

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Lexington County

S.C. SUPREME COURT

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY RAY JONES, JR.,

APPELLANT.

APPELLATE CASE NO. 2019-001008

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

SUSAN B. HACKETT
Appellate Defender

DONALD J. ZELENKA
Deputy Attorney General

DAVID ALEXANDER
Appellate Defender

MELODY J. BROWN
Senior Assistant Deputy Attorney General

LARA M. CAUDY
Appellate Defender

TOMMY EVANS, JR.
Assistant Attorney General

TAYLOR D. GILLIAM
Appellate Defender

S. R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

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

Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-3727

ATTORNEYS FOR RESPONDENT

ATTORNEYS FOR APPELLANT

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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)

1 could be guilty, guilty but mentally ill, not guilty by
2 reason of insanity and not guilty at all. Those are the
3 four potential verdicts.

4 A Right.

5 Q Now understanding you haven't heard any facts, you
6 haven't heard any instructions by the Court on how to
7 consider those particular aspects of the verdict, can you
8 give meaningful consideration to any and each of those
9 potential verdicts, applying the facts you heard in court
10 and be a fair and impartial Juror in this case?

11 A I can.

12 Q Now, I am going to list other potential defenses
13 which may also be testified to and may be instructed at
14 that time. Until the testimony is presented, I as the
15 instructor of the law, don't really know exactly how I am
16 going to tailor my particular instructions to the jury.
17 Things are testified to, perhaps a reason for me to give
18 additional instructions I would do so. These are defenses
19 that are available under our statute. I won't give them
20 all, I am going to list them all to you right now. At the
21 appropriate time I may not give them all to you then if
22 the testimony doesn't support it. Okay.

23 A Okay.

24 Q Potential defenses may be identification, accident,
25 involuntary intoxication, self-defense, necessity,

1 insanity, guilty but mentally ill, defense of habitation,
2 entrapment, duress and alibi. Those are potential
3 defenses available so can you give meaningful
4 consideration to those particular defenses, any of them if
5 they are appropriate to be instructed considering the
6 testimony and evidence in the trial. Can you do that?

7 A Yes.

8 Q Also, if a not guilty verdict is found during guilt
9 or innocence the case stops right there, it ends. It is
10 over with. But if the State meets its burden of proving
11 murder it goes to stage two which is the sentencing phase.
12 At that time the State is then tasked with proving beyond
13 a reasonable doubt aggravating circumstances. Aggravating
14 circumstances are additional steps the State must prove
15 beyond a reasonable doubt in order to seek a life without
16 parole, I am sorry, a death penalty verdict. Aggravating
17 circumstances are killing of a police officer, rape of
18 murder, kidnapping of murder, murder of children, murder
19 of multiple victims. They have got to prove at least one
20 beyond a reasonable doubt.

21 A Okay.

22 Q Also the jury gets to consider any mitigating factors
23 that are presented to them, from where ever they come.
24 Mitigating factors are reasons to not impose the death
25 penalty, to impose the life without parole sentence. Do

1 you understand?

2 A Yes.

3 Q Particular mitigating circumstances allowed under the
4 statute are, the Defendant has no significant history of
5 prior criminal conviction involving the use of violence
6 against another person. The murder was committed while
7 the Defendant was under the influence of mental or
8 emotional disturbance. The victim was a participant in
9 the Defendant's conduct or consented to the act. The
10 Defendant was an accomplice in the murder committed by
11 another person and his participation was relatively minor.
12 The Defendant acted under duress or under the domination
13 of another. The capacity of the Defendant to appreciate
14 the criminality of his conduct or to conform his conduct
15 was substantially impaired. The age or mentality of the
16 Defendant at the time of the crime. The Defendant was
17 provoked at the time of the crime by the victim. The
18 Defendant was below the age of 18 at the time of the
19 crime. The Defendant had mental retardation at the time
20 of the crime. Now, those are statutory. Jury's are not
21 limited to only considering the statutory mitigating
22 factors but they can consider any types of testimony which
23 they can think would impact their decision to vote for
24 life without parole such as a person's prior personal
25 history, growing up, broken home, walk in life, whatever.

1 That type of thing is also allowed to be considered as
2 mitigating factors. Now, during the sentencing portion
3 jury's are required to consider testimony of aggravating
4 factors which the State has met its burden of proving
5 beyond a reasonable doubt as well as any mitigating
6 factors that have been presented. The jury can consider
7 all of those facts. Now, can you give meaningful
8 consideration to all of those aspects, whether it is
9 aggravating factors, mitigating factors, defenses,
10 whatever the testimony, give meaningful consideration to
11 it as well as consider the instructions of the Court on
12 the law in evaluating and considering this type of
13 evidence, can you do that?

14 A Yes, I can.

15 Q Now, do you have any religious, personal or moral
16 belief which would prevent you from finding a sentence of
17 the death penalty?

18 A Can you repeat that.

19 Q We are in the sentencing phase, the very end when the
20 jury has reached a unanimous verdict. At the very end
21 jurors have to sign their name to the verdict form. Do
22 you have any religious, personal or moral belief that
23 would prevent you from agreeing and voting for the death
24 penalty?

25 A No.

1 Q Now, likewise, do you have any religious, personal,
2 any type of belief, moral belief which would prevent you
3 from finding life without parole sentence?

4 A No.

5 Q You could find either one?

6 A Yes.

7 Q Now, this case involves graphic testimony involving
8 the death of children. It is unpleasant, it is harsh. I
9 have not seen all of it. I know very little about it
10 other what I am telling you, the death of five children.
11 I have no doubt when the lawyers represented to me, it is
12 difficult, unpleasant testimony. Would that subject
13 matter make it difficult for you to be fair and impartial
14 to both sides, to the State and to the Defense?

15 A No.

16 Q Can you do that?

17 A Yes.

18 Q Can you think of any other reason why you cannot be
19 fair and impartial to both the State and the Defense?

20 A No.

21 THE COURT: All right, Mr. Secor.

22 EXAMINATION

23 By Mr. Secor:

24 Q Hi, Mr. Lewis. I have some things that I would like
25 to talk about with you if that is all right. And the

1 Judge was talking to you, he was obviously talking to you
2 about the requirements of a qualified Juror, a person who
3 is actually sitting on this jury in this case. And I
4 would like to talk to you more about your personal
5 feelings about some issues. Is that all right with you?

6 A Sure.

7 Q First I would just like to ask you what your thoughts
8 are on the death penalty, just generally how do you feel
9 about the death penalty?

10 A It depends on the facts.

11 Q Okay. Do you think that it serves a purpose?

12 A Yes.

13 Q Do you remember hearing anything about this case when
14 it originally happened?

15 A No.

16 Q Not at all?

17 A No.

18 Q Okay. As the Judge talked to you about, there is
19 four possible verdicts in the first phase in this case.
20 There is guilty, guilty but mentally ill, not guilty by
21 reason of insanity and not guilty. Right. And three of
22 those verdicts, a verdict of guilty, a verdict of guilty
23 but mentally ill or a verdict of not guilty by reason of
24 insanity, that would mean that the jurors believed that
25 the person had done the act. So the case of murder, the

1 person had killed, maliciously an innocent person without
2 any excuse, justification or defense. Is that your
3 understanding of that?

4 A Yes.

5 Q Okay. And some people feel like in that situation
6 where they know that the person did the act, that a
7 verdict of not guilty by reason of insanity is somehow
8 just an excuse and some jurors would say that is not a
9 realistic option for me where I know that somebody
10 actually killed somebody. How do you feel about that, do
11 you feel like it is a thing that you could consider or do
12 you feel like it is sort of an excuse or a copout?

13 A I don't think it is an excuse. There are
14 professionals that handle or deal with that. But I can be
15 impartial.

16 Q I appreciate that. As the Judge told you, this is a
17 case where the allegations are the murder of five
18 children. And as the Judge told you, that is malicious
19 killing, one done with hatred, evil or wickedness. Right.
20 And so what I would like to know from you, is your
21 feelings about how a person should be punished if a jury
22 finds beyond a reasonable doubt, there is no question
23 about that this person maliciously killed five innocent
24 children. You don't get to decide the punishment at that
25 point if you are on the jury. What I am asking, what you

1 feel about a person at that point who has been convicted
2 of five murders of innocent children. How do you feel
3 personally about the death penalty for that person.

4 MR. GRAHAM: Objection, Your Honor, I thought we were
5 going to limit our questioning to classes as opposed to
6 specifics.

7 THE COURT: We were. Rephrase your question to
8 characteristics of the class of charges here, not
9 specifics.

10 MR. SECOR: Can I get some clarification before I go
11 foreward?

12 MR. GRAHAM: Can we approach, Your Honor?

13 THE COURT: Yes.

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

17 Q And I may have been overly wordy and I apologize. I
18 want to know how you feel personally, just in your own
19 heart of hearts, about the death penalty for a person who
20 was found guilty of the murder of multiple children?

21 A I can't say that. I don't know, I would have to see
22 what is presented.

23 Q Okay. Do you feel as though that a sentence of life
24 without the possibility of parole could ever be a
25 sufficient punishment for somebody who you found--

1 A Yes.

2 Q Yes, okay. Are there any types of cases that you
3 think, personally, just absolutely call for the death
4 penalty in all circumstances?

5 A No.

6 Q Okay. I would like to talk to you a little bit about
7 the way that the penalty phase works in these cases if you
8 found somebody guilty and move on to the penalty phase.
9 Okay. As the Judge told you the State would present to
10 you what is called aggravating evidence and that has to be
11 proven beyond a reasonable doubt to all jurors
12 unanimously. Does that make sense to you?

13 A Yes.

14 Q Okay. And of course those are reasons that the State
15 would offer to you in their argument that they think that
16 death is the appropriate punishment. Right. And then on
17 the other side of that you would consider mitigating
18 evidence and the definition of mitigating evidence is
19 really just simply any reason to vote for life without
20 parole. And unlike aggravating evidence there is no,
21 there is no standard of proof or burden of proof in
22 mitigating evidence. Okay. And it doesn't have to be
23 proven unanimously. Each Juror finds for themselves what
24 they think is mitigating about a case or a Defendant and
25 it doesn't have to have anything to do with the actual

1 facts of the case. Does that make sense to you?

2 A Yes.

3 Q And that is why, what is presented in mitigation can
4 be the character and background of the convicted murderer.
5 And one Juror might find that I think it is mitigating
6 that he had a good relationship with his dad. That is the
7 mitigation I find for myself. Nobody has to agree with
8 that Juror. Another Juror might say, I think he has
9 mental health problems. Nobody else has to agree but
10 those jurors have found that mitigation and that is
11 mitigating to them and they hold on to that. Does that
12 make sense to you?

13 A Yes.

14 Q The law also says that once you get to the point
15 where you make the ultimate decision as an individual
16 Juror between life or death, you may choose a sentence of
17 life without parole for any reason, no reason or based on
18 mercy alone. So any reason would be like one of those
19 mitigating factors that we talked about. No reason would
20 just be, I as a Juror, I have heard everything, I have
21 considered everything, I have followed my oath. I have
22 gone to the deliberation room and talked to my fellow
23 jurors but I have a responsibility to make the decision
24 based on my own individual moral judgment and I can't tell
25 you why, I can't point to a certain thing, I can't put it

1 into words but life is the right sentence for me in this
2 case and I am voting for life and you don't have to
3 justify that or explain to anybody. Does that sound fair
4 to you.

5 MR. GRAHAM: Judge, I am going to object. I feel
6 like we are indoctrinating--

7 THE COURT: I think we need to ask questions, this is
8 lengthy.

9 Q I bring that up just to ask you, if a person said
10 that to you and they are entitled to that would that be
11 okay with you that they chose that even though they
12 couldn't tell you?

13 A Yes.

14 Q And a Juror also has the ability at all times to vote
15 for life for mercy. Is that something that you could
16 accept and follow as well?

17 A Yes.

18 Q As I said, the law requires the decision of
19 punishment to be each juror's own individual moral
20 judgment. And once a Juror arrives at their own
21 individual moral judgment on a penalty they are not
22 allowed to deviate from that. And I say that because it
23 is not appropriate for a person to be bullied out of their
24 own individual moral judgment. Does that makes sense to
25 you?

1 A Yes.

2 Q And if you arrived at your own--

3 MR. GRAHAM: Objection, Your Honor. I can talk out
4 loud or we can come over there.

5 THE COURT: Mr. Lewis, step down and I have to deal
6 with some issues with the lawyers. You stand in the hall
7 and I want to hear from the lawyers and we will have you
8 right back in here.

9 (Whereupon, the Juror was excused from the
10 courtroom.)

11 THE COURT: Mr. Graham.

12 MR. GRAHAM: I just feel like the whole line of
13 questioning, just trying to indoctrinate them of what they
14 should do and how to do it. He just told the Juror that
15 once you make a decision you can't change your mind and
16 that is not true. The Juror can make a decision and
17 change their mind. It is not that the first decision you
18 make is the one that you stick with forever. That is
19 incorrect.

20 THE COURT: I think the correct statement would be,
21 you cannot be bullied or coerced to change your mind, not
22 you are absolutely bound by that decision. I think that
23 is a mischaracterization to phrase it what way. You are
24 not bound to not change your mind. But you cannot be
25 bullied to change your mind.

1 MR. SECOR: I specifically said to him about talking
2 to other jurors as I have the other people I have voir
3 dired and I said, once you arrive at your individual moral
4 judgment on penalty that is your verdict. And that is
5 true, that is a true statement of law.

6 THE COURT: You used some very direct specific verb,
7 I don't remember it right now.

8 MR. GRAHAM: I think he said you couldn't change your
9 mind.

10 THE COURT: There was another word, it was specific.
11 Maybe deviate. Y'all have delved into that, but the
12 question gets rephrased three or four times. I mean,
13 once, twice, that is plenty because we are getting into--

14 MR. HUBBARD: Your Honor, maybe we can agree, and it
15 might help things go quicker. Obviously they want to make
16 sure nobody is bullied and we agree with that. Maybe if
17 they can just ask that question, that you can't be bullied
18 out of your position, that is fine. But this follow-up
19 that you can't change it for some reason--

20 THE COURT: Would be a violation of your oath.

21 MR. HUBBARD: Yes, sir.

22 THE COURT: Okay.

23 MR. SECOR: I don't see a difference between telling
24 them that they, once they arrive at their individual moral
25 judgment they can't change it and--

1 THE COURT: Your style of questioning is, once a
2 person arrives at their individual moral judgment and they
3 arrive at that judgment after fully considering
4 everything, consider the Judge's instruction and the
5 appropriate law and they consider this that they are bound
6 by their oath under the Court's instruction to not deviate
7 from that finding. Do you think that is fair. It is that
8 long of a question that you are asking and I think it is
9 kind of tricky for you to get them to commit to all of
10 those things because you ask lengthy questions. It is
11 just your style, I am not criticizing you but you have a
12 very, very lengthy, would you agree with that style.

13 MR. HUBBARD: Your Honor, I guess my concern, because
14 one of the prior jurors, it was almost, I was left feeling
15 like maybe that decision can be reached before she or he
16 walked in the back room. And then they felt like they
17 couldn't change it because now I am required to stick to
18 my position. That is not it. If we could just shorten
19 this, Judge.

20 MR. SECOR: I have said to each Juror, after
21 considering the--

22 THE COURT: Shorten your questions.

23 MR. HUBBARD: And we could leave out, you can't
24 deviate or change. Anybody can change their opinion.

25 THE COURT: You are allowed to stick with your

1 opinion and your decision. You are very much allowed to
2 do that, you can't be bullied. Fair enough.

3 MR. SECOR: And it would be a violation of your oath
4 to deviate from your own individual moral judgment.

5 THE COURT: It is not a violation of your oath to
6 change your mind. That is what they are thinking. Your
7 suggestion is what you make it, you can't unchange your
8 mind. And the way you have worded it, that sounds like,
9 once you make the decision it is, no mind change or I
10 violate my oath, that is the law. That is not the law.

11 MR. SECOR: Yes, sir. Just so I am clear so we don't
12 have to revisit this. You want me to restrict my
13 questions to the issue of bullying, is that correct.

14 THE COURT: The issue of what?

15 MR. SECOR: Of bullying. Is that correct.

16 THE COURT: Yes but you are allowed to maintain your
17 decision but I think the question is kind of evolved, it
18 would be a violation of your oath if you then deviate from
19 your original decision. I think that is the
20 mischaracterization of the, what the State is objecting to
21 and I think that is a mischaracter of the law. Once you
22 made your decision and it is your decision and you are
23 allowed to stick with it and under all juror's oath nobody
24 is allowed to be bullied out of that decision. That is
25 accurate. If you change your mind for a valid reason you

1 can but I am certain you are not going to ask that.

2 MR. SECOR: Yes, sir. I would just bring up, in
3 light of the Court's ruling regarding our inability to
4 tell jurors about the consequence of unanimity at the
5 penalty phase of the deliberations, the next best thing we
6 have available to us to instill in them the belief that
7 they have to make this decision--

8 THE COURT: See, that is getting to what he is
9 objecting to, that is what you are trying to do.

10 MR. SECOR: To suggest to indoctrinating them to the
11 truth of the law strikes me as a bit odd. I don't know
12 why we wouldn't want them to be indoctrinated to the truth
13 of the law.

14 THE COURT: Well, the way you are characterizing it
15 is not actually the law. You are bound to not deviate
16 your sworn oath, once you made your individual moral
17 judgment you are not. You are allowed to stick with your
18 decision and not allowed to be bullied by that decision.
19 That is what the law is and that, you know, it is what it
20 is.

21 MR. SECOR: I would just say, I don't think that I
22 did tell him that you could come in there without
23 considering anything and just say, I am voting life. I
24 don't think I said anything even remotely close to that.

25 THE COURT: Well, and here is another. I mean, y'all

1 are aware of this. These jurors are novices. Y'all are
2 very aware of the language, the individual moral judgment,
3 mitigating factors. This is all new stuff to them and so
4 we use this language, it means more to us then it does to
5 them. So we have to be aware of that. These jurors are
6 not trained and experienced in Capital cases as y'all are.
7 So I think the proper question is something along the line
8 is, if and when you reach your individual moral judgment
9 you are allowed to maintain that and you are not allowed,
10 under anyone's oath, to be bullied out of it. Something
11 along those lines. I don't think it should be suggested
12 to be a violation of their oath if they change their mind.
13 That is what I am worried about, not be a violation of
14 them to change their mind. They can't force or coerce to
15 change their mind.

16 MR. SECOR: Yes, sir.

17 THE COURT: Fair enough.

18 MR. SECOR: Yes, sir.

19 THE COURT: Bring him back in.

20 (Whereupon, the Juror entered the courtroom.)

21 Q Mr. Lewis, I am sorry about that. They just wanted
22 to make sure I got across to you. In the penalty phase
23 deliberations, when a person has taken everything into
24 consideration and arrived at their individual moral
25 judgment of what the appropriate penalty is, the law does

1 not allow them to be bullied or coerced out of that. Does
2 that make sense to you?

3 A Yes.

4 Q Thank you for your time. I appreciate it.

5 EXAMINATION

6 By Mr. Graham:

7 Q My name is Shawn Graham, how are you?

8 A Good.

9 Q I appreciate you being here with us today. Just real
10 clear, real short I guess. What I heard you say is you
11 are a type three Juror which means that you could give the
12 death penalty in the appropriate case?

13 A Correct.

14 Q You could give life without parole as well?

15 A Correct.

16 Q You want to hear everything?

17 A Correct.

18 Q You want to hear the good, you want to hear the bad?

19 A Correct.

20 Q You want to go back to the jury room with the rest of
21 your jurors and you want to sit down and talk about it and
22 then you want to reach your decision?

23 A Correct.

24 Q You understand that if all twelve of you decide that
25 the death penalty was the punishment that you would

1 actually have to sign your name to a document that said, I
2 vote for death.

3 A Correct.

4 Q And knowing that, if you thought death was
5 appropriate would you be willing to do that?

6 A Yes.

7 Q Thank you, Mr. Lewis.

8 THE COURT: Anything further, Mr. Secor?

9 MR. SECOR: No, sir.

10 THE COURT: Anybody need to put anything on the
11 record?

12 MR. SECOR: Yes, sir.

13 THE COURT: Mr. Lewis, step out and we will put
14 something on the record and we will have you right back
15 in.

16 (Whereupon, the Juror was excused from the
17 courtroom.)

18 MR. SECOR: Your Honor, if I may just briefly
19 regarding the conversation we had at sidebar. Is that
20 okay?

21 THE COURT: Sure.

22 MR. SECOR: And I don't want to misstate what Your
23 Honor said but I believe it was Your Honor did not want
24 the question regarding the murder of five children and
25 that you wanted it to be restricted to the murder of

1 multiple children. Is that correct?

2 THE COURT: Yes. What the discussion has been was
3 the Defense is wanting to continually ask about
4 particular, I am sorry, about general characteristics of
5 the case. And the State does not want specifics about the
6 case like the murder of five children, ages, 2, 3, 5, 6,
7 7, like that. That is what we are trying to stay away
8 from and we have kind of gotten a step closer, a step
9 closer where the facts are generalized. But there is
10 accusations made of the murder of five children. The
11 State has been using children under the age of eleven,
12 multiple murders. And we discussed at sidebar and you may
13 have brought up the fact that the Solicitor brought up the
14 brutal murder of children on a prior Juror and that was
15 during the examination of being able to deal with the
16 subject matter. It wasn't exactly on can you reach this
17 decision or that decision. But in order to not violate
18 the staking out but allow the proper questions, do you
19 think it would be better if we consistently say the murder
20 of children under eleven, five accusations of that. I
21 mean, the number of five, I don't know how we get around
22 because there is five indictments.

23 MR. SECOR: Yes, sir.

24 MR. HUBBARD: Right. I guess what we think, probably
25 me being articulate in. When it is just a question, do

1 you think that demands the death penalty, that seems to
2 jump right into a case and they don't have the facts. I
3 would just ask this Court that, I would like for it to be
4 balanced. Would you, in a case involving multiple
5 children under the age of eleven being murder, where there
6 is no question, there is a conviction, would you feel the
7 need to hear additional testimony, mitigating and
8 aggravating circumstances. I mean, that is, opposed to,
9 would you automatically think that is or you think that
10 that would be an appropriate sentence for somebody who has
11 killed people under the age of eleven or multiple kids.
12 Because the way it has been asked sometimes it seems to
13 assume, at least on the record if you read it, it seems to
14 assume that that Juror is jumping right to a verdict
15 without reviewing statutory aggravating and mitigating
16 circumstances. And I think it has been confusing to the
17 jurors. That has been my frustration, that there hasn't
18 been that preface of balance. And I think it would cut
19 out a world of questions and certainly clear things up for
20 us when we get up to ask questions.

21 MR. SECOR: If I may.

22 THE COURT: Yes, sir.

23 MR. SECOR: I would just say that the question
24 regarding the appropriate, the death penalty for a person
25 convicted of an aggravating murder is the question

1 authorized by--

2 THE COURT: And what you just said is perfectly fine.
3 They objection comes in with five children. Then you add
4 the facts and we get a step closer to staking. What you
5 just said is not staking, that is generalization. So how
6 do we get you to do the characteristics of the crime
7 without going too far.

8 MR. SECOR: I would say, I would say that pursuant to
9 State versus Longworth, 313 SC 360; State v. Davis, 309 SC
10 326 and U.S. v. Johnson, 366 F2nd 822. The Defendant in
11 Capital cases has the constitutional right to ask
12 potential jurors is predisposed to or will automatically
13 vote for the death penalty upon conviction of murder based
14 on category of conduct. Category of conduct in this case
15 could be the murder of five children as already
16 articulated to the potential jurors by the Court.

17 MR. HUBBARD: If he had, he can almost ask it that
18 way without mentioning five kids that are, he can say,
19 does the murder of children, multiple children, is that a
20 category conduct that you think always warrants. Well, I
21 don't think I would even ask that way. But would you
22 consider, would you automatically sentence or would you,
23 death or would you want to consider aggravating and
24 mitigating circumstances, something to that effect. It
25 has got to be balanced.

1 MR. SECOR: Please correct me if I am wrong but my
2 recollection from yesterday, we were just saying,
3 conviction of murder for, of a child. And the State
4 wanted it to go to five in order to prevent us from first
5 starting at conviction one and then adding on the five
6 instead of one.

7 THE COURT: I don't remember that. I am not sure
8 about that. You may be right.

9 MR. HUBBARD: It was the only and always language
10 that they were using in their questions. Do you think it
11 is the only appropriate sentence. That was our objection.
12 Is it appropriate, I am fine with. And it is appropriate,
13 I am fine with that.

14 MR. SECOR: I think there has been some
15 inconsistencies of the State wanting us to use the word,
16 only, sometimes and not wanting us to use the word, only,
17 at other times. I am, what I am asking the question of
18 these jurors. I have tempered it a little bit by telling
19 them, you don't have the ability to sentence at that
20 point. What I am asking, pursuant to Morgan is, what are
21 your feelings as a person, not as a Juror. There are
22 rules about following the law don't apply to these
23 perspective jurors. We are entitled, in order to
24 intelligently exercise--

25 THE COURT: All right. How about this. If the

1 person convicted of murdering more than one child,
2 multiple children, would you consider it appropriate, that
3 is kind of what you just said. And that is kind of
4 fitting what the State is trying to get away from five.

5 MR. HUBBARD: And from the word, only. Would that be
6 the only appropriate sentence. So you are right, Judge,
7 that question, we didn't object to that question
8 yesterday.

9 MR. SECOR: I believe that when I ask the question,
10 the emphasis is on the word, appropriate. Meaning is it
11 the only appropriate sentence for you. That is what I
12 need to get at and that is what Morgan versus Illinois
13 entitled me to do. I need to know whether they are
14 predisposed of that and that is the standard in South
15 Carolina. I am not trying to trick them, I am trying to
16 put them in a situation where they understand--

17 THE COURT: It is a lot easier to manage one lawyer
18 at a time. But I got Mr. McGuire's style, I have got Mr.
19 Young's style, I have got the Solicitor's style, I have
20 got Mr. Graham's style. Y'all are all slightly different.
21 Y'all are giving me six different things to -- your style
22 is lengthy. That is probably most difficult for me
23 because you are thinking as you are talking.

24 MR. SECOR: I assure you I am not trying to be long.

25 THE COURT: I understand, I am the same way. Y'all

1 make it real hard and I am not saying I am going to tell
2 you to quit doing it. But it is easier when I am just
3 dealing with one consistently and I kind of get into a
4 rhythm in knowing where you are going.

5 MR. SECOR: I understand, I am not trying to add to
6 that.

7 MR. HUBBARD: Your Honor, maybe I can assist. I know
8 the case he sited, correct me if I am wrong, he wants to
9 ask if they would be predisposed to the death penalty. I
10 am fine with the question. If the State has proven murder
11 of multiple children would you be predisposed to the death
12 sentence. I am fine with that.

13 MR. SECOR: And I appreciate that. The only problem
14 with that is that, that the predisposed is sort of the
15 guide for Your Honor. If we just ask people who came in
16 and said, are you substantially impaired, every single one
17 of them would say no.

18 THE COURT: How about locked in or committed to.

19 MR. SECOR: Or would you be starting at, that sounds
20 pretty close to predisposed.

21 THE COURT: Sure. Try that. The State proves
22 murder, multiple children.

23 MR. HUBBARD: Actually, the one difference there is
24 we had a guy earlier who said, are asking whether is your
25 starting point.

1 THE COURT: Right.

2 MR. HUBBARD: And we had one Juror who said, you
3 know, obviously I don't know. We had one who said I
4 started at life and then depending on what I hear. I
5 think it is probably better to just say, would you need to
6 hear any aggravating or mitigating circumstances. Would
7 you need to hear anything else. That would really tell
8 Your Honor, all right, I have got somebody who doesn't
9 even listen anymore. Or would you want to hear anything
10 else.

11 THE COURT: You are suggesting Mr. Secor say, if the
12 State has proven murder and multiple children would you
13 need to hear anything else.

14 MR. HUBBARD: Before you find for death or before you
15 find for life, either one. I am fine with that.

16 MR. SECOR: That would be difficult. I am just, I
17 need to stick with the question, their feelings about the
18 death penalty, aggravated murder. There was even one
19 Juror where I told them--

20 THE COURT: How about this. If the State proves
21 murder, multiple children, what is your feelings about the
22 death penalty. Simple question and not wordy.

23 MR. SECOR: I can't say, are you starting with the
24 death penalty.

25 THE COURT: You just changed the question on me

1 there. What are your opinions on the death penalty. The
2 State proves murder, multiple children. What is your
3 opinion on the death penalty, that circumstance. That is
4 what you just asked and I think that is okay.

5 MR. SECOR: May I just ask--

6 THE COURT: You can follow-up with something. That
7 is what you just asked and I think that is fine.

8 MR. SECOR: Yes, sir.

9 THE COURT: I think that gets you where you need to
10 go or where, what you are hoping for. Understand now, you
11 can still make a motion because we are through with Mr.
12 Lewis.

13 MR. SECOR: Yes, sir. And we are just, just renew
14 also our objection to not being able to discuss with
15 jurors the consequence of the non-unanimous panel.

16 THE COURT: Your objection is noted for the record
17 and I have already ruled on that and consistently rule on
18 the same. Bring Mr. Lewis back in.

19 (Whereupon, the Juror entered the courtroom.)

20 THE COURT: Mr. Lewis, that discussion was lengthy
21 that I had to deal with. You are found qualified as a
22 Juror by the Court. That means, I know you are a IT guy
23 and you can follow my instructions and watch the computer
24 website, when you are coming back in. It will be under
25 the heading of qualified Juror. Instructions will say,

1 please check back, please report when, some date and time.
2 Probably be after next week. You are under oath to not
3 talk about the case, not discuss the case, not answer
4 questions about the case. Not to do any independent
5 research in the case. Do you understand?

6 JUROR: Yes, sir.

7 THE COURT: Are you going to live by that oath.

8 JUROR: Yes, sir.

9 THE COURT: There is plenty of publicity in the case
10 and don't do any research, don't follow the media reports,
11 minimize your media perusing. I want you to be influenced
12 and make your decision on what you hear in here. Can you
13 do that for me?

14 JUROR: Yes, sir.

15 THE COURT: Thank you so much and see you when I see
16 you next.

17 JUROR: Very well.

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

20 THE COURT: Bring number 286 in.

21 (Whereupon, Juror number 286, Joe Medlock entered the
22 courtroom.)

23 EXAMINATION

24 By The Court:

25 Q Good afternoon.

1 A Good afternoon.

2 Q You are Mr. Medlock?

3 A I am.

4 Q My name is Eugene Griffith, pleasure to meet you.

5 Monday I asked y'all to take an oath as a group to

6 minimize communication. Do not talk about the case.

7 Don't let anybody ask you questions and do not respond to

8 questions. Did you do that?

9 A I did.

10 Q Did you follow the oath?

11 A I followed your oath.

12 Q You did not talk about the case?

13 A No, sir.

14 Q No one asked you questions.

15 A No, I was asked questions and I just told them I

16 couldn't answer.

17 Q Fair enough, that is what you are suppose to do.

18 Now, there has been a lot of publicity. Has any of the

19 publicity and including my publication of the indictments

20 Monday, obviously you heard that?

21 A Yes, I heard that.

22 Q Has anything from my comments, publications of the

23 indictments, any publicity you heard, any publicity before

24 Monday and months ago, there has been publicity period.

25 Has any of that publicity, my comments reading the

1 indictments, anything whatsoever caused you to form an
2 opinion as to what has happened in this case?

3 A Probably honestly, yes.

4 Q Okay. Now, a lot of facts, I provided brief facts
5 about the allegations the State has made against Mr.
6 Jones. He is presumed innocent.

7 A Right.

8 Q I also gave you some preliminary instructions,
9 aspects of the law, criminal procedure. Kind of how a
10 Capital case is a two-step process if necessary. Step
11 one, guilt or innocence. Step two, the State provides, if
12 they are found guilty of the actual murder, the State has
13 got to prove an aggravating factor as well as mitigating
14 circumstance and testimony for you to consider. I gave a
15 sheet to describe three types of jurors. What type of
16 Juror, did you read this?

17 A I did.

18 Q Did you understand it?

19 A Yes, sir.

20 Q Did you find yourself in any one of those three
21 categories.

22 A I would like to think I was a number three.

23 Q Okay. You would like to?

24 A Yes, I am only human.

25 Q Okay.

1 A No, I will try to consider, everything depends, there
2 is not a solid answer.

3 Q So that means an open mind?

4 A Yes.

5 Q Consider all sort of factors?

6 A Yes, sir.

7 Q Now, there is some aspects of this case that I
8 mentioned in the preliminary instructions which included
9 defenses that Mr. Jones has presented. There are statutes
10 which are the books behind me written out by the General
11 Assembly provides several potential defenses for people
12 when they are accused of crimes. Okay?

13 A Okay.

14 Q Potential defenses from our statutes, now there is
15 testimony, you have got no facts.

16 A Right.

17 Q Very, very scant facts. There are going to be a lot
18 of facts presented. Until all the facts and testimony are
19 presented I am not exactly sure how my instructions will
20 be. My instructions will be tailored from some of the
21 testimony that is going to be presented. So the testimony
22 that is going to be presented regarding the facts of this
23 nature or that nature, I could add in instructions on
24 aspects of that testimony. I won't know until I hear the
25 testimony also. But I will instruct you on whatever I

1 deem is appropriate considering what is presented. So
2 with that in mind, potential defenses and all of these
3 will not be presented, it depends on the testimony. This
4 is from the statute, I will read them off to you.
5 Identification, accident, involuntary intoxication,
6 self-defense, necessity, insanity, guilty but mentally
7 ill, defense of habitation, entrapment, duress or alibi.
8 Those are potential defenses. Mr. Jones has selected to
9 claim one of those and try to present it for the jury's
10 consideration. Can you give meaningful consideration to
11 those defenses, the testimony presented, evidence
12 presented, consider my instructions on the law, give
13 meaningful consideration to those types of defenses?

14 A Yes, I can consider them.

15 Q Now because of the plea he has entered, not guilty by
16 reason of insanity. There are four potential verdict
17 forms. Guilty, guilty but mentally ill, not guilty by
18 reason of insanity and not guilty at all. Those are the
19 potential verdicts. Can you give meaningful consideration
20 to any of those four potential verdicts after considering
21 the instructions of law as well as the facts and evidence
22 testified to?

23 A Yes.

24 Q Also, if the State has proved its case beyond a
25 reasonable doubt, if a verdict of not guilty is found the

1 case ends right there, on either of the potential
2 verdicts. If guilty but mentally ill or guilty then the
3 case proceeds to phase two. At that time the State has
4 got to prove an aggravating factor by the statute of
5 several, rape of murder, kidnapping of murder, police
6 officer murdered, children murdered, multiple murders. An
7 aggravating factor, the State has got to prove at least
8 one of those beyond a reasonable doubt. Presume that has
9 happened, you are also tasked with considering mitigating
10 evidence. Mitigating evidence are reasons to impose a
11 life sentence as opposed to the death sentence.
12 Statutorily mitigators, the Defendant has no significant
13 history of prior criminal conviction involving the use of
14 violence against another person. The murder was committed
15 while the Defendant was under the influence of mental or
16 emotional disturbances. The victim was a participant in
17 the Defendant's conduct or consented to the act. The
18 Defendant was an accomplice in the murder committed by
19 another person and his participation was relatively minor.
20 The Defendant acted under duress or under the domination
21 of another person. The capacity of the Defendant to
22 appreciate the criminality of his conduct or to conform
23 his conduct to the requirements of law was substantially
24 impaired. The age or mentality of the Defendant at the
25 time of the crime. The Defendant was provoked by the

1 victim in committing the murder. The Defendant was below
2 the age of 18 at the time of the crime. The Defendant had
3 mental retardation at the time of the crime. Other
4 non-statutory mitigating factors can also be considered
5 like his walk in life, how he was raised, broken home,
6 whatever aspects of his growing up, anything can be a
7 mitigating factor. There is really no burden of proof on
8 it, the jury can consider what they hear.

9 A Right.

10 Q Okay. Now, can you give meaningful consideration to
11 the aggravating factors, the State has got to prove that
12 beyond a reasonable doubt and any mitigating evidence or
13 circumstances, can you give meaningful consideration to
14 all of those factors?

15 A Yes, sure.

16 Q In considering a case, my instructions on the law in
17 reaching a fair and impartial verdict in this case?

18 A Yes.

19 Q Do you have any religious, moral or personal beliefs
20 you cannot impose the death penalty?

21 A No.

22 Q Similar question. Do you have any religious,
23 personal beliefs you could not impose or vote for a life
24 without parole sentence?

25 A No.

1 Q Now, I should have asked you first. Do you have an
2 obligation which would prevent you from appearing as a
3 Juror. My guess is that the trial will start Monday a
4 week or so, go on for a week or two, go close to June?

5 A Yes, June I have a--

6 Q What have you on the horizon personally that you are
7 obligated to?

8 A I have a daughter graduating high school and I have
9 put a deposit on a house at the beach.

10 Q You are going to the beach with her?

11 A Yes and my other kids.

12 Q Okay. When is that?

13 A June 1st.

14 THE COURT: I am kind of inclined to say, enjoy his
15 trip.

16 MR. YOUNG: Yes, sir.

17 Q I would like to keep you and say that is not a good
18 enough reason but I am going to let you go on your trip.
19 So that would be a huge imposition if you were not allowed
20 to go. Thank you for coming and I should have asked you
21 that question up front.

22 A That is all right, no problem.

23 Q Thank you for your patience. You are excused, you
24 have got obligations that I am not going to impose upon.

25 (Whereupon, the Juror was excused from the

1 courtroom.)

2 THE COURT: Let's bring in 260.

3 (Whereupon, Juror 260, Carmen Lucas came into the
4 courtroom.)

5 EXAMINATION

6 By The Court:

7 Q Ms. Lucas, how are you?

8 A Good, how are you.

9 Q My name is Eugene Griffith, I have introduced myself
10 several times. I asked you to take an oath Monday to not
11 talk about the case. Have you lived up to that
12 obligation?

13 A Yes, sir.

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

15 A No, sir.

16 Q And if they did you told them not to talk about it?

17 A Yes, sir.

18 Q You got anything on your personal calendar, business,
19 personal or otherwise over the next, to the first week of
20 June. Next week I am dealing with other jurors so next
21 week you will, if you are called as a Juror it won't be
22 starting next week, perhaps after that?

23 A I do, yes sir.

24 Q What have you got?

25 A My daughter has school events on the 16th, 17th and

1 20th.

2 Q She has a lot of events?

3 A She is in 4K, sir.

4 Q All right, 16th, 17th and 20th.

5 A Yes, sir.

6 Q Is she graduating on the 20th to 5K.

7 A It is their last day, yes sir.

8 Q All right. 13th is Monday?

9 A It is that Thursday, Friday and Monday.

10 Q Is that your only child?

11 A Yes, sir.

12 Q So she is four-years-old?

13 A She is five and a half.

14 Q You work outside the home?

15 A I do, yes.

16 Q Do you take care of her all the time other than that?

17 A I do, yes. I have full custody.

18 Q And so once she gets out of school you are the one
19 that picks her up?

20 A No, she goes to daycare after school.

21 Q Okay. Other than daycare you are the primary
22 caregiver for her?

23 A Yes, sir.

24 THE COURT: She is a caregiver of a child under the
25 age of seven.

1 MR. YOUNG: Yes, sir.

2 Q Ma'am, thank you for coming, I am going to excuse you
3 from service because of that.

4 A Thank you.

5 THE COURT: And that is also consistent with her need
6 to get out by 5:00. She had children issues that the
7 statute allows for her.

8 (Whereupon, the Juror was excused from the
9 courtroom.)

10 THE COURT: 306, are y'all ready or do you need a
11 break. Are y'all good?

12 MR. HUBBARD: Yes, sir.

13 THE COURT: Bring him in.

14 (Whereupon, Juror 306, Franklin Nelson entered the
15 courtroom.)

16 EXAMINATION

17 By The Court:

18 Q How are you?

19 A All right, how are you.

20 Q Good. Your name is Mr. Nelson?

21 A Yes, sir.

22 Q My name is Eugene Griffith. I called you in on
23 Monday, you took an oath, Monday's oath required you not
24 to communicate about the case in any fashion. Has anybody
25 asked you about the case?

1 A No.

2 Q Have you talked to anybody about the case?

3 A No.

4 Q Now, there has been presentation Monday, I read the
5 indictments and you know a few brief facts and discussed
6 them a little bit earlier. I read the statement regarding
7 the criminal procedure and some of the processes. Did you
8 understand that?

9 A Yes, sir.

10 Q Now, have any of the publicity and the allegations
11 read by the Court, have those facts or whatever you heard,
12 because prior to Monday, there was publicity, you were
13 under no obligation to not read it or watch it. If you
14 did I want to know, have you formed an opinion as to what
15 happened in this case?

16 A I pretty much had an opinion before the case but, no,
17 in the morning I watch the news as far as the weather
18 goes.

19 Q I always watch the weather myself.

20 A I really don't care what is going on in the world
21 other than the weather.

22 Q Now, there, the fact, the summary of the criminal
23 procedures I gave you, talked to you about the State has
24 got to bring the case, make the allegations of murder.
25 They have got to have the burden of proof. Mr. Jones is

1 presumed innocent sitting right there. The State has got
2 to make its proof of the murder in phase one of the case.
3 Before we can go to phase two, not guilty is found in
4 phase one the case stops. It ends right there. If it
5 goes to phase two then the jury determines the punishment.
6 The State has got to prove at least one of the statutory
7 aggravating factors which are murder of a child, murder of
8 a police officer, rape of murder, those are aggravating
9 factors, the State is required to prove at least one of
10 those beyond a reasonable doubt. So I handed this sheet
11 to you describing, if the State proves murder, there is an
12 aggravating factor proven beyond a reasonable doubt and
13 there is also mitigating circumstances and factors.
14 Considering those factors, three types of jurors. Type
15 one, type two, type three. Did you read that sheet?

16 A Yes, sir.

17 Q Did you understand it?

18 A Yes, sir.

19 Q Can you find yourself and identify yourself
20 particularly to one of those three types of jurors?

21 A Yes, sir.

22 Q Which one?

23 A Probably one.

24 Q One. Now, when you say that, it means that you kind
25 of, personal belief that if somebody committed murder and

1 the State proved an aggravating factor, that is a result
2 they should get.

3 A Yes, sir.

4 Q Anything talk you out of that?

5 A Probably not. I am an eye for an eye.

6 Q Eye for an eye. Fair enough. Mr. Nelson, I greatly
7 appreciate your patience with us and this process and you
8 are free to go.

9 A All right.

10 Q You are excused.

11 (Whereupon, the Juror was excused from the
12 courtroom.)

13 THE COURT: Are y'all ready on 272.

14 MR. YOUNG: Can we take a break.

15 THE COURT: Yes, we will take five, sure.

16 (Whereupon, a short break was taken.)

17 THE COURT: Now are we ready on 272?

18 MR. YOUNG: Yes, sir.

19 THE COURT: Bring him in.

20 (Whereupon, Juror 272, Jeremy Mason entered the
21 courtroom.)

22 EXAMINATION

23 By The Court:

24 Q Mr. Mason, how are you doing?

25 A I am good.

1 Q My name is Eugene Griffith and I the presiding Judge
2 for the case. I placed you under oath Monday and I told
3 you, told everyone, please don't talk about the case.

4 Have you talked about the case?

5 A No, sir.

6 Q Has anyone asked you about the case?

7 A No, sir.

8 Q Other than having to get off of work?

9 A Yes, my boss knows what is going on, jury duty.

10 Q Now, I published the indictments on Monday and read
11 those and there is some very brief facts out there
12 regarding the allegations the State has made. There has
13 been multiple amounts of publicity before Monday about the
14 case in general. My question to you is, have you formed
15 an opinion based on anything you have heard whatsoever as
16 to what happened in this case?

17 A No, Your Honor.

18 Q Okay. Nothing has influenced you yet?

19 A No, sir.

20 Q Now, a lot of the questions that we are going to ask
21 you, the lawyers are going to ask you are about your
22 opinions so really and truly there are no wrong answers,
23 just candid answers, truthful answers which you are sworn
24 to tell the truth. So I ask you first, do you have
25 anything scheduled, I am asking jurors the same questions

1 so, I have got to ring a bunch of jurors in next week, it
2 will probably be the following week before the trial
3 starts. So if you are qualified as a Juror your duty
4 wouldn't start until then and it may go on for a couple of
5 three weeks, probably end early June. Do you have
6 anything scheduled that would create a huge imposition for
7 you to reschedule if you were selected as a Juror?

8 A No, Your Honor. The next plans that my wife might
9 have are at the end of July.

10 Q You are open--

11 A Right.

12 Q Did you examine the witness list, the potential
13 witnesses?

14 A Yes, sir.

15 Q Do you know of any of those potential witnesses?

16 A Not that I am aware of, Your Honor.

17 Q Now, I gave a summary, a brief summary, criminal
18 procedure, indictment, the State has got the burden of
19 proof, the State brings a Capital case there is
20 potentially a two-step process. The State must prove the
21 murder first, the jury finds murder, the State has got to
22 prove the case beyond a reasonable doubt. Do you
23 understand?

24 A Yes, sir.

25 Q Once that is done then potentially, if it is a not

1 guilty verdict the case ends right there. So not guilty
2 the case stops. If a verdict of guilty is found then it
3 goes over into phase two which is the sentencing phase.
4 And at that time the jury has basically got two choices,
5 life or death. And during phase two the State is required
6 to prove an aggravating factor to be entitled to seek the
7 death penalty. Our statutes allow or show several
8 aggravating factors and the State has got to prove at
9 least one. Murder of a police officer is one, rape of
10 murder, kidnapping of murder, children, child being the
11 victim, multiple victims. Those are some aggravating
12 factors the State could prove. The State has got to prove
13 one beyond a reasonable doubt. At that time, also the
14 jury is allowed to consider any mitigating factors,
15 reasons to not impose the death penalty. I gave you a
16 sheet that described, if you were in that position, the
17 State proved the murder beyond a reasonable doubt and also
18 the State proved an aggravating factor. Three types of
19 jurors, three choices as to two sentences. Can you
20 identify yourself as one of those three categories?

21 A Type three, Your Honor.

22 Q You are a type three, very well. Type three is
23 somebody who wants to hear it all. Do not have my mind
24 made up upon a finding of a guilty verdict. Is that
25 correct?

1 A That's correct.

2 Q Now, as an additional aspect, in some cases have
3 defenses that the Defense can show. Some of them may be
4 shown in this trial. I am going to read all of the
5 statutory defenses and ask you if you can consider those.
6 Potential defenses include identification and some of
7 these may not be applicable I am going to read them all.
8 Identification, accident, involuntary intoxication,
9 self-defense, necessity, insanity, guilty but mentally
10 ill, defense of habitation, entrapment, duress and alibi.
11 Those are all potential defenses, some of them are
12 affirmative defenses meaning you have got to alert the
13 State, we are going to intend to prove that, say that I am
14 going to present that. Considering those are potential
15 defenses and that Mr. Jones has tendered a plea of not
16 guilty by reason of insanity, so potential verdicts could
17 be guilty, guilty but mentally ill, not guilty by reason
18 of insanity or not guilty at all as opposed to guilty, not
19 guilty. Can you give meaningful consideration to all of
20 those potential defenses and affirmative defenses, those
21 four potential verdicts while considering testimony
22 presented, the evidence presented and the instructions of
23 the Court, meaning from me and make a fair and impartial
24 determination of guilt at that time, make a determination
25 to reach a verdict that is fair to both sides. Can you do

1 that?

2 A Yes, Your Honor.

3 Q So you can consider everything including my
4 instructions on all four of those potential verdicts?

5 A Yes, sir.

6 Q Now, if the case were to go to the sentencing phase,
7 so the State has met its burden of proof, stage two, phase
8 two is the sentencing portion. There is only two
9 potential results, life without parole or death. No
10 middle ground, no other options, there are only two
11 options. During that phase the State has got to prove the
12 aggravating factor beyond a reasonable doubt. As a Juror,
13 you are allowed to consider any and all mitigating factors
14 and testimony. There is some statutory and some is not,
15 you can hear whatever you want, listen to the testimony,
16 you can consider whatever you want. Mitigating factors
17 under our statute can be the Defendant has no significant
18 history of prior criminal conviction involving the use of
19 violence against another person. The murder was committed
20 while the Defendant was under the influence of mental or
21 emotional disturbances. The victim was a participant in
22 the Defendant's conduct or consented to the act. The
23 Defendant was an accomplice in the murder committed by
24 another person and his participation was relatively minor.
25 The Defendant acted under duress or under the domination

1 of another person. The capacity of the Defendant to
2 appreciate the criminality of his conduct or to conform
3 his conduct to the requirements of the law was
4 substantially impaired. The age or mentality of the
5 Defendant at the time of the crime. The Defendant was
6 provoked by the victim in committing the murder. The
7 Defendant was below the age of 18 at the time of the
8 crime. The Defendant had mental retardation at the time
9 of the crime and any other aspects of his personal
10 history, growing up, broken home, whatever the testimony
11 is, considering the mitigation facts. A Juror can
12 consider any of those in imposing or deciding upon which
13 verdict, punishment is appropriate. Now, can you give
14 meaningful consideration to the aggravating factors
15 presented by the State, must prove that beyond a
16 reasonable doubt and mitigating factors that are presented
17 during the trial of the case, any defenses presented
18 during the trial of the case, consider the evidence,
19 consider the testimony, instructions of the Court and how
20 to evaluate and consider that testimony. Can you do that
21 and act as a fair and impartial Juror?

22 A I can, Your Honor.

23 Q Now, do you have any reason, moral, personal or
24 religious belief that would prevent you from finding a
25 punishment of the death penalty?

1 A No, Your Honor.

2 Q Do you have any beliefs, moral, personal belief that
3 would prevent you from finding a punishment of life
4 without the possibility of parole?

5 A No, Your Honor.

6 Q Now, this testimony involved in this case will
7 involve the death of children. The subject matter is
8 going to be difficult and unpleasant and perhaps graphic
9 and harsh. Would subject matter in that nature be
10 difficult for you to hear and consider and therefore
11 prevent you from being fair and impartial to both the
12 State and the Defense?

13 A No, Your Honor.

14 Q Can you listen to that?

15 A Yes.

16 Q That is all the questions I have. What does the
17 discharge mean, explain that, what does that mean?

18 A I was in basic training and tore my ankle, stepped in
19 a hole on a march and it tore my ankle up and they give me
20 two choices. They said we can fix it and you can start
21 basic training or we will just give you a discharge with
22 un-characterized service which means I wasn't there long
23 enough to do anything right or wrong.

24 Q Okay. So they said thank you, we can fix it but you
25 have got to stay with us.

1 A Yes and I was, and I had been married for two months
2 before I went into basic training and I was like, no.

3 Q I couldn't read that word, un-characterized and it
4 explains that, fair enough.

5 THE COURT: Mr. Young, go ahead.

6 EXAMINATION

7 By Mr. Young:

8 Q Good afternoon, Mr. Mason, I appreciate you bearing
9 with us and I agree with your decision on the basic, I
10 wouldn't have done it again myself. As the Judge
11 explained to you, there is no right or wrong answers here,
12 I am just going to ask you some questions about your
13 opinions about some things. Okay?

14 A Okay.

15 Q And I see that you are a legal assistant in a law
16 firm?

17 A Yes, sir.

18 Q And y'all do some criminal defense?

19 A Yes, sir.

20 Q So you are probably way more familiar with this than
21 most of the jurors that we have talked to?

22 A Yes sir, I am.

23 Q And you know how important it is to share your
24 opinion and to keep an open mind and to be fair and
25 impartial for jury duty?

1 A Yes, sir.

2 Q And the Judge has talked to you a little bit about
3 Mr. Jones has plead not guilty by reason of insanity?

4 A Yes, sir.

5 Q Have y'all ever done any not guilty by reason of
6 insanity cases?

7 A No sir, we haven't done homicides since I have been
8 part of the firm.

9 Q Well, not guilty by reason of insanity means the,
10 somebody says I did the act, right, I did the acts I am
11 accused of but because of a moral disease or defect I was
12 not able to appreciate the legal or moral wrongfulness of
13 my conduct. Do you understand that?

14 A Yes, sir.

15 Q And some jurors think that that is a copout, like
16 they are getting away with it and they are getting off
17 scott free and it shouldn't be allowed.

18 A I understand.

19 Q And does that describe you?

20 A No, no sir.

21 Q You understand mental illness is a real thing and
22 some people aren't able to appreciate wrongfulness in the
23 conduct and those people are dealt with differently?

24 A Yes, sir.

25 Q And that is how you feel about things?

1 A That's correct.

2 Q So I am going to move straight to and we are talking
3 about murder and you know what murder is and murder is the
4 intentional killing of another with malice aforethought.
5 And you know what malice is, right?

6 A That's correct.

7 Q And the Judge talked to you about a category of cases
8 where you have multiple children killed, right, that would
9 be sort of the aggravating factor, right?

10 A Yes, sir.

11 Q And then the jury would have the option to decide
12 punishment. Are you with me on that?

13 A Yes, sir.

14 Q And at that point and time where you found this
15 murder of multiple children, do you have a leaning towards
16 life or death as an appropriate punishment?

17 A I would have to consider everything. I don't have a
18 leaning in one trend or another until I have heard all the
19 mitigating factors, look at everything from the beginning
20 to the end of the trial essentially.

21 Q I totally understand and thank you for your response.
22 Do I understand you to be saying that you believe that
23 life in prison without the possibility of parole and you
24 understand that means they stay there until they die and
25 there is no coming out. Right?

1 A Right.

2 Q You believe that could be a substantial enough
3 punishment for the murder of multiple children?

4 A It can be.

5 Q Depending?

6 A Depending on all of the mitigating factors.

7 Q Okay. Can you just share with me like, your sort of
8 general philosophy regarding the death penalty, like what
9 do you think about it?

10 A I am, I am not, it is kind of odd to say. I am not
11 against it. I think there are certain circumstances where
12 the death penalty can and should be applied. However, if
13 the State were to ever do away with the death penalty, I
14 wouldn't shed a tear over that either, I believe as long
15 as it is the will of the people that the death penalty to
16 be part of it then it should be considered in the crimes
17 that it, the statute sets up.

18 Q I think I understand where you are coming from. Do
19 you, would you, I am going to say some people think that
20 the death penalty should be reserved for the worst of the
21 worst. Is that a philosophy that you--

22 A I absolutely agree.

23 Q Sort of an option of last resort?

24 A Right.

25 Q I understand where you are coming from on that. I am

1 going to skip ahead a little further and we are going to
2 start talking about the mitigation factors and the other
3 factors that you would consider or have the opportunity to
4 consider in sentencing. Okay. And the Judge told you a
5 little bit about those. You understand that aggravating
6 factors have to be proved by the State beyond a reasonable
7 doubt, unanimously found by the jury?

8 A Right.

9 Q And each Juror decides for himself what is or is not
10 mitigating. Is that your understanding?

11 A Correct.

12 Q There is no burden of proof on it. Do you understand
13 that?

14 A Right.

15 Q And each Juror doesn't have to agree that it was
16 found. Do you understand?

17 A That is correct.

18 Q This Juror could say, I saw a relationship with his
19 father and based on that relationship I think that I am
20 going to extend a life verdict and the law is fine with
21 that. Are you okay with that?

22 A I am fine with that.

23 Q And the next Juror could say, well, I didn't see
24 that, I disagree with that. But I thought that, I thought
25 the evidence of mental illness was appropriate and I am

1 going to find for a life verdict based on that. Are you
2 okay with that?

3 A Yes, sir.

4 Q And those two jurors could say, I disagree but they
5 could each arrive at their own reason for a life penalty.

6 A That's correct.

7 Q And jurors, under South Carolina law, can even say, I
8 don't have a reason but I want to vote for life. Could
9 you respect a Juror who says I don't have reason and I
10 don't want to talk about it but my vote is going to be
11 life?

12 A They, even though we are charged to consider
13 everything, that is the choice between life and the death
14 penalty is on each individual Juror so I have no right to
15 feel one way or the other about what another Juror feels
16 on the situation.

17 Q So basically you are way ahead of the game. That
18 Juror, that decision about who lives or dies, what is
19 referred to in the law as a individual moral judgment, are
20 you with me on that?

21 A Yes, sir.

22 Q You have heard that term before?

23 A Yes, sir.

24 Q And that is sort of like the way that I equate is,
25 choosing what faith is right for you.

1 A That's correct.

2 Q And you have made your own personal decision about
3 what faith is appropriate for you?

4 A I have.

5 Q And you recognize that other people have made
6 different decisions about what faith is appropriate for
7 them?

8 A Absolutely.

9 Q You respect their right to their choice?

10 A Yes, I do.

11 Q You expect them to respect your right to your choice?

12 A I absolutely do.

13 Q And if you saw somebody being disrespected about
14 their individual moral judgment would you stop it?

15 A I would attempt to by whatever means is necessary to
16 stop somebody from essentially bullying someone else into
17 another, into changing their mind.

18 Q You could send a note out to the Judge saying, people
19 aren't being respectful?

20 A That's correct.

21 Q And the Judge would bring everybody out and tell
22 them, take care of it, right?

23 A Right.

24 Q The law in South Carolina with regard to each juror's
25 individual moral judgment, when you have arrived at it,

1 you consider everything, you have talked to everybody, you
2 arrive at what your individual moral judgment is, right.
3 And you can have an initial opinion and then change it
4 after talking to other people. But when you arrive at
5 what your individual moral judgment is about what sentence
6 is appropriate. Are you with me on that?

7 A Yes, sir.

8 Q It is each juror's duty and obligation to have that
9 individual moral judgment returned in court. Do you
10 understand that?

11 A Yes, sir.

12 Q You have any problem with that?

13 A No, sir.

14 Q Based on the Court's limitations I am going to stop
15 there. Thank you, Mr. Mason.

16 EXAMINATION

17 By Ms. Mayes:

18 Q Good afternoon, Mr. Mason.

19 A Good afternoon.

20 Q My name is Suzanne Mayes and I am a Deputy Solicitor
21 here in Lexington County. Our job as prosecutors is to
22 represent the State in this case. I just want to
23 follow-up on a couple of questions that Mr. Young asked
24 you. He had asked you specifically about the death
25 penalty and what your views were on that. And one of your

1 responses was that if it were done away with you wouldn't
2 shed a tear.

3 A Yes.

4 Q Does that mean that you have some level of opposition
5 to the death penalty?

6 A No. That just means that I believe that the people
7 should decide what penalties are, are in their code or in
8 the code of laws and if the majority in the State wanted
9 to remove the death penalty then that is the will of the
10 people.

11 Q So your thoughts on it aren't so personal in nature
12 as much as what the majority of citizens may feel is right
13 or appropriate for that?

14 A That's correct.

15 Q And of course here in South Carolina we recognize the
16 death penalty. And with that comes the option, if this
17 were to advance to a second phase of the trial where
18 jurors would then determine life without parole or the
19 death penalty. Are those two options that you can
20 consider?

21 A Absolutely.

22 Q And with that and recognizing that that is the law of
23 the State of South Carolina, that it is a sentencing
24 option, can you personally vote for a death penalty if
25 after considering all the factors, aggravating and

1 mitigation, you personally felt that that was the
2 appropriate sentence?

3 A Yes, ma'am.

4 Q With that potential death verdict, in this case or
5 any other case, if it would be a form that goes along with
6 the verdict that each individual Juror would have to sign
7 and then personally acknowledge that that is, in fact,
8 their sentence. Would you be able to sign your name to a
9 death verdict?

10 A Yes, ma'am.

11 Q If after considering all of the factors and all of
12 the evidence you felt that that was appropriate?

13 A Yes, ma'am.

14 Q One of the questions that Mr. Young posed to you was
15 whether you felt it was for the worst of the worst.

16 A Yes, ma'am.

17 Q Have there been cases throughout history that you
18 have seen or that you read about where you personally felt
19 the death penalty was appropriate?

20 A Some serial killers, mass murderers and some cases
21 especially ones that are absolutely unrepentant. There
22 have been cases in history where I felt the death penalty
23 was an appropriate punishment.

24 Q Thank you. Nothing further.

25 THE COURT: Anything else?

1 MR. YOUNG: No, Your Honor.

2 THE COURT: Anything on the record?

3 MR. YOUNG: No, sir.

4 THE COURT: Does the State need anything on the
5 record?

6 MR. HUBBARD: No, sir.

7 THE COURT: All right, Mr. Mason, you are deemed a
8 qualified Juror. What that means is you are going to be
9 on a different list. I want you to pay attention to the
10 website like you were looking at, qualified jurors will
11 say please contact or look again, we will let you know
12 later, something nice, we will let you know when the trial
13 starts. I need you to come back in when the qualified
14 jurors, please report back on such and such a date. My
15 guess is it is going to be early week after next. I don't
16 know. Start watching it in the middle of the week to see
17 what it says. Now, until that time of reporting back and
18 throughout the trial I don't want you to discuss the case.
19 You are not selected, you are qualified from the number
20 that are being qualified a petit jury will be selected.
21 So you are qualified but not selected yet. Still your
22 oath, do not investigate the case, do not look anything
23 up, do not talk about the case, do not answer questions
24 about the case. Do not pay attention to publicity. I
25 want you to decide this case on what you hear in the

1 courtroom with your fellow jurors if you are so selected,
2 presented by the lawyers and the witnesses who are under
3 oath. Understand what is in the media, I don't know, what
4 is in here is, what is in the record, all of that subject
5 to the scrutiny of what is allowed to be testified to or
6 not. Can you live up to that oath?

7 JUROR: Yes, Your Honor.

8 THE COURT: All right. You watch the website and
9 come back in when it says report back and thank you for
10 your patience. Good luck.

11 (Whereupon, the Juror was excused from the
12 courtroom.)

13 (Whereupon, Court is finished for the day. The trial
14 will resume on May 6, 2019.)

15 May 6, 2019.

16 THE COURT: Are we ready to get started with the
17 first group?

18 MR. YOUNG: Yes, sir.

19 MR. HUBBARD: Yes, sir.

20 THE COURT: Bring them in.

21 (Whereupon, Jury Panel number six came into the
22 courtroom. 438, Kelly Tomlinson; 457, Dinah
23 Washington; 444, Philip Turner; 329, Anh Pham; 476,
24 Christopher Wilde; 383 Geoffrey Shackley.)

25 THE COURT: Folks, good morning. My name is Eugene

1 Griffith, again I will introduce myself. I am going to
2 give you some instructions. First of all I have got to
3 put y'all under oath. And as each of you come back in the
4 courtroom momentarily, bring you in one at a time and ask
5 you some other questions. But I am going to give you a
6 brief overview on the criminal procedure, some of the
7 criminal law we are going to deal with in this case.
8 Madam Clerk, will you place this group under oath, please.

9 (Whereupon, the jurors were sworn at approximately
10 8:38 a.m.)

11 THE COURT: I am going to give you these
12 instructions. First of all, when you come back in, some
13 of the first things I need from you is your work schedule,
14 personal schedule, calendar coming up over the next
15 several weeks, what you have got on the horizon. I need
16 to know about that first and foremost. Then I will ask
17 you about, since last Monday not to communicate about the
18 case. That sort of thing. And then we will add questions
19 about different aspects of the case and things you might
20 be presented. The answers to those questions are, a lot
21 of times they are just your personal opinions. So there
22 is no right or wrong answer, just truthful and candid
23 answers of what I need. And I will ask you some questions
24 and the lawyers will ask you some questions. So, anyway,
25 overview, criminal procedure, aspects of this case then I

1 will put you in the back and call you back. And I am
2 going to read, I would rather tell it to you but I want to
3 get particular about what instructions I give you upfront
4 so give me your attention. You have been summoned as a
5 potential Juror in the case of the State versus Timothy R.
6 Jones, Jr. As I said, my name is Eugene Griffith, Jr. and
7 I am the presiding Judge in this trial. Mr. Jones is
8 charged with five counts of murder. And in South Carolina
9 murder is defined as the killing of another person with
10 malice aforethought. Malice is defined as a person with a
11 wicked or depraved heart, intent on wrongdoing, hatred,
12 ill-will or hostility. The definition of murder
13 particularly excuses or excludes any just cause or excuse
14 for the killing. When the State alleges murder combined
15 with certain aggravating circumstances the State can then
16 seek the death penalty. Now before and during the trial a
17 person accused is presumed innocent of each and every
18 element of the crime to which he is accused. The State
19 must prove each and every element of the crimes charged by
20 a standard of proof called beyond a reasonable doubt. In
21 most cases the Judge determines the punishment upon a
22 conviction. But in a Capital penalty case the jury
23 determines the punishment. In a Capital case the trial is
24 divided into two parts potentially, the guilt or innocence
25 phase and then if necessary the punishment phase. In the

1 first portion of the case the State must prove the
2 Defendant's guilt of murder beyond a reasonable doubt. If
3 a jury finds an accused guilty of murder then the trial
4 proceeds to the second phase. In the second phase, if the
5 State proves an aggravating circumstance beyond a
6 reasonable doubt then the jury considers the aggravating
7 circumstances and mitigating circumstances and evidence in
8 deciding the punishment, either life without parole or the
9 death penalty. Our law in South Carolina does not allow
10 the State to seek that execution if a person is convicted
11 solely of murder. The State must prove the aggravating
12 factor, the State must prove at least one of the statutory
13 aggravating factors beyond a reasonable doubt. Even if
14 the State proves murder and an aggravating circumstance
15 jurors are not required, I am sorry, jurors are required
16 to consider any mitigating evidence or circumstances.
17 Jurors must consider any mitigating facts that would
18 support a sentence other than death. Even if no
19 mitigating circumstances exist jurors are not required to
20 impose the death penalty. In order for a sentence of
21 death to be imposed the verdict must be signed by all
22 twelve jurors. If jurors unanimously decide to sentence a
23 Defendant to a life without parole sentence then a
24 sentence of life without the possibility of parole will be
25 imposed. In this case the State has indicted five counts

1 of murder and has notified Mr. Jones that it intends to
2 seek the death penalty. Mr. Jones has entered a plea of
3 not guilty by reason of insanity. So in this case you may
4 hear testimony and evidence showing many things, a wide
5 variety of testimony may be presented to you. I will
6 instruct you on how to consider and evaluate that
7 testimony, whether it be defined as evidence of
8 aggravating factors, evidence of mitigation, which would
9 be any reason to vote for a sentence of life without
10 parole. Evidence of defenses, evidence of affirmative
11 defenses such as accident, guilty but mentally ill and not
12 guilty by reason of insanity. Until the testimony and
13 evidence is presented I am not able to tell the exact
14 instructions that I will give you. But can you and I will
15 ask this question again when you come in individually, can
16 you accept an oath to meaningfully consider all the
17 testimony and all of the evidence, apply the law as I
18 instruct it and consider the evidence consistent with my
19 instructions. Can y'all do that and y'all will be reasked
20 that question again. Those are my preliminary
21 instructions. Step out and the bailiffs will give you
22 some other things to read, potential Juror, I mean witness
23 list, there is a lot there. So give a review to those and
24 we will bring you in one at a time. Thank y'all.

25 (Whereupon, the jurors were excused from the

1 courtroom.)

2 THE COURT: Let's bring them back in.

3 (Whereupon, the jurors entered the courtroom.)

4 THE COURT: Y'all are the first panel of the day and
5 I forgot to tell you something I didn't tell one of the
6 earlier panels. Y'all are not allowed to discuss the
7 case, I told you that Monday, even if you are held back in
8 the little room and drinking coffee you can't discuss the
9 case among each other. Okay. You know some of the facts
10 but not to be discussed in the jury room. I will bring
11 you back in here, it makes it easier for me to tell you
12 that. Do not discuss the case, talk about whatever you
13 like but not about the case. Now y'all can step back out.

14 (Whereupon, the jurors were excused from the
15 courtroom.)

16 THE COURT: Are we ready, 438.

17 (Whereupon, Juror 438, Kelly Tomlinson entered the
18 courtroom.)

19 EXAMINATION

20 By The Court:

21 Q Ms. Tomlinson, like I told you before, I remind you
22 you are under oath. My name is Eugene Griffith, I am the
23 presiding Judge on this case. I remind you you are under
24 oath, we have got several questions. I will ask you the
25 questions and then the lawyers will have an opportunity to

1 ask you questions. And some of the questions are your
2 personal feelings or opinions. No wrong answers, honest
3 and candid answers is what the Court is suggesting that is
4 the appropriate answer. Now, I did make an initial
5 comment, what do you have personally on your calendar that
6 if you were selected as a jury that may upset or cause you
7 to reschedule?

8 A I am a stay-at-home Mom so I have young children,
9 seven and ten. And obviously it is the end of school, May
10 is super busy for us. So nothing, I mean--

11 Q You are number 438?

12 A I am.

13 Q Okay. But you don't work right now?

14 A I am a nurse but I work on a as needed basis.

15 Q Okay.

16 A So I pick my own time.

17 Q Okay. That is what was confusing me. I saw Prisma
18 Health?

19 A I am Prisma now.

20 Q And so May is a big time for school and the end of
21 the year, seven and ten?

22 A Seven and ten.

23 Q Fair enough. So nothing hugely other than a personal
24 inconvenience, you don't have a Disney vacation already
25 paid for?

1 A Not in the next couple of weeks, no.

2 Q So if called upon you you could do it?

3 A I could.

4 Q All right. Now, the next question, have you had an
5 opportunity to observe and review the potential witness
6 list?

7 A I have.

8 Q I am required and the Court is required to have all
9 potential witnesses to be listed, they are not required to
10 be called as witnesses but out of an abundance of caution
11 if they list them all then I can ask you, do you know
12 anybody and if so what is your relationship. Do you know
13 anybody on the list?

14 A I know one. Dr. James Doer, (phonetic).

15 Q James Stewart?

16 A Doer.

17 Q Doer?

18 A Yes.

19 Q And have you worked with him in the past?

20 A Well, I work with him at the hospital.

21 Q Okay. And would the fact that you work with him at
22 the hospital from time to time, would that affect your
23 ability to be fair and impartial to both sides
24 understanding he may be a potential witness?

25 A No. I mean I don't know him that well.

1 Q Okay. That is kind of what I am looking for. So if
2 he is a colleague of yours and you work with him and you
3 could listen to his testimony but still be fair to both
4 sides, that is what I am looking for. If you and he are
5 close friends and that would create, you go to church with
6 him, that kind of thing. That is not the case?

7 A That is not the case.

8 Q You can be fair and impartial?

9 A I can be fair.

10 Q Now, I gave you the preliminary instructions on the
11 law. Did you understand that explanation I gave a moment
12 ago?

13 A I did.

14 Q And then I also gave you a list that describes three
15 types of potential jurors, type one, type two, type three.
16 Did you review that list?

17 A I did.

18 Q Now, can you, knowing basic facts and let me go back
19 and ask you. Have you maintained your oath for me since
20 Monday and not talked about the case?

21 A I have. I did one time have the news on, on Tuesday
22 morning after but that was it.

23 Q There is a lot of media coverage. Also I presented
24 some facts on Monday that you heard and certainly can
25 consider. Have any of those facts and publicity caused

1 you to form an opinion about what happened in this case
2 already?

3 A Well, and I remembered this case four years ago and I
4 followed it and listened to the news, read the paper. I
5 mean, I had a baby at home at the time so I was just at
6 home and so I do remember everything about this case.

7 Q Because of that publicity and viewing the stuff and
8 that is fine, that is what people do. But has that caused
9 you to form an opinion as to what you believe happened?

10 A It has.

11 Q Okay. I mean, I want candid answers. Understanding
12 what is reported in the news, publicity, what is heard on
13 social media, none of that has been proven so we stand
14 here today, Mr. Jones is presumed innocent, the State has
15 not presented any testimony before any jurors. Do you
16 think what you have heard already, the opinion you have
17 formed, would that create an issue for you being able to
18 be fair and impartial from this point forward?

19 A Yes.

20 Q I am going to ask you one more question. Have you
21 found yourself as identified to any of those three types
22 of jurors. Very scant facts, you have got broad facts,
23 not much so I am putting you on the spot and I am doing
24 that intentionally. I want to know, a broad picture, if
25 these facts are given where would you fall.

1 A I think I am type one.

2 Q And you told me you have formed some kind of opinion
3 based on the publicity you have reviewed over whether it
4 was four years ago, four weeks ago or even Tuesday. And
5 that is where I am trying to sort out this. I want plain
6 sheets of papers as jurors but you think you are type one?

7 A I do.

8 Q All right. And that's partly because you have young
9 children?

10 A It is.

11 Q And would the subject matter be difficult for you to
12 listen to, understanding it is the death of children?

13 A It probably would be.

14 Q All right. I don't see any point in perusing Ms.
15 Tomlinson any further. Any objection?

16 MR. YOUNG: No, Your Honor.

17 THE COURT: You are excused and thank you for your
18 patience.

19 (Whereupon, the Juror was excused from the
20 courtroom.)

21 THE COURT: Let's bring in 457.

22 (Whereupon, Juror 457, Dinah Washington came into the
23 courtroom.)

24 EXAMINATION

25 By The Court:

1 Q You are 457, Ms. Washington?

2 A Yes, sir.

3 Q Good morning.

4 A Good morning.

5 Q I was looking at your review sheet. You still work
6 at the Department of Corrections?

7 A No, sir.

8 Q Are you retired?

9 A Yes, sir.

10 Q How long did you work there?

11 A I think from 2003 to 2008.

12 Q So about five years?

13 A Seven years.

14 Q The fact that you were employed by the Department of
15 Corrections formally, is that going to affect your ability
16 to be fair and impartial in this case?

17 A Would it affect me?

18 Q Yes.

19 A No, sir.

20 Q Okay. You took an oath on Monday when I first met
21 you, again, my name is Eugene Griffith. Monday you were
22 told not to discuss the case, don't let anybody discuss
23 the case with you, have you discussed the case in any
24 manner whatsoever?

25 A No, sir.

1 Q Anybody try to talk to you about it?

2 A No, sir. I just stayed away from people.

3 Q And other than, I got to court, you have got to tell
4 your family about that?

5 A Yes.

6 Q Now, there has been publicity in the case, talk about
7 the case. I gave some allegation of facts Monday when I
8 read the indictments regarding this case and some of the
9 facts that are alleged. Any publicity, those facts, has
10 that caused you to form any opinion in this case
11 whatsoever about what happened?

12 A No, sir.

13 Q Have you made up your mind about what happened?

14 A No, sir.

15 Q Now, I also, just before you came in here, gave you a
16 lengthy potential witness list, a lot of witnesses that
17 could be called. And I will tell you, all of them won't
18 be called. They have got to list them all in case,
19 therefore you can say, I use to work with this one. Even
20 though he is a minor witness to a minor thing, do you know
21 anybody on the witness list?

22 A No, sir.

23 Q Okay, fair enough. Now, I gave you an instruction
24 moments ago with the other five jurors. We sat in here
25 and described the criminal procedure that is involved as

1 well as some aspects of the criminal law and the State's
2 burden of proof and presumption of innocence and the two
3 stage Capital type trial that is involved here. Now,
4 understanding those instructions, did you?

5 A Yes, sir.

6 Q Did you also read and review the sheet that I gave
7 you which describes the three types of potential jurors?

8 A Yes, sir.

9 Q Now, can you identify yourself as to falling into one
10 of those three categories?

11 A Probably Juror number three.

12 Q Number three. Okay. Now, I forgot to ask you about
13 your work schedules. Your personal schedule on the
14 calendar for the upcoming several weeks, through June, not
15 through June but until June. Do you have anything on the
16 calendar that is going to really get upset if you get
17 selected as a Juror in this case?

18 A I will be keeping my grandchildren, they will be out
19 of school by then.

20 Q Okay. So keeping your grandchildren is the only
21 thing that would be upset?

22 A Yes, sir.

23 Q Fair enough. Most of the questions from this point
24 forward are kind of your personal feelings and opinions,
25 no wrong answers, like the type three you described

1 yourself. That is kind of how you evaluate yourself. So
2 candid and truthful is all we are looking for, right.
3 Now, understanding this, that if you are selected as a
4 Juror you will hear testimony and evidence, two aspects of
5 the trial. Phase one which is the guilt or innocence
6 phase and then if a not guilty verdict is found in that
7 phase the case ends, it stops right there. But if the
8 State meets its burden of proof and proves a murder beyond
9 a reasonable doubt then phase two or the second stage of
10 the case will then proceed on. The stage two case is only
11 for punishment and during the time the State has got to
12 prove one of the statutory aggravating factors which I
13 described to you as some potential factors that could be,
14 the killing of a police officer, rape of a murder,
15 kidnapping of a murder, murder of children, multiple
16 murders. Those are aggravating factors that would allow
17 the State to then seek the death penalty. If it is just a
18 plain vanilla murder and the State gets a conviction the
19 Judge sentences but not the death penalty. Do you
20 understand?

21 A Yes.

22 Q Stage one there is guilt or innocence but there is
23 also defenses allowed to be claimed by people accused.
24 Potential defenses which can be claimed, one of them has
25 been claimed in this case so it causes the verdicts to be

1 a little bit broader. In this case, based upon the plea
2 filed by Mr. Jones, and he is presumed innocent sitting
3 over there. There could be a verdict of guilty, guilty
4 but mentally ill, not guilty by reason of insanity or not
5 guilty all together. Potential defenses which may be
6 heard and considered by the jury, this is the aspect of my
7 instruction, until I hear all of the testimony I am not
8 exactly sure how I am going to tailor my instructions to
9 include which aspects of the law. If there is no
10 testimony about one aspect I don't instruct the jury on
11 something that they didn't hear anything about. So I have
12 got to hear the testimony also. Potential defenses
13 available in a trial like this are accident, involuntary
14 intoxication, self-defense, insanity, guilty but mentally
15 ill, defense of habitation, entrapment, duress or alibi.
16 Those are defenses that can be heard and considered by a
17 jury if the testimony and evidence supports it. So
18 understanding there are four potential verdicts in this
19 case can you give meaningful consideration to any of the
20 testimony presented, consider any one of those four
21 potential verdicts. Can you do that?

22 A I believe that I can.

23 Q Can you give meaningful consideration to my
24 instructions on the aspects of guilty, guilty but mentally
25 ill, not guilty by reason of insanity because I will have

1 to instruct you on those aspects of our law and how to
2 evaluate the testimony and evidence that you have heard.
3 Can you do that?

4 A Yes, sir.

5 Q All right. Now if we get past that stage, the State
6 has got to prove beyond a reasonable doubt and say if they
7 don't, a not guilty verdict is found the case ends. If
8 the State proves its case, the murder beyond a reasonable
9 doubt we go to phase two. At that time the State will
10 then prove one of the statutory aggravating factors I
11 described to you. Additionally jurors consider, must
12 consider any of the mitigating factors that have been
13 testified to. And mitigating facts are any reason a Juror
14 would want to impose a life sentence as opposed to a death
15 sentence. Okay.

16 A Okay.

17 Q Mitigating factors can include the Defendant has no
18 significant history of crime against violence against
19 another person. The murder was committed while the
20 Defendant was under the influence of mental or emotional
21 disturbances. The victim was a participant in the
22 Defendant's conduct or consented to the act. A Defendant
23 was an accomplice in a murder committed by another person
24 and his participation was relatively minor. The Defendant
25 acted under duress or under the domination of another.

1 The capacity of a Defendant to appreciate the criminality
2 of his conduct or to conform his conduct to the
3 requirements of law was substantially impaired. The age
4 or mentality of the Defendant at the time of the crime.
5 The Defendant was provoked by the victim in committing the
6 murder. The Defendant was below the age of 18 at the time
7 of the crime. The Defendant had mental retardation at the
8 time of the crime. Those are statutory factors that
9 jury's can consider. For instance, under age 18, that one
10 wouldn't apply, that one wouldn't be instructed. But the
11 other things jurors can consider, jurors can also consider
12 non-statutory mitigators like how he was raised up,
13 troubled childhood, broken family, those sort of things.
14 Jurors can consider any mitigating factors. They don't
15 have to be proven to any certain level, they just can be
16 considered if they are heard or seen by jurors. Do you
17 understand?

18 A Yes, sir.

19 Q Can you give meaningful consideration to the
20 testimony in the sentencing side, to any aggravating
21 factors that the State must prove beyond a reasonable
22 doubt and consider any and all mitigating factors which
23 are presented to the jury, apply the instructions of the
24 Court and reach a fair and impartial verdict in this case?

25 A Yes, sir.

1 Q Do you have any religious, moral or personal belief
2 as to any reason you could not impose the death penalty?

3 A That is a hard question.

4 Q Okay and that is why I am asking because I want you
5 to understand, the death penalty is not automatic. If the
6 guilt is proven there is still more to be proven,
7 aggravating factors, consider mitigation, those factors.
8 The jury considers both sides of that and they make a
9 decision. So if the jury reaches a unanimous verdict on a
10 life sentence a life sentence will be imposed. If a jury
11 reaches a unanimous verdict on the death penalty the death
12 penalty will be imposed. Do you understand that?

13 A Yes, sir.

14 Q All right. So I am going to ask you both ways, do
15 you have any religious, personal or moral belief that you
16 could not impose a life without parole sentence. Could
17 you impose a life sentence?

18 A Can I impose a life sentence?

19 Q Yes.

20 A Sure.

21 Q Okay. And going back to the other sentence. Do you
22 have any religious, moral, personal belief you could not
23 impose the death penalty if the facts and evidence and all
24 of that supported it?

25 A Yes.

1 Q You could do it?

2 A Yes.

3 Q All right. Do you know any reason whatsoever you
4 cannot be fair and impartial to both sides in this case?

5 A There is no reason I couldn't be.

6 Q Okay. Fair enough.

7 THE COURT: Mr. Young.

8 EXAMINATION

9 By Mr. Young:

10 Q Good morning, Ms. Washington.

11 A Good morning.

12 Q How are you today?

13 A Fine.

14 Q Thank you for being patient with us throughout this
15 process. I know it is taking a lot of time out of a lot
16 of peoples schedule. Okay?

17 A Okay.

18 Q Can you tell me where you were employed at SCDC?

19 A First I was in the nursing part, I drew blood and all
20 of that, I was a CNA first and then I became a supervisor,
21 so I did two different departments.

22 Q Were you over at the Broad River complex?

23 A Yes, sir. Broad River and Trenton and sometimes
24 Camille Graham.

25 Q Okay. I have a couple of questions. Like the Judge

1 told you about your views, there is no right or wrong
2 answers here. Just how you feel. Okay?

3 A Yes, sir.

4 Q Did you understand the Judge to tell you that the law
5 in South Carolina never requires the death sentence. Do
6 you understand that?

7 A Yes, sir.

8 Q There is no set of facts like if A, B and C is proven
9 the appropriate punishment is death. Do you understand
10 that?

11 A Yes, sir.

12 Q It is always up to each Juror for themselves to make
13 a determination. Does that make sense to you?

14 A Yes, sir.

15 Q The way that works is what we call mitigation,
16 mitigating factors that the Judge talked to you a little
17 bit about. Okay?

18 A Yes, sir.

19 Q Now mitigation is not an excuse or a justification or
20 a defense for a convicted murderer. Do you understand
21 that?

22 A Yes, sir.

23 Q Like the Judge said, it is stuff about his
24 background, his walk in life. Does that make sense to
25 you?

1 A Yes, sir.

2 Q Do you think for you in deciding whether or not a
3 person ought to live or die that you should take the
4 measure of their whole life?

5 A Say that again.

6 Q Sure and if you don't understand my question please
7 just let me know. It was probably a bad question. Okay.

8 A Okay.

9 Q Do you think that the background and character of a
10 person is relevant in deciding what the appropriate
11 punishment should be?

12 A No, sir.

13 Q You think it should be just what happened?

14 A Yes, sir.

15 Q Okay. Well, the Judge told you a little bit about
16 aggravating factors are factors that the State offers to
17 prove why death might be the appropriate punishment. And
18 that has to be proven beyond a reasonable doubt,
19 unanimously found to each of the twelve jurors. Are you
20 with me on that?

21 A Yes, sir.

22 Q Mitigating factors are different, mitigating factors
23 don't have to be unanimous, they don't have a burden of
24 proof. Okay?

25 A Yes, sir.

1 Q One Juror may say, I saw that he had a relationship
2 with his father and for me I want to give that
3 relationship the value of a life sentence and that is
4 fine. Do you understand that?

5 A Yes, sir.

6 Q And another Juror may say, I didn't see that, that is
7 not something that I saw but I think for a different
8 reason I think I saw, I think the Defendant might be
9 mentally ill. And based on that factor alone I want to
10 give a life sentence. Do you understand that?

11 A Yes, sir.

12 Q And they don't agree on that but they both arrived at
13 a different decision but it was for a life decision. Do
14 you understand that?

15 A Yes, sir.

16 Q And it is also, jurors don't even have to have a
17 reason to vote for a life sentence. They can say for no
18 reason at all, I feel like life is the appropriate
19 punishment. Do you understand that?

20 A Yes, sir.

21 Q It is always up to the Juror. You got that?

22 A Yes, sir.

23 Q Can you respect the right of a Juror to say, I can't
24 tell you why but I think life is the appropriate
25 punishment.

1 A Yes, sir.

2 Q Finally jurors can give a life penalty based on mercy
3 alone. Does that make sense to you?

4 A Yes, sir.

5 Q Who you are and your concept of mercy, do you think
6 that mercy is something that somebody earns or is it
7 something that is sort of freely given?

8 A It is freely given.

9 Q The law talks about the ultimate decision about
10 whether or not you, for yourself, decide that the death
11 penalty is the appropriate punishment or you decide for
12 yourself that the life penalty is the appropriate
13 punishment, that is called an individual moral judgment.
14 Are you with me on that?

15 A Yes, sir.

16 Q It is like choosing what faith is right for you,
17 right?

18 A Yes, sir.

19 Q You have made your own decision about your faith?

20 A Yes, sir.

21 Q And you recognize that other people have made a
22 different decision about their faith?

23 A Yes, sir.

24 Q You expect them to respect your right to make your
25 decision?

1 A Not really.

2 Q You don't expect them to respect your choice about
3 your individual moral judgment about your faith?

4 A Probably.

5 Q You don't think that people should come tell you
6 like, whatever faith you have chosen is wrong. You should
7 convert to my faith?

8 A I believe they could do that.

9 Q And you respect their right to make their own choice
10 about what faith is appropriate for them?

11 A Yes, sir.

12 Q And if you saw somebody being bullied or harassed
13 into changing what they had arrived at is their individual
14 moral judgment would you stop it?

15 A I would try to stop it.

16 Q And you could send a note to the Judge saying, things
17 aren't being respected, people are being bullied out of
18 their individual moral judgment and that should stop it?

19 A Yes, sir.

20 Q Ms. Washington, this decision and I don't know where
21 you were with the Judge, you seemed a little bit hesitant
22 about the death penalty. Are you somebody that says you
23 are open to the State being able to prove to you, to your
24 satisfaction the quantity and quality about which to
25 convince you that death is the appropriate punishment?

1 A Yes, sir.

2 Q You could do that?

3 A Yes, sir.

4 Q And if you found that death was the appropriate
5 punishment could you sign your name to the sentencing
6 sheet saying that you had found that death was the
7 appropriate punishment?

8 A Yes, sir.

9 Q Likewise you are open to saying, for whatever
10 mitigation reason you want that life is the appropriate
11 punishment?

12 A Yes, sir.

13 Q Even if it is just your gut feeling that life is the
14 appropriate punishment, you could give that punishment?

15 A Yes, sir.

16 Q In decisions about whether or not somebody lives or
17 dies, the law anticipates that twelve individuals might
18 not arrive at the same individual moral judgment. Okay?

19 A Yes, sir.

20 Q Are you with me on that?

21 A Yes, sir.

22 Q If each of the jurors, twelve individual moral
23 judgments is for death then the penalty will be death.

24 A Yes, sir.

25 Q Did you understand that the Judge told you that?

1 A Yes, sir.

2 Q And if each of the twelve jurors individual moral
3 judgments is not for death then the penalty won't be
4 death?

5 A Yes, sir.

6 Q All right. Thank you very much.

7 MR. YOUNG: Based on the Court's limitation I will
8 stop there.

9 THE COURT: We will put something on the record when
10 we finish this Juror.

11 EXAMINATION

12 By Mr. Hubbard:

13 Q Ms. Washington, how are you?

14 A Fine.

15 Q Have you ever served on a jury before?

16 A Yes, sir.

17 Q You have, what did you serve?

18 A Richland County.

19 Q Now you live over in--

20 A I live in Lexington County, just off St. Andrews
21 Road.

22 Q Just inside the County line?

23 A Yes, sir.

24 Q This is still a new experience for you?

25 A Yes, sir.

1 Q I just want to go over a few things. I know you say
2 you worked at South Carolina Department of Corrections for
3 a while?

4 A Yes, sir.

5 Q And you take care of your grandbabies?

6 A Grandbabies, yes sir.

7 Q Now, how many grandbabies do you have?

8 A Too many.

9 Q Too many. About what ages are they?

10 A Well the youngest one is three months old. And the
11 oldest one is nineteen.

12 Q Okay. You got a bunch of them?

13 A Yes, sir. They all love me.

14 Q And I bet you love them?

15 A Yes, sir.

16 Q I ask you that because you understand, this case
17 deals with little babies?

18 A Yes, sir.

19 Q And you have talked about the death penalty in
20 general, just in general terms?

21 A Yes, sir.

22 Q But this case is going to involve some very graphic
23 disturbing testimony, maybe even some very graphic, very
24 disturbing photos involving these little babies.

25 Considering your views on the death penalty, the fact that

1 you are a caretaker for these grandbabies, you think you
2 can do this or is this something that in your heart of
3 hearts, this just isn't for you?

4 A I believe I could do it.

5 Q You could?

6 A Yes, sir.

7 Q Okay. I know you have been at SCDC so you have seen
8 the worst and maybe the best of some people?

9 A Yes, sir.

10 Q And I see you are a Chaplin of a church?

11 A Yes, sir.

12 Q Village of Hope Church?

13 A Yes, sir.

14 Q Where is that?

15 A Right on River Drive.

16 Q River Drive.

17 A 2000 River Drive.

18 Q And that is not a, it is kind of a non-denominational
19 church?

20 A Yes, sir.

21 Q With serving on this jury and the subject matter
22 impact you with your church or with those you go to church
23 with.

24 MR. YOUNG: Objection, Your Honor.

25 THE COURT: I will overrule the objection. That is a

1 fair question.

2 Q Would it have any impact on you?

3 A No, sir.

4 Q You could do this despite, the Judge had asked you
5 about your religious views, if there was anything that
6 would keep you from serving and you are telling us no.

7 MR. YOUNG: Objection, asked and answered, Your
8 Honor.

9 THE COURT: Overruled.

10 A Say that again.

11 Q You said whatever your religious views are you could
12 be a fair Juror?

13 A Yes, sir.

14 Q And in the right circumstances you could give life,
15 is that right, under the right circumstances?

16 A Yes, sir.

17 Q And then on the one that you said was a hard
18 question, on the death penalty. You said you could be
19 fair there as well?

20 A Yes, sir.

21 Q Now, you understand it is just not considering
22 whether death is appropriate but we are asking you, could
23 you actually give someone a death sentence. Do you
24 understand that?

25 A Yes sir, I understand.

1 Q So when Mr. Young was asking you about your
2 individual beliefs, you come to a conclusion, you
3 understand for death to be imposed all twelve jurors have
4 to believe that that is the right option?

5 A Yes, sir.

6 Q But ultimately you have to decide for yourself, do
7 you understand?

8 A Yes, sir.

9 Q And you can't just go with the crowd. Do you
10 understand that?

11 A I understand.

12 Q You would have to write your name in ink on a piece
13 of paper, the verdict form, saying death is what we want?

14 A Yes, sir.

15 Q So that is like a death warrant?

16 A Yes, sir.

17 Q You are saying there is nothing in your heart and
18 sole that would keep you from doing that?

19 A No, sir.

20 Q Can I ask you, just generally, what your feelings are
21 about the death penalty?

22 A My feelings about the death penalty. One thing I
23 know, we all got to look at death one day.

24 Q I am sorry?

25 A We all got to stare death in the eye.

1 Q Stare death in the eye, yes ma'am. I understand.

2 A That is the only thing I can tell you about death.

3 Q Well, I understand what you are saying. All of us
4 have to look at death. But as a penalty that we would
5 impose on somebody, do you have a thought on that?

6 A Do I have a thought on it?

7 Q Yes, ma'am. Do you have an opinion on that or what
8 you are thinking on that, that we can come in and say you
9 have done something so wrong you deserve to die. Do you
10 have a thought or a feeling on that?

11 A My opinion is that, sometimes we, they don't
12 understand what they are doing and maybe they haven't been
13 around enough strong people to have these situations. So
14 life is kind of hard sometimes.

15 Q Yes.

16 A And know that we have got to forgive one another and
17 forgive yourself. So as long as you have had did the
18 forgiven part in life you are going to be all right.

19 Q Considering death, how does those feelings affect you
20 when you consider the death penalty, those feelings you
21 have just expressed.

22 A By working and preparing last meals for human beings
23 and going through all of that. You got to be strong and I
24 have seen a few of them go, you know, I seen what they use
25 to take them out and I seen the aftermaths and all of

1 that. And I have been able to accept what was going on.

2 Q So you have worked in that environment where you have
3 seen these people get their last meal?

4 A Yes, sir.

5 Q You have seen where they have been taken to death
6 row?

7 A Yes, sir.

8 Q And they have died?

9 A Yes, sir.

10 Q And you accept that as an appropriate form of
11 punishment?

12 A Yes, sir.

13 Q A big question. Really today, just knowing all of
14 that, now that I have got that expression from you because
15 you have got that unique background but based on what you
16 have seen, your experience of knowing that system, what
17 people go through could you be the one--

18 MR. YOUNG: Objection, Your Honor, asked and
19 answered.

20 THE COURT: I am going to let her answer again.

21 Q Based on all of that can you be one of those jurors
22 who can sign that death sentence saying someone has to go
23 through it?

24 A Can I be one?

25 THE COURT: No, she thinks, all twelve have to sign.

1 MR. HUBBARD: Right, all twelve, could she be one of
2 the twelve.

3 THE COURT: You didn't finish the other twelve.

4 MR. HUBBARD: I am sorry.

5 THE COURT: Your hesitation, you said could she be
6 the one.

7 MR. HUBBARD: No, no, no.

8 Q Could you be one of those people saying, signing that
9 knowing somebody has got to go through that process that
10 you know about.

11 A I said if all of us came to an agreement.

12 Q Yes, ma'am.

13 A Yes.

14 Q And it would be your name?

15 A Yes, sir.

16 Q Knowing that you would put your name there.

17 THE COURT: She has asked and answered that.

18 A Yes, sir.

19 THE COURT: She has answered it.

20 Q Ms. Washington, I appreciate it. This is something
21 new for all, every case is different and I know you are
22 new to this so we just want to make sure we understand.

23 A Yes, sir.

24 Q Thank you so much for your honesty.

25 A You are welcome.

1 Q Like the Judge said, there aren't any wrong answers.

2 A Thank you.

3 Q Thank you. One more question. There was a note and
4 I think Your Honor may have taken care of it. But you had
5 asked at one point to be exempted or excused.

6 A Yes, because of my transportation.

7 Q Okay. All right. I remember that and His Honor took
8 care of that.

9 A Yes.

10 Q Okay, very good.

11 THE COURT: We want to be heard?

12 MR. YOUNG: No, Your Honor.

13 THE COURT: You want to be heard, Solicitor?

14 MR. HUBBARD: No, sir.

15 THE COURT: All right. Ms. Washington, I very much
16 appreciate you coming in here. The Court will find you as
17 a qualified Juror meaning you are now gone from whatever
18 panel you are on, you are now a qualified Juror which
19 means you are going to be one of the group, smaller than
20 the 175 we had here Monday. But you are a member of the
21 smaller group qualified meaning potentially you are going
22 to be a Juror in the case. The jury hasn't been selected
23 yet. Did you have trouble going on the internet or get
24 somebody to show you where to look before you came back in
25 today?

1 JUROR: No, sir.

2 THE COURT: You got a phone?

3 JUROR: Yes, sir.

4 THE COURT: You are going to follow that same website
5 and it is going to say qualified jurors report back on or
6 about Monday at 9:30 or whatever or please check back
7 tomorrow night. You are looking for instructions for a
8 qualified Juror. Until you come back do not talk about
9 the case, do not let anybody question you about the case,
10 you don't ask any questions about the case or do not do
11 any independent research, minimize your view consideration
12 or whatever with the publicity cases. I understand it is
13 difficult. I want you, because you described a lot of
14 things, I want you just like all the jurors, I want you to
15 decide the case based on what is presented here in the
16 courtroom, not what is heard on the street corner or the
17 internet. Can you do that?

18 JUROR: Yes, sir.

19 THE COURT: Thank you for coming.

20 MR. HUBBARD: Your Honor, I have one real quick thing
21 at sidebar, real quick.

22 THE COURT: Okay.

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

1 MR. HUBBARD: Thank you, Judge.

2 THE COURT: You are free to go.

3 JUROR: Thank you.

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

6 THE COURT: We need, the Court needs to address two
7 things. And basically the, the Defense asked a question,
8 if all twelve jurors, individual moral judgment is not for
9 death then life will be imposed.

10 MR. YOUNG: I didn't--

11 THE COURT: Yes, you did.

12 MR. YOUNG: No--

13 THE COURT: Let me ask this, please. That is what I
14 thought I heard and I want to be sure we get, if twelve
15 jurors reach that same moral judgment unanimously then
16 that is the sentence. That is fine. But I thought the
17 question was, if twelve jurors individual moral judgment
18 is not for death then life will be imposed.

19 MR. YOUNG: No, sir. It was that there won't be
20 death.

21 MR. HUBBARD: It is the same thing.

22 MR. YOUNG: No, sir.

23 MR. HUBBARD: You only have two options, it is the
24 same.

25 MR. YOUNG: The statute is, the jury should not

1 recommend a death penalty, to vote such penalty is not
2 unanimous.

3 THE COURT: I know what the statute is, we have been
4 wrangling with this all along. I don't want you to reword
5 the question and then say, Judge, let us do it and the
6 State didn't object. He jumps right up because it is
7 getting really close.

8 MR. YOUNG: He didn't object.

9 THE COURT: What?

10 MR. YOUNG: He didn't object.

11 MR. HUBBARD: No sir, that is, Your Honor said we
12 were going to take it up.

13 THE COURT: I did. You had already asked the
14 question, it had already been answered. He was standing.
15 I said we will take that up after the Juror. So I
16 recognized him standing up to object to it. It has
17 happened now. I don't want that question, you can't ask,
18 well, Judge, you let us ask the question. We are not
19 getting there.

20 MR. YOUNG: If the jury is not unanimous the verdict
21 won't be death.

22 THE COURT: I understand that but we wrangled this
23 issue and I have been clear we can tell these jurors,
24 these potential jurors if they are unanimous either way
25 that verdict will be imposed. If it is not unanimous we

1 are reading the statute clearly. I agree with you that is
2 what it says. But I don't think, telling them ahead of
3 time that if they are non-unanimous there still-will be
4 life and the Court will impose it. I don't think that is
5 fair to the jury to give them--

6 MR. YOUNG: It is not fair to give one side and not
7 the other side. It is not fair to Mr. Jones to tell them,
8 if it is all twelve then it is death. If it is not twelve
9 for death then it won't be death.

10 THE COURT: If it is all twelve for life it will be
11 life.

12 MR. YOUNG: Sure.

13 THE COURT: That is fair. That is balanced. The
14 middle questions were, I am having grief about because we
15 went over this so much last week and now you are bound
16 again.

17 MR. YOUNG: I didn't say agree to disagree. I didn't
18 say no hung jury. I didn't say one vote for life means
19 life. I operated within the Court's guidelines and said
20 if it is not twelve jurors for death it won't be death.

21 MR. HUBBARD: Judge, here is my response. The whole
22 battle here and where, Your Honor caught me because I was
23 trying to refer back to them.

24 THE COURT: Well, I am going to fuss at you also
25 because -- could have received by this Juror that you

1 said, can you be the one that will sign the death warrant
2 and referring to her, she would be the only one that would
3 have to sign the verdict form.

4 MR. HUBBARD: I thought I had asked, not the one but,
5 Judge, that is my problem. I think, can we just from this
6 point forward stop digging this deep and just say, can you
7 do either one and let's just leave it. Because, Judge, we
8 are going where frankly in all my experience we have never
9 gone before.

10 THE COURT: I haven't done one of these cases--

11 MR. YOUNG: I haven't--

12 MR. HUBBARD: So,--

13 THE COURT: Y'all keep interrupting me and Joy is
14 going to get on me and then I am really going to get on
15 y'all.

16 MR. HUBBARD: Yes, sir.

17 THE COURT: I am comfortable with, if the verdict is
18 unanimous one way that is the sentence that will be
19 imposed. If the verdict is unanimous the other way that
20 is the sentence that will be imposed. No person can be
21 required or coerced in abandoning their individual moral
22 judgment, that can be asked or suggested. But this
23 suggestion that a non-unanimous verdict is going to be
24 life, I am calling that out of bounds. I don't like the
25 question, my ruling, I can't be any clearer. I want to

1 get past this, both of you. And I do not want another
2 question to a Juror that says, can you be the one to sign
3 it. All twelve, that is fine.

4 MR. YOUNG: Your Honor, just to put on the record
5 that we object pursuant to Shafer, Kelly and Poindexter,
6 the cases that we have cited all of which indicate that
7 the jurors have to be told about consequences of their
8 verdict and what those imply, the South Carolina statute
9 is clear.

10 THE COURT: And I have been clear about my ruling,
11 the record is protected.

12 MR. YOUNG: And to make sure, the Court is saying you
13 cannot ask jurors if it is not twelve individual moral
14 judgment for death then the penalty won't be death.

15 THE COURT: You cannot ask that question. You can
16 say, all twelve jurors unanimously agree to death or
17 agree, individual moral judgment agree to life then that
18 sentence will be imposed. Absolutely.

19 MR. YOUNG: I understand the Court's ruling. And we
20 would like to address one other issue, Your Honor.

21 THE COURT: Sure.

22 MR. YOUNG: The State went into where does she live,
23 what church she goes to, what are her church members going
24 to think about her verdict. It is completely improper and
25 way out of bounds.

1 THE COURT: I think the reason he did it because she
2 is a Chaplain, that gave him a little something extra
3 there.

4 MR. YOUNG: It didn't, that is just an intimidation
5 tactic, Judge. That is just like we know where you live,
6 we know what church you go to. That is completely
7 improper and they shouldn't do it.

8 THE COURT: All right. Be careful, Solicitor.

9 MR. HUBBARD: Yes sir, Your Honor. Following up on
10 the facts she gave. Thank you.

11 MR. YOUNG: Can I say one more thing. After this
12 Juror we will take this up, if it does come an issue with
13 this Juror.

14 THE COURT: Now, bring him in.

15 (Whereupon, Juror 444, Philip Turner came into the
16 courtroom.)

17 EXAMINATION

18 By The Court:

19 Q Good morning.

20 A Good morning.

21 Q My name is Eugene Griffith and I am a resident Judge
22 from the Eighth Circuit. I have been assigned to hear
23 this case. I will ask you several questions. Monday you
24 took an oath to not talk about the case and can't let
25 anyone talk to you about the case. Did you follow my oath

1 and instructions?

2 A I did. I had people approach me, they knew I had
3 jury duty on Monday and they saw the news but did not
4 speak about specifics in the case.

5 Q Very good. Now, I gave several, I read the
6 allegations in the indictments, gave some facts, there has
7 been a huge amount of publicity this week, last week, four
8 years ago about this case. Has that publicity, where ever
9 it is, whenever it was. Has that caused you to form an
10 opinion as to what you believe happened in this case?

11 A No, sir. I hadn't heard about the case until Monday.

12 Q Okay. And so now the facts I outlined and the
13 allegations of the indictments, has that caused you to
14 form an opinion in this case?

15 A No, sir.

16 Q Now, I handed to you, all right, first question on
17 this. Your personal schedule, work, home, vacation,
18 whatever. You got anything on your calendar that would
19 cause you to have to reshuffle everything going on this
20 summer, the trial starts and it may take us close to June
21 to get done. You got anything on your calendar that that
22 would interrupt?

23 A In June, I have two weeks in June that I have got
24 obligations, two trips in June but after that--

25 Q Which June weeks?

1 A June 17th through 21st and 24th through the 28th.

2 Q And I likewise have things then. I generally take a
3 week before the 4th for vacation. I don't think we will
4 interrupt that. Now, I gave you a potential Juror list,
5 did you review it?

6 A I did.

7 Q Did you know any jurors?

8 A No, sir. Witnesses.

9 Q I have been talking jurors and thank you for
10 correcting me. You are right, potential witnesses, not
11 all of these will be called but potentially they could be.
12 So do you have any relationship with any of them?

13 A No, sir.

14 Q So if any of them are called you can still be fair
15 and impartial?

16 A Yes, sir.

17 Q Now, the outline of the criminal procedures and some
18 of the aspects of criminal law. Did you hear my
19 instructions a few moments ago?

20 A Yes, sir.

21 Q Understand them?

22 A Yes, sir.

23 Q Likewise I gave you a sheet that identifies,
24 describes three types of potential jurors and this is just
25 real basic, the State proves its case, murder, goes to the

1 sentencing phase, Capital case is stage two. Stage two is
2 imposing punishment for life or death. Can you find
3 yourself, after reviewing that three types of Juror, can
4 you identify yourself, kind of broad picture as one type
5 of Juror?

6 A Yes sir, I would identify with type three.

7 Q Type three?

8 A Yes, sir.

9 Q And that type, as I understand it, is open minded,
10 haven't heard anything, wants to hear everything before
11 making and giving consideration to that decision?

12 A Yes, sir.

13 Q Is that you?

14 A Yes, sir.

15 Q Now, this case has many different aspects of the law
16 that the Court will try to instruct as it comes and that
17 is what I do. I instruct the law as we go, rule on the
18 law as we go and then at the very end give the jury
19 instructions on how to consider the evidence and testimony
20 they have heard. One aspect about this, goes to stage one
21 initially. Guilt or innocence. The State does not prove
22 its case of murder beyond a reasonable doubt, the case
23 ends. If it is a not guilty verdict it stops the case and
24 it ends and everybody goes home. If the State does meet
25 its burden then we go to phase two and the punishment is

1 determined by the jury. Now, in phase one there are
2 potential defenses. I am going to read off to you. Some
3 of these don't apply, some of them could apply, it depends
4 on the testimony that has been presented as to whether I
5 would instruct it. Potential defenses, identification,
6 accident, involuntary intoxication, self-defense,
7 necessity, insanity, guilty but mentally ill, defense of
8 habitation, entrapment, duress and alibi. Those are
9 statutory defenses that can be presented to jurors and
10 jurors can consider if the testimony supports it. This
11 case, there has been a plea of not guilty by reason of
12 insanity meaning there are four potential verdict forms
13 that could be considered by the jury. Guilty, guilty but
14 mentally ill, not guilty by reason of insanity or not
15 guilty whatsoever. Can you, understanding these defenses
16 are available and must be supported and must be instructed
17 by the Court, can you give meaningful consideration to any
18 and all testimony regarding the burden of proof from the
19 State but also particularly any defenses presented,
20 considering evidence and testimony presented and my
21 instructions on the law. Can you be fair and impartial in
22 this case?

23 A Yes sir, I believe so.

24 Q And you will give consideration to all of that
25 testimony?

1 A Yes, sir.

2 Q Now, if the case proceeds to the sentencing phase, at
3 that time the State will then be required to prove an
4 aggravating factor. And so a regular murder case, this is
5 murder, if it is proven the Judge imposes the punishment.
6 The State can only seek the death penalty if an
7 aggravating factor is proved beyond a reasonable doubt in
8 addition to the murder. An aggravating factor, also
9 outline in the statutes, rape, murder, kidnapping of
10 murder, murder of a police officer, murder of a child,
11 multiple murders. Those are some aggravating factors the
12 State must prove in order to support a death penalty
13 request. Now, also during the punishment phase,
14 mitigating factors will be presented, probably the first
15 phase as well as the second phase, will be presented
16 throughout the whole trial. They are not a burden of
17 proving, they are just presented, jurors get to consider
18 mitigating factors for any reason a Juror would want to
19 give a life without parole sentence as opposed to a death
20 sentence. There are several mitigating statutory factors
21 and I am going to read those to you. The Defendant has no
22 significant history of prior criminal conviction involving
23 the use of violence against another person. The murder
24 was committed while the Defendant was under the influence
25 of mental or emotional disturbance. The victim was a

1 participant in the Defendant's conduct and consented to
2 the act. The Defendant was an accomplice in the murder
3 committed by another person and his participation was
4 relatively minor. The Defendant acted under duress or
5 under the domination of another person. The capacity of
6 the Defendant to appreciate the criminality of his conduct
7 or to conform his conduct to the requirements of the law
8 was substantially impaired. The age or mentality of the
9 Defendant at the time of the crime. The Defendant was
10 provoked by the victim in committing the murder. The
11 Defendant was below the age of 18 at the time of the
12 crime. The Defendant had mental retardation at the time
13 of the crime. Those are statutory mitigators, other
14 mitigators are any type of testimony such as walk in life,
15 how he was raised, troubled childhood, whatever aspects of
16 his raising up would impact a juror's decision to give the
17 life sentence. Now, understanding this, the sentencing
18 phase two, the murder has been proven, going to the
19 sentencing. The jurors have two choices, life or death.
20 No other choices, those are the two choices. A unanimous
21 verdict of life, a life sentence imposed and carried out.
22 The jury unanimously decides death, death is carried out.
23 Those are the jury's two decisions. Can you give
24 meaningful consideration to any and all facts, factors
25 including the State's burden of proving the aggravating

1 factor beyond a reasonable doubt, any and all mitigating
2 factors presented by any party, any defenses or
3 affirmative defenses that may impact your decision on the
4 sentence. Can you give meaningful consideration to all of
5 that testimony and evidence, consistent with my
6 instructions and be a fair and impartial Juror?

7 A Yes, sir.

8 Q Do you have any reason that you could not morally,
9 personally, believe that you could not impose a life
10 without parole sentence?

11 A No, sir.

12 Q No personal, religious or moral belief where you
13 could not impose a death sentence?

14 A Religious belief, just with the death penalty, taking
15 into consideration the value of life. And that is
16 something I have wrestled with this last week.

17 Q It is not something you are often called upon.

18 A That is exactly right.

19 Q Would your religious belief, whatever it may be,
20 would it prevent you from signing, because on a death
21 verdict, the sentence if it is unanimous must be signed by
22 all twelve jurors?

23 A Yes, sir.

24 Q Can you sign a verdict form, I am sorry, a punishment
25 form of that verdict. Can you do that?

1 A I believe so, yes sir.

2 Q I want you to be comfortable with it. I don't want
3 you to get into half of the trial and say, wait a minute,
4 I am too uncomfortable. I can't do it?

5 A I understand.

6 Q Can you consider everything, my instructions, still
7 while maintaining your own responsibility of yourself as
8 to your beliefs, can you find if the facts and evidence
9 supports it a verdict of life or death?

10 A Yes, sir.

11 Q Understanding you have to sign the death verdict
12 form?

13 A Yes, sir.

14 Q Can you do that?

15 A Yes, sir.

16 Q Now, this subject matter of this case involves the
17 death of children. It will be graphic, it is going to be
18 unpleasant and perhaps harsh. I don't know another way to
19 describe but it is not going to be easy. Would subject
20 matter of that type create an issue for you to be fair and
21 impartial to both the State and the Defense?

22 A I don't believe so, no sir.

23 Q All right. Those are my questions. Remember, there
24 is no right or wrong answer, it is kind of your opinion,
25 personal beliefs. The lawyers are going to get an

1 opportunity to question you.

2 THE COURT: Mr. Secor.

3 EXAMINATION

4 By Mr. Secor:

5 Q Good morning, Mr. Turner.

6 A Good morning.

7 Q How are you?

8 A I am well, hope you are.

9 Q Good, thank you. The Judge has just talked to you
10 about, a lot about your ability to follow the law and to
11 be fair and impartial which is obviously appropriate. I
12 want to talk to you about your true, personal feelings and
13 I don't want you to be incumbent about the concept of
14 trying to follow the law.

15 A Sure.

16 Q At this point I just want to know how you feel. Does
17 that make sense?

18 A Yes, sir.

19 Q All right. Do you remember when you heard about this
20 case originally, whether it was last week or back in 2014?

21 A It was Monday.

22 Q It was Monday?

23 A Yes, sir.

24 Q So you weren't really affected by anything in the
25 media at all?

1 A No, sir.

2 Q The Judge talked to you about the possibility or the
3 fact that there is a plea of NGRI or not guilty by reason
4 of insanity in this case. A plea of not guilty by reason
5 of insanity is a statement by the person saying I did the
6 act or I did the killings but because of a mental disease
7 or defect I was unable to distinguish between moral and
8 legal right and moral and legal wrong at the time. I know
9 that is awfully long, a little bit convoluted but does
10 that kind of make sense to you?

11 A Yes, sir.

12 Q And in a case, this category of case that we are
13 talking about where a person killed multiple children,
14 does that seem like a verdict, a verdict of not guilty by
15 reason of insanity, does that seem like a verdict that you
16 could be open to even though you knew that the person had
17 killed multiple children?

18 A That is a tough one. It is, as a father, trying to
19 figure what that means in my head, right. And then not
20 understanding how the brain works all the time. That is a
21 tough one. But given my duty, I would try my best but I
22 don't know, I don't know what I would say. Does that make
23 sense.

24 Q It makes perfect sense. And I guess the question I
25 should have asked, does that plea sound to you like an

1 excuse or a copout or does it sound legitimate to you and
2 something that you could really, consideration to?

3 A Not being an expert on human behavior, it does sound
4 like an excuse but also, I guess not understanding how the
5 brain works. Like I said earlier, I don't know how
6 insanity exhibits itself or presents itself in so many
7 different forms.

8 Q So you would be opening to learning about that?

9 A Sure, yes sir.

10 Q Now, I want to really focus on your feelings about
11 punishment.

12 A Yes, sir.

13 Q And I want to focus on your feelings about punishment
14 for somebody who is guilty of the murder of multiple
15 children.

16 A Yes, sir.

17 Q And that means that in order to be guilty of murder
18 you have to know the difference between right and wrong
19 and there has to be no excuse, justification or defense
20 and you maliciously kill multiple children. And so for a
21 person like that who has done that, say in your mind you
22 know there is proof beyond a reasonable doubt, there is no
23 question about it, this is the person who did it. What
24 are your feelings about the death penalty, knowing that
25 there is two punishments?

1 A Right.

2 Q What are your feelings about the death penalty as the
3 appropriate punishment for a guilty murderer of multiple
4 children?

5 A So I believe that every human life is valuable, part
6 of my faith dictates that. But I also, I preached
7 yesterday, Romans 13:1, that we are called as believers,
8 if I am able to speak about that personally.

9 Q Of course.

10 A That there is, we are subject to the governing
11 authorities and so there is law and order in America. And
12 so there is an obligation for everybody to abide by
13 consequences of actions. I believe there are natural
14 consequences to every action that man does. And so in
15 this case a natural consequence to murder would be the
16 death penalty or life without parole. And so that is
17 what, that is what I have wrestled with.

18 Q But in your mind the natural consequence is one or
19 the other, you don't start at one punishment, you lean one
20 way?

21 A No sir, no sir, I don't.

22 Q Okay. And I guess, based on what you are saying, I
23 assume that you do not subscribe to the concept of an eye
24 for an eye, that type of mentality towards Capital
25 punishment?

1 A No, no sir.

2 Q I appreciate that. I just want to run quickly
3 through concepts about how things in a penalty works in
4 Capital cases. Okay. The death penalty is never
5 required, not in any case, not the worst case you can
6 possibly imagine. The law is always satisfied with a
7 sentence of life without parole. Does that make sense to
8 you?

9 A Say that one more time.

10 Q The death penalty is never required in any case ever
11 in South Carolina, in the United States. The law is
12 always satisfied with a sentence of life without parole in
13 a Capital case, worst case you can possibly imagine, life
14 is an acceptable punishment. And the way that works is
15 through the concept of what the Judge said, mitigation,
16 mitigating evidence is any reason to vote for a sentence
17 of life without parole instead of the death penalty. Does
18 that make sense to you?

19 A Yes, sir.

20 Q And mitigation is never offered as an excuse or a
21 justification. It is just the penalty phase, you have
22 already found the person guilty. Right?

23 A Yes.

24 Q And it doesn't have to have anything to do with the
25 murders themselves. It could have to do just with the

1 character, background of the guilty murderer. Does that
2 sound fair to you?

3 A Sure.

4 Q Are those types of things you think are relevant to
5 punishing a guilty murderer, their character and
6 background?

7 A Yes, sir.

8 Q You do. Okay. Another thing, the aggravating
9 factors that the State would present to you in the penalty
10 phase have to be proven beyond a reasonable doubt
11 unanimously to all jurors. Mitigation has no burden of
12 proof and does not require unanimity and that is because
13 the law allows each individual Juror to find mitigation
14 themselves in whatever they see or experience during the
15 trial. Does that make sense to you?

16 A Yes, sir.

17 Q And the law says that a Juror may impose a life
18 sentence for any reason, no reason or based on mercy
19 alone. So when I say, any reason, it would be something
20 like one Juror would say, I saw that he had a good
21 relationship with his father and I am going to give that
22 the value of life. Another Juror might say, I didn't see
23 that relationship with the father but I believe he has
24 mental illness and I am going to give the value of life to
25 that mitigating factor. They disagree with one another

1 but they both found mitigating factors that they believe
2 have the value of life and they are entitled to use that
3 themselves. Does that make sense to you?

4 A Yes, sir.

5 Q Okay. The idea of giving a life sentence for no
6 reason is simply that. The law empowers a person to just
7 say, I don't have a reason but I am voting for life. Can
8 you respect a juror's right to do that.

9 A Yes sir, I believe so.

10 Q It is just the law doesn't require a person to
11 articulate their reason.

12 A I got you.

13 Q And the last reason is mercy, meaning that a Juror
14 can say I have heard everything, I have considered
15 everything. In this case I have decided that a merciful
16 act is what I want to do and I am voting for life for
17 mercy alone. Does that seem appropriate to you?

18 A Yes, sir.

19 Q And you could respect a juror's decision to do that
20 despite whatever else the evidence was?

21 A Sure.

22 Q Okay. The ultimate decision for a Juror in a Capital
23 case is based on their individual moral judgment. When it
24 comes to decide whether to kill another human being you
25 have based that on your individual moral judgment. The

1 law, of course, requires you to deliberate reasonably and
2 respectfully with your fellow jurors. But when it comes
3 time to make your decision it has to be based on your
4 individual moral judgment and a Juror is not allowed--

5 THE COURT: Ask questions now.

6 MR. SECOR: I am sorry.

7 THE COURT: You are preaching to the preacher.

8 MR. SECOR: Yes, sir. I am sorry, I lost my--

9 THE COURT: You were at the point, once you have
10 reached an individual moral judgment, the respect of
11 others.

12 MR. SECOR: Yes, sir.

13 Q And the point that I am trying to get to, is that
14 some people have a more difficult time standing up for
15 themselves. And it is important that other jurors help
16 people who have reached their individual moral judgment.
17 And could you do that. If you saw a person who you felt
18 had reached their individual moral judgment and they were
19 being bullied or pressured out of it, you could say stop,
20 that is against the law, you can't do that.

21 A You mean in a jury deliberation or something along
22 those lines?

23 Q Yes.

24 A Yes, sir. Absolutely.

25 Q And if necessary you could alert the Judge that that

1 was happening?

2 A I believe so, yes.

3 Q Okay. Thank you very much, just one moment please.

4 Thank you, sir.

5 EXAMINATION

6 By Mr. Graham:

7 Q Mr. Turner, my name is Shawn Graham, I am one of the
8 Deputy Prosecutors in this case. Good morning.

9 A Good morning.

10 Q If you were Governor for a day and you had the option
11 of keeping the death penalty or getting rid of it for the
12 type of cases we are discussing what would you do?

13 A I have seen too movies, right, and read too many
14 articles of folks that are waiting on death row who are
15 later on found not guilty. So that is a tough question.
16 I would like to think of myself as a man of principle and
17 so while I am not an eye for an eye, as the Gentleman just
18 asked me, I do understand we have laws and there are
19 consequences to our laws, to our actions because of our
20 laws. So if the death penalty is a natural consequence to
21 murder then I think we have to abide by that.

22 Q Let me follow-up. If you could make the law, that
23 was the question. And I know it is a tough subject.

24 A It is a very tough subject. I don't think anybody
25 really wants to be sitting right here. To keep the death

1 penalty or get rid of it.

2 Q And it was your choice.

3 A For one day.

4 Q Your choice on that day to determine what happens,
5 that is what the law would be.

6 A That's right. I guess I would keep the death
7 penalty. I think I would.

8 Q You said that you preached on Romans 13:1 this week?

9 A Yes, sir.

10 Q Did you choose that topic?

11 A I did, I did. I was speaking and just happened to
12 fall with what I was preaching.

13 Q So the whole week you were preparing and you were
14 struggling with this, I think that is what you actually
15 said, you had wrestled all week with the idea of the death
16 penalty?

17 A Yes, sir. And that was a topic that was chosen
18 before Monday. So it is just strange, yes.

19 Q And based on that wrestling that you had, I guess it
20 is our personal belief now that that law is out there and
21 you said if you were Governor you would allow it to stay
22 on there?

23 A Yes, sir.

24 Q So in the appropriate situation, depending on the
25 facts and circumstances of the case, listening to the good

1 and the bad, you could vote for life if you thought it was
2 appropriate. And if the circumstances warranted it you
3 could not only vote for death but actually sign your name
4 to a document so that a death sentence would be carried
5 out?

6 A Yes, sir. That is to me, as the Judge asked earlier,
7 just the thought of that is tough, right. But if I were
8 to go through everything that has to go through to get to
9 that point then, yes sir.

10 Q Thank you very much.

11 A Yes, sir. Thank you.

12 THE COURT: You want to be heard on this?

13 MR. SECOR: No, sir.

14 THE COURT: Would you like to be heard on this?

15 MR. GRAHAM: No, sir.

16 THE COURT: Mr. Turner, the Court finds you qualified
17 to be a Juror. So you are not a potential Juror, you are
18 a qualified Juror. You are going to monitor the website
19 for about a week or so, monitor it each night and it will
20 say qualified jurors please check back tomorrow night.
21 Qualified jurors please finally come in and report to this
22 courtroom on such and such date and time. Until such time
23 don't discuss the case. Don't ask people about it, don't
24 let people ask you about it. Don't do any independent
25 research. Minimize the publicity contact. It is almost

1 impossible to say, don't have any contact, somehow it will
2 happen. I want you to come back into the courtroom
3 saying, Judge, I am still open to everything. I have not
4 formed an opinion. So that is what I am looking for, open
5 minded, fair and impartial Juror and you are under your
6 oath to do so.

7 JUROR: Yes, sir.

8 THE COURT: Enjoy the rest of your day.

9 JUROR: Thank you.

10 THE COURT: We will take a break.

11 (Whereupon, a short break was taken.)

12 THE COURT: Bring him in.

13 (Whereupon, Juror 329, Anh Pham entered the
14 courtroom.)

15 EXAMINATION

16 By The Court:

17 Q Mr. Pham?

18 A Pham.

19 Q Pham?

20 A Yes, sir.

21 Q It is an M?

22 A M.

23 Q Okay, there was a family of Phan's with an N growing
24 up that I went to school with in Newberry. Good morning.

25 A Good morning.

1 Q My name is Eugene Griffith again, I gave you some
2 instructions Monday about the indictments. I also asked
3 you to take an oath to not talk about the case. From that
4 time forward have you talked about the case with anyone?

5 A No.

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

7 A My wife was asking me a few questions about it but I
8 told her I couldn't talk about it.

9 Q That is the appropriate response. Now, there has
10 been a lot of publicity on the case as well as my reading
11 of the indictments during Monday's preliminary
12 instructions to the jurors. Has anything you have heard,
13 whether it be publicity or presentation of the
14 indictments, have you, has it caused you to form an
15 opinion as to what happened in this case?

16 A I haven't made an opinion yet.

17 Q Fair enough. I also asked you about your personal
18 schedule. What have you got on the agenda for the rest of
19 this month getting into early June that would prevent you
20 from being a good Juror, or a non-frustrated Juror being
21 imposed upon?

22 A Other than my work schedule I am free.

23 Q Okay. And everybody has potential work complex
24 issues to manage and if you were selected you could serve
25 but for your boss wanting to know, make certain you are on

1 jury duty?

2 A Right, correct.

3 Q And we could provide that. The Clerk of Court could
4 say you have been selected. We could help you minimize
5 that.

6 A Yes, sir.

7 Q Did you have a chance to review the potential witness
8 list?

9 A I did.

10 Q And that is potential witnesses, not exactly the ones
11 that are going to be called but potentially could be
12 called. Do you understand?

13 A Right. I did recognize a name on the list.

14 Q You did recognize a name?

15 A Yes.

16 Q Who did you recognize?

17 A Shawn Gorski.

18 Q And how would you know her?

19 A About seven years ago my wife and I were separated at
20 the time, we were working out formal joint custody
21 arrangement and she was a Guardian Ad Litem.

22 Q For your children?

23 A For our daughter at the time.

24 Q Just one child?

25 A Yes.

1 Q Now, you said, you discussed your wife. Is that
2 matter now--

3 A We reconciled and everything, we got back together.

4 Q That is so good to hear. And Ms. Gorski obviously
5 then didn't have any further work to do other than what
6 she did?

7 A Just, just for the one time in her office and then
8 another time when we ratified our custody agreement.

9 Q And she had to make a report of y'all's ratification
10 and agreement and getting back together was certainly okay
11 to do?

12 A Right.

13 Q Reconciliation is favored under our law. Very proud
14 to hear you tell me that?

15 A Yes, sir.

16 Q And that is not an issue in this case but personally
17 thank you?

18 A Yes, sir.

19 Q Other than her, the fact that she may be a witness in
20 this case, would that create an issue for you being fair
21 and impartial to both sides?

22 A No, sir.

23 Q Now, I gave you a limited instruction on the law
24 about some aspects of criminal procedure, the definition
25 of murder, potential plea that has been entered here in

1 this case and very scant facts you have got. So not much
2 facts out there but in big terms there will be a lot of
3 testimony and evidence presented during the trial. But
4 prior to that, just knowing what you feel now if the case
5 were and you were on the jury, I am trying to find out
6 what type of potential, typical Juror you might be. Did
7 you read that three types of jurors summary?

8 A I read that. I would fall into the third category.

9 Q You find yourself very quickly a three?

10 A Yes, sir.

11 Q And would that be because you want to hear everything
12 before making a decision?

13 A I would like to know everything about what is going
14 on, all the factors into it and then go from there.

15 Q I want to make certain we are clear. There is two
16 stages. Stage one, guilt or innocence only and defenses
17 can be presented. If there is a not guilty verdict in
18 stage one the case ends. If the State meets its burden of
19 proving the case beyond a reasonable doubt then the case
20 will proceed to stage two and then other things are
21 presented to the jurors. So I am going to ask you about
22 stage one first and then stage two second. Okay.

23 A Yes, sir.

24 Q And stage one, the State has got to prove murder
25 beyond a reasonable doubt, all the elements. Mr. Jones is

1 presumed innocent, he will be presumed innocent until the
2 State overcomes that burden by proving the case, each
3 element, beyond a reasonable doubt. Now there is some
4 statutory defenses and I am going to read them off to you
5 that are available, not all of them will be applicable but
6 I am going to read them all nevertheless.

7 A Yes, sir.

8 Q Potential defenses are accident, involuntary
9 intoxication, self-defense, necessity, insanity, guilty
10 but mentally ill, defense of habitation, entrapment,
11 duress or alibi. Now, understanding that Mr. Jones has
12 entered one of those defenses by not guilty by reason of
13 insanity meaning that you will consider, let me change my
14 question. Can you consider the aspects of the
15 instructions on the law of any of those defenses, the
16 burden of proof the State has beyond a reasonable doubt,
17 with the facts and evidence that is presented during the
18 guilt or innocence phase, give meaningful consideration to
19 all the evidence and making that determination consistent
20 with my instructions. Can you do that?

21 A Yes, I can.

22 Q Okay. And understanding this, that the potential
23 verdict form in this case will have four potential
24 verdicts, guilty, guilty but mentally ill, not guilty by
25 reason of insanity and not guilty whatsoever. Can you

1 give meaningful consideration to any of those four
2 potential verdicts?

3 A Yes.

4 Q Is there any of those four potential verdicts that
5 you cannot give consideration to?

6 A No.

7 Q Now, if guilt is found beyond a reasonable doubt we
8 go to stage two, phase two. Punishment at that time is up
9 to the jury. There are two potential punishments, life or
10 death, nothing else is on the table. Those two decisions,
11 the jury will make one of those two, there is no in
12 between. The jury considers whether the State has proven
13 one of the statutory aggravating factors which would
14 enable them to ask for a death penalty. Aggravating
15 factors defined in our statute is perhaps, murder of a
16 police officer, rape of murder, kidnapping of murder,
17 murder of a child, murder of multiple victims.
18 Understanding those are aggravating factors, one of which
19 the State has to prove beyond a reasonable doubt. The
20 jury is also allowed and required to consider any and all
21 mitigating testimony and evidence that is presented during
22 the trial. Mitigating factors are a factor which would
23 cause one to want to give life without parole as opposed
24 to the death penalty. Do you understand?

25 A Yes, sir.

1 Q Statutory factors to consider could be and these are
2 just ideas, the Defendant has no significant history of
3 prior criminal conviction involving the use of violence
4 against another person. The murder was committed while
5 the Defendant was under the influence of mental or
6 emotional disturbances. The victim was a participant in
7 the Defendant's conduct or consented to the act. The
8 Defendant was an accomplice in the murder committed by
9 another person and his participation was relatively minor.
10 The Defendant acted under duress under the domination of
11 another. The capacity of the Defendant to appreciate the
12 criminality of his conduct or to conform his conduct with
13 the requirements of law was substantially impaired. The
14 age or mentality of the Defendant at the time of the
15 crime. The Defendant was provoked by the victim in
16 committing the murder. The Defendant had mental
17 retardation at the time of the commission of the crime.
18 Those are statutory, some may apply and some may not,
19 depending on the testimony. Other factors that can be
20 considered mitigating are the Defendant's walk in life,
21 broken childhood, broken home from a childhood, anything
22 whatsoever a Juror can assign in a mitigating factor. Can
23 you give meaningful consideration to the State's burden of
24 proving an aggravating factor, mitigating factors,
25 testimony and evidence of those, considering my

1 instructions, the aspects of how those laws apply and be a
2 fair and impartial Juror in this case?

3 A Yes, I can.

4 Q Now, can you or do you have any personal belief,
5 religious or moral or otherwise which would prevent you
6 from making a finding of a death penalty verdict?

7 A No, I do not.

8 Q Do you have any religious, moral, personal beliefs
9 which would prevent you from finding any life without
10 parole sentence is appropriate?

11 A No, sir.

12 Q Very well. Do you understand this subject matter in
13 this case will be involving the death of children. It
14 will be difficult, unpleasant, harsh at times, won't be
15 easy. Would the subject matter of that type create an
16 issue for you where you could not still be, in spite of
17 that harsh testimony, be fair to both sides, the State and
18 the Defense?

19 A I can be fair.

20 Q You can do that?

21 A Yes, sir.

22 THE COURT: Mr. Young.

23 Q He is going to ask you, remember, you are under oath,
24 no wrong answer.

25 A Yes, sir.

EXAMINATION

By Mr. Young:

Q Good morning.

A Good morning.

Q The Judge told you, my name is Boyd Young, I am one of Mr. Jones attorneys. Okay?

A Okay.

Q The Judge talked to you about your ability to be fair and impartial and follow the law. Right now I just want to talk about your personal feelings. Okay?

A Okay.

Q I noticed that you stood up on Monday and said that you had heard information about this case. Is that right?

A Right.

Q Can you tell me what it was that you heard, saw or read?

A The Sunday before, I was letting my teammates from work, letting them know I was coming in for jury duty. And one them said he thought it could be related to what is in the media. So I looked it up on the internet and found the story on the State news about jury selection for this trial. I read that entire news story, that is when I first heard about this, this case in Lexington.

Q Did that news story like have a summary of the facts and allegations?

1 A It talked about some of the findings that authority
2 made and people involved. Whatever was in the State's
3 story that Sunday is what I read.

4 Q Based on what you read did you inform an impression
5 in yourself about what should happen to Tim Jones?

6 A Well, when I read the story I was really shocked
7 about what I read in the story. But there really wasn't
8 much to go on but just reading the story itself, it was
9 just, you know, the story was a shocking story.

10 Q Shocking allegations?

11 A Right.

12 Q Did you form an impression about what should happen
13 to Mr. Jones?

14 A Well, I, when I read the story I was like, I have a
15 four-year-old son and so when I read the story I just
16 couldn't imagine how something like this could happen. So
17 that was my initial impression.

18 Q Okay. If I understand you, you are saying you didn't
19 inform an impression about like what should happen to him,
20 should he live, should he die?

21 A Well, the story didn't give much what happened, like
22 if he was on medication at the time or any factors that
23 played a role. So I would like to know all the factors
24 before I pass judgment.

25 Q I understand where you are coming from. The Judge

1 told you that Mr. Jones has plead not guilty by reason of
2 insanity?

3 A Right.

4 Q You understand that?

5 A Right.

6 Q And that means that when you plead not guilty by
7 insanity you say, I did the killings. Right?

8 A Right.

9 Q But because of a mental disease or defect I was
10 unable to appreciate the legal or moral wrongfulness of
11 the actions?

12 A Right.

13 Q Is that what you understand not guilty by reason of
14 insanity?

15 A Yes, sir.

16 Q And some people say that not guilty by reason of
17 insanity is sort of a copout, it is not a defense that I
18 really can give meaningful consideration to.

19 A Right.

20 Q Is that you?

21 A No. As a copout, no. I mean, I don't know, maybe he
22 was on medication that affected his judgment at the time
23 or something like that. So I have had friends who were on
24 drugs for some things they are going through and once they
25 are on it it really affected their judgment and they had

1 thoughts they never had before and they tell their doctor
2 about them. So if it is something like that I would
3 definitely take that into consideration.

4 Q Okay. Let me talk to you a little bit about your
5 views about the death penalty. In order to talk about the
6 death penalty we need to be on the same page here. We are
7 talking about somebody who has been convicted and found
8 guilty of murder. Okay. Are you with me on that?

9 A Yes, sir.

10 Q That means whatever evidence the jury heard about not
11 guilty by reason of insanity, they have rejected that.
12 They said, no, he knew the difference between right from
13 wrong and he had no excuse, justification or defense and
14 he maliciously murdered multiple children. Are you with
15 me on that?

16 A Yes, sir.

17 Q And in a case like that, that type of case, what are
18 your thoughts about the appropriateness of the death
19 penalty?

20 A Well, if anyone did what they did of their own free
21 will and they weren't on any type of influence chemically
22 or whatever wise, I think they are deserving the death
23 penalty certainly.

24 Q Is it sort of automatic right then, like you knew
25 what you were doing, you chose to kill, automatically get

1 death?

2 A Well, I mean, if there weren't any type of
3 intoxication or whatever, anything, if they weren't under
4 the influence of anything and they knew what they were
5 doing then I think the death penalty is appropriate. But
6 if there are mitigating factors, for instance, they
7 weren't getting the psychiatric treatment they needed for
8 some type of impairment or some type of mental imbalance,
9 I think that should be factored in as well.

10 Q Okay. So you think that even under those
11 circumstances, knew what they were doing, chose to kill,
12 do you think that life could be a substantial enough
13 punishment for that type of guilty murder?

14 A I think that life can be appropriate in some
15 situations, yes.

16 Q Okay. And if I understand what you are saying, don't
17 let me put words in your mouth.

18 A Okay.

19 Q This is just our time to talk.

20 A Right.

21 Q Some people say, you know, when you go to decide
22 whether or not a person lives or dies, you should take a
23 full measure of their life?

24 A Yes, definitely.

25 Q Does that sound like that resonates with you?

1 A Yes, sir.

2 Q The concept of the death penalty, is that something
3 that you think is sort of reserved for the worst of the
4 worst?

5 A I think it definitely is deserved for the worst of
6 the worst and is appropriate in this case.

7 Q I am going to talk to you a little bit about how this
8 decision is made by jury's. Okay?

9 A Yes, sir.

10 Q And it is really, you understand that death is never
11 required, there is no set of facts that say, all right,
12 this is, death is the appropriate punishment. Do you
13 understand that?

14 A Yes, sir.

15 Q There is not a formula where the State proves A and B
16 and it equals the appropriate punishment is death.

17 A Okay.

18 Q It is up to each individual Juror.

19 A Okay.

20 Q And how we get there is called mitigation, mitigating
21 circumstances. Do you understood the Judge talked to you
22 about those a little bit?

23 A Right.

24 Q And those are different from aggravators in they
25 don't have a burden of proof, they don't have to be

1 unanimously found by the entire jury. Okay. Each Juror
2 draws their own conclusion about what is or not mitigating
3 for them. Do you understand me?

4 A Right.

5 Q Juror one may say, for me I saw he had a loving
6 relationship with his father and based on that I am going
7 to give that relationship the value of life and I am going
8 to find life for that reason. Do you understand that?

9 A Right.

10 Q That is totally appropriate. Is that how you
11 understand the law works?

12 A Well, I mean, I am sorry, can you say that again.

13 Q Sure.

14 A I want to make sure I understood you.

15 Q One Juror can say I saw that he had a loving
16 relationship with his father.

17 A Right.

18 Q And based on that relationship alone I am going to
19 decide that life is the appropriate punishment for me just
20 based on that relationship. And it might not be you, you
21 might not, you might say, well, that is not a reason for
22 me. But if a Juror finds that reason they are entitled to
23 it.

24 A A person is entitled to what they believe but it
25 needs to be pertinent to the case at hand.

1 Q And you wouldn't find that pertinent?

2 A In regards to this case before the Court?

3 Q Any case, in any case, and in the Defendant in taking
4 a full measure of their life?

5 A I think, yes, sure, that can play a factor. I think
6 I would treat, it definitely plays a role.

7 Q Okay. And my point is that Juror number two could
8 say, well, I thought he was mentally ill. And based on
9 that mental illness it didn't rise to a level of insanity
10 but I am going to say that based on mental illness I put
11 the value of life on that. So I am not going to kill for
12 that reason. Does that make sense to you?

13 A That makes sense to me, yes.

14 Q And there are two jurors don't agree, they are
15 conflicted. They, it wasn't unanimously found, it wasn't
16 beyond a reasonable doubt but each Juror believes that and
17 they are entitled to that belief. Does that make sense to
18 you?

19 A Right, that makes sense.

20 Q And a Juror can say, I don't have a reason, I have no
21 reason but I think life is the appropriate penalty for me.
22 And the law is satisfied with that too.

23 A Right.

24 Q Can you respect the right of a Juror to say, I can't
25 explain it to you, I can't put it into words but this is

1 what is right for me.

2 A Right.

3 Q Can you respect their right to do that?

4 A Yes, sir.

5 Q And finally they can also recommend a penalty for
6 life for what is called mercy alone. Does that make sense
7 to you?

8 A Right.

9 Q In your concept of mercy, is mercy something that is
10 earned or is it something that is sort of freely bestowed
11 on another?

12 A It is freely bestowed.

13 Q And ultimately this decision about who lives and who
14 dies is called an individual moral judgment. Do you
15 understand that?

16 A Right?

17 Q It is like choosing what faith is right for you. You
18 have made your own choices about that?

19 A Right.

20 Q And you recognize that other people have made
21 different choices for themselves about their faith?

22 A Yes.

23 Q And they might not agree with yours?

24 A Certainly.

25 Q You respect their right to do that?

1 A I do.

2 Q And you expect them to respect your right to have
3 your own faith?

4 A Certainly.

5 Q And in a decision like a life or death or what faith
6 is appropriate, people can make different choices?

7 A Right.

8 Q And if you saw somebody who was being bullied or
9 pressured into giving up what they had arrived at as their
10 individual moral judgment, would you say, well, wait a
11 minute, they are entitled to their opinion, that needs to
12 stop?

13 A Right, bullying isn't a place, everyone is entitled
14 to their opinion.

15 Q The law is that each Juror makes their individual
16 moral judgment about their appropriate punishment. Are
17 you with me on that?

18 A Right?

19 Q And it is your duty and obligation as a Juror, it is
20 your oath, to make sure that your individual moral
21 judgment is heard. Does that make sense to you?

22 A Right.

23 Q Thank you, Mr. Pham. Based on the Court's
24 limitations that is all I have.

25 THE COURT: Ms. Mayes.

1 MS. MAYES: If it please the Court.

2 THE COURT: Yes, ma'am.

3 EXAMINATION

4 By Ms. Mayes:

5 Q Good morning.

6 A Good morning.

7 Q My name is Suzanne Mayes and as a Deputy Solicitor I
8 am one of the Prosecutor's in this case. So we represent
9 the State. Just wanted to ask you a few questions. You
10 just responded to Mr. Young that you did see an article on
11 Sunday before coming in for jury selection?

12 A I did.

13 Q And you actually read the article.

14 A I read the article.

15 Q Now, with that in mind would you be able to follow
16 the instructions of the Judge and set aside anything you
17 read in that article and be fair and impartial in this
18 case?

19 A I can and I will.

20 Q Mr. Young was asking you about mitigating factors and
21 mitigating circumstances that may be offered by the
22 Defense during the course of this trial. Is that
23 something that you are open to and open to listening to
24 and evaluating during this trial?

25 A Yes, ma'am.

1 Q And the Judge explained to you the options, if this
2 case gets to a second phase of the trial, the options
3 would be life without parole meaning he never gets out of
4 prison and the other option would be the death penalty.

5 A Yes, ma'am.

6 Q Are both of those options that you can consider in
7 this case?

8 A I will.

9 Q And reaching a decision, ultimately, about the
10 punishment, as the Judge explained, there would be
11 aggravating circumstances and mitigating circumstances.
12 Can you consider both types of evidence?

13 A I can.

14 Q And would you be able to consider each of the factors
15 that are presented?

16 A Yes.

17 Q And after hearing all of the evidence and factors,
18 aggravating and mitigating, if you determine that life
19 without parole was the appropriate sentence, could you
20 make life without parole the choice?

21 A Yes, ma'am.

22 Q And if after hearing all of the evidence, you
23 determine that the death penalty was appropriate, could
24 you give the death penalty as your verdict?

25 A I could.

1 Q And with that death penalty verdict, if that were the
2 decision reached by jurors unanimously, there would be a
3 form that goes along with that verdict where every member
4 of the jury must sign their name and acknowledge that the
5 death sentence is their verdict. Would you be able to
6 sign that form?

7 A I would.

8 Q Thank you.

9 A Yes, ma'am.

10 MR. YOUNG: Nothing from the Defense.

11 THE COURT: Anything we need to put on the record.

12 MR. YOUNG: No, sir.

13 THE COURT: The State?

14 MR. HUBBARD: No objection. Thank you, Your Honor.

15 THE COURT: All right. Mr. Pham, you have been
16 determined by the Court, based upon the answers to the
17 questions and responses the Court has heard from the
18 lawyers and from the Court itself, that you are going to
19 be a qualified Juror. What that means is, now you are
20 going to be on the list of potential qualified jurors. So
21 you are no longer a potential Juror, you are a qualified
22 Juror. The website you were following on when to come
23 back from this panel, you will look at it again but follow
24 the instructions on qualified jurors. It may say, check
25 back again tomorrow, check back again the next day.

1 Finally it is going to say, please report back to the
2 Lexington County Court House, this courtroom at such and
3 such time and date and then come in then. Until that time
4 you are still going to remain under oath. I want you to
5 not talk about the case, do not discuss the case, do not
6 answer any questions about the case. The responses of, I
7 was told not to talk about the case will remain. Don't do
8 any independent research, don't go perusing any of the
9 publicity the case has got. What you need to decide the
10 case you will get in here in the courtroom by the
11 testimony of the parties and the instructions of the Court
12 and consistent in, at the same time with all the other
13 jurors, if you are selected as a Juror. Can you accept
14 that oath?

15 JUROR: Yes, sir.

16 THE COURT: Watch the website and we will see you
17 back next week sometime.

18 JUROR: Yes, sir.

19 THE COURT: Anything before we bring the next one in.
20 The next Juror is 476.

21 (Whereupon, Juror 476, Christopher Wilde entered the
22 courtroom.)

23 EXAMINATION

24 By The Court:

25 Q Good morning, Mr. Wilde?

1 A Yes, sir.

2 Q You spell it, W-I-L-D-E?

3 A Yes, D-E.

4 Q All right. Sir, my name is Eugene Griffith, was
5 introduced to you several times. You were in the
6 courtroom Monday when we went over all of the preliminary
7 qualification questions, very general.

8 A Yes, sir.

9 Q You took an oath not to talk about the case?

10 A Yes.

11 Q Have you talked about the case since Monday?

12 A I have not.

13 Q Has anyone tried to engage in questions and answers
14 with you about the case?

15 A No, sir.

16 Q Very good. Now, there has been publicity about this
17 case several years ago, last week, this week. Also Monday
18 I read the indictments and said, this case involves
19 allegations of and I gave you particular allegations of
20 fact outlined by the State. Any of those facts, whether
21 it is publicity or allegations in the indictments,
22 anything you have heard prior to right now caused you have
23 not formed an opinion?

24 A Well, I mean, obviously I read it when the story
25 first broke four or five years ago. But actually I forgot

1 about it since then. So and since I was called here I
2 haven't read or anything like that. So, I read what was
3 happened and that was about it off the media.

4 Q Okay. And so you have not formed an opinion, it
5 involves the death of children.

6 A No, I have not formed an official opinion.

7 Q Okay. Now, from this point I want you to maintain
8 that oath to not discuss the case or look into it?

9 A Yes, sir.

10 Q I ask you to tell me about your personal schedule
11 coming up, whether it be work, personal or otherwise. You
12 got anything in the horizon through the end of May, close
13 to early June which if you were selected as a qualified
14 Juror could you serve?

15 A I have a son graduating June 7th from high school.
16 And we are planning a four-day trip prior to that
17 graduation.

18 Q Prior to?

19 A Prior to. Family coming down for graduation and my
20 son graduates from River Bluff High School on June 7th.

21 Q I think this is very similar to the other gentleman I
22 had in here. All right. If it was just finishing school
23 I would probably tell you, sorry Charlie. But this is a
24 child graduating from high school.

25 A I am not going to miss it.

1 Q I know. I don't want to be the guy that says you
2 have got to miss your son's graduation. I am going to
3 excuse him for personal obligation, child graduation and
4 trip. Mr. Wilde, thank you for being candid with me. I
5 don't want to impersonally impose. You are excused.

6 A Thank you so much.

7 THE COURT: Okay, we are going to bring in 383.

8 (Whereupon, Juror 383, Geoffrey Shackley entered the
9 courtroom.)

10 EXAMINATION

11 By The Court:

12 Q Good morning.

13 A Good morning.

14 Q Will you spell your first and last name and I am
15 going to remind you you are under oath.

16 A Yes, sir. I am Geoffrey Shackley, that is
17 G-E-O-F-F-R-E-Y-; S-H-A-C-K-L-E-Y.

18 Q Mr. Shackley, my name is Eugene Griffith and I have
19 introduced myself a couple of times to you. You were here
20 with us Monday and when we did the original qualification.
21 And I ask you to take an oath to not discuss the case with
22 anybody. Have you not discussed the case?

23 A Yes, sir.

24 Q Has anybody tried to discuss the case with you?

25 A I did, as you mentioned, I mentioned to my family

1 what was going on. My dad did try to send me an article,
2 is this the case you are on? And I said, I can't read
3 that.

4 Q That's correct. Is that how you responded to him, I
5 can't read that?

6 A Yes.

7 Q That is a very appropriate response. Now, I ask you
8 this. There has been publicity about the case. Obviously
9 your dad was quizzing you on that. Both before you got
10 here Monday there was publicity about it, five, four years
11 ago, recently, this week, whatever the source plus I read
12 the indictments in open court, in the big courtroom. Has
13 anything that you have heard up to this point, no matter
14 what its source, has anything caused you to form an
15 opinion as to what you believe has happened in this case?

16 A Honestly, sir, yes.

17 Q All right.

18 A Everything that I heard last Monday.

19 Q All right. There are allegations, five indictments,
20 murder allegations against Mr. Jones. He is presumed
21 innocent right now. Has that caused you to form an
22 opinion as to his guilt or innocence?

23 A Yes, sir.

24 Q Now, I also sent back, gave you my instructions on
25 the law earlier. Kind of the procedure, two-step process

1 to a Capital case, guilt or innocence and the punishment.

2 There are jurors that are typically, I guess, described in
3 cases like this are type one, type two, type three. Did
4 you understand my instructions first of all?

5 A Yes, sir.

6 Q Did you understand my typical two types of, I mean,
7 three types of jurors? Did you understand that sheet you
8 read?

9 A Yes, sir.

10 Q Can you find yourself as any one of those types?

11 A I feel like in regards to what I know about this case
12 I am a hard number one.

13 Q Okay. And that is, there is no wrong answer. You
14 remember me telling you that over there. These are
15 opinions, everybody is entitled to an opinion. But you
16 think you are a hard number one?

17 A Yes, sir.

18 Q I appreciate your candor. 383, Mr. Shackley will be
19 excused. Thank you.

20 A Thank you, sir. I appreciate it.

21 THE COURT: All right, we have got the two that were
22 late. What about the other eight, they will be here at
23 11:30. Any objection to me bringing these two in, read
24 the same instructions, quiz them why they were late. I
25 mean, they weren't very late, they both called and made

1 inquires of the Clerk to let us know.

2 MR. YOUNG: No, sir.

3 THE COURT: Let's do the same thing, bring them in.

4 (Whereupon, Juror 183, Ryan Hatcher; Juror 275,
5 Carolyn Mayers entered the courtroom.)

6 THE COURT: I want to talk to y'all for a minute.

7 Thank y'all for calling and letting us know you were
8 running late. The reason I ran you out earlier, I read a
9 preliminary statement of law, a little bit about the
10 procedure and some of the proceeds it goes through in a
11 case like this and I want you to hear it before you come
12 back in and answer questions and y'all missed that on the
13 first six. Here it is and then I will bring you in one at
14 a time and then ask questions about your schedule and
15 things, any potential witnesses and such as that. Now, I
16 am going to read this to you and put you back outside and
17 bring you back in one at a time and ask you questions.
18 And you are under oath and there are no wrong answers.
19 Some of it is your personal beliefs. You have been
20 summoned as potential jurors in the case of the State
21 versus Timothy R. Jones, Jr. My name is Eugene Griffith,
22 Jr. and I am the presiding Judge. Mr. Jones has been
23 charged with five counts of murder. And in South Carolina
24 murder is defined as the killing of another person with
25 malice aforethought. Malice is defined as a person with a

1 wicked or depraved heart, intent on wrongdoing, hatred,
2 ill-will or hostility. The definition of murder excludes
3 any just cause or excuse for the killing. When the State
4 alleges the defense of murder, combined with certain
5 aggravating circumstances the State can then seek the
6 death penalty. Before and during the trial an accused is
7 presumed innocent to each element of the crimes which he
8 is accused and charged. The State must prove these
9 elements, each and every one of them, to a standard of
10 proof called beyond a reasonable doubt. In most criminal
11 cases the Judges determine the punishment upon a
12 conviction. But in a Capital penalty case the jury
13 determines punishment. In a Capital case the trial is
14 divided into two parts potentially. The guilt or
15 innocence phase and then if necessary the punishment
16 phase. In the first portion, the first phase of the case,
17 the State must prove the Defendant's guilt of murder
18 beyond a reasonable doubt. If a jury finds an accused
19 guilty of murder then the trial proceeds into the second
20 phase or the punishment phase. In the second phase, if
21 the State proves an aggravating circumstance beyond a
22 reasonable doubt then the jury will consider aggravating
23 and mitigating circumstances and evidence to decide the
24 appropriate punishment, either life without parole or the
25 death penalty. Our law in South Carolina does not allow

1 the State to seek that execution if a person is convicted
2 solely of the murder. The State must prove at least one
3 of the statutory aggravating factors beyond a reasonable
4 doubt. Even if the State proves the murder and an
5 aggravating circumstance jurors are required to consider
6 any mitigation evidence or circumstances. Jurors must
7 consider any mitigating facts that would support a
8 sentence other than death. Even if no mitigating
9 circumstances exist jurors are not required to impose the
10 death penalty. In order for a sentence of death to be
11 imposed the verdict must be signed by all twelve jurors.
12 If jurors unanimously decide to sentence a Defendant to
13 life without parole sentence then a sentence of life
14 without parole will be imposed. In this case the State
15 has indicted Mr. Jones with five counts of murder and has
16 notified him that it intends to seek the death penalty.
17 Mr. Jones has entered a plea of not guilty by reason of
18 insanity. In this case you may hear testimony and
19 evidence showing many things. A wide variety of testimony
20 may be presented to you in this trial. I will instruct
21 you as to how to consider and evaluate this testimony and
22 evidence, whether it be defined as evidence of an
23 aggravating factor, evidence of mitigation, that would be
24 any reason to vote for a sentence of life without parole,
25 evidence of any defenses, evidence of any affirmative

1 defenses such as accident, guilty but mentally ill and not
2 guilty by reason of insanity. Until the testimony and
3 evidence is presented I am not able to tell you my exact
4 instructions of the law, which I will give at the
5 conclusion of the case. But will you and can you accept
6 an oath to meaningfully consider all the testimony and
7 evidence, apply the law as I instruct it and consider all
8 the evidence consistent with these instructions. Can
9 y'all do that.

10 (Whereupon, both jurors responded in the
11 affirmative.)

12 THE COURT: Both answered affirmatively. Now, I will
13 excuse y'all until y'all come back in. Don't discuss the
14 case with each other, step back and out and we will have
15 you back in.

16 (Whereupon, a short break was taken.)

17 THE COURT: Bring Mr. Hatcher in.

18 (Whereupon, Juror 183, Ryan Hatcher entered the
19 courtroom.)

20 EXAMINATION

21 By The Court:

22 Q Good morning, Mr. Hatcher.

23 A Good morning, how are you.

24 Q Thank you for coming in this morning. I know you
25 were a few minutes late and you came in and I hadn't quite

1 read that preliminary statement to you and had you sitting
2 in the back for a while.

3 A Yes, sir.

4 Q You are familiar that social media is out there and
5 prevalent everywhere?

6 A Yes, sir.

7 Q Media attention, publicity, makes an impact on
8 people's decision. Do you understand that?

9 A Yes, sir.

10 Q And didn't I give you instructions not to talk about
11 the case?

12 A Yes, sir.

13 Q Did you publish something on the internet, use social
14 media since you have been sitting in the Court House?

15 A No, sir.

16 Q You didn't? You are under oath. Did you publish
17 anything, put anything on social media since you have been
18 here?

19 A No, sir.

20 Q All right. I want the Clerk of Court to find where
21 that is. I think you are lying to me.

22 A A picture of me?

23 Q Yes.

24 A I put a picture of me on Facebook.

25 Q Is that not putting something on social media and

1 publishing and talking about the case?

2 A I didn't know that I said anything about the case.

3 Q Did you make a negative comment to law enforcement?

4 A No, sir. I do hog hunts and that is what--

5 Q Tell you what I am going to do. I am going to excuse
6 you from being a Juror in this case. I am going to hold
7 you here a little bit until I decide what I am going to
8 do. Because I want to check the nature of what I was told
9 or shown that was on social media, I am not very happy.
10 Put him somewhere where I can hang on to him a little bit.
11 Don't talk about the case with anybody. I will decide
12 what to do with you in a little bit, I want to hear a
13 little bit more.

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

16 THE COURT: Come on up. There was something posted
17 on social media about Mr. Hatcher. It appears to be
18 negative talking about the case and it indicates in the
19 sitting at the Court House thinking about stabbing a pig
20 in all caps. And then the bacon and on and on more. He
21 has been excused from service on this case but the Court
22 may consider bringing him back in and questioning him
23 further. But I really don't have time to do all of that
24 so if anyone, the State or Defense, has got a suggestion
25 as to what to do with him for misrepresenting the things

1 to the Court, let me know but I may do nothing, I may just
2 let him sit here for a while.

3 MR. HUBBARD: The State's position is it is your
4 discretion. Obviously I think he needs to be struck.

5 THE COURT: He is not going to serve, he is excused
6 by the Court right now.

7 MR. HUBBARD: Thank you, Your Honor.

8 THE COURT: Are we ready to go on the next one?

9 MR. HUBBARD: Yes, sir.

10 THE COURT: Bring the next one.

11 (Whereupon, Juror 275, Carolyn Mayers entered the
12 courtroom.)

13 EXAMINATION

14 By The Court:

15 Q Ms. Mayers.

16 A Mayers.

17 Q How are you doing today?

18 A I am good, how are you.

19 Q I am doing fine. My name is Eugene Griffith and I
20 introduced myself Monday and Monday I asked everyone to
21 take an oath to not talk about the case until I get to see
22 you again. Did you talk to anybody about the case?

23 A No. I mean, just from what was being said on the
24 news.

25 Q Okay. Understanding there was a lot of publicity but

1 did anybody ask you about the case, of you being a
2 potential Juror?

3 A No.

4 Q Now, this is, I am asking a question, I am looking
5 for fair and impartial jurors. There has been a lot of
6 publicity, there was talk Monday because I read the five
7 indictments, the allegations made by the State to Mr.
8 Jones. And Mr. Jones is presumed innocent right now.
9 Have you formed an opinion, result from whatever
10 conversation, publicity you have heard, seen in the media,
11 where ever it is. Have you formed an opinion that you
12 think you know what happened?

13 A No, I don't. I really don't.

14 Q That is what I am trying to determine. I don't want
15 somebody to come in and say, I know what happened and I
16 know what I am going to do. That would not be fair to the
17 State or the Defense. Do you understand?

18 A I do.

19 Q What do you have on your work schedule, personal
20 schedule, otherwise over the next several weeks if you are
21 selected as a qualified Juror?

22 A I babysit for my grandkids. Other than that I don't
23 have anything else.

24 Q You were a little bit late getting here today. Was
25 that because some of your grandkids slowed you up getting

1 out of the house?

2 A No. I had to find a ride.

3 Q Okay. And is transportation an issue for you?

4 A Yes, it really is.

5 Q So if you are selected as a qualified Juror would we
6 need to assist you getting you to and from the court?

7 A Yes.

8 Q And that can be done, not a problem with that?

9 A Okay.

10 Q Now, did you understand my instructions I read a
11 moment ago about the two phase, two-step process, there is
12 a guilt or innocence phase in a Capital case and then
13 there is a sentencing phase.

14 A Yes. I read that paper there also.

15 Q The three types of jurors?

16 A Yes.

17 Q Understanding my instructions about phase one, guilt
18 or innocence and then goes to stage two if there is a
19 finding of guilt and then the jury will impose the
20 sentence. One of two things, either guilty, I am sorry,
21 either life without parole or it is the death penalty, the
22 punishment. No other options for the jury. Do you
23 understand that?

24 A Yes.

25 Q The death penalty is not automatic. Did you know

1 that?

2 A No.

3 Q And I am telling. When the jury determines the
4 punishment they have got two choices, death or life.

5 A Okay.

6 Q Nothing else. Do you understand?

7 A Yes.

8 Q Did you read the type one, two and three types of
9 jurors?

10 A Yes.

11 Q Do you find yourself in any of those three types?

12 A I think type two.

13 Q Type two. Let me ask you another way. Do you have
14 any personal beliefs that you think that the only
15 reasonable sentence in a case of this type, you have got
16 just very, very broad facts, nothing particular about the
17 victims or the Defendant. But in a case like this you
18 believe the only appropriate sentence would be a life
19 sentence?

20 A Yes.

21 Q You have a religious belief that the death penalty
22 would be, you couldn't sign a verdict form on that?

23 A No.

24 Q Very well. Anything further from this lady?

25 MR. HUBBARD: Not from the State.

1 Q I am going to excuse you from service and thank you
2 for coming in.

3 A Thank you.

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

6 THE COURT: All right, we will take a break.

7 (Whereupon, a short break was taken.)

8 THE COURT: We are missing one out of the eight, so
9 we are checking on that. If they are not here in just a
10 moment or two we are going to, make them come in at the
11 last, we are going to keep things rolling.

12 BAILIFF: Not here yet.

13 THE COURT: Not here yet. Bring me the seven you
14 have got.

15 (Whereupon, 17, Kristin Ashburn; 464 Tracy Wehr; 129,
16 Elizabeth Durham; 186, Lawryn Henderson; 237, Peter
17 Kleemoff; 177, Terrie Hanley; 338, Rachna Prasad
18 entered the courtroom.)

19 THE COURT: Good morning, my name is Eugene Griffith
20 yet again. Hope you had a good weekend. I have got to
21 give you some preliminary instructions on criminal
22 procedures and aspects of the criminal law and then I will
23 send you back. While you are waiting back don't discuss
24 the case, don't talk about the case among yourself with
25 anybody. There are cameras in here, none of them are on.

1 They don't take pictures of jurors. They take pictures of
2 witnesses, Court Reporter, my picture, the law clerk and
3 the lawyers, the jurors are off limits. And the cameras
4 are off right now. This question and stuff will not be
5 published or anything. When y'all come back in we need to
6 know about your work schedule, personal schedule and see
7 what your calendar is. Other than that we will come in
8 and ask questions, you are under oath, you are going to
9 stand and take an oath momentarily to renew your oath.
10 Some of the questions they ask are just personal opinions
11 about your beliefs. No wrong answers, what do you
12 believe, what do you stand for, who are you. Madam Clerk,
13 place the panel under oath for me.

14 (WHEREUPON, the jury was sworn at 11:34 a.m.)

15 THE COURT: Ladies and gentlemen, you have been
16 summoned, now I have read this to the other panels and I
17 will read it again. You have been summoned as potential
18 jurors in the case of the State versus Timothy R. Jones,
19 Jr. My name is Judge Eugene Griffith, Jr. and I will be
20 the presiding Judge in the trial. Mr. Jones is charged
21 with five counts of murder. And in South Carolina murder
22 is defined as the killing of another person with malice
23 aforethought. Malice is defined as a person with a wicked
24 or depraved heart, intent on wrongdoing, hatred, ill-will
25 or hostility. The definition of murder excludes any just

1 cause or excuse for the killing. When the State alleges
2 the defense of murder combined with certain aggravating
3 circumstances the State can then seek the death penalty.
4 Before and during a trial a person accused is presumed
5 innocent throughout each and every element of the crimes
6 which he is charged. The State must prove each and every
7 element of the crime charged by a standard of proof called
8 beyond a reasonable doubt. In most criminal cases Judges
9 determine the punishment upon a conviction. But in a
10 Capital penalty case the jury determines the punishment.
11 In a Capital case the trial is divided into two parts
12 potentially. Part one or phase one is the guilt or
13 innocence phase and then if necessary phase two is the
14 punishment phase. The first portion of the case the State
15 must prove a Defendant's guilt of murder beyond a
16 reasonable doubt. If a jury finds an accused person
17 guilty of the murder then the trial proceeds to the second
18 phase. In the second phase, if the State proves an
19 aggravating circumstance beyond a reasonable doubt then
20 the jury considers both aggravating and mitigating
21 evidence in deciding the punishment, either life without
22 the possibility of parole or the death penalty. Our law
23 in South Carolina does not allow the State to seek that
24 execution if a person is convicted solely of a murder.
25 The State must prove at least one of the statutory

1 aggravating factors beyond a reasonable doubt. Even if
2 the State proves murder and an aggravating circumstance
3 jurors are not, are required to consider any mitigating
4 evidence or circumstances. Let me make that clear.
5 Jurors must consider any mitigating facts that would
6 support a sentence other than death even if no mitigating
7 circumstances exist. Jurors are not required to impose
8 the death penalty. In order for a sentence of death to be
9 imposed the verdict must be signed by all twelve jurors.
10 If jurors unanimously decide to sentence a Defendant to
11 life without parole sentence then a sentence of life
12 without the possibility of parole sentence be imposed. In
13 this case the State has indicted five counts of murder and
14 has notified Mr. Jones that it intends to seek the death
15 penalty. Mr. Jones has entered a plea of not guilty by
16 reason of insanity. In this case you may hear testimony
17 and evidence showing many different things. A wide
18 variety of testimony may be presented to you in this
19 trial. I will instruct you as to how to consider and
20 evaluate the testimony presented to you and whether it be
21 defined as evidence of an aggravating factor, evidence of
22 mitigation which are any reason to vote for a sentence of
23 life without parole. Evidence of any defenses, evidence
24 of affirmative defenses such as accident, guilty but
25 mentally ill and not guilty by reason of insanity. Until

1 the testimony and evidence is presented I am not able to
2 tell you the exact instruction of the law that I will
3 give, on which of these aspects. But can you accept an
4 oath to meaningfully consider all the testimony and all of
5 the evidence, apply the law as I instruct it and consider
6 any and all evidence consistent with my instructions.
7 That will be the question imposed to you when you come
8 back in. Those are my preliminary instructions so y'all
9 step back in the jury room, don't discuss the case while
10 you are back there and we will call you in one at a time.
11 There is a potential witness list I want you to review and
12 there is also another form I want you to review and I will
13 bring you back in one at a time and we will go over that
14 with you. Okay.

15 (Whereupon, the jury panel was excused from the
16 courtroom.)

17 THE COURT: There was one Juror who was late, she was
18 the first one. Y'all want to do her.

19 CLERK OF COURT: I was told she was in the jury room.

20 THE COURT: I want to bring her in and put her on the
21 witness stand and do it right now. Go get my first Juror,
22 we will do her first. Bring her.

23 (Whereupon, Juror 348, Avery Renwick entered the
24 courtroom.)

25 EXAMINATION

1 By The Court:

2 Q Are you Ms. Renwick?

3 A Yes.

4 Q Hop up here. Thank you for getting here. You are
5 not in trouble or anything but your name is Ms. Renwick?

6 A Yes.

7 Q State your name and spell your name.

8 A Avery Renwick, A-V-E-R-Y; last name, R-E-N-W-I-C-K.

9 Q Okay. The other panel came in and listened to some
10 instructions about this and I am going to read those to
11 you like you were sitting here with them. And you were
12 kind of first on the panel list of our numbers. So that
13 is why I brought you in first. You are not in trouble, I
14 am going to go ahead and put you in your seat. Okay?

15 A Okay.

16 THE COURT: Madam Clerk, will you place Ms. Renwick
17 under oath.

18 (WHEREUPON, Juror Ms. Renwick was sworn.)

19 Q And so you are kind of getting it solo and that is
20 how I did the first panel but it is easier to do them as a
21 group. And so since you were late and I am okay with that
22 the lawyer said let's go ahead and start with her. I am
23 going to read this to you just like I did the others and
24 then I am going to give you something else to read, give
25 you a few minutes to peruse that and then I am going to

1 ask you some more questions. Now, you have been summoned
2 as a potential Juror in the case of the State versus
3 Timothy R. Jones. My name is Judge Eugene Griffith, Jr.
4 and I will be presiding in the trial. Mr. Jones is
5 charged with five counts of murder. And in South Carolina
6 murder is defined as the killing of another person with
7 malice aforethought. Malice is defined as a person with a
8 wicked or depraved heart, intent on wrongdoing, hatred,
9 ill-will or hostility. The definition of murder excludes
10 any just cause or excuse for the killing. When the State
11 alleges the offense of murder combined with certain
12 aggravating circumstances the State can then seek the
13 death penalty. Before and during a trial a person accused
14 is presumed innocent of all the elements of the crime to
15 which he is accused. The State must prove each and every
16 element of that crime charged by a standard of proof
17 called beyond a reasonable doubt. In most criminal cases
18 the Judge determines the punishment upon a conviction.
19 But in a Capital trial or a Capital penalty case the jury
20 determines the punishment. In a Capital trial, the trial
21 is divided into two potential parts. Part one is the
22 guilt or innocence phase. Part two, if necessary, is the
23 punishment phase. In the first portion of the case the
24 State must prove a Defendant's guilt of the murder beyond
25 a reasonable doubt. If a jury finds an accused guilty of

1 the murder then the case proceeds to the second phase. In
2 the second phase, if the State proves an aggravating
3 circumstance beyond a reasonable doubt then the jury can
4 consider any aggravating or mitigating evidence in
5 deciding the punishment, either life without parole or the
6 death penalty. Those are the two choices. Our law in
7 South Carolina does not allow the State to seek that
8 execution if a person is convicted solely of the murder.
9 The State must prove at least one of the statutory
10 aggravating factors beyond a reasonable doubt. Even if
11 the State proves the murder and an aggravating
12 circumstance jurors are required to consider any
13 mitigating evidence or circumstances. Jurors must
14 consider any mitigating facts that would support a
15 sentence other than death. Even if no mitigating
16 circumstances exist jurors are not required to impose the
17 death penalty. In order for a sentence of death to be
18 imposed the verdict must be signed by all twelve of the
19 jurors. If jurors unanimously decide to sentence a
20 Defendant to a life without the possibility of parole
21 sentence then a life without the possibility of parole
22 sentence will be imposed. In this case the State has
23 indicted five counts of murder and has notified Mr. Jones
24 that it intends to seek the death penalty. Mr. Jones has
25 entered a plea of not guilty by reason of insanity. In

1 this case you may hear all sorts of testimony and evidence
2 showing many things. A wide variety of testimony and
3 evidence may be presented to you in the trial. I will
4 instruct you as to how to consider and evaluate the
5 testimony and evidence and whether it is defined as
6 evidence of an aggravating factor, evidence of mitigation
7 and that would be any reason to vote for a life sentence
8 or life sentence without parole. Evidence of defenses,
9 evidence of affirmative defenses such as accident, guilty
10 but mentally ill and not guilty by reason of insanity.
11 Until the testimony and evidence is presented I am not
12 able to tell you exactly the instructions that I will give
13 on each of these but can you accept an oath to
14 meaningfully consider all the testimony and evidence,
15 apply the law as I instruct it and consider all of the
16 evidence consistent with my instructions. Can you do
17 that?

18 A Yes, sir.

19 Q Okay. Now, there are some cameras in the courtroom,
20 none of them are on. You are, they aren't taking your
21 picture. Witnesses and lawyers, they get their pictures
22 made, but you are off limits. Okay. Now, I am going to
23 give you, because the other jurors back there, this is a
24 potential witness list and I am going to come around and
25 let you peruse it, that is a lengthy list. Everybody has

1 to give me all potential witnesses. They won't call all
2 of them because they are just not necessary most likely to
3 call the witnesses but potentially they could be. You
4 look over it and see if you know any of them and if you do
5 then the question will be, you got a relationship with a
6 witness who does such and such. Maybe it is any one of
7 those witnesses. Would that relationship, your friendship
8 or whatever, connection to the witness create an issue for
9 you being fair and impartial. Look over that first and
10 then when you get done with that I want you to look over
11 this and I will ask you questions about that. Okay. You
12 take your time, the lawyers are going to kind of sit there
13 and do nothing. Take your time. Okay.

14 A Okay.

15 THE COURT: Bring me in 17 while she is reading.

16 (Whereupon, Juror 17 Kristin Ashburn entered the
17 courtroom.)

18 EXAMINATION

19 By The Court:

20 Q Ms. Ashburn, I want you to spell your first and last
21 name.

22 A K-R-I-S-T-I-N, A-S-H-B-U-R-N.

23 Q Ms. Ashburn, my name is Eugene Griffith again, good
24 morning. I ask you to take an oath Monday to not discuss
25 with anybody. Have you talked to anybody about the case?

1 A Not really. I told people at work that I needed to
2 go to jury duty, I told my boss and everything.

3 Q And that is acceptable. What I don't want you to do
4 is engage in a conversation-

5 A No, no. I had some of them that had their opinion
6 but I didn't really pay them on attention. It is their
7 opinion, not mine.

8 Q Right. And like I told you, what I think or what I
9 am going to require is what you hear in the case based in
10 here. Now, said people asked you what was going on. You
11 said, can't talk about it.

12 A But they asked if it pertained to this I said, yes or
13 no.

14 Q Now, understanding that will happen and understanding
15 there has been publicity in this case. News media covered
16 it, last week before you took the oath, this week since
17 you have taken the oath. The news media has no
18 responsibility to not discuss stuff. That is what they do
19 and that is fine. They present the news. Four years ago
20 when this happened there was news media coverage,
21 publicity. I actually read the indictments to you Monday.
22 So I told you certain allegations the State is making
23 against Mr. Jones.

24 A Yes.

25 Q Considering everything, anything, what you have heard

1 or understand thus far have you formed an opinion as to
2 what you believed happened in this case?

3 A No, sir.

4 Q I want you to decide the case what is heard in here.

5 A Exactly, you can't go by hearsay.

6 Q So you have not formed an opinion as to what has
7 happened?

8 A No, sir.

9 Q Tell me about your personal calendar. You got
10 something coming up where you, vacation, child's
11 graduation from college or high school, something on the
12 horizon from now to early June.

13 A No.

14 Q So if you were selected you could serve subject to
15 the working problems?

16 A Possibly, yes. I do have a child that is 13, he has
17 been diagnosed with autism. He is what they call high
18 functioning.

19 Q I am aware of children like that.

20 A I do have an 19-year-old at home also but my
21 19-year-old does work and I don't know when he works
22 because his schedule varies from week to week.

23 Q Are you a single parent?

24 A No, my husband works night and I work during the day.

25 Q Is your child with the autism, does he function, does

1 he have a job or anything?

2 A The 13-year-old, no. He is 13.

3 Q Does he stay at home by himself?

4 A I don't let him stay at home by himself very long at
5 all because I, just the way he is. He is very smart and
6 everything, yes. But he has his moments where he has his
7 little fits where he runs back and forth.

8 Q They manage themselves differently than other kids
9 and so when they are stressed they have a routine that
10 they go through.

11 A Yes. He does not like change.

12 Q I am speaking from personal experience, I have seen
13 it myself, I know exactly what you are talking about.
14 Now, if you were selected as a Juror do you think you
15 could manage that 13-year-old, with his condition that he
16 could be okay at home from time to time if you are not
17 there, big brother is not there, your husband is not
18 there?

19 A It depends on how many hours. Maybe an hour is good,
20 maybe two hours.

21 Q Okay. 9:00 to 5:00, 5:30, along in there, about a
22 normal work schedule?

23 A I work usually to 2:00, 3:00, he gets home about 3:00
24 o'clock from school.

25 Q Okay. So you could manage that?

1 A Possibly yes but I really don't want to have to if I
2 don't have to.

3 Q Okay. Well, I mean, I don't have any volunteers. It
4 is an inconvenience. I try to minimize the inconvenience,
5 yes it is an inconvenience?

6 A Yes, I really try, I don't like the idea of someone
7 else's life in my hands.

8 Q Okay. Now we will get to that. I gave you an
9 instruction, on preliminarily on the kind of aspects of a
10 Capital case, two phases. Phase one, guilt or innocence.
11 Phase two is the sentencing portion. If the State proves
12 its case beyond a reasonable doubt it goes to phase two.
13 You know very scant facts, broad allegations the Court
14 read. Did you study the type one, two or three Juror?

15 A Yes, sir.

16 Q Can you find yourself on those three types?

17 A Yes, sir.

18 Q Where do you find yourself?

19 A Possibly number three.

20 Q Okay. And it is not often you come and say, please
21 give this consideration, what would you do if you were in
22 that position. Well, I am putting you in that position.

23 A Yes, sir.

24 Q The lawyers are too because that is what they are
25 trying to do.

1 A Yeah, I have had people tell me to say, like--

2 Q To give the correct answer to get out of it?

3 A Yes.

4 Q So you are being truthful with me?

5 A Yes, sir.

6 Q Thank you.

7 A You are welcome.

8 Q I very much appreciate that.

9 A No problem.

10 Q I understand, I can generally recognize when somebody
11 is giving me the canned answer, this is not my first day.
12 And the lawyers are going to ask you more questions about
13 aspects of the case.

14 A Yes, sir.

15 Q And like I say, personal opinion.

16 A Yes, sir.

17 Q Now as a phase three you want to hear everything
18 about the case?

19 A Most definitely.

20 Q Personal experiences of the--

21 A Even though I really do not want to see it or hear
22 it.

23 Q And that is another question. The testimony is about
24 the death of children. Will be graphic, perhaps harsh and
25 certainly unpleasant. Would that subject matter be

1 something that you could consider in light of its
2 unpleasantness and still be fair to both the State and the
3 Defense?

4 A I am not really sure. I would try to be.

5 Q Is it going to be so bad you can't do that and I
6 can't tell you because I can't show you ahead of time?

7 A Well, I really don't know.

8 Q Okay. Well, the lawyers may ask you more questions
9 about it because I am not going to represent to you that
10 this trial will be easy. So understand it is going to be
11 unpleasant.

12 A Yes.

13 Q You tell me you would try?

14 A I would try, yes, if I had to.

15 Q Now, going back to phase one and phase two aspect of
16 the case. Phase one is guilt or innocence. The State has
17 got to prove murder beyond a reasonable doubt. There has
18 been defenses already presented by Mr. Jones, I am going
19 to read out a list of potential defenses and not knowing
20 how the testimony may go, I may instruct on potential
21 defenses. Potential defenses could be accident,
22 involuntary intoxication, self-defense, necessity,
23 insanity, guilty but mentally ill, defense of habitation,
24 entrapment, duress and alibi. Those are potential
25 defenses allowed by our State code. Could you consider

1 testimony and evidence in regard to the guilt or innocence
2 and also consider the potential defenses which may be
3 presented, instructed by the Court obviously and be a fair
4 and impartial Juror giving meaningful consideration to the
5 testimony and evidence, particularly instructions on how
6 to evaluate those defenses and elements of the crime. Can
7 you be fair and impartial

8 A I think so.

9 Q I want you to be comfortable with it.

10 A I am not sure really.

11 Q Now, if guilt or innocence phase, a not guilty
12 verdict is found the case ends. It doesn't go forward.
13 If the State proves its case beyond a reasonable doubt it
14 goes forward to the sentencing phase. Two potential forms
15 of punishment exist. Life or death, nothing else. On
16 other options, you have got two. Testimony will be
17 presented by the State, they have to prove an aggravating
18 factor in addition to the murder. An aggravating factor
19 examples and these are in the statutes too, murder of a
20 policeman, rape of murder, kidnapping of murder, a murder
21 of a child, multiple murders. Those are aggravating
22 factors the State has got to prove beyond a reasonable
23 doubt. Jurors also consider mitigating factors. I am
24 going to read some statutory mitigating factors and ask
25 you if you can consider those factors. The Defendant has

1 no significant history of prior criminal conviction
2 involving the use of violence against another person. The
3 murder was committed by the Defendant, was under the
4 influence of mental or emotional disturbances. The victim
5 was a participant in the Defendant's conduct and consented
6 to the act. The Defendant was an accomplice in the murder
7 committed by another and his participation was relatively
8 minor. The Defendant acted under duress or under the
9 domination of another. The capacity of the Defendant to
10 appreciate the criminality of his conduct or to conform
11 his conduct was substantially impaired. The age or
12 mentality of the Defendant at the time of the crime. The
13 Defendant was provoked by the victim in committing the
14 murder. The Defendant was below the age of 18 at the time
15 of the crime. The Defendant had mental retardation at the
16 time of the crime. Those are statutory. Also a person's
17 walk in life, how they were raised, broken home or
18 troubled childhood, whatever aspects that you could assign
19 a reason to not impose the death penalty, life without
20 parole, there are mitigating factors. So can you
21 consider, listening to the instructions of the Court,
22 considering aggravating factors, testimony and evidence as
23 well as mitigating circumstances and facts and evidence in
24 reaching a verdict for punishment in the guilt or
25 innocence side, considering the aspects and instructions

1 of the Court. Can you be fair and impartial in that
2 regard?

3 A Yes, sir.

4 Q Okay. Now, do you have any religious, personal or
5 moral belief which would prevent you from signing a
6 verdict of punishment for the death penalty?

7 A No, sir.

8 Q Do you have any religious, moral belief which would
9 prevent you from finding a sentence of life without
10 parole?

11 A No, sir.

12 Q Can you be fair and impartial to both sides in this
13 case, the State and the Defense?

14 A I believe so.

15 Q Okay. I think I have got everything.

16 MR. HUBBARD: Can we approach?

17 THE COURT: You may.

18 (Whereupon, a bench conference was held in the
19 presence of the Juror but out of the hearing of the
20 Juror.)

21 Q The lawyers and me and you, you are the one that is
22 concerned too.

23 A Yes.

24 Q I want to make certain that you understand this. If
25 you are selected as a potential qualified Juror, likely we

1 will go until 9:00 o'clock in the morning, lunch break,
2 breaks in the middle of the day but we will work most of
3 the day until 5:00 or 5:30. That type of work schedule,
4 consider evidence and get the trial done will carry the
5 trial probably into late May or early June. So I doubt we
6 are starting this week, probably will start next week
7 early and go for a couple of three weeks maybe. That type
8 of commitment obligation to you or from you to me and to
9 the Court system, with your child, how do you feel about
10 that?

11 A I really don't want to leave him home by himself for
12 hours at a time.

13 Q Okay.

14 A So there ain't really nobody around for him to get
15 ahold of if my oldest is not home. I have an uncle who
16 lives next door, yes, but he is not reliable like that.

17 Q Okay.

18 A And my husband works an hour away from the house.

19 Q Okay. So he is not close by to attend to him if
20 something happens?

21 A No, sir.

22 Q That was my problem. If I am in the middle of a
23 witness and your son calls and you didn't get the call
24 until thirty minutes later that would create an issue?

25 A Yes.

1 Q I think being out of an abundance of caution, I am
2 going to excuse you for that reason because I am likewise
3 concerned. I have a child that has similar issues, not
4 exactly like because they are all different.

5 A It is just, I don't want to leave him by himself
6 until I know for sure that he--

7 Q Routine is good and change is tough.

8 A Yes, very much so.

9 Q And that is what I think this trial may do is put him
10 into some aspect of that behavior that you might not
11 anticipate right now?

12 A And he might show out at school too because he is
13 doing real good at school.

14 THE COURT: I am going to excuse her, I am concerned
15 about that. Juror number 17, you are excused and thank
16 you for coming and being patient with the Court.

17 JUROR: Yes, sir. I appreciate it.

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

20 THE COURT: Back to Ms. Renwick.

21 (Whereupon, 348, Avery Renwick entered the
22 courtroom.)

23 EXAMINATION

24 By The Court:

25 Q Ms. Renwick, we did the other lady first and we will

1 do you now. You took an oath not to talk about the case,
2 discuss the case or let people discuss the case with you
3 Monday. Have you done any of that since then?

4 A No, sir.

5 Q People know you are coming for jury duty, certainly
6 that is okay, tell your boss I can't come to work today, I
7 am going to jury service. You have done that?

8 A Yes.

9 Q Now, I published some information Monday about the
10 case. There has been a lot of publicity about the case
11 before Monday, some since, regardless of its source or
12 timing. Any of that publicity or information the Court
13 gave you, has any of that information caused you to form
14 an opinion about what has happened in this case?

15 A Yes.

16 Q Have you formed an opinion about what has happened?

17 A Yes.

18 Q Now, that being said, I gave you instructions here
19 about how this case proceeds. Phase one is guilt or
20 innocence, phase two is punishment. The State has got to
21 prove phase one in order to get to phase two to be able to
22 try to prove an aggravating factor. Mitigating
23 circumstances are presented throughout. I gave you a
24 thing and I know you were looking over it, but you looked
25 over the three type of potential jurors in this case?

1 A Yes.

2 Q Just a moment ago?

3 A Yes, sir.

4 Q Can you identify yourself as any one of those three
5 types. Like if you saw yourself in the case, the case
6 goes to the end and there is a guilty verdict of the
7 murder and then there is considering the aggravating
8 factor and that is proven and then the mitigating factors.
9 Do you fall into one of those three categories, just
10 knowing what you know right now.

11 A Two.

12 Q You have got concern that the death penalty is not an
13 appropriate form of punishment?

14 A Right.

15 Q Do you have a religious or moral belief that you
16 believe that the death penalty is probably not moral or
17 right?

18 A Right.

19 Q You do have that?

20 A Yes.

21 Q All right, I have heard enough. You are free to go,
22 thank you for coming.

23 A Thank you.

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

1 THE COURT: Bring me 464.

2 (Whereupon, Juror 464, Tracy Wehr entered the
3 courtroom.)

4 EXAMINATION

5 By The Court:

6 Q Is it Wehr?

7 A Wehr.

8 Q Okay. Will you spell your last name since I have
9 seen it spelled two or three different ways.

10 A W-E-H-R.

11 Q Ms. Wehr, my name is Eugene Griffith and I am the
12 presiding Judge. I gave you an instruction Monday under
13 oath to don't talk about the case or allowed to be talked
14 to or questioned about the case. Has anyone tried to talk
15 to you about the case?

16 A No, they have not.

17 Q And you have not discussed with anyone?

18 A No sir, I have not.

19 Q There has been publicity in this case, since Monday,
20 prior to Monday, weekend before, week before, four years
21 ago, a lot of publicity over the course of this thing plus
22 I read the indictments, published them on the record. Any
23 of that information, whether it is from the Court or any
24 source whatsoever, has it caused you to form an opinion as
25 to what you think happened in this case?

1 A No.

2 Q You haven't formed an opinion?

3 A No, sir.

4 Q Very well. Now, this case involves of commitment of
5 a little bit of time. So once you are selected and
6 impaneled as a Juror you will be here through the balance
7 of May. Do you have anything on your personal schedule,
8 vacation, holiday, whatever that would prevent you from
9 serving as a Juror?

10 A No sir, I don't.

11 Q Now, this case is going to involve testimony
12 regarding the death of some children. Testimony may be
13 graphic and may be harsh, it will be unpleasant. I don't
14 want to oversell you on the idea it won't be easy. Will
15 testimony about that subject matter make it difficult for
16 you to be fair and impartial to both the State and to Mr.
17 Jones?

18 A No sir, I don't believe so.

19 Q You can be fair and impartial?

20 A I believe so, yes.

21 Q Fair enough. Now, I am going to go back over some
22 aspects of my instructions and the two phase Capital trial
23 model. In a Capital trial phase one is guilt or
24 innocence. The State has got to prove beyond a reasonable
25 doubt a murder. There is some defenses available to

1 people accused and in this case Mr. Jones is claiming one
2 of them. He has plead not guilty by reason of insanity.
3 I am going to read you some other potential defenses
4 allowed by our statute and then ask you can you consider
5 those if the evidence supported it. Some of these --
6 applicable but I haven't heard the testimony either so I
7 don't know exactly which aspects would be instructed. I
8 will listen and then apply the ones that are appropriate.
9 Potential defenses are identification, accident,
10 involuntary intoxication, self-defense, necessity,
11 insanity, guilty but mentally ill, defense of habitation,
12 entrapment, duress and alibi. Those are potential
13 statutory defenses. Now, can you give meaningful
14 consideration to the evidence in the guilt or innocence
15 phase considering the elements of murder as well as any
16 potential defenses which are proved. The Court will give
17 appropriate instructions on aspects of the burden of proof
18 as well as the defenses that are shown with that
19 testimony. Can you be fair and impartial and consider the
20 instructions of the Court in phase one and phase two.

21 A Yes, sir.

22 Q In phase one, I am sorry, can you do that?

23 A Yes, sir.

24 Q Now because of the defense entered by Mr. Jones it
25 will create, most likely, the verdict form for the jury to

1 consider in phase one of four potential verdicts.
2 Potential verdicts could include guilty, guilty but
3 mentally ill, not guilty by reason of insanity and not
4 guilty at all. Can you consider the facts and testimony
5 presented by the parties, instructions of the Court and
6 reach a verdict on any and all of those four potential
7 verdict forms?

8 A Yes.

9 Q There is not one particular verdict that you say, I
10 couldn't find that verdict no matter what.

11 A No.

12 Q Fair enough. Now, the case proceeds during phase
13 one. If the State fails to prove its case beyond a
14 reasonable doubt the proof fails, not guilty verdict, the
15 case ends. All right. If the State meets its burden of
16 proof and proves the guilt of the Defendant it moves into
17 phase two. Phase two is where the jury considers
18 punishment. There are two choices, death or life without
19 parole. No other choices available, one of the two. In
20 that portion of the trial the State must prove one of the
21 statutory aggravating factors to be allowed to request the
22 death penalty. I will name some statutory aggravating
23 factors. Murder of a police officer, rape of murder,
24 kidnapping with murder, murder of a child, multiple
25 murders. The State must prove one of those statutory

1 aggravators in order to ask for the death penalty. Also
2 during the sentencing portion mitigating factors are
3 presented for the jury to consider. And they can consider
4 any of them. Potential statutory mitigators are the
5 Defendant has no significant history of prior criminal
6 conviction involving the use of violence against another
7 person. The murder was committed while the Defendant was
8 under the influence of mental or emotional disturbance.
9 The victim was a participant in the Defendant's conduct or
10 consented to the act. The victim was an accomplice in the
11 murder committed by another and his participation was
12 relatively minor. The Defendant acted under duress or
13 under the domination of another. The capacity of the
14 Defendant to appreciate the criminality of his conduct or
15 to conform his conduct to the requirements of law was
16 substantially impaired. The age or mentality of the
17 Defendant at the time of the crime. The Defendant was
18 provoked by the victim in committing the murder. The
19 Defendant was below the age of 18 at the time of the
20 crime. The Defendant had mental retardation at the time
21 of the crime. Now, those are statutory. Other factors
22 are, how he was raised, broken home, troubled childhood,
23 any aspect of his personal upbringing and walk in life can
24 be considered as mitigators. Thus my question is, can you
25 act fairly and impartially, consider testimony whether it

1 be from the State regarding the aggravating factors in
2 proving that element beyond a reasonable doubt,
3 considering any mitigating factors presented and
4 considering all aspects of the mitigating factors which
5 mitigators are reasons to assign life without parole
6 sentence. Can you give meaningful consideration to all of
7 that testimony, consider my instruction by the Court and
8 find a verdict consistent with those instructions and the
9 evidence shown to you?

10 A Yes.

11 Q Can you be fair and impartial?

12 A Yes.

13 Q Do you have any reason, religious or personal or
14 moral belief which would prevent you from finding a
15 sentence of the death penalty?

16 A No, sir.

17 Q Do you have any religious, personal or moral belief
18 which would prevent you from finding a sentence of life
19 without parole?

20 A No, sir.

21 Q Now, if a sentence unanimously is found to impose the
22 death penalty you will have to sign the verdict form. Do
23 you understand that?

24 A Yes.

25 Q Each of the twelve jurors must do that. Now if a

1 unanimous decision to impose live without parole, you
2 understand that that sentence will be carried out?

3 A Yes.

4 Q Just as if it is unanimously found of the death
5 penalty. That penalty will be carried out.

6 A Yes.

7 Q Did I ask you about the witness list?

8 A No.

9 Q Did you examine the witness list?

10 A Yes, I did.

11 Q Do you know anybody on it?

12 A Only one.

13 Q Who is it?

14 A Adam Myrick.

15 Q Adam Myrick.

16 A Yes, sir.

17 Q And how do you know him?

18 A We go to church together.

19 Q The fact that you know Mr. Myrick, I think he is
20 Captain Myrick now. The fact that you know him, would
21 that affect your ability to be fair and impartial to both
22 the State and the Defense?

23 A No.

24 Q And you go, you attend the same church?

25 A Yes.

1 Q Okay. Now I generally ask earlier, considering
2 everything you know and you don't know very many facts
3 about the case because no testimony has been presented.

4 A Right.

5 Q The allegation has been read and whatever publicity.
6 If you were put into a position of being a Juror there are
7 three typical types of jurors. Do you see yourself as one
8 of those three types?

9 A Probably the third one.

10 Q The third one?

11 A Yes.

12 Q I was supposed to ask you that earlier and I went
13 into the aspects of the testimony. But you find yourself
14 as a type three?

15 A Yes.

16 Q So you want to hear everything?

17 A Yes.

18 Q Before you make a decision?

19 A Yes.

20 THE COURT: Mr. Secor, come on up.

21 EXAMINATION

22 By Mr. Secor:

23 Q Hey, Ms. Wehr.

24 A Hello.

25 Q I just want to ask you some questions and really

1 about your personal feelings. Judge Griffith was asking
2 you a lot, was your ability to be fair and impartial and
3 follow the law which is, of course, appropriate. But
4 right now I just want to know how you feel about some
5 topics. Is that all right with you?

6 A Yes.

7 Q As the Judge said, one of the possible verdicts in
8 this case in the first phase would be not guilty by reason
9 of insanity. And when a person pleads not guilty by
10 reason of insanity they are saying I did the act, so in a
11 case of a murder, I did the killing but because of a
12 mental disease or defect I didn't have the capacity to
13 distinguish between legal and moral right and legal or
14 moral wrong. Kind of a mouthful but that is the legal
15 definition. And so I just want to know, from your
16 personal perspective, does that sound like a verdict that
17 you could really give meaningful consideration of even
18 though that it meant that the person had done the killing.
19 Does that make sense?

20 A Yes.

21 Q You don't have any problem with that?

22 A Uh-uh, (indicated no.)

23 Q Because some people would say it sounds like an
24 excuse or a copout but that is not you?

25 A No.

1 Q Okay, thank you. I would like to talk to you about
2 your feelings specifically about punishment. About how
3 you believe a person should be punished who is guilty of
4 murder. Okay?

5 A Okay.

6 Q And in South Carolina, as the Judge told you, in
7 order to be guilty of murder it means that the person they
8 knew right from wrong had no excuse, justification or
9 defense and they maliciously killed an innocent person.
10 And the category of the case that we are talking about is
11 the murder of multiple children. So I want you to think
12 about a person who has been found guilty of that,
13 unequivocally, beyond a reasonable doubt you know that
14 that person did that. There are, of course, two options
15 for sentencing as the Judge told you. But on a personal
16 level when you know that somebody is guilty of murdering
17 multiple children, how do you feel about the death
18 penalty. Do you start off leaning one way towards the
19 death penalty, towards life without parole. What do you
20 think personally?

21 A Without hearing anything, just my initial reaction?

22 Q Yes, ma'am.

23 A I still want to hear, I still want to hear the
24 evidence, I still know what transpired and the facts
25 before I make a decision.

1 Q So even if you were on the jury and you had found him
2 guilty and you knew that the facts were that he was guilty
3 you still would not lean one way or the other regarding
4 penalty. There is still more that you want to know?

5 A Yes.

6 Q And can you tell me the types of things that you
7 would want to know?

8 A Like you said, the mental state is definitely
9 something that I would want to know. Just more of the
10 evidence of how they were found, you know, how did we come
11 to this conclusion that he murdered these children.

12 Q Yes, ma'am. And would things like the guilty
13 murderer's character and background, his life experience.
14 Would that matter to you regarding what the punishment
15 ultimately was?

16 A Yes.

17 Q It would?

18 A Yes.

19 Q Okay. May I ask you just your general views of the
20 death penalty, if you think about the death penalty, what
21 types of things come to mind for you about its usefulness
22 or whether we should or should not have it, those types of
23 things.

24 A I definitely believe there is a place for it. But,
25 again, I am not going to just make that decision without

1 hearing the facts. I am not going to look at the case and
2 be like, death penalty. I want to know more.

3 Q Yes, ma'am. And are there cases that you can think
4 of that you think absolutely call out for the death
5 penalty every time always?

6 A No.

7 Q No, okay. I want to just run through some principles
8 regarding penalty phase, the way the jurors access things
9 in the penalty phase and just make sure they are
10 principles that you are comfortable with and that you
11 think that you can comply with. All right?

12 A Okay.

13 Q Did you know that in South Carolina that the death
14 penalty is never required. I think the Judge did tell you
15 that?

16 A I did not know until he mentioned it, yes.

17 Q Meaning that the law is satisfied with a life
18 sentence in every case, the worst case you can possibly
19 imagine. And that is because jurors are empowered in
20 these cases--

21 MS. MAYES: Objection, Your Honor, at this point, it
22 is not the form of question, he is making statements.

23 THE COURT: Rephrase the form of the question.

24 Q Okay. Did you know that mitigating evidence, the
25 Judge described to you, did you know that it does not have

1 to be related to the actual offenses that you found
2 somebody guilty of?

3 A I don't, I think I understand what you are saying.
4 And, no, I don't think that I knew that.

5 Q And that is because as the Judge said, character and
6 background of a person, you understand how that could have
7 absolutely nothing to do with the murders?

8 A Yes.

9 Q And were you aware that mitigation does not have to
10 be found unanimously by jurors?

11 A No, I was not aware of that.

12 Q The law gives jurors the right to find it just for
13 themselves. And did you know there was no burden of proof
14 for mitigation?

15 A Okay.

16 Q Meaning each Juror finds mitigation for themselves to
17 whatever degree of satisfaction they require for
18 themselves.

19 A Okay.

20 Q And did you know that jurors can choose mitigation
21 for themselves and give it, the value of life, even if no
22 other Juror agrees with that. Did you know that?

23 A No.

24 Q Jurors are empowered to do that. Is that something
25 you think is fair and appropriate?

1 A Yes.

2 Q Okay. The law also allows jurors to give the value
3 of life in a case like this for no reason at all. Did you
4 know that?

5 A What do you mean, give the value of life for no
6 reason.

7 Q Voting for life in a Capital case. They can decide
8 to vote for life, the law says for any reason, no reason
9 or based on mercy alone.

10 A Okay.

11 Q So any reason would be sort of things we were talking
12 about, something to do with the character and background
13 of the Defendant. Right. But the law also says a Juror
14 can give life for no reason. Okay. And could you respect
15 the right of a Juror to say, I have heard everything, I
16 have considered everything, I can't explain it, I can't
17 articulate it but I am voting life, that is right for me
18 in this case. Could you respect a juror's right to do
19 that?

20 A Yes.

21 Q And do you think that is a fair and appropriate rule
22 that governs these proceedings?

23 A I think every person should have their choice.

24 Q Yes, ma'am. And lastly, the law, like I said,
25 empowers jurors to vote life based on mercy. Which again

1 means they can consider everything and just say, I have
2 considered everything and my reason is mercy. And you
3 could respect a juror's right to vote for life based on
4 just mercy alone. Correct?

5 A Yes.

6 Q Okay. Last thing I want to talk to you about. The
7 penalty phase deliberation in these cases have to be based
8 on your individual moral judgment. Have you heard that
9 term before?

10 A Yes.

11 Q Something that is profound and personal as important
12 as sort of something like the faith you choose for
13 yourself. You agree that people make different moral
14 choices from you but you still respect them because that
15 is their right?

16 A Yes.

17 Q And vice versa, you expect people to respect your
18 moral judgments?

19 A Yes.

20 Q And in these proceedings, if you were to get to a
21 phase of deliberation the Judge would tell you that you
22 have to make the decision based on your own individual
23 moral judgment and you may not be bullied or pressured or
24 coerced into giving up your individual moral judgment.
25 Does that make sense?

1 A Yes.

2 Q And could you, if you saw a person being bullied or
3 coerced, could you come in and step in and say they are
4 entitled to their individual moral judgment and make sure
5 that they have maintained that individual moral judgment,
6 that type have come to?

7 A Yes.

8 MR. SECOR: Your Honor, based on the Court's
9 limitations I will stop there. Thank you.

10 THE COURT: Ms. Mayes.

11 EXAMINATION

12 By Ms. Mayes:

13 Q Good day, Ms. Wehr. My name is Suzanne Mayes, I am a
14 Deputy Solicitor here in Lexington County. As a
15 prosecuting attorney we represent the State in this case.

16 A Yes, ma'am.

17 Q And I just have a few questions for you. I wanted to
18 follow-up a little bit on some of the questions that Mr.
19 Secor was asking. As the Judge explained, if there is a
20 second phase to this trial there would be two sentencing
21 options. One would be life without parole meaning he
22 never gets out of prison. The other would be the death
23 penalty. Are both of those sentencing options that you
24 could consider?

25 A Yes.

1 Q And if after you heard all of the evidence including
2 each of the mitigating factors that may be offered by the
3 defense as well as any aggravating factors offered by the
4 State in this case, if after hearing all of those you
5 decided that the death penalty was the appropriate
6 punishment is that a verdict that you could reach?

7 A Yes.

8 Q With that verdict of the death penalty, that would be
9 a unanimous decision of each of the jurors. There would
10 be a form that goes along with that where every Juror must
11 sign it acknowledging that that is in fact their verdict,
12 a death sentence. If that were your appropriate verdict
13 is that a form that you could sign?

14 A Yes.

15 Q I know that one of the questions that Mr. Secor asked
16 you was, in general, your feelings on the death penalty.
17 And you indicated, I believe your response was, I do
18 believe there is a place for it but I want to hear
19 everything. And just to follow-up on that, you would
20 consider all of the evidence in ultimately reaching a
21 decision?

22 A Yes.

23 Q But recognizing that, as you said, there is a place
24 for it. Is that something that you have thought about
25 even before this week, your personal feelings on the death

1 penalty?

2 A I mean, I know what I personally believe on the death
3 penalty if that is what you are asking me, yes.

4 Q And those are feelings that when you said there is a
5 place for it, those are feelings that you harbored for
6 some period of time even before getting your notice for
7 jury selection.

8 A Oh, yes. I mean, I have my own thought and my
9 decision on what I believe the death penalty is.

10 Q And if you heard all of the evidence and decided that
11 life without parole was the appropriate sentence, is that
12 also, could you make the choice of life without parole if
13 you determined that to be the appropriate sentence?

14 A Yes.

15 Q One of the questions that Mr. Secor asked you was in
16 terms of not guilty by reason of insanity as a possible
17 verdict in the case. Would you consider evidence in
18 support of that. So I am going to ask you to the
19 contrary. If the State countered that evidence or if
20 there is evidence to be offered that counteracts is that
21 also something that you would consider?

22 A Yes.

23 Q Thank you.

24 MR. SECOR: Just one more question.

25 THE COURT: Yes, sir.

EXAMINATION

By Mr. Secor:

Q Ms. Wehr, I think I just heard you say that, I have my own personal feelings about the death penalty?

A Yes.

Q And this may just be my fault for not asking questions right. But do you feel like you told us what that personal feeling is about the death penalty?

A Yes, because I believe that the death penalty is something that is appropriate but I am not going to come to, something like this and just immediately go, because I heard indictments that he has murdered people that he automatically should have the death penalty. I want to know, I want to hear facts, I want to hear evidence before I say the death penalty.

Q And if you heard facts and you saw the evidence and you heard the testimony and you believed that he was guilty, those two options, the death penalty or life without parole, are you committed to one of those at that point or do you still want to hear about his character and background. Is that stuff still relevant to you?

A For me the background weighs a little bit with me, yes.

Q Okay. But not as much as the facts?

A The facts and evidence, yes.

1 Q Thank you, Ma'am.

2 THE COURT: All right, y'all want to be heard on her?

3 MR. YOUNG: No, Your Honor.

4 THE COURT: The State is good?

5 MR. HUBBARD: Yes, sir.

6 THE COURT: Ms. Wehr, you have now been determined as
7 a qualified Juror. What that means you are no longer a
8 potential Juror, you are a qualified Juror. It does not
9 mean that you are on the jury. It means you are on
10 another list that moves to now checking the website to
11 when the qualified jurors need to come back in. My guess
12 is early next week. I don't know that yet. I want you to
13 start paying attention to that website. May be that we
14 have you in here Friday. I don't know. Watch the
15 website, check back, please report, date and time. Until
16 that time don't discuss the case, don't let anybody ask
17 you questions or try to discuss the case with you. Do not
18 do any independent research. Do not peruse publicity
19 given on this case. Like all the jurors I have told, I
20 want you to be influenced and convinced with this case and
21 the facts based upon the testimony you hear in the
22 courtroom under the Court's supervision, court record, all
23 the lawyers. It is important y'all hear it all at the
24 same time. All right. Can you live up to that oath?

25 JUROR: Yes, sir.

1 THE COURT: See you when you get summoned back.

2 Thank you very much.

3 (Whereupon, the Juror was excused from the
4 courtroom.)

5 THE COURT: Are y'all ready for 129.

6 MR. HUBBARD: Yes, sir. I do have one thing I want
7 to put on the record.

8 THE COURT: Yes, sir.

9 MR. HUBBARD: The next one, she has an establishment,
10 cutting hair. I go there but I don't go to her, I didn't
11 even know her name, I just know of her and have said hey
12 to her before. I want to put that on the record. The
13 person that cuts my hair has been since 2003 and she has
14 moved around to all different establishments. So I want
15 to put that on the record. I don't know this lady, I know
16 of her. But I have never done business with her.

17 THE COURT: Okay. Y'all can ask her anything
18 relevant to that. Bring her in.

19 (Whereupon, Juror 129, Elizabeth Durham entered the
20 courtroom.)

21 EXAMINATION

22 By The Court:

23 Q Ms. Durham, welcome back to the courtroom. My name
24 is Eugene Griffith. You are under oath, we put you under
25 oath earlier. Will you spell your name, first and last

1 for Ms. Holston's record.

2 A Okay, Elizabeth Durham. E-L-I-Z-A-B-E-T-H,
3 D-U-R-H-A-M.

4 Q Ms. Durham, I asked you to be under oath and not
5 communicate about the case, discuss the case or have
6 anybody discuss the case with you.

7 A No.

8 Q Has anybody discussed the case with you?

9 A No. They tried.

10 Q So you terminated the conversation very rapidly?

11 A Yes.

12 Q Now, there has been publicity in this case, all
13 sorts. Since Monday, prior to Monday, four years ago,
14 whenever. Also during Monday's presentation I read the
15 indictments. They made allegations of facts. Information
16 from any source, whatever source, have you as a result of
17 any information you have received, formed an opinion as to
18 what happened in this case?

19 A No.

20 Q All right. Haven't formed an opinion of any facts?

21 A Right.

22 Q I see you are a hairdresser. You were called to
23 serve, mostly we will be working week days, mostly of
24 times won't work weekend, most of the time just weekdays.
25 From 9:00 o'clock or so to 5:00 or 5:30. Knowing you are

1 self-employed--

2 A Yes.

3 Q Do you understand that obligation?

4 A I do.

5 Q And in spite of that are you still-willing to serve?

6 A Well, if I have to I will.

7 Q It is a civic duty. Self-employed people, if you
8 represent to the Court that you being self-employed you
9 have got to close down your occupation you could ask for
10 that relief. It is up to you, not me, I am not going to
11 excuse you if you don't ask. You are claimed to be
12 self-employed and wish to be excused I will be glad to do
13 so. Now, would you like to claim that exception?

14 A I would.

15 Q You would?

16 A Yes.

17 Q Thank you much for coming, you are free to go.

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

20 THE COURT: I was thinking about lunch about 1:00,
21 maybe two more and then eat? Mr. Young is giving me the
22 symbol for bellies. I am okay with that. Do one or two
23 more and then get lunch. All right, bring in 186.

24 (Whereupon, Juror 186, Lawryn Henderson entered the
25 courtroom.)

EXAMINATION

By The Court:

Q How are you doing?

A I am good.

Q Ma'am, you are under oath. Your name is Ms.
Henderson?

A Yes.

Q I am going to get you to spell your first and last
name for Ms. Holston's record.

A Okay. It is L-A-W-R-Y-N, H-E-N-D-E-R-S-O-N.

Q Ms. Henderson, I placed you under oath Monday and
readmitted the oath this morning. Part of the oath Monday
was to not talk about the case, discuss the case in any
fashion or let anybody discuss the case with you. Has
anyone tried to discuss the case with you?

A No.

Q Have you discussed the case with anyone?

A No.

Q Other than I have got to go to court?

A Right.

Q With your family?

A Right.

Q And that is perfectly fine. I published the
indictments Monday, gave you some very brief facts and the
allegations the State is making in this case. There has

1 been publicity in this case since Monday, which I told you
2 to minimize your contact with. There was publicity before
3 that. I can't tell you to go back and get what you read
4 or heard but there was publicity some four years ago.
5 From where ever the facts came, I don't really care, but
6 if you heard, seen, read or seen any publicity, the
7 allegations I made also, from any source whatsoever. Has
8 any of that information, accumulation of all that
9 information caused you to form an opinion as to what
10 happened in this case?

11 A No.

12 Q You haven't form an opinion?

13 A I have not formed an opinion. I haven't heard any
14 publicity.

15 Q Okay. You haven't heard any publicity?

16 A No.

17 Q Okay. Now, I am going to ask you about your work
18 schedule, personal schedule. If you are selected as a
19 qualified Juror the trial is likely to start next week
20 sometime and will take several weeks, two, maybe three
21 weeks, carried into early June. Would that commitment of
22 the Court asking you to sit as a Juror for some three
23 weeks, would that impose on any schedule you have at home,
24 whether it be personal, vacation, work?

25 A Starting next week?

1 Q Starting next week.

2 A Nothing at this moment.

3 Q So if you were called to sit as a Juror you could do
4 that notwithstanding the inconvenience to you personally?

5 A Yes.

6 Q And everyone enjoys that same burden, that is just
7 the way it is, but you could serve, you have got no
8 vacation plans to go to Alaska?

9 A No, sir.

10 Q Fair enough. Now, the subject matter on this case is
11 relatively graphic. Involves the subject matter of the
12 death of some children. Some of them are graphic and
13 harsh. I don't want to represent to you that it is
14 anything but unpleasant, difficult. Would the subject
15 matter of that type be difficult for you to be a fair
16 Juror because I need you to be fair in considering the
17 testimony, be fair to both the State and Mr. Jones and the
18 Defense. Can you be fair?

19 A Yes. I am sorry, we are not talking about me, we are
20 talking about them, right?

21 Q Correct. Understanding this, none of the parties
22 here, none of them have told me, I know very little of the
23 facts. I don't know all the facts. I will hear them as
24 the jury does. The lawyers has told me, said this is
25 going to be tough. So with that in mind, it is going to

1 be tough. Understanding that subject matter will be tough
2 can you still be fair and impartial to both sides?

3 A Yes.

4 Q Now, the plea in this case, I am sorry. Let's go to
5 this. I described to you the preliminary elements of the
6 law, two-stage process of a Capital case, there is guilty
7 which is phase one. If guilt is found it goes to phase
8 two. If the guilt is not found it is not guilty and the
9 case ends right there. But if the State proves its case
10 beyond a reasonable doubt it goes into phase two. And
11 then the jury is imparted with decisions to make, the
12 punishment. They have got two choices, life or death. A
13 unanimous decision on life means they will get a life
14 without the possibility of parole sentence. The jury
15 makes the decision unanimous of death that sentence will
16 be carried out. Now, you have not been told anything
17 other than the allegations by the State. I gave you a
18 sheet describing three types of jurors which assumes the
19 State proves its aggravating factors and there was
20 mitigating facts to consider which will be reasons to not
21 impose the death penalty. Can you identify yourself with
22 one of those three typical types of jurors?

23 A I would say most closely type two.

24 Q Type two. That means you are kind of already leaning
25 towards or committed to a life without a possibility of

1 parole sentence. Is that right?

2 A Yes.

3 Q Now, do you have religious, moral or personal belief
4 that the death penalty sentence would be improper, where
5 you couldn't vote for it?

6 A I do believe that the death penalty is not something
7 we should be doing.

8 Q Not something we should be doing?

9 A No.

10 Q You are, to me, you are firm with number two. Is
11 that fair enough?

12 A Yes.

13 Q Okay. That is what I need to know. I need to know
14 your personal opinion and thank you for giving it to me
15 because that is what the lawyers and I are looking for,
16 personal beliefs. You are excused. I don't need you any
17 further.

18 A Thank you.

19 Q Thank you, Ms. Henderson.

20 (Whereupon, the Juror was excused from the
21 courtroom.)

22 THE COURT: Bring in 237.

23 (Whereupon, Juror 237, Peter Kleemoff entered the
24 courtroom.)

25 EXAMINATION

1 By The Court:

2 Q You can be seated.

3 A Thank you, sir.

4 Q Juror 237, I am not going to take a stab at
5 pronouncing your name. Please say it and then spell it,
6 first and last for Ms. Holston's record.

7 A Pete Kleemoff. K-L-E-E-M-O-F-F.

8 Q Mr. Kleemoff, my name is Eugene Griffith, welcome
9 back to the courtroom. I gave you an oath Monday to not
10 discuss the case. Has anyone tried to discuss this case
11 with you?

12 A No, sir.

13 Q Have you discussed the case with anyone?

14 A No, sir.

15 Q Thank you for following that instruction. Now, there
16 has been publicity including my reading of the indictments
17 into the court record Monday which made allegations of
18 facts that are being made by the State that the jury will
19 consider. There has been publicity since Monday, been
20 publicity before Monday, several years ago in fact. There
21 has been publicity here and there, throughout. I made my
22 comments about the allegations, here they are. Has any of
23 those facts, where ever they came from, whether it be
24 publicity several years ago, recently, this week or
25 otherwise, my comments on the indictments. Have any of

1 those facts, which have been gleamed from you from
2 whatever source, create, made you create or decide or have
3 an opinion in this case as to what happened?

4 A No, sir.

5 Q You don't have an opinion yet?

6 A Not yet.

7 Q Now, I ask you to look at your work schedule,
8 personal schedule, home schedule, whatever it is that you
9 have on the horizon, if my qualification process proceeds
10 as it is going, I hope to start the trial early next week.
11 It should go two weeks, maybe three, to the conclusion.
12 That type of schedule will impact anything on your
13 personal schedule?

14 A Yes.

15 Q What have you got?

16 A Vacation rental.

17 Q Where are you going?

18 A Hilton Head.

19 Q When are you going?

20 A It is departing 5/18 and coming back 5/25.

21 Q I won't be done by then. I don't want to rearrange
22 something you paid for. That is not fair. So that is why
23 I asked that question earlier. I don't want to get into
24 any other issues, don't need to. I am going to excuse you
25 from serving. Thank you for coming and thank you for your

1 patience, enjoy Hilton Head.

2 A Thank you.

3 Q All right.

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

6 THE COURT: Bring me 177.

7 (Whereupon, Juror 177, Terrie Hanley entered the
8 courtroom.)

9 EXAMINATION

10 By The Court:

11 Q Good afternoon, Ms. Hanley.

12 A Good afternoon.

13 Q Would you spell your first and last name for Ms.
14 Holston's record.

15 A Yes. It is T-E-R-R-I-E, H-A-N-L-E-Y.

16 Q Ms. Hanley, my name is Eugene Griffith for the
17 umpteenth time. I am the presiding Judge, I introduced
18 myself. I have got several questions to ask you.
19 Remember you are under oath, no wrong answers. Now, the
20 oath on Monday, I said don't talk about the case, don't
21 let anyone ask you questions about the case, just don't
22 talk about the case. Have you talked about the case with
23 anyone?

24 A No.

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

1 A Yes.

2 Q Not a surprise. What was your response?

3 A I walked away.

4 Q Fair enough. That is appropriate. Judge Griffith
5 said don't talk about the case.

6 A I first said I can't talk about it and then I walked
7 away.

8 Q Okay. That works well. Now, Monday I read the
9 indictments. There are five indictments. I read the
10 facts about the deaths that are being alleged by the
11 State. You have received those facts and I read them out
12 loud. There has been publicity in this case since Monday,
13 I told you to minimize your contact with doing any
14 research or watching social media or regular media. There
15 was media attention before Monday also, there was media
16 attention several years ago. Any media attention, any
17 publicity, no matter where it is from, social media,
18 otherwise. I don't care where it is from. What I want to
19 know, is there any information you have received up to
20 this point, from where ever it came from, has that caused
21 you to form an opinion as to what happened in this case?

22 A No.

23 Q You have not formed an opinion?

24 A No.

25 Q Now this testimony, the allegations involve the death

1 of some children. They are young, the testimony is going
2 to be graphic and perhaps even hard. I don't want to
3 represent to you that it will be easy, it will be
4 difficult testimony to hear. Would the testimony
5 involving that type of subject matter make it difficult
6 for you to be fair and impartial to both the State and to
7 Mr. Jones?

8 A No.

9 Q You can be fair both ways even in light of that
10 testimony or in spite of that difficult testimony?

11 A Yes.

12 Q All right. Now, I gave you instructions on the law,
13 kind of the procedures regarding a Capital case. A
14 Capital case has two phases potentially. Phase one is the
15 guilt or innocence, determine guilt or innocence, nothing
16 else. Do you understand?

17 A Yes.

18 Q Now, if the State determines that there is, I am
19 sorry. If the case is proven beyond a reasonable doubt by
20 the State of the guilt and then we proceed to phase two
21 which is the sentencing would then be imposed, in part, by
22 the jury. So they are first required to determine guilt
23 or innocence. If he is innocent the case ends. If it is
24 guilty because the State has proved its case it goes into
25 phase two. Phase two the jury determines the punishment.

1 Two choices, life or death, no other choices. Do you
2 understand?

3 A Yes.

4 Q The State must prove in phase two the statutory
5 aggravating factor as well as the jury considers any and
6 all mitigating factors that have been presented. I showed
7 you and had you perused a list of three types of jurors.
8 Did you look over that?

9 A I did.

10 Q And you understood my instructions earlier?

11 A Yes.

12 Q Can you identify yourself as any one of those three
13 types of potential jurors?

14 A Type three.

15 Q You are type three?

16 A Yes.

17 Q And that means in my opinion, that you want to hear
18 everything before you make a decision?

19 A Yes.

20 Q Is that right?

21 A Yes.

22 Q Remember, no wrong answers, I want you to continue to
23 being candid with me. I will give you some additional
24 things, considering this, considering that can you be
25 fair. In the phase one portion, guilt or innocence. The

1 State has to prove guilt beyond a reasonable doubt of
2 murder. Now there are some statutory defenses which
3 people are allowed to claim if they wish to. I am going
4 to read the statutory defenses and I have already told you
5 that Mr. Jones is claiming at least one of them. He has
6 plead not guilty by reason of insanity. So other
7 potential defenses which could be presented,
8 identification, accident, involuntary intoxication,
9 self-defense, necessity, insanity, guilty but mentally
10 ill, defense of habitation, entrapment, duress or alibi.
11 Those are all statutory defenses that a person may present
12 during a trial. The State has got to convince you beyond
13 a reasonable doubt of the Defendant's guilt. The
14 Defendant can present on those defenses. I will instruct
15 you on those defenses. Now, can you give meaningful
16 consideration to any and all facts and evidence received,
17 testified to during the trial, be fair and impartial,
18 understanding the State has the burden of proving guilt
19 beyond a reasonable doubt and give meaningful
20 consideration to all forms of evidence and the Court's
21 instruction and continually be fair and impartial to both
22 sides

23 A Yes.

24 Q Understand this, by Mr. Jones' plea of not guilty by
25 reason of insanity there are potentially four verdict

1 forms that could be presented to the jury to make a
2 decision on. Four forms would be guilty, guilty but
3 mentally ill, not guilty by reason of insanity or not
4 guilty whatsoever. Of those four potential verdict forms
5 can you, if selected as a Juror, can you give meaningful
6 consideration to each and every one of those potential
7 verdict forms?

8 A Yes.

9 Q Like I said, if the jury finds that the State has not
10 met its burden of proof then the case is over and it ends.
11 If the jury believes the State has proven its case beyond
12 a reasonable doubt of the murder the case goes into phase
13 two. Phase two is the penalty phase. In that phase the
14 State is then required to prove an aggravating factor
15 outlined by our statutes beyond a reasonable doubt.
16 Aggravating factors, I will give you several that are
17 listed in the statute would be murder of a policeman, rape
18 of murder, kidnapping of murder, murder of a child,
19 multiple murders. Those are five potential statutory
20 aggravators. The State must prove one of those beyond a
21 reasonable doubt. Now, during the penalty phase a
22 Defendant is allowed to present on mitigating factors.
23 You may hear them in both sides of the case. They could
24 come up any time. Mitigating factors, some are allowed by
25 the statute, these are reasons a Juror would want to find

1 a life without parole sentence. Potential statutory
2 mitigators, a Defendant had no significant history of
3 prior criminal conviction involving the use of violence
4 against another person. The murder was committed while
5 the Defendant was under the influence of mental or
6 emotional disturbance. The victim was a participant in
7 the Defendant's conduct or consented to the act. The
8 Defendant was an accomplice in the murder committed by
9 another person and his participation was relatively minor.
10 The Defendant acted under duress or under the domination
11 of another person. The capacity of the Defendant to
12 appreciate the criminality of his conduct or to conform
13 his conduct to the requirements of law was substantially
14 impaired. The age or mentality of the Defendant at the
15 time of the crime. The Defendant was provoked by the
16 victim in committing the murder. The Defendant was below
17 the age of 18 at the time of the crime. The Defendant had
18 mental retardation at the time of the crime or any factors
19 a Juror hears, believes, impacts a reason to vote for life
20 without parole such as the Defendant's walk in life, he
21 had a rough childhood, come from a broken home, any
22 aspects of that can also be considered and are allowable.
23 So my question to you is, can you give meaningful
24 consideration to the testimony and evidence knowing the
25 State has got to prove an aggravating factor beyond a

1 reasonable doubt as well as any and all evidence of
2 mitigation presented. Can you give meaningful
3 consideration to all of that evidence, considering my
4 instructions on the law and reach a fair and impartial
5 verdict for each side. Can you do that?

6 A Yes.

7 Q Also, do you have, in the sentencing phase there are
8 only two potential verdicts, life and death, no middle
9 ground. One of the two. The death penalty is not
10 automatic. Once you get to the sentencing phase the State
11 has got to prove its aggravating factors, mitigating
12 factors are presented which there is no requirement that
13 they have got to be proven, they are shown. So you hear
14 about it, he had a tough childhood. That is proven by
15 just presenting. Okay. You don't have to consider, you
16 consider whatever you like of mitigating factors. Do you
17 have any religious, personal or moral belief which would
18 prevent you from signing a verdict of punishment by death?

19 A No.

20 Q Do you have any religious, moral or personal belief
21 at all which would prevent you from finding a sentence of
22 punishment of life without the possibility of parole
23 knowing that would mean live out the balance of your life
24 in jail?

25 A No.

1 Q You could find any one?

2 A Yes.

3 Q Do you know of any reason whatsoever that you
4 couldn't be fair and impartial to both sides?

5 A No.

6 THE COURT: I think that is all I have got. Mr.
7 Madsen.

8 EXAMINATION

9 By Mr. Madsen:

10 Q How are you doing today?

11 A I am doing all right.

12 Q You understand what the Judge was telling you that at
13 this point and time it is my chance to talk to you and
14 there is no right or wrong answers. Just trying to find
15 out what your feelings are. Okay?

16 A Okay.

17 Q I noticed looking at your Juror sheet that you work
18 outside of the home but you have three young children and
19 you understood that we will run court from 9:00 to 5:00 or
20 5:30 every day. Would you be able to do that over the
21 weeks that it would take?

22 A Yes.

23 Q Can you just kind of tell me your general feelings on
24 the death penalty?

25 A Well, never really had to think about it honestly. I

1 don't have any.

2 Q Let me ask you this. Let me kind of put you on the
3 spot. Say we waive a magic wand and we make you Governor
4 for the day in South Carolina and there is a Bill on your
5 desk that says we can have the death penalty. And there
6 is a Bill on your desk that says we are going to get rid
7 of the death penalty. Which, as the Governor, would you
8 sign?

9 A I would keep it, I would have the death penalty.

10 Q Why?

11 A Sometimes it is mandatory, sometimes it is not.

12 Q Well, you said sometimes it is mandatory. You
13 understand in South Carolina it is never mandatory.

14 A Well, yes. Poor choice of words.

15 Q And when you say, would you say the death penalty is
16 kind of reserved for the worst of the worst?

17 A Yes.

18 Q Let me change up a little bit. You heard the Judge
19 kind of tell you the different potential verdicts. The
20 Judge told you that Tim has plead not guilty by reason of
21 insanity?

22 A Yes.

23 Q And that basically means a person who pleads not
24 guilty by reason of insanity, admit they did the killing
25 but they said that because of a mental disease or defect

1 that they cannot appreciate the legal or moral
2 wrongfulness of their actions. Do you understand that?

3 A Yes.

4 Q Is that something that you can give meaningful
5 consideration to?

6 A Yes.

7 Q Because some people will say, hey, you have got
8 someone who says they did this crime but because they
9 don't know the legal or moral difference between right or
10 wrong. That is just kind of an excuse or a copout. That
11 is not you?

12 A No.

13 Q So I want to talk to you a little bit about your
14 feelings on punishment for a guilty murderer. And what I
15 mean by that is, you understand, as the Judge told you
16 there is kind of two different parts of a Capital trial.
17 You have got the first part where the guilt or the
18 innocence is determined. And then you have got that
19 second part with the penalty phase on whether it is a life
20 penalty or whether it is the death penalty. Do you
21 understand that?

22 A Yes.

23 Q And understand, you know, we are not saying we are
24 getting to the second so we are kind of putting the cart
25 before the horse which is kind of weird at this point and

1 time before it is ever started but you understand that,
2 right?

3 A Yes.

4 Q So in a situation where you have got, you understand
5 that murder means the malicious killing of an innocent
6 person?

7 A Yes.

8 Q You understand that. So we are not talking about
9 someone who didn't know the different between right or
10 wrong. If you heard any evidence of any kind of mental
11 illness you have rejected that and so, no, they knew what
12 they were doing. You understand that?

13 A Yes.

14 Q And we are not talking about any kind of idea. I
15 mean we know that this is the person who did it. Correct?

16 A Yes.

17 Q And we are not talking about self-defense, we are not
18 talking heat of passion. You know, if you have anything
19 on any of those defenses you have rejected all of that.
20 So this person, I mean we know that this person did that
21 murder, intentionally kill that innocent victim. Are you
22 with me?

23 A Yes.

24 Q So my question to you, is in that situation where you
25 have that person who is guilty of that intentional murder

1 of an innocent victim what is your feeling as the death
2 penalty is the appropriate punishment for that guilty
3 murder?

4 A Can you repeat that question again.

5 THE COURT: Simplify it a little bit.

6 Q Okay. So you understand that you have, you have got
7 someone who is, let me change it. So you have heard
8 defenses and you have rejected those and you have decided
9 this person is guilty of an intentional, malicious murder
10 of an innocent victim. What is your opinion as the death
11 penalty is the appropriate sentence for that guilty
12 murderer.

13 MS. MAYES: Your Honor, I am going to object to the
14 form of the question.

15 THE COURT: I understand your objection, I will let
16 her answer. What is your opinion under those
17 circumstances.

18 A My opinion, I don't know. I guess it depends on the
19 evidence really, like, are we talking about the first part
20 or the second part?

21 Q We are saying you have basically gotten past that
22 first part.

23 A Past the first part.

24 Q You have gotten past that first part, you found that
25 this person did an intentional murder. So we know that

1 they are a guilty murderer. And then my question to you
2 is, if you take, what is your thought for the death
3 penalty for that guilty murderer. We know they did it, we
4 know they are guilty, they intentionally murdered an
5 innocent person. What is your feelings about the death
6 penalty?

7 A I am all for the death penalty for someone who is
8 guilty of murder, innocent murder.

9 Q So in that situation where you have got someone that
10 you know has intentionally killed someone and they don't
11 have any justification, no excuse, anything like that.
12 Are you, for that guilty murderer, are you just for the
13 death penalty for that person who intentionally killed
14 another one all the time?

15 A No. I mean, that is what I, I am biased, I am not
16 all for the death penalty so I am okay with someone having
17 life without parole. But I am still okay with the death
18 penalty as well.

19 Q Okay. Let me ask you. When you hear those facts of
20 that guilty murderer, you kind of start off and say, hey,
21 it is death penalty for me and you have got to convince me
22 that the life penalty is appropriate or do you start off
23 in the middle or you start and say, start off with life
24 and I kind of go from there.

25 A Start off with life and kind of go from there.

1 Q So can you kind of think of any types of cases in
2 your mind that the death penalty, I mean it just seems it
3 is the only appropriate punishment.

4 MS. MAYES: Objection, Your Honor, to the question
5 and the word, only.

6 THE COURT: Rephrase that question. I am going to
7 sustain that objection to the form of the question.

8 Q Can you think of any type of case in your mind that
9 just screams the death penalty?

10 A No.

11 Q And so you would want to hear other things?

12 A Yes.

13 Q Someone's background or upbringing be relevant to you
14 in deciding what the penalty was?

15 A Yes.

16 Q Do you think that a life without parole sentence
17 could be a sufficient penalty for a guilty murderer?

18 A Yes.

19 Q How about in a situation where you have got a guilty
20 murderer of multiple children. Would you ever think that
21 a life without parole sentence could be appropriate in
22 that case?

23 A Can you say that again.

24 Q Sure. Do you ever think that a life without parole
25 sentence is a sufficient penalty for someone who is

1 convicted of killing of multiple children?

2 A I am still going to have to say yes.

3 Q Like I said, there is no right or wrong answers. Let
4 me talk with you a little bit about, you understand from
5 what the Judge told you that a death sentence is never
6 required?

7 A Yes.

8 Q Not in this case, not in any case and not even the
9 worse case that you could ever imagine. You understand
10 that the law is always okay with a life without parole
11 sentence. You understand that?

12 A Yes.

13 Q And you understand that if you get to that second
14 part of the trial that the State has to prove aggravation
15 beyond all reasonable doubt. Do you understand that?

16 A Yes.

17 Q But there is also this thing called mitigation. And
18 you understand mitigation isn't some kind of excuse or
19 justification. You understand that?

20 A Yes.

21 Q And it doesn't even have to be related to the
22 killings. Do you understand that?

23 A Yes.

24 Q And it could be someone's upbringing or background
25 and that might not be related to the killing itself. But

1 you understand, is that something you would want to hear
2 before deciding what the appropriate sentence was?

3 A Yes.

4 Q And you understand that mitigation, unlike
5 aggravating circumstances, mitigation doesn't have any
6 type of burden of proof?

7 A Yes.

8 Q And so what I mean by that, and well, let me stop.
9 Mitigation can also be whatever an individual Juror finds
10 is mitigation. Just a single Juror, do you understand
11 that?

12 A Yes.

13 Q So in other words, this Juror right here could say,
14 you know what, I saw that he has a good relationship with
15 his father. And to me, you know what, that is mitigation
16 that I want to give a life penalty. Do you understand
17 that?

18 A Yes.

19 Q And maybe this Juror says, you know what, I didn't
20 see that but you know what I see, I see some mental
21 illness. And for me I want to give that life. Do you
22 understand that?

23 A Yes.

24 Q And so while two jurors don't agree they both come
25 with a different reason for mitigation for themselves. Do

1 you understand that?

2 A Yes.

3 Q And then there could be a third Juror that says, you
4 know what, I didn't see either of those. But you know
5 what, for me I don't have reason. I just want to give
6 life based on mercy. And each one of those can be right
7 of what they found. Do you understand that?

8 A Yes.

9 Q And you are okay with that?

10 A Yes.

11 Q And so you understand that a Juror never has to have
12 a reason to vote for life?

13 A Yes.

14 Q And if you heard a Juror say, you know what, I can't
15 give you a reason why I want to vote for life. Would you
16 be able to respect their decision?

17 A Yes.

18 Q And so when jurors kind of make that decision or come
19 with up with it in their mind, they call it an individual
20 moral judgment. Have you ever heard that before?

21 A No.

22 Q Individual moral judgment might be kind of like what
23 you determine is the appropriate faith for you. And
24 someone else might have determined in their individual
25 moral judgment that they have a different faith that is

1 appropriate for them. And so you would expect them to
2 respect your decision, wouldn't you?

3 A Yes.

4 Q And at the same time you would respect their
5 individual moral judgment about what their faith is?

6 A Yes.

7 Q Is that correct?

8 A Yes.

9 Q And the law basically says that each of the jurors
10 have to make their own individual moral judgment as to
11 what the appropriate penalty is. Do you understand that?

12 A Yes.

13 Q And that doesn't mean that you don't talk or
14 deliberate or respectfully talk with someone else. Do you
15 understand that?

16 A Yes.

17 Q But that means that if someone has come up with their
18 individual moral judgment as to what they believe is the
19 appropriate penalty, that they shouldn't be coerced or
20 bullied or browbeating into changing their own individual
21 moral judgment. Do you understand that?

22 A Yes.

23 Q And are you someone that is, you saw someone that was
24 getting bullied out of their individual moral judgment
25 could say, no, no, no, they have the right to their own

1 individual moral judgment, you can't do that?

2 A Yes.

3 Q And if it kept on you, understand you could write a
4 note to the Judge. Judge, this has gone way past civil
5 discourse, can you please help us. Do you understand
6 that?

7 A Yes.

8 Q And you understand that your oath as a Juror
9 basically says, hey, if it gets to that point that is what
10 your duty is. Judge, this has just gotten out of hand
11 here. You would do that if you saw that?

12 A Yes.

13 Q Based on the Court's limitations I don't have
14 anything further.

15 THE COURT: Ms. Mayes.

16 EXAMINATION

17 By Ms. Mayes:

18 Q Good afternoon, Ms. Hanley.

19 A Good afternoon.

20 Q I am Suzanne Mayes, I am the Deputy Solicitor and as
21 a prosecuting attorney we represent the State in this
22 case. I have a couple of questions for you. One of the
23 things that I heard you say when Mr. Madsen was asking you
24 questions about deciding of punishment. You said I guess
25 it depends on the evidence.

1 A Yes.

2 Q And so in this case, as the Judge told you, there
3 would ultimately be two options in a second phase of the
4 trial for sentencing. That would be life without parole
5 and the death penalty. Can you consider both of those
6 options?

7 A Yes.

8 Q And the Judge explained that there will be
9 aggravating circumstances as well as mitigating factors
10 and that might be anything offered by the defense
11 regarding the Defendant's background. Are all of those
12 things that you could consider in reaching a decision on
13 punishment?

14 A Yes.

15 Q So when you said, I guess it depends on the evidence,
16 you meant the evidence from both sides?

17 A Yes.

18 Q And ultimately if you heard all of the evidence and
19 all of the factors presented and you decided that life
20 without parole was the appropriate choice, is that a
21 choice that you could make in this case?

22 A Yes.

23 Q And if you heard all the evidence and you determine
24 that the death penalty was the appropriate punishment, is
25 that a verdict that you could reach in this case?

1 A Yes.

2 Q A verdict for the death sentence?

3 A Yes.

4 Q With that verdict, if that were to ultimately be the
5 decision of the twelve jurors unanimously for the death
6 penalty, there would be a sheet that goes along with that
7 verdict form where each Juror would have to sign it
8 acknowledging that they agree with and vote for the death
9 sentence. Is that a form that you could sign?

10 A Yes.

11 Q You could sign your name to that?

12 A Yes.

13 Q Nothing further.

14 THE COURT: Anything further?

15 MR. YOUNG: No, Your Honor.

16 THE COURT: Anybody want to be heard?

17 MR. YOUNG: No, Your Honor.

18 MR. HUBBARD: No, sir.

19 THE COURT: Ms. Hanley, you are now qualified as a
20 Juror. What that means is you will move into now
21 rechecking the website for qualified jurors instructions.
22 The instructions will be one of two things. Check back
23 tomorrow, check back tomorrow, finally you are going to
24 see, please report back to the courtroom on some date and
25 time. It may be early morning or afternoon. Follow that

1 instruction on qualified Juror as you are now. So you are
2 qualified in the case as a potential Juror. When you come
3 back in the parties will decide which jurors will be on
4 the jury. Until that time I see you again your oath
5 remains, don't talk about the case, do not let anybody
6 interrogate you about the case, do not answer questions
7 about the case. Don't answer questions about the process
8 today. Judge Griffith says don't talk about the case.
9 Don't investigate, social media, otherwise, comment on the
10 case. Do not, be mindful that media is going to be making
11 reports. I don't want those reports, publications or
12 social media or on the television, I don't want those to
13 impact your ability to be fair and impartial so minimize,
14 you see a report involved in this case don't watch it,
15 don't read it, don't listen to it. I want you to make
16 your decision on what you hear in here with the other
17 jurors. I will see you back when we summon you back.
18 Thank you for coming.

19 JUROR: Thank you.

20 (Whereupon, the Juror was excused from the
21 courtroom.)

22 THE COURT: We will take a lunch break. See y'all at
23 2:00.

24 (Whereupon, a lunch break was taken.)

25 THE COURT: Bring me 338.

1 (Whereupon, Juror 338, Rachna Prasad entered the
2 courtroom.)

3 EXAMINATION

4 By The Court:

5 Q I am going to ask you to spell your first and last
6 name.

7 A R-A-C-H-N-A, P-R-A-S-A-D.

8 Q All right, Ma'am. Thank you for your patience. I
9 think the Clerk fed you?

10 A Yes. Thank you for that.

11 Q I placed you under oath Monday so I am going to ask
12 you a bunch of questions. You are under oath to tell the
13 truth. Some of these questions and your responses are
14 going to be opinions, no right or wrong answers on your
15 opinions. It is just who you are. Now, Monday I said
16 take an oath and promise me to not discuss the case with
17 anybody, don't let anybody discuss the case with you. Has
18 anybody tried to discuss the case with you?

19 A Discuss the case, no.

20 Q Have you discussed the case with anyone?

21 A No.

22 Q There has been facts alleged when I read the
23 indictments Monday. So you heard those, if you were in
24 the courtroom and following my instructions to listen, I
25 gave some facts about the allegations the State has made.

1 There has been publicity of all sorts since Monday and
2 before Monday. So before you took your oath certainly
3 there was some publicity that could have been seen or
4 heard by you, even several years ago. I am not concerned
5 about when or how but if you considered and all of the
6 publicity, the facts outlined by the Court and the
7 allegations on the indictments, considering any of those
8 things have you formed an opinion as to what happened in
9 this case?

10 A I have not.

11 Q Anything influence you already that you have seen or
12 heard, I know exactly how to decide that case?

13 A No, I have not seen any of the publicity right now.
14 And then I guess when it happened several years back I am
15 sure I had seen the headline but I don't remember anything
16 from it.

17 Q Fair enough. Personally on your work schedule, home
18 schedule, family obligation schedule, if you were selected
19 as a qualified Juror, potentially the trial would start
20 next week and it would last two, maybe three weeks, so
21 into early June. Do you have anything on your personal
22 schedule of any type that if you were selected that it
23 would really impact your personal calendar?

24 A Personal calendar, no.

25 Q Everybody has the inconvenience of not working and

1 you are kind of out of your routine. I understand that
2 but that is not what I was asking about. Right now you
3 could serve if so selected?

4 A Yes.

5 Q Very well. Now, I gave you some instructions as a
6 group about the process, the criminal procedures, the
7 aspects of the criminal law regarding this case. I didn't
8 ask you particularly, the allegations in this case
9 involved allegations of the death of some children. The
10 subject matter will be difficult and unpleasant and
11 perhaps graphic and harsh. I don't want to represent to
12 you that it is anything other than difficult. Would
13 subject matter of that type create an issue for you
14 personally where you could not listen fair and impartial,
15 you would have a hard time being fair to both sides?

16 A That is a little hard to answer because obviously it
17 would be hard to hear. But as far as being impartial to
18 the facts I don't think that would be a problem.

19 Q And all of the parties, I have not heard much of the
20 testimony, a little bit of preliminary hearings I have
21 heard some testimony. But the lawyers have told me,
22 Judge, this is going to be tough. That is kind of in
23 their words. So understanding they have represented to
24 the Court that it would be tough. Certainly you wouldn't
25 ask to go see it, maybe you would but it is difficult but

1 you could listen and then evaluate it fairly and be fair
2 to both sides?

3 A Yes.

4 Q Now, I read you that script about the Capital trial
5 and how it is in two phases if necessary. Phase one is
6 guilt or innocence and phase two is the punishment phase.
7 So, if you were selected as a Juror and if the State
8 proves guilt beyond a reasonable doubt, if innocent or not
9 guilty was found the case ends, it stops right there. But
10 if it goes into phase two, because of a unanimous of guilt
11 is found, because the State proved it beyond a reasonable
12 doubt then you are sitting in phase two as a Juror. I
13 handed to you to review a script of three types of
14 potential jurors, type one, two and three. Not knowing
15 any more than you know, we don't know very much, you and I
16 know basically the same about the case, allegations only.
17 But the State proves its case, aggravating circumstances
18 get proven, mitigation facts get presented. What type of
19 Juror do you identify yourself as being of those three
20 types?

21 A I would say the third one.

22 Q Third one. And that type of Juror is someone who
23 wants to hear everything. I have not made up my mind, I
24 don't have a preconceived notion. I want to hear
25 everything and then make up my mind.

1 A Correct.

2 Q Now, in this case, I am going to go back and
3 describe, I haven't asked you about the jury list. Did
4 you examine the jury--

5 A I did.

6 Q Not the jury list, the witness list. Potential
7 witnesses, I can tell you not all of those witnesses are
8 likely to be called. A lot of them but not all of them.
9 Nevertheless we are required to disclose all potential
10 witnesses. Do you know any of them?

11 A I do not.

12 Q All right. So they couldn't cause you to be fair and
13 impartial nevertheless, could they?

14 A Correct.

15 Q All right, phase two, phase trial. Phase one, the
16 guilt or innocence. There are some potential defenses
17 that are allowed to be heard or presented by people
18 accused. I am going to read you the statutory defenses
19 and then come back and ask you another question. These
20 are all statutory defenses, I am not going to represent to
21 you that all of them are applicable to this case. But
22 some of them could be. Potential defenses are
23 identification, accident, self-defense, necessity,
24 insanity, guilty but mentally ill, defense of habitation,
25 entrapment, duress and alibi. Those are potential

1 defenses. Now, I do also tell you that the case will be
2 presented, phase one, the State has got to prove the
3 elements of murder beyond a reasonable doubt. Aspect of
4 defenses will be presented during that phase also. Can
5 you give meaningful consideration to the testimony and
6 evidence the State presents regarding its attempting the
7 murder and the elements thereof as well as any defenses
8 and facts presented supporting those defenses that the
9 parties make. Can you give consideration, meaningful
10 consideration to all of those defenses and be a fair and
11 impartial Juror in this case?

12 A I would to the best of my ability.

13 Q Fair enough. Mr. Jones has tendered a plea of not
14 guilty by reason of insanity and by that plea, that
15 doesn't rule out some other defenses that could be
16 presented. Potentially by way of his plea the jury could
17 get a verdict form that they would have to sign one of
18 these four verdicts. Guilty, guilty but mentally
19 impaired, not guilty by reason of insanity and not guilty
20 at all. Those are four potential verdict forms. Could
21 you give meaningful consideration to all of those four
22 potential verdict forms and be fair and impartial and
23 evaluate the testimony and evidence from the State and the
24 defense and be fair to both sides?

25 A Yes.

1 Q And considering the testimony consistent with my
2 instructions?

3 A Yes.

4 Q All right. As I said, if the case is not proven by
5 the State or the Defense has proven and it is a not guilty
6 verdict the case is over, it ends right there. If the
7 State meets its burden and proves the murder then it goes
8 to phase two. At that point the jury is then tasked with
9 imparting punishment. Got two choices, life without
10 parole or death. And if a jury reaches a verdict
11 unanimously on either one that sentence will be carried
12 out. So unanimous to death, the death penalty is carried
13 out. If the jury is unanimous on life then life without
14 parole is carried out. That means the balance of their
15 life and don't get out. In that case the State then has
16 to prove an aggravating factor in this punishment phase.
17 Aggravating factors outlined by the statute, I am going to
18 name off several of them. Some of them may not be
19 applicable, the State has to prove one of these. Murder
20 of a police, rape of murder, kidnapping with murder,
21 murder of a child, multiple murders. Those are potential
22 aggravating factors. The State has got to prove one of
23 those beyond a reasonable doubt during the sentencing
24 portion. Additionally there are mitigating circumstances
25 include the Defendant has no significant history of prior

1 criminal conviction involving the use of violence against
2 another person. The murder was committed while the
3 Defendant was under the influence of mental or emotional
4 disturbance. The victim was a participant in the
5 Defendant's conduct or consented to the act. The
6 Defendant was an accomplice in the murder committed by
7 another person and his participation was relatively minor.
8 The capacity of the Defendant to appreciate the
9 criminality of his conduct or to conform his conduct to
10 the requirements of law was substantially impaired. The
11 age or mentality of the Defendant at the time of the
12 crime. The Defendant was below the age of 18 at the time
13 of the crime. The Defendant was provoked by the victim in
14 committing the murder. And lastly, the Defendant had
15 mental retardation at the time of the crime. Those are
16 statutory mitigating factors. There are also
17 non-statutory reasons. Any evidence, any reason
18 whatsoever that you may vote for a life without parole is
19 a mitigating factor such as the way he was raised, broken
20 home, troubled childhood, whatever. Anything that sort
21 can also be considered by jurors. Thus my question to you
22 now, can you give meaningful consideration to the State's
23 burden of proof to the aggravating factors beyond a
24 reasonable doubt as well as consider any mitigating
25 factors that are presented, consider my instructions on

1 the law and make a decision for punishment considering my
2 instructions in the law and mitigating factors and
3 circumstances you have seen or heard.

4 A I could to the best of my ability.

5 Q Do you have any religious, moral or personal belief
6 which would prevent you from finding a verdict of
7 punishment of the death penalty?

8 A No, to be honest I have not given the death penalty
9 much thought aside from--

10 Q You just know it exist?

11 A Yes, aside from you, you know, cost expense, risks.

12 Q Okay. Do you have any religious, moral or personal
13 belief why you could not impose a life without parole
14 sentence?

15 A I do not.

16 Q All right. Now, there is, the death penalty is not
17 automatic. Two options, life or death. The jury gets to
18 decide one of the two. Can you give meaningful
19 consideration to all the evidence and factors,
20 instructions of the Court and act as a fair and impartial
21 Juror to both the State and the Defense?

22 A Yes.

23 Q And consider the subject matter which will be
24 difficult?

25 A Yes.

1 Q I think that is all of my questions. Mr. McGuire.

2 EXAMINATION

3 By Mr. McGuire:

4 Q Good afternoon.

5 A Good afternoon.

6 Q Excuse me, I am a little hoarse today. My name is
7 Bill, Bill McGuire, I am one of the lawyers on the case.
8 Is it Ms. Prasad.

9 A Prasad.

10 Q Prasad.

11 A Yes.

12 Q Okay. In response to the Judge's last couple of
13 questions about the death penalty, you threw out that you
14 sort of generally knew it existed and you had some
15 thoughts about cost expense and risks. I am going to take
16 them one at a time. When you said, I will go backwards.
17 When you said risk, what did you think, what were you
18 thinking about?

19 A I guess more so risk of, a risk to society and that
20 is why you would move forward with the death penalty.

21 Q Okay. And that is because if, totally incapacitated
22 the person, they are not capable of doing anything violent
23 again?

24 A Or that they would be violent and so the matter of
25 potential escape or potential freedom.

1 Q Okay.

2 A And continuing to be violent so the better option to
3 eliminate the risk.

4 Q Okay. Maybe an assault on a guard or another inmate
5 or escape, something like that?

6 A Right, yes.

7 Q Okay. And that weighs in favor of the death penalty
8 with you?

9 A Right.

10 Q And expense, what did you mean about expense?

11 A So to not do the death penalty there is a cost to,
12 you know, provide facility and security for those that
13 have been accused and convicted.

14 Q And that cost is greater than putting somebody to
15 death?

16 A I don't know which, is the cost greater than the risk
17 or is the risk greater than the cost. That I am not sure.

18 Q Lawyers are a lot more expensive then--

19 MR. GRAHAM: Objection, Your Honor. I don't know
20 that this is relevant. He is trying to answer questions
21 as well.

22 THE COURT: Sustained, moving on. Understand what
23 she does as an insurance, that is kind of, I understand
24 her answer and your follow-up, move on.

25 Q That is the only question I had on that. Thank you,

1 Judge. And, okay, what I want to do is just ask you,
2 one-hundred percent, your personal opinions, don't tell me
3 what I want hear or what you think I want to hear or the
4 Judge. This is just one-hundred percent your personal
5 opinions and beliefs. Okay. This is one day where
6 everything you say is right along as it is truth.

7 A Okay.

8 Q If you were Governor for the day and you had a Bill
9 on your desk and you could sign it and we would either
10 keep having the death penalty or we would not have the
11 death penalty which one would you sign?

12 A Without any kind of information, I don't think that I
13 could sign either one of them.

14 Q Okay.

15 A So ask me at this moment, I honestly don't know which
16 would be or wouldn't be the better option. I would hate
17 to sign that death penalty, should be without really
18 knowing which way I sit on that one. If that makes sense.

19 Q It does make sense. Like I said, this is the day
20 where everything is right as long as it is truthful. Some
21 people might say, you know, some offenses, some crimes are
22 just so bad, so aggravating, that maybe the death penalty
23 should be pretty much automatic for them. Like a rape, a
24 sexual assault in a murder, killing of a police officer in
25 the line of duty, that sort of thing. If somebody were to

1 come to you, at work at the water cooler and say, you know
2 what, if the person really did it, not an ancient, not
3 self-defense and intentionally took innocent lives, meant
4 to do it, chose to kill, knew right from wrong and the
5 victims were innocent children, killed one after the
6 other. In that situation, and that person said, you know,
7 I think that should be automatic for the death penalty.
8 What would you say in response to that?

9 A In a perfect world maybe but I am not sure how I feel
10 about a life for a life. So I am not sure to be honest.

11 Q Okay. And we have heard phrases like life or a life
12 or if you take an innocent life you forfeit yours or an
13 eye for an eye. Do these things resonate with you, they
14 don't describe you?

15 A I would say, yes. I guess the difficult part is,
16 particularly, yeah, when somebody does something that
17 heinous you don't want them to be part of society. But
18 then again, are you kind of almost being hypocritical
19 where you are, okay, if they did this to someone now you
20 do this to them.

21 Q Sort of the, if we are going to kill somebody to
22 teach the world that killing is wrong doesn't really make
23 sense?

24 A Right. It is almost a catch twenty-two type of
25 situation.

1 Q It is. I agree with you, a lot of people say that.
2 Now, in this case there is a plea of not guilty by reason
3 of insanity. And some people might say, if somebody knew
4 right from wrong or let me rephrase that. Just knowing
5 the, like the Judge said, we don't know a whole lot of
6 facts here. Just the death of innocent children and not
7 guilty by reason of insanity would mean that a person
8 would admit to the killing. And the only way they could
9 be found not guilty by reason of insanity is if you found
10 the person, because they had some mental defect or disease
11 that they couldn't distinguish legal or moral right from
12 wrong. Does that make sense?

13 A It does.

14 Q And some people might say, if the evidence is there
15 and the person definitely did the killing that is not an
16 issue, I can't really consider a not guilty by reason of
17 insanity. It sounds like kind of letting somebody off.
18 Do you agree with that?

19 A I guess, my questions would be behind the insanity of
20 what is the measure of insanity, what are you defining as
21 insanity. Was insanity, you know, what was the mind-frame
22 during that time that the actions were taken. So in my
23 line of work measurement is huge. So what does insanity
24 actually mean.

25 Q If you were to hear testimony from expert witnesses

1 describing what that meant and evidence supporting that,
2 is that something that you could truly consider?

3 A With that type of information, sure.

4 Q And if you, if in your mind you thought they did
5 present enough information to support that verdict, is
6 that a verdict you could really consider or would you
7 still have some hesitation because it would kind of be
8 letting someone off still?

9 A It would depend on the information provided and the
10 plan of action after that. So obviously you, claimed
11 insanity you wouldn't just become part of society again.
12 What would then be that plan. So you have been declared
13 insane and then what, now what, essentially. Does that
14 make sense.

15 Q Some people might fear that if they don't really
16 know, if they are not told what that means it kind of lets
17 the guy out into society. Do you think that?

18 A So you are saying if they have been declared insane
19 they should still be part of society.

20 Q No, I am saying if you found--

21 MR. GRAHAM: Objection, Your Honor.

22 THE COURT: Hang on a second.

23 MR. GRAHAM: Your Honor has already ruled on this
24 area and where it goes and where it stops. And I think we
25 are past that.

1 THE COURT: Rephrase your question.

2 Q Sure. What I am saying is, if you and eleven other
3 jurors, let's say you all voted not guilty by reason of
4 insanity, some people might have a fear in voting that way
5 because they think the person gets put out back in society
6 like you said. Is that a fear that you have?

7 A So here is my question and maybe I don't understand.

8 MR. GRAHAM: Your Honor,--

9 THE COURT: Hang on. Let's clarify this and let her
10 step out real quick just so we know where we are going
11 because this is one of the issues it took so long to get
12 started. Let me clear up, you are doing fine, I just need
13 to talk to the lawyers. Step out real quick and we will
14 have you right back in here.

15 A All right.

16 (Whereupon, the Juror was excused from the
17 courtroom.)

18 THE COURT: Finish that question and let's hear it
19 and then I will hear Mr. Graham on why he is objecting to
20 it. He may not object to it if you finish it.

21 MR. MCGUIRE: Sure. The way I started was, in
22 considering the not guilty by reason of insanity verdict,
23 some people might have a fear that that could be, she
24 stated earlier, letting somebody back out into society.
25 Ma'am, would that be a fear that you would share. This is

1 in response to her comments about I would have concerns
2 about what the plan was.

3 THE COURT: She is a risk reward panelist because
4 what she does for a living, she evaluates the risk and
5 reward and benefit, all the costs, all of that. She talks
6 like a person who works for the insurance company because
7 she is.

8 MR. MCGUIRE: Right. And she said she would have
9 some concerns about not knowing what the plan would be,
10 the resulting plan after an NGRI verdict. And I have sort
11 of, I have stayed away from the stuff we have talked about
12 earlier, just ask her, you know, some people have a fear,
13 considering that because, as you said, it would be letting
14 somebody back into society. Do you share that fear.

15 THE COURT: All right, Mr. Graham.

16 MR. GRAHAM: We have delve into that area, it is
17 beyond what her job as a Juror would be. Right or wrong.
18 What happens, it never tells a Juror what happens. I
19 don't think it is appropriate to go down this line of
20 questioning. Even if she has that question voicing to
21 engage in I think is improper.

22 MR. MCGUIRE: And, Judge, we are not saying, let me
23 tell you what will happen. We are not suggesting anything
24 like that. I am just asking her, would she maybe not
25 fully consider NGRI because she might have some fear about

1 not knowing what would happen. They don't get to have it
2 both says, let's keep her in the dark and not ask about
3 that and her fears based on being in the dark and let's
4 not tell her what really happens. And so we can't tell
5 her about that. I mean they can't have their cake and eat
6 it too.

7 THE COURT: Then she asked the next question, exactly
8 what would the plan entail and give me the details of it.
9 That is the type of person she is. If she reask that
10 question--

11 MR. MCGUIRE: I will say--

12 THE COURT: It won't surprise me.

13 MR. MCGUIRE: I will say, I am not allowed to say
14 that.

15 THE COURT: How about this. Blame it on me but the
16 Court--

17 MR. MCGUIRE: I am happy to blame it on you.

18 THE COURT: You can blame it on me.

19 MR. HUBBARD: Judge, do we even really want to get
20 there.

21 THE COURT: I really don't. I think you have asked
22 her does she have a fear because it sounds like you are
23 getting off scott free and she says, she is kind of, she
24 is a little bit, she is unsure as to what the result is or
25 how to ask the question.

1 MR. MCGUIRE: I think the Defendant has the right,
2 she has some fear or reservation or hesitation.

3 THE COURT: Mr. Graham.

4 MR. GRAHAM: She has answered that question, she does
5 have a fear of it.

6 MR. MCGUIRE: She hasn't, she just said she would be
7 concerned about not knowing the plan. But I didn't tie
8 that up to not considering NGRI as a verdict because of
9 that fear. That is the question. And if she says, yes, I
10 want to know what happens, what happens, Mr. McGuire. I
11 will say, the Judge said we are not allowed to say that.

12 THE COURT: Yes, not allowed to go into that.

13 MR. MCGUIRE: Right.

14 MR. GRAHAM: My opinion is he has already asked, he
15 has already got the information, we shouldn't get into any
16 further. All Your Honor is ever going to be able to tell
17 her is you are going to give the law that applies to the
18 case and she is going to have to apply it. You are never
19 going to answer the question for her about what happens.

20 THE COURT: How about this. And I will let him do
21 this. Because you have a concern as to what the plan may
22 be and I can't say what the plan is. Could you still
23 consider--

24 MR. MCGUIRE: I will do that.

25 THE COURT: That is a fair question, leave it alone.

1 MR. MCGUIRE: Sure.

2 THE COURT: Bring her back in.

3 (Whereupon, the Juror entered the courtroom.)

4 EXAMINATION

5 By Mr. McGuire:

6 Q So we left off, we were talking about the potential
7 verdict of not guilty by reason of insanity. And it
8 sounds like you had a concern about that, not knowing what
9 would happen if somebody was found not guilty by reason of
10 insanity. And not knowing what would happen, would that
11 cause you to perhaps not consider that verdict?

12 A I would need to know what happened to consider that
13 verdict.

14 Q And what if I was to tell you that the rules of the
15 Court and the Judge would never let us tell you what
16 happened in the case of not guilty by reason of insanity
17 verdict. Is that something that you could consider--

18 MR. GRAHAM: Objection, Your Honor.

19 THE COURT: I understand your objection.

20 MR. GRAHAM: I would ask Your Honor to give any
21 direction that needs to be given at this point about what
22 the law is and how to apply.

23 THE COURT: I am going to allow the question to go.
24 And I agree, the next Juror will be so, I am sustaining
25 your objection but let her answer that question subject

1 to, I always give instructions. That is what the Court's
2 and they explain the law and so that is where the lawyers
3 are kind of wondering, shouldn't I be telling you, all
4 right, if y'all do this then that. The end result plan is
5 not allowed to be given in a trial. Okay. It is not. So
6 he is asking you, if that were the case then would that
7 affect your ability to consider it. So you are not going
8 to have.--

9 A Can I ask a question?

10 THE COURT: You may.

11 A So in the case of the death penalty, you know death
12 is the result.

13 THE COURT: That is the result.

14 A And if you know the life sentence without parole, you
15 know that is a result.

16 THE COURT: Correct.

17 A But in the case of not guilty by insanity, you don't
18 know the result.

19 THE COURT: Don't know the result.

20 A I don't understand.

21 THE COURT: That is just the Court rules.

22 Q So the result of that you would always be in the dark
23 with regard to the result of a not guilty by reason of
24 insanity verdict. Knowing you would always be in the dark
25 about that, not knowing what would happen, would that

1 cause you to maybe not consider that verdict as a true
2 verdict. Would you vote for it not knowing what would
3 happen?

4 A I have no words honestly because without knowing what
5 the result is how can you choose that option.

6 Q So it sounds like you do have some reservations about
7 choosing that option, not knowing the result.

8 A It is just not knowing the result. You know the
9 result of the other options but you don't know the result
10 of that option.

11 THE COURT: Okay. She has answered that
12 sufficiently. Move on.

13 Q Okay. I don't want to put you in the position of,
14 let's say you are already selected to be on a jury. You
15 and other, eleven other jurors found the person guilty
16 beyond a reasonable doubt, they definitely did it, knew
17 right from wrong, chose to kill innocent children. Is the
18 life penalty, life without parole, is that sufficient to
19 punish that kind of killing?

20 A I can't say I have an answer for that right now. It
21 depends on all of the facts and all of the information.

22 Q Okay. That is exactly where I was heading. Do you
23 believe the background of the person who actually
24 committed the killings, like his childhood, his history,
25 could that be, should that be relevant in fixing

1 punishment for this intentional killing of innocent
2 children?

3 A I am not sure if it should be relevant for punishment
4 but I think it should be relevant for evaluation. Like
5 information to consider.

6 Q Okay. Well, I guess that is my point. Could
7 something in someone's background not connected to the
8 case, the offense, the incident, something that happened
9 when they were growing up as a child, their walk in life,
10 I think the Judge talked about a really hard childhood or
11 maybe growing up in poverty, these things. Could these
12 things be relevant in trying to fix the punishment for the
13 Defendant, for the killer, if it had no connection to the
14 crime?

15 A So I think an upbringing of a child does determine
16 whether they know right from wrong, going into an adult.
17 Whether that plays into the punishment of an act that they
18 have committed, I want to say yes because you are still
19 essentially, whether you know right from wrong you still
20 harmed others and you are still potentially a risk to
21 society if that makes sense.

22 Q So would you be looking at factors that would sort of
23 predict maybe someone's future danger to society?

24 A Not so much someone's future danger but what you have
25 done.

1 Q Okay. Let me ask you about the concept of mercy. Is
2 mercy something that somebody has to earn or is mercy
3 something that is freely bestowed, in your view, your
4 personal opinion?

5 A Mercy freely earned or something bestowed.

6 Q Does somebody have to earn mercy or is it something
7 that is just freely given to somebody, kind of like grace
8 or forgiveness. Is that something you have to earn or is
9 that something we, as humans, just freely give to
10 somebody, in your personal view?

11 A I think that is something we, as humans, choose to
12 give or not to give.

13 Q Okay. I want to talk to you a little bit sort of the
14 process, how this works. And I am going to start off
15 with, did you know that the death penalty is never
16 required in any case, not this case, not the worse case?

17 A I did not.

18 Q A lot of people show up and think, well, if the
19 Government proves A and B and C that there is just one
20 result and that is the death penalty. That is not the way
21 it works so I am going to walk through this with you. If
22 there is something that I say that is confusing stop me
23 and you start asking me questions. Okay?

24 A Okay.

25 Q If we get to a sentencing phase, the punishment

1 phase, determining if Mr. Jones, life without parole in
2 prison or he would die in prison or does he get the death
3 penalty, no Juror ever has to vote for the death penalty
4 in any situation. Did you know that?

5 A Can you ask the question again?

6 Q Yes. It was poorly worded. So a lot of people think
7 that when we show up for a jury trial and the Government
8 is asking for the death penalty, a lot of people thinks
9 that, well, has the State proved this and they proved this
10 and they proved this, we check those boxes off on the
11 verdict form and then the result is, well, they proved
12 everything so it has to be death. Is that what you
13 thought before you got here?

14 A To be honest, I didn't think much before I got here.

15 Q You really haven't contemplated the death penalty or
16 how it works?

17 A No.

18 Q Do you think it is used about right or too often or
19 not enough?

20 A I definitely think it is not something that should be
21 used lightly. But I also am not sure which is the better
22 option, life in prison without parole or the death
23 penalty.

24 Q Okay. Well, let me tell you a little bit about how
25 it works and see if you can, if you have an opinion about

1 these legal principles. So the way it would work, like
2 the Judge said, if we got to a second phase, the
3 punishment phase you would have twelve individual jurors
4 and the law requires them to reach what is called and
5 described as their individual moral judgment. Life
6 penalty, death penalty and you would expect some
7 disagreement there in a matter so grave whether a human
8 being lives or dies. So that is the starting point, that
9 it is twelve individual jurors, they all get to have their
10 own conscientiously held position. And the way that that
11 can work is sort of that concept of mitigation that the
12 Judge told you. Mitigation is really any reason that any
13 Juror would choose to vote for the life penalty, life
14 without parole and not the death penalty. So it can be
15 just anything. And say one Juror, the first Juror sitting
16 here might say that I saw that a Defendant had a condition
17 of mental illness and I found that significant, that
18 resonated with me and I am not going to vote to put that
19 person to death. And that is their individual reason.
20 And they might have more reasons but they can say that is
21 my main reason. Somebody else could say, when looking at
22 his background, growing up, adulthood he had and the
23 relationship with family members, maybe his father and I
24 saw a spark of humanity in that, some hope of redemption
25 and that is my reason, that resonated with me. And those

1 two jurors don't even have to agree with each other,
2 everybody can have their own different reason, nobody has
3 to agree. Does that make sense?

4 A Yes.

5 Q Does that sound right to you, like fair?

6 A Yes.

7 Q Okay. And another Juror might actually say, I don't
8 have a reason, the Judge said we could vote for the life
9 penalty for any reason, no reason or mercy alone. And
10 somebody might say, after hearing everything, after seeing
11 everything, it just doesn't fit with me. You know, after
12 I contemplate the rest of my life, I don't want to have
13 the burden of having killed another human being. And I
14 just don't want to do it. And they could actually say I
15 don't really have a reason to put in words. Does that
16 sound fair that people could say that?

17 A No.

18 Q They should have a reason?

19 A Your life in this trial doesn't matter. So your
20 opinion, your, I don't want to think belief, but your
21 belief of how it is going to affect you as a person isn't,
22 is not what, is not what is at stake right now.

23 Q Okay. What if they say it is not my future that is
24 my problem, I am not thinking about my burden. What if
25 someone just says, I heard it all, I saw it all and I

1 can't put it into words but the death penalty is just not
2 right for me, I want to vote for the life penalty, life
3 without parole. Does it sound fair that they could say
4 that and have no reason?

5 A I don't know whether it is fair or not but I
6 understand that it is possible that they could say that.

7 Q Okay. Well, some people are better at expressing
8 themselves and sticking up for themselves than other
9 people. And some people might not be able to put their
10 emotions into words. But if they just said, my
11 consciously held belief, it would hurt my conscience if I
12 had to change my position. My position, life without
13 parole penalty, could you let them have that, stick with
14 it, does that sound fair that they should be able to say
15 that, retain that position if they don't even have a
16 reason?

17 A No.

18 Q I want to go back to one question that I forgot to
19 ask you at the very bargaining. Do you know anyone else
20 that was called for jury duty?

21 A Like personally?

22 Q Yes, friends, coworkers, anybody?

23 A I do not.

24 Q So there are a lot of rules in court. Some of them
25 are for Mr. Jones, some of them are for lawyers but some

1 of them actually are for jurors. And there is a principle
2 of law, let's say some Juror comes to their individual
3 moral judgment and says the life penalty, that is the
4 penalty I want to vote for and they have a reason. It is
5 actually unlawful, it is against the rules for them to
6 change that position and throw in with the majority--

7 MR. GRAHAM: Objection, Your Honor.

8 THE COURT: Rephrase that question.

9 Q So if you were to be selected on the jury, the jurors
10 would take an oath and that means they have to decide the
11 case on the law and the Judge's instructions. Part of
12 those instructions require jurors to reach their own
13 individual moral judgment based on whatever they are
14 seeing. And it is actually against the Juror oath, it is
15 unlawful for a juror--

16 MR. GRAHAM: Objection, Your Honor, if we can
17 approach.

18 THE COURT: You may.

19 (Whereupon, a bench conference was held in the
20 presence of the Juror but out of the hearing of the
21 Juror.)

22 Q So we were talking about the Juror oath and the way
23 that works is, once an individual moral reaches their
24 individual moral judgment, that is how it is described
25 under the law, once that becomes a consciously held belief

1 that would harm their conscience to change it, they have a
2 duty and obligation to stick with that position. Did you
3 know that?

4 A I don't think so.

5 Q Does it sound fair?

6 A No.

7 Q Why?

8 A Because, again, it is going with one person's belief
9 when it really should be going based on the facts and the
10 evidence to lead to a certain result. What you believe
11 can be different than what somebody else believes but your
12 belief is not what is on trial right now.

13 Q Well, a lot people will describe the first part of
14 the trial as part of the trial is based on science, fact
15 and evidence because something either happened or didn't,
16 got the right guy or didn't. But can you see how
17 different jurors from different walks of life would come
18 here and have different positions on the ultimate question
19 of whether a human being lives or dies?

20 A Yes, I understand that.

21 Q And maybe, well, and just the law is that once
22 somebody has that belief and it is conscientiously held
23 and it would harm their conscience to change their view,
24 their position, that the rules of court say that it would
25 be wrong to coerce or force or bully somebody to give up

1 their belief as to whether Mr. Jones lives or dies. Does
2 that sound fair?

3 A To convince someone to change their stance on a
4 position. Is that what you are asking?

5 Q In a coercive manner, meaning that, sometimes you can
6 just look at somebody and say, you know what, that is
7 their belief, they really think that, that they seem to
8 hold onto this in a really conscious manner, it looks like
9 it would harm their conscience to get them to change their
10 position and yet other people would still try to force
11 them to or coerce them. It would be wrong for that Juror
12 to give up their position just because they were coerced.
13 Does that make sense?

14 A It does make sense.

15 Q Okay. If you saw that going on, whether people were
16 coercing somebody to change their position unless they,
17 for example, their position was they were going to vote
18 for life without parole and you could see it on their
19 face, they really believe that is what they wanted to do,
20 that was their personal individual moral judgment. And
21 things got beyond civil discourse, in deliberations it
22 became coercion. The rules say that is wrong. Would you
23 jump in and stop that?

24 A I want to say yes. A lot of the work that I do
25 currently, because you, you don't want to wrongfully

1 change someone's mind. You want to make sure you are
2 changing their mind based on the information that you
3 have. And the reasoning why they have chose their
4 decision.

5 Q Okay. That sounds right.

6 A My method would actually be, instead of trying to
7 convince you to follow my path, I would understand why you
8 chose the path that you chose.

9 Q Okay. And, again, some of the rules of court are for
10 jurors and each Juror is entitled to absolute respect for
11 their position. And if somebody had a position different
12 from yours you could absolutely respect that?

13 A Yes.

14 Q And you would want your position respected?

15 A Right.

16 Q Okay. And if respect left the jury room and things
17 got beyond civil discourse, became coercive, one of the
18 things you could do is send a note out to the Judge saying
19 I believe things are getting in a coercive environment,
20 fairness, dignity, decorum has left these proceedings.
21 Could you do that?

22 A Yes, absolutely.

23 MR. MCGUIRE: If I can just have one second, Judge.

24 Q That is all I have for you. Thank you very much.

25 MR. GRAHAM: Your Honor, can we approach?

1 THE COURT: 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: Ma'am, I am going to put you outside, I
6 am going to put something on the record the lawyers have
7 alerted me to. Nothing you have done wrong. The question
8 I asked you earlier, not being able to give you an answer.
9 I want to put something about that on the record. Step
10 out and I will have you right back in.

11 (Whereupon, the Juror was excused from the
12 courtroom.)

13 THE COURT: Mr. Graham, you asked for a sidebar, let
14 me hear you.

15 MR. GRAHAM: I approached at sidebar, Your Honor, to
16 tell you that it is the State's belief that she was not
17 going to be qualified. That she has already said that,
18 when she was questioned about not guilty by reason of
19 insanity, that she wanted to know what was going to happen
20 if she found that verdict and that would be important to
21 her in deciding it and Your Honor is never going to be
22 able to tell her that. So she is going to have an
23 unanswered question and I don't believe that that, I don't
24 believe, I think that she expressed that she would not be
25 able to consider that verdict sufficiently enough without

1 us having to delve further into it.

2 THE COURT: Mr. McGuire.

3 MR. MCGUIRE: Well, first off, I will address her
4 comments and statements. I don't believe she ever said, I
5 cannot consider not guilty by reason of insanity. She
6 indicated that she would have some concern not knowing,
7 she said it did not make sense to her. But, you know, all
8 twelve votes in, it will be death; all votes for life
9 there will be life. But we don't know if we vote this
10 other one. And we had to just say, yes, the rules don't
11 allow you to know what would happen and she said, I don't
12 think she, her ultimate response to that was, not I can't
13 consider it. She just said, I would have a concern.
14 Well, people have a lot of concerns in this case, a lot of
15 people would have a lot of concerns. That is not a
16 disqualified issue. If she is substantially impaired, she
17 has got to go but that was not her statement, that wasn't
18 her comment. So based on what she said, taken this up in
19 order, she is qualified. We are in this position because
20 the State doesn't want anyone to know what happens so we
21 are kind of shooting in the dark and if they are in the
22 dark is it fair for someone to have a concern. Sure. Our
23 position was, you could tell them, you could tell them
24 exactly what happens by statute or you could say something
25 along the lines of, we can't tell you exactly what would

1 happen but we can tell you there is a plan, a vehicle in
2 place to take care of that per statute under South
3 Carolina law. So something would happen, there would be a
4 plan, we just can't tell you the details. I am happy if
5 you want to tell her that.

6 THE COURT: What do y'all say on that instruction,
7 that is she, I mean, this is going to come up again. How
8 would, so far I have said nothing, can't go into it. But
9 there will be some monitoring, a plan of supervision
10 monitoring, whatever you want to call that.

11 MR. HUBBARD: Here is the problem, Judge, what I see
12 happening. They are asking all of these question and then
13 they are going say, Judge, during the trial they want to
14 be able to ask our experts what happens. And then they
15 want to be able to bring this up again, this is going to
16 keep going on, Judge, and this is all off the table here.
17 We are way out off the path where we are suppose to be.
18 That is the problem here, that is the problem. And now
19 because we got off the path, she asked a very bright
20 question. She said, well, what happens in this situation.
21 And unfortunately Your Honor can't answer it. And if the
22 jury sent a question out you couldn't answer it. And our
23 problem is, what she said is, in order to consider that
24 she wants that information. So that is why, Judge, if she
25 gets on the jury and we get a conviction and we get death

1 obviously there is going to be other lawyers over on this
2 side and will go, why wasn't that addressed. Why wasn't
3 the State arguing for this and not the Defense. I think
4 it is tainted at this point, that is the problem. She
5 seems to be a very fine person trying hard. But you have
6 got something on the record now, Judge, I think, you can't
7 erase it now. I think it is a problem and it is a problem
8 that if it isn't addressed now it is going to come back to
9 bite us later.

10 MR. MCGUIRE: Well, this is just due to the peculiar
11 nature that we don't want jurors to pass upon NGRI. We
12 would renew our motion to inform them in some sort of
13 fashion that, as the consequence of their NGRI verdict,
14 whether it is just the full statute, you just say this is
15 the statute, read the law word for word as it is in the
16 code books or we agree with something that gets the
17 message across that this is not putting this guy into
18 society or on the street. You know, a reference to we
19 have State laws that deal with this. If you want to go
20 ask specific, a person would always be committed to the
21 South Carolina Department of Health pursuant to statutory
22 guidelines and procedures. We can do that. There are a
23 lot of ways to cure this but this is, I agree with Mr.
24 Hubbard, this is going to come up continually whether they
25 are in voir dire or you are going to get a note from the

1 jury room, from the Foreman, and we have to figure out how
2 to intelligently answer this. And you have two choices,
3 let's keep them totally in the dark which, we believe it
4 would be error if we keep you in the dark and they don't
5 know the consequences of their actions with regard to NGRI
6 pursuant to Simmons, Kelly, Shafer, Poindexter, I will put
7 that on the record. The State wants to keep you in the
8 dark but then when something comes up about the dark and
9 they are confused, well, let's not tell. You know, it is
10 sort, we are sort of in this spiral of having this
11 question come up again and again and again and we have
12 got, I think we have to find, we need to talk about some
13 resolution.

14 MR. HUBBARD: And that is why I keep going, they keep
15 saying the State wants to keep you in the dark. The law
16 says they can't go there.

17 THE COURT: I agree. And, you know, if you start
18 looking at all of the things that jurors aren't told,
19 let's make certain Mr. Jones is not shackled, orange, we
20 are not telling them he is in custody, I mean there is a
21 lot of things that jurors aren't told because it would
22 impact their decision.

23 MR. HUBBARD: Right.

24 THE COURT: We want to decide, what they decide based
25 upon what they are presented with.

1 MR. HUBBARD: Unfortunately with this potential
2 Juror, we got so sidetracked and now there is something on
3 the record that she said she would need to know in order
4 to consider that form of verdict. And, Judge, as much as
5 I don't believe that is what the verdict should be I am in
6 the strange position of saying, because she can't consider
7 it based on what she said, we are in a position now, no
8 matter, if she gets on and there is a conviction and
9 certainly if there is death we are going to be doing this
10 again. That one person from this.

11 MR. MCGUIRE: And, Judge if I can respond to that.
12 First off she responded to Your Honor's questions. She
13 could consider all the verdicts. There was one verdict
14 she had a problem with. She said that she would have
15 concern not knowing the results of it but she never said
16 that is a verdict that I can't consider. She never said
17 that.

18 MR. HUBBARD: No, she said she needed that
19 information in order to make that determination. So that
20 is, the way I read that, Judge, is she can't make that
21 determination without information that Your Honor even
22 said you can't give her. So that is the problem, that is
23 the problem. And this is the first Juror that has
24 happened to. But, Judge, we went down that road for, we
25 have so far with other jurors, that is why I think, I

1 would like it scaled back to keep jurors, the other jurors
2 when we are talking to them that their focus on the two
3 options that you gave. Because as you stated it, you had
4 her on course, just like all these jurors. There is only
5 two options when you get to that second phase. That first
6 phase, you have got four, potential four options. But by
7 walking down this road and why they wanted to do it with
8 this Juror, I don't know but they did. And now here is
9 where we are.

10 THE COURT: Okay. I have heard enough.

11 MR. MCGUIRE: Let me just say one more thing and I
12 will be through.

13 THE COURT: You missed all of that stuff Friday
14 afternoon late.

15 MR. MCGUIRE: Was it about brevity.

16 THE COURT: Yes, it was.

17 MR. MCGUIRE: That was a bad lecture for me to miss.
18 A good way to look at this would be, what if a Juror said,
19 well, so all twelve death, all twelve life, we know what
20 happens, what happens if we, what if we don't agree, we
21 have a non-unanimous jury. What happens then.

22 THE COURT: You are bringing up something we have not
23 even discussed.

24 MR. MCGUIRE: I am saying that is a good way to look
25 at it.

1 THE COURT: No, it is not.

2 MR. MCGUIRE: Well, because that person would always
3 be eligible to serve and would always be qualified even if
4 they had that concern just like this Juror.

5 THE COURT: All right. I agree that both of y'all
6 have concerns. Bring her back in, please.

7 (Whereupon, the Juror entered the courtroom.)

8 THE COURT: Ms. Prasad, I and the lawyers have been
9 talking and of the answers and questions that I did not
10 give you an explanation of what would happen on all four
11 potential verdicts and haven't done that to the other
12 jurors either. You ask very good questions.

13 JUROR: That's my job.

14 THE COURT: Well, since I can't answer your question
15 and that is a big concern of you being able to go forward
16 and make a decision I am going to excuse you from jury
17 service and let you go and thank you for your help and
18 thank you for your patience.

19 JUROR: Thank you.

20 (Whereupon, the Juror was excused from the
21 courtroom.)

22 THE COURT: I excused her because I couldn't answer
23 her question.

24 (Whereupon, a bench conference was held.)

25 THE COURT: Are y'all ready to go to the next panel.

1 MR. HUBBARD: Are they here.

2 THE COURT: Yes.

3 MR. MCGUIRE: Judge, can we put our objection on the
4 record?

5 THE COURT: You may.

6 MR. MCGUIRE: Your Honor, with this Juror we believe
7 that her answers qualified her. She is very logical,
8 rational, expressed a concern not knowing what would
9 happen as a result of the NGRI verdict. She was having
10 concerns in this case and just having concerns doesn't
11 disqualify somebody. And we would just cite back to the
12 cases--

13 THE COURT: Poindexter and all of that.

14 MR. MCGUIRE: And I cited them earlier before she was
15 excused. Just for the record we object to you excusing
16 her.

17 THE COURT: I understand. I took the safe way on
18 that one. So, I understand. Let's bring the next panel.

19 (Whereupon, Juror 249, Sharon Lindler; 254, Jeffrey
20 Long; 19, Emily Atkins; 241, Toshia Latimer Addison;
21 10, Edgardo Alvira; 363 Johnny Rowell; 273, Gail
22 Massaro; 496, Antonio Wright came into the
23 courtroom.)

24 THE COURT: All right, folks, good afternoon, sorry
25 for the few minutes delay but we are moving a little

1 quicker today. And so it has been a little better
2 organized hopefully because of my better efficiency. A
3 couple of things for you. We will place you under
4 momentarily as a group. Go ahead and do that right now,
5 Madam Clerk.

6 (WHEREUPON, the jury was sworn at 3:15 p.m.)

7 THE COURT: I am going to read you a statement of
8 criminal procedure, a little bit of criminal law, a little
9 bit of the aspects of a Capital case and then send you
10 back in the jury room and call you back in one at a time.
11 While y'all are back in the jury room I don't want you
12 talking about the case. Y'all know a little bit about it
13 because I read some of it to you Monday. But you need not
14 discuss that back in the jury room when you come in.
15 Before you come in the Bailiff will give you a list of
16 potential witnesses, not all will be called at trial but
17 could be. Also another sheet where it describes three
18 type of jurors and I want you to review that before you
19 come in. Understanding you are under oath, what you will
20 be asked today is more or less your personal beliefs and
21 opinions which is no wrong answers, just candid and honest
22 answers is what I am looking for. And I need to know a
23 little bit about your availability and any impact of a
24 personal vacation already paid for or graduation or big
25 project, something like that, for availability purposes I

1 will ask you that when I bring you back in. So I will
2 read this statement and send you back and call you in one
3 at a time. You have been summoned as a potential Juror in
4 the case of the State versus Timothy R. Jones, Jr. My
5 name is Judge Eugene Griffith, Jr. and I will be the
6 presiding Judge in this trial. Mr. Jones is charged with
7 five counts of murder. And in South Carolina murder is
8 defined as the killing of any person with malice
9 aforethought. Malice is defined as a person with a wicked
10 or depraved heart, intent on wrongdoing, hatred, ill-will
11 or hostility. The definition of murder excludes any just
12 cause or excuse for the killing. And when the State
13 alleges the offense of murder with certain aggravating
14 circumstances the State can seek the death penalty. Now
15 before and during the entire trial a person accused with a
16 crime is always presumed innocent of each element of the
17 crime which he is charged. The State must prove each and
18 every element of the crime charged by a standard of proof
19 called beyond a reasonable doubt. In most criminal cases
20 Judges determine the punishment upon a conviction. But in
21 a Capital penalty case the jury determines the punishment.
22 In a Capital case the trial is divided in two parts
23 potentially. The guilt or innocence phase which will be
24 the first part then if necessary phase two which will be
25 the punishment phase. The first portion of the case the

1 State must prove the Defendant's guilt of murder beyond a
2 reasonable doubt. If the jury finds an accused guilty of
3 murder then the trial proceeds to the second phase. In
4 the second phase, if the State proves statutory
5 aggravating circumstances beyond a reasonable doubt then
6 the jury considers aggravating and mitigating evidence in
7 deciding the punishment, whether it be either, one of two,
8 life without the possibility of parole or the death
9 penalty. Our law in South Carolina does not allow the
10 State to seek that execution if a person is convicted
11 solely of the murder. The State must prove at least one
12 of the statutory aggravating factors beyond a reasonable
13 doubt. Even if the State proves murder and an aggravating
14 circumstance jurors are required to consider any
15 mitigating evidence or circumstances. Jurors must
16 consider any mitigating facts which would support a
17 sentence other than death. Even if no mitigating
18 circumstances exist jurors are not required to impose the
19 death penalty. In order for a sentence of death to be
20 imposed the verdict must be signed by all twelve jurors.
21 If jurors unanimously decide to sentence a Defendant to a
22 life without possibility of parole sentence then the
23 sentence will be imposed just that, life without the
24 possibility of parole. In this case the State has
25 indicted five counts of murder and has notified Mr. Jones

1 that it intends to seek the death penalty. Mr. Jones has
2 entered a plea of not guilty by reason of insanity. In
3 this case you may hear testimony and evidence showing many
4 things. A wide variety of testimony may be presented to
5 you in this trial. I will instruct you as to how to
6 consider and evaluate the testimony, whether it be defined
7 as evidence of an aggravating factor, evidence of
8 mitigation, which would be any reason to vote for a
9 sentence of life without parole. Evidence of any
10 defenses, evidence of any affirmative defenses such as
11 accident, guilty but mentally ill and not guilty by reason
12 of insanity. Until the testimony and evidence is
13 presented I am not able to tell you exactly what the
14 instructions I will give you. But can you, let me ask
15 this question. Can you accept an oath to meaningfully
16 consider all the testimony and evidence, apply as the law
17 as I instruct it to you and consider all evidence
18 consistent with my instructions on the law. Y'all will be
19 asked that when you come back. So those are my
20 preliminary instructions, procedure and a little bit of
21 law along with I want y'all to study the witness list,
22 types of jurors as well as personal things on your
23 calendar. Step back in the jury room and don't discuss
24 the case and the facts and I will get you back here one at
25 a time.

1 (Whereupon, the jurors were excused from the
2 courtroom.)

3 THE COURT: Bring in number 249.

4 (Whereupon, Juror 249, Sharon Lindler came into the
5 courtroom.)

6 EXAMINATION

7 By The Court:

8 Q Good afternoon, Ms. Lindler.

9 A Hi.

10 Q My name is Eugene Griffith again. You are under
11 oath, we want candid responses, your personal opinions,
12 personal beliefs. It is fine to have an opinion, we just
13 need to know it. So I will ask you several things. First
14 and foremost, did you have anyone try to communicate with
15 you, did you talk to anybody about the case since Monday?

16 A No.

17 Q Did anybody ask you about the case?

18 A No.

19 Q Now, there was a great deal of publicity before
20 Monday. I gave you some facts in the indictments when I
21 read the accusation made by the State of the five murders.
22 Has anything you have heard, where ever it is, four years
23 ago, two years ago, a week ago, my comments. Have any of
24 those things you heard, whether it be through publicity or
25 from my comments, from any source whatsoever caused you to

1 form an opinion about what happened in this case?

2 A No.

3 Q No opinion. Now, I gave you a list of potential
4 jurors, did you review that list?

5 A I did.

6 Q Did you know any folks on that list?

7 A One name I recognized.

8 Q Who would that be?

9 A Mary Beth Hill.

10 Q Ms. Hill?

11 A Yes.

12 Q And you are friends with her or somebody--

13 A I am not friends. Her daughter and my daughter were
14 friends in school.

15 Q Your daughters are friends to some degree?

16 A I am sorry?

17 Q To some degree your daughter and she are friends?

18 A Back in the '90's, it hasn't been recent. She
19 graduated in '05 so it has been a long time.

20 Q Your daughter's friendship with her, would that
21 create an issue for you to be fair and impartial though
22 she is a potential witness?

23 A Oh, no.

24 Q Very well. Now, Ma'am, do you have anything on the
25 horizon, on the calendar that this, if you were selected

1 as a Juror that that would impact some personal plans or
2 obligations you already have?

3 A No.

4 Q Okay. So if you were selected potentially you could
5 serve?

6 A Yes.

7 Q Very good. Now, the lawyers has represented to me to
8 ask this question. This subject matter or this case
9 involves the death of some children. The subject matter
10 is difficult, it is unpleasant and perhaps graphic and
11 harsh. I don't want to represent to you that it is going
12 to be easy. It is not. Would the subject matter of that
13 type make it difficult for you to be fair and impartial to
14 both the State and the Defense?

15 A I wouldn't have too much a problem with it, no.

16 Q Okay. You could do that?

17 A Yes, I could.

18 Q Now, understanding my instructions I gave you earlier
19 on the aspects of the Capital case and how it is in two
20 phases, there is the guilt or innocence phase. The jury
21 has got to reach a verdict in that phase in order to be
22 entitled to go to phase two. So if it is a not guilty
23 verdict in phase one the case ends. If the State proves
24 its case beyond a reasonable doubt it goes into phase two,
25 then it goes into phase two which is the punishment phase.

1 In the punishment phase, there is two options. The jury
2 imposes punishment, one being life and one being death.
3 No in between, no other choices. I gave you a summary, a
4 little short paragraph summary of three types of potential
5 jurors just asking a question that if it were a Capital
6 case, if the State proves its case of murder beyond a
7 reasonable doubt and we are in phase two, you consider
8 aggravating and mitigating circumstances then and the
9 State has prove the aggravating factor beyond a reasonable
10 doubt. Can you describe yourself and find yourself as one
11 of those three types of jurors?

12 A Number three.

13 Q Number three. And that number three is a type of
14 Juror who would want to hear more and all of the evidence,
15 facts and circumstances before imposing either sentence.

16 A Correct.

17 Q Does that describe you?

18 A Yes.

19 Q All right. Now, I am going to go back to phase one
20 and get some more aspects of the law that potentially that
21 you could hear because that is my job is to instruct you
22 on the law as to the law of South Carolina states that,
23 requires this. It imposes a duty for the State to prove
24 its case, presumed Mr. Jones -- that's what I do is to
25 instruct on the evidence and the law. Now, if this case,

1 when it goes to trial the State has got to prove the
2 murder first. They have got to prove the elements of
3 murder, the killing of another of malice beyond a
4 reasonable doubt. Now, also in that phase there are some
5 defenses available to people accused. There are several
6 statutory defenses and I am going to read most of them to
7 you. Potential defenses include identification, accident,
8 involuntary intoxication, self-defense, necessity,
9 insanity, guilty but mentally ill, defense of habitation,
10 entrapment, duress and alibi. Considering those are
11 potential defenses can you give meaningful consideration
12 to any and all of those defenses if they are so presented
13 by the Defense and instructed by the Court and also
14 consider the State's burden of proof beyond a reasonable
15 doubt of the elements of the murder that they are
16 indicting and charging, accusing in this case. Can you
17 give meaningful consideration to all of those factors,
18 the elements of the crime as well as any potential
19 defenses and the Court's instruction and make a fair and
20 impartial Juror in this case?

21 A Yes, sir.

22 Q If the State fails to meet its burden of proof and
23 does not prove it case beyond a reasonable doubt the case
24 ends. In this case because Mr. Jones has claimed one of
25 the defenses and has entered that plea there are four

1 potential verdicts that could be reached by the jury in
2 phase one. There is guilty, guilty but mentally ill, not
3 guilty by reason of insanity and then not guilty at all.
4 Can you give meaningful consideration to any and all of
5 those potential verdict forms in this case, considering my
6 instructions on the law, as to how those two aspects of
7 the law were to work, apply and find facts and evidence
8 which has been presented to you and be fair and impartial
9 in that phase of the case?

10 A Yes.

11 Q So you can consider my instructions, testimony and
12 evidence presented and be fair and impartial to both the
13 State and Mr. Jones?

14 A Yes.

15 Q Now, if the case goes from phase one into phase two
16 and there is a guilty verdict found. At that time the
17 State has then got to prove statutory aggravating factors.
18 There are several and I will name off a couple. Murder of
19 a police, rape of a murder, kidnapping of a murder, murder
20 of a child, murder of multiple people. Those are
21 aggravating factors. The State is required to prove at
22 least one of those factors beyond a reasonable doubt to a
23 jury to be allowed to ask for the death penalty. That is
24 in sentencing, phase two. During that phase the Defendant
25 is also allowed to present mitigating factors and

1 mitigating evidence which are reasons to impose the life
2 sentence. Do you understand that mitigating circumstances
3 by statute are allowed as follows. The Defendant has no
4 significant history of prior criminal conviction involving
5 the use of violence against another person. The murder
6 was committed while the Defendant was under the influence
7 of mental or emotional disturbance. The victim was a
8 participant in the Defendant's conduct or consented to the
9 act. The Defendant was an accomplice in the murder
10 committed by another and his participation was relatively
11 minor. The Defendant acted under duress or under the
12 domination of another. The capacity of the Defendant to
13 appreciate the criminality of his conduct or to conform
14 his conduct to the requirements of law was substantially
15 impaired. The age or mentality of the Defendant at the
16 time of the crime. The Defendant was provoked by the
17 victim in committing the murder. The Defendant was below
18 the age of 18 at the time of the crime. The Defendant had
19 mental retardation at the time of the crime. Those are
20 statutory mitigators and there are also others. How he
21 was raised up, did he come from a broken home, have a hard
22 childhood. Those sort of things are also mitigating
23 factors that jurors consider. Can you meaningfully
24 consider any aggravating factor testimony, the State has
25 got to prove an aggravating factor beyond a reasonable

1 doubt. And likewise consider any mitigating evidence,
2 reason to give a life sentence, give meaningful
3 consideration to all of that testimony. Also apply the
4 law as I instruct it and find a sentence consistent with
5 my instructions on evaluating the testimony and evidence
6 you have heard. Can you do that?

7 A Yes.

8 Q Now, you understand during the sentencing portion
9 there are only two choices. There is no middle ground.
10 Now the death penalty is not automatic. When it gets to
11 the sentencing after guilt if proven the death penalty is
12 not automatic. The State has got to prove the aggravating
13 factor and the jury has got to consider any mitigating
14 evidence. Two sentences, life without parole or death.
15 Do you understand that?

16 A Yes, sir.

17 Q So if a jury were to unanimously find for life
18 without parole the life without parole sentence will be
19 imposed. Likewise if the jury unanimously finds that
20 death is the appropriate punishment then the death penalty
21 would be carried out. Do you understand?

22 A Yes, sir.

23 Q Do you have any reason, moral, personal, religious
24 belief that would prevent you from finding the death
25 penalty?

1 A No.

2 Q Do you have any religious, moral or personal reason
3 or belief that you could not find a sentence of life
4 without parole?

5 A No.

6 Q You could do that also?

7 A Right.

8 Q You know any reason whatsoever you couldn't be a fair
9 and impartial Juror in this case?

10 A No.

11 THE COURT: Mr. Secor.

12 EXAMINATION.

13 By Mr. Secor:

14 Q Ms. Lindler, how are you?

15 A Hi, fine.

16 Q I just want to ask you some questions, if I may. And
17 the Judge was talking to you about you are going to be
18 fair and impartial and follow the law. I want to talk to
19 you about how you feel personally based on your life
20 experience. And I don't want you to be constrained by the
21 idea of trying to say I would follow the law. I just want
22 to know how you feel. Is that okay with you?

23 A Sure.

24 Q As the Judge said, this case involves the possibility
25 of a verdict of not guilty by reason of insanity. That is

1 the plea that has been entered. And did you know that
2 when someone makes a plea of not guilty by reason of
3 insanity that means that they are saying that they did the
4 act in question, meaning in the case that they are charged
5 with murder, they are saying I did the killing. Does that
6 make sense to you?

7 A Yes.

8 Q They are saying that because of a mental disease or
9 defect prevented me from knowing right from wrong, I am
10 therefore not culpable in the way that a sane person would
11 be?

12 A Right.

13 Q Does that make sense to you?

14 A Yes.

15 Q Okay. And some people feel like that kind of a plea
16 is just sort of an excuse or a copout. Is that you. Is
17 that how you feel about that plea?

18 A No.

19 Q So you would seem like, a legitimate plea to enter?

20 A Yes.

21 Q You are open to that?

22 A Yes.

23 Q Okay. Thank you. Let me just go back quickly and
24 forgive me if I have asked this. Did you say you never
25 heard anything about this case even in 2014 when it first

1 happened?

2 A I honestly do not remember much about it, I was going
3 through a -- I was preoccupied at that time.

4 Q Yes, ma'am.

5 A And I remember just bits and pieces but no details
6 about it.

7 Q That's fine. And do you remember any feelings,
8 emotions, reactions you had at all?

9 A No, I hated to hear something like that happened but,
10 you know, I didn't, I am not one that listens to the news
11 and I did not, I just kind of remember it happening but I
12 don't know any of the details about it.

13 Q Okay. I want to talk to you now about your feelings
14 about punishment for a guilty murderer. Okay. So I want
15 you to think a person who has gone to trial and has been
16 proven guilty beyond a reasonable doubt, unanimously,
17 there is no question about it. And as the Judge told you,
18 murder means the malicious killing of a innocent person.
19 So it would mean a person that knew right from wrong, who
20 had no excuse, justification or defense and maliciously
21 killed multiple children. That is the situation that we
22 are talking about. And knowing that there are two options
23 for sentencing for somebody who would be convicted of
24 that, what I am interested in knowing, just based on that,
25 when you know somebody is absolutely guilty of that, what

1 are your feelings about the death penalty as the
2 appropriate penalty for that guilty murderer.

3 A If it is proven that it was just hateful, meanness
4 and, I could see myself going towards the death penalty.
5 But if they were mentally unstable then I would lean for
6 life.

7 Q Yes, ma'am. I understand. And I want to make sure I
8 am clear. If you were to find the person not guilty by
9 reason of insanity there would be no penalty phase. Does
10 that make sense?

11 A Okay. Yes.

12 Q So if you found a person not guilty or if you found
13 them not guilty by reason of insanity the trial ends.

14 A Okay.

15 Q It is only if they are found guilty that we go to the
16 second phase.

17 A Right, right. I understand that.

18 Q So if you found a person guilty, so you would address
19 the issue, insanity, and said he is not insane. All the
20 jurors say he is not insane, he is guilty of murder,
21 malicious killing of innocent children. At that point how
22 do you feel, just you, how do you feel about the death
23 penalty as the appropriate punishment.

24 MS. MAYES: Your Honor, I believe this question has
25 been asked and answered with the previous question.

1 THE COURT: I will let her answer but I agree with
2 you, very similar to the prior question so I am going to
3 overrule and let her answer this one time or the second
4 time.

5 A I have never thought about the death penalty before.
6 I have never been placed in the predicament where I would
7 have to choose anything like that. It would be hard for
8 me to impose a death penalty but in certain circumstances
9 I could see myself doing that.

10 Q Are there any circumstances for you where you think
11 it should be automatic?

12 A No. I wouldn't think it would be an automatic thing,
13 no.

14 Q And for you and fixing punishment for a guilty
15 murder, does the person's character, background, their
16 walk in life, where they came from, does that stuff matter
17 to how they are punished to you?

18 A Yes, it does to me.

19 Q And I appreciate that. And I know these are hard
20 questions and I don't mean to give you a hard time. But
21 and don't let me put words into your mouth but it sounds
22 to me like you think the death penalty does serve a
23 purpose in society. Is that fair to say?

24 A Yes, it does. In certain circumstances, yes.

25 Q I want to go through some principles of law that

1 govern the penalty phase in these types of cases. Okay.
2 Again, the penalty phase being the person was already
3 found guilty and they know they did it, we are at the
4 point where you are accessing whether they are going to
5 live or die. Did you know that in South Carolina the
6 death penalty is never required in any case?

7 A No.

8 Q That is the case in South Carolina and the entire
9 United States. There is no case for which the death
10 penalty is required, meaning the law is satisfied with a
11 sentence of life without parole in any case, the worst
12 case you can possibly imagine. Does that seem reasonable
13 to you?

14 A Yes.

15 Q Does that seem like the way it should be?

16 A Yes.

17 Q And the way that a Juror goes about accessing the
18 determination of life or death is, as the Judge told you,
19 between aggravating circumstances and mitigating
20 circumstances. Aggravating circumstances are things that
21 the State has to prove beyond a reasonable doubt to the
22 entire jury. And there are things that the State suggest
23 are reasons for a sentence of death. Does that make
24 sense?

25 A Yes.

1 Q Okay. And the other side is mitigating
2 circumstances. Mitigation is any reason to vote for life.
3 Does that sound reasonable to you?

4 A Yes.

5 Q All right. And mitigation, it is important that I
6 tell you, mitigation is not an excuse or a justification.
7 As we talked about, it could be completely unrelated to
8 the murders that you found a person guilty of, right?

9 A Right.

10 Q And mitigation also doesn't have to be proven beyond
11 a reasonable doubt and it doesn't have to be proven
12 unanimously. And that is because the law says that a
13 Juror can vote for life for any reason, no reason or based
14 on mercy alone. And any reason would be like the things
15 we were talking about, mitigating factors that a Juror
16 finds. And one Juror might find, they say it is
17 mitigating to me that the person had a good relationship
18 with their father. I am going to choose that to vote for
19 life. Another Juror might say, well, I didn't see that
20 but I thought he had some mental health problems, for me
21 that is mitigating, I am going to vote for life. They
22 don't have to agree, they can have their own reasons. And
23 you could respect each jurors authority and right to find
24 their own mitigation?

25 A Yes.

1 Q Okay. And a Juror also has the right to vote for
2 life for no reason and you could respect a Juror that
3 said, I have heard everything, I have considered
4 everything, I can't say exactly what it is, I can't put it
5 into words but for me in this case the right sentence is
6 life without parole. You could respect a juror's right to
7 do that?

8 A I could.

9 Q And lastly, a Juror is always empowered to give life
10 for mercy and if you saw a Juror who said, I have heard
11 everything, I have considered everything and I have just
12 decided to give mercy in this case and that is my decision
13 and I am giving life for mercy. And you could respect a
14 juror's right to do that, right?

15 A Yes.

16 Q The ultimate decision in whether a Juror decides
17 whether another human being lives or dies is based on the
18 juror's individual moral judgment. That comes from your
19 moral compass, your sense of right from wrong, your walk
20 in life. Does that make sense?

21 A Yes.

22 Q And I assume you would agree that there are people
23 that make moral decisions that are different from yours
24 but you respect the fact that they have the right to make
25 moral decisions for themselves.

1 A Sure.

2 Q Likewise you expect people to respect the moral
3 decisions that you make for yourself?

4 A Right.

5 Q And the same is true and the law required the same in
6 the penalty phase deliberations of a Capital case that
7 peoples individual moral judgments be respected. Does
8 that make sense to you?

9 A Yes.

10 Q And once a Juror arrives at their individual moral
11 judgment on penalty it would be unlawful for them to be
12 bullied or pressured to change their individual moral
13 judgment. Do you agree that that is the way that it
14 should be?

15 A Could you repeat that?

16 Q Yes, ma'am.

17 A I just want to make sure I understand what you are
18 saying.

19 Q My fault. It was probably not very well said. In
20 the penalty phase the decision, each juror's decision on
21 life or death has to be their own individual moral
22 judgment?

23 A Yes.

24 Q And once a person arrives at their individual moral
25 judgment they say, I have arrived at my individual moral

1 judgment and it is life?

2 A Right.

3 Q It would be illegal for them to be bullied or
4 pressured or coerced out of that individual moral
5 judgment?

6 A Correct.

7 Q Does that make sense?

8 A Yes, it does.

9 Q And if you saw that happening to somebody you could
10 bring it to the Judge's attention and say, somebody is
11 being pressured or bullied, this is improper?

12 A Correct.

13 Q Okay. Do you have any idea if you know anybody who
14 has been called for jury duty or seen anybody that you
15 know coming to the Court House?

16 A From last Monday?

17 Q Yes, ma'am.

18 A Yes, I did know of two people.

19 Q Just from church or--

20 A One I worked with and the other is just like a friend
21 of a friend.

22 Q Okay. Thank you. Subject to the Court's prior
23 rulings I will stop now. Thank you.

24 THE COURT: Ms. Mayes.

25 EXAMINATION

1 By Ms. Mayes:

2 Q Good afternoon, Ms. Lindler.

3 A Hi.

4 Q My name is Suzanne Mayes, I am one of the prosecuting
5 attorneys in this case. I am just going to have a couple
6 of questions for you mainly to just follow-up on some of
7 the questions that you just answered.

8 A Okay.

9 Q One of the questions that you got asked was about
10 your views on the death penalty and you said you had never
11 really thought about it before.

12 A That's true.

13 Q So until you came in or until you came in last Monday
14 and found out that this was, in fact, a death penalty case
15 did you have any views on the death penalty?

16 A I haven't thought a whole lot about it. I realize
17 that I would probably be asked that question. And I have
18 thought some about it, I guess I could, I would just have
19 to listen before I made a decision. I can't say if I
20 would say yes, I could go with the death penalty until I
21 heard the case. I couldn't make a decision, I can't.

22 Q So let me follow-up a little bit more on that then.
23 When the Judge spoke to you about the three types of
24 jurors and you said you were Juror number three. Juror
25 number three is a Juror that can give either life or the

1 death penalty?

2 A Right.

3 Q Juror number two is a Juror that just doesn't feel
4 comfortable with the death penalty at all. So I want you
5 to take a moment and think about that so that you can
6 distinguish which one you may actually be.

7 A I would admit it would be hard to give a death
8 penalty but if it was without any other circumstances and
9 the person just seemed hateful and intent on doing that
10 with, I could see myself maybe choosing that.

11 Q Okay. And I need to follow-up a little bit more.

12 A I know, I am still indecisive on it because it would
13 be taken someones life is, would be a hard thing to do.

14 Q And so that is why I want to follow-up a little bit
15 more. Because now we are at the stage where you kind of
16 can't be in between.

17 A I know, I understand.

18 Q You are indecisive.

19 A I understand. I just feel like after I listen to the
20 case and I would just know better.

21 Q But you don't know for sure if you could actually
22 vote for the death penalty--

23 A I could if I had enough to point to that direction.
24 I mean, I could possibly choose that.

25 Q You could possibly choose that?

1 A Yes, I could.

2 Q Another question now I want to follow-up on is when
3 we talk about potential verdicts being life or the death
4 penalty, the death penalty, if you are number three as
5 opposed to Juror type number two, the death penalty would
6 be something that you don't just consider but you would
7 actually have to be able to do if you found that to be
8 appropriate. So you would actually have to render a vote
9 for it. Does that make sense?

10 A Yes.

11 Q So in addition to that, if a jury were to determine
12 at that final stage that the death penalty was appropriate
13 and it was a unanimous decision among jurors, every Juror
14 would then have to sign what would be termed the death
15 verdict acknowledging your name and by signing that you
16 are acknowledging the sentence of death. Can you state
17 with complete certainty that you are capable of rendering
18 that vote if the circumstances warranted it?

19 A Yes.

20 Q You could sign your name to that?

21 A Yes.

22 Q Now, one of the questions that you were asked earlier
23 was about considering evidence of insanity or mental
24 illness, things of that nature. You stated that you could
25 consider that type of evidence. If the State potentially

1 were to offer evidence to the contrary would you be able
2 to give that equal weight and consideration?

3 A Yes.

4 Q To the contrary?

5 A Yes.

6 Q Another thing I wrote down is when defense counsel
7 asked you if the death penalty served a purpose in society
8 you said that, yes, it does, in certain circumstances.

9 A Yes.

10 Q So do you agree that the law should be to have the
11 death penalty or would you prefer laws where the death
12 penalty couldn't be imposed at all?

13 A I can see reasons to have the death penalty, yes.

14 Q So you would be in favor of keeping the law exactly
15 as it is now where the death penalty is one of the
16 options?

17 A Yes.

18 Q In certain cases?

19 A Yes.

20 Q And then about your response where you said, yes, you
21 would consider the death penalty, even vote for the death
22 penalty in certain circumstances. Are there other cases
23 that you have seen or you recall historically, whether in
24 this State or across the Nation, where you found that
25 those circumstances existed?

1 A Yes.

2 Q What are some of those cases?

3 A You just want me to name a case that I can, Pee Wee
4 Gaskins.

5 Q That is a case you remember historically right here
6 in South Carolina?

7 A Right.

8 Q And that is the case you knew of and felt that the
9 death penalty was appropriate in that case?

10 A I did.

11 Q Thank you, Ms. Lindler.

12 THE COURT: Anything further, Mr. Secor?

13 MR. SECOR: No, sir.

14 THE COURT: Anybody want to be heard on her?

15 MR. HUBBARD: No sir, Your Honor.

16 THE COURT: Ms. Lindler, the Court will find you,
17 based upon the questionnaire and the questions and answers
18 today, to be a qualified Juror. That doesn't mean you are
19 on the jury, it means you are qualified to be selected.
20 Now, you are number 249 and so I am going to tell you, you
21 are still going to remain under oath until you come back
22 and that oath goes with you. You are not allowed to talk
23 about the case with anyone. You are not allowed to answer
24 questions about the case to anyone. I am directing you to
25 not do any independent research, social media, internet or

1 otherwise. What you need to decide the case you will be
2 getting here. Along with the other jurors, you all will
3 get at the same time under the court record, the Judge,
4 here in the courtroom, everybody presented. Things
5 outside of the courtroom are not relevant to the proof
6 required by the State and the Defense in this case. You
7 decide it here. I want you to hear it here. I don't want
8 you deciding it before you come back in because I asked
9 you, have you formed an opinion and you said no. When you
10 come back in that is how I want you to remain. Now, I
11 understand the publicity, I want you to minimize your
12 contact with that publicity and come back in here, that is
13 to all the jurors, has anything happened, run across
14 something which would cause you now to have already formed
15 an opinion. And so I don't want, I want you to be able to
16 answer that question honestly, I don't need you to go out
17 and form opinions. Now, can you go on the internet?

18 JUROR: Yes, I can.

19 THE COURT: Go on the website and go under qualified
20 jurors. It will say, qualified jurors please look, back
21 tomorrow, come back tomorrow night and check again.
22 Finally it is going to say, please report to this
23 courtroom at such and such time on such and such date.
24 That is when I will see you again and until that time
25 enjoy yourself. Thank you.

1 JUROR: All right.

2 (Whereupon, the Juror was excused from the
3 courtroom.)

4 THE COURT: Are y'all ready for Mr. Jeffrey Long.

5 MR. MCGUIRE: Your Honor, can I have Joy to mark
6 this, this is Ms. Prasad's jury questionnaire, if I could
7 mark as a Court's exhibit.

8 COURT REPORTER: This will be number 73.

9 (Whereupon, Court's Exhibit 73 was marked for
10 identification only.)

11 MR. MCGUIRE: Number 73. And my argument, Judge,
12 that Ms. Prasad was far more qualified on the issue of
13 NGRI than at least three white Christian men were on
14 considering the verdict of life without parole. And I do
15 believe that their argument is pretext, it is truly really
16 based on the fact she is South Asian. Thank you.

17 MR. HUBBARD: Your Honor, it is not every day I get
18 called a racist. But I am going to tell you, there is
19 absolutely no place for that here. And she gave an answer
20 and I have the duty as an administer of justice to stand
21 up whether he likes it or not. And to be called a bigot
22 in a courtroom is offensive.

23 MR. YOUNG: Judge, in fairness, I need to respond to
24 that. It is sort of a fundamental misunderstanding when
25 we say somebody could be stricken for their race, it

1 doesn't necessarily mean somebody is racist. For
2 instance, there is a prosecutor who I am friends with down
3 in Beaufort who says I am Batson proof because I let my
4 lead detective pick my jury, he is an African American
5 male. And I told him, no, I am sure he is not racist but
6 you might also strike some black folks because who doesn't
7 think they are good jurors and the reason could be race.
8 So my allegation is not that Mr. Hubbard, himself, is
9 racist but he might have a view that this person's
10 background and religion would affect their deliberations
11 and decision making process. I don't mean anything
12 offensive by it--

13 THE COURT: Well, I mean here is what, I guess,
14 bothers me is that issue was not discussed factually by
15 anyone when she was being presented, no one did.

16 MR. MCGUIRE: I know, that's my fault.

17 THE COURT: The question was all about a response
18 that she said, I would like to know the answer to this
19 question. We can't answer that. And she was very
20 articulate and logical and linear in her thinking. I was
21 very impressed with her.

22 MR. MCGUIRE: She was very rationale and very
23 logical, I agree with that. That is why we thought she
24 was a good Juror. She, herself, is an expert in her field
25 in insurance. And we thought she would give great weight,

1 her testimony, which is, of course, that is what our
2 defense is.

3 THE COURT: Why would you bring up race when that was
4 not even--

5 MR. MCGUIRE: I gave it some thought when I knew that
6 all of her answers taken as a whole might have her leaning
7 slightly towards the State as a favorable Juror to them, I
8 kept racking my brain, well I don't understand why they
9 would be trying to strike her. And then I reread her
10 questionnaire and it occurred to me late, that is my
11 fault, I am sorry. I apologize.

12 THE COURT: Well, I mean, did you miss her
13 testifying?

14 MR. MCGUIRE: I am sorry?

15 THE COURT: Did you miss her testifying?

16 MR. MCGUIRE: No, sir.

17 THE COURT: Then why did you read the questionnaire
18 to decide what race she was.

19 MR. MCGUIRE: No, no, no. When I went through her
20 questionnaire again and I was looking over everything and
21 I was trying to think, why would the State strike
22 somebody. I am sorry, why would the State, I misspoke.
23 Why would the State try to keep a Juror on when, let me, I
24 misspoke again. She, the State tried to have her declared
25 not qualified. They wanted to get rid of her and when all

1 of her answers are taken as a whole, I agree with Your
2 Honor, she is very smart, rational, likable and her
3 answers taken as a whole can actually be interpreted as
4 leaning towards the State, an ideal Juror for them. There
5 is some principles that she really didn't agree with that
6 would be favorable to us. So I was racking my brain, why
7 would he try to get rid of her, why were they trying to
8 get rid of her. Now, we thought she would be very good
9 for expert testimony, she is an expert herself. That is
10 where we are putting a lot of weight on. And then I
11 reread the fact that she is Hindu and it makes sense,
12 maybe that is it. I apologize for bringing it up late.

13 THE COURT: I don't think the State presented any
14 indication race or religion that impacted their, the sole
15 argument presented to me was, what was presented. I can
16 understand Mr. Hubbard is taking offense to it because I
17 didn't feel any of that. I mean,--

18 MR. MCGUIRE: It was not discussed, it didn't come up
19 but it is information that we have knowledge of. And I
20 was puzzled why they were trying to have her disqualified
21 when her answers seemed very favorable to the State. And
22 then they say things like, Judge, if you put her on, if
23 you qualify her this whole case is going to get reversed.
24 It is actually not true. If we are advocating that she be
25 qualified and you find her so qualified we can't be heard

1 at all. So there is no reversal issue there and they kept
2 telling Your Honor, Judge, you know, if you make this
3 mistake this case is coming back, the whole thing is
4 getting reversed. That is not true. So that is my--

5 THE COURT: Y'all are making that same argument from
6 time to time.

7 MR. MCGUIRE: When it is accurate.

8 THE COURT: Well then, quit blaming them for arguing
9 the law too.

10 MR. MCGUIRE: I am not.

11 THE COURT: Sit down, I have heard enough.

12 MR. MCGUIRE: All right. Thank you.

13 THE COURT: Bring the next Juror in.

14 MR. HUBBARD: Just for the record, Your Honor ruled
15 with me and it was on law which is what my objection was
16 on.

17 THE COURT: And the Court will also state, I did not,
18 could not, did not create a curative question or
19 instruction. I did not create that at that time and that
20 was a basis also for my excusing her is I couldn't figure
21 a way to cure that question because it is a difficult
22 question. And I told y'all, I am working on it.

23 (Whereupon, Juror 254, Jeffrey Long entered the
24 courtroom.)

25 EXAMINATION

1 By The Court:

2 Q Good afternoon, Mr. Long.

3 A How is it going.

4 Q How are you doing?

5 A I am pretty good.

6 Q You are under oath still since Monday. And I will go
7 back to my Monday instructions to you. Have you talked to
8 anybody about the case since Monday?

9 A No, sir.

10 Q Okay. Anybody try to talk to you about the case
11 since Monday?

12 A No, sir.

13 Q There has been a lot of facts presented Monday by the
14 Court, I read the indictments. There are other publicity
15 out there, four years ago, a few months ago, this week,
16 all sort of publicity. Any information out there, under
17 the Court, from where ever source you might have gotten
18 it, have you formed an opinion based upon any of that that
19 those facts and circumstances, reading the indictments,
20 did you form an opinion as to what happened in this case
21 already?

22 A No, sir.

23 Q No opinion whatsoever?

24 A No, sir.

25 Q Now, asked about your work, personal schedule. What

1 have you got upcoming through the end of May, early June,
2 the first week of June or so that would be extreme
3 hardship for you to reschedule like a prepaid vacation or
4 something along those lines or medical procedure you have
5 got scheduled. What have you got on your agenda?

6 A Just a dentist appointment, I can reschedule that.

7 Q It is just a regular dentist appointment?

8 A A tooth.

9 Q Perhaps we can work around that, depending on the
10 scheduling. All right. So nothing big on your schedule.

11 A No.

12 Q Did you look over the potential witnesses?

13 A Yes, sir.

14 Q A lengthy list. The parties are required to tell me
15 all potential witnesses and likely not to call all of
16 them. If they don't tell potential witnesses then the
17 Juror or Court, somebody half way through the trial will
18 go, I know that person and then that creates an issue of
19 being fair and impartial. What I don't want is somebody
20 you are connected to, to any of the jurors, to me, that
21 would create an issue to be fair and impartial. Nobody is
22 connecting to you whatsoever?

23 A No, sir.

24 Q Did you understand my instructions I gave you thirty
25 minutes ago or so on the aspects of criminal procedure,

1 Capital case that is being in two phases. Did you
2 understand all of that?

3 A Yes, sir.

4 Q Do you understand that the case will proceed in two
5 phases. The first phase is guilt or innocence and then if
6 necessary the second phase which will be the punishment
7 phase. There are two options, life and death, only two
8 options available to the jurors. Do you understand that?

9 A Yes, sir.

10 Q And you understand the testimony in this case
11 involves the death of several children. The testimony
12 will be graphic, harsh, unpleasant and difficult, not an
13 easy thing to talk about or see or hear. Would the
14 subject matter of that type, of this difficult testimony,
15 unpleasant, create an issue for you being fair and
16 impartial to both the State and Defense or can you
17 consider for what it is?

18 A Yes, sir.

19 Q Can you do that?

20 A Yes, sir.

21 Q You can be fair and impartial to both?

22 A Yes, sir.

23 Q Now, we get to the second phase, the sentencing
24 phase. So I am presuming a verdict of guilty has been
25 found. Mr. Jones is presumed innocent, so nothing has

1 been proven. You have very little facts, other than what
2 I read to you Monday, the accusations of five murders. Do
3 you understand?

4 A Yes, sir.

5 Q Just assuming those facts, the State proves guilt
6 beyond a reasonable doubt, we go into phase two. The
7 jurors consider an aggravator factor as the State can
8 prove and, or mitigating factors are shown to you.
9 Mitigating factors are reasons to not impose the death
10 penalty. Did you read the three types of potential
11 jurors, that little summary of the three types of jurors?

12 A Yes, sir.

13 Q Can you identify yourself as any one of those three
14 types?

15 A Type three.

16 Q Type three. And that means, the way I think it is
17 drafted is that you are the type of person if the State
18 has proven the guilt of the murder, then understand the
19 law requires the State to prove an aggravating factor and
20 then will consider any and all mitigating factors that are
21 presented and make a fair verdict, determination of life
22 or death at that time.

23 A Yes, sir.

24 Q Does that describe you?

25 A Yes, sir.

1 Q Now, understand this, in the first phase, going back
2 to phase one, guilt or innocence. Their defenses which
3 people accused of crimes can claim on murder, I am going
4 to read those to you quickly. And I will tell you now,
5 all of them won't be instructed, some, one has plead, the
6 not guilty by reason of insanity is one defense that has
7 already been plead. But there may be another defense that
8 may come into play, depending on the testimony. I have
9 heard the testimony but I can't tell you, okay, that
10 defense also will come into play. I don't know because I
11 haven't heard any of the testimony either. So I will
12 tailor my instructions then. I am going to read all the
13 defenses to you right now. Potential defenses,
14 identification, accident, involuntary intoxication,
15 self-defense, insanity, guilty but mentally ill, defense
16 of habitation, entrapment, duress or alibi. Those are all
17 potential defenses afforded to people under our statutes.
18 Now, understanding those are out there potentially, can
19 you give meaningful consideration to any of the
20 instructions on those potential defenses, consider the
21 testimony presented by the State, testimony and evidence.
22 The State has the burden of proving the elements of murder
23 beyond a reasonable doubt. The defenses would be
24 considered there to, can you consider that testimony and
25 evidence, my instruction of the law and make findings and

1 a verdict consistent with my instructions and the facts
2 and evidence that has been presented in a trial?

3 A Yes, sir.

4 Q Can you do that?

5 A Yes, sir.

6 Q So it is kind of a long way to ask. Can you be fair
7 and impartial and consider my instructions sitting as a
8 Juror?

9 A Yes, sir.

10 Q Listen appropriately and meaningful consider?

11 A Yes, sir.

12 Q You can do that?

13 A Yes, sir.

14 Q Now, because of the defense entered by Mr. Jones of
15 not guilty by reason of insanity there are four potential
16 verdicts in phase one. There could be guilty, guilty but
17 mentally ill, not guilty by reason of insanity and not
18 guilty whatsoever. Those are four potential verdicts.
19 The Court will instruct on the respective aspects of what
20 that means. Can you give meaningful consideration to each
21 and every one of those four potential verdicts, depending
22 on the facts and testimony presented to you and my
23 instructions and be a fair and impartial Juror?

24 A Yes, sir.

25 Q Are any one of those four potential verdicts that you

1 could not give meaningful consideration to?

2 A No, sir.

3 Q All right. If a not guilty verdict, not guilty by
4 reason of insanity is found the case ends. If guilty is
5 proven by the State beyond a reasonable doubt we go to
6 phase two. Phase two is the determination of the
7 punishment. Two choices, life or death, nothing else, no
8 other in between, one of the two. During that time the
9 State has got to prove, in addition to the murder
10 statutory aggravating factor. There are several, I will
11 list them all to you and then come back and ask you a
12 question. Murder of a policeman, rape of murder,
13 kidnapping of murder, murder of a child, multiple murders.
14 Those are potential aggravating factors the State must
15 prove beyond a reasonable doubt. Also during the
16 sentencing phase mitigation circumstance facts are
17 presented. So understanding that certain mitigating
18 factors can be presented, I am going to read off the
19 statutory circumstances which jurors can consider. The
20 Defendant has no significant history of prior criminal
21 conviction involving the use of violence against another
22 person. The murder was committed while the Defendant was
23 under the influence of mental or emotional disturbance.
24 The victim was a participant in the Defendant's conduct or
25 consented to the act. The Defendant was an accomplice in

1 the murder committed by another and his participation was
2 minor. The Defendant acted under duress or under the
3 domination of another person. The capacity of the
4 Defendant to appreciate the criminality of his conduct or
5 to conform his conduct to the requirements of law was
6 substantially impaired. The age or mentality of the
7 Defendant at the time of the crime. The Defendant was
8 provoked by the victim in committing the murder. The
9 Defendant was below the age of 18 at the time of the
10 crime. The Defendant had mental retardation at the time
11 of the crime. Other mitigating factors, those are
12 statutory meaning the statute has outlined those,
13 potentially would be, how Mr. Jones grew up, he had a
14 troubled childhood or a broken home, whatever aspects of
15 his walk in life. Jurors can consider that as a
16 mitigating factor. Thus understanding in the sentencing
17 portion of the trial can you give meaningful consideration
18 to the testimony and evidence of the aggravating factors
19 which the State has got to prove beyond a reasonable doubt
20 and any mitigation circumstances and evidence which are
21 reasons to vote for life, whether they be statutory or
22 just non-statutory. Can you give meaningful consideration
23 to all of that testimony and then consider my instructions
24 on the law, give consideration to the testimony and apply
25 that law as instructed and be a fair and impartial Juror

1 in this case?

2 A Yes, sir.

3 Q Now, you understand the death penalty is not
4 automatic.

5 A Yes, sir.

6 Q If twelve jurors vote unanimously for the death
7 penalty all twelve jurors must sign the verdict on the
8 sentencing phase?

9 A Yes, sir.

10 Q And if twelve jurors unanimously vote for a life
11 without the possibility of parole that sentence is carried
12 out. Do you understand?

13 A Yes, sir.

14 Q Do you have any religious or moral or personal belief
15 which would prevent you from imposing the death penalty?

16 A No, sir.

17 Q Do you have any religious, moral or personal belief
18 which would prevent you from imposing a life without the
19 possibility of parole sentence?

20 A No, sir.

21 THE COURT: All right, Mr. Young.

22 EXAMINATION

23 By Mr. Young:

24 Q Good afternoon, Mr. Long.

25 A How is it going.

1 Q It is going all right. Thank you for your patience
2 with us in this process. Now is my opportunity to just
3 sort of have a conversation with you about your opinions.
4 Okay.

5 A All right.

6 Q Fair enough?

7 A Yes.

8 Q So if I am doing all the talking I am doing it wrong.
9 Okay?

10 A All right.

11 Q I am trying to hear from you. All right.

12 A All right.

13 Q Do you know any of the other jurors who were called
14 in on Monday?

15 A No, sir.

16 Q Okay. I want to talk to you a little bit about, the
17 Judge has told you that Tim has plead not guilty by reason
18 of insanity. Do you understand that?

19 A Yes, sir.

20 Q And not guilty by reason of insanity in South
21 Carolina means that because of a mental disease or defect
22 a person was not able to understand the legal or moral
23 wrongfulness of their conduct. Does that make sense to
24 you?

25 A Yes, sir.

1 Q So they don't dispute that they did the act, they did
2 the killing. Are you with me on that?

3 A Yes, sir.

4 Q When they say, I didn't know, I couldn't appreciate
5 that it was wrong. Does that make sense to you?

6 A Yes, sir.

7 Q Understanding that, some people say, well, that
8 defense for me is sort of a copout, it is just an excuse,
9 it is not something that I could ever see myself finding
10 in a case like this. How do you feel about it?

11 A I know there are people with problems.

12 Q So that is something, if I hear you right and don't
13 let me put any words in your mouth. Okay?

14 A All right.

15 Q You think that there are people out there that have
16 problems?

17 A Yes.

18 Q Okay. I know you are in a hot seat and you are
19 nervous, none of the cameras are on, nobody can report
20 your name or any of your responses or anything like that.
21 Okay.

22 A All right.

23 Q Does that make you feel better?

24 A Yes.

25 Q I am going to move on and talk about your views of

1 punishment. Okay.

2 A All right.

3 Q Can you tell me a little bit about how you feel, just
4 sort of in general about the death penalty?

5 A I know you have to do something pretty bad to get it.

6 Q All right. Well, let me talk to you about it this
7 way. I want to make sure we are talking about the same
8 thing. Okay?

9 A All right.

10 Q Let's say you were on a jury and you and eleven other
11 jurors sat through a case. Okay?

12 A All right.

13 Q And you and everybody else decided that the Defendant
14 in that case was guilty, guilty of murder. And murder, as
15 the Court has defined it for you, is the intentional
16 killing of another with malice aforethought. Right?

17 A All right.

18 Q And the Judge has told you what malice means, evil,
19 wicked, wicked hearted, hatred. Right?

20 A Yes.

21 Q Of an innocent person. Are you with me on that?

22 A Yes, sir.

23 Q It means it wasn't self-defense, it wasn't an
24 accident, any evidence that the Juror heard about insanity
25 they rejected and they said, no, the Defendant in that

1 case knew what they were doing, they knew the difference
2 between right and wrong and they chose to kill an innocent
3 person. Are you with me so far?

4 A Yes, sir.

5 Q All right. And then we have that second trial that
6 the Judge has talked to you about, the penalty trial.
7 Okay. And then in that trial it was proven beyond a
8 reasonable doubt to all the jurors that the Defendant had
9 killed multiple children. Are you with me on that?

10 A Yes, sir.

11 Q And I want ask you, what are your feelings about the
12 appropriateness of the death penalty for that guilty
13 murder?

14 MR. HUBBARD: Objection, Your Honor, with mitigating
15 as well. It is not a fair question.

16 MR. YOUNG: I will rephrase.

17 THE COURT: Rephrase it, sustained.

18 Q At that point in the trial do you have any feelings
19 about whether or not the death penalty was appropriate
20 prior to hearing from, about mitigation?

21 A No.

22 Q Okay. You don't have any leanings one way or the
23 other?

24 A No, sir.

25 Q Okay. And you understand what we are talking about,

1 someone has been found guilty of murder?

2 A Do what?

3 Q You understand that we are talking about somebody who
4 has already been guilty. So that part is done, right?

5 A Yes.

6 Q For that guilty murderer what are your thoughts
7 about, should we have a death penalty or should we not
8 have a death penalty, for people who have been convicted
9 of aggravating murder and you are the Governor for the
10 day, you decide we are going to have the death penalty or
11 not have the death penalty. What would you say?

12 A I would say have a death penalty.

13 Q Okay. Can you tell me why?

14 A Because there is a lot of killing out there just for
15 no reason.

16 Q Is that sort of a deterrence, is that where you sort
17 of come from?

18 A There is people that kill and then they kill again
19 and they want to get out.

20 Q Are there any cases that you think the death penalty
21 is the only appropriate punishment?

22 MR. HUBBARD: Your Honor, I do object to that.

23 MR. YOUNG: Your Honor, this is Ms. Mayes question.

24 MR. HUBBARD: I object to that question. The only
25 punishment. I think we are going down the wrong road.

1 THE COURT: Rephrase your question. Y'all both used
2 questions very similar in nature. Try to rephrase it, I
3 think I know what you are trying to, the response. Go
4 ahead.

5 Q Any case out there that you have heard about or just
6 sort in your head where you think the death penalty is the
7 appropriate punishment.

8 A Like the O.J. trial, if he was, if he was found
9 guilty then, yes. But he wasn't found guilty.

10 Q Right. Do you think you could have learned anything
11 about O.J. where you say, all right, maybe the death
12 penalty is not the appropriate punishment.

13 A Like if it is, like background or something was wrong
14 with him.

15 Q Okay. I understand where you are coming from there.
16 Do you think the death penalty is sort of a punishment of
17 last resort?

18 A No.

19 Q Do you think it is sort of reserved for the worst of
20 the worst?

21 A Yes.

22 Q Can you tell me your views about whether or not we
23 should take into consideration a person's whole life while
24 in deciding whether or not they live or die?

25 A Yes.

1 Q Okay. And that is sort of the background stuff the
2 Judge was talking to you about earlier?

3 A Yes.

4 Q I want to talk to you about, I am going to move a
5 little further and talk about how a Juror comes to this
6 decision and what their guidance from the law is. Okay?

7 A Okay.

8 Q You understand the Judge has told you the death
9 penalty is not required, never required, it is never
10 automatic. Right?

11 A Yes.

12 Q Not in this case, not in any case, not the worst case
13 you could imagine. Does that make sense to you?

14 A Yes, sir.

15 Q How we get there is through this stuff called
16 mitigation. The Judge told you is the reason to vote for
17 life penalty.

18 A Yes.

19 Q And there is no burden of proof, it doesn't have to
20 be unanimous, each Juror finds mitigation for themself.
21 Okay?

22 A All right.

23 Q And it can be something that was presented by the
24 Defense, it can be something that was presented by the
25 State. It could have absolutely no bearing on the facts

1 of whether they did it or not did it. Okay. It is
2 something that a Juror sees for themselves. Does that
3 make sense to you?

4 A Yes, sir.

5 Q And Juror one could say I saw that he had a loving
6 relationship with his father and based on that reason I am
7 going to give that relationship the value of life and I am
8 going to find life for that reason. Do you understand.
9 That is perfectly acceptable?

10 A Yes, sir.

11 Q Are you with me on that?

12 A Yes, sir.

13 Q And a second Juror could say, well, I didn't see
14 that, I don't think that that is mitigating but for me I
15 thought that he has a mental illness so therefore I am
16 going to give that the value of life. And those two
17 reasons are different but each Juror is allowed to have
18 their own reasons. Does that make sense to you?

19 A Yes.

20 Q And finally jurors don't have to have a reason to
21 vote for a life penalty. Does that make sense to you?

22 A Yes.

23 Q Can you respect the right of a Juror to say, I don't
24 have a reason but for me the life penalty is right, the
25 appropriate punishment and that is what I am going to vote

1 for. Can you respect that?

2 A Yes, sir.

3 Q And then we have this thing called mercy, mercy alone
4 can be a reason to give a life punishment if a Juror feels
5 it is right for them. Okay?

6 A Yes, sir.

7 Q And you and yourself, can you tell me about your
8 concept of mercy. Do you think that mercy is something
9 that sort of is freely given or is it something that
10 somebody earns?

11 A Something somebody earns.

12 Q And how would somebody go about earning mercy?

13 A I don't know.

14 Q Okay. Fair enough. This ultimate decision about
15 whether or not another person lives or dies is called an
16 individual moral judgment. Are you with me on that?

17 A Yes, sir.

18 Q Moral judgments are things that we make every day in
19 our daily lives. Okay?

20 A Okay.

21 Q You have made your own decisions about how to raise
22 your child. Is that right?

23 A Yes, sir.

24 Q And you understand that other people have made
25 different decisions about how to raise their children.

1 A Yes, sir.

2 Q Does that make sense to you?

3 A Yes, sir.

4 Q Do you, you expect them to respect you in making your
5 own individual moral judgment about that?

6 A Yes, sir.

7 Q And you respect their right to make their own
8 individual moral judgment even if it is different than
9 yours.

10 A Yes, sir.

11 Q Does that makes sense?

12 A Yes.

13 Q And if you saw somebody being bullied or told that
14 their moral judgment was wrong would you stop it?

15 A No, I would call the cops.

16 Q I am sorry?

17 A If they were doing something wrong I would call the
18 cops.

19 Q Right. Of course. If somebody was doing something
20 wrong to children you would call the cops?

21 A Yes.

22 Q But if it was a moral decision like whether or not to
23 have kids or not have kids. Are you with me on that?

24 A Yes.

25 Q Or how much screen time to give them or no screen

1 time to give them?

2 A Yes.

3 Q Does that make sense to you?

4 A Yes.

5 Q Those types of parental decisions that you make every
6 day, I am not talking about anything that is illegal.

7 A Okay.

8 Q And you respect their right to make their choice
9 about that?

10 A Yes, sir.

11 Q And you expect them to respect you?

12 A Yes.

13 Q And if you saw somebody being bullied and say, you
14 are wrong, your opinion is stupid, would you stop them?

15 A No.

16 Q Okay. Why not?

17 A Everybody has their own opinions.

18 Q Right and if somebody had said, this is mine,
19 individual moral judgment. This is my opinion and
20 somebody else said your opinion is wrong, your opinion is
21 stupid and you are not entitled to your opinion, would you
22 stop that?

23 A No.

24 Q Okay. Why not?

25 A They are just debating.

1 Q If it got past sort of civil debate--

2 A Like if they fight?

3 Q Yeah, like it came almost to blows?

4 A Yes, I would stop it.

5 Q Okay. Would you say, we are entitled to our own
6 opinion?

7 A Yes.

8 Q Could you send a note out to the Judge saying things
9 have gotten hostile or disrespectful here?

10 A Yes.

11 MR. YOUNG: Your Honor, based on the Court's
12 limitations I will stop there. Thank you very much, Mr.
13 Long.

14 THE COURT: Very well. Solicitor.

15 EXAMINATION

16 By Mr. Hubbard:

17 Q Mr. Long, I am Rick Hubbard, how are you?

18 A I am doing pretty good.

19 Q Have you ever been on jury service before?

20 A This is my first time.

21 Q It is kind of different, isn't it?

22 A Yes.

23 Q And out of all the cases this is kind of the big one,
24 right?

25 A Yes.

1 Q Well, I won't be long. Did I understand you
2 correctly, you want to hear everything in this case before
3 you make a decision?

4 A Yes, sir.

5 Q So when it comes to that first phase, whether he is
6 guilty or not guilty or all the verdicts the Judge listed
7 out, you want to hear all the evidence. Is that what I
8 heard before you make a decision?

9 A If he is guilty--

10 Q No, I am talking about in the first, in the guilt
11 phase, do you want to hear all the evidence before you
12 reach that decision?

13 A Yes.

14 Q So anything that comes out, whether it is from both
15 sides or either side, you are wanting to hear it?

16 A Yes.

17 Q Now, in that second phase, if we get there on the
18 penalty, where there is life and death on the table, do
19 you want to hear everything there is to hear in that part
20 of the trial?

21 A Yes.

22 Q And my understanding you are a type three?

23 A Yes.

24 Q You could give life if you thought that was
25 appropriate?

1 A Yes.

2 Q You could give death if you think that is
3 appropriate?

4 A Yes.

5 Q And with death, it is a little different than the
6 verdict for life. With death every single Juror has to
7 sign their name to that verdict form. If you thought
8 death was appropriate, you and your eleven colleagues,
9 could you put your name on that verdict form?

10 A Yes.

11 Q Mr. Long, that is all we can ask you. Thank you.

12 A All right.

13 THE COURT: Anything else?

14 MR. YOUNG: Yes, sir.

15 EXAMINATION

16 By Mr. Young:

17 Q Mr. Long, let me just follow-up with the Solicitor,
18 you started to say if he was guilty and then you got cut
19 off. Can you tell, can you finish that thought for me?

20 A I don't remember, what did I say?

21 Q You were talking about the death penalty and life
22 penalty and you said, if he was guilty, and then got cut
23 off.

24 A If he was guilty then, yes.

25 Q Then the death penalty would be the appropriate

1 punishment?

2 A No, it wouldn't be the punishment but it would be an
3 option.

4 Q Okay.

5 A Unless the, unless he was insane or whatever.

6 Q Okay. I understand where you are coming from. Thank
7 you very much, Mr. Long.

8 THE COURT: Do we need anything on the record?

9 MR. YOUNG: Yes, sir.

10 THE COURT: Please step off and I will have you right
11 back in here in a minute.

12 (Whereupon, the Juror was excused from the
13 courtroom.)

14 THE COURT: Mr. Young.

15 MR. YOUNG: Your Honor, we move to disqualify Mr.
16 Long being substantially impaired in his ability to follow
17 the law regarding his death penalty views. And I know Mr.
18 Long has trouble, he had trouble speaking in public and in
19 court he was very soft spoken and hesitant with his words.
20 But when asked, give an example of a case that he thought
21 the death penalty was appropriate for, his example was the
22 O.J. Simpson case where he was found not guilty. When we
23 further evaluated that his example here at the end was,
24 unless somebody was insane and which case they would have
25 been not guilty and not eligible for death, then the death

1 penalty was the appropriate punishment. I think his views
2 are substantially impaired, his ability to follow the law
3 under Morgan, Witherspoon and evidence he is, he is
4 predisposed to vote for death and he should not be
5 qualified.

6 THE COURT: Solicitor.

7 MR. HUBBARD: Your Honor, I disagree. Obviously I
8 think he is balanced. If you look at his answers in
9 totality, this man struggled and when I went to ask a
10 question, the reason why I stopped is to make sure he
11 understood. He was talking about that second phase and I
12 was asking him about the first phase. But his answer was
13 really death penalty would be an option unless he was
14 insane or whatever. He was in another phase. And so,
15 Your Honor, I think he is perfectly fine. He has said
16 several times, for instance, about the insanity defense.
17 I know there are people out there that have problems so he
18 would consider that. He understands you have to do
19 something pretty bad to get the death penalty. This was
20 his way of coming in here without any experience trying to
21 express his ideas and obviously hasn't had a lot of
22 thoughts on this until he has come in here today.

23 THE COURT: I think he is qualified and I find him
24 qualified and I will tell you why. His answers were
25 consistent, I want to consider everything, I want to hear

1 everything, he said multiple times. The question about
2 can you name a case, that is a tough question for anybody
3 but him to only know one case and it was 25 years ago, I
4 don't put a whole lot of emphasis on that. Name the case,
5 we are so focused on trials and cases and people and their
6 accusations, I mean it is, asking him that is a difficult
7 question for any Juror if they are not paying attention to
8 the criminal justice system. That is a hard question, to
9 name a case. But, you know, a double murder couldn't be
10 proven and it was in California. It was a double murder,
11 I think it was a different answer but I don't think that
12 disqualifies him. I think he shows he can be fair, he can
13 consider instructions and he just gives very simple
14 answers. Yes or not, was very, very consistent with him,
15 one word answers. So I find him qualified. Anything
16 else?

17 MR. YOUNG: Note our objection.

18 THE COURT: Okay, noted. Bring him back in.

19 (Whereupon, the Juror entered the courtroom.)

20 THE COURT: Mr. Long, the Court has found you
21 qualified. That means you are qualified to be a Juror,
22 not put on the jury yet. What will happen next, you will
23 watch the website where qualified jurors are going to
24 check, come back to, when to come back to court. Probably
25 early next week when you see the, may be late this week

1 but most likely please report back to Lexington County
2 Court House in the courtroom on the fourth floor at some
3 time and some date. It may say for a few days, please
4 check back tomorrow, but you are looking under qualified
5 jurors. Follow those instructions for a qualified Juror
6 because you are one. Now, until that time you are under
7 oath, do not talk about the case, do not let anybody talk
8 to you about the case, do not do any independent research,
9 do not do research on social media, stay off of social
10 media and telling people you are on the jury. Just don't
11 talk about it. If someone tries to talk to you about it,
12 terminate the conversation. Judge Griffith says, don't
13 discuss the case. Minimize your perusal of any media
14 reports. I want you to be impacted and make your decision
15 based on what you heard here in the courtroom, under oath
16 on the witness stand, with the Court Reporter, not what is
17 in the social media. Do you understand.

18 JUROR: Yes, sir.

19 THE COURT: That is your oath, I will see you next
20 time you come back in the courtroom.

21 (Whereupon, the Juror was excused from the
22 courtroom.)

23 MR. HUBBARD: Your Honor, on the next one, I just
24 want to put something on the record before she comes out.
25 Number 19, my Investigator Matt Martin just let me know he

1 used to go to a church where she and her brother attended.
2 He was a youth minister and she was part of that youth
3 group. He doesn't know if she remembers him but wanted to
4 put that on the record.

5 MR. YOUNG: Mr. Jones needs five minutes.

6 THE COURT: Okay. We can do that. We will take five
7 minutes. This is one that may need riding assistance,
8 transportation assistance.

9 (Whereupon, a short break was taken.)

10 THE COURT: Let's bring in number 19.

11 (Whereupon, Juror 19, Emily Atkins entered the
12 courtroom.)

13 EXAMINATION

14 By The Court:

15 Q Good afternoon, Ms. Atkins.

16 A Hello.

17 Q How are you doing?

18 A I am good.

19 Q All right. I am going to ask you basically the same
20 question I have asked everybody else. You are under oath,
21 you are sworn to tell the truth. A lot of the questions
22 that I am going to ask you and the lawyers are going to
23 ask you are opinion questions, your personal beliefs,
24 there are no wrong answers, just truthful and candid.
25 Some of them are a little different, there may be more no

1 opinions but just answer the questions the best you can
2 but remember, there is no wrong answers. You took an oath
3 Monday to not talk about the case, has anybody tried to
4 talk to you about since Monday?

5 A Very briefly but I told her I can't talk about it.

6 Q Okay. You have not talked to anybody other than
7 that?

8 A No.

9 Q Okay. Now, there has been, I made an announcement--

10 A Well, I then, on the way back, the next lady, the
11 next Juror, she took me home and I did tell her something
12 of the stuff that I remembered when it happened.

13 Q Okay. There has been publicity, since it happened,
14 when it happened, recently, last week, this week. I also
15 read the indictments in court, the State is accusing Mr.
16 Jones of five counts of murder. He has plead not guilty
17 and is presumed innocent. Have anything you have heard,
18 no matter what it was, anything you have heard caused you
19 to form an opinion as to what you believe happened in this
20 case?

21 A No, sir.

22 Q You have no opinion?

23 A No, sir.

24 Q Okay, fair enough. Do you, you understand Mr. Jones
25 is presumed innocent right now?

1 A Yes, sir.

2 Q Now, the subject matter in this case involves the
3 death of five children. It is going to be difficult
4 testimony, harsh, graphic, unpleasant. I don't want to
5 tell you it is going to be easy, it is going to be hard.
6 Would the subject matter involving that type of testimony
7 make it difficult for you to be fair to both sides, both
8 the State and the Defendant?

9 A No, sir.

10 Q Can you consider testimony of that type?

11 A Yes, sir.

12 Q Do you have anything on your personal calendar coming
13 up if you were selected as a Juror, late May or early June
14 will be the obligation.

15 A No, sir.

16 Q Nothing on the schedule. All right. Did you read
17 the list of potential witnesses?

18 A Yes, sir.

19 Q Did you know anybody?

20 A From a while back.

21 Q Who was it?

22 A Michelle Gorski, Kevin McKinney and Scott Smith.

23 Q How do you know those folks?

24 A I know Michelle from a long time ago, from, she
25 taught at my school a long time ago. And Kevin McKinney

1 went to my church but we don't really keep in touch. And
2 Scott Smith was the pastor and the Baptist VSU BCM at
3 Lander but that was a while back too.

4 Q Some of these folks are some people you know through
5 church and some through the student ministries through
6 Lander College and Michelle Gorski, how do you know her?

7 A She was a teacher.

8 Q At the school a long time ago?

9 A Where I went.

10 Q Okay. Now would the fact that you know those folks,
11 can that create or does it create an issue for you being
12 fair and impartial in this case?

13 A No, sir.

14 Q Now, I gave you preliminary instructions on the law
15 which described how a Capital case gets called, it is in
16 two phases. Phase one is guilt or innocence, phase two is
17 penalty. The State has got to prove the first phase even
18 to get to the second phase. Phase two requires the State
19 to prove an additional aggravating factor and it also
20 allows jurors to be considered and mindful and understand
21 and consider mitigating factors, reasons not to give the
22 death penalty, to impose a life without parole sentence.
23 Not knowing very much about this case, we have got very
24 sparse facts, the accusations of the murder, the children.
25 I gave you a sheet to describe three types of potential

1 jurors. I have got it sitting here too. Can you identify
2 yourself as being one of those three potential jurors?

3 A Type two, mostly what I consider myself.

4 Q Okay. Now a type two Juror is a person who is going
5 to impose a life without parole sentence, who considers
6 that to be an appropriate sentence if it is a murder with
7 an aggravating factor such as once proven by the State
8 beyond a reasonable doubt. You understand that the death
9 penalty verdict, the jurors have to be unanimous in that
10 vote to impose that sentence?

11 A Yes, sir.

12 Q Could you sign a verdict form imposing the death
13 penalty?

14 A Yes, sir.

15 Q You could?

16 A Yes, sir.

17 Q If the appropriate facts were presented but you say
18 you identify yourself as a type two. Explain that to me.

19 A Well, in certain circumstances the, having time to
20 think about it is more than the death penalty to me.

21 Q They have to live with themselves?

22 A Yes.

23 Q Do you think that is an appropriate sentence for a
24 case, Capital case such as this?

25 A Yes, sir.

1 Q Would it be in -- just given these facts and the
2 State proves the murder and the aggravating circumstance
3 and whatever mitigation, do you think the life without
4 parole is the sentence that you would vote for?

5 A If there is, there is evidence as to mental factors
6 and such.

7 Q Okay. Let me ask you this. Could you be, you
8 describe yourself as a type two, could you see yourself
9 finding an occasion, depending on the facts and
10 circumstances that you could either or are you going to be
11 stuck on the life sentence?

12 A I can be convinced otherwise.

13 Q And what, here is what I am looking for. There are
14 ways to convince you in testimony and evidence, mitigating
15 factors, aggravating factors the State has got to prove
16 and the Defense shows, those are the testimony and
17 evidence. Would you let somebody talk you out of your
18 moral position if you decided that one sentence was more
19 appropriate and you thought that was your decision. Would
20 you let somebody talk you out of that?

21 A Yes, sir.

22 Q You would. Now, would you let somebody bully you out
23 of your moral decision if you made it and you thought the
24 appropriate sentence was a life sentence. Would you let
25 somebody push you out of that decision?

1 A It depends.

2 Q Okay. Do you think, would it be appropriate for
3 someone who is in that position, who made that decision,
4 should they go along with the majority or not?

5 A Yes, sir.

6 Q All right. Now, I am going to describe the first
7 half. You talked about some mental issues, there are some
8 mental issues that have been raised in this case. There
9 was the defense of not guilty by reason of insanity. That
10 is an affirmative defense, potential defense is available
11 and so I am going to read out some potential defenses and
12 then ask you if you can consider those. Now, I am going
13 to read all of them, all of them may not be appropriate in
14 this case but I am going to read all of them nevertheless.
15 It is not necessary that you hear all of those defenses in
16 the case but you are going to hear because that is a
17 summary of the law. Okay?

18 A Yes, sir.

19 Q Accident, involuntary intoxication, self-defense,
20 necessity, insanity, guilty but mentally ill, defense of
21 habitation, entrapment, duress and alibi are potential
22 defenses available to a Defendant. Could you consider
23 aspects of those defenses, if appropriately instructed by
24 the Court, and give those due consideration on the facts
25 and circumstances consistent with my instructions and all

1 the facts and evidence in this case. Can you do that?

2 A Yes, sir.

3 Q Could you consider that the State does, under my
4 instructions, will have the burden of proving its case,
5 the elements of murder beyond a reasonable doubt?

6 A Yes, sir.

7 Q Now, potential defenses in this case, I am sorry,
8 potential verdicts in this case, four potential verdicts
9 because of the plea of not guilty by reason of insanity
10 has been entered would be guilty, guilty but mentally ill,
11 not guilty by reason of insanity and not guilty
12 whatsoever. Those are four potential verdict forms. Can
13 you give due and meaningful consideration to all four of
14 those potential verdicts, understanding the Court will
15 instruct you on the aspects of those four verdicts and
16 make a finding consistent with the jury's finding of
17 circumstances, facts and evidence. Can you be fair and
18 impartial on those circumstances?

19 A Yes, sir.

20 Q Now, if a verdict of not guilty or not guilty by
21 reason of insanity is found by the jury the case ends. If
22 a verdict of guilty or guilty but mentally ill the case
23 goes to phase two. Do you understand?

24 A Yes.

25 Q In phase two the State has to prove the aggravating

1 factor. Do you understand that?

2 A Yes, sir.

3 Q And there are several aggravating factors. Murder of
4 a police officer, murder of a child, murder of multiple
5 people, rape of murder, kidnapping of murder are
6 aggravating factors allowed in the statute, the State must
7 prove at least one.

8 A Yes, sir.

9 Q In the sentencing phase unanimously beyond a
10 reasonable doubt. Now, mitigating facts are facts to not
11 give the death penalty but to impose life. I am going to
12 read those to you, all of these may not be present during
13 the testimony but they are available. The Defendant has
14 no significant history of prior criminal conviction
15 involving the use of violence against another person. The
16 murder was committed while the Defendant was under the
17 influence of mental or emotional disturbance. The victim
18 was a participant in the Defendant's conduct or consented
19 to the act. The Defendant was an accomplice in the murder
20 committed by another person and his participation was
21 relatively minor. The Defendant acted under duress or
22 under the domination of another person. The capacity of
23 the Defendant to appreciate the criminality of his conduct
24 or to conform his conduct to the requirements of law was
25 substantially impaired. The age or mentality of the

1 Defendant at the time of the crime. The Defendant was
2 below the age of 18 at the time of the crime. The
3 Defendant had mental retardation at the time of the crime.
4 Those are statutory mitigators. Additional ones, how the
5 Defendant was raised, did he have a troubled childhood,
6 does he have any other particular reasons that he has had
7 issues in his personal life. All of those factors can be
8 considered mitigating evidence. Can you give due
9 consideration, meaningful consideration to any of those
10 mitigating factors, presuming they are supported by the
11 evidence presented?

12 A Yes, sir.

13 Q And consider the aggravating factors and evidence
14 presented by the State on aggravating factors and be fair
15 and impartial in this case?

16 A Yes, sir.

17 Q Fair and impartial Juror in this case. Now, do you
18 have a reason, you know the death penalty is not a
19 automatic decision. The State has got to prove the guilt
20 of the murder to get to phase two. Phase two is
21 sentencing, the jury has got two choices, life or death,
22 nothing else, no other choices. You give consideration to
23 the aggravating factors, testimony and the mitigating
24 factors, consider all of that in reaching a unanimous
25 verdict that if the jury votes unanimously of the death

1 penalty that sentence will be carried out. If the jury
2 votes unanimously of life without parole the Defendant is
3 committed to the life without parole sentence. Do you
4 understand that?

5 A Yes, sir.

6 Q Do you have any reason, moral, religious, personal
7 ethical reason which you could not impose or sign a
8 verdict for the death penalty?

9 A No, sir.

10 Q Do you have any reason, moral, personal or ethical or
11 religious which would prevent you from imposing a life
12 without parole sentence?

13 A No, sir.

14 Q All right.

15 THE COURT: Mr. McGuire.

16 EXAMINATION

17 By Mr. McGuire:

18 Q Good afternoon, excuse me, I am a little hoarse, I
19 have been doing a lot of talking?

20 A You are a little donkey.

21 Q I am sorry. I appreciate that. So, Ms. Atkins, this
22 is where the Judge lets the lawyers just talk to you for a
23 little bit about your personal opinions about the death
24 penalty. Okay. And all we can do is just ask people to
25 be fair. And it sounds like you can fairly consider both

1 punishments in a Capital case for life and death. Is that
2 right?

3 A Yes, sir.

4 Q And you would listen to all of the evidence that the
5 State would present, the Government, the Prosecution?

6 A Yes, sir.

7 Q Okay. And if you found yourself in a position where
8 the State, the Government came forward with all of the
9 evidence to prove guilt and an aggravating circumstance
10 thereby making the case eligible for the death penalty,
11 you can vote for the death penalty?

12 A Yes, sir.

13 Q Okay. And in South Carolina, if the jury votes for
14 the death penalty they all have to sign their name to it,
15 all twelve people, could you do that?

16 A Yes, sir.

17 Q And could you also consider the life penalty if the
18 Defense was to offer some reasons to vote not for the
19 death penalty but for the life penalty, you could consider
20 the life penalty?

21 A Yes, sir.

22 Q And that would be life without parole, the person
23 would never get out of prison?

24 A Yes, sir.

25 Q Okay. And do you have any doubt about that, you can

1 definitely do both of those things?

2 A Yes, sir.

3 Q Okay.

4 MR. MCGUIRE: Judge, if I could have just one second.

5 THE COURT: You may.

6 Q That is all I have for you, Ma'am, thank you very
7 much.

8 A Thank you.

9 THE COURT: Mr. Hubbard.

10 EXAMINATION

11 By Mr. Hubbard:

12 Q Ms. Atkins, how are you?

13 A I am good.

14 Q I am Rick Hubbard and I just have a few questions for
15 you as well. When you first came in here the Judge asked
16 you a number of questions and ask you about the list of
17 the types of jurors and you said number two best described
18 you?

19 A Yes, sir.

20 Q I just want to make sure I understand. If I can, I
21 am going to read it and make sure that you and I are still
22 talking about the same number two. Okay?

23 A Yes, sir.

24 Q Type two is a Juror that once the crime of murder and
25 an aggravation circumstance has been prove by the State

1 this Juror would always give a sentence of life without
2 parole. This Juror would not need to hear the facts and
3 circumstances in aggravation or mitigation of the case
4 because this Juror simply feels that once a murder has
5 been committed life without parole is the appropriate
6 punishment. Does that describe you?

7 A Yes but I can be convinced otherwise.

8 Q Okay. And you mentioned that and I think when the
9 Judge was asking you some questions and I may not have
10 heard it right so this is the time to clear it up because
11 sometimes I don't hear things well. He was asking you
12 about if somebody was bullying you or trying to get you to
13 change your position and you would consider, I think you
14 said something?

15 A Yes, sir.

16 Q What was your response there?

17 A I would consider it.

18 Q Okay. And he asked you if the majority of the jurors
19 had a different view from yours what would you do?

20 A I would listen to their opinions.

21 Q And I think at one point you said something, if I
22 heard you right, that you would go along with the
23 majority?

24 A Yes, sir.

25 Q Okay. And I guess, I just need to know that, would

1 that still be your opinion if you are going along with the
2 majority?

3 A Yes, sir.

4 Q So say after hearing a case and you were thinking you
5 were a number two and it is life and fellow jurors were
6 saying thought otherwise, that maybe death was
7 appropriate, you would go along with them?

8 A Yes, sir.

9 Q Okay. Ms. Atkins, thank you so much for being very
10 honest with us.

11 A Thank you.

12 MR. MCGUIRE: Just very briefly.

13 THE COURT: Sure.

14 EXAMINATION

15 By Mr. McGuire:

16 Q So, Ms. Atkins, regarding this, would you stay with
17 your position or would you get talked into joining the
18 majority, I want to talk to you a little bit about the law
19 on that issue and you tell me what you think about it.
20 Okay. What your personal position is. And if the Judge
21 was to tell you or the Clerk instruct you that a person's
22 decision is their decision and they have an obligation and
23 a duty, if it were to harm their conscious to change their
24 position, they can't do it, they have to stick with their
25 position. That is a little wordy.

1 MR. HUBBARD: Your Honor, I object to that question.

2 If he can rephrase it.

3 THE COURT: I will let him rephrase it and I think he
4 realized it was a little wordy.

5 MR. MCGUIRE: It was a little wordy.

6 Q If you were to say you wanted to vote for the life
7 without parole penalty and if it would harm your
8 consciousness to change that position and the Judge told
9 you it was your duty and obligation to stick with that
10 position even if there was a majority of people on the
11 other side--

12 MR. HUBBARD: Your Honor, I object to that question
13 as well.

14 THE COURT: I am going to allow it, I think it
15 follows the questions the Court asked.

16 MR. HUBBARD: Okay.

17 THE COURT: And your objection is noted and I
18 understand your basis.

19 Q So could you do that, could you stick with your
20 position?

21 A If need be.

22 Q Because the rules are that it is not a majority
23 decision, it is not, you know, if more people are on one
24 side than the other it is not a majority decision. This
25 is an individual decision and everybody is allowed, in

1 fact they have the duty and obligation to stick to their
2 position once they make it and it is a consciously held
3 view. Can you do that?

4 A Yes, sir.

5 Q But you would want to listen to other people, hear
6 their views, their opinions and that could maybe make you
7 change your mind?

8 A Yes, sir.

9 Q But you wouldn't give up your position just to join
10 the majority, would you?

11 A No, sir.

12 Q So if you reach a conscientious decision and you
13 really believe it, you really believe that the life
14 penalty is the real punishment, it is right for you, you
15 can stick with that?

16 MR. HUBBARD: Asked and answered.

17 THE COURT: Sustained. It has been asked and
18 answered.

19 MR. MCGUIRE: Okay, I just want to verify.

20 Q I think you have answered all of my questions. I
21 really appreciate it. Thank you so much, Ms. Atkins.

22 A Thank you.

23 THE COURT: All right. Ms. Atkins, will you step out
24 of the courtroom, I have got to talk to the lawyers
25 briefly and then I will have you back in here.

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

3 MR. MCGUIRE: We don't have anything.

4 THE COURT: All right.

5 MR. HUBBARD: Your Honor, at the risk now of being
6 accused of being against someone who is disabled--

7 MR. MCGUIRE: I didn't say she was disabled.

8 MR. HUBBARD: My objection is on State v. Bennett
9 which is at, for the record, 493 SE 2nd 845. Judge, a
10 Juror who would vote with the majority on a death penalty
11 is not qualified. Here is my concern. Judge, she is
12 extremely nice. She may end up, Judge, she sounds like
13 she wants to do the right thing, she seems to answer yes
14 if you just give her a question with yes, no. But when
15 you get her to explain and I got her to use her own
16 language that she would go with the majority, that was the
17 disturbing thing. So here is the concern that I have that
18 was raised in Bennett. She gets on the jury, she is
19 persuaded by others, she feels like this is life, I
20 identify with Juror number two. I can be persuaded but
21 all eleven other folks say, look, we think this is death.
22 She is life, if she were on her own she would say this is
23 life. But she says, all right, I will go with you. That
24 seemed to be the level of persuasion. And that concerns
25 me. Although on the one hand that would be the verdict,

1 obviously, I am looking for. My concern is, say now that
2 verdict is handed down. I have got a death sentence with
3 her on the jury. I have got a transcript that is muddy
4 where she was qualified, where it was just, Judge, it just
5 seems so clear she is going to be easily led. And where
6 she said she would go with the majority, she is on her
7 own. She seemed very polite, very nice but just easily
8 led and would abandon her original position because eleven
9 other people are saying they were going another way. And
10 that is exactly what State v. Bennett addresses. And,
11 again, this isn't because of any disability. Your Honor
12 could make whatever allowance is needed for that, we have
13 done that many times before. The other issue I have is
14 just, I am not sure she can follow directions. She had
15 mentioned when you brought her in that she had talked to
16 one of the jurors that drove her here. That is another
17 concern. I am just wondering how easily led she is,
18 Judge. We are talking about the ultimate sentence here.

19 THE COURT: All right, let me hear from Mr. McGuire.

20 MR. MCGUIRE: Thank you, Judge. She has a Bachelor's
21 of Science from Lander University and she actually gave
22 some pretty thoughtful answers to the Court. It is
23 difficult when you start off on a one or a two and then
24 you say, well, later I am changing my mind. And she
25 actually said why, to listen to other people and in the

1 right circumstances I am a number three. She abandoned
2 her position of going with the majority when she was
3 informed that the rules of court do not allow for that,
4 this is not a majority decision, that she would have a
5 duty and obligation to stick with her consciousness held
6 belief, she said she could do that and she would do that.
7 So I think taking her answers as a whole I think she is
8 qualified. And also there is no reversible error when we
9 are asking you to qualify somebody and you do so.

10 MR. HUBBARD: Except for PCR's which is where all of
11 these cases are getting flipped. And that is my big
12 concern.

13 THE COURT: I am considering all the testimony that
14 she presented, that she talked with the Juror going home
15 and told not to. I mean, she answered my questions and
16 her answers routinely elicited more questions from me. It
17 seemed to me that it depended on who was the last one to
18 talk to her, which answer she was given. And she stated
19 to me twice that she was a type two and would vote for
20 life. She then answered that she would go along with the
21 majority vote and that she could be talked into changing
22 her mind or her moral view. She talked with the other
23 jurors. She seemed to be inconsistently or she was
24 consistently agreeing with the interrogator, whether it
25 was me, whether it was you or whether it was Solicitor

1 Hubbard. She went along with us individually. That
2 causes me concern, can she follow my instructions of don't
3 talk about the case and she talked with the girl, lady,
4 whoever it was giving her a ride home. I am going to find
5 her not qualified, I just have too many concerns with her
6 answers being inconsistent and she gave different answers,
7 not one, she gave several different answers to each of the
8 attorneys as well as the Court. And that is inconsistent,
9 and consistent responses to the very important questions
10 gives me great concern that she could be, that she could
11 follow the instructions of the Court. You want to be
12 heard, Mr. McGuire?

13 MR. MCGUIRE: Just only to state that we have had
14 other jurors giving inconsistent answers including Mr.
15 Garrett Johnson who was the second Juror who I talked to.
16 And he went from a number three on his sheet and his final
17 answer to me was that he was a number one, inconsistent
18 answers, gave an answer to the last person who talked to
19 him, that was, essentially that he was automatic death
20 penalty in an aggravated murder involving multiple
21 children. Despite inconsistent answers with his last one
22 being a disqualified answer, not a qualifying answer like
23 this Juror, but his ultimate last answer was that he was,
24 he would not be qualified as a number one. He is going to
25 be qualified, he is that impaired because he is going to

1 vote for death or we are going to have a life leaning
2 Juror disqualified under different standards, we would
3 object to that process. Because that would be using a
4 different standard, if we are going to have a different
5 standard for people who lean towards life and a different
6 standard leaning towards death then we are going to have a
7 system that results in a jury uncommonly willing to
8 convict and sentence to death.

9 THE COURT: I understand your argument and I will try
10 to give that analysis because that is what I am trying to
11 do is not be inconsistent but this lady answered several
12 times to me inconsistent, not to y'all, she answered to
13 y'all too, to Solicitor Hubbard and to you, Mr. McGuire
14 that she was meandering about that she was. And also I
15 note that the Defense is engaged in a line of questions is
16 you understand your individual moral judgment, what it is,
17 and you are not required to be bullied out of it. Y'all
18 kind of stayed away from her on that. She explained it to
19 her when you got back up but not in as detailed as before.
20 I am still not going to find her qualified, I am not going
21 to do it. Bring her back in.

22 (Whereupon, the Juror entered the courtroom.)

23 THE COURT: Ma'am, the Court, based on some of your
24 answers, self describing yourself as a type two Juror, I
25 am going to find you not qualified to sit on this jury.

1 So you are going to be excused from jury service. All
2 right.

3 JUROR: All right.

4 THE COURT: Thank you very much for coming in.

5 JUROR: Okay.

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

8 MR. MCGUIRE: And, Judge, just to protect the record,
9 I think I have got to object after you actually ordered
10 her excused. This is a little bit different so I would
11 just add that excusing this Juror would be a violation of
12 Mr. Tim Jones Sixth Amendment right, fair and impartial
13 jury. And it is found both in the Sixth Amendment and the
14 due process clause, Fifth Amendment. And, again, if we
15 have a system where you give inconsistent answers but they
16 are definitely qualified, we have a system with analysis,
17 that are leaning towards life, that that process would be
18 a violation of Mr. Jones' rights.

19 THE COURT: And your objection is noted and your
20 analysis noted for the record.

21 MR. HUBBARD: And one final thing for the record, I
22 don't think that we have any other Juror come in here and
23 admit that they have ignored your instruction and then,
24 not just talk to another Juror but talk fully about
25 everything she knew about this case.

1 THE COURT: She has done that. All right, are y'all
2 ready on 241?

3 MR. HUBBARD: Yes, sir.

4 THE COURT: Bring number 241.

5 (Whereupon, Juror 241, Toshia Addison came into the
6 courtroom.)

7 EXAMINATION

8 By The Court:

9 Q Good afternoon, how are you doing.

10 A I am doing fine.

11 Q You are Ms. Addison?

12 A Yes, I am.

13 Q Or Latimer Addison?

14 A Addison is fine.

15 Q Whatever your name to be on the record I want you to
16 say and spell it for Ms. Holston so she will put it down
17 right now.

18 A Toshia, T-O-S-H-I-A; Addison, A-D-D-I-S-O-N.

19 Q Ms. Addison, welcome back to the courtroom. I gave
20 you some instructions and you took an oath Monday to not
21 talk about the case. Since Monday have you talked about
22 the case with anyone?

23 A No, sir.

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

25 A No, sir.

1 Q Now, there has been a lot of publicity and a lot of
2 information about this case provided. I have provided
3 some of the information Monday by reading the indictments
4 and the allegations of the murders that the State is
5 alleging against Mr. Jones to which he has plead not
6 guilty. Now, considering the information, whether it be
7 publicity or the Court giving you information, have you
8 formed an opinion based upon any of that information at
9 this point in the case?

10 A No, sir.

11 Q And did you, you don't have an opinion as to what
12 happened?

13 A No, sir.

14 Q Very well. Now, I asked you when you came back in to
15 tell me about your personal schedule, whether it be work
16 or otherwise. You got anything on the schedule coming up
17 through the end of May, early June which would prevent you
18 from serving as a Juror in this case?

19 A No, sir.

20 Q Nothing?

21 A No, sir.

22 Q Now, I also gave you a list of witnesses to read
23 over, did you look over those witnesses?

24 A Yes, sir.

25 Q Did you know anybody?

1 A No, sir.

2 Q Not a one?

3 A Not a one.

4 Q Now, I also gave you instructions before you came in
5 here.

6 A Yes, sir.

7 Q One part of that instruction that I did not tell you
8 was, I want you to understand that the subject matter of
9 this case involves the death of some children. The
10 subject matter involves descriptions, the testimony will
11 be graphic, perhaps harsh, unpleasant, tough to hear,
12 tough to see. That is how it has been described to me, I
13 have not seen all of the testimony or evidence, I don't
14 exactly know how to describe it to you other than those
15 words, unpleasant and tough. The subject matter of that
16 type, being difficult to hear, would that make it
17 difficult for you to be fair and impartial to both the
18 State and the Defense?

19 A No, sir.

20 Q Can you do that?

21 A Yes, sir.

22 Q All right. I gave you an instruction, kind of a
23 brief instruction on the law, as the law of South Carolina
24 is, the State must prove a Capital case in two parts.
25 Phase one is the trial or guilt or innocence of the murder

1 charge. If it is not guilty in phase one the case ends.
2 If the State proves the case beyond a reasonable doubt it
3 goes to stage two. Stage two is when it is presented, the
4 State has got to prove an aggravating factor allowed by
5 the statute and there is mitigation evidence considered by
6 the jurors. Mitigation of reasons to not give the death
7 penalty, to give life in prison. I gave you a form which
8 describes three types of jurors in general terms. So in
9 considering the scant evidence you have thus far can you,
10 broad picture, find yourself, identify yourself as one of
11 those three types of typical jurors?

12 A Yes, sir.

13 Q What type?

14 A Three.

15 Q Type three. That is a Juror who wants to hear
16 everything before making a decision. Is that you?

17 A Yes, sir.

18 Q All right. Now, I am going to start back and kind of
19 work through the trial process. Mr. Jones has entered a
20 plea of not guilty by reason of insanity. And by that
21 that means the jury is going to hear some defenses
22 available to him under our law. Since I haven't heard the
23 testimony some of the defenses, additional to that come
24 into play also. Won't know until the testimony is
25 presented and maybe those facts get argued if the

1 testimony supports it. I am going to list all of them to
2 you for the purpose of my question. So eligible
3 defenses for a crime could be identification, accident,
4 involuntary intoxication, self-defense, necessity,
5 insanity, guilty but mentally ill, defense of habitation,
6 entrapment, duress and alibi. Those are all potential
7 defenses. Not all of them will be instructed. The ones
8 that are appropriate considering the testimony and
9 evidence will be instructed. Now, can you give meaningful
10 consideration to all of those defenses and consider
11 meaningfully the evidence and testimony of the State in
12 its presentation of the case, the State has got to prove
13 its case beyond a reasonable doubt. Can you consider all
14 of the evidence in that phase of the case, consider my
15 instructions and give meaningful consideration to the
16 State's required burden of proof as well as any of those
17 defenses which are supported by the evidence. Can you do
18 that?

19 A Yes, sir.

20 Q Can you act fairly and impartially in doing so?

21 A Yes, sir.

22 Q Now, if the State fails to meet its burden or a not
23 guilty by reason of insanity verdict is found the case
24 ends. If the State meets its burden of proof, prove the
25 guilt of the murder, then we go to phase two and phase two

1 the State has got to prove an aggravating factor. There
2 are several under our statutes, they are rape of murder,
3 kidnapping of murder, murder of a policeman, murder of a
4 child, multiple murders. Those are aggravating factors,
5 one of which the State has to prove beyond a reasonable
6 doubt. During the punishment phase mitigating factors are
7 presented also for a jury to consider and those are
8 reasons to give life without parole. Statutory defenses,
9 I mean mitigating evidence could be, not all of these
10 could be appropriate but I will instruct you on the ones
11 that are at that time. The Defendant has no significant
12 history of prior criminal conviction involving the use of
13 violence against another person. The murder was committed
14 while the Defendant was under the influence of mental or
15 emotional disturbance. The victim was a participant in
16 the Defendant's conduct or consented to the act. The
17 Defendant was an accomplice in the murder committed by
18 another person and his participation was relatively minor.
19 The Defendant acted under duress or under the domination
20 of another person. 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 at the
24 time of the crime. The Defendant was provoked by the
25 victim in committing the murder. The Defendant was below

1 the age of 18 at the time. The Defendant had mental
2 retardation at the time of the crime. Those are statutory
3 mitigators. Additional mitigation would be anything the
4 jury wants to hear. Walk in life with the Defendant, life
5 while growing up, broken childhood, broken home, anything
6 of that sort can be considered and be a reason for voting
7 for a life without parole sentence. Do you understand
8 those factors could be presented and the jury should
9 consider them?

10 A Yes, sir.

11 Q Now, understanding this, if the case gets to the
12 sentencing phase, burden of proof, the jury determines the
13 punishment, the State has got to prove beyond a reasonable
14 doubt an aggravating factor. The Defendant will present
15 mitigating evidence which a jury may consider any form of
16 that. Two potential verdicts, life or death, nothing in
17 between, only two choices. Can you give meaningful
18 consideration to the State's burden of proving the
19 aggravating factor as well as any and all mitigating
20 factors to be presented and consider my instructions on
21 those aspects of the law and be fair and impartial in this
22 case?

23 A Yes, sir.

24 Q Can you, do you understand the death penalty is not
25 automatic?

1 A Yes, sir.

2 Q Do you have any religious, personal or moral belief
3 that you could not impose a life without parole sentence?

4 A No, sir.

5 Q Do you have any religious, moral or personal belief
6 that you could not impose the death sentence if that were
7 appropriate?

8 A No, sir.

9 Q Do you know any reason whatsoever you could not be
10 fair and impartial in this case?

11 A No, sir.

12 THE COURT: All right, Mr. Madsen.

13 EXAMINATION

14 By Mr. Madsen:

15 Q Ms. Addison, how are you doing today?

16 A I am good.

17 Q So the Judge, he kind of went over some stuff with
18 you and you understand that it is, my name is Rob Madsen,
19 I am one of Tim's lawyers. It is just kind of our chance
20 to have a conversation or talk. There is no right or
21 wrong answers. I am just kind of trying to get your
22 feelings and your opinions. Okay?

23 A Okay.

24 Q Did you know any of the other jurors?

25 A No, sir.

1 Q And I can't remember, when, gosh, I guess it was last
2 Monday a week ago, did you stand up when he asked about
3 publicity, had you heard anything?

4 A Not a word.

5 Q Four years ago. Okay. So can you just kind of tell
6 me your general feelings on the death penalty?

7 A Such as?

8 Q Well, I mean, what do you think about it?

9 A I don't really have an opinion one way or the other.
10 I mean, I never thought about the death penalty and I am
11 not being a smartelec, nothing I consider one way or the
12 other, I have never had the opportunity to think about it
13 one way or the other. I have never thought that someone
14 should have it, I have never thought that someone should
15 not have it. I don't really have an opinion about it one
16 way or the other. I don't, you know--

17 Q That is a perfect answer. As long as you are
18 truthful, you can't answer it wrong.

19 A I don't have a, I can't say no one should ever get
20 the death penalty or if you do A, B and C you should have
21 the death penalty. I have never actually thought about
22 it, it has never come to my frame of mind, I watch CNN and
23 I have never really sat and thought about that.

24 Q Well, let me put you on the hot seat a little bit.

25 A Sure.

1 Q Say you are the Governor for the day and they put a
2 Bill on your desk that allows the death penalty and they
3 put a bill on your desk that eliminates the death penalty.
4 Which one do you sign?

5 A I feel that is a loaded question because, you are
6 trying to make me say something that I really may or may
7 not believe. And even if I am Governor for the day,
8 saying that I would sign for the death penalty or not sign
9 for the death penalty, I guess for me I would put it
10 towards the voters.

11 Q Okay. Well, do you think the death penalty has a
12 purpose?

13 A Yes.

14 Q Can you tell me what that is?

15 A In South Carolina it has been quite a while since we
16 have actually performed the death penalty. We have the
17 death penalty where many people are on death row but we
18 haven't performed that in quite some time. So I guess
19 that is why it is not really coming up in my frame of
20 mind. I don't wish your client to live, I don't wish your
21 client to die. I truly, when you asked the question a
22 second ago, the only thing that I have heard about the
23 case was what the Judge read and I know you are asking if
24 I would require your client to die. And I don't want to
25 sit here and come up and concoct a story and tell you a

1 lie and even if I was Governor for the day I still never
2 really thought about it. And I think that before you make
3 such a harsh or rash decision for anybody that you should
4 actually have a valid reason and not just say something
5 just to say it or just to answer a question that I don't
6 feel like if I tell you anything I would be telling you a
7 lie because I really don't know. So for me to say if I
8 was Governor for the day, I would say death penalty, for
9 me to say if I was not Governor for the day I would say
10 strike it. I am a person who thinks that our laws are put
11 on the books for a reason and I don't think that a
12 Governor should have, want to say that this or that should
13 or should not occur. So I think that we should have a
14 reasonable discussion before we come off with saying, I
15 want the death penalty or I don't want the death penalty.
16 So I can't tell you, I can't say that.

17 Q Okay. That is a perfect answer. Like I said, no
18 right or wrong answers here, just kind of what you feel.

19 A So I don't agree or disagree. I am truly about, I am
20 very neutral with it, I don't have, I can't do that or I
21 don't have, that is when you should always do it. I think
22 that, in our society, that we have a collective group of
23 people and the death penalty is there for a reason and it
24 was voted for and it was put on our book. The Governor
25 wasn't the one that just decided it.

1 Q Right. And you understand that some people that say,
2 you know, the death penalty is appropriate for
3 retribution, kind of an eye for an eye. Do you understand
4 that?

5 A I do.

6 Q Is that something that you believe?

7 A They also, if they get you on one cheek turn the
8 other.

9 Q Sure. Like I said, retribution is one reason that
10 some people support the death penalty and you have also
11 got deterrence.

12 A I don't think that that deters it. I mean, I think
13 that, I don't think that the death penalty one way or the
14 other can deter a crime, if they did we wouldn't have so
15 much murder that we do in our society period. You know, I
16 don't think that a lot of things, I don't think that cops
17 setting up speed traps deter people from speeding, they
18 still do it, the cameras that they put on the traffic cam,
19 that doesn't deter people from running the traffic light,
20 they still do it.

21 Q Sure. That makes sense. And you have got,
22 obviously, some people incapacitation in other words, you
23 get that rid of that person they can't do anything again.
24 So let me kind of switch it up. The Judge kind of talked
25 to you and told you that Tim had plead not guilty by

1 reason of insanity.

2 A Yes, sir.

3 Q And that basically means that someone, because of a
4 mental disease or a mental defect does not know the
5 difference between a moral or a legal wrongfulness of
6 their actions. Do you understand that?

7 A Yes sir, I do.

8 Q And you get some people that say, you know what, that
9 is just an excuse or that is a copout. I can't do with
10 that. My question is, is that you?

11 A No, it is not.

12 Q And so even though, you know, when someone pleads not
13 guilty by reason of insanity, they are saying, hey, I did
14 the act, I just couldn't appreciate the moral or the legal
15 wrongfulness of it. And you understand that?

16 A Yes, sir.

17 Q Well, let me ask you this. The Judge kind of told
18 you, murder means the malicious killing of an innocent
19 victim done with hatred or ill-will. Do you understand
20 that?

21 A Yes, sir.

22 Q And that it is not, it is done without any kind of
23 excuse or justification or any kind of defense. Do you
24 understand that?

25 A Yes, sir.

1 Q So if you were on a jury and the Defendant is charged
2 with multiple murders of children and there is no excuse.
3 In other words, if you have heard anything about any kind
4 of mental illness you and the other jurors have rejected
5 that, there is no type of defense, there is no
6 self-defense or heat of passion or anything like that. So
7 basically it is a situation where it is a malicious
8 killing, an intentional killing of innocent children. My
9 question to you is, what is your thought as the death
10 penalty is the appropriate punishment for that intentional
11 malicious murderer of innocent children?

12 A My thought is that if you actually believe that, that
13 you wouldn't be representing him as strong as you are.

14 Q No, but I am trying to find out what your thoughts
15 are in that situation, obviously.

16 A I mean, you described something that anyone including
17 yourself would classify as heinous. So in doing that it
18 is like, almost like a circle of a question and that leads
19 back around to the death penalty question that you were
20 asking me before.

21 Q Let me ask you, in that situation, could a life
22 without parole sentence ever be sufficient?

23 A You are asking me something to make a judgment
24 inference to a case.

25 Q I am not talking about, I am not just talking about

1 this case. I am just talking in general.

2 A Can you repeat what you are asking me.

3 Q Sure. So in that situation where you and eleven
4 other jurors have found someone guilty of an intentional,
5 malicious killing of multiple kids, is a life without
6 parole sentence ever appropriate in that situation?

7 A Well, according to what the Judge told us a minute
8 ago we would have to follow his instructions and make sure
9 we found mitigating circumstances as to why or why not
10 that would be the case. So the first thing would be to
11 follow the instructions of the Court and of the Judge with
12 how we would actually follow that crime. So if all of
13 those things in there, no mitigating of what you have
14 shown to show that we would actually follow, my job would
15 be to follow the instructions of the Judge.

16 Q Right. Well, you understand--

17 A I am trying to answer your question without going
18 left or without going right. And I feel like I am, it is
19 trying to take me one direction when I am really trying to
20 give you an honest -- and as far as possible. But when
21 you ask me that question, he also gave me instructions a
22 second ago in how we are to make sure that we listen to
23 what you say as far as his defense and as far as the
24 prosecution and what they say in making sure that we
25 follow his instructions with what we are doing.

1 Q And you understand that the question just kind of
2 presupposes, well, let me back up. So you kind of
3 understand that it is a weird situation because I am kind
4 of talking to you about penalty when we might not ever get
5 there?

6 A Exactly.

7 Q And so it is kind of odd--

8 A So I can make up a lie to you, I can tell you
9 anything you want me to tell you.

10 Q No, I just want to hear what you think, deep down in
11 your heart.

12 A But I am telling you that and I am saying that to
13 you.

14 Q So you have got two separate, so you have got that
15 first phase where you and the other jurors are going to be
16 able to consider guilty, not guilty, not guilty by reason
17 of insanity or guilty but mentally ill. Do you understand
18 that?

19 A I understand.

20 Q And so what I was asking you is, you and the other
21 jurors have determined either guilty or guilty but
22 mentally ill--

23 A You are telling me now, you are saying that we have
24 found your client guilty.

25 Q Yes. And we sort of jump to that second phase.

1 Okay. So we are kind of presupposing that and you
2 understand that even in that second phase that in South
3 Carolina the death penalty is never required?

4 A I understand that.

5 Q And so I think you kind of said, A, B and C, there is
6 never, if the State proves A, B and C, got to have death.
7 Do you understand that?

8 A I understand that.

9 Q Because in South Carolina, basically that is called
10 mitigation. In other words, mitigation is any reason to
11 give someone a life without parole sentence?

12 A Right.

13 Q You understand that. And this State or actually
14 throughout the whole Country anyone can get a life
15 sentence for this case, any case or even the worst case
16 you could imagine.

17 A Correct.

18 Q And you could hear circumstances but those
19 aggravating circumstances have to found by you and the
20 eleven other jurors beyond a reasonable doubt. Do you
21 understand that?

22 A Correct.

23 Q But the mitigating circumstances do not have to be,
24 there is no burden of proof. Do you understand that?

25 A Correct.

1 Q And so when we talk about those mitigating
2 circumstances each Juror can find different mitigating
3 circumstances themselves. Do you understand that?

4 A Correct.

5 Q And so what that means, this Juror right here says,
6 you know what, I saw that he has got a good relationship
7 with his dad. And you know what, to me, I want the value
8 of life on that and that is reason that I want to sentence
9 him to a life sentence.

10 A I understand that.

11 Q And this Juror could say, you know what, I didn't
12 necessarily see what this Juror here saw, I think he has
13 some mental health problems. And you know what, for me,
14 that is why I want to give the value of life. Do you
15 understand that?

16 A Yes, sir.

17 Q And this third Juror over here could say, you know
18 what, I didn't see that, what they say. But you know
19 what, I don't know what it is, I can't put it into words.
20 I just think that a life sentence is appropriate myself.

21 A I understand.

22 Q And you agree with that?

23 A I think that each individual person may have their
24 own reasons for why they may have, as you stated,
25 mitigating circumstances. And from my understanding it

1 has to be all twelve to make sure it is a death penalty.

2 Is that correct?

3 Q It is.

4 A Right. So you could have one that could have that
5 mitigating circumstances that would make it to where it
6 would have to be, I am assuming, life without parole,
7 correct?

8 Q Yes, ma'am.

9 A Okay.

10 Q And so, like I said,--

11 MR. GRAHAM: Your Honor, objection. I don't know if
12 this is proper questions.

13 THE COURT: I think I am going to let you ask the
14 questions, Mr. Madsen. Reask the question because she is
15 understanding the instructions but keep going with the
16 understanding of mitigating factors.

17 Q Well, so, like I said, each Juror can find their own
18 mitigating factors or whatever they feel is appropriate.

19 A Yes, sir.

20 Q And some people, the Supreme Court kind of calls it,
21 when jurors look at those factors they kind of call it an
22 individual moral judgment. Do you understand what that
23 means?

24 A Yes.

25 Q Okay. So I kind of equate it to like faith. You

1 have made an individual moral decision about what your
2 faith is.

3 A Okay.

4 Q And maybe someone else has an individual moral
5 decision about what their faith is.

6 A I understand.

7 Q And you, the two of you might have made different
8 decisions about what your, their faith is but you would
9 expect them to respect what your decision is, correct?

10 A Correct.

11 Q And you would--

12 A Respect theirs, correct.

13 Q And you understand that once a Juror makes that
14 individual moral judgment that that is their decision?

15 A Correct.

16 Q And you understand that when you are back in the jury
17 room that jurors might have different individual moral
18 judgments?

19 A Correct.

20 Q And the law says that once you have made that, that
21 is your decision and that you shouldn't be bullied or
22 browbeat or someone to kind of take that away from you.
23 Do you agree with that?

24 A Definitely.

25 Q And is that something that if you saw, you know, back

1 in the jury room where it got farther than say, just
2 normal civil discourse that you would step in and say, no,
3 they have a right to their individual moral judgment.

4 A Definitely.

5 Q And if it got to the point where you saw that would
6 you write a note to the Judge and say, Judge, this is gone
7 way past civil discourse. You need to step in.

8 A Definitely if it is out of hand.

9 Q And you would send a note?

10 A I wouldn't have a problem whatsoever.

11 MR. MADSEN: Judge, subject to your previous ruling
12 that is all I have.

13 THE COURT: All right, Mr. Graham.

14 EXAMINATION

15 By Mr. Graham:

16 Q Ms. Addison, my name is Shawn Graham, I represent the
17 State.

18 A Mr. Graham.

19 Q Thank you for being here today and answering our
20 questions.

21 A Yes, sir.

22 Q My understanding is you are a type three?

23 A Yes, sir.

24 Q You read it over, you would want to hear the good and
25 the bad?

1 A Yes, sir.

2 Q And then after you hear the good and the bad, if you
3 think it is right you could vote for life?

4 A Yes, sir.

5 Q If after hearing the good and the bad do you think
6 the appropriate sentence is death, you could vote for
7 death?

8 A Yes, sir.

9 Q Thank you.

10 THE COURT: Anything else?

11 MR. MADSEN: No, sir.

12 THE COURT: Ms. Addison, we are done with you and I
13 am telling you right now I find you qualified as a Juror.
14 You are now qualified and you will watch the internet on
15 the Lexington County website just as you did when you
16 reported as a panel. You are now going to follow the
17 instructions on what is under the qualified jurors
18 description. And the qualified Juror has to come back,
19 probably early next week it will say, please report back
20 to the Lexington Court House at 9:00 o'clock Monday
21 morning, Tuesday morning. It may not say that for a few
22 days, it may say please check back tomorrow for further
23 instructions. You check back and follow the instructions
24 and until that time don't discuss the case. You are under
25 oath not to do any investigation, not to do independent

1 research, don't get on social media and tell people you
2 are on the jury. Don't talk about the case whatsoever.
3 And my instructions tell you not to let anyone talk to you
4 about the case includes don't peruse publicity, media,
5 social media or otherwise. Any opinions on this case that
6 are out there are just that. I want you to decide the
7 case on what is presented to you here in the courtroom,
8 under oath, under the supervision and the record. Will
9 you do that?

10 JUROR: Yes, sir.

11 THE COURT: Thank you.

12 JUROR: Have a good evening.

13 THE COURT: Okay.

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

16 THE COURT: Observation, Mr. Long and Ms. Addison,
17 different form, giving answers, yes, yes, no. She gave
18 answers.

19 MR. HUBBARD: She did.

20 THE COURT: All right, are y'all ready on number 10?

21 MR. HUBBARD: Yes, sir.

22 THE COURT: Bring them in.

23 (Whereupon, Juror 10, Edgardo Alvira entered the
24 courtroom.)

25 EXAMINATION

1 By The Court:

2 Q How are you doing. Sit right here, please, sir. Are
3 you Mr. Alvira?

4 A Yes.

5 Q Have a seat. I will tell you again for the third or
6 fourth time, my name is Eugene Griffith, I am the
7 presiding Judge. I need you to spell and say your first
8 and last name for my Court Recorder, Ms. Holston.

9 A My name is Edgardo Alvira, E-D-G-A-R-D-O;
10 A-L-V-I-R-A.

11 Q All right, sir. Thank you for coming. I placed you
12 under oath Monday and instructed you not to talk about the
13 case or have anyone talk to you about the case. Since
14 Monday, leaving the Court House, has anyone tried to talk
15 to you about the case?

16 A No, sir.

17 Q You have not talked to anybody nor has anybody
18 questioned you about the case?

19 A No, sir.

20 Q There has been a lot of publicity in the news media,
21 publicity on social media as well as the Court gave
22 instructions on the indictments about what the State is
23 alleging happened. There were murders, allegations of
24 five murders in this case. Do you understand that?

25 A Yes, sir.

1 Q Based upon anything you heard prior to coming into
2 court today have you formed an opinion as to what you
3 think happened in this case?

4 A No, sir.

5 Q No opinion formed?

6 A No, sir.

7 Q Now, I ask you about your work schedule, your
8 personal schedule over the next month. Have you anything
9 on your calendar, if you are qualified as a Juror, can you
10 sit as a Juror if I need you for next week, the week
11 after, potentially into the early part of late May or
12 June. Can you do that?

13 A Can I say something?

14 Q Yes. I want to know what you have got on your
15 schedule.

16 A Okay. I have no problem with my work but my problem
17 may be with my language because my stronger language is
18 Spanish.

19 Q Okay.

20 A That is the only thing that maybe can create any
21 problem.

22 Q Now, you, how long, you grew up in--

23 A Porta Rica.

24 Q I thought that PR was an abbreviation for Porta Rica.
25 Did you study English growing up?

1 A Yes, in Porta Rica.

2 Q So you were raised in a dual language household?

3 A No, sir.

4 Q Only Spanish?

5 A Yes. Everyone in my house speaks Spanish.

6 Q When you went to high school, did they teach you
7 English in high school?

8 A Yes, sir.

9 Q Is that where you learned it?

10 A Yes, sir. I had to speak, learn to talk English.

11 Q Thus far any of the instructions I have given you,
12 have you been able to discern what I meant?

13 A But these are not like my environment where I work or
14 my field.

15 Q You work in maintenance?

16 A Yes.

17 Q You fix things?

18 A Yes, sir.

19 Q Motors?

20 A Walls.

21 Q Carpenter, you do carpenter work, sheetrock?

22 A Yes, maintenance is a apartment complex.

23 Q Okay, I got you. You work on buildings. If
24 something needs fixing you repair it?

25 A Yes, sir.

1 Q I guess you work on broken doors from time to time?

2 A Yes, sir.

3 Q Okay. Thus far if you have trouble understanding me
4 tell me to reask the question and I will be glad to. Did
5 you hear and understand the instructions I gave to you
6 earlier about the process, the criminal process of,
7 accusations of murder in a Capital case means there could
8 be a two-phase case. Phase one would be the consideration
9 of guilt or innocence, whether the murder happened or not.
10 The murders, the State proves the murder then it goes to
11 phase two where punishment is considered by the jury. And
12 in a Capital case the jury imposes the punishment, not the
13 Judge. Do you understand that?

14 A Yes, sir.

15 Q Now, did you, I didn't ask you about this. The case
16 involves the testimony which involves the death of some
17 children. Would testimony about the children's deaths,
18 their descriptions, it is not going to be easy, it is
19 going to be difficult testimony to listen to, may be
20 graphic, harsh, unpleasant. Would testimony of that type,
21 that subject matter be difficult for you being fair and
22 impartial to both the State and Mr. Jones' side?

23 A Maybe.

24 Q You have got children?

25 A The youngest is 24, the oldest 28.

1 Q Your children are grown?

2 A Yes.

3 Q Do you have grandchildren yet?

4 A Not yet.

5 Q Okay. And so I don't want you to be surprised by me

6 saying it is going to be unpleasant and difficult

7 testimony. It is going to be difficult and unpleasant.

8 Is that going to be difficult for you to be fair and

9 impartial to both sides?

10 A Can I say something?

11 Q You can say it.

12 A I believe in justice and I think that what I lean

13 for, for justice.

14 Q Let me go on to the next question. Did you see and

15 read the types of jurors the Court's typically find, type

16 one, type two, type three?

17 A Yes, sir.

18 Q Can you identify yourself on any of those three types?

19 A Yes.

20 Q Where would you fall assuming those facts.

21 A Well, by my understanding what I read I think I would

22 apply for number three, from my understanding.

23 Q Okay. And let me ask you about that and I don't mean

24 to embarrass in any way but you brought up your language,

25 native language being Spanish and your secondary language

1 being English. Do you read and speak, do you speak
2 English better than you read it or do you read it equally
3 as well?

4 A I think it is even.

5 Q Even. Okay. Fair enough. Have you understood my
6 instructions on the law thus far?

7 A Yes, sir.

8 Q But you classified yourself as a type three. You
9 want to hear everything to determine what is the justice
10 of the case?

11 A Can you repeat that, please.

12 Q You described yourself as a type three Juror which
13 would be a person that would consider and wait for the
14 entire case to be presented, all evidence of the
15 aggravation which would be the aggravating factors and all
16 evidence of mitigation, would be reasons to impose a life
17 sentence as opposed to a death sentence. A type three
18 Juror wants to hear everything before making that
19 decision. Is that right?

20 A Yes, sir.

21 Q Do you understand the death penalty is not automatic
22 in these cases, never any case. The jury has to consider
23 all the testimony before they make that decision. Do you
24 understand that?

25 A Yes, sir.

1 Q Now, you understand that the first phase, the guilt
2 or innocence, the State has got to prove the murder beyond
3 a reasonable doubt before we go to phase two. If the
4 State doesn't prove the murder then not guilty is the
5 verdict and the case stops right there, it ends. Do you
6 understand that?

7 A No, sir.

8 Q All right. The State has got to prove and call
9 witnesses to prove its case and is accusing Mr. Jones, he
10 is presumed innocent, it is presumed he has not done
11 anything. The State has got to show you the facts and
12 evidence to support the accusations they are making
13 against him. The accusations are for murder, five times
14 over. The State has got to prove those facts and
15 circumstances all to a burden of proof called beyond a
16 reasonable doubt. So if you are convinced that he is
17 guilty beyond a reasonable doubt then you would make a
18 finding of guilt. If you didn't think the State has
19 proven its case beyond a reasonable doubt then you could
20 find a verdict of not guilty. That would be the
21 instruction of the Court. Could you listen to the
22 testimony and evidence and make a decision, consider the
23 instructions of the Court at that time?

24 A Yes, sir.

25 Q Additionally, Mr. Jones has plead not guilty by

1 reason of insanity, so he has brought another defense into
2 play other than you can't prove it. Okay. Here are some
3 statutory defenses that people could present. Accident,
4 involuntary intoxication, self-defense, insanity, guilty
5 but mentally ill, defense of habitation, entrapment,
6 duress or alibi. Those are defenses that the parties can
7 present if testimony is presented to support any of those.
8 I would instruct you as to how to evaluate and consider
9 those, that testimony and that aspect of the law. Do you
10 understand that?

11 A Yes, sir.

12 Q Could you give meaningful consideration to my
13 instructions on the State's burden of proving its case
14 beyond a reasonable doubt and proving each and every
15 element of murder as well as aspects of any defenses which
16 the Defense presented on and give due consideration,
17 meaningful consideration to those evidence and testimony
18 and follow my instructions on the law. Could you do that?

19 A Yes, sir.

20 Q Could you be fair and impartial to both sides when
21 you are doing that?

22 A Yes, sir.

23 Q All right. Now, like I say, if the State does not
24 meet its burden of proof or you believe and found that the
25 Defendant did not know what he was doing at the time of

1 the crime, therefore he was insane. If you find that the
2 case ends. If the State meets its burden of proving guilt
3 of the murder the case goes to phase two which is the
4 sentencing portion which we talked a little bit about.
5 The jury has got to make one of two decisions, life or
6 death, no other options out there once the guilt has been
7 proven. The State has got to prove an aggravating factor
8 to be entitled to say we are seeking the death penalty.
9 An aggravating factor, making it an aggravating murder
10 would be, murder of a policeman, murder of a child, murder
11 of more than one person, rape of murder, kidnapping of
12 murder. Those are aggravating factors. The State has got
13 to prove one of those five beyond a reasonable doubt to
14 then ask for the death penalty. Do you understand that?

15 A Yes, sir. Can I say something?

16 Q You may.

17 A I don't, not believe that is not the right word but
18 not, I don't think that me, specially, these are my
19 opinions, that everybody, no matter how bad is the case
20 deserve the death penalty. That is me.

21 Q Okay. And that is some of the opinions I am looking
22 for. So a type three has got to hear everything and they
23 make that decision based upon what all has been presented.
24 Now, aggravating factors I am going to give to you are
25 presented in the punishment phase. So you hear

1 aggravating factors but you also hear mitigating factors
2 which kind of challenge the aggravating factors. Here is
3 some mitigating factors. The Defendant had no significant
4 history of prior criminal conviction of violence against
5 another person. The murder was committed while the
6 Defendant was under the influence of mental or emotional
7 disturbance. The victim was a participant in the
8 Defendant's conduct or he consented to the act. The
9 Defendant was an accomplice in the murder committed by
10 another person and his participation was relatively minor.
11 The Defendant acted under duress under the domination of
12 another. The capacity of the Defendant to appreciate the
13 criminality of his conduct or to conform his conduct to
14 the requirements of law was substantially impaired. The
15 age or mentality of the Defendant at the time of the
16 crime. The Defendant was provoked by the victim in
17 committing the murder. The Defendant was below the age of
18 18. The Defendant had mental retardation at the time of
19 the crime. And any other aspect of Mr. Jones' life, if he
20 came from a broken home, if he had a bad childhood,
21 subject to abuse, any sort of thing like that. Those are
22 mitigators meaning those can give jurors reasons to
23 support a life sentence as opposed to a death sentence.
24 Now, can you consider all aspects of the testimony whether
25 it be aggravating circumstances or mitigating

1 circumstances knowing the State has got to prove the
2 aggravator beyond a reasonable doubt but consider the
3 mitigating facts and consider those consistent with my
4 instructions on the law on all of those factors and be a
5 fair and impartial Juror in this case. Can you do that?

6 A Can you would make a question?

7 Q Yes you may.

8 A That means that if, it wasn't by influence or
9 something. If I can make a point?

10 Q Yes.

11 A Yes.

12 Q Yes, you get to discuss in the jury room fully. Now,
13 you got any religious belief, moral belief, personal
14 belief that you could not impose the death penalty?

15 A Can you repeat that?

16 Q Do you have any religious belief, moral belief,
17 belief in your heart personally that you would be not able
18 to sign a verdict of the death penalty?

19 A Yes sir, I believe in religion and moral.

20 Q You could sign it or could not?

21 A No.

22 Q I want you to understand that the possible
23 punishments that are on the table, life without parole and
24 death. Do you have any religious or moral belief that you
25 could not vote for a life without parole sentence. Could

1 you do that?

2 A Can I say something?

3 Q Yes.

4 A It is a little bit difficult for me.

5 Q Okay.

6 A Why?

7 Q Tell me why.

8 A Because I believe in opportunities. I know these by
9 what I heard is difficult is life involving but it is
10 still difficult for me to punish someone at that point
11 because we are not, we, our life, there is going to be s
12 stop where we are going to change, our mind is going to
13 change. We are not going to be that same all of our life.
14 So that is mine.

15 Q I understand people grow, people learn, people have
16 things happen to them. So, could you, do you have any
17 personal belief that you could not impose a sentence of
18 life? Can you impose a sentence of life if the facts
19 supported it and the instructions were consistent with
20 that?

21 A That means if I can't point that, to take a decision?

22 Q Yes.

23 A Maybe, like I said, it is going to maybe difficult
24 for me to tell you now.

25 Q Okay, right. Because you don't know any facts. We

1 are guessing. We haven't heard anything.

2 A Yes.

3 Q All right. I am going to go back to my other
4 question. Do you have a belief, personal belief in your,
5 in your heart that you would not be able to sign, if the
6 verdict was the death penalty could you sign that verdict
7 form. That is one of the requirements, each Juror, all
8 twelve sign the verdict.

9 A I have got none, I have an option, right?

10 Q Life without parole is the other option, those are
11 the two choices.

12 A Life without parole and death penalty, right?

13 Q Those are the two choices.

14 A Difficult for me but I hear, right. I think I can
15 make a, I can sign for what I believe is the more fair.

16 Q Okay. Considering my instructions and the testimony
17 and evidence you have heard?

18 A Yes, sir.

19 Q All right.

20 MR. HUBBARD: Your Honor, I wasn't real clear of the
21 answer to that question on signing.

22 THE COURT: I will ask him again.

23 Q Do you believe, can you sign, if the verdict was
24 unanimous to impose the death penalty, could you sign your
25 name to the verdict form?

1 A Can I make a question?

2 Q Yes you may.

3 A To clarify maybe my understanding?

4 Q Yes.

5 A Of the question.

6 Q Okay.

7 A If was declared guilty?

8 Q Right, we are past guilty. Yes, the murder happened.

9 A Two options, death or life.

10 Q Correct.

11 A Like I said, I think it will be difficult for me to
12 sign, I mean, I being honest.

13 Q And I want you to be.

14 A I going to be difficult, still difficult because I
15 never being involved in this situation. And I believe on,
16 believe in opportunities. Like myself, but it going to be
17 difficult to sign because I got two options. But if that
18 option is death penalty I have to sign it.

19 Q Yes.

20 A It is no option that I not going to sign that because
21 I think I lean more on life without, I would have to sign
22 whatever it was, the decision of the Court, right?

23 Q No. Here is what is unique about the Capital case.
24 The jury first decides the guilt or innocence, whether it
25 happened and he did it. That is done. You go to step

1 two, in phase two the jury decides which punishment, life
2 or death.

3 A The jury?

4 Q The jury does, the Court does not. If the decision
5 of the jury was death could you sign, as a Juror, could
6 you make a finding of the death penalty and then sign the
7 verdict?

8 A Can I say something?

9 Q Sure.

10 A Like the movies, like it is twelve jurors, ten vote
11 for something, two for, so I want to be one of those?

12 Q I am asking, the verdict to be a death penalty has
13 got to be unanimous, all twelve have got to vote and all
14 twelve have got to sign. Could you do that?

15 A I think so.

16 Q Now, the verdict for life without parole, twelve vote
17 for it, the sentence is life without parole, could you do
18 that?

19 A It is difficult but like I say, it is something that,
20 it is difficult for me because I am not trying to be
21 unfair with what I, by the book, the decision I can be
22 against them.

23 Q You could.

24 A It is difficult, it is difficult for me.

25 Q If you made your decision, your personal decision on

1 what you thought was right and different from someone
2 else's could you talk with them and try to see their point
3 of view and let them talk to you so y'all could exchange
4 your views. Could you do that?

5 A Yes, sir.

6 Q Okay. But if y'all resolve your differences and the
7 verdict was for the death penalty, could you sign?

8 A I have no option. I cannot refuse, right?

9 Q You can. Nobody can make you do something that you
10 don't want, if it is your decision but if you understand
11 the, because we haven't heard the testimony. Testimony is
12 presented and your decision is that the appropriate
13 sentence would be death could you sign that verdict form.
14 Now, that means you have heard everything, all the
15 factors.

16 A Can I say something?

17 Q Yes.

18 A I want to sleep good when I get home. I don't want
19 to sign something that then see on the news that I was one
20 of those--

21 Q No. Your name is not put on the news.

22 A No, no. No by name but by what my decision, it is
23 going to be involving the person, you know, I want to
24 feel--

25 Q Comfortable that you made, the decision is right.

1 A Because difficult case.

2 Q Oh, it is a difficult case.

3 A I don't have babies but I love kids and that is why I
4 have three kids when I was young. I always wanted to be a
5 father. I love kids, I was a father very young and I
6 changed my life because of them.

7 Q Okay.

8 THE COURT: Mr. Secor.

9 MR. SECOR: Yes, sir.

10 EXAMINATION

11 By Mr. Secor:

12 Q Hello, Mr. Alvira. How are you?

13 A Good, nervous, cold.

14 Q I am nervous too. These are difficult questions and
15 I appreciate you being so honest with us. One thing that
16 I want to make sure that you know and tell me if you don't
17 know this, that you can be or you can have religious or
18 moral opposition to the death penalty. You can say my
19 religion or my morality doesn't agree with the death
20 penalty. But you can still be on the jury. Does that
21 make sense to you?

22 MR. HUBBARD: Your Honor, that's not a correct
23 statement.

24 MR. SECOR: It is exactly a correct statement of law.

25 THE COURT: No, no. I think the Court has made a

1 determination that he can read, write or at least speak
2 and understand the English language. That is a
3 determination that I made and he can.

4 MR. SECOR: I didn't ask anything about that, Your
5 Honor.

6 MR. HUBBARD: The question was on his moral and
7 religious beliefs, that you can have religious beliefs
8 that an opposition of the death penalty can still be--

9 MR. YOUNG: Your Honor, can we be heard on the
10 record.

11 THE COURT: All right, step outside real quick. I
12 have got to put something on the record.

13 (Whereupon, the Juror was excused from the
14 courtroom.)

15 THE COURT: All right, I thought he had a language
16 barrier at issue. I think I would rather you go first on
17 this witness because I think he has answered all of my
18 questions. And I don't think, I will let them come
19 second. I think this is a good one for you to go first.

20 MR. HUBBARD: All right.

21 THE COURT: Mr. Secor, do you have any objection to
22 that?

23 MR. SECOR: Yes, sir.

24 THE COURT: Why is that?

25 MR. SECOR: Well, I just began, Solicitor Hubbard

1 said I made a mistake of the law which is one-hundred
2 percent incorrect.

3 THE COURT: Don't get personal on me.

4 MR. SECOR: I am not, I am just stating what
5 happened.

6 THE COURT: Okay. I spent a lot more time with this
7 Juror than any other Juror we have had in here because of
8 the language issue.

9 MR. SECOR: I would just say State v. Sep, 366 SC--

10 THE COURT: All right, why, why, what is it?

11 MR. SECOR: For the proposition that the exclusion of
12 a venire person simply because there was general objection
13 to the death penalty or perhaps conscientious or religious
14 scruples against its infliction is unconstitutional. The
15 State versus Sep, 366 SC--

16 THE COURT: And I think that was one of the questions
17 that I asked him to determine his qualification. So far,
18 I think he is qualified so far. Maybe it would be better
19 for the State, who, I mean, am I wrong, y'all kind of like
20 the guy. It is obvious.

21 MR. SECOR: I agree that he is qualified but I take
22 issue with the State saying in front of him that I made a
23 misstatement of law when I did not.

24 MR. HUBBARD: Your Honor, the question that I heard
25 was, did you know you can be on a jury, death penalty case

1 even though your moral and religious views were opposed,
2 your personal views, you are opposed to it. You have
3 asked that question, every Juror, do you have any
4 religious or moral reasons why you can't be fair to both
5 sides and that would absolutely make him unfair, make him
6 unqualified. We never got an answer but that question was
7 wrong.

8 THE COURT: Well, I thought he has been asked that
9 question multiple times is can you do that. And he has
10 said it would be difficult numerous times but he could do
11 it.

12 MR. SECOR: I agree and Your Honor asked him numerous
13 times if he could sign the verdict form and he said
14 numerous times that he could.

15 THE COURT: Correct. All right, I understand you
16 don't like, I am going to clear that up with him and I am
17 going to let, whichever one the State's going first and
18 then you come back and follow it up. I will tell him, I
19 made a mistake, it was their turn, I will claim that
20 mistake with this gentleman.

21 MR. SECOR: I will just say that it doesn't require
22 any further questioning from anybody, he is qualified.

23 THE COURT: I am going to let Solicitor Hubbard,
24 whoever it is. Who is it.

25 MR. HUBBARD: Yes, sir.

1 THE COURT: Bring him back in.

2 (Whereupon, the Juror entered the courtroom.)

3 THE COURT: Mr. Alvira, be seated back again. I was
4 distracted, I was writing down something you said and
5 taking my notes and I called on Mr. Secor and that was, he
6 is suppose to ask questions secondly. Solicitor Hubbard
7 was suppose to go first asking you questions. Both
8 attorneys may get an opportunity to ask you questions.
9 Okay. Answer their questions the best you can, they are
10 looking for candor and truthfulness. Okay. All right.

11 EXAMINATION

12 By Mr. Hubbard:

13 Q How are you, sir?

14 A Good, yourself.

15 Q If there is anything that I ask and you have a
16 question about and you need me to reask it phrase it a
17 different way I will be happy to do that.

18 A All right, thank you.

19 Q I am sure this is probably your first time serving on
20 a jury?

21 A Yes, sir.

22 Q It is pretty new and a big case?

23 A Uh-huh.

24 Q The Judge went over different types of jurors with
25 type one saying, when there is a murder I don't need to

1 hear anything else, it is death. Do you understand that?

2 A Yes, sir.

3 Q On type one.

4 A Yes.

5 Q It is always death, they don't want to hear anything,
6 they are done. Type two is always life and they don't
7 need to hear anything else. Type three is a Juror, when
8 they go back in that Juror room, they want to hear
9 everything, have heard everything, good and bad and each
10 Juror can give life or death. It is always going to be
11 difficult, it is always going to be hard.

12 A Yes.

13 Q Before a jury can sit over here they don't know
14 anything about the facts, before they can sit here they
15 have to be able to say, you know, I can do it. I can give
16 life but I can also give death. Nobody tells these jurors
17 what to do. Do you understand that?

18 A Yes.

19 Q They are not required to do anything. Do you
20 understand?

21 A Yes, sir.

22 Q So the jurors who sit in this box get to decide if
23 someone gets a life sentence or death, nothing is
24 required. Do you understand that?

25 A Yes, sir. I have no problem with taking this issue

1 but it is against, not by, because I am going to be clear.
2 No matter I believe God or not, I serve God or not, no
3 matter it is a moral or not, I think it is about me. Who
4 I am.

5 Q Yes.

6 A Who I pick or choose how to treat people. Something
7 I have been taught, I don't like to happen to me either.
8 I don't want, nobody, like example, in my car but I don't
9 want to hit nobody's car but I don't want nobody hit my
10 car either. So in this situation I can't sign and but I
11 can, but the thing is, it is not something, to be honest
12 with you I don't want to do it. I getting more specific,
13 I don't want to be involved in this situation.

14 Q Right.

15 A And I feel bad about if I pick the wrong decision is
16 not, it is not, it is an option to pick a decision but it
17 is something that I don't want to do. It look like that
18 nobody grabbing me by the neck, y'all or grabbing by the
19 neck to pick a decision. That is something that I don't
20 feel comfortable, I am not mad or I feel that way. I have
21 no problem with, to pick one of those but the problem is I
22 don't want to do it, I don't want to pick both. I want
23 y'all to, I don't want that to fall on me.

24 Q You don't want to pass judgment?

25 A Yes, sir.

1 Q And because you are not a person that wants to judge
2 other people and you don't want to be judged?

3 A I believe in, I was a drug addict.

4 Q I see.

5 A When people not believe in me, you know. And I not
6 like, that wasn't my type of life but I, facts changed, I
7 never been in rehab, I never was in intoxication because
8 it was with power and I was since 1995, I quit, I say no
9 more. But because, like I said, I love kids. When I was
10 23 I was with three babies in my house, boys, all three.
11 So I changed because of them so I had opportunity, I know
12 this is difficult situation and I think nobody deserves,
13 especially kids, to, you know, but I think, I have not
14 been one, like I said, thank God I never was violent. But
15 I am not that God, I am not that God who, no matter how he
16 did, I am not the one who a God that has got work to
17 punish someone.

18 Q That is God's work to punish someone?

19 A Yes.

20 Q Not yours?

21 A I feel it is not my responsibility. I want to say
22 something else. I do maintenance that is my stronger of
23 what I can do. That is what I can do. But I tried to
24 study human resources, I went to college and because I
25 liked to talk with people, I not change no one, nobody can

1 change no one, nobody. And then it wasn't for me because,
2 I am not good at math.

3 Q I am not good at math either.

4 A But so I started study social worker because to try
5 to heal myself and this is something that has made me
6 uncomfortable or to the point that I don't want to do it.
7 I believe, like I said, I am going to be open. While my
8 son, boy, was in jail and, you know, and he is out and I
9 join him now and my wife and I love him. I don't like
10 what he did but I think, like I said, this is something
11 complicated for me. Maybe I not the guy, the right guy
12 for you because--

13 THE COURT: All right, let him ask questions.

14 Q Based on your life experiences and all of the things
15 you went through do you feel like, in following up your
16 answers, do you feel like you can't pass judgment in this
17 case?

18 A Well, I have got one here. Since I heard, I got mine
19 but not that brutal or that, I got my judgment since I
20 heard the, I got my judgment but not that strong, I don't
21 know the work for it.

22 Q Let me ask you this. When a person is convicted of
23 murder and the State is seeking death and these jurors go
24 back and they decide, he committed a murder. We go into
25 that next phase. The only options are life where he dies

1 in prison or death where the State puts him to death. Are
2 those two options something, because of your past
3 experience, neither one of those are suitable for you,
4 that you can't pass judgment?

5 A Maybe with this I can, every, the decision that we
6 make has consequences.

7 Q Sure.

8 A I believe that if we create, we do violate the law
9 that is punishment. In this case I think but I believe
10 need some punishment but not those. I be more clear I
11 think now.

12 Q So something less than life?

13 A Yes, I think that is, without parole.

14 Q Right.

15 A Like I say, he is not going to be that same all of
16 his years, he going to change one point.

17 Q He would not have opportunities in the future to
18 change and turn his life around.

19 A Yeah, because there is two option on his, for life
20 until the health or his life die or that. That is too
21 much.

22 Q Well, I appreciate your honest answers and there is
23 not a right or wrong answer.

24 A I feel free, I feel good but thank you.

25 Q Thank you for explaining it that life and death, both

1 of those are too harsh for you?

2 A No matter.

3 Q No matter what.

4 A Uhmmm (yes.)

5 Q Thank you so much.

6 A You are welcome.

7 THE COURT: Okay.

8 EXAMINATION

9 By Mr. Secor:

10 Q I just have a few more questions for you, Mr. Alvira.
11 Is that okay?

12 A Yes, sir.

13 Q In a case like this you and the other jurors, at the
14 first phase would be asked to decide if a person is guilty
15 or not guilty and you understand that?

16 A Yes.

17 Q And you said earlier, I think, that you believe in
18 justice?

19 A Yes, sir.

20 Q You believe that people need to be held accountable
21 when they are guilty of crimes?

22 A Yes, sir.

23 Q And although it might be difficult or uncomfortable,
24 if you were on a jury and you and the eleven other jurors
25 believe that the person was guilty of the malicious murder

1 of multiple children you could find that person guilty?

2 A Yes, without mentioning the punishment.

3 Q I understand, yes. But you could find him guilty.

4 Now, by finding him guilty that would mean that you and
5 the same eleven jurors would have to go to the second
6 trial, the penalty phase, as the Judge described. Right?

7 A Yes.

8 Q And during that penalty phase you hear all the
9 evidence that is presented by the State and by the
10 Defense. The State would be trying to convince you that
11 death is the right punishment. You would also be able to
12 consider anything and everything about the convicted
13 murderer that you decided you wanted to give a life
14 sentence for. And if you believe, based on your morality,
15 that life in prisonment without the possibility of parole
16 was appropriate you could sentence him to life without
17 parole?

18 A I can make a decision, I don't want that.

19 Q Of course and I don't think anybody would want to be
20 in that position, it is a very difficult position, I agree
21 with you. But it is important that we have thoughtful
22 people like you willing to do it, willing to make the
23 sacrifice because it is hard. And in that case, that same
24 case where you could vote for life without parole, is you
25 thought it was appropriate, if you based on your own

1 individual morality believed that death was the
2 appropriate punishment, for you, you could sentence that
3 person to death if you thought it was the right thing to
4 do?

5 A Like when I sentence him to death penalty? It is
6 still the same question. For me it is no, to be honest
7 with y'all, y'all are going to make me take out a decision
8 that is not, I don't think I know what you mean, that he
9 be served, because I agree the aggravation of the case.

10 Q Yes, sir.

11 A That is two things, life, no parole, that is going to
12 be, like I said at the beginning. He is going to be until
13 his last breath, he is 40 or 30, he can be 90 and he can
14 reach 98 or until the life, life or death. But it is,
15 like I say, I, I am not the one, I am the wrong guy for, I
16 know you are going to continue doing the same question and
17 I am going to give you the same answer.

18 Q And I hope I am not being disrespectful.

19 A No, no, no, no.

20 Q And you are entitled, of course, to your personal
21 opinions and your personal opinions are all that matter.

22 A Even I think, it is hard to say but I kind of through
23 that, even with my family I didn't act like that with
24 that, even to my family I wasn't that because I have been
25 through a lot, no matter is now, I didn't never did

1 something wrong, bad. But even those ones who try to
2 damage my family, especially on my orders on the, even I
3 was not anything like that because I have pacify, I am
4 not, no matter I used to fight, I used to go with my, we
5 have to go through this on how to deal with the problem
6 because you fight. But not, it is, I don't--

7 THE COURT: All right, ask your next question.

8 Q I guess the ultimate thing that we need to know is,
9 if you thought that life without parole was the right
10 sentence could you vote life without parole, if you
11 thought it was the right thing?

12 A Well, he got maybe opportunity inside there to, he
13 will never be out but I think he can change inside there.

14 Q Yes, there is a possibility of redemption in prison,
15 right?

16 A He is not going to be out, but.

17 Q And then the only other thing is that if you, just
18 yourself, you thought that death was appropriate based on
19 everything you heard and you considered everything and you
20 said, my individual decision, my individual morality says
21 that death is right. There would be a line for your name.
22 And all the Judge needs to know is whether or not you
23 could put your name on that line saying death, if you
24 thought it was right?

25 A It is that why he, so--

1 Q You would have to decide that.

2 A Okay, I can sign.

3 Q Okay. Thank you, sir.

4 A You are welcome.

5 MR. HUBBARD: Follow-up, Judge.

6 THE COURT: You may.

7 EXAMINATION

8 By Mr. Hubbard:

9 Q You have talked about opportunity and that is the big
10 issue you have had with punishment. And with life, you
11 had earlier mentioned something less than life would be
12 more suitable to you or said something to that effect. So
13 they had opportunity, right?

14 A Yes, sir.

15 Q Didn't you mention or maybe during prison or maybe
16 there is some opportunity in prison even though they are
17 going to die there. Is that right?

18 A Repeat that again.

19 Q Yes, sir. And then when asked about the question
20 about the Defense about serving life until you die in
21 prison, maybe there is some opportunity in prison?

22 A If that were I lean, for what I said, but I know the
23 options and I think that is the best.

24 Q With death there is no opportunity?

25 A Yes.

1 Q And so would your past experience and belief about
2 giving someone an opportunity, making sure they have a
3 chance to change, in light of your experience, in thinking
4 about that could you not -- death then?

5 A No, no I am not, no.

6 Q Because there is no opportunity to change?

7 A I am not the one who take that, it is, whoever, about
8 death?

9 Q Yes, sir.

10 A It is God or, it is one itself, yourself, not someone
11 else.

12 Q It is suicide or God?

13 A Yes, sir.

14 Q Okay.

15 A Because of free will.

16 Q Free will. Thank you, sir.

17 A You are welcome.

18 THE COURT: Step out real quick and we will put
19 something on the record and have you right back in here.

20 (Whereupon, the Juror was excused from the
21 courtroom.)

22 THE COURT: Solicitor, let me hear from you and then
23 I will hear from Mr. Secor.

24 MR. HUBBARD: Your Honor, this is a man who has tried
25 very hard to explain himself. I think the difficulty, he

1 kept talking about opportunity. When he explained that he
2 made it clear that because of the breaks he got in life,
3 the changes he was able to make, he got a family out of
4 that and he experienced good things. He thinks everyone
5 should have that light at the end of the tunnel. He
6 mentioned initially with me, both life and death were too
7 harsh even in a bad case. The Defense said, well, could
8 you sign life and put him in, vote for life. And then he
9 conceded that maybe there is opportunity in prison. What
10 he finally comes down to, what he finally has explained,
11 is that with death there is no opportunity. And only God
12 can take a life or the individual can take his own life.
13 That he is not that man therefore, Your Honor, I think he
14 is disqualified. He has been all over. Initially when
15 you were talking to him I think he had the impression that
16 he was going to have to do something even though Your
17 Honor was taking pains to explain--

18 THE COURT: I remember, you don't have to review my
19 questioning of him.

20 MR. HUBBARD: That is where, ultimately, where we
21 are. When it comes to death only God can take a life or a
22 man can take his own life but he won't.

23 THE COURT: Okay, let me hear from Mr. Secor.

24 MR. SECOR: Your Honor, based on numerous questions
25 from Your Honor as well as from the Defense, Mr. Alvira

1 certified numerous times that he could vote to impose
2 sentence of life without parole and he could vote to
3 sentence a person to the death penalty including and up to
4 the point where he would sign his name on a verdict
5 imposing the death sentence. He did state it would be
6 difficult for him but I would hope that would be the case
7 for every Juror. He is qualified under every standard
8 articulated by the United States Supreme Court and South
9 Carolina Supreme Court. The State has not articulated
10 legal grounds for his disqualification and his
11 disqualification, given the fact that he has given
12 entirely qualified answers, his disqualification would be
13 akin impaneling a jury uncommonly willing to--

14 THE COURT: Okay, you don't need to give me all the
15 law. I mean, just tell me what you think rather than
16 reading that. You are reading off law. Tell me why he
17 should be qualified.

18 MR. SECOR: He should be qualified because he gave
19 qualified answers. The State's ultimate question, when
20 they want to get a Juror to say that they are going to,
21 unable to sentence the death, they always ask the question
22 of whether they can put their name on the line on the
23 death verdict form. Mr. Alvira on numerous occasions said
24 that he could do that.

25 THE COURT: I think he said twice.

1 MR. SECOR: Well he said one to me and I think he
2 said it twice to Your Honor.

3 THE COURT: I am considering once to you and I
4 thought he said once to me. All right. I don't want to
5 hear any more. He gave a variety of answers that were
6 inconsistent but totality of the circumstances,
7 particularly my question of him, I think he is qualified.
8 He is difficult, he is not going to be talked out of his,
9 once he makes his decision he is going to be a solid guy.
10 I think he is qualified, I think the language challenge
11 was a challenge for us all but I think he is qualified.
12 And I understand he is different than the girl but he is
13 very, he is qualified.

14 MR. SECOR: Yes, sir.

15 MR. HUBBARD: Just for the record, I know Your Honor
16 has a tough job, I get that. And the whole time you were
17 questioning him, what I gathered was, he kept talking
18 about opportunity. He finally explained that with me.
19 But that final explanation, he can't take, he said I am
20 not the guy to give death. Only God can give death or the
21 individual. Judge, I,--

22 MR. SECOR: I object under Rule 18.

23 THE COURT: All right. Your objection is noted for
24 the record and bring him in.

25 (Whereupon, the Juror entered the courtroom.)

1 THE COURT: Mr. Alvira, the Court has made a
2 determination that you would be qualified as a Juror. So
3 what I want you to do is remember your oath to not talk
4 about the case with anyone, not let anyone talk about the
5 case with you, do not do any independent research, do not
6 read any of the social media or public media. Study the
7 website under qualified jurors. It will tell you, please
8 check back, please check back and finally tell you when to
9 report back to the courtroom. It will probably be one day
10 earlier next week. Can you do that.

11 JUROR: Yes, sir.

12 THE COURT: Okay. See you next week.

13 (Whereupon, the Juror was excused from the
14 courtroom.)

15 THE COURT: Bring in 363.

16 (Whereupon, Juror 363, Johnny Rowell entered the
17 courtroom.)

18 EXAMINATION

19 By The Court:

20 Q How are you doing, 363. Mr. Rowell.

21 A That's right.

22 Q Can you spell your first and last name for Ms.
23 Holston's record.

24 A J-O-H-N-N-Y; R-O-W-E-L-L.

25 Q All right, Mr. Rowell, I put you under oath Monday to

1 not talk about the case and now has anybody talked to you
2 about the case. Has anybody done that?

3 A My boss, that's it.

4 Q And have you told him you are coming to jury service?

5 A Yes, sir.

6 Q Did you discuss the case any further than that?

7 A No, sir.

8 Q There has been a lot of media attention on this case,
9 social media, public media, I gave facts of the case on
10 Monday about some allegations occurred and facts in this
11 case. Have you heard those?

12 A No, sir.

13 Q Well, you heard what I said?

14 A Yes.

15 Q But you have not paid any attention to the media?

16 A No, no.

17 Q Have you made a decision or formed an opinion as to
18 what you believe happened in this case?

19 A What do you mean.

20 Q I mean, I told you the allegations that the State are
21 making is that there are five murder charges against Mr.
22 Jones involving five children. Have you made a decision
23 or formed an opinion on this case based upon that?

24 A Yes, sir.

25 Q Now, what is your opinion that happened in this case?

1 A Well, I read the statements out there.

2 Q Okay.

3 A Is that what you are saying?

4 Q Yes.

5 A Number one.

6 Q You are number one?

7 A Yes.

8 Q Okay. Now, let me go back and review this a little
9 bit. If you were put on the jury or a typical Juror on a
10 case like this, if the State proved guilt, proved the
11 murder, the State proved an aggravating factor, mitigating
12 evidence was presented to you, would you consider all of
13 that in making your decision or is your mind pretty much--

14 A My mind is pretty much made up.

15 Q And so you are number one?

16 A Yes, sir.

17 Q Fair enough. You are excused. Thank you.

18 A Yes, sir.

19 (Whereupon, the Juror was excused from the
20 courtroom.)

21 THE COURT: Bring me 273.

22 (Whereupon, Juror 273, Gail Massaro entered the
23 courtroom.)

24 EXAMINATION

25 By The Court:

1 Q Good afternoon, Ma'am.

2 A Good afternoon.

3 Q I will remind you you are under oath. Can you spell
4 your first and last name for Ms. Holston's record.

5 A Gail, G-A-I-L; Massaro, M-A-S-S-A-R-O.

6 Q Ms. Massaro, my name is Eugene Griffith, I met you
7 Monday and introduced myself and I gave you some
8 instructions on the case a little bit then, some this
9 afternoon. Have you talked to anybody about the case
10 since Monday when I told you not to discuss the case?

11 A I did not but I work in an office, I am a nurse, I
12 work in an office with all women. And the first thing I
13 went in on Tuesday morning, they blasted me and I had to
14 excuse myself. They were around me but I didn't talk
15 about the case.

16 Q They were asking questions and you didn't respond?

17 A I did not.

18 Q Now, I gave a summary of allegations made by the
19 State which were made in the indictments which say the
20 State is making accusations against Mr. Jones of five
21 counts of murder. There has been publicity in the case
22 that you may have come across before Monday, early
23 weekend, a couple of years ago, even since. Have you
24 received any information from me, public media, social
25 media, anywhere which has caused you to form an opinion as

1 to what happened in this case already?

2 A Yes, I have heard information and, you know,
3 initially formed an opinion. But, yes, but I haven't
4 heard all the facts.

5 Q I gave you a little preliminary summary, the court
6 procedure, criminal procedure as to the case, it is a
7 Capital case, they have to prove the first half in order
8 to go the second half. Have to prove the first half
9 beyond a reasonable doubt. Do you understand?

10 A Yes.

11 Q And then the second half the State has got to prove
12 an aggravating factor as well as, the jury has to consider
13 mitigating facts.

14 A Yes.

15 Q I gave you a little summary of the types of jurors?

16 A Yes.

17 Q Can you identify yourself as one of those three
18 types?

19 A I am a type three.

20 Q Type three is somebody who wants to listen and hear
21 everything?

22 A Yes.

23 Q Hear all of the evidence. Mitigating facts,
24 aggravating facts, hear everything?

25 A Yes.

1 Q You tell me you are a nurse, the subject matter in
2 this case involves the description of death of children.
3 Would that subject matter affect you in any way, knowing
4 it is going to be graphic, unpleasant and probably
5 difficult to listen to. Can you be fair and impartial to
6 both sides considering that type of subject matter?

7 A It is very hard for me because I have seen a lot in
8 my nursing career.

9 Q Okay. But could you be fair and impartial to both
10 sides?

11 A I could try.

12 Q Considering that, I want your fair assessment that
13 that is going to be--

14 A That is going to be difficult for me.

15 Q Could you be fair and impartial to both sides?

16 A No.

17 Q You couldn't?

18 A If I saw pictures, no, I could not.

19 Q All right. So you are not going to be able to kind
20 of sort out--

21 A If I saw pictures I could not do it. It would bother
22 me.

23 Q So you are not going to be able to consider that type
24 of testimony, that would be too graphic for you?

25 A Yes, sir. Yes, Your Honor.

1 Q Anything further?

2 MR. HUBBARD: No, sir.

3 MR. YOUNG: No, sir.

4 Q Ma'am, I am going to excuse you for that reason.

5 A Thank you.

6 Q Thank you very, very much.

7 (Whereupon, the Juror was excused from the
8 courtroom.)

9 THE COURT: Let's bring in 496.

10 (Whereupon, Juror 496, Antonio Wright entered the
11 courtroom.)

12 EXAMINATION

13 By The Court:

14 Q Are you Mr. Wright?

15 A Yes, sir.

16 Q Mr. Wright, spell your first and last name for the
17 record, please.

18 A A-N-T-O-N-I-O, that is Antonio. And Wright,
19 W-R-I-G-H-T.

20 Q Mr. Wright, I had you in court Monday, placed you
21 under oath and told you not to talk about the case with
22 anybody?

23 A Yes, sir.

24 Q Have you talked about the case to anybody?

25 A No, sir.

1 Q Has anybody tried to talk with you about the case?

2 A Yes, sir. But I have not answered any questions, I
3 can tell you.

4 Q Fair enough. The case received a lot of media
5 attention, a lot of publicity. I told you the, read you
6 the indictments of the five allegations of the murder
7 indictments. Based on any information you have received,
8 whether it is from me, from any of the publicity received
9 this week or last week, any time, have you formed an
10 opinion as to what you believe happened in this case?

11 A No, I actually haven't.

12 Q Do you understand that you are going to wait and hear
13 what happened from the witnesses in the case?

14 A Yes sir, I understand.

15 Q Fair enough. Now, this case involved a lengthy
16 trial. So what is your work schedule like starting next
17 week to the next two to three weeks after that.

18 A I am working, all of next week and I should be
19 continuing work throughout those weeks.

20 Q What do you do?

21 A I am actually masonry. I work for Brickland.

22 Q So you are a Mason by trade and training?

23 A Yes, I am still training.

24 Q Still training?

25 A I am trying to become, yes sir.

1 Q You are one of the mud men right now?

2 A Yes.

3 Q Okay. I have mixed mud.

4 A You have?

5 Q Yes.

6 A Oh, yeah, it is hard work.

7 Q You doggone right it is.

8 A Yes, sir.

9 Q All right. So who do you say you work for again?

10 A I work for my Uncle actually, he owns his own
11 company, his own company.

12 Q If you are selected as a Juror that would be your
13 hurtle in getting through work, around work with dealing
14 with your uncle if you are selected as a Juror. Is that
15 right?

16 A Yes, sir.

17 Q Now, this case involves testimony which will be
18 graphic, difficult, harsh and unpleasant because it
19 involves descriptions of testimony about the death of some
20 children. Do you understand this testimony will be
21 difficult and harsh to hear?

22 A Yes sir, I understand that.

23 Q Understanding that the subject matter will be
24 testimony in that regard, that subject matter, can you be
25 fair and impartial in spite of that difficult and

1 unpleasant testimony?

2 A To be honest, sir, I don't think so because I don't
3 like to hear things like that.

4 Q You couldn't listen to testimony like that and be
5 fair to both Mr. Jones and the State?

6 A I couldn't, I am going to be honest with you, I
7 couldn't. That is not very, I don't like that topic.

8 Q Okay. It is going to be no fun, it is going to be
9 unpleasant.

10 A Yes, sir.

11 Q You couldn't listen to that testimony?

12 A I could not.

13 Q I am going to excuse you. It is going to be tough
14 testimony, I don't want somebody to get half way through
15 and say, I can't take it.

16 A Yes, sir. I am telling you right from the beginning
17 I don't think I can take that.

18 Q I am going to tell you right now, you are free to go.

19 A Yes, sir.

20 Q Thank you and good luck on your masonry.

21 A Yes sir, you have a nice day.

22 (Whereupon, the Juror was excused from the
23 courtroom.)

24 THE COURT: We are done for the day. Start back
25 anew. I got an email from an attorney thirty minutes ago

1 describing a Juror who talked to the attorney and said
2 some things, talked to somebody but they were very couched
3 then, the friend talking with the attorney, very close
4 nit, don't have a name. I think the attorney does but
5 they were concerned and wanted some guidance, spiritual
6 advice and that sort of thing, I am involved or may be
7 called as a Juror and I think I told them some things in
8 Monday's questioning. But it involves the death penalty.
9 So he is kind of included in, probably this trial and one
10 of our potential jurors. Didn't tell me the name but I
11 will forward this to you if y'all want to see me. Didn't
12 give me a name but you are welcome to read it. I think
13 that is going to be, have you talked to somebody about the
14 case type of question that is going to come up but I
15 wanted to get y'all's, alert you to it. I wrote him back
16 and thanked him for the email but I, if y'all want me to
17 write him back and ask for the name of them I will. I
18 didn't at this time but I will. So y'all think about that
19 and we will do that. We are on the same schedule for the
20 morning, 8:30, 11:30, 3:00, same deal.

21 MR. HUBBARD: I do have one thing I wanted to ask
22 Your Honor. A while back we were talking about the
23 Defendant getting evaluated by Dr. Frierson. There was
24 the issue about the psychologist, Dr. Kimberly Kruse. And
25 we said that we weren't going to give underlying data.

1 What we have done, is we have even stepped back even
2 further and so far, Judge, we have not even had a sit down
3 with her or seen her actual report, not her underlying
4 data but obviously we are going to need her in this case,
5 would need to talk to her. The underlying data, at that
6 point it might be relevant for us but otherwise all I am
7 looking to is talk to Dr. Kruse and actually have her
8 report. Dr. Frierson said to really understand what he
9 has got you need to see what she has got.

10 THE COURT: I think that would be allowed and
11 certainly everybody is wanting to see her report.

12 MR. YOUNG: I think that is what would happen. They
13 can do what they want to. Your Honor, I would ask to
14 instruct the Solicitor to stop signaling to the Juror, he
15 sits there and shakes his head when he is like what they
16 are saying--

17 MR. HUBBARD: Your Honor, I don't know what he is
18 talking about. I have taken a lot of hits today, I am
19 communicating with jurors, bigot and I have about had it.
20 I am not the only person in this courtroom listening to
21 stuff but I sure as heck have a bulls eye on my back.

22 THE COURT: I haven't noticed that, Mr. Young, at
23 all. I noticed when I look at y'all and I am stopped in
24 the middle and know it is a good place to stop, with the
25 jurors, y'all both give me signals and I thought that was

1 some of the signals from the Defense table as well as the
2 Prosecution table. If I see it, certainly I will call it
3 but I have just not noticed that.

4 MR. YOUNG: Sure.

5 THE COURT: And so we will see y'all in the morning.

6 MR. YOUNG: Thank you.

7 May 7, 2019

8 THE COURT: We have them all here. Bring them in.

9 (Whereupon, Juror 74, Sylvia Cannon; 146, Stacey
10 Foster; 287, Melvin Jonas; 314 Judy Nixon; 96, Toni
11 Clark; 89 Nathan Chapman; 426, Doris Taylor; 156,
12 Zachary Gantt entered the courtroom.)

13 THE COURT: Good morning to all of y'all. Thank you
14 for being on time. That was a great surprise, y'all were
15 the first group, thank you very much. We are ready to go.
16 Here is what is going to happen. I am going to give you
17 some preliminary instructions. I am going to read to you
18 virtually the exact that I have read to the other groups
19 who have come in before. And then we are going to excuse
20 you, put you in the back and let you read over a witness
21 list and another sheet describing the types of jurors and
22 then bring you in one at a time and then say, okay, here,
23 I need to ask you about some of your personal feelings,
24 personal beliefs. So it is some opinions you may have.
25 So you will be under oath, so give honest answers. Some

1 of them are your opinions so there is really no wrong
2 answers. So with that in mind, I will also ask you about
3 your personal schedule and interference with that to see
4 what you have got on the horizon for the next several
5 weeks. And we will deal about that, questions about your
6 personal beliefs and then we will move on from there.
7 Okay. Now, I don't want, because one of my questions,
8 early questions is, there has been publicity, I am going
9 to ask you about that. So I don't want y'all discussing
10 in the back and say, well, we have just discussed it. So
11 don't talk about the case in the back this morning.
12 Plenty of time for that if you are selected as a qualified
13 Juror. I don't need you discussing things this morning,
14 when I ask you the question, I am asking everybody the
15 same lines of questions and the lawyers follow up with the
16 same line of questions which you will be under oath. So
17 if y'all as a group will stand and the Clerk of Court will
18 place you under oath.

19 (WHEREUPON, the jury was sworn at 8:33 a.m.)

20 THE COURT: Thank y'all for doing that. Y'all can be
21 seated. Sometimes it is a little bit repetitive but you
22 have been summoned as potential jurors in the case of the
23 State versus Timothy R. Jones, Jr. My name is Eugene
24 Griffith, Jr. and I will be the presiding Judge in this
25 trial. Mr. Jones is charged with five counts of murder.

1 And in South Carolina murder is defined as the killing of
2 any person with malice aforethought. Malice is defined as
3 a person with a wicked or depraved heart, intent on
4 wrongdoing, hatred, ill-will or hostility. The definition
5 of murder excludes any just cause or excuse for the
6 killing. When the State alleges the offense of murder
7 combined with certain aggravating circumstances the State
8 can then seek the death penalty. Before and during a
9 trial a person accused is presumed innocent of each
10 element of the crimes he is charged with. The State must
11 prove those elements, each and every one of them to a
12 standard of proof called beyond a reasonable doubt. In
13 most criminal cases Judges determine the punishment upon a
14 conviction. But in a Capital penalty case the jury
15 determines the punishment. In a Capital case the trial is
16 divided into two phases potentially. The guilt or
17 innocence phase and if necessary the punishment phase. In
18 the first phase of the case the State must prove the
19 Defendant's guilt of murder beyond a reasonable doubt. If
20 a jury finds an accused guilty of the murder then the
21 trial proceeds into the second phase. In the second
22 phase, if the State proves an aggravating circumstance
23 beyond a reasonable doubt then the jury considers the
24 aggravating evidence and mitigating evidence in deciding
25 the punishment, either life without the possibility of

1 parole or the death penalty. Our law in South Carolina
2 does not allow the State to seek the execution of a person
3 if the person is convicted solely of the murder. The
4 State must prove at least one of the statutory aggravating
5 factors beyond a reasonable doubt. Even if the State
6 proves a murder and an aggravating circumstance jurors are
7 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 impose a
14 life without parole sentence then a life without the
15 possibility sentence is carried out. In this case the
16 State has indicted five counts of murder and has notified
17 Mr. Jones that it intends to seek the death penalty. Mr.
18 Jones has entered a plea of not guilty by reason of
19 insanity. In this case you may hear testimony and
20 evidence showing many things. A wide variety of testimony
21 may be presented to you in this trial. I will instruct
22 you as to how to consider and evaluate the testimony,
23 whether it be defined as an aggravating factor, evidence
24 of mitigation which are any reasons to vote for a sentence
25 of life without parole. Evidence of defenses, evidence of

1 any affirmative defenses such as accident, guilty but
2 mentally ill and not guilty by reason of insanity. Until
3 the testimony and evidence is presented I am not able to
4 tell you the exact instruction of the law I will give on
5 each of these. But I will ask you when you come in, will
6 you be able to accept and give an oath to meaningfully
7 consider all the testimony and evidence, apply the law as
8 I instruct it and consider all evidence consistent with
9 those instructions. That will be the question posed to
10 you when you come back in. Now, retire to the jury room.
11 As you are called up you will be given the witness list,
12 peruse that as well as the types of jurors and then when
13 you are ready and have enough time to peruse it we will
14 get you in here one at a time. So step back in the jury
15 room, thank y'all for being prompt.

16 (Whereupon, the jurors were excused from the
17 courtroom.)

18 MR. HUBBARD: Your Honor, I would move for the State
19 to go first on this panel, we have had eight panels and we
20 have been playing backstop the whole time.

21 THE COURT: Y'all want to be heard on that, the
22 Defense?

23 MR. YOUNG: Yes, sir. We think that the statute says
24 that the Defendant has the right, the State's right is
25 derivative and we should go first.

1 MR. HUBBARD: Your Honor, as the discretion, it has
2 been done before, basically every other case. It is at
3 Your Honor's discretion.

4 THE COURT: I don't see any prejudice to let the
5 State go first so I am going to let the State go first on
6 this panel and if it works out, may go back the other way.
7 But we will see how that goes, I will let the State go
8 first.

9 MR. HUBBARD: Thank you, Your Honor.

10 THE COURT: Bring 74 in.

11 (Whereupon, Juror 74, Sylvia Cannon entered the
12 courtroom.)

13 EXAMINATION

14 By The Court:

15 Q Good morning, Ms. Cannon.

16 A Good morning.

17 Q Ms. Cannon, I gave you some preliminary instructions
18 and I remind you, you were placed under oath today. You
19 were placed under oath Monday to not discuss the case. I
20 am asking every Juror the same question out of the box.
21 So not that, I don't want you to take offense to it. Have
22 you discussed the case in any way since Monday?

23 A No.

24 Q Has anybody tried to discuss the case with you?

25 A No.

1 Q And other than telling your family, I have got to go
2 to court, something along those lines, have you not
3 discussed it in any manner whatsoever?

4 A No.

5 Q All right. There has been publicity in this case
6 since Monday, before Monday, several years ago, social
7 media, regular media. Also I read the indictments to you
8 Monday in open court. So at least those facts that are
9 being alleged by the State have been presented to you.
10 Have anything you have heard about this case, up to this
11 point, caused you to form an opinion as to what you
12 believe actually happened?

13 A No.

14 Q So you have not formed an opinion about what has
15 happened?

16 A No. Just, I don't know.

17 Q But you have heard the allegations.

18 A Yes. I heard stuff and when I saw it on the news, I
19 turned the news, I looked at the paper, I didn't read it
20 but I just, it just breaks my heart. I just, I don't
21 know.

22 Q I understand.

23 A And I am so emotional. See, I am about to cry now.

24 Q All right.

25 A I am real emotional.

1 Q And understand, Ma'am, that is perfectly natural and
2 fine.

3 A I take medicine, I am emotional. I am sorry, y'all.
4 I am so emotional.

5 Q Now, if you want to discuss some health issues
6 perhaps we will do that but we will do it on a very
7 limited basis. Okay. Because I don't want you to say
8 anything that you are uncomfortable saying in front of the
9 court record and the lawyers, okay, about your health or
10 anything like that. We might can take that up a little
11 more privately but still on the record. Okay?

12 A Okay.

13 Q Now, understanding this, that this subject matter
14 involves the death of children. And the testimony will be
15 about that, the testimony may be difficult, unpleasant and
16 graphic and, it has been described to me as harsh and
17 tough.

18 A Yes.

19 Q I don't want to represent to you that it is going to
20 be easy to consider.

21 A Yes, sir.

22 Q Understanding that is the subject matter that will be
23 presented during the trial, is that subject matter going
24 to be difficult for you to consider but also consider and
25 be fair and impartial to both the State and the Defense?

1 A Yes, sir. It is going to be difficult for me, real
2 difficult. I am really emotional.

3 Q Do you have children?

4 A Yes, sir.

5 Q Grandchildren?

6 A No, sir.

7 Q Not yet?

8 A Not yet. I just have two kids, that's all.

9 Q Okay. Now, do you think in light of that type of
10 testimony you can be fair and impartial to both sides or
11 not. That is kind of the opinion, there is no wrong
12 answer here. Okay. I am not trying to talk you into one
13 way or the other. Tell me about that.

14 A I probably going to be no good to, to be no Juror. I
15 am sorry, I just can't.

16 Q You don't think you can fairly evaluate the testimony
17 if that is what it is about?

18 A No, sir.

19 THE COURT: Should we keep going further?

20 MR. HUBBARD: No, sir.

21 MR. YOUNG: No, sir.

22 Q Generally the lawyers and I, I am communicating with
23 them by looking at them and I have had a few jurors just
24 like you that, says that is really difficult for me and I
25 couldn't, that is good enough for me.

1 A Okay.

2 Q All right. I am going to excuse you from being a
3 qualified Juror.

4 A Okay.

5 Q I would rather you not talk about the case.

6 A I am not.

7 Q I wish you well and enjoy Mother's Day.

8 A Thank you, sir.

9 Q Okay.

10 (Whereupon, the Juror was excused from the
11 courtroom.)

12 THE COURT: I wanted to make sure y'all are okay with
13 my inquiry back to you, her emotions were not false. That
14 was real stuff, the way we managed that, is that okay with
15 both sides. If y'all want a little more questioning of
16 her I will let y'all do it. But I was comfortable that
17 she was not going to be able to do it.

18 MR. HUBBARD: Your Honor, our position, obviously you
19 are closest, you did the same thing to the school teacher.
20 I believe it was the first panel, the emotions. That is
21 your call, Judge.

22 THE COURT: Are y'all okay with that, Boyd?

23 MR. YOUNG: Yes, sir. We had requested to be able to
24 show some pictures. It is going to be really hard.

25 THE COURT: Okay, good enough. I will keep managing

1 in the same fashion and go that route. Okay. We are
2 good. Bring in 146.

3 (Whereupon, Juror 146, Stacey Foster entered the
4 courtroom.)

5 EXAMINATION

6 By The Court:

7 Q All right, Ma'am, you are Juror 146. Can you spell
8 name for my Court Recorder for Ms. Joy.

9 A Sure. First name, S-T-A-C-E-Y; last name,
10 F-O-S-T-E-R.

11 Q All right. Ms. Foster, I ask the same jurors the
12 same questions generally in the same order so that I have
13 a little pattern about this. But you took an oath Monday
14 to not talk about the case and not let people talk to you
15 about the case. Have you talked about the case to anyone?

16 A Only about the potential absence from work.

17 Q Okay. And that is with our employer?

18 A Yes.

19 Q All right. Anybody ask you questions about the case?

20 A No, not really.

21 Q Now, and my hope that you will maintain that oath and
22 not discuss the case in any fashion whatsoever.

23 A Yes.

24 Q I told you I would ask you about your work schedule.
25 So what is your work schedule, personal schedule. I am

1 hopeful to get the jury qualified, enough folks this week
2 perhaps select the jury late this week, early next week
3 and the trial will start and it will go for two weeks, a
4 little more, maybe into early June. What is your personal
5 schedule of those weeks?

6 A I have a commitment May 17, 18 and 19th,
7 non-refundable. I am basically solely responsible for
8 something we are planning with my job that jumps off June
9 27, 28, 29. It is a big, like educational networking
10 event. We have like 75 speakers, we are open to have a
11 thousand attendees this year. So I am the one
12 coordinating and promoting all of that. And then as a
13 reward for that, in July, I have my first vacation in five
14 years, also non-refundable.

15 Q I don't think I will impose on that. The thing the
16 weekend of the 17, 18, 19, that is Friday, Saturday,
17 Sunday?

18 A Correct.

19 Q And so what time is your plans to depart on that
20 Friday, is it Friday afternoon or Friday morning?

21 A Probably around 2:00 o'clock.

22 Q And you have already committed to that?

23 A Correct.

24 Q Paid for?

25 A Yes.

1 THE COURT: Do y'all hear what her plans are?

2 MR. YOUNG: Yes, sir.

3 MR. HUBBARD: I missed a little bit of it.

4 THE COURT: All right. She has got a commitment for
5 work, travel plans to coordinate a follow up, fund raiser,
6 big to do.

7 A It is not really a fundraiser. It is for profit.

8 Q That is raising funds.

9 A Well, yes.

10 Q 17th, 18th, 19th, that weekend after next, the
11 weekend after Mother's Day.

12 A Correct.

13 Q Committed Friday, Saturday and Sunday and then
14 committed to another event following it up in mid-June.

15 A End of June.

16 Q Okay. I am inclined to excuse her for that reason.

17 MR. YOUNG: Yes, sir.

18 THE COURT: Any problem, Solicitor?

19 MR. HUBBARD: No sir, Your Honor, unless Your Honor
20 wanted to work around that one day in May. It is up to
21 you, whatever Your Honor feels to do, it is in the Court's
22 discretion. That is fine, Your Honor.

23 THE COURT: I understand. That would give us a built
24 in day to be down.

25 A You are welcome. It is all internet driven. So if

1 there is any restrictions on internet, if I am here during
2 the day I would be on the internet all night and every
3 weekend doing my job. I don't know if that factors in at
4 all.

5 Q Well, it does and it doesn't. It is just a matter of
6 what you are doing on the internet. If you are doing work
7 not related to this case, knock yourself out. So, all
8 right, if your commitment is Friday, Saturday, Sunday, if
9 you were selected as a potential Juror you would need to
10 be not in court on Friday at all to be ready to leave.
11 You are flying somewhere?

12 A I am driving, it is driving distance.

13 Q But you are leaving Friday afternoon after lunch?

14 A Yes.

15 Q Let me ask you this. If I protect you, say from noon
16 until the following Monday, if you were potentially
17 selected would that impact your ability to serve if we did
18 that?

19 A That would not.

20 Q That would not. So, I am kind of inclined to do
21 that. Noon Friday, protection if she is on the jury. I
22 don't think that impractical. I have got plans that
23 weekend, mine are not until Saturday. Okay. I am going
24 to keep you with the idea that if you are selected that
25 would, because of you we would adjourn court midday Friday

1 and then resume Monday morning.

2 A Okay.

3 Q That is what I am going to do with this.

4 A And you are sure you are done by the end of June.

5 Q Oh, yes. I am pretty certain on that.

6 A Pretty certain?

7 Q Yes, ma'am. Let me give you this. My daughter is
8 getting married early July, several of the lawyers have
9 plans in July, I think we are going to be done by then.
10 That is my hope. Everybody here is going to work
11 efficiently and we are on the same page.

12 A Okay.

13 Q Now, back to my questions.

14 THE COURT: Let's make sure she is protected Friday
15 afternoon and that would be the entire panel she is on.

16 Q Let me get back to my question. The case involves, I
17 read the allegations and you have heard the publicity, the
18 allegations were read Monday. You have seen publicity
19 before Monday, way back, recently, whatever, from where
20 ever you have heard anything about the case including the
21 courtroom. Has any of that information that you perused
22 caused you to form an opinion as to what happened in this
23 case?

24 A I literally think I heard a news story five years ago
25 or whenever. Didn't even think to look up what was going

1 on. I don't watch the news. We have DVR so I typically
2 fast forward through all of that. So it didn't even occur
3 to me what would be happening when I came in last Monday.

4 Q Okay.

5 A So I really don't have--

6 Q You haven't formed an opinion at all?

7 A No.

8 Q All right. Now, the testimony, because of the
9 allegations made by the State, the testimony is going to
10 involve the death of several children. The testimony is
11 going to be difficult, challenging, very unpleasant. Will
12 testimony in that subject matter, showing or describing
13 those sorts of things, that subject matter cause an issue
14 for you to be fair and impartial just because we are
15 considering that type of subject matter. But I need you
16 to be able to consider it and also yet be fair to both
17 sides, the State and to Mr. Jones. Can you do that?

18 A Logically speaking, yes.

19 Q Okay. I asked you to look over a Juror, I mean
20 potential witness list. Has a list of all the potential
21 witnesses that could be called, not all of them will be
22 called but potentially could be. Are you connected to
23 anyone, did you recognize any names?

24 A I did not recognize anyone.

25 Q Not a soul?

1 A No.

2 Q Now, I gave you the preliminary instructions over
3 here a moment ago and you listened because you were
4 sitting on the far left. Did you listen to those
5 instructions that gave the kind of criminal procedure and
6 overview of how a Capital case is provided into two
7 phases?

8 A Yes.

9 Q Now, did you understand my instructions?

10 A Yes, there is a couple of words I would want to look
11 up but for the most part.

12 Q All right, I can help define. Which words were you--

13 A Just like the legal definition of mitigating and the
14 opposite of the mitigating, like legally what that means.
15 And I just know what I think that means.

16 Q I will find that right now and then I will ask you
17 about you being a Juror. Here is the way it works in a
18 Capital case. The State says we are going to seek the
19 imposition of the death penalty. The murder has to be
20 proven first beyond a reasonable doubt. And that is
21 taking another life with malice, with hatred, ill-will in
22 your heart. If the jury finds a person guilty in that
23 phase then phase two, the sentencing phase is then
24 started. In that phase the State must prove an
25 aggravating factor. And so in addition to the murder the

1 statutory, one of these statutes has, the aggravating
2 factors and I will name off some of them to you. Rape of
3 murder, kidnapping of murder, murder of a policeman,
4 murder of a child, multiple victims. Those are statutory
5 aggravating factors. The State has to prove at least one
6 of those beyond a reasonable doubt. Now, mitigating
7 factors is any reason you would want to give a life
8 sentence as opposed to a death sentence. So they are kind
9 of converse of the aggravating factor.

10 A Sure.

11 Q Mitigating factors are what was the Defendant's walk
12 in life, what was his age at the time of the crime, did he
13 have any emotional disabilities, had he ever done anything
14 of violence against another person. There are eight or
15 ten of those listed.

16 A Okay.

17 Q And I can go over all of them with you if you like
18 right now. Let me do that just out of caution because
19 look here, I have them written down. It is a common
20 question, I normally go into it later but since you asked
21 I will do it right now. The Defendant has no significant
22 prior criminal conviction involving the use of violence
23 against another person. The murder was committed while
24 the Defendant was under the influence of mental or
25 emotional disturbance. The victim was a participant in

1 the Defendant's conduct or consented to the act. The
2 Defendant was an accomplice in the murder committed by
3 another and his participation was relatively minor. The
4 Defendant acted under duress or under the domination of
5 another. The capacity of the Defendant to appreciate the
6 criminality of his conduct or to conform his conduct to
7 the requirements of law was substantially impaired. The
8 age or mentality of the Defendant at the time of the
9 crime. The Defendant was provoked by the victim in
10 committing the murder. The Defendant was below the age of
11 18 at the time of the crime. The Defendant had mental
12 retardation at the time of the crime. Those are statutory
13 definitions of mitigating factors. There are other
14 non-statutory like just walk in life, how he was raised.
15 The jury can hear any of those. Some of these aren't
16 applicable like age, being under 18. So if it is not
17 applicable I wouldn't instruct the jury on that but each
18 one of these are testified or presented by either side,
19 the jury will receive instructions that these are
20 mitigating factors. So now, you have got examples of
21 aggravating factors and mitigating factors. The question
22 on the types of jurors kind of presupposes that the
23 conviction of the murder, the State met its burden of
24 proof beyond a reasonable doubt. Then the jury considers
25 the aggravators and the mitigators. Did you read the

1 types of jurors?

2 A I did.

3 Q Where do you find yourself?

4 A I believe I am type three.

5 Q Type three?

6 A Yes.

7 Q You want to hear the type of testimony that may fit
8 in some of these categories. Let me ask you--

9 A Well, I interpreted it to be, type three as open
10 hearing what you are going to be saying.

11 Q I believe that to be a correct interpretation. Some
12 people come in for whatever reason, they are already kind
13 of committed to one punishment or the other. Now, in the
14 sentencing phase too, there is only two choices. There is
15 life or death, there is no in the middle. Do you
16 understand that?

17 A Yes.

18 Q Okay. Now, understanding that, can you listen, I
19 will ask you those question. Can you listen to the
20 instructions of the Court and consider, presuming the
21 murder was a conviction beyond a reasonable doubt. I am
22 going to go back and ask the guilt or innocence question.
23 If the State proves the murder beyond a reasonable doubt
24 and we get to the penalty phase, can you consider all
25 aspects of the testimony, whether it be testimony of the

1 State proving aggravating factors, the State must prove
2 beyond a reasonable doubt any mitigating circumstantial
3 facts and whether they fit in these categories or not,
4 consider the mitigating facts, the reasons you would give
5 life and then follow the instructions of the Court and be
6 a fair and impartial Juror in this case. Can you do that?

7 A I believe so.

8 Q Now, I am going to back up one step further there.
9 Entering the plea of not guilty by reason of insanity,
10 there is some defenses available under our laws to people
11 accused of murder. I am going to read those to you. I
12 will read them all, some of them wouldn't be appropriate,
13 some of them may be, depending on the testimony.
14 Potential statutory defenses would be identification,
15 accident, involuntary intoxication, self-defense,
16 insanity, guilty but mentally ill, defense of habitation,
17 entrapment, duress and alibi. Those are potential
18 defenses, one of which has been plead by Mr. Jones. So in
19 phase one, where the murder, it is the burden upon the
20 State to prove that, Mr. Jones has already offered one
21 potential defense that may be testimony that the others
22 would support. Can you consider the testimony of all the
23 witnesses, whoever testifies, make a finding consistent
24 with my instructions on evaluating the evidence, the
25 circumstances of facts. Can you follow my instructions as

1 it applies to the aspect of those defenses and the State's
2 burden of proof of the murder. Can you do that?

3 A I believe so, yes.

4 Q All right. Now, four potential verdicts come into
5 play because of the defense presented by Mr. Jones.
6 Potentially could be guilty, guilty but mentally ill, not
7 guilty by reason of insanity, not guilty at all. The
8 Court will instruct on those four aspects, potential
9 verdict forms. Can you right now tell me any reason
10 whatsoever you could not consider my instructions and make
11 a finding to each of those potential verdict forms.

12 A Based on what I know right now, no.

13 Q Okay. But you would wait and hear and then consider
14 my instructions, apply to the evidence you have heard?

15 A Correct.

16 Q Can you be fair and impartial in doing so?

17 A I believe so, yes.

18 Q Now, you have any religious, personal or moral belief
19 which would prevent you from signing a verdict of
20 punishment of the death penalty?

21 A No.

22 Q Similar question. Do you have any religious,
23 personal or moral belief which would prevent you from
24 imposing the sentence of life without the possibility of
25 parole?

1 A No.

2 Q And understand, the death penalty is not automatic.
3 The State proves the murder beyond a reasonable doubt and
4 then it goes into the sentencing phase. The sentence is
5 not predetermined to be one or the other. The jury
6 considers everything and makes a determination of one or
7 the other. Do you understand?

8 A Yes.

9 THE COURT: Those are my questions. Mr. Hubbard.

10 MR. HUBBARD: Thank you, Your Honor.

11 EXAMINATION

12 By Mr. Hubbard:

13 Q Ms. Foster, how are you doing?

14 A As well as can be expected. I feel a little anxious.

15 Q Yeah, you have never served on a jury, I saw from
16 your--

17 A Correct.

18 Q This is a pretty big one to have as your first trial?

19 A You think?

20 Q Well, how long have you been in South Carolina, it
21 looks like you are from Wisconsin?

22 A That's correct. I believe we moved down here in the
23 summer of 2011. So, eight years now.

24 Q The Judge has kind of gone over the overview of what
25 we are getting into and I am going to do a little bit of

1 that too. My name is Rick Hubbard, the Solicitor. You
2 will hear from me and somebody from the Defense table as
3 well. We just want to kind of get to know you but also
4 let you see what is coming, just to see where you are on
5 this and make sure that you are okay, the Court's okay
6 with where we go from here. I just want to go over a few
7 things. I know the Judge started off by talking about
8 this is potentially two phases. You have a trial to
9 determine whether a person has done something or not. In
10 this case whether the charge of five murders, whether
11 they, there is a guilt or not guilty verdict on that. Do
12 you understand that?

13 A Yes.

14 Q So the whole first part of this trial is just like
15 every other trial you have seen or heard of. It is all
16 about guilty or not guilty and as the Judge said, because
17 in this case the Defendant is pleading not guilty by
18 insanity. There is two other verdicts. There is not
19 guilty by reason of insanity and guilty but mentally ill.
20 So you have four options. My understanding is you want to
21 hear everything before you make a decision?

22 A That's correct.

23 Q Now, because there is a trial like this and because
24 the plea is not guilty by reason of insanity the Defense
25 gets to put evidence saying, here is where or why it was

1 at the time, mentally. He didn't know right from wrong.
2 And the law, the Judge is going to tell you what the law
3 is on that but it is something like this. And he is the
4 one that gives you the ultimate law, not me or any other
5 lawyer, okay. But he did not appreciate the legal or
6 moral wrongfulness of his conduct at the time of the
7 killing. So, yes, he did the killing but he just didn't
8 know it was wrong, legally wrong or morally wrong. Do you
9 understand that, that is what a plea of not guilty by
10 reason of insanity is?

11 A I understand.

12 Q So typically in any case like that they will have
13 folks come in and say, here is why we believe he is what
14 we would call insane, not guilty by reason of insanity.
15 He didn't know right from wrong. You would be open to
16 hearing them, their witnesses?

17 A Yes.

18 Q And then we also will have witnesses, may or may not
19 be experts, some will be experts, some will be people,
20 every day people dealing every day with saying, clearly,
21 at that time he knew right from wrong. Would you be open
22 for that?

23 A Yes.

24 Q You can hear both sets of witnesses?

25 A Yes.

1 Q Do you understand there is two sides to that story?

2 A Yes.

3 Q And you would be willing to hear what we presumed as
4 well as what the Defense presents?

5 A Yes.

6 Q And as a Juror you would be back there with eleven
7 other people, something you discuss but ultimately
8 everybody comes to a conclusion of guilty or one of these
9 other verdicts. Do you understand that?

10 A Yes.

11 Q Only if you find guilty of either murder, guilty but
12 mentally ill, guilty but mentally ill and the Judge is the
13 one that will give you the law on that. But it is, he is
14 guilty, he knew right from wrong. But because of the
15 mental illness he couldn't control his actions to conform
16 to the law, he couldn't obey the law because of a mental
17 illness. It is kind of hard to understand something like
18 that. If you find him guilty you go to that second phase.
19 And in that phase it is like another trial, a whole trial
20 comes down to punishment. That is why you don't get there
21 if you are not guilty.

22 A It makes sense.

23 Q So if he is just not guilty we don't get there. If
24 he is not guilty by reason of insanity we don't get there.
25 We are done. Make sense?

1 A Yes.

2 Q We get to that second trial. Let's just assume we
3 are there. The Judge says there is only two options,
4 there is life and there is death. And the Judge, I
5 believe, said life means you die in prison. And death
6 means exactly what it says, death. Do you understand the
7 Judge isn't the one that does that sentence. Do you
8 understand that?

9 A Yes.

10 Q If you are a Juror, you and your fellow jurors would
11 be determining the sentence. Do you understand that?

12 A Yes.

13 Q My understanding from what you told the Judge, when
14 you looked at those three options about where you fit in
15 as a Juror, you said you picked number three, can you tell
16 me why?

17 A I think it is just part of who I am to look at both
18 sides before I decide on something, for however many sides
19 there happens to be. I don't like other people's
20 interpretation of the facts. That is why I really don't
21 watch the news or anything like that because I just, I
22 want to read it for myself or see it for myself or hear it
23 for myself rather than getting someone else's spin. So I
24 try to form opinions only on what I know, not what I
25 heard.

1 Q Right.

2 A What somebody else thinks the facts are.

3 Q Being in that third category too, it takes you one
4 step further. Not just listen in forming your own opinion
5 but then being able to act on that opinion. Do you
6 understand that?

7 A Yes.

8 Q So one option, once you form that opinion, is to act
9 with your fellow jurors and say, he deserves life based on
10 what I have heard. Are you willing to do that?

11 A I am not going to lie, it is going to be tricky,
12 deciding between those two things if that is where it
13 lands.

14 Q What's that, I am sorry.

15 A It is going to be tricky to decide between those two
16 if that is where it lands. Just because there is pros and
17 cons, I mean, I can see it both ways if that is where it
18 lands.

19 Q Well, you understand, once you hit guilty that's
20 where it lands?

21 A I understand.

22 Q And so you have got two doors you can go through, you
23 and your fellow jurors, life and death. Pretty big?

24 A It is huge, yeah.

25 Q So, well let me ask you about the biggest one, death.

1 Is this something you have thought about before you walked
2 in here, have you thought much about the death penalty
3 before you came in here?

4 A Relative to this case or just in general?

5 Q Just in general.

6 A I mean, I have thrown an off the cuff remark about
7 the death penalty and people's sucking tax dollars like
8 Charles Manson and Ted Bundy and all of those guys just,
9 it is like \$100,000.00 dollars a year or something to keep
10 someone in prison, whatever. I just, had that kind of
11 uninformed tax payer attitude towards it.

12 Q Right. Well, is there anything, but it is still kind
13 of an honest, that is who you are?

14 A Right.

15 Q Is there anything--

16 A It hasn't really affected me.

17 Q Sure. But is there anything in that underlying
18 attitude that, maybe I am not opposed so much to death but
19 it is just kind of waste, waste of time or money.

20 A Right.

21 Q Would that sum up your view on that?

22 A I mean, I think that is, yeah, that is fair to say.

23 Q Well, let me ask you this. If that is fair to say,
24 if you are a Juror with your fellow jurors and now you are
25 looking at both of those doors, life and death. Can you

1 really honestly, your hand raised under oath, and you are
2 really honest, this is an honest moment. It is hard
3 sitting up there?

4 A Yes.

5 Q Can you look at that door that says death, knowing
6 your feelings and still say, Mr. Hubbard and the State, I
7 can be fair on that issue or maybe I am not the person on
8 that. Maybe my honest opinion is I can't really consider
9 it like I think I should because that is just where I
10 fall, it is just me and it is nothing wrong.

11 A No, it is my, like I said, unaffected.

12 Q Sure.

13 A First glance attitude towards it but never having
14 been in a situation where I have a specific situation and
15 a specific set of circumstances to consider, I mean I am
16 going to look at whatever is presented.

17 Q Sure. And you have said that repeatedly and I
18 appreciate that. You want to hear everything?

19 A I do, I am nosy as hell.

20 Q And you know what, that is good. Every Juror needs
21 to be able to ask those questions but ultimately this is
22 the second step I was talking about.

23 A Okay.

24 Q So you have looked at everything and this is just
25 kind of a moment of truth, in the hot seat without having

1 really thought about it because you haven't been affected.

2 A Right.

3 Q When you are faced with two doors. Life is a fairly
4 clear choice for you if the facts support it because you
5 understand, you haven't indicated anything that would keep
6 you from going through that, is that fair?

7 A I believe so.

8 Q But with death, I guess what I just want to clarify
9 for me, as an advocate, are you for one side. That other
10 door, is that really an option for you, not just to
11 consider but to actually walk through or would the, that
12 inner feeling, that inner thought, that inner option, as
13 opposed--

14 MR. YOUNG: Objection, that is not an appropriate
15 statement.

16 MR. HUBBARD: I am asking her about her answers.

17 THE COURT: He is exploring her response so, be clear
18 with your question.

19 Q Is there anything at that moment of honesty with you,
20 because you have talked how much it is expensive and how
21 expensive it is--

22 A Jail is expensive.

23 Q Sure, it is.

24 A Death is cheap--

25 Q What is that?

1 A Death is cheap, I mean relatively.

2 Q And that is why, I guess, and there is not a right or
3 wrong answer.

4 A Am I going to lose sleep and have aches and whatever
5 over those two choices. You would have to be inhuman if
6 you didn't.

7 Q Right, you are right. Like I said, this is the big
8 one, right.

9 A But you just, I mean whatever the instructions are,
10 however it, we land in sight of those instructions and
11 definitions.

12 Q And the Judge will give you all that help you need.
13 But that last leg of the journey--

14 A The rough one.

15 Q It is yours.

16 A Yeah.

17 Q Because now you have got all of the definitions, you
18 have got all of the facts, now it is you and eleven
19 colleagues in the back room, where do we go. And I guess,
20 the only thing, I am probing in a way that maybe nobody
21 else has just so you and I can understand where you are
22 and where ever you are is fine. So when we think about
23 death would you actually be able to say death even though
24 you have had concerns about cost and things like that?

25 A I mean if that is where the facts take you, I don't,

1 I believe so if that is where you get to in the process,
2 is you are down to those two choices and that is how
3 things line up. I wouldn't just said it, just to be like
4 emotional about, you know, justice and bla, bla, bla.

5 Q Right. The Judge brought up two things you asked
6 about which was great, mitigating and aggravating
7 circumstances. In that second phase, before you go
8 through that door that says death, I have to prove, I have
9 to prove beyond a reasonable doubt at least one
10 aggravating circumstance. And the Judge gave you a list
11 and they include child under eleven and more than one
12 murder. So I have to prove those before you can even
13 consider going through the death, do you understand that?

14 A Yes.

15 Q Now, mitigation, no one has to prove mitigation.
16 Okay. There is some that the Judge gave you, statutory,
17 it is in the law. Here are some things that a Juror can
18 consider but there is also things outside of the law that
19 you consider, just his relationship with other people,
20 whether you think he is a good guy. Do you understand
21 that?

22 A Yes.

23 Q That sounds far, things that you can consider?

24 A Sure.

25 Q And the law will even say, you can even give him life

1 for no reason at all. You don't have to justify that to
2 anybody, you can just say it is life. Do you understand
3 that?

4 A Yes, sir.

5 Q Here is something interesting, you can find both,
6 mitigating circumstances and aggravating circumstances.
7 You can find things that, that maybe help him in your view
8 and you may find that we have proven beyond a reasonable
9 doubt aggravating circumstances. Just because you find a
10 mitigating circumstance doesn't mean you can't give death.
11 Do you understand that?

12 A Yes.

13 Q And you would want to hear all of that, based on the
14 definition the Judge gave?

15 A Correct.

16 Q And is it fair to say that as you sit here you are
17 not only willing to consider, you will act on the evidence
18 presented, that you will make a decision based on that
19 evidence.

20 A Yes.

21 Q Whether it is, on the first phase, guilty or one of
22 those other options?

23 A Yes.

24 Q Second phase, you will consider both options of life
25 or death?

1 A Yes.

2 Q And you are saying to me today, you could act on that
3 decision and go through either door?

4 A I believe so.

5 Q Okay. Do you have a doubt, we just need to clarify
6 that. I mean, it is unfair because you have to know the
7 facts.

8 A Yeah, I don't think you know something until it
9 happens, I believe based on how I think about things that
10 I would be able to.

11 Q One final thing, one final thing on death that is
12 different from life. Life, the Foreperson signs that
13 verdict form. But death, all twelve people when their
14 decisions are made, it is basically a death penalty, you
15 vote death it is death. It is really big. Can you take
16 that step, if the facts in your mind warrant death.

17 A Yes.

18 Q Okay.

19 A I think so.

20 Q No matter what, you want to hear everything?

21 A Yes.

22 Q Ms. Foster, that is all we can ask of you. I
23 appreciate it.

24 A And get me out of here by July.

25 Q If we are here by July I think we are all miserable.

1 Thank you.

2 THE COURT: Mr. Young.

3 EXAMINATION

4 By Mr. Young:

5 Q Good morning, Ms. Foster.

6 A Good morning.

7 Q My name is Boyd Young. I am going to follow-up with
8 you about a couple of points that the Solicitor was
9 talking to you about. Okay?

10 A Yes.

11 Q This is the time for you to talk and me to listen so
12 please feel free to elaborate on your answers. And if you
13 don't understand something that I am asking about please
14 let me know. Okay.

15 A Okay.

16 Q I noticed and just for your information, the cameras
17 are all off, nobody can report on what you are saying or
18 anything like that. Okay.

19 A Okay.

20 Q And I bring that up because you put on your
21 information that a friend of yours who had a child who was
22 murdered?

23 A Yes.

24 Q Can you tell me about that.

25 A So, it was part of a home invasion, there was a, her

1 daughter was at least 17 or 15 or something at the time,
2 was home by herself. And they lived in a neighborhood
3 where there was some drug activity nearby in an apartment
4 complex. And the, two or three people had broken in the
5 night before and stole some gaming equipment or camera
6 equipment or something but they didn't get all of the
7 pieces. So they came back the next night to get the rest
8 of the pieces and she confronted them or him and he ended
9 up stabbing her to death in her home over some cables.

10 Q Was that here in Lexington?

11 A No, that was Illinois.

12 Q Obviously that was a very tragic experience.

13 A Yes.

14 Q Having that experience and then a case where the
15 charges are the murder of five children, does that in any
16 way affect you?

17 A I mean it is sad but, it is sad.

18 Q It is and I just need to know, you, I can still be
19 fair and impartial?

20 A Yes.

21 Q It seems like that is where you are?

22 A Yeah. A little bit iron, my emotions don't come to
23 the top for me very often.

24 Q You are sort of a stoic person?

25 A Very stoic, yeah. It is not always a good thing.

1 Q It is not. The Solicitor was talking to you about
2 the not guilty by reason of insanity plea, did you have
3 any questions about the definitions that he gave you or
4 what that meant?

5 A I mean a legal definition of insanity is interesting,
6 I don't know exactly what that means, I just know it means
7 something different than how we use it for slang.

8 Q Sure, it does.

9 MR. YOUNG: Judge, do you have it right there?

10 THE COURT: I have got it right there. This is the
11 definition, it is statutory, I will read it to you and you
12 can try to answer his question. But note, my instructions
13 will be of this at that time appropriate.

14 A Okay.

15 THE COURT: At the time of the commission of the act
16 constituting the offense, the Defendant, as a result of
17 metal disease or defect, lack the capacity to distinguish
18 moral or legal right from moral or legal wrong or to
19 recognize the particular act charged as morally or legally
20 wrong.

21 A That is it?

22 THE COURT: That's it, will that clear it up for you?

23 Q As clear as mud?

24 A Right. I will have to read that a couple of times
25 but okay.

1 Q Sure and it is something that you can actually think
2 about.

3 A Sure.

4 Q But my question to you is, some people say not guilty
5 by reason of insanity is just a copout, it is an excuse,
6 it is not on the table for me. You know people like that?

7 A Yes.

8 Q Just trying to get away with that, it is just an
9 excuse.

10 A Right. It is lawyers tricks.

11 Q Because of the plea of not guilty by reason of
12 insanity, he admits, I killed the kids, I killed the
13 children. Right, do you understand that?

14 A Yes.

15 Q But he says, I didn't know legal or moral right from
16 wrong at the time. For you, is that something that is on
17 the table?

18 A I mean I am open to hearing all that could be.

19 Q Right. That is a verdict that you could see yourself
20 considering and if you thought it was appropriate based on
21 the evidence given in a case?

22 A Yes.

23 Q Okay. The Solicitor talked to you a little about
24 your views about the death penalty?

25 A Yes.

1 Q Can you tell me in sort of a, I understand the cost
2 basis, and I want to talk to you about that in just a
3 second. Anything else that comes to mind, where you are
4 on death penalty, like just sort of general philosophy
5 about the death penalty?

6 A My first reaction is always, you know, it sucks to
7 keep someone in jail if you know they are not redeemable,
8 bla, bla, bla. Why would you pay a million, to a million,
9 three million dollars to keep them alive until they are 95
10 or whatever. But that is just the tax payer reaction to
11 the cost. I also, like, understand innocent project and
12 wrongful convictions and stuff like that. And if there is
13 a reason to hold off on just executing people from the
14 jump because maybe made a mistake. I really am, I just
15 sit in the middle, I am a centrist, I guess, on most
16 things.

17 Q Okay. Sure. Let me go ahead and talk to you, so,
18 about the cost. Nobody is allowed to present testimony
19 about the cost.

20 A Right.

21 Q Of the death penalty. I may want to present
22 testimony about like why the death penalty is more
23 expensive then life without parole, right?

24 A I would present that.

25 Q You would. But we are not allowed to talk about it,

1 we are not allowed to bring up cost, jurors are not
2 allowed to consider cost as a factor in deciding the death
3 penalty. I just need to know from you, some people say,
4 you know what, that is part of who I am, it is always
5 going to be with me, I cannot consider the cost and some
6 people say, that doesn't bother me one way or the other.
7 It is not an issue for me.

8 A Like I said, it is just the first off the cuff
9 reaction, it is not like the deeper thought of, you know,
10 that wouldn't be a deciding factor. Let's just say that.

11 Q Well, can you assure the Judge that it wouldn't play
12 a role in your decision.

13 A I mean, I already, as a tax payer, I already pay for
14 a lot of stuff I don't believe in so I don't really see
15 that as a deciding factor.

16 Q Okay.

17 A I mean, don't we all.

18 Q Yes, ma'am. So, just sort of going a little bit
19 further along on your views about the death penalty. You
20 understand he would have a trial and he would have been
21 found guilty or guilty but mentally ill of the five
22 murders of children. Right?

23 A Yes.

24 Q That was the malicious intentional killing. You
25 would have found they knew right from wrong, any evidence

1 that you heard about they didn't know right from wrong,
2 you would have said no, that is not the case. They knew
3 what they were doing and knew right from wrong, they
4 intentionally chose to kill multiple children. Are you
5 with me on that?

6 A Yes.

7 Q Not accident, self-defense, none of that stuff,
8 guilty, guilty. Are you with me on that?

9 A Yes.

10 Q Given that situation, do you sort of have a leaning
11 towards life or death as the appropriate punishment?

12 A I mean, I don't know. There is instructions to
13 follow.

14 Q Yes, ma'am. For you, at that point and time, it is
15 sort of an unfair question. But at that point and time do
16 you have sort of, an equal, you say one way or another you
17 say I need to know?

18 A I can't say without knowing what all is presented, if
19 I am going to just jump straight to one or the other.

20 Q Right. Fair enough. And the Judge talked to you
21 about some mitigating information and all that kind of
22 stuff. Right?

23 A Yes.

24 Q Okay. And that is stuff that you would need to hear
25 to make your final decision?

1 A Right.

2 Q That is a poorly worded question on my part but that,
3 some people say I don't need to know all of that stuff. I
4 have heard the facts of the case and I have-

5 A Made up their mind already.

6 Q They are guilty and I don't need to hear anything
7 else. That sounds like that is not you?

8 A No.

9 Q Okay. Do you think that the death penalty should be
10 sort of reserved for the worst of the worst?

11 A Yes.

12 Q I mean you brought up Charles Manson.

13 A Charles Manson, Jeffrey Dahmer, John Wayne Gacy,
14 yeah.

15 Q Can you think of anything about one of those people
16 that you brought up that you might learn to make you
17 think, like, you know what, maybe life would be the
18 appropriate punishment?

19 A That I could learn about the person?

20 Q Yes, ma'am.

21 A I can't think of anything. I mean, I suppose you
22 could sway that the argument that, life behind bars is a
23 harder punishment to serve. But about the person, I
24 really don't know.

25 Q Okay. Let me ask you a little bit different way. Do

1 you think in, for you, deciding whether or not to kill
2 somebody, give them the death penalty, do you think that
3 you should take a full measure of their life?

4 A Yes.

5 Q That if you are going to decide to end their life you
6 should weigh the whole thing?

7 A Yes.

8 Q To make that decision, how we get to this decision.
9 What I want to talk to you a little bit now is sort of the
10 mitigating circumstances. Mitigation is how jurors decide
11 life or death. Right?

12 A Okay.

13 Q And as the Court has told you, mitigating
14 circumstances are any reason that a Juror finds for
15 herself to give the life penalty. Do you understand that?

16 A Yes.

17 Q That it could be, one Juror could say I saw that he
18 had a good relationship with his father and based on that
19 reason I feel life is the appropriate punishment for me.
20 And that is fine. Do you understand that?

21 A Yes.

22 Q And another Juror could say, I didn't see that,
23 that's not a mitigating factor for me. But I thought he
24 has a mental illness. So based on that reason alone I am
25 going to vote for the life penalty for myself. That is

1 fine too. Does that make sense to you?

2 A Yes.

3 Q And then those reasons don't agree, right?

4 A Right.

5 Q Each Juror can choose their own reason and give it
6 the value of life if they want to.

7 A Okay.

8 Q And the Solicitor talked to you about a Juror can
9 have no reason, say I don't have a reason. I think life
10 is the appropriate punishment for me based on everything
11 that I have heard and the law is satisfied with that too.
12 Does that make sense to you?

13 A Yes.

14 Q Can you respect the right of a Juror to say, I don't
15 have a reason but for me life is the appropriate
16 punishment?

17 A Yes.

18 Q And finally we have what is called mercy. Mercy
19 alone can be enough for a Juror to say, I didn't see any
20 mitigation but based on who I am and my sense of mercy I
21 have decided I want to vote for the life penalty for that
22 reason. And that is fine too. Does that make sense to
23 you?

24 A Yes.

25 Q Do you agree that is how it should work when deciding

1 whether or not a person lives or dies?

2 A I think you have to account for peoples, I don't know
3 that we all got core value or emotion or feeling or how
4 you want to categorize it but to expect someone to sit
5 through all of that and have to give death when just
6 honestly can't, don't believe, whatever, you are doing an
7 injustice of that person.

8 Q Right. Exactly. And I think you understood in our
9 conversation with the Solicitor and the Court that it is
10 not like, here is how many aggravators I have, here are
11 how many mitigators I have. That tells me what the
12 appropriate punishment is. You understand that is not how
13 it works?

14 A Yes.

15 Q It is, you don't add them, A, B and equal C. Right?

16 A Okay.

17 Q There is no automatic death. It is up to each Juror
18 to decide for herself what the appropriate punishment is.

19 A Okay.

20 Q Based on all the evidence. Are you with me on that?

21 A Yes.

22 Q What we call that, what the law calls that is sort of
23 individual moral judgment. Have you heard that phrase
24 before?

25 A No.

1 Q Well, an individual moral judgment is like people
2 choose what faith is right for them or not have faith. Do
3 you understand that you have made your personal decisions
4 about that type of thing?

5 A Yes.

6 Q And you recognize that other people may have made
7 different decisions than you?

8 A Yes.

9 Q You respect their right to make their own personal
10 decision about that?

11 A Yes.

12 Q You expect them to respect your right to make your
13 own personal decision about that?

14 A That would be nice, yes.

15 Q If you saw somebody who was being bullied or coerced
16 into giving up what they had arrived at as their
17 individual moral judgment would you stop it?

18 A In that setting and like a controlled, confined
19 setting like that, yes. Just out on the street where you
20 don't know anybody and anything could happen, probably
21 not.

22 Q I totally understand. But in a jury room where
23 somebody was saying, this is my opinion, I think this is
24 right for me and somebody said, you can't have that
25 opinion, your opinion is stupid. You have to give up your

1 opinion.

2 A Yes, and I would jump on that.

3 Q Whether you were on the side of their opinion or not?

4 A Correct.

5 Q You would say, no, that is not how it works?

6 A Correct.

7 Q The Solicitor talked to you about signing your name
8 to a verdict for death. If you arrived at your personal
9 moral judgment that it was for death could you sign your
10 name. You recall that conversation?

11 A Yes.

12 Q If you arrived at your personal moral judgment that
13 the appropriate sentence was life, could you say I'm not
14 signing that? Could you say I am not going to sign that?

15 A I don't understand.

16 Q If you arrive at your personal moral judgment, are
17 you with me on that?

18 A Yes.

19 Q And you decided for you that the life penalty, for
20 whatever the reason, is the appropriate sentence.

21 A Okay.

22 Q And people are passing around a verdict form saying,
23 sign this or don't. Could you say, I am not signing it?

24 A For death you mean?

25 Q Yes, ma'am.

1 A Oh, no, I wouldn't sign if that is not what I
2 decided.

3 Q Okay. Thank you very much.

4 MR. YOUNG: Based on the Court's limitations I will
5 stop there.

6 MR. HUBBARD: Nothing further.

7 THE COURT: Need to be heard?

8 MR. HUBBARD: No, sir.

9 THE COURT: All right, does the Defense need to be
10 heard?

11 MR. YOUNG: No, sir.

12 THE COURT: Ms. Foster, you are going to be qualified
13 as a Juror. What that means is you are being placed on
14 the list of qualified jurors. I am going to ask you to
15 monitor the Lexington County website and follow the
16 instructions on when to come back in. Next week, one day.
17 Start looking at it this week. Watch it and follow the
18 instructions, check back, check back, come in, come in.
19 Until that time your communication about this case, like
20 you have done, don't talk about it, don't ask questions,
21 don't let anybody interrogate you about it. Don't get on
22 social media and discuss it.

23 JUROR: Right. I have been basically following the
24 progress of how many panelist you have gotten through,
25 that is all I have been watching, to try to plan my

1 weekend.

2 THE COURT: I don't want anything outside the
3 courtroom to impact your decision. I want you to be fair
4 and impartial and make your decision on what has been
5 heard in here. Not what is reported outside because--

6 JUROR: Someone else's interpretation.

7 THE COURT: There is a lot of interpretation. So can
8 you live up to that obligation under that oath?

9 JUROR: Yes.

10 THE COURT: Thank you very much. See you soon.

11 (Whereupon, the Juror was excused from the
12 courtroom.)

13 MR. YOUNG: Judge, can we have a few minutes.

14 THE COURT: I know this was the first time y'all have
15 gone second but you were really long, you were really
16 long. You are following up his, you don't have to go
17 through all of his and then all of yours the second time.
18 You asked the same question five different ways. So you
19 have been brief, you just got over, you were lengthy and
20 redundant. I mean, follow-up and then get to your
21 questions. I know what you are going to ask but you ask
22 all of your questions you normally do and then all of the,
23 I mean--

24 MR. YOUNG: She had a couple of issues--

25 THE COURT: That was very long considering her

1 answers. She was smart and understood and wanted to hear
2 and she was right in along with the type three and stayed
3 there. The Solicitor, that was his first time leading off
4 but lengthy. I am not telling you what to do but you were
5 lengthy. We will take a couple of minutes because you
6 were lengthy.

7 (Whereupon, a short break was taken.)

8 THE COURT: Are we ready on Juror 287?

9 MR. HUBBARD: Yes, sir.

10 MR. SECOR: Yes, sir.

11 THE COURT: We are going to try not to be redundant.

12 (Whereupon, Juror 287, Lasharee Melvin-Jonas entered
13 the courtroom.)

14 EXAMINATION

15 By The Court:

16 Q Good morning.

17 A Good morning.

18 Q Will you spell for me your first and last name.

19 A First name is Lasharee, L-A-S-H-A-R-E-E;
20 Melvin-Jonas, M-E-L-V-I-N-J-O-N-A-S.

21 Q Okay. I am asking the jurors the same question, same
22 order, no reason other than it is easy for me to keep up.
23 Monday you came in and took an oath to not talk about the
24 case. Have you talked about this case in any manner?

25 A No.

1 Q Has anyone tried to talk to you about the case in any
2 manner?

3 A No.

4 Q There has been a great deal of publicity, before,
5 during, since, prior to, a lot of publicity period. I
6 published, read the indictments to the whole jury panel
7 Monday. So you have some information about the case, the
8 allegation in the indictments you have heard. Any
9 information that you have taken in or seen, heard about,
10 seen, included the Court. Has any of that information
11 caused you to form an opinion as to what happened in this
12 case?

13 A Yes, I feel like it has from what I have heard in the
14 court, yes.

15 Q Okay. You think something has happened and there are
16 allegations of the murders made by the State. They have
17 got to prove them beyond a reasonable doubt. Have you
18 formed an opinion as to whether or not it actually
19 happened or are you still, can you answer that?

20 A Not anything specific happened, just opinions.

21 Q Okay. Your work schedule, your personal schedule
22 over the next several weeks. So through this week,
23 starting next week, the following week, maybe into early
24 June, do you have an idea of your personal schedule,
25 whether it be work related, personal related that you

1 would have to rearrange that would create a hardship on
2 you to serve as a Juror in this case?

3 A Yes, I have the first week of June, an event coming
4 up, was the whole week. But other than that there is
5 nothing that I have coming up.

6 Q So you are committed to the entire first week of
7 June?

8 A Yes.

9 Q And that is something that you have been planning for
10 a while?

11 A Yes.

12 Q Are you getting married?

13 A No, I am already married. I have vacation.

14 Q You have vacation?

15 A Yes.

16 Q Where are you going?

17 A Mexico.

18 Q I am not going to interrupt that because potentially
19 the trial could into that first week and everyone who has
20 had a vacation I have tried to work around that. And so I
21 am going to work around it by thanking you for coming and
22 excusing you from service in this case. Thank you very
23 much.

24 A Thank you.

25 (Whereupon, the Juror was excused from the

1 courtroom.)

2 THE COURT: Are y'all ready on 314?

3 MR. HUBBARD: Yes, sir.

4 MR. YOUNG: Yes, sir.

5 THE COURT: Bring them in.

6 (Whereupon, Juror 314, Judy Nixon entered the
7 courtroom.)

8 EXAMINATION

9 By The Court:

10 Q Hello. Ms. Nixon, good morning to you.

11 A Good morning.

12 Q I am going to ask you to spell your first and last
13 name for Ms. Holston.

14 A Okay. Judy, J-U-D-Y; Nixon, N-I-X-O-N.

15 Q Ms. Nixon, I asked y'all to take an oath Monday and I
16 am asking all the jurors the same question, basically in
17 the same order. Have you communicated in any way with,
18 about this case with anyone?

19 A No.

20 Q Has anyone tried to communicate with you about this
21 case?

22 A No.

23 Q Now, there has been publicity, media, regular media
24 since Monday, prior to Monday, prior to you taking the
25 oath, several years ago in fact. Also the Court read the

1 indictments to the entire jury panel so that was
2 information considering the allegations the State has
3 made. Has any of that information, from where ever its
4 source, no matter where it came from, that you received.
5 So I am not asking you, what have you received but right
6 now considering everything, have you formed an opinion as
7 to what you believe happened in this case?

8 A I have not.

9 Q Okay. Now, I told you, my earlier question was going
10 to be about your vacation, your personal schedule. Do you
11 have anything, understanding if you are selected as a
12 qualified Juror you could be potentially selected later.
13 Starting next week, the following week and into early
14 June, that first week in June, do you have anything on
15 your personal calendar that would impact, be impacted if
16 you were selected as a potential Juror in this case?

17 A I don't.

18 Q So your schedule is clear if you were obligated to
19 come in and serve those weeks?

20 A Yes.

21 Q Thank you so much. Now, I gave you, I ask this
22 question. The allegations in this case involve, alleged
23 murders that the State has indicted Mr. Jones with. He is
24 presumed innocent sitting right there. The presumption
25 stays with him all the way through the trial. I gave you

1 instructions this morning about the criminal procedure,
2 some of the definition of criminal law, the two phase
3 process of a Capital case, the first is the murder has to
4 be proven. If it was not proven the case ends. If it is
5 proven beyond a reasonable doubt by the State phase two
6 would then start and the State then would have to prove an
7 aggravating factor. And then the jury considers any and
8 all mitigating circumstances and facts that it hears and
9 determining the punishment in the punishment phase. The
10 punishment phase there is two choices, life or death. I
11 gave you a sheet describing three types of typical jurors
12 in cases like this. You don't have very many facts, very
13 limited. But considering what you have got right now can
14 you identify yourself, considering that, did you read that
15 and understand it?

16 A I did read it.

17 Q Did you understand my instructions?

18 A I did.

19 Q Can you identify yourself as a type of Juror?

20 A Three.

21 Q You are a three. And what I understand three to mean
22 is you have not made up your mind, do not want to commit
23 yourself until you hear everything?

24 A That's right.

25 Q That's right?

1 A Yes.

2 Q Okay. Now, the lawyers have to hear you so they may
3 start perking up and Ms. Holston may help you with that
4 microphone. She wants to hear you too. Now, do you
5 understand the testimony in this case will be of the
6 subject matter concerning the death of children. It will
7 be graphic, harsh, unpleasant and difficult. I do not
8 want to promise you anything else, difficult, tough. The
9 subject matter of that type is going to be difficult to
10 hear and consider. Is that subject matter a type of
11 subject matter which would make it difficult for you to
12 fairly consider and be a fair Juror to both the State and
13 also to Mr. Jones in this case. Can you do that?

14 A I can do that.

15 Q In spite of the testimony being difficult and
16 unpleasant?

17 A Yes.

18 Q Okay. Now, I am going to go through stage one and
19 stage two, phase one, phase two. In a phase one portion
20 of the case the State has to prove the murder. In this
21 case there are potential defenses available, one of which
22 Mr. Jones has claimed but I am going to read all of the
23 potential defenses to a murder accusation to you. All of
24 them may not apply but some of them might so the ending on
25 the testimony is whether I instruct you on those. Okay?

1 A Okay.

2 Q Potential defenses are identification, accident,
3 involuntary intoxication, self-defense, necessity,
4 insanity, guilty but mentally ill, defense of habitation,
5 entrapment, duress and alibi. Those are potential
6 defenses available to people. Mr. Jones has elected to
7 claim or try to show not guilty by reason of insanity.
8 Now, can you be a fair and impartial Juror, consider the
9 testimony presented during the guilt or innocence stage at
10 trial. The State as got the burden of proving its case
11 beyond a reasonable doubt that each and every element of
12 the murder accusations, can you consider my instructions
13 on the aspects of the appropriate law, meaningful consider
14 all of the evidence presented in this case and act as a
15 fair and impartial Juror in this case?

16 A Yes.

17 Q Now, Mr. Jones' plea brings with it a potential of
18 four options on a verdict form. So in the phase one the
19 potential verdicts could be guilty, guilty but mentally
20 ill, not guilty by reason of insanity and not guilty at
21 all. Those are four potential verdicts in that case.
22 Phase one. Can you give meaningful consideration to all
23 four of those potential verdict forms, considering you
24 will be instructed on the law as to how to evaluate the
25 aspects of those additional defenses and on the State's

1 burden of proof. Can you give meaningful consideration to
2 all four of those verdict forms?

3 A Yes.

4 Q Now, if the State does not meet its burden of proof
5 or the jury reaches a verdict of not guilty by reason of
6 insanity the case ends. If the State meets its burden of
7 proving the murder then the case goes to phase two.
8 During the phase two the State must prove a statutory
9 aggravating factor. There are several and I am going to
10 name them all and then come back with more instructions.
11 Murder of a policeman, murder of a child, rape of murder,
12 kidnapping of murder, multiple victims. Those are
13 aggravating factors. The State must prove one of those,
14 at least one of those beyond a reasonable doubt in the
15 sentencing portion in order to ask a jury to please impose
16 a death sentence. Once it gets to the sentencing phase
17 the jury is also required to consider mitigating evidence.
18 Mitigators are things that would allow you or to compel
19 you to impose a life sentence as opposed to a death
20 sentence. I am going to read some of those. There are
21 some statutory ones and there is some non-statutory
22 issues. Statutory mitigators would be the Defendant has
23 no significant history of prior criminal conviction
24 involving the use of violence against another person. The
25 murder was committed while the Defendant was under the

1 influence of mental or emotional disturbance. The victim
2 was a participant in the Defendant's conduct or consented
3 to the act. The Defendant was an accomplice in the murder
4 committed by another person and his participation was
5 relatively minor. The Defendant acted under duress or the
6 domination of another person. The capacity of the
7 Defendant to appreciate the criminality of his conduct or
8 to conform his conduct to the requirements of law was
9 substantially impaired. The age or mentality of the
10 Defendant at the time of the crime. The Defendant was
11 provoked by the victim in committing the murder. The
12 Defendant was below the age of 18. The Defendant had
13 mental retardation at the time of the crime. Those are
14 statutory mitigating factors. Other mitigators can be,
15 not saying got to be but could be, the Defendant's
16 childhood, whether he came from a broken home, his walk in
17 life. Things of that type. Now mitigating factors are
18 those and the jury gets to consider them. Can you give
19 meaningful consideration to the fact that the State has
20 the burden of proving an aggravating factor and the jury
21 considers mitigating factors in imposing the punishment.
22 Can you, now, the death penalty is not automatic. Once
23 the sentencing phase starts the jury has two choices, life
24 or death, nothing else is on the table, those are the two
25 options. Can you give meaningful consideration to the

1 instructions of the Court on the State's burden of proving
2 an aggravating factor and the jury's responsibility to
3 consider mitigating factors and reach and be a fair and
4 impartial Juror in this case. Can you do that?

5 A Yes.

6 Q Now, do you have any reason, moral, personal or
7 religious belief which would prevent you from imposing a
8 death sentence?

9 A No.

10 Q Do you have any religious, moral, personal belief
11 which would prevent you from imposing a life without
12 parole sentence?

13 A No.

14 Q Those are my questions.

15 THE COURT: Solicitor.

16 MR. HUBBARD: Yes, sir.

17 EXAMINATION

18 By Mr. Hubbard:

19 Q Ms. Nixon, how are you doing?

20 A Hi, I am fine.

21 Q I am Rick Hubbard, the Solicitor. And this is our
22 opportunity to have a chat and talk to you and find out a
23 little bit about you, also let you kind of get an idea of
24 what you are looking at should you be sitting on a jury.
25 So I just want to ask you a few questions. My

1 understanding is, from your answers, you understand the
2 two phase process in a trial like this?

3 A I do.

4 Q And that the whole first phase, the whole first trial
5 is just determining, is this Defendant guilty or not
6 guilty or not guilty by reason of insanity, something like
7 that. The Judge read the four verdict forms, right?

8 A Yes.

9 Q So, did he do it and did he have the mindset, the
10 mental capacity, right?

11 A Yes.

12 Q Than and only then do you move to the second phase,
13 about punishment. You don't punish somebody who is not
14 guilty, right?

15 A That's right.

16 Q That first phase, I want to talk to you just a little
17 bit about it. And it is like a regular trial. But as you
18 heard, there is a claim of not guilty by reason of
19 insanity. And I can't recall if the Judge read to you
20 what that meant but ultimately he is the one that gives
21 the law on that, not me, not the Defense. Okay?

22 A Okay.

23 Q All law comes from him, we talk about it but he is
24 the law, the law guy. Not guilty by reason of insanity
25 basically is this. A person actually commits the act, but

1 at the time of the act he didn't understand the wrongness
2 of that act, both legally and morally, just didn't
3 appreciate it was legally and morally wrong. Does that
4 make, do you understand that?

5 A Yes.

6 Q And my understanding is, you would consider that as
7 an option in that first phase of the trial if you were a
8 Juror?

9 A Yes.

10 Q You would want evidence?

11 A Yes.

12 Q Now, the Defense, by claiming that, would bring in
13 people to say here is why we say that. You would want to
14 hear them?

15 A Yes.

16 Q Our side of the table will have people coming here,
17 they may be experts but they don't have to be and say, no,
18 at that time he knew right from wrong. You would want to
19 hear both sides?

20 A Yes.

21 Q And of those four verdict options, you told the Jug
22 you would consider each and every one of them?

23 A Yes.

24 Q And you could act on any one of those?

25 A Yes.

1 Q Based on the evidence?

2 A Yes.

3 Q Let's assume for a moment a guilty verdict is
4 rendered. Okay?

5 A Okay.

6 Q Guilty so now we are going into the second phase
7 because we don't get there without guilt. So we are in
8 the second phase. As the Judge explained, there is only
9 two options now for punishment. Life without parole where
10 you die in prison and death meaning exactly what it says,
11 he will be put to death. Do you understand those two
12 options?

13 A I do.

14 Q And my understanding from your responses with the
15 Judge, you are the kind of person that could do, you don't
16 have anything about you moral or any of your views, your
17 personal views that would keep you from giving a life
18 sentence. Is that correct?

19 A That's right.

20 Q But there is nothing about you, your beliefs, your
21 morals, your religious views that would keep you from
22 giving a death sentence either.

23 A That's right.

24 Q The Judge said at that time, before you make that
25 decision there are several things that will come about in

1 that trial. Before you can even consider that the State,
2 represented by me, will have to prove at least one
3 aggravating circumstance. For instance, is a child under
4 eleven, more than one person died. We have to prove that
5 to you in that second phase and that what has happened
6 before you can even consider death. Do you understand
7 that?

8 A Yes.

9 Q Mitigating factors, the Judge said nobody has to
10 prove those. There are some he read off that are by law
11 and then there are some that are just out there that you
12 can consider life, the Defendant's background, his
13 relationship with others. Would you be willing to hear
14 both aggravating and mitigating circumstances?

15 A Yes.

16 Q Would you want to?

17 A Yes.

18 Q And you understand you can find an aggravating
19 circumstance, that the State has proven an aggravating
20 circumstance and you can find mitigating circumstances as
21 well. And you can still vote for death, do you understand
22 that?

23 A Yes.

24 Q Just because you find a mitigating circumstance
25 doesn't mean you have to give life. Do you understand

1 that?

2 A Yes.

3 Q One final thing, before a death sentence can be
4 imposed, we do it differently than we do for any other
5 sentence. If it is life just the Foreperson signs, saying
6 all twelve of us agree, this is a life sentence. Do you
7 understand?

8 A Yes.

9 Q With death all twelve jurors sign their name in ink
10 in that form, basically a death warrant. Can you do that,
11 if the facts are there?

12 A Yes.

13 Q That is all I have, thank you so much.

14 A Thank you.

15 THE COURT: Mr. Secor.

16 MR. SECOR: Yes, sir.

17 EXAMINATION

18

19 By Mr. Secor:

20 Q Good morning, Ms. Nixon.

21 A Good morning.

22 Q How are you?

23 A Good.

24 Q The Judge and the Solicitor talked to you a lot about
25 your willingness and ability to be fair and impartial and

1 to follow the law. Is that right?

2 A Yes.

3 Q And that is obviously perfectly appropriate, I don't
4 doubt you at all on that. But it is also just as
5 appropriate for me to ask you questions about how you feel
6 personally. Okay. And so I just want to make sure that,
7 do you agree with me that there could be a difference
8 between the answers you give, this is how it would be as a
9 Juror and this is what my personal feelings are.

10 A Yes.

11 Q And so I really want to know just what your personal
12 feelings are. Does that make sense to you?

13 A Yes.

14 Q Okay. Going back to what Mr. Hubbard was saying
15 being found guilty in a theoretical case, of course not
16 talking about this case because this case hasn't been
17 tried. But I want you to think about being a Juror on a
18 case where a person is charged with multiple murders of
19 children. Okay?

20 A Okay.

21 Q As the Judge told you, murder in South Carolina is
22 the malicious killing of an innocent person. That would
23 mean that that, the person, they knew right from wrong.
24 And that they had no excuse, justification or defense, so
25 you had found that they were not insane, they were not

1 acting in self-defense. They were not defending anybody
2 else, they were not acting in the heat of passion. All of
3 those types of things that could be a defense to murder.
4 They don't apply for a guilty murderer, of course, right?

5 A Right.

6 Q And if I am being confusing just stop me.

7 A No, it is okay.

8 Q Do you feel like we are on the same page?

9 A I understand.

10 Q Okay. Thank you. So there would be no defense and
11 the person would maliciously kill multiple children and
12 knowing that if you find a person guilty of that, you
13 can't sentence them at that point. As the Judge said, you
14 would then go to the second phase, right. That is where
15 the determination about punishment happens by the jurors.
16 But what I would like to know, again, about your personal
17 feelings. Is at the time that you believe that person is
18 guilty, even though you are not allowed to sentence at
19 that point, what are your feelings about the death penalty
20 for somebody that you know is guilty of multiple murders
21 of children?

22 A I feel like it is there to be applied.

23 Q It is there to be applied?

24 A Yes.

25 Q Okay. And do you, I guess the question I would like

1 to know is, once you know that they are guilty and you
2 have death on one side and life on the other, are you
3 leaning one way. Do you start at one punishment and that
4 you will have to be convinced the other way or how do you
5 feel personally?

6 A It is hard to imagine without facts. I mean, you are
7 right, it is one or the other.

8 Q Right.

9 A Probably lean more toward life.

10 Q Lean more toward life at that point. Okay. I
11 appreciate that, I know it is a tough question but we
12 really just want to know how you feel. I appreciate that.
13 In your mind, for you, is the death penalty something that
14 should be reserved just for the worst of the worst
15 offenders?

16 A Yes.

17 Q And in deciding punishment do you feel like a
18 person's entire life experience should be taken into
19 consideration?

20 A Yes.

21 Q Even if it is completely unrelated to the actual
22 murders that they were guilty of?

23 A Yes.

24 Q Thank you. I just want to run through some
25 principles that are used to guide jurors in Capital cases,

1 once you got to the penalty phase, once you know the
2 person is guilty and you have to hear the evidence to make
3 a determination between life or death. Okay. And just
4 find out whether or not you are familiar with these and if
5 you think that they are appropriate, is that okay?

6 A Okay.

7 Q In South Carolina the death penalty is never
8 required. Did you know that?

9 A No.

10 Q And that is true actually everywhere in the entire
11 United States, the death penalty is never required in any
12 case, not the worst case you can possibly imagine. Do you
13 think that is appropriate?

14 A If that is the law.

15 Q Okay. And that is because the law says that, the law
16 is satisfied with a sentence of life without parole in any
17 case, the worst case you can possibly imagine. And it
18 sounds to me like that is something that you agree with
19 because you think you would start off in a life sentence
20 when you know someone is guilty?

21 A Yes.

22 Q And you talked to the Solicitor about the concept of
23 mitigating evidence and aggravating evidence. And they
24 are different in that mitigating evidence doesn't have to
25 be proven to any standard, right, there is no burden of

1 proof for mitigating evidence, where there is for
2 aggravating evidence.

3 A Okay.

4 Q And also mitigating evidence doesn't have to proven
5 unanimously and that is because the law gives each
6 individual Juror the right to vote for life based on any
7 reason, no reason or based on mercy alone. Okay.

8 A Okay.

9 Q And a Juror has the right to find a piece of
10 mitigating evidence and nobody else to agree with them.
11 They can say, I saw that he had a good relationship with
12 his dad and that is mitigating for me. I am voting for
13 life for that. Can you could respect a juror's right to
14 do that?

15 A Yes.

16 Q Even if you disagreed with them and didn't see that
17 piece of mitigating evidence, right?

18 A Yes.

19 Q And also the second thing, no reason, the law
20 empowers a Juror to say, I considered everything. For me
21 I just feel that life is the right sentence, I can't tell
22 you why, I can't put my finger on it. You could respect a
23 juror's right to do that as well?

24 A Yes.

25 Q Because the law doesn't require a person to give a

1 reason for life. They can just say, I have decided it is
2 life and they don't have to explain it. Do you think that
3 is appropriate?

4 A If that is the law, yes.

5 Q And finally a Juror can give life for mercy, meaning
6 they have heard everything, they found aggravating
7 evidence, they may or may not have found mitigation but
8 they can just say, for me in this case I have decided that
9 I am going to be merciful and for me that means life
10 without parole in this case. And you could respect a
11 juror's right to do that even if you disagreed with them?

12 A Yes.

13 Q The ultimate decision for each Juror in the penalty
14 phase is based on your own individual moral judgment. And
15 that is a little bit wordy but it is just a profoundly
16 personal moral decision, sort of like how a person goes
17 about choosing what faith is right for them. And you
18 respect people to make individual moral judgments that are
19 different from yours, of course.

20 A Yes.

21 Q And you expect that they respect your individual
22 moral judgments even if they disagree with them?

23 A Yes.

24 Q In these deliberations in a penalty phase the law
25 requires you to deliberate respectfully and reasonably but