

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

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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 the decision on whether or not to kill another human being
2 has to be by each individual Juror. And once they arrive
3 at that decision is unlawful for them to be bullied,
4 pressured or coerced out of that individual moral
5 judgment. Does that sound appropriate to you?

6 A Yes.

7 Q Some people have a harder time standing up for
8 themselves and if you saw somebody being bullied you could
9 say that is not appropriate, that person has their
10 individual judgment they are entitled to. Stop it, right?

11 A Yes.

12 Q And if need be you could notify Judge Griffith and
13 say, people are being bullied, you need to take care of
14 this?

15 A Yes.

16 Q Thank you, I appreciate it.

17 MR. HUBBARD: Nothing else, Your Honor.

18 THE COURT: Anything we need to put on the record?

19 MR. SECOR: No, sir.

20 THE COURT: Ms. Nixon, the Court will find you
21 qualified. What that means you are on the next list of
22 qualified jurors. Several jurors are going to be
23 qualified. I want you to follow the website where you
24 were checking panel nine, now you are a qualified Juror.
25 Watch those instructions, it may say check back, check

1 back, please report on or about 9:00 a.m. on such and such
2 a date. You watch the website for directions to the
3 qualified jurors, you are one of those.

4 JUROR: Okay.

5 THE COURT: Still under oath. From this point
6 forward don't talk about the case, do not let anyone
7 communicate with you about the case, do not do any
8 independent research, do not get on any social media and
9 say, I am on the jury. I don't want you to peruse the
10 media publicity, social media publicity, any publicity.
11 You need and should decide this case, I want you to hear
12 what you need in the courtroom under my supervision, the
13 Court's record, under oath and all the jurors hear the
14 presentation all at the same time. So it is not piecemeal
15 gathering, this and that and the other and come in with a
16 preconceived notion of what happened and also what the law
17 is. The law is for the Court to instruct, that is my job.
18 I can't instruct you on the law via outside of the
19 courtroom. Can't do it. I want you to decide the case on
20 what you hear in here, if you are so selected as a Juror.
21 Can you promise me you will live up to that oath?

22 JUROR: I can do that.

23 THE COURT: Very well, we will see you soon. Thank
24 you very much.

25 JUROR: Okay.

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

3 THE COURT: Bring in 96.

4 (Whereupon, Juror 96, Toni Clark entered the
5 courtroom.)

6 EXAMINATION

7 By The Court:

8 Q Good morning, Ms. Clark.

9 A Good morning.

10 Q I asked you on Monday to take an oath to promise to
11 not talk about the case and not allow other people to talk
12 to you about the case. Have you talked to anyone about
13 the case?

14 A No, sir.

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

16 A No, sir.

17 Q Other than, you know, I am going to court and I have
18 got to go and letting people know where you will be.

19 A The only people that knew was my immediate family.

20 Q Fair enough. Now, there has been a lot of publicity
21 in this case since Monday, prior to Monday, several years
22 ago. Also the Court read five indictments, reading the
23 allegations made by the State gainst Mr. Jones. He is
24 presumed innocent but I read those indictments to tell the
25 jury a little bit, introduce the jurors a little bit about

1 the facts that are being considered in this case. Has any
2 of the information, publicity, information from the Court,
3 where ever it came, any information created an issue for
4 you to form an opinion as to what happened in this case?

5 A No sir, other than what you told us and a tiny little
6 article I read a few weeks ago. That is all I know.

7 Q So you have not formed an opinion as to what
8 happened?

9 A No, sir.

10 Q Okay. And also let me ask you about your potential
11 schedule and availability to be a Juror. The
12 qualification will go most likely through this week. The
13 trial will start early next week if we continue making
14 progress on qualifying the jurors. If we start the trial
15 next week, I am guessing through the end of May, early
16 June, what have you on your calendar, work, personal or
17 otherwise that would be impacted if you were so selected?

18 A I take care of my grandson who is five years old and
19 he is still in school. By the time he gets out I have to
20 be there at 2:30. My son who is his father is a single
21 dad and if he doesn't work he doesn't get paid.

22 Q Okay. So you are helping your son with his
23 five-year-old?

24 A Yes, sir.

25 Q And it is your blood grandchild?

1 A Yes, sir.

2 Q Aside from that any other issues on your calendar?

3 A None.

4 Q If you were selected as a Juror or if you have
5 something going on, what happens with this five-year-old
6 if you are not available, what happens?

7 A I guess my son will have to take off of work. He may
8 try and see if his work can work around the schedule.

9 Q I think you told me that the mother is not involved
10 whatsoever?

11 A No, sir. The mother is not and none of her family
12 is.

13 Q Okay. Understanding you have got a five-year-old
14 grandchild, the subject matter of this case involves the
15 death of some children. The subject matter, the
16 testimony, the evidence the jurors will consider will be
17 graphic and harsh, perhaps unpleasant if not very
18 unpleasant, difficult testimony to consider. Would that
19 testimony of that type of subject matter make it difficult
20 for you to be a fair and impartial Juror just because of
21 the subject matter?

22 A I have been thinking about it and to tell you the
23 truth I don't know.

24 Q Okay. And fair enough answer since you haven't seen
25 it. I am going to give you my, information I received

1 from the lawyers, Judge, this is going to be tough
2 evidence. They would not tell me that and represent that
3 to me if it weren't going to be that difficult, unpleasant
4 and tough to consider and see. With that representation
5 and description, does that help you evaluate any further
6 whether or not you can be fair and impartial to both
7 sides?

8 A I would think I could still be. But to tell the
9 truth, no, I don't want to hear it but until I hear it I
10 won't know.

11 Q And your response just now is a common response,
12 until, I don't know. Very common and no one says, you
13 know, I can't wait to see it. There has never been that
14 response. Your response is a common one to the jurors I
15 have talked to. I gave you a preliminary instruction on
16 the law an hour ago, aspects of a Capital case, two phase,
17 phase one, guilt or innocence. Phase two, the sentencing
18 portion. I also gave you a sheet to examine and describe
19 three potential jurors which presupposes that guilt is
20 found and then the jury considers the aggravating factor
21 and mitigating factors. If that is proven and you don't
22 know anything about the facts in this case other than the
23 allegations that I read, can you identify yourself as one
24 of those three types of potential jurors?

25 A I looked it over and I thought about it, I know

1 definitely I am not Juror one.

2 Q Okay.

3 A But, again, until I am put in that position of making
4 a choice, I don't know until I am there.

5 Q Okay. Now, in the sentencing phase, this type of
6 case, it is required that the death penalty be unanimous
7 and it is also required that each Juror that verdict,
8 verdict for death, all twelve jurors sign. Do you have a
9 reason, personal or otherwise that would prevent you from
10 signing or imposing the death penalty?

11 A No, sir.

12 Q Do you have any personal, religious, moral belief
13 which would prevent you from imposing that sentence if the
14 evidence and facts support it, consistent with my
15 instructions on the law?

16 A No, sir.

17 Q You could do that?

18 A Yes, sir.

19 Q Now, do you have any religious, personal or moral
20 beliefs which would prevent you from imposing the life
21 without parole sentence if the facts supported that?

22 A No, sir.

23 Q I ask you to look over the potential witness list.
24 Did you do that?

25 A Yes, sir.

1 Q Do you know any of the witnesses?

2 A I am not sure, two of the names were familiar.

3 Q What are the names?

4 A William Herring, if it is the same one I know he is a
5 friend of mine. But I know him as William Thomas Herring.

6 Q Who else?

7 A The other one is Lisa Shealy. If it is the same one,
8 I went to high school with her at Brooklyn-Cayce High
9 School.

10 Q Not sure, let's suppose it is them. Is your
11 relationship with them close enough that if they were to
12 testify would it be difficult for you to be fair and
13 impartial in this case?

14 A No.

15 Q You could still evaluate their testimony impartially?

16 A Yes.

17 Q In a murder case there are several defenses that are
18 available to people accused. I am going to read those to
19 you and I will ask you about phase one of the case. Okay.

20 A Okay.

21 Q Potential defenses and it doesn't mean you will
22 consider all of these but there are potential ones on the
23 statute. Identification, accident, involuntary
24 intoxication, self-defense, necessity, insanity, guilty
25 but mentally ill, defense of habitation, entrapment,

1 duress and alibi. Those are potential defenses. Now, in
2 phase one the State is required to prove the murder beyond
3 a reasonable doubt. The Defendant has claimed one of
4 these defenses, not guilty by reason of insanity. Perhaps
5 the testimony could support one of the other defenses.
6 You are not aware of that because you have not heard the
7 testimony. Okay. I have not heard it. I am telling you,
8 if the testimony supports another defense it may be
9 considered by the jury. Understanding those are defenses
10 which a person may present, understanding the State has
11 the burden of proving the allegations of murder beyond a
12 reasonable doubt can you evaluate and consider,
13 meaningfully consider all the evidence, the facts and
14 circumstances in the case, consistent with my instructions
15 on the law, on the aspects of it and be a fair and
16 impartial Juror to both the State and the Defense.

17 A I would hope so.

18 Q I want you to be comfortable with that. Are you
19 comfortable with that, being fair and impartial?

20 A Yes.

21 Q Okay. Now, understanding the defense of not guilty
22 by reason of insanity as being claimed by Mr. Jones, that
23 brings in verdict forms in the first phase, guilt or
24 innocence of guilty, guilty but mentally ill, not guilty
25 by reason of insanity and not guilty whatsoever. Those

1 are four potential verdicts the jury may reach. Can you
2 give meaningful consideration to each one of those
3 potential verdict forms, considering the facts and
4 evidence presented and considering my instructions on the
5 aspects of those defenses and verdicts and be fair and
6 impartial to both sides?

7 A Yes.

8 Q If the State fails to meet its burden or the jury
9 finds the not guilty by reason of insanity the case ends.
10 If a guilty verdict is found then the case proceeds to
11 phase two. In phase two the jury has to impose sentence.
12 They have got to consider two different sentences, only
13 two. Life or death, nothing else, no middle ground, no
14 other choices. In that phase, phase two, the State must
15 then prove an aggravating factor, there are several
16 statutory aggravating factors. Murder of a policeman,
17 murder of murder, kidnapping of murder, murder of a child,
18 multiple victims. Those are aggravating factors. The
19 State must prove at least one of those beyond a reasonable
20 doubt. Mitigators, the reason to impose the life sentence
21 are also presented and considered by jurors. Mitigators
22 provided by statute are the Defendant had no significant
23 history of prior criminal conviction involving the use of
24 violence against another person. The murder was committed
25 while the Defendant was under the influence of mental or

1 emotional disturbance. The victim was a participant in
2 the Defendant's conduct or consented to the act. The
3 Defendant was an accomplice in the murder committed by
4 another person and his participation was relatively minor.
5 The Defendant acted under duress or under the domination
6 of another person. The capacity of the Defendant to
7 appreciate the criminality of his conduct or to conform
8 his conduct to the requirements of law was substantially
9 impaired. The age or mentality of the Defendant at the
10 time of the crime. The Defendant was provoked by the
11 victim in committing the murder. The Defendant was below
12 the age of 18 at the time of the crime. The Defendant had
13 mental retardation at the time of the crime. Those are
14 statutory mitigators. There is also other mitigators that
15 are outside the statute and those are fair and can be
16 considered by jurors. The Defendant's walk in life, how
17 he was raised up, did he come from a broken home, any
18 personal circumstances he may have gone through prior to
19 this event happening. Anything can be a mitigator which
20 can be reason to impose a life sentence. Can you give
21 meaningful consideration to the instructions the Court
22 will give requiring the State to prove beyond a reasonable
23 doubt an aggravating factor as well as consider any and
24 all mitigating facts in reaching a verdict consistent with
25 my instructions and be fair and impartial to both the

1 State and the Defense in reaching a verdict.

2 A Yes.

3 Q Those are my questions.

4 THE COURT: Ms. Mayes.

5 MS. MAYES: May it please the Court.

6 THE COURT: Yes, ma'am.

7 EXAMINATION

8 By Ms. Mayes:

9 Q Good morning, Ms. Clark.

10 A Good morning.

11 Q My name is Suzanne Mayes, as a prosecuting attorney
12 we represent the State of South Carolina in this
13 prosecution. I really just kind of want to talk to you
14 this morning and find out a little bit more about some of
15 the responses you gave to the Judge just so we will know
16 where you stand on these matters. One of the things that
17 the Judge mentioned that during the course of the trial
18 there will be graphic evidence involving brutality towards
19 children. And you responded to the Judge you wouldn't
20 know how that would affect you until you actually see it.
21 Can you state with certainty that it won't affect you or
22 do you just not know?

23 A I am sure it has got to affect me but I can't tell
24 you how, I mean how it cannot affect me.

25 Q And so just to follow-up a little more on that, when

1 the Judge is asking about to what degree it may affect
2 you, it is really to determine whether it could impact
3 your ability to be impartial to both sides. Do you still
4 feel like you wouldn't know the answer to that until you
5 saw the evidence?

6 A I think, I want to say, yes, I could still be
7 impartial.

8 Q Okay. One of the things that you did mention on your
9 questionnaire is about a group, maybe it was on a social
10 media post, about a group that you were involved with,
11 Defenders of Children. Does that ring a bell?

12 A Not right off hand.

13 Q Okay. And then the Judge asked you a little bit more
14 about your grandson and your caretaking responsibilities
15 with him. Do you normally have him every weekday?

16 A Out of seven days, I have him at least five. My
17 son's job, the days he takes off varies and his hours
18 varies. So there are weeks, yes, I have him five days a
19 week.

20 Q And that is normally when he gets out of school. If
21 it is a school like right now?

22 A Right.

23 Q And then what is his normal, his routine the school
24 year is over and summer break starts?

25 A And then I will have him full-time when his dad is at

1 work.

2 Q So even mornings before 2:00 p.m.

3 A Mornings could be, well, it depends. If he has
4 opening shift then my grandson spends the night with me
5 instead. If he works swings then I could have him from
6 11:00 to 8:00.

7 Q Okay. And where does your son work?

8 A At the Chef Store. It is like a huge grocery store
9 but for like restaurants and stuff like that.

10 Q Now, another thing that the Judge was asking you
11 about at the outset is whether you reviewed the three
12 types of jurors and that was a sheet that you looked at
13 before you came in here. And I am going to ask you to
14 take a look at it again and I believe Your Honor has a
15 copy of it on the bench.

16 THE COURT: I do.

17 Q And I know, Ms. Clark, you said that you were not
18 type one and then whether you were type two or type three,
19 you said until I am put in that position I can't say.

20 A Right. So I guess maybe that is type three, I can't
21 definitely say that no matter what I am going to choose
22 life, I can't say that.

23 Q Okay. Have you thought about the death penalty
24 before you got the jury notice and showed up last week and
25 found out that it was a death penalty trial? Do you have

1 any strong views on the death penalty one way or the
2 other?

3 A Not really any heavy thought, no. I never thought I
4 would ever be in this position.

5 Q Right. Most people here this week were in the same
6 boat. From a standpoint of just trying to determine what
7 your feelings are and having thought about it since last
8 Monday when you came in and the Judge informed you, what
9 are you general views on the death penalty?

10 A I had to do a lot of thinking about that in the last
11 couple of weeks. At first I was against it because I
12 think that the guilty person should stay alive and deal
13 with what they have done. But then I am a Christian and
14 so I do read my Bible and it just reminded me there are
15 consequences to your actions. So, I mean, it could go
16 either way.

17 Q Okay. So having thought about it over the course of
18 the last two weeks and considering consequences, do you
19 feel that the law that is in place establishing the death
20 penalty as a potential sentence, do you feel that is
21 appropriate?

22 A I would think so.

23 Q So you don't have a disagreement with the existence
24 of the death penalty in South Carolina?

25 A No.

1 Q Do you see situations where you believe it is
2 appropriate for the death penalty to be enacted?

3 A I mean like, specific--

4 Q It can be specific or general.

5 A I believe it has its place, yes.

6 Q Okay. And considering all of that, I know the Judge
7 explained there are two phases to the trial. In
8 potentially a second phase of the trial it would only be
9 two options for sentencing. And that would be the option
10 of life without parole or the option of the death penalty.
11 Are both of those options that you can consider?

12 A Yes.

13 Q And beyond just considering it, my next question is,
14 is the death penalty something that you and you just take
15 a moment and reflect, that you in your heart of hearts is
16 the death penalty a sentence that you can render if having
17 considered all aggravating factors and mitigating factors,
18 you believe that is the appropriate sentence?

19 A Again, I actually had to do a lot of soul searching
20 because I knew this would come up and if it came to it
21 then I would be able to do it.

22 Q Okay. And when you say you would be able to do it,
23 that is something that you feel firmly convinced of?

24 A As long as I am convinced of the facts and
25 everything, yes.

1 Q That the facts would support that sentence?

2 A Yes.

3 Q And then the Judge explained some of the mitigating
4 factors that would be presented during the course of the
5 trial by the Defense and can include a long list of
6 things, basically reasons to consider a life sentence.
7 Would you be able to consider all of those mitigating
8 factors?

9 A Yes.

10 Q And in doing so, still recognize that even with the
11 existence of mitigating factors, you would not have to
12 necessarily vote for life but you can have the existence
13 of mitigating factors and still make the decision for the
14 death penalty if you deem appropriate?

15 A Yes.

16 Q With the death penalty and the Judge may have eluded
17 to this, I just want to ask a couple of follow-up
18 questions on it. There is a specific form that goes along
19 with that verdict. So if twelve jurors unanimously decide
20 that the death penalty is the appropriate verdict, each
21 Juror would sign their name to that form acknowledging
22 that that is, in fact, the sentence that they choose to
23 impose. Would you, Ms. Clark, be able to sign your name
24 to that death sentence?

25 A Yes.

1 Q No more questions.

2 THE COURT: Mr. Madsen.

3 EXAMINATION

4 By Mr. Madsen:

5 Q Good morning, Ms. Clark, how are you?

6 A Good morning.

7 Q My name is Rob Madsen and I am one of Tim's lawyers.
8 Just kind of want to talk with you now about your
9 feelings. You heard the Judge kind of go over and ask you
10 a fair and impartial, just trying to ask you questions
11 about what is just inside you. Okay?

12 A Okay.

13 Q Did you know any of the other jurors on the panel
14 when you came in, I guess a little over a week ago?

15 A Not that I could see, no.

16 Q Some of the things that the Solicitor asked you
17 about, I am going to just kind of ask you a little bit
18 more and make sure of your understanding. You understand
19 from what the Judge told you that even a guilty murderer
20 is never required to be put to death. You understand
21 that?

22 A Right.

23 Q And that the law is satisfied with a life without
24 parole sentence in this case, in any case and even the
25 worst case that you could imagine. Do you understand

1 that?

2 A Right.

3 Q And as the Solicitor said, you kind of get, it is
4 kind of like two different trials. We have the first
5 trial that kind of determines guilty, not guilty, guilty
6 but mentally ill or not guilty by reason of insanity. You
7 understood that?

8 A Right.

9 Q And if it is guilty or guilty but mentally ill you
10 kind of go on to that second part of the trial. Do you
11 understand that?

12 A Yes.

13 Q And I want to talk to you about that second part. So
14 assume you have already kind of gotten there with the
15 other jurors. You understand that the State can present
16 aggravating circumstances. You understand that, right?

17 A Yes, sir.

18 Q And those have to be found unanimously and beyond a
19 reasonable doubt. Do you understand that?

20 A Yes, sir.

21 Q And then there is also something that we talk about,
22 mitigating circumstances. And do you understand that
23 mitigating circumstances would be anything that would say,
24 hey, life without parole is the appropriate sentence. Do
25 you understand that?

1 A Yes, sir.

2 Q And you understand that mitigating circumstances
3 don't have any type of burden of proof.

4 A Yes, sir.

5 Q And so what that kind of means is that each
6 individual Juror is empowered with finding what they find
7 as mitigation. Do you understand that?

8 A Yes, sir.

9 Q And what that kind of means is, the Juror that sits
10 right here could say, you know, I have heard all of the
11 evidence and I see this spark of humanity, he has got a
12 good relationship with his father and so I want to give
13 that mitigation the vote of life. And they can do that.
14 This Juror sitting here might say, you know what, I didn't
15 see that but I saw that he has got mental health problems
16 and for me that is what I want to give the vote of life
17 for. Do you understand that?

18 A Yes, sir.

19 Q And they might disagree with one another but they
20 have different mitigating circumstances that what they
21 give up the vote of life for. You understand that?

22 A Yes, sir.

23 Q And even you could have this Juror sitting right here
24 saying, you know what, I didn't see what either of them
25 saw and I can't really tell you what my reason is. But,

1 you know, I just know that to me I think a life without
2 parole sentence is appropriate. Do you understand that?

3 A Yes, sir.

4 Q And after the consideration of the mitigation,
5 basically the juror's decision on the appropriate penalty
6 comes down to what we kind of call individual moral
7 judgment. Have you ever heard of that before?

8 A No.

9 Q So the way it was described to me, it is kind of like
10 your faith. You have made an individual moral judgment of
11 what the appropriate faith for you is. And someone over
12 here might have made a different individual moral judgment
13 about what their faith is. And you would expect them to
14 respect what your individual moral judgment is on your
15 faith, wouldn't you?

16 A Yes.

17 Q And at the same time you would respect what their
18 decision is?

19 A Right.

20 Q You understand that?

21 A Yes, sir.

22 Q Even though you might disagree?

23 A Right.

24 Q And so when you are back in a jury room certainly you
25 will talk with other jurors about what their decisions

1 are, what they think. But you understand in the end each
2 Juror has to make their individual moral judgment about
3 what the appropriate penalty is?

4 A Right.

5 Q And the law says that once you make that you can't
6 change it just to kind of throw in, let's say the
7 majority.

8 A Right.

9 MR. GRAHAM: Objection. I don't think that is a
10 correct statement of the law.

11 THE COURT: I understand your objection. I will
12 allow the question.

13 Q And you understand that if, in the jury room, once
14 someone has made their individual moral judgment, if
15 bullying goes on or browbeating somebody out of their
16 individual moral judgment, that that is not appropriate.

17 A Right.

18 Q And are you someone that if you saw that going on
19 could say, hey, they have made their individual moral
20 judgment, they have the right to that. Could you step in
21 and say, no, that this is past civil discourse, this isn't
22 appropriate?

23 A Yes.

24 Q And if it went to that point the law says that is
25 inappropriate, you could write a note to the Judge. And

1 say, hey Judge, it has gotten past civil discourse in
2 here, we need you to step in and help. Could you do that
3 if that was, if it had gotten to that point?

4 A Yes.

5 MR. MADSEN: Judge, subject to the Court's
6 limitations no further questions.

7 THE COURT: Very well. Anything on the record from
8 the State or the Defense?

9 MR. MADSEN: No, sir.

10 MS. MAYES: No, sir.

11 THE COURT: All right, Ma'am, I understand the
12 difficulty with your grandson, we will try to be mindful
13 of that but based upon your answers on the questionnaire
14 and all the questions I am going to find you qualified as
15 a Juror in this case. What that means is, you are
16 qualified and not excused yet. You will be on a list of
17 other jurors that I described earlier. I want you to
18 follow instructions on when to report back on the
19 Lexington County website, the same one that told you when
20 to come in this mornings, that same site. You are not
21 looking at panels, numbers, whatever, qualified jurors,
22 please check back, please report on a certain date and
23 time. Follow that instruction's and come back in. Until
24 that time you are under oath not to talk about the case,
25 not to be questioned by anybody about the case, do not

1 discuss the case with anybody, not to do any independent
2 research in the case, social media, public media,
3 otherwise. I want you, if selected as a Juror in this
4 case, to make your decision fairly and impartially, based
5 on what you hear in the courtroom, not outside the
6 courtroom. What is outside the courtroom none of us have
7 any control over. It is just information that we don't
8 know where it came from. In here you will see and hear
9 witnesses under oath testifying. I want you to consider
10 and evaluate and make determinations of fact in this case
11 on what you hear in the courtroom. So I want you to
12 minimize any perusal or publicity in this case. Don't
13 talk about the case, don't do any independent research,
14 stay away from the media reports. Can you do that?

15 JUROR: Yes, sir.

16 THE COURT: Thank you very much and see you soon.

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

19 THE COURT: Are we ready for the next one which will
20 be Juror number 89. This guy wrote me an email about work
21 problems, work issues.

22 (Whereupon, Juror 89, Nathan Chapman entered the
23 courtroom.)

24 EXAMINATION

25 By The Court:

1 Q Mr. Chapman, good morning.

2 A Good morning.

3 Q I am Judge Eugene Griffith presiding over the case,
4 you are under oath since Monday, have you talked to
5 anybody about the case since Monday?

6 A I talked to my wife and the owner of our company.

7 Q Has anybody discussed the case with you about the
8 facts and what happened?

9 A No.

10 Q Now, there has been publicity about the case
11 involving media, otherwise, several years ago, a couple of
12 weeks ago, this week. I gave a publication of the
13 indictment, the allegations the State is making against
14 Mr. Jones to which he is presumed innocent. Has any of
15 that information caused you to form an opinion in this
16 case?

17 A No, sir.

18 Q All right. Now, I ask you over here, right before
19 you came back in to be ready to tell me about your
20 potential work conflicts, your personal conflicts on your
21 calendar. I believe you communicated in an email to,
22 directly to me?

23 A Yes, sir.

24 Q Tell me about that.

25 A I have got, my wife and I have a vacation that we

1 have been planning for about a year to celebrate our 50th
2 birthdays with nine other couples and all of that is paid
3 for and suppose to happen next month.

4 Q What part of June, when?

5 A We leave the 21st.

6 Q I have got that same exact question from a member of
7 my staff, the third week of June is going to impact that
8 or not and based on what I am hearing from the lawyers we
9 shouldn't, we should--

10 MR. YOUNG: Yes, sir.

11 THE COURT: We agree with that.

12 MR. YOUNG: Yes, sir.

13 Q That was my understanding, so we should be done by
14 then. I have been telling other people this, if we find
15 qualified jurors this week, I am looking for 45 to 50
16 qualified jurors from which to select a jury who will sit.
17 We have got several, we are continuing to go through that
18 process. My hope is to have that group of qualified
19 jurors finished off by this week or very early next week
20 so as to select the jury very early next week and start
21 the trial. Now, there is witness logistics and whatnot
22 and there, you work on construction so you have got to
23 finish one thing before you start another.

24 A That was my other point, it is not my company but it
25 would be a burden on the company as I am the only sales

1 person.

2 Q Okay. Now, not impacting your personal schedule, you
3 should be good on that. And the lawyers and I have been
4 guessing, estimating, we start next week through May,
5 early June, we should be done.

6 A Okay.

7 Q Nothing would impact your schedule there?

8 A No.

9 Q Now, I don't know, this is another question to you,
10 the company you work for is Agnew Lake Service.

11 A Yes, sir.

12 Q It was involved with the employee issue and there was
13 a case tried here in Lexington County involving two
14 employers or former employees. Were you involved in that
15 case whatsoever?

16 A No, sir.

17 Q Do you know anything about it?

18 A I do know about it.

19 Q Now, is that going to cause an issue for you being
20 fair and impartial in the courtroom knowing I was the
21 presiding Judge in that case and knowing that the
22 Lexington Solicitor's office prosecuted that case. Have
23 you got preconceived notions about that. I need you to be
24 candid, okay. If you have awkward feelings because my
25 understanding the employee of Agnew was convicted by a

1 jury and got sentenced. Will that impact your decision to
2 be fair and impartial in this case, me being the presiding
3 Judge. I need to know that.

4 A I do not think it would.

5 Q I want you to be comfortable with it. The victim in
6 that case was an employee of Agnew and he is no longer
7 employed with Agnew, he does something else?

8 A That's correct.

9 Q His being a victim in that trial, would that impact,
10 factor your ability to be fair and impartial in this case?

11 A No, sir.

12 Q Now, the subject matter of this case involves the
13 death of children. The subject matter will be difficult,
14 graphic, harsh, unpleasant. The lawyers have represented
15 that to me. I don't believe they are exaggerating. I
16 think they are being candid. Understanding that subject
17 matter will be difficult and unpleasant involving a
18 description of that, can you be fair and impartial in
19 light of the subject matter, the testimony would be
20 difficult and unpleasant?

21 A That is a tough one.

22 Q Here it is, we haven't seen any evidence. I haven't,
23 you haven't, it will be presented. I need to know candid,
24 can you be fair and impartial in light of that type of
25 testimony. Everybody has personal experiences, I want to

1 know what they are, if you have something in your past
2 that would impact your ability to evaluate that kind of
3 testimony we need to know.

4 A I just think it would be hard.

5 Q No question.

6 A I think I could, yes.

7 Q I want you to be comfortable with that because what I
8 don't need is this. We get into the trial, it is too
9 much, I can't do it, I want out. That is what I don't
10 want to be faced with that, with that Juror.

11 A It has definitely been weighing on me since coming up
12 and coming back and forth in my head. But I try to think
13 that I could be.

14 Q Now, I gave preliminary instructions on the law,
15 procedures of a Capital case meaning the State has got to
16 prove the murder itself first in phase one. If the State
17 fails to meet its burden of proof in the case it ends
18 right there. If the State proves the murder it goes to
19 phase two. In phase two the State has got to prove an
20 aggravating factor and jurors consider mitigating facts of
21 all different sorts and then they determine the
22 punishment. There is two choices, life or death, no other
23 choices, no other options, no middle ground. I provided
24 to you a list, a summary of three typical types of jurors
25 in cases like this. Can you identify yourself to one of

1 those three types?

2 A I would be type three.

3 Q So you are the type that wants to hear all the facts
4 of the trial itself, all of the facts of the aggravation
5 and all the facts of the mitigation and then make a
6 decision?

7 A Yes.

8 Q And in light of that there is, phase one, I want to
9 discuss that with you for a moment. Do you understand
10 right now Mr. Jones is presumed innocent. The State will
11 go first and try to prove the murder beyond a reasonable
12 doubt.

13 A Yes.

14 Q Mr. Jones has tendered a plea which he has claimed
15 one of the defenses allowed in our laws. I am going to
16 read to you all of the statutory defenses that are allowed
17 and then come back and ask you if you can consider them.
18 I don't know that all of them will apply but any of them
19 will apply other than the one he has claimed. The Court
20 will instruct all the jury panel on the aspects of which
21 defenses are appropriate and how to consider them and that
22 kind of thing. Potential defenses are identification,
23 accident, involuntary intoxication, self-defense,
24 necessity, insanity, guilty but mentally ill, defense of
25 habitation, entrapment, duress and alibi. Those are

1 potential defenses. If the testimony were to support some
2 of that for the jury to consider I would instruct on those
3 particular aspects. If it didn't support it you wouldn't
4 hear the instructions. Can you give meaningful
5 consideration to the instructions that the Court will give
6 you at that time on the guilt or innocence phase to
7 consider the State's burden of proving its case beyond a
8 reasonable doubt and consider whatever defenses the
9 testimony can allow the jury to consider, my instructions
10 on those defenses and be fair and impartial for both the
11 State and the Defense?

12 A Yes, sir.

13 Q Can you do that. Okay. Now, if there is a not
14 guilty verdict, I am sorry, let me go back to this.
15 Because of the defense that Mr. Jones submitted there is
16 four potential verdict forms in phase one. There is
17 guilty, guilty but mentally ill, there is not guilty by
18 reason of insanity and not guilty at all. Those are four
19 potential verdict forms the jury will consider at this
20 time. The case will be presented, the jury will be
21 instructed. Can you give meaningful consideration to all
22 four of those potential verdict forms, consistent with my
23 instruction's on the law and make findings of fact and
24 reach one of those four verdicts?

25 A Yes, sir.

1 Q Now, if there is a guilty verdict go to phase two.
2 At that time, then the State is tasked with proving an
3 aggravating factor. The State has got to prove at least
4 one and I will name off five. The murder of a policeman,
5 rape of murder, kidnapping of murder, murder of a child,
6 murder of multiple victims. Those are five aggravators.
7 The State has got to prove one to the jury beyond a
8 reasonable doubt. During the sentencing phase jurors are
9 allowed to consider mitigating factors or mitigators. I
10 am going to read those statutory mitigators to you that
11 you could be presented evidence on. The Defendant has no
12 significant history of prior criminal conviction involving
13 the use of violence against another person. The murder
14 was committed while the Defendant was under the influence
15 of mental or emotional disturbance. The victim was a
16 participant in the Defendant's conduct or consented to the
17 act. The Defendant was an accomplice in the murder
18 committed by another person and his participation was
19 relatively minor. The Defendant acted under duress under
20 the domination of another person. The capacity of the
21 Defendant to appreciate the criminality of his conduct or
22 to conform his conduct to the requirements of law was
23 substantially impaired. The age or mentality of the
24 Defendant at the time of the crime. The Defendant was
25 provoked by the victim in committing the murder. The

1 Defendant was below the age of 18 at the time of the
2 crime. The Defendant had mental retardation at the time
3 of the crime. Those are statutory mitigators, other
4 mitigators which are not statutory could be considered by
5 the jury is anything, the Defendant's walk in life, how he
6 was raised, he came from a broken home, whether anything
7 has happened to him in the past that could be of reason to
8 give life rather than death. Can you, as a Juror, be fair
9 and impartial and consider the burden of proof upon the
10 State in proving the aggravating factor and consider any
11 and all mitigation evidence which would be reasons to
12 impose the life sentence and be fair and impartial but
13 reach these conclusions consistent with my instructions on
14 the law. Can you do that?

15 A Yes, sir.

16 Q Now, do you have any reason whatsoever, religious,
17 moral, personal belief that would prevent you from signing
18 the death penalty on the verdict form?

19 A No, sir.

20 Q Do you have any religious, moral, personal belief
21 finding a verdict of punishment of life with the
22 possibility of parole?

23 A No, sir.

24 Q Do you know any reason whatsoever you can't be fair
25 and impartial in this case for any reason?

1 A No, sir.

2 Q All right.

3 THE COURT: Mr. Graham.

4 MR. GRAHAM: Thank you, Your Honor.

5 EXAMINATION

6 By Mr. Graham:

7 Q Mr. Chapman, my name is Shawn Graham and I am one of
8 the Prosecutor's in this case. Have you ever served on a
9 jury before?

10 A No, sir.

11 Q This is all brand new?

12 A Yes, sir.

13 Q I understand. And you understand that this is not a
14 normal type of case?

15 A Yes, sir.

16 Q Normally there is a trial and the jury determines
17 whether the Defendant is guilty or not guilty. In this
18 case Mr. Jones has plead not guilty by reason of insanity
19 which changes that up and there is actually four verdicts.
20 So you could have guilty, guilty but mentally ill, not
21 guilty by reason of insanity or not guilty. So there will
22 be four verdicts that the jury would need to hear based on
23 the evidence that comes up during the trial. Do you
24 understand that?

25 A Yes, sir.

1 Q Not guilty by reason of insanity means that he did
2 the act but he was claiming he is not guilty because he
3 didn't understand the legal or moral right or wrong of his
4 action at the time of the killings. Does that make sense?

5 A Yes, sir.

6 Q So there will be experts who will testify and experts
7 are a little different normal witnesses. Normal witnesses
8 don't get to give opinions but experts, because of their
9 background and training, do. So you may hear from
10 psychiatrists and psychologists and other types of people
11 who will get up and explain what they understand about the
12 case, what people told them and then they get to render an
13 opinion. Does that make sense?

14 A Yes, sir.

15 Q The weight that you would give them, would you be
16 willing to listen to the experts?

17 A Yes, sir.

18 Q Okay. And you understand that just because they give
19 you an opinion that doesn't mean you have to blindly agree
20 with their opinion?

21 A Yes, sir.

22 Q Does that make sense. You still get to evaluate
23 their credibility and you get to evaluate their reasoning
24 and you still get to decide whether you believe those
25 experts or not. You still get to make that decision even

1 though they get to offer an opinion. Does that make
2 sense?

3 A Yes, sir.

4 Q Knowing that, knowing that you are going to hear from
5 these experts, not guilty by reason of insanity is one of
6 the things that you would have to consider. Are you
7 willing to listen to that testimony, judge it for what you
8 think it is worth and then actually be able to give
9 consideration to that type of verdict?

10 A Yes, sir.

11 Q Because this trial is a death penalty there is two
12 parts. The first part would be listening to the evidence,
13 going through those four verdicts and determining whether
14 he was guilty or not guilty. You understand that?

15 A Yes, sir.

16 Q Okay. If you were a member of the jury and you and
17 the other eleven members of the jury found beyond a
18 reasonable doubt that he was guilty or guilty but mentally
19 ill you would move into that second phase. In the second
20 phase you would have to listen to, as a Juror, along with
21 your fellow jurors, the first thing you would do is look
22 for an aggravating circumstance. We can't even go to the
23 death penalty until there is a murder conviction and an
24 aggravating circumstance. In this particular case the
25 aggravating circumstance is the murder of a child under

1 eleven or multiple people being killed. Does that make
2 sense?

3 A Yes.

4 Q Once you and your fellow jurors, if you did determine
5 beyond a reasonable doubt those aggravating circumstances
6 were present, only at that time would you be able to start
7 looking at what the punishment would be.

8 A Yes.

9 Q And normally the Judge does the punishment but in
10 this case the jury does. At that point, if we made it
11 that far, you would hear aggravating factors, mitigating
12 factors, things that make it sound worse than it already
13 is and things in mitigation, as the Judge explained to
14 you, to make it sound better or it is a reason that you
15 could give life. And you and your fellow jurors could
16 decide on that. Does that make sense?

17 A Yes.

18 Q All right. Mitigation is anything that the Defense
19 wants to offer, it can be mercy in your own head for a
20 reason to give life. So you understand that even though
21 they present mitigation and you can see mitigation, just
22 because it is there that doesn't mean that you still can't
23 consider death as an option. Does that make sense?

24 A Yes.

25 Q If after hearing all the evidence, the mitigation,

1 the aggravation, the good and the bad, is there any reason
2 that you couldn't give a life sentence if you thought it
3 was appropriate?

4 A No, sir.

5 Q If after hearing all the information, the good, the
6 bad, the aggravation and mitigation, is there any reason
7 that you couldn't give a death sentence?

8 A No, sir.

9 Q One of the other things that are different about a
10 death penalty case is, if the jury unanimously finds that
11 death is the appropriate sentence, all twelve members have
12 searched their souls and decided that that is the right
13 thing to do, have deliberated and discussed and as a
14 group, all twelve, that that is the right thing. In a
15 death penalty case, if the death verdict is reached each
16 member of the jury has to sign their name on a document
17 attesting to that fact that they think that death is the
18 appropriate sentence. And the death will be carried out.
19 Do you understand that?

20 A Yes, sir.

21 Q Knowing that, if you and your fellow jurors thought
22 death was the appropriate sentence would you, personally,
23 be able to sign your name on the document?

24 A Yes, sir.

25 Q Thank you, Mr. Chapman, I appreciate it.

1 THE COURT: Mr. McGuire.

2 EXAMINATION

3 By Mr. McGuire:

4 Q Good afternoon, sir. I just want to remind you that
5 these cameras that you see here, they are not rolling, no
6 one is filming you so don't be nervous about that. Okay.
7 And nobody is allowed to publish your name or any kind of
8 identifying information about you. You are almost
9 anonymous. Okay. And we put you in that position because
10 we just want completely truthful answers, whatever your
11 personal opinion is on all of these issues. Does that
12 sound fair?

13 A Yes, sir.

14 Q Can you tell me about this criminal trial that
15 involved Agnew Lake Service employees. Were they your
16 friends?

17 A Yes, sir.

18 Q And they were tried by these prosecutors or somebody
19 different?

20 A I am not sure who they were tried by.

21 THE COURT: Different.

22 Q Different, okay. Somebody in the prosecutors office
23 then. And did you attend any part of the trial?

24 A I did not.

25 Q Okay. And there has been, how many employees got

1 convicted?

2 THE COURT: One employee was conviction but one
3 employee was the Defendant. So it was, the victim was
4 terminated and the employee was still employed during the
5 trial.

6 Q Okay. And did you visit anybody when they were in
7 jail or since they have been to prison?

8 A I have not visited.

9 Q Have you written letters to them?

10 A I have.

11 Q Okay. How about telephone calls?

12 A I actually did talk to them on the phone as well.

13 Q Okay. And the Judge asked you the fact that your
14 friend was convicted in this court, prosecuted by this
15 office and sentenced by this Judge, you could still be
16 fair?

17 A Yes.

18 Q Okay. Now I am going to shift gears and talk to you,
19 I am going to ask you about your views of the death
20 penalty. If you found yourself Governor for a day and you
21 had a Bill on your desk and you could have the death
22 penalty or you could say we are not going to have the
23 death penalty. Which way would you go?

24 A I would probably go for the death penalty.

25 Q Okay. And that sort of implies that you believe

1 there is some sort of purpose, the death penalty serves a
2 purpose. Can you tell me what purpose, in your view, it
3 serves?

4 A I still think an eye for an eye.

5 Q Eye for an eye. Okay. So we can talk about this
6 more in concrete terms. I want to ask you to do something
7 for me. If you would, in your mind, just put yourself on
8 a jury with eleven other people and you are on a case,
9 criminal case, murder case. Murder, killing somebody with
10 malice aforethought. Malice, an evil intent, hatred,
11 hostility, that means it is not a case of self-defense,
12 accident, voluntary manslaughter. This person, this case
13 that you are sitting on with your eleven other jurors, the
14 Defendant intentionally and knowingly, knowing right from
15 wrong, killed five innocent children, one after the other.
16 What are your thoughts about the death penalty as being
17 the only appropriate and just penalty for that kind of
18 killing.

19 MR. GRAHAM: Objection to the form of the question,
20 Your Honor. I thought we had agreed to classes.

21 THE COURT: We did and I think he tried to stay in
22 the class, y'all are pretty close.

23 MR. GRAHAM: Mischaracterization, I guess, of the
24 question saying the only appropriate punishment.

25 THE COURT: Okay. I understand that. Rephrase that.

1 MR. MCGUIRE: I will rephrase.

2 THE COURT: That part of the question.

3 MR. MCGUIRE: Take only out, okay.

4 Q So, in that situation, the type of case, the category
5 of case, intentional killing, multiple innocent children.
6 Your thoughts about the death penalty as the appropriate
7 penalty for that kind of killing?

8 A Yes.

9 Q Yes. And letting somebody live out their years in
10 prison, that wouldn't be severe enough to punishment that
11 kind of killing, right?

12 A No.

13 Q And you feel strongly about this?

14 A Yes.

15 Q And you are under oath and you know your answers are
16 under oath?

17 A Yes.

18 Q And it seems like you are giving great thought to
19 your answers, you are taking your time. Is that right?

20 A I am.

21 Q You are doing great. But it is true you are giving
22 thoughts to your answers?

23 A Yes.

24 Q And these answers about the death penalty that we
25 just talked about, your view about the death penalty is

1 appropriate in that case and that is a reflection on your
2 value system?

3 A Yes.

4 Q Who you are as a person?

5 A Yes.

6 Q That is a reflection of your moral code?

7 A Yes, sir.

8 Q And it kind of comes from a deep place within?

9 A Yes, sir.

10 Q In that kind of case that we just talked about,
11 intentional killing innocent children, that sheet that the
12 Judge talked to you about, in that kind of case it sounds
13 like you are the number one where the death penalty would
14 always be appropriate?

15 A That is where you get into the different informations
16 and the Judge, and have to digest. But just based on how
17 you presented it and then I would say the death penalty
18 unless there were other facts that would lesson my mind.

19 Q Okay. I want to talk a little bit about how this
20 process works and kind of walk you through it. If I say
21 something that you don't understand or it is too wordy or
22 I ask a bad question you just stop me, you ask me
23 questions. Okay.

24 A Okay.

25 Q The first phase of the trial, just like any other

1 trial you might see on TV, do they have the right guy, is
2 he really guilty beyond a reasonable doubt. All twelve
3 people agree if it is true or if he is guilty, right?

4 A Yes.

5 Q All right. And in the penalty phase the sentencing
6 phase of a Capital case, it is more of an individual
7 process where each individual Juror can decide for
8 themselves to vote for the death penalty or the life
9 penalty. Do you understand that?

10 A Yes.

11 Q And the concept of mitigation that the Judge talked
12 to you about, that can be any reason to not vote for the
13 death penalty.

14 A Okay.

15 Q Did you know that?

16 A I didn't.

17 Q So the death penalty is never automatic. The State
18 of South Carolina is satisfied with the life penalty in
19 any case, the worst case, or this case. Did you know
20 that?

21 A No.

22 Q Okay. A lot of people thinks that if the Government
23 proves A, B, C then it kind of leads you right to deciding
24 the death penalty or not. Is that what you thought it
25 was, if the Government proves their case it would be the

1 death penalty?

2 A No, not necessarily. I mean I knew that there would
3 be other--

4 Q Options.

5 A Yes, you could do life or you could do death.

6 Q So no Juror is ever required to vote for death. Did
7 you know that?

8 A Yes.

9 Q Okay. And it can be for, the Judge will tell the
10 jury at the end of the trial, any individual Juror can
11 vote for life for any reason, no reason or mercy alone.
12 Did you know that?

13 A Can you restate it?

14 Q Yes. Right. This is kind of a new concept for most
15 people. At the end of the trial, if we get to a penalty
16 phase, the Judge would charge the jury that any individual
17 Juror can vote for life without parole for any reason, no
18 reason or mercy alone. You probably have never heard that
19 before?

20 A I understand, yes sir.

21 Q Does it sound fair to you?

22 A Yes.

23 Q An example of that would be, say this is the jury and
24 the first Juror sitting right here could say, you know, I
25 saw something in the man's mental health and I am not

1 going to vote for death to kill a man where he has got a
2 broken mind, I am not going to do that. That is my
3 reason. And then the Juror sitting right next to him
4 could say, I didn't really see that, I don't think that is
5 necessarily true but I saw something in his relationship,
6 the Defendant's relationship with his father and I saw a
7 spark of humanity there, hope of redemption. That is my
8 reason to vote for life without parole. And you can see
9 how they have different reasons and they don't have to
10 agree. Did you know that jurors don't have to agree on
11 why?

12 A I did not know that. That is the one question I did
13 have, does it have to be unanimous on the jury.

14 THE COURT: Unanimous verdict for the death penalty,
15 all jurors sign the verdict form, the death penalty is
16 carried out. If it is unanimous on a life sentence, the
17 life sentence is imposed and carried out. Go ahead.

18 Q And what do you think happens if you have six on one
19 side and six on the other, what do you think happens if
20 they can't come together.

21 MR. GRAHAM: Objection.

22 THE COURT: That is an improper question, sustained.

23 Q Okay. So the way the rules of court work is once a
24 Juror comes to their individual moral judgment, that is
25 how this decision is described in the law, kind of a

1 conscious held position, very personal. You agree that
2 whether somebody lives or dies, that might be the hardest,
3 most personal decision any human being can ever make.

4 A Absolutely.

5 Q And the way the law and the rules work, is that if a
6 Juror decides that they want to vote for the life penalty,
7 life without parole, the have a duty and obligation to
8 stick with that position and not change it if it would
9 harm their conscience.

10 MR. GRAHAM: Objection, Your Honor, it is
11 inappropriate.

12 MR. MCGUIRE: That's the law.

13 THE COURT: I think that is an appropriate question,
14 I overrule that objection. I don't want it characterized
15 otherwise, with some other words we have discussed with
16 another Juror.

17 MR. MCGUIRE: Right, I have worded it down a bit.

18 THE COURT: All right.

19 Q So, the rules of court require if a Juror reaches
20 their individual moral judgment where they have a
21 conscious belief and that is right for them, they have a
22 duty and obligation to stick to that position and not
23 change it if it would harm their conscience. Is that a
24 principle of the law that you could respect?

25 A I thought you could hash it out in the jury room to

1 determine, that is not the case?

2 Q Absolutely. We would expect reasonable and
3 reasonable deliberations and civil discourse. And, but
4 once somebody makes up their mind for themselves, it is
5 their individual moral judgment, conscientious held
6 belief, they can't change that position just to go with
7 the other side. They can't let the group speak for them,
8 it has to be their own change of position and nobody else
9 can change it if it is just for the sake of joining the
10 others. Did you know that?

11 MR. GRAHAM: Objection.

12 THE COURT: That is a lengthy question. I will allow
13 it. We discussed the no coercion and that--

14 MR. MCGUIRE: I am getting that.

15 THE COURT: Okay, I will allow.

16 Q Did you know that is how the, that is probably a new
17 concept, does that sound like a fair principle to you?

18 A I would think that I would change an answer but I
19 thought that that was the whole purpose was to get all
20 twelve jurors, if it is not all twelve jurors then it is a
21 hung jury. Is that correct?

22 Q Well, you would receive further instruction from the
23 Court if you reached that point.

24 A Right.

25 Q That would have to happen and then you would get

1 further instructions from the Court.

2 A Okay.

3 Q We can't tell you right now.

4 THE COURT: The Court will give you instructions if
5 y'all weren't able to reach a verdict as to how to try to
6 resolve that, that dispute.

7 A Okay.

8 Q Does that sound fair?

9 A Yes.

10 Q Okay. And let's say you saw a Juror member and you
11 were convinced in your heart that person has reached their
12 consciously held position and it would harm their
13 conscience to change their position and they wanted to
14 vote for the life penalty and you saw that folks were
15 trying to coerce that person, maybe bully that person.
16 And that person, as I contemplate the rest of my life, my
17 mortality, I don't want this black mark on my soul, I do
18 not want to vote for the death penalty but you saw people
19 trying to force them to abandon that position. That is
20 wrong, I will just tell you, the rules of court says that
21 is wrong, could you step in and stop them?

22 A I don't know how I would stop it.

23 Q I want to give you a suggestion. Pass a note out to
24 the Judge and said, as the rules of the court require that
25 everything be conducted with decorum and dignity, we

1 expect deliberations would have to be civil discourse, not
2 bullying. And if you saw bullying and dignity had left
3 the jury room you can write a note out to the Judge
4 saying, dignity has left, this is not civil discourse
5 anymore, there is some bullying and, Judge, could you stop
6 that. Could you do that?

7 A Sure.

8 Q That is all I have for you.

9 THE COURT: Mr. Graham, anything else?

10 MR. GRAHAM: Briefly, Your Honor.

11 EXAMINATION

12 By Mr. Graham:

13 Q Mr. Chapman, I want to go over some of the questions
14 Mr. McGuire was asking you. Even in the case of, if you
15 got to the second phase, and you as a member of the jury
16 had determined as an aggravating factor that a child under
17 eleven was murdered and multiple children were murdered--

18 MR. MCGUIRE: Your Honor, I can't hear Mr. Graham.

19 THE COURT: Okay, he is speaking softly, speak up.

20 Q In the second phase when you would be considering the
21 aggravating factors, if you and the other jurors had
22 unanimously decided that a child under eleven had been
23 murdered or multiple people had been murdered. Do you
24 understand where we are at?

25 A Yes, sir.

1 Q In that case you would still be a type three Juror,
2 you would still want to hear the good and the bad and you
3 could still consider life and you could still consider
4 death.

5 MR. MCGUIRE: Objection, asked and answered.

6 THE COURT: We are readdressing it, go ahead.

7 Q Is that correct?

8 A Yes, sir.

9 Q In talking about the jury deliberations, when you are
10 back there in the second phase and you are and the rest of
11 the jurors are having your conversations about what you
12 saw, what you didn't see, what your thoughts are, listen
13 to their thoughts. You understand that you always have
14 the right to change your opinion?

15 A Yes.

16 Q Thank you.

17 THE COURT: All right. Mr. Chapman, I am going to
18 have you step in the hall real quick, I have got to put a
19 couple of things on the record and I will have you right
20 back in here.

21 (Whereupon, the Juror was excused from the
22 courtroom.)

23 THE COURT: All right, Mr. McGuire, you want to be
24 heard?

25 MR. MCGUIRE: Yes, Your Honor. Just briefly. I move

1 to strike for cause. When becoming aware of the category
2 of the case, the aggravators, he indicated that the death
3 penalty was always appropriate, the life sentence would
4 not be severe or harsh enough to punish that kind of
5 killing. So he is substantially impaired despite the fact
6 he gave some inconsistent answers. And he would be a
7 burden shifter, clearly and we would have to get him off
8 of that and that would be burden shifting. This would
9 violate Mr. Jones Constitutional rights to a fair and
10 impartial jury under the Sixth Amendment and due process
11 clause under the Fourteenth Amendment.

12 THE COURT: Mr. Graham.

13 MR. GRAHAM: Your Honor, I think that he replied that
14 he would always be for the death penalty in that case,
15 whether he leaned one way or the another, depending on the
16 aggravating factors he is not disqualified. He said that
17 he would still need to, he said there were other factors.
18 I think the quote was, he did say death penalty unless
19 there were other factors. He is willing to listen and he
20 made that abundantly clear that he was going to listen. I
21 personally think this is an area we are not suppose to go
22 into because we start staking out people. So, he may be
23 predisposed, he may think that that is the appropriate
24 punishment but he is not saying it is the only punishment
25 that he would be imposed. He still said he wanted to

1 listen and I think that the question is unfair, which is
2 why I objected to, the way it is worded because when you
3 ask somebody if it is appropriate you are not really
4 getting to the matter can they consider everything which
5 is truly the reason to determine, that is the information
6 that is needed to determine whether they can be a Juror or
7 not. When I re-questioned him on that he said that he
8 would want to hear the good and the bad before he made up
9 his mind. He is qualified, Your Honor.

10 THE COURT: All right. Is there anything else that
11 needs to be delved into about the lawyer in the other case
12 that I was the presiding Judge on?

13 MR. MCGUIRE: No.

14 MR. HUBBARD: No, sir.

15 THE COURT: That probably causes me more concern than
16 y'all then.

17 MR. HUBBARD: No concern here.

18 MR. MCGUIRE: And, Judge, just for the record, I
19 would agree with Mr. Graham that he is predisposed and
20 would be, for him to follow the evidence, he is not a
21 qualified Juror. That if there is a Juror that is
22 predisposed to recommend a sentence of death in a case of
23 intentional killing such that there is a reasonable basis
24 for which the trial Court concluded that this Juror would
25 not be able to follow the instructions, his or her

1 responsibilities as a Juror of the law, that is
2 predisposed to that Juror and I believe this Juror meets
3 that description.

4 MR. GRAHAM: Your Honor, I just ask to go to the
5 totality of the circumstances, his answers to you, his
6 answers to Mr. McGuire and myself.

7 THE COURT: I am going to go back to the employer
8 again. This is what I recollect about the results of that
9 trial. It was a shooting and aggravated assault with a
10 self-defense defense. I recollect there being some harsh
11 feelings towards the Defendant and his employer, towards
12 the Court.

13 MR. MCGUIRE: I would be happy if you want to let him
14 go for that reason.

15 THE COURT: It was harsh reaction during that trial
16 when the verdict came in and I imposed sentence. They
17 expected that kid to walk out of the courtroom and he is
18 at the Department of Corrections under an eighty-five
19 percent sentence from me. He has heard something about
20 it. I am getting to the point, just for that reason alone
21 I don't really--

22 MR. HUBBARD: Your Honor, I appreciate your personal
23 feelings on that based on a prior trial. Obviously the
24 office that I represent that prosecuted him, we are the
25 reason for this. But this man said, although he had that

1 friendship, he didn't indicate how he felt about the case.
2 He has a friendship with this guy. But his answers on
3 this case, whether he could be qualified and fair and
4 impartial in this case, even with you sitting as the
5 Judge, his answers were consistent. And for that reason,
6 Judge, I think he has got to be qualified based on his
7 answers. Ultimately that is what we have got to go back
8 to, his answers. And, Your Honor, I think that is where
9 it is, I don't think there is anything he indicated that
10 would say that he retains a hostility. Maybe some folks
11 in his company do. But he certainly had an opportunity,
12 particularly when you were asking him and then even when
13 Mr. McGuire got up and directly hit that issue again. He
14 kept saying he could be fair. I think we have got to take
15 him at his word.

16 MR. MCGUIRE: Judge, I think it is in your
17 discretion.

18 MR. HUBBARD: It is your discretion, Judge, it is.

19 THE COURT: Bring him back in here.

20 (Whereupon, the Juror entered the courtroom.)

21 THE COURT: Mr. Chapman, based upon everything that
22 has been presented the Court and the Court's knowledge of
23 everything going on, the Court is going to find you not
24 qualified to be a potential qualified Juror in this case.
25 And thank you for your patience with us and coming in.

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

3 THE COURT: Are y'all ready on 426.

4 MR. HUBBARD: I do have something real quick, Your
5 Honor.

6 THE COURT: Sure. We have two recurring questions
7 that we keep objecting to. One is staking out and it is
8 the recurring question about -- I want all the lawyers to
9 be in here when we put this on the record because I agree,
10 we keep revisiting the same ground. They will be here in
11 a second, I hope. If not I will send you for them. Okay,
12 go ahead, Solicitor.

13 MR. HUBBARD: Thank you, Your Honor. Two types of
14 questions keep coming up. One is just the bold staking
15 out question that is being asked just about to every
16 perspective Juror. There is a variation but it goes
17 something like, the guy has been convicted of an
18 aggravating murder and brutally killing, getting into the
19 facts, little kids. Is that--

20 THE COURT: Multiple children.

21 MR. HUBBARD: Multiple children, sometimes it has
22 been five kids. Does that sound like a case where the
23 death penalty should be imposed. That is clear staking
24 out, even if they don't say always or it must be, it is
25 clear staking out because it is not balanced, it is

1 confusing to a Juror that there are also mitigating
2 circumstances that Your Honor have already gone over that
3 they have to consider. It is not fair to the Juror, it is
4 just a bold staking out and then they are saying, ah-hah,
5 when this Juror answers like this last Juror did, well,
6 now he can't be fair even though every other answer is I
7 want to hear it. That is the first objection. The second
8 one that keeps coming up, so we get to the penalty phase
9 and they are talking about the individual, how do they
10 classify it.

11 THE COURT: Individual moral judgment, mitigating
12 factor and there is three jurors over here that have
13 different mitigating factors. Is that the line you are
14 talking about?

15 MR. HUBBARD: That line and particularly where it
16 ends, and you have a duty under the law to basically not
17 change your mind. And if that is the case this is not the
18 America that live in. Because everybody has a right to
19 change their opinion, even their most personal private
20 deeply held opinions.

21 THE COURT: Said that three times.

22 MR. HUBBARD: Exactly. I think, Judge, I would like
23 to nip that question, just say, Your Honor had proposed
24 early on, you know, you have to reach your own decision,
25 but you have to hear the others. And you can't be bullied

1 out of your decision, leave it at that. Without us
2 objecting every time.

3 THE COURT: I tend to agree with the Solicitor that
4 this is the question that is creating heartburn for me is
5 multiple murders, children victims, murder, murder, death
6 penalty is the only result, the only penalty that you
7 should give. Give me your comments. That is an unfair
8 question.

9 MR. YOUNG: Your Honor, it is Morgan, it is straight
10 out of the Supreme Court case, United States Supreme Court
11 case, Morgan versus Illinois. He actually ask a Juror,
12 how do you feel about the death penalty, is the only
13 appropriate punishment for somebody who has been convicted
14 of aggravating--

15 MR. HUBBARD: -- that question is not in Morgan, it
16 is not. Morgan just stands for, we get to probe, the
17 Defense gets to probe their positions. That question, the
18 way it is couched and phrased is staking.

19 MR. YOUNG: Judge, I just want to make sure the
20 record was clear. The only person who has said the brutal
21 murder or five murders is the Solicitor. The Solicitor
22 said brutal murder, the Solicitor said five murders. We
23 have said multiple murder of children. He also used the
24 term, baby, one time which we haven't used. And the
25 transcript will speak for itself. Now, the category of

1 the case, the multiple murder of children is the
2 appropriate question based on Morgan and that is the
3 question that jurors have to be able to answer. Are you,
4 some people think that the death penalty is the only
5 appropriate punishment for this type of case. Is that
6 you, is it not you.

7 THE COURT: How about that. Do you think, leave it
8 at that, do you think that the only appropriate, if
9 multiple murders. Y'all are leading with a huge lengthy
10 explanation, seems like staking out most of the time and
11 then go, would you agree or give me your comments on the
12 death penalty is the only appropriate response. Y'all's
13 questions, the Defense particularly, lengthy, considering
14 all of these facts and these facts and these facts and
15 these facts. And then a very short question, would you
16 agree with me. I mean, y'all are doing that a lot and it
17 is, you are tacking on a lot of stuff on the potential
18 jurors by asking questions in that fashion. The one you
19 just said, do you think that death is the only appropriate
20 result if there is multiple murder of children.

21 MR. HUBBARD: That is my objection because, and Your
22 Honor sustained that. That is my problem, is that, they
23 haven't even heard questions about, you know, there is
24 going to be mitigating circumstances provided. So they
25 nip this Juror before he has heard anything and says, is

1 that the only one that is going to be appropriate. I have
2 got to object every time, that is clear staking. That is
3 why I would suggest that in order to comply with Morgan,
4 they get to ask where a Juror fits and feels but they
5 can't ask it that way.

6 THE COURT: I am not sure they can. I mean, I
7 understand what you are trying to say but, we have been
8 doing the multiple murders of children, that is the
9 classification, they started that, we ended up at. I
10 don't know how else to allow them to ask that question
11 other than that fashion. But what I am, it is creating
12 this thing to go on too long and it is, all right,
13 assuming the fact and they give a long, long explanation
14 of the graphic facts, it gets longer and longer. The
15 questions are hugely long and difficult to follow. We are
16 following it because we have heard it seventy-five times,
17 too many. So can we fashion a more simple question.

18 MR. HUBBARD: What I would ask Your Honor, is that
19 any question that says is this the only verdict that is
20 appropriate is wrong, it is just, that is where it is just
21 to me it is unfair to a Juror. They haven't heard
22 anything and then they are asked, is this the only one
23 that is appropriate. Judge, then, my gosh, if they take a
24 misstep, oh my gosh, you have got to strike them. That is
25 just patently unfair to a Juror, patently unfair.

1 MR. YOUNG: I totally agree with the Solicitor that a
2 response to, death is appropriate in that situation does
3 not result in, all right, the Defense is done, Judge, kick
4 him, let's get out of here. There is an absolute
5 follow-up question. Judge, do mitigating circumstances,
6 the background, walk in life, the factors that the Judge
7 has read to you, are those ever going to change a juror's
8 mind. Is that enough for you to be able to consider life
9 in a case of multiple murder of children. That combines
10 with your start at death. Do you require the defense to
11 prove to you, those follow-up questions are absolutely
12 important. It is not a one question in a substantial
13 impairment. It is up to Your Honor--

14 THE COURT: Both sides have asked the same question
15 multiple times during the questioning. I am going to
16 allow that question but I don't want an extensive summary
17 of the classification of multiple murders of children.
18 That is where, I don't want any expansive adverbs or
19 adjectives in addition to that because where we keep
20 getting slowed down.

21 MR. YOUNG: I have to just check in to make sure you
22 understood what the Judge said was murder. Do you
23 understand what, when I say, murder--

24 THE COURT: And when you say, murder, the State
25 proves all of this and all of this and all of this and all

1 of this and all of this and would you agree. I think I
2 have already done that. Y'all are repeating a lot of what
3 I say the second time through. It is just getting
4 lengthier and lengthier.

5 MR. YOUNG: Yes, sir.

6 THE COURT: I am going to allow the question but I
7 want it simplified.

8 MR. YOUNG: Yes, sir.

9 THE COURT: The second question, the Solicitor is
10 right. The Defense, depending on who is asking the
11 question says this. You understand when a person reaches
12 their individual moral judgment it is improper or not
13 allowed or illegal, it is against the law. Y'all have
14 used several different characterizations of that. I think
15 it is an appropriate question to say, once a person
16 reaches their individual moral judgment, you understand
17 that the person is not allowed to be bullied out of that
18 decision. You can maintain that opinion, you can change
19 your mind but you can't be bulled out of that. But it has
20 been suggested that once a person has reached that
21 decision that they are going to be acting illegally and
22 against the Court's instructions. And the way y'all
23 emphasize it, it sounds like they could be charged with a
24 crime. I mean, it is harsh the way you characterize it,
25 it gets illegal to change your mind. It is illegal to

1 abandon your reason, your moral decision if it is going to
2 injure the constitution and your morals. I suggest that,
3 y'all kind of gotten away from it and gotten back to it.
4 But for the questions we got to earlier which were, you
5 understand you have got to reach that moral decision. And
6 once you do it is okay to stick with it. You can't be
7 bullied out of it. But that is fine. But it is when you
8 go, you realize it is illegal or immoral. I mean, that is
9 where I am getting heartburn too and the Solicitor is not
10 objecting to it every time but y'all migrated back to a
11 more harsh use of the word than improper.

12 MR. YOUNG: I understand where the Court is on that.
13 The language that I have used, you understand that your
14 oath to insure that your individual moral judgment,
15 whatever it is, is heard in the courtroom.

16 THE COURT: That is fine. I think you are correct,
17 it wasn't utilized, I am not sure which one it was.

18 MR. YOUNG: The other issue is the Defendant,
19 question which, of course, the State used yesterday to
20 move for the excusal of a Juror where they asked eleven
21 people are over here and one person over here. Will you
22 change your mind and go along with the majority, that is
23 the Bennett question. They asked that a Juror to be
24 excused based on their use of the Bennett question and
25 that question is fair game.

1 THE COURT: The Bennett question is fair game, you
2 are saying that?

3 MR. YOUNG: Yes, sir.

4 THE COURT: All right. Would you change your mind
5 just to go along with the majority. That is the Bennett
6 question that is allowed.

7 MR. YOUNG: Yes, sir. If there are eleven people on
8 one side--

9 THE COURT: And I think that is what the State asked
10 yesterday to that young lady sitting up here.

11 MR. YOUNG: It was.

12 THE COURT: That was okay.

13 MR. YOUNG: Yes, sir.

14 THE COURT: But you can't bully someone into changing
15 their mind but if somebody just changed their mind to go
16 along with the majority--

17 MR. YOUNG: That would be a violation of their oath
18 and--

19 THE COURT: But not illegal.

20 MR. YOUNG: It would be impairing their ability to
21 follow the law.

22 THE COURT: Okay and I agree with you on both of
23 those. I think the State does too.

24 MR. HUBBARD: Yes, sir. As long as when it comes to
25 changing the mind, a Juror needs to know they are always

1 free to change their mind. So if it is just, you change
2 your mind it needs to be, you give up your position just
3 to go along with the majority. That is what my question
4 was yesterday.

5 THE COURT: That is the Bennett question, I am just
6 going to end this, I will go along with the majority. We
7 are on the same page. And, Mr. Young, you understand?

8 MR. YOUNG: Yes, sir.

9 THE COURT: We don't want to go into these violations
10 anymore.

11 MR. YOUNG: Yes, sir.

12 THE COURT: All right. Let's get 426.

13 (Whereupon, Juror Doris Taylor entered the
14 courtroom.)

15 EXAMINATION

16 By The Court:

17 Q Ms. Taylor.

18 A Yes, sir.

19 Q Can you spell your first and last name for me.

20 A D-O-R-I-S; T-A-Y-L-O-R.

21 Q Ms. Taylor, I do that for the record for Ms. Holston
22 and it kind of gives me an opportunity to hear you on the
23 microphone.

24 A Okay.

25 Q You are still under oath?

1 A Yes, sir.

2 Q I ask the same questions to every Juror. Have you
3 talked about the case with anybody?

4 A No, sir.

5 Q Have you discussed, has anybody tried to discuss the
6 case with you?

7 A No, sir.

8 Q Now, there has been publicity, social and regular
9 media. There has been publicity, I published the
10 indictments, I read them in open court.

11 A Yes, sir.

12 Q Monday. Any of that information you received from
13 any source whatsoever, has that caused you to form an
14 opinion as to what happened in this case?

15 A Since you read it?

16 Q No, no. Any time because I mean, I couldn't control
17 what you read or saw beforehand. So whatever information
18 you may have, you received, from where it came, don't
19 care.

20 A Yes, it has.

21 Q Have you formed an opinion?

22 A Yes, sir.

23 Q What do you think happened?

24 A I mean, he has already confessed to killing the
25 children from what I have read a while back.

1 Q Would that impact your ability to be fair and
2 impartial in this case?

3 A I think so, yes.

4 Q Okay. Fair enough. That is all I need. Thank you,
5 Ma'am. That is what I am looking for is an honest answer.
6 Okay, you are free to go.

7 A Thank you.

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

10 THE COURT: Let's get 156.

11 (Whereupon, Juror 156, Zachary Gantt entered the
12 courtroom.)

13 EXAMINATION

14 By The Court:

15 Q You are Mr. Gantt?

16 A Yes, sir.

17 Q Mr. Gantt, I want you to say and spell both of your
18 first and last name.

19 A Z-A-C-H-A-R-Y; G-A-N-T-T.

20 Q Mr. Gantt, you took an oath Monday, you took an oath
21 this morning.

22 A Yes, sir.

23 Q I am asking the same questions of all the jurors.

24 You have heard my request to not talk about the case with
25 anyone?

1 A Yes, sir.

2 Q Have you talked about the case to anyone since
3 Monday?

4 A No, sir.

5 Q Anybody tried to talk to you about the case?

6 A No, sir.

7 Q Now, there has been publicity, social, public,
8 whatever, plenty of coverage on this case over the last
9 several years at different times. I told you some facts
10 about the case regarding the allegations of the charges
11 against Mr. Jones to which he has plead not guilty, he is
12 presumed innocent. Considering any information that you
13 may have received at any time, including Monday, have you
14 formed an opinion as to what happened in this case?

15 A Honestly, I have no recollection of who he was or in
16 this case until Monday.

17 Q Now, having your memory refreshed over something that
18 occurred sometime ago, do you have an opinion now as to
19 the facts of this case? And look here, you are not going
20 to give me any wrong answers. I just want honesty and
21 candor, there is no right or wrong answer in the way to
22 answer that.

23 A I believe anybody is innocent until proven guilty.

24 Q Okay.

25 A I believe that all the evidence and the facts should

1 be presented and taken into consideration when you are
2 talking about somebody's life especially what this case
3 deals with.

4 Q Right. And that is a fair answer and truthful. I
5 can hear your sincerity. Now, I read to you, I will ask
6 you a question about your work schedule, personal
7 schedule, whatever schedule for the next several weeks.
8 The case may start next week and go on for three weeks,
9 the early part of June. What do you have on your calendar
10 that would be, impact directly if you were selected as a
11 Juror. Do you have any prepaid vacation or something
12 scheduled to have a--

13 A No, sir. I am a HVAC installer so I have a busy work
14 schedule but obviously if I am required to be here by law
15 I will be here. Other than that, I really don't have any
16 vacation.

17 Q Do you work for somebody?

18 A Yes, sir.

19 Q You are not self-employed?

20 A No, sir.

21 Q Okay. Y'all are pretty busy when the weather warms
22 up, aren't you?

23 A Yes, sir.

24 Q Now, I gave you a summary, I will ask you another
25 question. This case matter, the subject matter of this

1 case involves the death of several children. The subject
2 matter will be testimony and evidence in regard to the
3 death of children. That subject matter has been
4 represented to me and I have not heard all of the
5 testimony and evidence, I have seen a little bit of it but
6 not very much. I have been told that it is graphic,
7 difficult, harsh and unpleasant. The lawyers involved in
8 this case would not have told me that if that not were the
9 case.

10 A Yes, sir.

11 Q Would the subject matter of that type be difficult
12 for you to hear and evaluate and make a decision in a case
13 like this but also in light of that being fair to both the
14 State and to Mr. Jones?

15 A No, sir.

16 Q Can you do that?

17 A Yes, sir.

18 Q Okay. Now, I gave you a preliminary instruction on
19 the law, kind of described the two-phase concept of a
20 Capital trial. Guilt or innocence, punishment. Guilt or
21 innocence has got to be determined first before the
22 punishment stage occurs. The State has got to prove the
23 first phase beyond a reasonable doubt of murder. Then the
24 second phase starts, the aggravating factor has got to be
25 proven by the State beyond a reasonable doubt and then

1 mitigating factors are considered by jurors. I handed out
2 for you to read, before you came in, three types of
3 potential jurors. Can you identify or find yourself as
4 one of those types, I understand you have got limited
5 facts.

6 A Yes, sir. Reading all three I find myself torn
7 between, I see myself as type three but depending on the
8 facts I can quickly bring myself to type one, depending on
9 the facts and evidence.

10 Q Okay. Now, that being the case, let me ask you this.
11 I am going to go over the guilt or innocence portion, I am
12 going to kind of break them back down. The testimony
13 would go this way. The State has got to prove murder
14 first. The State has got the burden of proving that
15 beyond a reasonable doubt. So they will call witnesses,
16 present testimony about the unlawful killing with malice
17 and try to convince the jury beyond a reasonable doubt of
18 that. During that phase defenses are allowed to be
19 presented by the Defendant. And I will read all the
20 potential defenses, I am going to tell you now that all of
21 them will not be instructed, some of them may be present,
22 one of them has been claimed already by Mr. Jones. I will
23 read them all to you and then I will come back and ask you
24 another question. Potential defenses are identification,
25 accident, involuntary intoxication, self-defense,

1 necessity, insanity, guilty but mentally ill, defense of
2 habitation, entrapment, duress or alibi. Those are
3 potential defenses that are afforded to people from the
4 statutory books back here. Can you give meaningful
5 consideration to the instructions of the Court on that, to
6 respect to those defenses, if they are appropriate. In
7 other words, are the facts for which you are to consider
8 to evaluate was not the present, if there is no fact there
9 to evaluate, like alibi, somewhere else, that would be an
10 instruction that one of the Defense claimed. Testimony is
11 out there, the jury considers the instructions of the
12 Court. The jury considers the instructions of the Court
13 requiring the State to prove its case beyond a reasonable
14 doubt. Can you give meaningful consideration to the
15 testimony and evidence in the guilt or innocence phase and
16 consider the instructions that are appropriate, meaningful
17 consider the defenses the Court instructs you on and be
18 fair to both sides

19 A Yes, sir.

20 Q Can you be fair to the State and the Defendant in
21 this case?

22 A Yes, sir.

23 Q Now, if a verdict is presented to the jury's
24 consideration, because of the plea entered by Mr. Jones
25 there are four potential verdicts, results that could come

1 out. Guilty, guilty but mentally ill, not guilty by
2 reason of insanity and not guilty whatsoever. Those
3 potential will be on the verdict form. Can you give
4 meaningful consideration to all four verdict forms, be
5 fair and impartial to both the State and the Defense,
6 considering the facts and evidence presented, instructions
7 of the Court and make a determination on each and all four
8 of those verdict forms.

9 A Yes, sir.

10 Q And can you do that fairly and impartially and not
11 favor one side or the other?

12 A Yes, sir.

13 Q Now, if there is a not guilty verdict the case ends,
14 it stops right there. If the State meets the burden of
15 proving the murder the case goes to phase two. At that
16 time the State is then required to prove an aggravating
17 factor. There are five aggravating factors and the State
18 has got to prove at least one, murder of a police, rape of
19 murder, murder of kidnapping, murder of a child, multiple
20 victims. Those are aggravating factors. The State has
21 got to prove at least one to the jury beyond a reasonable
22 doubt for it to seek the death penalty. Jurors are
23 presented mitigating factors, mitigating evidence. There
24 are numerous statutory mitigating factors, I am going to
25 give you those. The Defendant has no significant history

1 of prior criminal conviction involving the use of violence
2 against another person. The murder was committed while
3 the Defendant was under the influence of mental or
4 emotional disturbance. The victim was a participant in
5 the Defendant's conduct or consented to the act. The
6 Defendant was an accomplice in the murder committed by
7 another and his participation was relatively minor. The
8 Defendant acted under duress or under the domination of
9 another person. The capacity of the Defendant to
10 appreciate the criminality of his conduct or to conform
11 his conduct to the requirements of the law was
12 substantially impaired. The age or mentality of the
13 Defendant at the time of the crime. The Defendant was
14 provoked by the victim in committing the murder. The
15 Defendant was below the age of 18 at the time of the
16 crime. The Defendant had mental retardation at the time
17 of the crime. There are other mitigating factors other
18 than the statutory ones, whatever the jury wants to
19 consider and can assign a reason, I find that mitigating,
20 his walk in life, the way he was raised, broken home,
21 whatever, anything. Those are the statutory ones, not all
22 of them may apply, some of them might. You will hear
23 testimony of a wide variety of mitigating factors. In the
24 sentencing phase, knowing the jury's tasked to impose a
25 sentence, there are two choices, life without parole,

1 death. There is nothing in between, no middle ground, no
2 other options. Can you give meaningful consideration to
3 the testimony offered by the State regarding aggravating
4 factor and their requirement to prove that beyond a
5 reasonable doubt as well as consider any mitigating
6 factors that are presented to you, give meaningful
7 consideration to all of those and consider the
8 instructions of the law by the Court and make a fair and
9 impartial judgment in imposing a sentence in this case?

10 A Yes, sir.

11 Q You can do that?

12 A Yes, sir.

13 Q Do you understand the death penalty is not automatic?

14 A Yes, sir.

15 Q One choice or the other. You consider all aspects of
16 the aggravating factors and the mitigating factors. Do
17 you understand that?

18 A Yes, sir.

19 Q Now, do you have any religious, moral or personal
20 belief which would prevent you from finding a sentence of
21 death?

22 A No, sir. I believe in God and I believe we have a
23 maker. I believe you have to take consideration all
24 evidence when you are talking about somebody's life. When
25 you are talking about somebody who took somebody's choice

1 to live or not, if the evidence finds that it is, calls
2 for the death penalty then I feel like as human beings we
3 have to determine whether we decide to take the choice of
4 that person's choice to live or not.

5 Q That is an individual choice each Juror makes on
6 their own.

7 A Yes, sir.

8 Q Okay. Now, do you have any religious, moral or
9 personal belief that you could not impose a sentence of
10 life without parole?

11 A No, sir.

12 Q So you could find either one?

13 A Yes, sir.

14 Q And you want to hear the facts, both aggravating and
15 mitigating during the sentencing phase to make that
16 determination?

17 A Well, what is right is right, what is wrong is wrong.

18 Q Okay.

19 THE COURT: Okay, Solicitor.

20 MR. HUBBARD: Thank you, Your Honor.

21 EXAMINATION

22 By Mr. Hubbard:

23 Q Mr. Gantt, I am Rick Hubbard. I am the Solicitor in
24 this case. Thank you for being here.

25 A Yes, sir.

1 Q I just want to ask you a few questions, just kind of
2 following up on what the Judge has asked you and what your
3 answers were. Now, have you ever served on a jury before?

4 A No, I had jury duty, I can't remember, it was last
5 year I think, maybe, last year. But it was a traffic
6 court and when I showed up at the door back here, it was
7 like it has been dismissed, you can go home. So I didn't
8 even see inside the building.

9 Q So you lucked out?

10 A I lucked out.

11 Q On this case, obviously this is a big case?

12 A Yes, sir.

13 Q And so there is no right or wrong answers. The Judge
14 has told you that, we just want to know who you are, what
15 your thoughts are and determine, the Judge needs to
16 determine the qualification for each Juror. That is why
17 you are sitting where you are sitting right now.

18 A Yes, sir.

19 Q Picking up on where the Judge asked you about this
20 process, you understand it will be up two different phases
21 in this case?

22 A Yes, sir.

23 Q The first phase is just like any trial you probably
24 ever thought about where you determine whether somebody is
25 guilty of doing the offense or not.

1 A Yes, sir.

2 Q And in most cases when somebody is found guilty the
3 Judge sentences them. Do you understand that?

4 A Yes, sir.

5 Q But in a death penalty or Capital case the jury's do
6 the sentencing, not the Judge?

7 A Yes, sir.

8 Q Now, typically if we convict somebody with the Judge,
9 you know, in a regular case we bring the Defendant up and
10 the Judge hears stuff that didn't come out in the trial
11 about the person.

12 A Yes, sir.

13 Q Maybe things about that person's life. And maybe
14 hear stuff from us as well. In a Capital case you, the
15 jurors, get to hear that stuff. Do you understand that?

16 A Yes, sir.

17 Q When the Judge was talking about aggravating
18 circumstances and mitigating circumstances. Do you
19 understand?

20 A Yes, sir.

21 Q So when a jury is sitting right behind me convicts
22 somebody of murder and all murders are aggravated or have
23 malice.

24 A There is a reason why behind every choice we make.

25 Q Yes, yes. So once somebody is convicted of murder, a

1 jury says, yeah, he did it. The next step for them is the
2 punishment?

3 A Yes, sir.

4 Q Now, the Judge has said you are going to hear those
5 two types of evidence, aggravating and that you can only
6 give death with aggravating. You can only do it if the
7 State proves beyond a reasonable doubt at least one
8 aggravating circumstance. Do you understand that?

9 A Yes, sir.

10 Q And there is mitigating circumstances. Things about
11 the Defendant, maybe things that are good that make you
12 say, you know, maybe a life sentence is okay. Do you
13 understand that?

14 A Yes, sir.

15 Q So if you were to sit on a jury, any jury,
16 particularly something with this type of consequences and
17 you have reached with your colleagues, your co-jurors, the
18 decision he is guilty of murder, maybe even more than one
19 murder, depending on what the charges are. Would you
20 already have your mind made up coming in that second phase
21 or would you want to hear additional stuff of the good and
22 the bad, the aggravating and the mitigating before you
23 made that big decision?

24 A Me personally?

25 Q Yes.

1 A Like I said, I think every ounce of information,
2 evidence, facts, mitigating, everything, needs to be taken
3 into consideration before the final decision.

4 Q Is that why you said you are a type three, you would
5 put yourself in that position because you would want to
6 hear aggravating and mitigating good and bad?

7 A Good and bad. Like I said, what is right is right,
8 what is wrong is wrong. And one is not going to alter the
9 other one, you just need to take into consideration
10 everything. You are in a court of law. If the evidence
11 at the end of all of this, mitigation, aggravation, all of
12 that, if it constitutes for the death penalty then what is
13 right is right, what is wrong is wrong.

14 Q So you are saying after you hear all of that, if you
15 believe death is appropriate you could issue a death
16 sentence?

17 A Yes, sir.

18 Q Would you also be capable and willing, if you hear
19 all of this evidence, both the aggravating evidence that
20 the State is going to present and any mitigating evidence
21 that comes out in this trial about the Defense or the
22 Defendant, would you consider that and be willing to issue
23 a life sentence?

24 A Yes, sir.

25 Q Are you a person who has your mind made up coming

1 into this courtroom or do you want to hear facts?

2 A I want to hear facts. You are talking about
3 somebody's life.

4 Q Yes, sir. And when you are stepping into that next
5 phase where you are talking about punishment, do you want
6 to hear everything before you make that big decision or
7 are you going to automatically say if he committed a
8 crime, committed a murder, even multiple murders perhaps,
9 it is automatic death. Which one are you, automatic or
10 are you going to hear everything and then make a decision?

11 A Like the Judge said, you have got life sentence in
12 prison or death penalty, no in between. I want to hear
13 everything before I make my final decision.

14 Q Mr. Gantt, I think that is all that anybody in this
15 courtroom can ask you to do. I appreciate that.

16 A Yes, sir.

17 Q Thank you, sir.

18 THE COURT: Mr. Young.

19 EXAMINATION

20 By Mr. Young:

21 Q Good afternoon, Mr. Gantt.

22 A Hello.

23 Q How are you doing?

24 A Doing all right.

25 Q I appreciate your patience with us this morning.

1 A Yes, sir.

2 Q As the Judge told you, we are just here to talk about
3 your opinions, there are no right or wrong answers here.
4 Is that right?

5 A Yes, sir.

6 Q The Judge told you that Tim has entered a plea of not
7 guilty by reason of insanity. You understood that?

8 A Yes, sir.

9 Q And you understood a plea of not guilty by reason of
10 insanity says I killed my kids but because of a mental
11 disease or defect, I was not able to appreciate the
12 difference between legal or moral right from wrong. Does
13 that make sense to you?

14 A Yes, sir.

15 Q Two questions. Do you think that, some people think
16 that that is just an excuse or that is just letting a guy
17 off. Is that you or is that a defense that you could give
18 meaningful consideration to?

19 A There is people born in this world that, not born but
20 they acquire it, whether it be how they are raised in
21 life, it doesn't matter, that can have a mental disease
22 because confliction on decisions. And I understand that,
23 I acknowledge that.

24 Q Is that a decision that you could see yourself
25 finding, if you found, based upon the evidence, that that

1 was an appropriate verdict could you return that verdict?

2 A Based upon the evidence, all evidence.

3 Q Right.

4 A Yes.

5 Q And that would be all the facts and circumstances
6 around the crime, the murders?

7 A Yes, sir.

8 Q The killings?

9 A Yes, sir.

10 Q I am going to move forward a little bit and talk to
11 you about your views after you found somebody guilty of
12 murder. Okay?

13 A Yes, sir.

14 Q You understood the Judge's definition of murder?

15 A Yes, sir.

16 Q Any questions about that, the intentional killing of
17 another, malice aforethought?

18 A No, sir.

19 Q And then we have the aggravation circumstances where
20 we have multiple children killed. Are you with me on
21 that?

22 A Yes, sir.

23 Q Some people say, based on that, if I find beyond a
24 reasonable doubt guilty, guilty, murder, multiple
25 children, the only appropriate penalty for me is the death

1 penalty. Is that where you are?

2 A It is hard to, when you ask me these questions I go
3 back to the evidence. Like, when I hear the evidence I
4 can give you a legitimate reason. I mean, if that is the
5 case then me, personally, yes, if you took somebody's life
6 and took their choice to live or not, purposefully and
7 willingly then I think that your, you forfeit your chance
8 to have a choice to live or not.

9 Q Okay. When they forfeit their chance to have a
10 choice to live or not, are you telling me that that choice
11 is going to be up in the hands of the jury or do you think
12 that the appropriate punishment is death?

13 A I think if the jury comes to the verdict of a death
14 penalty then the punishment should be death, yes.

15 Q I think I understand where you are at. The stuff
16 about a Defendant's background, character, how he grew up,
17 those are the facts that would be presented by the Defense
18 in mitigation. Are you with me on that?

19 A Yes.

20 Q And I know that you told the Judge that you could be
21 a type three Juror who could quickly be persuaded to be a
22 type one Juror based on the facts and evidence.

23 A Yes, sir.

24 Q Is that right?

25 A Yes, sir.

1 Q This stuff about the house where they were raised,
2 what their background is, how they grew up, that would be
3 the stuff in mitigation that the Defense would offer to a
4 jury to say this is why we think you should go with life
5 without parole sentence. Do you understand that?

6 A Yes, sir.

7 Q Some people say that stuff, it doesn't have anything
8 to do with the killings. And that is not important to me
9 in making my decision about which punishment is
10 appropriate. Do you understand people like that. A lot
11 of people had a hard life and it doesn't excuse what they
12 did.

13 A Yes, sir.

14 Q You know people like that?

15 A I know people that has had a hard life. But what you
16 are explaining there is, I feel like when it comes to
17 taking another human's life and you are talking about how
18 they are raised and stuff. It is basically like, if your
19 family raised you to be a Carolina fan and when you get
20 older you are a Carolina fan, you can't really explain it,
21 you are just, that is how you are brought up. That is
22 your background. But here you are talking about taking
23 somebody's life. So the way you are brought up could have
24 a lot of consideration of your reason or why but you are
25 still taking another human being's life. I don't really

1 know how else to word that.

2 Q Sure and I think I asked my question and I made a
3 poor chose of words, Mr. Gantt. Are you somebody who can,
4 who says I will need to, before I decide whether or not to
5 end somebody's life I need to weigh their whole life,
6 their good, their bad, their past, their future?

7 A With me personally, I want to hear everything,
8 everything.

9 Q Okay.

10 A You are talking about somebody's life.

11 Q Right.

12 A So what is right is right, what is wrong is wrong.

13 Q And I want to talk to you a little bit about
14 mitigating factors and the Judge has given you some, those
15 are reasons for a Juror to choose life. Okay, are you
16 with me on that?

17 A Yes, sir.

18 Q And I think the Solicitor explained to you a little
19 bit about, they don't have a burden of proof, it doesn't
20 have to be unanimous. All the jurors don't have to agree.
21 Each individual Juror can decide for themselves what is or
22 is not mitigating. Does that make sense to you?

23 A Yes, sir.

24 Q And it can be any reason, no reason or mercy alone.
25 Do you understand that was how it worked?

1 A Yes, sir.

2 Q Could you respect the right of a Juror to say, I
3 don't have a reason but I feel that life is the
4 appropriate punishment for me. Could you respect a jurors
5 right to do that?

6 A To say he doesn't have a reason but he feels that
7 way?

8 Q Yes.

9 A Like I said earlier, there is a reason to why
10 everything we do.

11 Q Sure.

12 A My personal belief, the choice we make. I believe if
13 you are going to make a decision like that you should be
14 able to at least explain it and explain why you feel that
15 way. I mean, feelings are up in the air, I mean you have
16 to explain why you feel a certain way.

17 Q And the Judge is going to tell you, the law is you
18 can give a life sentence for any reason or no reason. And
19 it sounds like to me if a Juror says I don't have a
20 reason, I think life is the appropriate punishment, that
21 would be in conflict with your view on how it should work?

22 A Well, I think it is, I could be wrong saying this,
23 this is how I am feeling right now. I believe it is
24 y'all's job to give us the reason, to give us the facts.

25 Q Sure.

1 A And when we have the facts, we feel the way from the
2 facts because of the reasons that we give.

3 Q I am going to stick a pin in that and I am going to
4 come back to it in just one second. Okay.

5 A Yes, sir.

6 Q This ultimate decision about who lives and who dies.
7 The law refers to that as an individual moral judgment.
8 Are you with me on that?

9 A Yes, sir.

10 Q And an individual moral judgment is like choosing
11 what faith is appropriate for you. You have made your own
12 personal moral judgment about what faith is appropriate
13 for you. Is that right?

14 A Yes, sir.

15 Q And you understand that other people may have made
16 different choices about what faith is right for them.

17 A Yes, sir.

18 Q You respect their right to have their own choice even
19 if it is different from yours?

20 A Of course.

21 Q You expect them to respect your right to make your
22 own individual moral judgment?

23 A Yes, sir.

24 Q Now, this decision we are talking about, this
25 individual moral judgments, somebody might say I don't

1 have a reason. This is what feels right for me, I can't
2 put it into words, I can't explain it to you, it is right
3 for me. You understand that?

4 A Yes, sir.

5 Q About the individual moral judgment, like faith.
6 Somebody might say, I can't explain it to you, this is
7 what I feel is right. Back to my question, can you
8 respect a juror's right to say, I don't have a reason,
9 this is my individual moral judgment, this is what is
10 right for me, I have got to do it.

11 A It might sound harsh when I say this. But if they
12 say that after being presented the facts, I don't believe
13 they should be here.

14 Q Okay.

15 A They are not taking seriously.

16 Q No?

17 A Yes.

18 Q You think that is not taking--

19 A I think after you are presented the evidence and the
20 facts, you have a reason of the way you feel and the way
21 you are going to be weighed to, to the decision you make.

22 Q Okay. I understand where you are coming from. The
23 law also says that for mercy alone, solely on the basis of
24 mercy a Juror can choose life on that base along. I have
25 seen mitigation, I have heard all the aggravation, I just

1 choose to extend mercy. Are you with me on that?

2 A Yes, sir.

3 Q Based on your, do you think mercy is something that
4 is sort of freely given or is it something that is earned?

5 A I can't really answer, it depends on the situation.

6 Q Fair enough. Could you respect the right of a Juror
7 to say, I just want to be merciful, I am going to choose
8 life because I want to be merciful.

9 A Yet again, like what the Judge said, there is no
10 between, I don't see how you can be here and be fair to
11 both parties if something says, well, I feel merciful.
12 What is right is right and what is wrong is wrong.

13 Q Okay. It is the duty and obligation of each Juror to
14 make sure that their own individual moral judgment is
15 heard in court. Does that make sense to you?

16 A Yes, sir.

17 MR. YOUNG: Based on the limitation I am going to
18 stop there. Thank you, Your Honor.

19 THE COURT: Anything, Solicitor?

20 MR. HUBBARD: Quick follow-up.

21 EXAMINATION

22 By Mr. Hubbard:

23 Q Mr. Gantt, when we talk about mitigating factors.

24 A Yes, sir.

25 Q Those things that don't have to be proven beyond a

1 reasonable doubt.

2 A Yes, sir.

3 Q You would, as a Juror, you would consider those?

4 A Things that--

5 Q Mitigating factors, those things that basically are
6 to the benefit of the Defendant, maybe his background, his
7 relationships with others that explained who he is, all of
8 those things that they might want to present to say, hey,
9 there is a big picture here we want you to see. Would you
10 be willing to consider all of those mitigating factors
11 before issuing a sentence?

12 A I am thinking, it needs to be within a recent
13 timetable. Anything else, to me, how you are raised has a
14 play in it, how a life you came from has a play in it.
15 But when we are here for these, the murders of these kids,
16 needs to be involved around this. Do you know what I
17 mean, I can't really explain that better. The mitigating
18 factors that have something to do with the case. But
19 also, I mean, when you are talking about somebody's life,
20 how long this could take, this whole process. I mean,
21 there is nothing wrong to me with getting all the facts,
22 all the evidence.

23 Q Well, let me ask you this. What if there is a
24 position that says, look, what we want to show you going
25 way back has a lot to do to explain with this event.

1 Would you be willing to consider that and hear it?

2 A Yes, I don't see why it could do any wrong. But,
3 like I said, for me personally, you know, what happened
4 twenty years ago when you are in elementary school doesn't
5 have anything to do with your decision making now. Do you
6 know what I mean. I really don't know how to word that or
7 explain that any better. But like I said, I will be
8 willing to, I mean when you are talking about somebody's
9 life, like I said, if the Defense wants to give up their
10 facts, the Prosecutors wants to give their facts, I am
11 willing to listen to both before making an ultimate
12 decision.

13 Q And ultimately, no matter what though, you could
14 render a verdict for life or death?

15 A Yes, sir.

16 Q And that would depend on facts or just feelings?

17 A Facts.

18 Q Okay. Thank you, sir.

19 THE COURT: All right. I want you to step in the
20 hall, I have got the lawyers a couple of questions and
21 have you right back in here.

22 (Whereupon, the Juror was excused from the
23 courtroom.)

24 THE COURT: All right, Mr. Young.

25 MR. YOUNG: Your Honor, we would move to excuse Mr.

1 Gantt, he is substantially impaired in his ability to
2 follow the law. He is mitigation impaired. And I know he
3 wants to do what the law requires him to do and he wants
4 to do his civic duty. I don't doubt his earnesty in that
5 belief. But his ability to give meaningful consideration
6 to mitigation is substantially impaired. He says, what he
7 did twenty years doesn't matter. It all has to involve
8 around the facts of the case, around the killings. And I
9 didn't bring that out, that was brought out by Mr.
10 Hubbard. He is also impaired in his ability to follow the
11 law in that he can not allow, he could not respect the
12 right of other jurors to give a life penalty for any
13 reason or no reason or to, for another Juror to consider
14 mercy. And those impairments substantially impair his
15 ability to follow the law as given by Your Honor because
16 he would not allow a Juror to say, for me mercy is
17 appropriate. He says, no, we have got to have facts.
18 Based on those reasons we move to excuse him.

19 THE COURT: All right, Solicitor.

20 MR. HUBBARD: Your Honor, we have had an SCDC
21 Chaplain who was, who basically said the same thing, she
22 wasn't concerned about the past and about background. She
23 was qualified with no objection. Here is what, and, Your
24 Honor, I know this guy was kind of all over the board.
25 But the big thing he wanted to hear was facts. He is a

1 facts guy. Now, I think he has got a right to come to a
2 courtroom and say, even be qualified by saying, there is
3 some types of mitigation that I am not interested in. But
4 he didn't shut the door on mitigation. Something twenty
5 years ago he has a hard time understanding. I get that
6 and I think a lot of people can understand that. They
7 want to see how does it tie into the crime and ultimately
8 what I particularly try to do is let them know, that is
9 exactly what the Defense is going to try to do is who that
10 it does have a bearing on the crime. So he is looking for
11 that bearing, that is it. Not just facts for the
12 information, for the sake of information. Hey, do you
13 know that back in the day he used to love ponies. Who
14 cares about that, what does it have to do with this crime.
15 Well, if they start talking about prior relationships and
16 his mother, his father, those things may very well have a
17 bearing on that night because that is how they are going
18 to caption their defense. So, he is going to be listening
19 to those facts.

20 THE COURT: Anything else, Mr. Young?

21 MR. YOUNG: Your Honor, obviously the Court has told
22 him that there is no nexus required for mitigation, for
23 his consideration. But he, himself, requires it and that
24 is why he is impaired in his ability to follow mitigation.
25 The prior Juror who wasn't objected to by the State, as

1 far as whether or not they are or are not mitigation
2 impaired. I know the State brought up the SCDC Chaplain.
3 She did, I did have some concerns based on her overall
4 views. I thought she was qualified and I didn't object.
5 To say that I didn't object to her, I can't object to him
6 is just wrong.

7 THE COURT: You made the opposite argument yesterday
8 but I, I agree with your statement. He stated repeatedly
9 he wanted to hear all the facts, all the facts before he
10 makes a huge decision of taking someone's life. I find
11 him qualified based on the totality of all of his
12 testimony. I think that is, considering what he
13 presented, questions both sides asked him. That is my
14 decision to find him qualified. Bring him back in here.

15 (Whereupon, the Juror entered the courtroom.)

16 THE COURT: Mr. Gantt, based upon your responses to
17 the questions of the Court and the lawyers I am going to
18 find you qualified to be a Juror. It does not mean you
19 are a Juror.

20 JUROR: Yes, sir.

21 THE COURT: It means you are potentially a Juror, so
22 you are qualified. So you go to the website and check to
23 see what the qualified jurors responsibilities are, when
24 to report back. It is going to say, check back, check
25 back tomorrow, finally it is going to say, please report

1 back on a date and time. It will be back in this
2 courtroom most likely or this Court House some where. So
3 I want you to follow that. Until that time and throughout
4 the trial, I don't want you to discuss the case with
5 anybody, don't let anybody discuss this case with you. I
6 don't want you doing any independent research. I do not
7 want you to be perusing social media and, or public media.
8 I want you to take the oath, which you have given me your
9 oath, that you will not do any gathering of facts, trying
10 to form opinions prior to the trial. I want you to form
11 your opinions and testimony here in the courtroom, not
12 outside the courtroom because that is not fair because no
13 one has control. You can decide this case based upon the
14 Court's instructions and based on what you hear in the
15 courtroom. If you bring into or allow any influence
16 outside the courtroom to influence your decision you are
17 not living up to your oath.

18 JUROR: The facts are in this room, not outside the
19 room.

20 THE COURT: Absolutely. Can you do that.

21 JUROR: Yes, sir.

22 THE COURT: Will you do that?

23 JUROR: Yes, sir.

24 THE COURT: I will see you when you get called back.

25 JUROR: Yes, sir.

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

3 MR. YOUNG: Your Honor, we object under the Sixth and
4 the Fourteenth Amendment.

5 THE COURT: You are protected. We will take our
6 lunch break, about forty-five minutes. Come back at 1:15.

7 (Whereupon, a lunch break was taken.)

8 THE COURT: If y'all go back through a question the
9 second time I am going to say asked and answered. I want
10 you to move on, we have got to be moving on with this
11 thing. You can't keep asking the same question and that
12 goes for everybody. But if I have heard it, it has been
13 answered, I am going to say asked and answered, move on.
14 Give you fair warning. Bring me the panel in here.

15 (Whereupon, Juror 199, Barbara Howell-Stevenson;
16 Juror 159, Richard Gentle; Juror 372, Tonya Sasser;
17 Juror 62, Todd Buehrig; Juror 495, Amy Wright; Juror
18 136, Robin Ehrlick; Juror 244, Ladonna Lee; Juror 56,
19 Elizabeth Brown entered the courtroom.)

20 MR. YOUNG: Your Honor, after this panel I want to
21 put something on the record about Juror 156.

22 THE COURT: Okay, now is not a good time to do it.
23 Okay. The panel is coming in.

24 I tried to feed y'all because I didn't know how long,
25 some panels are taking less time, some a little more time.

1 That last panel took a little extra time because of some
2 issues we discussed. Now, here is the way it is going to
3 work. I will have y'all back in here in a few minutes.
4 You will be placed under oath momentarily, I am going to
5 ask you questions about your upcoming anticipated personal
6 schedule or work schedule that would impact your ability
7 to serve. Then I am going to ask you some questions about
8 your knowledge of the case and whatnot. And then the
9 lawyers get to follow up on some of the aspects of my
10 questions with questions they want to ask you about your
11 ability to consider everything. That is how we will go
12 and most of the questions, a lot of the questions deal
13 with personal feelings and beliefs. So sometimes there is
14 no wrong answers, always no wrong answers. Those beliefs
15 may lead to other questions that can lead to other
16 questions and that is how we get slowed down sometimes.
17 So, depending on how the question is answered, we still
18 need your candidness and honesty. So Madam Clerk, will
19 you place this entire panel under oath for me.

20 (WHEREUPON, the jury panel was sworn at approximately
21 1:45 p.m.)

22 THE COURT: I have read this brief instruction on the
23 criminal procedure and some aspects of criminal law to the
24 other panels. I am going to read it just as I read to
25 them therefore everybody is getting consistency in the

1 instructions. So I apologize for not telling you the
2 instructions, I have got to read them. You have been
3 summoned as potential jurors in the case of the State
4 versus Timothy R. Jones, Jr. My name is Eugene Griffith,
5 Jr. and I will be the presiding Judge. Mr. Jones is
6 charged with five counts of murder. In South Carolina
7 murder is defined as the killing of any person with malice
8 aforethought. Malice is defined as a person with a wicked
9 or depraved heart, intent on wrongdoing, ill-will or
10 hostility. The definition of murder excludes any just
11 cause or excuse for the killing. When the State alleges
12 the offense of murder, combined with certain aggravating
13 circumstances the State can seek the death penalty.
14 Before and during a trial a person accused is presumed
15 innocent of each element of the crime to which he is
16 charged. The State must prove each and every element of
17 the crime charged by a standard of proof called beyond a
18 reasonable doubt. In most criminal cases Judges determine
19 the punishment upon a conviction. But in a Capital
20 penalty case the jury determines the punishment. In a
21 Capital case the trial is divided into two phases
22 potentially. The guilt or innocence phase and then if
23 necessary the punishment phase. In the first phase of the
24 case the State must prove the Defendant's guilt of murder
25 beyond a reasonable doubt. If a jury finds an accused

1 guilty of murder then the trial proceeds to the second
2 phase. In the second phase, if the State proves an
3 aggravating circumstance beyond a reasonable doubt then
4 the jury considers both aggravating and mitigating
5 evidence in deciding the punishment. Those two choices of
6 punishment are life without the possibility of parole or
7 the death penalty. Our law in South Carolina does not
8 allow the State to seek that execution if a person is
9 convicted solely of murder. The State must prove at least
10 one of the statutory aggravating factors beyond a
11 reasonable doubt. Even if the State proves murder and an
12 aggravating factor beyond a reasonable, I am sorry, if the
13 State proves murder and an aggravating circumstance jurors
14 are required to consider any mitigating evidence or
15 circumstances. Jurors must consider any mitigating facts
16 that would support a sentence other than death. In order
17 for a sentence of death to be imposed the verdict must be
18 signed by all twelve jurors. If jurors unanimously decide
19 to sentence a Defendant to life without parole sentence
20 then a sentence of life without the possibility of parole
21 sentence is imposed. In this case the State has indicted
22 five counts of murder and has notified Mr. Jones it
23 intends to seek the death penalty. Mr. Jones has entered
24 a plea of not guilty by reason of insanity. In this case
25 you may hear testimony and evidence showing many things.

1 A wide variety of testimony may be presented to you in the
2 trial. I will instruct you as to how to consider and
3 evaluate the testimony, whether it be defined as evidence
4 of an aggravating factor, evidence of mitigation which
5 would be any reason to vote for a sentence of life without
6 parole. Evidence of any defenses, evidence of any
7 affirmative defenses such as accident, guilty but mentally
8 ill and not guilty by reason of insanity. Until the
9 testimony and evidence is presented I am not able to tell
10 you the exact instruction of the law that I will give on
11 each of these, but when you come back in I will ask you,
12 can you accept an oath to meaningfully consider all the
13 testimony and evidence, apply the law as I have instructed
14 it and consider the evidence consistent with those
15 instructions. So that will be the question that will be
16 posed to you in addition to others. So those are my
17 instructions, retire to the jury room. Wait, don't
18 discuss the case back in the jury room, there has been
19 publicity, I will ask you about that. But I don't want
20 you to create your own conversation so don't discuss the
21 case. Cameras aren't on, so your names and photographs
22 are not being published or gathered in this hearing today.
23 Okay. Step in the jury room and we will call you in one
24 at a time.

25 (Whereupon, the jury panel was excused from the

1 courtroom.)

2 THE COURT: Mr. Young, you said you wanted to put
3 something on the record about the Juror, 156.

4 MR. YOUNG: I did, Your Honor. We had objected on
5 two grounds on Mr. Gantt's qualification and the first one
6 I think Your Honor ruled upon that he was not
7 substantially impaired in his ability to consider
8 mitigating circumstances that were not casually related to
9 the killing. The second objection to his qualification,
10 based on his inability to consider mercy as a grounds for
11 a life sentence and just ask the Court to rule referring
12 to that second objection.

13 THE COURT: I think by qualifying him I ruled on all
14 of those. So that is my ruling.

15 MR. YOUNG: My lawyer wanted me to make sure, Judge.

16 THE COURT: Okay, I just did.

17 MR. YOUNG: Thank you.

18 THE COURT: Bring me in 199.

19 (Whereupon, Juror 199, Barbara Howell-Stevenson
20 entered the courtroom.)

21 EXAMINATION

22 By The Court:

23 Q Spell your first and last name please.

24 A Barbara, B-A-R-B-A-R-A; Howell-Stevenson,
25 H-O-W-E-L-L-S-T-E-V-E-N-S-O-N.

1 Q Do you go by Ms. Howell-Stevenson?

2 A Yes.

3 Q Very good. Ma'am, I asked you, I am going to ask you
4 the same question I ask everybody else. Generally in the
5 same order. You are under oath, I put you under oath
6 Monday to not talk about the case. Have you talked about
7 the case to anyone whatsoever?

8 A No.

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

10 A Yes.

11 Q How did that conversation go?

12 A I can't discuss it.

13 Q All right, and that was pursuant to my directions?

14 A Right.

15 Q Now, I made a publication of the indictments and
16 whatnot during the Monday gathering, last Monday. The
17 indictments says thus and so and I gave you facts of the
18 allegations made by the State against Mr. Jones. You have
19 heard those because I said them.

20 A Right.

21 Q Now, there has been other publicity about this case,
22 since Monday, prior to Monday, even several years ago, all
23 sorts of publicity. Whatever the publicity is or
24 information you have heard or gathered from any source
25 whatsoever. Have you formed an opinion as to what

1 happened in this case?

2 A I didn't know anything of this case until I came to
3 court, when you read the indictments.

4 Q That is all you have heard?

5 A Because I didn't live here in 2014.

6 Q Okay. And that is a very reasonable explanation why
7 you didn't hear the publicity because you weren't here to
8 hear it. Now, have you formed an opinion based upon my
9 reading of the indictments?

10 A I just had certain questions.

11 Q Okay and we will hopefully get to those. Now, I told
12 you first because I was going to ask you about your
13 availability to be a Juror over the next three weeks.
14 Because hopefully the jury trial will start next week and
15 continue on for late May or early June. So your
16 availability for those several weeks is what I am
17 concerned about. What have you on your schedule that will
18 be impacted if you were asked to be a Juror?

19 A Well, I am on disability and I do not work. But I
20 was suppose to start a part-time job today but they
21 realize I am on jury duty. And that it may continue for
22 sometime and my job will still be there when I am ready.

23 Q Other than starting today, that is an impact on you
24 but other than that nothing else?

25 A Nothing.

1 Q Very good. I asked you to, I am going to ask you
2 this. The case involves circumstances, facts which will
3 be testified to regarding the death of several children.
4 That is the subject matter of this case. I am told and
5 informed by the attorneys representing both sides, the
6 testimony is going to be graphic, harsh, unpleasant,
7 difficult. Those are some of the words that I have heard,
8 some using their words. They are not representing to me
9 those words if that weren't exactly what is going to be
10 presented to jurors and to the Court for consideration.
11 Would consideration of testimony and evidence of that
12 subject matter, unpleasant, be difficult for you to
13 consider and still be able to render a fair verdict for
14 both the State and the Defense?

15 A Yes but to be upfront I suffer from severe
16 depression. And if a note is needed I can get a note from
17 a doctor.

18 Q Okay.

19 A I mean I take medicine every day for it.

20 Q Okay.

21 A But I could still perform my duties.

22 Q Okay. Understanding you are getting treatment but my
23 question would be, with you hearing about the condition,
24 evidence of deceased children affect your ability to be
25 fair and impartial, affect your health that you couldn't

1 perform jury duty and continue it?

2 A It would not affect my decision as far as the
3 Defendant.

4 Q Okay. What I am looking for is this, is people to be
5 jurors who understand the testimony is going to be tough.
6 In spite of that they can still consider it and be fair to
7 both sides notwithstanding it being tough. Can you do
8 that?

9 A Yes.

10 Q Okay. Now, I gave you a summary just a moment ago,
11 procedure in this case, two step procedure in a Capital
12 case is a little different than a regular case. Two steps
13 meaning, phase one, phase two. Phase one is guilt or
14 innocence. If not guilty is determined the case ends.

15 A Right.

16 Q If guilt is determined, the State has met its burden
17 of proof then we go into phase two and that is when
18 punishment is determined. The jury considers if the State
19 has proved an aggravating factor and considers mitigating
20 facts. Mitigating facts are anything that would cause you
21 to vote for a life sentence as opposed to a death
22 sentence. The Defendant being raised up having a tough
23 childhood, broken home, he has never committed a violent
24 crime before, something, I am going to read those to you
25 in a little bit. Those would be things jurors will

1 consider. Now considering various limited facts I have
2 given you, as the allegations of five murders, you
3 reviewed the three types of jurors in this case?

4 A Right.

5 Q Or into every case just about for a Capital case.
6 Can you identify yourself as one of those particular
7 types?

8 A Yes.

9 Q With only the facts you have?

10 A Yes.

11 Q What type would you be?

12 A I believe it was number three.

13 Q I have got them right here if you want to see them.

14 A It is number three.

15 Q Number three and that means you want to hear
16 everything before you make a decision?

17 A Right.

18 Q Now, I am going to go back and kind of break down
19 into smaller pieces. In the initial phase, phase one, the
20 guilt or innocence phase. The State has the burden or
21 proving the murder at that time beyond a reasonable doubt.
22 They have got to prove the killing of another with malice.
23 During that time it is appropriate for a Defendant accused
24 to present defenses if they so choose if they have facts
25 to support them. We know by entering of the plea by Mr.

1 Jones that he is going to tender or has tendered a plea of
2 not guilty by reason of insanity. He is going to present
3 on that to some degree. Potential defenses available, I
4 am going to read them all and then ask you my question.
5 Potential defenses and these all may not be instructed at
6 the end of the case but these could be. Identification,
7 accident, involuntary intoxication, self-defense,
8 necessity, insanity, guilty but mentally ill, defense of
9 habitation, entrapment, duress or alibi. Those are
10 statutory defenses that a person may claim. If the
11 testimony supports one of those defenses the jury will be
12 instructed on the aspects of that particular defense. Can
13 you give meaningful consideration to any instructions I
14 give on those defenses if they are appropriate for the
15 jury to consider and be fair to both sides

16 A Yes.

17 Q Can you consider the instructions of the Court
18 regarding the burden of proof upon the State to prove its
19 case, all elements of the murder, beyond a reasonable
20 doubt and be fair to both the State and the Defendant?

21 A Yes.

22 Q Now, Mr. Jones has entered a plea of not guilty by
23 reason of insanity and by that plea there are four
24 potential verdicts that could be on the verdict form.
25 Guilty, guilty but mentally ill, not guilty by reason of

1 insanity, not guilty whatsoever. Considering those four
2 particular verdicts that are available, can you give
3 meaningful consideration to each and every one of those
4 potential verdicts, considering my instructions on those
5 verdicts and while evaluating the testimony and evidence,
6 fairly and impartially, understanding the State has got a
7 burden of proof, beyond a reasonable doubt on its portion
8 of the case. Can you be a fair and impartial Juror under
9 those circumstances?

10 A Yes.

11 Q Now, if a finding of not guilty occurs, the case
12 ends. If the State meets its burden it goes to the next
13 phase, phase two. Phase two is when the State is required
14 to prove an aggravating circumstance, the State has got to
15 prove one aggravating circumstance to being able to seek
16 the death penalty. Potential aggravators are murder of a
17 police officer, murder of a child, rape of murder,
18 kidnapping of murder, multiple victims. Those are
19 potential statutory aggravators. The State has got to
20 prove one of those beyond a reasonable doubt for you to
21 consider the death penalty, for them to ask you to
22 consider the death penalty. Statutory mitigators, reasons
23 to not impose the death penalty are also given to the jury
24 for their consideration and I am going to read those to
25 you. The Defendant had no significant history of prior

1 criminal history involving the use of violence against
2 another person. The murder was while the Defendant was
3 under the influence of mental or emotional disturbance.
4 The victim was a participant in the Defendant's conduct or
5 consented to the act. The Defendant was an accomplice in
6 the murder committed by another and his participation was
7 relatively minor. The Defendant acted under duress or
8 under the domination of another. The capacity of the
9 Defendant to appreciate the criminality of his conduct or
10 to conform his conduct to the requirements of law was
11 substantially impaired. The age or mentality of the
12 Defendant at the time of the crime. The Defendant was
13 provoked by the victim in committing the murder. The
14 Defendant was below the age of 18 at the time of the
15 crime. The Defendant had mental retardation at the time
16 of the crime. Those are statutory mitigating facts.
17 There are others like his walk in life, how he was raised,
18 his physical condition, all sorts of things. Can you give
19 meaningful consideration to both, the aggravating factor
20 the State has got to prove beyond a reasonable doubt and
21 any mitigating factors that are presented to you and give
22 consideration of my instructions on all of that law and
23 reach a fair and impartial, be a fair and impartial Juror
24 in the sentencing phase of the case?
25 A Yes.

1 Q Now, in the sentencing phase, there are only two
2 choices, nothing is automatic, the death penalty is not
3 automatic. Some people think it is, it is not. The State
4 proves murder, it goes to phase two. Phase two, the State
5 has got to prove the aggravating factor and the jury
6 considers any and all mitigating facts. Two choices, life
7 or death, nothing else, no other options, no middle
8 ground, those are your two choices that the jury gets. If
9 a jury reaches a verdict unanimously of life without
10 parole that sentence will be carried out. The jury
11 unanimously finds the death penalty is appropriate that
12 sentence will be carried out. A Juror has to sign the
13 death penalty, each and every one, all twelve. Could you
14 sign the verdict form if that were the case and the facts
15 are proven?

16 A If proven, yes.

17 Q Okay. Now, do you have any religious or moral,
18 personal belief that would prevent you from finding a
19 death penalty sentence?

20 A No, I believe in it.

21 Q Scoot up to the microphone so we can hear you.

22 A I believe in the death penalty.

23 Q Now, do you have any religious, moral or personal
24 belief which would prevent you from finding a life without
25 the possibility of parole sentence?

1 A No.

2 Q Now, one last question for you. You mentioned to me
3 that you are being treated for depression, it is under
4 management right now?

5 A Yes.

6 Q Do you believe that that condition could impact your
7 ability to be fair and impartial in this case?

8 A No.

9 Q Okay.

10 THE COURT: Mr. Young.

11 EXAMINATION

12 By Mr. Young:

13 Q Good afternoon.

14 A Good afternoon.

15 Q Howell-Stevenson, is that right?

16 A That's right.

17 Q Okay. As the Judge told you, there are no right or
18 wrong answers here, we are just talking to you about your
19 feelings about some stuff. Okay.

20 A Okay.

21 Q And I want to thank you for taking the time to fill
22 out your questionnaire and you shared a couple of things
23 with us that I imagine were very difficult experiences for
24 you and if you need to talk about anything, sort of with
25 just the Judge and the attorneys let us know and we will

1 talk about it like that. Okay.

2 A Okay.

3 Q You shared with us that you had a sister that was
4 murdered?

5 A Yes.

6 Q Can you tell me about that?

7 A They listed it as a suicide. She lived on Gibson
8 Road, right across from the sheriffs department in the
9 little patio homes. She had just left me that morning to
10 come home and she was shot and killed by her ex-husband.
11 But they did list it as a suicide. I do not have respect
12 for Lexington County Police Department.

13 Q Okay. Would having that experience where Lexington
14 Police Department or the sheriffs department was involved
15 in the case, would that be difficult for you?

16 A It was not investigated which made it very difficult
17 for me because I went to see them several times. And he
18 called an ambulance to himself and took himself to a
19 mental hospital after he shot her. And he is still
20 walking the streets.

21 Q He was never prosecuted?

22 A He was never prosecuted.

23 Q In addition to that experience you also had a, had a
24 friend who was murdered.

25 A My son's best friend was murdered at 31 years old,

1 right off of Cherokee Ridge or whatever it is, Cherokee
2 Home.

3 Q Was it, can you tell me about that, like what
4 happened with that?

5 A There was a party going on across the street from his
6 home, he is 31 years old. I had known him since, before
7 he was born. This friend of mine, I had been with her 40
8 years. For some reason Derrick's roommate had went out of
9 the house and had been drinking. Derrick was not a part
10 of the party across the road. There were also law
11 enforcement involved in this party that had been going on
12 across the road. But Derrick had went out to stop his
13 friend, Chris, from driving off in the car. It was early
14 morning, like 2:00 a.m. And that is the only reason
15 Derrick, that Derrick was outside of his house was to stop
16 Chris from leaving the home drunk. And neither of the two
17 were at the party across the road. It was, the case of
18 Nicewonger. Derrick was shot three times. I mean, he, he
19 was like my own son. And he was shot in the leg, the gun
20 was right at his chest, put at his chest and shot again in
21 the chest and he was shot in the face by just, we don't
22 even know what happened. It was, he was never, they drug
23 tested and did all kinds of tests on Derrick which all
24 come back with no drugs, no alcohol, no nothing in his
25 system. But they never tested Nicewonger which I have

1 strong feelings on that because, you know, he was having a
2 party, there was lots of people there. Like I said, there
3 was even some police officers there. And I felt like it
4 was an injustice done to him because, like I said, I had
5 known this child since birth and there was no, they said
6 there was a fight but there was no evidence of a fight, no
7 hand marks, no scuff marks, no nothing. But Derrick was
8 shot three times. And he layed dieing in the road.

9 Q Please understand that I am very sorry you went
10 through those experiences, those are tough. And I can
11 tell that those are hard.

12 A He was like my boy.

13 Q Yes. This is your time, I mean this is a murder case
14 involving the murder of children and I know the Judge has
15 asked you about that. Can you do it?

16 A Yes. I can be fair and impartial. I have had to
17 live through a lot of things. My growing up was very
18 rough, my father was an alcoholic, I seen things as a
19 child no child should ever see. I have one son who served
20 both in the Navy and in the Marines. He was in Iraq twice
21 and Afghanistan once. His best friend dies in his arms.
22 You know, I mean, there was so many things that I saw as a
23 child that you just can't make judgments on.

24 Q Okay. I want to thank you, I appreciate that. I am
25 going to move forward and talk to you a little bit about

1 the defense that the Judge talked to you about, the not
2 guilty by reason of insanity plea. Okay?

3 A Okay.

4 Q When there is a plea of not guilty by reason of
5 insanity, I did the killing, I did the crime. But because
6 of a mental disease or defect I was not able to appreciate
7 the moral or legal wrongfulness of my conduct. Do you
8 understand what I am saying there?

9 A Yes.

10 Q And I think, some people say that that is just a
11 copout, that is an excuse, it is not a real verdict that I
12 can really consider in a case like this. Is that you?

13 A No, I have depression, I have been institutionalized.
14 I realize what the difference between insanity and what I
15 have exist.

16 Q Has your depression ever manifested as psychotic
17 features?

18 A They have never listed me as psychotic. I have just
19 severe major depression.

20 Q Severe chronic depression?

21 A Yes. I take meds every day.

22 Q Is Vistaril one of the medications that you take?

23 A I am sorry?

24 Q Vistaril?

25 A No.

1 Q Okay. I want to talk to you little bit about, I am
2 going to move forward a little bit and talk to you about
3 your views of the death penalty. Okay. And I know you
4 said you believe in the death penalty?

5 A I do.

6 Q Can you tell me a little bit more about that. What
7 is your general philosophy about the death penalty?

8 A I don't exactly remember the case when I was young,
9 there was a boy, when I was in school there was a fight
10 that had taken place. And the boy was killed and as I
11 recall I was in middle school. And if I am not mistaken
12 he received the death penalty.

13 Q Do I take it to mean that you thought it was
14 appropriate?

15 A I knew both boys. And it was, I was surprised that
16 he got the death penalty but, you know, when they talked
17 about it in the papers and my parents, remembering my
18 parents talking about it, I understand why.

19 Q The Judge talked to you a little bit about what
20 murder is in South Carolina, the intentional killing of
21 malice aforethought and in this case talking about the
22 intentional chose to kill with malice multiple children.
23 Are you with me on that?

24 A Yes.

25 Q And that is, before a jury is able to decide about

1 punishment they would have found guilty, guilty beyond a
2 reasonable doubt, any evidence would be heard about not
3 knowing the difference between right or wrong, we rejected
4 that, found that he knew right from wrong, chose to kill.
5 Are you with me on that?

6 A Yes.

7 Q Some people say in that type of case, for me the
8 death penalty is the only appropriate punishment in that
9 type of case. Does that resonate with you?

10 A Truly insane and going for that verdict then I
11 believe that everyone here, that Defendant or the
12 Defendants or the other Counsel would prove that. And
13 then I don't believe there would be a death penalty case.

14 Q Right. If you found not guilty by reason of insanity
15 the case would be over. Okay. But and the jury, the
16 jury's job would be over. Okay?

17 A Right.

18 Q It is only if somebody were found guilty or guilty
19 but mentally ill that the jury would have the option of
20 doing or deciding penalty. Okay. So insanity is out, the
21 jury has decided beyond a reasonable doubt that the person
22 was insane and they knew what they were doing. Are you
23 with me on that?

24 A Yes.

25 Q It sounds like to me, maybe in that case, they knew

1 what they were doing, for you the appropriate punishment
2 would be the death penalty?

3 A Yes. If they can prove without a doubt.

4 Q Right. If you had a doubt about whether or not they
5 did it or not--

6 A In my mind if I had a doubt, based on things that I
7 heard, no, I couldn't impose the death penalty.

8 Q But if you were convinced, if you were firmly
9 convinced beyond a reasonable doubt that they did it, they
10 knew what they were doing, chose to kill, for you that is
11 the death penalty?

12 A Death penalty.

13 Q And for you, in that circumstance, where they chose
14 to do it life in prison without the possibility of parole,
15 that is just not a substantial enough punishment for that
16 type of crime?

17 A No, it is not.

18 Q And evidence about somebody having a hard life, a
19 hard childhood, hard background, that is not evidence that
20 is going to convince you that life is appropriate?

21 A No, that wouldn't convince me because I was there,
22 there was six children in my family.

23 Q And you have had a hard life?

24 A A very hard life. My dad's punishment for us was a
25 braided bullwhip. So, I know what a hard life is.

1 Q That is terrible.

2 A And that was right here in South Carolina, well, in
3 Columbia.

4 Q Your views that you share with me, those are your
5 honest answers.

6 A Yes.

7 Q I am not going to change your mind about your views.
8 Right?

9 A No. I mean I believe my father should have been
10 under a jail.

11 Q We probably agree on that. And your opinions that
12 you share with me and you are going to share it with the
13 State and with the Judge.

14 A Right.

15 Q Thank you, I don't have any further questions.

16 THE COURT: Ms. Mayes.

17 MS. MAYES: No questions, Your Honor.

18 THE COURT: If you will step outside I need to go
19 over something with the lawyers and I will have you right
20 back in here.

21 JUROR: Okay.

22 (Whereupon, the Juror was excused from the
23 courtroom.)

24 THE COURT: Mr. Young.

25 MR. YOUNG: Your Honor, we want to excuse Ms.

1 Howell-Stevenson.

2 MR. HUBBARD: No objection.

3 THE COURT: I find that appropriate. Tell her she
4 has been excused and are y'all ready for the next one?

5 MR. YOUNG: Yes, sir.

6 (Whereupon, Juror 199, Barbara Howell-Stevenson was
7 excused.)

8 MR. HUBBARD: Yes, sir. I know this Juror was a
9 little different. We are still getting into that, do you
10 think death would be appropriate without information. And
11 we are still going into that. I want to let Your Honor
12 know we are still having that.

13 THE COURT: Okay, be careful how y'all characterize
14 that question. You know what I am talking about. Bring
15 him in.

16 (Whereupon, Juror 159, Richard Gentle entered the
17 courtroom.)

18 EXAMINATION

19 By The Court:

20 Q Sir, could you please state your name and spell it
21 for us reminding you you are under oath.

22 A My name is Richard Gentle. R-I-C-H-A-R-D;
23 G-E-N-T-L-E.

24 Q Sir, since I placed you under oath and asked you not
25 to talk about the case or allow anybody to talk to you

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

2 A No, sir.

3 Q Have you talked to anybody about the case?

4 A My wife. I mentioned to her that--

5 Q That you were here?

6 A Yes.

7 Q Okay. Now, there has been publicity in this case.
8 Social media, regular media. The Court, me, published the
9 indictments. I read them to the whole jury panel. Is
10 there any information that you heard or received or
11 understood thus far to right now caused you to form an
12 opinion as to what happened in this case?

13 A No, sir.

14 Q Don't have an opinion whatsoever to what happened?

15 A No, sir.

16 Q Okay. Now, I asked you, did you bring me your
17 schedule, not bring it to me written down, I am asking you
18 about your schedule. If you are selected as a qualified
19 Juror potentially, have you sitting, listening, next week
20 or it would take two and a half, maybe three weeks, late
21 May, early June is kind of the commitment I am looking for
22 from the jurors without impacting your calendar harshly.
23 Can you tell me if that is the case, do you have something
24 on the agenda that is planned, prepaid, something along
25 those lines?

1 A Nothing planned or prepaid until August of this year.

2 Q Okay. I think we are safe there. So you could serve
3 if asked to serve?

4 A Yes, sir.

5 Q Very well. Now, the subject matter of this case
6 involves the allegation of murder, children. The subject
7 matter is going to be graphic, harsh, unpleasant, tough,
8 those are some of the words the lawyers have used to me.
9 I haven't seen all the testimony. I have been told that
10 by the attorneys on both sides. Not easy, unpleasant.
11 Would the subject matter, testimony about that type of
12 graphic evidence, would that make it difficult for you to
13 be fair to both the State and the Defense?

14 A No, sir.

15 Q Can you do that?

16 A Yes, sir.

17 Q Have you had an opportunity, you heard my
18 instructions on the procedure. A Capital case is two
19 procedures. Phase one, phase two if necessary. Phase one
20 is the State's attempt to prove the murder. Phase two is,
21 if the murder is proven the jury decides the punishment.
22 I gave you a sheet to identify, there are three general
23 categories as jurors in cases such as Capital cases. Can
24 you find yourself, not knowing any more than you know, big
25 picture, no facts other than murder, aggravating

1 circumstances to consider, can you find yourself as one of
2 those jurors?

3 A Yes, sir. Type three.

4 Q You are type three?

5 A Yes, sir.

6 Q Does that mean you have got your mind not made up but
7 want to hear everything before you make a decision?

8 A I would be openminded.

9 Q Now, in the sentencing side there is only two
10 choices, the death penalty is not automatic, the jury has
11 got to decide between the two. Do you understand?

12 A Yes, sir.

13 Q Did you study the potential witness list?

14 A I looked it over, yes sir.

15 Q Did you recognize any names on there?

16 A No, sir.

17 Q Do you know of those witnesses?

18 A No, sir.

19 Q You could be fair and impartial since you don't have
20 a relation with any of them?

21 A Yes, sir.

22 Q All right. I am going to discuss both phases in a
23 little more detail. Phase one which is the guilt or
24 innocence phase. The State has to prove the murder,
25 killing of another, malice, ill-will, the State has got to

1 prove that beyond a reasonable doubt, all the elements.

2 During a murder trial the Defense, if they claim a defense

3 allowed by the statute, they could ask the jury, Judge, we

4 have presented testimony, we would like for you to

5 instruct the jury on that particular defense. I am going

6 to read all of the defenses, I don't think all of them are

7 appropriate or I don't think all of them are

8 inappropriate. Perhaps the jury will be instructed on one

9 or more of these. Identification, accident, involuntary

10 intoxication, self-defense, necessity, insanity, guilty

11 but mentally ill, defense of habitation, entrapment,

12 duress or alibi. Those are statutory defenses. Can you

13 listen to the instructions of the Court if testimony were

14 to support one of more of those defenses, give meaningful

15 consideration to those defenses understanding the State

16 has the burden of proving murder beyond a reasonable

17 doubt, give meaningful consideration to the State's

18 testimony and evidence and my instruction on the law on

19 how to evaluate all of that and make findings. Can you be

20 fair and impartial?

21 A Yes, sir.

22 Q Under those circumstances?

23 A Yes, sir.

24 Q Now, I told you already and I will tell you again,

25 Mr. Jones has, he has admitted a defense of not guilty by

1 reason of insanity. By that assertion he brings into play
2 four potential verdicts in the guilt or innocence.
3 Potential verdict could be guilty, guilty but mentally
4 ill, not guilty by reason of insanity, not guilty
5 whatsoever. Can you give meaningful consideration,
6 considering my instructions on the law, facts and
7 circumstances, evidence the jury hears, give meaningful
8 consideration to each and every one of those potential
9 verdict forms?

10 A Yes, sir.

11 Q If a verdict of not guilty, not guilty by reason of
12 insanity is found the case ends. If the State proves the
13 murder beyond a reasonable doubt we will proceed to phase
14 two. At that time the State has got to prove a statutory
15 aggravating factor. I am going to name off five. Murder
16 of a policeman, rape of murder, kidnapping, murder of a
17 child, multiple murders. Those are statutory aggravating
18 factors. If the State proves one of those aggravating
19 factors beyond a reasonable doubt the jury can then
20 consider a sentence of life without parole or death. The
21 jury also takes into consideration mitigating evidence and
22 factors. I am going to give you a list of those also that
23 the jury can consider if the facts and testimony support
24 it. The Defendant has no significant history of prior
25 criminal conviction involving the use of violence against

1 another person. The murder was committed while the
2 Defendant was under the influence of mental or emotional
3 disturbance. The victim was a participant in the
4 Defendant's conduct or consented to the act. The capacity
5 for the Defendant, the criminality of his conduct or to
6 conform his conduct to the requirements of law was
7 substantially impaired. The Defendant acted under duress
8 or the domination of another. The age or mentality of the
9 Defendant at the time of the crime. The Defendant was
10 provoked by the victim at the time of the crime. 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, there are other
14 non-statutory reasons to not give the death penalty. How
15 he was raised, maybe his physical condition, broken home,
16 troubled childhood. Any factor the jury hears testimony
17 about, they can consider mitigating factors in deciding a
18 life without parole sentence. Can you give meaningful
19 consideration to the State's burden of proving the
20 aggravating circumstance, the aggravating factor and
21 meaningful consideration to the mitigating factors
22 presented in the case, be fair and impartial and reach a
23 fair verdict considering my instructions and the testimony
24 you hear. Can you do that?

25 A Yes, sir.

1 Q Now, you understand that in the sentencing phase, you
2 get there, the guilt is proven, the sentencing phase is
3 two choices for the jury, death or life. Nothing in
4 between, no other options. Death is not automatic. Do
5 you understand?

6 A Yes, sir.

7 Q If a unanimous verdict of death is found that
8 sentence will be carried out. If a sentence of life
9 without the possibility of parole is unanimously decided,
10 that sentence will be carried out. Can you be a fair and
11 impartial Juror in those circumstances?

12 A Yes, sir.

13 Q Now, you have any religious, moral or personal belief
14 that would prevent you from finding a punishment of the
15 death penalty?

16 A No, sir.

17 Q Do you have any religious, moral or personal beliefs
18 which would prevent you from finding a sentence of life
19 without the possibility of parole?

20 A No, sir.

21 Q Those are my questions.

22 THE COURT: Mr. Secor.

23 EXAMINATION

24 By Mr. Secor:

25 Q Good afternoon, Mr. Gentle.

1 A Hey.

2 Q How are you doing?

3 A Good.

4 Q Good. The Judge was just talking about your ability
5 to determine the law and be fair and impartial. I want to
6 talk to you just about your personal feelings and I don't
7 want you to feel incumbent by trying to be fair and
8 impartial or follow the law, I just want to know how you
9 feel. Is that all right?

10 A Sure.

11 Q Do you remember hearing anything about this case in
12 the past when it originally happened back in 2014?

13 A No.

14 Q You don't. Okay. Any media incurred, have you heard
15 anything about the case I guess?

16 A It was the day before when we reported over to the
17 other Court House that it came up on the news that there
18 was the jury selection was going to start with this. And
19 then my wife mentioned it, she said something like, maybe
20 that is what you are doing and I said, I don't think so.

21 Q You never heard anything?

22 A That was the only thing I had heard prior to this.

23 Q I understand. And the Judge talked to you about the
24 verdict of not guilty by reason of insanity. And you
25 understand that when a person is not guilty by reason of

1 insanity they are saying I did it, I did the killing. But
2 because of my mental disease or defect I was unable to
3 appreciate the difference between legal right and wrong,
4 moral right and wrong. Do you understand that?

5 A Yes, sir.

6 Q And some people, just on a personal level, when they
7 hear that they think, they say, give me a break, that
8 sounds like an excuse or a copout. Does that, do you feel
9 that way?

10 A No, I don't.

11 Q It seems to you like a real, legitimate thing that
12 you would be able to consider?

13 A Yes, sir.

14 Q Okay. I appreciate that. I want to talk to you
15 about your personal feelings on punishment for a guilty
16 murder. Okay. And I am going to ask you, I am going to
17 ask you a question but I want to make sure that you
18 understand that. In a case of a guilty murderer,
19 aggravated guilty murder in South Carolina the jury always
20 has a choice between life or death. So I want you to just
21 have that in the back of your mind that that is always an
22 option. But as the Judge said to you, murder in South
23 Carolina is the malicious killing of a person and it was
24 done with evil, wickedness and hatred. Okay. And in
25 order to find somebody guilty of murder you, as a Juror,

1 would have to find that they knew right from wrong,
2 meaning that they were not insane. And that there was
3 also no excuse, justification or defense. It wasn't
4 self-defense, it was defense of others, it wasn't heat of
5 passion, it wasn't a mistake, anything like that. And
6 that the person maliciously killed and in this case
7 multiple children. Okay. And so for you, what I would
8 really like to know on a personal level, what are your
9 feelings about how a guilty murderer like that should be
10 punished?

11 A I don't really have any feelings about it to tell you
12 the truth because I don't know how that person should be
13 punished. I don't know what the laws are around that,
14 what they are, what that person is subject to. I don't
15 know. So I guess what I was saying to the Judge and to
16 you was, with guidance or whatever the law is I could be
17 openminded about what is presented.

18 Q And I appreciate that and I don't doubt that for a
19 second. I guess, maybe I didn't say this well. When you,
20 if you found that to be true and there was no question in
21 your mind that person had committed murder of multiple
22 children, personally do you start off thinking that death
23 is appropriate--

24 MS. MAYES: Objection, Your Honor, asked and
25 answered.

1 THE COURT: I don't believe he has asked that
2 question so overruled on that one.

3 Q Do you start off thinking that one is more
4 appropriate in your own mind, personally?

5 A No, not really.

6 Q I appreciate that. Do you feel like, again, on a
7 personal level, that a person's whole life, everything
8 that they have been through, where they come from, is that
9 relevant to how they are punished once they are found to
10 be guilty of murder?

11 A Well it depends on what that whole life is, what you
12 are talking about.

13 Q Yes, sir. Can you tell me the types of things you
14 think would be, are relevant about a person's background
15 or life to how they are punished?

16 A It is various and numerous, you know, with
17 educational. I mean, where you come from, that is kind of
18 hard to take all of those different factors that could be
19 applicable and just barrel it down to just one little
20 thing. But, yes, there are things that are in your
21 background that I am assuming that could be relevant.
22 Now, relevant to the punishment, you are saying is given
23 out because of their background, I don't know.

24 Q And the punishment would mean because they are a
25 guilty murderer, right. So you would be asking to take

1 into consideration things that didn't have anything to do
2 with the murder but might somebody, like the person grew
3 up in poverty, the person had a drug problem, the person
4 had an abusive parent. Are those types of things that you
5 think are relevant to how a person is punished even though
6 they decided and chose to commit a murder?

7 A I don't think that is relevant to the punishment, no.

8 Q All right. I would like to run through a few
9 principles that govern how jurors to come to their
10 decision in the punishment phase of a Capital case. All
11 right. As the Judge told you, a Juror on a Capital case,
12 they go through the first trial, the guilt or innocence
13 trial. If they find the person not guilty or not guilty
14 by reason of insanity of course the trial ends and you
15 understand that, right?

16 A Yes.

17 Q And it is only if the person is found guilty that you
18 then and the other eleven jurors proceed to the penalty
19 phase. At the penalty phase you are asked to make the
20 determination between life or death. And the State
21 presents to you aggravating evidence which are things that
22 they think weigh in favor of a death sentence and they
23 have to be proven beyond a reasonable doubt, unanimously
24 to all jurors. You can accept that, right?

25 A Yes.

1 Q And mitigating evidence or mitigating factors are any
2 reason to vote for a life sentence. And they can involve
3 the character and background of the Defendant. They don't
4 have to have anything to do with the crime. Does that
5 sound fair to you?

6 A Yes.

7 Q And jurors are empowered to find mitigating
8 circumstances and vote for life based on mitigating
9 circumstance that no other Juror agrees with. And just as
10 an example, one Juror might say he had a good relationship
11 with his father. To me that is mitigating, I am going to
12 give that the value of life and vote for life. Another
13 Juror will say, I didn't see that, but I think he had some
14 mental health problems, that is mitigating to me, I am
15 going to vote for life based on that. They don't have to
16 agree. They both have found mitigation for themselves and
17 they are going to vote for life for those reasons. And
18 you would respect a jurors right to do that?

19 A Yes.

20 Q And the law also says a Juror can vote for life for
21 no reason. I have heard everything, I have considered the
22 aggravation, I have considered the mitigation, I can't put
23 into words. I am just saying for me, life is the right
24 sentence in this case and I am voting life. I can't put
25 it into words. And you could accept, you would respect a

1 juror's right to say that even if they couldn't put it
2 into words?

3 A Yes.

4 Q Because the law doesn't require them to justify it.
5 And finally, the law also empowers a Juror to give life
6 for mercy. Meaning again, they can say I have considered
7 the aggravation, maybe I haven't even found any mitigation
8 but I am just going to vote for life for mercy because I
9 feel that is right for me in this case. And you could
10 respect a juror's right to do that?

11 A Yes.

12 Q The law says that the ultimate decision on which
13 punishment a Juror decides is your individual moral
14 judgment. And it is something as profound and personal as
15 something like the faith you choose for yourself
16 enforcement. Does that make sense to you?

17 A Yes.

18 Q And, of course, I am sure you respect people's
19 individual moral judgment that you might disagree with
20 because they make them for themselves?

21 A Yes.

22 Q And you would demand respect for your own individual
23 moral judgment even if people disagree with you because
24 you decided it for yourself?

25 A Correct.

1 Q And once a Juror arrives at that individual moral
2 judgment the law does not allow them to be bullied or
3 coerced or pressured out of that. Does that make sense to
4 you?

5 A Yes.

6 Q Okay. And if you saw a person, said that they had
7 arrived at their individual moral judgment was being
8 bullied you could step in and say, that is not right, they
9 are entitled to their opinion.

10 A Correct.

11 Q Even if you disagreed with the individual moral
12 judgment they had made, you would stop that kind of
13 bullying?

14 A Yes.

15 Q Okay. Thank you, Mr. Gentle.

16 A Okay.

17 THE COURT: Ms. Mayes.

18 EXAMINATION

19 By Ms. Mayes:

20 Q Good afternoon, Mr. Gentle.

21 A Hello.

22 Q My name is Suzanne Mayes and I am a Prosecuting
23 Attorney, we represent the State in the prosecution of
24 this case. I just wanted to follow-up on a couple of
25 things that Defense Counsel was just asking you about.

1 A Okay.

2 Q You described yourself as a type three Juror?

3 A Yes.

4 Q And I believe your previous testimony was, that was
5 because you want to hear all of the evidence. Does that
6 include the evidence that goes towards deciding
7 punishment?

8 A Whatever evidence is presented.

9 Q As the Judge indicated, there would be potentially
10 two phases of this trial. The first phase would be the
11 guilt phase and I heard your responses on that and that
12 you would consider all possible verdicts, even verdicts
13 that may relate to the Defendant's mental state.

14 A Yes, ma'am.

15 Q And then potentially if there is a second phase of
16 the trial, that only deals with punishment. And so there
17 would be two options there, life without parole and the
18 death penalty. And your indications to Your Honor is that
19 you could consider both?

20 A Yes, ma'am.

21 Q Now, in considering both, there would be potential,
22 what we call mitigating factors that would be presented by
23 the Defense and the Judge gave you some examples of those
24 earlier. I just kind of want to go over that again in a
25 little more detail. Because in addition to those facts

1 that the Judge gave such as whether or not he may have
2 been under the influence of a mental emotional
3 disturbance, whether or not he is under the age of 18,
4 whether or not he had mental retardation. In addition to
5 all of those factors the law also allows for mitigating
6 factors to be offered into evidence that can be anything
7 that Defense Counsel chooses to show. So it could be any
8 random thing about his past or his history that they
9 believe somehow may relate to a decision on punishment.
10 So with that in mind can you consider all evidence in this
11 case in ultimately reaching a decision?

12 A Yes, ma'am.

13 Q Including a decision on punishment?

14 A Yes, ma'am.

15 Q And so I know the Defense was asking you earlier,
16 what about this or what about that. And I don't want to
17 pick one or two things and just ask you about those one or
18 two things. I am going to ask you can you consider
19 everything that they show that relates to mitigating,
20 mitigating factors?

21 A Yes, ma'am.

22 Q Mitigation evidence?

23 A Yes.

24 Q And then can you follow the instructions of Your
25 Honor?

1 A Yes, ma'am.

2 Q And those instructions would be that you shall
3 consider all evidence and mitigation?

4 A Yes.

5 Q You could do that?

6 A Yes.

7 Q Just a couple of things. We are now talking about
8 that second phase of the trial where we are only deciding
9 punishment, life without parole or the death penalty. If
10 after considering all of the aggravating factors offered
11 by the State and each of the mitigating factors offered by
12 the Defense, you found that the death penalty was
13 appropriate could you render a sentence of death?

14 A Yes, ma'am.

15 Q You do not have an opposition to the death penalty?

16 A Depends on the evidence.

17 Q And so depending on the evidence, if that were the
18 verdict reached by yourself as well as the other jurors
19 unanimously could you sign your name to a form indicating
20 that a death sentence was your verdict?

21 A Yes, after hearing both sides and the mitigating
22 factors, like you say. If that was the decision that I
23 came to, yes, I could sign my name to it.

24 Q Okay. Have you thought much about the death penalty
25 before you got that jury notice and showed up two weeks

1 ago?

2 A Not really, I haven't thought about it sense then
3 either, to tell you the truth.

4 Q Okay.

5 A That is something that I don't dwell on too much.

6 Q Okay. You don't have any disagreement with the law
7 in South Carolina allowing for the death penalty?

8 A No, ma'am.

9 Q Then I want to ask you, just as we spoke about the
10 death penalty. If after hearing all of the mitigating
11 factors offered by the Defense and the aggravating factors
12 offered by the State and you determined that the
13 appropriate sentence was life without parole, is that a
14 verdict that you could reach considering all of the
15 evidence?

16 A Yes, ma'am.

17 Q Thank you, nothing further.

18 THE COURT: Mr. Secor, anything further?

19 MR. SECOR: Briefly.

20 THE COURT: Very briefly.

21 EXAMINATION

22 By Mr. Secor:

23 Q Mr. Gentle, I want to go back to one thing.

24 A Sure.

25 Q And I want to make sure you understand that no one is

1 trying to give you a hard time or confuse you.

2 A Okay.

3 Q When we were talking about, things about a person's
4 character or background. And correct me if I am wrong,
5 but I think I asked you if those things to you on a
6 personal level, things about a person's life, if those
7 matter to how they are punished for an intentional
8 malicious murder. And my recollection you said for you
9 those things don't matter, the punishment. Now, when you
10 were talking to Ms. Mayes I felt like I got a little bit
11 different picture but I want you to clear it up for me. I
12 don't want to try to suggest. I know you would follow the
13 instructions. I know everybody believes they can do that.

14 A Right, right.

15 Q But when it comes to you.

16 A Well, people's background, I mean I have dealt with a
17 lot of people over my life, I spent 24 years in the Army
18 and people, their backgrounds that they have when they
19 come into the military is diverse and different all across
20 the spectrum. Now, the punishment and the way people were
21 treated in the military while I was there, during my time
22 period, your background doesn't matter when it comes down
23 to, whether or not to the punishment. It was kind of
24 standard across the board for everybody. You do this this
25 is what you can be expecting. If you mean, your

1 punishment should be different based off of your
2 background or where you come from versus everybody else,
3 no, I don't believe so. It is all standardized punishment
4 I guess is what I am kind of familiar with and comfortable
5 with for quite a few years. So long as it is applied
6 across the board fairly to everybody.

7 Q And you said that is 24 years of experience in the
8 military is where you got that sort of ingrained--

9 A Part of that brain washing comes from.

10 Q But that is also just part of who you are?

11 A Yes, sure.

12 Q Thank you, sir.

13 A All right.

14 THE COURT: Ms. Mayes?

15 EXAMINATION

16 By Ms. Mayes:

17 Q If part of the Judge's instructions is to consider
18 all factors presented and all evidence and that included
19 background would you do that?

20 A Yes, ma'am.

21 Q In regards to punishment?

22 A Yes, ma'am.

23 Q Nothing further.

24 THE COURT: Okay. Step in the back and I will put
25 something on the record. Let me talk to the lawyers and

1 we will have you right back in here.

2 (Whereupon, the Juror was excused from the
3 courtroom.)

4 THE COURT: Mr. Secor, let me hear from you.

5 MR. SECOR: I would argue Mr. Gentle, despite his
6 seeming very genuine, responses about wanting to follow
7 the law, following the Judge's instruction. There is a
8 clear delineation between him as a Juror and him as an
9 individual. He said that based on his experience,
10 partially in the military that a person's life history and
11 background is not, does not matter to him for the purpose
12 of how they are punished for a crime that they are
13 convicted of or I guess, plead guilty to. And he thinks
14 that punishment should be meted out fairly without regard
15 to a person's past and history. And my argument would be
16 that based on that he is mitigation impaired.

17 THE COURT: Okay. Didn't he answer questions from
18 you about respecting other people's belief and assigning
19 reasons why they would have an individual moral judgment?

20 MR. SECOR: Absolutely.

21 THE COURT: Okay, I thought so. Let me hear from Ms.
22 Mayes.

23 MS. MAYES: Yes sir, Your Honor. His explanation
24 there at the end perfectly explained where he is coming
25 from. He is relying on his experience that began in the

1 military for 24 years and he is answering their question,
2 very pointed question and a very premature question.
3 Again, we submit it is staking but he is answering that in
4 relation to his military background. However he cured
5 that by repeatedly stating he would consider all evidence
6 because he wants to consider that evidence. And in
7 addition to that, he would follow Your Honor's
8 instructions to give weight to all evidence presented. So
9 he has been asked a very pointed, asked him an unfair
10 question. He gives an answer and then they want to argue
11 that he is disqualified because of that answer. And I
12 don't know how a Juror can possibly survive this setup
13 under those circumstances.

14 THE COURT: Any more, Mr. Secor?

15 MR. SECOR: I guess I am not even sure what question
16 it is that the State is complaining of.

17 MS. MAYES: We object, Your Honor, to picking and
18 choosing certain factors and then saying, well, do you
19 think that should be considered in regards to punishment.
20 These are non-statutory mitigating factors. He is saying
21 that he will consider all factors. But to just pick one
22 or two and then tie it in in the context of this case
23 where they have already said it is a guilty murderer, he
24 has done this and he has done that, what about his
25 background. As the Solicitor stated earlier, the fact

1 that when he was five he liked ponies. No, I mean the way
2 it is presented in the form of a question is very
3 confusing to any potential Juror. But in the end he
4 answered it accordingly. He would follow the Court's
5 instruction and consider all evidence.

6 MR. SECOR: Substance abuse definitely falls into one
7 of the statutory mitigators. I mean, I didn't say
8 anything about a pony or anything nearly as absurd as
9 that.

10 THE COURT: Well, you know, here is the thing for the
11 Court. Substance abuse is not his background, that is a
12 circumstance that could be considered mitigating. I
13 don't, didn't understand, the question did not point to
14 name everything is his background that you wouldn't
15 consider, last history you would consider. I think he is
16 qualified. I mean I think he went over all the points of
17 I will consider everything. I agree with you, he said
18 exactly, he answered the question exactly like you said,
19 would you consider personal background. He said, I
20 wouldn't know, I am in the military, everybody is equal,
21 everybody knows what to expect, to take orders and follow
22 them. That is a military background. For him he doesn't
23 consider the background of a military. The Court's
24 instructions, he said I will accept the Court's
25 instructions. And he never wavered from being a three,

1 all the way through, however y'all characterize it. He
2 wanted to hear everything first. I find him qualified.

3 MR. SECOR: Yes, sir. May I place an objection on
4 the record?

5 THE COURT: You may.

6 MR. SECOR: We would just cite for Mr. Gentle's
7 mitigation impairment, the State versus Bell, Bryant v.
8 Sterling, United States v. Folks, Morgan v Illinois,
9 Eddings v. Oklahoma and Abdul Kabir versus Quarterman.
10 The principle that a Juror is disqualified for cause if
11 mitigation is irrelevant to them or they cannot properly
12 consider mitigation. Thank you, sir.

13 THE COURT: Okay. Your objection is noted for the
14 record. Bring him out here.

15 (Whereupon, the Juror entered the courtroom.)

16 THE COURT: Mr. Gentle, based upon your answer to the
17 questionnaire and my questions and instructions of the
18 Court and the questions from both attorneys the Court
19 finds you qualified. That means you are going to be on a
20 list of qualified jurors that will be maintained here.
21 But you will follow the instructions on the Clerk of
22 Courts website where you found to come back today. Look
23 on that website, qualified jurors are to check back
24 tomorrow night, check back, finally it will say please
25 report to the Lexington Court House on a date and time.

1 It will probably be early next week. Until that time you
2 are under oath to not talk about the case, don't let
3 anybody discuss the case with you, do not do any
4 independent research. What you need to decide this case
5 you will find in this courtroom. The parties will present
6 it to you, my instructions on the law. You and all the
7 other jurors, if you are so selected, will consider all of
8 that testimony from what you hear in the courtroom, not
9 what you hear outside.

10 JUROR: Okay.

11 THE COURT: Thank you so much.

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

14 THE COURT: All right, let's bring in 372.

15 (Whereupon, Juror 372, Tonya Sasser entered the
16 courtroom.)

17 EXAMINATION

18 By The Court:

19 Q Tell me your name and spell it, first and last.

20 A Tonya Sasser, T-O-N-Y-A; S-A-S-S-E-R.

21 Q Ms. Sasser, my name is Eugene Griffith, I introduced
22 myself to you several times. You took an oath Monday, I
23 am asking you the same questions I have asked everybody
24 else.

25 A Okay.

1 Q Have you talked about the case with anybody
2 whatsoever?

3 A No.

4 Q Has anybody tried to talk to you about the case?

5 A No.

6 Q There has been publicity before you took the oath. A
7 lot of publicity way back, recently, this week. I gave
8 you instructions of the allegations on the indictments of
9 the allegations of five counts of murder. Any information
10 which you have received, have you formed an opinion
11 yourself as to what happened in this case?

12 A Yes, sir.

13 Q And what is that opinion?

14 A That he is guilty.

15 Q Okay. Now, I gave you three types of jurors. Do you
16 find yourself on one of those types?

17 A One.

18 Q Type one. You are not going, you are pretty hard on
19 one?

20 A In this case.

21 Q In this case?

22 A Yes, sir.

23 Q So the death of the children have really impacted
24 you?

25 A Yes, sir. One of my nieces went to school with one

1 of the children.

2 Q That is all I need to hear. That would create a huge
3 problem.

4 THE COURT: 372 is excused. Thank you for coming in.

5 JUROR: Thank you.

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

8 THE COURT: We are on Juror 62.

9 (Whereupon, Juror 62, Todd Buehrig entered the
10 courtroom.)

11 EXAMINATION

12 By The Court:

13 Q Juror 62, please state your name and spell it, first
14 and last.

15 A Todd Buehrig, B-U-E-H-R-I-G.

16 Q Mr. Buehrig, I placed you under oath Monday. I am
17 asking you the same questions I asked every Juror, the
18 same order. Took an oath to not talk about the case.

19 Have you communicated with anybody about this case since
20 Monday?

21 A No.

22 Q Has anybody tried to communicate with you other than
23 telling your boss or your wife or spouse, whomever, that
24 you had to come to court?

25 A No.

1 Q Now, there has been publicity in this case, social
2 media, public media, all sorts of publicity before Monday
3 and since also. I read the indictments to the entire
4 panel and provided information and the allegations the
5 State has made against Mr. Jones. He has plead not guilty
6 and is presumed innocent. Have you formed an opinion as a
7 result of the information that is out there that has come
8 to you from any source?

9 A No, I don't know much about the case.

10 Q Okay. Now, your schedule, work, personal, otherwise,
11 starting next week for about three weeks. What do you
12 have if you were selected as a Juror that would impact, I
13 understand missing work, that is going to be an impact.
14 But preplanned, prepaid, impact on your schedule.

15 A No, I am an Executive Director for a non-profit so
16 obviously my schedule is packed. But beyond work related
17 duties I don't have any travel or any prepaid items that I
18 could use as an excuse to get out.

19 Q Subject to the normal inconvenience jurors who have
20 jobs and families, the inconvenience factor, other than
21 that, you don't have any particular scheduled things that
22 you would have to reroute.

23 A No, I do not.

24 Q All right. Now, the subject matter of this case
25 involves allegations of the death of five children. That

1 subject matter has been described to me by the lawyers, I
2 have not seen all of the evidence. I have seen a little
3 bit of it, preliminary hearings, not much. The subject
4 matter is going to be difficult, it is going to be harsh,
5 it is going to be graphic, very difficult is described to
6 me by the lawyers. That type of subject matter regarding
7 the children and being difficult, would that affect your
8 ability, knowing that is the subject matter, to be fair
9 and impartial to both sides, both the State and to Mr.
10 Jones?

11 A I do believe not, no.

12 Q You could listen to testimony like that and still
13 consider it, fair to the State and fair to Mr. Jones?

14 A I believe so, yes.

15 Q Now, I gave you some preliminary instructions on the
16 Capital murder of a trial, phase one is guilt or
17 innocence, phase two is the punishment phase. If the
18 State meets the proof of stage one, hypothetically under
19 my typical types of jurors. Then the jury decides the
20 punishment. Jurors are classified as three typical
21 groups. Not giving you any facts other than the
22 accusations of the murders. Presume those have been
23 proven beyond a reasonable doubt and guilt has been found
24 and now the State is going to prove the aggravating factor
25 and you get to hear mitigating facts. Can you identify

1 yourself as one of those three types of potential jurors.

2 A I believe the option is three. I really don't have
3 an opinion either way on the--

4 Q I have the paper right here.

5 A I believe it is option three. I believe I would be
6 fairly balanced in looking at the evidence, I am not
7 passionate one way or the other when it comes to the
8 Capital punishment.

9 Q I am going to go back, did you look at the jury list?

10 A I did.

11 Q I am sorry, the witness list.

12 A I did.

13 Q The witness list, potential witnesses. Do you know
14 any of them?

15 A I don't, I am new to the County so I don't know many
16 in the area.

17 Q How long have you been here?

18 A We moved her about a year ago.

19 Q Welcome to South Carolina.

20 A No, I was in Richland County, just down the road. We
21 built a house over here.

22 Q Okay. Welcome to Lexington. I am from Newberry
23 County so I am not far, just near, we all touch the lake.
24 I will go back to the guilt or innocence portion, phase
25 one. We will talk about that. In that case the State has

1 got to meet the burden of proving the murder beyond a
2 reasonable doubt. They have got to do that beyond a
3 reasonable doubt and they have got to do that by calling
4 witnesses and presenting evidence. During that
5 presentation the Defendant is allowed to have defenses
6 which are shown by the evidence or which are claimed by
7 them upfront to be considered by the jury and instructed
8 by the Court if the evidence supports it. Okay?

9 A Okay.

10 Q Potential statutory defenses, I am going to read all
11 of them to you, not all of them are going to be
12 applicable. I am going to read them all and tell you that
13 if the evidence supported it I would instruct you on that
14 aspect of the defense. Okay.

15 A Okay.

16 Q Potential defenses are identification, accident,
17 involuntary intoxication, self-defense, necessity,
18 insanity, guilty but mentally ill, defense of habitation,
19 entrapment, duress and alibi. Those are potential
20 defenses available under our statute. If the testimony
21 were to support the jury can consider those I would
22 instruct you on them. Can you give meaningful
23 consideration to the guilt or innocence phase, meaning
24 understand my instructions will include the State has the
25 burden of proving each and every element of the murder

1 beyond a reasonable doubt. Any defenses presented,
2 whatever they are, the aspect of a defense, the jury's
3 consider instructions regarding those defenses, consider
4 the evidence. Can you be a fair and impartial Juror given
5 those circumstances and parameters to all of my
6 instructions?

7 A Yes.

8 Q Mr. Jones has entered a plea of not guilty by reason
9 of insanity and by that plea that is brought into play
10 potential verdict forms of four different things.
11 Potential verdicts that could be reached by the jury,
12 guilty, guilty but mentally ill, not guilty by reason of
13 insanity and not guilty at all. Given those are four
14 potential verdict forms can you give meaningful
15 consideration to all the testimony and evidence presented
16 during the guilt or innocence phase and meaningful
17 consider each and every one of those potential verdict
18 forms, consider my instructions and the testimony and
19 evidence?

20 A Yes.

21 Q Can you be fair and impartial in doing so?

22 A Yes.

23 Q If the not guilty or not guilty by reason of insanity
24 verdict is reached the case ends, it stops there. If the
25 State meets its burden of proving murder the case goes to

1 phase two. Phase two is when the jury considers, can you
2 give meaningful consideration to those particular
3 defenses, any of them if they are appropriate to be
4 instructed considering the testimony and evidence in the
5 trial. Can you do that?

6 A Yes.

7 Q Also, if not guilty verdict or not guilty by reason
8 of insanity verdict is reached the case ends. It stops
9 there. If the State meets its burden of proving murder the
10 case goes to phase two. Phase two when the jury
11 considers, the State has to prove an aggravating factor.
12 I am going to name off several aggravating factors and
13 tell you the State has got to prove at least one. Murder
14 of a policeman, murder of a child, rape of murder,
15 kidnapping of murder, multiple victims in murders. Those
16 are statutory aggravating factors. The State must prove
17 one of those beyond a reasonable doubt. Mitigating
18 factors, there are some in the statute and there are some
19 that are not classified under the statute. The jury
20 considers mitigating factors, here are the statutory ones.
21 The Defendant has no significant history of prior criminal
22 conviction involving the use of violence against another
23 person. The murder was committed while the Defendant was
24 under the influence of mental or emotional disturbance.
25 The victim was a participant in the Defendant's conduct or

1 consented to the act. The Defendant was an accomplice in
2 the murder committed by another person and his
3 participation was relatively minor. The Defendant acted
4 under duress or under the domination of another person.
5 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. And any other
13 mitigating factors that you find such as the Defendant's
14 childhood history, broken home if that is the case,
15 physical condition can be for consideration. Mitigating
16 factors is any reason to cause you to vote for life
17 without parole. Now, in the sentencing portion the State
18 has got to prove the aggravating factor beyond a
19 reasonable doubt. Mitigating factors are just considered
20 by the jury if they want to consider them because they
21 will be presented. No burden of proving those. Can you
22 give meaningful consideration to all that testimony,
23 whether it be aggravating testimony or mitigating factors
24 by the law as instructed by the Court and be fair and
25 impartial to both the State and the Defense?

1 A Yes.

2 Q Now, do you understand the verdict in the sentencing
3 phase is not predetermined, the death penalty is not
4 automatic. Do you understand?

5 A Yes.

6 Q Death or life are the two choices. If the jury finds
7 a verdict unanimously of the death penalty that penalty is
8 carried out. If the jury unanimously finds for life
9 without parole that penalty is carried out. Those are the
10 two options for jury's. Can you meaningful consider my
11 instructions on that, all the testimony, aggravating and
12 mitigating and be fair and impartial to both the State and
13 the Defense?

14 A Yes.

15 Q Do you have any religious, personal, moral belief
16 which would prevent you from entering a verdict of the
17 punishment of life without parole?

18 A No.

19 Q Do you have any religious, personal or moral belief
20 that would prevent you from finding a punishment of the
21 death penalty?

22 A No.

23 THE COURT: Mr. Madsen.

24 MR. HUBBARD: Can we approach, Your Honor?

25 THE COURT: Yes, sir.

1 (Whereupon, a bench conference was held in the
2 presence of the Juror but out of the hearing of the
3 Juror.)

4 THE COURT: Mr. Buehrig, I have been apprized by the
5 State that you are a participant in or active in the
6 National Safety Counsel. What exactly is that?

7 JUROR: The National Safety Counsel is a National
8 Non-Profit but we are the Southeastern Chapter in Georgia
9 and South Carolina. We work with defensive driving in the
10 State, we place safety in emergency care. Our primary
11 area is defensive driving. Our largest program is called
12 Alive at Twenty-five. It is a distracted driving program
13 in high schools.

14 THE COURT: I am familiar with that.

15 JUROR: In South Carolina. We work with 140 high
16 schools to mandate that their students take the, a
17 four-hour course prior to being able to park on campus.
18 So that is one of our biggest most well known programs.

19 THE COURT: I am familiar with that. The fact that
20 you are involved in National Safety Council, would that
21 impact your ability to be fair and impartial to both the
22 Defense, particularly the Defense but also the State?

23 JUROR: No, but I do want to be transparent. The
24 Solicitor is the newest addition to our Board of
25 Directors. We have not met, he is a brand new addition.

1 I think we corresponded by email once or twice but I do
2 want to be transparent about that.

3 THE COURT: And he mentioned very, very similar facts
4 to that. You reached out via email and invited him and
5 told him he was nominated by someone. Now, the fact that
6 he is involved on the Board for your non-profit, is that
7 going to affect your ability to perform your duties as a
8 non-profit organization or perform your duties here as a
9 Juror?

10 JUROR: No.

11 THE COURT: You don't think so?

12 JUROR: No.

13 THE COURT: Can you be fair and impartial knowing
14 that, you may see him again?

15 JUROR: See the Solicitor?

16 THE COURT: Yes. Can you do that?

17 JUROR: Yes.

18 THE COURT: Okay, Mr. Madsen.

19 EXAMINATION

20 By Mr. Madsen:

21 Q Mr. Buehrig.

22 A Buehrig.

23 Q Mr. Buehrig, the Judge kind of went over some stuff
24 with you asking you if you can kind of be fair and
25 impartial. My name is Rob Madsen and I represent, one of

1 the lawyers that represents Tim. What I want to talk to
2 you about is just kind of your feelings, your thoughts,
3 kind of your personal opinions. Is that okay?

4 A Sure.

5 Q Did you know any of the other jurors when you came
6 in, I guess a little over a week ago?

7 A I did not.

8 Q And let me just kind of ask you, what are your
9 general feelings on the death penalty?

10 A I am not really partial one way or the other. I
11 guess I feel that there are certain crimes that warrant it
12 and perhaps it is a deterrent to some crimes. At the same
13 time I also think it is not always equitably, I think
14 sometimes human error comes into our problem with the
15 death penalty as well. So I guess I am not passionate one
16 way or the other on the issue. I can see both sides.

17 Q When you said, deterrent to certain crimes. Can you
18 explain that to me?

19 A I guess in the idea that, like a premeditate crime.
20 If you, the idea the death penalty is there, perhaps that
21 is something that would stop that from happening or stop
22 that individual performing that crime.

23 Q So, I am want to ask you. If you were the Governor
24 of South Carolina and they put a Bill on your desk and one
25 of them says, we will have the death penalty, the other

1 one says we won't have the death penalty. Which one would
2 you sign?

3 A It is either, or?

4 Q Either, or.

5 A I am not sure I would sign either one of them.
6 Mandating that there wasn't an option, I am sorry, you
7 have to--

8 Q Either you have the death penalty or not have the
9 death penalty and you were the Governor and the decision
10 was up to you?

11 A I am not sure how to answer that question.

12 Q Okay. Fair enough. Let me change the subject a
13 little bit. As you heard, the Judge told you that there
14 is a number of verdicts. Not guilty, guilty, guilty but
15 mentally ill and not guilty by reason of insanity. And
16 you heard that Tim has plead not guilty by reason of
17 insanity which means that because of a mental disease or
18 defect, someone can't appreciate the legal or moral
19 wrongfulness of their actions. Do you understand that?

20 A Yes.

21 Q And so basically what that means is they are saying,
22 hey, I did the action, I did the killings but because of
23 that mental or, because of that mental disease or defect
24 they don't understand the legal or moral wrongfulness of
25 their actions. Some people would say, hey, you know what,

1 for me, that is kind of a copout, that is an excuse and I
2 can't consider that. My question is, is that you?

3 A No. I mean I would have to understand a little more
4 about the issue involved and the signs behind it. My
5 father was a psychologist and so I think, he taught me to
6 sort of believe about, it is not always a black or white
7 situation. So I think there is room for that as a
8 defense, I think I would need quite a bit of evidence to
9 kind of, of push me in that direction but I am open to it.

10 Q Okay. So let me ask you then. Let me kind of put
11 you on a jury and what I want to talk to you about is your
12 feelings on punishment for a guilty murderer of multiple
13 children. So you understand we are talking about someone
14 who, if you heard any evidence of any kind of mental
15 defense, that person knows the different between right and
16 wrong. That person maliciously, well there is no excuse,
17 there is on justification. We know that this person is
18 guilty, guilty. I mean we know that this person did it.
19 And my question to you, that person who chose to
20 maliciously kill those multiple children. What do you
21 think as the death penalty being the appropriate
22 punishment for that guilty, guilty murderer.

23 A So we have removed all options, no doubt.

24 Q We know it is that person, we know that they are the
25 one that did it, we know that they knew right from wrong

1 and we know it is not a self-defense or an accident or
2 anything like that. We know we have got the right person
3 and they did it.

4 A And your question is, is the death penalty or--

5 Q My question is, what do you think of the death
6 penalty as being the appropriate punishment for that
7 guilty murderer of multiple children?

8 A I think it could be an option in that scenario if we
9 have removed all doubt, if we removed all the
10 possibilities from that.

11 Q And are there things that you would want to know
12 before you made that decision?

13 A I mean the scenario you just showed me is, convincing
14 that we have eliminated all doubt. But I mean, I think
15 there is a lot of steps before I would get to that point
16 to issue for that opinion. As for specifics about what I
17 would know, I am not really sure.

18 MR. GRAHAM: Objection, Your Honor, I object to the
19 question and ask Your Honor to instruct. He is asking one
20 specific thing that he might or might not care about.

21 THE COURT: Okay. Go back and recharacterize your
22 question. I will sustain the objection. Rephrase it and
23 you kind of know where you are going anyway.

24 MR. MADSEN: I can just kind of move on.

25 THE COURT: All right. That will be fine too.

1 Q So the Judge kind of told you about mitigation and
2 you heard there are certain things statutory type of
3 mitigation. But you understand that the law never
4 requires a guilty murderer to be put to death. Do you
5 understand that?

6 A Correct.

7 Q And so what that basically means is that the law is
8 always satisfied with a life sentence in this case, in any
9 case or even the worst case you could imagine. You
10 understand that?

11 A Correct.

12 Q Mitigation is basically any reason to give someone
13 the life penalty. You understand that?

14 A Yes.

15 Q And while the Judge told you about statutory
16 mitigation, there is this other mitigation and it can be
17 different for each individual Juror. So in other words,
18 say Juror number one here says, you know what, I saw a
19 spark of humanity, I saw the relationship with his dad and
20 for me that is reason that I want to vote for life. You
21 understand that?

22 A Correct.

23 Q And Juror number two could say, you know what, I
24 didn't see that but I saw some mental illness there. And
25 for me, for me that mental illness is why I want to vote

1 for life. Do you understand that?

2 A Yes.

3 Q And those two jurors could have, you know, different
4 opinions, they don't have to have the same reason. You
5 understand that?

6 A So you are saying basically, my personal opinions or
7 beliefs or how I can refer my own life to the situation of
8 the Defendant.

9 Q Well, each Juror.

10 A Okay.

11 Q Because mitigation doesn't have any type of burden of
12 proof. The State has got to prove aggravating
13 circumstances to you and the jury has got to find those
14 unanimously and beyond a reasonable doubt. Mitigation
15 does have any type of burden.

16 A Okay.

17 Q And then there could be a third Juror that says, you
18 know what, I didn't see what Juror number one saw, I
19 didn't see what Juror number two saw, in fact I can't even
20 really tell you why I want to vote for life. I just, that
21 is, I just believe in that. Could you respect that
22 decision?

23 A Yes. Not having been in this position before, to
24 make that decision, but I guess I can see how a personal
25 opinion and intuition can play to that.

1 Q And you understand that after consideration of
2 mitigation that the penalty is actually based on each
3 juror's individual moral judgment. Do you understand
4 that?

5 A Okay.

6 Q Have you ever heard that term before?

7 A Moral judgment?

8 Q Well, yes, an individual moral judgment?

9 A Yes.

10 Q And the way it is best been described to me is,
11 whatever your faith is. You have made an individual moral
12 judgment about what your faith is. And you might, someone
13 over here that has made a different individual moral
14 judgment about their faith. And you would expect them to
15 respect your individual moral judgment about your faith,
16 wouldn't you?

17 A Correct.

18 Q And you would give them respect about what they
19 believe, correct?

20 A Correct.

21 Q And so the law says that each one of those jurors
22 back there have an individual moral judgment about what
23 they believe the appropriate sentence is. Do you
24 understand that?

25 A Yes.

1 Q So you understand that once a Juror, the jurors,
2 obviously when they are back there in the jury room, they
3 should discuss their thoughts and opinions with other
4 jurors, kind of have a regular civil discourse. Do you
5 understand that?

6 A Yes.

7 Q But once someone makes their individual moral
8 judgment it is not appropriate for them to be bullied out
9 of that decision or browbeat. You agree with that, don't
10 you?

11 A I do, yes.

12 Q And certainly once someone makes their individual
13 moral judgment, the law says, hey, you can't just be
14 bullied or browbeaten or give it up just so you can go
15 along with the majority. You understand that, right?

16 A Yes.

17 Q And are you someone that if you are back there and
18 you see the bullying or the browbeating going on that you
19 could step in and say, no, no, no. This has past, you
20 know, normal civil discourse, this is inappropriate, this
21 person has made their individual moral judgment, could you
22 kind of step in?

23 A I would hope so. I am assuming that this follows
24 intense discussions and, I mean, obviously I would respect
25 anyone's opinion. But, I mean, it has to be challenged to

1 a point based on what we have learned. But obviously a
2 person's opinion is their own. I can't change that.

3 Q And you understand that if it gets to the point where
4 it gets past that normal back and forth civil discourse
5 that if it was, got to the point of the bullying or the
6 browbeating, that the law says, hey, you can write a note
7 to the Judge and say this is just gotten out of hand. Do
8 you understand that?

9 A Yes.

10 Q And if you saw that would you be able to do that?

11 A I believe so, yes.

12 Q For you, does someone's personal life history, does
13 that matter to you as far as determining what the
14 appropriate punishment would be?

15 A What do you mean by personal life history?

16 Q Well, just their upbringing, just how they have grown
17 up?

18 A I wouldn't believe so, no. Can you give me an
19 example of what you are referring to.

20 Q Well, maybe someone had a hard life. Like the Judge
21 said, I think he might of used some examples, had a hard
22 life, substance abuse in the past, things along those
23 lines.

24 MR. GRAHAM: Your Honor, I move to object. If he
25 wants to ask the question the way you have asked the

1 question I think it is appropriate.

2 THE COURT: I sustain the objection. Rephrase it
3 similar to the way the Court did because I think that has
4 been asked and answered to consider mitigation.

5 Q Let me ask, let me just kind of move forward and ask
6 this. The fact that the Solicitor in this case is asking
7 for a death sentence and I guess he is on your Board.
8 One-hundred percent sure that wouldn't affect your
9 decision?

10 A It would not at all, no. As I said, the Solicitor
11 and I have never met before.

12 Q Sure.

13 A Prior to today.

14 Q Obviously I have got to ask those questions.

15 A Sure.

16 Q Just to make sure. That is all the questions I have.

17 THE COURT: Mr. Graham.

18 EXAMINATION

19 By Mr. Graham:

20 Q Is it Buehrig.

21 A Buehrig.

22 Q Thank you for being here this afternoon. My name is
23 Shawn Graham and I am one of the Prosecutor's in the case.
24 I have a few follow-up questions for you. In the guilt or
25 innocence phase, you understand because of his plea of not

1 guilty by reason of insanity that there are four verdicts.

2 A What was just read, correct.

3 Q You have guilty, guilty but mentally ill, not guilty
4 by reason of insanity and not guilty. Those four for the
5 jury to consider.

6 A Okay.

7 Q You are going to hear most likely testimony from
8 psychologist and psychiatrist and other people like that,
9 experts. Because of the rules of court most people aren't
10 allowed to give opinions but experts are. So they would
11 make an opinion, make an opinion that he was insane and he
12 didn't understand the moral differences or the difference
13 between right and wrong, legally or morally because of a
14 mental disease or defect. Okay?

15 A Okay.

16 Q You would understand or agree with me that as a Juror
17 you just don't take that opinion blindly?

18 A Correct.

19 Q You still evaluate it, use your own common sense to
20 determine whether you believe that opinion or whether to
21 support it?

22 A Correct.

23 Q If there is a verdict of guilty but mentally ill or a
24 guilty, a guilty verdict then we would go to that second
25 phase. And in the second phase, if you or a member of the

1 jury found an aggravating circumstance which as the Judge
2 explained would be, in this case, would be either the
3 death of a child under eleven or multiple deaths. Only
4 then could you consider the death penalty as an option.

5 A Okay.

6 Q At that point, as a Juror, you would either have the
7 decision to make life without parole or death. You
8 understand that?

9 A Correct.

10 Q Okay. In making that decision you have to listen to
11 all the evidence, evidence that is put up by the State and
12 evidence that is put up by the Defense. Anything that the
13 Defense puts up is called mitigation. Things for you to
14 consider, a reason to give not death but life. You
15 understand that?

16 A Correct.

17 Q Just because you hear mitigation doesn't mean you
18 have to give a life sentence. You understand that?

19 A Yes.

20 Q It is just something to consider. If after hearing
21 all the evidence, both the good and the bad, and the
22 aggravation and mitigation, if you felt life was the
23 appropriate sentence could you give a verdict of life
24 without parole?

25 A I could, yes.

1 Q If after hearing all the evidence in the punishment
2 phase, the good and the bad, and you thought death was the
3 appropriate sentence, could you make a vote for death?

4 A I could, yes.

5 Q And one final question, if you and all the other
6 jurors, after deliberating and going back and forth and
7 explaining everybody's position and what you are
8 considering and why you are considering and listening to
9 what they are saying, if all of you unanimously agreed
10 that death was the appropriate verdict in this caese you
11 would actually have to sign a piece of paper with your
12 name. If that is the decision that you and the other
13 jurors reach would you actually be able to put your name
14 on a document for the death penalty?

15 A I could.

16 Q Thank you very much.

17 THE COURT: Anything else, Mr. Madsen?

18 MR. MADSEN: No, sir.

19 THE COURT: Step in the back and I will have you back
20 out here in a second.

21 (Whereupon, the Juror was excused from the
22 courtroom.)

23 MR. MADSEN: Judge, we believe that he would be
24 mitigation impaired. He had indicated that the background
25 wouldn't be relevant as far as determining punishment. So

1 we do believe that he ought to be excluded. I think Joy
2 has it but we would cite State versus Bell, Bell versus
3 Sterling, United States versus, Morgan versus Illinois,
4 Eddings versus Oklahoma.

5 THE COURT: Mr. Graham.

6 MR. GRAHAM: Your Honor, he answered your questions
7 and said that he could consider everything. I think when
8 you start going down the road and asking specific
9 questions, because something is not important to him
10 doesn't mean he couldn't consider it. And when Your Honor
11 gives him the law and told him that he had to consider it,
12 every element of mitigation, he acknowledged that he would
13 follow the law and do what he was suppose to do. He said
14 that he would listen to all the good and the bad and based
15 on that to make a decision. I think the questions are
16 inappropriate and I think that is why we keep running into
17 the same problem. Regardless, Your Honor, I think he is
18 qualified with the totality of the circumstances.

19 THE COURT: Based upon the totality of all the
20 answers to his questions, the questionnaire, the questions
21 answered by the Court as well as those answered for the
22 Defense and prosecution, I find him qualified. Bring him
23 back in.

24 (Whereupon, the Juror entered the courtroom.)

25 THE COURT: Mr. Buehrig, the Court has found, based

1 on all of your answers, I find you qualified to sit as a
2 potential Juror. So what is going to happen next is, the
3 qualifying jurors, trying to find a group of qualified
4 jurors sufficient enough to meet the demands. You are on
5 that group so you will follow the website. The qualified
6 jurors is the instructions you will look for. It may
7 state to please check back tomorrow, it will finally say
8 please report back to Lexington County Court House of some
9 date and time. I suspect it will be early next week, but
10 just check that website. Do not, under your oath, talk
11 about the case, allow the case to be discussed with you,
12 do any independent research. Do not do any independent
13 research, surfing the internet, looking up facts. There
14 is a lot of information out there, none of it is, been
15 scrutinized in this courtroom in a court record, none of
16 the rules of evidence. I want you and all the jurors to
17 decide the case on what you hear in this courtroom, not
18 something that you have received outside the courtroom.
19 Can you do that under your oath?

20 JUROR: Yes, sir.

21 THE COURT: I will see you when you get summoned
22 back.

23 JUROR: Okay.

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

1 THE COURT: Let's take a short break.

2 (Whereupon, a short break was taken.)

3 THE COURT: Let's bring in number 495.

4 (Whereupon, Juror 495, Amy Wright entered the
5 courtroom.)

6 EXAMINATION

7 By The Court:

8 Q Ms. Wright, spell your name and say it so I can make
9 sure you are speaking loud enough for Ms. Holston.

10 A Wright, W-R-I-G-H-T. Amy, A-M-Y.

11 Q Ma'am, since Monday, I placed you under oath and
12 asked you not to talk about the case. I ask the same
13 questions to everybody else. Have you talked about the
14 case in any manner whatsoever with anyone?

15 A I have not.

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

17 A No.

18 Q Do, you heard some publicity because I gave you some.
19 I gave you the allegations--

20 A Only what you gave me.

21 Q That is all you have heard?

22 A That is all I have heard.

23 Q Have you formed an opinion as to what happened based
24 upon what I told you?

25 A No. I need more facts.

1 Q You need more facts.

2 A I need more facts.

3 Q Excellent. Tell me about your work schedule coming
4 up, if the jury were to start, if you were selected as a
5 qualified Juror and we were to start next week. I am
6 expecting your jury responsibilities will carry through
7 late May, early June, so about three weeks.

8 A Okay.

9 Q Would that impact your personal schedule, work
10 schedule or otherwise?

11 A No, sir.

12 Q You are open?

13 A I am open.

14 Q Excellent. I gave you an overview of the criminal
15 process. Do you, did you understand those instructions?

16 A I did.

17 Q Now, based upon that instruction, that tells you that
18 a Capital case is generally divided into two phases.
19 Phase one is the guilt or innocence phase. Phase two is
20 the punishment phase. Presuming phase one was proved by
21 the State and a guilty verdict was found then the jury
22 were to consider and the State proved an aggravating
23 factor and a mitigating factor would also be presented.
24 Could you identify yourself as one of those three typical
25 types of jurors?

1 A Type three.

2 Q Type three. And your answer to the first question
3 kind of eluded that, you need more facts.

4 A Yes.

5 Q Now, I am going to go back to another question and
6 ask you this. The subject matter that, the death of these
7 children. It has been described to me, lawyers have heard
8 and they have exchanged all of the information so they
9 know all of the evidence out there available, I don't.
10 They have described the testimony and evidence as being
11 graphic, harsh, unpleasant, it is going to be tough. That
12 is the kind of answers and descriptions I have gotten
13 regarding the subject matter that will be presented to the
14 jury. Will testimony and consideration of that type of
15 subject matter being described as tough and unpleasant be
16 difficult for you to receive and consider and also be a
17 fair Juror considering it being that unpleasant?

18 A I think I could be fair.

19 Q Understanding the testimony will be unpleasant, can
20 you be fair and impartial and consider that testimony?

21 A I can.

22 Q Or evidence.

23 A I can.

24 Q Maybe photographs, descriptions, I don't know what
25 all might be presented but unpleasant and tough is what I

1 am told. Can you do that?

2 A I can.

3 Q Okay. Now, in the two phase of a Capital case, the
4 first phase is guilt or innocence. In that phase the
5 State is required to prove the murder beyond a reasonable
6 doubt. They have got to prove the killing of another with
7 malice aforethought, all elements beyond a reasonable
8 doubt. A person accused of that has several defenses
9 available to them under the statute. I am going to read
10 them all and come back and tell you, I will instruct on
11 whichever one of those may be relevant depending on the
12 testimony. Potential defenses to a murder are
13 identification, accident, involuntary intoxication,
14 self-defense, necessity, insanity, guilty but mentally
15 ill, defense of habitation, entrapment, duress or alibi.
16 Those are potential defenses. The testimony has not been
17 presented, it will be during the trial and during that
18 first phase. Mr. Jones has claimed one of those defenses
19 and intends to present evidence to that defense. Other
20 testimony could come into play which may impact whether
21 any one of these other defenses is also applicable. So
22 can you consider all the testimony and evidence, knowing
23 the State has the burden of proving its case of murder
24 beyond a reasonable doubt, consider any of the defenses
25 instructed by the Court and the aspects of the law on

1 those particular defenses and act as a fair and impartial
2 Juror for both the State and the Defense.

3 A Yes, sir.

4 Q Can you do that?

5 A Yes, sir.

6 Q All right. Now, Mr. Jones has claimed and is going
7 to present, has entered a plea for not guilty by reason of
8 insanity. By virtue of that plea that brings into play
9 four potential verdicts. Forms of the verdict could be
10 guilty, guilty but mentally ill, not guilty by reason of
11 insanity and not guilty at all. Those are the four
12 verdict forms.

13 A Okay.

14 Q Can you likewise, the same circumstances, consider
15 the State has the burden of proving its case beyond a
16 reasonable doubt, consider all aspects of the facts,
17 testimony and evidence presented, weigh that and consider
18 it, meaningfully consider it consistent with my
19 instructions on their burden, the State's burden as well
20 as the aspects of those verdicts. Can you meaningful
21 consider each and every one of those four potential
22 verdicts?

23 A Yes, sir.

24 Q Can you be fair and impartial in doing so?

25 A Yes, sir.

1 Q Now, if the State does not meet its burden or proving
2 the case or the jury is finding not guilty by reason of
3 insanity, if that happens the case is over, it ends. If
4 the State meets its burden, proves its guilt beyond a
5 reasonable doubt the case moves to phase two. During
6 phase two jury's have to make a decision on punishment.
7 The jury has got two choices subject to some more facts to
8 be proved. The two choices are life or death. So the
9 State must prove, during the punishment phase, one of
10 several statutory aggravating factors and I will name off
11 a few. Murder of a policeman, murder of a child, rape of
12 murder, kidnapping of murder, multiple murders. Those are
13 aggravating factors under our statutes. The State has to
14 prove at least one of those beyond a reasonable doubt. If
15 they do so then the State may seek a sentence of death.
16 Also during the sentencing phase the Defendant presents on
17 mitigating factors. There are mitigating factors allowed
18 under the statute, there are also mitigating factors that
19 are just general mitigating factors jurors can consider.
20 I will list the mitigators. The Defendant has no
21 significant history of prior criminal conviction involving
22 the use of violence against another person. The murder
23 was committed while the Defendant was under the influence
24 of mental or emotional disturbance. The victim was a
25 participant in the Defendant's conduct and consented to

1 the act. The Defendant was an accomplice in the murder
2 committed by another person and his participation was
3 relatively minor. The Defendant acted under duress or
4 under the domination of another person. The capacity of
5 the Defendant to appreciate his criminality of his conduct
6 or to conform his conduct to the requirements of law was
7 substantially impaired. The age or mentality of the
8 Defendant at the time of the crime. The Defendant was
9 provoked by the victim in committing the murder. The
10 Defendant was below the age of 18 at the time of the
11 crime. The Defendant had mental retardation at the time
12 of the crime. Those are statutory mitigators. There are
13 also other factors that jurors can consider, whatever they
14 want in imposing a life without the possibility of parole
15 sentence including his childhood, the way he was raised,
16 broken home if that is what the circumstances, whatever
17 else, they can consider any of those factors as mitigating
18 factors in deciding to vote for a life sentence. Now, can
19 you give meaningful consideration to the State's burden of
20 proving an aggravating factor beyond a reasonable doubt,
21 as well as any and all mitigating facts which are
22 presented by the Defense, give meaningful consideration to
23 those and the instructions of the Court on the law, how to
24 evaluate all of that presentation of evidence and
25 testimony and act as a fair and impartial Juror?

1 A Yes, sir.

2 Q Can you be fair and impartial to both the State and
3 to the Defense considering that same question?

4 A Yes, sir.

5 Q Now, do you know of any reason why you could not,
6 whether it be personal, religious, moral, could not find a
7 punishment in the sentencing phase of the death penalty?

8 A No, sir.

9 Q Do you know any reason whatsoever, religious, moral,
10 personal belief that you could not make a finding of life
11 without parole sentence?

12 A No, sir.

13 Q Do you know any reason whatsoever you can't be fair
14 and impartial to both sides?

15 A No, sir.

16 Q Did I ask you about the witness list?

17 MR. MCGUIRE: I don't think so, Judge.

18 A No. I didn't know anybody on it.

19 Q Did you know anybody on it?

20 A No, sir.

21 Q Nobody on the witness list. That won't be a problem
22 then. Sorry about that.

23 EXAMINATION

24 By Mr. McGuire:

25 Q Good afternoon, Ms. Wright, how are you doing today.

1 A I am good, how are you.

2 Q A little hoarse. Thank you for being with us and
3 being patient, this is a slow process. We have been in
4 here working the whole time. I am going to ask you some
5 questions about your views of the death penalty.

6 A Okay.

7 Q And I want to start by asking you to put yourself in
8 a situation where you are the Governor of South Carolina
9 for a day and you have a Bill on your desk that says, we
10 are not going to have the death penalty anymore. And you
11 have a Bill where you keep the death penalty. Which way
12 would you go?

13 A I want to say I don't know.

14 Q Let's say you were Queen of--

15 A Queen for the day.

16 Q Queen for a day and it is the Kingdom of Right and
17 only you can make the decision, which way would you go?

18 A Probably life without parole.

19 Q You lean towards life without parole?

20 A Yes.

21 Q Okay. And would you agree with the statement that
22 the death penalty, we do have it obviously now but it
23 should be reserved for the worst of the worst?

24 A Yes.

25 Q And the Judge talked to you about the category of

1 some kind of cases with aggravating factors. And I want
2 to focus on the one, killing multiple children. Would
3 that fit in that category, the worst of the worst?

4 A Yes.

5 Q And could you consider the death penalty for that?

6 A I could.

7 Q Could you consider the life sentence for that?

8 A I could.

9 Q And in determining what sentence is appropriate do
10 you think that the person who committed the murders, the
11 killings rather, their background, how they grew up, their
12 walk in life, their background, character, in fixing
13 punishment for that type of crime, would the background of
14 the person be relevant?

15 A It could.

16 Q And when you say it could, what are you thinking?

17 A Not knowing everything it is hard for me to, like, I
18 have--

19 Q I know, it is extremely difficult.

20 A Yes, it is really--

21 Q Here is my question, some folks say, you know what,
22 if it doesn't have anything to do with the actual
23 incident, the offense, then I am not going to consider it
24 because I am just going to look at the facts and the
25 punishment is going to fit the crime and i don't really

1 think it is relevant about somebody, how they grew up 10,
2 20 years ago. Is that you?

3 A I think that it, I don't know. Honestly, it is, yes.

4 Q You would be open to hearing it?

5 A I would have to hear the whole thing in order to know
6 whether or not how I would determine that. It just
7 depends on the situation.

8 Q Sure. And the Judge also told you that Mr. Jones has
9 plead not guilty by reason of insanity. And that means
10 there is an admission that the Defendant committed the
11 acts and the only thing at issue is what was his mental
12 state at the time. And the Judge would tell you that, if
13 you find that there was a mental disease or defect that
14 prevented the person, the Defendant, from right from wrong
15 or moral right from wrong or legal right from wrong, then
16 the verdict would be not guilty by reason of insanity.
17 Does that make sense?

18 A Yes.

19 Q Have you heard those words before, that definition
20 before?

21 A No.

22 Q But now that you know it, some folks might say, you
23 know what, killing multiple innocent children, not guilty
24 by reason of insanity is kind of a copout or almost
25 letting the guy go and it wouldn't really consider that

1 verdict. What do you think about that statement?

2 A I don't know.

3 Q Okay. I want to kind of walk through this process
4 with you and tell you a little bit about how this works, a
5 little bit more detail. If I say something you don't
6 understand or if I say something confusing you just start
7 asking me questions. Okay.

8 A Okay.

9 Q And the Judge told you a little bit about the first
10 phase of a Capital trial, that is just a regular, do they
11 have the right guy, is he guilty, that sort of thing. But
12 the penalty phase in a Capital trial is extremely unique
13 and it has a lot of things change, it is not a group
14 decision anymore, it is twelve individual jurors and each
15 Juror has the right to have their own view about what the
16 punishment should be. Does that make sense?

17 A Yes.

18 Q And the way and an example of how that could work
19 out. A Juror number one right here could say, you know
20 what, I saw something about his mental health, mental
21 illness and I am not going to vote for death for somebody
22 who I think has a broken mind. And that is my reason.
23 And then another Juror could say, you know what, I think
24 he knew right from wrong and I am not buying the mental
25 health thing. But I saw an enduring relationship between

1 the Defendant and his father. I saw a spark of humanity
2 there, some hope of redemption and this Juror could say
3 that is going to be my reason and they don't have to even
4 agree. In fact, different jurors could have twelve
5 different reasons to vote for the life penalty. Does that
6 make sense?

7 A Yes.

8 Q The whole jury doesn't have to agree, this is why we
9 are doing this. Does that make sense?

10 A Yes.

11 Q Okay. Sound fair?

12 A Yes.

13 Q And the Judge would instruct the jury at the end of
14 the trial, if we got to a penalty phase, that any
15 individual Juror could vote for the life penalty for any
16 reason, no reason or mercy alone. Does that sound fair?

17 A It does.

18 Q So in that situation some people are better at
19 articulating their opinions, views and some person on the
20 jury might say, you know what, I can't really put into
21 words just why I will not vote for death, why that is not
22 right for me. But as I contemplate the rest of my
23 mortality I don't want that black mark on my sole but I
24 can't really give it a reason. They are allowed to do
25 that. Does that sound fair?

1 A Yes.

2 Q And the way this decision is described, individual
3 position on what punishment should be is called an
4 individual moral judgment. And if it becomes a belief
5 that is strongly held, a conscientious belief, where it
6 would harm their conscious to change that position it
7 would be against the Court rules for that person to just
8 go over to the majority for the sole sake of joining the
9 majority. Do you understand that would be wrong?

10 A Yes.

11 Q While we expect reasonable deliberations and civil
12 discourse, if you saw somebody, you could see it on their
13 face, they had reached, it would harm their conscious to
14 vote for death, and they were being bullied or forced or
15 coerced to change their position, to go with the majority,
16 that would be wrong. And could you jump in and stop that?

17 A Yes.

18 Q And one of the things you could do, you could just
19 pass a note out to the Judge saying, we were told these
20 proceedings have to be conducted with dignity and civility
21 has left the room, it has become coercive, it has become
22 bullying. And, Judge, could you help us get that back
23 here, could you help us get back to the civility. Could
24 you pass a note out like that?

25 A Yes.

1 Q I think that is all I have for you. That is all,
2 thank you so much.

3 THE COURT: Ms. Mayes.

4 EXAMINATION

5 By Ms. Mayes:

6 Q Good afternoon, Ms. Wright. My name is Suzanne
7 Mayes, I am a prosecuting attorney in this case. We
8 represent the State. I just have a few questions for you,
9 just to follow-up kind of on some of the reasons you gave
10 just a few moments ago.

11 A Okay.

12 Q Defense Counsel was asking you about your views on
13 the death penalty. I think your initial response was you
14 couldn't really even answer what you would do if you--

15 A I would have to hear more, yes.

16 Q Have you thought much about the death penalty prior
17 to coming into jury service last week?

18 A No. To be honest, no. I have never had to do
19 anything like this so it is not something you think about
20 on a daily basis.

21 Q Not something you had to write an essay for or
22 anything like that in school. With that in mind, how
23 would you best summarize for us here in court, what your
24 feelings are about the death penalty and whether it is
25 appropriate under the law?

1 A In certain situations I feel that there are times
2 that people cannot be redeemed. But at the same time, I
3 don't know if I could, I don't know, I don't know. I
4 would have to know more, I am sorry.

5 Q When you said I don't know if I could and I don't
6 want to put words in your mouth but can you finish that
7 statement--

8 A I don't know if I could without knowing all the facts
9 because that is someone's life. So I would have to know
10 everything in order to make a decision like that. I can't
11 just, just give you a yes or no to that without knowing
12 everything about it.

13 Q So I want to come back to that where you said I don't
14 know if I could. That is because the whole purpose of
15 this hearing right now and having you testify is so that
16 you can tell us what you could or couldn't do. And there
17 is no right or wrong answers. If the answer is I don't
18 think I could then we would need to know that as well. So
19 I know when the Judge was giving you the potential Juror
20 types that were on that sheet, and you felt like you were
21 a type three?

22 A Yes.

23 Q Part of what type there is, is a Juror who can, who
24 knows that they want to hear all the evidence, want to
25 hear all the facts but they know that they can return a

1 verdict of either life without parole or the death
2 penalty. And it sounds like you are part of type three
3 because you want to hear all the facts. But that second
4 element of type three, you don't know if you are there
5 because you don't know if you can in fact return a death
6 penalty.

7 A It is not that I don't know that I can, it is that I
8 need to know the whole story before I can give an answer
9 to that question. I have to consider everything before I
10 can consider the two. Does that make sense.

11 Q Okay. Ultimately if the jury of twelve unanimously
12 decided that the death penalty was appropriate, after
13 hearing all of the facts. Part of what they would do is
14 sign their name to a form, each individual Juror
15 confirming the death sentence. And so you are saying you
16 would have to hear all the facts to even know what a
17 verdict would be and that is absolutely understandable.
18 That is why we have a trial, that we have that first stage
19 of morally, morally can you sentence someone to death, can
20 you sign that form in any kind of case?

21 A Yes.

22 Q And you feel comfortable with that?

23 A Yes.

24 Q Another thing that Defense Counsel was asking you
25 about is a potential defense of not guilty by reason of

1 insanity or a plea of not guilty by reason of insanity
2 which is one of the four potential verdicts that would be
3 submitted in the initial phase of this trial, what we call
4 the guilt phase of this trial. And I think the question
5 that Counsel posed was, what do you think about the
6 defense is a copout. And you gave an honest response of I
7 don't know. Is there anything more that you can elaborate
8 on that, on the potential not guilty by reason of
9 insanity?

10 A I am not really, say it again.

11 Q So--

12 MR. MCGUIRE: We object, asked and answered. It is
13 actually my exact question that is being asked.

14 THE COURT: I will let her rephrase one time but I
15 agree with you, she has answered she could. So I want Ms.
16 Mayes to reask it to make certain it is clear.

17 Q Okay. So when you say I don't know, you don't know
18 if you can consider the not guilty by reason of insanity
19 verdict?

20 THE COURT: Rephrase your question to giving the
21 parameters and the balance like we have been talking
22 about, I think that would be appropriate.

23 A Or just repeat it.

24 Q Okay. So with the four possible verdicts in that
25 first phase of the trial being guilty, guilty but mentally

1 ill, not guilty be reason of insanity and then not guilty.
2 The one that was proposed to you earlier when Defense
3 Counsel was asking questions was specifically about not
4 guilty by reason of insanity. Is that something that you
5 can consider a copout or is that a defense that you can
6 truly consider, is that evidence you can truly consider of
7 a verdict?

8 A Depending on the situation, I guess. Again, I am not
9 getting the whole story here. Y'all are giving me bits
10 and pieces and it is hard to answer.

11 Q And it becomes problematic, isn't it.

12 A It is.

13 Q You haven't heard any of it.

14 A Exactly, because I don't want to say yes or no
15 because I don't know until I am presented everything. And
16 then at that point I can answer any question you want.

17 Q Because it is premature to even try and give an
18 answer to something at this stage?

19 A Yes. It is really difficult, sorry.

20 THE COURT: I am going to ask you a question, a
21 similar question that was asked before. In the guilt or
22 innocence phase where the Court will instruct you on
23 aspects of those four particular verdict forms and the law
24 on that.

25 JUROR: Yes.

1 THE COURT: Testimony is going to be there for you to
2 consider. Can you consider my instructions and whatever
3 evidence that is presented and make a fair verdict finding
4 and be fair to both sides.

5 JUROR: Yes sir, that I can do.

6 THE COURT: Anything else Mr. McGuire?

7 MR. MCGUIRE: Nothing further for Ms. Wright or the
8 Court.

9 THE COURT: Anything from the State?

10 MS. MAYES: No sir, Your Honor.

11 THE COURT: Ms. Wright, you are qualified as a Juror.
12 You are not on the jury but a qualified Juror. That means
13 you will be part of the group that will come back to have
14 a jury selected form. In the meantime, check the
15 website--

16 JUROR: And don't talk to anybody.

17 THE COURT: No, Ma'am. There is a lot of testimony
18 you are going to hear in the courtroom, it is going to be
19 special, lay people, whatever. I want you and the rest of
20 the jurors to decide the case on what you hear here in the
21 courtroom, not what is presented out there on the
22 newspaper, internet, television. That is not the scrutiny
23 of the evidence laws or court of under oath. I want you
24 to consider and determine this case on what you hear in
25 here and my instructions so you are not leaving out facts

1 or you are not getting all the facts. On the outside of
2 the courtroom, that is, potentially could happen. Don't
3 do any independent research, minimize your contact with
4 the publicity, don't talk to anybody about the case. That
5 is your oath. See you when I see you next, check the
6 website and make sure to come back.

7 JUROR: Thank you, sir.

8 THE COURT: Thank you, Ma'am.

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

11 THE COURT: Next one is 136. Wait a minute. This
12 Juror called the Clerk's office numerous times complaining
13 about being summoned in and nobody answering the phone.
14 She has been a problem for the Clerk's office.

15 (Whereupon, Juror 136, Robin Ehrlich entered the
16 courtroom.)

17 EXAMINATION

18 By The Court:

19 Q Hello.

20 A Hello.

21 Q Ms. Ehrlich, is it?

22 A Yes sir, that is correct.

23 Q Can you spell and say your full name for Ms. Holston
24 to make certain we can hear you through the microphone.

25 A Sure. Robin N. Ehrlich. E-H-R-L-I-C-H.

1 Q Ma'am, I placed you under oath Monday, I am asking
2 you the same question I ask everyone else. Have you had
3 any contact with anybody to discuss this case since Monday
4 when I told you not to?

5 A Not at all.

6 Q Has anybody tried to contact or communicate with you
7 regarding the facts of this case or trying to communicate
8 with you about being a Juror?

9 A No, sir. Not at all.

10 Q Now, there has been publicity, social media, news
11 media, whatnot, a lot of that since Monday but also prior
12 to Monday before you took the oath. I also read to you
13 five indictments out loud on the record. Has any
14 information which has come to you, from whichever source,
15 don't care where it came from, my question is this. Has
16 any of that information that has come to you created an
17 issue for you, have you already formed an opinion as to
18 what you think happened in this case?

19 A No, sir.

20 Q Now, what do you have on the calendar coming up week
21 after next, the week following and the week following.
22 Anything on the work schedule, personal schedule,
23 vacation, such as that.

24 A My daughter has a couple of doctors appointments. My
25 husband and I are both retired military so he works from

1 home, so it is not a problem. She is on home bound right
2 now. She is 16 but I am retired so I don't do anything.
3 Well, excuse me, I do a lot. I am a domestic engineer.

4 Q So you don't have anything particular on your
5 calendar but a lot of things on your calendar?

6 A Yes, a lot of things but nothing in particular.

7 Q So you could serve if so called?

8 A Yes, sir.

9 Q Now, I gave an overview of the criminal procedures of
10 a Capital case, a two stage process. Stage one is guilt
11 or innocence. Stage two is the sentencing. Jurors are
12 tasked to do both stages if they hear facts consistent
13 with and make findings consistent with my instructions.
14 There are three types of typical jurors. Have you
15 reviewed that typical Juror sheet?

16 A Yes sir, I have.

17 Q Did you understand my instructions or my explanation
18 of the criminal procedures that takes place in a Capital
19 case?

20 A Yes, sir.

21 Q And can you find yourself in one of those three
22 typical types?

23 A Yes.

24 Q Which type?

25 A Type three.

1 Q Type three. That means you want to hear everything
2 before you make a decision?

3 A Every time.

4 Q All right. That being the case, I am going to ask
5 you a few more questions. Stage one, when the jury is
6 required to listen to the State offering proof, their
7 burden to prove the case beyond a reasonable doubt of the
8 murder itself. The State has got to present testimony and
9 evidence to that end. The Defendant accused can claim
10 defenses as well as they can request the Court to instruct
11 jury's on potential defenses if the facts support them
12 coming from the testimony. I have not heard the testimony
13 yet so I don't know exactly what the testimony will come
14 out to be. There could be additional defenses other than
15 the one Mr. Jones has already claimed that he intends to
16 try to prove. Other testimony may support one of these
17 other defenses. Potential defenses allowed under our
18 statute are identification, accident, involuntary
19 intoxication, self-defense, necessity, insanity, guilty
20 but mentally ill, defense of habitation, entrapment,
21 duress and alibi. Now, if the Court hears testimony which
22 could support the jury considering one of those defenses I
23 would instruct you on the aspects of that particular
24 defense. Mr. Jones is claiming not guilty by reason of
25 insanity. So certainly I will instruct on that defense.

1 A Thank you.

2 Q Now, understanding the Court will instruct you, can
3 you consider, give meaningful consideration to all the
4 testimony offered by the State, offered by the Defense,
5 considering the required proof of the State on its attempt
6 to prove guilt beyond a reasonable doubt as well as any
7 testimony by the Defense on its defense it is claiming,
8 consider all of the testimony, consider all the evidence,
9 consistent with my instructions and be fair to both sides.
10 Can you be fair to the State and the Defense knowing that
11 is going to be your oath?

12 A Yes sir, I follow directions very well.

13 Q Do you understand that the testimony will come
14 however but I will give you instructions on the aspects of
15 the four potential verdicts which could come out based
16 upon Mr. Jones' plea. Guilty, guilty but mentally ill,
17 not guilty by reason of insanity or not guilty all
18 together. Those are the four potential verdict forms.
19 Can you consider my instructions on the particulars of
20 those four individual verdict forms, give meaningful
21 consideration to the testimony and evidence that you hear
22 as a Juror and make a finding but be fair and impartial to
23 both the State and the Defense?

24 A Yes sir, I can.

25 Q You can do that. All right. Now if a finding by the

1 jury is unanimous, not guilty or not guilty by reason of
2 insanity the case ends. It stops right there. If the
3 State meets its burden of proving the case beyond a
4 reasonable doubt and guilt is found the case proceeds to
5 phase two. During phase two the State is required to show
6 an aggravating factor. I am going to name off several,
7 just got to show one. Killing of a policeman, killing of
8 a child, rape of murder, kidnapping of murder, multiple
9 murders. The State must prove one of those aggravating
10 factors beyond a reasonable doubt in order to ask for a
11 sentence of a death penalty. During the sentencing phase
12 the Defense presents testimony of mitigating factors,
13 mitigating evidence meaning those are reasons to assign
14 sentence of life without parole. I am going to read you
15 the statutory parameters of mitigating. There are others,
16 also that are non-statutory. The Defendant had no
17 significant history of prior criminal conviction involving
18 the use of violence against another person. The murder
19 was committed while the Defendant was under the influence
20 of mental or emotional disturbance. The victim was a
21 participant in the Defendant's conduct or consented to the
22 act. The Defendant was an accomplice in the murder
23 committed by another and his participation was relatively
24 minor. The Defendant acted under duress or under the
25 domination of another person. The capacity of the

1 Defendant to appreciate the criminality of his conduct or
2 to conform his conduct to the requirements of law was
3 substantially impaired. The age or mentality of the
4 Defendant at the time of the crime. The Defendant was
5 provoked by the victim in committing the murder. The
6 Defendant was below the age of 18 at the time of the
7 crime. The Defendant had mental retardation at the time
8 of the crime. Those are statutory mitigating factors that
9 evidence could support any of those. No proof required,
10 just consideration by the jury. They must consider those.
11 Other mitigating factors jurors can consider are how he
12 was raised up, troubled childhood, broken home, any aspect
13 of his growing up can be considered a mitigating factor.
14 Now, during the sentencing phase jurors have two choices
15 to sentence. Life or death. The State has got to prove
16 the aggravating factor beyond a reasonable doubt to ask
17 for a sentence of death. The death penalty is not
18 automatic. The two sentences are the only two options.
19 Mitigating factors are presented by the Defense and
20 considered by the jury. There is no burden to show them,
21 they are just presented and considered. Can you give
22 meaningful consideration to my instructions on the law,
23 the requirement of the State to prove the aggravating
24 factor and give meaningful consideration to any and all
25 aspects of mitigating evidence presented by the defense

1 and reach a verdict in this case consistent with my
2 instructions and to consider all of those factors and
3 instructions?

4 A Yes sir, I do believe I can.

5 Q Can you be fair and impartial?

6 A Yes.

7 Q Can you be fair and impartial to both the State and
8 the Defense?

9 A Yes.

10 Q Do you have any moral, religious or personal belief
11 that you could not impose the death penalty?

12 A No sir, I do not.

13 Q Do you have any religious, moral or personal belief
14 that you could not impose a life without parole sentence?

15 A No sir, I do not.

16 Q Do you know any reason whatsoever you could not be
17 fair to both sides?

18 A No sir, I do not.

19 Q Did you read over the witness list?

20 A I did. It was a very long list.

21 Q It was a very long list. Under the rules they give
22 me all the potential witnesses, in case they may call
23 them. It is likely they won't call all of the potential
24 witnesses, they call many of them. Do you know any of
25 them?

1 A No, sir. A couple of names. Like the first names I
2 recognized but nothing, no one that I knew personally.
3 There was a Jamie on there. I just don't know the
4 person's last name, I don't know him. It is just that I
5 am the Treasurer for the Lexington High School Marching
6 Band. There is 140 band members. One of the parents may
7 be, I don't know his last name, Jamie McClellan. But I
8 don't know where Smith County is so I don't know what the
9 dad does for a living.

10 Q And that is an out-of-state witness.

11 A Okay. So I don't even though, that was the only one
12 that even sounded somewhat familiar to me but I don't know
13 him personally.

14 Q There is some witnesses from out-of-state that could
15 be called by both parties. If they are from out of state
16 you are not connected to them.

17 A I was stationed in a few States around the Country.

18 Q But the McClelland.

19 A No, not at all.

20 Q But if he is an out-of-state witness, you are not
21 connected?

22 A No, I wouldn't know him. There was a Jamie that is
23 in our marching band that I am a Treasurer of.

24 Q All right. Now, tell me about this, there was some
25 questioning in the inconvenience, I asked about your

1 personal schedule. There was some, it is an inconvenience
2 to everybody that serves on a jury but it is kind of a
3 civic duty, civic responsibility. The Court is very aware
4 of the inconvenience it puts on people and jurors. I try
5 to minimize that inconvenience but the undertaking of
6 calling in a panel of 500 something, I got in 185 people
7 in the courtroom. It is a challenging logistics for a
8 small County like Lexington. Lexington is not a big
9 County. Understanding that can you still be fair and
10 impartial understanding that there is a huge challenge put
11 upon the Court and the Clerk's office to organize that?

12 A Yes, sir.

13 Q I want to make sure.

14 THE COURT: Mr. Young.

15 MR. YOUNG: The nature of the evidence, Your Honor.

16 THE COURT: Yes, did not ask that. I forgot that
17 question. The testimony, evidence presented in this case
18 throughout the trial is going to involve the subject
19 matter that it describes, shows, give the evidence of the
20 death of children. It is described to me by the lawyers,
21 all of them consistently using different words but,
22 graphic, harsh, unpleasant, very difficult. They have not
23 described anything other than descriptions of that type.
24 Understanding the subject matter will be difficult and
25 harsh, unpleasant, can you consider, evaluate the

1 testimony and evidence of that type and still be fair and
2 impartial to both sides. Because this impacts both, the
3 evidence and testimony can be difficult on people
4 personally. I need to know it now because half way in the
5 trial, you know, the ship has sailed and we have got to
6 keep going, I can't stop.

7 JUROR: Yes sir, unfortunately I have seen the death
8 of children by working in, being deployed to Bosnia, all
9 ages. It is not pleasant whatsoever but it is something
10 that I have dealt with and not comfortably but could.

11 THE COURT: Could you consider and be fair and
12 impartial to both sides.

13 JUROR: Yes.

14 THE COURT: Mr. Young.

15 MR. YOUNG: Thank you, Your Honor.

16 EXAMINATION

17 By Mr. Young:

18 Q Good afternoon, Ms. Ehrlich.

19 A How are you.

20 Q Thank you for your service, I hope you enjoyed your
21 time over in Sumter.

22 A That was our last assignment, yes sir.

23 Q I want to talk to you a little bit about your views
24 about the death penalty. Okay. Is where the option where
25 somebody has been found guilty of murder. Okay. Can you

1 tell me sort of your general philosophy regarding the
2 death penalty?

3 A To be honest I have never really thought about it. I
4 know it is an option and some of our States in the United
5 States, I honestly didn't know it was in South Carolina.
6 I never gave it much thought either way. I know there are
7 certain cases where it is called for and is needed
8 depending on the State that it is legal in. I am
9 comfortable making a decision either way on in.

10 Q Okay. Can you tell me about those situations where
11 it is called for or needed?

12 A Mass murders like the school shooting. That guy two
13 years ago shot up the school, Columbine, things like that.

14 Q Sure.

15 A Even though the person was not of age so I don't know
16 that they were an adult or not. But I have never really
17 thought about it. I am so sorry.

18 Q That's okay. I understand where you are coming from.
19 Let me ask you one follow-up question. Is there anybody
20 about those people, the school shooters, that you could
21 learn that would make you think, you know what, maybe life
22 without parole is the appropriate penalty for them?

23 A Oh, sure. Absolutely. You have to take into
24 consideration where their mind was, how they were raised,
25 their family background, their personal situation. Even

1 the situation that day. I mean, I know there are times
2 that I have had road rage behind a car where I wanted to
3 do more than honk a horn. So, I mean, you, not making
4 that lightly but there are definitely mitigating
5 circumstances in every case.

6 Q I totally understand where you are coming from. The
7 Judge has told you that Tim has plead not guilty by reason
8 of insanity.

9 A Yes.

10 Q And in South Carolina what that means is that, I did
11 the killings but because of mental disease or defect was
12 not able to understand the legal or moral wrongfulness of
13 my actions. Do you understand that?

14 A Yes, I do.

15 Q And some people thinks that defense sounds like a
16 copout, like that is just an excuse, that would just be
17 letting somebody off. Does that statement resonate with
18 you?

19 A No, sir. I have had PTSD myself from just times at
20 war. And can understand situations where that could
21 occur.

22 Q So you could see yourself, if you felt it was
23 appropriate, rendering a verdict of not guilty by reason
24 of insanity?

25 A Yes, I could.

1 Q Thank you. Moving forward a little bit, after you
2 found somebody guilty of murder, as the Judge has told
3 you, intentional murder with malice aforethought and we
4 are talking about multiple children, guilty of murder of
5 multiple children. Are you with me on that?

6 A Yes, sir.

7 Q Some people in that situation say death is the only
8 appropriate punishment. It sounds like you, that is not,
9 that would not describe you as somebody who says, based on
10 that I am at death?

11 A No, you have to delineate mitigating circumstances to
12 determine that and their state of mind if they are
13 temporarily insane because of other things that have
14 happened. Then, no, it would not be.

15 Q For you life without the possibility of parole could
16 be an appropriate punishment for that type of murder?

17 A That is a very good punishment, yes.

18 Q Okay. The way we get there and make this ultimate
19 decision which is what we have been talking about, sort of
20 these mitigating factors. And the Judge has told you
21 aggravating factors have to be proven by the State to all
22 twelve jurors, they all have to agree on it that it is
23 proven beyond a reasonable doubt and they have to be
24 unanimous on it. Are you with me on that?

25 A Yes, sir.

1 Q Mitigating circumstances do not have to be proven to
2 any level of proof and they don't have to be unanimously
3 found by the jury. Do you understand that?

4 A I am sorry, could you repeat that?

5 Q Sure. Each Juror gets to decide for herself what is
6 or is not mitigating. Okay.

7 A Okay.

8 Q The Judge will tell you if it is presented mitigation
9 evidence you have to consider it as mitigation. You can't
10 think of it as aggravating. Does that make sense to you?

11 A Yes, sir.

12 Q But you get to personally decide what value that
13 evidence has to you. Does that make sense to you?

14 A Yes, that makes sense.

15 Q Some Juror could say I saw a relationship with his
16 family and based on that mitigating circumstance I want to
17 give that piece of mitigation, to me it gets the value of
18 life, I want to vote for life for that reason alone. Does
19 that make sense?

20 A Yes sir, that does.

21 Q And another Juror could say, I disagree. I don't
22 think that that is mitigating or certainly doesn't rise to
23 the level of giving value to a life sentence but for me I
24 thought there was mental illness. And based upon that
25 reason alone I want to vote for life. And that is

1 perfectly okay. If they don't agree, they have different
2 reasons.

3 A Yes, sir.

4 Q Does that make more sense about why it doesn't have a
5 burden of proof and why it doesn't have to be unanimously
6 found?

7 A Absolutely.

8 Q And finally a Juror can say, I don't have a reason.
9 For me, based on who I am, based on mercy alone, based on
10 my concept of mercy, I can't put it into words but for me
11 I have decided that life is the appropriate punishment and
12 I can't explain it. Could you respect the right of a
13 Juror to say, I can't put it into words, I can't explain
14 it to you but for me it is right.

15 A Can I respect a Juror that does, says that?

16 Q Yes, ma'am.

17 A Yes, I believe every person has, who has selected has
18 that burden in your heart and in their mind to choose for
19 themselves. We are individuals.

20 Q Right. And that, ultimately this decision about
21 whether or not somebody lives or dies is called an
22 individual moral judgment. Does that make sense to you?

23 A Yes.

24 Q An individual moral judgment is like choosing what
25 faith is appropriate for you. You have made your own

1 decisions about that.

2 A Yes.

3 Q And you recognize that other people may have made
4 different decisions for themselves about that?

5 A Yes.

6 Q And you respect their right to make their own
7 individual moral judgment about what is right for them?

8 A Absolutely. I fought for my Country, the right of
9 freedom of religion is very important to me.

10 Q Right. And individual moral judgment, whether who we
11 kill or what faith is right for us, those are individual
12 moral judgments. And you respect the right of everybody
13 to make their individual moral judgment about those types
14 of decisions.

15 A Absolutely.

16 Q If you saw somebody who was being bullied or
17 pressured to change their individual moral judgment would
18 you stop it?

19 A Yes, I would speak up that each person has their own
20 right to their own opinion. That is very important to me,
21 I was a first sergeant for six years. And when the Judge
22 reads the information and I am going to assume that it is
23 going to say that each person has the right to make their
24 own decision. If someone is bullying someone else then
25 that is not following the Judge's instructions and that is

1 inappropriate.

2 Q Thank you very much.

3 MR. YOUNG: Based on the Court's limitations I will
4 stop there.

5 THE COURT: Very well. Mr. Graham.

6 MR. GRAHAM: Thank you.

7 EXAMINATION

8 By Mr. Graham:

9 Q Ms. Ehrlich, my name is Shawn Graham, I am one of the
10 Prosecutor's on behalf of the State in this case. You
11 understand that in the first phase, which is the guilt or
12 innocence phase, the Judge said there are four verdicts.
13 You remember that?

14 A Yes.

15 Q Guilty, guilty but mentally ill, not guilty by reason
16 of insanity and not guilty. In that phase you potentially
17 will hear testimony from people who are allowed to give
18 expert opinions. And actually tell you it is there
19 opinion, like psychologists and psychiatrists. Do you
20 understand that just because they give an opinion, as a
21 Juror you would still have the right to determine whether
22 you believe that opinion, whether the facts supported it.
23 Does that make sense?

24 A Yes, sir.

25 Q Okay. If you were a member of the jury and you found

1 that he was guilty or guilty but mentally ill but guilty,
2 then it goes to that second phase. And in the second
3 phase the State would have to prove beyond a reasonable
4 doubt the aggravating circumstances, a child under the age
5 of eleven or multiple deaths. That is called an
6 aggravating circumstance. Only after the State proved to
7 you and the other jurors unanimously that one or more of
8 those aggravating factors existed because you can consider
9 death and you understand that?

10 A Yes, I do.

11 Q Given that situation then you would hear evidence in
12 aggravation and evidence in mitigation. So evidence that
13 made things worse than the facts you already heard and
14 evidence for you to consider life. Do you understand
15 that?

16 A Yes.

17 Q Okay. You understand that just because mitigation
18 evidence is presented and you hear it and you believe it,
19 that that is a reason to give life.

20 A Would you repeat that.

21 Q If mitigation is presented and you believe it you can
22 use that as a basis to give life. Do you understand that?

23 A Yes, I do.

24 Q Just because you hear it and you believe it you can
25 also give death. Do you understand that?

1 A Yes, I do.

2 Q If at the end of the day, you as a member of the
3 jury, my understanding is you want to hear everything?

4 A Absolutely.

5 Q And if the facts supported it then you would be able
6 to talk with the other jurors and tell them about your
7 point of view?

8 A At the end, yes.

9 Q And you would listen tot their point of view?

10 A Yes.

11 Q And if you and all the other jurors thought life was
12 appropriate based on the circumstances of this case you
13 could vote for a life sentence?

14 A Yes.

15 Q If on the other hand, you and the other twelve jurors
16 unanimously thought death was the proper verdict then you
17 would and all twelve could vote for death. Is that
18 correct?

19 A Yes, after talking through it, not bullying like the
20 other person.

21 Q Right. Not bullying but actually there would have to
22 be a give and a take.

23 A Yes, communication.

24 Q All the same opinion or different opinions. But if
25 unanimously after not bullying everybody reached the same

1 verdict that death was appropriate you could vote for
2 death?

3 A Yes, I could.

4 Q Okay. One last question is. And another unique
5 thing about the death penalty in South Carolina is if you
6 were one of those jurors and you and all twelve decided
7 that death was appropriate you would actually have to sign
8 your name to what is called the death warrant or death
9 verdict. Do you understand that now?

10 A I understand that now.

11 Q If you thought that it was appropriate and the other
12 jurors did too and unanimously you all voted for death,
13 knowing that you would have to sign your name on it, if
14 you thought that was appropriate punishment, could you
15 actually sign it?

16 A Yes, I could.

17 Q Thank you.

18 THE COURT: Anything further?

19 MR. YOUNG: No, Your Honor, nothing for the Court.

20 MR. GRAHAM: If Mr. Madsen and I could approach.

21 THE COURT: You may.

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

25 THE COURT: Ms. Ehrlich, you are found qualified by

1 the Court to be a Juror in this case. What you will do is
2 you are going to monitor, that doesn't mean you are going
3 to be selected, it means you are potentially a Juror. But
4 you are qualified, so look at the list, it will say call
5 back next week or late this week, to determine which
6 jurors out of that qualified group will then be selected
7 or not excused, to remain on the jury or one of the
8 alternates. So you are on the qualified list but not yet
9 excused from service. So I am going to have you come
10 back. I will tell you when to come back on the internet.
11 That website you have been watching for, you are now
12 looking at the instructions for qualified jurors. You are
13 not on a panel anymore, you are a qualified Juror group.
14 Follow the instructions, it says look back tomorrow, look
15 back tomorrow, then it says come in Monday, come in
16 Monday. It will tell you the date and time when to come
17 in. Until that time do not talk about the case, do not
18 discuss the case, don't let anybody question you about the
19 case and do not do any independent research. Don't read
20 any news accounts, publicity or any type, minimize that
21 impact. What you need to decide this case you are going
22 to get in here with the lawyers, experts, appropriately
23 under the law. Things outside the courtroom, I have no
24 control or monitoring, nobody is even under oath. They
25 can say what they want to say. I want you to be impacted

1 in decision making on sworn testimony under the scrutiny
2 of the courtroom and lawyers, not no scrutiny whatsoever.

3 JUROR: Yes sir, you made that clear at the last
4 time.

5 THE COURT: Can you follow that oath?

6 JUROR: Yes, I can.

7 THE COURT: See you when you get summoned back.

8 JUROR: Could someone write down, under jury
9 selection, is that what it is under?

10 THE COURT: It is under qualified jurors. Thank you
11 very much.

12 JUROR: Thank you.

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

15 THE COURT: I am going to put the conversation at
16 sidebar on the record. Ms. Ehrlick is Treasurer of the
17 Lexington Band. Mr. Graham and Mr. Madsen have children
18 in the band, they sold some things to raise money for the
19 band. She apparently didn't recognize them but both of
20 them are in the same posture. I don't know that she knows
21 all the students by first name. It is a large band. So,
22 neither one found an issue with that but that is on the
23 record. If that needs to be addressed further we will.

24 MR. MADSEN: No, sir.

25 THE COURT: Okay. Fair enough. Let's bring in

1 number 244.

2 (Whereupon, Juror 244, LaDonna Lee entered the
3 courtroom.)

4 EXAMINATION

5 By The Court:

6 Q Good afternoon.

7 A Good afternoon.

8 Q Ma'am, I told you earlier, my name is Eugene
9 Griffith, I am the presiding Judge of the case. I remind
10 you you are under oath. I have got certain questions to
11 ask you and I am going to roll through them as rapidly as
12 I can without confusing you. You talked to anybody about
13 the case since Monday?

14 A Yes.

15 Q Who did you talk to?

16 A It was about the case but it was basically about what
17 was expected in here.

18 Q Let me go back and ask you to say and spell your name
19 for the record.

20 A LaDonna, L-A-D-O-N-N-A; last name, L-E-E.

21 Q Tell me who you talked to about what is expected of
22 you in here?

23 A I don't know her name, we didn't discuss names in
24 there. It was before you brought us in here and said we
25 were under oath.

1 Q Okay.

2 A And we just said, wonder what is going on in there
3 and what have we got to do. It wasn't anything really
4 specific, we were all laughing about just--

5 Q Sitting there waiting.

6 A Yes, it really was nothing specific.

7 Q Now there has been publicity, in the news, on social
8 media, news media, whatever media. Before Monday, years
9 ago, several months ago, recently and since Monday. I
10 gave you the indictments, I read them out loud in front of
11 the entire jury panel Monday. That is information. Has
12 any information you come across or received or got, seen
13 or heard, cause you to form an opinion in this case?

14 A No, sir. I banned my mother from calling me under
15 after I get through with this. I had to. She wanted to
16 know and I kept saying, Mama, I can't talk about it. So I
17 finally had to call my sister and have my sister to tell
18 my mama, don't ask me any more questions. And I could
19 still see her Sunday.

20 Q You still want to see her on Mother's Day?

21 A Yes.

22 Q I think you better.

23 A Sorry, I didn't mean to laugh.

24 Q That's okay. I understand. Mothers and concerned
25 cousins, family, like to make certain they know

1 everything.

2 A Right.

3 Q But what they know and what they are getting is not
4 sworn and it is not under, I want you to consider what is
5 in here.

6 A Yes, sir.

7 Q Have you formed an opinion yet?

8 A No, sir. I actually know nothing about it because,
9 other than whenever you gave us the dates and read those
10 indictments the other day. My husband was actually in the
11 hospital for almost a year. So that time period in my
12 life, I didn't care what was going on in the world.

13 Q You had other things more important?

14 A Yes, sir.

15 Q Now, what is your calendar like starting next Monday
16 for about three weeks. What do you have on the agenda
17 that you got due, planned, paid for or obligated to do?

18 A My birthday is the [REDACTED]

19 Q Of [REDACTED]

20 A Yes.

21 Q Okay.

22 A I am going to be here, I mean not here.

23 Q Another year.

24 A Yes, hopefully, Lord willing, if the creek don't
25 rise. I am going to be at work or either I will be here.

1 I plan on having a pool installed the last week of May.

2 Q A swimming pool?

3 A Yes.

4 Q Dug in the ground or placed on top?

5 A No, sorry. I have to go on top of the ground. But
6 it is the biggest above ground.

7 Q Good luck with that.

8 A Thank you. Can I get a note for the husband said you
9 vote for it?

10 Q I will tell him that I have cleaned one myself. Now,
11 I gave you a list of witnesses. Do you know any of the
12 witnesses on the list?

13 A No, sir.

14 Q Now, the subject matter of this case involves, let me
15 go to a question. I gave you the instructions of the
16 procedure.

17 A Yes, sir.

18 Q Two phase type trial in a Capital case. Phase one is
19 guilt or innocence, phase two is sentencing. The jury has
20 got to determine both, guilt beyond a reasonable doubt
21 unanimously. The jury has got to determine the sentencing
22 phase to consider aggravating circumstances if proved by
23 the State then they can ask for the death penalty. That
24 is what I read to you. Did you understand those
25 instructions, they are broad, no facts have been presented

1 to you so in broad terms. Did you understand that?

2 A In broad terms I did understand that.

3 Q Now, in broad terms can you identify yourself as one
4 of those three types of jurors?

5 A I can in broad terms.

6 Q What is it?

7 A Number three.

8 Q In broad terms that is, I haven't heard much, I want
9 to hear everything.

10 A Right, that is the type of person I am in real life.

11 Q So you have not predetermined what is going on?

12 A No. I found out when I was young, don't judge a book
13 by its cover. Find out what is on the inside.

14 Q So you want to hear all the aspects of the case
15 before rendering a decision?

16 A If I am going to be involved I want to know
17 everything. And if I don't know I will ask.

18 Q Okay. Now, certain, the case is divided into two
19 parts. We will go into part one, I am going to describe
20 that for you.

21 A Yes, sir.

22 Q Part one involves the guilt or innocence. The State
23 has got to prove the murder beyond a reasonable doubt.
24 Mr. Jones is presumed innocent right now, all the way
25 throughout the trial until the State disproves it.

1 A Correct.

2 Q Proves it, the burden of proof beyond a reasonable
3 doubt. They will present evidence on that. The jury will
4 consider it consistent with my instructions.

5 A Yes, sir.

6 Q There are some defenses available. He has claimed
7 one, there are others if the testimony supports any of the
8 others I may instruct on those. So I am going to give you
9 potential defenses that could be proven. All of them
10 might not but I will list them all out of an abundance of
11 caution.

12 A Okay.

13 Q Identification, accident, involuntary intoxication,
14 self-defense, necessity, insanity, guilty but mentally
15 ill, defense of habitation, entrapment, duress and alibi.
16 Those are potential defenses. The testimony may support
17 one of those, may not. If there is no testimony regarding
18 one of those it wouldn't come into play, the Court would
19 not instruct it but it could and if it does the Court will
20 instruct you on the aspects of any of those potential
21 defenses. Now, can you give meaningful consideration to
22 the State to prove its case beyond a reasonable doubt of
23 the murder but also consider any aspects of any defenses
24 that the Defense presents on or the jury can consider
25 regarding any facts and testimony that has been presented

1 during the first phase of the trial, consistent with my
2 instructions and evaluate that testimony and evidence but
3 be fair and impartial to both sides. Can you do that?

4 A I can, Your Honor, as long as I had, was able to ask
5 questions for clarification and clarity.

6 Q Okay. Now, I am hopeful that my instructions will be
7 clear enough. I have jurors ask questions like please
8 clear up the definition of reasonable doubt. I can do
9 that. Jurors generally aren't allowed to ask questions.
10 So, Judge, can we, we would like to ask that witness a
11 question or, Judge, can we ask you a question, why didn't
12 so and so get called as a witness.

13 A That is none of my business.

14 Q Right. Some questions I can answer but some I can't.
15 So considering my instructions I will clear up definitions
16 as best as I can. Hopefully my instructions will be
17 concise, clear and efficient. So can you follow my
18 instructions and if you need clarification request that
19 but make findings and be fair to both sides considering my
20 instructions.

21 A Yes sir, Your Honor.

22 Q Now, if Mr. Jones has presented a defense of not
23 guilty by reason of insanity. The Court will define that
24 to you at the time of considering the case, in the guilt
25 or innocence phase. I will define others because there

1 are four potential verdict forms in this case by entry of
2 that plea. There is guilty, guilty but mentally ill, not
3 guilty by reason of insanity or not guilty all together.
4 Those four potential verdict forms will be instructed by
5 the Court, the aspects and the particulars of the law and
6 how to arrive at or consider whether the testimony can
7 allow jurors to find those potential verdict forms. Can
8 you meaningfully consider all four of those potential
9 verdict forms provided you have direct and concise and
10 explicit instructions on the law. I intend to do that.
11 But consider the testimony, all aspects of it consistent
12 with my instructions. Can you be fair and impartial and
13 find each one of those four potential verdicts?

14 A I can, Your Honor.

15 Q Consistent with my instructions and also unanimously?

16 A Yes, sir.

17 Q All right. Now, if the State proves its case beyond
18 a reasonable doubt, not guilty, not guilty by reason of
19 insanity is not proven or decided by the jury. Unanimous
20 verdict of guilty the case goes to phase two. At that
21 point the State then has to prove an aggravating factor.

22 I am going to name off several. Murder of a policeman,
23 murder of a child, rape of murder, kidnapping of murder,
24 murder of multiple people. Those are aggravators. If the
25 State proves one of those aggravators beyond a reasonable

1 doubt the State can then ask for the death penalty. They
2 have got to prove one of those aggravators during the
3 sentencing phase beyond a reasonable doubt. Do you
4 understand that will be in my instructions at that time?

5 A I do.

6 Q Also during the sentencing phase the jury will
7 consider any testimony of mitigating facts. Mitigators
8 are reasons to assign the life without parole sentence, to
9 not find the death penalty. Statutory ones which are
10 allowed to be considered to be presented on are the
11 Defendant had no significant history of prior criminal
12 conviction involving the use of violence against another
13 person. The murder was committed while the Defendant was
14 under the influence of mental or emotional disturbance.
15 The victim was a participant in the Defendant's conduct or
16 consented to the act. The Defendant was an accomplice in
17 the murder and committed by another person, I am sorry,
18 the murder was committed by another person and his
19 participation was relatively minor. The Defendant acted
20 under duress or under the domination of another. The
21 capacity of the Defendant to appreciate the criminality of
22 his conduct or to conform his conduct to the requirements
23 of law was substantially impaired. The Defendant was
24 provoked by the victim in committing the murder. The
25 Defendant was below the age of 18 at the time of the

1 crime. The Defendant had mental retardation at the time
2 of the crime. Those are statutory mitigators that the
3 jury considers if the testimony supports it. All right,
4 under the age of 18, the testimony is not going to support
5 that.

6 A Yes.

7 Q Now, other mitigating factors, any reason whatsoever
8 a jury wants to believe or assign a reason to give a life
9 without parole sentence such as the Defendant's childhood,
10 came from a broken home, any aspects of his rearing, the
11 jury's can consider that and assign that to be a
12 mitigating factor if they so choose. So can you give
13 meaningful consideration to the State's required burden of
14 proving the aggravating factor, the State must prove one
15 of those before the State can seek the death penalty. The
16 jury must consider any mitigating testimony, facts and
17 circumstances to be shown, they don't have to be proven,
18 just shown. Jury's can assign belief on those as they see
19 fit. Can you give consideration to all the testimony,
20 whether it be an aggravating factor, beyond a reasonable
21 doubt proof required and mitigating factors and reach a
22 fair verdict in this case, be fair to the State and be
23 fair to Mr. Jones?

24 A Yes I can, Your Honor.

25 Q Now, you understand that during the sentencing phase,

1 two potential verdicts, death or life. No other options,
2 no middle ground. Got to find one of the two.

3 A Yes.

4 Q You got to consider my instructions in evaluating the
5 testimony in reaching your verdict.

6 A Yes.

7 Q Can you be fair and impartial to both the State and
8 the Defense in considering only those two options?

9 A Yes, sir.

10 Q All right. Additionally, do you have any religious,
11 moral or personal belief that you could not impose a
12 sentence of death if the facts and circumstance warranted
13 it and the jury was unanimous in that decision?

14 A No, sir.

15 Q Any reason you cannot find a life without parole
16 sentence, religious, moral or personal belief that you
17 would not find that sentence?

18 A No, sir.

19 Q Very good. Do you know anybody on the witness list?

20 A No, sir.

21 Q None whatsoever?

22 A I swear I don't. I live here but I am from Camden.

23 Q You are from Camden?

24 A Yes.

25 Q Okay. Those are my questions, so I am going to allow

1 Mr. Madsen to ask you questions. And, remember, you are
2 under oath, no wrong answers, looking for your personal
3 beliefs.

4 A I will answer him like I answered you.

5 Q Very well.

6 EXAMINATION

7 By Mr. Madsen:

8 Q How are you today?

9 A Doing well and yourself.

10 Q So, the Judge kind of went over some stuff for you
11 asking you if you can follow the law. What I want to talk
12 with you about is kind of your personal feelings. Okay.
13 There is no right or wrong answers, it is just kind of
14 what you believe.

15 A Okay.

16 Q Did you know anyone else when you came in on the jury
17 panel?

18 A No, sir.

19 Q So can you just kind of tell me what your general
20 feelings about the death penalty are?

21 A Actually I have never give it a thought on how I
22 would vote if I was able to do anything about it. But
23 since last Monday I have given it a lot of thought and I
24 could do it if, I could vote yes or I could vote no but I
25 would need to know all of the facts and I would need to

1 know the who, what, why, when and where. And I wouldn't,
2 I would not do it because I was scared that it would be
3 that, made somebody leave this earth, for lack of a better
4 word. And I wouldn't say yes just to be a vindictive
5 person. It would take a lot, I would have to know before
6 I would say yes. I would have to listen to the whole
7 thing.

8 Q Would you say like the death penalty is a kind of
9 punishment of last resort?

10 A Yes.

11 Q Kind of reserved for the worst of the worst?

12 A Yes.

13 Q Now, you heard the Judge talk to you about the four
14 different types of verdict, not guilty, guilty, not guilty
15 by reason of insanity and guilty but mentally ill. And
16 you heard that Tim has plead not guilty, not guilty by
17 reason of insanity.

18 A Yes.

19 Q You understand that?

20 A I do.

21 Q And that basically means that someone is saying, hey,
22 I did the murders but I, because of a mental disease or
23 defect I could not or did not understand the difference or
24 did not understand moral or legal wrongfulness of my
25 conduct. Do you understand that?

1 A I understand.

2 Q And some people would say, hey, to me that is just
3 kind of a copout. You know, to me--

4 A And they don't understand mental illness.

5 Q That is just not something that I can consider. Is
6 that you?

7 A No.

8 Q If you heard evidence that is something that you
9 could meaningfully consider?

10 A Yes, if somebody can prove that they actually had a
11 history or actually at that time had a mental break, I
12 would be able to be fair about it. I believe I would.

13 Q Like I said, no right or wrong answers.

14 A I know, I just--

15 Q Let me ask you a little bit, I want to talk about
16 your feelings of punishment of a guilty murderer of
17 multiple children. So we are talking a situation, I am
18 putting you in a a place where you and eleven other jurors
19 have listened to all the testimony and if there was
20 something about mental illness you have rejected that and
21 said, no, this person knew the difference between right
22 from wrong, whether morally or legally, not an ID problem.
23 In other words, this is the person who did it. It is not
24 self-defense or accident or anything like that. Are you
25 with me?

1 A Yes.

2 Q And there is on justification or excuse or anything
3 like that. And so you got someone who maliciously and
4 intentionally killed multiple children. And my question
5 to you is, obviously, and in that situation you could get
6 a life penalty or a death penalty and I want to find out
7 what your opinion is as the death penalty is the
8 appropriate punishment for that guilty, guilty intentional
9 murderer.

10 A Yes.

11 Q So you wouldn't want to hear--

12 A If everything else had, like you just said, had been
13 gone through, we had verified that there was no mental
14 illness, it was intentional, it was malicious, didn't have
15 nobody else to blame but themselves and, yes.

16 Q So in that type of case, it sounds to me like in that
17 situation where you had the guilty murderer of multiple
18 children, for you the death penalty is the only
19 appropriate--

20 A No. It was proven, the scenario you provided me, you
21 said everything else was off the table and it was proven.
22 In that case, proven with a preponderance, no doubt, yes,
23 the death penalty.

24 Q Okay. So in other words, like I said, you heard that
25 first part of it, you and the other eleven jurors have

1 found that person guilty, no doubt whatsoever. He
2 intentionally killed multiple children. For you the death
3 penalty is the only appropriate punishment?

4 A If the death penalty is part of the punishment, and
5 we have checked off the list and everything matches up,
6 yes.

7 Q And to you in that situation a life without parole
8 sentence would never be a sufficient punishment?

9 A To me, no. You have done it, you were maliciously
10 doing it, you had your sound mind and you did it. You
11 admitted you did it. There is no other reason, why should
12 you continue on.

13 Q Sure. And a lot of people think that. Just as I
14 said, this is just and it sounds like that is something
15 that, you know, that in your heart of hearts truly
16 believe?

17 A I wouldn't have said it if I didn't.

18 Q And there is nothing that I could do to kind of talk
19 you out of that or the Judge or the Prosecutor could talk
20 you out of that?

21 A Not based on the scenario you just provided me.

22 Q And so stuff about that guilty murderer's background
23 or character or anything like that, you wouldn't want to
24 hear any of that?

25 A You didn't put that in your question. Your question

1 was, everything had been mitigating, everything had been
2 decided and now it was time to determine if there was
3 going to be life without parole or either there was going
4 to be the death sentence. Now, had you told me during the
5 deciding part, before it got to the part that, okay, you
6 are only going to get to say death penalty or no death
7 penalty. Had you presented the evidence that there was a
8 problem with the person that did the killing, no matter
9 how many people or how small the people were, if they
10 killed somebody based on they were beat half the time when
11 they were a child, their daddy was a drunk, their mama was
12 a prostitute and don't nobody care about them and they
13 felt like the world was nothing. That might have
14 something to do with it but that is not how you asked me.

15 Q Okay. Fair enough. Well, what I am trying to find
16 out though is, so and I don't want to put words in your
17 mouth.

18 A No, you are not going to.

19 Q Got a feeling I wouldn't be able to.

20 A No, you are not because I take this very seriously.

21 Q Sure and as everyone obviously should. So even if
22 you found there is no justification or no excuse you still
23 want to hear everything before you decide the punishment?

24 A Yes, sir. Why would I do it any other way, that
25 would be a lie.

1 Q And you understand that a death sentence is never
2 required for even a guilty murderer.

3 A I understand that and based on the scenario you gave
4 me before you told me there could have been, the person's
5 childhood, based on the original question you presented to
6 me, death penalty. Based on the second scenario where
7 there could have been some problems in upbringing and
8 stuff as that, depending on the extremities, I could be
9 considered a different outcome.

10 Q Well, now, so you understand, as the Judge told you--

11 A I feel like he was asking me two different questions
12 in one.

13 THE COURT: He understands that, he is trying to
14 rephrase his question.

15 Q Sometimes I can be confusing.

16 A You are not confusing. You think you are confusing
17 but you are not. There was two totally different things
18 going on with your statements.

19 Q If I do that--

20 THE COURT: The reason it is taking so long to do
21 this, sometimes lawyers do that and they don't know it but
22 you caught him so he is going to ask you a better
23 question. Mr. Madsen, ask a better question and be clear
24 with your question.

25 Q Just want to make sure, as the Judge kind of told

1 you, it is kind of like two different trials. There is a
2 guilt or innocence phase.

3 A I understand that.

4 Q And what I am saying or what I was trying to convey
5 is that you and eleven other jurors have kind of gotten
6 past that first part. So if you have heard any defenses
7 or anything like that you have determined that this person
8 is a guilty murderer and I am trying to kind of take you
9 into the second phase where you decide the penalty.

10 A Okay.

11 Q Do you understand that?

12 A I got that.

13 Q And so I guess my question is, after you have gotten
14 or through that first phase and determined that there
15 wasn't any justification, any excuse--

16 A No childhood, everything was cut and dry, point to
17 the death penalty. If everything was based on the
18 original question that you provided me, no mitigating
19 circumstances, no bad childhood, just a mean individual
20 that is going to be to nobody's good in society and is
21 never going to go free, death penalty.

22 Q And so in that situation you started, the death
23 penalty?

24 A No. You, bless you. It is not funny, you are not
25 going to trick me on this one. No, I am going to finish

1 this. You ask me a question and it was a cut and dry
2 question to begin with. I answered it, you added to it.
3 I answered to it again, you added to it again. We circled
4 back around to the original question with some more stuff
5 added to it. It is like, baking a cake. Now we are
6 adding butter to the cream. I have already explained to
7 you, if there were no extenuating circumstances the person
8 was just like a bad apple, just rotten to the core and
9 instead of that person rotting away in a jail cell, never
10 going to do nothing for society, always going to be just a
11 lump in a chair, on a cot in a room. Yes. But, no, I
12 would not start there, I do not take death lightly.

13 Q Okay. I just wanted to make sure.

14 A I wanted to make sure you understood where I stood,
15 that I don't want you putting words in my mouth.

16 Q And I don't think you would let me.

17 A I won't. I have complete respect for you in this
18 court but this is not the time for runaround jokes. This
19 is serious.

20 Q Now, when we talk about kind of the background in
21 that, as the Judge told you, he kind of told you about
22 what is statutory, mitigation and then there is other
23 types of mitigation which you understand that there isn't
24 any kind of burden of proof with those types of things?

25 A Yes. From the part that he explained to me, I am

1 definitely not college material so I don't know the
2 definition but I will find out.

3 Q Well, the State, they will want to prove aggravating
4 circumstances to you. And those have got to be found
5 beyond a reasonable doubt and those have got to be found
6 unanimously but by all twelve jurors. Do you understand
7 that?

8 A I understand that.

9 Q And then like I said, mitigation can be just what an
10 individual Juror sees.

11 A Okay.

12 Q And so say, this Juror right here can say, you know,
13 I saw something about his relationship with his father and
14 for me that is mitigation and I want to give that the
15 weight of life. Do you understand that?

16 A I got it.

17 Q And maybe the second Juror says, you know what, I
18 didn't see that but I saw that he had some mental illness
19 and to me that is mitigation and I want to give that the
20 weight of life?

21 A Okay.

22 Q And you understand that they might kind of disagree
23 on mitigation but each Juror gets to find mitigation
24 within themselves.

25 A I get you.

1 Q And there could be a third Juror that says, you know
2 what, I didn't see or heard what they saw and you know, I
3 really can't put it into words as to why but for me the
4 appropriate penalty is the life without parole sentence.

5 A And I can get there if it presented itself to me.

6 Q And you could respect somebody that says, you know
7 what, I can't tell you why, I just know that this is
8 right?

9 A Just because somebody else's opinion is not my own
10 does not mean I don't respect it.

11 Q And some people would call that, you know, this idea
12 of mercy. And my question to you is, is mercy something
13 that somebody earns or is it something that is just freely
14 bestowed on another?

15 A No human being has the right to provide mercy to
16 another, we provide comfort, we provide all types of
17 things. But mercy is something that everybody has and it
18 is up to you as an individual to provide it. It is not
19 something that we can just put in a court of law.

20 Q And you understand that once a jury has considered,
21 once a jury has considered mitigating evidence, on whether
22 or not they decide to put another human to death, that is
23 kind of called an individual moral judgment.

24 A Yes.

25 Q And the way it has been explained to me is kind of

1 what you decided as your faith, it is an individual moral
2 judgment that you have made for yourself. And that is
3 maybe different from someone else's moral or individual
4 moral judgment about what their faith is.

5 A Okay.

6 Q And you would expect them to respect your individual
7 moral judgment on that, correct?

8 A I would hope so, yes.

9 Q And at the same time I think you would respect their
10 decision?

11 A I would give it a one-hundred percent to do so.

12 Q And you understand that when you are back in the jury
13 room there is a, people should have a civil discourse and
14 talk about what they think. You understand that?

15 A I do.

16 Q But the law basically says that once a Juror comes to
17 their individual moral judgment they just can't throw that
18 away to go in with the majority. Do you understand that?

19 A I understand that.

20 Q And if you were back in the jury room and you saw it
21 got beyond kind of civil discourse to where it got to the
22 point of bullying--

23 A It is time to call in the bailiff.

24 Q And that was kind of my question. Are you the type
25 of person if you saw that you could say, you know what,--

1 A I tell on myself all the time at work. Yes, sir. I
2 am the one that will tell you that I am late, I am the one
3 that will tell you I wasn't sick, I just didn't want to go
4 in. I will tell you that I went fishing. So, yes, I am
5 that person.

6 Q And you understand that it is appropriate to say, you
7 know, right a note to the Judge, hey, Judge, it has gone
8 beyond civil discourse back here, can you help us out?

9 A I probably wouldn't use the word, civil discourse,
10 but I would say, call the Judge.

11 Q Okay.

12 MR. MADSEN: Judge, subject to your previous rulings
13 that is all the questions I have.

14 THE COURT: Mr. Graham.

15 EXAMINATION

16 By Mr. Graham:

17 Q Ms. Lee, my name is Shawn Graham, I am one of the
18 Prosecutor's in the case and I appreciate you being with
19 us this afternoon.

20 A Yes, sir. Nice to meet you.

21 Q Nice to meet you. You came in and you said you were
22 a type three, right?

23 A Yes.

24 Q And you are a type three right now too, aren't you?

25 A Yes.

1 Q You want to hear everything?

2 A Yes.

3 Q You want to hear the good--

4 A The bad, the ugly and in between.

5 Q And then after you hear all of that, if you thought
6 that life was appropriate you could give life?

7 A I could.

8 Q And if you thought death was appropriate you could
9 give death?

10 A I could and if I thought freedom was appropriate I
11 could give that.

12 Q You do realize that that won't be--

13 A I do but I am just telling you.

14 Q But that section, the first section that would be a
15 choice, you are right. One of those four choices would be
16 not guilty or not guilty by reason of insanity. In the
17 second section, if you and the other twelve jurors found
18 that death was the appropriate, you would have to actually
19 sign your name, some people have a problem with signing
20 their names to documents. You have a problem signing if
21 you thought that was the appropriate sentence?

22 A No, sir. I would sign my full name.

23 Q Okay. In that second phase you heard people talking
24 about mitigation. You heard that word now.

25 A Yes, sir.

1 Q Which is a reason, it has been described as a reason
2 to give life. Do you understand that?

3 A Yes, sir.

4 Q Just because mitigation is presented and you hear it,
5 on one hand you can choose that is the reason I am going
6 to give life. You can also hear it and say that doesn't
7 mean anything to me or that is not important--

8 A It doesn't affect me, right.

9 MR. YOUNG: Objection, Your Honor. You can't say it
10 doesn't mean anything.

11 THE COURT: It was the individual decision of
12 mitigation, I think how he characterized the question.

13 MR. YOUNG: That is a misstatement of the law.

14 THE COURT: Recharacterize that question. I
15 understand what you meant now.

16 MR. GRAHAM: I didn't mean to misstate anything. I
17 do apologize.

18 Q You can hear evidence presented in mitigation,
19 anything presented by the Defense would be presented in
20 mitigation.

21 A Okay.

22 Q Just because it is presented does that mean you have
23 to individually find that as a reason to give life. Do
24 you understand that?

25 A I understand.

1 Q You still get to weigh it for what you think it is
2 worth?

3 A That's correct. I get to weigh it upon my own
4 feelings and thoughts.

5 Q Yes, and then after you would go back and discuss
6 with all of the other jurors what your feelings and
7 thoughts were and listen to theirs and then reach a
8 consensus.

9 A Thank you.

10 Q Thank you, Ma'am.

11 THE COURT: Anything else?

12 MR. MADSEN: No, sir.

13 THE COURT: All right, Ma'am, step out real quick, I
14 am going to talk to the lawyers and have you right back in
15 here. Nothing? Wait, come back in here.

16 MR. GRAHAM: Your Honor, if we could approach at
17 sidebar.

18 THE COURT: Okay.

19 (Whereupon, a bench conference was held in the
20 presence of the Juror but out of the hearing of the
21 Juror.)

22 THE COURT: Ms. Lee, considering all of your answers,
23 questionnaire and questions in here, I have found you to
24 be a qualified Juror. That doesn't mean you are on the
25 jury, it means you are qualified to be on the jury based

1 upon your answers. I want you to follow the website, the
2 Lexington website and watch for the instructions under the
3 qualified jury tab. It will say, please look back
4 tomorrow, please come back some other time. And then it
5 will say, please come in here on such and such a date,
6 such and such a time, that is when I want you back in
7 here. Until that time you are under your oath.

8 JUROR: Don't talk to my mama.

9 THE COURT: Tell her Judge Griffith is really nice
10 but he said absolutely no communication.

11 JUROR: She understands.

12 THE COURT: Tell her to steer clear of conversations
13 about the case because that would create an issue for you.
14 Because then you have got to come in here and tell me
15 everything she asked you and everything she told you and
16 then the lawyers get to listen. That will happen.

17 JUROR: I understand.

18 THE COURT: Don't do any independent research, look
19 up things. What I want you to determine is based on what
20 you hear in here.

21 JUROR: Yes, sir. I am that kind of person.

22 THE COURT: All right. So you are under oath to do
23 that. Don't communicate, don't do anything, don't read
24 the news media reports, social media.

25 JUROR: I haven't watched the news.

1 THE COURT: Okay. Don't go on social media.

2 JUROR: My husband tells me what the weather is.

3 THE COURT: Enjoy your Mother's Day and maybe we will
4 see you very soon.

5 JUROR: Yes, sir.

6 THE COURT: Thank you, Ma'am.

7 JUROR: Thank you.

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

10 MR. GRAHAM: Judge, if I could just put something on
11 the record.

12 THE COURT: You may.

13 MR. GRAHAM: The reason the State is opposed the way
14 they are asking the questions, they keep citing Morgan
15 versus Illinois, that is not, the questionnaire does not
16 involve Morgan v. Illinois and leads to the problem we
17 just had.

18 THE COURT: And she understood.

19 MR. GRAHAM: She did but I don't know that everybody
20 has, that is our concern. Is that you throw it out there
21 and honestly you are looking at disqualified people. And
22 it is not a fair question. Morgan versus Illinois is a
23 question that the Court should have been allowed to have
24 asked was, if you found the Defendant guilty will you
25 automatically vote to impose the death penalty no matter

1 what the facts are. And that is what they are not asking,
2 they are talking about, do you think it is appropriate,
3 not automatic and you are not throwing in without needing
4 to consider anything else. And that has been our
5 objection the whole time and I don't know that we stated
6 it.

7 THE COURT: And what we saw with this lady was a
8 perfect example of you need to find out what her basis is
9 and she was very confident and comfortable explaining to
10 you that you changed the question and that was not an
11 appropriate question.

12 MR. MADSEN: And, Judge, they keep on talking about
13 fairness and that is certainly, you know, we are zealously
14 representing Tim, I don't care about fairness. Morgan
15 versus Illinois says that we have to ask questions to try
16 to find out biased from people that might not even realize
17 they have that biased. And so saying that we have to have
18 some kind of standard for fair questions is absolutely
19 ridiculous. I mean, it is a tough job where you have to
20 ask questions to try to find out something that someone
21 might not know themselves. And if we don't do that then
22 we come back and we do this again.

23 THE COURT: Well, the way the question gets
24 characterized can lead to this and that is what the
25 stages, concerned about. And, you know, I understand

1 that.

2 MR. MADSEN: And, Judge, I want her to talk me out of
3 it, I want her to say you got me wrong and she did that.

4 THE COURT: She did that.

5 MR. MADSEN: She is a qualified Juror because of
6 that. So it works.

7 THE COURT: Correct. Okay. Well, what I think would
8 be the better question, are you automatically going to
9 death, something like that. But always, maybe it is the
10 word, automatic versus always. I don't know.

11 MR. MADSEN: How is automatic different from only
12 which is a word that they, I mean that is basically the
13 same thing.

14 THE COURT: Well, it is semantics and I am trying to
15 help guide y'all.

16 MR. MADSEN: And they complained about only.

17 THE COURT: I am trying to guide y'all reasonably
18 through this narrow course. So I understand their
19 complaint. That is a good example of you walked down with
20 her and then she explained to you why you changed the
21 facts and she was correct. But, you know, you done it
22 intentionally for a reason to see if mitigating factors
23 impacted her decision making. And she was very clear, she
24 did not want to make a decision without them. So, all
25 right, let's go forward, we have got one more on this last

1 panel.

2 MR. YOUNG: Your Honor, can we take two minutes.

3 THE COURT: Yes, we can.

4 (Whereupon, a short break was taken.)

5 THE COURT: Let's bring in 56, Elizabeth Brown.

6 (Whereupon, Juror 56, Elizabeth Brown entered the
7 courtroom.)

8 EXAMINATION

9 By The Court:

10 Q Good afternoon, Ms. Brown.

11 A Good afternoon.

12 Q My name is Judge Griffith, you are under oath, I am
13 going to ask you the same questions, basically the same
14 order as everybody else. Since Monday have you talked to
15 anybody about the case?

16 A Not about the case but jury duty.

17 Q And that was somebody earlier today before y'all came
18 in here for my instructions?

19 A Yes.

20 Q She told me something similar, y'all discussed I
21 wonder what is going on or what we would be asked?

22 A Yes.

23 Q That type of subject matter?

24 A Yes.

25 Q Other than that has anybody questioned you about the

1 case?

2 A No, sir.

3 Q Now, there has been publicity, a lot of it, I gave
4 you some information Monday. The accusations made by the
5 State against Mr. Jones are five counts of murder, such
6 and such, I read those.

7 A Yes, sir.

8 Q That is the information. Other information may have
9 come to you from any source whatsoever. Have you formed
10 an opinion as to what happened in this case?

11 A No, sir.

12 Q Now, you have anything on your calendar starting next
13 week for about three weeks if you were selected as a Juror
14 could you serve or do you have vacation, something
15 personal, work, some obligation that would create a
16 hardship on you to sit as a Juror?

17 A I believe I could sit as a Juror, yes sir.

18 Q Okay. Fair enough. Now, subject matter in this case
19 involves testimony, evidence, photographs, otherwise of
20 children, the death of children. The subject matter has
21 been described to me by the lawyers, Judge, this is going
22 to be difficult. It is tough, graphic, unpleasant. That
23 type of subject matter will be presented and considered by
24 the jury in the court. Can you consider difficult and
25 unpleasant testimony knowing that is what is coming in

1 this trial and be fair to everybody because it is going to
2 be harsh and unpleasant. You have got to consider it. If
3 you can't I have got to know because that is going to be
4 very difficult to sit and see. And it is going to come
5 in. It is not like we are going to avoid it because the
6 testimony is going to all of a sudden turn around and be
7 something different. Can you do that?

8 A Yes, sir.

9 Q I sent you, I gave you the instructions on the law.
10 Very, very broad instructions on the process, two step
11 procedure for a Capital case, guilt or innocence and
12 sentencing. If guilt is found then they go to sentencing
13 and the sentencing the State has got to prove an
14 aggravating factor from the statutes. Mitigation evidence
15 is presented and considered by jurors. Understanding that
16 is a very broad picture, do you have an idea, if you were
17 seated as a Juror, which type of potential Juror you would
18 be?

19 A I believe I would be Juror number three.

20 Q Okay. Now, understand that, Juror number three wants
21 to hear facts, testimony and evidence. They don't have
22 their mind made up. Now, this presupposes a conviction,
23 murder and an aggravating factor. So there is no defenses
24 considered in that portion. So the guilt is found,
25 sentencing only is left. Can you still classify yourself

1 as a type three because you want to hear other testimony?

2 A Yes, sir.

3 Q Okay. Some people get confused. There is still
4 guilt up in the air. Guilt is not up in the air, it will
5 be decided under this scenario. Did you look at my
6 witness list?

7 A Yes, sir.

8 Q Those are potential witnesses. Not all of them will
9 be called. Most of them might. Do you know any of these
10 witnesses?

11 A Not personally but I know the name of the Lexington
12 County Communications Officer. I worked at a firm that
13 used to do work for the District.

14 Q Would that relationship, that friendship, knowing,
15 would that affect your ability to be fair and impartial?

16 A No, sir.

17 Q Going back to the two stage process, stage one, phase
18 one. Guilt or innocence, when the State tried to prove
19 the murder, the State has to call witnesses, present
20 evidence to try to convince a jury beyond a reasonable
21 doubt unanimously of Mr. Jones guilt. He is seated right
22 there is presumed innocent. The Constitution affords him
23 that presumption. During that presentation Mr. Jones may
24 provide testimony, testimony may come from someone of
25 potential defenses. He is claiming one potential defenses

1 already. If other testimony that could be considered by
2 the jury's defense you may hear additional testimony. Do
3 you understand?

4 A Yes, sir.

5 Q Now, I am going to read potential defenses and then
6 tell you, I am not going to instruct on all of those but
7 if testimony were to support it I could instruct on some
8 of these. Potential defenses, identification, accident,
9 involuntary intoxication, self-defense, necessity,
10 insanity, guilty but mentally ill, defense of habitation,
11 entrapment, duress, alibi. Those are potential defenses
12 allowed by our statute one of which he has claimed and he
13 is going to try and prove. Can you give meaningful
14 consideration to any of those defenses, considering my
15 instructions will be focused on the aspects of that law to
16 explain it to you. But to consider the testimony,
17 evidence you heard, consider the State has got the burden
18 of proving guilt beyond a reasonable doubt. But also
19 consider the instructions on defenses while evaluating the
20 testimony and evidence and be fair to both sides, both the
21 State and the Defense. Can you do that?

22 A Yes, sir.

23 Q It is going to be complicated because of the defense
24 that Mr. Jones has introduced or going to prove, there are
25 four potential verdict forms, guilty, guilty but mentally

1 ill, not guilty by reason of insanity and guilty, I mean
2 not guilty absolute. Of those four potential verdict
3 forms can you give meaningful consideration to all four of
4 those potential verdict forms considering my instructions
5 to explain them and consider the testimony and evidence
6 presented at trial and act as a fair and impartial Juror
7 for both sides?

8 A Yes, sir.

9 Q So I will explain those defenses. I mean, I am
10 sorry, the verdict forms and the defenses. Then you have
11 got to evaluate the testimony as consistent with my
12 instructions of the law. Do you understand?

13 A Yes, sir.

14 Q Can you do that?

15 A Yes, sir.

16 Q Now, if not guilty or not guilty by reason of
17 insanity is found the case ends. If guilt is found the
18 State meets its burden of proving the case beyond a
19 reasonable doubt then we go to phase two, the sentencing
20 portion. In that portion the State is required to prove
21 an aggravating factor. Several aggravating statutory
22 factors could be murder of policeman, murder of a child,
23 rape of murder, kidnapping of murder, multiple murders.
24 Those are aggravating factors, the State has got to prove
25 one beyond a reasonable doubt. Also during that

1 presentation mitigating factors, mitigating testimony,
2 reasons to give life are presented by the defense. Jury's
3 have to consider those mitigating factors under the
4 instructions of the Court. Now, some mitigating factors
5 could be, under our statute, the Defendant has no
6 significant history of prior criminal conviction involving
7 the use of violence against another person. The murder
8 was committed while the Defendant was under the influence
9 of mental or emotional disturbance. The victim was a
10 participant in the Defendant's conduct or consented to the
11 act. The Defendant was an accomplice in the murder
12 committed by another person and his participation was
13 relatively minor. The Defendant acted under duress or
14 under the domination of another person. The capacity of
15 the Defendant to appreciate the criminality of his conduct
16 or to conform his conduct to the requirements of law was
17 substantially impaired. The age or mentality of the
18 Defendant at the time of the crime. The Defendant was
19 provoked by the victim in committing the murder. The
20 Defendant was below the age of 18 at the time of the
21 crime. The Defendant had mental retardation at the time
22 of the crime. Those are statutory mitigators or reasons
23 to give life. There are other, childhood, broken home,
24 anything a Juror wants to assign value to to give life is
25 a mitigating factor. You are not required to be on that

1 statutory list. But jurors can assign reason to give
2 life, can be any one of those. Don't have to give life
3 but those are things that jury's consider. During the
4 sentencing portion jurors have to consider the State's
5 required proof of an aggravating factor. If they don't
6 prove that the death penalty is not allowed. You have got
7 to prove that beyond a reasonable doubt, unanimously.
8 Mitigating testimony is considered by the jury. In the
9 sentencing phase jurors only have two choices, life or
10 death, nothing else. No middle ground, no other options.
11 Can you give meaningful consideration to the State's
12 requirements to prove an aggravating factor, as well as
13 consideration of all the mitigating factors, testimony and
14 evidence shown. Can you follow my instructions and make
15 findings consistent with my instructions as to a potential
16 sentence for Mr. Jones.

17 A Yes, sir.

18 Q Now, the death verdict. The jury has to be
19 unanimous, all twelve jurors agree and all twelve must
20 sign the verdict form. Can you do that?

21 A Yes, sir.

22 Q If a jury makes a unanimous finding of life without
23 the possibility of parole then that sentence is imposed.
24 Do you understand?

25 A Yes, sir.

1 Q Do you have any reason you could not, moral,
2 religious, personal belief that you could not find a
3 verdict, if the facts and evidence support it, you could
4 not find the death penalty. Could you do that?

5 A Yes.

6 Q Let me reask it. I want to make certain if the facts
7 support it could you find a verdict of punishment for
8 death?

9 A Yes, sir.

10 Q If the facts support it, life without parole, could
11 you, do you have any religious, moral, personal belief
12 which would prevent you from finding that sentence?

13 A No, sir.

14 THE COURT: Mr. Young.

15 MR. YOUNG: Your Honor, Ms. Kuchar from our office.

16 THE COURT: She has been sitting behind you.

17 EXAMINATION

18 By Ms. Kuchar:

19 Q Good afternoon, Ms. Brown.

20 A Good afternoon.

21 Q I see that you are a legal assistant?

22 A Yes, ma'am.

23 Q Does your firm do any criminal defense work at all?

24 MS. MAYES: May it please the Court?

25 THE COURT: Yes, ma'am.

1 MS. MAYES: Can we approach?

2 THE COURT: Okay.

3 (Whereupon, a bench conference was held in the
4 presence of the Juror but out of the hearing of the
5 Juror.)

6 THE COURT: Okay, Ms. Kuchar.

7 Q Do you guys do any criminal work?

8 A The attorneys that I work for are not currently doing
9 criminal work.

10 Q Okay. But you probably have a better understanding
11 than most people are coming in about most of these legal
12 terms and how the court works?

13 A Some understanding, yes ma'am.

14 Q I am not sure, my brain is a little bit jumbled at
15 this point of the day. I don't know if the Judge asked
16 you, have you heard about this case, whether it was back
17 in 2014 or any time afterwards?

18 A No Ma'am, I didn't move to the State until 2015 and I
19 don't have local cable or the local newspaper.

20 Q So you haven't heard anything about the case?

21 A No.

22 Q Okay. And, again, just to start off. The Judge
23 talked to you about the law, I am really here just to kind
24 of learn about your feelings, your attitude, your belief
25 that you have held already before you came into this

1 courtroom. There is no wrong answer, there is no right
2 answer. You are not going, either way, I don't care what
3 the answer is, I just want to know how you feel. Is that
4 fair?

5 A Yes, ma'am.

6 Q Okay. And really I just generally want to know, have
7 you thought about the death penalty much before you were
8 summoned?

9 A Not before I was summoned but I have done some soul
10 searching on it in the last week.

11 Q Well, tell me about that.

12 A I think to some extent, for me it is like being
13 pro-choice. I personally am, would not make that
14 decision. But that option is available because it is
15 granted under the law. So it is there, it is the option
16 and it is something to consider if the facts do support
17 it.

18 Q So it sounds to me like you are saying it is a big
19 choice. Obviously it is something that you take very
20 seriously. And you would consider making the choice?

21 A Yes, ma'am.

22 Q What kind of cases do you feel you would be willing
23 to make that kind of choice for that?

24 A I think it depends on the factors behind the case, no
25 case is alike. No evidence presented is going to be

1 alike. So it is, just depends on the case itself.

2 Q Can you give me a little bit more, what would you be
3 looking for?

4 A Something well--

5 MS. MAYES: Objection, Your Honor.

6 MR. GRAHAM: Objection, staking.

7 THE COURT: Okay. Step out real quick, I need to put
8 another thing, I have got another issue.

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

11 THE COURT: Changing lawyers is slowing this thing
12 down. We have got eight jurors sitting back in the back
13 that I am getting blamed for being late. Ma'am, it is not
14 your fault, you haven't been up here so I am really not
15 throwing criticism to you. I want to get through three
16 panels, I still do. This is moving slower now because you
17 changed lawyers and put her up here, put her in a real bad
18 spot for me. I am not happy about that, put her in a bad
19 spot. She has not done this and she has not gotten the,
20 she has been here. Let's take a couple of minutes but I
21 am frustrated because y'all are moving slow and we have
22 got jurors sitting back here and I want to get through
23 three panels. Everybody has got a little bit of blame, a
24 little bit of fault including me. But this is not really
25 fair to those guys and the ladies back in the back. So

1 please help me manage them, I have already been asked by
2 the Clerk about the panels tomorrow. I think we may want
3 to go ask them and see if they want to come in tomorrow so
4 they are not sitting here for two hours and fifteen
5 minutes thus far. I am just unhappy about that and I am
6 blaming all of y'all equally and accepting my own blame so
7 I am not pointing all fingers. I have been part of it
8 too. We have got to go faster to get this done and
9 beating dead horses and asking the same questions. It is
10 not fair to the jurors we are trying to get through here.
11 Take a couple of minutes.

12 (Whereupon, a short break was taken.)

13 THE COURT: Are y'all ready to proceed on. Ma'am, I
14 apologize, I understand your difficult position that they
15 put you in. I am blaming them. Okay.

16 MS. KUCHAR: I don't consider it has a difficult
17 position, Your Honor. I am just sorry if I am taking too
18 long.

19 THE COURT: Go ahead and bring that Juror back in.

20 (Whereupon, the Juror entered the courtroom.)

21 THE COURT: Reask your question.

22 EXAMINATION

23 By Ms. Kuchar:

24 Q Sorry about that. I think we were just talking about
25 the soul searching that you have done. And it sounds like

1 you could consider both the life penalty and the death
2 penalty?

3 A Yes, ma'am.

4 Q Depending on the circumstances?

5 A Yes, ma'am.

6 Q And then it also sounds like to me that even in a
7 case where there are the deaths of multiple children, and
8 you found that person guilty you could consider both the
9 life penalty and the death penalty?

10 A Yes, ma'am.

11 Q There would be no penalty that would be automatic for
12 you?

13 A Yes, ma'am.

14 Q And you heard the Judge explain mitigating factors to
15 you?

16 A Yes, ma'am.

17 Q Did you understand what those meant?

18 A Like a situation or condition that is, I am going to
19 call it parallel to whatever the event was.

20 Q Okay. And the way I am going to describe it is just
21 any reason that is offered to choose the life penalty
22 instead the death penalty. So that could be a lot of
23 things. I think the Judge read a list to you. It could
24 also be anything that the Defense offers. So, things like
25 the Defendant's childhood or background or relationship

1 with his family. Does that sound fair to you?

2 A Yes, ma'am.

3 Q Are those things that you would give meaningful
4 consideration to?

5 A Yes, ma'am.

6 Q Okay. And also the Judge explained to you
7 aggravating factors and those need to be proven by the
8 State beyond a reasonable doubt and you all, all of the
9 jurors will have to agree unanimously that they exist
10 before they can be considered. Does that make sense?

11 A Yes, ma'am.

12 Q Okay. And mitigating factors are different because
13 you don't need be unanimous and there is no standard of
14 proof. Does that make sense?

15 A Yes, ma'am.

16 Q So one Juror could see something like the Defendant
17 had a great relationship with his father and say, I decide
18 to give the weight of life. And the second Juror might
19 not agree with that but that is totally fine, choosing
20 your own mitigation, finding your own mitigation is
21 perfectly valid for a Juror. Does that make sense to you?

22 A Yes, ma'am.

23 Q Okay. And likewise a Juror can have no reason at all
24 for choosing life. Death is never automatic in any case,
25 not even in the worst case. So a Juror might not be able

1 to explain why she has come to the decision that life is
2 the appropriate sentence. But she can still choose life.
3 Is that something that you could respect?

4 A Yes, ma'am.

5 Q And you wouldn't expect for that person to give you
6 an explanation or a standup for their position if that is
7 their own moral decision that they come to?

8 A No, ma'am.

9 Q And would you also, once you have to come to your
10 unique moral determination as to what the appropriate
11 punishment would be, would you be able to stand up for
12 yourself?

13 A Yes, ma'am.

14 Q Okay. You wouldn't allow yourself to be bullied out
15 of that position?

16 A No, ma'am.

17 Q And if you saw someone else, even if they disagreed
18 with you being bullied would you be able to address that?

19 A Yes, ma'am.

20 Q Would you be willing to write a note to the Bailiff
21 saying, Judge, I think that we have gone beyond civil
22 discourse and someone is being bullied?

23 A Yes, ma'am.

24 Q Thank you so much. Give me one moment. I don't have
25 anything further, thank you so much.

1 THE COURT: Ms. Mayes.

2 EXAMINATION

3 By Ms. Mayes:

4 Q Good afternoon, Ms. Brown.

5 A Good afternoon.

6 Q I am Suzanne Mayes, I am one of the Prosecutor's in
7 this case on behalf of the State. Shouldn't take very
8 long, just a couple of questions to follow-up. One of the
9 things that you were just asked a few moments ago was
10 whether you had thought much about the death penalty
11 before coming in here. And you said, not really. But I
12 wrote down that you said I have done some soul searching
13 over the weekend. To a certain extent it is like being
14 pro-choice, I wouldn't personally make that decision but
15 it is there under the law. When you said I wouldn't
16 personally make that decision, what did you mean by that?

17 A I wouldn't personally have that abortion but I will
18 defend another woman's right to have that abortion because
19 that is granted under the law.

20 Q Okay. I just needed to clarify that the distinction
21 was regarding reproductive rights and not the death
22 penalty itself.

23 A Right, yes.

24 Q Okay. So where the death penalty is concerned would
25 you be able to personally make that decision?

1 A Yes, ma'am.

2 Q If the facts were there to support it after
3 considering both the aggravating circumstances and the
4 mitigating circumstances?

5 A Yes, ma'am.

6 Q And in so doing, the Judge mentioned this earlier but
7 just wanted to give you a little more detail about it. If
8 at the close of the second phase of the trial, it gets to
9 that point, the jury unanimously decides that the death
10 verdict is the decision on a sentence, each individual
11 Juror would then sign that form acknowledging that that is
12 in fact their verdict, to render a death sentence. Could
13 you sign your name to that?

14 A Yes, ma'am.

15 Q You could personally make that decision?

16 A Yes, ma'am.

17 Q Nothing further.

18 THE COURT: Anything additional?

19 MS. KUCHAR: Nothing further.

20 THE COURT: Anything we need to put on the record?

21 MS. KUCHAR: No, Your Honor.

22 THE COURT: From the State?

23 MS. MAYES: Nothing from the State, Your Honor.

24 THE COURT: Ms. Brown, you are Juror 56. Based upon
25 your answer you are found as a qualified Juror.

1 JUROR: Yes, sir.

2 THE COURT: And what that means, you are going to be
3 identified as a qualified Juror on the website. You will
4 look on the website tomorrow evening and determine whether
5 or not I need you to come back in the next day, the next
6 day or the next day. It may say check back the next day.
7 Until it says please come in some date and time, then come
8 in, it will probably be in this courtroom. That is what I
9 want you to do. Until that time and then, if you are
10 selected as a Juror, all through the trial, do not allow
11 anyone to communicate with you about the case, do not
12 discuss the case with anybody. Do not do any independent
13 research, do not peruse the publicity, social or public
14 media where attention this case is given. I have no
15 control, the testimony, facts, whatever it is that is out
16 there, not in the courtroom, it is not under oath, not
17 under the scrutiny of a court record, it is what it is.
18 And who knows what it is. I don't so I want you to make
19 your decision on this case under oath, be fair and
20 impartial to both sides while considering the testimony,
21 evidence, the Court's instructions from within a court
22 record. Can you do that?

23 JUROR: Yes, sir.

24 THE COURT: I will ask you that again when you all
25 come back. So maintain your oath and see you when you get

1 back.

2 JUROR: Yes, sir.

3 THE COURT: Thank you very much.

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

6 THE COURT: Folks, six out of the eight want to stay
7 and get it done tonight. That is what we are going to do,
8 we will roll two in the morning and add those to the eight
9 tomorrow. The order of the random draw stays the same. I
10 don't know which ones are staying, do you have the
11 numbers.

12 CLERK OF COURT: Yes, sir. The two I let go was 308
13 and 117.

14 THE COURT: Subject to that we will figure out who is
15 coming in first and y'all figure that out. We will break
16 before we bring them in, why don't we bring them in here
17 and then give them a break because they will have to
18 study, bring them all in.

19 (Whereupon, Juror 255, Laurie Long; Juror 77, Debora
20 Carter; Juror 430, Patricia Teal; Juror 147, Patricia
21 Fowler; Juror 288, Tameka Merritt; Juror 236, Andrew
22 Kirkwood entered the courtroom.)

23 THE COURT: Thank you for going ahead and get this
24 done tonight. I much appreciate your willingness to do
25 so. I apologize for the delay. Blame it on me, I blame

1 it on the lawyers. Now, that is a joke, all of us in the
2 courtroom, we will get in here and talk about some things.
3 You will understand. We are talking opinions, personal
4 feelings and sometimes they aren't yes or no answers.
5 Okay. And then one answer may lead to another and that is
6 fine because that is what I am looking for in this process
7 are personal feelings and opinions that would allow you to
8 be fair and impartial jurors or not. When you come back
9 in I will ask you about your personal schedules,
10 availability to serve as a Juror or not, describe some of
11 the testimony you might receive, whether that would be a
12 problem for you and then also the aspects of the criminal
13 process. I will read you this and then put you back there
14 and then bring you back in one at a time. And you are
15 going to study the witness list and a three types of
16 jurors before you come in and that will be some of the
17 first questions. I have read this to all of the other
18 jurors, I like to state it to you, I am going to read it
19 that way all panels get the same thing. 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 will be the presiding Judge in this trial. Mr.
23 Jones is charged with five counts of murder. And in South
24 Carolina murder is defined as the killing of another
25 person with malice aforethought. Malice is defined as a

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

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

1 guilty by reason of insanity. Until the testimony and all
2 the evidence is presented I am not able to tell you the
3 exact instruction of the law. You will be asked when you
4 come back in, can you accept an oath to meaningfully
5 consider all the testimony and evidence, apply the law as
6 I instruct it and consider the evidence, all the evidence,
7 consistent with my instructions. Those are my preliminary
8 instructions on the law procedure which is expected in a
9 Capital case. Step back in the jury room and don't
10 discuss the case. The cameras are off, pictures are not
11 being taken, but don't discuss the case while I am calling
12 you out here. Okay. See you back in a moment. Oh, I am
13 sorry. I forgot to put y'all under oath. Y'all were
14 under oath Monday. My first question to you is going to
15 be, have you talked about the case with anybody since
16 Monday. Stand as a group and place them under oath, Ms.
17 Frick.

18 (WHEREUPON, the jury was sworn at approximately 5:40
19 p.m.)

20 THE COURT: The first Juror that will be with the
21 reading material, give you a couple of minutes. We will
22 step out real quick and when you are ready we will have
23 you back in here.

24 (Whereupon, a short break was taken.)

25 THE COURT: Are y'all ready to bring in 255.

1 (Whereupon, Juror 255, Laurie Long entered the
2 courtroom.)

3 EXAMINATION

4 By The Court:

5 Q Ms. Long, I want you to tell me your name and spell
6 it into the microphone.

7 A Laurie Long. L-A-U-R-I-E; L-O-N-G.

8 Q Ms. Long, you took an oath Monday not to talk about
9 the case. Have you talked about the case in any fashion?

10 A No, not other than telling my boss that I had an open
11 ended date.

12 Q Okay. Fair enough. Anybody tried to ask you
13 questions about the case?

14 A Yes.

15 Q What was your response about those inquires?

16 A I walked off.

17 Q That is a great response and that is what I want the
18 response to continue to be. Now, there has been
19 publicity, social media, private media, everything. I
20 read those indictments to the whole jury pool Monday.
21 That is information. Has any information that you have
22 come across, whether publicity prior to Monday, publicity
23 earlier last week, any time this week, any information
24 that has been produced to you?

25 A No, sir.

1 Q Have you formed an opinion as to what happened in
2 this case as a result of any of that?

3 A Quite possibly, yes.

4 Q The accusations--

5 A The accusations are there, our Deputies showed up and
6 there are five children that are dead. Somebody has got
7 to speak for the children.

8 Q Now, do you presume that the, Mr. Jones is not
9 innocent right now, as the Constitution requires. Do you
10 think you have already formed an opinion as to what
11 happened?

12 A I don't know, I don't know enough about it.

13 Q Now, the law requires the State to prove the crime
14 beyond a reasonable doubt and they have got to offer
15 witnesses and testify to that sort of thing. Mr. Jones is
16 presumed innocent, the presumption stays with him. You
17 understand that?

18 A Yes, sir.

19 Q So part of your duty is, response as a Juror is to
20 accept the instructions of the Court and the presumptions
21 under the Constitution that everybody gets. So he is
22 presumed innocent sitting right there. Now, did you, I
23 will ask you about, you said five children, somebody has
24 got to speak for them. The testimony about this case and
25 in this trial will be, the subject matter involving the

1 death of five children. It will be, represented by the
2 lawyers to me, I have not heard all the testimony, I don't
3 know much of it. I am going to hear the testimony and
4 evidence just like the jury. I am told it is harsh, it is
5 graphic, unpleasant and tough. Those are some of the
6 words I have heard used by the lawyers that reviewed most
7 of these in the courtroom. The subject matter that has
8 been described as tough, unpleasant. Can you consider
9 that type of testimony and evidence, photographs, what
10 have you, and consider this case, be fair and impartial to
11 both sides in light of the fact that it is going to be
12 very unpleasant, graphic testimony involving those, that
13 type of subject matter. Can you do that?

14 A I am not sure.

15 Q You are not sure. And see, that is kind of the
16 problem. I can't show it to you ahead of time and go,
17 Ma'am, can you handle that.

18 A Right.

19 Q If you don't know you don't know because you haven't
20 seen it. I want you, I am going to represent to you,
21 suggest it is going to be tough. That being the case can
22 you be fair and impartial to both sides and consider very
23 difficult and unpleasant testimony or would that be too
24 much for you?

25 A It would be all right, I could do it.

1 Q You could it?

2 A I can do it.

3 Q All right. I gave you a preliminary instruction on
4 the law just then. Kind of give you a systematic
5 approach. The Capital case is a two phase, guilt or
6 innocence, punishment. In the guilt phase the State has
7 got to prove the case. I gave you a list of three types
8 of potential jurors in cases that are involving the death
9 penalty. This summary suggests, you can take a look at
10 it. This summary suggests, it is the same one you read,
11 the summary presupposes that the guilty verdict has
12 already been found. Then the State is required in the
13 sentencing phase to convince you beyond a reasonable doubt
14 the aggravating factor and the jury considers mitigating
15 factors. Can you describe yourself, find yourself in any
16 one of those three types of jurors right now as you sit,
17 presuming a conviction on the murder?

18 A Number one.

19 Q Number one. Is that where you find yourself?

20 A Yes.

21 Q And that is kind of in light of what you said earlier
22 is there is five children.

23 A Right.

24 Q I understand. And you are pretty firm on one?

25 A Yes.

1 Q That is what you think the appropriate punishment is?

2 A Yes, sir.

3 Q Very well. Ma'am, I am going to excuse you from
4 serving on the case. Thank you so very much and thank you
5 for your candor.

6 A Thank you.

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

9 THE COURT: Number 77, are y'all ready?

10 MR. YOUNG: Yes, sir.

11 (Whereupon, Juror 77, Debora Carter entered the
12 courtroom.)

13 EXAMINATION

14 By The Court:

15 Q How are you doing?

16 A Fine.

17 Q Ms. Carter, good afternoon and thank you for being
18 patient.

19 A No problem.

20 Q I want you to spell your first name and last for Ms.
21 Holston and to make certain the microphone is picking you
22 up.

23 A Debora, D-E-B-O-R-A; Carter, C-A-R-T-E-R.

24 Q Ms. Carter, I gave you instructions and an oath
25 Monday to not talk about the case. Have you talked about

1 the case to anybody whatsoever since Monday and receiving
2 the oath?

3 A No, I haven't.

4 Q Has anybody tried to talk to you about the case since
5 Monday?

6 A No, they haven't.

7 Q Okay. I gave you some facts, allegations on the
8 indictments from the State they made to Mr. Jones to which
9 he plead not guilty. Those indictments contain facts.
10 There has been publicity about this case several years
11 ago, last several months and the weekend prior to Monday
12 as well as since. I ask you this question, the
13 information you have gotten, I don't care where it came
14 from, whether before the oath, since my reading the
15 indictments to you, where ever it has come from, has any
16 of that information caused you to form an opinion as about
17 what happened in this case? You can't answer wrong, okay.

18 A Right.

19 Q Not a wrong answer, you are not going to get in
20 trouble no matter your answer. I need your honest
21 opinion, your honest view. Okay.

22 A Well, when you first hear of something like that on
23 the news then your first reaction is your opinion at the
24 time. My opinion is how could someone do that.

25 Q So do you believe that Mr. Jones, you understand that

1 Mr. Jones under the Constitution is presumed innocent.

2 But based upon the facts you have already heard from the
3 news way back several years ago, the allegations that I
4 read off the indictments, do you have an opinion now that
5 he is already been established as committing those crimes?

6 A Explain that again, please.

7 Q I want to know if you have formed an opinion. Do you
8 think he is guilty already or not?

9 A Do I think he is guilty already?

10 Q Yes.

11 A Yes.

12 Q Okay. And that presupposes the next question. So he
13 is already guilty then it is going to be difficult for you
14 to go back and revisit the facts and circumstances that
15 may have lead to it happening? You may get to hear why
16 but you have already believed he would be guilty?

17 A Even though I believe he is guilty now I think I
18 could listen to more facts and, you know, consider those
19 things.

20 Q Now, the media reports you heard was several years
21 ago when it first happened?

22 A Yes.

23 Q Did you hear any news reports here recently?

24 A I have not watched the news since I left last Monday.

25 Q Okay. I mean last weekend, the weekend before you

1 came in?

2 A I didn't hear anything prior to that.

3 Q You have already formed an opinion as to his guilt?

4 Is that right, I think you have told me that.

5 A I did say that.

6 Q All right.

7 THE COURT: I think that is going to be a tough spot
8 to put her in. I am not going to find her qualified. So
9 77 is not qualified.

10 THE COURT: Ma'am, you didn't do anything wrong. I
11 couldn't, you did exactly what I asked and you were candid
12 with me so thank you very much.

13 JUROR: All right, you are welcome.

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

16 THE COURT: Number 430.

17 (Whereupon, Juror 430, Patricia Teal entered the
18 courtroom.)

19 EXAMINATION

20 By The Court:

21 Q Ms. Teal, how are you doing?

22 A I am good.

23 Q Wasn't you sitting on my far left when I was talking
24 to y'all?

25 A Yes.

1 Q Now, I told you I ask the same questions. You are
2 under oath. And will you spell your first and last name
3 to make certain Ms. Holston is picking up the microphone
4 and your voice.

5 A Okay. P-A-T-R-I-C-I-A, T-E-A-L.

6 Q Ms. Teal, I asked you not to talk about the case on
7 Monday. Since that time have you talked about the case
8 with anybody?

9 A Yes.

10 Q All right. Who would that be?

11 A When we were in there before we were waiting.

12 Q Before I brought you in and told you the
13 instructions?

14 A Yes.

15 Q Had you talked with the other jurors?

16 A A little bit, yes.

17 Q And I don't think, I didn't tell you that again
18 today. But what was the nature of those conversations?

19 A Just what, that we weren't supposed to talk about it,
20 you know, watch TV, watch anything on the news. We were
21 talking about how hard that was to not watch TV and the
22 news.

23 Q And so the nature basically what was going on
24 happened in here, when you were getting the follow-up
25 questioning in here?

1 A Yes.

2 Q Now, there has been a lot of publicity on the
3 television since Monday, prior to Monday, several years
4 ago. And in fact, I told you some of the facts that are
5 being alleged by the State against Mr. Jones to which he
6 has plead not guilty, he is presumed innocent. Any facts
7 whatsoever, whether you got conversations here in the jury
8 room, from the television at any time, from the internet,
9 where ever, I don't care, I don't care where it came from,
10 even from me. Have any of those facts that you come
11 across caused you to form an opinion as to what happened
12 in this case?

13 A No.

14 Q You have not formed an opinion?

15 A No.

16 Q You understand that Mr. Jones is presumed innocent of
17 all of these charges as he sits right now here in court?

18 A Yes, I do.

19 Q I told you also, I want to know about your personal
20 schedule. If you are selected as a Juror it may start
21 early next week, commitment may be two to three weeks.
22 You got anything work wise, personal wise, vacation wise
23 that would be impacted if you were selected as a Juror?

24 A Well, I am a personalized manager at my job. So I
25 manage other people at my office, they might could do

1 without me. Other than that I am probably okay with work.

2 But I have vacation planned for Memorial weekend.

3 Q Okay. You are going to be gone that whole weekend?

4 A Yes.

5 Q Any additional days other than Monday?

6 A Thursday and Friday.

7 Q Thursday and Friday before?

8 A Yes.

9 Q Okay. I don't want to impact vacations. Some of
10 them are prepaid. Are you going to the mountains or
11 beach?

12 A We are going to James Island to camp.

13 Q You are going with family?

14 A No, well, some of our family might come there. But
15 it is just me and my husband.

16 Q Thursday, Friday and Monday?

17 A Thursday, Friday and Monday.

18 Q I don't want to impact that vacation. I am going to
19 excuse you for that reason. That is why I ask the
20 question. Thank you for your patience today.

21 A Thank you.

22 Q She is excused.

23 (Whereupon, the Juror was excused from the
24 courtroom.)

25 THE COURT: Let's bring in 147.

1 (Whereupon, Juror 147, Patricia Fowler entered the
2 courtroom.)

3 EXAMINATION

4 By The Court:

5 Q Ms. Fowler, I want you to say and spell your name so
6 Ms. Holston can determine how you spell your name and also
7 see if the microphone is picking you up sufficiently
8 enough.

9 A Okay. Patricia Fowler, P-A-T-R-I-C-I-A, F-O-W-L-E-R.

10 Q Ms. Fowler, I told y'all in here the first question
11 that I would ask, you were under oath to not talk about
12 the case since Monday. Has anybody tried to talk to you
13 about the case?

14 A No, sir.

15 Q Have you talked about the case with anybody?

16 A No, sir.

17 Q Now, was there any conversation going on back in the
18 jury room affecting or basically in general terms about
19 what was going to happen out here once y'all came out
20 here?

21 A No, sir.

22 Q Okay. The attention, the media attention, publicity
23 in this case has gotten, it has been a lot. I read to you
24 the indictments, the allegations the State is making
25 against Mr. Jones in open court. You heard that. The

1 media has been reporting on the case, social media has
2 been commenting on the case. There has been news media
3 reports way before Monday when you came into court from
4 all sorts of, different sources. My question to you is,
5 no matter the source, if you come across information,
6 heard about the case in any fashion including my comments.
7 Has any of that information you have come across cause you
8 to form an opinion about this case and what happened?

9 A I haven't heard much about the case to make a
10 judgment yet.

11 Q But you have heard a little bit about it?

12 A Yes, sir.

13 Q But you have not formed an opinion?

14 A No, sir. I heard more about it from 2014.

15 Q Okay, back when it happened?

16 A Yes.

17 Q Has that impacted, you still haven't made an opinion,
18 formed an opinion even about the news reports from 2014?

19 A I have not made a complete decision on it.

20 Q Okay. So whatever decision you have made, a partial
21 decision, can you describe that for me?

22 A Well, the only way I can describe it is that it is a
23 very sad situation.

24 Q Okay. That is a fair assessment. You understand
25 that five children are deceased and it is very sad?

1 A Yes.

2 Q All right. I am going on to the next question. The
3 subject matter in this case is going to be testimony
4 involving the deaths of children. That is what is going
5 to be presented to the jury and to the Court. I have not
6 seen all the facts, have heard a little bit of it,
7 preliminary but not much. The lawyers, most of these
8 lawyers in here, we have discussed, it is going to be
9 impactful testimony describing these children. Harsh,
10 graphic, difficult, unpleasant are some of the words I
11 have heard from the lawyers, I am using their words.
12 Testimony of that type subject matter, difficult
13 testimony, unpleasant testimony. Would that create an
14 issue for you knowing that is what we are going to receive
15 in this trial. Can you see testimony like that, evaluate
16 it and be fair and impartial or would that testimony be
17 kind of difficult and create an issue for you not to be
18 able to evaluate fairly?

19 A I think it would be an issue with me being able to
20 sleep at night.

21 Q Okay. Do you think hearing the testimony because of
22 the graphic as the lawyers have described, would that
23 create a problem for you that you couldn't be fair and
24 impartial?

25 A Well, I could be fair and impartial but I don't know

1 if I can handle it emotionally when I got home to sleep at
2 night.

3 Q Fair statement. If it did that that would create a
4 very awkward position, difficult for you for not sleeping
5 well and having to come in and consider testimony and
6 evidence is difficult yet again.

7 A Yes.

8 Q All of that considered, your self-description is,
9 there is no wrong answers in here. I am looking for
10 candor. If you believe it would impact your sleep at
11 night and probably emotionally impact you negatively do
12 you think you can be fair and impartial or not? Your
13 voice causes me enough to know that you are concerned.

14 A I am concerned.

15 Q And it is not, that is why I have got you in here,
16 okay.

17 A I am concerned because I believe that, you know, I am
18 one that believes in the death penalty if it is warranted.
19 But I also believe there are situations where, there are
20 other reasons to it. I mean, if that makes sense.

21 Q Now, the difficult testimony, let me get back to
22 that. Do you think and this is just your gut feeling
23 right now, harsh, difficult testimony, is that going to be
24 an unfair position to put you in having to judge this
25 case?

1 A Yes, sir.

2 Q Very well. I am going to excuse you also. 147 is
3 excused. Thank you.

4 A Thank you.

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

7 THE COURT: Let's bring in 288.

8 EXAMINATION

9 By The Court:

10 Q Ms. Merritt, good afternoon and thank you for your
11 patience. I want you to say and spell your name for Ms.
12 Holston so she can determine whether the microphone is
13 picking you up enough and she gets to spell your name.

14 A Tameka Merritt. T-A-M-E-K-A, M-E-R-R-I-T-T.

15 Q Ms. Merritt, I told you my first question was going
16 to be, you took an oath Monday to not talk about the case.
17 So the last eight days have you talked about the case with
18 anybody?

19 A No, sir.

20 Q Has anybody tried to talk with you about the case?

21 A No, sir.

22 Q Now, I heard there was some conversations in the jury
23 room about the procedures going on here today. Did you
24 hear any of that earlier?

25 A No, sir.

1 Q Okay. Now, I asked you about, I told you about your
2 work schedule, personal schedule, vacation, whatnot, what
3 have you. If you are selected as a Juror and you are
4 impaneled and put on the jury, right now I am determining
5 whether you are qualified or eligible to be put on the
6 panel. Work, vacation, personal reasons, your calendar is
7 already full. Starting next week, the week following and
8 the last week of May, what have you got on your calendar
9 that would be impacted if you were put on the jury?

10 A Trying to get childcare together.

11 Q How many children have you got?

12 A Three.

13 Q How old are they?

14 A Four, ten and twelve.

15 Q And when do they get out of school?

16 A For the summer?

17 Q Yes.

18 A June the 1st, well May the 31st.

19 Q Do you get them?

20 A Yes, sir.

21 Q You pick them up?

22 A Yes, sir.

23 Q You work outside the home?

24 A Yes, sir.

25 Q You get them yourself mostly after school?

1 A Yes, sir. I work 6:00 to 2:00 at Lexington Extended
2 Care.

3 Q So that you can go get your children?

4 A Yes, sir.

5 Q You can claim an exception having children under
6 seven, that you are the primary caregiver for and not
7 serve on a jury. You are excused.

8 A Okay.

9 Q Thank you, Ma'am.

10 A Thank you.

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

13 THE COURT: The last one is 236.

14 (Whereupon, Juror 236, Andrew Kirkwood entered the
15 courtroom.)

16 EXAMINATION

17 By The Court:

18 Q 236, tell me your name and spell it for Ms. Holston.

19 A Andrew Kirkwood. A-N-D-R-E-W, K-I-R-K-W-O-O-D.

20 Q Mr. Kirkwood, you are speaking good in the
21 microphone. Some people we have to work with. I told you
22 in my preliminary instructions I was going to ask you
23 about communication about the case. Monday when I brought
24 the whole group together, I ask from this time forward
25 don't talk about the case in any fashion. Have you talked

1 with anyone about the case?

2 A I haven't talked about the case. I have heard people
3 mention it but they don't really have any details on it or
4 anything.

5 Q Has anybody asked you any questions about it?

6 A They have tried to but I haven't--

7 Q You have been stopping the conversations and told
8 them you can't talk about it?

9 A Yes, yes.

10 Q That is what is going on?

11 A Yes.

12 Q There has been publicity, a lot out there. Four
13 years ago and afterwards, since then, off and on, it has
14 been in the media. Here recently a lot in the media.
15 Monday I read to you the indictments, the allegations the
16 State has made against Mr. Jones. Any information
17 whatsoever from any source whatsoever, has that caused you
18 to create or form an opinion as to what happened in this
19 case?

20 A I haven't really heard anything besides--

21 Q What have you heard?

22 A Mainly just people asking me or telling me that must
23 have been where I went for jury duty was for this case and
24 I told them I couldn't confirm.

25 Q Fair enough. You have not formed an opinion in this

1 case as to what happened?

2 A I don't think so.

3 Q I want to make sure. The other jurors, I was talking
4 about their age, the same age. Four in a row, all of
5 y'all are the same age, amazing. Mr. Kirkwood, let me ask
6 you this. Your schedule coming up, you are put on the
7 jury, qualify the jury and then selected, likely the trial
8 will start over the next week. So what does your calendar
9 look like starting next week for about three weeks. How
10 am I going to impact your personal schedule, work,
11 vacation, otherwise?

12 A I do have another court hearing for a separation type
13 thing on the 23rd of this month.

14 Q On the 23rd. Do you know what time that is?

15 A No, I don't, I don't know what time it is.

16 Q Is it here in this Court House, is it in Lexington
17 County?

18 A Yes.

19 Q It will be in this Court House?

20 A Okay.

21 Q And that is a domestic situation that you have with
22 your spouse?

23 A Right.

24 Q If we find out when that is, either have the lawyer
25 reschedule it at my request, let me talk to the lawyers or

1 let me talk to the Family Court Judge and suggest they
2 reschedule it, manage it. Now, I don't really care about
3 your case, don't want to know about it. Have y'all
4 already been to court one time, had the temporary ground
5 rules laid out?

6 A Temporary hearing.

7 Q Okay. That might need to get done and perhaps, if
8 that needs to be done, if you are qualified we will see if
9 it can be coordinated to get done, are you represented?

10 A Yes.

11 Q And is she?

12 A Not yet.

13 Q Well, we can probably coordinate if. If you are
14 qualified as a Juror I will see what I can do to help
15 accommodate and make that hearing go forward even if we
16 have to break, a temporary hearing shouldn't last very
17 long. It is just that it is temporary ground rules. I
18 don't want to give you any advice but I think that
19 shouldn't be a problem with managing that hearing. Okay.

20 A Okay.

21 Q Other than that no other thing on the schedule?

22 A Just work.

23 Q Work. If you got selected, was qualified, you could
24 serve?

25 A Correct.

1 Q Now, I gave you preliminary instruction on a Capital
2 case, two phase process. How it works, how it goes
3 together. The first phase is guilt or innocence, the
4 second phase is punishment. The three types of jurors
5 summary I gave you presupposes that guilt is found. Go
6 into phase two, aggravation, the State has got to find it,
7 proof beyond a reasonable doubt and also the jurors
8 consider mitigating facts. Can you identify yourself, did
9 you understand that sheet?

10 A Yes, I did. I believe I would be a number three.

11 Q Number three. And to you what does that mean?

12 A It is not necessarily a definite death penalty, it
13 could sway the, depending on all the evidence.

14 Q So you want to hear everything?

15 A Yes.

16 Q Okay. Let's ask you a few more questions then. Now,
17 if the jury, did you look at the potential witness list?

18 A Yes, I did.

19 Q Do you know anybody on there?

20 A Not that I know of.

21 Q Okay. And if you did, if somebody came in, wait a
22 minute, I know his face and who he is.

23 A I am not good with names.

24 Q Okay, fair enough. If you are selected as a Juror,
25 you would be hearing the case, phase one would go first.

1 The State has got to prove its case beyond a reasonable
2 doubt and Mr. Jones is presumed innocent right now. Phase
3 one, the State has got to prove the murder. I defined it
4 for you, the proof of killing, malice aforethought. The
5 State presents evidence to that and trying to convince a
6 jury unanimously of guilt beyond a reasonable doubt. They
7 have got to prove all the elements beyond a reasonable
8 doubt. Mr. Jones is tendering a plea claiming a defense
9 to that. There are other defenses that are potentially
10 available and depending on how the testimony goes, I have
11 not heard the testimony yet, so there could be other
12 evidence to support another defense, maybe, maybe not.
13 All the defenses, potentially available, this does not
14 mean they will be shown to you, it is potentially
15 available depending on the testimony, some of these will
16 not be available because the facts won't support them, the
17 jury trying to decide whether it happened or not.
18 Potential defenses, identification, accident, involuntary
19 intoxication, self-defense, necessity, insanity, guilty
20 but mentally ill, defense of habitation, entrapment,
21 duress and alibi. Those are potential defenses. The
22 testimony will be presented from both sides if those
23 defenses are appropriate for the jury to consider. I will
24 instruct you on the aspects of that law. Can you give
25 meaningful consideration to the State's responsibility to

1 prove the murder beyond a reasonable doubt, consider that
2 testimony but also consider the Defenses and aspects of my
3 instructions on any defenses which may be shown through
4 the evidence available to Mr. Jones and act as a fair and
5 impartial Juror in considering all of that testimony and
6 evidence, consider with respect to my instructions and be
7 fair and impartial to both, the State and the Defense?

8 A I don't know that I totally can, I feel like a child
9 is innocent. But other than that I think I can, kind of
10 sway or lay with the death penalty.

11 Q Some defenses like, entrapment, duress, alibi, those
12 aren't going to come into play. I don't want to comment
13 on too much of what the case will present. But if
14 something supports the consideration of the Defense I
15 would instruct you on that and you would evaluate that
16 testimony. You said that children are innocent. Yes,
17 they are young and innocent, they are the victims. The
18 State will show that. Mr. Jones is presumed innocent
19 though of doing any of this but he has entered a plea of
20 not guilty by reason of insanity. Do you understand that?

21 A Yes.

22 Q I will present, because of that plea, four forms of
23 the verdict. Guilty, guilty but mentally ill, not guilty
24 by reason of insanity and not guilty all together. I will
25 instruct the jury on those respective verdict forms,

1 potential verdicts could be reached. The State has got
2 the burden of proving guilt beyond a reasonable doubt.
3 Can you consider the instructions of the Court, the
4 State's burden of proof and all potential defenses that
5 will be submitted by the Court to the jury, can you give
6 reasonable meaningful consideration to all of those
7 defense?

8 A Honestly, I can give consideration to three of those
9 four, I am not sure about one of those four.

10 Q Which one?

11 A The total innocence.

12 Q Okay. And that is all right because one of the
13 defenses may involve the presentation of that. The
14 lawyers may follow-up with that question later. But you
15 think something happened, you are not convinced, but you
16 understand he is presumed innocent right now?

17 A Yes. I haven't really heard a lot about the case and
18 I, so I don't have a total thought on it yes, I guess.

19 Q But you understand he is presumed innocent by our
20 Constitution?

21 A Yes.

22 Q Can you accept that. Because part of the thing, even
23 if you disagree with the law you have got to accept it as
24 the Court gives it because I am giving the law of South
25 Carolina as I understand it as a Judge. I am not making

1 it up and it is not my opinion. I instruct the law as I
2 understand it to be.

3 A I think I can.

4 Q One of the oaths of jurors is, I will accept the oath
5 as you instruct it even if I disagree with it, I have
6 accepted that disagreement and misunderstanding aside and
7 take it as you are giving it, Judge. Can you do that?

8 A Yes, I can do that.

9 Q Can you accept an oath that presumes Mr. Jones to be
10 innocent right now?

11 A From everything I know, yes. I haven't seen all of
12 the evidence.

13 Q And I am asking you questions about considering the
14 case yet, it is presumed no evidence right now. But the
15 State is going to present on evidence, they have got that
16 responsibility of proving the case up front. The Defense
17 presents their side kind of after the State goes. That is
18 how the process goes. The State has got the burden, they
19 go first. They will call witnesses first.

20 A Okay.

21 Q Now, considering those four defenses, can you give
22 reasonable consideration to all four of them?

23 A I believe I can.

24 Q If the State fails to meet its burden or the jury
25 decides that the Defense has proven not guilty by reason

1 of insanity the case would end there if either of those
2 two happen. If the State meets its burden of proof, proves
3 the guilt beyond a reasonable doubt of the murder then
4 phase two commences. In phase two several things are
5 presented to jurors. First and foremost the State has got
6 to prove an aggravating factor. I am going to name off
7 five and the State is going to prove one of these five.
8 Any one of these could be an aggravating factor. Murder
9 of policeman, murder of a child, rape of murder,
10 kidnapping of murder, multiple murders. The State is
11 under the responsibility of the burden of proof to prove
12 one of those aggravating factors beyond a reasonable doubt
13 before they can ask for the death penalty. They will do
14 that in the sentencing phase, attempt to make that proof
15 to you as a Juror if you are so selected. The Defense
16 presents consideration of mitigating factors. Those are
17 reasons to give life rather than death. They can be any
18 reasons. But there are some statutory reasons that they
19 can kind of focus in on and they are allowed. I am going
20 to tell you those. The Defendant has no significant
21 history of prior criminal conviction involving the use of
22 violence against another person. The murder was committed
23 while the Defendant was under the influence of mental or
24 emotional disturbance. The victim was a participant in
25 the Defendant's conduct or consented to the act. The

1 Defendant was an accomplice in the murder committed by
2 another person and his participation was relatively minor.
3 The Defendant acted under duress or under the domination
4 of another person. The capacity of the Defendant to
5 appreciate the criminality of his conduct or to conform
6 his conduct to the requirements of law were substantially
7 impaired. The age or mentality of the Defendant at the
8 time of the crime. The Defendant was provoked by the
9 victim in committing the murder. The Defendant was below
10 the age of 18 at the time of the crime. The Defendant had
11 mental retardation at the time of the crime. Those are
12 statutory as well as the Defense may present on his
13 growing up, having a hard childhood, coming from a broken
14 home, they can present all sorts of testimony to that end
15 that jurors can use as mitigating factors to assign a
16 reason to give the life sentence. Now, some of these
17 statutory ones wouldn't apply, under the age of 18, is not
18 going to apply. So they can't present on that, they can
19 present on other ones that may be appropriate. In the
20 sentencing phase the State has got to prove the
21 aggravating factor beyond a reasonable doubt, the Defense
22 presents testimony regarding mitigating factors, they
23 don't have to prove for a jury to consider them. Can you
24 give meaningful consideration to all testimony and
25 evidence, whether it be the State's aggravating factors,

1 knowing their burden of proof is beyond a reasonable doubt
2 or whether it be mitigating testimony, mitigating factors
3 the Defense shows you, showing reasons to give a life
4 sentence. Can you give meaningful consideration to all of
5 that testimony and be both fair and impartial to both the
6 State and Mr. Jones?

7 A I think the only one I could give consideration to is
8 the minor involvements, the other ones don't really--

9 Q Now, I am going to suggest this to you. You must
10 know more facts than you are letting on.

11 A I am psychic.

12 Q Well, that is not one of them. Some of the facts I
13 have already told you, the allegations of murder,
14 children, kind of know those are allegations. The State
15 has got to prove it. All right. I ask that question
16 again, can you consider all of those factors, they have
17 got to present testimony that can follow one of these
18 categories or testimony about his childhood, struggles in
19 life, anything they wish to present they believe jurors
20 can consider mitigating facts. Jurors are required to
21 consider those mitigating facts. Are you going to be able
22 to accept an oath to consider mitigating factors presented
23 by the Defense?

24 A I believe I can consider, I can't guarantee my
25 decision.

1 Q Okay. You understand that in the sentencing phase
2 there are only two potential verdicts. Death or life.

3 A Yes.

4 Q No middle ground, no other options. You have got to
5 consider that, the State has got to prove the aggravating
6 factor. The jury has to consider mitigating factors that
7 are presented out there. Do you have any religious, moral
8 or personal belief that you could not impose the death
9 penalty?

10 A I don't think so.

11 Q Do you have any religious, moral or personal belief
12 that you could not impose a life without parole sentence
13 if the facts support it?

14 A If the facts support it I think I could.

15 Q And see, you don't have any facts so not knowing I am
16 kind of asking you, are you still a type three?

17 A I think I am, yes.

18 Q Now, those are my questions. I am going to let the
19 lawyers ask you some more questions and they can ask you
20 more about your beliefs, candid, candor, honesty, no wrong
21 answers.

22 THE COURT: Mr. Young.

23 EXAMINATION

24 By Mr. Young:

25 Q Good evening, Mr. Kirkwood.

1 A How are you doing.

2 Q Doing all right. I appreciate you bearing with us
3 and sticking this out this evening. Mr. Kirkwood, I
4 notice your son is a police officer over in Gaston, is
5 that right?

6 A He has been, he is not presently.

7 Q Okay. And I just need you to tell me, some people
8 say that when you have that close relationship with a
9 police officer and a police officer is testifying they may
10 have trouble fairly judging the credibility of a police
11 officer because of the nature of their work. Does that
12 make sense to you?

13 A I think so.

14 Q They, sort of police officers have more credibility
15 and believability just based on the nature of being a
16 police officer?

17 A Okay.

18 Q Does that make sense to you?

19 A Yes.

20 Q Is that a view that you hold?

21 A I think everybody wants to hold that belief, I don't
22 know if I one-hundred percent hold that belief.

23 Q You think you could fairly judge the credibility of
24 police officers even though they are law enforcement
25 officials?

1 A I sure hope I can but I, yes.

2 Q Okay. I have to ask you about some personal stuff
3 and I understand that you are going through a separation
4 and I don't mean to pry on that and if you need to be
5 heard sort of off the record with the Judge we can do
6 that. Okay?

7 A Okay.

8 Q If a case involves sort of domestic allegations and
9 child custody allegations, is that type of case going to
10 be something that you can sit as a fair Juror?

11 A Yes. I don't have any child custody allegations or
12 anything involving this.

13 Q Okay. Just the divorce?

14 A Yes.

15 Q Okay. And that is not going to affect you in a case
16 involving--

17 A No.

18 Q Mr. Kirkwood, can you tell me sort of your general
19 philosophy about the death penalty?

20 A I consider myself a Christian by faith. So, I mean,
21 death generally is wrong but I think there is an eye for
22 an eye, and about everything. So I think the death
23 penalty is justified in certain cases.

24 Q What do you mean, in a case of intentional deliberate
25 murder with malice aforethought. Do you understand what I

1 am talking about, what the Judge told you what murder is
2 in South Carolina?

3 A Something that is not any self-defense or--

4 Q Not an accident, not self-defense?

5 A Right.

6 Q Any evidence you heard about mental illness you
7 rejected that, they knew the difference between right and
8 wrong, chose to kill and I believe you said children were
9 particularly innocent?

10 A Yes.

11 Q And so in a case, some people say that in a case
12 where the murder of multiple children, for me that is sort
13 of automatically the death penalty.

14 A Yes, without extenuating circumstances, again, I
15 don't know all the in's and out's. But yes, I would say,
16 yes.

17 Q And sort of these extenuating circumstances you are
18 talking about, when we are talking about extenuating
19 circumstances, you understand it is already been decided
20 beyond a reasonable doubt that they did it. Right, you
21 are guilty, guilty of the murder. Are you with me on
22 that?

23 A Okay.

24 Q And it wasn't heat of passion or self-defense or an
25 accident, not one of those extenuating circumstances.

1 A I say the death penalty was, is something that will
2 be--

3 Q Would that always be the death penalty for you?

4 A I believe it would, I don't know what could sway me a
5 different direction.

6 Q And if I offered you, like say somebody had a hard
7 childhood or a rough upbringing, that is not going to sway
8 you off?

9 A I don't think so.

10 Q And I believe, the Court went through some mitigating
11 factors with you, do you recall the eight that he read
12 off?

13 A Yes, vaguely, yes.

14 Q Well, I think your response to him was, well, of
15 those the only one that would be important to me would be
16 if--

17 A Minor involvement.

18 Q If it was a minor participant in the crime, in the
19 murders?

20 A Yes. Minor being not of age but of an involvement, I
21 guess.

22 Q Sure, sure. Like a codefendant who was in the
23 get-a-way car?

24 A Yes.

25 Q That is what you are talking about, like minor

1 involvement?

2 A Yes.

3 Q But if they did the killing, that is not minor
4 involvement, right?

5 A No.

6 Q Okay. So other than that, sort of for you it is the
7 death penalty?

8 A Yes, pretty much so.

9 Q Thank you, that is all the questions that I have.

10 THE COURT: Any questions, Solicitor?

11 MR. HUBBARD: No, sir.

12 THE COURT: All right, Mr. Kirkwood, thank you for
13 coming, I am going to excuse you from service at this
14 time. Thank you very much.

15 JUROR: Thank you.

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

18 THE COURT: What time did we start that one, 6:00
19 o'clock?

20 MR. YOUNG: I think about a quarter till, 5:30.

21 THE COURT: I think it was an excellent idea to try
22 to get them done. I am very proud of them staying because
23 we did accomplish that. See y'all, the group of two wants
24 to come in early. They said they would be here at 8:00.
25 We will start at 8:00. See y'all tomorrow.

1 (Whereupon, the trial will resume the next morning at
2 8:00 a.m.)

3 May 8, 2019.

4 THE COURT: Are we ready to go?

5 MR. HUBBARD: Yes, sir.

6 MR. YOUNG: Yes, sir.

7 THE COURT: Let's bring the two in first.

8 (Whereupon, 117, Jeremy Davis; 308, Shanna Nelson
9 entered the courtroom.)

10 THE COURT: All right, the two of y'all, we are going
11 to manage y'all just like we have done everybody else.
12 Here is the way it works. I am going to read this to you
13 in a moment and when you come back in I need to know about
14 your work schedule, vacation schedule, if any conflicts
15 exist there. And then the witness list y'all were looking
16 over, do you know anybody on the witness list. There is
17 another sheet you need to read too, that will be some of
18 the questions. Anyway, this is a summery or a preliminary
19 instruction on the law and I have read to everybody. I
20 will read to the two of y'all and then we will get you in
21 here and hopefully it won't be prolonged too much. Thank
22 you for being on time. I think the folks
23 yesterday were being patient to wait. Madam Clerk, place
24 them under oath.

25 (WHEREUPON, the two jurors were sworn at 8:06 a.m.)

1 THE COURT: You have been summoned as potential
2 jurors in the case of the State versus Timothy R. Jones,
3 Jr. My name is Judge Eugene Griffith, Jr. and I will be
4 the presiding Judge. Mr. Jones is charged with five
5 counts of murder. And in South Carolina murder is defined
6 as the killing of any person with malice aforethought.
7 Malice is defined as a person with a wicked or depraved
8 heart, intent on wrongdoing, hatred, ill-will or
9 hostility. The definition of murder excludes any just
10 cause or excuse for the killing. When the State alleges
11 the offense of murder combined with certain aggravating
12 circumstances the State can seek the death penalty.
13 Before and during a trial a person accused is presumed
14 innocent of each of the elements of the crime for which he
15 is charged. The State must prove each and every element
16 of those crimes charged, crimes charged by a standard of
17 proof called beyond a reasonable doubt. In most cases
18 Judges determine the punishment upon a conviction. But in
19 a Capital penalty case the jury determines the punishment.
20 In a Capital case the trial is divided into two phases
21 potentially. The guilt or innocence phase and then if
22 necessary the punishment phase. In the first portion of
23 the case the State must prove the Defendant's guilt of
24 murder beyond a reasonable doubt. If a jury finds an
25 accused guilty of murder then the trial proceeds into the

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

1 this trial. And I will instruct you as to how to consider
2 and evaluate the testimony, whether it be defined as
3 evidence of an aggravating factor, evidence of mitigation.
4 Mitigation is any reason to vote for a sentence of life
5 without parole, evidence of any defenses, evidence of any
6 affirmative defenses such as accident, guilty but mentally
7 ill and not guilty by reason of insanity. Until the
8 testimony and evidence is presented I am not able to tell
9 you the exact instruction of law I will give but when I
10 bring you back in one at a time I will ask you to accept
11 an oath, to meaningfully consider all the testimony and
12 all of the evidence, apply the law as I instruct it and
13 consider all the evidence consistent with my instructions.
14 Those are your preliminary instructions. Step out and I
15 will have y'all right back in here and don't discuss the
16 case while you are in the back.

17 (Whereupon, the two jurors were excused from the
18 courtroom.)

19 THE COURT: Bring the first one in.

20 (Whereupon, Juror 117, Jeremy Davis entered the
21 courtroom.)

22 EXAMINATION

23 By The Court:

24 Q Mr. Davis, I want you to say your name and spell it
25 to make sure Ms. Holston and everyone can hear you.

1 A Jeremy Davis. J-E-R-E-M-Y, D-A-V-I-S.

2 Q Mr. Davis, I remind you you are under oath. I am
3 going to ask you the same general questions I have asked
4 every Juror, basically in the same order. Since Monday,
5 last Monday, I placed the entire panel under oath to not
6 discuss with anybody. Have you discussed the case with
7 anybody since Monday?

8 A No, sir.

9 Q Has anybody tried to ask you questions about the case
10 since Monday?

11 A Yes, sir.

12 Q And what were the nature of those questions?

13 A Just what I, my job knew I had jury duty.

14 Q Okay. Explain to them you had to report to court?

15 A Yes.

16 Q Discussion going any further than that?

17 A Not really, no.

18 Q Now, there has been information out there available,
19 publicity about this case, news media, social media, all
20 sorts of places, street corner, people know things. No
21 matter where your information came from, even my reading
22 of the indictments on Monday to the entire jury panel,
23 also information to you. Any information you have
24 received from any publicity, any source whatsoever
25 including the Court, has any of that information that you

1 have received thus far until this point right now caused
2 you to form an opinion as to what you believe happened in
3 this case?

4 A Yes.

5 Q Has it? What is your opinion right now what
6 happened?

7 A I mean, if you kill five kids, man, there is really,
8 insanity or not and then you flee, in my opinion I just
9 can't form an honest opinion of other than guilty.

10 Q Okay. I am looking for candor, I am not looking for
11 the answers you think I want, I want to hear your honest
12 opinion.

13 A All right.

14 Q So you think Mr. Jones is guilty right now?

15 A Well, I mean I know all about the case from previous.

16 Q Before Monday you weren't prohibited from looking at
17 the news media.

18 A No.

19 Q That is why I ask you the question. I don't care
20 where you got the information. I want to know right now
21 how do you feel. Do you think he is guilty?

22 A I mean, he said he was guilty.

23 Q If you could identify one of those three types of
24 jurors, where would you follow?

25 A Probably number one.

1 Q Fair enough. Thank you for coming, you are free to
2 go. I appreciate your patience with me yesterday.

3 A Thank you.

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

6 THE COURT: We have got 308.

7 (Whereupon, Juror 308, Shanna Nelson entered the
8 courtroom.)

9 EXAMINATION

10 By The Court:

11 Q Ms. Nelson, how are you?

12 A Good, how are you.

13 Q Very good. I want you to spell, say and spell your
14 name so that Ms. Holston can see if she is picking you up
15 good.

16 A Okay. Shanna Nelson. S-H-A-N-N-A, N-E-L-S-O-N.

17 Q Good morning, Ms. Nelson.

18 A Good morning.

19 Q I am asking the same questions to each Juror
20 basically.

21 A Okay.

22 Q I will start out with the same ones. I am not
23 starting out because I think you have done something. You
24 are under oath, I want honest candid answers. I don't
25 want the answer you think I am listening for, I want

1 candor. Okay?

2 A Okay.

3 Q Because some of this is about your personal feelings
4 and opinions, some of it is not, this one is not. Since
5 Monday when I placed you under oath, I said don't talk
6 about the case. Have you talked about the case with
7 anyone?

8 A No.

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

10 A I mean, I have had people say, is it that case and I
11 said, I can't talk about it.

12 Q That is an appropriate response. Now, over the last
13 several years, since the incident occurred back in '14
14 through Monday, through this week, information, publicity
15 has been out there. There is a lot of it. Some people
16 saw it, some people didn't. I am going to ask you, I read
17 the indictments to you in open court, that is information
18 to you also. Those indictments are allegations made by
19 the State against Mr. Jones. Has any of the information
20 you have heard at this point right now this morning,
21 anything, caused you to form an opinion as to what
22 happened in this case?

23 A Yes.

24 Q What do you think happened?

25 A I don't remember the details. It gave me an opinion

1 about him but I don't remember any of the details from
2 when it first came out.

3 Q So you saw some media report before Monday?

4 A Yes, when it first happened my Mom told me about it.
5 I never actually saw it so I don't remember any of the
6 details or anything, I just remember thinking, well, it is
7 messed up.

8 Q Okay. You thought the whole situation was messed up?

9 A Yes.

10 Q And do you still have that same opinion?

11 A Well, I don't know what happened, I don't remember
12 the details from the media.

13 Q You understand part of the interactions, it is my job
14 to instruct all jurors on the law. One of my instructions
15 is Mr. Jones is accused by way of the indictments of
16 committing five murders, he has plead not guilty, also not
17 guilty by reason of insanity. He is presumed innocent
18 until the State proves his case beyond a reasonable doubt.
19 Do you understand that?

20 A Yes.

21 Q Could you follow that instruction if I so gave it?

22 A Yes.

23 Q I just gave it to you?

24 A Okay.

25 Q Now, how is your work schedule, home schedule,

1 personal schedule starting next week to say the end of
2 May, early June. What have you got out there that you
3 have got to rearrange if you were so selected to serve?

4 A I have a seven-year-old son but I have people who
5 could get him to and from school if need be. And then, I
6 mean I have a full-time job but they are understanding.

7 Q Okay. So you could do it?

8 A Yes.

9 Q And it is inconvenient. And everybody who would be
10 called upon to serve as a Juror would be inconvenienced by
11 the fact that they are serving and not at home tending to
12 their family, their job, those sort of things. Those
13 don't count because of the civic duty of serving as jurors
14 imposes on that and that is an inconvenience but it is one
15 that sometimes has to be done. That is just a civic duty
16 that some people have to do. So if called upon to serve
17 you could do so?

18 A Yes.

19 Q Now, I gave you instructions just a few moments ago
20 about kind of the criminal procedure and some of the
21 criminal law, very brief description of what is kind of
22 coming down the tracks on a Capital case. A Capital case
23 is potentially two phases. The first phase is guilt or
24 innocence. If guilt is proven beyond a reasonable doubt
25 by the State you go into phase two. Then the State has

1 got to prove an additional factor, aggravating factor.

2 The Defense presents the mitigating factors. Jurors

3 determine the punishment at that time. I gave you a sheet

4 just like this one, I have it. Can you identify yourself

5 if you were seated on the jury and if the guilt was

6 proven, can you identify yourself as one of those

7 potential jurors with the very slim fact you already have,

8 you don't have, I don't want you to consider anything

9 other than what you already have gotten.

10 A The type three.

11 Q And what does that mean to you?

12 A It means I would not decide the death penalty or life

13 without parole without hearing everything. I don't want

14 to make that kind of decision without everything.

15 Q Fair enough. So you are open to hearing things?

16 A Yes.

17 Q Including everything, the good and the bad?

18 A Yes.

19 Q Did you look over the witness list?

20 A Yes.

21 Q That is the potential witnesses. It is not

22 necessarily the parties are going to call all of them but

23 potentially they could be called. You have any connection

24 or friendship with any of those potential witnesses?

25 A Yes. Dr. James Doer. I used to work up front at his

1 office and now I am a nurse but not his location but that
2 practice.

3 Q Is that the Palmetto Pediatric Practice?

4 A Yes.

5 Q Which office did you work in?

6 A I worked at the Lexington office up front through
7 nursing school so mostly summer time. And then, now I
8 work at the downtown location.

9 Q So aren't those doctors kind of generally kept at
10 those respective offices.

11 A Yes.

12 Q My children were there, so there are certain offices
13 out there at Dutch Square, in that area. They stay there
14 and some out in the Northeast and there is some over in
15 Lexington.

16 A Correct. The doctors don't really move other than
17 weekends and holidays.

18 Q When they are on call?

19 A Yes.

20 Q Now, the fact that, Dr. Doer?

21 A Uh-huh, (In the affirmative).

22 Q The fact that he is a potential witness, would that
23 create, do you still work for them?

24 A Not at his location but I do still work for the
25 practice.

1 Q Over in another location?

2 A Yes.

3 Q The fact that he may be called to testify as a
4 witness, would that create an issue for you being fair and
5 impartial to both the State and the Defense?

6 A No.

7 Q Okay. You can do that?

8 A Yes.

9 Q That is the only witness you know?

10 A Yes.

11 Q Very well. All right. I want to go back to stage
12 one and describe some additional factors on the phases.
13 Phase one, phase one is guilt or innocence. Nothing is
14 proven, presumed innocent, the State has made allegations,
15 present that case. The State is going to present its case
16 first. They have got the burden of proving the case
17 beyond a reasonable doubt, described that to you over
18 here. So they will go first calling their witnesses.
19 Their burden of proof is beyond a reasonable doubt. I
20 will explain and define that later. Defendants that are
21 accused have certain defenses they can claim. There are
22 numerous ones of them, I want to read all of them to you
23 and then ask you can you accept instructions. Potential
24 defenses to a criminal charge, a murder charge would be
25 identification, accident, involuntary intoxication,

1 self-defense, necessity, insanity, guilty but mentally
2 ill, defense of habitation, entrapment, duress and alibi.
3 Those are all potential defenses. Now, I haven't heard
4 the testimony yet. So if the testimony came in to support
5 one of those defenses the lawyers can ask me, Judge,
6 please instruct the jury since we have heard testimony a
7 little bit about that aspect of the defense, would you
8 please instruct on it. If it is not supported by any
9 evidence then the instructions wouldn't come. Okay. So I
10 kind of got to listen to see what evidence is coming in
11 and if so I may give an instruction on that particular
12 aspect at the end of the trial. Can you give meaningful
13 consideration to any and all of those defenses which are
14 supported by the evidence, consistent with my instructions
15 on the law, still be fair to both the State and the
16 Defense?

17 A Yes.

18 Q Okay. Now, one defense that we know by virtue of Mr.
19 Jones' plea, not guilty by reason of insanity required
20 that the jury have a verdict choice at the time of
21 determining guilt or innocence. There are four choices,
22 rather than traditional guilt or innocence the verdict
23 will read this way. Guilty, guilty but mentally ill, not
24 guilty by reason of insanity or not guilty whatsoever.
25 Four potential verdict forms. Understanding there will be

1 four verdict forms the Court will give you instructions on
2 how to evaluate and consider those four potential verdict
3 forms. Can you consider the facts and testimony and
4 evidence presented by the State knowing they have the
5 burden of proving the case beyond a reasonable doubt but
6 give meaningful consideration to my instructions from
7 those potential verdicts. Could you find any one of those
8 potential verdicts consistent with the facts and evidence
9 presented at trial?

10 A Yes.

11 Q Okay. Any one of those potential verdict forms you
12 would not give consideration to?

13 A No.

14 Q Okay. Now, if a not guilty verdict or a not guilty
15 by reason of insanity is found by the jury the case ends,
16 it stops right there. If the State proves its case beyond
17 a reasonable doubt, the guilt is found on the murder the
18 case goes to the sentencing phase. At that time the State
19 is then required to prove a statutory aggravating factor.
20 The statutes are over here, the blue books, provide
21 aggravating factors, required to be proven by the State,
22 to enable the State to ask for the death penalty sentence.
23 Potential aggravators, murder of a policeman, murder of a
24 child, rape of murder, kidnapping of murder, multiple
25 murders. The State has got to prove one of those five

1 aggravating factors beyond a reasonable doubt in order to
2 request a jury impose a death sentence. Okay. That is in
3 the sentencing side and they do it then. So during that
4 portion of the case they have got to prove that beyond a
5 reasonable doubt but also jurors consider mitigating
6 factors or mitigating evidence. And those are reasons to
7 give life and not the death sentence. I am going to read
8 you some statutory mitigators, some of them could be
9 presented at trial, some of them may not, so may not be
10 applicable but I will read them all to you and ask you if
11 you can consider those. Mitigating circumstances include
12 the Defendant has no significant history of prior criminal
13 conviction involving the use of violence against another
14 person. The murder was committed while the Defendant was
15 under the influence of mental or emotional disturbance.
16 The victim was a participant in the Defendant's conduct or
17 consented to the act. The Defendant was an accomplice in
18 the murder committed by another person and his
19 participation was relatively minor. The Defendant acted
20 under duress and under the dominion, I am sorry, under the
21 domination of another person. The capacity of the
22 Defendant to appreciate the criminality of his conduct or
23 to conform his conduct to the requirements of law was
24 substantially impaired. The mentality or age of the
25 Defendant at the time of the crime. The Defendant was

1 provoked by the victim in committing the murder. The
2 Defendant was below the age of 18 at the time of the
3 murder. The Defendant had mental retardation at the time
4 of the crime. Those are statutory mitigators that the
5 Defense can present on. There are also non-statutory
6 mitigating factors such as his childhood, how he was
7 raised up, did he come from a troubled home, broken home.
8 Those kind of factors are other reasons that jurors can
9 assign a reason for life without parole as opposed to the
10 death penalty. During the sentencing phase can you be,
11 act fair and impartial to both the State and the Defense,
12 consider the State's burden of proving at least one of the
13 statutory aggravating factors and also consider any and
14 all mitigating testimony and evidence which you have been
15 presented by the Defense. There is no responsibility to
16 prove mitigating factors to any certain level, just can
17 you consider mitigating factors which are presented and be
18 a fair and impartial Juror in finding a punishment
19 consistent with my instructions on the law. Can you do
20 that?

21 A Yes.

22 Q Now, in the sentencing phase there are only two
23 choices, life or death, nothing in between, no other
24 options. If guilt is found the death penalty is not
25 automatic. If it is phase two the State has got to prove

1 the aggravating factor, the jury considers any and all
2 mitigating factors presented. Then the jury decides life
3 or death. Do you have any moral, religious or personal
4 belief which would prevent you from finding a death
5 penalty?

6 A No.

7 Q Do you have any religious, personal or moral belief
8 which would prevent you from a life without the
9 possibility of parole verdict?

10 A No.

11 Q I didn't ask you this about, going back. This should
12 have been when I was talking about the witnesses. The
13 testimony in this case, obviously I have read your sheet
14 and see what you do for a living, you are a nurse.

15 A Yes.

16 Q The testimony in this case is going to be about
17 descriptions, evidence, photographs of deceased children.
18 You work for a pediatric office?

19 A Yes.

20 Q Can you consider difficult, unpleasant, graphic
21 evidence of that type of subject matter in considering
22 this case and considering the guilt or innocence,
23 considering the punishment or would that be too much for
24 you to consider. I need to make certain you can handle
25 that type of subject matter and sit as a fair and

1 impartial Juror. Would that subject matter be too
2 difficult for you?

3 A No, I think I can handle it.

4 Q Okay. Fair enough. All right, Mr. Young.

5 EXAMINATION

6 By Mr. Young:

7 Q Good morning, Ms. Nelson.

8 A Good morning.

9 Q Now is the time for you and I just to have a
10 conversation about your feelings and opinions about some
11 subjects. Okay?

12 A Okay.

13 Q There is no right or wrong answers, it doesn't make
14 you an unfair person, just how you feel. Okay?

15 A Okay.

16 Q Were you working at Dr. Stewart's office between 2012
17 and 2014?

18 A I believe I was off and on up front. I can't
19 remember exactly what year I started and I mainly worked
20 the summer months in between nursing school.

21 Q Okay.

22 A So I don't remember exactly what years I was working
23 up front at that office.

24 Q And I know you stood up on Monday that you had seen
25 some pretrial publicity. There is nothing wrong with

1 that, it is hard to miss. And you have seen the pictures
2 of the children that are involved in the case.

3 A I don't really remember seeing their pictures. Like,
4 I could not--

5 Q You couldn't pick them out?

6 A No, I couldn't.

7 Q When you saw the pictures of the children, did you
8 recognize them as having been treated at the office?

9 A I don't, I don't think I ever saw them. I don't
10 think I ever worked or dealt with them at all. Like, I
11 don't, because I worked up front during that time so
12 checking them out, check them in or talk to them on your
13 phone, and I don't remember. I don't remember any of
14 that, I don't recognize the name.

15 Q Okay. All right. And I don't recognize your name
16 from any of the records. Fair enough. You said that you
17 had formed an opinion about Tim. Can you tell me what
18 that is?

19 A Well, when my mom told me that a father had killed
20 his children, I just thought that is very heartbreaking,
21 how could you do that.

22 Q Right. Sure. Did you sort of form an impression
23 about what should happen to him?

24 A I don't remember forming one, I am sure I would have
25 said he deserves to go to prison. I am sure I would have

1 thought that but I honestly don't remember.

2 Q Okay. Fair enough. The Judge told you a little bit
3 about that Tim has plead not guilty by reason of insanity.
4 Okay?

5 A Okay.

6 Q Do you have any questions about that. I am going to
7 give you the definition of insanity. Insanity is, in
8 South Carolina when somebody has, says I did the killings,
9 I killed my kids but because of a mental disease or defect
10 I was unable to appreciate the difference between legal or
11 moral right from wrong. Does that make sense to you?

12 A Yes.

13 Q And some people say in a case like that, insanity is
14 just sort of an excuse or copout, it is a verdict that I
15 can't really find in a case like this. What are your
16 thoughts?

17 A I do think that sometimes people have an underlining
18 illness that we don't know about and it comes out and
19 sometimes stuff can happen. So, I mean, I can believe
20 that there is a chance of insanity, I guess is what I am
21 trying to say.

22 Q Sure.

23 A I mean, stuff like that can happen.

24 Q I mean, we used to hear about things like the tweeky
25 defense and temporary insanity and sort of like, oh, that

1 is just nonsense. Right?

2 A Correct.

3 Q But that is not, it is not you, you are open to, if
4 it is shown to me that somebody didn't know the difference
5 between legal or moral right from wrong at the time they
6 committed the act I could make that finding?

7 A If they can prove it without a doubt.

8 Q The standard is a preponderance of the evidence,
9 likely more, likely than not?

10 A Okay.

11 Q Is that okay with you or are you going to require
12 proof beyond a reasonable doubt?

13 A More likely than not.

14 Q You are going to follow the law that the Court gives
15 you?

16 A Yes.

17 Q Okay. I am going to talk to you a little bit about
18 sort of your feelings about the punishment phase of the
19 case. Okay.

20 A Okay.

21 Q That means you would have found somebody guilty of
22 murder, like the Judge has told you what it is, the
23 intentional killing of another with malice aforethought.
24 Are you with me on that?

25 A Yes.

1 Q And you found beyond a reasonable doubt that they are
2 guilty, guilty, guilty, not accident, not self-defense,
3 they knew the difference -- any evidence that you would
4 have heard about insanity you would said, no. Right, this
5 person knew the difference between right and wrong, they
6 chose to kill multiple innocent children. Are you with me
7 on that?

8 A Yes.

9 Q At that point and time some people will say, I don't
10 need to hear anything else, you knew what you were doing,
11 you killed multiple children. For me the death penalty is
12 the only appropriate punishment. Is that you?

13 A Yes.

14 Q Okay.

15 A Well, I don't know, it is so tricky.

16 Q It is, it is tricky. And I am going to talk to you a
17 little bit more, sounds to me it is like maybe you are
18 sort of starting at death might be the appropriate
19 punishment.

20 A It could be.

21 Q There is going to be other evidence that the Judge
22 talks to you about and this is sort of the background,
23 character, how somebody was raised, what their life was
24 like. You think that that stuff, that information about
25 the background and character, what their life was like,

1 what the future might be like. Could that, in your mind,
2 be sufficient for you to say, you know what, based on all
3 of that I think the life penalty might be appropriate.

4 A As in do I think those factors could have put him
5 doing what he did and therefore consider those and maybe
6 like the influences in his childhood, take those into
7 consideration?

8 Q Right, yes ma'am.

9 A Yes, I could take those into consideration.

10 Q And some of the stuff we are talking about, it
11 doesn't have anything to do with what he did. Right.

12 A Right.

13 Q It doesn't have anything to do with the killing. All
14 the evidence about the killing, did he do it, how was it
15 done. You know, all of that stuff has already been
16 decided. Right.

17 A Right.

18 Q So, this would be additional evidence about some good
19 stuff that he has done in his life, some bad stuff has
20 happened to him in his life, what his future might be
21 like. Do you understand what I am talking about?

22 A Right.

23 Q And actually I need to know from you, is that stuff
24 that would matter to you?

25 A Yes.

1 Q That is stuff that you could say, you know what,
2 based on that I think life might be the appropriate
3 punishment?

4 A Yes.

5 Q Okay. Can you tell me a little bit about, sort of
6 your general philosophy with regard to the death penalty?

7 A I do believe in the death penalty. But I think a lot
8 of stuff needs to be considered before you just say, yes,
9 they deserve the death penalty. I do think that influence
10 can change people. I do think that there are sometimes
11 people weren't given a chance and that is why they do the
12 things they did. And so I think those need to be
13 considered. Like people who have rough childhoods,
14 involved in drugs and gangs and they, I don't necessarily,
15 they automatically deserve the death penalty because maybe
16 they weren't given a chance and so I would think more on
17 the line of life without parole.

18 Q Yes.

19 A I just think a lot of things needs to be considered
20 before you choose the death penalty but I do believe in
21 it.

22 Q Okay. I think I am with you. Are there any cases
23 that you can think of that sort of, just sort of call out
24 for the death penalty for you?

25 A I mean, people like Ted Bundy.

1 Q Serial killers?

2 A Right.

3 Q The worst of the worst?

4 A Yes.

5 Q Do you sort of think that the death penalty is
6 reserved for the worst of the worst?

7 A Yes.

8 Q Do you think that the death penalty is sort of an
9 option of last resort, can't do anything else, they are
10 going to keep praying on people, we as society just have
11 no other choice?

12 A I have never really looked at it that way. I could
13 see it that way but I don't really look at it that way. I
14 look at it more as like the ultimate punishment for what
15 you did.

16 Q For the ultimate crime?

17 A And kind of the fear factor it might put in them that
18 you just put in your victims and stuff.

19 Q Okay. I understand where you are coming from. Is
20 the murder of children sort of the worst of the worst
21 crimes?

22 A If it is flatout murder and not like accidental and
23 not like any kind of specialty, like putting any of those
24 situations to the side and it is flatout you murdered on
25 purpose. Then, yes, that is horrible.

1 Q With malice aforethought, you intentionally murdered,
2 malice aforethought. That sort of is for you, the worst
3 of the worst.

4 A Yes.

5 Q Ms. Nelson, I am going to talk to you a little bit
6 about how this decision gets made by jurors. Okay. Are
7 you with me on that?

8 A Yes.

9 Q So we have this person and he has been found guilty
10 of murder, intentional murder, multiple children, malice
11 aforethought, meant to do it, knew the difference between
12 right and wrong. Are you with me on that?

13 A Yes.

14 Q And that is when the jury gets to say, I get to
15 decide between these two punishments. Okay. Life without
16 parole on one hand and death penalty on the other. Okay?

17 A Yes.

18 Q The State will present to you what has been called
19 aggravating circumstances, reasons that they think
20 somebody deserves the death penalty. Okay?

21 A Okay.

22 Q And the Defense will present to you mitigating
23 circumstances, reasons why they think the life penalty
24 might be appropriate.

25 A Okay.

1 Q And as the Court told you, the death penalty is never
2 required, not in this case, not any case, not in the worst
3 case you could imagine. Okay.

4 A Okay.

5 Q There is no set of facts like A, B and C equals, the
6 death penalty is appropriate.

7 A Correct.

8 Q The jury has to weigh and give meaningful
9 consideration to all of the mitigating circumstances as
10 well, right?

11 A Right.

12 Q So mitigating circumstances are different than
13 aggravating circumstances. Okay. Obviously they are
14 different titles and they are different reasons.

15 A Right.

16 Q And they are also, considered different ways.
17 Aggravating circumstances have to be proven beyond a
18 reasonable doubt and all the jurors have to unanimously
19 agree that they are present. Does that make sense to you?

20 A Yes.

21 Q Mitigating circumstances don't have the burden of
22 proof and they don't have to be unanimous. Each Juror
23 gets to decide for herself what is or is not mitigating.

24 A Okay.

25 Q So one Juror could say, I saw a relationship with his

1 father and that relationship is important to me and I want
2 to give that relationship the value of life.

3 A Okay.

4 Q Can you respect the right of a Juror to say, you
5 know, what, based on that relationship I have decided for
6 me that life is the appropriate punishment?

7 A Yes.

8 Q And another Juror may say, I don't agree. I don't
9 think that that is mitigating to me, I didn't see it or
10 even if I saw it I don't think that it deserves the way of
11 life. But for me I saw that he was mentally ill, it
12 didn't rise to the level of insanity defense but I thought
13 he was, he is mentally ill. And for me, based on how I
14 am, for that reason alone I want to give that the value of
15 life. Do you understand how they disagree but they have
16 each arrived at their own decision about life as the
17 appropriate punishment for their own individual reasons?

18 A Correct.

19 Q And all twelve jurors could have different reasons
20 and still arrive at life as the appropriate punishment?

21 A Okay.

22 Q Finally, jurors, under the law and in the law of
23 South Carolina is that a Juror does not even have to have
24 a reason to give the life penalty for any reason, no
25 reason at all or based on mercy alone. So a Juror could

1 say, I have heard everything, I don't think anything rises
2 to the level of me giving the value of life but for me who
3 I am my walk in life, I think life is the appropriate
4 punishment and I can't even tell you why. Are you with me
5 on that.

6 A Yes.

7 Q Can you respect the right of a Juror to say, I can't
8 tell you why but life is the punishment that I want to
9 give?

10 A Yes.

11 Q It is what is called an individual moral judgment.

12 A Correct.

13 Q And the penalty decision, whether you decided to give
14 life penalty or the death penalty is what is called an
15 individual moral judgment. Okay?

16 A Okay.

17 Q And the best way it has been described to me, similar
18 to deciding who lives and who dies is decisions about,
19 your personal decisions that you have made about your
20 faith.

21 A Correct.

22 Q You have made your own decisions about what faith is
23 appropriate for you?

24 A Correct.

25 Q And you recognize that other people have made

1 different decisions about what is appropriate for them?

2 A Correct.

3 Q You may disagree with their decision but you respect
4 their right to have their own individual moral judgment.

5 A Right.

6 Q And you expect them to respect your right to have
7 your own individual moral judgment.

8 A Right.

9 Q If you saw somebody who was being bullied or coerced
10 into saying, your individual moral judgment is stupid.
11 What you have said about your faith or who you want to
12 kill, that is dumb, you shouldn't have that, you aren't
13 worthy of your opinion. Would you stop that?

14 A Yes.

15 Q You would say we are all entitled to our own opinion,
16 it is an individual decision, we get to arrive at it
17 ourselves.

18 A Correct.

19 Q And even if you disagree with the person, said I
20 don't agree with their opinion but they are entitled to
21 that opinion, to belittle or disrespect them for their
22 opinion is wrong.

23 A Right.

24 Q And could you pass a note out to the Judge, saying
25 people are being belittled or yelled at or harassed or

1 bullied out of their individual moral judgment and that is
2 not how it is suppose to go.

3 A Right, I mean, as long as I am not getting in
4 trouble.

5 Q You will not get in trouble, nobody is going to get
6 you in trouble. I promise.

7 A Yes.

8 Q The Judge wants to know if that is happening in the
9 jury room.

10 A Right.

11 Q And you are going to tell him.

12 A Yes.

13 Q Finally, you are going to have conversations, you are
14 going to deliberate in the jury room about, if we arrive
15 at that phase, what punishment is for you. And you will
16 listen to other jurors tell you what they think?

17 A Right.

18 Q And even if they say, I can't tell you but this is my
19 opinion. You are going to listen to that?

20 A Right.

21 Q And then you are going to arrive at your own decision
22 about what is appropriate?

23 A Right.

24 Q And the only thing that your oath requires of you as
25 a Juror is to ensure us that your individual moral

1 judgment will be heard in court.

2 A Yes.

3 Q Can you do that?

4 A Yes.

5 Q Thank you, Ms. Nelson.

6 THE COURT: Ms. Mayes.

7 EXAMINATION

8 By Ms. Mayes:

9 Q Good morning, Ms. Nelson.

10 A Good morning.

11 Q My name is Suzanne Mayes, I am one of the Prosecuting
12 Attorney's in this case. So we represent the State.

13 A Okay.

14 Q Just have a few questions for you to kind of
15 follow-up on some of the things that the Defense Counsel
16 was asking you. And I want to start out like he did just
17 asking a little bit about Palmetto Pediatrics.

18 A Okay.

19 Q I know you said you worked there in nursing school.

20 A Yes.

21 Q Do you remember the year that you entered nursing
22 school or would have graduated nursing school?

23 A I started, I started college in 2012 so I think I
24 would have gone into nursing around 2013, 2014.

25 Q Okay. And then would have graduated nursing school?

1 A I graduated December of 2017.

2 Q Okay. And I know you mentioned that you did know Dr.
3 Doer or would have contact with him through Palmetto
4 Pediatrics. But does he travel around to the various
5 satellite locations?

6 A So on the weekends or holidays you work at the
7 downtown office and the doctors will rotate there. So I
8 have worked as Dr. Doer's nurse at the downtown office on
9 a weekend and I have, so if the offices are short staffed
10 a nurse can get pulled to another location. I have been
11 pulled to his location before.

12 Q And you mentioned downtown, what is the street
13 address for that location?

14 A It is 140 Park Central Drive, Columbia, South
15 Carolina.

16 Q Okay. And you mentioned that sometimes you would
17 answer the phone, is that here at the Lexington location?

18 A That was when I was working up front at the Lexington
19 location. As a nurse I can be on the phone now but that
20 was more so working up front, scheduling appointments,
21 answering questions, fax numbers, those kind of things.

22 Q And then what about, I want to ask specifically about
23 the Irmo location and the Clemson Road location.

24 A Okay.

25 Q Are those locations you would have worked up front?

1 A Not up front, no ma'am.

2 Q And then Eli Jones, Eli, known as Eli Jones, is that
3 a name you are familiar with?

4 A No, it is not.

5 Q Nahtahn Jones?

6 A No.

7 Q Merah Jones?

8 A No, Ma'am.

9 Q Gabriel Jones?

10 A No, Ma'am.

11 Q And then the birth name would be Abigail Jones but
12 she went as Elaine Jones. Is that a name you are familiar
13 with?

14 A No, Ma'am.

15 Q With Dr. Deor being a possible witness in this case
16 there may have been some law enforcement officers that
17 would have come to Palmetto Pediatrics to obtain records.
18 Were you a witness in that or involved in that in any way?

19 A No, Ma'am.

20 Q So you would not have had any kind of role or contact
21 with law enforcement in regards to obtaining records in
22 this case?

23 A No, Ma'am.

24 Q Okay. And the names that I just mentioned, would you
25 have reviewed those medical files at any point and time

1 based on your memory?

2 A Not that I remember.

3 Q Okay. Now, one of the questions, I want to go into
4 some of the questions that Mr. Young was asking you
5 specifically about punishment. And you heard Your Honor
6 say that if this case gets to a second phase where
7 punishment is to be decided it would be two options and
8 that is life without parole and the death penalty. Are
9 both of those options that you can consider?

10 A Yes.

11 Q And then Mr. Young asked you a question and your
12 response was yes but it is tricky. I want to ask you a
13 little bit more about that because the question he asked,
14 basically would you automatically give the death penalty
15 in a worst or worst kind of case.

16 A Correct.

17 Q And your response was, it is tricky. And can you
18 explain what you mean by that?

19 A It is just, I guess it is hard to sentence someone to
20 death because you are basically saying you are going to
21 die because you took other people's lives. But I do think
22 that there are situations that it is deserved. I guess it
23 is just mostly, it is hard to say, that yes, you are going
24 to sentence someone to death.

25 Q Without hearing all of the evidence?

1 A Correct. That is hard.

2 Q I want to follow-up on that a little bit more. As
3 Your Honor said, during the course of a second phase of
4 the trial there would be what we call the mitigating
5 factors which is anything that the Defense may offer about
6 his background, his life, for you to consider. Would you
7 want to hear all of that evidence?

8 A Yes.

9 Q Would you consider each of those factors in deciding
10 punishment?

11 A Yes.

12 Q And ultimately after hearing and considering all of
13 those factors can you also see yourself potentially voting
14 for life without parole, having considered all of the
15 mitigating factors?

16 A I could.

17 Q And by the same token, after considering all of the
18 aggravating factors and the mitigating factors, do you
19 also think that you would be capable rendering a death
20 sentence if the facts of the case supported it?

21 A I could.

22 Q Now, with that, Ms. Nelson, if a jury were to
23 unanimously decide that the death penalty was appropriate,
24 each member of the jury would actually sign the form
25 acknowledging that that is their verdict. Do you think

1 that you could sign your name to that form if that were
2 your verdict?

3 A Yes.

4 Q Another thing I think you said in response to Mr.
5 Young was a lot of stuff needs to be considered before
6 deciding punishment, what do you mean by that?

7 A Just kind of anything that was presented, like all
8 the facts. If there was a rough childhood, if there was
9 abuse in the home, if there is any kind of proof of mental
10 illness, all of those little facts that would be
11 presented, I think those things need to be considered.

12 Q Okay. And you would consider each of those before
13 deciding a punishment?

14 A Correct.

15 Q Thank you, Ms. Nelson, nothing further.

16 A You are welcome.

17 EXAMINATION

18 By Mr. Young:

19 Q Ms. Nelson, did you know anybody else who came on
20 Monday that you saw in the big group, any other jurors
21 that were called in?

22 A I don't think so. I was kind of sitting in the
23 middle so there was a lot of people behind me. But I
24 don't think I recognized anybody in there.

25 Q Okay. Let me put it to you this way. And you just

1 have to let me know. Do you think that, when we are
2 deciding whether or not to end somebody's life, that we
3 should take a measure of their whole life?

4 A Yes.

5 Q And we have sort of had this conversation about your
6 views about the punishment. And given sort of your
7 initial opinions of Tim, do you think that this case, that
8 he is, this case is really not about guilty, not guilty by
9 reason of insanity, it is more just about punishment?

10 MS. MAYES: Objection, Your Honor, I believe this has
11 been asked and answered.

12 THE COURT: I think so, I will sustain that
13 objection, asked and answered.

14 MR. YOUNG: Thank you, Your Honor. Based on the
15 Court's limitations I will stop there. Thank you, Ms.
16 Nelson.

17 THE COURT: Does the Defense want to be heard?

18 MR. YOUNG: Yes, sir.

19 THE COURT: Step outside and I will have you right
20 back in here.

21 (Whereupon, the Juror was excused from the
22 courtroom.)

23 THE COURT: Mr. Young.

24 MR. YOUNG: I like Ms. Nelson, I know that she wants
25 to do the right thing. I think she would be a great Juror

1 in a lot of cases. However, she wouldn't be a good Juror
2 in this case. Her ability to follow the law is
3 substantially impaired. She is predisposed to the death
4 penalty in this category of case under Evans and she made
5 that clear throughout her voir dire. Based on the
6 totality of her responses we believe she is substantially
7 impaired and she should be excused.

8 THE COURT: Ms. Mayes.

9 MS. MAYES: Yes sir, Your Honor, briefly. Based on
10 the totality of her responses she is clearly qualified.
11 She did expound upon the question that she was asked which
12 we had issues with for a week now about that particular
13 question because it is a loaded question and it is a very
14 suggestive question.

15 THE COURT: One that is tricky.

16 MS. MAYES: Her response was it is tricky and then
17 she went on to explain that she would consider everything
18 and that she thinks would have to consider everything
19 including mitigating factors. She is clearly qualified,
20 Your Honor.

21 THE COURT: I thought her response the first time
22 through was, I would be concerned equally. The question
23 was very open ended, explain it. Her explanation was
24 clearly the other way to me, I think in the totality of
25 the circumstances she is solid and wants to hear

1 everything. I mean that is just her nature of her being a
2 nurse. She gathers information and wants all the
3 information before she makes a call. She is qualified.
4 Bring her back in.

5 (Whereupon, the Juror entered the courtroom.)

6 THE COURT: Ms. Nelson, you are a qualified Juror.
7 That means you are on the qualified list. The website you
8 were looking at to determine when to come in, look at it
9 again and start looking tonight. It will say, qualified
10 jurors please report back to the courtroom. Please check
11 back and see if you are to report. Watch that website for
12 qualified jurors and follow the instructions on when to
13 report back. You are to report back in this courtroom.
14 Not sure when, check that starting tonight. Okay.

15 JUROR: Okay.

16 THE COURT: Now, until then you are under oath not to
17 talk about the case, terminate conversation, don't talk
18 about the case or answer questions. Tell them the Judge
19 told you that, if they want to discuss it with me I will
20 discuss it with them. Don't do any independent research,
21 don't peruse social or regular media about this case.
22 What you need to decide this case is here, you will hear
23 the law here, sworn testimony is in here. Outside, none
24 of that will happen. I want you to consider and make your
25 decision solely on what you hear in the courtroom and not

1 to be influenced by information outside the Court House.

2 Can you do that?

3 JUROR: Yes.

4 THE COURT: I will see you soon. Thank you.

5 JUROR: Thank you.

6 THE COURT: Let's get the first group today, the
7 first group in this morning. Read the preliminary
8 instructions to them, let them start studying the witness
9 list and then during that time take a break. Bring me
10 this panel in.

11 (Whereupon, Juror 396, Amy Simpson; 210, Jonnathan
12 Jackson; 222, Scott Johnson; 326, Karen Perez; 402,
13 Jason Smith; 355, Lashonda Roberts; 65 Kayla Burgess
14 entered the courtroom.)

15 THE COURT: Are we missing one, the one you told me
16 about?

17 CLERK OF COURT: Yes, sir.

18 THE COURT: All right. Very well. Good morning. We
19 were finishing up some people left over from yesterday. I
20 appreciate your patience. I am going to read an
21 instruction on the law to you, the same I have read to the
22 other groups that have come in. When you come back in I
23 will ask you questions about your understanding of those
24 instructions. Also I need to know about your work
25 schedule, personal schedule, vacation schedule for the

1 next few weeks and if that is going to create a hardship
2 for you. Those are some of the questions I am going to
3 ask you. The Clerk is going to place your under oath.
4 You are under oath to answer questions. Many of the
5 questions are about your personal feelings, beliefs,
6 opinions, so there is no wrong answers. Okay. Madam
7 Clerk, place them under oath, please.

8 (WHEREUPON, the jury panel was sworn at 9:58 a.m.)

9 THE COURT: I apologize for reading this to you. I
10 am reading the same as I did all the other panels. I
11 would rather tell it. You, have been summoned as
12 potential jurors in the case of the State versus Timothy
13 R. Jones, Jr. My name is Eugene Griffith, Jr. and I am
14 the presiding Judge. Mr. Jones is charged with five
15 counts of murder. And in South Carolina murder is defined
16 as the killing of any person with malice aforethought.
17 Malice is defined as a person with a wicked or depraved
18 heart, intent on wrongdoing, hatred, ill-will or
19 hostility. The definition of murder excludes any just
20 cause or excuse for the killing. When the State alleges
21 the defense of murder combined with certain aggravating
22 circumstances the State can seek the death penalty.
23 Before and during a trial the person accused is presumed
24 innocent of each of the elements of the crime of which he
25 is charged. The State must prove each and every one of

1 the elements of the crime charged by a standard of proof
2 called beyond a reasonable doubt. In most criminal cases
3 the Judge determines the punishment upon a conviction.
4 But in a Capital penalty case the jury determines
5 punishment. In a Capital case the trial is divided into
6 two phases potentially. The first phase being the guilt
7 or innocence phase and then if necessary the punishment
8 phase. In the first phase of the case the State must
9 prove the Defendant's guilt of murder beyond a reasonable
10 doubt. If a jury finds an accused guilty of murder then
11 the trial proceeds to the second phase. In the second
12 phase, if the State proves an aggravating circumstance
13 beyond a reasonable doubt then the jury considers both
14 aggravating and mitigating circumstances into evidence in
15 deciding the punishment either life without the
16 possibility of parole or the death penalty. Our law in
17 South Carolina does not allow the State to seek that
18 execution if a person is convicted solely of the murder.
19 The State must prove at least one of the statutory
20 aggravating factors beyond a reasonable doubt. Even if
21 the State proves murder and an aggravating circumstance
22 jurors are required to consider any mitigating evidence or
23 circumstances. Jurors must consider any mitigating facts
24 that would support a sentence other than death. If no
25 mitigating circumstances exist jurors are not required to

1 impose the death penalty. In order for a sentence of
2 death to be imposed the verdict must be signed by all
3 twelve jurors. If jurors unanimously decide to sentence a
4 Defendant to a life without parole sentence then a
5 sentence of life without the possibility of parole will be
6 imposed. In this case the State has indicted five counts
7 of murder and has notified Mr. Jones that it intends to
8 seek the death penalty. Mr. Jones has entered a plea of
9 not guilty by reason of insanity. In this case you may
10 hear testimony and evidence showing many things. A wide
11 variety of testimony may be presented to you in the trial.
12 I will instruct you as to how to consider and evaluate the
13 testimony and evidence, whether it be defined as evidence
14 of an aggravating factor, evidence of mitigation, which
15 would be any reason to vote for a life sentence without
16 parole. Evidence of any defenses, evidence of any
17 affirmative defenses such as accident, guilty but mentally
18 ill and not guilty by reason of insanity. Until the
19 testimony is fully presented I am not able to tell you the
20 exact instruction of the law I will give on each of these.
21 But when you are brought back into the courtroom
22 individually I will ask you can you accept an oath to
23 meaningfully consider all the testimony and all of the
24 evidence, apply the law as I instruct it and consider all
25 evidence consistent with my instructions. That will be

1 one the questions imposed to you individually. Those are
2 my instructions. Step back, a couple of things I forgot.
3 The camera is not on, don't worry about that. Also, don't
4 need to discuss the case back in the jury room. I am
5 going to ask you about any publicity or information
6 because you have some, I read some to you, it is okay. I
7 am going to ask you that question also. So step in the
8 jury room, don't discuss about the case, relax about the
9 cameras.

10 (Whereupon, the jurors were excused from the
11 courtroom.)

12 THE COURT: Let's bring in 396.

13 (Whereupon, Juror 396, Amy Simpson entered the
14 courtroom.)

15 AMY SIMPSON, being
16 first duly sworn, testified as follows:

17 EXAMINATION

18 By The Court:

19 Q Ms. Simpson?

20 A Yes.

21 Q Say and spell your name for the record as well as for
22 Ms. Holston.

23 A Amy Simpson. A-M-Y, S-I-M-P-S-O-N.

24 Q I will ask you the questions in the same order, took
25 an oath Monday to not talk about the case. Have you

1 talked about the case since that time?

2 A No, sir.

3 Q Anybody ask you questions about the case?

4 A No, sir.

5 Q There has been a lot of publicity, social media,
6 regular tennis, I provided some information reading the
7 indictment to the accusations the State has made in this
8 case. Any information you have received come across,
9 whichever source, I don't care when it happened, news
10 reports, that is information. Anything you have heard
11 about this case, has any of that information caused you to
12 form an opinion about what is happening in this case?

13 A No, sir.

14 Q Okay. Now, tell me about your personal schedule,
15 work schedule, vacation schedule otherwise over the next
16 several weeks, say to the end of May, what have you got?

17 A Through the end of May, nothing.

18 Q Early June?

19 A No, I don't have any plans until August.

20 Q Okay. That is good. I think we will be okay with
21 your schedule. Now, the subject matter about this case
22 involves testimony and evidence, description of deceased
23 children. I have asked the lawyers, I haven't seen all
24 the evidence, I don't know. The description of the
25 lawyers, both sides, harsh, graphic, unpleasant,

1 difficult. The subject matter of that type being
2 difficult and unpleasant. Can you consider that subject
3 matter, be fair and impartial to both sides, understanding
4 that subject matter will be a topic of the whole case.

5 A Yes.

6 Q You can handle that type of subject matter?

7 A Yes, sir.

8 Q Did you examine the witness list for me?

9 A Yes.

10 Q Did you see anybody you knew?

11 A I think I know them, I am an acquaintance.

12 Q Who is it? There is a lot of people on the list.

13 A I know and I had to read it twice. I don't want to
14 miss anybody but April Hames and Stephanie Stanley.

15 Q How do you know them?

16 A I don't really know April but a friend, I play tennis
17 and it is a large community and occasionally a group of
18 our friends will go out and do other things other than
19 tennis. So April, if it is the April that I think it is
20 she is a friend of one of the people that I play tennis
21 with.

22 Q Would that create an issue for you sitting as a Juror
23 understanding she could testify and you still give her
24 testimony the same credibility as all of the other
25 witnesses and be fair and impartial to both sides?

1 A Yes, sir.

2 Q You are not going to believe her over everybody else
3 because she is a friend of a friend?

4 A No, sir.

5 Q Equal footing on all the witnesses?

6 A Correct.

7 Q Who else?

8 A Stephanie Stanley.

9 Q How do you know her?

10 A Tennis.

11 Q Same thing?

12 A If it is the Stephanie Stanley that I think it is, I
13 haven't seen her in many years.

14 Q The same question, can you be fair and impartial in
15 light of the fact she could testify?

16 A Yes, sir.

17 Q Who else?

18 A No one.

19 Q That is the only two. Another question is, I am
20 informed, I hold court here regularly but, Preston is what
21 I know him by, is your neighbor?

22 A Yes sir, he is. I looked for his name on the list.

23 Q I want to ask you about him. He lives nextdoor to
24 you?

25 A He lives across the street.

1 Q Okay and y'all socialize some?

2 A I was in his swimming pool last weekend, yes.

3 Q Now, he is not involved in the case other than
4 coordinating security and organization and logistics here
5 in the Court House.

6 A Okay.

7 Q So not involved, but the fact he is in here, would
8 that create any issue for you being fair and impartial?

9 A It would probably make me more comfortable.

10 Q Okay. But he is not going to testify or say anything
11 other than maybe respond to some of my, is the door
12 locked, is the door open, is all the jurors here,
13 something like that.

14 A I can handle that.

15 Q You can handle that. I gave you some preliminary
16 instructions on the law describing the two phase process
17 of a Capital case. Phase one being guilt or innocence,
18 phase two being punishment. Two punishments only, life or
19 death. I also gave you a summary about the three typical
20 types of jurors. Can you, with very scant facts, what I
21 have read to you in open court, presuming the State proves
22 the guilt, can you identify yourself as one of those three
23 types of jurors?

24 A Yes, sir.

25 Q Which one?

1 A Three.

2 Q Three. Now, having prepared that, I understand three
3 means, what do you think three means?

4 A I understand three to mean that I would consider all
5 of the facts, I can't answer that question without seeing
6 the evidence. But, I mean if you are asking me if I could
7 consider the death penalty the answer would be yes but,
8 you know, I have to see the facts.

9 Q You understand the death penalty is not automatic?

10 A I understand.

11 Q You understand that. That will be my instruction at
12 the very end. All right, now, if we go and I will go back
13 and go through phase one a little bit and tell you some
14 other things. Phase one is guilt or innocence, meaning
15 the State has the burden of attempting to prove the
16 murder. Mr. Jones is presumed innocent sitting right
17 here. The Constitution affords him that presumption. He
18 is presumed innocent, the State has got to meet the burden
19 of proof. If the State fails to meet its burden of proof
20 the verdict is not guilty. The State has got to prove its
21 case beyond a reasonable doubt of the murder. People have
22 certain defenses afforded to them under our statutes. If
23 testimony supports any of them I would instruct the jury
24 you may consider this defense if you think the evidence
25 supports it. The jury does the evidence finding because

1 there may be, for instance there may be testimony, traffic
2 light was red and green, the jury determines which color
3 it was. I don't say I think it was yellow. I don't get
4 involved in the facts. But if there is testimony which
5 would support one of the defenses you may hear
6 instructions on more than one defense. Potentially
7 defenses, I am reading them all whether they are
8 applicable or not because I have not heard the testimony
9 either.

10 A Okay.

11 Q Identification, accident, involuntary intoxication,
12 self-defense, necessity, insanity, guilty but mentally
13 ill, defense of habitation, entrapment, duress and alibi.
14 Those are potential defenses available. If testimony and
15 evidence supports the consideration of those would you
16 consider the appropriate instruction on the law provided
17 me and consider the State has the burden of proving the
18 guilt beyond a reasonable doubt, consider the evidence
19 presented, instructions on the law and make findings
20 consistent with my instructions based upon the evidence
21 you hear and be fair and impartial to both sides?

22 A Yes, sir.

23 Q You could do that?

24 A I can do that.

25 Q Now, particularly with this case, a plea of not

1 guilty by reason of insanity is claiming one of those
2 defenses which brings two of them kind of into play and I
3 will instruct on those at the appropriate time. Four
4 potential verdict forms in this case could be and the jury
5 may have to consider this, four forms could be, guilty,
6 guilty but mentally ill, not guilty by reason of insanity
7 and not guilty whatsoever. Can you give meaningful
8 consideration to my instructions on the law on those four
9 aspects and verdict forms, considering the evidence and
10 testimony presented, understanding the State has the
11 burden of proving its case beyond a reasonable doubt.
12 Will you consider my instructions and give meaningful
13 consideration to all the evidence in reaching that
14 verdict?

15 A Yes, sir.

16 Q Can you tell me if any one of those four potential
17 verdict forms, that you could not follow my instructions
18 and you would not consider?

19 A No, sir.

20 Q You would consider all four?

21 A If that is what you instructed me to do, yes.

22 Q That is what I am asking. That is exactly what my
23 instructions will say.

24 A Okay.

25 Q Now, if the jury reaches a verdict of not guilty the

1 case ends, stops right there. It don't go to phase two.
2 If the State meets the burden of proving guilty of murder
3 it goes to phase two. At that time the, phase two begins
4 and the State must then prove an aggravating factor.
5 Aggravating factors are several, I will name a couple of
6 them. Murder of a police, murder of a child, rape of
7 murder, kidnapping of murder, multiple murders. Those are
8 aggravating factors outlined, defined by our statute. If
9 the State wants to ask for the death penalty they must
10 prove beyond a reasonable doubt at least one of those
11 statutory aggravating factors in the sentencing phase.
12 Also during the sentencing phase jurors consider
13 mitigating evidence. Let me define you some statutory
14 mitigators. The Defendant has no significant history of
15 prior criminal conviction involving the use of violence
16 against another person. The murder was committed while
17 the Defendant was under the influence of mental or
18 emotional disturbance. The victim was a participant in
19 the Defendant's conduct or consented to the act. The
20 Defendant was an accomplice in the murder committed by
21 another person and his participation was relatively minor.
22 The Defendant acted under duress or under the domination
23 of another person. The age or mentality of the Defendant
24 at the time of the crime. The Defendant was provoked by
25 the victim in committing the crime. The Defendant was

1 below the age of 18 at the time of the crime. The
2 Defendant had mental retardation at the crime. Those are
3 statutory mitigators. Also mitigating factors can be any
4 reason the jury decides to impose life as opposed to death
5 such as the Defendant's childhood history, came from a
6 broken home, aspects of his personal life. Anything the
7 jury wants to consider, there will be mitigating
8 circumstance evidence presented. Some of those statutory
9 ones might not be, like he is under 18.

10 A Right, I understand.

11 Q Jury's consider mitigating circumstances. There is
12 no requirement that they be proved to any certain
13 standard. The aggravating circumstances the State is
14 required to prove must be beyond a reasonable doubt. So
15 during the sentencing phase can you hear the testimony,
16 understand my instructions, the burden of the State,
17 consider the aggravating circumstance issue and consider
18 all the mitigating factors in evidence that are presented
19 in the case or heard during the case and make a fair and
20 impartial verdict, decision as to punishment considering
21 my instructions and all aspects of the evidence. Can you
22 do that?

23 A Yes, sir.

24 Q Now, I told you before, the death penalty is not
25 automatic. The State proves the murder, phase two starts,

1 two options on the table for the jury as to punishment,
2 life or death. Nothing is automatic. The State has still
3 got to prove the aggravating factor.

4 A I understand.

5 Q The State fails to meet that burden not entitled to
6 ask for the jury to consider the death penalty. So the
7 jury has got to make that finding. Can you consider all
8 the evidence, mitigating, aggravating, from where ever it
9 comes and make a fair, a fair determination of a sentence
10 considering my instructions and be fair to both sides?

11 A Yes, I can.

12 Q Do you have any moral or reason, moral, personal or
13 religious belief which would prevent you from making a
14 finding of punishment of the death penalty?

15 A No.

16 Q Do you have any religious, moral or personal belief
17 that would prevent you from finding a sentence of life
18 without parole?

19 A No.

20 Q Okay. Mr. McGuire.

21 EXAMINATION

22 By Mr. McGuire:

23 Q Did you tell the Judge you were nervous?

24 A Yes, it is intimidating.

25 Q Yes, it can be. But what I will tell you is that

1 this probably in the one day in your whole life,
2 everything you say is the correct answer. As long as it
3 is your personal belief and accurate and true and candid,
4 everything you say is correct. You can't be wrong today.

5 A Awesome.

6 Q So, Ms. Simpson, so we can talk about this in some
7 concrete terms. I am going to ask you to put yourself in
8 a position that you just find yourself to be Governor of
9 South Carolina for a day. And you have a Bill on your
10 desk and it says, we are going to keep the death penalty
11 and you have a Bill on your desk that says we are not
12 going to have the death penalty anymore. Where would you
13 go?

14 A I was the decider?

15 Q Yes.

16 A And I get to choose?

17 Q Choose one-hundred percent, just you.

18 A I would probably keep it.

19 Q And that would sort of imply you believe there is a
20 purpose in having the death penalty?

21 A I believe it is a deterrent, I hope that it is a
22 deterrent.

23 Q It keeps other people from doing bad things?

24 A Perhaps, sometimes. Perhaps not maybe.

25 Q Okay. Any other reason to have it?

1 A No, I mean--

2 Q Some people might say it is the ultimate punishment
3 and the punishment needs to fit the crime and that is why
4 we need to have the death penalty. What do you think
5 about that statement?

6 A Sometimes I guess punishment could be living forever,
7 dealing with, if you were found guilty of something of
8 such then, sometimes I have heard people say that that is
9 almost as much of a punishment as the other. I mean, I am
10 just saying in general.

11 Q Do you believe that the death penalty is a punishment
12 of last resort?

13 A What do you mean by that, last resort. Like you
14 can't take it back, I realize that.

15 Q Sure. It is irrevocable.

16 A Right.

17 Q Last resort meaning it should be reserved for just
18 the worst cases?

19 A Yes.

20 Q Okay. Sometimes the Court, the Judge will use the
21 phrase, plain ole murder or vanilla murder. You believe
22 the death penalty should be reserved just in the very
23 worst cases?

24 A And depending on the circumstances, yes, I don't
25 think it necessarily applies to every case, no.

1 Q And what about the killing of innocent children. Is
2 that worst of the worst?

3 A I think it is pretty awful, yeah.

4 Q Okay. Some people might say the case of where you
5 have a Defendant, you have the right guy, he is guilty
6 beyond a reasonable doubt, intentionally, deliberately
7 meant to kill children, not a car accident or anything
8 else, this is a deliberate, intentional killing of
9 multiple innocent children, one after the other. Some
10 folks would say that is the worst of the worst and that
11 case calls out for and demands the death penalty. What is
12 your view on that?

13 A I don't really think I can answer that honestly
14 without considering everything, all the other factors.

15 Q When you say factors, what are you--

16 A Evidence like what else is going on. I mean, if this
17 person killed five children and intended to do that and
18 meant to do that then, yes.

19 Q The death penalty?

20 A I could vote for it, yes.

21 Q Okay. The life sentence, letting somebody spend
22 their years in prison, would that be sufficient enough to
23 punishment, intentional killing of multiple children?

24 A As long as I could be assured he would never walk
25 among society.

1 Q The Judge can tell you right now if he wants to, life
2 in South Carolina, life without parole means die in
3 prison.

4 A Yeah, they would have to I think. I would not be
5 comfortable with someone like that walking among society,
6 no.

7 Q And at the end, like if we were to get to a penalty
8 phase, the punishment phase of this trial the Judge would
9 tell you you have two options, the death penalty and the
10 life without parole penalty. And the Judge would tell you
11 that means he never, ever gets out of prison.

12 THE COURT: It means die in prison.

13 Q Die in prison.

14 THE COURT: No release.

15 A Under those circumstances it would have to for me,
16 yes. It would have to mean there was no chance they would
17 ever--

18 THE COURT: I am going to tell you, there is no
19 chance.

20 Q Our law changed in 1996, parole, sometimes you might
21 even hear about cases--

22 A That would give me a problem, that would give me
23 pause if there was parole, that would give me pause.

24 Q Before 1996 there was parole, ever since then no
25 parole, die in prison.

1 A Okay.

2 Q Are you comfortable if a person, if they were
3 sentenced to life in South Carolina, would in fact have to
4 die in prison.

5 A I am comfortable with that.

6 Q Okay. And you believe that now that the Judge told
7 you that?

8 A Yes.

9 THE COURT: Ma'am, that is law.

10 Q And in that case where a person intentionally kills
11 multiple children you believe that the life penalty could
12 be a sufficient punishment for that?

13 A It could be, I am not saying that it is. I mean,--

14 Q It is hard to judge it now, right?

15 A Yes.

16 Q Because you don't have all the facts. Well, let me
17 ask you this. The Judge told you a little bit about the
18 defense of not guilty by reason of insanity. What that
19 means in South Carolina, there is no doubt that the person
20 did the act, committed the offense, did kill children.
21 But the defense is, is that he had a mental defect or a
22 disease that prevented him from knowing moral or legal
23 right from wrong. Are you with me there?

24 A I am with you.

25 Q Okay, does that make sense?

1 A That makes sense.

2 Q Some people would say, you know what, killing
3 multiple innocent children, not guilty by reason of
4 insanity, that sounds like a copout, an excuse, kind of
5 letting the guy off too easy. What do you think about
6 that?

7 A Well, I am not a doctor so I can't determine whether
8 someone is insane or not.

9 Q Sure. I am not asking you to make that decision, is
10 somebody insane or not. I am just saying if there was
11 evidence to support it some people--

12 A If there was evidence to support insanity?

13 Q Yes. Some people would still say, even though there
14 is evidence to support it, I am not going to consider that
15 verdict because it just doesn't have punishment attached
16 to it. I can't really vote that way. What do you think
17 about that statement.

18 A Can I ask a question?

19 Q Yes, yes.

20 A Okay. So would insanity mean that they could be in a
21 mental institution and potentially get out if they are
22 cured of their mental illness?

23 MR. GRAHAM: Your Honor, I ask that you answer that
24 question of the Juror.

25 THE COURT: All right. Insanity needs to be proven

1 to be entitled to that, we have not defined the result yet
2 to any other jurors so I am not going to define it for
3 you. Answer the question based on what you got.

4 Q It is a little hard to shoot in the dark because we
5 can't tell you what would happen if somebody was found
6 not--

7 MR. GRAHAM: Your Honor, there is not a question--

8 MR. MCGUIRE: There is a question coming there.

9 THE COURT: Get to the question.

10 Q So I am just going to restate what I said. It is
11 sort of difficult to shoot in the dark and the rules do
12 not allow us to tell you what would happen if somebody is
13 found not guilty by reason of insanity. And my question
14 is, would that cause you some concern in maybe make you
15 hesitant to vote for not guilty by reason of insanity not
16 knowing what would happen?

17 A Yes, not knowing what would happen I can't.

18 Q You couldn't vote for not guilty by reason of
19 insanity?

20 A I would want to know what the outcome of, if they
21 could get out, if they could walk among us again. Then,
22 yes, I don't know that I could--

23 Q Okay.

24 A --that I can do that.

25 Q That would cause you to not--

1 A I would have pause, yes.

2 Q Yes. Significant pause?

3 A Correct.

4 Q Because you would have a great concern that the
5 person could be out among us again?

6 A Correct. If that is a chance of that happening then,
7 yes, I would, no.

8 Q And that concerns an impediment to considering that
9 verdict?

10 A It would, yes.

11 Q In fixing punishment for a terrible murder,
12 deliberate, intentional killing innocent children. Some
13 folks take the position that, well let me ask you, do you
14 think that it, that the background of the killer, the
15 person who did the killing, do you think his background,
16 how he grew up, maybe in poverty or had a rough childhood,
17 are these things relevant to you in fixing punishment for
18 this type of murder?

19 A No.

20 Q And that is because the facts of the killing are
21 important.

22 A No, it is because a lot of people have gone through a
23 lot of things that are horrible and they don't make those
24 choices.

25 Q Right, people have free will.

1 A They do.

2 Q And if they know right from wrong they make their
3 choices?

4 A Correct.

5 Q And their choices have consequences?

6 A Right.

7 Q Okay. So their background that is, not connected to
8 the crime would not be relevant?

9 A I am sorry, repeat that, please.

10 Q Sure. The background and character of the person who
11 did the killing, that would not be relevant?

12 A No.

13 Q In fixing punishment for this type of intentional
14 killing?

15 A No.

16 Q Okay. And I want to thank you for your answers. It
17 looks like you are giving great thought to what you are
18 saying. Is that true?

19 A I am.

20 Q And you are taking it very seriously?

21 A I do.

22 Q And you are under oath?

23 A I am.

24 Q And your answers are sort of a reflection of who you
25 are as a person?

1 A Right.

2 Q Your personal views?

3 A Right.

4 Q And your personal opinions?

5 A Correct.

6 Q And sort of a reflection of your values system?

7 A Okay, yes. That is what I am trying to do, yes.

8 Q Okay. I just want to make sure these are your
9 absolute, honest, one-hundred percent candid--

10 A Oh, I don't get asked these questions every day.

11 Q I know.

12 A And I am trying to give it thought because, it is a
13 big deal.

14 Q It is a big deal and you are taking it very seriously
15 and you are giving great thought to these answers?

16 A Yes.

17 Q Okay. Let me tell you a little bit about the way
18 this process works and the punishment phase, the
19 sentencing phase. And if you have any questions about
20 that you just start asking me questions. Okay.

21 A Okay.

22 Q Because you are right, people don't get these
23 questions all the time, this is a very new and unique
24 experience.

25 A It is a very unique experience.

1 Q I agree with you, well, not for us but for you.

2 A For me, yes.

3 Q So, the Judge told you about the first phase of this
4 kind of case and it is just like any other trial you would
5 see on the news or TV, to have the right guy, is he guilty
6 beyond a reasonable doubt. And all twelve jurors agree or
7 not, right?

8 A Right.

9 Q The punishment phase in a Capital case is very
10 different. And it has a lot of focus on the individuality
11 of each individual Juror. And I want to explain that to
12 you, if you have questions about that you stop me and ask
13 me.

14 A Okay.

15 Q So, in South Carolina the State is always satisfied
16 with a life sentence. The death penalty is never
17 required, no Juror is ever required to vote for the death
18 penalty ever, not in this case, not in the worst case.
19 Did you know that before you got here?

20 A No.

21 Q A lot of people think that if the Government proves
22 A, B and C it kind of all, well, they have proved
23 everything so it is the death penalty. And the Judge is
24 going to tell you that is absolutely not the way it works,
25 it is never automatic. Does that make sense?

1 A Yes.

2 Q And what that means is, at the end of a sentencing
3 phase and you hear aggravation evidence, hear mitigation
4 evidence, each individual Juror has the absolute right to
5 vote for the life without parole for any reason at all.
6 Did you know that?

7 A Yes.

8 Q What I mean by that, the jury doesn't have to agree
9 on a reason to vote for the life penalty. It is just each
10 individual juror's decision. Does that make sense?

11 A Yes, we all have a vote.

12 Q All have a vote. It can all be different too?

13 A Right.

14 Q This Juror right here, number one could say, I saw
15 that the person had a mental illness and I am not going to
16 vote for the death penalty for somebody who has a broken
17 life. And that is their reason, that is my position.
18 Somebody next to them could say, I saw that he had an
19 enduring relationship with his father, I saw a spark of
20 humanity there, hope for redemption. And that is my
21 reason and I don't agree with your mental illness thing
22 but I have got my own reason. Do you see how everybody
23 could have a different reason?

24 A Right.

25 Q They don't have to agree?

1 A Right.

2 Q Does that seem fair?

3 A Everyone is entitled to their opinion, yes.

4 Q Right. Okay. And at the end of the case the Judge
5 would tell the whole jury, each Juror can vote for life
6 for any reason, no reason or just mercy alone. And some
7 people are better at sticking up for themselves or maybe
8 voicing their opinion. And some person, another Juror
9 could just say, I can't put it into words.

10 A Right.

11 Q But you can just see on their face, they just don't
12 want this burden of having killed another human being by
13 voting for the death penalty. They don't want to do it,
14 they can't do it and they just say, I have no reason.
15 Would you respect that if they had no reason, if they
16 couldn't put it into words?

17 A I mean, yes, they are entitled to their opinion, yes.
18 I might not necessarily agree with their opinion but,
19 sure.

20 Q And in a matter like this so grave as whether another
21 human being dies or not, you would expect some
22 disagreement on that issue?

23 A Of course.

24 Q And the way the law works, if a Juror finds that it
25 is their position, their conscientious held position,

1 their individual moral judgment that the life without
2 parole penalty is right for them. They have a duty and
3 obligation to stick with that position, maintain it and
4 not just give it up to go with the majority. Does that
5 make sense?

6 A Yes.

7 Q That would actually be a violation of the jury oath.
8 And if you saw somebody it would be wrong, it would be
9 wrong for other people to coerce or force somebody,
10 another individual Juror, to give up their conscientiously
11 help position to go with the majority. That is actually
12 against the rules of court. If you saw that happening
13 could you jump in and stop that?

14 A I am not usually a confrontational person. I might
15 would probably report it to someone else.

16 Q That is exactly what could happen. The rules and the
17 law demands that these proceedings be conducted with
18 decorum, dignity and respect.

19 A Right.

20 Q And expect civil discourse and reasonable
21 deliberations. But bullying, intimidation, forcing
22 somebody to give up their position just to try to get the
23 majority on one side, that is wrong. And what you could
24 do is pass a note out to the Judge saying we were told
25 this had to be conducted with civility, it has gotten

1 beyond civil discourse, it is coercive in the jury room,
2 Judge, could you put a end to that, could you stop that
3 and get civility back here. Could you pass that note up?

4 A Yes.

5 Q That is all I have for you. Let me check.

6 MR. MCGUIRE: Can I have just one second, Judge?

7 THE COURT: Yes.

8 Q That is all I have for you, thank you very much.

9 A Sure.

10 MR. HUBBARD: Nothing at this time but I do have a
11 matter.

12 THE COURT: Okay. Ma'am, step out real quick. I
13 have a matter to take up with the lawyers. Be right back
14 in.

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

17 THE COURT: Yes, sir.

18 MR. HUBBARD: Judge, this is yet another case where
19 we have a Juror who in every way is qualified because of
20 her answers, she wants to listen to everything. The type
21 of question is being asked, unfairly traps the novice that
22 comes in as a Juror. Starts out with staking questions,
23 Your Honor, about the death penalty. And it is not
24 following the Morgan v. Illinois language. That question
25 in that case was, if you found the Defendant guilty would

1 you automatically vote to impose the death penalty no
2 matter what the facts are. What is being done here is
3 they are couching these god awful heinous facts in saying
4 would you vote for death. Every Juror, just about every
5 Juror is struggling with that, I don't know all the facts
6 which is correct. That is why it is an improper question.
7 The Defendant builds from there and it goes, onto the
8 death penalty and then jump right back to the first phase,
9 the NGRI. So that Juror is still on the second phase.
10 They are just new to this. And then asked, all right,
11 that same case, they are still answering on that same
12 first question.

13 THE COURT: I think the Defense needs to ask their
14 question but also put in there, without all the facts.
15 They consistently don't do that.

16 MR. HUBBARD: And then, Your Honor, I guess without
17 us having to stand up and object constantly they jump
18 right in, they go from that to NGRI. So you are going
19 back to that first phase and that Juror is thinking, there
20 is no break in the questions. And the Juror is thinking
21 those same facts to answer the next question. And that is
22 why all of a sudden she is like, I can't, I want to know
23 more. Of course she does. And it leads right to the
24 problem we were discussing earlier.

25 THE COURT: I agree with you.

1 MR. HUBBARD: And now on the record very prudently, I
2 can't answer without knowing more but she wants to know
3 more about what happens after, you know, somebody is found
4 insane. She got walked right into it.

5 THE COURT: I tend to agree with you, they steer that
6 way. I am in the same position with another Juror just
7 like this.

8 MR. HUBBARD: And it could be when we get to that
9 point in trial, you may determine on how to address that
10 on the front end. But right now that is not laid down so
11 it is patently unfair for a Juror in that position when
12 they are just trying to be honest.

13 THE COURT: About this from this point forward. She
14 asked the question two different ways. She talked about
15 life in the old rule and new rule. She knew there was a
16 difference. And it took three instructions for me to
17 convince her life meant life. I mean, she looked at me
18 three times when that question was going on because she
19 was not taking Mr. McGuire's word for it. And he said it
20 three times, four times. She may still doubt it, I don't
21 know. She also provided testimony and she was not
22 considering any of the background or any mitigation at
23 all, that was people have bad backgrounds, they still do
24 bad things. I think for that reason alone she is
25 disqualified. But she is also, couldn't make a decision

1 on not giving reason of insanity. Y'all want to be heard
2 on that.

3 MR. MCGUIRE: I think I understand what the Court is
4 saying. I agree, she is disqualified on a number of--

5 THE COURT: Okay, I find her disqualified, the State
6 is not going to have to ask questions. Can we agree from
7 this point forward, when asking about the verdicts. I ask
8 about the four separate verdicts. The Court will give you
9 further instructions on that verdict. If they ask a
10 question I will give further instructions during the trial
11 and not the end result. Because I haven't answered that
12 question yet, we have not answered it for any other Juror
13 so I don't want to answer it for one now. I am still
14 considering that.

15 MR. YOUNG: We are fine with that, Your Honor, and we
16 consistently maintain the best way to ask them is just
17 tell them the truth.

18 THE COURT: I understand, I have not made a ruling on
19 that. You keep asking that but I keep ruling the same
20 way.

21 MR. YOUNG: Yes, sir.

22 THE COURT: So I don't think the truth, you want me
23 to read the statute. The truth would be, yes, he could
24 walk free.

25 MR. YOUNG: Could be, yes.

1 THE COURT: Right. And so--

2 MR. YOUNG: If a couple of doctors and the Court all
3 agree that could happen.

4 THE COURT: Okay. I am going to run her back in and
5 we will go to the next one.

6 (Whereupon, the Juror entered the courtroom.)

7 THE COURT: Based upon the questions and answered we
8 got from you, everything, the Court is going to find you
9 not qualified and excuse you from service.

10 JUROR: Okay.

11 THE COURT: Thank you for your patience and
12 understanding.

13 JUROR: Thank you.

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

16 THE COURT: Can y'all add in that question you keep
17 asking, something to the effects, without all the facts.
18 Because you are leaving them in there, wanting to know if
19 they will get all the facts.

20 MR. MCGUIRE: Well, Judge look at the question, we,
21 intentional, murder, malicious, there is nothing wrong
22 with that.

23 THE COURT: Innocent.

24 MR. MCGUIRE: Innocent children. There is nothing
25 wrong with that. And then not an accident, car accident.

1 And some people have actually said, well, it is not an
2 accident. So we take that out and we say in that
3 situation deliberate, intentional killing of innocent
4 children. Then the death penalty should be automatic.
5 That is exactly the advice we have.

6 THE COURT: Without all the facts.

7 MR. MCGUIRE: I am sorry.

8 THE COURT: Without all the facts. You can't say
9 that.

10 MR. MCGUIRE: We used the question, without hearing
11 anything more, just based on that. Some people would say
12 the death penalty is always appropriate, what is your
13 position. If they say, yes, death is always the verdict
14 that is appropriate, it should always be death. Then what
15 they are saying is--

16 THE COURT: I know what they are saying, you don't
17 have to argue that to me. But I like, you add some,
18 without all the facts, rather than you give them your
19 intentional, malicious, with ill-will, I mean you are
20 hammering that in.

21 MR. YOUNG: I think I said without anything more.

22 THE COURT: You may have but Mr. McGuire didn't this
23 last time. I mean, y'all are doing it different. I am
24 not fussing at you for doing it.

25 MR. MCGUIRE: You just have to find the words that

1 are appropriate for the person that is in front of you.

2 THE COURT: I understand. Can you shorten your
3 question about, if you see civil discourse can you, and
4 you all do it, send a note to the Judge and then read the
5 entire note, send a note to the Judge that we need help.
6 Kind of shorten it because it says the same thing. They
7 know where you are going. Civil discourse, can you send a
8 note out to the Judge telling him, hand it to the Bailiff
9 and you end of giving 25 more words than you need. I am
10 just trying to streamline some things.

11 MR. HUBBARD: Your Honor, I think it is the same
12 thing with intentional murder, malicious murder, that is
13 what murder is, you have already told them that. It
14 builds it up and then they are, at least on this occasion
15 left out the key, no matter what the facts are or
16 regardless of what the facts are.

17 THE COURT: I am, I would like to add without all the
18 facts. Hearing nothing more, something along those lines
19 would be helpful rather than leaving the Juror thinking
20 that is all they are going to get. Because that is not
21 all they are going to get. No one would be that, without
22 considering all the facts. I guess what it leads to is,
23 this Juror thinks, well, is that all I am going to get.
24 And, no. It is confusing in that regard to them as a
25 novice is they don't realize they are going to get more

1 facts than they really want. But it is not going to be a
2 situation where they get no other facts. That is
3 confusing to them. And that is where the trap is. Does
4 that make sense?

5 MR. YOUNG: It makes sense but I disagree that it is
6 a trap.

7 THE COURT: It is a trap.

8 MR. YOUNG: Because that answer doesn't disqualify
9 them. We are arguing at that point and time and then we
10 are going to talk about the additional stuff you are going
11 to hear.

12 THE COURT: That is called a trap.

13 MR. MCGUIRE: And, Judge, we would be satisfied with
14 putting five pictures of the children up and then the
15 pictures of the bodies and say that is what you are going
16 to see. I know you are not going to do that but our words
17 are so weak in comparison to the massive horrific amount
18 of evidence they are going to get.

19 THE COURT: I don't want to hear that. Bring the
20 next one in.

21 (Whereupon, Juror 210, Jonathan Jackson entered the
22 courtroom.)

23 EXAMINATION

24 By The Court:

25 Q Good morning.

1 A Good morning.

2 Q You are Mr. Jackson. Spell and say your first and
3 last name to Ms. Holston to determine whether she is
4 picking you up properly.

5 A Jonathan, J-O-N-A-T-H-A-N; Jackson, J-A-C-K-S-O-N.

6 Q Mr. Jackson, you took an oath Monday to not talk
7 about the case. Have you discussed the case with anybody
8 whatsoever?

9 A No.

10 Q Anybody ask you about the case since Monday?

11 A I have had people ask if that is the case I am on.

12 Q You said you can't talk about it?

13 A Yes.

14 Q Now, there has been publicity in this case, social
15 media, regular media, all sorts of publicity four years
16 ago, last month, last week, since the Monday. I gave you
17 information reading the indictments. That was information
18 to the jury. Based upon any of that information received,
19 where ever it came, don't care where it came from or where
20 or when you got it. Has that information caused you to
21 form an opinion as to what happened in this case?

22 A Not really, just to see what--

23 Q -- you understand there has been five accusations
24 made?

25 A Yes.

1 Q Aside from the accusations made, accusations of
2 murder, any other opinion formed by you?

3 A No.

4 Q Now, I ask you about your work schedule, vacation
5 schedule over the next two or three weeks, through the end
6 of May, early June, what have you got?

7 A I am available for it.

8 Q If you were selected you potentially could serve, it
9 would be an inconvenience to you and your family and your
10 work schedule?

11 A Yes.

12 Q That is a good answer, a fair answer?

13 A Work doesn't like it.

14 Q But serving as a Juror in any case will be an
15 inconvenience as a civic duty. That is one of the
16 responsibilities we have as citizens. We have to endure
17 that burden and that is okay. I gave you a list of
18 potential witnesses. Did you review that list?

19 A Yes, I did.

20 Q Did you notice anybody on the list you know?

21 A Scotty Frier.

22 Q How do you know him?

23 A He was the lead investigator in my mother's murder
24 trial.

25 Q When was that?

1 A She was murdered in '94, had the trial in '97.

2 Q And that case has already ended?

3 A Yes.

4 Q Okay. And was that investigated by Lexington County
5 or West Columbia?

6 A Yes, Lexington County.

7 Q The trial was in '97?

8 A Yes.

9 Q Okay. Now, subject matter in this case. Would that
10 affect your ability to be fair and impartial if he was a
11 witness, Investigator Frier?

12 A No.

13 Q That was twenty years ago?

14 A Twenty-two years ago, yes.

15 Q The fact that the Lexington Sheriffs Department was
16 involved in the case and potentially part of the Eleventh
17 Circuit prosecutors were involved in the case, were any of
18 these prosecuting?

19 A No, that was Donnie Myers and Fran Humpheries.

20 Q Fran Humpheries?

21 A Yes.

22 Q Those were the two prosecutors, you remember that?

23 A Yes.

24 Q Who was the Defense attorney?

25 A It has been so long I don't remember.

1 Q But you remember Mr. Humpheries and Mr. Myers?

2 A Yes, they worked well with the family.

3 Q The subject matter in this case would involve the
4 testimony about the case, children. It has been described
5 to me by the lawyers who have reviewed it, I have not seen
6 some of the evidence, evidence is going to be tough,
7 unpleasant, difficult, graphic. Those were the words the
8 lawyers were using to me to tell jurors, it is going to be
9 tough, unpleasant, difficult. Understanding the subject
10 matter will be in that fashion, will be regarding that
11 type of subject matter, can you consider testimony and
12 evidence of that nature and still be fair to both sides?

13 A I think I can, yes.

14 Q You can consider that subject matter and still be
15 fair to the State and to Mr. Jones?

16 A Yes.

17 Q Now, I gave you kind of an overview of the criminal
18 process involving the prior trial. You know a little bit
19 about it?

20 A Yes.

21 Q The State has the burden of proving the guilt. Once
22 the guilt is proven, if it is then the case goes to the
23 sentencing phase. If it is not proven then the case ends,
24 not guilty, okay. Presuming the, my three type of jurors,
25 if guilt is found and it goes to the sentencing phase and

1 you are a potential Juror can you identify yourself as
2 one, as any one of those three types of potential jurors?

3 A Yes.

4 Q Which type?

5 A Type one.

6 Q You are type one?

7 A For the death penalty.

8 Q Do you believe that is automatic?

9 A Eye for an eye basically, yes sir.

10 Q Okay. Fair enough. Okay, I don't think we have
11 anything else for you.

12 A Okay.

13 Q Thank you very much for coming, have a nice day and a
14 nice weekend.

15 A Okay.

16 Q Thank you for your patience.

17 A Okay.

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

20 THE COURT: Let's bring the next one.

21 (Whereupon, Juror 222, Scott Johnson entered the
22 courtroom.)

23 EXAMINATION

24 By The Court:

25 Q Good morning.

1 A Good morning.

2 Q Mr. Johnson, spell your name, first and last for the
3 record and so Ms. Holston can determine whether you are
4 speaking out loud.

5 A Sure. Scott Johnson. S-C-O-T-T, J-O-H-N-S-O-N.

6 Q Mr. Johnson, I am asking you the same question. You
7 are still under oath. You took an oath last Monday to not
8 talk about the case with anybody. Have you talked to
9 anybody about the case since last Monday?

10 A I only mentioned to my wife that I am going to be in
11 the jury pool, that is the extent of that.

12 Q Since that time has anybody asked you about this
13 case?

14 A No.

15 Q Also the publicity in this case, four years ago
16 publicity, several months ago, there has been publicity
17 off and on but it is kind of more intense here in the last
18 two weeks. I gave you, read five indictments, allegations
19 of the facts alleged by the State against Mr. Jones. He
20 is presumed innocent of those charges. Have you, any
21 information you have received, whenever it was received,
22 whether it was four years ago, four minutes ago, last week
23 on Monday, I don't care where it came from, any
24 information you have received, has that caused you to
25 make, form an opinion about this case?

1 A No, sir.

2 Q You have not formed an opinion whatsoever?

3 A No, sir.

4 Q All right. Now, how is your availability, asked you
5 about your work schedule, your personal schedule, your
6 vacation schedule commencing next week toward early June?

7 A My work schedule, I can work remotely, my employer is
8 aware of it. They are going to continue my salary during
9 the process if I am selected. I work for a good company
10 so no issue there. We do not have any vacation scheduled
11 at all this year.

12 Q So if you were qualified as a Juror you could serve?

13 A Yes, sir.

14 Q The subject matter in this case involves allegations
15 of the death of children. I have asked the lawyers, I
16 have not seen all the evidence, I am going to be receiving
17 it also for the first time. Subject matter involves
18 testimony described by the lawyers, the lawyers have seen
19 all of the evidence. They exchange it and share it. It
20 is difficult, graphic, harsh, unpleasant. That has been
21 the descriptive words I have been getting. Evidence of
22 that type subject matter, harsh and difficult, unpleasant,
23 can you fairly and honestly weigh and receive that type of
24 evidence and still be fair and impartial to both the State
25 and the Defense?

1 A I do believe I could, yes.

2 Q Now, did you look over the potential witness list?

3 A Yes, sir.

4 Q Did you notice anybody you knew?

5 A I didn't know anybody.

6 Q Didn't know a soul?

7 A No, sir.

8 Q Now, I gave you an overview of the criminal
9 procedures in a Capital case, kind of a two phase step
10 process. Step one, phase one, guilt or innocence
11 determined by the jury. Innocence is found the case ends.
12 If the jury believes the State has proved the case beyond
13 a reasonable doubt, a finding of guilt occurs goes to
14 phase two. The State then has to prove an aggravating
15 factor and mitigating factors presented by the Defense.
16 At that point right now, you don't have any fact other
17 than what I have read to you, the indictments.

18 A That's correct.

19 Q Two options, life or death. Can you find yourself as
20 one typical type of Juror as described in my little
21 summary of typical types of jurors. Where do you fall?

22 A I consider myself a type three.

23 Q Type three?

24 A Yes, sir.

25 Q What does that mean to you. I wrote this and I know

1 what I intended to seek out. What do you think it means?

2 A For me I wouldn't make a decision until I got all the
3 facts on either way.

4 Q On either way?

5 A Yes, sir.

6 Q You know the death penalty is not automatic?

7 A That's correct.

8 Q But there is only two choices, life or death. That
9 is the jury's decision if you get to the punishment phase.
10 Now, I am going to back up and go back to the guilt or
11 innocence phase and ask you a couple of more questions
12 about some other aspects of the criminal law. In a
13 criminal case someone is accused by way of the indictment.
14 The State makes an accusation, they have got to prove the
15 case beyond a reasonable doubt. The Defendant believes
16 not guilty, this case, Mr. Jones plead not guilty by
17 reason of insanity. He is presumed innocent sitting right
18 here in the courtroom and will be presumed innocent
19 throughout the trial until the State overcomes that
20 presumption by proving its case beyond a reasonable doubt.
21 Some defenses he can claim, he has already claimed one. I
22 am going to read them, all of them may not be applicable
23 but if the testimony supports you may receive instructions
24 on those so I am going to see if you can understand my
25 instructions. Allowed by statute are the following

1 defenses. Identification, accident, involuntary
2 intoxication, self-defense, necessity, insanity, guilty
3 but mentally ill, defense of habitation, entrapment,
4 duress and alibi. Those are potential defenses allowed by
5 our code books. Mr. Jones may present testimony
6 supporting one of those, one or more of those. Can you
7 meaningful consider the instructions of the Court, all the
8 evidence received, understanding the State has got the
9 burden of proving its case beyond a reasonable doubt in
10 this phase. The Defense may present on some of those
11 offenses and consider my instructions, consistent with the
12 evidence, consistent with my instructions, both ways, can
13 you be fair and impartial to both the State and the
14 Defense in doing so

15 A Yes sir, I believe I could.

16 Q Okay. Mr. Jones has entered a plea, claiming a
17 defense of not guilty by reason of insanity. I will give
18 you instructions on these potential verdict forms by
19 claiming or alleging that defense. There are four
20 potential verdict forms in this case when we get there.
21 Potential verdicts that the jury could consider. Guilty,
22 guilty but mentally ill, not guilty by reason of insanity,
23 not guilty whatsoever. Those are four potential verdict
24 forms that the jury may consider. Can you give meaningful
25 consideration to each and every one of those potential

1 verdicts in considering the evidence presented to you, the
2 State's burden of proving its case beyond a reasonable
3 doubt and in considering my instructions. So you evaluate
4 all of the testimony and evidence, can you find those, any
5 one of those, each of these verdicts, could you do that?

6 A Yes, sir.

7 Q Can you be fair and impartial in doing so?

8 A Yes, sir.

9 Q I will give an explanation, more instructions on the
10 aspects of those defenses and how they are defined by the
11 law at that time. If a not guilty verdict is found, not
12 guilty by reason of insanity the case ends, it stops right
13 there, goes no further. If the State meets its burden of
14 proving guilty beyond a reasonable doubt we go to phase
15 two. In phase two the State has got to prove an
16 aggravating factor. I am going to name all five. Murder
17 of a police, murder of a child, rape of murder, kidnapping
18 of murder, multiple murders. The State must prove one of
19 those beyond a reasonable doubt in the sentencing portion
20 in order to ask for a sentence of death. During this
21 portion the Defense also presents on mitigating factors.
22 I am going to read the statutory mitigators that are
23 allowed. The Defendant has no significant history of
24 prior criminal conviction involving the use of violence
25 against another person. The murder was committed while

1 the Defendant was under the influence of mental or
2 emotional disturbance. The victim was a participant in
3 the Defendant's conduct or consented to the act. The
4 Defendant was an accomplice in the murder committed by
5 another and his participation was relatively minor. The
6 Defendant acted under duress or under the domination of
7 another. The capacity of the Defendant to appreciate the
8 criminality of his conduct or to conform his conduct to
9 the requirements of law was substantially impaired. The
10 age or mentality of the Defendant at the time of the
11 crime. The Defendant was provoked by the victim in
12 committing the murder. The Defendant was below the age of
13 18. The Defendant had mental retardation at the time of
14 the crime. Those are statutory mitigators. Also
15 mitigators the jury can consider as any aspect of Mr.
16 Jones' life. Childhood, came from a broken home, any of
17 those factors can also be considered as mitigators or
18 those are reasons to find a life sentence. Can you
19 consider all the evidence, both aggravating factors which
20 the State has got to prove beyond a reasonable doubt and
21 any mitigating evidence and circumstances and make a
22 finding as to the punishment of this case considering my
23 instructions on those aspects. Can you do that?

24 A Yes, sir.

25 Q Understanding that the death penalty is not

1 automatic. You understand?

2 A Yes, sir.

3 Q Two choices, life or death. You understand?

4 A Yes, sir.

5 Q My instructions will give instructions to that end.

6 Can you be fair and impartial to both the State and the

7 Defense in that regard?

8 A Yes, sir.

9 Q Do you have any religious, personal or moral belief
10 which would prevent you from making a finding of
11 punishment of death?

12 A No, sir.

13 Q Do you have any religious, moral or personal belief
14 that would prevent you from making a finding of punishment
15 of life without the possibility of parole?

16 A No, sir.

17 Q Mr. Madsen.

18 EXAMINATION

19 By Mr. Madsen:

20 Q Good morning, how are you?

21 A Good morning.

22 Q My name is Rob Madsen, I am one of Tim's lawyers.

23 The Judge kind of went over with you about the law and

24 kind of being fair and impartial. What I want to talk to

25 you about this morning is just kind of your opinions. So

1 no right or wrong answers, just trying to find out what
2 you think and feel. Is that okay?

3 A Yes, sir.

4 Q Did you know any of the other jurors in the jury
5 panel when you came in a little over a week ago?

6 A Not a one.

7 Q And can you just kind of tell me what your feelings
8 are on the death penalty?

9 A I mean, I know it is the ultimate punishment for a
10 crime. I believe it could be deserved based on the crime
11 itself.

12 Q And so would you say it is the penalty of last
13 resort?

14 A It can be.

15 Q Should it be reserved for the worst of the worst?

16 A I feel so, yes.

17 Q Let me ask you. The Judge kind of went over the four
18 different potential verdicts with you and as you have
19 heard, Tim has plead not guilty by reason of insanity.
20 And what that means, that is someone who is saying, hey, I
21 did the crime but because of a mental disease or a defect
22 I could not appreciate moral or legal, the moral or legal
23 wrongfulness of my actions. Do you understand that?

24 A Yes, sir.

25 Q And my question to you then is some people hearing

1 that say, you know, that is just not on the table for me.
2 That is not something that I would consider and my
3 question is, is that you?

4 A No, it is not. I would consider that.

5 Q And so if you heard evidence that supported that and
6 believe that evidence you could vote for not guilty by
7 reason of insanity if you thought that that--

8 A I would use the information for consideration.

9 Q Yes, sir. I want to talk with you about your
10 feelings of the punishment for a guilty murderer of
11 multiple children. Okay.

12 A Okay.

13 Q And so kind of put you in the jury and you and eleven
14 other jurors have heard information and you found that the
15 person knows the difference between right and wrong. So
16 in other words, if you heard stuff about their mental
17 health, y'all have rejected that and said, no, this person
18 knew moral or legal right from wrong. Are you with me?

19 A Yes, sir.

20 Q And there is no defenses, there is no justification,
21 there is no excuse so it is not a heat of passion or a
22 self-defense or an accident or anything like that. I mean
23 you have found this person guilty of an intentional
24 killing of innocent children. Do you understand that?

25 A Yes, sir.

1 Q And so my question to you is without hearing anything
2 else, what are your feelings about the death penalty as
3 the appropriate punishment for that guilty murderer of
4 multiple children.

5 MR. GRAHAM: Objection, Your Honor.

6 THE COURT: Overruled. You phrased it the way I
7 suggested it, I thought. Do we need to be heard.

8 MR. GRAHAM: If we can have a sidebar.

9 THE COURT: Okay.

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

13 Q You want me to ask it again.

14 A Would you mind, please.

15 Q So in that situation where you have got, you and
16 eleven other jurors have found someone guilty beyond a
17 reasonable doubt of the killing of multiple children.
18 They knew right from wrong, no defenses, no excuse, not an
19 accident, you know it is that person. My question to you,
20 is that person that intentionally and maliciously killed
21 multiple children, my question is without hearing anything
22 else what are your feelings as the death penalty as, the
23 feelings about the death penalty as the appropriate
24 punishment for that guilty murderer of multiple children?

25 A From my understanding, we have to consider the

1 aggravating and mitigating circumstances so I wouldn't be
2 able to form an opinion without all of the underlying
3 circumstances.

4 Q Okay. And so there are cases that you can think of,
5 in your mind where the death penalty would just be, you
6 know, for you that just screams the death penalty?

7 A Nothing comes to mind.

8 Q So would you want to hear information about the
9 Defendant's character and background and how they grew up
10 and kind of what they went through.

11 A I would want to hear every available information.

12 Q And so in that situation your mind wouldn't be made
13 up, you wouldn't want to make a decision based on
14 everything you have heard?

15 A Correct.

16 Q So you do understand from what the Judge told you
17 that death is never required. The law is always satisfied
18 with a life sentence. Do you understand that?

19 A I do understand that.

20 Q And so that means life sentences are appropriate in
21 this case, any case or even the worst case that you could
22 ever imagine. Do you understand that?

23 A Yes, sir.

24 Q And as you kind of said, the aggravating and
25 mitigating circumstances, you understand that aggravating

1 circumstances have to be found unanimously by all of the
2 jurors and they have to be found beyond a reasonable
3 doubt.

4 A Yes, sir.

5 Q And mitigation is a little bit different. Mitigation
6 doesn't have any type of burden of proof. Do you
7 understand that?

8 A Yes.

9 Q And the jurors could even kind of disagree on what
10 they feel is mitigation. Do you understand that?

11 A Yes, sir.

12 Q And so what I mean by that is Juror number one could
13 say, you know what, I saw a spark of humanity, I saw a
14 relationship with his dad and for me I want to give that,
15 the sentence of life. That is important to me and I think
16 that is, deserves a sentence of life. Do you understand
17 that?

18 A Yes, sir.

19 Q Juror number two might sit there and say, you know, I
20 didn't see that but I see that he does have a mental
21 illness or a broken mind and to me that deserves the
22 sentence of life. You could respect that?

23 A Yes.

24 Q And you understand they might disagree with what they
25 see and they can find mitigation themselves?

1 A Yes.

2 Q Do you understand that?

3 A I understand that.

4 Q And Juror number three here could say, I didn't see
5 what they saw and quite honestly I can't really tell you
6 why I think life is appropriate but it is just something
7 that tells me life is appropriate and I just can't express
8 myself. If Juror number three said that could you respect
9 them and say, I respect your opinion on that?

10 A I could respect their opinion, yes.

11 Q And obviously, all twelve jurors could vote for the
12 life penalty but have different reasons that are just
13 individual to them, do you understand that?

14 A Yes.

15 Q And when we talk about the decision to, you know,
16 take another citizen's life, we kind of call that an
17 individual moral judgment. Are you familiar with that?

18 A I mean the morality of it.

19 Q The way it has been described to me is you made a
20 decision on your faith, that is your individual moral
21 judgment on what faith is appropriate for you. And
22 someone over here might have made a different individual
23 moral judgment on what their appropriate faith is. And
24 you would expect them to respect your decision on your
25 faith, wouldn't you?

1 A Yes.

2 Q And I would imagine you would respect their decision?

3 A Yes.

4 Q Even though y'all disagree? And so the decision on
5 what the appropriate penalty is is an individual moral
6 judgment that each jurors has to make themselves. Do you
7 understand that?

8 A I do.

9 Q And the law says that once that Juror makes that
10 individual moral judgment they just can't throw that away
11 because they want to go in with the majority. Do you
12 understand that?

13 A Yes.

14 Q And when you get back into a jury room there is
15 discussion back and forth, there is civility in talking
16 about it. You understand that?

17 A Yes.

18 Q But at the same time if someone has come to their
19 individual moral judgment, it is illegal to bully them or
20 browbeat them out of that individual moral judgment.

21 A Yes.

22 Q And if you saw that going on would you say, hey, this
23 is past civility, this is past civil discourse, that is
24 inappropriate. Would you do that?

25 A I would try to keep the discussions civil.

1 Q And you understand that if it got to that point you
2 could write a note to the Judge. Judge, this is kind of
3 out of bounds, this is inappropriate, we need some help
4 from you.

5 A Yes, sir.

6 Q Could you do that if you saw that?

7 A I could.

8 MR. MADSEN: Subject to the Court's limitations that
9 is all I have.

10 THE COURT: Mr. Graham.

11 EXAMINATION

12 By Mr. Graham:

13 Q My name is Shawn Graham, I am one of the Prosecutors
14 on this case.

15 A Okay.

16 Q Thank you for your patience and answering our
17 questions. In the guilt phase with the plea of not guilty
18 by reason of insanity there will be experts who will
19 testify. So there will be doctors, maybe psychiatrists,
20 maybe psychologists. An expert is to give an opinion.
21 You have somewhere earlier on one of your questions, I
22 think you said something that you would listen and
23 evaluate, you do understand that just because somebody
24 gives an opinion you are not bound by that opinion.

25 A Correct.

1 Q You still consider using your common sense and other
2 facts and circumstances?

3 A I would judge it on my own, yes.

4 Q Talking about being in the second phase, so now, we
5 are assuming that you have already found him guilty and
6 now we are looking at the punishment part. At that point
7 you either have the choice of life or death. You want to
8 hear everything?

9 A Yes.

10 Q You would want to hear the good, the bad, the ugly,
11 everything?

12 A Yes, sir.

13 Q Part of that is anything that the Defense presents,
14 mitigation, and that is something that you and the other
15 jurors would be able to review, to consider and to look
16 at. And if you felt it appropriate give a life sentence.

17 A I could, yes. Either way.

18 Q And you understand that just because it is presented
19 and you consider it and look at it doesn't mean you
20 automatically have to give the life sentence?

21 A Correct.

22 Q You could consider and weigh it for what it is worth,
23 reach your decision and at that point you would choose
24 either life or death?

25 A Yes.

1 Q If you and the other jurors reached a decision that
2 death was appropriate in this case you would have to sign
3 your name to a form, each one of you would have to sign
4 your name on a form attesting that you thought death was
5 the appropriate sentence.

6 A Yes.

7 Q Would you be able and willing to do that?

8 A Yes, sir.

9 Q Thank you.

10 THE COURT: You want to be heard?

11 MR. MADSEN: No, sir.

12 MR. GRAHAM: No, Your Honor.

13 THE COURT: Mr. Johnson, you have been found
14 qualified by the Court based upon all of your answers,
15 questionnaire, questions and answers here. Here is what
16 happens. I want you to check the website tonight.
17 Determine when it says to come back and report as a
18 qualified Juror. Qualified jurors please check back or
19 please come back at some particular time. Come back to
20 the courtroom at that time. Now, under oath, do not
21 discuss the case, talk about the case, don't let people
22 talk to you about the case. Not to do any independent
23 research, you are not to peruse publicity, whether it be
24 social media or other media. I want you and the other
25 jurors to decide the case based upon what is presented in

1 the courtroom under oath, not outside with no
2 responsibility to what is being said. Can you live up to
3 that oath?

4 JUROR: Yes, sir.

5 THE COURT: See you when you come back.

6 JUROR: Yes, sir.

7 THE COURT: Thank you very much.

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

10 THE COURT: The next Juror will be 326. Y'all need a
11 minute now or you want to keep rolling.

12 MR. YOUNG: Keep going.

13 THE COURT: Bring her in.

14 (Whereupon, Juror 326, Karen Perez entered the
15 courtroom.)

16 EXAMINATION

17 By The Court:

18 Q Good morning. How are you?

19 A Well, how are you?

20 Q I am very good. Please state your name and spell it
21 so that Ms. Holston can make certain you are talking into
22 the microphone.

23 A My name is Karen Perez. P-E-R-E-Z.

24 Q Ma'am, I asked you take an oath last Monday, and that
25 oath was not to discuss the case with anybody. Have you

1 discussed the case with anyone?

2 A No, I have not.

3 Q Has anyone tried to discuss the case with you?

4 A Yes, they have.

5 Q What did you do?

6 A Told them that I was under oath to not discuss the
7 case.

8 Q Great answer.

9 A Thank you, sir.

10 Q Now, there has been publicity, social media, public
11 media, news media, whatever from different sources. I, in
12 fact, read the indictments, the allegations the State is
13 making against Mr. Jones to you and all the jurors. I
14 don't know which publicity you may have heard or not
15 heard, I don't really care. I care about this answer.
16 Any information that you have gathered on this case or
17 been presented, has any of that information caused you to
18 form an opinion as to what happened?

19 A No, it has not.

20 Q So you understand the allegations I read are merely
21 that, they are noticed, allegations to Mr. Jones, what to
22 be prepared to defend himself under. He has plead not
23 guilty by reason of insanity, he is presumed innocent
24 right now. Do you understand that?

25 A I understand that.

1 Q And the State has got to meet the burden of proving,
2 to disprove that presumption they have got to present
3 evidence beyond a reasonable doubt.

4 A Yes sir, I understand.

5 Q Now, I asked you about your availability over the
6 next several weeks, vacation, work, any conflicts over the
7 weeks between now and the end of the month toward the
8 early part of June.

9 A No, sir. No conflicts.

10 Q No conflicts so if called to serve you could serve?

11 A Yes sir, I could.

12 Q Very well. Now the subject matter in this case, I
13 have not seen all the evidence, I have not seen much at
14 all as a matter of fact. I will be receiving the evidence
15 just like the jury. It has been described by the lawyers
16 to me, Judge, this is difficult, it will be tough,
17 unpleasant, graphic involving the death of children.
18 Would that subject matter be difficult for you to receive
19 and consider or can you receive and consider difficult
20 subject matter such as that, as I have described and still
21 be fair and impartial to both the State and to Mr. Jones?

22 A I believe I can receive it and be fair.

23 Q Very good. I sent you a potential witness list,
24 lengthy. The lawyers have to identify all potential
25 witnesses if possible, not just the main ones, they have

1 got to do all of them in case they get called so you can
2 answer this question. Do you know any of them?

3 A I believe I know one of them.

4 Q Who is that?

5 A That would be Joe Powell.

6 Q And how do you know him?

7 A I believe it would be through church.

8 Q Okay. So you attend church with him?

9 A I have.

10 Q Now, you still attend church with him?

11 A I do not.

12 Q All right. Has he changed churches or have you
13 changed churches?

14 A I changed churches and it was, it has been many
15 years.

16 Q Okay. So the fact that he is going to appear as a
17 witness, would that affect and he may not get called.

18 A Right.

19 Q He could be called. If he did would that affect your
20 ability to evaluate all the testimony, particularly his,
21 fairly and impartially?

22 A No.

23 Q All right. Now, I gave you an overview moments ago
24 out here when you were sitting in the jury box. I believe
25 you were on my far left?

1 A Yes.

2 Q On the end?

3 A Yes.

4 Q Considering my instructions, did you understand them
5 about the two phase process in a Capital case?

6 A I believe I do.

7 Q So there is phase one is guilt or innocence only?

8 A Right.

9 Q The State has got to meet its burden of proof and
10 prove the case beyond a reasonable doubt, if they fail to
11 meet the burden the case ends. If they do make that
12 burden, prove the guilt of the murder we go to phase two.
13 At that point the State then as to prove an aggravating
14 factor and the jury considers mitigating factors. At that
15 point, typical jurors in a Capital case are outlined by
16 types one, two and three. I handed that to you to read
17 before you came in here.

18 A Yes.

19 Q Can you find yourself as one of those typical types?

20 A I can.

21 Q Identify yourself?

22 A Type three.

23 Q Type three. That is a person that what?

24 A That is a person who does not make a judgment without
25 gathering all of the information, testimony and evidence.

1 Q So you have got an open mind?

2 A I do.

3 Q You want to hear everything?

4 A Not necessarily.

5 Q Okay.

6 A But yes sir, yes sir.

7 Q Okay. Now, would all the testimony be relevant, do
8 you think that is presented?

9 A If it was presented I would hope so.

10 Q Okay. I would too. All right. The accusations the
11 State has made, they have got to prove their case. Their
12 potential defenses available to all of the defendants, I
13 am going to read them all. If testimony supported some of
14 them I may instruct further on those at that time but
15 without knowing the evidence I can't tell you this one is
16 out, this one is in. I got to hear the evidence to decide
17 what to instruct the jury on.

18 A Right.

19 Q Potential ones, identification, accident, involuntary
20 intoxication, self-defense, necessity, insanity, guilty
21 but mentally ill, defense of habitation, entrapment,
22 duress and alibi. Those are potential defenses. Not all
23 of them will be instructed, maybe one or two. Right now I
24 can't tell you. If those defenses are presented, the
25 testimony presented are relevant to some of those

1 defenses, can you consider the Court's instructions, the
2 State's burden of proof, proof beyond a reasonable doubt
3 of the elements of murder as well as consider the
4 instructions on any of those relevant offenses. Consider
5 my instructions and evaluate the testimony and evidence
6 that you hear in the trial. Can you do that?

7 A I can do that.

8 Q Can you be fair to both the State and Mr. Jones?

9 A I believe so.

10 Q Okay. Now, in this case Mr. Jones has claimed one of
11 those defenses already. He claims not guilty by reason of
12 insanity. By virtue of that plea the jury will likely get
13 a verdict form having four potential verdicts rather than
14 just guilty or not guilty. Four potential verdicts,
15 guilty, guilty but mentally ill, not guilty by reason of
16 insanity or not guilty whatsoever. Can you give
17 meaningful consideration to each of those potential
18 verdicts, considering my instructions on each aspect of
19 those defenses and verdicts, evaluating that testimony and
20 evidence fairly and impartially. Can you do that?

21 A I can do that.

22 Q Be fair to the State and the Defense?

23 A I can do my best.

24 Q Very well. Now, if the State fails to meet its
25 burden, the jury finds a not guilty verdict or not guilty

1 by reason of insanity the case ends. If the State meets
2 its burden it goes to phase two.

3 A Right.

4 Q In phase two the State is required to prove an
5 aggravating factor. I will name off several. Murder of a
6 policeman, murder of a child, rape of murder, kidnapping
7 of murder, multiple murders. Those are aggravating
8 factors from our statutes. The State must prove at least
9 one of those beyond a reasonable doubt in order to be able
10 to ask a jury to return a punishment of death. Do you
11 understand that?

12 A I do.

13 Q Do you understand that the death penalty is not
14 automatic?

15 A I do.

16 Q Do you understand the jury will have two choices to
17 make, one or the other, life or death.

18 A Yes, sir.

19 Q During that phase also mitigating circumstances and
20 evidence is presented for the jury to consider. I am
21 going to name off the statutory mitigators for you. The
22 Defendant has no significant history of prior criminal
23 conviction involving the use of violence against another
24 person. The murder was committed while the Defendant was
25 under the influence of mental or emotional disturbance.

1 The victim was a participant in the Defendant's conduct or
2 consented to the act. The Defendant was an accomplice in
3 the murder committed by another person and his
4 participation was relatively minor. The Defendant acted
5 under duress or under the domination of another. The
6 capacity of the Defendant to appreciate the criminality of
7 his conduct or to conform his conduct to the requirements
8 of law was substantially impaired. The age or mentality
9 of the Defendant at the time of the crime. The Defendant
10 was below the age of 18. The Defendant was provoked by
11 the victim in committing the murder. The Defendant had
12 mental retardation at the time of the crime. Those are
13 statutory mitigators that you could hear testimony about,
14 you may not but you could. Additional mitigators are any
15 factors, any evidence regarding Mr. Jones' life history.
16 Troubled childhood, came from a broken home, any types of
17 aspects of his personal life could be considered
18 mitigating factors. Can you give meaningful consideration
19 to any mitigation testimony and evaluate fairly and
20 impartially, also consider and evaluate the State's burden
21 of proving an aggravating circumstance and act as a fair
22 and impartial Juror, making findings consistent with my
23 instructions?

24 A Yes, I can.

25 Q Can you, can you tell me, do you have any religious,

1 personal or moral belief which would prevent you from
2 finding a punishment of death?

3 A No.

4 Q Do you have any religious, personal or moral belief
5 which would prevent you from making a punishment finding
6 of life without parole?

7 A No.

8 Q You realize and I have told you, the death penalty is
9 not automatic?

10 A Right.

11 Q Do you understand that?

12 A Yes.

13 THE COURT: All right. Mr. Young.

14 MR. YOUNG: Can we ask the Juror to step out real
15 quick.

16 THE COURT: Sure. Step out real good.

17 JUROR: Can I leave my bag?

18 THE COURT: Absolutely, I won't go through it.

19 JUROR: Okay.

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

22 MR. YOUNG: Your Honor, it has come to my attention
23 that, the Chronicle, the Lexington Chronicle or whatever
24 has restocked their paper box out in front of the Court
25 House. I showed the picture to the State, mass murderer

1 trial starts Monday.

2 THE COURT: How did they know that?

3 MR. YOUNG: I don't know but we have jurors coming in
4 now.

5 THE COURT: Make that an exhibit.

6 (Whereupon, Court's Exhibit 74 was marked for
7 identification only.)

8 THE COURT: And I note, that reporter, I am not sure
9 what he looks like, unlike some other reporters.

10 MR. YOUNG: He was in here yesterday, pink shirt,
11 khaki pants. When I came back he was standing at my table
12 in front of the bar which I didn't have a real concern
13 with. I asked him to move back.

14 THE COURT: And I tell all of the security, reporters
15 are not allowed at the attorneys tables, either side, that
16 is absolute off limits.

17 MR. YOUNG: I don't know what the, we request that
18 the Chronicle box be removed through the regular trial and
19 we renew our motion for a change of venue. I don't if you
20 can, I don't know what the law is about, moving it or that
21 it would just be covered, blacked out, need to put
22 something in front of it so it can't display what those
23 papers are. Obviously we have had this issue before where
24 jurors have seen these out in the community, not
25 necessarily at the Court House.

1 THE COURT: A few jurors have said, I saw such and
2 such.

3 MR. YOUNG: Right, at the Hardee's and other
4 locations when they were out in the community. There is
5 another reason we would, again, renew our motion for a
6 change of venue.

7 THE COURT: I will deny your motion for a change of
8 venue but I will grant your request to minimize, remove,
9 turn around, remove the paper box and we can do so. It
10 does not need to be on the Court House grounds during a
11 trial. That is just totally unfair and creates hurtles
12 for us. We can move that, I think. Yes, I think the
13 curative action should be taken and we are going to take
14 that. I mean, it is like the TV people having a big
15 screen TV out there that reports. They are not doing
16 that.

17 MR. YOUNG: Even if they were doing that that would
18 be during the trial, the jurors would know who they were.

19 THE COURT: Right, I agree with you. It is something
20 that we can minimize. I deny the request for change of
21 venue and we will go forward.

22 MR. YOUNG: For the record, I made everybody aware as
23 soon as it came to.

24 THE COURT: Bring me Ms. Perez.

25 (Whereupon, the Juror came into the courtroom.)

1 THE COURT: Ma'am, I had to address an issue for Mr.
2 Young, nothing to do with you. Remember this, you are
3 under oath, he wants candid answers, opinions, that type
4 of thing. You cannot give a wrong answer.

5 JUROR: Okay.

6 EXAMINATION

7 By Mr. Young:

8 Q We will have a group conversation, okay.

9 A Okay.

10 Q Ms. Perez, did you know any of the other jurors who
11 were called in on Monday?

12 A I knew one of them, yes.

13 Q Can you tell us who that was?

14 A I don't know her name but she worked for the
15 orthodontist that I went to like 25 years ago or so.

16 Q Okay.

17 A So I say I know her, she just looked familiar and we
18 were speaking but that is all.

19 Q And that relationship between the two of you, would
20 that in any way, if y'all were both on the jury would
21 that, would you be convinced that her opinion was more
22 correct than your opinion?

23 A No.

24 Q I didn't think so but I had to ask.

25 A Yes, sir.

1 Q Move that mike around so we can hear you and I think
2 the Judge has told you the cameras are off and all that
3 kind of stuff, nobody can report on who you are.

4 A Yes, sir. And I appreciate that.

5 Q Okay. As your aware the Judge has told you what the
6 charges and accusations, he has read you the indictments
7 in this case, five counts of murder, right?

8 A Yes, sir.

9 Q And Tim has plead not guilty by reason of insanity.
10 Do you understood when the Judge told you that?

11 A Yes, sir.

12 Q When somebody says I plead not guilty by reason of
13 insanity that means I did the action, killed the kids, are
14 you with me on that?

15 A Right.

16 Q And they say, but because of a mental disease or
17 defect I was not able to appreciate the legal or moral
18 wrongfulness of my actions. Kind of a lot. Do you
19 understand what the words are?

20 A Yes.

21 Q Some people say in a case like that involving
22 killing, not guilty by reason of insanity is not on the
23 table for me, it is not a verdict I could consider, it is
24 a copout, it is an excuse. And I just have to ask, what
25 is your opinion about that?

1 A I really hesitate to say what my opinion is about
2 that but my opinion, I think you have to be insane to do
3 something like that.

4 Q Would you be open to hearing evidence and saying that
5 I have decided that that is the appropriate verdict in a
6 case of this magnitude?

7 A Absolutely, yes sir.

8 Q Okay. And you understand why some people would say,
9 no, I am not going to consider that.

10 A I do, I do.

11 Q But that is not you?

12 A That is not me.

13 Q So I am going to move forward and we are going to
14 talk about your views about punishment.

15 A Okay.

16 Q Now, the only time that the jury gets to talk about
17 punishment, whether it is the life penalty or the death
18 penalty would be after somebody has been found guilty of
19 murder.

20 A Right.

21 Q Are you with me on that?

22 A I am.

23 Q And guilty of murder, like the Judge told you, is
24 intentional killing of another, malice of aforethought,
25 they knew what they were doing, had evil intent, they

1 chose to kill innocent kids. Are you with me on that?

2 A Right.

3 Q And any evidence that the jury heard about insanity,
4 not insanity, they would have rejected that evidence. Are
5 you with me on that. They would have found he was sane,
6 he knew the difference between right and wrong at the time
7 of the killings?

8 A Okay.

9 Q Are you with me on that?

10 A Yes, sir.

11 Q That is out the window, right?

12 A Right.

13 Q So for you, can you tell me a little bit about your
14 views about the death penalty or the penalty of life
15 without parole for that guilty murderer after you have
16 rejected those defenses.

17 A I think, I think that actually, I think that the
18 death penalty is more gracious rather than surviving and
19 living with the done deed. If someone were given the
20 death penalty, I am not sure if I am answering this
21 correctly.

22 Q You can't answer it incorrectly.

23 A Okay. Just my opinion on the death penalty?

24 Q Sure.

25 A Like I said, if somebody is convicted and given the

1 death penalty then I don't have a problem with it.

2 Q Okay. It sounds to me like you may think that the
3 life penalty would be more harsh. That might be the easy
4 way out?

5 A Yes, I do think that.

6 Q And you understand that the law in South Carolina is
7 the other way?

8 A I do, yes I do. But you ask my opinion and so--

9 Q I did, I did.

10 A Okay.

11 Q And I am not trying to talk you out of your opinion.
12 I just need to know, understand that in South Carolina
13 death is the harsher punishment. Can you follow that law?

14 A I can, yes sir.

15 Q Despite your opinion that it might be easier?

16 A Yes, sir.

17 Q Okay. Can you tell me a little bit about sort of
18 your general philosophy about the death penalty?

19 A I don't know if I have given much thought to the
20 death penalty or have a philosophy about it. I think the
21 death penalty can certainly be deserved.

22 Q A person can earn the death penalty?

23 A Yes, sir.

24 Q Are there other cases where you think that that sort
25 of really cries out for the death penalty?

1 A The murder of five children comes really close.

2 Q Okay.

3 A Yes.

4 Q And but for, if they are insane that is okay but if
5 they are not insane the murder of five children sort of,
6 you are at death. Is that what I hear you saying.

7 A That is you are not insane, that if you did this out
8 of evil malice?

9 Q Yes.

10 A Yes.

11 Q For you the life penalty, you did this out of evil
12 malice, sort of not on the table for you?

13 A I don't know if I understand what you are saying.

14 Q Not a sufficient enough penalty for that intentional
15 malice, murder of children.

16 THE COURT: That is inconsistent with her answer.
17 She remembers her answers. Go back and think about her
18 answers and reask your question.

19 Q Ms. Perez, don't let me put any words in your mouth,
20 okay.

21 A Okay.

22 Q And if I have you wrong you just tell me.

23 A I will try.

24 Q Thank you very much.

25 A You are welcome.

1 Q I thought I understood you to say that once you have
2 found not insane, guilty of murder, five children. Are
3 you with me on that?

4 A Yes.

5 Q And you haven't heard all of the evidence yet, right,
6 you haven't heard there might be mitigation, additional
7 aggravation?

8 A No.

9 Q All of that kind of stuff. Understanding that you
10 may hear additional evidence, are you saying based upon
11 the fact that I have found somebody guilty of malice,
12 murder of five children that for me the only appropriate
13 punishment is death or are you saying that is not you?

14 A So you are asking me if I believe that is the only
15 appropriate punishment if he is not insane would be the
16 death penalty?

17 Q Yes, Ma'am.

18 A Yes.

19 Q Okay. Fair enough. Thank you, Ms. Perez.

20 A You are welcome.

21 MS. MAYES: No questions, Your Honor.

22 THE COURT: All right. Ms. Perez, thank you for your
23 answers and the Court will excuse you from being a Juror.
24 Thank you very much.

25 JUROR: Thank you, Judge Griffith.

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

3 THE COURT: Let's take a couple of minutes.

4 (Whereupon, a short break was taken.)

5 MR. YOUNG: Your Honor, for the record, I went
6 downstairs, that box is not bolted or chained down in any
7 way, it is not heavy, it is pretty easy to move. I turned
8 it around so that the front of it is not facing out.

9 THE COURT: I am not certain, Ms. Cromer went
10 downstairs to call somebody to do something about it. She
11 left here, she was intent on--

12 MR. YOUNG: If it can be taken inside until--

13 THE COURT: I am going to do one of those things. I
14 don't want it sitting during the remainder of the trial
15 because it is going to create an issue once a week. I
16 agree with you. And the State doesn't want that issue
17 either. I mean, we are all on the same page, there is not
18 going to be a problem with that. We have got 402, bring
19 the Juror in.

20 (Whereupon, Juror 402, Jason Smith entered the
21 courtroom.)

22 EXAMINATION

23 By The Court:

24 Q I remind you you are under oath.

25 A Yes, sir.

1 Q State your name and spell your name, in light it is
2 an easy name to spell, we need to check the microphone for
3 Ms. Holston.

4 A Check, check.

5 Q All right, Mr. Smith, you took an oath last Monday to
6 not talk about the case. Has anyone tried to talk to you
7 about the case?

8 A No, sir.

9 Q Have you talked with anyone about the case?

10 A No, sir.

11 Q There has been publicity, social media, public media,
12 news media, whatever, four years ago, several months ago,
13 last week, publicity. I have read you the indictments,
14 the allegations.

15 A Yes, sir.

16 Q That was facts alleged by the State. Based upon
17 anything you have already heard, up to this point, where
18 ever it came from, whenever you got it, have you formed an
19 opinion as to what happened in this case?

20 A No, sir.

21 Q Okay. Have you seen or heard publicity in this case?

22 A Very little, at the very beginning.

23 Q Several years ago?

24 A Yes, sir.

25 Q And you didn't form an opinion based upon that?

1 A No, sir.

2 Q Now, I asked you about your work schedule, personal
3 schedule, otherwise starting next week for about three
4 weeks. What would you have to reschedule if you were
5 selected as a potential Juror?

6 A I work for the Lexington County Fire Marshall's
7 office. I have jobs that are out and permitted. We have
8 other guys that work for us, things can be rescheduled.
9 However it is going to take some time to get those things
10 rescheduled.

11 Q So other than the inconvenience at work you could
12 still serve?

13 A Yes, sir.

14 Q Fair enough. And everybody who is employed in some
15 fashion, if they are selected to serve on a jury, the
16 Court obviously knows it is an inconvenience. I try to
17 minimize the inconvenience, however one of our
18 responsibilities as a citizen is to serve on jury's when
19 called to do so. So that is an inconvenience to some and
20 we just have to tolerate it.

21 A Sure.

22 Q The testimony in this case is going to be received
23 regarding subject matter involving the death of children.
24 The subject matter has been described to me by the lawyers
25 as difficult, graphic, harsh, unpleasant. Those are the

1 words the lawyers have said. I have not seen all the
2 evidence either.

3 A Yes, sir.

4 Q I have not been given the preview. That subject
5 matter of that type, that subject matter being difficult
6 and unpleasant, could you receive that type of testimony,
7 subject matter and still be fair to both the State as well
8 as Mr. Jones?

9 A Yes, sir.

10 Q That wouldn't bother you?

11 A No, sir.

12 Q You heard my summary of the criminal process,
13 criminal procedure between now and the end of the trial.
14 In a Capital case is a two phase system. Do you
15 understand?

16 A Yes, sir.

17 Q Did you understand my instruction when I explained
18 that the guilt or innocence is first and then the
19 sentencing is second.

20 A Yes, sir.

21 Q And there is only two choices, life or death.

22 A Yes, sir.

23 Q The death penalty is not automatic?

24 A Yes, sir.

25 Q Understanding my instructions and understanding that

1 my query on the types of jurors presupposes that guilt has
2 been found, aggravating factor and mitigating factor will
3 be presented during the sentencing phase. Can you
4 identify yourself as one of those three types of potential
5 jurors?

6 A Yes, sir.

7 Q What type?

8 A Type three.

9 Q Type three. Now, I wrote this and I kind of know
10 what I meant when I wrote it, how do you interpret being a
11 type three. What does that mean?

12 A To me it means taking all of the information in,
13 listening to all of the information, making a
14 determination that based on all of the information, not
15 just one part or other.

16 Q Okay. So you are not presupposed to one side or the
17 other, you want to hear everything.

18 A Yes, sir.

19 Q Fair enough, good answer. I said good answer, there
20 is no wrong answer. My comment didn't mean you were the
21 best answer.

22 A I got you.

23 Q I am looking for candor, candid answers. There are
24 about your personal beliefs and opinions and so there are
25 no wrong answers, your personal beliefs. Now, if the case

1 goes, I am going to go back and do a little more
2 definition on the guilt or innocence portion. In that
3 portion the State has to prove the murder beyond a
4 reasonable doubt. They call their witnesses first,
5 present their case first. During the portion of the trial
6 defenses are also presented in the guilt or innocence
7 phase. It is not presented later. The defenses are
8 presented in the first phase. I am going to read off
9 potential defenses, some of them won't be instructed, the
10 ones that are appropriate will likely be instructed during
11 that portion of the trial. Okay.

12 A Okay.

13 Q Potential defenses include identification, accident,
14 involuntary intoxication, self-defense, necessity,
15 insanity, guilty but mentally ill, defense of habitation,
16 entrapment, duress and alibi. Those are potential
17 defenses that are allowed by our statutes. Can you
18 meaningfully consider instructions on any of those
19 defenses if they are appropriate to be instructed because
20 if the testimony doesn't support them they won't be
21 instructed by the Court, they will be not relevant. So I
22 am not going to instruct them all, just the ones that
23 apply?

24 A Yes, sir.

25 Q Can you give meaningful consideration to the State's

1 burden of proving its case beyond a reasonable doubt of
2 the murder as well as any of the defenses and my
3 instructions on how to evaluate and consider those,
4 consider all the testimony and evidence and be a fair and
5 impartial Juror?

6 A Yes, sir.

7 Q Can you be fair and impartial to the State and to Mr.
8 Jones?

9 A Yes, sir.

10 Q Now, if the jury reaches a unanimous verdict that the
11 State did not prove its case or that not guilty by reason
12 of insanity is proven, at that time the case would end.
13 It stops, everybody goes home. If the State meets its
14 burden of proof and the case goes to the sentencing phase
15 then, I want to ask you some questions about that.

16 A Okay.

17 Q Do you understand that during the sentencing portion
18 the State has to prove an aggravating factor. Five
19 potential aggravating factors, I am going to name them,
20 the State has got to prove one of them. Murder of a
21 policeman, murder of a child, rape of murder, kidnapping
22 of murder, multiple murders. The State must prove one of
23 those aggravating factors beyond a reasonable doubt. Do
24 you understand that?

25 A Yes, sir.

1 Q If they don't prove one beyond a reasonable doubt
2 then they are not entitled to ask for the death penalty.
3 If they prove it beyond a reasonable doubt they are
4 entitled to ask for the death penalty as the punishment.
5 The defense presents on mitigating factors. Mitigating
6 factors are reasons to impose a life sentence. There is
7 no burden of proving them, the jury considers the
8 information and testimony that is presented. Potential
9 statutory mitigators, not all of them will be appropriate
10 but some of them could be. The Defendant has no
11 significant history of prior criminal conviction involving
12 the use of violence against another person. The murder
13 was committed while the Defendant was under the influence
14 of mental or emotional disturbance. The victim was a
15 participant in the Defendant's conduct or consented to the
16 act. The Defendant was an accomplice in the murder
17 committed by another person and his participation was
18 relatively minor. The Defendant acted under duress or
19 under the domination of another. The capacity of the
20 Defendant to appreciate the criminality of his conduct or
21 to conform his conduct to the requirements of law was
22 substantially impaired. The age or mentality of the
23 Defendant at the time of the crime. The Defendant was
24 provoked by the victim in committing the murder. The
25 Defendant was below the age of 18. The Defendant was

1 mentally retarded at the time of the crime. Those are
2 statutory mitigators. Other mitigators jury's could
3 consider, any testimony they believe entitles a reason or
4 an imposition of a life sentence such as the Defendant's
5 history, his broken home, if he came from a broken home.
6 His troubled childhood if he was an abused child.
7 Anything in his history can be considered by jurors. Can
8 you give meaningful consideration to my instructions on
9 the law, evidence testimony presented at trial,
10 considering the State's duty to prove the aggravating
11 factors beyond a reasonable doubt and the mitigation
12 factors the jury must consider in evaluating the
13 appropriate punishment. Can you be a fair and impartial
14 Juror under those circumstances?

15 A Yes, sir.

16 Q And you will reach a fair and impartial verdict
17 understanding there are only two, life or death, no in
18 between, no other options. Can you do that?

19 A Yes, sir.

20 Q Can you be fair to the State and to the Defense?

21 A Yes, sir.

22 Q Can you, I am sorry, do you have a religious,
23 personal or moral belief which would prevent you from
24 assigning a punishment of the death penalty?

25 A No, sir.

1 Q Do you have any religious, personal or moral belief
2 from assigning a punishment of life without parole?

3 A No, sir.

4 Q You could be fair to both sides?

5 A Yes, sir.

6 MR. HUBBARD: Your Honor, may we approach real quick?

7 THE COURT: You may.

8 (Whereupon, a bench conference was held in the
9 presence of the Juror but out of the hearing of the
10 Juror.)

11 Q Mr. Smith, I was informed that you were assigned to a
12 first responders team of some type, maybe you remember,
13 maybe you don't, that was involved in the transporting of
14 people regarding this case. Are you aware of that?

15 A No, sir.

16 Q Okay.

17 MR. HUBBARD: Wrong person then, Your Honor.

18 THE COURT: May be a wrong person. You have got a
19 common name. So you weren't assigned as a, I understand
20 that you work for the Fire Marshall?

21 JUROR: Fire Marshall's office, yes sir.

22 THE COURT: You have not been assigned to any duties
23 or responsibilities involving in this case, in any manner
24 whatsoever?

25 JUROR: No, sir.

1 THE COURT: Fair enough. Mr. Young.

2 EXAMINATION

3 By Mr. Young:

4 Q Good morning, Mr. Smith.

5 A Good morning, sir.

6 Q My name is Boyd Young, I am one of Tim Jones'
7 lawyers, okay.

8 A Yes, sir.

9 Q Now is an opportunity for you and I to have a
10 conversation about your opinions, there is no right or
11 wrong answers. Okay.

12 A Yes, sir.

13 Q First off I want to thank you for your service.

14 A Thank you.

15 Q I know that you were in combat over in Dessert Storm.

16 A Yes, sir. Could I clarify that?

17 Q Please do.

18 A Dessert Storm, I was in the National Guard, was not
19 in combat during Dessert Storm. We were activated, sent
20 to Fort Stewart, Georgia and then to Fort Irwin,
21 California. My service time is civilian. In 2005 I went
22 to Iraq as a civilian firefighter. So I didn't serve in
23 combat.

24 Q Okay. Here is, let me tell you why I was asking.

25 A Yes, sir.

1 Q Some people who have had that experience and been in
2 combat like that, you know, maybe a murder case might not
3 be right for them. You understand, you know people like
4 that?

5 A Yes.

6 Q And I just have to ask. Is that you or is it
7 something that you could do?

8 A Yes sir, I can.

9 Q You understand why I had to ask?

10 A Yes sir, I know.

11 Q The second thing you put on your questionnaire was
12 some information about your dad.

13 A Yes.

14 Q That he has been in trouble here in Lexington?

15 A Yes, sir.

16 Q Is that in Lexington?

17 A Yes, sir.

18 Q Was he prosecuted by the Solicitor's office here?

19 A He was, yes sir.

20 Q Did he go to prison?

21 A He did, yes sir. He has actually been in and out of
22 prison since I was three.

23 Q Is there anything about that experience dealing with
24 the Lexington County Solicitor's office or Lexington
25 County Police Department that affects you in any way? Do

1 you think he was handled fairly and appropriately?

2 A I think he was, yes sir.

3 Q Do you understand why I have to ask about that?

4 A Yes, sir.

5 Q Okay. Did you know any of the other jurors that came
6 in on Monday when you were in that big room?

7 A There was one Juror that, we call him Paco, he worked
8 for us at the fire service but he is retired. I know him,
9 he worked on the other end of town, on the other end of
10 the County, excuse me. But that is the only Juror I knew.

11 Q Okay. If you and he were both on the jury would that
12 in any way be an issue for you like maybe his opinion
13 would weigh more than your opinion?

14 A No, sir.

15 Q You would have your own opinion?

16 A Yes, sir.

17 Q Okay. Let me talk to you a little bit about the
18 case. The Judge has read you the indictments, you are
19 aware of the charges and what the allegations are?

20 A Yes, sir.

21 Q And the Judge has told you that Tim has plead not
22 guilty by reason of insanity. Not guilty by reason of
23 insanity in South Carolina means that because of a mental
24 disease or defect somebody was unable to appreciate the
25 legal or moral wrongfulness of their conduct. Does that

1 make sense to you?

2 A Yes, sir.

3 Q And I imagine you have probably, in your line of
4 work, dealt with some people that were mentally ill?

5 A Yes, sir.

6 Q Some severely mentally ill?

7 A Yes, sir.

8 Q And you understand that some people say, for me in
9 that type of killing not guilty by reason of insanity is
10 not something that I can give meaningful consideration to.
11 And my question for you, is it something that you can like
12 really see yourself voting for, saying if it was proven to
13 you that that would be a real option for you?

14 A With all the facts, where I work at the Fire
15 Marshall's office, I have to take all the facts and put
16 them together to make my final determination on things
17 that I write up by code. And, yes, I could take all the
18 information put together and form an opinion on that.

19 Q Right. And the Judge will tell you that the burden
20 of proof is on the Defense to prove by a preponderance of
21 the evidence not guilty by reason of insanity. If you
22 found it and you said, all right, well, more likely than
23 not you could vote for it.

24 A Yes, sir.

25 Q Okay. After that verdict, if it is not guilty or not

1 guilty by reason of insanity the trial is over?

2 A Yes.

3 Q But if it is guilty or guilty but mentally ill then
4 the jury may have the option to consider punishment. Are
5 you with me on that?

6 A Yes, sir.

7 Q Now, all the evidence that the jury would have heard,
8 not guilty by reason of insanity, the jury would have said
9 that is not the case. We found beyond a reasonable doubt
10 the person was sane, they knew what they were doing, they
11 intentionally, maliciously killed multiple children. Are
12 you with me on that?

13 A Yes, sir.

14 Q At that point and time, understanding you haven't
15 heard all the evidence, there might be additional
16 aggravation, evidence might be additional, mitigating
17 circumstances but some people say based on who I am, at
18 that point and time for me the only appropriate punishment
19 would be death. You know there are people like that?

20 A Yes, sir.

21 Q Just based on the type of case?

22 A Yes, sir.

23 Q And my question for you, is that you?

24 A Taking all the information in, I would have to make
25 that decision at that time.

1 Q Okay. So life without the possibility of parole,
2 that could be a substantial enough punishment for you in
3 that type of case?

4 A It could be, yes sir.

5 Q It is on the table?

6 A Yes, sir. Depending on all of the evidence.

7 Q Yes, sir. At that point and time where you found a
8 person guilty, guilty, knew what they were doing. Are you
9 with me?

10 A Yes, sir.

11 Q Do you have a leaning towards life or death or are
12 you still saying I need to know more?

13 A I do have a leaning towards the death penalty.

14 Q Okay. It is sort of, you are open to stuff being
15 presented to you?

16 A Yes, sir.

17 Q But you would, the Defense should present to you
18 evidence in mitigation that says maybe the death penalty
19 is not the appropriate punishment?

20 A Yes, sir.

21 Q Can you think of what that type of stuff might be
22 that would say for me, you know what, I am right, you are
23 right, life without parole could be an appropriate
24 punishment?

25 A There, I mean, someone, I know how drugs affect

1 people, alcohol, things of that nature. People sometimes
2 snap, lose their minds especially on drugs, I have been
3 around drugs my whole life with my father and just being
4 in the fire service seeing that kind of thing. I know how
5 things can happen that places people out of their right
6 mind at that time and that would be one circumstance.

7 Q Fair enough. They are still criminally responsible?

8 A Yes, sir.

9 Q And you would hold them accountable. And when
10 something like that might make you say, all right, life
11 could be appropriate?

12 A Yes, it is possible.

13 Q And the Judge would tell you, under the influence of
14 drugs and alcohol is a mitigating factor and that you have
15 to give it meaningful consideration and you would do that?

16 A Yes, sir.

17 Q And you know some people say, drugs and alcohol for
18 me, that makes it worse. I think that that is
19 aggravating.

20 A I have seen my dad and I know how he can be on drugs
21 and how he is off of drugs. So I know there is two
22 different people there at different times. So I know that
23 I can make a decision depending on what the circumstances
24 were, whether, I think I could make a decision on that.

25 Q And I want you to go one step further and say, if

1 somebody said, well, to me that makes it worse. Could you
2 tell them, no, the law is that we have to consider it as
3 mitigation?

4 A I don't think I understand.

5 Q The Judge is going to charge you on mitigation
6 factors.

7 A Yes, sir.

8 Q But the law for the jurors is, it has to be
9 considered as mitigation, as mitigating, as weighing in
10 favor of the life penalty.

11 A Okay.

12 Q And if a Juror was back there saying, well, to me it
13 makes it worse you would say that is not the law, here is
14 the law that we are suppose to follow. You can't consider
15 it that way.

16 MS. MAYES: Objection, Your Honor. The Court can
17 instruct--

18 THE COURT: I think the question is a little
19 confusing, sustained. Rephrase your question and keep
20 going with it.

21 Q I think you understand what I am talking about?

22 A I do, yes sir.

23 Q Okay.

24 THE COURT: Just so he knows. The Court does give
25 instructions to the jurors about how to consider and

1 evaluate the law, they argue the facts. And so it gets a
2 little bit confusing sometimes. Continue on.

3 MR. YOUNG: Yes, sir.

4 Q Mr. Smith, do you think that in this decision, this
5 ultimate decision about whether to end a person's life
6 that we should, you should as a Juror weigh their whole
7 life and in making that decision about whether or not to
8 end it?

9 A I think so but there is also circumstances with
10 myself that, I grew up in a bad situation with my father
11 and I turned out okay. And it is different for other
12 people, I can weigh that out. But I know for me I turned
13 out fine. But I made that conscious decision, choice to
14 turn away from the other, other things that would lead me
15 to that circumstances.

16 Q And I just need you to share with me, if you are open
17 to weighing all of that information.

18 MS. MAYES: Your Honor, asked and answered, Your
19 Honor.

20 THE COURT: I am going to let him answer it but I
21 agree with you. Can you consider all of the evidence, I
22 think what you asked. He can answer it.

23 MR. YOUNG: He did, Your Honor.

24 THE COURT: Okay, he answered it affirmatively.

25 MR. YOUNG: Yes sir, he did.

1 Q Mr. Smith, at the end of the day this decision about
2 life penalty or death penalty is what we call an
3 individual moral judgment. Are you with me on that?

4 A Yes, sir.

5 Q Whether we are going to kill this person or allow
6 them to stay in prison until they die is, for each Juror
7 makes their own judgment or, and it is a moral judgment,
8 there is no right or wrong answer. There is no A, B and
9 C, this is appropriate, D, E, F, this is appropriate.

10 A Yes, sir.

11 Q The way that I describe it, it is sort of like
12 choosing what faith is appropriate for you. You have made
13 your own individual moral judgment about that?

14 A Yes.

15 Q And you understand that other people have made
16 different decisions for themselves?

17 A Right.

18 Q You respect their right to make their own decision
19 about that?

20 A That's right.

21 Q You expect them to respect your own decision?

22 A Yes, sir.

23 Q And if you saw somebody being bullied or coerced or
24 belittled for their individual moral judgment, would you
25 say that is not right?

1 A Yes, sir.

2 Q And would you stop it?

3 A Yes, sir.

4 Q And if you had to would you even send the Judge a
5 note?

6 A Yes, sir.

7 Q I imagine you could stop it yourself but if it got to
8 the point you could send out a note?

9 A Yes, sir.

10 Q Thank you very much.

11 MR. YOUNG: Based on the Court's limitations that is
12 all I have.

13 THE COURT: Yes, sir. Ms. Mayes.

14 EXAMINATION

15 By Ms. Mayes:

16 Q Just briefly, Mr. Smith.

17 A Yes, ma'am.

18 Q Just to follow-up a little bit more. As the Judge
19 informed you, if this case were to go to a second phase,
20 there would be two options, life without parole and the
21 death penalty. Can you consider both of those options?

22 A Yes, ma'am.

23 Q And in doing so could you consider each of the
24 mitigating factors which would be anything out there that
25 the Defense may offer about the Defendant?

1 A Yes, ma'am.

2 Q Would you follow the Court's instructions in giving
3 each of those meaningful consideration?

4 A Yes, ma'am.

5 Q And if after doing so and you heard all the evidence
6 and all the mitigating factors that are presented, if at
7 that time you determine that life without parole was the
8 appropriate sentence could you render a verdict of, or a
9 sentence life without parole?

10 A Yes, ma'am.

11 Q Having take into consideration all of the mitigating
12 factors which could be offered in this case?

13 A Yes, ma'am.

14 Q And by the same token, if after hearing all of the
15 aggravating factors offered by the State and each of those
16 mitigating factors offered by the Defense, you determine
17 that a death sentence was the appropriate sentence, is
18 that a sentence that you could vote for?

19 A Yes, ma'am.

20 MS. MAYES: I beg the Court's indulgence. That is
21 all I have.

22 THE COURT: Y'all want to be heard?

23 MR. YOUNG: No, sir.

24 THE COURT: Mr. Smith, the Court will find you
25 qualified as a Juror based on your responses and

1 questionnaire and the questions here today. What that
2 means is you are going to pay attention to the website
3 again. And watch the instructions for qualified jurors.
4 Check it tonight, it will tell you to either check back or
5 come in. When it says please report back to the courtroom
6 at such and such time on such and such date, follow those
7 instructions.

8 JUROR: Yes, sir.

9 THE COURT: Also you live up to your oath to not talk
10 about the case, do not let anybody talk to you about the
11 case, not to do any independent researching, not perusing
12 the media and publicity. I want you to decide this case
13 on the information that you receive here in the courtroom
14 while it is being presented to you under oath. Not
15 unsupervised outside of the courtroom.

16 JUROR: Yes, sir.

17 THE COURT: Can you do that?

18 JUROR: Yes, sir.

19 THE COURT: See you soon. Thank you, sir.

20 JUROR: Thank you, sir.

21 (Whereupon, the Juror was excused from the
22 courtroom.)

23 THE COURT: All right, let's bring in 355. Mr.
24 Young, the box is empty and going away tomorrow.

25 MR. YOUNG: Yes, sir. Thank you.

1 (Whereupon, Juror 355, Lashonda Roberts entered the
2 courtroom.)

3 EXAMINATION

4 By The Court:

5 Q Ma'am, good afternoon, good morning still.

6 A Good morning.

7 Q How are you doing today?

8 A Good, how are you doing.

9 Q My name is Judge Griffith, I have introduced myself
10 several times. I remind you, you are under oath. I want
11 you to say and spell your name so that Ms. Holston can
12 detect whether or not you are speaking loud enough in her
13 microphone.

14 A Okay. L-A-S-H-O-N-D-A; R-O-B-E-R-T-S.

15 Q Ms. Roberts, I am going to ask you these same
16 questions I have asked other jurors. You took an oath
17 Monday when I was in the other Court House with you. Have
18 you talked to anybody about this case since that day?

19 A No, sir.

20 Q Has anybody tried to talk to you about the case since
21 that day?

22 A No, sir.

23 Q There has been publicity by the media, social media,
24 news media, whomever, four years ago, several weeks ago,
25 last ten days or so. I also read you the five indictments

1 in open court, to all the jurors, information presented to
2 jurors. It was a notice document, Mr. Jones is presumed
3 innocent. I want you to tell me if you have heard any
4 information about this case in any manner whatsoever. Has
5 that information caused you to form an opinion as to what
6 happened?

7 A No.

8 Q So you answered no?

9 A Uh-uh. (Nods head in the negative.)

10 Q I need you to answer yes or no because she is writing
11 it down.

12 A The answer is no.

13 Q All right. You have not formed an opinion?

14 A Oh, do I have an opinion?

15 Q Yes.

16 A Oh, yes, I do have an opinion, yes. I am sorry.

17 Q Is your opinion about what happened?

18 A Yes.

19 Q What do you think happened. And there is no wrong
20 answer, please understand that. I want to know what is
21 your opinion about what you believe happened? You are not
22 going to get in trouble for this because I didn't tell you
23 to not pay attention to the publicity until Monday so
24 there is a lot out there before. So I want to know what
25 your opinion is.

1 A My opinion, really, I really don't know.

2 Q If you have one kind of explain to me. It is fine, I
3 promise you you are not going to get in trouble. I just
4 need to know it.

5 A I don't have no opinion. I have an opinion but--

6 Q If you don't tell me then I can't decide whether or
7 not you can be fair and impartial because that is what I
8 am looking for. If you have got presupposed opinion that
9 will prevent you from being fair to both the State and the
10 Defense. We have got two sides in here and I am trying to
11 pick a fair jury. And if you have made up your mind about
12 as to what happened I need to know it. Okay. It is okay,
13 I just need to know what your opinion is.

14 A Well, my opinion, it was wrong, what happened.

15 Q Okay.

16 A Very hurtful about it.

17 Q It was tragic, wasn't it?

18 A Yes.

19 Q Is that your opinion?

20 A Yes.

21 Q Anything else? Have you made up your mind as to what
22 the punishment should be?

23 A Yes.

24 Q What would that be?

25 A Life.

1 Q Do you have a religious or moral or personal belief
2 that you could not give the death penalty?

3 A I just don't believe in it.

4 Q You don't believe in it?

5 A No.

6 Q So you consider yourself, I gave you three types, you
7 are a type two?

8 A Yes.

9 Q You are locked down on that?

10 A Yes.

11 Q Okay. That is fair enough. That is another personal
12 belief opinion that I was going to ask you about. You are
13 telling me you are going to be stuck on type two no matter
14 what you hear, it was tragic, the children are gone and
15 that is awful, they are innocent. You are a type two and
16 you want to see the life sentence?

17 A Yes.

18 Q Then that would allow me to say, thank you for coming
19 and I am going to excuse you from being a Juror. Thank
20 you very much.

21 A Thank you.

22 (Whereupon, the Juror was excused from the
23 courtroom.)

24 THE COURT: The last one of this panel, bring them
25 in.

1 (Whereupon, Juror 65, Kayla Burgess entered the
2 courtroom.)

3 EXAMINATION

4 By The Court:

5 Q Good morning, Ms. Burgess. I want you to say and
6 spell your name for Ms. Holston's benefit to make certain
7 the microphone is picking you up.

8 A Kayla Burgess. K-A-Y-L-A, B-U-R-G-E-S-S.

9 Q Ms. Burgess, I asked you, I am asking the same
10 question to all the jurors, not because of something
11 anybody has done but since Monday when I asked you to take
12 an oath to not talk about the case, have you talked about
13 the case with anybody?

14 A No, sir.

15 Q Has anybody tried to talk to you about the case?

16 A Yes.

17 Q Have they asked you questions about it?

18 A Yes.

19 Q What was your response?

20 A I just didn't really, I just didn't really engage in
21 conversation.

22 Q Did you tell them you were told not to talk about it?

23 A Yes.

24 Q I want yes or no so she can take it down. The
25 lawyers need to hear you. Now, in this case a lot of

1 publicity out there, social media, news media, all sorts
2 of attention, talk, four years ago, several months ago,
3 over the last ten days, the weekend before we came into
4 court on Monday. I in fact read the five indictments to
5 the entire jury panel. Everybody, if they were listening,
6 I told them to listen, heard the allegations the State is
7 making. That is information. Has any of the information
8 you have received, heard or otherwise come into
9 possession, has that caused you to form an opinion as to
10 what happened in this case?

11 A Yes.

12 Q What do you think happened? Remember, I told you,
13 this is personal beliefs, opinions, I am not worried about
14 whether you are right or wrong because your answers are
15 truthful and that would be right.

16 A Okay.

17 Q What do you think happened?

18 A Personally, just based on what I heard and the news
19 media, I do have an opinion of guilty.

20 Q Okay. And you understand you believe he is guilty?

21 A Yes, sir.

22 Q Now, can you identify yourself as a type of Juror, I
23 gave you that list?

24 A Yes.

25 Q Which one?

1 A I think I would be Juror number one.

2 Q Juror number one?

3 A Yes.

4 Q Are you pretty hard on number one?

5 A Yes.

6 Q You think he did it because of what you have already
7 heard?

8 A Yes.

9 Q Fair enough. That is enough for me to say thank you
10 for coming. And you are excused from jury service.

11 A Okay.

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

14 THE COURT: Do y'all want to get that next panel in.

15 MR. YOUNG: Are they here?

16 THE COURT: I don't know, if they are here we can go
17 ahead and read the instructions and then take our break.

18 MR. YOUNG: Sure.

19 THE COURT: Are they all here?

20 BAILIFF: We are missing four.

21 THE COURT: We are missing four.

22 BAILIFF: We are missing three of this panel.

23 MR. YOUNG: I would give them a few minutes.

24 THE COURT: I will give them a few minutes. Y'all
25 want to sit here for a few minutes and then we will take

1 our break or do y'all want to take a break and come back
2 in in a few minutes.

3 MR. YOUNG: I think we will just take a break.

4 THE COURT: It suits me, I don't care.

5 (Whereupon, a short break was taken.)

6 THE COURT: All right, let's bring them in.

7 (Whereupon, Juror 39, Donnie Blackmon; 14, Dawn
8 Applegate; 370, Roger Sandy; 481, Reba Williams; 44,
9 Amy Boozer; 325, Tina Penn; 425, Robert Tate; 417,
10 Joseph Straczek entered the courtroom.)

11 THE COURT: Thank you for coming in. We got all
12 eight of you, welcome back to the courtroom. Several
13 things are going to happen. I am going to read you a
14 summary of the procedures and the aspects of criminal law.
15 I want y'all to consider it, sent back outside to read
16 over potential witness list as well as a three potential
17 types of jurors. And then we will come back in, you will
18 be placed under oath momentarily. When you are brought
19 back in you are asked about anybody communicate with you
20 and such as that. The cameras aren't in the courtroom,
21 they are off. No cameras are going right now, nobody will
22 get their picture made so don't worry about that. The
23 Clerk's office is going to get lunch for y'all. I heard
24 the food was really good yesterday. Now when you come
25 back in and asked questions, a lot of the questions are

1 about your personal beliefs and opinions. So candid,
2 truthful answers, there are no wrong answers. Okay. I
3 need to know your beliefs to see if you are suitable to be
4 a qualified Juror. Okay. Madam Clerk, will you place the
5 group under oath.

6 (WHEREUPON, the jury was sworn at 11:44 a.m.)

7 THE COURT: Ladies and gentlemen, you have been
8 summoned as potential jurors in the case of the State
9 versus Timothy R. Jones, Jr. My name is Judge Eugene
10 Griffith, I am the presiding Judge for the trial. Mr.
11 Jones has been charged with five counts of murder. And in
12 South Carolina murder is defined as the killing of any
13 person with malice aforethought. Malice is defined as a
14 person with a wicked or depraved heart, intent on
15 wrongdoing, hatred, ill-will or hostility. The definition
16 of murder excludes any just cause or excuse for the
17 killing. When the State alleges the offense of murder
18 combined with certain aggravating circumstances the State
19 can seek the death penalty. Now before and during a trial
20 a person accused is presumed innocent of each element of
21 the crime to which he is charged. The State must prove
22 each and every element to the standard of proof called
23 beyond a reasonable doubt. In most criminal cases Judges
24 determine the punishment upon a conviction. But in a
25 Capital case the jury determines the punishment. In a

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

1 without the possibility of parole sentence will be
2 imposed. In this case the State has indicted five counts
3 of murder and has notified Mr. Jones that it intends to
4 seek the death penalty. Mr. Jones has entered a plea of
5 not guilty by reason of insanity. In this case you may
6 hear testimony and evidence showing many things. A wide
7 variety of testimony may be presented to you in this
8 trial. Depending on testimony I will instruct you on how
9 to consider and evaluate that testimony, whether it be
10 defined as evidence of aggravating factors, evidence of
11 mitigation, which are any reason to vote for a sentence of
12 life without parole. Evidence of any defenses, evidence
13 of any affirmative defenses such as accident, guilty but
14 mentally ill and not guilty by reason of insanity. Until
15 the testimony and evidence is presented in I am not able
16 to tell you the exact instructions of the law I will give
17 you. Now, I will bring you back in one at a time and ask
18 you a question, can you accept an oath to meaningfully
19 consider all the testimony and evidence, apply the law as
20 I instruct it and consider the evidence consistent with my
21 instructions. That will be the question imposed to each
22 of you. Now, retire to the jury room, do not discuss the
23 case among yourselves. I will bring you back in one at a
24 time, enjoy the food that the Clerk has provided to y'all.
25 Thank you.

25 || A No.

1 Q Now, there has been a lot of publicity about the
2 case, several years ago, several months ago, over the last
3 ten, twelve, fourteen days, since the process, since the
4 case has been called. And when you came in Monday I also
5 published or read the five indictments of the accusations
6 of, for murder against Mr. Jones. Considering any and all
7 information you received prior to walking in the courtroom
8 today, any of it, where ever you got it, whenever you got
9 it, have you formed an opinion as to what happened in this
10 case?

11 A No, sir.

12 Q You not formed an opinion whatsoever?

13 A No.

14 Q Now, I asked you to consider and decide, consider and
15 to bring to me what on your schedule, your calendar that
16 if you were selected as a Juror that we may impose upon
17 any of your plans commencing, say Monday and through late
18 May, early June. What have you got on your calendar?

19 A Other than meeting my maker nothing that I know of.

20 Q So you would be available if so selected?

21 A Right.

22 Q Now, subject matter in this case involves the death
23 of five children. I have not seen all the evidence but
24 the lawyers have made representations to me, Judge, this
25 is difficult testimony, it is graphic, it is harsh, it is

1 unpleasant for us to use but they have to use it. I ask
2 you, is testimony, evidence of subject matter that would
3 be considered difficult and unpleasant, and that subject
4 matter involving the death of five children, can you
5 consider unpleasant testimony and still get, be fair and
6 impartial to both sides?

7 A I believe so.

8 Q Fair enough. Now, I gave you a list of potential
9 witnesses. Did you read over that potential witness list?

10 A I did.

11 Q All of those witnesses won't be called, many of them
12 will. Both sides have to alert me if they potentially
13 could be called. Do you know any of those folks?

14 A No, I don't.

15 Q Not a one?

16 A Not a one.

17 Q Fair enough. I also just gave you instructions, just
18 a few minutes ago about the procedure, process and the
19 State's burden of proving the case beyond a reasonable
20 doubt and phase one. If the State were to meet that
21 burden and find, find the Defendant guilty then goes into
22 phase two which is the sentencing phase. Considering what
23 you know which is very little about this case, if you were
24 put in a position of having to decide a case like this
25 what type of Juror would you classify yourself, how would

1 you identify yourself in one of those three types of
2 jurors?

3 A I guess it would depending on the evidence and based
4 on the evidence, if the death penalty warranted, I don't
5 think I would have a problem.

6 Q Now, so you would identify yourself as type one, two
7 or three? I will show it to you again so you can review
8 it.

9 A I didn't see this before.

10 Q You didn't see that before?

11 A No.

12 Q Read over it right now, I want you to tell me what
13 you are, I am sorry.

14 A I would have to say type three.

15 Q Type three. All right. Now, I wrote this and I know
16 what I was inquiring and trying to suggest. How do you
17 identify as a type three, what does that mean to you?

18 A I would have to hear all the evidence and any
19 mitigating circumstances.

20 Q So you want to hear it all, good and bad?

21 A Right.

22 Q Before you make up your mind?

23 A Right.

24 Q All right. I want to go back to the two phases again
25 because thus far, I want to explain some things to you and

1 ask you can you do this and can you do that and be fair to
2 both sides, fair and impartial, fair to both sides. In
3 the guilt or innocence phase, where they are trying to
4 prove the murder, the State has alleged five counts of
5 murder, the State has to prove its case beyond a
6 reasonable doubt of all the elements. Mr. Jones seated
7 here in the courtroom and all the way through the trial is
8 presumed innocent until the State meets its burden of
9 proof and a jury returns a unanimous verdict, they are
10 convinced beyond a reasonable doubt of his guilt.
11 Defenses can be presented during that phase of the case
12 and if the defenses are presented the jury considers
13 those. I am going to read all potential defenses and come
14 back and ask you could you consider any of them.
15 Potential defenses would be identification, accident,
16 involuntary intoxication, self-defense, necessity,
17 insanity, guilty but mentally ill, entrapment, defense of
18 habitation, duress or alibi. Those are potential defenses
19 that are outlined in my statute books behind me available
20 to Defendants that want to claim them. Not knowing what
21 testimony will be presented, if any aspects of testimony
22 to support the instructions of one of those, because I
23 wouldn't instruct on if it weren't relevant, but if some
24 aspects were relevant I would instruct on those defenses.
25 Can you give meaningful consideration to any testimony and

1 evidence in this case, consider my instructions that the
2 State bears the burden of proving the guilt beyond a
3 reasonable doubt of the murder but also consider my
4 instructions on any of those appropriate defenses if the
5 evidence supported it. Can you do that?

6 A I could.

7 Q Can you be fair and impartial in doing so to both the
8 State and the Defense?

9 A I could.

10 Q Now, Mr. Jones has claimed or already suggested, he
11 has stated that he is entering a plea of not guilty by
12 reason of insanity. And by that plea it involves two of
13 the defenses. Now because of the plea four potential
14 verdicts will be suggested or presented to the jury for
15 their consideration and their determination. Four
16 potential verdicts could be guilty, guilty but mentally
17 ill, not guilty by reason of insanity or not guilty
18 whatsoever. Those are four potential verdicts that may be
19 presented to the jury in this case. Can you give
20 meaningful consideration to each and every one of those
21 potential verdict forms after considering my instructions
22 explaining those potential verdicts and evaluating the
23 testimony and evidence presented to you?

24 A I could.

25 Q Can you be fair and impartial to both the State and

1 the Defense in doing so?

2 A I could.

3 Q Now, if not guilty or not guilty by reason of
4 insanity is found the case ends. If the jury finds the
5 State has proven its case beyond a reasonable doubt guilt
6 is found and determined, we move into phase two which is
7 the sentencing portion phase of the trial. In that
8 portion the State is then responsible for proving an
9 aggravating factor. I am going to name five. Murder of a
10 policeman, murder of a child, rape of murder, kidnapping
11 of murder and multiple murders. Those are potential
12 aggravating factors. The State must prove one of those
13 beyond a reasonable doubt for it to be in a position to
14 ask a jury to impose a death sentence. Do you understand
15 that?

16 A I do.

17 Q Do you understand that mitigating circumstances and
18 evidence will be presented also during the trial and
19 during the sentencing phase by the Defense. Mitigating
20 factors need not be proven, they are to be considered if
21 shown to the jury. I am going to give you a list of
22 mitigating factors. Okay.

23 A Okay.

24 Q The Defendant has no significant history of prior
25 criminal conviction involving the use of violence against

1 another person. The murder was committed while the
2 Defendant was under the influence of mental or emotional
3 disturbance. The victim was a participant in the
4 Defendant's conduct or consented to the act. The
5 Defendant was an accomplice in the murder committed by
6 another person and his participation was relatively minor.
7 The Defendant acted under duress or under the domination
8 of another. The capacity of the Defendant to appreciate
9 the criminality of his conduct or to conform his conduct
10 to the requirements of law was substantially impaired.
11 The age or mentality of the Defendant at the time of the
12 crime. The Defendant was provoked by the victim in
13 committing the murder. The Defendant was below the age of
14 18 at the time of the crime. The Defendant had mental
15 retardation at the time of the crime. Those are statutory
16 mitigating factors that the Defense could present on.
17 Also there are non-statutory reasons, evidence, such as
18 maybe Mr. Jones had a troubled childhood, came from a
19 broken home, anything in his life up from the time of the
20 crime can be considered by the jury in evaluating whether
21 to give a life sentence as opposed to a death sentence.
22 Do you understand that?

23 A Yes, sir.

24 Q Do you understand that during the sentencing phase
25 jury's determine the punishment, two choices only, death

1 or life. Do you understand?

2 A Yes.

3 Q You also understand that the death penalty is not an
4 automatic decision. Do you understand?

5 A I do.

6 Q It is not automatically given because the State
7 proves several things. It is considered by the jury if
8 the State presents beyond a reasonable doubt evidence of
9 an aggravating factor. Now, can you give meaningful
10 consideration to the State's proof beyond a reasonable
11 doubt of an aggravating factor. If they don't prove an
12 aggravating factor beyond a reasonable doubt they are not
13 entitled to ask a jury to impose a death sentence. If
14 they meet that burden they are entitled to ask. During
15 that presentation also the Defense presents on those
16 mitigating factors. Can you give meaningful consideration
17 to any mitigating factors, whatever they are in reaching
18 your decision as to whether to vote for a life or death
19 sentence?

20 A I could.

21 Q Do you have any religious, moral or personal belief
22 which would you prevent you from imposing the death
23 sentence?

24 A No.

25 Q Do you have any religious, moral or personal belief

1 which would prevent you from imposing a life sentence?

2 A No.

3 Q Do you know of any reason whatsoever you couldn't be
4 fair to both the State and the Defense?

5 A No, I don't.

6 THE COURT: Okay. Mr. McGuire.

7 EXAMINATION

8 By Mr. McGuire:

9 Q Good afternoon, sir. Thank you for being patient
10 with us and putting up with us, it has been a slow
11 process. I appreciate you hanging in there. This is the
12 time that the Judge lets us talk to you about your views
13 of the death penalty for murder. And I am going to put
14 you in a situation. In your mind I want you to pretend
15 that you are just Governor for a day, Governor of South
16 Carolina for a day and you had a Bill on your desk, we can
17 have the death penalty or not have it. Which way would
18 you go?

19 A I would have to say we would have it.

20 Q Okay. And that implies that there is a purpose, the
21 death penalty, having it on the books to serves a purpose.
22 What purpose are you thinking about when you say we should
23 have it.

24 A I would think depending on the circumstances, it
25 needs to be.

1 Q It needs to be like some people deserve that
2 punishment?

3 A Yes.

4 Q That it is the ultimate punishment but sometimes the
5 crime is so bad it warrants it?

6 A Not necessarily. If the crime warrants it it does,
7 if it is the ultimate crime then it should receive the
8 ultimate punishment.

9 Q Right. A lot of people say it should be reserved for
10 the worst of the worst, does that describe you?

11 A That's correct.

12 Q The murder of five innocent children, does that fit
13 into the category of--

14 MR. HUBBARD: Objection.

15 THE COURT: Remember my instructions and phrase your
16 question in that fashion.

17 MR. MCGUIRE: Sure.

18 Q There are some folks that would say, you know, I
19 don't need to know the specifics of the crime, I don't
20 need to know, I don't need to know if the killer was white
21 or black or grew up poor or grew up wealthy or he was a
22 family member of the children or if he was a stranger. I
23 don't need to know these facts. And I don't need the
24 facts of the killing, I don't care if the kids were
25 drowned or shot or strangled. What I need to know are the

1 basics and that is if all the evidence points beyond a
2 reasonable doubt that the person knew what they were doing
3 and deliberately and intentionally with an evil heart took
4 the lives of five innocent children. That person would
5 say the death penalty--

6 MR. HUBBARD: Objection, form of the question.

7 THE COURT: I am going to allow it.

8 Q What do you say, sir.

9 A Depending on the circumstances and the evidence. If
10 it is warranted that he receives the death penalty then he
11 should. If he can't, if the Court can't prove that he is
12 warranted the death penalty he shouldn't get it.

13 Q Okay. Well, going back to if you were Governor for a
14 day, and your Legal Aid came to you and said, here is a
15 Bill that the General Assembly has put before you and it
16 would say without the regards of the facts in the case,
17 the background of the Defendant, we are going to have a
18 law and it says, death penalty is automatic for
19 intentionally taking the lives of children. What would
20 your position on that Bill do?

21 A I would have to say no, depends on the evidence.

22 Q Okay. Would a life sentence be sufficient, in your
23 personal view, in a situation that we have discussed, the
24 intentional killing of innocent children, letting somebody
25 spend their years in prison, would that be sufficient to

1 punish that kind of killing?

2 A Not knowing all the evidence involved, I could not
3 honestly answer that.

4 Q I understand. That is a fair answer. When it comes
5 to fixing the punishment for a killer who took the lives
6 of innocent children, would their background, their
7 character, how they grew up, their walk in life, would
8 that be relevant to fix a punishment for that kind of
9 killing?

10 A I would have to say it would.

11 Q Okay. And why is that, why would that be important?

12 MR. HUBBARD: Your Honor, I object. I don't know
13 that the Juror has to give an explanation as to why.

14 THE COURT: -- I sustain, move on.

15 Q Mr. Blackmon, what I am going to do, I am going to
16 get you to kind of walk with me through this process and I
17 am going to explain a couple of legal principles to you
18 and if I say something you don't understand or if I ask a
19 bad question and you want to ask me questions you start
20 asking me questions. Okay, is that okay?

21 A Correct.

22 Q In the first phase of the case the Judge talked to
23 you about some potential verdicts and I am going to talk
24 to you about one of them. Not guilty by reason of
25 insanity. In a case that we just talked about earlier,

1 potential killing of innocent children under the age of
2 11, all of them. Some people might say, I can't consider
3 not guilty by reason of insanity as a verdict because
4 there is just no punishment attached to it, it is like a
5 copout of letting the guy off. What is your view on that
6 statement?

7 MR. HUBBARD: Your Honor, I am going to object to the
8 form of that. It was an added phrase in there.

9 THE COURT: I am not sure I heard that, you want to
10 be heard on that.

11 MR. HUBBARD: If you can just reask it.

12 MR. MCGUIRE: I am confused as well so I am probably
13 just say the same thing.

14 Q In that case that we have been talking about,
15 intentional killing of innocent children, the aggravating
16 facts would be multiple children, they are all under 11.
17 Okay. The Judge talked to you about the first phase and
18 there could be potential verdict of not guilty by reason
19 of insanity. Some folks who sat right there this week or
20 this last two weeks would say, you know, that verdict
21 sounds like it is a copout, an excuse, there is no
22 punishment attached to it, just letting somebody go
23 really. What do you think about that?

24 THE COURT: You want to hear it?

25 MR. HUBBARD: Yes, sir.

1 THE COURT: Okay. He wants to be heard on this. Mr.
2 Blackmon, I need to put something on the record with the
3 lawyers. I will have you step out and have you right back
4 in here.

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

7 THE COURT: Mr. Hubbard.

8 MR. HUBBARD: Thank you. Two things, one he began a
9 question, he says first phase but he talks about
10 aggravating circumstances in the first phase. Highly
11 confusing right as he is phrasing his question.

12 THE COURT: I thought he had gone on to the second
13 phase.

14 MR. HUBBARD: He was in first phase, talking about
15 NGRI. But starts with aggravating circumstances.
16 Completely confusing and then is coming to a question
17 where it is like, it is like a baiting question, on the
18 NGRI question that we have discussed already. Because he
19 said let him go. And, Judge, that is, that baits the--

20 THE COURT: Here is what I heard that I hadn't heard
21 on all the other questions, the language. In the guilt or
22 innocence phase, the State has got to prove the guilt.
23 Some people say that NGRI would be a copout or excuse but
24 with no punishment attached. You added that. And I think
25 that is what, you have not been adding that to it each

1 time. You have been saying it is an excuse or copout.
2 Give me your thoughts, that is what y'all have been doing.
3 And they have not been objecting to it.

4 MR. YOUNG: What I have been doing is saying,
5 understanding, you won't sentence. The trial will be
6 over, you won't sentence.

7 MR. HUBBARD: That is not the question.

8 THE COURT: That is not what he asked, you asked
9 something different. But I am going back to Mr. McGuire.
10 I think the question could be that NGRI is an excuse or a
11 copout, give me your thoughts and leave off with no
12 punishment attached.

13 MR. MCGUIRE: And if he is not guilty there is no
14 punishment attached. That is correct.

15 THE COURT: No, no, no. NGRI, no punishment
16 attached.

17 MR. MCGUIRE: There is no punishment if he is found--

18 THE COURT: This guy doesn't know that. Y'all have
19 been trying to get me to tell them the truth, I think that
20 is y'all's words each and every time. There is something
21 attached, you want me to tell the jurors what that is. I
22 have said, no. I want you to limit it without addressing
23 what is the no punishment. What actually happens. That
24 is what is baiting and they are asking you the question.
25 An excuse or a copout, give me your thoughts.

1 MR. MCGUIRE: So the Court's ruling is we can't use
2 the phrase, with no punishment.

3 MR. HUBBARD: Right because Mr. Young was not doing
4 that. He was saying something. The trial is over, the
5 jury doesn't get to sentence.

6 THE COURT: Correct.

7 MR. HUBBARD: I would object to that added phrase too
8 because it has got to be just like you said, a copout.
9 Just ask them if you can consider, throwing in there is a
10 conclusion and that is the baiting part that is what
11 happens.

12 MR. MCGUIRE: I will just use the Court's words.

13 THE COURT: I think he lead into the question
14 differently. If you use my words I think that will
15 still--

16 MR. HUBBARD: And just also, on the first part,
17 started with aggravating circumstances and then led into
18 that.

19 MR. MCGUIRE: I agree, I misspoke, I didn't mean to
20 do that. That is my fault.

21 THE COURT: You are asking about the aggravating, the
22 sentencing side. Bring him back in.

23 MR. YOUNG: Your Honor,--

24 THE COURT: He is arguing his, you sit down.

25 MR. YOUNG: For the record, I just need to make sure,

1 for the record, we understand that we still have motion
2 number 96 and 100 pending. For the record, I wanted--

3 THE COURT: I have not addressed that yet. Bring him
4 in, you worry me to death.

5 (Whereupon, the Juror entered the courtroom.)

6 CONTINUE EXAMINATION

7 Q So, Mr. Blackmon, I want to bring you back to looking
8 at the first phase of the trial. The first phase of the
9 trial is like any other trial you see on TV, did they get
10 the right guys beyond a reasonable doubt. That sort of
11 thing. Are you with me?

12 A Yes.

13 Q And in this case, because there is a plea of not
14 guilty by reason of insanity, that could be a potential
15 verdict in the first phase. Are you with me?

16 A Yes.

17 Q Okay. And some folks would say, you know what, the
18 Judge talked to you about horrific evidence, graphic
19 evidence, children, multiple children under 11 that in
20 that type of case knowing that not guilty by reason of
21 insanity would just end the trial right there, that we
22 would not go into a penalty phase. Some people might say,
23 I can't consider that verdict if it doesn't allow us to
24 get to that second phase, the punishment phase. What do
25 you think about that?

1 A I think it depends on the evidence presented.

2 Q Okay. Would you be open to hearing from maybe expert
3 witnesses about a person's mental state?

4 A I would.

5 Q And if that evidence rose to a level to satisfy you
6 that the person did not, because they had a mental disease
7 or defect in their brain, that they didn't understand or
8 appreciate the legal or moral wrong of their actions. If
9 you were convinced of that you could consider and vote for
10 not guilty by reason of insanity?

11 A I could.

12 Q If you were so convinced. Now, I want to take you
13 and let's you and I focus on that second phase, the
14 punishment phase. Okay. We might not ever get there but
15 if we do I want to talk to you a little bit about how that
16 works and you ask me questions if I say something that
17 doesn't make sense or is a bad question. Okay.

18 A Yes.

19 Q If we were to get to the sentencing phase, the
20 punishment phase, a lot, the Juror becomes less of a group
21 and more of individual people.

22 MR. HUBBARD: Objection to that. I object to that.

23 THE COURT: Rephrase your question.

24 Q The law is that each individual Juror has to reach
25 their own individual position, their individual moral

1 judgment with regard to sentence, with regard to
2 punishment. Is that concept of individuality something
3 that makes sense to you?

4 A I think every man should have the right to choose his
5 own mind.

6 Q Right. And the rules according to the law is, that
7 if a Juror reaches their own conscientious individual
8 moral judgment it is against the rules and unlawful for
9 them to change that position just to join the majority.
10 Did you know that?

11 A I didn't know that but I would agree with it.

12 Q Does it make sense?

13 A Yes.

14 Q Okay. So you would agree that once a Juror reaches
15 their conscientiously held position and it is what they
16 think is right, it would harm their conscience to change
17 their position. You agree that it would be wrong for them
18 to just join the majority for the sake of joining a larger
19 number?

20 A That's correct.

21 Q Okay. If you saw somebody, it was clear to you that
22 they reached their individual moral judgment and let's say
23 they wanted to vote for the life without parole penalty.
24 And you saw that it would harm their conscience to change
25 that position, as they maybe contemplated the rest of

1 their life, they just don't want to burden the black mark
2 of their soul of having to kill another human being by
3 authorizing their death through the death penalty and you
4 saw other people, maybe a majority being coercive or
5 bullying or forcing or trying to force them to change that
6 position--

7 THE COURT: Finally ask the question.

8 Q I will tell you this, it is wrong for that to happen.
9 Could you step in and stop that and say, hey, this person,
10 we have a duty to respect their position and could you
11 send a note out to the Judge saying, Judge, civility has
12 left the jury room, it is coercive here. Could you send a
13 note saying something wrong is happening, could you come
14 in here and help us?

15 A I could, I don't believe in bullying and a man has a
16 right to his opinion.

17 Q And you expect people to respect your opinion?

18 A Right.

19 Q And the rules are you have to respect other peoples
20 opinions?

21 A That's correct.

22 Q Thank you, sir. Did you know any other jurors when
23 you came in Monday, last week when the big panel came in.
24 Did you recognize or know anybody?

25 A I thought I recognized one guy.

1 Q Who was that?

2 A I think his name is Author Chavis.

3 Q Are y'all friends or you just kind of know each
4 other?

5 A We are members of the same lodge but we are not
6 close.

7 Q Mason Lodge?

8 A Mason.

9 Q Okay, so you know each other there but you don't
10 socialize together, you don't go out and do things
11 together?

12 A No.

13 Q Okay. Would the fact that he is on the jury, if he
14 had an opinion regarding the evidence or the sentence,
15 would you go with his opinion rather than stick to yours.

16 A I would have to say I would stick to mine. His
17 opinion is his and mine would be mine.

18 Q Right, his would be his, yours would be yours and he
19 wouldn't impact your decision making.

20 A No.

21 Q Thank you, sir.

22 THE COURT: All right, Solicitor.

23 EXAMINATION

24 By Mr. Hubbard:

25 Q How are you, Mr. Blackmon.

1 A Fine.

2 Q You are doing all right. My name is Rick Hubbard, I
3 am the Solicitor. I just have a few questions. I have
4 been listening to your responses and it sounds like and
5 please correct me if I am wrong but in that first phase,
6 where we are talking about whether the Defendant is guilty
7 or one of those other verdicts is better suited, you would
8 want to hear all the facts.

9 A All of them.

10 Q And we got to that second phase you would want to
11 hear all the aggravating and mitigating circumstances as
12 well?

13 A That's correct.

14 Q Now, there is one thing that I don't think was
15 brought up. If you are in that second phase and you and
16 all of those other jurors decide death is appropriate, on
17 the verdict form, it is different than all other verdicts
18 forms, all twelve jurors have to put their name down on
19 it. The reason I am asking, some people will tell you
20 your thoughts but they don't want to put their name on it.
21 Could you put your name on that verdict form if you
22 thought it was the right thing to do?

23 A I would.

24 Q Mr. Blackmon, I think that is all I can ask you, I
25 think that is all anybody can ask of you. Thank you, sir.

1 THE COURT: Y'all want to be heard on the record?

2 MR. HUBBARD: No sir, nothing for Mr. Blackmon or the
3 court.

4 THE COURT: Mr. Blackmon, I appreciate you coming in,
5 I appreciate your patience with the process. You are
6 deemed by the Court has a qualified Juror meaning, I will
7 need you to come back in here during the selection
8 process. Your instructions when to come back to court
9 will be on the list of the qualified jurors. Okay.

10 JUROR: Yes, sir.

11 THE COURT: You will look on the same website and
12 determined when you came in today. But not looking under
13 your panel number but qualified jurors are to report to
14 the courtroom at such and such date and time. Those are
15 your instructions when to come back will be on that
16 website. Can you get there?

17 JUROR: I got that.

18 THE COURT: Until such time as you are called back
19 in, if you are selected and seated as a Juror, you are not
20 to talk about the case, do not discuss it with anyone, not
21 answer any questions, not to do any independent research,
22 not to peruse or evaluate any of the news reports, social
23 media reports, any publicity whatsoever. I want you to
24 take the oath, you will be under your oath to do this,
25 decide this case on what you hear inside the courtroom and

1 to totally ignore anything that is not heard in the
2 courtroom. So outside the courtroom is off limits, out of
3 bounds. It is not even under oath, it is not supervised,
4 not on the record. I want you to consider and make your
5 determination if you are selected as a Juror things in the
6 courtroom, not outside the courtroom. Can you do that.

7 JUROR: I can.

8 THE COURT: Thank you so much for coming this
9 afternoon.

10 JUROR: Thank you, Your Honor.

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

13 THE COURT: Are we ready on 14?

14 MR. MADSEN: Yes, sir.

15 THE COURT: Bring them in.

16 (Whereupon, Juror 14, Dawn Applegate entered the
17 courtroom.)

18 EXAMINATION

19 By The Court:

20 Q You are Ms. Applegate?

21 A Yes, sir.

22 Q Good afternoon.

23 A Good afternoon.

24 Q You were placed under oath earlier, you were placed
25 under oath Monday. I am asking the same questions in the

1 same order regardless of when you came in. First of all,
2 say and spell your name in the microphones because you are
3 going to answer to Ms. Holston, she needs to hear
4 everything you are saying or she is going to fuss at me.

5 A Okay. Dawn Applegate. Applegate, A-P-P-L-E-G-A-T-E.

6 Q I am looking for candid, truthful answers. Okay.

7 And so I am going to ask you the first several series of
8 questions and then the lawyers may get an opportunity to
9 follow-up with some of my questions. Okay.

10 A Okay.

11 Q Now, I ask you to take an oath not to talk about the
12 case last Monday. Have you talked to anybody about the
13 case?

14 A No.

15 Q Has anybody tried to talk to you about the case?

16 A No.

17 Q Now, other than your schedule at work or home, you
18 got to tell them you were going to court.

19 A Yes, sir.

20 Q Other than that, no other conversations?

21 A No, sir.

22 Q Now, there has been publicity, several years ago,
23 several months ago, a week or so ago, all during the last
24 week regarding this case, on social media and on public
25 news. I, in fact, read the five indictments to the entire

1 jury pool.

2 A Correct.

3 Q And I told you to listen.

4 A Yes.

5 Q Now, information that you have received whenever you
6 got it, where ever it came from, I don't care, whatever
7 you heard, received information for yourself about this
8 case. Has any of that information caused you to form an
9 opinion about what has happened?

10 A No, sir.

11 Q You have not formed an opinion whatsoever?

12 A No.

13 Q Now, in the case I asked you also to tell me about
14 your work schedule, home schedule, vacation schedule.
15 What have you got on the calender over the next, say three
16 weeks?

17 A Several meetings. I travel all around the State of
18 South Carolina so I have some meetings up in the upstate
19 coming up next week. And then the following week I have
20 some meetings in Myrtle Beach. I also have, not until
21 July, but I have a meeting in Scottsdale, Arizona.

22 Q Okay. Now, if you were selected as a Juror could you
23 reschedule those meetings. I mean, Scottsdale, Arizona,
24 that would be a lot more difficult to reschedule. And so
25 I don't plan on the case continuing that far, the lawyers

1 have assured me we should be done way before then. My
2 daughter is getting married in July so there is some, some
3 of the parties involved have vacations coming up in July.
4 So we kind of intend to get our work before then. So,
5 July is not going to be threatened. Your Scottsdale trip
6 should be safe.

7 A Okay.

8 Q Now, the meetings you have over the next couple of
9 weeks, can you reschedule them if you were so selected?

10 A I believe that I can, I am not necessarily the
11 primary presenter for those, some I can complete remotely.
12 So depending on time of day I could call in for conference
13 calls, yes.

14 Q Fair enough. Now, I gave you a potential witness,
15 rather lengthy. Did you study that?

16 A I did.

17 Q Did you know anybody on it?

18 A I do, well, potentially one.

19 Q That is what I want to know because if you have a
20 connection to one of them and that is going to create a
21 problem I need to know about it. Who is it?

22 A Lee Toste, Leigh Ann Toste.

23 Q And how do you know her?

24 A If she is the same person our son's played soccer
25 together two years ago.

1 Q So a Rec league?

2 A The GPS Lexington. It is Global Premier Soccer.

3 Q Like a travel team?

4 A Yes.

5 Q Okay.

6 A They are not on the elite team but they do travel to
7 Savannah, Charleston.

8 Q I understand, so they are trying to hone their skills
9 to be ready to play in high school?

10 A Yes.

11 Q Or then college?

12 A For some, not for my son.

13 Q Okay. I had children that did some of that softball
14 and baseball and basketball. And it is quite fun.

15 A Yes.

16 Q The fact that you have been a parent, a team parent,
17 would that create an issue for you if she had to testify.
18 I don't know if she will be called, I don't know. If she
19 were called to testify would that create an issue for you
20 to be fair and impartial considering she may present
21 testimony?

22 A No.

23 Q Other than her nobody else?

24 A No, sir.

25 Q I gave you an overview when y'all came in and sat

1 down a few minutes ago of the criminal process, procedures
2 for a Capital case. Two stage process if necessary.
3 Stage one is guilt or innocence. If guilt is determined,
4 if the State meets its burden of proof then we go into the
5 sentencing phase. Jurors consider mitigating factors and
6 if the State can prove an aggravating factor. I also gave
7 you a sheet to try to show you the three types of
8 potential jurors that we normally see in Capital cases.

9 Can you, after reviewing that sheet, now did you
10 understand my instructions?

11 A I did.

12 Q Did you understand the three types of jurors?

13 A Yes.

14 Q Can you identify yourself as one of those three
15 types?

16 A I believe I am a third.

17 Q You are a third?

18 A I believe so.

19 Q And I wrote this and I kind of know what I meant,
20 what do you think I meant there?

21 A That, not only would we need to have determined
22 whether or not Mr. Jones is guilty but we also need to be
23 able to hear the evidence in terms of determining whether
24 there was some mitigating factor that led to that but we
25 need to hear the evidence in order to make that final

1 decision.

2 Q That is as good a summary as I have heard. Now, I am
3 going to go back and break down the two stages a little
4 bit more to make certain you can consider other aspects of
5 the trial. In the first phase, guilt or innocence, that
6 is all will be determined. The State has got the burden
7 of proving the murder beyond a reasonable doubt. They go
8 first, they present first. Defenses are allowed in cases
9 like this and I am going to read all the potential
10 defenses and ask you can you consider all of them if the
11 evidence supported them.

12 A Okay.

13 Q Potential defenses, identification, accident,
14 involuntary intoxication, self-defense, necessity,
15 insanity, guilty but mentally ill, defense of habitation,
16 entrapment, duress and alibi. Those are potential
17 defenses allowed by our statute behind me right here. Can
18 you, if the evidence supports and presented and the Court
19 instructed the proper aspects of any of those defenses,
20 can you consider the burden of proof on the State to prove
21 its case beyond a reasonable doubt of the murder but also
22 consider any aspects of any defenses that is presented to
23 the jury, consider my instructions. But most importantly
24 consider the evidence, testimony presented consistent with
25 my instructions and be fair and impartial in this case?

1 A Yes.

2 Q You can do that?

3 A Yes.

4 Q Now, if this case gets, if you get seated as a Juror,
5 because one of the defenses claimed by Mr. Jones, not
6 guilty by reason of insanity, there are four potential
7 verdict forms. Guilty, guilty but mentally ill, not
8 guilty by reason of insanity or not guilty all together.
9 Those are four potential verdicts that the jury may be
10 tasked with finding. Can you be a fair and impartial
11 Juror, consider the testimony and evidence. It is the
12 State's responsibility of proving the case beyond a
13 reasonable doubt, any aspects of my instructions on those
14 respective defenses. Are there any of those four
15 potential verdicts or could you adequately consider all of
16 those four potential verdicts?

17 A Yes.

18 Q Can you be fair and impartial in doing so?

19 A Yes.

20 Q Are any of those four potential verdicts that you
21 would not be able to find a verdict on?

22 A No.

23 Q Now you understand, I will instruct the jury, as a
24 whole, on the aspects of the four potential verdicts?

25 A Yes.

1 Q Can you be fair and impartial in reaching a verdict
2 in stage one?

3 A Yes.

4 Q For both the State and to Mr. Jones?

5 A Yes.

6 Q If the State meets its burden the case goes to phase
7 two, if the State fails to meet its burden of proving the
8 case, the case ends, right there. Go to phase two, the
9 State has met its burden of proving the murder. In stage
10 two the State is then responsible for proving an
11 aggravating factor. I am going to name five. Murder of a
12 policeman, murder of a child, rape of murder, kidnapping
13 of murder and multiple murders. Those are potential
14 aggravating factors. The State must prove one of those
15 five beyond a reasonable doubt in order to be in a
16 position to request a jury to impose a death sentence. If
17 the don't prove an aggravating factor beyond a reasonable
18 doubt they cannot ask for the death sentence. Okay. If
19 they do prove, the jury is also responsible for
20 considering all of the mitigating factors that are
21 presented. Potential statutory mitigating factors
22 include, the Defendant has no significant history of prior
23 criminal conviction involving the use of violence against
24 another person. The murder was committed while the
25 Defendant was under the influence of mental or emotional

1 disturbance. The victim was a participant in the
2 Defendant's conduct or consented to the act. The
3 Defendant was an accomplice in the murder committed by
4 another person and his participation was relatively minor.
5 The Defendant acted under duress or under the domination
6 of another person. The capacity of the Defendant to
7 appreciate the criminality of his conduct or to conform
8 his conduct to the requirements of law was substantially
9 impaired. The age or mentality of the Defendant at the
10 time of the crime. The Defendant was provoked by the
11 victim in committing the murder. The Defendant was below
12 the age of 18. The Defendant had mental retardation at
13 the time of the crime. Other evidence that can be
14 considered mitigating, reasons to decide the life sentence
15 include how the Defendant was raised up, his childhood, if
16 he came from a broken home. Any aspects of his life can
17 be considered mitigating. The jurors are presented that
18 type of evidence to consider. Can you give meaningful
19 consideration to my instructions regarding the State's
20 burden of proving the aggravating factor and be fair and
21 impartial?

22 A Yes.

23 Q Can you also likewise consider the mitigating factors
24 and circumstances, evidence presented by the Defense in
25 assigning value to the mitigating factors, consistent with

1 my instructions on the law. Can you do that?

2 A Yes.

3 Q Can you be fair and impartial to both sides in doing
4 so?

5 A Yes.

6 Q Do you understand the death penalty in the sentencing
7 phase is not automatic.

8 A Yes.

9 Q Do you understand that?

10 A Yes.

11 Q Now, the jury is tasked with making a decision of
12 punishment. Life without parole or death. No other
13 choices, no middle ground, no other options. One of the
14 two. Do you understand that?

15 A Yes.

16 Q So can you consider all aspects of my instructions,
17 the testimony regarding the aggravating factors and the
18 State's responsibility to prove that beyond a reasonable
19 doubt, consider mitigating factors and be a fair and
20 impartial Juror in this case to both the State and to Mr.
21 Jones?

22 A Yes.

23 Q Do you have any personal, religious or moral belief
24 which would prevent you from finding a punishment of
25 death?

1 A No.

2 Q Do you have any religious, moral, personal belief
3 which would prevent you from finding a sentence of life
4 without parole?

5 A No.

6 THE COURT: Mr. Madsen.

7 EXAMINATION

8 By Mr. Madsen:

9 Q My name is Rob Madsen, I am one of Tim's lawyers. I
10 think you mentioned your son plays for GPS and your
11 daughter does too, doesn't she?

12 A Yes, she does.

13 Q My daughter is T. [REDACTED].

14 A I was going to say, you looked familiar. Yes, I have
15 seen you on the sidelines.

16 Q I think she has played with your daughter some.

17 A As a guest player.

18 Q Year before last. They have moved up, she has moved
19 up. What I want to talk with you about here is the Judge
20 kind of went over with you the law a little bit. What I
21 want to talk to you about is just your personal feelings.
22 So there aren't any kind of right or wrong answers. Okay.
23 I just got to ask you questions to find out what you
24 believe.

25 A Sure.

1 Q Now, I know, I guess a week and a half ago on Monday
2 you stood up and said, hey, I had heard some publicity.

3 A Yes.

4 Q Can you tell me what you heard?

5 A It was actually as I was leaving the house and about
6 to turn off the television, it was the news, that local
7 news that comes in when the Today Show is on. And it just
8 said that a jury was being started, that there was jury
9 selection that day.

10 Q So you didn't hear anything that made you form an
11 opinion or anything like that?

12 A I may have heard the case when it originally
13 occurred, but in terms of details or things, no.

14 Q Could you just tell me your general feelings on the
15 death penalty?

16 A As the Judge said, if there are mitigating
17 circumstances that preclude us from determining that a
18 person should be put to death then I think that I could
19 consider that. I think that I can also consider the need
20 to sentence someone to death if they are not those
21 mitigating circumstances.

22 Q You told the Judge, you said I believe I am a third.

23 A Yes.

24 Q If a third wasn't an option, are you a one or are you
25 a two?

1 MR. GRAHAM: Objection, Your Honor. That is not a
2 proper question.

3 THE COURT: Rephrase that question.

4 Q Well, let me ask it this way. Say I waive a magic
5 wand and you have become Governor of South Carolina for a
6 day and they put two Bills on your desk. One Bill has the
7 death penalty and the other Bill gets rid of the death
8 penalty. Which one would you sign?

9 A I think in that case I would need to lean towards the
10 life sentence so that not too late to perhaps represent
11 some information and perhaps come to a different
12 conclusion.

13 Q Would you agree that the death penalty is kind of the
14 penalty of last resort?

15 A I guess, yes. That is a tough question.

16 Q Some people will say it is kind of reserved for the
17 worst or the worst. Would you agree with that?

18 A Yes.

19 Q I wanted to ask you, as the Judge has told you, Tim
20 has plead not guilty by reason of insanity. And so what
21 that means is someone is saying, hey, I have done the acts
22 but because of a mental disease or defect I did not know
23 the legal or the moral wrongfulness of my actions. And
24 some people will say, you know in that situation where
25 someone said I done the action but I can't appreciate the

1 moral or legal wrongfulness of my action. You know, that
2 is just a copout, that is an excuse and I just can't go
3 with that. My question is, is that you?

4 A I don't think so.

5 Q So that is something that if evidence is presented to
6 you you could meaningfully consider that before making
7 your decision?

8 A Yes.

9 Q Let me ask you a little bit, kind of switch it up a
10 little bit and let me kind of put you in the jury box.
11 And I want to talk to you about your feelings of
12 punishment of a guilty murderer of multiple children. So
13 let's make sure we are talking about the same thing. When
14 I am talking about this guilty murderer, I am talking
15 about someone who knew the difference between right or
16 wrong, you heard any evidence of that. You determined
17 that the person knew the difference between right and
18 wrong, that there is no type of defense. So it is not an
19 ID, it is not an accident, it is not self-defense or
20 anything like that. I mean the person intentionally
21 killed multiple innocent children. Are you with me there?

22 A Yes.

23 Q And my question is to you, is after, without hearing
24 anything else what is your feelings on the death penalty
25 as the appropriate punishment for that guilty murderer of