

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY RAY JONES, JR.,

APPELLANT.

APPELLATE CASE NO. 2019-001008

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INDEX**VOLUME I**

INDEX	i
TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	1
MOTION FOR FORMAL ARRAIGNMENT IN FRONT OF JURY	81
MOTION TO INSTRUCT JURORS ON NOT GUILTY BY REASON OF INSANITY PRIOR TO INDIVIDUAL VOIR DIRE.....	105
COURT’S RULING DENYING MOTION FOR FORMAL ARRAIGNMENT IN FRONT OF JURY AND DENYING MOTION TO INSTRUCT JURORS ON NOT GUILTY BY REASON OF INSANITY PRIOR TO INDIVIDUAL VOIR DIRE.....	113
MOTION FOR A CONTINUANCE, CHANGE OF VENUE, AND TO ESTABLISH PENALTY FOR VIOLATION OF GAG ORDER	115
COURT DEFERS RULING	115
DEFENDANT’S PLEA OF NOT GUILTY BY REASON OF INSANITY	121
VOIR DIRE	127
MOTION AND MEMORANDUM SUBMITTED REGARDING EMOTIONAL NATURE OF GRUESOME PHOTOGRAPHS	156
COURT DEFERS RULING	157
DISCUSSION OF JUROR FORM.....	159
DISCUSSION OF GAG ORDER VIOLATIONS INVOLVING AMBER KYZER.....	169
COURT’S RULING NOT TO ISSUE SANCTIONS WITH LEAVE TO REVISIT	178
MOTION FOR A CONTINUANCE TO REVIEW VIDEO FOOTAGE	179
COURT’S RULING DENYING MOTION	180
MOTION TO PROHIBIT “MAGIC QUESTION” REHABILITATION IN LIEU OF A CHALLENGE.....	183

MOTION TO RESTRICT REHABILITATION OF BIASED JURORS	184
COURT’S RULING ON BOTH MOTIONS DETAILING VOIR DIRE PROCESS.....	186
RENEWED MOTION TO DEFER DEATH PENALTY VOIR DIRE UNTIL PENALTY PHASE IF NECESSARY	187
COURT’S RULING DENYING MOTION	188
RENEWED MOTION TO ALLOW JURORS WITH RELIGIOUS OBJECTION TO DEATH PENALTY.....	188
COURT’S RULING DENYING MOTION	188
RENEWED MOTION TO STRIKE JURORS AS THEY ARE QUALIFIED	188
COURT’S RULING DENYING MOTION	189
RENEWED AMENDED MOTION TO INSTRUCT JURORS ON NOT GUILTY BY REASON OF INSANITY PRIOR TO INDIVIDUAL VOIR DIRE.....	194
COURT DEFERS RULING	202
RENEWED MOTION TO INFORM JURY OF THE CONSEQUENCES OF A NOT GUILTY BY REASON OF INSANITY VERDICT	210
COURT’S RULING DENYING RENEWED MOTION.....	227
MOTION TO EXCLUDE EVIDENCE BASED ON LATE DISCLOSURE AND/OR TO GRANT A CONTINUANCE.....	229
COURT’S RULING DENYING MOTION WITH LEAVE TO REVISIT	231

April 30, 2019

QUALIFYING OF JURORS INDIVIDUALLY

ROBERT CODY (JUROR #97)	
Examination by the Court	263
Direct Examination by Mr. Young	282
Juror Disqualified by the Court.....	283

KENNETH HALL (JUROR #174)	
Examination by the Court	285
Direct Examination by Mr. Young	296
Cross-examination by Mr. Hubbard	352
Re-direct Examination by Mr. Young	359
Juror Qualified by the Court over Defense Objection	368

May 1, 2019

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

PAUL LONG (JUROR #256)	
Examination by the Court	370
Juror Disqualified by the Court.....	383
GARRETT JOHNSON (JUROR #221)	
Examination by the Court	383
Direct Examination by Mr. McGuire.....	396
Cross-examination by Mr. Hubbard	431
Juror Qualified by the Court over Defense Objection	440

RENEWED MOTION FOR A CHANGE OF VENUE	447

COURT’S RULING DENYING MOTION	448

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

THOMAS LANGDALE (JUROR #240)	
Examination by the Court	448
Juror Disqualified by the Court.....	458

JACOB WHITTEN (JUROR #473)	
Examination by the Court	459
Direct Examination by Mr. Young	476
Cross-examination by Mr. Hubbard	490
Re-direct Examination by Mr. Young	493
Juror Qualified by the Court	494

SARAH FUCCI (JUROR #150)	
Examination by the Court	497
Juror Disqualified by the Court.....	500

VOLUME II

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	501

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

JAMES PRESCOTT (JUROR #339)

Examination by the Court	501
Direct Examination by Mr. McGuire.....	521
Cross-examination by Ms. Mayes.....	533
Juror Qualified by the Court	535

MARTHA EDWARDS (JUROR #135)

Examination by the Court	549
Juror Disqualified by the Court.....	562

KANDY THIVIERGE (JUROR #432)

Examination by the Court	563
Juror Disqualified by the Court.....	574

ARTHUR CHAVIS (JUROR #91)

Examination by the Court	575
Direct Examination by Mr. Young	592
Cross-examination by Mr. Graham.....	602
Juror Qualified by the Court	604

SARA RUSSO (JUROR #368)

Examination by the Court	605
Juror Disqualified by the Court.....	617

May 2, 2019

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

KRISTIANA MCGILL (JUROR #24)

Examination by the Court	618
Direct Examination by Mr. Young	636
Cross-examination by Mr. Graham.....	653
Juror Disqualified by the Court.....	658

RENEWED MOTION TO INFORM JURY OF THE CONSEQUENCES
OF A NOT GUILTY BY REASON OF INSANITY VERDICT

663

COURT'S RULING DENYING MOTION	664

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

PAUL JENNINGS (JUROR #219)

Examination by the Court	675
Direct Examination by Mr. McGuire.....	689
Cross-examination by Mr. Hubbard	693
Juror Qualified by the Court	698

TAMIKA SUMMERS (JUROR #421)

Examination by the Court	708
Juror Disqualified by the Court.....	717

KEITH SHIREY (JUROR #393)

Examination by the Court	717
Juror Disqualified by the Court.....	719

RENEWED MOTION FOR A CHANGE OF VENUE	723

COURT'S RULING DENYING MOTION	723

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

PHILLIP SMITH (JUROR #405)

Examination by the Court	731
Juror Disqualified by the Court.....	733

CONRAD GORE (JUROR #166)

Examination by the Court	733
Direct Examination by Mr. Secor	742
Cross-examination by Ms. Mayes.....	753
Juror Qualified by the Court	754

DANIEL HALL (JUROR #172)

Examination by the Court	760
Juror Disqualified by the Court.....	761

LAURA NIELSON (JUROR #312)

Examination by the Court	762
Juror Disqualified by the Court.....	764

KELLY STONE (JUROR #416)

Examination by the Court	766
Juror Disqualified by the Court.....	781

SARAH MCNEAL (JUROR #283)	
Examination by the Court	781
Juror Disqualified by the Court.....	785
TIFFANY KENT (JUROR #231)	
Examination by the Court	785
Direct Examination by Mr. Young	795
Cross-examination by Mr. Graham.....	805
Juror Qualified by the Court	808
JESSICA MILLER (JUROR #283)	
Examination by the Court	809
Direct Examination by Mr. McGuire.....	818
Cross-examination by Ms. Mayes.....	826
Juror Qualified by the Court	828

May 3, 2019

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

AMY GIRARDEAU (JUROR #162)	
Examination by the Court	854
Direct Examination by Mr. Young	862
Cross-examination by Ms. Mayes.....	871
Juror Qualified by the Court over Defense Objection	875
DAVID MURPHY (JUROR #302)	
Examination by the Court	876
Direct Examination by Mr. McGuire.....	885
Cross-examination by Mr. Graham.....	894
Juror Qualified by the Court over Defense Objection	907
NATHANAEL BROWN (JUROR #59)	
Examination by the Court	909
Juror Disqualified by the Court.....	913
DAVID CONNELLY (JUROR #101)	
Examination by the Court	914
Juror Disqualified by the Court.....	916
HOPE DERRICK (JUROR #125)	
Examination by the Court	916
Juror Disqualified by the Court.....	918

DESIREE JORDAN (JUROR #226)	
Examination by the Court	919
Direct Examination by Mr. Secor	928
Cross-examination by Mr. Hubbard	935
Juror Qualified by the Court	939
JEFFREY GRIFFITH (JUROR #169)	
Examination by the Court	941
Juror Disqualified by the Court.....	946
SCOTT SPIGENER (JUROR #411)	
Examination by the Court	952
Direct Examination by Mr. Secor	962
Cross-examination by Ms. Mayes.....	975
Juror Qualified by the Court	976
TONYA HARMON (JUROR #179)	
Examination by the Court	977
Direct Examination by Mr. McGuire.....	985
Cross-examination by Mr. Hubbard	992
Juror Qualified by the Court	995
ANDREW LEWIS (JUROR #247)	
Examination by the Court	997

VOLUME III

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	1001

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

ANDREW LEWIS (JUROR #247) (CONTINUED)	
Direct Examination by Mr. Secor	1005
Cross-examination by Mr. Graham.....	1018
Juror Qualified by the Court	1027
JOE MEDLOCK (JUROR #286)	
Examination by the Court	1028
Court Disqualified by the Court.....	1035
CARMEN LUCAS (JUROR #260)	
Examination by the Court	1036
Juror Disqualified by the Court.....	1038

FRANKLIN NELSON (JUROR #306)	
Examination by the Court	1038
Juror Disqualified by the Court.....	1041
JEREMY MASON (JUROR #272)	
Examination by the Court	1041
Direct Examination by Mr. Young	1049
Cross-examination by Ms. Mayes.....	1056
Juror Qualified by the Court	1059

May 6, 2019

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

KELLY TOMLINSON (JUROR #438)	
Examination by the Court	1065
Juror Disqualified by the Court.....	1070
DINAH WASHINGTON (JUROR #457)	
Examination by the Court	1070
Direct Examination by Mr. Young	1079
Cross-examination by Mr. Hubbard	1086
Juror Qualified by the Court	1094
PHILIP TURNER (JUROR #444)	
Examination by the Court	1101
Direct Examination by Mr. Secor	1110
Cross-examination by Mr. Graham.....	1118
Juror Qualified by the Court	1120
ANH PHAM (JUROR #329)	
Examination by the Court	1121
Direct Examination by Mr. Young	1130
Cross-examination by Ms. Mayes.....	1140
Juror Qualified by the Court	1142
CHRISTOPHER WILDE (JUROR #476)	
Examination by the Court	1143
Juror Disqualified by the Court.....	1146
GEOFFREY SHACKLEY (JUROR #383)	
Examination by the Court	1146
Juror Disqualified by the Court.....	1148

RYAN HATCHER (JUROR #183)	
Examination by the Court	1152
Juror Disqualified by the Court.....	1154
CAROLYN MAYERS (JUROR #275)	
Examination by the Court	1155
Juror Disqualified by the Court.....	1159
AVERY RENWICK (JUROR #348)	
Examination by the Court	1164
KRISTIN ASHBURN (JUROR #17)	
Examination by the Court	1168
Juror Disqualified by the Court.....	1179
AVERY RENWICK (JUROR #348) (CONTINUED)	
Re-examination by the Court	1179
Juror Disqualified by the Court.....	1181
TRACY WEHR (JUROR #464)	
Examination by the Court	1182
Direct Examination by Mr. Secor	1189
Cross-examination by Ms. Mayes.....	1197
Re-direct Examination by Mr. Secor	1200
Juror Qualified by the Court	1201
ELIZABETH DURHAM (JUROR #129)	
Examination by the Court	1202
Juror Disqualified by the Court.....	1204
LAWRYN HENDERSON (JUROR #186)	
Examination by the Court	1205
Juror Disqualified by the Court.....	1209
PETER KLEEMOFF (JUROR #237)	
Examination by the Court	1210
Juror Disqualified by the Court.....	1212
TERRIE HANLEY (JUROR #177)	
Examination by the Court	1212
Direct Examination by Mr. Madsen.....	1220
Cross-examination by Ms. Mayes.....	1231
Juror Qualified by the Court	1233

RACHNA PRASAD (JUROR #338)

Examination by the Court	1235
Direct Examination by Mr. McGuire.....	1244

RENEWED MOTION TO INFORM JURY OF THE CONSEQUENCES OF A NOT GUILTY BY REASON OF INSANITY VERDICT	1270

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

RACHNA PRASAD (JUROR #338) CONTINUED

Re-examination by the Court	1274
Juror Disqualified by the Court over Defense Objection.....	1274

SHARON LINDLER (JUROR #249)

Examination by the Court	1280
Direct Examination by Mr. Secor	1288
Cross-examination by Ms. Mayes.....	1298
Juror Qualified by the Court	1302

JEFFREY LONG (JUROR #254)

Examination by the Court	1309
Direct Examination by Mr. Young	1317
Cross-examination by Mr. Hubbard	1329
Re-direct Examination by Mr. Young	1331
Juror Qualified by the Court over Defense Objection	1334

EMILY ATKINS (JUROR #19)

Examination by the Court	1336
Direct Examination by Mr. McGuire.....	1346
Cross-examination by Mr. Hubbard	1348
Re-direct Examination by Mr. McGuire.....	1350
Juror Disqualified by the Court over Defense Objection.....	1357

TOSHIA ADDISON (JUROR #241)

Examination by the Court	1359
Direct Examination by Mr. Madsen.....	1366
Cross-examination by Mr. Graham.....	1379
Juror Qualified by the Court	1380

EDGARDO ALVIRA (JUROR #10)

Examination by the Court	1382
Direct Examination by Mr. Secor	1398
Direct Examination by Mr. Hubbard	1402
Cross-Examination by Mr. Secor.....	1408
Re-direct Examination by Mr. Hubbard	1412
Juror Qualified by the Court over State's Objection	1417

JOHNNY ROWELL (JUROR #363)	
Examination by the Court	1417
Juror Disqualified by the Court.....	1419
GAIL MASSARO (JUROR #273)	
Examination by the Court	1419
Juror Disqualified by the Court.....	1423
ANTONIO WRIGHT (JUROR #496)	
Examination by the Court	1423
Juror Disqualified by the Court.....	1426

May 7, 2019

MOTION FOR STATE TO EXAMINE JURORS FIRST ON NEXT PANEL	1433
COURT’S RULING GRANTING MOTION	1434
QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)	

SYLVIA CANNON (JUROR #74)	
Examination by the Court	1434
Juror Disqualified by the Court.....	1438
STACEY FOSTER (JUROR #146)	
Examination by the Court	1439
Direct Examination by Mr. Hubbard	1451
Cross-examination by Mr. Young.....	1464
Juror Qualified by the Court	1477
LASHAREE MELVIN-JONES (JUROR #287)	
Examination by the Court	1479
Juror Disqualified by the Court.....	1481
JUDY NIXON (JUROR #314)	
Examination by the Court	1482
Direct Examination by Mr. Hubbard	1489
Cross-examination by Mr. Secor	1494

VOLUME IV

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	1501

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

JUDY NIXON (JUROR #314) (CONTINUED)

Juror Qualified by the Court	1501

TONI CLARK (JUROR #96)

Examination by the Court	1503
Direct Examination by Ms. Mayes	1512
Cross-examination by Mr. Madsen	1518
Juror Qualified by the Court	1523

NATHAN CHAPMAN (JUROR #89)

Examination by the Court	1524
Direct Examination by Mr. Graham	1534
Cross-examination by Mr. McGuire	1539
Re-direct Examination by Mr. Graham	1550
Juror Disqualified by the Court	1555

DORIS TAYLOR (JUROR #426)

Examination by the Court	1565
Juror Disqualified by the Court	1567

ZACHARY GANTT (JUROR #156)

Examination by the Court	1567
Direct Examination by Mr. Hubbard	1576
Cross-examination by Mr. Young	1581
Re-direct Examination by Mr. Hubbard	1590
Juror Qualified by the Court over Defense Objection	1595

BARBARA HOWELL-STEVENSON (JUROR #199)

Examination by the Court	1602
Direct Examination by Mr. Young	1612
Juror Disqualified by the Court	1621

RICHARD GENTLE (JUROR #159)

Examination by the Court	1621
Direct Examination by Mr. Secor	1628
Cross-examination by Ms. Mayes	1636
Re-direct Examination by Mr. Secor	1640
Re-cross Examination by Ms. Mayes	1642
Juror Qualified by the Court over Defense Objection	1646

TONYA SASSER (JUROR #372)

Examination by the Court	1647
Juror Disqualified by the Court	1649

TODD BUEHRIG (JUROR #62)	
Examination by the Court	1649
Direct Examination by Mr. Madsen.....	1659
Cross-examination by Mr. Graham.....	1669
Juror Qualified by the Court over Defense Objection	1674
AMY WRIGHT (JUROR #495)	
Examination by the Court	1675
Direct Examination by Mr. McGuire.....	1682
Cross-examination by Ms. Mayes.....	1689
Juror Qualified by the Court	1694
ROBIN EHRLICH (JUROR #136)	
Examination by the Court	1695
Direct Examination by Mr. Young	1705
Cross-examination by Mr. Graham.....	1712
Juror Qualified by the Court	1715
LADONNA LEE (JUROR #244)	
Examination by the Court	1718
Direct Examination by Mr. Madsen.....	1729
Cross-examination by Mr. Graham.....	1741
Juror Qualified by the Court	1744
ELIZABETH BROWN (JUROR #56)	
Examination by the Court	1749
Direct Examination by Ms. Kuchar	1757
Cross Examination by Ms. Mayes	1765
Juror Qualified by the Court	1766
LAURIE LONG (JUROR #255)	
Examination by the Court	1773
Juror Disqualified by the Court.....	1777
DEBORA CARTER (JUROR #77)	
Examination by the Court	1777
Juror Disqualified by the Court.....	1780
PATRICIA TEAL (JUROR #430)	
Examination by the Court	1780
Juror Disqualified by the Court.....	1783
PATRICIA FOWLER (JUROR #147)	
Examination by the Court	1784
Juror Disqualified by the Court.....	1788

TAMEKA MERRITT (JUROR #288)	
Examination by the Court	1788
Juror Disqualified by the Court.....	1790

ANDREW KIRKWOOD (JUROR #236)	
Examination by the Court	1790
Direct Examination by Mr. Young	1802
Juror Disqualified by the Court.....	1807

May 8, 2019

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

JEREMY DAVIS (JUROR #117)	
Examination by the Court	1811
Juror Disqualified by the Court.....	1814

SHANNA NELSON (JUROR #308)	
Examination by the Court	1814
Direct Examination by Mr. Young	1826
Cross-examination by Ms. Mayes.....	1840
Re-direct Examination by Mr. Young	1845
Juror Qualified by the Court over Defense Objection	1848

AMY SIMPSON (JUROR #396)	
Examination by the Court	1853
Direct Examination by Mr. McGuire.....	1863
Juror Disqualified by the Court.....	1882

JONATHAN JACKSON (JUROR #210)	
Examination by the Court	1885
Juror Disqualified by the Court.....	1890

SCOTT JOHNSON (JUROR #222)	
Examination by the Court	1890
Direct Examination by Mr. Madsen.....	1898
Cross-examination by Mr. Graham.....	1906
Juror Qualified by the Court	1908

KAREN PEREZ (JUROR #326)	
Examination by the Court	1909

RENEWED MOTION FOR A CHANGE OF VENUE	1919

COURT'S RULING DENYING MOTION	1920

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

KAREN PEREZ (JUROR #326) (CONTINUED)

Direct Examination by Mr. Young	1921
Juror Disqualified by the Court.....	1927

JASON SMITH (JUROR #402)

Examination by the Court	1928
Direct Examination by Mr. Young	1938
Cross-examination by Ms. Mayes.....	1948
Juror Qualified by the Court	1949

LASHONDA ROBERTS (JUROR #355)

Examination by the Court	1951
Juror Disqualified by the Court.....	1954

KAYLA BURGESS (JUROR #65)

Examination by the Court	1955
Juror Disqualified by the Court.....	1957

DONNIE BLACKMON (JUROR #39)

Examination by the Court	1962
Direct Examination by Mr. McGuire.....	1971
Cross-examination by Mr. Hubbard	1983
Juror Qualified by the Court	1985

DAWN APPLGATE (JUROR #14)

Examination by the Court	1986
Direct Examination by Mr. Madsen.....	1997

VOLUME V

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	2001

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

DAWN APPLGATE (JUROR #14) (CONTINUED)

Cross-examination by Mr. Graham.....	2006
Juror Qualified by the Court	2010

ROGER SANDY (JUROR #370)

Examination by the Court	2012
Direct Examination by Mr. Young	2021
Cross-examination by Ms. Mayes.....	2029
Juror Qualified by the Court over Defense Objection	2033

REBA WILLIAMS (JUROR #41)	
Examination by the Court	2035
Direct Examination by Mr. McGuire.....	2044
Cross-examination by Mr. Hubbard	2051
Juror Qualified by the Court	2053
AMY BOOZER (JUROR #44)	
Examination by the Court	2055
Juror Disqualified by the Court.....	2057
TINA PENN (JUROR #325)	
Examination by the Court	2057
Juror Disqualified by the Court.....	2059
ROBERT TATE (#425)	
Examination by the Court	2059
Juror Disqualified by the Court.....	2061
JOSEPH STRACZEK (JUROR #417)	
Examination by the Court	2062
Juror Disqualified by the Court.....	2065
TRAVIS ROSS (JUROR #361)	
Examination by the Court	2070
Juror Disqualified by the Court.....	2073
WILLIAM CUNNINGHAM (JUROR #109)	
Examination by the Court	2074
Direct Examination by Mr. McGuire.....	2085
Cross-examination by Mr. Hubbard	2095
Juror Qualified by the Court over Defense Objection	2100
RICHARD SHINN (JUROR #392)	
Examination by the Court	2101
Juror Disqualified by the Court.....	2104
MATTHEW HASLINGER (JUROR #181)	
Examination by the Court	2104
Juror Disqualified by the Court.....	2106
BRIAN PUGH (JUROR #343)	
Examination by the Court	2107
Juror Disqualified by the Court.....	2109

WENDY ALLISON (JUROR #8)

Examination by the Court	2109
Direct Examination by Mr. Madsen.....	2120
Cross-examination by Mr. Graham.....	2128
Juror Disqualified by the Court.....	2134

LINDA SMITH (JUROR #403)

Examination by the Court	2134
Direct Examination by Mr. Young	2142
Cross-examination by Ms. Mayes.....	2151
Juror Qualified by the Court	2154

May 9, 2019

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

KIMBERLY HUGHES (JUROR #200)

Examination by the Court	2159
Juror Disqualified by the Court.....	2162

CHRISTOPHER ROCKER (JUROR #357)

Examination by the Court	2162
Direct Examination by Mr. Young	2171
Cross-examination by Mr. Hubbard	2181
Juror Disqualified by the Court.....	2186

JOSEPH NEELEY (JUROR #305)

Examination by the Court	2186
Juror Disqualified by the Court.....	2188

SUSAN WATSON (JUROR #461)

Examination by the Court	2188
Juror Disqualified by the Court.....	2191

TIMOTHY BELAY (JUROR #34)

Examination by the Court	2191
Direct Examination by Mr. Madsen.....	2199
Cross-examination by Mr. Hubbard	2208
Juror Qualified by the Court	2211

TODD BEDENBAUGH (JUROR #32)	
Examination by the Court	2212
Direct Examination by Mr. McGuire.....	2222
Cross-examination by Mr. Hubbard	2232
Re-examination by the Court	2236
Re-direct Examination by Mr. McGuire	2237
Juror Qualified by the Court	2237
ROGERS CHAMBERS (JUROR #86)	
Examination by the Court	2238
Juror Disqualified by the Court.....	2243
TERESA MACFAWN (JUROR #264)	
Examination by the Court	2247
Direct Examination by Mr. Young	2257
Cross-examination by Mr. Graham.....	2266
Juror Qualified by the Court	2269
THOMAS LEE (JUROR #245)	
Examination by the Court	2270
Direct Examination by Mr. McGuire.....	2280
Cross-examination by Ms. Mayes.....	2288
Juror Qualified by the Court over Defense Objection	2292
TAYLOR MEDLIN (JUROR #285)	
Examination by the Court	2293
Direct Examination by Mr. Madsen.....	2302
Cross-examination by Mr. Graham.....	2310
Juror Qualified by the Court over Defense Objection	2316
VICTORIA SCHNEIDER (JUROR #377)	
Examination by the Court	2319
Juror Disqualified by the Court.....	2324
ASHLEY RUSSELL (JUROR #366)	
Examination by the Court	2325
Juror Disqualified by the Court.....	2326
CANDY WHISENANT (JUROR #469)	
Examination by the Court	2326
Direct Examination by Mr. Young	2335
Cross-examination by Ms. Mayes.....	2344
Re-direct Examination by Mr. Young	2348
Juror Qualified by the Court	2349

LAGUADIA CAUGHMAN (JUROR #83)	
Examination by the Court	2351
Juror Disqualified by the Court.....	2355
 BRYAN FERREIRA (JUROR #143)	
Examination by the Court	2355
Juror Disqualified by the Court.....	2358

May 13, 2019

RENEWED MOTION FOR A CHANGE OF VENUE	2363
COURT’S RULING DENYING MOTION	2363
MOTION FOR COURT TO RULE JURORS #10 AND #226 NOT QUALIFIED	2365
MOTION FOR JUROR #444 TO BE STRUCK FOR NOT TRUTHFULLY ANSWERING JURY QUESTIONNAIRE	2370
MOTION FOR COURT TO REVIEW RULINGS ON JUROR #174, JUROR #221, JUROR #302, AND JUROR #411	2374
COURT’S RULING DISQUALIFYING JUROR #10 AND JUROR #444 ONLY	2382
JURY SELECTION.....	2384
MOTION FOR DISQUALIFICATION FOR CAUSE OF JUROR #156, ZACHARY GANTT	2389
COURT’S RULING DENYING MOTION	2389
JURY SELECTION CONTINUED	2389
DEFENSE <u>BATSON</u> CHALLENGE TO JURY SELECTION.....	2392
COURT’S RULING DENYING MOTION TO RESTRIKE THE JURY BASED UPON A <u>BATSON</u> VIOLATION	2398
RENEWED MOTION FOR A CHANGE OF VENUE	2399
COURT’S RULING DENYING MOTION	2399

MOTION TO REQUIRE SPECIFICITY OF “OTHER BAD ACTS” EVIDENCE IN RESPONSE TO STATE’S MOTION TO ADMIT SUCH EVIDENCE	2408
DISCUSSION AND OBJECTION TO A JURY INSTRUCTION ON NOT CONSIDERING THE CONSEQUENCES OF A VERDICT AND REFUSAL TO CHARGE THE STATUTE.....	2419
MOTION TO SUPPRESS DEFENDANT’S STATEMENTS TO MISSISSIPPI INVESTIGATORS	2424
COURT’S RULING DENYING MOTION	2426
MOTION TO EXCLUDE DEFENDANT’S STATEMENT TO MISSISSIPPI INVESTIGATORS REFERENCING “GARBAGE”	2427
COURT’S RULING DENYING MOTION	2430
MOTION TO EXCLUDE DEFENDANT’S STATEMENTS TO MISSISSIPPI INVESTIGATORS AS AN INADMISSABLE OPINION ON A LEGAL ISSUE.....	2430
COURT’S RULING DENYING MOTION IN PART.....	2433
MOTION TO EXCLUDE STATEMENT FROM DEFENDANT’S INTERVIEW WITH MISSISSIPPI INVESTIGATORS AS AN INADMISSABLE OPINION ON THE ULTIMATE ISSUE	2434
COURT’S RULING DENYING MOTION	2435
MOTION TO EXCLUDE STATEMENT FROM DEFENDANT’S INTERVIEW WITH MISSISSIPPI INVESTIGATORS AS AN IRRELEVANT LAY OPINION	2435
COURT’S RULING DENYING MOTION	2436
MOTION TO EXCLUDE DEFENDANT’S STATEMENT TO MISSISSIPPI INVESTIGATORS REGARDING CAR ODOR	2436
COURT’S RULING DENYING MOTION	2439
STATE’S MOTION FOR A <u>BLAIR</u> HEARING.....	2452
COURT DEFERS RULING.....	2453

May 14, 2019

**TESTIMONY VIDEOTAPED (OUT OF THE PRESENCE OF
THE JURY FOR LATER PRESENTATION TO THE JURY)**

DR. TRAVIS SNYDER

Direct Examination by Mr. Young	2454
Voir Dire Examination by Mr. Graham	2461
Continued Direct Examination by Mr. Young.....	2463
Cross-examination by Mr. Graham.....	2483

VOLUME VI

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019 2501

**TESTIMONY VIDEOTAPED (OUT OF THE PRESENCE OF
THE JURY FOR LATER PRESENTATION TO THE JURY CONTINUED)**

DR. TRAVIS SNYDER

Re-direct Examination by Mr. Young	2507

TESTIMONY (IN CAMERA)

DR. TRAVIS SNYDER

Examination by Mr. Young	2512

**TESTIMONY (FOR LATER VIEWING ON
VIDEOTAPE IN THE PRESENCE OF THE JURY)**

DR. TRAVIS SNYDER

Re-direct Examination by Mr. Young (Continued)	2514

**PROFFERED TESTIMONY REGARDING THE
SUFFICIENCY OF THE SEARCH WARRANT
AFFIDAVIT FOR CELL PHONE**

LT. JESSIE LAINTZ (IN CAMERA)

Direct Examination by Ms. Mayes	2519

ARGUMENT BY MR. SECOR 2526

ARGUMENT BY MS. MAYES.....2529

REPLY ARGUMENT BY MR. SECOR.....2529

COURT’S RULING THAT AFFIDAVIT IS SUFFICIENT AND DENYING MOTION TO SUPPRESS	2542

RENEWED MOTION TO INFORM JURY OF THE CONSEQUENCES OF A NOT GUILTY BY REASON OF INSANITY VERDICT	2547

COURT’S RULING DENYING MOTION	2547

GUILT PHASE OF TRIAL

OPENING STATEMENT BY MR. GRAHAM.....	2556

OPENING STATEMENT BY MR. MADSEN.....	2563

MOTION FOR A MISTRIAL	2573

COURT’S RULING DENYING MOTION	2573

May 15, 2019

TESTIMONY

JAN WISE

Direct Examination by Ms. Mayes	2576
Cross-examination by Mr. Madsen.....	2588
Re-direct Examination by Ms. Mayes	2590

JANET RICARD

Direct Examination by Ms. Mayes	2591
Cross-examination by Mr. Madsen.....	2603
Re-direct Examination by Ms. Mayes	2611
Re-cross Examination by Mr. Madsen.....	2615

JIM MCCONNELL

Direct Examination by Mr. Hubbard	2618
Cross-examination by Mr. Secor	2648
Re-direct Examination by Mr. Hubbard	2656

CHRISTINA EHLKE

Direct Examination by Ms. Mayes	2658
Cross-examination by Mr. Young.....	2685
Re-direct Examination by Ms. Mayes	2700
Re-cross Examination by Mr. Young	2705

LIEUTENANT JESSE LAINTZ

Direct Examination by Mr. Graham	2708
Cross-examination by Mr. Madsen	2712
Re-direct Examination by Mr. Graham	2721
Re-cross Examination by Mr. Madsen.....	2722

LINDA WATKINS

Direct Examination by Mr. Hubbard	2723

CHARLES JOHNSON

Direct Examination by Ms. Mayes	2739
Cross-examination by Mr. Madsen.....	2758
Re-direct Examination by Mr. Mayes.....	2760

JAMIE MCCLELLAN

Direct Examination by Mr. Graham	2761
Cross-examination by Mr. Young.....	2771

MARTY PATTERSON

Direct Examination by Mr. Hubbard	2778
Cross-examination by Mr. Secor	2803
Re-direct Examination by Mr. Hubbard	2827
Re-cross Examination by Mr. Secor	2831

May 16, 2019

TESTIMONY CONTINUED

STACY JONES

Direct Examination by Mr. Graham	2835
Cross-examination by Mr. Madsen.....	2888
Re-direct Examination by Mr. Graham	2914

ERIC JOHNSON

Direct Examination by Mr. Graham	2918
Cross-examination by Mr. Young.....	2956

DISCUSSION OF THE AWARENESS OF
THE WITNESS OF WHETHER THE DEFENDANT
INVOKED HIS RIGHT TO COUNSEL

2973

PROFFERED TESTIMONY

ERIC JOHNSON (IN CAMERA)

Cross-examination by Mr. Young.....	2978

COURT’S RULING ALLOWING QUESTIONS FROM THE STATE ABOUT OBTAINING A SEARCH WARRANT	2980

TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

ERIC JOHNSON (CONTINUED)	
Cross-examination by Mr. Young (Continued)	2982
Re-direct Examination by Mr. Graham	2982

May 17, 2019

TESTIMONY CONTINUED

CHARLIE CRUMPTON	
Direct Examination by Mr. Hubbard	2986

VOLUME VII

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	3001

TESTIMONY CONTINUED

CHARLIE CRUMPTON (CONTINUED)	
Cross-examination by Mr. Secor	3009

DISCUSSION OF THE DEFENSE’S POSITION THAT THE STATE HAS OPENED THE DOOR TO QUESTIONING THE VOLUNTARINESS OF THE DEFENDANT’S STATEMENTS	3010

COURT’S RULING THAT ITS PRIOR RULING CONTROLS.....	3014

PROFFERED TESTIMONY

CHARLIE CRUMPTON (IN CAMERA)	
Cross-examination by Mr. Secor	3017

TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

CHARLIE CRUMPTON (CONTINUED)	
Cross-examination by Mr. Secor (Continued)	3021
Re-direct Examination by Mr. Hubbard	3031

KEITH MCMAHAN	
Direct Examination by Mr. Graham	3032
Cross-examination by Mr. Madsen.....	3040
Re-direct Examination by Mr. Graham	3041

STIPULATION REGARDING BLOOD SAMPLE, STATE’S EXHIBIT #70.....	3041

TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

DUSTIN SMITH	
Direct Examination by Ms. Mayes	3042
Cross-examination by Mr. Madsen	3054
Re-direct Examination by Ms. Mayes	3061

KENNAN FREDERICK	
Direct Examination by Ms. Mayes	3065
Cross-examination by Mr. Madsen	3078

DENISE ATKINSON	
Direct Examination by Ms. Mayes	3079
Cross-examination by Mr. Madsen	3087

MARTY LONGSHORE	
Direct Examination by Ms. Mayes	3088

PROFFERED TESTIMONY

DAVID MACKEY (IN CAMERA)	
Direct Examination by Mr. Young	3092

TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

DAVID MACKEY	
Direct Examination by Mr. Hubbard	3094
Cross-examination by Mr. Young	3131
Re-direct Examination by Mr. Hubbard	3144

BRITTANY PICKLE	
Direct Examination by Mr. Graham	3146

MOTION <i>IN LIMINE</i> TO EXCLUDE CERTAIN CRIME SCENE PHOTOGRAPHS.....	3163

COURT DEFERS RULING ON MOTION <i>IN LIMINE</i> BECAUSE OF UNCERTAINTY OF THE PHOTOGRAPHS SOUGHT TO BE ADMITTED	3164

MOTION <i>IN LIMINE</i> TO LIMIT TESTIMONY REGARDING CHILDREN’S STATE OF UNDRESS	3164

COURT DEFERS RULING ON PHOTOGRAPHS	3166
TESTIMONY CONTINUED	
BRITTANY PICKLE (CONTINUED)	
Direct Examination by Mr. Graham (Continued)	3168
May 20, 2019	
TESTIMONY CONTINUED	
STEPHANIE STANLEY	
Direct Examination by Mr. Graham	3175
KAREN LEONHARDT	
Direct Examination by Ms. Mayes	3185
Cross-examination by Mr. Madsen	3190
PROFFERED TESTIMONY	
KAREN LEONHARDT (IN CAMERA)	
Re-direct Examination by Ms. Mayes	3194
TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)	
KAREN LEONHARDT (CONTINUED)	
Cross-examination by Mr. Madsen (Continued)	3194
Re-direct Examination by Ms. Mayes	3195
Re-cross Examination by Mr. Madsen	3196
RULE 403 DISCUSSION OF STATE'S EXHIBIT #177	3199
ARGUMENT BY MR. HUBBARD	3200
ARGUMENT BY MR. YOUNG	3201
COURT'S RULING ALLOWING EXHIBIT	3201
RULE 403 DISCUSSION OF AUTOPSY PHOTOGRAPHS	3202
COURT'S RULING PROHIBITING ADMISSION OF PHOTOGRAPHIC EVIDENCE WITH LEAVE TO REVISIT	3213

TESTIMONY CONTINUED

DR. JANICE ROSS

Direct Examination by Mr. Hubbard	3218
Cross-examination by Mr. Young.....	3245
Re-direct Examination by Mr. Hubbard	3255
Re-cross Examination by Mr. Young	3258
Re-direct Examination by Mr. Hubbard	3259

SHELBY DERRICK

Direct Examination by Mr. Graham	3263
Cross-examination by Mr. Young.....	3266

MOTION TO PROHIBIT THE STATE FROM MAKING
POTENTIAL PCR ISSUE ARGUMENTS

3275

COURT'S RULING DENYING MOTION	3276

TESTIMONY CONTINUED

SHELBY DERRICK (CONTINUED)

Cross-examination by Mr. Young (Continued)	3276

CANDY KYZER

Direct Examination by Mr. Graham	3279
Cross-examination by Mr. Madsen.....	3284

BRITT DOVE

Direct Examination by Mr. Graham	3285
Cross-examination by Mr. Madsen.....	3292

AMBER KYZER

Direct Examination by Ms. Mayes	3294

MOTION FOR A MISTRIAL	3334

COURT'S RULING DENYING MOTION	3337

RENEWED MOTION FOR A MISTRIAL	3342

COURT'S RULING DENYING MOTION	3342

TESTIMONY CONTINUED

AMBER KYZER (CONTINUED)

Direct Examination by Ms. Mayes (Continued)	3342
Cross-examination by Mr. Young	3344
Re-direct Examination by Ms. Mayes	3351

HEATHER CLARY

Direct Examination by Mr. Graham	3352

May 21, 2019TESTIMONY (OUT OF THE PRESENCE OF
THE JURY FOR LATER PRESENTATION TO THE JURY)

DR. JONATHAN LIPMAN

Direct Examination by Mr. Madsen	3363
Cross-examination by Ms. Mayes	3411
Re-direct Examination by Mr. Madsen	3446
Re-cross Examination by Ms. Mayes	3450

TESTIMONY (IN THE PRESENCE OF THE JURY)

CYNTHIA BOBE

Direct Examination by Mr. Graham	3455
Cross-examination by Mr. Young	3459

VICKIE ROBERTS

Direct Examination by Mr. Graham	3461

JACKSON V. DENNO HEARING (IN CAMERA)

TESTIMONY

TRAVIS PRESSLEY

Direct Examination by Mr. Hubbard	3464
Cross-examination by Mr. Young	3470

DEFENSE TESTIMONY

BENJAMIN BOYD

Direct Examination by Mr. Madsen	3476
Cross-examination by Mr. Hubbard	3481
Re-direct Examination by Mr. Madsen	3483

ARGUMENT BY MR. HUBBARD	3484

ARGUMENT BY MR. YOUNG.....	3484

COURT’S RULING THAT DEFENDANT’S STATEMENTS WERE VOLUNTARY	3485

TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

TRAVIS PRESSLEY	
Direct Examination by Mr. Hubbard	3489
Cross-examination by Mr. Young.....	3496

VOLUME VIII

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	3501

TESTIMONY CONTINUED

BENJAMIN BOYD	
Direct Examination by Mr. Hubbard	3516
Cross-examination by Mr. Madsen.....	3520

ARGUMENTS ABOUT REDACTIONS TO STATE’S EXHIBITS #187 AND #198.....	3529

TESTIMONY CONTINUED

MIKE PHIPPS	
Direct Examination by Mr. Graham	3536
Cross-examination by Mr. Young.....	3576
Re-direct Examination by Mr. Graham	3590

May 22, 2019

DISCUSSION OF REDACTIONS TO A “PACKET” OF CELL PHONE EXTRACTION EVIDENCE.....	3595

TESTIMONY CONTINUED

MIKE PHIPPS (CONTINUED)	
Re-direct Examination by Mr. Graham (Continued)	3600
Re-cross Examination by Mr. Young	3609

THE STATE RESTS	3612

MOTION FOR A DIRECTED VERDICT.....	3612

ALL PREVIOUS MOTIONS RENEWED	3612
RENEWED MOTION FOR A MISTRIAL	3613
RENEWED MOTION FOR A CHANGE IN VENUE	3613
COURT’S RULINGS DENYING ALL MOTIONS	3613

DEFENSE CASE

PRESENTATION OF PRE-RECORDED TESTIMONY OF DR. TRAVIS SNYDER	3619

PROFFERED TESTIMONY

ADAM CREECH (IN CAMERA) Direct Examination by Mr. Madsen.....	3623

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

ADAM CREECH Direct Examination by Mr. Madsen.....	3628
Cross-examination by Mr. Hubbard	3699

PROFFERED TESTIMONY

ADAM CREECH (IN CAMERA) Cross-examination by Mr. Hubbard	3702

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

ADAM CREECH (CONTINUED) Cross-examination by Mr. Hubbard (Continued)	3716

May 23, 2019

DEFENSE TESTIMONY CONTINUED

ADAM CREECH (CONTINUED) Cross-examination by Mr. Hubbard (Continued)	3735
Re-direct Examination by Mr. Madsen.....	3757
Re-cross Examination by Mr. Hubbard	3764

DR. BHUSHAN AGHARKAR Direct Examination by Mr. Secor	3765
Cross-examination by Ms. Mayes.....	3809

ERIC BRENTON SANDREAMELI

Direct Examination by Mr. Young	3838
Cross-examination by Mr. Hubbard	3849

MICAH SUTTON

Direct Examination by Mr. Secor	3850
Cross-examination by Mr. Hubbard	3863

DR. APRIL HAMES

Direct Examination by Mr. Young	3865
Cross-examination by Mr. Graham.....	3894
Re-direct Examination by Mr. Young	3914
Re-cross Examination by Mr. Graham	3918

STATE'S MOTION TO EXCLUDE VIDEOTAPED

TESTIMONY OF CYNTHIA TURNER	3920

May 24, 2019

COURT'S RULING GRANTING STATE'S MOTION

TO EXCLUDE VIDEOTAPED TESTIMONY OF CYNTHIA TURNER.....	3926

DEFENSE TESTIMONY CONTINUED

DR. ERIN BIGLER

Direct Examination by Mr. Young	3932
Cross-Examination by Mr. Hubbard.....	3959
Re-direct Examination by Mr. Young	3971
Re-cross Examination by Mr. Hubbard	3975

PROFFERED TESTIMONY

ROBERTA THORNSBERRY (IN CAMERA)

Direct Examination by Mr. Secor	3978

ARGUMENTS ON PROPOSED LIMITATIONS

ON DEFENSE TESTIMONY	3991

VOLUME IX**CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019**

COURT'S RULING LIMITING THE

TESTIMONY OF ROBERTA THORNSBERRY	4005

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

ROBERTA THORNSBERRY

Direct Examination by Mr. Secor	4010
Cross-examination by Mr. Graham.....	4037
Re-direct Examination by Mr. Secor	4052

MOTION TO LEAD WITNESS UNDER RULE 611(C).....	4055

COURT’S RULING GRANTING MOTION	4055

DEFENSE TESTIMONY CONTINUED

BRIAN TRAVIS

Direct Examination by Mr. Madsen.....	4055
Cross-examination by Mr. Graham.....	4067
Voir Dire Examination by Mr. Madsen	4069
Cross-examination by Mr. Graham (Continued)	4071

May 28, 2019

DEFENSE TESTIMONY CONTINUED

PRESENTATION OF PRE-RECORDED TESTIMONY

OF DR. JONATHAN LIPMAN	4101

STATE’S MOTION TO EXCLUDE TESTIMONY OF CHILDREN’S COUNSELOR, KIMBERLY FENDER	4101

COURT DEFERS RULING	4104

DEFENSE TESTIMONY CONTINUED

SHERRY HENRY

Direct Examination by Mr. Madsen.....	4105
Cross-examination by Ms. Mayes.....	4127
Re-direct Examination by Mr. Madsen.....	4141
Re-cross Examination by Ms. Mayes	4144

PROFFERED TESTIMONY

KIMBERLY FENDER (IN CAMERA)

Direct Examination by Mr. Young	4150
Cross-examination by Ms. Mayes.....	4157

COURT’S RULING GRANTING STATE’S MOTION TO EXCLUDE TESTIMONY OF CHILDREN’S COUNSELOR, KIMBERLY FENDER EXCEPT FOR THE FACT SHE WAS A COUNSELOR	4159

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

KIMBERLY FENDER	
Direct Examination by Mr. Young	4163
Cross-examination by Ms. Mayes.....	4163
BRANTLEY BROKAW	
Direct Examination by Mr. Secor	4164
Cross-examination by Mr. Graham.....	4179
BRICE MANKOWSKI	
Direct Examination by Mr. Secor	4184
Cross-examination by Ms. Mayes.....	4192
TODD SCHELLING	
Direct Examination by Mr. Secor	4199
Cross-examination by Ms. Mayes.....	4214
Re-direct Examination by Mr. Secor	4221
Re-cross Examination by Ms. Mayes	4222
JAIMEET ANEJA	
Direct Examination by Mr. Secor	4223
Cross-examination by Mr. Hubbard	4229

May 29, 2019

DEFENSE TESTIMONY CONTINUED

JODIE DURNEY	
Direct Examination by Mr. Madsen.....	4234
Cross-examination by Ms. Mayes.....	4244
RUBY DURNEY	
Direct Examination by Mr. Madsen.....	4246
Cross-examination by Mr. Graham.....	4251
CHRYSTAL BALLENTINE	
Direct Examination by Mr. Young	4254
Cross-examination by Ms. Mayes.....	4266
Re-direct Examination by Mr. Young	4277

SANDRA BLACK

Direct Examination by Mr. Young	4278
Cross-examination by Ms. Mayes.....	4281

JOY LORICK

Direct Examination by Mr. Young	4287
Cross-examination by Ms. Mayes.....	4309
Re-direct Examination by Mr. Young	4321
Re-cross Examination by Ms. Mayes	4323

CAROLYN WILLIFORD

Direct Examination by Mr. Secor	4325

PROFFERED TESTIMONY

CAROLYN WILLIFORD (IN CAMERA)

Direct Examination by Mr. Secor	4347

COURT'S RULING ALLOWING DEFENDANT'S
EXHIBIT #262, BUT DENYING ADMISSION OF

DEFENDANT'S EXHIBITS #263, #264, #265, #266.....	4352

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

CAROLYN WILLIFORD (CONTINUED)

Direct Examination by Mr. Secor (Continued).....	4353
Cross-examination by Ms. Mayes.....	4357
Re-direct Examination by Mr. Secor	4362

TIMOTHY JONES, SR.

Direct Examination by Mr. Secor	4363

PROFFERED TESTIMONY

TIMOTHY JONES, SR. (IN CAMERA)

Direct Examination by Mr. Secor	4415

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

TIMOTHY JONES, SR. (CONTINUED)

Direct Examination by Mr. Secor (Continued).....	4416
Cross-examination by Mr. Hubbard	4434

PROFFERED TESTIMONY

TIMOTHY JONES, SR. (IN CAMERA) Re-direct Examination by Mr. Secor	4477

COURT’S RULING LIMITING TESTIMONY OF TIMOTHY JONES, SR.	4488

May 30, 2019

MOTION TO ISSUE A LIMITING INSTRUCTION PRIOR TO DR. FRIERSON’S TESTIMONY	4490

VOLUME X

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	4501

COURT’S RULING GRANTING MOTION TO ISSUE LIMITING INSTRUCTION IN PART, BUT DEFERING FURTHER RULING	4505

STATE’S MOTION TO EXCLUDE TESTIMONY OF BETHANY YEISER	4505

PROFFERED TESTIMONY

BETHANY YEISER (IN CAMERA) Direct Examination by Mr. Madsen.....	4513

COURT’S RULING GRANTING STATE’S MOTION TO EXCLUDE TESTIMONY OF BETHANY YEISER.....	4538

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

DR. RICHARD FRIERSON Direct Examination by Mr. Young	4544

LIMITING INSTRUCTION BY COURT.....	4544

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

DR. RICHARD FRIERSON (CONTINUED) Direct Examination by Mr. Young (Continued)	4546

PROFFERED TESTIMONY

DR. RICHARD FRIERSON (IN CAMERA)

Direct Examination by Mr. Young 4602

MOTION FOR A MISTRIAL 4604

COURT'S RULING DENYING MOTION 4605

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

DR. RICHARD FRIERSON (CONTINUED)

Cross-examination by Mr. Graham.....4605

Re-direct Examination by Mr. Young 4705

MOTION TO RECONSIDER RULING TO

EXCLUDE THE TESTIMONY OF BETHANY YEISER.....4710

COURT'S RULING DENYING RENEWED MOTION.....4711

May 31, 2019

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

DR. BEVERLY WOOD

Direct Examination by Mr. Young 4715

Cross-examination by Ms. Mayes.....4733

Re-direct Examination by Mr. Young 4753

DR. JULIE DORNEY

Direct Examination by Mr. Young 4755

PROFFERED TESTIMONY

DR. JULIE DORNEY (IN CAMERA)

Direct Examination by Mr. Young 4765

Cross-examination by Mr. Graham.....4766

Re-direct Examination by Mr. Young 4770

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

DR. JULIE DORNEY (CONTINUED)

Direct Examination by Mr. Young (Continued) 4773

Cross-examination by Mr. Graham.....4809

Re-direct Examination by Mr. Young 4888

THE DEFENSE RESTS	4894
COLLOQUY WITH DEFENDANT ON HIS RIGHT TO TESTIFY	4896
MOTION FOR A MISTRIAL ON DRUG USAGE.....	4899
COURT’S RULING DENYING MOTION	4899
RENEWED MOTION FOR A DIRECTED VERDICT, RENEWED MOTION FOR A MISTRIAL, RENEWED MOTION FOR A CHANGE OF VENUE, RENEWED MOTION FOR SUPPRESSION OF ALL ROADBLOCK EVIDENCE, AND ALL OTHER PREVIOUS MOTIONS	4900
COURT’S RULINGS DENYING MOTIONS.....	4901

June 3, 2019

REPLY TESTIMONY

DR. KIMBERLY KRUSE

Direct Examination by Mr. Hubbard	4911
Cross-examination by Mr. Secor	4947
Re-direct Examination by Mr. Hubbard	4973
Re-cross Examination by Mr. Secor	4978
THE STATE RESTS	4980
CURATIVE INSTRUCTION ON TESTIMONY OF DR. WOOD REGARDING COCAINE	4987
RENEWED OBJECTION AND MOTION FOR A MISTRIAL	4987
COURT’S RULING DENYING MOTION	4987
CLOSING ARGUMENT BY MR. HUBBARD	4988

VOLUME XI

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	5001
CLOSING ARGUMENT BY MR. YOUNG	5021

DEFENSE REQUEST FOR INSTRUCTION ON INVOLUNTARY INTOXICATION AND ON THE CONSEQUENCES OF A VERDICT OF NOT GUILTY BY REASON OF INSANITY AND THE CONSEQUENCES OF A VERDICT OF NOT GUILTY BUT MENTALLY ILL	5051

COURT’S RULING DENYING REQUEST FOR JURY INSTRUCTION	5053

JURY CHARGE	5053

RENEWED OBJECTIONS TO REFUSAL TO GIVE REQUESTED JURY INSTRUCTIONS	5073

RENEWED DENIAL OF REQUEST TO CHARGE	5073

COLLOQUY WITH THE DEFENDANT AND COUNSEL ON THE DEFENDANT’S RIGHT TO ADDRESS THE JURY	5074

COLLOQUY REGARDING BLU-RAY PLAYER	5076

COLLOQUY WITH FOREPERSON OF THE JURY REGARDING TEXT MESSAGES AND GOOGLE SEARCHES	5078

June 4, 2019

DEFENSE MOTION FOR A MISTRIAL	5083

COURT’S RULING DENYING MISTRIAL MOTION	5085

CONTINUED COLLOQUY PERTAINING TO EXHIBITS VIEWED DURING DELIBERATION	5086

RENEWED DEFENSE MOTION FOR A MISTRIAL	5095

COURT’S RULING DENYING RENEWED MISTRIAL MOTION	5095

JURY VERDICT	5097

POLLING OF THE JURY	5097

DEFENSE MOTION FOR A NEW TRIAL AND RENEWAL OF ALL PREVIOUS MOTIONS AND OBJECTIONS	5101

COURT’S RULING DENYING MOTION FOR A NEW TRIAL AND RENEWED MOTIONS AND OBJECTIONS.....	5101

COURT EXPLAINS TWENTY-FOUR HOUR WAITING PERIOD TO JURY	5103

June 5, 2019

MOTION BY COUNSEL BEATTIE BUTLER TO ELICIT TESTIMONY AND ADDRESS THE JURY ON BEHALF OF TIM JONES, SR., PURSUANT TO THE VICTIMS’ BILL OF RIGHTS	5108

SOLICITOR’S OPPOSITION TO THE MOTION.....	5109

RESPONSE BY COUNSEL BUTLER	5111

COURT DEFERS RULING ON MOTION	5112

DEFENSE REQUEST FOR A LIMITING INSTRUCTION REGARDING THE TESTIMONY OF DR. FRIERSON AND DR. KRUSE	5112

COURT DEFERS RULING	5125

DEFENSE MOTION TO EXCLUDE POST-MORTEM PHOTOGRAPHS OF VICTIMS	5126

DISCUSSION PERTAINING TO PENALTY PHASE PHOTOGRAPHS.....	5130

COURT’S RULING ALLOWING STATE’S PENALTY PHASE PHOTOGRAPHS AND VIDEOTAPE.....	5146

RENEWED OBJECTION TO THE COURT’S RULING	5147

DEFENSE MOTION TO EXCLUDE AUTOPSY PHOTOGRAPHS	5148

COURT’S RULING ALLOWING AUTOPSY PHOTOGRAPHS	5156

June 6, 2019

PENALTY PHASE OF TRIAL

OPENING STATEMENT BY MS. MAYES.....	5162

OPENING STATEMENT BY MR. YOUNG	5167

STATE’S MOTION TO INCORPORATE GUILT PHASE EVIDENCE INTO THE PENALTY PHASE	5175

COURT’S RULING GRANTING MOTION TO INCORPORATE GUILT PHASE EVIDENCE	5175

RENEWED MOTION FOR A LIMITING INSTRUCTION REGARDING THE TESTIMONY OF DR. FRIERSON	5176

COURT’S RULING DENYING MOTION FOR A LIMITING INSTRUCTION	5176

TESTIMONY

DAVE LAWRENCE Direct Examination by Mr. Hubbard	5178

DEFENSE MOTION FOR A MISTRIAL BASED ON JUROR CRYING OVER PHOTOGRAPHS.....	5199

DISCUSSION OF JUROR’S REACTION TO PHOTOGRAPHS	5199

COURT’S RULING DENYING DEFENSE MOTION FOR A MISTRIAL	5204

TESTIMONY CONTINUED

DAVE LAWRENCE CONTINUED Direct Examination by Mr. Hubbard (Continued).....	5206
Cross-examination by Mr. Madsen.....	5207

SHELBY DERRICK Direct Examination by Mr. Graham	5213

DR. JANICE ROSS Direct Examination by Mr. Hubbard	5222

JANET RICARD Direct Examination by Ms. Mayes	5232

DEFENSE OBJECTION TO TESTIMONY (IN CAMERA).....	5246

PROFFERED TESTIMONY

JANET RICARD (IN CAMERA) Direct Examination by Ms. Mayes	5248

ARGUMENT PERTAINING TO PROFFERED TESTIMONY	5249

COURT’S RULING ALLOWING TESTIMONY	5251

TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

JANET RICARD CONTINUED

Direct Examination by Ms. Mayes (Continued)	5254

Cross-examination by Mr. Madsen	5264

JOY LORICK

Direct Examination by Ms. Mayes	5266

Cross-examination by Mr. Young	5274

JURY EXCUSED FOR THE DAY	5276

DEFENSE MOTION THAT AUTOPSY PHOTOGRAPHS BE VIEWED IN OPEN COURT	5276

STATE’S OPPOSITION TO THE DEFENSE MOTION	5277

COURT DEFERS RULING ON MOTION	5278

June 7, 2019

COURT’S RULING DENYING DEFENSE MOTION REGARDING VIEWING OF AUTOPSY PHOTOGRAPHS	5278

DEFENSE EXCEPTION TO THE COURT’S RULING REGARDING VIEWING OF AUTOPSY PHOTOGRAPHS	5279

COURT’S RULING REFUSING TO RECONSIDER DENIAL OF DEFENSE MOTION	5279

TESTIMONY CONTINUED

JACQUELYN MORAN

Direct Examination by Ms. Mayes	5281

Cross-examination by Mr. Madsen	5297

JOHNATHAN STONE

Direct Examination by Mr. Hubbard	5298

AMY SHEARER

Direct Examination by Ms. Mayes	5319

THE STATE RESTS	5336
DEFENSE MOTION FOR A DIRECTED VERDICT, RENEWED MOTION FOR A MISTRIAL, RENEWED MOTION FOR A NEW TRIAL, AND RENEWAL OF ALL PREVIOUS MOTIONS	5336
COURT’S RULINGS DENYING MOTIONS	5336
DEFENSE MOTION TO INCORPORATE DEFENSE GUILT PHASE EVIDENCE INTO PENALTY PHASE	5337
COURT’S RULING GRANTING MOTION	5337
STATE’S OBJECTION TO THE DEFENSE TESTIMONY OF SERGEANT BARRY SOWARDS	5337
DISCUSSION REGARDING OPPOSED TESTIMONY OF SERGEANT BARRY SOWARDS	5338
COURT’S RULING ALLOWING DEFENSE TESTIMONY OF SERGEANT BARRY SOWARDS	5342
COURT RECONSIDERS RULING ALLOWING DEFENSE TESTIMONY OF SERGEANT BARRY SOWARDS	5344
PROFFERED TESTIMONY	
BARRY SOWARDS (IN CAMERA) Direct Examination by Mr. Madsen	5345
COURT’S RULING EXCLUDING THE TESTIMONY OF SERGEANT BARRY SOWARDS	5346
DEFENSE TESTIMONY (IN THE PRESENCE OF THE JURY)	
KERRY BREEN Direct Examination by Mr. Young	5348
Cross-examination by Mr. Hubbard	5353
Re-direct Examination by Mr. Young	5354
SERGEANT BARRY SOWARDS Direct Examination by Mr. Madsen	5354
RENEWED DEFENSE OBJECTION TO EXCLUSION OF TESTIMONY OF SERGEANT BARRY SOWARDS	5367

June 10, 2019

DEFENSE TESTIMONY CONTINUED

DR. DONNA MADDOX

Direct Examination by Mr. Young	5373
Cross-examination by Mr. Hubbard	5398
Re-direct Examination by Mr. Young	5427

STATE’S OBJECTION TO VIDEOTAPE OF ROBERTA THORNSBERRY, THE DEFENDANT’S GRANDMOTHER AND GREAT-GRANDMOTHER TO THE FIVE VICTIMS	5430

DISCUSSION OF ROBERTA THORNSBERRY EVIDENCE	5431

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

ROBERT BRANNON

Direct Examination by Mr. Madsen.....	5441
Cross-examination by Mr. Graham.....	5444
Re-direct Examination by Mr. Madsen.....	5447

RONALD ROGERS

Direct Examination by Mr. Madsen.....	5447

ROBERTA THORNSBERRY

Direct Examination by Mr. Secor	5452

PROFFERED TESTIMONY

ROBERTA THORNSBERRY (IN CAMERA)

Direct Examination by Mr. Secor	5453

ARGUMENTS PERTAINING TO LIMITATIONS ON THE TESTIMONY OF ROBERTA THORNSBERRY	5457

COURT’S RULING SUSTAINING STATE’S OBJECTIONS TO TESTIMONY OF ROBERTA THORNSBERRY	5463

OBJECTION TO THE COURT’S RULING	5463

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

ROBERTA THORNSBERRY (CONTINUED)

Direct Examination by Mr. Secor (Continued).....	5466
Cross-examination by Mr. Graham.....	5474
Re-direct Examination by Mr. Secor	5480

DISCUSSION OF THE ADMISSABILITY OF THE TESTIMONY OF DR. ADRIANA FLORES.....	5483

PROFFERED TESTIMONY

TIMOTHY JONES, SR. (IN CAMERA)

Direct Examination by Mr. Secor	5493

VOLUME XII

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	5501

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

TIMOTHY JONES, SR.

Direct Examination by Mr. Secor	5505
Cross-examination by Mr. Hubbard	5524
Re-direct Examination by Mr. Secor	5532
Re-cross Examination by Mr. Hubbard	5533

DISCUSSION OF THE PROFFER OF DEBORAH GREY’S TESTIMONY, THE PROFFER OF DR. ADRIANA FLORES’ TESTIMONY, AND THE PROFFER OF BETHANY YEISER’S TESTIMONY	5534

REQUEST TO PLAY PROFFERED TESTIMONY OF BETHANY YEISER FOR JURY.....	5536

COURT’S RULING DENYING REQUEST TO PLAY PROFFERED TESTIMONY OF BETHANY YEISER FOR JURY	5539

PROFFERED TESTIMONY

DEBORAH GREY (IN CAMERA)

Direct Examination by Mr. Secor	5543

STATE’S OBJECTIONS AND DISCUSSION REGARDING THE TESTIMONY OF DEBORAH GREY	5594

June 11, 2019

STATE’S OBJECTION TO ALLOWING THE TESTIMONY OF DR. ADRIANA FLORES.....	5598
DISCUSSION REGARDING THE TESTIMONY OF DR. ADRIANA FLORES	5600
STATE’S MOTION TO SEAL PROFFERED TESTIMONY OF DR. ADRIANA FLORES	5603
DEFENSE OPPOSITION TO MOTION	5604
COURT’S RULING GRANTING MOTION	5604
PROFFERED TESTIMONY	
DR. ADRIANA FLORES (IN CAMERA)	
Direct Examination by Mr. Young	5606
Cross-examination by Mr. Hubbard	5630
MOTION TO SEAL ALL RELATED COURT’S EXHIBITS.....	5639
MOTION FOR A NEW TRIAL BASED ON AFTER-DISCOVERED EVIDENCE THAT DR. KRUSE’S TESTIMONY WAS UNRELIABLE DURING THE GUILT PHASE	5639
COURT’S RULING DENYING MOTION	5640
ARGUMENTS ON THE ADMISSABILITY OF DR. ADRIANA FLORES’S TESTIMONY	5640
COURT’S RULING EXCLUDING TESTIMONY OF DR. ADRIANA FLORES.....	5645
COURT’S RULING LIMITING TESTIMONY OF DEBORAH GREY	5647
DEFENSE EXCEPTION TO RULING LIMITING SOCIAL HISTORY TESTIMONY	5651
DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)	
DEBORAH GREY	
Direct Examination by Mr. Secor	5657

AMBER KYZER

Direct Examination by Mr. Young	5715
Cross-examination by Ms. Mayes.....	5719
Re-direct Examination by Mr. Young	5734
Re-cross Examination by Ms. Mayes	5735

DEBORAH GREY (CONTINUED)

Direct Examination by Mr. Secor (Continued).....	5735

June 12, 2019

DEFENSE TESTIMONY CONTINUED

DEBORAH GREY (CONTINUED)

Cross-examination by Mr. Hubbard	5789
Re-direct Examination by Mr. Secor	5807

STATE’S OBJECTION TO PUBLISHING THE VIDEOTAPED TESTIMONY OF CYNTHIA TURNER DURING THE PENALTY PHASE AND ARGUMENT REGARDING THAT TESTIMONY	5810

COURT’S RULING EXCLUDING THE TESTIMONY OF CYNTHIA TURNER	5821

DEFENSE TESTIMONY CONTINUED

JULIE JONES

Direct Examination by Mr. Secor	5824
Cross-examination by Mr. Graham.....	5843

TYLER JONES

Direct Examination by Mr. Young	5850

TRAVIS JONES

Direct Examination by Mr. Secor	5859

JACKIE RANGEL

Direct Examination by Mr. Secor	5869

THE DEFENSE RESTS	5886

COLLOQUY WITH DEFENSE COUNSEL AND DEFENDANT ON HIS RIGHT TO ADDRESS THE JURY AND TO TESTIFY	5887

DEFENSE RENEWS ALL PREVIOUS MOTIONS	5889

COURT’S RULING DENYING MOTIONS	5890
June 13, 2019	
CLOSING ARGUMENT BY MR. HUBBARD	5892
DEFENSE OBJECTION THAT STATE’S CLOSING ARGUMENT DENIED DEFENDANT’S DUE PROCESS RIGHT TO A FAIR TRIAL	5917
COURT’S RULING DENYING RELIEF.....	5918
STATE’S MOTION <i>IN LIMINE</i> TO PLACE LIMITATIONS ON THE DEFENSE CLOSING ARGUMENT	5919
DISCUSSION OF THOSE PROPOSED LIMITATIONS.....	5919
DEFENSE RENEWED MOTION THAT STATE’S USE OF AUTOPSY PHOTOGRAPHS AND INFLAMMATORY CLOSING ARGUMENT VIOLATED DEFENDANT’S DUE PROCESS RIGHT TO A FAIR TRIAL	5924
COURT’S RULING REFUSING TO RECONSIDER ITS PRIOR RULING	5926
CLOSING ARGUMENT BY MR. SECOR.....	5927
ARGUMENTS PERTAINING TO THE JURY INSTRUCTIONS (IN CAMERA).....	5940
JURY CHARGE	5947
EXCEPTIONS TO JURY INSTRUCTION	5962
NOTE FROM THE JURY	5964
SENTENCING VERDICT	5965
POLLING OF THE JURY.....	5966
MOTION TO SET ASIDE VERDICT, <u>INTER ALIA</u> , AS BEING THE RESULT OF PASSION AND BASED ON UNCONSTITUTIONAL LIMITATIONS ON MITIGATING EVIDENCE	5969
ALL PREVIOUS MOTIONS RENEWED	5969

REQUEST FOR INDIVIDUAL RULINGS ON EACH GROUND FOR A NEW TRIAL	5970
COURT’S RULING DENYING MOTION FOR A NEW TRIAL.....	5970
COURT’S RULING DENYING ALL RENEWED PREVIOUS MOTIONS	5971
COURT SENTENCES DEFENDANT TO DEATH	5971
TRANSCRIPT OF PRETRIAL HEARING HELD DECEMBER 13, 2017.....	5976
<u>SCHMERBER</u> MOTION AND MOTION FOR COLLECTION OF SUSPECT STANDARDS	5979
TESTIMONY	
ADAM CREECH	
Direct Examination by Ms. Mayes	5982
Cross-examination by Mr. Madsen.....	5996
VOLUME XIII	
TRANSCRIPT OF PRETRIAL HEARING HELD DECEMBER 13, 2017.....	6001
TESTIMONY CONTINUED	
ADAM CREECH (CONTINUED)	
Cross-examination by Mr. Young.....	6005
Re-direct Examination by Ms. Mayes	6008
Re-cross Examination by Mr. Madsen.....	6018
GAILE HEATH	
Direct Examination by Ms. Mayes	6019
Cross-examination by Mr. Young.....	6022
Re-direct Examination by Ms. Mayes	6026
Re-cross Examination by Mr. Young	6028
ARGUMENT BY MS. MAYES.....	6029
ARGUMENT BY MR. MADSEN	6034
ARGUMENT AS TO MR. YOUNG ON HANDWRITING COMPARISONS	6041
COURT DEFERS RULING.....	6050

DEFENSE MOTION TO REVOKE ANY PRIOR CONSENT OR WAIVER OF FOURTH OR FIFTH AMENDMENT RIGHTS BY DEFENDANT	6054
COURT’S RULING GRANTING MOTION IN PART	6060
DEFENSE MOTION REASSERTING DEFENDANT’S FIFTH AND SIXTH AMENDMENT RIGHTS AND NOT CONSENTING TO ANY QUESTIONING WITHOUT A LAWYER PRESENT	6061
COURT’S RULING GRANTING MOTION	6061
DEFENSE MOTION FOR DEFENDANT TO BE PRESENT AT ALL HEARINGS	6064
COURT’S RULING GRANTING MOTION OTHER THAN FOR STATUS CONFERENCES	6064
MOTION TO QUASH INDICTMENTS, PROVIDE WITNESSES THAT HAVE ACTUAL KNOWLEDGE OF THE CASE, PROVIDE FAVORABLE INFORMATION TO THE DEFENSE, AND TO HAVE A COURT REPORTER PRESENT FOR THE GRAND JURY PROCEEDINGS	6065
COURT DEFERS RULING	6066
MOTION TO PROHIBIT THE DEFENDANT FROM BEING EXHIBITED IN JAIL CLOTHING OR WHILE SHACKLED	6067
COURT’S RULING GRANTING MOTION	6068
MOTION TO PRESERVE ALL EVIDENCE AND TO PRECLUDE ADDITIONAL TESTING DESTROYING EVIDENCE WITHOUT NOTICE AND PRIOR COURT APPROVAL	6069
COURT’S RULING TO HAVE A MOTION HEARING IF SPECIFIC EVIDENCE IS IDENTIFIED	6070
MOTION TO REQUIRE INVESTIGATIVE AGENCIES TO PRESERVE NOTES OF ALL INTERVIEWS AND INVESTIGATIVE ACTIONS	6070
COURT’S RULING FOR THE SOLICITOR TO NOTIFY APPLICABLE AGENCIES TO PRESERVE NOTES	6072
MOTION THAT ALL HEARINGS BE ON THE RECORD WITH A COURT REPORTER	6072

COURT’S RULING GRANTING MOTION	6073
MOTION FOR THE SOLICITOR TO RESPOND IN WRITING TO EACH MOTION THAT IS CONTESTED	6073
COURT’S RULING GRANTING MOTION	6074
DEFENSE MOTION TO SET HEARING DATES ON ALL PRE-TRIAL MOTIONS	6074
COURT’S RULING AGREEING TO SET A “PREDICTABLE SCHEDULE”	6074
TRANSCRIPT OF PRETRIAL HEARING HELD JANUARY 5, 2018.....	6076
MOTION FOR CONSENT ORDER PERTAINING TO SCDC RECORDS	6078
AGREEMENT TO CONSENT ORDER.....	6079
MOTION FOR AN ORDER SEALING PRISON VISITATION LOGS TO ENSURE CONFIDENTIALITY.....	6079
COURT’S RULING TO PARTIALLY SEAL PRISON VISITATION LOGS	6089
MOTION REGARDING COLLECTION OF BUCCAL SWABS AND HANDWRITING EXEMPLARS	6090
COURT’S RULING THAT DEFENSE COUNSEL CAN BE PRESENT DURING THE COLLECTION OF SAMPLES.....	6090
TRANSCRIPT OF PRETRIAL HEARING HELD MAY 25, 2018	6100
STATE’S MOTION FOR CLARIFICATION OF RULING THAT IT RESPOND TO EVERY MOTION IN WRITING.....	6104
COURT’S RULING THAT THE STATE RESPONDING IN WRITING IS OPTIONAL	6106
MOTION FOR ALL EVIDENTIARY MATTERS TO BE HEARD IN CAMERA.....	6107
COURT’S RULING GRANTING MOTION	6109

MOTION TO HAVE SOLICITOR PROVIDE WRITTEN NOTICE OF NON-STATUTORY EVIDENCE IN AGGRAVATION NO LATER THAN THIRTY DAYS AFTER DISCOVERY OF SUCH EVIDENCE.....	6109
COURT’S RULING GRANTING MOTION IN PART	6110
MOTION FOR AN ORDER REQUIRING THE PRODUCTION OF ALL MATTERS INVOLVING VICTIM IMPACT EVIDENCE AND FOR A PRE-TRIAL HEARING ON VICTIM IMPACT TRIAL PRESENTATION	6111
COURT’S RULING FOR ALL PARTIES TO COMPLY WITH DISCOVERY, <u>BRADY</u> , AND RULE 5 STANDARDS	6116
MOTION FOR AN ORDER DIRECTING THE STATE TO PROVIDE BIRTH DATES AND SOCIAL SECURITY NUMBERS OF ALL STATE’S WITNESSES	6120
COURT’S RULING THAT NON-LAW ENFORCEMENT BIRTH DATES AND SOCIAL SECURITY NUMBERS BE PROVIDED	6122
MOTION FOR DISCLOSURE OF PSYCHIATRIC HISTORY OF STATE’S WITNESSES	6123
COURT DEFERS RULING	6128
MOTION TO PREVENT THE STATE FROM SEEKING A SENTENCE OF DEATH, OR IN THE ALTERNATIVE, TO QUASH THE INDICTMENTS FOR FAILURE TO ALLEGE STATUTORY AGGRAVATING CIRCUMSTANCES THAT CONSTITUTE THE ELEMENTS OF A CAPITAL OFFENSE IN THE INDICTMENTS	6128
COURT’S RULING DENYING MOTION	6128
MOTION FOR DISCLOSURE OF ANY IMPROPER BIAS OR PREJUDICE ON THE PART OF THE SOLICITOR, COURT PERSONNEL, OR OTHER STATE ACTORS.....	6129
COURT’S RULING THAT ANY SUCH BIAS OR PREJUDICE MUST BE REVEALED	6130
MOTION FOR DISCLOSURE OF ALLEGED PRIOR WRONGS, CRIMES, OR BAD ACTS EVIDENCE THE STATE INTENDS TO INTRODUCE AT TRIAL	6130

STATE CONSENTS TO MOTION	6130
MOTION FOR DISCLOSURE OF ANY POSSIBLE BIAS ON THE PART OF THE TRIAL COURT THAT COULD BE GROUNDS FOR A MOTION FOR RECUSAL	6131
COURT’S RULING THAT NO BIAS EXISTS WHICH WOULD BE A GROUNDS FOR RECUSAL	6131
MOTION TO DECLARE THE DEATH PENALTY STATUTORY SCHEME UNCONSTITUTIONAL AS OVER BROAD AND ARBITRARY BECAUSE IT FAILS TO NARROW THE CLASS OF ELIGIBLE CANDIDATES	6131
COURT’S RULING DENYING MOTION	6132
MOTION TO PREVENT EX PARTE COMMUNICATION BETWEEN THE STATE AND THE COURT	6132
COURT’S RULING GRANTING MOTION	6133
SECOND MOTION TO DECLARE THE DEATH PENALTY STATUTE UNCONSTITUTIONAL	6133
COURT’S RULING DENYING MOTION	6134
MOTION TO DECLARE DEATH PENALTY UNCONSTITUTIONAL BASED ON LACK OF STANDARDS AND SAFEGUARDS TO PRESENT DISPARATE AND ARBITRARY TREATMENT	6134
COURT’S RULING DENYING MOTION	6138
MOTION FOR THE COURT REPORTER’S TAPES AND NOTES TO BE MADE A PART OF THE RECORD	6138
COURT’S RULING GRANTING MOTION AS FAR AS PRACTICABLE	6139
MOTION TO CHALLENGE THE PARTICULAR EXECUTION PROCEDURE	6140
COURT’S RULING DENYING MOTION AS PREMATURE	6140
MOTION FOR A <u>NEIL V. BIGGERS</u> HEARING BEFORE AN IN-COURT IDENTIFICATION	6141

COURT’S RULING GRANTING MOTION	6141
MOTION TO PREVENT LAW ENFORCEMENT, COURT OFFICIALS, AND BAILIFFS FROM HAVING IMPROPER INFLUENCE ON THE JURY.....	6142
COURT’S RULING THAT IT WILL MEET WITH BAILIFFS AND COURT PERSONNEL ON PROPER PROCEDURES.....	6142
MOTION TO DECLARE THE DEATH PENALTY STATUTORY SCHEME UNCONSTITUTIONAL IN DENYING JURY SENTENCING FOR A DEFENDANT WHO PLEADS GUILTY	6143
COURT’S RULING DENYING MOTION	6144
MOTION TO SEQUESTER WITNESSES PRIOR TO HEARINGS	6145
COURT’S RULING GRANTING MOTION	6147
MOTION FOR APPOINTMENT OF A NEUTRAL WITNESS MONITOR TO ENFORCE SEQUESTRATION ORDERS.....	6147
COURT’S RULING DENYING MOTION	6149
MOTION FOR INSTRUCTION TO VICTIMS’ FAMILY AND OTHER SPECTATORS TO REFRAIN FROM SHOWING EMOTIONS IN THE COURT ROOM	6149
COURT’S RULING THAT IT WILL MANAGE ANY PROBLEMS THAT ARISE	6149
DEFENSE MOTION THAT PETIT JURY NOT BE SEQUESTERED	6149
COURT’S DEFERS RULING	6150
MOTION TO DECLARE DEATH PENALTY STATUTORY SCHEME UNCONSTITUTIONAL AS ARBITRARY AND STANDARDLESS PURSUANT TO <u>FURMAN V. GEORGIA</u>	6150
MOTION TO PREVENT PREJUDICIAL SECURITY MEASURES	6152
COURT’S RULING AGREEING TO COORDINATE COURTROOM SECURITY AND MANAGEMENT.....	6153

MOTION FOR A DAILY TRANSCRIPT OF ALL VOIR DIRE PROCEEDINGS	6153
COURT DEFERS RULING	6155
MOTION TO PROHIBIT PROSECUTORIAL MISCONDUCT AND TO LIMIT THE PROSECUTORS' OPENING STATEMENT AND CLOSING ARGUMENT	6157
COURT'S RULING THAT THE STATE HAS BEEN PUT ON NOTICE BUT A CONTEMPORANEOUS DEFENSE OBJECTION IS REQUIRED	6157
MOTION FOR JURY TO VIEW EXECUTION PROCESS	6158
COURT'S RULING DENYING MOTION	6159
MOTION TO PROHIBIT JURY ARGUMENT ON GENERAL DETERRENCE OR TO PERMIT THE DEFENSE TO PRESENT EVIDENCE ON THE TOPIC	6159
COURT'S RULING DENYING MOTION	6161
MOTION TO EXCLUDE EVIDENCE OF PRISON CONDITIONS AND PRIVILEGES	6161
COURT DEFERS RULING	6162
MOTION TO PROHIBIT COMPARATIVE WORTH EVIDENCE AND ARGUMENT	6162
COURT'S RULING GRANTING MOTION	6162
DEFENSE NOTICE OF INTENT TO TENDER PLEA OF NOT GUILTY BY REASON OF INSANITY	6163
COURT RECOGNIZES THE GIVING OF NOTICE	6163
TRANSCRIPT OF PRETRIAL HEARING HELD DECEMBER 19, 2018	6175
ORDER FOR DR. DORNEY TO PRODUCE REPORT BY JANUARY 9, 2019	6186
DISCUSSION OF CONSENT ORDER REGARDING DOCUMENTS FROM DSS AND A PENDING CIVIL CASE	6188
COUNSEL FOR DSS OPPOSES	

DISCLOSURE OF DSS DOCUMENTS.....	6190
COURT DEFERS RULING	6203
DEFENSE REQUEST FOR COURT ORDER FOR THE DEPARTMENT OF MENTAL HEALTH TO TAPE-RECORD ANY INTERVIEWS WITH AMBER JONES	6210
COURT DEFERS RULING	6212
DEFENSE REQUEST FOR A HEARING ON THE LEGALITY OF THE MISSISSIPPI ROADBLOCK.....	6216
DEFENSE MOTION FOR INDEPENDENT TESTING OF EVIDENCE.....	6221
COURT’S RULING THAT BOTH SIDES COMPLY WITH SECURITY MEASURES DURING TESTING	6222
DISCUSSION AND ARGUMENTS ON JURY QUESTIONNAIRE	6228
COURT DEFERS RULING ON JURY QUESTIONNAIRE LEGAL ISSUES.....	6245
TRANSCRIPT OF PRETRIAL HEARING HELD JANUARY 11, 2019.....	6251
DEFENSE MOTION TO AUDIO RECORD INTERVIEW WITH AMBER JONES.....	6254
COURT’S RULING DENYING MOTION IN PART.....	6267
DISCUSSION OF JURY QUESTIONNAIRE.....	6269
COURT’S TENTATIVE RULING THAT JURY QUESTIONNAIRE WILL BE MORE GENERAL	6281
DISCUSSION OF DEFENSE EXPERT’S TESTIMONY ON UNCONSTITUTIONALITY OF THE SOUTH CAROLINA DEATH PENALTY STATUTE	6288
COURT’S RULING THAT THE DEFENSE CAN PROFFER EVIDENCE ON THE UNCONSTITUTIONALITY OF THE DEATH PENALTY	6306

PROFFERED TESTIMONY

DR. WANDA FOGLIA

Direct Examination by Mr. Young 6314

END OF PROFFERED TESTIMONY 6420

MOTION FOR DEFENDANT TO BE TRANSFERRED

TO LEXINGTON COUNTY DETENTION CENTER PENDING TRIAL 6421

COURT’S RULING GRANTING MOTION 6421

COURT’S RULING ON HOW IT WILL

PRODUCE A JURY QUESTIONNAIRE.....6426

TRANSCRIPT OF PRETRIAL HEARING HELD JANUARY 31, 2019.....6434

TESTIMONY

DR. RICHARD FRIERSON

Examination by the Court 6437

COLLOQUY REGARDING DR. FRIERSON

EVALUATING DEFENDANT.....6439

TESTIMONY CONTINUED (WITHOUT DEFENDANT PRESENT)

DR. RICHARD FRIERSON (CONTINUED)

Examination by the Court (Continued).....6441

Direct Examination by Mr. Young 6444

Re-examination by the Court.....6448

Cross-examination by Mr. Graham.....6449

Re-direct Examination by Mr. Young 6454

COLLOQUY WITH DEFENDANT REGARDING

TESTIMONY OF DR. BRAWLEY 6458

TESTIMONY CONTINUED (WITHOUT DEFENDANT PRESENT)

DR. TORA BRAWLEY

Direct Examination by Mr. Young 6459

Cross-examination by Mr. Graham.....6464

COURT’S RULING DECLINING TO

LIMIT TESTING BY DR. FRIERSON 6469

DEFENSE MOTION FOR ANY REPORT OR RESULTS FROM THE MMPI TO BE SEALED AND PROVIDED TO THE DEFENSE AND THE COURT FOR REVIEW PRIOR TO DISCLOSURE TO THE STATE	6475

COURT’S RULING ON DISCLOSURE OF TESTING RESULTS	6480

STATE’S MOTION FOR A HEARING SHOULD DEFENDANT INVOKE HIS FIFTH AMENDMENT RIGHTS	6482

COURT’S RULING GRANTING MOTION	6482

FURTHER DISCUSSION OF JURY QUESTIONNAIRE	6485

VOLUME XIV

CONTINUED - TRANSCRIPT OF PRETRIAL HEARING HELD JANUARY 31, 2019	6501

MOTION FOR PERSONAL SERVICE ON ALL RETURNED JURY QUESTIONNAIRES	6512

COURT’S AGREEMENT TO FOLLOW UP ON RETURNED NO SERVICE QUESTIONNAIRES.....	6513

MOTION TO QUASH INDICTMENT AND HAVE COURT REPORTER PRESENT DURING GRAND JURY PROCEEDINGS.....	6516

COURT’S RULING DENYING MOTION	6516

MOTION FOR VICTIM IMPACT TESTIMONY TO BE REDUCED TO WRITING FOR REVIEW BY DEFENSE	6518

COURT’S DEFERS RULING UNTIL AND UNLESS IT BECOMES NECESSARY	6518

MOTION THAT ALTERNATE JURORS NOT BE IDENTIFIED AS ALTERNATES	6519

COURT’S RULING GRANTING MOTION	6520

MOTION TO REQUIRE THE COURT TO ESTABLISH THE RACE, GENDER, AND ETHNICITY OF EVERY PROSPECTIVE JUROR FOR THE RECORD.....	6522

COURT DEFERS RULING	6522
MOTION TO DISCLOSE THE PAST AND PRESENT RELATIONSHIPS, ASSOCIATIONS, AND TIES BETWEEN THE SOLICITOR AND PROSPECTIVE JURORS AND TO DISCLOSE RECORDS ABOUT PROSPECTIVE JURORS IN THE PROSECUTION’S POSSESSION	6522
COURT’S RULING GRANTING MOTION	6523
MOTION TO PROHIBIT THE USE OF JUROR ORIENTATION VIDEOTAPES OR HANDBOOKS	6523
COURT’S RULING GRANTING MOTION	6523
MOTION TO DISQUALIFY FOR CAUSE TYPE ONE OR TYPE TWO JURORS WITHOUT “REHABILITATION”	6523
COURT DEFERS RULING UNTIL ACTUAL VOIR DIRE.....	6524
MOTION FOR COMPENSATION OF JURORS AT CURRENT WAGES	6525
COURT’S RULING DENYING MOTION	6526
MOTION FOR AN ORDER TO VIDEOTAPE VOIR DIRE PROCEEDINGS.....	6527
COURT’S RULING DENYING MOTION	6528
MOTION TO LIMIT CONVERSATIONS BETWEEN JURORS AND BAILIFFS.....	6528
COURT’S RULING GRANTING MOTION	6528
MOTION TO STRIKE JURORS AS THEY ARE QUALIFIED BY THE COURT	6529
COURT’S RULING DENYING MOTION	6530
TRANSCRIPT OF PRETRIAL HEARING HELD FEBRUARY 4, 2019.....	6542
DEFENSE MOTION FOR A CONTINUANCE	6545
MOTION FOR A BENCH TRIAL.....	6547

COLLOQUY PERTAINING TO DEFENSE MOTION.....	6547
COURT’S RULING DENYING MOTION FOR A CONTINUANCE WITH LEAVE TO RESTORE	6552
TRANSCRIPT OF PRETRIAL HEARING HELD MARCH 11-14, 19, 2019	6556
March 11, 2019	
MOTION TO SUPPRESS EVIDENCE SEIZED PURSUANT TO AN ILLEGAL ROADBLOCK.....	6564
TESTIMONY	
MOLLY MILLER	
Direct Examination by Ms. Mayes	6565
Voir Dire Examination by Mr. McGuire	6571
MOTION TO SEQUESTER WITNESSES.....	6575
COURT’S RULING GRANTING SEQUESTRATION.....	6576
TESTIMONY CONTINUED	
MOLLY MILLER (CONTINUED)	
Direct Examination by Ms. Mayes (Continued)	6578
Cross-examination by Mr. McGuire	6583
Re-direct Examination by Ms. Mayes	6618
CHARLIE CRUMPTON	
Direct Examination by Mr. Hubbard	6621
Cross-examination by Mr. McGuire	6625
Re-direct Examination by Mr. Hubbard	6640
CHARLES JOHNSON	
Direct Examination by Ms. Mayes	6642
Cross-examination by Mr. McGuire	6670
MOTION TO BAR QUESTIONS REGARDING PENDING CHARGES AGAINST STATE’S WITNESSES.....	6693
COURT’S RULING GRANTING MOTION	6698

TESTIMONY CONTINUED

ROBERT WAYNE THOMPSON

Direct Examination by Mr. Graham	6700
Cross-examination by Mr. McGuire	6714

MARTY PATTERSON

Direct Examination by Mr. Hubbard	6721
Cross-examination by Mr. McGuire	6731

ARGUMENT BY MS. MAYES.....	6735

ARGUMENT BY MR. MCGUIRE.....	6738

ARGUMENT BY MR. HUBBARD.....	6743

REPLY ARGUMENT BY MR. MCGUIRE	6745

COURT DEFERS RULING ON MOTION TO SUPPRESS EVIDENCE SEIZED PURSUANT TO AN ILLEGAL ROADBLOCK.....	6751

MOTION TO SUPPRESS USE OF DEFENDANT’S PERSONALITY TESTING	6753

COURT DEFERS RULING	6754

MOTION FOR STATE TO PROVIDE BILL OF PARTICULARS REGARDING AGGRAVATING EVIDENCE	6754

COURT DEFERS RULING	6758

March 12, 2019

COURT’S RULING DENYING MOTION TO SUPPRESS EVIDENCE SEIZED PURSUANT TO AN ILLEGAL ROADBLOCK.....	6760

<u>JACKSON V. DENNO</u> HEARING.....	6768

COURT’S RULING ADMITTING DEFENDANT’S STATEMENTS REGARDING SPICE	6769

COURT’S RULING ADMITTING DEFENDANT’S STATEMENTS REGARDING CAR ODORS	6771

TESTIMONY

JAMIE MCCLELLAN

Direct Examination by Mr. Graham	6772
Cross-examination by Mr. Young.....	6778
Re-direct Examination by Mr. Graham	6791

ARGUMENT BY MR. YOUNG.....	6796

ARGUMENT BY MR. HUBBARD.....	6796

REPLY ARGUMENT BY MR. YOUNG	6802

COURT DEFERS RULING ON ADMISSIBILITY OF DEFENDANT’S STATEMENTS TO OFFICER MCCLELLAN REGARDING CHILDREN	6803

TESTIMONY CONTINUED

MARTY PATTERSON

Direct Examination by Mr. Hubbard	6804
Cross-examination by Mr. Secor	6814
Re-direct Examination by Mr. Hubbard	6862
Re-cross Examination by Mr. Secor	6874
Re-direct Examination by Mr. Hubbard	6875

ERIC JOHNSON

Direct Examination by Mr. Graham	6880
Cross-examination by Mr. Young.....	6912
Re-direct Examination by Mr. Graham	6945

THE STATE RESTS	6947

March 13, 2019

<u>JACKSON V. DENNO</u> HEARING CONTINUED	6948

DEFENSE TESTIMONY

TIMOTHY JONES, SR. (CALLED OUT OF ORDER)

Direct Examination by Mr. Secor	6951
Cross-examination by Mr. Hubbard	6974
Re-direct Examination by Mr. Secor	6997

RENEWED MOTION TO HAVE ALL EVIDENTIARY MATTERS HEARD IN CAMERA.....	6998

COURT’S RULING RENEWING HIS GRANT OF THE MOTION	6999

VOLUME XV

CONTINUED - TRANSCRIPT OF PRETRIAL HEARING HELD MARCH 11-14, 19, 2019	7001

DEFENSE TESTIMONY CONTINUED

TIMOTHY JONES, SR. (CONTINUED) Re-direct Examination by Mr. Secor (Continued)	7005

ERIC JOHNSON (RECALLED) Direct Examination by Mr. Young	7009
Cross-examination by Mr. Graham	7013
Re-direct Examination by Mr. Young	7018

ADAM CREECH Direct Examination by Mr. Graham	7022
Cross-examination by Mr. Madsen	7072
Re-direct Examination by Mr. Graham	7116
Re-cross Examination by Mr. Madsen	7137
Re-direct Examination by Mr. Graham	7144

March 14, 2019

MOTION TO CHANGE VENUE DUE TO PRETRIAL PUBLICITY	7148

COURT DEFERS RULING ON MOTION TO CHANGE VENUE	7150

<u>JACKSON V. DENNO</u> HEARING CONTINUED	7151

REPLY TESTIMONY

ERIC JOHNSON (RECALLED) Direct Examination by Mr. Graham	7152
Cross-examination by Mr. Young	7159

DAVID MACKEY Direct Examination by Ms. Mayes	7162
Cross-examination by Mr. Young	7194
Re-direct Examination by Ms. Mayes	7225
Re-cross Examination by Mr. Young	7233

ADAM CREECH (RECALLED)

Direct Examination by Mr. Young	7237
Cross-examination by Mr. Graham.....	7240

March 19, 2019

<u>JACKSON V. DENNO</u> HEARING CONTINUED	7258

ARGUMENTS ON ADMISSIBILITY OF DEFENDANT'S STATEMENTS TO OFFICER MCCLELLAN REGARDING CHILDREN	7259

COURT'S RULING ADMITTING STATEMENTS.....	7274

ARGUMENTS ON ADMISSIBILITY OF DEFENDANT'S STATEMENT TO UNDER-SHERIFF PATTERSON REGARDING SUV CONTENTS	7275

COURT'S RULING ADMITTING STATEMENT	7283

ARGUMENTS ON ADMISSIBILITY OF DEFENDANT'S STATEMENT AFTER INVOCATION OF HIS RIGHT TO SILENCE	7287

COURT'S RULING ADMITTING STATEMENT	7300

ARGUMENTS ON ADMISSIBILITY OF DEFENDANT'S STATEMENTS FROM SEPTEMBER 7TH INTERROGATION	7301

COURT'S RULING ADMITTING STATEMENTS.....	7326

ARGUMENTS ON ADMISSIBILITY OF DEFENDANT'S STATEMENTS FROM SEPTEMBER 8TH INTERROGATION	7326

COURT'S RULING ADMITTING STATEMENTS.....	7339

ARGUMENTS ON ADMISSIBILITY OF DEFENDANT'S STATEMENT TO HIS FATHER IN THE PRESENCE OF POLICE	7340

COURT'S RULING ADMITTING STATEMENT	7345

ARGUMENTS ON ADMISSIBILITY OF DEFENDANT'S STATEMENTS FROM SEPTEMBER 9TH INTERROGATION	7347

COURT'S RULING ADMITTING STATEMENTS.....	7352

ARGUMENTS ON ADMISSIBILITY OF DEFENDANT'S STATEMENTS FOLLOWING LOCATION OF BODIES.....	7353

COURT’S RULING ADMITTING STATEMENTS.....	7355
ARGUMENTS ON ADMISSIBILITY OF DEFENDANT’S STATEMENTS FROM SEPTEMBER 11TH INTERROGATION	7357
COURT DEFERS RULING ON STATEMENTS	7361
TRANSCRIPT OF PRETRIAL HEARING HELD APRIL 11, 2019	7370
MOTION TO CHALLENGE EXECUTION PROCEDURE.....	7376
COURT DEFERS ARGUMENT UNTIL NECESSARY	7376
MOTION <i>IN LIMINE</i> TO SUPPRESS AUTOPSY AND BODY RECOVERY PHOTOGRAPHS.....	7379
COURT DEFERS RULING ON ADMISSIBILITY OF PHOTOGRAPHS	7384
MOTION TO PREVENT DEATH QUALIFICATION OF JURY	7390
COURT’S RULING DENYING MOTION	7402
MOTION TO INSTRUCT JURY ON THE MEANING OF A LIFE SENTENCE WITHOUT PAROLE	7402
COURT’S RULING GRANTING MOTION	7404
MOTION TO ENSURE MITIGATING CIRCUMSTANCES RECEIVE DUE WEIGHT AND ATTENTION FROM JURY	7405
COURT’S RULING GRANTING MOTION	7415
MOTION FOR CONSTITUTIONALLY ADEQUATE VOIR DIRE	7416
COURT’S RULING GRANTING MOTION	7422
MOTION FOR AN INSTRUCTION ON JURORS TAKING NOTES AND FOR JUROR NOTES TO BE MADE PART OF THE RECORD	7423
COURT’S RULING GRANTING MOTION IN PART AND DEFERRING IN PART	7426
MOTION TO ENSURE CHALLENGED QUESTIONS OF PERSPECTIVE JURORS COMPLY WITH A FAIR AND IMPARTIAL TRIAL	7427

COURT DEFERS RULING	7432
MOTION FOR RESTRICTION ON REHABILITATION OF JURORS DURING VOIR DIRE	7437
COURT’S RULING GRANTING MOTION	7438
MOTION TO PRECLUDE TESTIMONY REGARDING PRISON CONDITIONS	7439
STATE CONSENTS TO MOTION	7439
MOTION FOR JURY INSTRUCTION ON NON-UNANIMOUS PENALTY PHASE VERDICT	7440
COURT DEFERS RULING	7445
MOTION TO QUALIFY JURORS WITH RELIGIOUS OBJECTION TO DEATH PENALTY	7447
COURT’S RULING DENYING MOTION	7451
MOTION TO ALLOW JURORS TO SUBMIT WRITTEN QUESTIONS TO WITNESSES	7451
COURT’S RULING DENYING MOTION	7454
MOTION TO PRECLUDE STATE FROM PURSUING DEATH PENALTY DUE TO SEVERE MENTAL ILLNESS	7455
COURT’S RULING DENYING MOTION	7456
MOTION <i>IN LIMINE</i> TO BAR INTRODUCTION OF DEFENDANT’S TATTOOS	7457
STATE CONSENTS TO MOTION	7458
MOTION TO EXCLUDE TESTIMONY REGARDING POSTMORTEM RAPE KITS	7458
STATE CONSENTS TO MOTION	7458
MOTION TO EXCLUDE STATEMENTS OF MERAH JONES	7459
STATE CONSENTS TO MOTION	7459

MOTION <i>IN LIMINE</i> TO EXCLUDE TESTIMONY REGARDING CHILDREN’S STATE OF UNDRESS	7459
COURT DEFERS RULING	7460
MOTION TO PROHIBIT TESTIMONY REGARDING DEFENDANT’S INTERNET SEARCHES	7461
COURT’S RULING GRANTING MOTION UNLESS DEFENSE OPENS THE DOOR	7462
MOTION TO EXCLUDE TESTIMONY REGARDING DEFENDANT USING RACIST LANGUAGE	7462
STATE CONSENTS TO MOTION	7462
MOTION TO EXCLUDE EVIDENCE OF BUTTERFLY KNIFE	7462
STATE CONSENTS TO MOTION	7463
DISCUSSION OF VOIR DIRE PROCESS	7464

WRITTEN EXHIBITS, MOTIONS, AND DOCUMENTS

DEFENDANT’S EXHIBIT #1 (DR. TRAVIS SNYDER’S CURRICULUM VITAE)	7473
DEFENDANT’S EXHIBIT #2 (REPORT OF DR. SNYDER’S MEDICAL IMAGING STUDY)	7480
DEFENDANT’S EXHIBIT #3 (MAGNETIC RESONANCE IMAGING OF JONES’ BRAIN)	7495

VOLUME XVI

DEFENDANT’S EXHIBIT #136 (DR. ERIN D. BIGLER’S CURRICULUM VITAE)	7505
DEFENDANT’S EXHIBIT #362 (GENOGRAM OF JONES’ IMMEDIATE FAMILY)	7626
DEFENDANT’S EXHIBIT #363 (GENOGRAM OF JONES’ EXTENDED FAMILY)	7627
COURT’S EXHIBIT #63 (WITNESS LIST)	7628
COURT’S EXHIBIT #64 (THREE TYPES OF JURORS)	7634

COURT’S EXHIBIT #83 (DEFENDANT’S REQUESTED PRELIMINARY INSTRUCTIONS).....	7635
COURT’S EXHIBIT #88 (DR. BHUSHAN S. AGHARKAR’S SOURCES OF INFORMATION)	7638
COURT’S EXHIBIT #89 (REPORT ISSUED BY DR. BHUSHAN S. AGHARKAR)	7659
COURT’S EXHIBIT #94 (DR. RICHARD FRIERSON’S FORENSIC EVALUATION).....	7668
COURT’S EXHIBIT #95 (DR. RICHARD FRIERSON’S CURRICULUM VITAE).....	7720
COURT’S EXHIBIT #99 (JONES’ SOCIAL HISTORY).....	7744
COURT’S EXHIBIT #100 (DR. JULIE DORNEY’S CURRICULUM VITAE).....	7877
COURT’S EXHIBIT #102 (DR. RICHARD FRIERSON’S SOURCES OF INFORMATION FOR THE FORENSIC EVALUATION)	7884
COURT’S EXHIBIT #103 (JONES’ ADVISEMENT OF RIGHTS SENT TO DR. KIMBERLY KRUSE).....	7899
COURT’S EXHIBIT #104 (TESTING CONDUCTED BY DR. KIMBERLY KRUSE)	7901

VOLUME XVII

COURT’S EXHIBIT #106 (DEFENDANT’S REQUESTED JURY INSTRUCTIONS).....	8153
COURT’S EXHIBIT #120 (DR. DONNA MADDOX’S FORENSIC EVALUATION).....	8175
COURT’S EXHIBIT #121 (GENOGRAM OF JONES’ FAMILY).....	8180
COURT’S EXHIBIT #122 (DR. ADRIANA FLORES’ CURRICULUM VITAE).....	8181
COURT’S EXHIBIT #123 (AFFIDAVIT OF DR. ADRIANA FLORES).....	8188
COURT’S EXHIBIT #124 (CRITIQUE OF DR. KRUSE’S TESTING BY DR. FLORES)	8199

DEFENDANT’S EXHIBIT #1 (LETTER DATED 1/16/2019, OBJECTING TO PERSONALITY TESTING) (FROM THE JANUARY 31, 2019 PRETRIAL HEARING)	8258
COURT’S EXHIBIT #13 (CHARLES JOHNSON’S AFFIDAVIT REGARDING ROADBLOCK) (FROM THE MARCH 11-14, 19, 2019 PRETRIAL HEARING)	8259
EX PARTE PETITION FOR CERTIFICATE TO PRODUCE MATERIAL WITNESS, CYNTHIA TURNER, AND DOCUMENTS FROM OUT OF STATE (DATED MARCH 28, 2019).....	8261
EX PARTE CERTIFICATE REGARDING OUT OF STATE WITNESS, CYNTHIA TURNER (FILED APRIL 2, 2019)	8263
EMERGENCY PETITION FOR COURT ORDER ALLOWING VIDEOTAPED TESTIMONY OF CYNTHIA GRANADO JONES TURNER (DATED MAY 9, 2019).....	8265
ORDER THAT CYNTHIA GRANADO JONES TURNER SUBMIT TO VIDEOTAPED INTERVIEW (DATED MAY 9, 2019).....	8269
MOTION TO VOIR DIRE POTENTIAL JURORS REGARDING THE CONSEQUENCE OF A VERDICT OF NOT GUILTY BY REASON OF INSANITY AND GUILTY BUT MENTALLY ILL AND FOR JURORS TO BE INSTRUCTED AS TO THE CONSEQUENCE OF A VERDICT OF NOT GUILTY BY REASON OF INSANITY AND GUILTY BUT MENTALLY ILL (FILED APRIL 11, 2019).....	8270
SUPPLEMENT TO MOTION TO VOIR DIRE POTENTIAL JURORS REGARDING THE CONSEQUENCE OF A VERDICT OF NOT GUILTY BY REASON OF INSANITY AND GUILTY BUT MENTALLY ILL AND FOR JURORS TO BE INSTRUCTED AS TO THE CONSEQUENCE OF A VERDICT OF NOT GUILTY BY REASON OF INSANITY AND GUILTY BUT MENTALLY ILL (FILED APRIL 24, 2019).....	8284
MOTION FOR CONSTITUTIONALLY ADEQUATE VOIR DIRE (FILED APRIL 25, 2018).....	8342
MOTION TO SUPPRESS EVIDENCE AND FRUITS FROM UNLAWFUL ROADBLOCK (FILED APRIL 12, 2018).....	8348
NOTICE OF INTENT TO SEEK THE DEATH PENALTY AND ORDER (FILED DEC. 9, 2015).....	8352

ORDER ASSIGNING THE HONORABLE EUGENE C. GRIFFITH, JR. AS PRESIDING JUDGE (DATED DEC. 20, 2016)	8355
INDICTMENTS	8356
CERTIFICATE OF COUNSEL	8366

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 multiple children?

2 A Yes, that does sound appropriate to me, yes.

3 Q So you wouldn't want to hear anything else?

4 A No, I am sorry. I was assuming that other evidence
5 was presented and that based on all of that evidence we
6 were coming to the conclusion that, indeed, that person
7 did not have any, any other reason than they intended to
8 commit the crime.

9 Q Right. And I guess is what I am trying to say, as
10 the Judge told you, there is kind of two different trials.
11 There is that first part of the trial.

12 A Right.

13 Q Which is the guilt and the innocence. And like I
14 said, in that situation that I am talking to you about,
15 you and eleven other jurors have determined, you know
16 what, this person is guilty, guilty, guilty, they did it,
17 they intentionally did it, there is no excuse, there is no
18 justification or anything like that. And my question is,
19 you will get some people who will say, you know what,
20 after I have heard all of that I just don't need to hear
21 anything else. For me there are certain crimes that just
22 scream the death penalty and the killing of multiple
23 children is one of those and so I am death all the time.
24 And my question is, is that you?

25 A No.

1 Q And so you could listen to a Defendant's character or
2 background or how they grew up, those would be things that
3 would be important to you to determine the punishment?

4 A Yes.

5 Q Are there cases that you can think of in your mind
6 that you think of, you know what, for me, what I feel
7 personally, it just screams the death penalty?

8 A None that I can think of.

9 MR. GRAHAM: Objection, Your Honor.

10 THE COURT: Okay. She answer none and they have
11 asked that question several times. Okay, move onto
12 something else.

13 Q And as the Judge told you, the death penalty is never
14 required in any case in South Carolina. You understand
15 that?

16 A Yes.

17 Q Not in this case, not in any other case, not even in
18 the worst case you could imagine, it is never required.
19 You do understand that?

20 A Yes.

21 Q And the State has to prove aggravating factors to the
22 jury, not only unanimously, in other words all twelve
23 jurors have to agree but they have got to prove those
24 beyond a reasonable doubt. Do you understand that?

25 A Yes.

1 Q And that is a little different than say, mitigating
2 factors.

3 MR. GRAHAM: Objection, Your Honor, to the language,
4 mitigating circumstances.

5 MR. MADSEN: Aggravating circumstances, sorry.

6 Q You understand that aggravating circumstances have to
7 be proved beyond a reasonable doubt unanimously to all
8 twelve jurors?

9 A Yes.

10 Q While mitigation is just basically, as the Judge told
11 you, anything that would cause a Juror to want to give
12 someone the life without parole penalty. Do you
13 understand that?

14 A Yes.

15 Q And those don't have any burden of proof. Do you
16 understand that?

17 A Yes.

18 Q And so they can be different among jurors as to what
19 they find as mitigation. Does that make sense to you?

20 A Yes.

21 Q So in other words, a Juror sitting right here could
22 say, you know what, I saw this spark of humanity, I saw a
23 relationship with his father and because of that
24 relationship I want to vote for life. Do you understand
25 that?

1 A Yes.

2 Q And at the same time, the second Juror there, and say
3 you know what, I didn't see what this Juror saw but I saw
4 some mental health problems and because of that I want to
5 give that the weight of life. And you understand how they
6 can find different mitigation internally?

7 A Yes.

8 Q And then Juror number three could say, I didn't see
9 what either of those two jurors saw but for me I don't
10 know who I want to vote for life. I don't know, I can't
11 put into words but I still want to vote for life. Could
12 you respect someone who said, you know, I can't put it
13 into words, that is just what I feel?

14 A Yes.

15 Q And so you understand that each one of them had a
16 different reason and it is different and that is why there
17 is no burden of proof?

18 A Yes.

19 Q And so what we talk about, when we talk about the
20 idea of basically taking someone's life, is that is an
21 individual moral judgment. Have you ever heard that
22 before?

23 A I don't think in those words, no.

24 Q Well, the best way it has been explained to me is
25 kind of the faith that you have chosen for yourself. That

1 that is an individual moral judgment that you have made
2 for yourself. And maybe someone else has made a different
3 individual moral judgment as to what their faith is
4 appropriate for them. You would expect them to respect
5 your decision about what your faith should be?

6 A Yes.

7 Q And at the same time would you respect them on what
8 they made that determination?

9 A Yes.

10 Q And so when you get to that second half of the trial
11 each Juror themselves needs to make their own individual
12 moral judgment as to whether someone lives or dies. You
13 understand that?

14 A Yes.

15 Q And if you were back in the jury room and you saw,
16 you know, civility go out the window and people trying to
17 browbeat or bully somebody out of their individual moral
18 judgment would you say something?

19 A Yes.

20 Q And you understand the law says if civility is gone
21 you have the right to write a note to the Judge and say,
22 Judge, this has gotten out of hand, it is browbeating,
23 bullying, and it is not appropriate. Could you do that if
24 you saw that?

25 A Yes.

1 Q And you understand that once someone comes up with
2 their individual moral judgment they can't just give that
3 away to kind of go with the majority?

4 A Yes.

5 Q And you agree with that?

6 A Yes.

7 MR. MADSEN: Subject to the Court's limitation that
8 is all the questions that I have.

9 THE COURT: Mr. Graham.

10 EXAMINATION

11 By Mr. Graham:

12 Q Ms. Applegate, my name is Shawn Graham and I am one
13 of the Prosecutor's for the State in this case. Good
14 afternoon.

15 A Good afternoon.

16 Q Thank you for being here with us. You are a type
17 three Juror and you understand that there is two phases in
18 this case. There is a guilt phase where you determine
19 whether he is guilty or not guilty. You look at the
20 evidence, as a Juror unanimously. If you find beyond a
21 reasonable doubt that he is guilty only then would we move
22 into the second phase.

23 A Yes.

24 Q There is something called aggravating factors. So
25 but murder by itself does not get you eligible to have a

1 death penalty case. In this case the aggravating factors
2 are, not only is he guilty of murder, the aggravating
3 factors and you and the rest of the jurors would have to
4 look in the penalty verdict, the State has to prove beyond
5 a reasonable doubt unanimously, all twelve of you, that
6 not only is he guilty of murder but the aggravating factor
7 and in this case you have to find one or two.

8 MR. MADSEN: Judge, didn't he object to that and not
9 use the word--

10 THE COURT: -- I think you want to use factor and you
11 used circumstance.

12 MR. GRAHAM: I will try to clear that up.

13 THE COURT: Right. Be careful what the word is to
14 not confuse the Juror.

15 Q The two things that would be submitted to you, as a
16 jury member, before you even can consider punishment would
17 be the death of a child under eleven or multiple murders.
18 Okay.

19 A Yes, sir.

20 Q Only at that point, if you, as a Juror, reached a
21 unanimous decision that the State had proven beyond a
22 reasonable doubt one of those two things and murder then
23 you can start considering the punishment. Does that make
24 sense?

25 A Yes.

1 Q In the punishment is a type of Juror, you would want
2 to hear everything?

3 A Yes.

4 Q Not just the fact about the crime that he was guilty
5 but now other things good and bad about his life,
6 potentially?

7 A Yes.

8 Q So mitigation is what, the statutory mitigation that
9 the Judge read through a list of things that by law you
10 are required to consider as a reason to give life?

11 A Yes.

12 Q Anything that the Defense puts up to you also has to
13 be considered as a possible mitigation or a reason to give
14 life. Does that make sense?

15 A Yes.

16 Q So as a Juror you would have to be able to listen and
17 consider and discuss with the other jurors anything that
18 the Defense presents?

19 A Yes.

20 Q Just because they present something you understand
21 that that does not mean that you have to accept that as
22 your own reason to give life?

23 A Correct.

24 Q Even if something was presented in testimony and you
25 considered it, that you could still, if you find

1 appropriate, think that death was appropriate?

2 A Yes.

3 Q So if after all the evidence and the deliberation
4 back in the jury room, if you unanimously decide that
5 death is the appropriate verdict one thing additional is
6 different about this type of case is that you as a Juror
7 would be required to sign your name on a piece of paper
8 attesting to the fact that death was the appropriate
9 verdict. Does that make sense?

10 A Yes.

11 Q And if you and the other eleven jurors, if you were a
12 Juror and the other eleven jurors thought that that was
13 the appropriate sentence could you sign your name to that
14 document?

15 A Yes.

16 Q Thank you, Ma'am. Just one second. I don't think I
17 made something clear enough. I am not sure if I am
18 confused or not. In the second phase, if we get there
19 after the State has proved those aggravating factors to
20 you as a Juror to a reasonable doubt, you understand that
21 you will hear aggravating circumstances potentially from
22 the State, that has nothing, it may or may not have
23 anything to do with the crime. It may get worst. The
24 Defense will present mitigating evidence as a reason to
25 give life. So you will have both of those to weigh. Do

1 you understand just because mitigating evidence--

2 MR. MADSEN: I object to this, it is not a--

3 THE COURT: Rephrase your question because it was a
4 lengthy question and I have been challenging all attorneys
5 to minimize the length of their questioning.

6 A Economy of language.

7 THE COURT: Economy of language, excellent words. I
8 am instructing all the lawyers to be aware of the economy
9 of language.

10 Q Do you understand that in that second phase, even if
11 mitigating evidence is presented that you still have a
12 choice of either life or death?

13 A Yes.

14 Q And that if you thought appropriate even after
15 hearing mitigating evidence you could still vote for
16 death. You understand that?

17 A Yes.

18 Q Thank you.

19 THE COURT: Anything to be put on the record?

20 MR. MADSEN: No, sir.

21 THE COURT: All right. Ms. Applegate, you are found
22 by the Court to be a qualified Juror. What that means is
23 you are on the list of qualified jurors. You will be in
24 the group that will be selected potentially to be placed
25 on the jury, you are not on there yet. We would have to

1 go through an elimination process and that would happen
2 soon. I need you to follow the website, the same one you
3 were checking. And where it says qualified jurors please
4 check back or please report back to the courtroom at such
5 and such date and time. Can you do that?

6 JUROR: Yes, sir.

7 THE COURT: Also you are going to be under your oath
8 to not discuss the case with anyone, on your oath to not
9 let anyone discuss the case with you or ask you questions
10 about that. On your oath to not do any independent
11 research. Under your oath to not peruse any of the media
12 sites, social, public, stay away from it. I want you to
13 be influenced in your evidence on the case in the
14 courtroom, not outside the courtroom. Can you do that?

15 JUROR: Yes.

16 THE COURT: I will see you when you come back. Thank
17 you so much for your patience.

18 JUROR: Thank you.

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

21 THE COURT: We will take a short lunch break right
22 now and come back at 1:30.

23 MR. YOUNG: Yes.

24 THE COURT: See you at 1:30. Let the jury know that
25 we are going to take a thirty minute break and to be at

1 ease and to not discuss the case.

2 (Whereupon, a lunch break was taken.)

3 THE COURT: Let's bring in 370.

4 (Whereupon, Juror 370, Roger Sandy entered the
5 courtroom.)

6 EXAMINATION

7 By The Court:

8 Q Tell me your name and spell it so Ms. Holston can
9 determine if the microphone is close enough to you.

10 A My name is Roger Sandy. R-O-G-E-R, S-A-N-D-Y.

11 Q Mr. Sandy, I asked you to take an oath Monday last
12 about not talking about the case. I ask the jurors the
13 same questions, the same words. It is not special for
14 you, it is special for everybody. Have you talked about
15 the case to anybody?

16 A No, sir.

17 Q Has anybody asked you about the case since last
18 Monday?

19 A No, sir.

20 Q Other than getting around work and family, telling
21 them you got summons to jury duty, that is the only
22 discussions you have had?

23 A Yes, sir.

24 Q Now, there is information out there from the
25 publicity. There is information out there from the Court.

1 I read the indictments. The indictments say the State
2 alleges that. That is information. So you have got some
3 information, of all the information you have heard, before
4 and after coming to court and what the Court read,
5 anything. Everything you have heard, have you formed an
6 opinion as to what happened in this case?

7 A No, sir.

8 Q All right. So you understand the State has got to
9 prove the case beyond a reasonable doubt and Mr. Jones is
10 presumed innocent sitting right here right now?

11 A Yes, sir.

12 Q And will remain that way until the State proves his
13 case?

14 A Yes, sir.

15 Q Beyond a reasonable doubt. Now, I asked you to have
16 an idea of what your schedule was over the next three
17 weeks. Starting next week to about three weeks what you
18 got on your calendar that would be impacted if you were
19 selected as a Juror?

20 A Just work.

21 Q Just work. So we would interrupt that. Serving on a
22 jury is an inconvenience. Everybody understands that but
23 it is a civic duty and sometimes we are inconvenienced.
24 Okay. Now, subject matter in this case involves
25 allegations of the death of children so there will be

1 testimony and evidence, photographs, different things
2 regarding subject matter of that type. I have not seen
3 all the evidence, the lawyers have, they exchanged it. I
4 am told in descriptive words, the testimony will be tough,
5 graphic, harsh, unpleasant. That type of subject matter
6 is difficult. Understanding that subject matter will be
7 testified to, shown to you as a Juror can you receive
8 subject matter of that type fairly and impartially and
9 still render a fair verdict knowing it is going to be
10 difficult testimony?

11 A I believe so, yes sir.

12 Q Okay. Fair enough. Now I gave instructions to you
13 before lunch, a few minutes to noon, I think and then
14 y'all got to go over there and how was your lunch?

15 A It was good.

16 Q Good. So I gave you those instructions earlier about
17 the process, the procedure of the two stage Capital type
18 trial. The first stage is guilt or innocence, the second
19 stage punishment. I also gave you a list, a sheet of
20 types of jurors in cases like that and that explanation
21 kind of assumes that the State proves its case beyond a
22 reasonable doubt and proves guilt. And the jurors have
23 got to consider mitigating and aggravating factors and
24 there is a burden of proof there. Understanding that will
25 be, the position you will be put in can you identify

1 yourself as one of those three types of particular jurors?

2 A Yes, sir.

3 Q What type are you?

4 A I believe to be type three.

5 Q And you can review that sheet if you like, that is
6 why I have got it up here. I wrote this and I knew my
7 intent. How do you read that, what does that mean?

8 A What does it mean?

9 Q Yes, for you? Just simple terms, no wrong answer,
10 just your opinion and your feelings and so that is what I
11 am looking for.

12 A Feel like it means can you judge all the evidence
13 that is presented to you.

14 Q Okay. Now, have you come up with a preliminary
15 judgment already or what you think the appropriate
16 sentence would be?

17 A No, sir.

18 Q You would want to hear the good and the bad facts,
19 whatever they are you want to hear them all before you
20 decide?

21 A Yes, sir.

22 Q That is a pretty accurate description of a type
23 three. I am going back to type, I am sorry, go back to
24 the guilt or innocence phase. I will tell you this. That
25 there will be testimony in that phase because the State

1 has the burden of proving its case beyond a reasonable
2 doubt. The State goes first trying to prove the murder.
3 During that phase the Defense is offered an opportunity to
4 prove or offer testimony to defenses. They may do so,
5 they have entered one plea already of guilty by reason of
6 insanity. So I am going to read all the defenses to you
7 and tell you that I may instruct on some of them.
8 Potential defenses include identification, accident,
9 involuntary intoxication, self-defense, necessity,
10 insanity, guilty but mentally ill, defense of habitation,
11 entrapment, duress or alibi. Those are potential defenses
12 available to Defendants accused. Not all of them will be
13 testified to or presented on. I don't know what will be
14 presented. Now, understanding that the testimony may
15 support the additional charging or instructing of one of
16 those, can you accept my instructions on the law. I am
17 telling you right now the State has the burden of proof,
18 guilt beyond a reasonable doubt. The State has got to do
19 that but also instruct you on potential defenses that Mr.
20 Jones may have and you will consider and weigh testimony
21 on my instructions as to those defenses also. Can you act
22 fairly and impartially to both the State, the Defense,
23 hearing all of the evidence and make findings consistent
24 with my instructions?

25 A Yes, sir.

1 Q Can you do so being fair to the State and the
2 Defendant?

3 A Yes, sir.

4 Q Very well. Now, additionally Mr. Jones has tendered
5 a plea of not guilty by reason of insanity. By that plea
6 the Court likely will offer a verdict form to the jury
7 which will have four potential verdicts rather than the
8 two traditional ones of guilty, not guilty. Potentially
9 the verdicts can be, guilty, guilty but mentally ill, not
10 guilty by reason of insanity, not guilty all together.
11 Those four potential verdict forms, can you evaluate the
12 testimony and the evidence, consistent with my
13 instructions and also find any one of those potential
14 verdict forms consistent and in line with my jury
15 instructions?

16 A Yes, sir.

17 Q Can you find a verdict of all four, any of those four
18 and can you act fairly and impartially to both the State
19 and to the Defense?

20 A Yes, sir.

21 Q All right. If the jury finds the State has failed to
22 meet its burden of proof and finds a not guilty or not
23 guilty by reason of insanity then the case ends. If the
24 State meets its burden of proving beyond a reasonable
25 doubt the case goes to phase two. In phase two two things

1 are presented. The State presents evidence, testimony of
2 aggravating factors. I will give you five. The murder of
3 a policeman, the murder of a child, rape of murder,
4 kidnapping of murder, multiple murders. The State must
5 prove one of those beyond a reasonable doubt in order to
6 ask the jury to consider imposing the death sentence. You
7 understand?

8 A Yes, sir.

9 Q Additionally evidence is submitted by the Defense for
10 the jury to consider of mitigation or reasons to impose
11 the life sentence. I will give you some statutory
12 mitigators. Okay?

13 A Okay.

14 Q The Defendant has no significant history of prior
15 criminal history involving the use of violence against
16 another person. The murder was committed while the
17 Defendant was under the influence of mental or emotional
18 disturbance. The victim was a participant in the
19 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 capacity of the Defendant to
24 appreciate the criminality of his conduct or to conform
25 his conduct to the requirements of law was substantially

1 impaired. The age or mentality of the Defendant at the
2 time of the crime. The Defendant was provoked by the
3 victim in committing the murder. The Defendant was below
4 the age of 18. The Defendant had mental retardation at
5 the time of the crime. Those are statutory mitigators
6 that the Defense can offer testimony and evidence to
7 support. There is also non-statutory mitigators such as
8 Mr. Jones childhood, if he came from a broken home, any
9 aspect of his early life or recent life. The jury can
10 consider as a reason to give life rather than death.
11 Understanding that the Defense has no burden of proving
12 those, they just show them and a jury must consider them
13 in their deliberations. Thus I ask you, can you consider
14 my instructions that the State has the burden of proving
15 the aggravating circumstance of, to be entitled to ask for
16 a death penalty and the jury is required to consider
17 mitigating factors that they present in that stage also.
18 Can you consider both, aggravating factors and mitigating
19 factors, act fairly and impartially for the State and the
20 Defense?

21 A Yes, sir.

22 Q You understand that the death verdict is not
23 automatic. If the State proves murder and aggravating
24 circumstances, still the jury has got to make a decision,
25 one of two things, life or death, not both, not something

1 else, not in the middle, one of the two. Death penalty is
2 not automatic, it is a decision that the jury has to
3 unanimously come to. Do you have any moral, religious or
4 personal belief that you could not vote for and impose the
5 death sentence?

6 A No, sir.

7 Q Do you have any religious, personal or moral belief
8 that you could not impose a life without parole sentence?

9 A No, sir.

10 Q Presuming that the facts, you have got to evaluate
11 all the facts and circumstances consistent with my
12 instructions of all the things presented in sentencing.
13 Can you do that?

14 A Yes, sir.

15 Q Can you be fair and impartial to both the State and
16 the Defense as a Juror?

17 A Yes, sir.

18 Q Very well.

19 THE COURT: Mr. Young.

20 MR. YOUNG: Did Your Honor inquire about the witness
21 list?

22 THE COURT: I don't know that I did.

23 Q Did you look over the witness list?

24 A Yes, sir.

25 Q Did you notice anybody that you knew?

1 A I did not notice any names.

2 Q Okay. That won't be a problem for you. Thank you.

3 EXAMINATION

4 By Mr. Young:

5 Q Good evening, Mr. Sandy. My wife took the
6 opportunity to get a new cat which I am highly allergic to
7 so I am dealing with that a little bit. Now if the
8 opportunity for you and I just to have a conversation
9 about your feelings and opinions about some things that
10 might be important in the case. Okay.

11 A Okay.

12 Q Are you with me on that?

13 A Yes, sir.

14 Q If I confuse you in any way I need you to say, you
15 know what, I don't understand that, can you rephrase that
16 or clarify it. Okay?

17 A Yes, sir.

18 Q I have tendency to say, what I hear you saying and if
19 I say it wrong I need you to say, that is not me, you got
20 me wrong.

21 A Yes, sir.

22 Q Fair enough?

23 A Yes, sir.

24 Q Okay. I want to start with talking about, the Judge
25 has told you about the charges in the case and he has read

1 you the indictments about the five counts of murder
2 involved in this case. Do you recall that from last
3 Monday?

4 A Yes, sir.

5 Q And he has told you that Tim has plead not guilty by
6 reason of insanity?

7 A Yes, sir.

8 Q You understand that?

9 A Yes, sir.

10 Q In South Carolina not guilty by reason of insanity
11 means somebody says I did the killing but because of a
12 mental disease or defect I was unable to appreciate the
13 legal or moral wrongfulness of my actions. A little wordy
14 but do you understand where I am coming from with that?

15 A Yes, sir.

16 Q Some people say in a case like that involving that
17 type of killing, not guilty by reason of insanity is not a
18 verdict that I can give meaningful consideration to. Do
19 you understand that?

20 A Not exactly, I am sorry.

21 Q Sure. Fair enough. Some people say that insanity
22 stuff is just an excuse, it is letting somebody get away
23 with it and I put that with the twinkie defense. That is
24 not something that I am open to voting for. And how about
25 you, where do you come down on that?

1 A I am pretty open minded.

2 Q You understand that sometimes people are mentally
3 ill?

4 A Yes, sir.

5 Q And in South Carolina that could be a defense and it
6 was proven to your satisfaction up to a preponderance of
7 the evidence you could, in fact, see yourself voting for a
8 not guilty by reason of insanity?

9 A Yes, sir.

10 Q And you understand if you vote for that the case
11 would be over?

12 A Yes, sir.

13 Q That would be it?

14 A Yes, sir.

15 Q The jury's job is done?

16 A Yes.

17 Q That is fine with you?

18 A Yes, sir.

19 Q But if the jury doesn't find that, okay, the jury
20 finds guilty or guilty but mentally ill then we have this
21 second trial where we talk about penalty. Are you with me
22 on that?

23 A Yes, sir.

24 Q In that, at that point and time you and eleven other
25 jurors would have found the Defendant guilty, guilty,

1 beyond all reasonable doubt. Okay. Not insanity, they
2 knew what they were doing, knew the difference between
3 right and wrong, chose to kill, chose to maliciously kill
4 multiple children. Are you with me on that?

5 A Yes, sir.

6 Q And then the jury gets to make a decision based on
7 aggravating circumstances, mitigating circumstances about
8 the appropriate punishment. Right?

9 A Yes, sir.

10 Q Are you with me on where we are in the trial?

11 A Yes, sir.

12 Q Some people say based on the malicious killing of
13 multiple children alone I don't need to hear anything
14 else, that makes up my mind for me. I think death is the
15 only appropriate punishment for that type of killing. Do
16 you understand that?

17 A Yes, sir.

18 Q You know there are people like that?

19 A Yes.

20 Q Is that you?

21 A No, sir.

22 Q Can you tell me why not?

23 A It is probably because I don't have children of my
24 own. Other than that I couldn't tell you why.

25 Q Okay. For you, in your decision, about life or

1 death, do you think life in prison without the possibility
2 of parole, understand that means he will die in prison.
3 That could be a substantial enough penalty for that type
4 of killing?

5 A Yes, sir.

6 Q Okay. Mr. Stanley, tell me a little bit where you
7 are in general, your feelings about the death penalty?

8 A I guess if the crime meets the death penalty sentence
9 then I would approve it.

10 Q Now, and I am not trying to confuse you, I am just
11 trying to understand where you are coming from. Okay.
12 Are you telling me that once the crime of murder has been
13 proven, are you with me on that?

14 A Yes.

15 Q And an aggravating circumstance has been proven, are
16 you with me on that?

17 A Yes.

18 Q And then the jury has these two options. Are you
19 saying once you have the option of life or death that
20 death is the appropriate punishment for you?

21 A I believe so, yes sir.

22 Q Okay. Some people say, that stuff about background,
23 character, how he was raised, what happened to him when he
24 was a kid, that type of stuff, for me in deciding life or
25 death, that stuff is not important. What is important to

1 me is what did they do, what was their mental state at the
2 time, but that is what I need. The other background
3 stuff, the background and character stuff, that is not
4 important to me.

5 A No, I believe the background is important.

6 Q I just want to make sure, I think I got you wrong,
7 okay.

8 A I got you.

9 Q For you, let me ask you if you agree with this
10 statement. To decide whether or not to end a person's
11 life, do you agree that we should take a measure of their
12 whole life?

13 A I am sorry,--

14 Q I think it is a great question but I think I seem to
15 be the only one. Do you think, I think you have said that
16 the character and background is important to you?

17 A Yes, sir.

18 Q And those things, those are reasons that you would
19 think you could find, for you, as a reason to vote for a
20 life penalty?

21 A Yes, sir.

22 Q Okay. And you could give whatever value you thought
23 was appropriate?

24 A Yes, sir.

25 Q To you does the death penalty sort of serve a

1 purpose, like is there a reason that we have it in
2 society?

3 A I am not sure. I couldn't give you a solid answer.

4 Q Okay. If you haven't had to talk about it much that
5 is fine. You haven't had much reason to?

6 A That's right.

7 Q Fortunately enough.

8 A Yes, sir.

9 Q At the end of the day this decision about who lives
10 and who dies is what is called individual moral judgment.
11 Are you with me on that?

12 A Yes, sir.

13 Q There is not fact A, fact B, fact C and tells the
14 jury this is the appropriate punishment. Are you with me
15 on that?

16 A Yes, sir.

17 Q And that is what the Judge means when he says it is
18 not automatic. No matter how many aggravating factors or
19 circumstances you find there is none of them, they never
20 add up to equal death.

21 A Yes, sir.

22 Q It is up to each Juror to decide what value you put
23 on any mitigating circumstances they find and whatever
24 aggravating circumstances they find. Does that make
25 sense?

1 A Yes, sir.

2 Q And then they make a moral determination, I am going
3 to kill somebody or I am not going to kill somebody. Are
4 you with me on that?

5 A Yes, sir.

6 Q For me in describing individual moral judgment is
7 kind of like choosing what faith is appropriate for you.
8 You have made your own personal moral decision about what
9 faith is appropriate for yourself. Is that right?

10 A Yes, sir.

11 Q And you recognize that other people may have made a
12 different decision for themselves?

13 A Yes, sir.

14 Q And they may not agree with your decision?

15 A Yes, sir.

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

18 A Yes, sir.

19 Q And you expect them to respect your right?

20 A Yes, sir.

21 Q Your own individual moral judgment, is that right?

22 A Yes, sir.

23 Q And if you saw somebody being belittled or bullied
24 out of what they arrived at as their individual moral
25 judgment would you stop it?

1 A Yes, sir.

2 Q Because that is not fair, right?

3 A Yes, sir.

4 Q And could you send the Judge a note saying it needs
5 to stop?

6 A Yes, sir.

7 Q And at the end of the day the only oath for the
8 jurors about their own individual moral judgment is to
9 ensure that their individual moral judgment is heard in
10 court. Okay?

11 A Yes, sir.

12 Q Can you follow that oath?

13 A Yes, sir.

14 Q Thank you, Mr. Stanley.

15 MR. YOUNG: Based on the Court's limitations I don't
16 have anything further.

17 THE COURT: Ms. Mayes.

18 EXAMINATION

19 Ms. Mayes:

20 Q Good afternoon, Mr. Sandy.

21 A Good afternoon.

22 Q My name is Suzanne Mayes, I am one of the prosecuting
23 attorneys in this case so we represent the State. I just
24 have a few questions for you to follow-up on. You are 21?

25 A Yes, sir.

1 Q So have you even thought much about the death penalty
2 until you got called into court?

3 A No, Ma'am.

4 Q One of the questions that Mr. Young just asked you
5 was about your feelings on the death penalty. And your
6 response is, I guess if a crime needs a death penalty
7 sentence I would approve it?

8 A Yes, sir.

9 Q With that said are you willing to listen to all
10 evidence in the case including all of the mitigating
11 factors that may be offered by the Defense in a case?

12 A Yes, ma'am.

13 Q And would you take each and every one of those
14 factors into consideration in deciding a punishment?

15 A Yes, ma'am.

16 Q So is your mind made up at this point with what you
17 might do?

18 A No, Ma'am.

19 Q Would you want to hear all of the evidence before
20 making a decision?

21 A Yes, ma'am.

22 Q And even in a case involving the murder of a child or
23 the murder of two or more persons would you still consider
24 all of the aggravating and mitigating circumstances?

25 A Yes, ma'am.

1 Q Would you consider all of those factors before making
2 a final decision on punishment?

3 A Yes, ma'am.

4 Q If after hearing all of those factors you decided
5 that life without parole, meaning he never gets out of
6 prison, is the appropriate punishment, could you make that
7 your choice, could you vote for life without parole?

8 A Yes, ma'am.

9 Q And if after hearing all of the evidence, all of
10 those mitigating factors as well as any aggravating
11 factors presented by the State during the course of the
12 second phase of the trial, if after hearing all of that
13 you were to reach the decision that the death penalty was
14 appropriate could you actually vote for the death penalty?

15 A Yes, ma'am.

16 Q With that death penalty all twelve jurors would have
17 to sign a verdict acknowledging that that is in fact their
18 decision and would have to sign that verdict form
19 individually. Could you sign your name to that?

20 A Yes, ma'am.

21 Q If after hearing all of the evidence you decided that
22 was the right punishment?

23 A Yes, ma'am.

24 Q And just to be clear, at this stage have you made up
25 your mind about anything?

1 A No, Ma'am.

2 Q Have you heard any facts here?

3 A No, Ma'am.

4 Q Thank you, nothing further.

5 THE COURT: Anything in reply?

6 MR. YOUNG: No further questions.

7 THE COURT: Anything you need to put on the record?

8 MR. YOUNG: Yes, sir.

9 THE COURT: Step out of the courtroom real quick and
10 I will have you right back in.

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

13 THE COURT: Mr. Young.

14 MR. YOUNG: I guess they can't hear out of that door,
15 I didn't know they were standing like right outside. Your
16 Honor, the Defense would move to disqualify Mr. Stanley.
17 I believe that he is substantially impaired. I know he
18 gave the Court and the State a lot of yes and no answers
19 but when he was asked about his views about the death
20 penalty and the only time he elaborated at all on the
21 death penalty was if the facts add up to it then it is
22 death. And I believe he is substantially disqualified in
23 his ability to consider a life without the possibility of
24 parole sentence for somebody who is found guilty of
25 murder.

1 THE COURT: Ms. Mayes.

2 MS. MAYES: Again, Your Honor, it is the totality. I
3 wrote down his response and Mr. Young asked that question,
4 he said what are your feelings on the death penalty. The
5 response was, I guess if a crime needs a death penalty
6 sentence I would approve it. But then went on to say he
7 would consider all mitigating factors as well as
8 background during Mr. Young's examination and made it
9 clear that he could also return a life sentence. He is
10 qualified, Your Honor.

11 THE COURT: Considering the totality I find him
12 qualified. He did answer the totality of everything, he
13 wanted to hear everything, all facts in making that
14 decision. Bring him back in.

15 (Whereupon, the Juror entered the courtroom.)

16 THE COURT: Mr. Sandy, you could say your name both
17 ways, Sandy Roger, Roger Sandy.

18 JUROR: Yes, sir.

19 THE COURT: Okay. Mr. Sandy, the Court finds you to
20 be a qualified Juror. What that means is you are now
21 going to be placed in a group of other qualified jurors.
22 That group will be notified via the internet, like you
23 looked when to determine to come in today. Start watching
24 it tonight, it will tell you when to report back as a
25 qualified Juror to the Court House. It may say report

1 back on such and such a day on such and such a time. It
2 may say check back the next day. Just monitor that each
3 evening and follow those instructions. Now, until such
4 time you come back and after that if you are seated as a
5 Juror don't talk about the case, don't let anyone talk to
6 you about the case. Do not do any independent research,
7 do not subject yourself to the publicity. I want you, if
8 put on the jury, to make your decision and your findings
9 considering what you hear here in the courtroom and not
10 what you consider or was trying to influence you outside
11 of the courtroom because none of that is sworn testimony.
12 It is what people want to say, there is no limits to what
13 they can place them out there. Okay.

14 JUROR: Yes, sir.

15 THE COURT: I want you to consider what you hear in
16 here. Keep an open mind, report back when it says
17 qualified jurors report back on. Okay.

18 JUROR: Yes, sir.

19 THE COURT: See you soon.

20 JUROR: Thank you.

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

23 THE COURT: Ms. Williams is next. Are y'all ready on
24 41?

25 MR. YOUNG: Yes, sir.

1 THE COURT: Bring her in.

2 (Whereupon, Juror 41, Reba Williams entered the
3 courtroom.)

4 EXAMINATION

5 By The Court:

6 Q How are you doing, Ms. Williams?

7 A Doing well, how are you doing.

8 Q I am very good.

9 A Good.

10 Q I want you to have a seat, I will remind you you are
11 under oath still. I want you to say and spell your name
12 so Ms. Holston, she has got to hear you through the
13 microphone and she wants to make sure it is working right.

14 A Okay. Reba, R-E-B-A; middle initial is L; Williams,
15 W-I-L-L-I-A-M-S.

16 Q Ms. Williams, you were sworn and placed under oath
17 Monday to not discuss the case with anyone whatsoever. I
18 ask you now, did you talk to anybody about the case since
19 Monday?

20 A No, sir.

21 Q Has anyone tried to talk to you about the case since
22 Monday?

23 A No, sir.

24 Q Other than family members saying I am coming to
25 court?

1 A No one.

2 Q Now, there has been publicity in this case, several
3 years ago, when it first happened, several months ago,
4 news reports, there has been social media reports, been
5 all sort of publicity. I, in fact, read the indictments
6 to you in the courtroom. So, I gave you some information?

7 A Yes.

8 Q Intentionally, indictments. These are the
9 accusations the State is making against Mr. Jones. That
10 is information. Has any of the information that you have
11 heard, seen or otherwise received?

12 A No, sir.

13 Q I know you have received some. But any information
14 you received has caused you to form an opinion about what
15 happened in this case?

16 A No, sir.

17 Q No opinions?

18 A No opinions.

19 Q What does your calendar look like over the next three
20 weeks, if the Court were to start the trial Monday, what
21 would your calendar look like considering your personal
22 and professional obligation. What have you got coming up
23 at you?

24 A My calendar looks good.

25 Q Does that mean you have got a lot of vacation

1 planned?

2 A For you guys, if you need me I am here.

3 Q You are available?

4 A I am.

5 Q Now, the subject matter of this case involves
6 allegations of deaths of children. I have asked the
7 lawyers, they have described that type of subject matter
8 to me. I have not seen all of the evidence so I don't
9 know, I am telling you from my observe. Descriptions that
10 have been presented to me, Judge, this is graphic, there
11 will be graphic evidence, difficult, harsh, unpleasant, it
12 is hard to see. Subject matter of that type, considering
13 the death of children, would that subject matter make it
14 difficult, is the evidence is unpleasant and very
15 difficult. Would that make, would you be able to perform
16 jury service considering that subject matter going to be
17 presented to the Court and to the jury?

18 A Yes, sir.

19 Q And so you can be fair and impartial to both the
20 State and the Defense in spite of the difficulty and
21 subject matter of the testimony?

22 A I will be fair.

23 Q Now, I gave you a witness list, I asked you to look
24 over it. Did you know any of those witnesses?

25 A I don't know any of those witnesses.

1 Q And it is a lengthy list and not all of them will be
2 called but they have got to tell you all the potential
3 ones just in case. Do you understand that?

4 A Yes, sir.

5 Q Now, earlier on right before lunch I put you all in
6 the jury box and made a explanation, a summary of the
7 criminal procedures process involved in a Capital case.
8 Kind of a two-stage process?

9 A Yes.

10 Q Phase one, phase two. The first phase guilt or
11 innocence is proven or disproven. Phase two the
12 punishment is imposed if necessary. I sent you another
13 thing of three types of potential jurors. Most people
14 fall in one of those three classes and they can identify
15 themselves of being one of those typical types of jurors.
16 Can you find yourself on one of those three types?

17 A I can.

18 Q Where are you?

19 A I am at number three.

20 Q You are at number three?

21 A I am.

22 Q All right. I wrote this and I knew what I meant when
23 I tried to write it, what do you think the type three
24 means, describe it for me?

25 A Three, every person has, who is on trial should have

1 a chance to be proven and it requires facts in order to
2 make that, you know, effective. And in order to do that,
3 to give an appropriate punishment it has to be factual and
4 it is important and to hear both sides, it is important.

5 Q Hear both sides?

6 A Have to.

7 Q Now, you don't have your mind made up right now to
8 which of the two punishments are appropriate, do you, if
9 the State were to prove guilt?

10 A No, sir. Haven't heard anything.

11 Q Okay. That is a fair answer. Now, I am going to
12 step back and go back to the guilt or innocence phase.
13 That portion of the case, the State has got to prove the
14 guilt of the murder of Mr. Jones, they have got to call
15 witnesses and present evidence trying to convince a jury
16 beyond a reasonable doubt of his guilt committing those
17 acts. Okay?

18 A Yes.

19 Q They have got to prove it unanimously to the jury.
20 During that portion of the case the Defense is also able
21 to offer defenses if they have any. Okay. I am going to
22 read you some potential defenses, I can't tell you if any
23 of them will be appropriate but some of them may.

24 A Okay.

25 Q Identification, accident, involuntary intoxication,

1 self-defense, necessity, insanity, guilty but mentally
2 ill, defense of habitation, entrapment, alibi and duress.
3 Those are potential defenses that are available under the
4 law. If testimony is presented which could support one of
5 those defenses could you give it meaningful consideration,
6 considering my instructions on those defenses, likewise
7 also give meaningful consideration to the State's
8 testimony where they are attempting to prove beyond a
9 reasonable doubt the elements of murder. Can you be fair
10 to both sides during that portion of the case?

11 A I can.

12 Q Can you consider my instructions when evaluating the
13 testimony and evidence you hear?

14 A Yes.

15 Q And you will be fair in that phase?

16 A I will be fair.

17 Q All right. Now, because of one of the defenses that
18 Mr. Jones has already claimed, not guilty by reason of
19 insanity, that brings into play two additional potential
20 verdict forms. Traditional is guilty or not guilty. That
21 is it. In this case because it is not guilty by reason of
22 insanity, the verdict could be guilty, guilty but mentally
23 ill, not guilty by reason of insanity and not guilty all
24 together. Can you give meaningful consideration to all
25 four of those potential verdict forms.

1 A I can, yes sir.

2 Q You can do that.

3 A Yes.

4 Q Considering facts and testimony, evaluating fairly,
5 consistent with my instructions and consider all of those
6 potential verdict forms?

7 A Yes, sir.

8 Q Any one of those particular verdict forms that you
9 would not consider?

10 A Not one of them.

11 Q If the State does not meet its burden of proof or the
12 jury finds the verdict of not guilty by reason of insanity
13 the case ends.

14 A Yes, sir.

15 Q If the State proves its case beyond a reasonable
16 doubt of murder the case goes to phase two. Phase two,
17 the jury is in charge of and must resolve and impose a
18 sentence. One of two things, life or death.

19 A Yes, sir.

20 Q In that phase the State is required to prove an
21 additional factor, it is called an aggravating factor.
22 There are five of those, I will name off five and the
23 State can prove one of them. Murder of a police officer,
24 murder of a child, rape of murder, kidnapping of murder,
25 multiple murders.

1 A Okay.

2 Q The State must prove one of those beyond a reasonable
3 doubt to the jury in order to ask a jury to consider the
4 death sentence. Do you understand that?

5 A Yes, sir.

6 Q And during this punishment phase, deciding
7 punishment, the Defense presents evidence for
8 consideration by the jury of mitigating factors. Do you
9 understand that?

10 A Yes, sir.

11 Q Mitigating factors, I am going to read off a list of
12 them and I will come back and ask a question. The
13 Defendant has no significant history of prior criminal
14 conviction involving the use of violence against another
15 person. The murder was committed while the Defendant was
16 under the influence of mental or emotional disturbance.
17 The victim was a participant in the Defendant's conduct or
18 consented to the act. The Defendant was an accomplice in
19 the murder committed by another person and his
20 participation was relatively minor. The Defendant acted
21 under duress or under the domination of another person.
22 The capacity of the Defendant to appreciate the
23 criminality of his conduct or to conform his conduct to
24 the requirement of law was substantially impaired. The
25 age or mentality of the Defendant at the time of the

1 crime. The Defendant was provoked by the victim in
2 committing the murder. The Defendant was below the age of
3 18. The Defendant had mental retardation at the time of
4 the crime. Those are statutory mitigators that the
5 Defense can present testimony to show. There are also
6 non-statutory ones like what was his way in life, what was
7 his walk in life, had a hard childhood, come from a broken
8 home. Things of that nature jurors can also use and find
9 as mitigating facts as reasons to give a life sentence.

10 A Yes.

11 Q Can you give meaningful consideration to the fact
12 that the State has to prove the aggravating factor beyond
13 a reasonable doubt while also considering the mitigating
14 facts that the Defense has shown. They don't have to
15 prove them, they just have to show them for the jury to
16 consider. Can you do that?

17 A I can.

18 Q Can you consider the aggravating factor testimony as
19 well as the mitigating circumstances the Defense presents,
20 evaluate all of that consistent with my instructions on
21 the law and be a fair Juror in this case?

22 A Yes, sir.

23 Q Can you be fair to the State and the Defense?

24 A I can.

25 Q Do you have any religious, moral or personal belief

1 that you could not impose a sentence of death?

2 A No, sir.

3 Q Do you have any religious, personal or moral belief
4 that you could not impose life without parole?

5 A No, sir.

6 Q All right.

7 THE COURT: Mr. McGuire.

8 EXAMINATION

9 By Mr. McGuire:

10 Q Good afternoon, Ma'am.

11 A Good afternoon.

12 Q My name is Bill, Bill McGuire. I am one of the
13 lawyers in the case. Monday, last week when everybody
14 came in the big Court House across, the big courtroom
15 across the street did you recognize anybody or friends,
16 coworkers or anybody in that group?

17 A No, I didn't.

18 Q We ask everybody that just to see.

19 A Not one person.

20 Q Okay. Now, the questionnaire that you sent into the
21 Court, the Judge gives copies to the lawyers and I noticed
22 that you work in teaching and childcare?

23 A I do.

24 Q And you spend a lot of time around children?

25 A I do.

1 Q And the Judge went over the fact that this case
2 involves the death of children, that is very sad
3 obviously. The fact that it involves that tragic subject
4 matter could you still be fair to both the State and the
5 Defense?

6 A Yes, I can.

7 Q So you can hear evidence concerning young children
8 and their deaths and maybe even graphic evidence like
9 pictures and stuff like that. You would not be
10 overwhelmed by that?

11 A No.

12 Q It would not push you to a place where you would be
13 biased for one side or the other?

14 A No.

15 Q Okay. Despite the fact that you have devoted a good
16 part of your professional career and your time with
17 children you can still be fair in this case?

18 A I can.

19 Q That is all we can ask for. And when, did you hear
20 anything about this case, what happened about four years
21 ago?

22 A Just from being here.

23 Q That is the first time you heard about--

24 A --yes.

25 Q And Mr. Jones has actually plead not guilty by reason

1 of insanity. Have you ever heard the definition of not
2 guilty by reason of insanity before?

3 A I have heard it.

4 Q So you know it just means somebody whose has got
5 something wrong with their mind, mental disease or defect
6 and they can't understand right from wrong?

7 A Yes.

8 Q And in that you have heard something along those
9 lines before?

10 A Yes, sir.

11 Q And that is a verdict that you could consider?

12 A Yes, sir.

13 Q And say you would listen to the testimony on both
14 sides supporting or not supporting that type of verdict?

15 A I will.

16 Q Now, the Judge told you if the jury voted not guilty
17 by reason of insanity that would end the case at the first
18 phase. The jury wouldn't have the opportunity to go the
19 second phase, the sentencing phase. And some jurors might
20 say, you know, I don't want to vote for not guilty by
21 reason of insanity because I want to reach that sentencing
22 phase so we can meat out some punishment. Would that
23 impact you or could you fairly consider not guilty by
24 reason of insanity?

25 A I could fairly consider.

1 Q And if some other Juror said I don't want to vote for
2 that because I want to get to that sentencing phase, that
3 wouldn't impact you?

4 A No, sir.

5 Q Okay. And in South Carolina the only way the death
6 penalty is the verdict is if all twelve jurors agree that
7 the death penalty is the right verdict. And there is some
8 paperwork that goes with that and each Juror has to write
9 their name on a line on a piece of paper saying that that
10 is their verdict. And that document would be filed in the
11 Court House and be here, public record. You could put
12 your name on that?

13 A I could put my name on that.

14 Q Okay. A lot of people say, I sure would have a hard
15 time writing my name on that but you can do that?

16 A I can do it.

17 Q All right. Now, also if your position that the life
18 verdict was possible, life without parole you could vote
19 for that too?

20 A I can.

21 Q Okay. And the way this works, if we get to a
22 sentencing phase, a phase two each individual Juror gets
23 to vote for life or death. This is not a group decision,
24 it is everybody's individual. Does that make sense?

25 A It does.

1 MR. HUBBARD: Your Honor, I object to that.

2 THE COURT: Rephrase your question to the way you
3 have been characterizing it.

4 Q Okay. So the rules of court state that it is wrong
5 for a Juror, any individual Juror, it is wrong for them to
6 give up their position, their vote and switch sides and
7 vote with the majority for the sole sake of joining the
8 majority. Do you understand that?

9 A I do, I understand.

10 Q You understand that would be wrong for somebody to
11 just, for the sole reason of joining the majority they
12 can't do that?

13 A I understand that.

14 Q And the law requires them, once they reach a
15 conscientiously held belief, what is called an individual
16 moral judgment, they have the duty and obligation to stick
17 with it and maintain it if that is right for them. Does
18 that make sense?

19 A It does.

20 Q And different jurors, if they want to vote for the
21 life penalty, life without parole, they can all have
22 different reasons, they don't have to agree. For
23 instance, Juror number one could say, I saw something
24 about the man's mind, his mental health wasn't right and I
25 am not going to death for somebody who has got a broken

1 mind. Not going to do it, that is my reason. Juror
2 number two could say, I didn't see that, I didn't agree
3 with that mental health stuff but I saw an enduring
4 relationship between the Defendant and his father and I
5 saw a spark of humanity there, some hope of redemption
6 that resonated with me. That is going to be my reason to
7 vote for life and they don't have to agree, they can have
8 their own individual reason. Does that make sense?

9 A It does.

10 Q What that means is all twelve jurors don't have to
11 say, well, we have to agree on a reason for life. We
12 don't have to have that. Does that make sense?

13 A It does.

14 Q Sound fair?

15 A It is fair.

16 Q And if you reach your individual moral judgment, all
17 also, the Judge would tell the jury that they can vote for
18 life for any reason, no reason or mercy alone. And if
19 somebody said, I can't even put into words my reason, I
20 can't explain that, I can't put into words but I saw
21 everything, I just want to vote for life. Does that sound
22 fair and appropriate, they don't even have to state a
23 reason?

24 A No.

25 Q That doesn't sound fair, they should have to have a

1 reason? Let me rephrase that.

2 A Please.

3 Q Okay. So the Judge would tell the jury at the end,
4 very end of the case, any individual Juror can vote for
5 the life penalty, life without parole, for any reason, no
6 reason, or mercy alone. And somebody might not be able to
7 come up with a reason and they say, I don't have a reason
8 to give you but I just want to vote for the life penalty.
9 Would you let them have that, would you respect that?

10 A No, that is not right.

11 Q They have to have a reason?

12 A Yes.

13 Q Okay. If the Judge, could you, if the Judge says,
14 the law is, they are allowed to vote for life for no
15 reason could you put aside your personal view that they
16 have to have a reason, could you put that aside and follow
17 the Judge's instructions and allow a Juror to vote for
18 life even if they didn't have a reason?

19 A Yes.

20 Q Okay. Now, part of the rules in court, some of them
21 are for lawyers, some of them are for Defendants but some
22 of the rules are for jurors. And the rules are that these
23 proceedings have to be conducted with dignity, decorum and
24 respect. And I will just tell you, once a Juror reaches
25 their consciously held belief, they have a duty and

1 obligation to stick with it, and it would be wrong for
2 other jurors to try to coerce them out of that or bully
3 them out of it or force them to change their position. If
4 you saw that happening, bullying, coercion, could you send
5 a note out here to the Judge to say, these proceedings are
6 not being conducted with dignity, decorum and respect,
7 things have gotten a bit out of hand. Could you help get
8 civility back in the jury room?

9 A Sure can.

10 Q And you would make sure that nobody was bullied?

11 A Definitely make sure.

12 Q Thank you very much.

13 THE COURT: Mr. Hubbard.

14 EXAMINATION

15 By Mr. Hubbard:

16 Q Ms. Williams, how are you?

17 A I am blessed, how are you doing.

18 Q I am good. Thank you for coming up here and thank
19 you, I know you have had to wait a while.

20 A That's okay.

21 Q Appreciate you coming.

22 A Thank you.

23 Q I am Rick Hubbard, I am the Solicitor, got some folks
24 over here, we are the ones prosecuting this case. And I
25 was listening to your answers with the Judge and the

1 Defense Counsel and you sound like somebody who wants to
2 hear everything?

3 A I do.

4 Q You can't make a decision unless you hear everything?

5 A Absolutely right.

6 Q Right. And that first phase of the trial which is
7 just to determine if somebody is guilty or one of those
8 other verdicts, you would want to hear everything?

9 A Yes.

10 Q And that is not about punishment or mercy at that
11 point?

12 A Right.

13 Q Just about those facts.

14 A Facts.

15 Q Yes. And we move into that second phase, the
16 punishment phase, that is after you found is guilty. You
17 move in, okay, now he is guilty, what is the punishment.
18 You want to hear all the facts there too?

19 A Yes.

20 Q You have heard the Judge mention aggravating factors,
21 things that I would have to prove and then mitigating
22 circumstances, things that are helpful to the Defendant.
23 You heard all of that?

24 A Yes.

25 Q Did you know you could actually find both and still

1 vote for either verdict, life or death?

2 A Yes.

3 Q You could find some good things about the Defendant
4 but if you found beyond a reasonable doubt that there also
5 are aggravating factors you, as a Juror, and your fellow
6 jurors could still say, you know what, we get there is
7 some good things here but we could still vote for death.
8 Do you understand that?

9 A I do.

10 Q And as a Juror would you be able to do that?

11 A Yes, sir.

12 Q And I think the final thing we mentioned was, what is
13 really unique about a death penalty case is every Juror,
14 if they vote death, have to sign their name and I
15 understood you are willing to do that?

16 A I am.

17 Q Ms. Williams, thank you.

18 A You are welcome.

19 THE COURT: Anything?

20 MR. MCGUIRE: Nothing for the Juror or the Court.

21 MR. HUBBARD: Nothing, Your Honor.

22 THE COURT: Ms. Williams, the Court deems you a
23 qualified Juror. What that means is you are going to be
24 not placed on the list but you are maintained now as a
25 qualified Juror on that group of jurors. Not all jurors

1 have been qualified for a variety of reasons. But you are
2 qualified to be selected as a Juror now. We had to make
3 certain you didn't come in here, had your mind made up.
4 You have not. That makes you qualified.

5 JUROR: Thank you.

6 THE COURT: You need to check the website tonight, it
7 is going to say please check back tomorrow or please come
8 into the Court House on such and such a date and such and
9 such time. I want you to check that website tonight and
10 every night until you come back into court. And you will
11 be under qualified Juror instructions. Until such time do
12 not allow anybody to try to influence your decision. Do
13 not allow anybody to talk to you about the case. Do not
14 do any independent research which would change your
15 willingness to listen. Do not listen to any of the media
16 publicity going on, social media or otherwise. I don't
17 care where it is coming from. It is not relevant because
18 it is not under oath and it is not here in the courtroom
19 with everybody at the same time. All jurors will listen
20 at the same time. That way everybody gets to consistently
21 hear the same thing and people can take what they want to
22 from that. Do not let anything outside the courtroom
23 influence your decision. I will see you when you come
24 back. Thank you.

25 JUROR: Okay. Thank you so much.

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

3 THE COURT: Bring in Juror 44.

4 (Whereupon, Juror 44, Amy Boozer entered the
5 courtroom.)

6 EXAMINATION

7 By The Court:

8 Q Is your name Ms. Boozer?

9 A Yes, sir.

10 Q Ms. Boozer, just to check the microphone out, Ms.
11 Holston's benefit, say and spell your name.

12 A Amy Boozer. A-M-Y, B-O-O-Z-E-R.

13 Q Ms. Boozer, I asked you Monday gone, a week ago, you
14 took an oath to not talk about the case. Have you talked
15 about it with anybody?

16 A My husband.

17 Q Okay. I mean, any facts or just to tell him you have
18 got to come in for jury duty?

19 A We haven't discussed facts since last Monday. Prior
20 to that we discussed it on multiple occasions because
21 there is a lot of knowledge of it.

22 Q There has been a lot of publicity on the case.

23 A Yes.

24 Q I gave you some, I read the indictments to the whole
25 panel and that is information also that could, that you

1 received.

2 A Yes, sir.

3 Q Of the information you received, no matter when it
4 was received or brought to your attention or you saw it,
5 read it, heard it, whatever, the information came to you
6 even from me. Has any of that information caused you to
7 form an opinion as to what happened in this case?

8 A Yes.

9 Q What do you think happened. See, there is no wrong
10 answers. I am looking for your beliefs and opinion.

11 A I believe that--

12 Q It is okay, you are not getting in trouble.

13 A Based on what I heard in the media, I believe that
14 this man murdered his five children.

15 Q Okay. Now, you believe him to be guilty as he sits
16 right now?

17 A Yes.

18 Q Okay. Now, have you kind of, I asked you to read the
19 potential Juror types. Can you identify yourself?

20 A One.

21 Q One. Okay. Fair enough. Can I talk you out of it,
22 move you off of it, suggest to you that maybe two is
23 better, three is better?

24 A No.

25 Q That is what I need to know. That is an honest,

1 candid opinion, what I need. I can now thank you for
2 coming by and excuse you from being served.

3 A Thank you.

4 Q Thank you so much.

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

7 THE COURT: Number 325, bring her in.

8 (Whereupon, Juror 325, Tina Penn entered the
9 courtroom.)

10 EXAMINATION

11 By The Court:

12 Q Ma'am, you are 325?

13 A Yes, sir.

14 Q I want you to spell and say your name so that Ms.
15 Holston can make sure she is hearing you correctly.

16 A Okay. Tina, T-I-N-A. Last name is Penn, P-E-N-N.

17 Q Okay, Ms. Penn, I asked you last Monday to take an
18 oath and to not talk about the case with anybody. Have
19 you talked about the case with anyone?

20 A No.

21 Q Has anyone talked to you about the case?

22 A Occasionally people would say something and I would
23 say, stop, I can't talk about it.

24 Q There has been a lot of publicity in this case.

25 Social media, regular media, news media and in fact I read

1 the five indictments because I had to in open court last
2 Monday and that is information, publicity. They are
3 allegations the State has made to Mr. Jones what to be
4 prepared to come into trial. Any information that you
5 have heard, received, considered, my information I gave
6 you. Any of that information, no matter when you got it,
7 has that caused you to form an opinion as to what happened
8 in this case?

9 A Yes.

10 Q Remember, there is no wrong answers here. What is
11 your opinion?

12 A That he is guilty.

13 Q And you think he is guilty sitting right here?

14 A Yes.

15 Q Now, I also asked you to identify yourself as a
16 potential Juror. Can you self-identify as one of those
17 three types?

18 A Two.

19 Q Two. So you think life in prison is the most
20 appropriate penalty on cases like this?

21 A Yes, because I think type one is the easy way out.

22 Q Okay. So you wouldn't impose a one?

23 A No, probably not because I think that is the easy way
24 out.

25 Q Fair enough. Okay. I can excuse you and thank you

1 for coming.

2 A Thank you.

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

5 THE COURT: Let's take a break.

6 (Whereupon, a short break was taken.)

7 THE COURT: Let's bring in 425.

8 (Whereupon, Juror 425, Robert Tate entered the
9 courtroom.)

10 EXAMINATION

11 By The Court:

12 Q Mr. Tate.

13 A Yes, sir.

14 Q I want you to spell your name, first and last so that
15 Ms. Holston can determine if you are close enough to her
16 mike.

17 A Robert Tate, T-A-T-E.

18 Q Mr. Tate, I had put you under oath Monday gone to not
19 talk about the case?

20 A Yes, sir.

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

22 A No.

23 Q You talked about the case with anyone?

24 A I have not.

25 Q There has been publicity, media, social media, news

1 media. In fact I read the indictments to the entire panel
2 Monday. The allegations are, the State is accusing Mr.
3 Jones of, remember that?

4 A Yes.

5 Q That is information also, publicity, it was read in
6 public, so that is publicity. Has any of the information
7 you have received, no matter when you received it, whether
8 it was four years ago, any news accounts since then, any
9 social media, my comments. Has any of that information
10 caused you to form an opinion as to what has happened in
11 this case already?

12 A A little.

13 Q And can you share that, no wrong answers here. Okay.
14 Can you share with me what you believe your opinion may
15 be?

16 A Just to hearing, just briefly during the jury
17 selection and what the trial was for and just
18 conversation, like being in the grocery store, where ever,
19 and just people talking.

20 Q So you have formed an opinion as to what happened?

21 A Well, of course.

22 Q What do you think happened?

23 A What the case is about, you know.

24 Q You think that has happened?

25 A Yes.

1 Q Okay. So have you formed an opinion that he is
2 guilty already? That is what I am asking.

3 A Yes.

4 Q Okay. So you believe he is guilty already?

5 A Yes, from what I have heard.

6 Q Do you think, you are pretty firm in that opinion, is
7 there anything that will talk you out of it?

8 A I don't--

9 Q It is hard to get over an opinion, isn't it?

10 A Yes, I wouldn't think so but I, you know--

11 Q Did you see the Juror, type of potential jurors?

12 A I did.

13 Q Can you identify yourself as one. Are you one, two
14 or three?

15 A Probably one.

16 Q Okay. You are pretty firm on that?

17 A Yes.

18 Q You couldn't go for life?

19 A You are asking me today?

20 Q You don't know much.

21 A Today, one.

22 Q One, fair enough. I am not going to waste any more
23 of your time. I am going to excuse you and appreciate you
24 coming and I appreciate your candor.

25 (Whereupon, the Juror was excused from the

1 courtroom.)

2 THE COURT: Let's bring in 417.

3 (Whereupon, Juror 417, Joseph Straczek entered the
4 courtroom.)

5 EXAMINATION

6 By The Court:

7 Q 417, I am not going to pronounce your name but I am
8 going to ask you to say it, first and last and spell it so
9 Ms. Holston can determine if you are talking loud enough
10 in her microphone.

11 A Okay. Joseph Straczek, last name is spelled,
12 S-T-R-A-C-Z-E-K.

13 Q Mr. Straczek, in the last ten days or so, you have
14 been under oath to not talk about the case since last
15 Monday when I asked you to take that oath. Has anyone
16 tried to talk to you about this case?

17 A No.

18 Q Have you talked to anybody about this case?

19 A No.

20 Q There has been information out there via publicity,
21 four years ago when it happened, a few months ago, here in
22 the last ten days, my reading of the indictments, the
23 charges and allegations the State is making. That is
24 information conveyed to you. Has any information that you
25 have received or been conveyed to you at this point, right

1 now, anything you have received about this case cause you
2 to already form an opinion as to what has happened?

3 A No.

4 Q You don't know much about it. Now, have you heard
5 the publicity?

6 A No.

7 Q Okay. Not heard any of it?

8 A No.

9 Q Okay. Now, the subject matter in this case, I read
10 the indictments, the subject matter involves the death of
11 children. Testimony will be presented by the parties
12 about these children and their death. I am told, the
13 lawyers and I talked about this because they represented
14 to me this, they wanted to make certain that all the
15 jurors realized and understood that the testimony may be
16 graphic, difficult, harsh, unpleasant. Those are the
17 words the lawyers are using in describing. I have seen
18 bits and pieces and some preliminary things. I have not
19 seen them. That is the type of subject matter and type of
20 graphic testimony the Court and jury will see and have to
21 consider. Would that subject matter be difficult, make it
22 difficult for you to act fairly and impartially because of
23 its nature or can you consider, even though it is
24 difficult, can you be fair and impartial?

25 A As, I have some circumstances that may contribute to

1 me not being, to being impartial.

2 Q And that would be because of the subject matter?

3 A Not because of the subject matter.

4 Q Are you fast forwarding to your personal, do you have
5 any personal belief that would prevent you from finding
6 one of the two verdicts?

7 A No.

8 Q I didn't ask you about your schedule. Let me get
9 there.

10 A Right.

11 Q What schedule have you coming up the next two or
12 three weeks?

13 A Well, currently I have an open case in the State of
14 Illinois right now. It is a family divorce matter so the
15 final hearing is suppose to be on May 29th.

16 Q Ohio?

17 A Illinois.

18 Q Illinois. In the mid-west?

19 A Yes.

20 Q You don't want to miss that.

21 A I prefer not to but I don't have to be there because
22 it is, it is the final judgment that is given by the
23 Judge.

24 Q Okay. And anything else going on other than you have
25 got to travel to Illinois?

1 A Other, no, I have made some personal travel as well
2 that I have spent money already, already committed to.

3 Q In the next three weeks?

4 A Yes, the week, the same week.

5 Q I am not going to impose on your personal money
6 committed already. Had you not paid for it I would say
7 let's reschedule it but most jurors that have come in here
8 with a prepaid travel plans and you have got a court
9 appearance. I think court appearance is important.

10 A They are.

11 Q I think they are very important so I don't want to
12 upset your calendar. So I am going to excuse you for
13 those reasons.

14 A Okay.

15 Q You are free to go.

16 A Thank you.

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

19 THE COURT: We are going to stand down until our next
20 panel gets in here.

21 (Whereupon, a short break was taken.)

22 THE COURT: Let's bring panel 14 in.

23 (Whereupon, Juror 361, Travis Ross; 109, William
24 Cunningham; 392, Richard Shinn; 181, Matthew
25 Haslinger; 343, Brian Pugh; 8, Wendy Allison; 403,

1 Linda Smith entered the courtroom.)

2 THE COURT: All right, Folks, back in the courtroom
3 and I will have you placed under oath momentarily. I am
4 going to read a statement, things about the procedure, a
5 little bit of law. Y'all can kind of considering in
6 answering the questions. I get to ask questions about the
7 understanding of this and other things. The witness list
8 will be shown to you, we need to know if you know anybody.
9 There are three types of jurors, I am going to ask you
10 about that. Most of the questions today will be under
11 oath are your personal beliefs or opinions so there is no
12 wrong answers. It is just how you feel. No wrong, just
13 truthful. We will get to those fairly quickly. Some
14 jurors take longer than others. And some took a long time
15 and some took that long so bear with me and thank you for
16 coming. Madam Clerk, place the group under oath, please.

17 (WHEREUPON, the jury was sworn at 3:40 p.m.)

18 THE COURT: All right, folks, like I said, when you
19 come back in I will need your calendar to know what is
20 coming at you for the next two or three weeks. I want to
21 know that impact on you, your calendar. Also don't
22 discuss the case back in the jury room, whatever about it.
23 The cameras are off, no cameras are going on right now.
24 So relax about that. You have been summoned as potential
25 jurors, and I have read this to all the other panels and I

1 continue doing so, everybody gets the same preliminary
2 instruction. You have been summoned as potential jurors
3 in the case of the State versus Timothy R. Jones, Jr. My
4 name is Judge Eugene Griffith, Jr. and I will be the
5 presiding Judge in the trial. Mr. Jones is charged with
6 five counts of murder. And in South Carolina murder is
7 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, hatred, ill-will
10 or hostility. The definition of murder excludes 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 an accused person is presumed
15 innocent of each and every element of the crime to which
16 he is accused. The State must prove each and every
17 element of that crime to the standard of proof called
18 beyond a reasonable doubt. In most crimes Judges
19 determine the punishment upon a conviction. But in a
20 Capital penalty case the jury determines the punishment.
21 In a Capital case the trial is divided into two parts
22 potentially. The guilt or innocence phase and then if
23 necessary the punishment phase. The first portion 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 aggravating and mitigating evidence in
5 deciding the punishment, either life without parole or the
6 death penalty. Our law in South Carolina does not allow
7 the State to seek that execution if a person is convicted
8 solely of the murder. The State must prove at least one
9 of the statutory aggravating factors to the standard of
10 proof beyond a reasonable doubt. Even if the State proves
11 murder and an aggravating circumstance jurors are required
12 to consider any mitigating evidence or circumstances.
13 Jurors must consider any mitigating facts that would
14 support a sentence other than death. Even if no
15 mitigating circumstances exist jurors are not required to
16 impose the death penalty. In order for a sentence of
17 death to be imposed the verdict must be signed by all
18 twelve jurors. If jurors unanimously decide to sentence a
19 Defendant to life without parole sentence then a sentence
20 of life without the possibility of parole will be imposed.
21 In this case the State has indicted five counts of murder
22 and has notified Mr. Jones that it intends to seek the
23 death penalty. Mr. Jones has entered a plea of not guilty
24 by reason of insanity. In this case you may hear
25 testimony and evidence showing many things. A wide

1 variety of testimony may be presented to you in this
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 is
5 reasons to vote for a sentence of life without parole,
6 evidence of any defenses, evidence of any affirmative
7 defenses such as accident, guilty but mentally ill and not
8 guilty by reason of insanity. Until all the testimony and
9 evidence is presented I am not able to tell you the exact
10 instruction of the law which I will give. Once you are
11 brought back into the courtroom one at a time you will be
12 asked this question. Can you accept an oath to
13 meaningfully consider all the testimony and evidence,
14 apply the law as I instruct it and consider all of the
15 evidence consistent with my instructions. Those are your
16 preliminary instructions. Step back to the jury room. We
17 will call you one at a time. We will give you an
18 opportunity to review the potential witness list as well
19 as the three types of jurors. I have asked all the jurors
20 basically the same line of questioning. My first question
21 will be, have you talked about the case. I haven't heard
22 anybody has talked about the case but that will be my
23 first question when you come in. Okay.

24 (Whereupon, the jury was excused from the courtroom.)

25 THE COURT: The first one, 361, bring him out.

1 (Whereupon, Juror 361, Travis Ross entered the
2 courtroom.)

3 EXAMINATION

4 By The Court:

5 Q You are Mr. Ross?

6 A I am.

7 Q You are, Mr. Ross, I want you to say and spell your
8 name so that Ms. Holston can identify whether or not you
9 are speaking loud enough.

10 A Sure. Travis Ross. T-R-A-V-I-S, R-O-S-S.

11 Q The first question, you are under oath. Have you
12 talked about the case in any manner whatsoever since I
13 told you not to Monday?

14 A Negative.

15 Q Have anybody, has anybody tried to talk to you about
16 the case?

17 A Negative.

18 Q Do you, you have heard publicity in the case because
19 I read the indictments. That is publicity, that is
20 publication of certain allegations made by the State, the
21 charges. There was publicity four years ago, several
22 months ago, the weekend before we came in Monday and
23 since. Has any information which come to you, from where
24 ever it came, whenever it came, don't care, any
25 information you have received even from me.

1 A Yes.

2 Q Has any of that information caused you to form an
3 opinion as to what happened in this case?

4 A Negative.

5 Q Okay. So you have not formed an opinion?

6 A Negative.

7 Q You will be presented testimony of subject matter
8 involving the death of children. I have not seen all the
9 testimony and evidence, it has not been presented to me
10 yet. I have seen preliminary things but not much. The
11 lawyers have represented to me this evidence is very
12 difficult, it is tough, it is going to be very graphic and
13 harsh. Would subject matter of that type make it
14 difficult for you to be a fair and impartial Juror or can
15 you receive testimony of difficult subject matter and
16 still be fair and impartial?

17 A It would be difficult.

18 Q Can you be fair and impartial in light of that?

19 A Yes.

20 Q You are willing to consider it?

21 A Willing to consider it.

22 Q I am, I don't think anybody would volunteer to try to
23 see the difficult testimony. I understand.

24 A Okay.

25 Q Have you looked at the witness list?

1 A I have.

2 Q Have you found anybody you know on there?

3 A Not from that list, no.

4 Q Are you connected to anybody in the courtroom?

5 A Not in the courtroom, at the time I was high school
6 buddies with Sheriff Koon was who in the prior room but I
7 don't see--

8 Q He is in and out.

9 A Yeah.

10 Q High school friend?

11 A High school friend, waive at a parade.

12 Q The fact that you waived at a parade would that
13 affect your ability to be fair and impartial since his
14 office is the main investigating authority in this case?

15 A Negative.

16 Q Now, I gave you a preliminary instruction on the law
17 moments ago. Two phase case, it is a Capital case. Phase
18 one is guilt or innocence. Phase two is sentencing. The
19 State has got to prove its case, phase one, guilty beyond
20 a reasonable doubt in order to get to phase two. I ask
21 you to evaluate three types of jurors if they got in the
22 second phase and could they find themselves under those
23 three potential types. Can you identify yourself?

24 A So it has to be an absolute choice?

25 Q Yes.

1 A Okay, that would lead towards one, after it is on
2 three.

3 Q With that being the case do you believe that Capital
4 cases deserve the death penalty?

5 A I do not believe they are always absolute. So I am
6 not exactly sure how to answer that question.

7 Q Okay. Well, in order to be, for me to understand
8 this. You classified yourself as somebody who once the
9 State proved its case, guilt and then an aggravating
10 factor, you wouldn't need to hear much else?

11 A There are circumstances that would take me away from
12 a one but I would be more inclined if proven, to lean
13 towards type one.

14 Q Okay.

15 A I am sorry to be very vague.

16 Q No, no, no. I told you there was no wrong answers.

17 A Right.

18 Q So you have not missed the same question, give me
19 your opinion is what I want, I don't want you to give me
20 an improper or not yourself. I don't want that. I want
21 exactly what you are giving me.

22 THE COURT: I find, since Mr. Ross is self-identified
23 as a type one I am going to excuse him. I just don't
24 think we can get past that.

25 Q I am going to excuse you from service.

1 A I understand.

2 Q Thank you.

3 A Okay.

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

6 THE COURT: Let's bring 109.

7 (Whereupon, Juror 109, William Cunningham entered the
8 courtroom.)

9 EXAMINATION

10 By The Court:

11 Q You are Mr. Cunningham?

12 A Yes, sir.

13 Q I want you to spell your first and last name to make
14 certain that Ms. Holston can hear you clearly.

15 A W-I-L-L-I-A-M, C-U-N-N-I-N-G-H-A-M.

16 Q Mr. Cunningham, I told you the first question, remind
17 you you are under oath. The first question is, have you
18 talked to anybody about the case since you were here last
19 Monday?

20 A No, sir.

21 Q Has anybody tried to talk to you about the case since
22 last Monday?

23 A Yes.

24 Q And the nature of the conversation was what?

25 A Well, I can't talk about it.

1 Q That is what you told them?

2 A Yes.

3 Q Fair enough. Now, there has been a lot of publicity
4 in this case, four years ago, several months ago, two
5 weeks ago, in the last ten days. When you were in court
6 Monday I read the indictments, those are the allegations
7 the State is making so I provided some information to you.

8 A Yes, sir.

9 Q Mr. Jones plead not guilty, he is presumed innocent.
10 The evidence, the information you heard to date, whatever
11 it was, whatever it is, whenever you heard it, I don't
12 want to really worry about when you received it. Has that
13 information you have gotten up to this point right now
14 caused you to form an opinion as to what happened in this
15 case?

16 A No, sir.

17 Q You still have not formed an opinion as to what
18 happened?

19 A No, sir.

20 Q All right. The testimony in this case involves the
21 death of five children. It has been described by the
22 lawyers that the testimony will be kind of graphic,
23 difficult, unpleasant, maybe even harsh. That subject
24 matter will be the nature of the trial. Can you consider
25 testimony that would be difficult and unpleasant and still

1 be a fair and impartial Juror in light of that subject
2 matter?

3 A Yes, sir.

4 Q Can you do that and be fair and impartial to both
5 sides?

6 A Yes, sir.

7 Q Now, I gave you a witness list to look over, the same
8 as this one. Did you read over the witness list?

9 A Yes, sir.

10 Q Did you know any of those witnesses?

11 A No, I didn't. None of them stuck out to me.

12 Q Fair enough. I gave you some instructions moments
13 ago on the procedure and some of the law in South
14 Carolina. Very brief, very over, big overview of a
15 Capital case, it is two phases. Phase one is guilt or
16 innocence. If the State meets the burden in phase one, a
17 guilty verdict is found. Presuming that is done jurors
18 then are faced with the decision of what type of
19 punishment to implement. I showed you a three type of
20 potential jurors. Can you identify yourself as any one of
21 those three types?

22 A Type three, sir.

23 Q Type three. Type three would be, how would you
24 describe a type three because I wrote that and I know what
25 I was intending.

1 A I would describe type three as somebody who is going
2 to listen to the evidence and then form a decision after
3 everybody presents their case.

4 Q Not a bad assessment of what type three is. You have
5 got an open mind, willing to consider all the evidence,
6 good and bad and then make a decision?

7 A Yes, sir.

8 Q Fair enough. How is your calender coming up over the
9 next three weeks?

10 A My boss which is the owner of the company that I work
11 for, he seems to think that it will be devastating for me
12 to be out for a long period of time.

13 Q I am guessing until early June, the first week.

14 A He told me that he was going to submit a letter or
15 try to tell all you guys to see about getting me, because
16 I do multiple job titles at my job.

17 Q What do you do?

18 A I am a Design Engineer, I am a C&C Programmer. I
19 also run the shop floor.

20 Q What do you make?

21 A Signs, sir.

22 Q Signs like billboards or smaller signs?

23 A No, like your big highway signs like car dealerships,
24 Volvo, Caterpillar, Ford, Chevy.

25 Q Those are made out of plastic and the lights are in

1 them and that kind of thing?

2 A All different, some of them is aluminum and some of
3 them is plastic and then there is lights in them and then
4 we also do the, like the facial boards, around a building.

5 Q Well, understand this. I am very aware of the
6 inconvenience it puts jurors who are called to serve on,
7 what they do for a living. It is a civic responsibility
8 and it creates inconvenience. And as unfortunate as that
9 is, it is just an inconvenience. So I appreciate that but
10 unless you are self-employed and you have got to close
11 your business I kind of got to keep you. I am not making
12 the rules, I am the messenger. The General Assembly gives
13 me the rules to follow and how to excuse jurors.

14 A I mean I will do what I have to do, I have done that
15 my whole life, sir. If I have got to serve I will serve
16 and if I don't then I don't. I will make it work one way
17 or the other. It is just, I didn't talk about the case
18 but he knows that I am missing because of the jury duty.
19 He knows I was out Monday. He knows that I was out and he
20 said it is a pretty big trial and I said, yes, it seems
21 like it is. He said, well you know that it is going to be
22 devastating for you to be out for a long time. I said,
23 well, I said you do what you have to do and I will do, I
24 mean, and so I am not saying he won't submit something but
25 that is your decision.

1 Q Okay. If I hear from him I may consider that but,
2 word from somebody else. I mean, I am sorry to
3 inconvenience him but jury service is an important in
4 responsibility society and sometimes it is more important
5 than people making money. And so I don't say this as
6 criticism toward him, everybody has their own things they
7 have got to do and their own task. That is how it is, you
8 weigh those things and make decisions. So anyway, we are
9 going to move forward with my questions to you. You said
10 you were a type three. You understand that during the
11 first phase, we discussed that with you. In the first
12 phase of the trial the State has got a responsibility or
13 burden to prove its case of murder beyond a reasonable
14 doubt. The State tried to meet that burden by presenting
15 evidence, calling witnesses to prove taking another one's
16 life, killing of another with malice aforethought. All
17 right?

18 A Yes, sir.

19 Q They try to prove that. The Defense can challenge
20 the State's evidence or they can also offer defenses which
21 are available to them under the statutes. I am going to
22 read you most of the defenses which are available, all of
23 them will not be applicable but some of them might and I
24 am going to come back and ask you a question. Okay.

25 A Okay.

1 Q Potential defenses include identification, accident,
2 involuntary intoxication, self-defense, necessity,
3 insanity, guilty but mentally ill, defense of habitation,
4 entrapment, duress and alibi. Those are potential
5 defenses that are available to a person accused. Mr.
6 Jones is presumed innocent right now. The Constitution
7 affords him that presumption. He remains presumed
8 innocent until the State presents enough evidence to
9 overcome the burden of proving the case beyond a
10 reasonable doubt. The defenses are offered by the
11 Defense. Now, if testimony supports one of those defenses
12 I will instruct on that particular defense. If testimony
13 doesn't support, presenting on that I won't. Most all of
14 those won't apply but they could. Can you consider the
15 State's burden of proof, evidence and testimony the State
16 presents, the cross-examination, anything and the
17 instructions of the Court on how to consider any defenses
18 and the testimony and evidence which may support that in
19 making your decision in this case following my
20 instructions, being fair to both sides. Can you do that?

21 A Yes, sir.

22 Q Can you give meaningful consideration to all of that
23 testimony and do it consistent with my instructions in the
24 trial?

25 A Yes, sir.

1 Q Now, particularly in this case there has been a
2 defense presented by Mr. Jones which is not guilty by
3 reason of insanity. Potentially four verdicts could be
4 facing the jury in the State's case, when the State tries
5 to prove the murder. Guilty, guilty but mentally ill, not
6 guilty by reason of insanity and not guilty whatsoever.
7 Four potential verdict forms. The State has the burden of
8 proving guilt beyond a reasonable doubt. These defenses
9 will be offered and you will hear testimony on those. The
10 Court, I, will instruct you on the aspects of those
11 defenses and must be proven for you to consider them. Can
12 you give meaningful consideration to the State's burden of
13 proving its case beyond a reasonable doubt as well as
14 those four potential verdict forms, guilty, guilty but
15 mentally ill, not guilty by reason of insanity, not
16 guilty. Can you do that?

17 A Yes, sir.

18 Q I will instruct you on the particular aspects of all
19 four of those verdict forms at that time. Do you
20 understand that?

21 A Yes, sir.

22 Q And you can apply my instructions and evaluate the
23 evidence and testimony presented to you.

24 A Yes, sir.

25 Q Being fair to both the State and the Defense?

1 A Yes, sir.

2 Q If a verdict of not guilty or not guilty by reason of
3 insanity happens the case ends. If the State meets its
4 burden of proof, proves the murder beyond a reasonable
5 doubt phase two commences. In phase two the State is then
6 required to prove the aggravating factor. I am going to
7 give you five. The murder of a policeman, the murder of a
8 child, rape of murder, kidnapping of murder, murder of
9 multiple people. Those are aggravating factors. The
10 State must prove one beyond a reasonable doubt in order to
11 be in a position to ask a jury to enter and find a
12 sentence of death. Okay. They have got to prove that
13 during the sentencing phase. During the sentencing phase
14 also the Defense presents evidence of mitigation.
15 Mitigation are reasons to give life. Okay. I am going to
16 read you some of the statutory ones and ask you a similar
17 question. The Defendant has no significant history of
18 prior criminal conviction involving the use of violence
19 against another person. The murder was committed while
20 the Defendant was under the influence of mental or
21 emotional disturbance. The victim was a participant in
22 the Defendant's conduct or consented to the act. The
23 Defendant was an accomplice in the murder committed by
24 another person and his participation was relatively minor.
25 The Defendant acted under duress or under the domination

1 of another person. The capacity of the Defendant to
2 appreciate the criminality of his conduct or to conform
3 his conduct to the requirements of law was substantially
4 impaired. The Defendant was provoked by the victim in
5 committing the murder. The age or mentality of the
6 Defendant at the time of the crime. The Defendant was
7 below the age of 18 at the time of the crime. The
8 Defendant had mental retardation at the time of the crime.
9 Those are statutory mitigators. Also mitigators that
10 aren't set forth in the statute but jury's can use them as
11 reason that they wish to impose the life sentence which
12 will be Mr. Jones' childhood history, his walk in life,
13 his coming from an abused home if that was the case. Any
14 aspect of his growing up, coming along can be considered
15 by a jury as mitigators also. Now, understanding in the
16 sentencing phase, jury's have got two choices, life or
17 death. The State proves the aggravating factor beyond a
18 reasonable doubt and those are the two punishments jury's
19 can consider. One of the two, no middle ground, no other
20 options. Can you give meaningful consideration to the
21 State's duty and responsibility to prove the aggravating
22 factor beyond a reasonable doubt as well as consider all
23 of the mitigating factors in evidence in supporting those
24 factors in reaching a fair punishment in this case?

25 A Yes, sir.

1 Q Now, can you or do you have any personal or religious
2 or emotional, personal belief that you could not find, if
3 the evidence supported it, consistent with my
4 instructions, a punishment of death. Could you do that?

5 A Could I?

6 Q If assuming the State proved the aggravating factor
7 and you consider all of the evidence.

8 A Yes.

9 Q Consistent with my instructions evaluating that
10 evidence, could you find a sentence of death?

11 A Yes, sir.

12 Q Now, do you have any religious, moral or personal
13 belief which would prevent you from finding a sentence of
14 life without parole?

15 A No, sir.

16 Q And I am going to go back and ask the other question
17 in the same fashion. I am not sure I did. Do you have
18 any religious, moral or personal belief which would
19 prevent you from entering a death penalty sentence if the
20 evidence supported it?

21 A No, sir.

22 Q Do you have any reason whatsoever you can't be fair
23 to both sides?

24 A Not right now, no.

25 Q Okay. Mr. McGuire.

EXAMINATION

By Mr. McGuire:

Q Good afternoon, Mr. Cunningham.

A Good afternoon.

Q This is the opportunity where the lawyers get to talk to you about your views about the death penalty for murder and if you don't understand any of my questions or if I ask a bad or confusing question you just start asking me questions. Okay?

A Okay.

Q I am going to put you in a spot, imagine that you are Governor of South Carolina for a day and you have got a Bill on your desk and it says we can have the death penalty or we can not have the death penalty. What, how would you go?

A I would have the death penalty.

Q And that sort of implies you believe that there is a purpose, it serves a purpose to have the death penalty?

A Yes sir, I do.

Q And what do you think that is?

A Depending on what the circumstances are in that, if you are found one-hundred percent guilty, if taking somebody's life then I do believe that you should be, have that chance of a sentence as well.

Q If you are one-hundred percent guilty of taking

1 someone's life the option of the death penalty--

2 A Is on the table.

3 Q Okay. And some people say that the death penalty is
4 reserved for the worst of the worst crimes. Do you
5 believe that or do you think we should use it more often?

6 A No, I mean I think it should be the worst crimes. I
7 mean, if you go steal something I don't think you should
8 be sentenced to death, if that is what you are asking.

9 Q That is not what I am asking. The phrase that the
10 Judge sometimes uses is like a plain old murder, a vanilla
11 murder, if the State one-hundred percent proves somebody
12 guilty of taking an innocent life, an eye for an eye, does
13 that phrase resonate with you, an eye for an eye?

14 A I mean for the most part, yes. I mean, if you take
15 somebody's life and you, and that is what you have done
16 and you are, once again proven guilty, yes, I do believe
17 in the death penalty from that standpoint.

18 Q Okay. The Judge read to you the indictments earlier.
19 You know the case is about the murder, well, the killing
20 of five innocent children.

21 A Yes.

22 Q And I can't remember, did you stand up and say you
23 heard some publicity or did you not hear some publicity?

24 A No sir, I didn't hear any publicity.

25 Q Because this incident happened about four years ago,

1 you don't remember anything back then?

2 A No, sir. If you need something else I can explain
3 more but I don't really watch the news or anything like
4 that.

5 Q Okay. I got you. Some folks would say, when it
6 comes to innocent defenseless children that they don't
7 really need to hear specifics like the background of the
8 Defendant, if he was black or white, grew up rich or poor,
9 broken home, parents stayed married, tough childhood,
10 privileged childhood. And they don't really need to hear
11 the specifics of how defenseless children are killed, they
12 are drowned, shot, strangled. Basically some people would
13 take the position, if all of the evidence points to
14 guilty, beyond a reasonable doubt, intentionally,
15 deliberately taking the life, lives of innocent children
16 the death penalty is the appropriate penalty.

17 MR. HUBBARD: Objection to the form of the question.

18 THE COURT: Rephrase that.

19 MR. MCGUIRE: Judge, I put all the facts in there.

20 MR. HUBBARD: Not mitigating.

21 MR. MCGUIRE: I did.

22 THE COURT: Rephrase--

23 MR. HUBBARD: Not describing mitigating, that sounds
24 misleading.

25 MR. MCGUIRE: I object to the characterization of

1 misleading, that is not true.

2 THE COURT: I really,--

3 MR. MCGUIRE: I put all the facts in there.

4 THE COURT: I was looking at something else and I
5 didn't hear so rephrase it for me.

6 MR. MCGUIRE: Okay, I can do that, that would make me
7 less angry.

8 THE COURT: Okay.

9 Q Some folks would say, when it comes to the specifics
10 of a case, of a case of murder of children, killing of
11 children. They would say I don't need to hear all the
12 facts. Background of the Defendant, grew up poor, grew up
13 privileged, parents, broken home, parents stayed together,
14 had a hard row of it, had a privileged easy life, these
15 things, the background, the character of the Defendant.
16 Don't need to hear that. And they would also say don't
17 need to hear the specifics of the crime. I don't care if
18 the kids were drowned, strangled, shot, this kind of
19 person would say, all I need to know, if the State proves
20 beyond a reasonable doubt an intentional killing, taking
21 the lives of innocent, defenseless children. That is what
22 I need to know, then in that case the death penalty is
23 appropriate? Do you agree with that.

24 MR. HUBBARD: Here is my objection. Just one word,
25 mitigating factors including.

1 THE COURT: He named off all of those.

2 MR. HUBBARD: He named them but didn't say what they
3 were. That is what is confusing to someone just off the
4 street.

5 THE COURT: All right. I think he did that and I
6 understand your objection because we have had this
7 question phrased 25 different ways. Can you answer that
8 question or was it too lengthy.

9 A It was lengthy but, I mean, if you are found guilty
10 of killing the kids is it would have to be an
11 extraordinarily defense system for me personally to say
12 that you should not get the death sentence from that. I
13 would consider all of that stuff in play but, I would
14 consider it.

15 Q But when it comes down to it, letting a killer
16 committing that kind of act, murder, killing innocent
17 children, the life sentence, letting that person live out
18 their years in prison, is that severe enough, harsh enough
19 to punish that kind of killing of innocent children.

20 A I would have to hear all of the evidence to actually
21 make that determination.

22 Q What about the background of the person who did the
23 killing. Some folks say and remember, we just want your
24 personal views here, everything you say is correct today.
25 If it is your honest opinion you can't be wrong. Now,

1 some folks would say, I am going to focus on the crime and
2 the punishment is going to fit the crime. And when it
3 comes to the background of the Defendant--

4 THE COURT: That has already been asked. That is
5 asked and answered. That was your last question that went
6 so lengthy.

7 MR. MCGUIRE: No, I asked if the death penalty as an
8 appropriate punishment.

9 THE COURT: Sounds like the same question. Go ahead.

10 MR. MCGUIRE: Okay, thank you. It is short.

11 Q If the background of the Defendant, like if he grew
12 up poor, things that happened to him 20 years ago, and
13 they are not related to the crime itself. Some people
14 would say, when it comes to fixing punishment for the
15 killing of innocent children I am not going to look at his
16 background and character and stuff that happened a long
17 time ago. How do you fall out on that?

18 MR. HUBBARD: I would object, that is asked and
19 answered.

20 THE COURT: That is asked and answered. That is the
21 same question.

22 Q So, I am going to take you now to the first phase.
23 The Judge talked to you about some potential verdicts.
24 One of them is not guilty by reason of insanity. And as
25 the Judge told you, if the jury finds the Defendant, Mr.

1 Jones, not guilty by reason of insanity the trial ends.
2 The jury doesn't have the opportunity to get to the
3 sentencing phase, the jury will not be able to deliver
4 punishment. Some people would say, I don't want to
5 consider not guilty by reason of insanity because the
6 deaths of five children, I want to get to that sentencing
7 phase. What are your thoughts about that?

8 A I mean if the jury comes back with that then, you
9 know, that is what the jury comes back with. I mean, when
10 I get to the sentencing phase, me personally, whether I
11 get to the sentencing phase or not step one, step two. We
12 have got to go through step one first. That one is is he
13 guilty. And then once we get to that phase then you got
14 to the next phase or no next phase, if that is the case.

15 Q Right. Some people would say not guilty by reason of
16 insanity sounds like a excuse or a copout, does that, is
17 that a phrase you would agree with. What are your
18 thoughts about that?

19 A I mean, I personally believe that you, in order to do
20 certain crimes like this that there has got to be
21 something wrong with you to a certain point. But, I mean,
22 it doesn't affect whether, what I am going to judge or a
23 jury on that or particular phase or whatever.

24 Q That sounds right. What I am going to take you to,
25 assuming we get to that second phase, that sentencing

1 phase, I want to take you there. Let's talk about that a
2 little bit. Okay?

3 A Okay.

4 Q When we get to that phase or if we get to that phase
5 there is a lot of individuality involved. The jury, there
6 are twelve individuals as opposed to a group. Everybody
7 has to make their own--

8 MR. HUBBARD: Objection.

9 THE COURT: To the form?

10 MR. HUBBARD: Yes, sir.

11 THE COURT: Go back to the way you were asking
12 earlier. You have evolved into this thing. Go to
13 mitigating facts. Go down that line, it is the same
14 question you are going to.

15 MR. MCGUIRE: I think it is the same thing.

16 Q So the Judge would instruct the jury they can find
17 for the life penalty, life without parole, for any reason,
18 no reason, mercy alone. Does that sound fair to you?

19 A I don't understand.

20 Q So the Judge, the Court, the Judge, at the very end
21 of the case, there is a part in his instructions where he
22 would actually say, I am telling you all right now, any
23 individual Juror can vote for the life penalty, life
24 without parole for any reason, no reason and mercy alone.
25 Does that sound fair?

1 MR. HUBBARD: Objection to the form, individual
2 Juror, that is not the charge.

3 THE COURT: I am going to allow the question. Go
4 ahead.

5 Q That is my question.

6 A Okay. I mean, yes, if I have been instructed to do
7 what the Judge is, has ruled on, so yeah, it is fair.

8 Q And you would expect twelve individual people charged
9 with determining whether a fellow human being lives or
10 dies, that is, it is probably the most serious decision a
11 human being could ever make?

12 A Yes, sir.

13 Q And twelve different people, from twelve different
14 places, twelve different walks in life, you would expect
15 some disagreement?

16 A I mean, yes sir, for the most part there could be
17 some disagreements, yes.

18 Q And it is against the rules of court, it is against
19 the law for a Juror, if they say, I have come to my
20 conscientiously held belief, I believe the life penalty is
21 right for me. I do not want to vote for the death
22 penalty. That is my own individual moral judgment. For
23 them to abandon that position just to throw in with the
24 majority, just to join a bigger group, that is actually
25 wrong. Did you know that?

1 A I mean, yes, I mean morally wrong and probably wrong
2 in the law as well, yes.

3 Q It absolutely is.

4 A It is whatever you believe at that time, yeah.

5 Q The way the law describes it, once somebody reaches
6 their individual moral judgment, if it would harm their
7 conscience to change it, just to join that majority, that
8 is against the rules. Does that sound right to you?

9 A Yes, sir.

10 Q And the law says these proceedings have to be
11 conducted with dignity, decorum and respect. And we
12 expect reasonable deliberations and civil discourse. But
13 it is wrong to try to coerce somebody out of their
14 individual position. And if you saw that intimidation,
15 coercion, trying to force somebody to abandon their
16 position to join, for the sole sake of joining the
17 majority could you jump in and stop them?

18 A I am a pretty fair guy so I, yes, I would say I
19 would, yes.

20 Q And one of the ways you could do that is you could
21 write a note out to the Judge. Judge, I believe a Juror
22 has got to their position, I think it would harm their
23 conscious for them to change their vote, people are trying
24 to coerce that person, it is unfair. We need some help
25 getting some civility back in here. Judge, could you help

1 us. Could you write that note out.

2 A Yes, I would, yes.

3 Q Or ask the Foreman to do it for you?

4 A Yes.

5 Q When you showed up Monday past, when we all met at
6 the big courtroom at the old Court House, did you
7 recognize any friends or coworkers or anybody?

8 A No.

9 Q Okay. That is all I have for you.

10 EXAMINATION

11 By Mr. Hubbard:

12 Q Mr. Cunningham, my name is Rick Hubbard. How are
13 you?

14 A I am doing good, how about you.

15 Q Doing good. I won't be too long. I just want to go
16 over a few things, the Judge has already gone over a good
17 bit of it but I just want to make sure I understand too
18 that we are all on the same page. That first stage of the
19 trial which determines whether the Defendant is guilty on
20 one of those other verdict forms the Judge mentioned. He
21 mentioned four.

22 A Yes, sir.

23 Q It was guilty, guilty by reason of insanity, I mean,
24 guilty but mentally ill, not guilty by reason of insanity
25 and not guilty.

1 A Yes, sir.

2 Q My understanding is you would consider all of those?

3 A Yes, I would consider them all, depending on the
4 facts of the case really is what it boils down to.

5 Q So comes down to the facts?

6 A Yes, sir.

7 Q You can give meaningful consideration to each and
8 every one of those verdicts, depending on the facts?

9 A Yes, sir.

10 Q Now, say you get to the next stage. Would you want
11 to hear all the evidence in the next stage before you
12 render a sentence and punishment. Would you want to hear
13 all the facts?

14 A Yes, but so there would be more facts in the second
15 phase as well too before sentencing.

16 Q Yes, sir. What the Judge has mentioned. You have
17 heard a lot today, you probably been fed with a firehouse
18 today. Have you ever served on a jury before?

19 A Nothing like this, no. I went to traffic court one
20 time.

21 Q And it is nothing like this?

22 A No, sir.

23 Q Here's what is different. The first part of the
24 trial is like trials you see on TV. A jury does its job
25 and then a Judge, if a person is convicted, the Judge does

1 the sentencing. A death penalty case or a Capital case,
2 the jury does the sentencing. But what we do is we have a
3 second hearing, trial. So all of those jurors still sit
4 over here, the Judge still sits up there and then before
5 death can even be on the table, before you can consider
6 that, the State has to prove at least one aggravating
7 factor. And the Judge will tell you what those are and I
8 think he mentioned murder of more than one person, a child
9 under eleven, he went through a series of them?

10 A Yes, sir.

11 Q You have to find beyond a reasonable doubt the State
12 has done that or you can't get that. Do you understand
13 that?

14 A Yes, sir.

15 Q And if the State fails to do that would you give
16 death?

17 A No. If they failed to do that, no.

18 Q And the Judge talked about mitigating circumstances.
19 Those are things that might put the Defendant in a better
20 light, some of them are wrote by statute, by law, say I
21 want you to consider these things. Some are just going to
22 be some of the things Mr. McGuire mentioned. The
23 background of the Defendant, some other things like that.
24 Maybe some things in his life, relationships in his life
25 that might put a different light on who he is. Would you

1 be willing to consider those things and give meaningful
2 consideration to those things as well before you render a
3 verdict, a sentence?

4 A Yes, sir.

5 Q Would you be willing to give death or life depending
6 on what you hear about aggravating and mitigating
7 evidence?

8 A Yes, sir.

9 Q You would be willing and able to do either one?

10 A Yes, sir.

11 Q Depending on what happens in this courtroom.

12 A Yes, sir.

13 Q That is all we can ask you to do. Thank you, sir.

14 THE COURT: Mr. McGuire.

15 MR. MCGUIRE: I just have something for the Court.

16 THE COURT: Let me ask you step out and have you
17 right back in.

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

20 THE COURT: Mr. McGuire.

21 MR. MCGUIRE: Move to strike for cause. Mr.
22 Cunningham indicated that the killing of five children
23 would have to be, for it not to be the death penalty it
24 would have to be some sort of extraordinary series of
25 events proven by us. So that would be he is mitigation

1 impaired, he is predisposed to death. And then he is a
2 burden shifter since we would have to prove something
3 extraordinary to get him off of that. That would be, he
4 is predisposed under evidence. Thank you.

5 MR. HUBBARD: Your Honor, I think, basically the
6 question put out, why I was objecting is because when he
7 starts listening to all of this information, Judge, he has
8 heard so much he doesn't even know what this is. This is
9 the mitigating circumstances Your Honor has been talking
10 about. So he doesn't even know, is this something
11 arbitrary being brought into this courtroom or what. And
12 my objection usually is about, based on the fact that most
13 jurors are going to think stuff outside of this case just
14 don't matter because he is being tried for something. But
15 Your Honor has given them some indication that there are
16 these mitigating circumstances. That is why that question
17 is so loaded because it is couched, all right, I am giving
18 the circumstances but I haven't told them that is what
19 they actually are. This is what the Judge is talking
20 about. And so, that is why it is loaded. But when I went
21 back to him he said he could do both and he could give
22 meaningful consideration and act on those mitigating
23 circumstances. He could vote life or death.

24 THE COURT: He did answer initially one way to Mr.
25 McGuire's question. But then as Mr. McGuire continued to,

1 the Juror wanted to hear more facts and circumstances.
2 The questions continue, he wanted to hear more and more
3 and wanted to hear all the testimony before imposing
4 either sentence. I am balancing and understanding the
5 totality of everything. I find that he is qualified.
6 Bring him back in.

7 (Whereupon, the Juror entered the courtroom.)

8 THE COURT: Mr. Cunningham, the Court has found you
9 to be a qualified Juror. You are to follow the internet,
10 website you have been following to when to come back in on
11 the panels. The same address, check back on that thing
12 tonight. It will say, qualified jurors, please check back
13 tomorrow. It may say, please come back to the main
14 courtroom on a date and time. Follow the instructions to
15 qualified jurors, one of those. Now that you are
16 qualified and you are coming back, you are not on the jury
17 but you are on the potential group, a jury you could be
18 selected from. Because of that do not talk about the
19 case, don't communicate about the case, answering
20 questions about the case. Don't want you doing any
21 independent research. You don't watch the news, continue
22 doing just that. I don't want anything to impact your
23 decision making. The decision on this case will come from
24 here in this courtroom, not outside. No independent
25 research, don't let people influence your decision making.

1 I want you to come back in and be ready to consider what
2 is presented to you when you are put on the jury. Can you
3 do that.

4 JUROR: Yes, sir.

5 THE COURT: See you soon. Thank you.

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

8 THE COURT: 26.

9 BAILIFF: He didn't show.

10 THE COURT: He didn't show. Let's bring in 392.

11 (Whereupon, Juror 392, Richard Shinn entered the
12 courtroom.)

13 EXAMINATION

14 By The Court:

15 Q My name is Mr. Shinn?

16 A Yes, sir.

17 Q Can you say and spell your name?

18 A My name is Richard Shinn. Richard, S-H-I-N-N.

19 Q Okay, Mr. Shinn, I told you the first question, I
20 remind you you are under oath, have you communicated about
21 the case in any way with anyone?

22 A No, sir.

23 Q Has anyone tried to communicate with you about the
24 case?

25 A They have tried but I stopped them. Coworkers mostly

1 but I can't talk about it.

2 Q You can't talk about the case or something along
3 those lines?

4 A Yes, sir.

5 Q So you have not engaged in any conversation about the
6 case?

7 A No, sir.

8 Q Publicity has happened in this case, there has been a
9 lot of information some four years ago, several months
10 ago, over the last two weeks. A lot of publicity. I, in
11 fact, read the indictments too so you heard that
12 information, the allegations the State is making against
13 Mr. Jones, he is presumed innocent right now. Now, based
14 upon any information including the information provided by
15 me, has any of that information, no matter when you got
16 it, where it came to, where you heard it, I don't care,
17 has any of that information caused you to have already
18 formed an opinion as to what happened?

19 A No, sir.

20 Q You haven't formed an opinion?

21 A No, sir.

22 Q Now, subject matter in this case involves the death
23 of children. Testimony and evidence will be towards that
24 subject matter. I am told by the lawyers, I have not
25 heard the evidence yet. I am told by the lawyers, they

1 have all described it to me in one way or another,
2 graphic, harsh, unpleasant, tough, words to that end.
3 Would tough and difficult testimony regarding the death of
4 children, that subject matter create an issue for you?

5 A It is not an issue but it is children.

6 Q Now, the testimony is--

7 A It is going to be hard, yes.

8 Q Yes. But it is, I want to know, is that going to
9 create an issue because everybody comes from a different
10 place. But understanding it is going to be tough
11 testimony, is that going to create an issue for you,
12 because of its impact on you personally, going to create
13 an issue you can't be fair and impartial to everyone.

14 A No sir, I don't believe.

15 Q You can do that, you can be fair?

16 A Yes sir, I can be fair.

17 Q Now, I ask you to tell me about your upcoming
18 calendar, say commencing Monday toward the end of May,
19 early June. What have you got on the horizon on your
20 calendar?

21 A Monday, May 20th I go on company business, I have got
22 to go out-of-state for the week.

23 Q May 20th?

24 A May 20th through the 24th.

25 Q You are already committed to that?

1 A Yes, sir. Plane tickets have been bought.

2 THE COURT: Number 392 will be excused for work. All
3 you have got to tell me is that. Thank you so much.

4 JUROR: Thank you.

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

7 THE COURT: Bring in 181.

8 (Whereupon, Juror 181, Matthew Haslinger entered the
9 courtroom.)

10 EXAMINATION

11 By The Court:

12 Q Good afternoon.

13 A Good afternoon.

14 Q You were on the back row?

15 A Yes, sir.

16 Q I want you to say and spell both your first and last
17 name loud enough so the microphone will pick you up and
18 loud enough that Ms. Holston won't fuss at me about you
19 talking too soft.

20 A My name is Matthew Haslinger. M-A-T-T-H-E-W,
21 H-A-S-L-I-N-G-E-R.

22 Q Mr. Haslinger, did I say it right?

23 A Yes, sir.

24 Q Okay. I asked you last Monday to not talk about the
25 case, under oath you promised me that. Has anybody tired

1 to talk to you about this case?

2 A No, sir.

3 Q Have you talked to anyone about this case?

4 A No, sir.

5 Q There has been information out there through
6 publicity, lots of publicity in this case, some several
7 years ago, several weeks ago, last ten or twelve days
8 publicity. I read to you the five indictments, the
9 allegation the State is making against Mr. Jones, he is
10 presumed innocent right now.

11 A Yes, sir.

12 Q Has any of that information, from me or otherwise,
13 from any source at any time, where ever you got it, I
14 don't care. Has that information caused you to already
15 form an opinion as to what happened in this case?

16 A No, sir.

17 Q Have not formed an opinion?

18 A No, sir.

19 Q Subject matter in this case involves the death of
20 children. I have not heard any of the evidence, I haven't
21 seen it. I will be receiving it with the jury as it comes
22 in. The lawyers have all shared, they described it to me
23 as difficult, harsh, tough, difficult, graphic, all words
24 that would be impacted. Testimony regarding the death of
25 children, that subject matter, tough testimony, will that

1 put you in a place where you could not receive testimony
2 of that subject matter fairly and also give both sides a
3 fair trial. The difficulty, impact on you personally, can
4 you receive testimony of that type of subject matter?

5 A Yes, sir.

6 Q And then act as a fair and impartial Juror for both
7 sides?

8 A Yes, sir.

9 Q I asked you to come in prepared to tell me about your
10 upcoming two or three weeks on your calendar, whether
11 work, personal, vacation. What does your calendar look
12 like from say Monday towards the end of the month?

13 A From the 11th, this Saturday, to the 31st I will be
14 in Greece.

15 Q You will not be available to be called as a Juror?

16 A I have this trip--

17 Q That is all I need. What are you going there for?

18 A My father turned 63 and my family and I surprised him
19 with a trip to Greece.

20 Q That is a wonderful gesture and I am not going to get
21 in the way of that. Enjoy.

22 A Thank you, sir.

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

25 THE COURT: Let's bring in 343.

1 (Whereupon, Juror 343, Brian Pugh entered the
2 courtroom.)

3 EXAMINATION

4 By The Court:

5 Q Are you Mr. Pugh?

6 A Yes, sir.

7 Q You are under oath. I am going to ask you to spell
8 your first and last name for Ms. Holston to make sure she
9 can hear you and she has got the right spelling.

10 A Okay. Brian, B-R-I-A-N; Pugh, P-U-G-H.

11 Q Now, you are under oath, I want truthful answers. I
12 put you under oath back Monday a week ago.

13 A Yes, sir.

14 Q Has anybody tried to communicate with you about the
15 case?

16 A Family, friends.

17 Q What did you tell them?

18 A Nothing.

19 Q Did you tell them that the Judge said don't talk
20 about the case?

21 A Yes, sir.

22 Q That is a very appropriate response?

23 A Right.

24 Q Did you talk to anybody about the case that didn't
25 ask you?

1 A No.

2 Q Now, there has been publicity, a lot of news, social
3 media, four years ago, several months ago, the last couple
4 of weeks, a lot of publicity coming out about this case.
5 I provided you facts alleged by the State when I read the
6 indictments to the whole jury panel so those are the facts
7 coming at you that you received information.

8 A Right.

9 Q So any information received from where ever source,
10 you were under a responsibility before Monday to not pay
11 attention to it and try to avoid it. Before that you
12 could pay attention all you wanted. So I am asking this,
13 any information you have received to date, right now,
14 whether it is from me, social media, news media,
15 television, radio, I don't care?

16 A Before Monday?

17 Q Any time, any information you have received.

18 A Yes.

19 Q Has that information caused you to have already
20 formed an opinion as to what happened in this case?

21 A Yes.

22 Q What do you think happened. There is no wrong
23 answers. What do you think has happened?

24 A What I think happened in the case?

25 Q Yes.

1 A That he killed his children.

2 Q You think he is guilty right now?

3 A I absolutely do.

4 Q Okay. Can I talk you out of that?

5 A No.

6 Q Okay. And you understand he is presumed innocent but
7 you have, because of the media attention, this has caused
8 you to form an opinion. Do you agree with that?

9 A I agree.

10 Q I don't think you are qualified, I think I will
11 excuse you. I am looking for people who hasn't heard a
12 word. Thank you for coming and you are free to go.

13 A Thank you, sir.

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

16 THE COURT: Bring number 8, Wendy Allison.

17 (Whereupon, Juror number 8, Wendy Allison entered the
18 courtroom.)

19 EXAMINATION

20 By The Court:

21 Q Good afternoon, Ms. Allison?

22 A Hi.

23 Q How are you doing?

24 A Good.

25 Q I am going to ask you to say and spell your first and

1 last name so Ms. Holston can determine she has got the
2 right spelling and whether you are talking loud enough.

3 A Okay. Wendy Allison. W-E-N-D-Y, A-L-L-I-S-O-N.

4 Q Ma'am, I asked you last Monday, placed you under oath
5 to not communicate about the case. Has anyone tried to
6 communicate with you about this case?

7 A No.

8 Q Have you communicated with anybody this case?

9 A No.

10 Q There has been a lot of publicity in this case,
11 several years ago, several weeks ago, many months ago, any
12 time, I am not really worried about when because you were
13 under the responsibility to me for that kind of disregard.
14 You could receive, consider it, no responsibility because
15 you didn't know you were coming in here. Now, I want to
16 know about any information you received including me
17 reading the indictments. That is information also. The
18 State's allegation against Mr. Jones. Has any information
19 you received up to this point right now, over the last
20 whatever time, caused you to already form an opinion as to
21 what happened in this case?

22 A No.

23 Q Okay. Have not formed an opinion?

24 A No.

25 Q I asked you also to come into court and tell me about

1 your calendar in the couple of weeks, commencing next week
2 into the end of the month, early June. What have you got
3 on your calendar?

4 A Nothing.

5 Q So you will be available if you are seated as a
6 Juror?

7 A Yes.

8 Q Now, the allegations in this case include allegations
9 of murder, children, the subject matter will be to that
10 end. That subject matter has been described by the
11 lawyers, I have not seen it, they have described it to me
12 so that I can ask this question. It is graphic, tough, it
13 is unpleasant. That testimony, I don't think they are
14 going to mislead me to ask that question. Understanding
15 the testimony will be tough and difficult involving that
16 subject matter, would that put you in a position that
17 would affect you to the extent that you could not fairly
18 evaluate that evidence and not be fair to both sides?

19 A No.

20 Q Can you be fair and impartial in light of the subject
21 matter of that testimony?

22 A Yes.

23 Q I gave you a witness list and ask you to look over it
24 and see if you knew anybody. How many witnesses do you
25 know?

1 A I only recognize the name of one person, FBI, Dave
2 Mackey. He doesn't know me, I don't know him but my
3 daughter works with him.

4 Q Okay. What does your daughter do?

5 A She is an SOS at the FBI.

6 Q What is an SOS?

7 A They, do ambatable (phonetic) work.

8 Q She is an FBI employee?

9 A Yes.

10 Q Here in the Columbia office?

11 A Yes.

12 Q Now, do you have any idea whether or not your
13 daughter done any work on this case?

14 A She does terrorism, she does JTTF Task Force. She
15 usually works with terrorism.

16 Q Okay.

17 A So I don't think she has had anything, and if she has
18 she can't talk to me about it.

19 Q Correct. You have not talked to her about it because
20 you didn't know?

21 A No.

22 Q How often, do you have any idea of her relationship
23 with Mr. Mackey.

24 A No, he, they work in the squads next to each other
25 but they don't work together, together. But I have heard

1 her mention his name.

2 Q He works in maybe perhaps another division?

3 A He works in the same building and, I mean, she can
4 see, I mean, I think they work not in the same, they call
5 them--

6 Q Pod?

7 A Yeah, yeah. Squads, not in the same squads because I
8 think he works in a different division.

9 Q Do you have an--

10 A But I don't know--

11 Q I am going to use the idea, I enjoy NCIS, it is a
12 show I always watch, open bay, they can kind of talk to
13 each other, maybe like that.

14 A I think he works a little further away. I mean I
15 don't think she sits at her desk and speaks with him.

16 Q Okay. Now, understanding Mr. Mackey is going to
17 likely, I have heard some, seen enough about the case to
18 know he will present something in the case. Do you
19 believe your daughter's relationship with him as a
20 coworker in the same office, would that create a position
21 for you to being fair and impartial if you had to consider
22 his testimony?

23 A No, I never met him. Like I say, I just know his
24 name and so I don't have any feelings towards him one way
25 or the other.

1 Q Okay. Now, I asked, I gave you instructions earlier
2 on the aspects of criminal procedure in a Capital case,
3 two phase, phase one is the guilty or innocence. The jury
4 makes the determination of whether the State has met its
5 burden of proving the case. If the State does prove its
6 case beyond a reasonable doubt to the murder the case goes
7 to phase two which is the sentencing. In the sentencing
8 the jury considers aggravating factors if the State can
9 prove them and mitigating factors the Defense shows.
10 Jurors evaluate all of that. Broad picture, big wide view
11 lens. I asked you to identify yourself as a typical
12 Juror, type one, two or three. Did you read over that
13 sheet?

14 A Yes.

15 Q You understood my instructions on the aspects of a
16 Capital case?

17 A Yes.

18 Q Can you find yourself, identify yourself as one of
19 those three types?

20 A Three.

21 Q Type three?

22 A Yes.

23 Q Now, what do you think type three means. I wrote it
24 and I know what I meant.

25 A I think it means, I would have to know all of the

1 circumstances of the case, I can't just say because it is
2 a murder, it is a murder and he is accused of killing his
3 five children. I can't say he did, it should be death
4 without seeing all the evidence. I would have to see
5 everything to make that decision.

6 Q You want to see everything, good or bad?

7 A Right.

8 Q Then make a decision?

9 A Right.

10 Q Let me go back through the answer to that question.
11 I want to go back through the answer to that question. I
12 want to go back through a couple of other aspects of the
13 case. In this case, phase one is guilt or innocence. The
14 State goes first, they call their witnesses first because
15 they have got to prove beyond a reasonable doubt. Killing
16 of another, malice aforethought. That is there
17 responsibility, have got to prove those elements to the
18 jury's unanimous verdict of beyond a reasonable doubt.
19 They call the witnesses first in doing so. Now, to a
20 murder case people accused have several defenses. I am
21 going to read all of the defenses they may have. I am
22 going to instruct on some of them at the trial but if
23 there are other testimony that could be considered on one
24 of these defenses I may instruct on more than one. I want
25 to make certain you can understand that they, these are

1 potential defenses. Potential defenses, identification,
2 accident, involuntary intoxication, self-defense,
3 necessity, insanity, guilty but mentally ill, defense of
4 habitation, entrapment, alibi and duress. Those are
5 potential defenses that a person accused can have evidence
6 to support. If the evidence presented could support it
7 then a jury gets to hear instructions on the aspects of
8 the law pertinent to that defense. And the jury gets to
9 consider in considering the evidence supporting it to make
10 a decision. Can you act fairly and impartially to both
11 the State and the Defense in this case, considering my
12 instructions on the State's burden of proving its case
13 beyond a reasonable doubt, all the elements to murder.
14 Can you be fair and impartial to both the State and the
15 Defense on that?

16 A Yes.

17 Q Can you also consider any testimony, any evidence
18 which may support any of these defenses and my
19 instructions on those particular defenses, weigh it
20 consistent with my instructions and be a fair and
21 impartial Juror for both the State and the Defense?

22 A Yes.

23 Q Now, if the State does not meet its burden of proof,
24 it fails or if the jury finds a verdict of not guilty by
25 reason of insanity, let me go back and ask another

1 question. Let me back up. Because of the plea entered by
2 Mr. Jones, not guilty by reason of insanity, that brings
3 to play four potential verdicts in this case. Guilty,
4 guilty but mentally ill, not guilty by reason of insanity,
5 not guilty all together. The Court will instruct likewise
6 on particulars of those aspects of those verdict forms
7 individually. Can you give meaningful consideration to
8 each and every one of those four potential verdicts,
9 consider the evidence in the case and act fairly and
10 impartially to both the State and the Defense?

11 A Yes.

12 Q You can do that?

13 A Yes.

14 Q If the State fails to meet its burden of proof or the
15 jury makes a finding of not guilty by reason of insanity
16 the case ends. There is no further. If the State meets
17 its burden of proof proving the crime of murder beyond a
18 reasonable doubt it goes to phase two. In phase two the
19 jury is presented with an option of considering the
20 punishment. You have got two choices, death or life,
21 nothing else is on the table, death or life. No in
22 between, no other options. In that part of the case the
23 State has then got to prove an aggravating factor. I am
24 going to name off a few and tell you the State has got to
25 prove at least one. Murder of a policeman, murder of a

1 child, rape of murder, kidnapping of murder, multiple
2 murders. The State has got to prove one of those five
3 beyond a reasonable doubt in order to be able to ask the
4 jury to consider imposing the death sentence. Do you
5 understand that you will be tasked with hearing the
6 State's aggravating factor and they have got to prove
7 beyond a reasonable doubt in that phase. Do you
8 understand?

9 A Yes.

10 Q All right. Also during that phase there is
11 mitigating factors or mitigating evidence also presented
12 by the Defense. Mitigators are reasons to assign life
13 without parole. Aggravating would go one way, mitigators
14 going the opposite way. Do you understand?

15 A Uh-huh. (In the affirmative.)

16 Q Statutory mitigating factors include the Defendant
17 has no significant history of prior criminal history
18 involving the use of violence against another person. The
19 murder was committed while the Defendant was under the
20 influence of mental or emotional disturbance. The victim
21 was a participant in the Defendant's conduct or consented
22 to the act. The Defendant was an accomplice in the murder
23 committed by another person and his participation was
24 relatively minor. The Defendant acted under duress or
25 under the domination of another person. The capacity of

1 the Defendant to appreciate the criminality of his conduct
2 or to conform his conduct to the requirements of the law
3 was 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. The Defendant had
7 mental retardation at the time of the commission of the
8 crime. Those are statutory mitigators. The Defense may
9 present to support some of those. The Defense may present
10 other testimony concerning Mr. Jones' raising, his
11 childhood, things that happened to him along his life.
12 All aspects of his prior life can be submitted by the
13 Defense and those can be considered mitigating factors by
14 the jury. In this phase jury's are required to consider
15 the State's burden of proving the aggravating factor as
16 well as consider any and all mitigating evidence
17 presented. Considering all of that then they must reach a
18 verdict as to which punishment to vote on. Do you
19 understand?

20 A Yes, sir.

21 Q Can you give meaningful consideration to all the
22 testimony, whether it be testimony to support the
23 aggravating factors, the State's burden of proving beyond
24 a reasonable doubt. And any mitigating factors presented
25 by the Defense which would support the imposition of a

1 life sentence, consider my instructions on the law and
2 evaluate that testimony and evidence in reaching a
3 decision. Can you do that?

4 A Yes.

5 Q Can you be both fair to the State and the Defense in
6 doing so?

7 A Yes.

8 Q Do you have any moral, personal or religious reason,
9 belief, that you could not find a verdict of death?

10 A No.

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

14 A No.

15 Q Do you have any reason whatsoever you can't be fair
16 and impartial?

17 A No.

18 Q All right.

19 THE COURT: Mr. Madsen.

20 EXAMINATION

21 By Mr. Madsen:

22 Q Hi, Ms. Allison, how are you doing?

23 A Good.

24 Q My name is Rob Madsen and I am one of Tim's lawyers.
25 The Judge kind of went over with you a little bit about

1 being fair and impartial and the law. I just want to talk
2 with you about your feelings, okay. So the great part
3 about it is you can't give right or wrong answers, just
4 trying to find out what your feelings are. If I remember
5 correctly back Monday a week and a half ago, when the
6 Judge asked about publicity you stood up. Can you tell me
7 what you remember hearing?

8 A Well, I remember, I haven't heard any publicity
9 recently because I haven't watched the news or anything.
10 I just remember the case from 2014. And I didn't listen
11 to a lot of the case. The only things I remember is that
12 the children were found in Alabama. I didn't see all the
13 interviews, I was working 65 hours a week so I didn't
14 watch the local news. Other than that I heard about the
15 case but I didn't read a lot of articles.

16 Q When you heard about that then did that cause you to
17 form any kind of opinion?

18 A Since I really didn't remember how it happened with
19 the circumstances, I, no.

20 Q When you came in on that Monday did you know any of
21 the other jurors?

22 A No.

23 Q So as you heard, well, let me ask you this. Can you
24 just kind of tell me your overall view of the death
25 penalty?

1 A In order for me to give someone the death penalty I
2 would have to know without a shadow of a doubt that he
3 committed those murders with intent. I mean, like I
4 couldn't give that to anybody. I would really have to
5 know, I would have to look at the evidence.

6 Q Would you say the death penalty is a penalty of the
7 last resort in just extreme cases?

8 A I think any time there is like children involved and,
9 yes, I would agree with the death penalty.

10 Q Is that something that you think the death penalty
11 serves a purpose?

12 A I just think that would be the proper punishment for
13 that crime.

14 Q Okay. And so let me ask you this then. As the Judge
15 told you about the different forms of a verdict. As you
16 heard Tim has plead not guilty by reason of insanity. And
17 what that means is someone is saying, hey, I did those
18 acts, I killed them but because of a mental disease or
19 defect I cannot appreciate the legal or the moral
20 wrongfulness of my actions. As the Judge told you, that
21 means the trial stops. There are some people that says,
22 for someone who says I did it but because of that mental
23 disease or defect, you know what, for me I just, I
24 couldn't consider that verdict. And my question is, is
25 that you?

1 A No, I believe there are cases where, they are
2 mentally, they just don't know what they are doing at that
3 time.

4 Q So if you were presented evidence you could consider
5 that and you know that it was appropriate you could vote
6 that?

7 A Right.

8 Q So you kind of hit on it a little bit earlier and I
9 want to talk with you now about your feelings about
10 punishment for a guilty murderer of multiple children. So
11 I want to put you in the jury box and what I am talking
12 about is you and eleven other jurors have found the person
13 guilty of multiple murders. So if you have heard anything
14 about mental health or anything like that you have
15 determined that that person knows the difference between
16 right and wrong. And not an idea, you know that they
17 killed those multiple innocent children. There isn't any
18 kind of excuse or justification or any type of defense
19 whatsoever. And my question is, is that, if you get to
20 that point in that, where you have found that person
21 guilty, guilty, guilty, no doubt whatsoever. What is your
22 feelings without hearing anything else that the death
23 penalty is the appropriate punishment for that guilty
24 murderer of those innocent children?

25 MR. GRAHAM: Objection, form of the question.

1 THE COURT: Form of the question included without
2 hearing anything else.

3 MR. MADSEN: Yes, sir.

4 A Can you repeat that.

5 Q Sure. So, my question is, you have got this person
6 who you know is guilty, no excuse, no defense, they knew
7 the difference between right and wrong. So we know it is
8 an intentional killing of multiple kids. And so my
9 question for you is, in that situation without hearing
10 about anything else what is your feelings as the death
11 penalty is the appropriate punishment for that guilty
12 murderer of multiple children?

13 A If he did it without a shadow of a doubt and he
14 intended to do it and he knew what he was doing, yes, I
15 believe the death penalty is proper.

16 Q And in that situation a life without parole sentence
17 is never appropriate in your mind?

18 A No, not for killing five children and if he knows, if
19 there was not other circumstances.

20 Q And so in that situation where that person, as you
21 said, without a shadow of a doubt--

22 A Without a shadow of a doubt.

23 Q They are the person that did it. Their background
24 from 20 years ago, how they grew up, whether they grew up
25 rich or poor or had a good life or a bad life, those

1 aren't things, it sounds like to you that the act itself
2 in knowing that without a shadow of a doubt they are the
3 ones that killed these innocent kids--

4 A No, if there was a background of mental instability
5 or there are certain, that would be different.

6 Q Tell me how so?

7 A May I refer to the cases.

8 THE COURT: You may most certainly.

9 A Like the Andrea Yates case where she killed her five
10 children. I feel sorry for her, like I did not believe
11 she should get the death penalty because she was
12 schizophrenic and that type of thing. Okay. And, you
13 know, even though she killed her five children because of
14 other circumstances and the way her condition was I would
15 not have given her, you know,--

16 Q I am not one-hundred percent correct, if I understand
17 correctly she was found not guilty by reason of insanity?

18 A Right.

19 Q So it never got to that second phase?

20 A Right.

21 Q And I guess my question would be, as you heard, if
22 you are found not guilty by reason of insanity the trial
23 just stops?

24 A Right, stops.

25 Q You don't get to that second part so obviously she is

1 never eligible for the death penalty.

2 A Right.

3 Q And so I guess the question in using her example is
4 if you were sitting on her jury and you heard that and you
5 determined maybe she has some mental problems but they
6 didn't rise to that level of not knowing right or wrong.
7 In that situation, for you killing of the five kids, if
8 she knows, you know, this is an intentional killing?

9 A Right. But that would leave me some doubt if I, you
10 know, so then in that case it would be life without
11 parole, if I had doubt.

12 Q Can you think of any case that is in your mind that
13 just screams, you know what, the death penalty is
14 absolutely the only appropriate punishment for that type
15 of case?

16 A I can't think of any.

17 Q The great part of about it, is there is no right or
18 wrong answers, it is just what you truly feel. Now, you
19 understand as the Judge told you that death is never
20 required in any case, not in this case, not in any case,
21 not even the worst case you could imagine. You understand
22 that?

23 A Yes.

24 Q And you understand that the taking of another
25 person's life, that is what we call an individual moral

1 judgment. Have you ever heard that before?

2 A No.

3 Q I guess the best way it has been described to me is
4 you have made a decision on what your faith is. And
5 someone else might have made a different decision or a
6 different individual moral judgment about what their faith
7 is, what is appropriate for them. And you would expect
8 them to respect your decision. Correct?

9 A Yes.

10 Q And you would respect their decision because it is
11 their right to make that individual moral judgment. And
12 when you come to the decision of life or death, that is an
13 individual moral judgment that each Juror has to make
14 themselves. You understand that?

15 A Yes.

16 Q And the law says that if a Juror comes to that
17 individual moral judgment themselves, something they truly
18 believe, they can't give that up just to kind of go along
19 with the majority. Do you understand that?

20 A Correct, yes.

21 Q And when jurors talk about the case, certainly there
22 should be civility but if it gets to a point where someone
23 is browbeat or bullied out of that individual moral
24 judgment you understand that that is wrong. That is
25 against the law?

1 A Yes.

2 Q And if you saw that back in the jury room where
3 someone was bullying someone would you say something to
4 them?

5 A Yes.

6 Q And you understand that the law allows you, that is
7 you see that, to say, to write a note and say, Judge, it
8 has gone way past civil discourse here. We think you need
9 to kind of step in and help with the civility. Would you
10 do that if you saw that?

11 A Yes.

12 MR. MADSEN: Judge, subject to the Court's previous
13 ruling no more questions.

14 THE COURT: Subject to. Mr. Graham.

15 EXAMINATION

16 By Mr. Graham:

17 Q Ms. Allison, my name is Shawn Graham, I am one of the
18 prosecutors for the State. Thank you for being with us
19 this afternoon and answering my questions. I wanted to
20 see if I can delve into a couple of things and try to
21 clarify what you, my understanding of what you said.

22 A Okay.

23 Q So with the intentional killing of five children, you
24 have already determined that that is guilty and you are
25 now in the penalty phase. That is the situation, okay.

1 A Okay.

2 Q Do you want to hear anything more or have you already
3 automatically decided what the punishment should be?

4 A We are at the final stage and we have already heard
5 everything, all of the evidence?

6 Q You have heard evidence, in this case the Defendant
7 has plead not guilty by reason of insanity. Assuming that
8 you have heard evidence on that topic and you and other
9 jurors had decided beyond a reasonable doubt that he was
10 guilty or guilty but mentally ill, only then would we got
11 to the punishment part.

12 A Okay.

13 Q That is the situation we are now in. So you would
14 have already determined as part of the jury that he was
15 guilty or guilty but mentally ill. Okay.

16 A Okay.

17 Q At that point would you automatically not want to
18 listen to anything else and automatically know what the
19 punishment would be?

20 A If it was the death penalty we are going for?

21 Q I am sorry, Ma'am?

22 A We are talking about the death penalty?

23 Q At that phase you would consider life without parole
24 or death penalty, you have those two options.

25 A If all the stuff was brought before me and we have

1 heard all the evidence and everybody has decided that he
2 is guilty.

3 Q You have heard the evidence about guilt.

4 A Guilt.

5 Q But you have not heard anything else. Would you want
6 to hear anything else or would you automatically know what
7 your sentence was going to be?

8 A I would want to hear everything that I could possibly
9 could hear. If it was more information I would want more
10 information.

11 Q If information was presented on a particular, so that
12 is what the aggravating and mitigation is. And you are
13 saying that you would want to hear all of that before you
14 would make a decision?

15 A Make a final decision, yes.

16 Q Okay. If evidence of mental illness was presented in
17 the first phase, not guilty by reason of insanity, I
18 thought I heard you say that you would automatically vote
19 for life. Is that true?

20 A If it was true mental illness, if I, after listening
21 to all the evidence, I thought, because people can just
22 say that they did it by reason of insanity and the
23 evidence doesn't prove that. I am telling you, if it was
24 really truly he had a mental condition and he did not know
25 what he was doing at the time, did not do this on purpose,

1 was not aware of his actions, then I would give him life.
2 He was aware of his actions and we found, and he did this
3 and this was something that, I would go for the death
4 penalty.

5 Q Let me back up to the guilt, let me go back to the
6 first section, guilty, not guilty by reason of insanity,
7 guilty but mentally ill. The definition of not guilty by
8 reason of insanity means that the Defendant was unable,
9 because of a mental disease or defect to appreciate the
10 moral or legal wrongfulness of his actions.

11 A Okay.

12 Q So if you found, if you and the other jurors saw that
13 and found him not guilty by reason of insanity then you
14 would not make it to the second, there wouldn't be a
15 punishment phase. The trial would stop. Do you
16 understand that?

17 A Okay. So if he was guilty by reason of insanity that
18 would be it, you wouldn't go to the punishment.

19 Q If he was not guilty by reason of insanity, he found
20 insanity there would not be a punishment phase.

21 A Okay, got you. Okay.

22 Q Now, if the jury, if you were on the jury and the
23 jury found him guilty or guilty but mentally ill then you
24 would go to the punishment phase. So I guess my question
25 to you, I am trying to understand where you are at.

1 Knowing that the Defendant is not guilty by reason of
2 insanity and you will hear testimony to support that
3 offered by the Defense, once you have heard that you are
4 either going to have to find one of those four verdicts,
5 right?

6 A Yes.

7 Q If you find guilty or guilty but mentally ill, we are
8 in the penalty phase, knowing that you have heard that,
9 have you already decided automatically without needing to
10 hear anything more, what your verdict would be?

11 A If he was mentally ill, if he was proven to mentally
12 ill I would not have to hear anything more.

13 Q If it was proven to you that he was mentally ill?

14 A Right.

15 Q You would not need to hear anything else?

16 A No.

17 Q You would have already determined that it would be--

18 A Life.

19 Q Life without parole. If you and the other jurors
20 determined that the death penalty was the appropriate
21 punishment, one of the things you would have to do is sign
22 your name to a document to attest to that. If that is
23 what you believed and that is what you and the other
24 jurors, you and the other eleven jurors unanimously, could
25 you sign your name to that verdict?

1 A Yes.

2 Q Thank you.

3 THE COURT: Anything further Mr. Madsen?

4 MR. MADSEN: Yes, sir.

5 THE COURT: Okay, Ma'am, step out real quick and I
6 will talk to the lawyers and will have you back in.

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

9 THE COURT: Mr. Madsen.

10 MR. MADSEN: Judge, we think that she is impaired.
11 When I asked her about if she gave, she wouldn't give
12 Andrea Yates the death penalty. I am not one-hundred
13 percent sure but I believe that that lady was not guilty
14 by reason of insanity. So you don't even get to that
15 point and that is the only way, I mean she said something
16 about wanting, she vacillated in her answers but in the
17 end it seems even if Mr. Graham, she doesn't want to hear
18 anything else, she is going to have her mind made up.
19 That substantially impairs her legally and she should be
20 excluded.

21 THE COURT: You want to challenge that, Mr. Graham?

22 MR. GRAHAM: No, Your Honor.

23 THE COURT: I am on the same page with y'all. She
24 did facilitate, she answered different questions, and I
25 agree with you. I was concerned a little bit about the

1 relationship with her daughter too. Bring her back in.

2 (Whereupon, the Juror entered the courtroom.)

3 THE COURT: Ms. Allison, based upon all of your
4 answers and the questionnaires and whatnot I am going to
5 excuse you from serving on this case. You are not
6 required to report back. Thank you.

7 JUROR: Thank you.

8 THE COURT: Thank you very much.

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

11 THE COURT: Bring in number 403.

12 (Whereupon, Juror 403, Linda Smith entered the
13 courtroom.)

14 EXAMINATION

15 By The Court:

16 Q Ms. Smith, sit down and spell your name and make
17 certain she can hear you.

18 A Linda Smith. S-M-I-T-H.

19 Q Ms. Smith, remind you you are under oath. I told you
20 last Monday to not talk about the case with anybody. Have
21 you talked about the case with anybody?

22 A Not the details.

23 Q You are talking about having to appear in court and
24 come to the selection part?

25 A Correct.

1 Q Now, has anybody questioned you about the case?

2 A No.

3 Q Now, you received information about the case from me.

4 I read the indictments Monday. That is information.

5 A Right.

6 Q The publicity that occurred before you, I told you to

7 minimize with it, lots of information out there, publicity

8 and otherwise. Any information you have received, I don't

9 care when you got it.

10 A I have seen headlines, have not read any of the

11 articles.

12 Q Even before Monday?

13 A Before Monday, yes, I am familiar, yes.

14 Q Okay. That is what I want to talk about. Everything

15 you have got because I can't control what you did

16 beforehand.

17 A Exactly.

18 Q I want to know this. Whatever information you have

19 got in your head, from which ever source, whether it be

20 off the computer, newspaper, television, I don't care,

21 from me. Any information you have received up to this

22 point right now, has that information caused you to form

23 an opinion as to what happened in this case?

24 A No.

25 Q You have not formed an opinion?

1 A No.

2 Q Now, tell me about your calendar in the upcoming
3 couple of weeks, commencing Monday to the next two or
4 three weeks?

5 A Just work, Monday through Friday.

6 Q So an inconvenience at work would be--

7 A That would be it, yes, work would not be happy but
8 that would be it.

9 Q So you are available if you were so selected?

10 A I am.

11 Q All right. The allegations in this case include
12 murder of five children. That would be the subject
13 matter. The lawyers have represented to the Court that
14 testimony on that subject matter is going to be difficult,
15 unpleasant, graphic, harsh, are some of the terms the
16 lawyers told me. I don't think they are exaggerating. I
17 think they called it like it is going to be. It is going
18 to be unpleasant. Would that subject matter create an
19 issue for you to evaluating and considering that you could
20 not sit and act fairly and impartially for this trial on
21 both sides?

22 A I don't believe it would.

23 Q You think you could receive and consider?

24 A Yes.

25 Q And still be fair to the State and the Defense?

1 A Yes.

2 Q All right. I gave you a witness list, do you know
3 anybody on it?

4 A No.

5 Q I gave you a preliminary instruction on the aspects
6 of the law, two phase trial, Capital case, guilt or
7 innocence. The guilt is proven by the State, if so go to
8 phase two. Self-evaluating, can you find yourself as a
9 typical Juror based upon my summary of the three types of
10 jurors?

11 A Yes.

12 Q What type are you?

13 A Juror three.

14 Q I wrote that, I know what I meant. What do you think
15 that means?

16 A It means you have to take all the evidence into
17 account, you can't, you can't have any preformed in your
18 mind. It has to be proven to you.

19 Q Okay. And so that is how you classify yourself?

20 A Right. If you tell me I did this because of this,
21 prove it to me, show me why you did it that way.

22 Q So you want to hear everything, good and bad?

23 A I want to hear everything, good and bad.

24 Q Okay. You haven't made up your mind yet?

25 A No.

1 Q Haven't formed an opinion?

2 A No.

3 Q Now, in this case the, I am going to go back to guilt
4 or innocence. That phase one, it stays right there, they
5 have called the case, published the indictments, this is
6 what we are going to try to convince you beyond a
7 reasonable doubt that Mr. Jones did. Mr. Jones sitting
8 right there is presumed innocent at this moment and all
9 the way through the trial until the State proves its case.

10 A Right.

11 Q He is presumed innocent. The State has got to prove
12 their case by calling witnesses, presenting evidence. The
13 jury will consider that. Additionally, people accused
14 like Mr. Jones are afforded certain defenses. I am going
15 to read all of them, what I am going to tell you, during
16 the trial, since I haven't heard all the testimony I am
17 not sure which of these defenses could come into play. At
18 least one will, perhaps more. All right.

19 A Okay.

20 Q Potential defenses are identification, accident,
21 involuntary intoxication, self-defense, necessity,
22 insanity, guilty but mentally ill, defense of habitation,
23 entrapment, duress or alibi. Having not heard the
24 evidence I am not certain what I am going to instruct you
25 on. If the testimony comes in and it was appropriate for

1 me to instruct you on one of those particular defenses I
2 will. Can you give meaningful consideration to the
3 evidence and testimony offered by the State and its proof
4 of this case beyond a reasonable doubt to the murder as
5 well as consider any testimony, evidence which may support
6 one of those defenses but apply consistent with my
7 instructions on the State's burden as well as the Defense
8 in those definitions?

9 A Yes.

10 Q You can do that?

11 A Yes.

12 Q And be fair to the State and the Defense?

13 A Yes.

14 Q Now, Mr. Jones has offered a plea of not guilty by
15 reason of insanity. By that plea that brings in to four
16 potential verdict forms right now. Guilty, guilty but
17 mentally ill, not guilty by reason of insanity and not
18 guilty all together. Of those four potential verdict
19 forms I will instruct the jury on how to consider the
20 aspects of those verdicts. Can you give meaningful
21 consideration to all the testimony and evidence, in
22 considering my instructions consistent with that and reach
23 a finding of any one of those particular verdicts.

24 A Yes.

25 Q Can you find, assuming they were supported, could you

1 make a finding to each one of those?

2 A Yes. If the evidence supported it.

3 Q There would only be one verdict but can you consider
4 all of those?

5 A Yes.

6 Q If the case is found not guilty, not guilty by reason
7 of insanity the case ends, it stops right there. If the
8 State meets the burden of proving the murder beyond a
9 reasonable doubt then phase two starts, the punishment
10 phase. In phase two the State has got to prove 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. The State as got to prove
14 one of those aggravating factors beyond a reasonable doubt
15 in order to ask a jury to impose a sentence of death. Do
16 you understand that?

17 A I do.

18 Q And they have got to prove one of those beyond a
19 reasonable doubt to do so. Now, in the sentencing phase,
20 death is not automatic. It is one of two. Life or death
21 are the two choices, nothing in the middle, no other
22 options. During that phase the State is trying to prove
23 the aggravating factor beyond a reasonable doubt. The
24 jury also heard from the Defense, mitigating evidence, and
25 mitigating factors. I am going to read to you several

1 statutory mitigators and come back and ask you another
2 question.

3 A Okay.

4 Q Potential statutory evidence could be, the Defendant
5 has no significant history of prior criminal conviction
6 involving the use of violence against another person. The
7 murder, while the Defendant was under the influence of
8 mental or emotional disturbance. The victim was a
9 participant in the Defendant's conduct or consented to the
10 act. The Defendant was an accomplice in the murder
11 committed by another and his participation was relatively
12 minor. The Defendant acted under duress or under the
13 domination of another person. The capacity of the
14 Defendant to appreciate the criminality of his conduct or
15 to conform his conduct to the requirements of law was
16 substantially impaired. The age or mentality of the
17 Defendant at the time of the crime. The Defendant was
18 provoked by the victim in committing the murder. The
19 Defendant was below the age of 18 at the time of the crime
20 and/or the Defendant had mental retardation at the time of
21 the crime. Those are statutory mitigators. Additionally
22 jurors are allowed to consider any mitigating factors
23 which would be reasons they would assign a life sentence
24 such as the personal history of Mr. Jones, he had a tough
25 childhood. Anything in his past can be a mitigating

1 factor. Can you give meaningful consideration to the
2 testimony regarding aggravating factors the State must
3 prove beyond a reasonable doubt and consider meaningful
4 any testimony and evidence and consider the mitigating
5 factors consistent with my instructions in reaching a
6 decision on which of the two punishments to give?

7 A Yes.

8 Q You can do that and be fair to the State and the
9 Defendant?

10 A Yes.

11 Q Do you have any religious, moral or personal belief
12 which would prevent you from finding a sentence of the
13 death penalty?

14 A No.

15 Q Do you have any religious, personal or moral belief
16 that would prevent you from imposing the sentence of life
17 without parole?

18 A No.

19 Q Okay.

20 THE COURT: Mr. Young.

21 EXAMINATION

22 By Mr. Young:

23 Q Good afternoon, Ms. Smith.

24 A Hi.

25 Q As the Judge told you, now is our chance to have just

1 a brief conversation about your opinions and your
2 thoughts, there are no right or wrong answers. Okay?

3 A Okay.

4 Q Are you with me on that?

5 A Yes.

6 Q If I confuse you in any way just say I don't
7 understand, can you repeat that. All right.

8 A Sure.

9 Q And if I misstate something and I say, it sounds like
10 to me you are saying this, you just tell me, no, you got
11 me wrong, that is not me.

12 A Okay.

13 Q Fair enough.

14 A Fair enough.

15 Q All right. I noticed that you stood up on Monday
16 when we were over and the Judge as asking anybody if you
17 heard anything about the case. And you told the Judge you
18 had read the headlines. Is there anything else you
19 remember about what you had seen or heard or read?

20 A I know from the news reports what is alleged to have
21 happened. I know what or the alleged circumstances around
22 when he was arrested. But, again, those are news reports.
23 You can't, you can't trust everything you read or see in
24 the media. So those are just news reports.

25 Q You just need to tell me, did you form any impression

1 about Tim from those news reports?

2 A It is hard to comprehend how someone could do what he
3 has alleged to have done. But, again, I would like to
4 keep the open mind of, explain it to me.

5 Q Okay.

6 A Explain it to me. It is not my place to say, you
7 know, this is that just because I read something in the
8 newspaper.

9 Q Right. You need to see it here in court?

10 A Right.

11 Q Thank you. And the Judge would, talked about the
12 five allegations of murder and then the Judge has told you
13 that Tim has plead not guilty by reason of inanity?

14 A Right.

15 Q And not guilty by reason of insanity in South
16 Carolina means that he did the killings, he said I did the
17 actions but because of a mental disease or defect he was
18 not able to understand the difference between legal or
19 moral right from wrong. Do you understand what that
20 means?

21 A I do.

22 Q Okay. Some people say that for them, understanding
23 that the case is over, if that is what the jury found, not
24 guilty, not guilty by reason of insanity the case is over.
25 Some people say for me, that is just some excuse, that is

1 a copout. It is not something that is really on the table
2 for me in the case involving charges like this. You know
3 people like that. And I just got to ask you, where do you
4 come from on that?

5 A I believe if he is truly mentally ill then there
6 needs to be treatment. If it can be proven, it happens,
7 it happens, there is mental illness in this Country and it
8 happens. And, you know, there needs to be treatment.

9 Q So it sounds to me what you are telling me is that is
10 a verdict for you that is on the table?

11 A It is on the table if the evidence is there, yes.

12 Q Okay. And the Judge is going to tell you that the
13 burden is on the Defense to prove more likely than not
14 insanity. And if the jury finds that then the case is
15 over. Okay.

16 A Right.

17 Q You okay with that?

18 A Yes.

19 Q But if the jury hears evidence about insanity and
20 they say, no, that is not the case, we find beyond a
21 reasonable doubt that he did know the difference between
22 right and wrong. And that it wasn't an accident, it was a
23 meant to do it, malicious murder of multiple children.
24 Then we end up in the penalty phase. Are you with me on
25 that?

1 A I am.

2 Q And that is where the State proves aggravating
3 circumstances beyond a reasonable doubt. Like I said,
4 multiple children killed, are you with me on that?

5 A I am.

6 Q And then the jury has these options. Life without
7 parole or the death penalty. Are you with me on that?

8 A Yes.

9 Q Some people say in that type of case where they knew
10 what they were doing, chose to kill, maliciously kill
11 innocent children. For me the only appropriate punishment
12 is death, I don't need anything else, that is where I
13 start and end just based on the nature of the victims.
14 Can you tell me what you think about that?

15 A I am not that set in stone.

16 Q Okay.

17 A Now, again, I have to hear the evidence.

18 Q Can you tell me anything about somebody who was in
19 that situation that you could, say, you know what, maybe
20 life is the appropriate punishment?

21 A I don't quite understand the question.

22 Q Thank you very much, it wasn't well worded. The
23 Judge has talked to you about mitigating circumstances
24 that would be offered as a reason for a Juror to vote for
25 a life penalty. Can you think of anything about somebody

1 in that type of case that would make you think that maybe
2 life is the appropriate punishment?

3 A If there were a circumstance, there are times when
4 people, not so much insanity but lose themselves
5 consciously for moments and things happen. And then when
6 the consciousness comes back they realize, it happens.
7 Again, I don't know that that is straight marching off to
8 the death penalty.

9 Q Okay.

10 A I understand, you know, things like that do happen,
11 it is not that black and white.

12 Q Then it didn't rise to the level they didn't know the
13 difference between legal and moral right from wrong but
14 they still had some issues and it sounds like for you that
15 might be mitigating?

16 A Correct.

17 Q And that might move you towards a life penalty?

18 A It is possible.

19 Q And I didn't ask this but you, and you said, when I
20 asked you about whether or not you thought the death
21 penalty was the only appropriate punishment you said,
22 well, it is not set in stone. Do I take that to mean that
23 you sort of start at death, probably the appropriate
24 punishment and then maybe you could be convinced that life
25 is the appropriate punishment or are you just sort of--

1 A I would start in the middle and go either side based
2 on the evidence.

3 Q Thank you very much. That is exactly what we are
4 looking for, Ms. Smith. Can you tell me a little bit
5 about, a little bit more about your sort of general
6 philosophy about the death penalty.

7 A I think it would be a good deterrent if it were
8 handled more efficiently. I think that our justice system
9 at this point is, it is just, it is not doing what it was
10 intended to do when it was enacted, in my opinion.
11 Because I believe it was enacted to be a deterrent for
12 heinous crimes like this but the fact that the sentence
13 itself can take 20 to 30 years to be carried out, people
14 don't take it as seriously as I think they used to.

15 Q Okay. Do I understand you to say if you thought you
16 gave somebody the death penalty that that sentence might
17 not be carried out?

18 A No.

19 Q Okay. And the Judge is going to tell you, as a Juror
20 you have to understand that if you give death he is going
21 to be executed?

22 A Right.

23 Q And if you give life he is going to die in prison?

24 A Right.

25 Q Any question about either one of those?

1 A No.

2 Q Do you think that the decision and the decision about
3 that jurors are asked about, to end somebody's life, do
4 you think it is appropriate to take their whole life into
5 consideration when you are asked to decide whether or not
6 to end it.

7 A Yes, I would think so.

8 Q So it sounds to me that for you the background, how
9 he was raised, who his family is, what his walk in life
10 is, that stuff might be important to you?

11 A Yes.

12 Q And you would be open to hearing all of that?

13 A Yes.

14 Q All right. At the end of the day this decision about
15 life or death is what is called an individual moral
16 judgment. Do you understand that?

17 A Yes.

18 Q There is no right or wrong answer. If you had this
19 many aggravators the appropriate thing is death. If you
20 have this many mitigators the appropriate thing is life.
21 That is not how it works. Okay.

22 A Right.

23 Q It is up to each individual Juror to decide for
24 yourself what the appropriate penalty is based on all of
25 the evidence. It has been described to me like choosing

1 what faith is appropriate for yourself. You have made
2 your personal moral decisions about that. Is that right?

3 A Right.

4 Q And you recognize that other people have made
5 different moral decisions for themselves about something
6 like that?

7 A Right.

8 Q You recognize that you respect their right to make
9 their decision when it comes to that type of individual
10 moral judgment?

11 A Yes.

12 Q And you expect them to respect your right to make
13 your own decision when it comes to that type of moral
14 judgment?

15 A Correct.

16 Q And if you saw something being belittled or bullied
17 or harassed into give up what they arrived at as their
18 individual moral judgment would you stop it?

19 A I would try to, yes.

20 Q Would you say, we are all entitled to our own
21 opinion, that is their opinion, that is perfectly fine?

22 A Yes. If their, there is no need for bullying. There
23 is a difference between bullying and persuading.

24 Q Right. And the law is is that a Juror can decide
25 that the life penalty is appropriate for any reason, just

1 some mitigating factor offered by the Defense. Are you
2 with me on that?

3 A Yes.

4 Q And they can give any one of those the value of life
5 or no reason at all. They can say, I can't put into words
6 but for me it is right and that is what I want to do. Can
7 you respect a Juror to say, I can't tell you why but it is
8 right for me?

9 A Yes.

10 Q If you saw somebody being bullied or harassed or
11 belittled about what they had arrived at as their
12 individual moral judgment would you, and you tried to stop
13 it and it kept going could you send the Judge a note
14 saying that should stop?

15 A Yes.

16 Q Do you know any of the other jurors who came to court
17 with you on Monday?

18 A No, I do not.

19 Q Okay.

20 MR. YOUNG: Based on the Court's limitations I will
21 stop there. Thank you.

22 THE COURT: Ms. Mayes.

23 EXAMINATION

24 By Ms. Mayes:

25 Q Good afternoon, Ms. Smith.

1 A Yes.

2 Q My name is Suzanne Mayes, I am one of the Prosecuting
3 Attorney's in this case and with the Solicitor's office,
4 we represent the State in this case. So just a couple of
5 questions for you to follow-up. One of the things that
6 Defense Counsel was asking you about is whether you were
7 open to hearing evidence of a mental health defense such
8 as not guilty by reason of insanity. And you answered
9 that you were?

10 A Yes.

11 Q And that you would listen carefully to any evidence
12 offered in that regard?

13 A I would.

14 Q And by the same token I want to ask you, if you heard
15 by testimony or evidence that countered that testimony or
16 evidence of, from, that was offered by the State would you
17 also consider that in reaching a verdict?

18 A Yes, I would.

19 Q If you have heard or gotten to the point where you
20 are now in the second phase of the trial. Of course we
21 are looking ahead and all of this is, you know, just from
22 the standpoint of what would happen if there were to be a
23 second phase of the trial but in a potential sentencing
24 phase, you would hear evidence offered by the State as to
25 aggravating circumstances. It would also be potential

1 evidence offered by the Defense regarding mitigating
2 factors, could be anything as the Judge told you. Not
3 just the statutory factors but even additional factors,
4 anything that they thought would be important in
5 consideration. Would you listen to each of those factors
6 in reaching a decision on punishment?

7 A Yes.

8 Q And if after taking all evidence into consideration
9 you decided that life without parole was the appropriate
10 punishment and that means he never gets out of prison, is
11 the life without parole a potential decision that you
12 could make in reaching punishment?

13 A It is.

14 Q And then the other option would be the death penalty.
15 If the death penalty is something that you have thought
16 much about before you came into the courtroom last week?

17 A Not really, no. But I am not opposed to, if that is
18 appropriate then that is the sentence.

19 Q Okay. And if ultimately the twelve jurors were to
20 reach a decision that, unanimously, that the death penalty
21 is appropriate can you find yourself being one of those
22 twelve jurors to vote for the death penalty if after
23 consideration of all the evidence you found appropriate?

24 A Yes.

25 Q With that potential verdict each Juror would have to

1 then acknowledge the death sentence with a signature on
2 that form. Could you see, after considering all the
3 factors in reaching that verdict that you could actually
4 not just vote for it but sign your name to that sentence?

5 A Yes.

6 Q Thank you, Ms. Smith, nothing further.

7 THE COURT: Anything from, are you good?

8 MR. YOUNG: Yes, sir.

9 THE COURT: You want to be heard?

10 MS. MAYES: No, sir.

11 THE COURT: Ms. Smith, the Court now, after hearing
12 everything in your answers to the questionnaire and
13 hearing you under oath I find you qualified to be a Juror
14 in this case. What that means is you must pay attention
15 to the website yet again. You are no longer on a panel,
16 you are on qualified jurors. There would be instructions,
17 please check the website again tomorrow or please report
18 to the Lexington Count Court House at some date and time.
19 Follow those instructions. Additionally, you are under
20 oath to not talk about the case, discuss the case, have
21 the case discussed in and around you, don't be influenced.
22 Don't want any information coming to you which could
23 impact your decision. I want your decision to be impacted
24 by only testimony and evidence here in the courtroom,
25 whether it is under the supervision of the Court or the

1 court record and it is under oath. I don't want something
2 outside the courtroom to cause you to think anything about
3 this case, good or bad. Can you live up to that oath?

4 JUROR: Yes.

5 THE COURT: I will see you when we see you next.

6 JUROR: Thank you.

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

9 THE COURT: We have got two panels coming in
10 tomorrow, nine and twelve. We will resume in the morning.
11 See y'all then, 9:00 o'clock.

12 (Whereupon, the case will resume the next morning at
13 9:00 a.m.)

14 May 9, 2019

15 THE COURT: We will get started with what we have
16 got. We are missing 143. Let's bring them in.

17 (Whereupon, Juror 200, Kimberly Hughes; 357,
18 Christopher Rucker; 305, Joseph Neeley; 461, Susan
19 Watson; 34, Timothy Belay; 32, Todd Bedenbaugh; 86,
20 Rogers Chambers entered the courtroom.)

21 THE COURT: Folks, I am going to give y'all a layout
22 of what to expect. I am going to read you a statement of
23 criminal procedure, kind of as a backdrop to some of the
24 questions you will be asked in a few minutes. The cameras
25 that are in here, they are off. You will be placed under

1 oath through your answers and whatnot. The majority of
2 the questions are by personal feelings and opinions, there
3 are no wrong answers, just need candid answers. Okay.
4 You are not going to be tricked up, I just need to know
5 personal opinions and feelings. The lawyers will
6 follow-up with some questions. To that end too, so you
7 can't give a wrong answer, just need candid and honest
8 answers. Once we start we will put you back in the jury
9 room, each Juror we do just about the same way. My first
10 question is, have you talked to anybody about the case.
11 That is going to be my first question so don't be, I am
12 going fast, some jurors are taking like I heard they were
13 talking about the case and I am confronting them but I ask
14 every Juror the same question upfront. That is going to
15 be the first question so it is not you, it is everybody.
16 Okay. All right, Madam Clerk, place them under oath.

17 (Whereupon, the jury panel was sworn at 9:10 a.m.)

18 THE COURT: You have been summoned as potential
19 jurors in the case of the State versus Timothy R. Jones,
20 Jr. My name is Judge Eugene Griffith, Jr. and I will be
21 the presiding Judge in this trial. Mr. Jones is charged
22 with five counts of murder. And in South Carolina murder
23 is defined as the killing of any person with malice
24 aforethought. Malice is defined as a person with a wicked
25 or depraved heart, intent on wrongdoing, hatred, ill-will

1 or hostility. The definition of murder excludes any just
2 cause or excuse for the killing. When the State alleges
3 the offense combined with certain aggravating
4 circumstances the State can seek the death penalty.
5 Before and during a trial a person accused is presumed
6 innocent of each and every element of the crimes which he
7 is charged with. The State must prove each and every
8 element of the crime charged by a standard of proof called
9 beyond a reasonable doubt. In most criminal cases Judges
10 determine the punishment upon a conviction. But in a
11 Capital case the jury determines the punishment. In a
12 Capital case the trial is divided into two phases
13 potentially. The guilt or innocence phase and then if
14 necessary the punishment phase. In the first phase of the
15 case the State must prove the Defendant's guilt of murder
16 beyond a reasonable doubt. If a jury finds an accused
17 guilty of murder then the trial proceeds to the second
18 phase. In the second phase, if the State proves an
19 aggravating circumstance beyond a reasonable doubt the
20 jury then considers aggravating and mitigating evidence in
21 deciding the punishment, either life without the
22 possibility of parole or the death penalty. Our law in
23 South Carolina does not allow the State to seek that
24 execution if a person is convicted solely of murder. The
25 State must prove at least one statutory aggravating factor

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

1 you as to the exact instruction of law which I will give.
2 But when you come back into the courtroom individually I
3 will ask you the question, can you accept an oath to
4 meaningful consider all the testimony and evidence, apply
5 the law as I instruct it and consider all the testimony
6 and evidence consistent with my instructions. That will
7 be the question posed to you in different fashion, that is
8 the general question. Retire to the jury room, do not
9 discuss the case. Also I will ask you about your schedule
10 and any conflicts may have with that. See you back in
11 here in a few minutes and will call you back one at a
12 time.

13 (Whereupon, the jury panel was excused from the
14 courtroom.)

15 THE COURT: Let's bring in 200.

16 (Whereupon, Juror 200, Kimberly Hughes entered the
17 courtroom.)

18 EXAMINATION

19 By The Court:

20 Q Ms. Hughes, I remind you you are still under oath.

21 As promised, have you talked about the case with anybody?

22 A No, sir. I talked about the jury schedule with my
23 boss.

24 Q That is fair enough. Were there any other inquires
25 made of you?

1 A They asked and it was pretty obvious what case it was
2 but I told them I couldn't speak about it.

3 Q Fair enough. That is following my instructions.
4 There has been a lot of information published before
5 Monday when you came in. As a matter of fact Monday when
6 you came in I published information about the indictments.
7 That is information that you received. There has been
8 publicity since Monday, I told you to minimize. There has
9 been publicity before Monday, whatever you have heard from
10 where ever it was, whenever it was including my comments.
11 Has any of that information you have received, heard or
12 considered caused you to already form an opinion as to
13 what happened in this case?

14 A Kind of I want to say yes just because of the
15 publicity back when I first heard about it.

16 Q Remember this is opinion and personal belief so you
17 are not going to give me a wrong answer.

18 A I got you. Yes, I want to be honest about it. I
19 would like to think that I am the kind of person that can
20 take into consideration all of the evidence. So I feel
21 like I have kind of made up my mind.

22 Q What do you think happened.

23 A It is just the kids, kind of soft heart and it is
24 just the murder and the amount of children.

25 Q Do you remember how many children it was?

1 A Five.

2 Q That is correct. Now, you already have an opinion as
3 to his guilt or innocence?

4 A I do.

5 Q Do you think he is guilty?

6 A I do.

7 Q I didn't mean to suggest the answer to you.

8 A No, no.

9 Q Now, if you have done that, formed an opinion prior
10 to coming in, that creates an issue and I will ask you a
11 couple of more questions. The subject matter of the case
12 involving the death of children will also be presented and
13 it is very difficult testimony I am told, I have not heard
14 it but troubling, graphic. Would that type of testimony
15 be difficult for you to consider also?

16 A Difficult in hard to perceive and see?

17 Q Yes.

18 A Yes, sir.

19 Q Would that affect your ability to be fair and
20 impartial in considering that factor also?

21 A I am not sure if I can do that, sir.

22 Q Now, I am going to excuse you. You are already
23 preforming the opinion and I can't prevent that or tell
24 you not to do that. It is something that happens so I am
25 going to excuse you in this trial. I am not going to put

1 you in that position saying, can you set that aside and
2 then consider everything and redecide. That is hard to
3 do.

4 A Yes, sir.

5 Q You are excused. Thank you.

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

8 MR. HUBBARD: Your Honor, when we have somebody who
9 has an opinion may we ask you to inquire if they think
10 they would be capable of setting that aside. I think you
11 have got discretion no matter what but just so it is real
12 clear that they could, because a lot of people I think
13 could have an opinion but if they can set it aside and
14 hear, I don't know that she could based on what you got
15 from her. But, anyway, Your Honor, I just ask that.

16 THE COURT: All right. Let's bring in 357.

17 (Whereupon, Juror Christopher Rocker entered the
18 courtroom.)

19 EXAMINATION

20 By The Court:

21 Q You are Mr. Rocker?

22 A Yes, sir.

23 Q I want you to say and spell your name so Ms. Holston
24 can determine if the microphone is working appropriately
25 for you.

1 A Chris Rocker. Last name, R-O-C-K-E-R.

2 Q Mr. Rocker, I ask for you and all the other jurors,
3 people discuss the case with you after Monday. Has anyone
4 tried to attempt to discuss the case with you since last
5 Monday?

6 A Well, my employer knows I have been checking,
7 continue to checking the website and all of that. And in
8 the context of our staff meeting someone asked said, hey,
9 is it the Jones' case. So I did my best to just kind of,
10 not comment and move the conversation forward. Also, of
11 course, I mentioned to my wife of this as well. And but
12 as far as discussing details in the case I haven't done.

13 Q That sounds like appropriate responses. Now, you
14 have not talked to anybody other than scheduling?

15 A Right.

16 Q Now, there has been publicity in this case, lots of
17 it, several years ago, several months ago, over the last
18 two weeks. In fact, during the preliminary qualification
19 of the jury on Monday I read five indictments of the
20 allegations the State has made against Mr. Jones. That is
21 yet, again, information that you have received. Has any
22 of the information you received from where ever it came
23 from, when ever you received it, it don't matter, I want
24 to know if any of that information all collectively, has
25 that caused you to form an opinion as to what you believe

1 happened in this case?

2 A No, it has not.

3 Q Now, I ask you about your schedule, you got a
4 personal schedule, work schedule, home obligations. Do
5 you have anything that, other than inconvenience, at work,
6 at home, do you have anything, prepaid vacation, upcoming
7 medical procedure, anything like that scheduled starting
8 Monday through the end of May or June?

9 A Next Friday which would be the 17th I do have a
10 retreat scheduled. I am a student pastor. That afternoon
11 I would need to get final details in order and things like
12 that so we will be leaving later that afternoon to go out
13 of town. As far as until the end of the month, that is
14 the only thing that comes to mind.

15 Q Well, interestingly enough another Juror says I am
16 good except for about 12:00 o'clock on that same weekend.
17 So I can, it may be that if either of y'all are selected
18 we can work around and with that schedule. Mid-day,
19 stopping the trial if you were selected and the other
20 Juror I dealt with before, this is basically the same
21 request. So I think between the two of you we can
22 probably work around that if either of you are put on the
23 jury once it is selected. The subject matter in this case
24 involves the death of five children. The subject matter
25 has been described to me, I have not heard the testimony,

1 I have seen some preliminary things but not very much.

2 The testimony, subject matter is very difficult, it is
3 graphic testimony, graphic photographs, it has been
4 described as tough, very difficult, those types of words.

5 That subject matter, can you receive subject matter of
6 that nature and still be fair and impartial or is it going
7 to affect you and create an issue for you not being able
8 to fairly evaluate the evidence and give both sides a fair
9 trial?

10 A I feel like I would certainly be able to receive that
11 information. I would be lying if I said it wouldn't
12 affect me at all emotionally being as the victims in the
13 case are children. But I honestly feel like I would be
14 able to receive that information and make an informed
15 decision.

16 Q Very well. Now, you understand that right now the
17 case, I gave you some preliminary instructions a moment
18 ago. Did you understand those?

19 A Yes, sir.

20 Q Now, thus a little bit of criminal procedure and a
21 little bit of criminal law, aspects of the Capital case
22 having two phases, guilt or innocence phase and the
23 punishment phase. Did you understand those?

24 A Yes, sir. The first time I have heard it but I think
25 I have got it.

1 Q And a lot of people have not heard that and so that
2 is why I go through a little education up front to give
3 you an idea of what to expect. Now, understanding that,
4 if the State meets its burden of proving guilt beyond a
5 reasonable doubt in phase one the case then goes to the
6 punishment phase. So considering just those basic facts,
7 if we got to phase two, we are in the punishment phase the
8 State generally presents evidence of aggravating factors
9 and the Defense presents mitigating factors.

10 Understanding that is what is coming at you, just knowing
11 those basic facts, the guilt is presumed and the types of
12 potential jurors that I outlined on the little sheet. Did
13 you review that sheet?

14 A Yes, sir.

15 Q Can you identify yourself as one of those three types
16 of jurors?

17 A Yes, sir. I would be type three.

18 Q And tell me, I wrote this and I know what I meant to
19 say. So you read it, describe for me what you believe a
20 type three Juror would be?

21 A My understanding was type three is if a person is
22 found guilty of a murder charge the two sentencing options
23 would be life without parole or the death penalty based on
24 evidence and all of those aggravating factors that you
25 mentioned. That was my understanding.

1 Q Sounds like a fair summary of what was intending to
2 convey. All right. You identified yourself as a type
3 three which means a person who can consider the case,
4 wants to hear everything, good and bad.

5 A Yes, sir.

6 Q Okay. Now, I am going to retreat back to phase one,
7 the guilt or innocence phase. I am going to tell you a
8 few things that is about the case and ask you can you
9 receive and consider these instructions. Phase one, the
10 State has got the burden of proving the murder beyond a
11 reasonable doubt. They call their witnesses first. They
12 present on that first, they have got that burden of
13 proving that case. During that phase of the case the
14 Defense presents defenses. Some are statutory. I am
15 going to read them off and come back and ask you and I
16 will you now, all of them won't be instruction but the
17 ones that are supported by the evidence presented could be
18 instruction, so you just kind of understand what they are.
19 Okay. So if I hear evidence supporting a particular
20 defense I instruct on that after hearing the testimony. I
21 don't know all the testimony coming in right now to say, I
22 will or won't instruct on a particular aspect. Does that
23 make sense?

24 A Yes.

25 Q Potential defenses are identification, accident,

1 involuntary intoxication, self-defense, necessity,
2 insanity, guilty but mentally ill, defense of habitation,
3 entrapment, alibi and coercion, I am sorry, duress. Those
4 are potential defenses that can be considered by jury's if
5 the evidence can support it. So, can you act fairly and
6 impartially, be a fair Juror and meaningful consider my
7 instructions on reasonable doubt and that responsibility
8 of the State as well as consider any defenses, evidence
9 testimony which the jury receives, can you give meaningful
10 consideration to all of those aspects from the testimony
11 and evidence and my instructions and be fair to both the
12 State and the Defense?

13 A I believe I can, yes sir.

14 Q Now, in this case particular Mr. Jones has claimed,
15 he is presumed innocent sitting right there, as of right
16 now since he has been charged and all the way through the
17 case, until the State proves beyond a reasonable doubt, he
18 is presumed innocent. Okay. Now, he has entered a plea
19 of not guilty by reason of insanity. That, by the virtue
20 of that plea bring potentially verdict considerations for
21 the jury and at the end of phase one could be these four.
22 Guilty, guilty but mentally ill, not guilty by reason of
23 insanity or not guilty all together. Can you consider the
24 instructions of the Court, evidence and testimony
25 presented and give meaningful consideration to each and

1 every one of those particular forms providing my
2 instructions address all four.

3 A Yes.

4 Q Can you do that being fair to the State and the
5 Defense?

6 A I believe I can, yes sir.

7 Q If the State fails to meet its burden or the jury
8 makes a finding of not guilty by reason of insanity the
9 case ends, it stops. If the State meets its burden of
10 proving guilt beyond a reasonable doubt the case goes to
11 phase two. During phase two, at that time the State is
12 then tasked with proving an aggravating factor. I am
13 going to name all five. Murder of a policeman, murder of
14 a child, rape of murder, kidnapping of murder, multiple
15 murders. Those are aggravating factors. The State must
16 prove at least one of those beyond a reasonable doubt to
17 then seek and request a jury to impose the death penalty.
18 If they don't meet that beyond a reasonable doubt they
19 can't ask for the death penalty. All right. In the
20 sentencing phase only two choices, life or death. Nothing
21 else, no other options, no middle ground. The State
22 proves the aggravating factor during that phase of, the
23 second phase. During that the second phase also jurors
24 hear and consider mitigating factors or mitigating
25 evidence for your reasons to decide and find life without

1 parole. I am going to read some statutory mitigators.

2 Okay.

3 A Okay.

4 Q The Defendant has no significant history of prior
5 criminal conviction involving the use of violence against
6 another person. The murder was committed while the
7 Defendant was under the influence of mental or emotional
8 disturbance. The victim was a participant in the
9 Defendant's conduct or consented to the act. The
10 Defendant was an accomplice in the murder committed by
11 another person and his participation was relatively minor.
12 The Defendant acted under duress or under the domination
13 of another person. The capacity of the Defendant to
14 appreciate the criminality of his conduct or to conform
15 his conduct to the requirements of law was substantially
16 impaired. The age or mentality of the Defendant at the
17 time of the crime. The Defendant was provoked by the
18 victim in committing the murder. The Defendant was below
19 the age of 18. The Defendant had mental retardation at
20 the time of the crime. Those are statutory mitigators
21 that the Defense can present on, they can present evidence
22 for a jury to consider. They don't have to be proven but
23 they can be presented and the jury can consider any one of
24 them. Also you could consider as mitigating any testimony
25 and evidence that, of Mr. Jones' life. Childhood, whether

1 he came from a broken home or was an abused child,
2 anything, a reason for mitigation factors to assign a life
3 without parole. Can you as a Juror act fairly and
4 impartially, consider the evidence of aggravating factors
5 and the State's burden of proving beyond a reasonable
6 doubt as well as any and all mitigating testimony and
7 evidence which are reasons to assign life. Can you
8 meaningful consider all of that testimony and evidence and
9 my instructions by the Court and give both the State and
10 Mr. Jones a fair and impartial trial in this case?

11 A Yes.

12 Q Do you have any religious, personal or moral belief
13 which would prevent you from finding a verdict, a sentence
14 of death?

15 A No.

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

19 A No.

20 Q You know of any reason whatsoever you can't be fair
21 to both sides?

22 A No, sir.

23 THE COURT: Mr. Young.

24 EXAMINATION

25 By Mr. Young:

1 Q Good morning, Mr. Rocker.

2 A Good morning.

3 Q Did you know any of the other jurors who were called
4 in on Monday, when we were in that big room?

5 A I did see a couple of familiar faces.

6 Q And you just don't know their names?

7 A I do, would you like for me to say their names?

8 Q Please.

9 A I have met a gentleman by the name of Phil Turner
10 once before, I believe he was there. And then also a
11 gentleman by the name of Tommy Cave who attends our church
12 periodically.

13 Q Okay. And don't worry about what you say in here,
14 you can't give a wrong answer and they can't report on
15 what jurors say. You are not getting anybody in trouble
16 or anything like that. All right.

17 A Okay.

18 Q My question is, if you were on the jury with one of
19 the people that you knew would you be somebody who says
20 they can have a different opinion than mine or would y'all
21 think that you had to have the same opinion or would they
22 influence on your opinion in any way?

23 A I don't think they would influence my opinion.

24 Q Okay. You would be able to make your own opinion and
25 not be influenced by that relationship that you had with

1 those people?

2 A Yes, sir.

3 Q That is why I ask the question. You understand that?

4 A I understand.

5 Q The Judge talked to you about, you understand that
6 there are five counts of the murder of children that Mr.
7 Jones has alleged to have committed, right?

8 A Yes.

9 Q And to those counts of murder he had plead not guilty
10 by reason of insanity. Do you understand that?

11 A Yes, sir.

12 Q And that means that he says, I did the killing,
13 right, by virtue of that plea. But because of a mental
14 disease or defect I was unable to distinguish between
15 legal or moral right from wrong. A little wordy but you
16 understand what I am saying?

17 A Yes.

18 Q Okay. Some people would say, for me in this type of
19 case not guilty by reason of insanity is not a verdict
20 that I could consider. That is not in the cards for me
21 and I want to know how you feel about that statement?

22 A That verdict would be a difficult one for me to
23 consider, yes, it would be really difficult for me to
24 consider not guilty by reason of insanity. Does that
25 answer your question.

1 Q Maybe. I mean, it is sort of a distant excuse?

2 A I don't know if I would word it that way. For me and
3 this is just--

4 Q Everything is just you.

5 A Right. This is just my vent. That doesn't change
6 the truth that that person would have committed those
7 crimes.

8 Q Right. And the case would end, the jury's job would
9 be over if they found not guilty by reason of insanity.
10 They wouldn't do any sentencing. Do you understand that?

11 A Yes, I do understand that.

12 Q Some people say for me that is not on the table and I
13 just need to know, is that you, did the killing and say,
14 that is not a verdict that I can see myself signing.

15 MR. HUBBARD: Asked and answered, Your Honor.

16 THE COURT: I think that has been asked and answered.

17 MR. YOUNG: Your Honor, the additional part is, he
18 understands that the case will be over and that there
19 wouldn't be any sentencing by the jury.

20 THE COURT: I thought he answer that question.

21 MR. HUBBARD: He did, asked and answered.

22 MR. YOUNG: He didn't. He understood that that would
23 happen. I haven't asked--

24 THE COURT: Isn't that the question, that he didn't
25 verbally answer and Ms. Holston made him answer and he

1 said, yes, he understood that.

2 MR. YOUNG: Yes, he understood that the case would be
3 over. My next question is, understanding that the case
4 would be over does that affect your ability to give
5 meaningful consideration to that defense, to see yourself
6 signing that verdict.

7 THE COURT: I don't believe that was your question
8 but ask your next question and then you can ask that.

9 Q Understanding that the case would be over, does that
10 affect your ability to see yourself voting for not guilty
11 by reason of insanity in a case like this?

12 A As a Juror, is that something that the jury would
13 decide, that we have determined that he is, in fact, not
14 guilty by reason of insanity?

15 Q Yes. That would be one of the four verdicts for the
16 jury.

17 A Okay. I think I am not understanding the question.
18 So, are you, knowing if he is found guilty by reason of
19 insanity are you asking would--

20 THE COURT: Go back over the four potential verdicts.
21 I think that would clear it up, he is confused on those
22 two elements.

23 Q Sure. As the Judge explained to you, there is four
24 potential verdicts when somebody pleads not guilty by
25 reason of insanity. There is not guilty, not guilty by

1 reason of insanity which I have explained to you is
2 somebody didn't know the difference between legal or moral
3 right from wrong at the time that they did the killing.

4 You understand that one?

5 A Yes, sir.

6 Q They are guilty, just did it with malice,
7 intentional, meant to do it, murder. Right?

8 A Yes.

9 Q And then there is guilty but mentally ill which is,
10 had a mental disease or defect and couldn't, knew the
11 difference between right and wrong and couldn't conform
12 his conduct. Okay?

13 A Yes.

14 Q So guilty, guilty but mentally ill we would have a
15 penalty trial where the jury would decide sentencing.
16 Okay?

17 A Yes, sir.

18 Q Not guilty is not guilty. Everybody knows what that
19 means?

20 A Yes.

21 Q What happens then. And then not guilty by reason of
22 insanity, and my understanding is you sort of struggled
23 with not guilty by reason of insanity for somebody who
24 says, who did act, did the killing?

25 A I do still, yes sir, if it is not guilty by reason of

1 insanity for me that doesn't change that there are still
2 victims. And I would feel that justification for the
3 crimes is not properly, that is a struggle for me because
4 it doesn't change that there are still victims and I would
5 feel like the, you know, justice would improperly being
6 served in that case.

7 Q Understand where you are at. A lot of people feel
8 that way.

9 A So I would struggle with not being able to have any
10 say in sentencing. If there is not sentencing for that
11 that would be difficult for me.

12 Q Okay. Fair enough. Just asking your thoughts and
13 opinions. Thank you for sharing that with us. I am going
14 to move forward a little bit, okay, and let's talk about,
15 if you heard evidence of not guilty by reason of insanity
16 and you said, no, we, all twelve jurors agree, that is not
17 a defense in this case, we have rejected that evidence, we
18 have found that he did know what he was doing, he did know
19 the difference between right and wrong, chose to kill
20 multiple children. Are you with me on that?

21 A Yes, sir.

22 Q At that point and time the jury would have two
23 options. The life penalty or the death penalty. Are you
24 with me on that?

25 A Yes, sir.

1 Q And that is where you would have different types of
2 evidence about mitigating circumstances or aggravating
3 circumstances as to which one of those punishments the
4 jurors thought were appropriate. Are you with me on that?

5 A Yes, sir.

6 Q Having found a Defendant guilty, guilty, knew what
7 they were doing, knew the difference between right and
8 wrong, murder of multiple children, do you have a leaning
9 towards a life penalty or death penalty as the appropriate
10 punishment?

11 A Yes, sir. I would lean towards the death penalty.

12 Q Okay. Is that sort of an eye for a eye, life for a
13 life view for you or can you tell me about that?

14 A I don't know that I would describe it in that way.

15 Q Okay.

16 A But by considering the number of victims and the age
17 of the victims, for me that is why I would lean towards
18 the death sentence.

19 Q Okay. I understand where you are coming from. The
20 background information in like, how the Defendant grew up
21 or what his childhood was like or his character. Do you
22 understand that is the type of stuff we are talking about
23 as sort of mitigation. Right?

24 A Yes.

25 Q Could any of that ever matter enough to you to move

1 you off of that leaning towards to death to think that
2 maybe life is appropriate.

3 A I would have to hear that and I guess the way I would
4 answer that is I would have to be strongly convinced to
5 come off, again, what my natural lean would be.

6 Q Okay. It would have to be pretty, it wouldn't have
7 to be like a bad childhood. It would have to be like a
8 horrific childhood? Is that what I hear you saying?

9 A I would have to be convinced.

10 Q Okay.

11 A To consider life as opposed to the death sentence.

12 Q Okay. Mr. Rocker, at the end of the day, this
13 ultimate decision, life penalty or death penalty is what
14 is called individual moral judgment. Are you with me on
15 that?

16 A Yes, sir.

17 Q And I know you have heard that term a lot in doing
18 your work and in your church. We make moral decisions all
19 the time?

20 A Yes.

21 Q And there is no right or wrong answer. There is no,
22 if A, B, C, there is no like, if five children the
23 appropriate response is death, it is up to each Juror,
24 there is no automatic death sentence. I understand you
25 have a leaning but the law is that there is no such thing

1 as an automatic death sentence. Do you understand that?

2 A I do understand that.

3 Q Okay. Individual moral judgments are sort of like
4 you choosing what faith is right for you. You have made
5 your personal moral decisions about that. Is that right?

6 A Yes, I have.

7 Q You recognize that other people have made different
8 decision for themselves?

9 A Right.

10 Q You respect their right to make their own decision
11 even if it is different from yours?

12 A Yes.

13 Q You expect them to respect your right to make your
14 own moral judgment about something like that?

15 A Yes.

16 Q And if you saw somebody being bullied or belittled or
17 harassed into giving up what they had arrived at as their
18 individual moral judgment would you stop it?

19 A Yes, I would hope I would.

20 Q Say that is not right, they are entitled, that is a
21 perfectly legitimate view?

22 A Correct.

23 Q And if it didn't stop could you send the Judge a note
24 saying things, peoples opinions aren't being respected?

25 A Are you talking about if that would happen during the

1 course of the jury's deliberation or something?

2 Q Yes, sir.

3 A Yes, I would do that.

4 MR. YOUNG: based on the Court's limitations I don't
5 have any further questions.

6 EXAMINATION

7 By Mr. Hubbard:

8 Q How are you?

9 A I am good.

10 Q I am Rick Hubbard, the Solicitor and I have got some
11 Deputy Solicitors with me and we represent the State in
12 this case and I have got a few questions too. I
13 understand you got to Trinity Baptist?

14 A Yes, sir.

15 Q And you are a Pastor there, a Youth Pastor?

16 A Student Pastor.

17 Q Student Pastor. Okay. I just want to flesh out a
18 few things if I can with you. So I understand, this is
19 our chance to get to know you and your, I guess your first
20 opportunity to come into a courtroom and serve as a Juror?

21 A In this setting it is. I was called to jury duty
22 when I lived in Georgia.

23 Q Let me ask you this. Do you agree with the concept
24 where our Government in place to make laws to both
25 protect, both those accused and those who are victims?

1 A Yes.

2 Q Do you agree with the concept that there are times
3 when people need to be punished but we also have to make
4 extra, take extra pains to make sure we are punishing the
5 right people?

6 A Yes.

7 Q That is kind of the bedrock where we are going here.
8 And I am assuming, it goes without question, you are going
9 to respect the authority of the Court speaking on behalf
10 of this system. He is the guardian of the law?

11 A Yes.

12 Q And you understand and respect that?

13 A Yes, sir.

14 Q When the Judge speaks to you that in this case, this
15 particular case, it is not the usual two verdict forms,
16 guilty, not guilty. There are four potential verdicts
17 just based on what he knows right now, guilty meaning the
18 guy did the crime, knew what he was doing, no excuse.
19 Guilty but mentally ill, he knew what he was doing, knew
20 right from wrong but has a mental illness and couldn't
21 appreciate the, control his abilities to obey the law. It
22 is kind of a hard concept. Three, not guilty by reason of
23 insanity. The guy didn't know right from wrong. And
24 finally, not guilty, he just didn't do it or we failed to
25 prove it. Do you understand those four?

1 A Yes, sir.

2 Q The Judge goes through this trial and you are on this
3 jury and he says, these are four possible verdict forms.
4 Can you respect and accept that?

5 A Yes.

6 Q Now there was a lot of talk about this verdict form
7 of, potential verdict of not guilty by reason of insanity.
8 Do you understand this is in the first phase. Did the
9 State prove its part and did the Defense put up evidence
10 on whether there is evidence of insanity? Do you
11 understand that?

12 A Yes.

13 Q So we each are coming onto what the burden, the
14 State's burden is the heavy one. We have got to prove
15 that he did the crime beyond a reasonable doubt. Do you
16 understand that?

17 A Yes.

18 Q Did you know that we have to prove two different
19 aspects of that, not just that he did the deed but he knew
20 that he did the deed. Do you understand that?

21 A I do.

22 Q And that is where the whole notion of not guilty by
23 reason of insanity comes into plea. That is a claim that
24 I can only prove one-half of that. Do you understand?

25 A Yes.

1 Q He did the deed but he didn't understand. Do you
2 understand?

3 A Yes.

4 Q Does that sound, in our, that part of our legal
5 system, is that something that you can accept as a Juror
6 if you were to come in and sit on a jury?

7 A The verdict of not guilty--

8 Q No, just taking it one step at a time. Can you
9 accept the concept that I have two aspects, two steps to
10 prove somebody is guilty. They did the deed, killed
11 somebody but they knew what they were doing and it was
12 with malice. Do you understand that?

13 A Yes.

14 Q Two steps. What they are raising is not guilty by
15 reason of insanity. They are saying I can only prove one.
16 He did the deed, the killing but I can't prove that mental
17 side. And they are going to put up evidence saying there
18 is evidence on the mental side. Do you understand that?

19 A Yes.

20 Q Can you accept that format if you were a Juror?

21 A Yes.

22 Q Could you consider all of that evidence?

23 A I would be able to consider it, yes.

24 Q I am going to go a step further. The evidence you
25 would actually hear would be from professionals and

1 experts, probably from both sides. Some saying here is
2 why we think he didn't know right from wrong. Other
3 experts saying, wait a minute, maybe he did know or he did
4 know right from wrong. Would you be willing to hear
5 those?

6 A I would.

7 Q Now, let's go a step further. If that evidence is
8 presented and you come convinced, maybe he was not in his
9 right mind at the time, he did not know right from wrong.
10 Would you agree with me that you can't punish somebody if
11 they didn't know they did something wrong.

12 A If something did something wrong--

13 Q But they didn't know what they did was wrong. They
14 had something going on, they just didn't know it was
15 wrong. Everybody else might have but they didn't. Do you
16 understand you can't punish somebody for that?

17 MR. YOUNG: Objection to the form of the question.

18 THE COURT: Rephrase the question.

19 Q Do you believe you can punish somebody for doing
20 something if they did not believe it was wrong? Let me
21 rephrase it again. Do you believe you can punish somebody
22 if they did not understand that what they did was both
23 against the law or even morally wrong, they just didn't
24 understand that at that time?

25 A I do believe I could, not I, but someone could and

1 should be punished in that case.

2 Q Even if they--

3 A --even if they didn't understand it.

4 Q Okay. Thank you.

5 THE COURT: Based upon your answers I am going to
6 excuse you from serving on this case and I thank you for
7 coming and thank you for your patience.

8 JUROR: I am free to go?

9 THE COURT: Free to go.

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

12 THE COURT: Are we ready on 305?

13 MR. YOUNG: Yes, sir.

14 (Whereupon, Juror 305, Joseph Neeley entered the
15 courtroom.)

16 MR. YOUNG: What number was missing?

17 THE COURT: Seven.

18 EXAMINATION

19 By The Court:

20 Q Good morning.

21 A Good morning.

22 Q I want you to say and spell your name for Ms. Holston
23 so she can determine if she is hearing you loudly enough.

24 A My name is Joseph Neeley, N-E-E-L-E-Y.

25 Q Mr. Neeley, you came into court last Monday and

1 listened to my comments and I asked you to take an oath to
2 not talk about the case. Have you talked about the case
3 since that time?

4 A No, sir.

5 Q Has anybody asked you about the case?

6 A No, sir.

7 Q No. I read some allegations, the indictments, I read
8 them to y'all, the whole panel. Made accusations of
9 murder by the State against Mr. Jones. He is presumed
10 innocent right now. Do you understand that?

11 A Yes, sir.

12 Q Have you seen any of the newspaper reports or
13 internet reports talking about this case?

14 A I saw it on WIS.

15 Q WIS. Now, would you, after seeing anything on the
16 news, hearing anything anywhere and hearing my comments
17 have you formed an opinion as to what happened?

18 A No, sir.

19 Q What have you got on your calendar starting next
20 Monday for about three weeks.

21 A I have got three doctors appointments from the end of
22 May.

23 Q Those are scheduled?

24 A Yes, sir. I got one May 20th, one May 23rd and May
25 30th.

1 Q Those would all kind of interfere with this. Have
2 those been scheduled for a good while?

3 A Yes, sir.

4 Q Any objection for me excusing him for medical
5 reasons, he has got three appointments?

6 MR. HUBBARD: No objection.

7 THE COURT: Any objection from the Defense?

8 MR. YOUNG: No, sir.

9 THE COURT: I am going to excuse you, you have got
10 conflicts on your calendar. Thank you, sir.

11 JUROR: Thank you.

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

14 THE COURT: Bring in 461.

15 (Whereupon, Juror Susan Watson entered the
16 courtroom.)

17 EXAMINATION

18 By The Court:

19 Q I remind you you are under oath but nevertheless I
20 want you to say and spell your name for Ms. Holston so she
21 can determine if you are speaking loud enough for her to
22 hear.

23 A Susan Watson. S-U-S-A-N, W-A-T-S-O-N.

24 Q Ms. Watson, I told you my first question was going to
25 be, have you talked with anybody about the case since last

1 Monday?

2 A I haven't really talked to anybody about the case but
3 I do work in outpatient rehabilitation clinic and they
4 watch the news and I ask them to not have the news on.

5 Q Okay.

6 A But sometimes they like to watch the game shows so it
7 is kind of hard to, I have to kind of ignore what comes
8 on. I do have something I wanted to bring up to you.

9 Q What have you got?

10 (Whereupon, the Court reads a form for the Juror.)

11 Q Now, I am not going to go into that. I will hand
12 that back to you and the lawyers may want to ask you. My
13 next question is this, it is kind of on that topic. Let
14 me go back to the media and publicity.

15 A Okay.

16 Q Regarding any publicity you have heard about the
17 case, no matter when you heard it, whether it was four
18 years ago, four weeks ago, four minutes ago. I read the
19 allegations of the indictments to the entire jury panel
20 and that is information that you received because I
21 directed it to every Juror so that they could say, I don't
22 know anything about this or I understand what this is
23 about. Now the media reports, publicity, social media or
24 public media, not concerned about who. But like you said,
25 news reports are in at work. Any of this information that

1 you have received, has that caused you to form an opinion
2 as to what happened in the case?

3 A Mostly just, how many jurors, most of the information
4 that has come on and I am trying not to look at it, it has
5 been about the jury stuff, it is not really about the
6 case. I mean, they have said--

7 Q More or less summarizing the allegations?

8 A Yes. One of the reports did say about his, it was
9 his children and something about bags in a trunk.

10 Q Has that caused you to form an opinion or are you
11 still trying to keep an open mind?

12 A It does kind of make you form an opinion.

13 Q Let me ask you this. I am going to ask you the next
14 question based upon what you provided to me. The subject
15 matter involving this case is going to involve testimony
16 of explaining, describing the death of five children.
17 That type of subject matter, I have asked the lawyers and
18 the lawyers have told me, they described it as being this.
19 It is going to be graphic, harsh, unpleasant and
20 difficult. Would subject matter described like that make
21 it difficult for you to be fair and impartial where it
22 would affect you emotionally where you could not give both
23 sides a fair trial in your opinion?

24 A Yes.

25 Q That would be difficult for you?

1 A Yes.

2 THE COURT: And for the record, she provided a note
3 from a physician to that end. And so--

4 JUROR: I am already being treated, I take
5 medication.

6 MR. HUBBARD: No problem.

7 THE COURT: I don't want to publish what is written
8 in the medical report and it is consistent on what I just
9 asked her and her response is what I expected. Ma'am, you
10 are excused. Thank you for coming in.

11 JUROR: Thank you for understanding.

12 THE COURT: Good luck to you.

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

15 THE COURT: Bring me 34.

16 (Whereupon, Juror Timothy Belay entered the
17 courtroom.)

18 EXAMINATION

19 By The Court:

20 Q I remind you you are under oath. I want you to say
21 your name and spell it for Ms. Holston so she can
22 determine if you are speaking loud enough for the
23 microphone.

24 A Timothy Belay, BRAVO-ECHO-LEMA-ALPHA-YELLOW.

25 Q Is it Belay or Belay.

1 A I prefer Belay.

2 Q Mr. Belay, I told you I was going to ask the
3 question, have you discussed the case with anybody since
4 last Monday?

5 A I have not. My coworkers is a diligent news reader
6 so I got some general information like I know your
7 nickname is Bubba.

8 Q That's correct.

9 A But other than that, no, nothing.

10 Q How about that. Do I look like a Bubba or not?

11 A I haven't guessed in that.

12 Q Anyway, the case received a lot of publicity
13 including some information that the Court has presented, I
14 presented information last Monday about the five
15 allegations in the indictments. And that is language to
16 Mr. Jones on what he is on trial for. Before Monday I
17 didn't have you under oath and did not look at media
18 reports and figure out what was going on or who the Judge
19 was. Now, any information you receive, I don't care where
20 it came from, any information you received up to right now
21 including information I have told you, has any of that
22 information caused you to form an opinion as to what has
23 happened in this case?

24 A No, it has not.

25 Q Now, I asked you to tell me about your calendar.

1 What have you got on your calendar from Monday, the end of
2 May, early June that would be a huge imposition on your
3 schedule if you were selected and seated as a Juror. What
4 have you got?

5 A Thankfully I have a very understanding boss so my
6 calendar would be free if need be.

7 Q Okay. And understanding it is an inconvenience and
8 imposition but it is a civic duty and I am glad your boss
9 is understanding. I have had several bosses that maybe
10 not so much. Thanks for your boss. Now, subject matter
11 in this case is going to involve testimony, graphic
12 testimony regarding the deaths of children. The lawyers
13 have described it to me has being harsh, graphic,
14 difficult, unpleasant to very unpleasant. Would testimony
15 described as such, regarding the deaths of children, would
16 that create an issue for you personally or emotionally
17 that you couldn't received testimony of that subject
18 matter and still render a fair and impartial trial for
19 both sides?

20 A No, it would not.

21 Q So you could consider testimony of that type and
22 still be fair to both sides?

23 A Correct.

24 Q Now, I gave you a summary, kind of a very thumbnail
25 sketch of procedures, two steps. Step one is phase one,

1 guilt or innocence, that is the determination. The State
2 has got the burden of proving that beyond a reasonable
3 doubt. The State meets that burden you go to phase two.
4 At stage two is the punishment phase. During that phase
5 the State has the additional responsibility of proving an
6 aggravating factor. The jury considers mitigating factors
7 also. Mitigating factors are reasons to give the life
8 penalty. You understand there are one of two choices. I
9 have you a little summary of three types of jurors that
10 are generally described. Can you find yourself or
11 identify yourself. Have you reviewed that sheet?

12 A Yes, I have.

13 Q Can you identify yourself as one of those three
14 types?

15 A I would consider myself a very hard three.

16 Q A very hard three. I wrote this so I am going to ask
17 you, what do you mean by hard three?

18 A Well, you are asking an individual to sign their name
19 on the life of another individual. And I take that very
20 seriously. So I would put a heavy burden on the State to
21 make sure that if I am to do so and if I am going to put
22 my name on someone's death certificate, that I will be
23 able to continue to live the rest of my life with
24 consciously knowing that I am responsible for that
25 person's life.

1 Q I think you have identified and described type three
2 very well. I am going to go back, did you read the
3 witness list?

4 A I have.

5 Q That is not that all the witnesses will be called, a
6 lot of them will. But both sides have to give potential
7 witnesses. Are you connected to them in any way?

8 A No, I am not.

9 Q So none of those witnesses create an issue for you?

10 A No, sir.

11 Q Now, I am going to go back to stage one, phase one,
12 guilt or innocence. During that phase the burden,
13 responsibility is upon the State to prove their case
14 beyond a reasonable doubt. They have got to prove murder,
15 killing of another with malice, hatred. That is what is
16 presented. During that phase also defenses can be
17 presented by the Defense obviously. I am going to read
18 off some statutory defenses then tell you, my instructions
19 will be tailored to what defenses are supported by the
20 evidence. So there are defenses available with evidence
21 testified to, you don't get the instruction on one that is
22 not relevant. The relevance ones will get instructions.
23 Potential defenses are identification, accident,
24 involuntary intoxication, self-defense, necessity,
25 insanity, guilty but mentally ill, defense of habitation,

1 entrapment, duress and alibi. Those are potential
2 statutory defenses that are allowed by our code books.
3 Can you be a fair and impartial Juror, consider all the
4 testimony, evidence presented, understanding the State has
5 got the burden of proving its case beyond a reasonable
6 doubt, Mr. Jones is presumed innocent, consider any
7 aspects and testimony regarding defenses, consistent with
8 my instructions on how to consider those. Can you do
9 that.

10 A I can.

11 Q Can you be fair to the State?

12 A Yes, sir.

13 Q Can you be fair to Mr. Jones?

14 A Absolutely.

15 Q All right. If, now I am telling you that Mr. Jones
16 has entered a plea, claiming at least one of those
17 defenses and that is not guilty by reason of insanity.
18 That brings into a play a verdict form potentially in this
19 trial that would be as follows. Guilty, guilty but
20 mentally ill, not guilty by reason of insanity or not
21 guilty all together. Can you be a fair and impartial
22 Juror, considering each and every one of those potential
23 verdict forms, while considering my instructions on the
24 definitions and aspects of those potential verdict forms,
25 consider all the testimony and evidence presented as well

1 as understanding the State's burden of proving this case
2 beyond a reasonable doubt?

3 A I can.

4 Q Can you be fair to the State in doing so?

5 A I can.

6 Q Can you be fair to Mr. Jones in considering that?

7 A I can.

8 Q All right. If the State fails to meet its burden of
9 proof or the jury finds a verdict of not guilty by reason
10 of insanity the case ends. If the State meets its burden
11 of proving murder beyond a reasonable doubt the case goes
12 to phase two. During phase two the State is then required
13 to prove its burden of proof, an aggravating factor. I am
14 going to name off five aggravating factors. Murder of a
15 police, murder of a child, rape of murder, kidnapping of
16 murder, multiple murders. The State has got to prove one
17 of those aggravating factors beyond a reasonable doubt in
18 order to be able to request a jury to impose a death
19 sentence. That is their burden. During this portion of
20 the second trial the Defense is allowed to present
21 mitigating evidence and circumstances. I am going to read
22 you a list of statutory mitigating factors. The Defendant
23 has no significant history of prior criminal conviction
24 involving the use of violence against another person. The
25 murder was committed while the Defendant was under the

1 influence of mental or emotional disturbance. The victim
2 was a participant in the Defendant's conduct or consented
3 to the act. The Defendant was an accomplice in the murder
4 committed by another person and his participation was
5 relatively minor. The Defendant acted under duress or was
6 under the domination of another. The capacity of the
7 Defendant to appreciate the criminality of his conduct or
8 to conform his conduct to the requirements of law was
9 substantially impaired. The age or mentality of the
10 Defendant at the time of the crime. The Defendant was
11 provoked by the victim in committing the murder. The
12 Defendant was below the age of 18. The Defendant had
13 mental retardation at the time of the crime. Those are
14 statutory mitigators. Other mitigators that the jury can
15 consider anything, any evidence such as Mr. Jones prior
16 life, his early childhood, come from a broken home, any
17 aspect of his life a Juror can consider a mitigating
18 factor for a reason to support a life sentence. Can you,
19 understanding the State has the burden of proving the
20 aggravating factor, also consider any mitigating evidence
21 and circumstances, weigh that evidence consistent with my
22 instructions and be a fair and impartial Juror in this
23 case?

24 A I can.

25 Q Can you be fair to the State?

1 A I can.

2 Q As well as the Defense?

3 A Absolutely.

4 Q Understanding that there are only two choices in the
5 sentencing phase, there is death and life. No other
6 options, no middle ground, one of the two. Do you
7 understand?

8 A I understand.

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

10 A Absolutely.

11 Q Do you have any personal, religious or moral belief
12 which would prevent you from imposing the death sentence?

13 A No.

14 Q Do you have any religious, personal or moral belief
15 which would prevent you from imposing a life without
16 parole sentence?

17 A No.

18 Q Those are my questions.

19 THE COURT: Mr. Madsen.

20 EXAMINATION

21 By Mr. Madsen:

22 Q Mr. Belay.

23 A Belay.

24 Q I am sorry. Good morning.

25 A Good morning.

1 Q How are you?

2 A I am fine.

3 Q My name is Rob Madsen and I am one of Tim's lawyers.
4 The Judge has just kind of went over a little bit with you
5 about being fair and impartial and gave you a little bit
6 of law. I just want to talk with you about your feelings
7 so there is no right or wrong answers. I just need to
8 know kind of what you think. When you came in here, I
9 guess over a week and a half ago to the other Court House
10 did you know any of those other jurors?

11 A No, I did not.

12 Q And as you heard the Judge tell you, Tim has plead
13 not guilty by reason of insanity. And so what that means
14 is that someone says, I did the acts, but because of a
15 mental disease or defect I did not know the difference
16 between legal or moral right or wrong. Do you understand
17 that?

18 A I do.

19 Q And some people would say, hey, in that situation,
20 you know what, that is just not a verdict that I could
21 consider. And my question is, is that you?

22 A I am sorry. If the verdict is--

23 Q Well, okay, it is kind of a long -- on a not guilty
24 by reason of insanity, as I said, someone because of a
25 mental disease or defect doesn't appreciate moral or legal

1 right from wrong. And some jurors sat right there and
2 said, you know what, in that situation where someone
3 admits I did it but because of that mental disease or
4 defect I didn't understand moral or legal right from
5 wrong. I can't consider that. And my question is, are
6 you one of those jurors?

7 A Yes, yes. I could consider that as a vital option.

8 Q And if you heard evidence of that and you felt that
9 that was appropriate that is the verdict that you could
10 render?

11 A Correct.

12 Q Let me ask you or let me change up a little bit and
13 talk with you about, just kind of put you on a jury. And
14 so you are sitting on a jury and you and eleven other
15 jurors have heard evidence say, about a mental illness and
16 you have rejected that. In other words, you say, hey,
17 this guy knew the difference between right and wrong. If
18 you have heard any kind of defenses, self-defense,
19 accident, anything like that, you have rejected it. So we
20 have got someone who knows the difference between right
21 and wrong and they are a guilty murderer of multiple
22 children. You understand that?

23 A Correct.

24 Q My question to you, in that situation what are your
25 feelings of the death penalty in that situation where you

1 have that intentional killing of multiple children?

2 A As opposed to the other eleven opinions?

3 Q Well, just yours. So, what I am trying to say is,
4 without hearing anything else at that point and time, you
5 and the other eleven other jurors have determined this
6 person is guilty beyond a reasonable doubt. No doubt they
7 did the killing, no doubt it was intentional and it is a
8 multiple innocent children. And my question is, what is
9 your opinion as the death penalty as being the appropriate
10 penalty in that situation.

11 MR. HUBBARD: Objection, Your Honor.

12 THE COURT: Lengthy question. Go back and rephrase
13 it like we have been doing the others. I was looking
14 something up and didn't pay particular attention to those
15 exact words. I am sorry. Try to rephrase that, Mr.
16 Madsen.

17 Q You understand at the end of the first phase we are
18 done, we have determined as the jury, all twelve of you
19 have determined guilty, no excuse, no defense, knew the
20 difference between right and wrong. Are you with me?

21 A Correct.

22 Q So my question is without hearing anything else at
23 that point and time what is your opinion as the death
24 penalty being the appropriate punishment for that guilty
25 murderer of multiple children?

1 A Well, considering that phase two is inherent with the
2 extenuating circumstances I don't, I would not be able to
3 form an opinion based solely on phase one without going
4 through phase two.

5 Q Can you tell me your general philosophy of the death
6 penalty or what your feelings are of it?

7 A Well, I believe, as I mentioned before, I would be a
8 hard three meaning and I know that this is an imperfect
9 legal system but there have been cases in the U.S. where
10 death penalties have been imposed and subsequently found
11 that the person who was put to death was innocent of the
12 charges that they were found for. So I do not want to be
13 in the case of one of those twelve people that signed off
14 on somebody who did not deserve to die. And so I would
15 make sure that, you know, the mitigating circumstances
16 aside, that if the death penalty is warranted and we, as
17 the jury, eleven other people find that that is the
18 appropriate punishment then that is because I have come to
19 the, I have situated myself with the burden that I will
20 live with that the rest of my life.

21 Q Sure. And so are there some type of cases that to
22 you just scream it is automatic death penalty.

23 MR. HUBBARD: Your Honor, objection, staking.

24 THE COURT: They have been asking that question.

25 MR. HUBBARD: I know and I, but I am objecting as

1 staking.

2 MR. MADSEN: I am not asking for any specifics, I am
3 just asking if there is anything he can think of.

4 THE COURT: Right. I will allow the question.

5 Q So is there anything that you can think of in your
6 mind that just, you know, for you is automatic death
7 penalty?

8 A No.

9 Q Some people would say that the death penalty is kind
10 of reserved for the worst of the worst. How do you feel
11 about that statement?

12 A I would feel that that would be mostly accurate.

13 Q Would you say that the death penalty would be
14 deserved for those who are utterly irredeemable.

15 THE COURT: That has been asked and answered.

16 Q If you were the Governor for a day and put two Bills
17 on your desk, one to have the death penalty and one to get
18 rid of the death penalty. Which one would you sign?

19 A I would sign the one that still allows the death
20 penalty as an option of the State.

21 Q And that would mean that you think there are reasons
22 to have it?

23 A Correct.

24 Q Can you tell me why?

25 A Because I believe that all options should be on the

1 table.

2 Q Now, as the Judge told you, you understand that the
3 death penalty is never required in any case in South
4 Carolina?

5 A Correct.

6 Q Not in this case, not in any case, not even in the
7 worst case you can imagine. Do you understand that?

8 A Correct.

9 Q And you understand the Judge talked to you a little
10 bit about aggravation that the Government has to prove
11 that to you not only beyond a reasonable doubt but that
12 has to be unanimous. Do you understand that?

13 A Correct.

14 Q Mitigation is something a little bit different.
15 Mitigation is any reason to give someone a life without
16 parole sentence. Do you understand that?

17 A I do.

18 Q And it doesn't have any kind of burden of proof. Do
19 you understand that?

20 A I do.

21 Q And so that kind of means is that Juror number one
22 here could say, you know, I saw this spark of humanity, I
23 saw this relationship with his dad and because of that I
24 want to give him the life without parole sentence. Do you
25 understand that?

1 A I do.

2 Q And Juror number two could say, you know what, I
3 didn't see what Juror number one saw. But I saw a broken
4 mind and to me that carries the value of life. And for
5 that I want to give a life sentence. And you understand
6 how they can come to the same conclusion but they can be
7 different?

8 A Correct.

9 Q And Juror number three could say, you know, I didn't
10 see what they saw and I really can't tell you or put into
11 words why I think a life sentence is appropriate but I
12 just do. Would you be able to respect someone who said, I
13 can't put it into words but I just know life is
14 appropriate?

15 A Oh, absolutely.

16 Q And you see how each one of them are different in
17 their rationale?

18 A Yes.

19 Q And you can respect that?

20 A Yes.

21 Q And you understand after considering mitigation, when
22 a Juror decides whether someone lives or dies, that is
23 what we call an individual moral judgment. Have you ever
24 heard that?

25 A Not until then.

1 Q The way it has been best described to me is you made
2 a decision on what the appropriate faith for you is and
3 someone else might have made a different individual moral
4 decision on what their faith is. And you would expect
5 them to respect your decision, correct?

6 A Correct.

7 Q And at the same time I would imagine you would
8 respect their decision?

9 A Correct.

10 Q Even though it was different from yours?

11 A Yes.

12 Q And so you understand that if, if someone comes to
13 their individual moral decision on what the appropriate
14 penalty is they can't just give that away to kind of go
15 along with the majority?

16 A Correct.

17 Q That would be inappropriate.

18 A I probably am the most stubborn headed person out
19 there.

20 Q So let me ask you questions along that line. If you
21 saw someone back in the jury room and they had come to
22 their individual moral judgment and someone is trying to
23 bully or browbeat them out of that would you step in and
24 say something?

25 A As a third party witness to the browbeating?

1 Q Sure.

2 A Absolutely.

3 Q And, because obviously if you are in that jury room
4 there is deliberations but if it gets past the point where
5 civility is kind of left the room you understand that is
6 inappropriate?

7 A Correct.

8 Q And that is against the law. And the law allows you,
9 you know what, if it gets to that point you could say, you
10 could write a note and say, Judge, this is way past civil
11 discourse, you need to kind of step in here. Would you do
12 that if you felt if that was appropriate?

13 A Yes.

14 MR. MADSEN: Subject to the Court's limitations no
15 further questions.

16 THE COURT: Fair enough. Solicitor.

17 EXAMINATION

18 By Mr. Hubbard:

19 Q How are you, sir.

20 A Doing all right, how are you.

21 Q Doing good. I am Rick Hubbard, Solicitor, leading
22 the prosecution in this case. I just want to ask you a
23 few questions too. I don't think I will be too long. You
24 mentioned correctly that you would put that heavy burden
25 on the State in proving their case. And know that burden

1 if beyond a reasonable doubt?

2 A Yes.

3 Q So it is not beyond a shadow of a doubt, it is not
4 something you can put into scientific formula but it is
5 something that convinces you that I have answered all the
6 reasonable questions and this is a, there is no reasonable
7 doubt. Do you understand that?

8 A I do.

9 Q Okay. That is for the first phase and in the second
10 phase with those aggravating circumstances or aggravating
11 factors.

12 A Yes.

13 Q We talked about, are you just, just answer some
14 questions about that second phase. Say you get into that
15 phase and have already determined that the Defendant is
16 guilty. Now it is about punishment. You said you want to
17 hear everything, both what the State presents as
18 aggravating factors and any mitigation on behalf of the
19 Defendant, correct?

20 A Correct.

21 Q Did you know you could find both, aggravating factors
22 and even mitigation and still render a death verdict?

23 A Yes.

24 Q So even if you find things that are favorable for the
25 Defendant, maybe you do find that he had a tremendous

1 relationship with his father or other things that are
2 appealing that put him in a better life, you can still
3 sentence to death?

4 A Yes.

5 Q You say you are a very strong person, once you reach
6 your opinions you are very strong and you will also
7 express your opinion. You will do that in a jury room?

8 A Oh, absolutely.

9 Q If you reach an opinion that death is appropriate
10 would you just be as firm on death as you would be on
11 life?

12 A Oh, I would be. And that probably would lean more
13 towards life when death, a considered option, but that
14 doesn't mean that I would not consider the death penalty.
15 But, again, without knowing all of the mitigating
16 circumstances I would not have formulated an automatic
17 opinion one way or the other.

18 Q You would be open to hearing what I have presented in
19 that phase?

20 A Correct.

21 Q Going back to that first phase, you have been asked
22 about the verdict of not guilty by reason of insanity and
23 you said you would consider that. You realize that
24 experts may be brought in to say there is a mental illness
25 but there may also be experts saying there is no mental

1 illness. Do you understand that?

2 A I do.

3 Q Do you understand that burden is on the Defense by a
4 preponderance of the evidence.

5 A I do. That is not my burden, right?

6 Q Correct. Okay. I think you have answered all of my
7 questions, Mr. Belay. Thank you so much.

8 A Thank you.

9 THE COURT: You need to be heard, Mr. Madsen?

10 MR. MADSEN: No, sir.

11 THE COURT: Very good. Mr. Belay, the Court finds
12 you qualified as a Juror. What that means, you are now
13 part of a group of qualified jurors meaning you are on
14 this list, a list of qualified jurors. You will follow
15 the website, I understand you work with computers. The
16 same one you were looking at for the time to come in,
17 follow the instructions for qualified jurors. It will say
18 please come in and report at so and so time, so and so
19 date. Follow those instructions. Until that time please
20 don't talk about the case, don't let anybody talk to you
21 about the case, do not do any independent research, do not
22 let anything try to influence you about this case. I tell
23 that to every Juror. I want you to be influenced by what
24 you hear in the courtroom. A lot of people are testifying
25 under oath, on the court record and with everybody else

1 here too, not something that is presented outside the
2 courtroom, it does not have those same controls. So as
3 you know, things on the internet could be untrue.
4 Everything in the courtroom is all considered at the same
5 time. Can you follow that oath?

6 JUROR: I can.

7 THE COURT: Thank you very much.

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

10 THE COURT: Let's take a few minutes.

11 (Whereupon, a short break was taken.)

12 THE COURT: Let's bring in 32.

13 (Whereupon, Juror 32, Todd Bedenbaugh entered the
14 courtroom.)

15 EXAMINATION

16 By The Court:

17 Q You are number 32?

18 A Number 32, yes sir.

19 Q Mr. Bedenbaugh, you are still under oath. I want you
20 to say and spell your name for Joy so she can get it
21 spelled right and make certain the microphone is picking
22 you up.

23 A Todd, T-O-D-D; Bedenbaugh, B-E-D-E-N-B-A-U-G-H.

24 Q You pronounce it Bedenbaugh?

25 A Before you say Bedenbaugh--

1 Q The rich Bedenbaugh's are up in Newberry County.

2 A Bedenbaugh is in Newberry County, the rich ones.

3 Q The ones I know, I agree with you. My name is not
4 Bedenbaugh, but if it were it would be Bedenbaugh. Mr.
5 Bedenbaugh, have you talked about the case with anybody?

6 A As far as the case, no. My wife discussed dates and
7 stuff like that.

8 Q Did anybody try to ask you about the case other than
9 trying to go around scheduling and work things?

10 A Just my boss and I talked about work and he knows,
11 because I didn't know exactly when I would be here so we
12 talked about, I would have to let him know the morning of
13 or the night before.

14 Q Let's talk about that. I told you that I want to
15 hear about your schedule. Let's start, say Monday for
16 about three weeks, what is your impact on your personal
17 schedule, vacation, work?

18 A Really no problem. At night I have a banquet on May
19 the 29th for my employees. Other than that I don't really
20 have anything.

21 Q So if you were called to serve you could do so?

22 A Yes, sir.

23 Q Fair enough. Now, there has been publicity in this
24 case, all sorts of information out there. In fact I read
25 the indictments. So I am part of the information

1 providing system. Social media, public media, they are
2 doing their job and doing whatever they want to do. I
3 have asked you to not talk about the case since Monday but
4 prior to that you had no obligation to ignore it. You
5 could consider whatever you wanted. Now, any information
6 you have received at any time, up to right now, four years
7 ago to the present, has that information you have heard or
8 seen or otherwise considered caused you to form an opinion
9 as to what happened in this case?

10 A No, sir.

11 Q No opinion?

12 A No, sir. I did stand up, I did hear about the case,
13 I heard about it but I have not formed an opinion.

14 Q Well, most folks that say they hadn't just moved
15 here. Several they did have, they have been here for the
16 last year or so.

17 A Makes me feel better about some people that didn't
18 stand up.

19 Q Okay. Everybody has got an answer to that question
20 and thank you for your answer. Now, the witness list, did
21 you review it?

22 A Yes, sir.

23 Q Do you know anyone?

24 A As far as knowing people, no sir. I recognized some
25 names. A lady from the Lexington School district calls

1 our house on--

2 Q Telling you about school is let out or something?

3 A Right but I don't know her personally.

4 Q She is not calling you?

5 A No sir, no. She is dialing a phone number.

6 Q It is automatic?

7 A Yes, sir.

8 Q That is one of those automated things.

9 A It is. Other than that I don't recognize any, other
10 names.

11 Q You work for the school district?

12 A In Five, Lexington Five, yes sir.

13 Q Now, subject matter in this case will be involving
14 testimony that will be about the deaths of children. It
15 will be, it has been described to me, I have not seen it,
16 it has been described to me as difficult, tough, graphic,
17 harsh, unpleasant. That type of subject matter regarding
18 the deaths of children, can you consider and receive
19 testimony, graphic testimony, unpleasant testimony of that
20 nature and still be fair and impartial to both sides?

21 A Yes, sir.

22 Q You can do that?

23 A Yes, sir.

24 Q I gave you a preliminary instruction, kind of aspects
25 to a Capital case, two phase. Phase one is guilt or

1 innocence, phase two is punishment. Phase one, the State
2 has got to prove guilt beyond a reasonable doubt. If the
3 State meets that burden it goes into phase two. At that
4 point the State has got to prove an aggravating factor.
5 Then the Defense presents on mitigating factors. Not
6 knowing anything more than you know, if the State meets
7 the burden of proving, the guilt is found, we are in the
8 sentencing phase. I ask you to evaluate and read the
9 types of potential jurors, one, two three. Can you self
10 identify yourself as any of those three types?

11 A You mind if I read. I almost got through, I am a
12 slow reader.

13 Q Sure.

14 (Whereupon, the Juror reads the form.)

15 A I would be type three.

16 Q Okay. And tell me, I wrote that and you have read
17 it, I want to know what you think type three means?

18 A Well, in my brief summary of reading, I think I would
19 have to hear the facts and then make the judgment before I
20 could say, that is why I think I am not one or two. I
21 think I need to hear everything before I can make a
22 determination.

23 Q Fair enough. You want to hear everything, good and
24 bad and then make a finding.

25 A Yes, sir.

1 Q Now, I want to go back to phase one. On phase one, I
2 am going to give you a little more instruction on the law
3 and ask you, can you follow these instructions if they
4 were so presented. In phase one the State has got the
5 responsibility on the burden of proving the murder.
6 Killing of another, malice, that element. The State has
7 got to prove that beyond a reasonable doubt. That is
8 their responsibility. If they don't meet that burden the
9 case, if it is not proven it ends. Now, also during that
10 portion defenses can be presented by the Defense. There
11 are some potential defenses, I am going to read all of
12 them to you and then come back and ask my question.
13 Potential defenses could be identification, accident,
14 involuntary intoxication, self-defense, necessity,
15 insanity, guilty but mentally ill, defense of habitation,
16 entrapment, duress or alibi. Those are potential defenses
17 available to everyone. Now if testimony is presented
18 during the trial and one of those defenses comes into play
19 because they could be supported or found based upon the
20 evidence presented I will instruct on it and say, the
21 defense has been raised and the aspects of that are thus
22 and so. Now, can you be a fair and impartial Juror,
23 considering all the facts, circumstances and evidence
24 presented at trial, evaluate whether the State has met its
25 burden of proving its case beyond a reasonable doubt or

1 not and consider any and all defenses in my instructions
2 on those defenses and give both the State and Mr. Jones a
3 fair trial in this matter?

4 A Yes, sir.

5 Q Now, in this case one of the defenses has already
6 been raised. Not guilty by reason of insanity. Because
7 of that there are four potential verdict forms that can
8 come into play. The verdict forms for the jury in this
9 case likely will be guilty, guilty but mentally ill, not
10 guilty of insanity, not guilty all together. Those are
11 four potential verdicts the jury could reach considering
12 what defense have already been claimed by Mr. Jones. I am
13 saying he is presumed innocent right now, will be until
14 the State proves his guilt beyond a reasonable doubt, if
15 the State can do that, those are the four verdict forms.
16 Can you give meaningful consideration to all the evidence
17 and testimony, considering my instructions on those
18 potential particular verdict forms and find any of those
19 verdicts, find each and every one of them if the evidence
20 supported it or didn't support while considering my
21 instructions because part of it is the State has got to
22 prove it. Can you find, consistent with my instructions
23 any one of those four particular verdict forms.

24 A Yes, sir.

25 Q Can you be fair to the State in doing so?

1 A Yes, sir.

2 Q Can you be fair to Mr. Jones in doing so?

3 A Yes, sir.

4 Q If the State fails to meet its burden of proof or if
5 the jury finds not guilty by reason of insanity the case
6 ends. Okay.

7 A Okay.

8 Q Now, if the State meets its burden of proving the
9 murder beyond a reasonable doubt it goes to phase two.
10 During phase two there are several things that get
11 presented to the jury then. Phase one, stands on the
12 trial in itself. If a guilty verdict is found by the jury
13 we go to phase two. If not the case is over. In phase
14 two the State has the burden of proving an aggravating
15 factor. I am going to name five. Murder of a policeman,
16 murder of a child, rape of murder, kidnapping of murder,
17 multiple murders. Those are aggravating factors. The
18 State must prove at least one of those in order to ask a
19 jury to consider imposing a death penalty. Do you
20 understand?

21 A Yes, sir.

22 Q They have got to prove that unanimously beyond a
23 reasonable doubt, that aggravating factor in order to ask
24 that. Now, the Defense will present on mitigating factors
25 or circumstances. I am going to read some statutory

1 mitigators to you. The Defendant has no significant
2 history of prior criminal conviction involving the use of
3 violence against another person. The murder was committed
4 while the Defendant was under the influence of mental or
5 emotional disturbance. The victim was a participant in
6 the Defendant's conduct or consented to the act. The
7 Defendant was an accomplice in the murder committed by
8 another and his participation was relatively minor. The
9 Defendant acted under duress or under the domination of
10 another person. The capacity of the Defendant to
11 appreciate the criminality of his conduct or to conform
12 his conduct to the requirements of law was substantially
13 impaired. The age or mentality of the Defendant at the
14 time of the crime. The Defendant was provoked by the
15 victim in committing the murder. The Defendant was below
16 the age of 18 at the time of the crime. The Defendant was
17 or had mental retardation at the time of the crime. Those
18 are statutory mitigators that are allowed to be considered
19 by jurors if the facts support it. Additional mitigators
20 could be Mr. Jones life, early childhood, aspects of
21 coming from a broken home, whatever that testimony is the
22 jury's can consider those factors as reasons to impose a
23 life sentence as opposed to a death sentence. So
24 aggravators are reasons to impose death, mitigators are
25 reasons to impose to life. Can you give meaningful

1 consideration to the knowledge that the State has the
2 burden of proving the aggravating factor, one of them
3 beyond a reasonable doubt unanimously as well as consider
4 mitigating factors in evidence, whatever the Defense
5 presents. There is no responsibility of proving anything
6 but they can present evidence for you to consider. Can
7 you give meaningful consideration to all of that
8 testimony, aggravating factors and mitigating factors and
9 be a fair and impartial Juror for both the State and the
10 Defense?

11 A Yes, sir.

12 Q You understand the death penalty is not automatic in
13 the sentencing portion of the case?

14 A Yes, sir.

15 Q It is not automatic?

16 A Right.

17 Q Two verdict forms of punishment, death or life. No
18 in between, no other options. But death is not automatic.
19 Do you understand?

20 A Yes, sir.

21 Q Do you have any religious, moral, personal belief
22 which would prevent you from finding a sentence imposing
23 the death sentence?

24 A No, sir.

25 Q Do you have any religious, personal or moral belief

1 which would prevent you from imposing a life without
2 parole sentence?

3 A No, sir.

4 Q Do you have any reason whatsoever you can't be fair
5 to both the State and the Defense?

6 A I think I can be fair, yes sir.

7 Q Those are my questions. The attorneys will get to
8 ask, Mr. McGuire and then a member of the prosecution team
9 will ask you some questions. There are no wrong answers.

10 A Yes, sir.

11 THE COURT: Mr. McGuire.

12 EXAMINATION

13 By Mr. McGuire:

14 Q I got a little lost in the Bedenbaugh.

15 A My grandfather was a Bedenbaugh. And that means that
16 you are poor. I have uncles that are Bedenbaughs so you
17 figure it out, I am still a Bedenbaugh.

18 Q Good morning, Mr. Bedenbaugh. My name is Bill, Bill
19 McGuire and this is the opportunity where the lawyers get
20 to ask you some questions about your views on the death
21 penalty for the offense of murder. I am going to put you
22 in a situation. In your mind I want to see yourself, you
23 got to be Governor of South Carolina for a day and you had
24 a Bill on your desk and you could sign it, we would
25 continue to have the death penalty. And you had another

1 Bill that said, we are not going to have the death penalty
2 any more. Which one would you want to sign?

3 A Tough question. It depends on the evidence and I
4 know that you are not asking me that. But I don't know
5 that answer because I think everyone gets a fair chance.
6 And I guess you want an answer, right, is that what you
7 want.

8 Q If you can find one, yes.

9 A That is hard for me to answer.

10 THE COURT: Go on to the next question, that is an
11 answer in itself.

12 Q Sure. Some people would say the death penalty is
13 reserved for the worst of the worst cases. What do you
14 think about that statement?

15 A Not necessarily. I just, well, I am a firm believer
16 in, you know, everyone is innocent until proven guilty.
17 So I think everyone has a, should have a fair chance
18 either way, good or bad. So I don't agree with that, I
19 guess.

20 Q Okay. Well, so we can talk about this in more
21 concrete terms. I am going to ask you to put yourself in
22 a situation. You are on a jury, on a case, it is a murder
23 case, not this case, some other case. But it is a murder
24 case and it is the intentional killing of another human
25 being with malice aforethought. That means, knew what

1 they were doing, had an evil motive intent in their heart,
2 not an accident, not self-defense, intentionally,
3 deliberately took the life, lives of five children. Are
4 you with me?

5 A I am with you.

6 Q In that case, without hearing more, what are your
7 thoughts about the death penalty as the appropriate
8 punishment.

9 MR. HUBBARD: Objection.

10 THE COURT: He clarified without further.

11 A So you want me to answer that?

12 THE COURT: The best you can.

13 A What was the question. I understand the parameters.
14 Tell me your question again.

15 Q My question is, in that situation, you are on a jury,
16 eleven other people, you find a person absolutely guilty
17 beyond a reasonable doubt, intentional taking of the lives
18 of five children. And you have convicted this person. So
19 now the person, and without hearing more facts, just
20 knowing that what are your thoughts as the death penalty
21 is the appropriate punishment for that type of case?

22 A Well, maybe I am slow too.

23 Q This is the only day in your life where everything
24 you said is one-hundred percent correct as long as it is
25 what you think and feel. There are no wrong answers. And

1 the Judge and I and the State, the State lawyers, all we
2 want are your personal opinions. So in that situation
3 what are your personal opinion about the death penalty?

4 A I think, in my opinion, in my heart if, you know, if
5 the facts are true and, you know, I think the death
6 penalty could be considered in those circumstances, if in
7 the shadow of my heart it is the right thing and
8 everything is proven, maybe, I guess. I don't know that I
9 am hard fast either way to be honest with you.

10 Q Okay. Well, I am going to give you the other side of
11 the coin. Same situation, guilty, guilty person, all the
12 evidence points to guilt, intentionally took the lives of
13 five innocent children, could the life penalty be severe
14 enough, harsh enough to punish that type of killing?

15 A It could be, in my opinion.

16 Q Okay. And just knowing that situation that we talked
17 about, the taking of innocent children's lives, would you
18 say you are sort of in the middle or you start on the
19 death penalty, you start at life. Tell me where you think
20 you might start off at?

21 MR. HUBBARD: Objection to that, that is staking.

22 MR. MCGUIRE: It is a perfectly appropriate question.

23 THE COURT: Y'all have been asking something to that
24 similar each time. I understand your objection. I am
25 going to let him answer it.

1 A I guess I would start in the middle and let it, I
2 want to hear all the facts I guess.

3 Q That is a fair answer. And all of your answers are
4 correct today as long as they are your personal beliefs.

5 A They are.

6 Q And when it comes to fixing punishment for that kind
7 of case, intentionally taking the lives of children, would
8 the background of the killer be relevant to you, how they
9 grew up, they grew up wealthy, they grew up poor, came
10 from a broken home, parents stayed together, had a
11 learning disability, made good grades. There is a lot of
12 stuff that can be in there but just sort of their
13 character and their background. Is that relevant when it
14 comes to fixing punishment for that type of killing that
15 we are talking about?

16 A I think so, I think so.

17 Q I want to talk to you a little bit about the first
18 phase right now. That is just like any other trial you
19 have seen on the news or TV, do they have the right guy,
20 is he guilty beyond a reasonable doubt. That sort of
21 thing. In that first phase the jury would be able to
22 consider not guilty by reason of insanity. And as the
23 Judge told you, if the jury was to vote for that, the jury
24 would never be able to sentence, would never be able to
25 reach that punishment phase, that would end the case right

1 there. And a lot of folks or some folks would say, you
2 know what, not guilty by reason of insanity, not letting a
3 sentence, not letting us punish, I don't want to vote for
4 that because there needs to be some punishment for this
5 intentional act.

6 MR. HUBBARD: Objection.

7 THE COURT: Ask your question, you are lecturing to
8 him now.

9 MR. MCGUIRE: I am sorry, I apologize.

10 Q So a lot of folks-

11 THE COURT: Sustained on the objection, get to the
12 question that you normally ask.

13 Q Some folks would say not guilty by reason of
14 insanity, that is just a copout, not really punishing
15 anybody. What do you think about that?

16 A I am not a scholar so insanity, I guess I would need
17 to read a little more on insanity.

18 THE COURT: The Court will instruct you on aspects,
19 that would happen.

20 A Right and I would appreciate.

21 THE COURT: So now ask your next question.

22 A I mean, I would have to have the facts to be honest
23 with you. I know that doesn't answer your question.

24 Q You are doing great, you are doing great. I think
25 you have answered as much as you can so I am going to take

1 you now to the second phase. Okay. So when we think
2 about the court system in jury trials, we always think
3 about the jury acting unanimously, all together, all
4 twelve speaking with one voice. But in the sentencing
5 phase of a Capital trial a lot of individuality comes into
6 play and the twelve jurors become twelve individual
7 decision makers.

8 MR. HUBBARD: Objection to that, Your Honor.

9 THE COURT: Get to your question about mitigation,
10 that is a long question you are asking.

11 MR. MCGUIRE: Sure.

12 Q And what I am going to do is give you some examples
13 of how this works and if you have any questions about it
14 let me know.

15 MR. HUBBARD: Your Honor, I object to that. He needs
16 to ask questions.

17 THE COURT: He is doing that and he said everybody.
18 So go to the, your next line of questioning you normally
19 do.

20 MR. MCGUIRE: Sure.

21 THE COURT: The lawyers have been up here and I have
22 heard a lot, I know what question he is going to ask but
23 he is trying to explain things and sometimes all get a
24 little wordy. I encourage them to minimize their words.

25 A They are doing their job.

1 THE COURT: They are doing their job. So don't hold
2 it against them, I have heard it one-hundred times, you
3 have only heard it once.

4 A Yes, sir.

5 THE COURT: Ask your question.

6 Q I am going to give you some examples of how this
7 works and if you have any questions about it you just ask
8 me. Okay. So each individual Juror as the right to find
9 mitigation evidence for themselves on an individual basis
10 and it is not a group decision as to whether or not
11 mitigation evidence exist. Does that sound right to you?
12 Does it sound fair, it probably sounds different than what
13 you thought--

14 A Well, I obviously do research, I don't think that I
15 would have that opportunity if I was on the jury, in the
16 jury room, to do research--

17 Q No, no, everything would be in the courtroom.

18 A Okay, okay.

19 Q You don't get to go on google or anything like that.
20 But you could hear, for instance this Juror right here
21 could hear, I saw that the Defendant had an enduring
22 relationship with his father. I saw a spark of humanity
23 there, some hope of redemption. I want to vote for life
24 for that reason, that is my reason. And then another
25 Juror could say, I think he has some mental health

1 problems. And I am not going to vote death for a man who
2 has got a broken mind, I am not going to do it. And you
3 see how the reasons could be different. They don't even
4 have to agree. This person could say, I don't agree with
5 your reason, this person could say I don't agree with your
6 reason but they both are allowed to have their own reason
7 to vote for the life penalty if they want to. Does that
8 sound fair?

9 A I think so.

10 Q And the Judge would tell the jury at the end of the
11 trial that an individual Juror could vote for the life
12 penalty for any reason, no reason, mercy alone. So
13 another Juror could say, I listened to everything, I
14 really can't put it into words why I don't want to vote
15 for the death penalty, I just don't want to. As I
16 contemplate the rest of my life, I don't want that burden
17 on me and I am voting for life and they can do that for no
18 reason. Does that sound fair?

19 A Tough question. It is a tough question. You know, I
20 am being honest with you, it would be tough to do. Be
21 tough either way.

22 Q Sure. Now, the rules of court, the law in South
23 Carolina forbids a Juror, if they reach a conscientiously
24 held position, if it would harm their conscience to change
25 that position, their vote, let's say they want to vote for

1 life. It would be wrong and against our rules, actually
2 it would be a violation against the jury oath and the
3 rules of the Court for that person to change their
4 position, abandon their individual moral judgment just to
5 throw in with the majority. Did you know that?

6 A I didn't know that.

7 Q We expect reasonable and, reasonable deliberations
8 and civil discourse. But once a Juror reaches their
9 conscious held position and it is described in the law as
10 an individual moral judgment, they have to stick with it,
11 they have a duty and obligation--

12 THE COURT: That has been asked and answered. Move
13 on.

14 MR. MCGUIRE: Okay, thank you.

15 Q And there are a lot of rules in court. Some of them
16 are for me, some are for Mr. Jones but some are for the
17 jurors. And the law is that these proceedings have to be
18 conducted with dignity, decorum and respect. And if you
19 were to see in the jury room, deliberations on punishment
20 whether a human being lives or dies, and you saw maybe a
21 majority trying to get somebody to abandon their position
22 and it was bullying, it was forceable, it was coercion and
23 civility and dignity and decorum had left the jury room,
24 could you pass a note out here to the Judge saying, we
25 need some help, it is getting, civility has left this

1 room, Judge, can you help us get it back.

2 A Without a doubt.

3 Q All right. When you came for jury selection across
4 the street in the old Court House, did you recognize
5 anybody else?

6 A Yes, sir.

7 Q Can you tell the Court who that was?

8 A His name was Bryson Tucker. He did some work for our
9 school district. He was released, a time before you
10 released him so I did know him. Yes, sir.

11 Q Okay. Thank you.

12 A I didn't talk to him.

13 Q Sure, sure. Of course not.

14 MR. MCGUIRE: But just for the Court's benefit, we
15 are not going to have anything further for the Court.

16 THE COURT: Solicitor.

17 EXAMINATION

18 By Mr. Hubbard:

19 Q Mr. Bedenbaugh?

20 A Yes, sir.

21 Q Rick Hubbard, how are you?

22 A All right, how are you.

23 Q Just fine. I am going to ask you a few questions.
24 Just listening to you it sounds like you are a man who
25 wants to hear all the facts?

1 A I am.

2 Q You have got to have facts to make a decision?

3 A Yes, sir.

4 Q Let me ask you this. Say we get into that punishment
5 phase that you and other members of the jury have found a
6 man guilty. You go into the punishment phase, the Judge
7 has told you about, there are aggravating factors that the
8 State has to prove and there is mitigating factors that
9 the Defense might bring out, things that might be
10 beneficial and put the Defendant in a better light. Do
11 you understand?

12 A Yes, sir.

13 Q Those are things that you would be looking for in
14 that second phase?

15 A Yes, sir.

16 Q Did you know that you could find both of those,
17 aggravating and mitigating factors and circumstances and
18 still reach a verdict for either life or death. Did you
19 know that?

20 A Yes, sir.

21 Q So you could find the good and the bad and still
22 reach a life sentence. Could you do that?

23 A I could.

24 Q And if you, if you found aggravating circumstances
25 have been proven by me and my team beyond a reasonable

1 doubt, even if there are mitigating factors you understand
2 that you could also reach a death sentence?

3 A Yes, sir.

4 Q And I believe you told the Judge that if you feel
5 that is appropriate you could actually render a verdict on
6 that?

7 A I feel in my heart that everything is correct, yes,
8 I could.

9 Q One thing about the death sentence that is different
10 from any other sentence. All twelve jurors have to put
11 their name on the dotted line on that.

12 A It is tough.

13 Q It is tough, could you do that? If you reach a
14 decision that, I am not going to ask you to make a
15 judgment and abstract, you don't know the facts right now.
16 Right?

17 A Right, that's correct.

18 Q But as a person, whatever those facts are, you reach
19 that decision, you know what the facts are, is death.
20 Could you take that further step, that one more step and
21 say, I can put my name to it?

22 A I won't lie because I am under oath, it would be
23 hard, very hard. I think maybe. You want a yes or a no.

24 Q Well, I guess, the reason why I am asking you, sir,
25 is once you get on that jury I don't get to talk to you

1 anymore about that.

2 A Right.

3 Q And this is just, nobody here is going to pin you
4 down on what side of the aisle you are going to fall.
5 That is for you to decide with eleven other people.
6 Right?

7 A Right.

8 Q My question is not about that. I can't make you jump
9 into the future and say where are you going to fall. But
10 we do need to know, could you if you believed death is
11 appropriate, whatever those facts are. Could you actually
12 pick up a pen and sign your name to a piece of paper that
13 is basically a death warrant?

14 A I can say I think so, that is the best answer I can
15 give you.

16 Q But you can't assure us that you could? And I know
17 this is tough, you are taking quite a lot of time and that
18 is good.

19 A Right. I think the best answer is, I think so.

20 Q That is your honest answer?

21 A That is my honest answer.

22 Q That is all I can ask you, is your honest answers.
23 Thank you so much.

24 A Thank you.

25 MR. MCGUIRE: Judge, if I can ask him a quick

1 follow-up.

2 THE COURT: I was going to ask him a question.

3 EXAMINATION

4 By The Court:

5 Q Mr. Bedenbaugh, I think the lawyers, sometimes they
6 will, don't explain everything. In phase two, sentencing,
7 there are two choices, life or death. The lawyers are
8 trying to tell you, after you have heard all of the
9 mitigating factors, the reasons to give life and after you
10 have heard all the aggravating testimony, if you all
11 twelve jurors unanimously made the same decision and
12 decide to impose one sentence or the other, that sentence
13 will be carried out. So if you decided that life without
14 parole and everybody else did, that sentence would be
15 imposed and carried out. If all twelve jurors, after
16 hearing everything, so if the facts support it, whichever
17 it was, that would be the sentence. The Solicitor, I
18 think, and Mr. McGuire asked a different question because
19 they are on different sides. If all twelve jurors agree
20 the death penalty was appropriate, after considering the
21 facts, could you then sign?

22 A I could.

23 Q Okay.

24 THE COURT: Mr. McGuire, I will let you follow-up if
25 you like.

1 MR. MCGUIRE: Nothing further, Your Honor.

2 Q That is kind of confusing, in the hypothetical, could
3 you. That is the position you get in. The reasons, this
4 is the one type of a sentence that if it is a death
5 verdict all twelve jurors show their unanimity by signing.
6 Okay.

7 A All right.

8 Q Is that a better explanation for you?

9 A Yes, sir.

10 Q Okay. In those circumstances could you sign it?

11 A Yes, sir.

12 Q Fair enough.

13 MR. MCGUIRE: Nothing for the Court.

14 THE COURT: Mr. Bedenbaugh, I am going to find you
15 qualified. You want to be heard, Solicitor, I am sorry.

16 MR. HUBBARD: No, sir.

17 THE COURT: Okay, I didn't think so. I find you
18 qualified. I will put you on the qualified jury list
19 which means you need to check the internet, the same
20 website that y'all have checked to when to come in and
21 report. Qualified jurors will be required to check back
22 or to report on some day, some time, to be determined
23 later. Start Monday, as to when to come back to court.
24 Until such time you can't talk about the case, you can't
25 let anybody interrogate you, educate you or lecture on the

1 case. Stay away from social media and news media. I don't
2 want anything outside of the courtroom influencing your
3 decision making. I want you to be influenced about what
4 you hear in here under oath, from the witnesses called.
5 These folks know more about the case than anybody else.
6 They are going to present on it. Can you do that?

7 JUROR: Is it okay for me to inform my employer?

8 THE COURT: Yes, scheduling things certainly. But I
9 don't want you to say, well, what I heard was, that kind
10 of thing. I need to report back on jury duty for such and
11 such date, absolutely okay. Can you deal with that?

12 JUROR: Yes, sir.

13 THE COURT: Thank you very much.

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

16 THE COURT: Let's bring in 86.

17 (Whereupon, number 86, Rogers Chambers entered the
18 courtroom.)

19 EXAMINATION

20 By The Court:

21 Q Are you Mr. Chambers?

22 A That is correct.

23 Q Mr. Chambers, I want you to give me a mike check by
24 saying and spelling your full name for Ms. Holston.

25 A R-0-G-E-R-S, A-N-D-E-R-S-O-N, C-H-A-M-B-E-R-S.

1 Q All right, Mr. Chambers, you were asked to not talk
2 about the case since last Monday. Have you talked about
3 the case since last Monday?

4 A Not really. I mean my sister lives up in Cincinnati
5 and she is coming down to take care of my mom and she
6 asked why I couldn't be there and I told her I had jury
7 duty.

8 Q And for scheduling is fine.

9 A Yeah, for scheduling. Not really talk about it as
10 far as--

11 Q The facts about the case.

12 A Right.

13 Q Now, has anybody questioned you about the facts of
14 the case?

15 A No, not really. I mean, people knew I was on jury
16 duty and I just kind of--

17 Q Is that the case, that kind of thing. I mean, your
18 response was?

19 A I can't talk.

20 Q Fair enough.

21 A I don't want to get in trouble.

22 Q That would create issues for the Court and that is a
23 proper response. Now, there has been a lot of publicity
24 in this case.

25 MR. YOUNG: Can we talk to you.

1 THE COURT: Sure.

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

5 Q Did you get a conviction in Georgia way back in '94,
6 November, aggravated assault?

7 A No, there was no conviction, no. I was in a bar
8 fight. I was scared.

9 Q It says it was dismissed. That case would have been
10 dismissed in '91. Fighting and aggravated assault,
11 dismissed. It appears it has been dismissed.

12 MR. YOUNG: Okay.

13 Q I don't want to put you in a bad situation, I have
14 got to ask. That is why I bring you in one at a time.
15 Okay. Now, publicity, before you Monday you had no
16 responsibility to me of not listening to it, reading about
17 it, because you didn't know. I asked you Monday to kind
18 of minimize that. Now, I read the indictments to the
19 entire jury panel. That is information to you also, to
20 also jurors, there was accusations made by the State to
21 Mr. Jones. He is presumed innocent right now.
22 Considering any information you have received from four
23 years ago up to right now, has that information you have
24 heard, seen or otherwise come into contact with, has that
25 caused you to form an opinion as to what happened in this

1 case?

2 A I just, I guess naturally you get opinions.

3 Q Okay. That is what I am talking about.

4 A That is human nature.

5 Q You got an opinion in this case?

6 A Yes, I do.

7 Q Okay.

8 A I don't know, to be honest with you, I have got too
9 much going on. I remember hearing about it back then, saw
10 it pop up on the newspaper.

11 Q Would it be fair to say you have got an opinion or
12 you have got a curiosity as to what went on?

13 A Well, sometimes I guess I form an opinion without
14 seeing the facts, yeah.

15 Q Can you give me an idea of what that opinion is?

16 A Honestly, if somebody hurts their children, I don't
17 like that but I don't know that yet. That is my given.

18 Q You believe that went on in this case?

19 A To be honest with you, I mean, just from what I seen
20 or read, yes.

21 Q Now, I ask you to identify yourself as one the types
22 of jurors, have you got yourself identified on there?

23 A I do.

24 Q Where are you?

25 A Three.

1 Q You want to hear everything?

2 A I like to hear stuff because I feel like you want my
3 opinion on this?

4 Q Absolutely.

5 A Okay. I feel like sometimes an eye for an eye. But
6 I do feel like due process. I believe people are allowed
7 due process but if there is circumstances out there
8 wholeheartedly I feel like someone has failed.

9 Q You understand this case, accusations have been made
10 by the State against him. The news accounts and whatnot
11 you heard in the past, are you going to be able to set
12 that aside and listen and see what happened or is that
13 going to impact your decision making at this point
14 forward. That is my concern is, I kind of think he did it
15 already. I kind of want to know whether you think you can
16 do that.

17 A I guess it is hard to say until you are put in that
18 situation. I mean, because like I said, you go into
19 something and, I mean someone is innocent until they are
20 proven guilty. But sometimes there are things that will
21 sway your mind. And then sometimes they will sway the
22 other way. I mean, I don't know about the case but I do
23 feel that, if someone can actually say, no, I have no
24 objective opinion about something. I think we all do,
25 just human nature.

1 Q Okay. I agree with you. I am going to this fashion.
2 I am going to excuse you from this case because I don't
3 want to put you in that position, figure out whether you
4 can do that or not. So you are free to go.

5 A Thank you.

6 Q Good luck and thank you, sir.

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

9 THE COURT: We will stand at ease until 12:00.

10 (Whereupon, a lunch break was taken.)

11 (Whereupon, Juror number 264, Teresa MacFawn; 245,
12 Thomas Lee; 285, Taylor Medlin; 377, Victoria
13 Schneider; 366, Ashley Russell; 469, Candy Whisenant;
14 83, Laguadia Caughman; 143, Bryan Ferreira entered
15 the courtroom.)

16 THE COURT: All right, folks, thank you for being
17 here. We got to eat inside of 45 minutes rather than 30
18 minutes yesterday. My name is Eugene Griffith, again, we
19 are going to bring you back into the courtroom after we
20 place you under oath individually and ask you questions,
21 all the questions is your personal feelings and opinions
22 are about this subject or that subject. So no wrong
23 answers, just candor, candid answers. Cameras in here are
24 off, nothing being recorded or nothing like that. When
25 you get back in the jury room I don't want you to discuss

1 the case because my first question to you, each of you,
2 have you discussed the case with anybody. That is my
3 first question. I had a Juror look at me, like I was
4 accusing her and I wasn't, that is just question number
5 one for me. So with that end y'all all stand and you will
6 be placed under oath.

7 (WHEREUPON, the jury panel was sworn at 12:20 p.m.)

8 THE COURT: Y'all be seated. Also the first early
9 questions are your schedules and what conflicts in your
10 schedules over the next few weeks. I will ask you about
11 that also. I have read this to all the other panels, I
12 will read it to y'all. You have been summoned as
13 potential jurors in the case of the State versus Timothy
14 R. Jones, Jr. My name is Judge Eugene Griffith, Jr. and I
15 will be the presiding Judge. Mr. Jones is charged with
16 five counts of murder. In South Carolina murder is
17 defined as the killing of any person with malice
18 aforethought. Malice is defined as a person with a wicked
19 or depraved heart, intent on wrongdoing, evil, ill-will or
20 hostility. The definition of murder excludes any just
21 cause or excuse for the killing. When the State alleges
22 the offense of murder, combined with certain aggravating
23 circumstances the State can seek the death penalty.
24 Before and during a trial a person accused is presumed
25 innocent of each element of the crime which he is charged.

1 The State must prove each and every element of the crime
2 to a standard of proof called beyond a reasonable doubt.
3 In most criminal cases Judges determine the punishment
4 upon a conviction. But in a Capital case the jury
5 determines punishment. In a Capital case the trial is
6 divided into two phases potentially. The guilt or
7 innocence phase and if necessary the punishment phase. In
8 the first portion of the case the State must prove the
9 Defendant's guilt of murder beyond a reasonable doubt. If
10 a jury finds an accused guilty of murder then the trial
11 proceeds to the second phase. In the second phase, if the
12 State proves an aggravating circumstance beyond a
13 reasonable doubt then the jury considers aggravating and
14 mitigating evidence in deciding punishment. Either life
15 without the possibility of parole or death. Our law in
16 South Carolina does not allow the State to seek that
17 execution if a person is convicted solely of the murder.
18 The State must prove at least one of the statutory
19 aggravating factors beyond a reasonable doubt. Even if
20 the State proves murder and an aggravating circumstance
21 jurors are required to consider any mitigating evidence or
22 circumstance. Jurors must consider any mitigating facts
23 that would support a sentence other than death. Even if
24 no mitigating circumstances exist jurors are not required
25 to impose the death penalty. In order for a sentence of

1 death to be imposed the verdict must be signed by all
2 twelve jurors. If jurors unanimously decide to sentence a
3 Defendant to life without parole sentence then a sentence
4 of life without the possibility of parole will be imposed.
5 In this case the State has indicted five counts of murder
6 and has notified Mr. Jones that it intends to seek the
7 death penalty. Mr. Jones has entered a plea of not guilty
8 by reason of insanity. In this case you may hear
9 testimony and evidence showing many things. A wide
10 variety of testimony may be presented to you in the trial.
11 I will instruct you as to how to consider and evaluate the
12 testimony, whether it be evidence of an aggravating
13 factor, evidence of mitigation, that would be any reason
14 to vote for a life sentence without parole, evidence of
15 any defenses, evidence of any affirmative defenses such as
16 accident, guilty but mentally ill or not guilty by reason
17 of insanity. Until all the testimony and evidence is
18 presented in the trial I am not able to tell you the exact
19 instructions of the law which I will give. But when you
20 come back in individually the question imposed to you will
21 be, can you accept an oath to meaningfully consider all
22 the testimony and evidence and apply the law as I instruct
23 it and consider all of this evidence consistent with my
24 instructions. Those are the preliminary instructions.
25 Have y'all back here one at a time. Remember, don't

1 discuss the case, cameras are off. I will ask you about
2 your work, personal schedule, calendar. All right. See
3 you back in a few minutes.

4 (Whereupon, the jurors were excused from the
5 courtroom.)

6 THE COURT: Are y'all ready on 264.

7 MR. YOUNG: Yes, sir.

8 THE COURT: Bring her in.

9 (Whereupon, Juror 264, Teresa MacFawn entered the
10 courtroom.)

11 EXAMINATION

12 By The Court:

13 Q Good afternoon. I am going to let you say your name
14 and spell it so Ms. Holston can see if she has where she
15 can hear you.

16 A Teresa, T-E-R-E-S-A; MacFawn, M-A-C-F, as in Frank,
17 A-W-N.

18 Q Ms. MacFawn, you have already been placed under oath,
19 I had you under oath since last Monday about not
20 communicating about the case. Have you talked about the
21 case in any way?

22 A I have not.

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

24 A Well, a couple of people have said,--

25 Q Is that the case?

1 A Yes and I have said, I am sorry, I am not allowed to
2 talk about it.

3 Q That is an appropriate answer. Now, I in that jury
4 qualification over in the old Court House, I read the five
5 indictments, published them, those are the accusations
6 made by the State of Lexington County to Mr. Jones. He is
7 presumed innocent, will be, remained, presumed innocent
8 until the State can prove its burden of proof, if they
9 can. Now, there has been publicity in the case, since
10 four years ago, off and on, last two weeks there has been
11 some. Any information you have received through today,
12 through right now, I don't care where you got it from, up
13 to right now, has any of that information caused you to
14 form an opinion as to what happened in this case?

15 A No.

16 Q Okay. Now, you, what does your calendar look like
17 commencing next week through the end of May, early June,
18 what have you got personally in work or whatever
19 obligations for your family?

20 A I mean I work but they know at work there is a
21 potential. So I kind of have people, I have other people
22 that I work with that can cover for me. I have one
23 doctor's appointment that I can reschedule.

24 Q Okay. That is kind of what I am listening for
25 because it is going to be an inconvenience if you are

1 called to serve but it is a civic duty so the
2 inconvenience kind of goes along with it. So no prepaid
3 vacation or anything like that?

4 A No, not unless we are going into July.

5 Q Well, my daughter is getting married in July so I am
6 hoping that we are all clear and the lawyers seem to be
7 consistent with things we will be done way before July.

8 A Now, my children did tell me they were giving me a
9 really good Mother's Day present. I don't know what that
10 is, unless I am going on a trip.

11 Q Let me know next week. I wish you well and Mother's
12 Day is to be enjoyed. I want to talk about subject
13 matter, there is subject matter in this case involves the
14 death of five children. It has been described and I have
15 not seen it, I have heard some testimony, preliminary, not
16 too much. The testimony has been described by the lawyers
17 who, the photographs as being unpleasant, graphic, harsh,
18 very difficult. Those have been the words being used to
19 me to describe it. The testimony of that type, subject
20 matter of that being graphic, harsh, unpleasant create an
21 issue for you being fair and impartial knowing that is
22 what the Court is going to receive. I am going to receive
23 it, the jury is going to receive it. You will consider
24 that, whatever it is. I am telling you, it is coming down
25 the track here, if you are selected as a potential Juror

1 would testimony of that type of subject matter create an
2 issue for you personally to receive and consider it fairly
3 and impartially and give both the State and the Defense a
4 fair trial?

5 A No, I think I could do that. It would be tough, yes.
6 But could I get past that to be fair and impartial.

7 Q Now, I gave a summary, let me ask you about the
8 witness list. Did you go over the witness list?

9 A I did.

10 Q All of those witnesses won't be called, most of them
11 could, all of them could be called. Are you connected to
12 any of those witnesses in any way?

13 A No.

14 Q I gave a summary of criminal process, criminal
15 procedure a few moments ago. Did you understand those
16 instructions?

17 A Yes.

18 Q Describing the two phase, two portions to the case if
19 necessary. The first portion is guilt or innocence only.
20 The second portion, if necessary, is punishment. I also
21 gave you a sheet to read before you came in about the
22 types of jurors. So kind of hypothetical, guilt has been
23 determined in my hypothetical types of jurors. Then the
24 jury considers, the State has got to prove an aggravating
25 factor and mitigating factors. Can you self-identify as

1 one of those three types of jurors just based on that kind
2 of hypothetical?

3 A Number three.

4 Q You are number three?

5 A Number three.

6 Q All right. I wrote that and so I ask each Juror,
7 what does that mean to you, what do you think I was trying
8 to ask?

9 A I think that means of me not coming in with any
10 predetermined feelings of how, based on the indictments,
11 based on those indictments that I would automatically
12 choose.

13 Q So you are coming in with non preconceived notion?

14 A Right. In fact, I haven't heard the case under, I
15 don't know what rock, if I would do anything.

16 Q Fair enough. You want to hear everything before you
17 make a decision, the good and the bad, hear it all?

18 A Definitely.

19 Q I am going to go back and I am going to kind of
20 divide the two parts and tell you some aspects of the law
21 that you will have to consider and follow. Because I
22 instruct the law in the cases, that is my job is to
23 instruct the law and this is the law of South Carolina and
24 the State is required to do thus and so. And you are to
25 consider this in that manner, kind of define things for

1 you. In a case like that there is a two-phase case. The
2 State has the burden of proving the murder in phase one.
3 They go first, they call their witnesses and they are
4 trying to prove killing of another with malice
5 aforethought. That is their job. So they call their
6 witnesses first. In the first part they have got to do
7 that to a burden of proof called beyond a reasonable
8 doubt. During that same first phase the Defense can also
9 present on defenses. They are allowed to, the defenses
10 are things that if the evidence supports them then I also
11 instruct on defenses and defining those. I am going to
12 give you several defenses and then I will come back and
13 ask you a question. This does not mean all these defenses
14 come into play in the trial because if testimony doesn't
15 support I won't give that instruction because it is not
16 relevant. It is like misidentification or something. I
17 wouldn't instruct that if the evidence wasn't presented.
18 Potential defenses include identification, accident,
19 involuntary intoxication, self-defense, necessity,
20 insanity, guilty but mentally ill, entrapment, defense of
21 habitation, duress and alibi. Those are potential
22 defenses available to everyone. Now, if evidence is
23 presented during the trial, during the first phase to
24 support any of those I will instruct on those aspects of
25 the law. So can you take an oath to be a fair and

1 impartial Juror, to understand my instructions that the
2 State is required to prove its case beyond a reasonable
3 doubt, the elements of the murder. But if any defenses
4 are presented you will consider the aspects of my
5 instructions on those facets of the law and be a fair and
6 impartial Juror to both the State and to the Defense?

7 A Yes.

8 Q You can do that. Now, in this case there has been a
9 defense already claimed, it has been presented because it
10 has to be ahead of time, it is not guilty by reason of
11 insanity. By that plea it brings in another aspect of a
12 verdict form that is slightly different because normally
13 it is guilty or not guilty. But in this case because of
14 the defense there are four potential verdicts, guilty,
15 guilty but mentally ill, not guilty by reason of insanity
16 and not guilty all together. Those are the four potential
17 verdicts. Can you accept an oath to be a fair and
18 impartial Juror to both sides, consider my instructions on
19 the law, defining those four potential verdicts, consider
20 them meaningful, all the evidence and testimony and be a
21 fair and impartial Juror to both the State and the
22 Defense?

23 A Yes.

24 Q Now, if the State fails to meet its burden of proving
25 the case then the case will not be proven and it ends

1 there. If the jury reaches a verdict of not guilty by
2 reason of insanity the case ends. If the State meets its
3 burden of proof, proves murder the case then goes to the
4 second phase which is the punishment phase. In the
5 punishment phase, additional things for the jury to
6 consider. The jury then considers whether aggravating
7 factors have been proven beyond a reasonable doubt by the
8 State. Aggravating circumstances could include murder of
9 a policeman, murder of a child, rape of murder, kidnapping
10 of murder, multiple murders. Those are aggravating
11 circumstances. The State needs to prove one of those
12 beyond a reasonable doubt unanimously to the jury in order
13 for a jury to be allowed to consider the State's request
14 for the death penalty. You have got to prove that beyond
15 a reasonable doubt unanimously before the jury can even
16 think about giving the death penalty. Do you understand?

17 A I do.

18 Q Now, also during the sentencing phase mitigating
19 factors, circumstances are presented to jurors. They need
20 not be proven, they are shown, they are testified to so
21 they are considered by the jury.

22 A My mind left me just momentarily. Back up just that
23 last--

24 Q The State has got to prove the aggravating factor
25 beyond a reasonable doubt unanimously. Mitigating

1 circumstances are facts and circumstances that would cause
2 a person to say, I am going to give a life sentence as
3 opposed to a death sentence. Those need not to be proven,
4 they are just shown for a jury's consideration. Jurors
5 may attach significance to those depending on the
6 testimony and how they are hearing the evidence. I will
7 give you some examples of statutory mitigators. The
8 Defendant has no significant history of prior criminal
9 conviction involving the use of violence against another
10 person. The murder was committed while the Defendant was
11 under the influence of mental or emotional disturbance.
12 The victim was a participant in the Defendant's conduct or
13 consented to the act. The Defendant was an accomplice in
14 the murder committed by another and his participation was
15 relatively minor. The Defendant acted under duress and
16 under circumstances or domination of another. The
17 capacity of the Defendant to appreciate the criminality of
18 his conduct or to conform his conduct to the requirements
19 of law was substantially impaired. The age or mentality
20 of the Defendant at the time of the crime. The Defendant
21 was provoked by the victim in committing the murder. The
22 Defendant was below the age of 18 at the time of the
23 crime. The Defendant had mental retardation at the time
24 of the crime. Those are facts outlined by the statute
25 that jurors can consider. So they are really neat, they

1 are considered, they are not required to be proved by some
2 standard of proof. They are testified to, jurors can
3 consider it. There are other factors jury's can consider
4 that aren't outlined in the statute such as a person's
5 childhood, he came from a broken home, he was an abused
6 child. Any aspects of that early, I mean the entire life
7 can be considered as mitigating factors if the jury so
8 chooses. So my question now becomes is, in the sentencing
9 phase jurors hear aggravating factors, testimony from the
10 State which the State must prove beyond a reasonable doubt
11 unanimously. Jurors also hear testimony and evidence
12 regarding mitigating factors and the jury considers those
13 and they evaluate and weigh those and make a determination
14 as to whether or not the sentence of death or life will be
15 imposed. There is only two choices in the sentencing
16 phase, one of the two, life or death, nothing else, no
17 middle ground, no other options. Can you give meaningful
18 consideration to the State's burden of proving the
19 aggravating circumstance unanimously beyond a reasonable
20 doubt and consider any mitigating factors in evidence, act
21 as a fair and impartial Juror in reaching your verdict for
22 punishment. Can you do that?

23 A Yes.

24 Q You understand you have got to be fair and impartial
25 for the State and fair and impartial for Mr. Jones. Can

1 you do both sides?

2 A Yes.

3 Q Do you have any religious, personal or moral belief
4 which would prevent you from imposing a sentence of death?

5 A No.

6 Q Do you have any religious, personal or moral belief
7 which would prevent you from imposing a sentence of life?

8 A No.

9 Q Do you know any reason whatsoever you can't be fair
10 and impartial?

11 A I don't.

12 Q All right.

13 THE COURT: Mr. Young.

14 EXAMINATION

15 By Mr. Young:

16 Q Good afternoon, Ms. MacFawn. I am Boyd Young, one of
17 Tim Jones lawyers. Did you know any of the other jurors
18 who came in on the panel on Monday, did you see anybody
19 you recognized?

20 A No, I did not.

21 Q Okay. The Judge has, do you recall he read you the
22 indictments from Monday, the five counts of murder and Tim
23 is charged with murdering his five children. And the
24 Judge has told you that he has plead not guilty by reason
25 of insanity. Okay. So that means, what he is saying is,

1 I did the killings, I did the acts but because of a mental
2 disease or defect I was not able to appreciate the legal
3 or moral wrongfulness of my actions. Do you understand
4 what the Defense is saying?

5 A Yes.

6 Q Some people say to me in that type of case that is
7 not really a verdict that I could consider, that would be
8 just like letting somebody go, just an excuse. And what
9 do you think about that verdict or that sentence or that
10 verdict, not sentence.

11 A Back up just a little bit on the question. I just
12 want to make sure I understand completely what you are
13 asking.

14 THE COURT: And, Ma'am, you can be assured, the Court
15 will instruct on the aspects of those four verdicts. He
16 just wants to make certain, ask your question again. So I
17 will give you instructions on that. I don't want you to
18 think that you have to go do homework or anything. You
19 are going to get the instructions. Just ask the question.

20 A Right. If you can ask the question again.

21 Q Absolutely. And if there is anything you don't
22 understand, I want you to be clear, I want to be clear.

23 A I just want to be clear I understand exactly what you
24 are asking.

25 Q And there is no right or wrong answer. It is just

1 your opinions and thoughts. Okay.

2 A Right.

3 Q Some people, you understand what not guilty by reason
4 of insanity means?

5 A Yes.

6 Q Did it, didn't know the difference between legal or
7 moral right from wrong. Right?

8 A Yes.

9 Q Some people say it is like the twinkie defense, that
10 is not something that I would give meaningful
11 consideration to. As a defense, in this type of case--

12 A You are asking me would I give that consideration?

13 Q I am asking where you are on that, is that something
14 that you think you could give meaningful consideration to
15 or not?

16 THE COURT: I think it is okay.

17 A Yes, I do.

18 Q You understand sometimes people are mentally ill or
19 having brain damage and they are not able to understand
20 the wrongfulness of their actions. And those people we,
21 we have a different set of rules for those people. We
22 find them not guilty and the trial is over. Right? I am
23 telling you if you find him not guilty, not guilty by
24 reason of insanity the trial will be over.

25 A Right.

1 Q The jury's job would be done.

2 A I got you.

3 Q Okay. But if he is found guilty or guilty but
4 mentally ill then we will have a second trial and that is
5 the penalty phase. Okay. Where the jury would ultimately
6 decide between life or a death penalty. Do you
7 understand?

8 A Yes.

9 Q So in order to get to that second trial that means
10 that the jury would have all unanimously decided beyond a
11 reasonable doubt that the person was guilty, guilty,
12 malicious intentional murder of multiple children. Are
13 you with me on that?

14 A Yes.

15 Q Any evidence that they would have heard about
16 insanity they would have just said, no, that is not the
17 case, we find beyond a reasonable doubt that he was sane,
18 knew what he was doing, chose to kill. Are you with me on
19 that?

20 A Yes.

21 Q At that point in the stage can you tell me a little
22 bit about your feelings about the death penalty for that
23 guilty murderer?

24 A I think, you know, I felt like this question was
25 going to be asked. I was asking myself, how do you feel

1 about this. You know, and I am like, how did you get to
2 be 63 years old and you don't have a black and white
3 answer to this. But I don't because I feel like you have
4 to take all of the circumstances into consideration and,
5 you know, I don't feel like one-hundred percent the death
6 penalty, one-hundred percent that I wouldn't give the
7 death penalty, that I would go for life imprisonment. I
8 would have to weigh--

9 Q Did you say weigh or wait?

10 A Weigh. I would have to weigh everything that I
11 heard.

12 Q Okay. I am going to come back to you and talk to you
13 about weight in here in just a second. Okay.

14 A Okay.

15 Q Don't let me forget.

16 A Okay.

17 Q I am just kidding. All the facts and circumstances
18 and you will have all the facts and circumstances about
19 what happened, how it happened, when it happened, all of
20 those facts and circumstances. Do you mean more than
21 that. Like how he was raised, what his life was like,
22 what his future is like, his background and character.
23 Would that be important to you?

24 A I think everything is going to play, would play into
25 trying to make a fair decision, you would have to look at

1 everything.

2 Q And it sounds to me like for you in making this
3 ultimate decision about whether or not to end a person's
4 life you would be the type of person that says, to me, I
5 have to weigh the whole life in order to make that
6 decision?

7 A I have to weigh everything.

8 Q And I just used weigh again myself.

9 A And I don't know, it is just that I would have to
10 look at every single, I mean, you know,--

11 Q It is not a wrong word.

12 A Right.

13 Q And in South Carolina, some States you ask jurors to
14 weigh things out. In South Carolina what we ask jurors is
15 to assign their own value. So in South Carolina you can
16 assign any value you want to any piece of mitigation you
17 want. You can say, I saw a relationship with his father,
18 for me I am going to give that relationship the value of
19 life and the law is perfectly okay with that. Do you
20 understand that?

21 A Yes.

22 Q And that is why I talked about the difference between
23 weighing, value. Does that make sense to you?

24 A Yes.

25 Q Can you tell me a little bit about, sort of general,

1 your philosophy about the death penalty. Have it, don't
2 have it, good things, bad things, necessary evil.

3 A Yes, I think it could be a necessary evil.

4 Q Okay.

5 A Like I said, I thought this question was going to
6 come up. And how did I get to be the age I am and not,
7 but and I know some people, it is black and white for
8 them.

9 Q Yes.

10 A You know, and looking at things, it is not black and
11 white for me. And some ways I wish it were.

12 Q Right, that would make it easy.

13 A It would make it easy. And I thought back to cases I
14 have heard in the past. And that somebody got the death
15 penalty or somebody got life in prison or somebody was let
16 off or whatever. How did I feel about that. I mean, I
17 have kind of had these things going through my head this
18 week. And I was like, every circumstance is kind of
19 different, you know.

20 Q I do. Tell me about, just some of those cases that
21 you heard where somebody got the death penalty and you
22 were thinking about it, did you think about things that
23 you would have maybe learned about a person that would
24 make you think that maybe life penalty might be
25 appropriate.

1 MR. GRAHAM: Objection, Your Honor. Staking out.

2 THE COURT: Overruled, I am going to let him ask it.

3 A I can answer the question?

4 THE COURT: You can.

5 A I mean, I was like, thinking about the Timothy McVey,
6 the Oklahoma City. That one that came to my mind. I was
7 like, yes, that was a death penalty case and I am okay
8 with that. You know, and then I thought about how do I
9 feel about the fact that we killed Osama Bin Laden. And I
10 was like, I guess I am okay with that. And then I have
11 heard, those were just two that popped into my head. I
12 didn't spend like hours thinking about this, I just knew
13 this question was going to come up. And this is not a
14 black and white thing for me. And where do I, you know,
15 and those were just things that came to my mind.

16 Q And those are two perfect examples. Like I said, you
17 can't give a wrong answer. My question is, anything about
18 Timothy McVey, some sort of domestic terrorist like that,
19 that you could learn about a person when deciding between
20 life and death and say maybe, domestic terrorist did a
21 horrible act. But if this was presented I might think
22 that letting them live in prison until they die--

23 A It was very different from, I think from terrorism.

24 Q Okay.

25 A I would just have to look at everything and weigh and

1 everything. That is just me on that.

2 Q That is exactly where you need to be Ms. MacFawn.

3 This decision, this ultimate decision about whether or not
4 the jurors decide the life penalty or the death penalty is
5 what is called an individual moral judgment. Okay, are
6 you with me on that?

7 A Yes.

8 Q Each Juror decides for herself what her moral
9 judgment is about the appropriate penalty. Okay?

10 A Okay.

11 Q And individual moral judgment is sort of like
12 choosing what faith is right for you. You have made your
13 individual moral judgment about that decision for
14 yourself. Is that right?

15 A Yes.

16 Q And you recognize that other people may have made
17 different decisions for themselves.

18 A Right.

19 Q You respect their right to their own individual moral
20 judgment about something that significant?

21 A Right.

22 Q You expect them to respect your right to make your
23 own individual moral judgment about something so
24 significant?

25 A Yes.

1 Q And if you saw somebody being bullied, harassed, or
2 belittled to change to what they had arrived at as their
3 individual moral judgment would you stop it?

4 A Oh, absolutely.

5 Q No question about that. If you had to you could even
6 send the Judge a note saying this needs to stop?

7 A Oh, yes.

8 Q Is that something that you could do?

9 A Yes.

10 Q Only if all twelve people arrive at the same
11 individual moral judgment for death is the appropriate
12 punishment, will the punishment be death. Do you
13 understand that?

14 A Yes.

15 Q Okay. Thank you.

16 THE COURT: Mr. Graham.

17 EXAMINATION

18 By Mr. Graham:

19 Q Good afternoon, Ms. MacFawn. My name is Shawn
20 Graham, I am one of the prosecutor's for the State on this
21 case. I have just a few follow-up questions for you as
22 well. In the first phase with the Defendant pleading not
23 guilty by reason of insanity you understand that we will
24 hear from psychiatrists and phycologists most likely. And
25 a little different in this kind of trial with those types

1 of people testifying and they get to give an opinion about
2 yes, I think he was insane, no, he wasn't. Do you
3 understand that?

4 A Yes.

5 Q Just like any other witness, you do understand that
6 you have the right to judge their credibility and also
7 look at the facts yourself, you don't just have to accept
8 the opinion of an expert?

9 A Right.

10 Q Does that make sense?

11 A Yes.

12 Q Okay. Assuming we make it to the second part so you
13 and the other eleven jurors found beyond a reasonable
14 doubt that Mr. Jones was guilty and then we go toward the
15 second part, that is the phase that I am going to talk to
16 you about now.

17 A Okay.

18 Q In that part, the State would have to prove an
19 aggravating factor which in this case is a death of
20 multiple people or a child, the death of a child under
21 eleven. Once you and the other eleven jurors found beyond
22 a reasonable doubt that the State had proved that, only at
23 that point could you start to consider punishment. Does
24 that make sense?

25 A Yes.

1 Q And you are a type three Juror, correct?

2 A Correct.

3 Q So that means that you would go into that punishment
4 phase and depending on what you heard if you thought it
5 was appropriate you could decide on a life sentence,
6 correct. If on the other hand you thought it was
7 appropriate you could decide on a sentence of death. Is
8 that correct. You would want to hear all the good?

9 A I want to hear it all.

10 Q So the Defense would present to you what the Judge
11 referred to as mitigation. That is anything that would be
12 a reason to give life. So they would present evidence.
13 There is no burden of proof. You are willing to listen to
14 that?

15 A Yes.

16 Q You are willing to consider that?

17 A Yes.

18 Q And you understand that even if you see it and you
19 find that it exists, yes, you can give life on it. Do you
20 understand that?

21 A Yes.

22 Q You understand that even if you find it, you consider
23 it, you see it and you find it that you can still give a
24 verdict of death. Do you understand that?

25 A Okay, yes.

1 Q One of the things that is different about a Capital
2 death penalty type case is, if you and the other eleven
3 jurors unanimously decide, after hearing all of the
4 evidence, that death is the appropriate sentence you
5 actually don't just say it, you actually have to write
6 your name on a document to attest to it that that is what
7 your belief is.

8 A Right.

9 Q Knowing that, if you and the other eleven jurors
10 thought, unanimously thought that death was the
11 appropriate sentence could you sign your name to a
12 document of that fact?

13 A Yes.

14 Q Thank you, Ma'am.

15 THE COURT: You want to be heard?

16 MR. YOUNG: No, Your Honor.

17 THE COURT: Very good. All right, Ms. MacFawn, the
18 Court will find you as, does the State need to be heard?

19 MR. GRAHAM: No, sir.

20 THE COURT: I didn't ask before I started talking. I
21 am sorry, the lawyers can be heard and they are in
22 agreement that you a qualified Juror. You are a qualified
23 Juror, you will be on a list of qualified jurors. You are
24 to follow the internet website of Lexington county, the
25 one that you were checking to find out when to come in

1 today. Under the qualified jurors instructions it will
2 say, please check back or please report on this date, this
3 time to the Lexington County Court House at some
4 particular time. You report back when it says to report
5 back. Okay. Until that time you are going to remain
6 under oath to not talk about the case. Additionally, I do
7 not want you to do any independent research. What you
8 need to decide this case will be here in the courtroom.
9 And the parties, the witness stand, under oath not
10 outside, unsworn, unchallenged. Do you understand?

11 JUROR: Yes.

12 THE COURT: Minimize your publication contact, come
13 back in when it says come back in. Can you do that.

14 JUROR: Yes, sir.

15 THE COURT: I am counting on you.

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

18 THE COURT: Let's bring in 245.

19 (Whereupon, Juror 245, Thomas Lee entered the
20 courtroom.)

21 EXAMINATION

22 By The Court:

23 Q We are going to give you a mike check. Spell your
24 name so she can check your voice out.

25 A Thomas Lee. T-H-O-M-A-S, L-E-E.

1 Q I am going to ask you questions in the first part and
2 Ms. Holston takes down everything you say, we need yes or
3 no answers. You are under oath. Since last Monday have
4 you talked to anybody about the case?

5 A No, Your Honor.

6 Q Has anybody asked you anything about the case?

7 A No.

8 Q So other than scheduling and telling somebody I have
9 got to go to court?

10 A That is it.

11 Q There has been a lot of publicity in this case. I
12 want to know about anything, I am just assuming you heard
13 what I said in the courtroom and I read the five
14 indictments. You have got information about the case?

15 A Yes, sir.

16 Q Other information is out there. So since four years
17 ago to right now, any information you have come into
18 contact with?

19 A No.

20 Q I read you the indictments, that is information you
21 have heard?

22 A Yes, sir.

23 Q I don't care whether you have seen a news report or
24 not, but any information you know about the case, can you
25 or have you, caused -- let me ask the question properly.

1 Has any of that information caused you to form an opinion
2 already as to what happened?

3 A No, Your Honor.

4 Q You haven't formed an opinion?

5 A No, sir.

6 Q All right. That is what I was doing, a poor job of
7 asking you. Okay. No opinions yet?

8 A No, sir.

9 Q Fair enough. What is on your calendar for the next
10 three weeks, personal, work or otherwise.

11 A Just work.

12 Q And serving jury duty is an inconvenience. It is a
13 civic duty so you can be inconvenienced. Don't have a
14 prepaid vacation or something next week?

15 A No, sir.

16 Q Now, the testimony in this case, evidence in this
17 case is going to be graphic. It is about subject matter
18 including the death of children. The lawyers have
19 exchanged information, know what it is about, I haven't
20 seen a lot of the evidence. They described it being very
21 difficult, graphic, unpleasant. Would testimony of that
22 subject matter, knowing it is going to be graphic and
23 unpleasant, can you still consider that type of subject
24 matter and testimony and evidence and still not let it
25 affect you emotionally, personally and give both sides a

1 fair trial?

2 A I believe I can.

3 Q I want to ask that because some people have something
4 that happened in the past. I want to make sure you are
5 comfortable even though it is going to be unpleasant to
6 receiving it.

7 A I understand.

8 Q Have you looked over the witness list?

9 A Yes, I have.

10 Q I get both sides to turn in their witness list to see
11 if you are connected to them.

12 A I didn't know any or anyone.

13 Q Didn't know anyone. Fair enough. Now, I gave you a
14 brief instruction on the law thirty minutes ago. Kind of
15 a two-step process on a Capital case.

16 A Yes, sir.

17 Q The stage one is guilt or innocence only. Stage two
18 is the punishment phase. I handed you a three types of
19 Juror case for you to study. Did you review that?

20 A Yes, I did.

21 Q Did you also understand my instructions earlier?

22 A Yes, I did.

23 Q Now, this three types of Juror kind of presumes the
24 burden of proving on guilt. So a person has been found
25 guilty or about to consider aggravating factors, the State

1 has got to prove those by a reasonable doubt and
2 mitigating factors.

3 A Yes, sir.

4 Q Can you self-identify yourself as a type of Juror?

5 A I feel I am number three.

6 Q Okay. Now, I wrote that, can you tell me what that
7 means to you?

8 A To me it is, to be able to consider both sides of the
9 story before determining the outcome of a verdict, if you
10 will.

11 Q You have not made up your mind?

12 A No, sir.

13 Q You want to hear everything?

14 A Yes sir, I think it is important to hear both sides
15 of every story.

16 Q Both sides of every story. That is a fair assessment
17 of what I was intending to seek out on three.

18 A Yes, sir.

19 Q I am going to step back and go back to phase one and
20 give you some other aspects, looking for your, this trial
21 is going to take several steps as it goes along and I give
22 instructions from time to time through those things about
23 the aspect of the law. In phase one, guilt or innocence,
24 the State is going to go first because they have to prove
25 beyond a reasonable doubt their murder accusations. Mr.

1 Jones is sitting right here, he is presumed innocent right
2 now and will be all the way through the case until the
3 jury finds the State has proved its case beyond a
4 reasonable doubt.

5 A Yes, sir.

6 Q Until then he is presumed innocent.

7 A Yes, sir.

8 Q That is an instruction, that is what I do in a case.
9 During the State's presentation on guilt or innocence they
10 call their witnesses first. The Defense is allowed to
11 present defenses. Does that make sense?

12 A Yes.

13 Q Potential defenses. I am going to read them all, not
14 all of these will be suggested to the jury because the
15 testimony has got to support them for the jury to consider
16 them. Potential defenses include identification,
17 accident, involuntary intoxication, self-defense,
18 necessity, insanity, guilty but mentally ill, defense of
19 habitation, entrapment, duress and alibi. Those are
20 potential defenses available to people accused. Now, can
21 you be a fair and impartial Juror to both the State and
22 Defense, consider my instructions on the law regarding the
23 State's burden of proof but also consider my instructions
24 on any aspects of those defenses which the evidence may
25 support, weigh the evidence, consider the evidence,

1 meaningful consider the evidence and be fair to both
2 sides?

3 A Yes, I can.

4 Q Can you do that being fair to the State?

5 A Yes, I can.

6 Q Can you do that in being fair to Mr. Jones?

7 A Yes, I can.

8 Q If during phase one the State fails to meet its
9 burden of proof that will be an acquittal, not guilty, not
10 proven. The case ends. But if the jury finds a verdict
11 of not guilty by reason of insanity the case ends there.
12 Okay.

13 A Okay.

14 Q Let me go back to the four potential verdicts. I
15 skipped a step. I have been doing this, kind of
16 repetitive to me. I ask the same general questions.

17 A I understand.

18 Q Because of the defense presented by Mr. Jones, he has
19 claimed one of them already, one of his potential
20 defenses, he and his team have claimed one. There goes
21 into play four potential verdict forms for a jury to
22 consider in this case during guilt or innocence. Guilty,
23 guilty but mentally ill, not guilty by reason of insanity
24 or not guilty all together. Those are four potential
25 verdict forms that the jury will consider in this case.

1 Can you give meaningful consideration to each of those
2 four potential verdict forms presuming I give adequate and
3 sufficient instructions about how to consider aspects of
4 those verdicts, evaluate, meaningful consider all of the
5 evidence testified to in that phase of the trial and be
6 fair to both sides?

7 A Yes, I can.

8 Q You can do that?

9 A Yes, I can.

10 Q Presuming a verdict of not guilty or not guilty by
11 reason of insanity is found the case would end, just stops
12 right there, it goes no further. The State meets its
13 burden of proving the murder beyond a reasonable doubt,
14 unanimously jurors find a verdict of guilty, we go to
15 phase two now. So, the first trial is over with, we go
16 into a second trial. The same jury, basically the same
17 facts but different determinations for the jury. In phase
18 two, now the State has got to prove an aggravating factor
19 beyond a reasonable doubt unanimously to the jury in order
20 to ask the jury to please impose a sentence of death.
21 Five aggravating factors I am going to name. Murder of a
22 police, murder of a child, rape of murder, kidnapping of
23 murder, multiple murders. The State has got to prove to
24 the jury beyond a reasonable doubt one of those
25 aggravating factors in order to be able to ask a jury,

1 please consider imposing the death penalty. Do you
2 understand that?

3 A Yes, I do.

4 Q Now, also during that phase, the punishment phase,
5 mitigating facts and circumstances are presented by the
6 Defense. Mitigating facts and circumstances are reasons
7 to impose a life sentence. Aggravating facts are reasons
8 to impose to death penalty. Potential mitigating factors
9 that are allowed in our statute include the Defendant has
10 no significant history of prior criminal conviction
11 involving the use of violence against another person. The
12 murder was committed while the Defendant was under the
13 influence of mental or emotional disturbance. The victim
14 was a participant in the Defendant's conduct or consented
15 to the act. The Defendant was an accomplice in the murder
16 committed by another person and his participation was
17 relatively minor. The Defendant acted under duress or
18 under the domination of another person. The capacity of
19 the Defendant to appreciate the criminality of his conduct
20 or to conform his conduct to the requirements of the law
21 was substantially impaired. The age or mentality of the
22 Defendant at the time of the crime. The Defendant was
23 provoked by the victim in committing the murder. The
24 Defendant was below the age of 18. The Defendant had
25 mental retardation at the time of the crime. Those are

1 statutory mitigators that the Defense can present on and
2 jury's can consider as reasons to impose life. Other, not
3 listed in the statute, other reasons can include Mr. Jones'
4 childhood, maybe he was abused as a child, perhaps came
5 from a broken home. Anything that the Defense presents
6 that you will consider a reason to impose life as a
7 mitigating factor. Jury's consider mitigating factors,
8 they are not required to be proved, they are considered.
9 Does that make sense?

10 A Yes, it does.

11 Q Can you give meaningful consideration to the
12 testimony offered by the State regarding aggravating
13 factors, understanding that they must prove that
14 unanimously beyond a reasonable doubt, an aggravating
15 factor, at least one. Also consider at the same time
16 mitigating factors that the Defense presents on in
17 reaching a verdict for the punishment. Can you do that?

18 A Yes, I can.

19 Q Can you do that being fair to the State?

20 A Yes, I can.

21 Q And to the Defense?

22 A Yes, I can.

23 Q And consider my instructions also in evaluating all
24 of that evidence and testimony?

25 A Absolutely.

1 Q Do you have any moral, personal, religious belief
2 which would prevent you from imposing a sentence of death?

3 A No, I do not.

4 Q Do you have any religious, personal or moral belief
5 which would prevent you from imposing a life without
6 parole sentence?

7 A I do not.

8 Q You know any reason whatsoever you can't be fair to
9 both sides?

10 A No, I do not.

11 Q Okay.

12 THE COURT: Mr. McGuire.

13 EXAMINATION

14 By Mr. McGuire:

15 Q Good afternoon, Mr. Lee.

16 A Good afternoon, how are you.

17 Q I am good. My name is Bill, Bill McGuire and I am
18 one of the lawyers in the case. This is the time the
19 Judge gives us to ask you questions about your views of
20 the death penalty from the offense of murder.

21 A Yes, sir.

22 Q And to get started I want to ask you to imagine that
23 you have been the Governor, you have been placed in the
24 position of Governor of South Carolina for a day and there
25 is a Bill on your desk and you can sign it and would keep

1 the death penalty. And there is another Bill you could
2 sign it and we wouldn't have the death penalty any longer.
3 Which one would you sign?

4 A I would say that I would go with the death penalty.

5 Q And that implies that you hold some personal views
6 that there is, the death penalty serves as a purpose?

7 A Yes, I do.

8 Q And tell me about that.

9 A I would think that, I believe for an eye for an eye.

10 Q Eye for an eye, taking an innocent life you forfeit
11 yours.

12 A More or less, yes sir.

13 Q And what I want to do, again, so we can talk about
14 this in a concrete way, less abstract. I want to, in your
15 mind I want to see, I want you to put yourself on a jury.
16 And it is a murder case, not necessarily this case but you
17 and eleven other people are on a case, it is a murder case
18 where all the evidence points to guilt, the person did it,
19 meant to do it, murder, took an innocent life. It is not
20 an accident, they knew right from wrong, they knew what
21 they were doing and took the lives of multiple innocent
22 children under eleven. Without knowing more what are your
23 thoughts about the death penalty for that intentional
24 killing?

25 A Could you repeat that. I am sorry.

1 Q I won't go through all of that. I want you to put
2 yourself in a position, you and eleven other people found
3 a Defendant guilty, meant to do it, not an accident,
4 intentional with an evil heart, took the lives of multiple
5 children under eleven. Without going into specifics, just
6 knowing that what are your thoughts about the death
7 penalty for that kind of intentional killing.

8 MS. MAYES: Objection, Your Honor, the standard would
9 be no matter what the facts are.

10 THE COURT: All right.

11 MR. MCGUIRE: I have worked it exactly the way--

12 THE COURT: You have worded it different both times.
13 Without knowing more, without considering anything else.
14 That is semantics.

15 MR. MCGUIRE: Right.

16 A So in other words, I don't know what the other side
17 had said?

18 THE COURT: That's correct.

19 Q Right, exactly.

20 A No, I would have to hear what the other side would
21 have to say before I could seek the death penalty.

22 Q When you say the other side, what side are you
23 talking about?

24 A I believe it is the Defendant, is that correct, yes.

25 Q Right. And a lot of people might say, you know,

1 without knowing more, the way I phrased that question, I
2 start out on the death penalty and I can maybe be swayed
3 away from it if the other side presented some things.

4 THE COURT: That is not a fair question. Rephrase
5 that, that is not what his answer was. Rephrase it
6 equally.

7 MR. MCGUIRE: Okay.

8 Q I want to go back to that case we were talking about
9 when I had in your mind, you were on the jury. The person
10 is guilty, guilty, killed innocent children.

11 THE COURT: That has been asked and answered. Ask
12 your question like you normally do.

13 MR. MCGUIRE: That is what I am doing. I always ask
14 this question, Judge.

15 Q Could the life sentence be appropriate to punish that
16 kind of killing?

17 A I think depending what I was, information I would
18 receive from the Defendant's side, what circumstances.
19 Yes, what else, it depends on what else, I would have to
20 hear both sides of the story before I would be able to
21 make up my mind, what would be fair punishment for that,
22 if that is what you are asking.

23 Q Sure, that is what I am asking. And remember there
24 are no right or wrong answers. Whatever you say is
25 correct. When it comes to fixing punishment for that kind

1 of case we were just talking about, killing innocent
2 children, deliberately killing innocent children, is the
3 background of the killer relevant to you in fixing that
4 punishment?

5 A Yes, it is. Yes, it is.

6 Q Okay. So the Judge talked to you a little bit about
7 potential verdicts. And one of them is not guilty by
8 reason of insanity. And that means that the Defendant is
9 not denying committing the act but is claiming, because he
10 has got some mental defect or disease that he couldn't
11 tell or appreciate right from wrong, morally or legally.
12 Does that make sense?

13 A Yes, it does.

14 Q Is that kind of your understanding?

15 A Yes, I understand that.

16 Q Okay. And the Judge told you if the jury votes not
17 guilty by reason of insanity the jury does not get the
18 opportunity to sentence, to go into a sentencing or
19 punishment phase because the trial would just end with not
20 guilty of reason of insanity.

21 A Correct.

22 Q Some people might say, you know what, not guilty by
23 reason of insanity, that is kind of a copout defense,
24 excuse defense. I don't really want to consider it. What
25 do you think about that?

1 A I think there are a lot of different sides to each
2 and every story and they will have to be told and I feel
3 like until those are brought out you really can't make a
4 fair judgment on what would be a good punishment.

5 Q Okay. Now I want to take you to the sentencing
6 phase, the second phase, the punishment phase if we get
7 there. I want to talk to you about that phase. Okay. If
8 we get there the rules would be that each individual Juror
9 gets to make their decision as to whether another fellow
10 human being lives or dies. It is each individual Juror
11 makes their own individual decision about that. Does that
12 sound fair?

13 A Yes, it does.

14 Q And each individual Juror can have different reasons
15 to vote for the life penalty if they so choose. They
16 don't have to be the same reason, the jury doesn't have to
17 agree that that reason is valid.

18 A Okay.

19 Q Does that sound fair?

20 A Yes.

21 Q That everybody can have a different reason to vote
22 for life?

23 A Absolutely.

24 Q Okay. The way that could work out is that somebody
25 right here could say, my reason, I saw some mental health

1 evidence and I think the guy has got a broken mind and I
2 am not going to kill a person with a broken mind.

3 MS. MAYES: Objection at this point, Your Honor, I
4 believe it has been asked and answered. His response was
5 every Juror can decide for themselves.

6 MR. MCGUIRE: Are we going to change things?

7 THE COURT: I understand your objection, Ms. Mayes, I
8 am going to allow him to ask that.

9 MR. MCGUIRE: I appreciate that, Judge, thank you.

10 Q So one Juror here could say, I saw mental health
11 issues, I am not going to vote for death for somebody with
12 a broken mind. That is my reason. Somebody else down the
13 line could say, I saw the Defendant having an enduring
14 relationship with his father. There was a spark of
15 humanity there and that resonated with that Juror. And
16 they can have different reasons and they don't even have
17 to agree on it. Does that sound fair?

18 A Yes, definitely.

19 Q Okay. And the Judge would tell the jury at the end
20 of the case that each individual Juror can vote for the
21 life penalty, life without parole for any reason, no
22 reason or mercy alone. Does that sound fair?

23 A Yes.

24 Q And that means that some Juror could say, I listened
25 to everything but I can't even put into words a reason to

1 support my position. I just, my position is, my
2 individual moral judgment is that I want to vote for the
3 life penalty. I don't want to vote to kill another human
4 being and I don't have any reason for it. Could you let
5 them have that and respect that position?

6 A Definitely, they are entitled to their own opinion.

7 Q Right, exactly. And the rules of court and the law,
8 the Juror oath requires an individual Juror, if they reach
9 a conscientiously held position, say for the life penalty,
10 life without parole, for them to change that, just to
11 throw in with the majority, that is actually against the
12 Juror oath and it is wrong, it is against the rules of
13 court. Did you know that?

14 A I didn't know that for a fact but I--

15 Q Does it sound right?

16 A Yes, you really can't be forced into changing your
17 mind.

18 Q Right. And if you were on the jury, in the jury room
19 in deliberations and we expect reasonable deliberations
20 and civil discourse?

21 A Yes.

22 Q But if you saw somebody and it was clear to you that
23 they had reached their individual moral judgment, it would
24 harm their conscience to change that position but others
25 were trying to force this person, coerce them, bully them

1 out of it just to get them to join the majority could you
2 stop that?

3 A I would do what I could, I think that would be wrong.

4 Q That is, it would be wrong. You are right, I agree
5 with you. And one of the things you could do is write a
6 note out to the Judge and say, Judge, we were told bully
7 is wrong and forcing people to change their mind is wrong.
8 Could you come back here and fix this. You could write a
9 note out to the Judge?

10 A I would have no problem with that.

11 Q Okay. And in South Carolina, if the jury were to
12 vote, I tell you what, my last question for you is, when
13 you came to the Court House across the street, the big
14 room, did you recognize any other jurors?

15 A No.

16 Q Just by yourself?

17 A I was all by myself.

18 Q All right. That is all I have, thank you.

19 THE COURT: Ms. Mayes.

20 EXAMINATION

21 By Ms. Mayes:

22 Q Good afternoon, Mr. Lee.

23 A Good afternoon, Ma'am, how are you.

24 Q Okay. My name is Suzanne Mayes. I am one of the
25 prosecuting attorneys in this case and we represent the

1 State.

2 A Yes, ma'am.

3 Q Just have a few questions for you on follow-up. You
4 were listening very attentively to the Judge but just want
5 to cover again that in a second phase of the trial where
6 punishment would potentially be determined. There would
7 be two options, life without parole and the death penalty?

8 A Yes, ma'am.

9 Q And you would be able to consider both of those
10 options?

11 A Yes, ma'am.

12 Q And if after you heard all of the evidence you felt
13 that the death penalty was appropriate, after hearing all
14 of the mitigating factors and all of the aggravating
15 factors could you vote for the death penalty?

16 A Yes, I would. Yes, I could.

17 Q And by the same token--

18 THE COURT: Ms. Mayes, wait a second. I need some
19 order in the court. It is a little bit distracting in the
20 back of the courtroom. Ms. Holston is really struggling.
21 This fan makes it a little harder to hear. So, I am sorry
22 for interrupting. Please rephrase your question.

23 Q If after you heard all of the evidence and all of the
24 mitigating factors, you determined that life without
25 parole was the appropriate sentence would you also be able

1 to return a verdict of life without parole?

2 A Yes, I would.

3 Q And with that in mind just wanted to ask a little bit
4 more about that to follow-up on some of the questions that
5 you got about the mitigating factors. Did you know that
6 even if mitigating factors are found to exist you could
7 still vote for the death penalty?

8 A Yes, I could.

9 Q And one of the questions you got was about
10 consideration of a not guilty by reason of insanity, a
11 defense or potential verdict along with three other
12 verdicts. Guilty but mentally ill, guilty and then not
13 guilty.

14 A Right.

15 Q If there is testimony offered by the State to
16 contradict any type of mental health or insanity defense
17 would you also be open to, open to listening to that
18 evidence?

19 A Yes, I would.

20 Q And weighing or considering all of the evidence?

21 A Definitely I would.

22 Q And you have got some questions about once you are in
23 the jury room and what may ultimately take place there.
24 Are you, did you know that jurors are entitled to
25 discourse and deliberate with thoughtful deliberation and

1 discussion?

2 A Yes, I did know.

3 Q But once doesn't necessarily have to have their mind
4 made up as soon as they get in the jury room?

5 A Correct.

6 Q Thank you, Mr. Lee.

7 A Yes Ma'am, thank you.

8 THE COURT: Anything from the Defense on Mr. Lee?

9 MR. MCGUIRE: Yes, I have got something for the
10 Court.

11 THE COURT: Mr. Lee, step out real quick. I have got
12 to hear from both lawyers and I will have you back in
13 here.

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

16 THE COURT: Mr. McGuire.

17 MR. MCGUIRE: Your Honor, move to strike for cause.

18 Mr. Lee indicated that he was an eye for an eye kind of
19 person. And when I put that back on him by saying, so you
20 take an innocent life you forfeit yours and his response
21 was always. I believe that would disqualify him.

22 THE COURT: Ms. Mayes.

23 MS. MAYES: Your Honor, he is qualified under the law
24 and that he made it clear that he would certainly consider
25 a life sentence, he is capable of rendering a life

1 sentence and evaluating all mitigating factors that may be
2 offered during the course of the case.

3 THE COURT: I heard the answer, the totality of all
4 the questions, he seemed very comfortable type three, want
5 to hear everything. Said several times, I would have to
6 hear both sides, there is always two sides before I made
7 up my mind. He said that repeatedly. So I, and he
8 answered other questions, would he consider the
9 background. Absolutely. Would you consider the mental
10 issues. Absolutely. Everybody has a story to them,
11 something like that. Bring him back in, he is qualified.

12 (Whereupon, the Juror entered the courtroom.)

13 THE COURT: Mr. Lee, the Court found you qualified as
14 a Juror. What I want you to do, starting tonight check
15 the website, where you were checking about the panels the
16 directions are under qualified jurors. So it will say
17 please check back tomorrow night or please report back to
18 the Lexington Court House at such and such a time. That
19 is what I want you to do. Until you report back and then
20 after you select a jury, don't talk about the case, don't
21 let anyone talk to you about the case, don't do any
22 independent research about the case, don't let anyone,
23 anything influence you before coming back. I don't want
24 you to be influenced by something outside of the
25 courtroom. I want you to consider and be influenced by

1 what is in the courtroom. Very well, thank you.

2 JUROR: Thank you for the opportunity.

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

5 THE COURT: Bring 285 in.

6 (Whereupon, Juror 285, Taylor Medlin entered the
7 courtroom.)

8 EXAMINATION

9 By The Court:

10 Q You are Mr. Medlin?

11 A Yes.

12 Q I need you to pull up close and say and spell your
13 name so that Ms. Holston can determine if you are speaking
14 loud enough.

15 A Taylor Medlin. T-A-Y-L-O-R, M-E-D-L-I-N.

16 Q Mr. Medlin, I asked you Monday to take an oath and
17 not to talk about the case. Have you talked about the
18 case since last Monday?

19 A No.

20 Q Anybody talk to you about the case since last Monday?

21 A They tried but--

22 Q What did you do?

23 A Just kind of ignored it.

24 Q Fair enough. Now there has been publicity in the
25 case, social media, regular media, television media, news

1 media. I actually read five indictments to you in the
2 courtroom. That is also information that you have heard.
3 Any information you received four years ago to today,
4 anything whatsoever, has that information, whatever it is
5 including my information caused you to form an opinion
6 about what happened in this case?

7 A No.

8 Q You haven't formed an opinion?

9 A No.

10 Q I asked you about your calendar, obligations, work
11 wise, everything. Starting Monday to the end of May,
12 early June, what have you got?

13 A My schedule comes out weekly but I mean, I work like
14 50 hours a week if not more.

15 Q Okay. So work is the only imposition on your
16 schedule?

17 A Yes.

18 Q Unfortunately that is not a reason to be excused
19 because most people have jobs except for retirees. That
20 imposition, I understand it but it is not, the General
21 Assembly does not allow me to excuse you because of hard
22 work. I have to have civic duty and a little bit of
23 inconvenience to jurors and I will try to minimize that
24 inconvenience. So nothing else prepaid, no trips coming
25 up or anything?

1 A No.

2 Q Did you read my list of potential jurors?

3 A I did.

4 Q Do you know any of the jurors?

5 A No.

6 Q Also, testimony in this case will include testimony
7 about the death of children. It is going to be tough
8 testimony to hear, the lawyers have told me, Judge, this
9 is graphic, unpleasant testimony, yet it is the evidence
10 that is going to be presented in the case. So, would
11 testimony regarding that difficult type subject matter be,
12 create an issue for you personally or anything that has
13 ever happened to you that you could not receive and
14 consider graphic evidence and not still be a fair and
15 impartial Juror?

16 A Sir, are you asking me if I can handle it?

17 Q Yes.

18 A Oh, yes.

19 Q Some people, I lost a brother or child or something
20 and, in a car wreck and injuries to children give me a
21 flashback. You can handle it?

22 A Yes.

23 Q Won't be, certainly won't be easy but you will be
24 able to manage it and consider it and be fair and
25 impartial to both sides?

1 A Yes.

2 Q I gave you instructions on the law moments ago, I
3 gave you a thumbnail sketch of the two phase process in a
4 Capital case. Okay.

5 A Yes.

6 Q Did you understand my instructions?

7 A Mostly.

8 Q A little bit difficult because most people don't hear
9 all of the aspects of that law. It is not on TV like
10 that, is it?

11 A No.

12 Q This is real stuff. This is South Carolina law as I
13 know it. And that is what Judges do, is they instruct the
14 jury so here is how you consider what you have just been
15 told. And it moves a lot slower in real life than it does
16 on television. Okay. More aspects of law to instruct on
17 and that is kind what I am going to make certain you are
18 going to be able to do, is follow the law as instructed
19 while considering what has been presented to you. Okay.
20 Now, my instructions thus far, I gave you a typical types
21 of jurors in a Capital case. My typical types of
22 potential jurors include the presumption that the State
23 has met its burden of proving the murder. So we are
24 already getting right at starting stage two. Understand
25 the State has got to prove an aggravating factor and the

1 jury considers mitigating factors. Can you identify
2 yourself at that point, assuming the murder has been
3 proven by the State as being one of those three types of
4 jurors?

5 A Three.

6 Q Type three. What do you understand that to mean?

7 A That depending on the facts presented at the end,
8 even after it has been like proven that, it will change
9 what I might decide.

10 Q So you want to hear everything?

11 A Yes.

12 Q Good and bad?

13 A Yes.

14 Q I am going to wait for you to answer each time
15 because she is has got to take it down. Type three. I am
16 going to go back to phase one. In phase one the State has
17 the responsibility or duty, burden to prove the murder
18 charge, all elements, killing of another, malice
19 aforethought. They have got to prove that beyond a
20 reasonable doubt in order to convict Mr. Jones. He is
21 presumed innocent sitting right there. That presumption
22 stays with him all the way through the trial until the
23 jury returns a verdict unanimously, accepting the State
24 has met its burden of proof. Do you understand?

25 A Yes.

1 Q During that phase also, the guilt or innocence phase.
2 Defenses can present defense. All right. I am going to
3 name off multiple statutory defenses and tell you, I will
4 instruct you on the aspects of which ones may apply after
5 the testimony has been received because some of these may
6 or may not apply, most of them probably won't. But some
7 of them could. I want to make certain you can apply and
8 accept my instructions on these. Potential defenses
9 include identification, accident, involuntary
10 intoxication, self-defense, necessity, insanity, guilty
11 but mentally ill, defense of habitation, entrapment,
12 duress or alibi. Those are potential defenses afforded to
13 everyone. Now depending on how the testimony comes into
14 the trial one of those may come into play, at least one of
15 them may come into play and I will instruct the jury on
16 particulars of considering that defense. Now, can you be
17 a fair and impartial Juror, considering my instructions on
18 the State's burden of proving its case beyond a reasonable
19 doubt and any relevant defenses which the evidence may
20 support, be a fair and impartial and meaningfully
21 considering all the evidence and facts in this case?

22 A Yes.

23 Q Can you be fair to both sides?

24 A Yes.

25 Q Both the State and the Defense?

1 A Yes.

2 Q All right. In this case one defense has already been
3 claimed by Mr. Jones. He has entered a plea already of
4 not guilty by reason of insanity. By that plea four
5 potential verdicts could be considered by the jury.
6 Guilty, guilty but mentally ill, not guilty by reason of
7 insanity, not guilty whatsoever. Those are four potential
8 verdicts the jury could be tasked with trying to decide.
9 Can you be fair and impartial to both sides, can you also
10 follow my instructions on the aspects of those four
11 potential verdicts and meaningfully consider all four
12 verdicts with the facts and circumstances presented in the
13 trial. Can you do that?

14 A Yes.

15 Q Can you be fair to the State in doing so?

16 A Yes.

17 Q Can you be fair to the Defense in doing so?

18 A Yes.

19 Q If the State does not meet its burden of proof or the
20 jury has a verdict of not guilty by reason of insanity the
21 case would end there, over with. If the State meets its
22 burden of proving the murder beyond a reasonable doubt the
23 case goes into phase two, the punishment phase. Okay?

24 A Okay.

25 Q In phase two another thing has to happen. The State

1 has to then prove in that second trial, it is like back to
2 back trials, the same jury and the same folks involved.
3 The State has to prove in the second phase an aggravating
4 factor, aggravating circumstance. I am going to name
5 five. Murder of a policeman, murder of a child, rape of
6 murder, kidnapping of murder, multiple murders. Those are
7 aggravating factors. The State must prove at least one of
8 those beyond a reasonable doubt in order to ask a jury to
9 return a verdict, punishment of the death penalty. Okay.
10 Now, in this phase the jury decides the punishment. There
11 are two choices, death or life, nothing else, no in
12 between, no other options, life or death. Those are your
13 options. During this portion of the trial the jury also
14 considers any mitigating factors that it has been
15 presented during a trial. I will name off some mitigating
16 factors. The Defendant has no significant history of
17 prior criminal conviction involving the use of violence
18 against another person. The murder was committed while
19 the Defendant was under the influence of mental or
20 emotional disturbance. The victim was a participant in
21 the Defendant's conduct or consented to the act. The
22 Defendant was an accomplice in the murder committed by
23 another person and his participation was minor. The
24 Defendant acted under duress or under the domination of
25 another person. The capacity of the Defendant to

1 appreciate the criminality of his conduct or to conform
2 his conduct to the requirements of law was substantially
3 impaired. The age or mentality of the Defendant at the
4 time of the crime. The Defendant was provoked by the
5 victim in committing the murder. The Defendant was below
6 the age of 18 at the time of the crime. The Defendant had
7 mental retardation at the time of the crime. Those are
8 statutory factors that jury's can consider and the
9 Defendant may present on. The jury can use, make a
10 finding for life without parole, that is their reason.
11 Other reasons can include and are not listed in that
12 statute. Mr. Jones' getting raised up, maybe came from a
13 broken home, perhaps he had an abusive childhood. Any
14 aspect of his life can be considered by a Juror as a
15 mitigating factor, jury's can use that to say, I want to
16 vote for life. Those are the reasons. Can you give
17 meaningful consideration to the State's responsibility,
18 duty of the burden of proving the aggravating factor
19 unanimously beyond a reasonable doubt and consider all the
20 mitigating testimony that is presented during the
21 punishment phase and act as a fair and impartial Juror in
22 this trial?

23 A Yes.

24 Q And consideration of my instructions as well? Can
25 you do that?

1 A Yes.

2 Q You understand that in the punishment phase the death
3 penalty is not, is not automatic?

4 A Yes.

5 Q You have two choices, life or death. Do you have any
6 religious, moral or personal belief that you could not
7 impose a death penalty if the facts support it?

8 A No.

9 Q Do you have any religious, personal or moral belief
10 to impose a life without parole sentence if the facts and
11 mitigation circumstances support it?

12 A No, I don't have any religious beliefs.

13 Q You can do either way, you can find either verdict?

14 A Yes.

15 Q I am sorry, either sentence?

16 A Yes.

17 Q There are two sentences, the verdict for the
18 imposition for either sentence.

19 A Yes.

20 Q You haven't made up your mind yet?

21 A No.

22 Q Okay.

23 THE COURT: Mr. Madsen.

24 EXAMINATION

25 By Mr. Madsen:

1 Q Mr. Medlin, how are you doing this afternoon?

2 A Good.

3 Q My name is Rod Madsen and I am one of Tim's lawyers.
4 The Judge kind of went over with you the law and kind of
5 being fair and impartial. What I want to talk with you
6 about is just your feelings. Okay. No right or wrong
7 answers, just kind of what you feel. When you came over
8 to the old Court House with the jury, did you know any of
9 those other jurors?

10 A I mean, some of them I went to school with but I
11 didn't talk to them or anything.

12 Q And so can you tell me who they were?

13 A I don't really know their names honestly, I just
14 recognized their faces.

15 Q Okay. And I guess will be, if you ended up on a jury
16 with them, if they had a different opinion than yours
17 because of that relationship would you abandon with your
18 opinion and go with them?

19 A No.

20 Q Okay. You understand why I have got to ask?

21 A Yes.

22 Q Can you just kind of tell me your thoughts of the
23 death penalty?

24 A Well, I mean, I would say I agree with it but that
25 would be if you could, one-hundred percent prove what

1 happened happened. Because if it comes back later that it
2 didn't really happen you can't take back death.

3 Q Okay. And so, I guess if I make you Governor of
4 South Carolina for a day and I put two Bills in front of
5 you, one to have the death penalty and one to not have the
6 death penalty. Which one would you sign?

7 A Do you mean just in general?

8 Q Just in general.

9 A I mean, would probably keep it just for those
10 specific cases.

11 Q The Judge has told you that Tim has plead not guilty
12 by reason of insanity. And do you understand that means
13 someone saying, hey, I did it, I committed the acts but
14 because of a mental disease or defect I cannot appreciate
15 moral or, the moral or legal wrongfulness of my actions.
16 Do you understand that?

17 A Yes.

18 Q And so some people would say, when someone says I did
19 it and I can't just appreciate the moral or legal
20 wrongfulness, that is just something that is not on the
21 table for me. As the Judge told you, the trial would
22 stop. You wouldn't get to a second sentencing phase. And
23 my question is, is that you?

24 A Wait, what do you mean?

25 Q Like I said. Some people would say, not guilty by

1 reason of insanity because someone is admitting, I did the
2 acts. I just didn't, I can't appreciate the moral or the
3 legal wrongfulness of those actions. Some people would
4 say, you know what, that is not a verdict that I could
5 give meaningful consideration to. And my question is, is
6 that you?

7 A I guess it would depend on the situation. But I
8 would be really critical at least for at first on it.

9 Q What do you mean by that?

10 A Like, I guess it would have to be something, you
11 would have to define insanity in a more specific sense
12 like does that mean you are psychotic or that, I don't
13 know, it is too broad for my, for me to like--

14 THE COURT: You want me to give him the definition?

15 MR. MADSEN: Sure.

16 Q The Judge can give you the legal definition.

17 THE COURT: This will be done in the trial too. The
18 definition of a person who could, I am defining insanity.
19 At the time of the commission of the act constituting the
20 offense the Defendant, as a result of a mental disease or
21 defect, lack the capacity to distinguish moral to legal
22 right from moral or legal wrong or to recognize,
23 particular that charge, as either mortally or legally
24 wrong. Okay.

25 A Okay. I could consider that.

1 Q So, that answers that question?

2 A I could consider doing that.

3 Q So let me take you to, let me kind of put you on a
4 jury and I am not talking about this case. But let me
5 just kind of put you on a jury and you and eleven other
6 jurors have found this person guilty. No doubt they are
7 guilty. They know the difference between right and wrong,
8 there is no kind of defense, there is no kind of excuse or
9 justification. I mean, you know it is that person. Are
10 you with me. And my question to you, you have got to say,
11 yes.

12 A Yes.

13 Q She has to take all of that down. So my question to
14 you is, when you know you have got the right guy and that
15 person has intentionally and maliciously killed multiple
16 innocent children, without hearing anything else what are
17 your thoughts as the death penalty as being the
18 appropriate punishment for that guilty murderer of
19 multiple innocent children?

20 A Well, just taking that I would say, yes, that the
21 death penalty.

22 Q And so in that situation, without hearing anything
23 else, the, a sentence of life without parole is just, that
24 is just not on the table for you, that is not serious
25 enough. I mean, one-hundred percent, we know we have got

1 the right person, they are definitely guilty.

2 MR. GRAHAM: Your Honor, objection.

3 THE COURT: Rephrase that question, y'all are getting
4 back in that same area we were getting into a minute ago.

5 Q So my question to you, in that situation where that
6 person is definitely guilty, they knew what they were
7 doing, right and wrong. My question from your last one,
8 life without parole sentence to you is just not on the
9 table for you?

10 A No, probably not.

11 Q And that is something, a belief that you just, like I
12 said, there is no right or wrong answer, just a belief
13 that you kind of hold internally?

14 A Yes.

15 Q And there is nothing that you could hear about that
16 person's upbringing or life or anything like that,
17 anything like that that was unrelated, the crime wouldn't
18 make any difference to you if those acts were proven
19 one-hundred percent.

20 MR. GRAHAM: Objection, Your Honor.

21 Q Beyond a--

22 THE COURT: It is very much a staking question now.
23 You are staking him out, rephrase that.

24 Q You wouldn't want to hear anything about their
25 background or upbringing or--

1 THE COURT: About would you listen. Y'all are really
2 trapping today.

3 Q Would you want to hear anything about--

4 MR. GRAHAM: Your Honor--

5 THE COURT: Describe the balanced question, this
6 question has been coming before a lot of jurors in
7 different forms. They rephrase them and asking questions
8 sometimes they get worded different. Ask a balanced
9 question please, Mr. Madsen, on that end rather than the
10 unbalanced one.

11 Q So in that situation where you found that person
12 guilty of murder of, you have said death penalty for you,
13 life without parole wasn't sufficient. And my question
14 was, would you not want to hear character or background?

15 A No matter really what you have done, once you, in
16 this situation that you are describing. Once you have
17 brutally murdered multiple people and you know, quote,
18 knew it was right or wrong, none of that matters anymore
19 because the matter of upbringing, if you knew it was wrong
20 and you still did it then here we are.

21 Q I understand and a lot of people agree with that.
22 And that is something that is just, that is just the way
23 you feel?

24 A Yes.

25 Q You understand, well, let me ask you this. There is,

1 the decision on whether or not to give someone the death
2 penalty, that is called kind of an, on the penalty it is
3 called an individual moral judgment. Have you ever heard
4 that before?

5 A Yes.

6 Q And the best way it has been described to me is, you
7 made an individual moral judgment on your faith.

8 A Well, lack of faith.

9 Q Or lack of faith. And someone else might have made
10 something a different individual moral judgment for their
11 faith. And you would expect them to respect your
12 individual moral judgment on that, correct?

13 A It wouldn't really matter to me, think what you want.

14 Q But at the same time, if they had something different
15 you would respect their individual moral judgment on their
16 faith, wouldn't you?

17 A As long as it didn't affect mine.

18 Q Sure. And so if you were to get onto the jury, the
19 decision on whether or not to put someone to death is
20 called an individual moral judgment. And while back in
21 the jury room there would be back and forth, you
22 understand that it would be inappropriate for someone to
23 give up their individual moral judgment to just kind of go
24 along with the majority.

25 A Right.

1 Q And if you were back there and you saw someone
2 browbeating someone or bullying them out of their
3 individual moral judgment would you say something to them?

4 A Most likely.

5 Q And you understand that if you saw that that, the law
6 requires or you are allowed to write a note to the Judge
7 and say, Judge, civility has left the room, this is
8 getting out of hand, can you step in.

9 A Yes.

10 Q You could write a note and do that. And would you do
11 that if you saw that?

12 A Again, I can't really say exactly what I would do but
13 I suppose if it got to that bad of a point, because if
14 something like that was needed to be done.

15 MR. MADSEN: Judge, subject to your prior
16 limitations.

17 THE COURT: Mr. Graham.

18 EXAMINATION

19 By Mr. Graham:

20 Q Good afternoon, Mr. Medlin.

21 A Good afternoon.

22 Q My name is Shawn Graham, I am one of the prosecutors
23 for the State. I am just going to follow-up on a couple
24 of your answers that you gave. You understand that there
25 are two phases or two potential phases in a death penalty

1 trial?

2 A Right.

3 Q So the first one is the guilt or innocence and not
4 guilty by reason of insanity, guilty but mentally ill, all
5 of that. You don't even get to consider punishment until
6 you first start there. Do you understand?

7 A Yes.

8 Q Okay. The second phase, if you find a guilty
9 verdict, you and the rest of the jurors unanimously found
10 a guilty verdict you move into the second phase. Okay.
11 In that phase the State, before you can even consider
12 punishment the State has to prove an aggravating factor
13 which in this case is a murder of a child under the age of
14 eleven or murder of multiple people. Okay?

15 A Yes.

16 Q And once the jury considers that evidence and if they
17 unanimously find beyond a reasonable doubt that one of
18 those factors exist then and only then can they consider
19 the death penalty. Okay.

20 A I understand.

21 Q So at that point the State would present aggravating
22 circumstances, things that may make the crime worse or
23 things about the characteristics of the Defendant. On the
24 other side the Defense would produce what is called
25 mitigation evidence or things that they would want you to

1 consider in giving a life sentence. Okay, does that make
2 sense?

3 A Yes.

4 Q After all of that evidence was presented, would you
5 need to hear all of that evidence, let me ask you that
6 question.

7 A Yes.

8 Q Or would you not need to hear it and you
9 automatically know what you were going to do just because,
10 you as a Juror, had already convicted him of the murder,
11 in this case of multiple children. Would you need to hear
12 anything more or at that point do you have your decision
13 made on what the punishment should be?

14 A No, I would want to hear it all, I would want to hear
15 everything possible.

16 Q You would want to hear everything?

17 A If I am going to make a decision I need to have every
18 fact there.

19 Q And why would you want to hear everything?

20 A To make sure I make the most current decision,
21 logically.

22 Q So you would or would not automatically reach a
23 decision on what you would do with the punishment?

24 A In a real life situation, no. But in his, like, made
25 up situation where all the facts were given to me in that

1 small amount then, yes, I do. But in a real life
2 situation, no, I would need to hear all the facts.

3 Q You would agree with me we are not talking about a
4 real life situation, right?

5 A Correct.

6 Q So in a case where somebody is convicted beyond a
7 reasonable doubt, they are guilty of the murder of
8 multiple children, you would want to hear everything, yes?

9 A And this is not with insanity or anything else.

10 Q To get to this point you have already heard insanity
11 and rejected it. So you would have heard that in the
12 guilt phase or the first phase. You have already heard
13 any type of defense they were going to offer as to him not
14 knowing legal right from wrong. To go to the punishment
15 you are already past phase. So my question is and
16 following up on our conversation is, once you and the
17 other jurors determine that he was guilty and you move to
18 the punishment part would you need to hear anything more
19 or you automatically know what you are going to do?

20 A I would probably need to hear more at that point.

21 Q You would want to hear the good and the bad?

22 A Yes.

23 Q Based on what you heard could you impose a life
24 without parole if you thought it was appropriate?

25 A Yes.

1 Q And that is something that you would meaningful
2 consider?

3 A Yes.

4 Q If on the other hand you thought death was the
5 appropriate sentence along with the twelve other jurors,
6 could you impose a death sentence?

7 A Yes.

8 Q Thank you, Mr. Medlin.

9 THE COURT: Anything on Mr. Medlin?

10 MR. MADSEN: Yes, sir.

11 THE COURT: Mr. Medlin, step out real quick and I
12 will take up something with the lawyers and I will have
13 you right back.

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

16 THE COURT: Mr. Madsen.

17 MR. MADSEN: Judge, we believe he should be excluded,
18 he is substantially impaired. When I went through and
19 asked him category specific, as we had done in the past,
20 he had said for him if that is, you know, basically if he
21 knows that that person is guilty beyond a reasonable doubt
22 it was death for him. He said that life without parole
23 was never sufficient for him. Mr. Graham's questions
24 were, if you found this, you know, if you found this
25 appropriate would you. I think under Morgan versus

1 Illinois he is impaired. Also I think he is impaired as a
2 burden shift and he is mitigation impaired.

3 THE COURT: Mr. Graham.

4 MR. GRAHAM: Judge, that is why we have continued to
5 object to the line of questioning. Morgan vs. Illinois is
6 spelled out what that Court felt was appropriate. They
7 have gone way beyond that and we keep walking into
8 situations, for lack of a better word, they are not
9 explaining and they are tricking people about how the
10 process works. And then they get to question, they get an
11 answer and then they try to kick a Juror. I don't think
12 that he understood what Mr. Madsen was actually asking or
13 trying to do. He answered his questions, he answered
14 mine. I don't think I tried to trick him. I explained
15 the process and how it worked. And I actually asked some,
16 the cart before the horse if you want to put it, question
17 asking him, what do you want to do. And on his own he
18 said he wanted to hear everything.

19 THE COURT: Well, I heard him answer one of your
20 questions that, yes, I want to hear everything. And the
21 question that Mr. Madsen asked him didn't include those
22 factors. I mean he distinguished--

23 MR. GRAHAM: Correct. They are not asking them,
24 would you automatically give death and not need to hear
25 any other facts. And that is what they are not asking

1 every time, they are not giving, and they can say they are
2 not looking to be fair and I understand what they are
3 trying to do. But it is not fair to the Juror and then to
4 strike them because they are not giving a proper question.

5 THE COURT: All right.

6 MR. GRAHAM: He was qualified in the totality, Your
7 Honor.

8 THE COURT: I think he was too. The totality of
9 everything, particularly his distinguishing your question
10 and characterizing Mr. Madsen's questions is limiting,
11 that he was confused as to what facts you had, what facts
12 you didn't have. The two step process is so new, and he
13 is 20 years old. I think clearly, the totality thing, he
14 understands he wants to hear everything. The couched
15 questions for just that. I find him qualified on the
16 totality of all of the questions he answered particularly
17 him distinguishing the two types of questions being asked.
18 He recognized it after hearing the question asked in the
19 balance fashioned as opposed to the, what we described all
20 along as the trapping question. So I find him qualified.
21 Bring him back in.

22 (Whereupon, the Juror entered the courtroom.)

23 THE COURT: Mr. Medlin, the Court considered all of
24 your answers and responses to your questionnaire and
25 whatnot, I find you to be qualified. You are not on the

1 jury, you are a qualified Juror. What that means is you
2 are in a pool of 50 people that could be considered to be
3 put on the jury. That selection process of elimination
4 are the ones who get down to the jury process which will
5 be done sometime later. I want you to check back on the
6 internet, the website, qualified jurors, please call back,
7 please check back, please report on or about. It is going
8 to give you instructions to check the internet or to come
9 in and report as a qualified Juror. I want you to do
10 that. Can you do that?

11 JUROR: Yes.

12 THE COURT: Okay. Additionally, do not talk about
13 the case, you are under oath to not talk about the case,
14 don't let anyone talk to you about the case. You are not
15 to do any independent research, you are not to pay
16 attention to the news accounts, publicity, social media.
17 Stay clear of any, the information regarding this case
18 outside the courtroom. Okay.

19 JUROR: Okay.

20 THE COURT: I will ask you that and all the other
21 jurors, has any other information come into your
22 possession because information is there, I don't want it
23 to influence you on being a fair Juror. I want you to be
24 a fair and openminded Juror when you come back just like
25 you are right now. Can you do that?

1 JUROR: Yes.

2 THE COURT: All right. See you, check the website
3 under qualified jurors. Thank you.

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

6 THE COURT: Let's take a couple of minutes.

7 MR. YOUNG: May I be heard on the record real quick?

8 THE COURT: Sure.

9 MR. YOUNG: Your Honor, I just heard from Mr. Secor,
10 not heard from the State about whether or not they want to
11 be present or submit any questions for a potential
12 interview with Ms. Turner. But my understanding is that
13 they have been asked to do a video interview with her
14 rather than order her to transport to South Carolina
15 pursuant to Your Honor's order. My understanding is that
16 that is going to take place here in about thirty minutes.
17 If the State wants to call in or questions. And finally,
18 Your Honor, the lunch hour yesterday and yesterday
19 afternoon at sidebar the State had requested that the
20 jurors be reshuffled prior to striking. And I stated to
21 the Court a memorandum in opposition to--

22 THE COURT: I haven't got to that yet. I mean, you
23 can hand it in but I haven't asked for that yet.

24 MR. YOUNG: Yes, sir. I am just going to hand it up.

25 THE COURT: You are diligent.

1 MR. YOUNG: Yes, sir.

2 THE COURT: Y'all are in the position, the State has
3 got more assets but y'all got double lawyers.

4 MR. YOUNG: All of theirs are carrying guns, Judge.

5 COURT REPORTER: We want to make this as a Court's
6 exhibit?

7 MR. YOUNG: Yes.

8 THE COURT: It doesn't have to be a Court's exhibit.
9 It is a file number.

10 MR. YOUNG: What are we to--

11 THE COURT: If you want it to be filed like that or
12 we can do it as a Court's exhibit.

13 MR. YOUNG: However you want to do it.

14 THE COURT: Let's do it that way. It will be filed
15 in the Clerk's file as a motion number so and so, not as a
16 Court's exhibit. Okay. Let's take a couple of minutes.

17 (Whereupon, a short break was taken.)

18 THE COURT: Let's bring in 377.

19 (Whereupon, Juror 377, Victoria Schneider entered the
20 courtroom.)

21 EXAMINATION

22 By The Court:

23 Q Ms. Schneider?

24 A Schneider.

25 Q Ms. Schneider, I want you to say and spell your name

1 so that Ms. Holston can see if the mike is picking you up
2 so everybody can hear you.

3 A Okay. The whole name?

4 Q The whole name.

5 A Victoria, V-I-C-T-O-R-I-A; Schneider,
6 S-C-H-N-E-I-D-E-R.

7 Q Ms. Schneider, I asked you to take an oath Monday to
8 not talk about the case. Have you talked about the case
9 since last Monday?

10 A I did tell my husband that I was doing this case. I
11 told him that I was not able to discuss it and he has been
12 very good about not talking about it with me. I have a
13 couple of few friends that have, suspected that I am here
14 but they have respected my privacy and not to discuss
15 this.

16 Q That would be consistent with my instructions. Most
17 jurors have given explanations very similar to yours so
18 you were doing just fine.

19 A Okay.

20 Q Now, there has been publicity on this case,
21 information out there. As a matter of fact, I read the
22 five indictments to the entire jury panel. So you have
23 got that as information, the accusations the State is
24 making against Mr. Jones and as he sits here he is
25 presumed innocent. Of any information you have received

1 to date, no matter where it came from, four years ago to
2 right now, has that information, even from the Court, has
3 that information caused you to form an opinion as to what
4 happened in this case?

5 A Just originally when I heard the story, when this
6 happened I was, I was horrified because I do love
7 children. I have four step-children, I mean I have three
8 step-children and four children. I have seven
9 grandchildren and I am a preschool teacher so I love
10 children. And I was horrified when I first heard about it
11 but after that, until now and my feelings are more of, I
12 haven't looked at the news since I have been told not to
13 and I have just kind of taken a, just we will see what
14 happens attitude.

15 Q So the reaction you had was, what you described as
16 horrific and understandable. But you have not formed an
17 opinion though as to what happened. You just, tragic.

18 A Yes, I don't know everything, I don't know the case,
19 I don't know what happened. So, I mean, when it comes my
20 children and my daughter is a foster mother so I fall in
21 love with the foster children that she is taking care of
22 and I wind up crying when they go back to mom or have to
23 leave.

24 Q So you are, I think I understand your answer, I am
25 going to ask you a different way. All of your emotions

1 you felt because of your involvement with other children,
2 has that caused you to form an opinion to what happened
3 here or not?

4 A No because I don't know.

5 Q Okay. Additionally, the subject matter in this case,
6 while we are on it, it involves children, the death of
7 children. Subject matter is going to be presented, the
8 lawyers have exchanged all the evidence back and forth,
9 they know the testimony that will be presented, the
10 evidence which will be presented, I do not. That is not
11 my job to view the evidence, they are going to present it,
12 the jury in court will consider it. That testimony has
13 been described by the lawyers to me in anticipation to all
14 of these questions to all the jurors, very graphic,
15 unpleasant, difficult. Those are some of the words I have
16 heard used by different attorneys as describing the
17 evidence and the subject matter. Would that type of
18 testimony, evidence, difficult, unpleasant, can you
19 consider testimony on that subject matter, I am certain it
20 is going to be unpleasant. Is it going to affect you
21 personally such that you cannot be a fair Juror for either
22 side?

23 A I have always considered myself fair because I deal
24 with children and you have to be fair minded to deal with
25 children. Honesty, I don't know how I would respond to

1 that. Again, I love children, I think they are God's
2 greatest gift to us but I can't honestly say how I would
3 respond.

4 Q Okay. I think it would be important understanding
5 your background and all the children you are involved with
6 that that would be important to you. But you think you
7 could receive it, consider it, be fair to both sides?

8 A I would definitely try, I am just that type of person
9 dealing with children. You have to be fair minded.

10 Q Understandably. All right. Your upcoming schedule
11 on the calendar commencing about Monday going through the
12 end of the month, early June. What is on your calendar
13 personally or professionally?

14 A I am still teaching pre-school. I do help with
15 summer school so I am still working, I am employed there,
16 I have been there for 18 years. So I am, yes, just love
17 working there, again, with children. I do have plans for
18 Memorial Day weekend, Thursday which is the 23rd, 24th I
19 will be out of town. My husband and his job and it is a
20 work fun type of situation.

21 Q He works for some boat maker?

22 A Yes. PCM, yes.

23 Q Those are the import boats?

24 A Yes.

25 Q Ski boats?

1 A Yes.

2 Q How would I know that?

3 A You must live on Lake Murray.

4 Q The plan, the trip, is that out of town?

5 A Yes.

6 Q Pleasure Craft is up in Chapin, isn't it?

7 A Yes.

8 Q Who is the gentleman that owns that, Joy?

9 COURT REPORTER: Trey Thurmond.

10 A Yes. He is the vice-president.

11 COURT REPORTER: I know them very well. This is my
12 daughter-in-law's sister.

13 Q I think considering your vacation of Memorial Day I
14 am going to excuse you, you have got the children question
15 too. But I am going to excuse you from service just for
16 that reason.

17 A Okay. Thank you.

18 Q I happen to know Mr. Thurmond too. That is not an
19 issue, that is not why I am excusing you. I saw your
20 husband works for Pleasure Craft and I am on the lake a
21 lot. I do live on the lake. Thank you for coming in and
22 you are free to go.

23 A Thank you.

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

1 THE COURT: Let's bring in 366.

2 (Whereupon, Juror 366, Ashley Russell entered the
3 courtroom.)

4 EXAMINATION

5 By The Court:

6 Q How are you doing. Your name?

7 A Ashley Russell.

8 Q Ms. Russell, can you say and spell your name so Ms.
9 Holston can pick up your name.

10 A Ashley Russell. A-S-H-L-E-Y, R-U-S-S-E-L-L.

11 Q Ms. Russell, I asked you Monday gone could you not
12 talk about the case in any manner. Have you talked about
13 the case with anybody?

14 A Yes.

15 Q Who have you talked with?

16 A My husband.

17 Q And what was the nature of that conversation?

18 A I didn't tell him about the case, he already knew
19 what case it was because he works at the sheriffs
20 department.

21 Q He is a correctional officer, isn't he?

22 A Yes.

23 Q She is, her spouse works at the detention facility
24 here.

25 MR. YOUNG: Yes, sir.

1 A We didn't discuss it.

2 THE COURT: I kind of think that is just trouble.

3 Q Ma'am, I am just, I am going to go out of bounds
4 almost to try to find a fair and impartial jury. That is
5 a very difficult place for me to put you. So I am not
6 going to put you on a position of putting you on this
7 jury.

8 A Thank you.

9 Q You are excused.

10 A Thank you.

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

13 THE COURT: All right, 469.

14 (Whereupon, Juror 469, Candy Whisenant entered the
15 courtroom.)

16 EXAMINATION

17 By The Court:

18 Q Good afternoon, Ms. Whisenant.

19 A Yes, sir.

20 Q Did I say it right?

21 A You did.

22 Q I am going to let you say it and spell it for Ms.
23 Holston to make certain the microphone is picking you up
24 properly.

25 A It is Whisenant, W-H-I-S-E-N-A-N-T.

1 Q I asked you last Monday to take an oath and not talk
2 about the case. Have you talked about the case in any
3 manner whatsoever?

4 A No, sir.

5 Q Has anybody tried to ask you about the case in any
6 way?

7 A Surprisingly, no.

8 Q There has been information, publicity, over the last
9 four years and the media, social media, otherwise. I also
10 read the indictments to you Monday. So you have
11 information received to you in some fashion or form at
12 least to that extend. Has any information that has come
13 to your perusal, whatever it is, whenever it came to, has
14 any of that information caused you to form an opinion as
15 to what happened in this case?

16 A No, sir.

17 Q I asked you, I told you I would bring you back out
18 here about your schedule. What have you got on your
19 upcoming calendar commencing Monday through the end of
20 May, early June?

21 A I work as a CNA. So I work second shift, 3:00 to
22 11:00 p.m.

23 Q Okay. You work for a facility?

24 A Rehab.

25 Q Okay. Now other than the inconvenience with work,

1 you got anything on your calendar that would be impacting
2 if you were selected as a Juror?

3 A No, sir.

4 Q Now, I am going to ask you about the subject matter
5 in this case. This case involves allegations of murder of
6 several children. The testimony and evidence will be in
7 that regard describing, showing evidence, pictures,
8 graphic evidence of children, deceased children. The
9 lawyers have described that testimony to me preliminary as
10 being difficult, graphic, very unpleasant. Would
11 testimony in that subject matter make it difficult for you
12 to be fair and impartial in this case or can you receive
13 that type of testimony even though it is graphic and
14 unpleasant?

15 A I think I can.

16 Q Part of the testimony is going to be graphic but
17 there may be some pictures and exhibits and things that
18 would be impactful to you. Can you consider those things?

19 A Yes, sir.

20 Q And be fair to both sides?

21 A Yes, sir.

22 Q Now, I gave you a preliminary instructions on the
23 aspect of a Capital case, the two phase process, what
24 happens. The State goes first, presents on guilt of
25 evidence. The State has got to prove guilt beyond a

1 reasonable doubt first in order to get to phase two. I
2 handed out a sheet describing three types of potential
3 jurors. Those types are being identified after the guilt
4 is found, the State presents on aggravating and the
5 Defense presents on mitigation. Can you identify
6 yourself?

7 A I would be Juror three.

8 Q Juror three. What does that mean to you?

9 A That I would listen with an open mind.

10 Q Okay. I am going to find, did you examine the
11 potential witness list. Have you seen that?

12 A Yes, sir.

13 Q Do you know anybody on there?

14 A I know one person.

15 Q Who is that?

16 A But he, but the name is listed twice, it is listed
17 twice it seems like. Samuel Smith, the Lexington County
18 Sheriffs Department and then Sam Smith. But I only know
19 one.

20 Q It is probably the same one but who is that to you?

21 A He is a friend of mine from the flea market, when I
22 did the flea market years ago.

23 Q So you know him from past acquaintances as a business
24 out at the flea market?

25 A Yes, sir.

1 Q Would your acquaintanceship, friendship, whatever you
2 want to describe it, whatever the relationship is. Would
3 that affect your ability to gage his credibility and still
4 be fair to both sides?

5 A I would be fair.

6 Q Okay. I am going to go back to the phases of the
7 case. I am going into phase one for you. In phase one
8 the State has the burden of proving the murder beyond a
9 reasonable doubt. Therefore they must prove the killing
10 of another person, malice aforethought. All right. They
11 have got to prove that beyond a reasonable doubt. They
12 will call their witnesses on that case first because they
13 are required to. During that portion of the case the
14 Defense presents defenses they may be entitled to or they
15 are claiming to prove. I am going to give you all the
16 defenses and then come back and ask you another question.
17 All of these may not apply at the trial but I am going to
18 read them to you in case. Potential defenses include
19 identification, accident, involuntary intoxication,
20 self-defense, necessity, insanity, guilty but mentally
21 ill, defense of habitation, entrapment, duress and alibi.
22 Those are potential defenses. Now depending on how the
23 testimony comes into the trial, some of those defenses may
24 come into play and if the evidence or testimony could
25 support one of those I would instruct the particular

1 aspects of those defenses. Okay. Can you give meaningful
2 consideration to the testimony, facts and evidence
3 presented at trial, understanding that my instructions
4 will include that the State bears the burden of proving
5 Mr. Jones' guilt beyond a reasonable doubt of the murder
6 charge as well as consider my instructions on the
7 consideration of any testimony and evidence on the
8 defenses and the particular aspects of that law. Can you
9 be a fair Juror under those circumstances?

10 A Yes, sir.

11 Q And can you be fair to both the State and the
12 Defense?

13 A Yes, sir.

14 Q Because of a defense, it has already been claimed by
15 Mr. Jones. So he is claiming one of those defenses at
16 least. Not guilty by reason of insanity. There are four
17 potential verdict forms the jury may be required to try to
18 resolve or find. Potential verdicts could include guilty,
19 guilty but mentally ill, not guilty by reason of insanity
20 and not guilty whatsoever. Those are the four potential
21 verdict forms, results that the jury would have to
22 consider. Can you give meaningful consideration to each
23 and every one of those particular verdicts in this case
24 considering the State's evidence, their burden of proof
25 beyond a reasonable doubt and the aspects of any defenses

1 that the Defense presents on. Can you give meaningful
2 consideration to each of those four particular verdict
3 forms?

4 A Yes, sir.

5 Q Are you going to be able to give a fair and impartial
6 trial to both the State and the Defense?

7 A Yes, sir.

8 Q If the State fails to meet its burden or the jury
9 finds a verdict of not guilty by reason of insanity the
10 case would end, it would stop right there, the punishment
11 phase or phase two would not commence. Now, there are two
12 phases. Phase one is actually a trial in and of itself.
13 If the State meets its burden of proving guilt beyond a
14 reasonable doubt that result is done. The case would then
15 start over basically and have a second trial on punishment
16 only. That is phase two. During that phase the State is
17 required to prove an additional aggravating factor. I am
18 going to tell you five aggravating factors. Murder of a
19 policeman, murder of a child, rape of murder, kidnapping
20 of murder and multiple murders. The State is required to
21 prove at least one of those beyond a reasonable doubt in
22 order to be able to ask the jury to consider imposing the
23 death penalty. Do you understand that?

24 A Yes, sir.

25 Q And during that sentencing phase jury's also are

1 required to consider any mitigation evidence and factors.
2 I am going to list you the statutory mitigators. Okay.
3 The Defendant has no significant history of prior criminal
4 conviction involving the use of violence against another
5 person. The murder was committed while the Defendant was
6 under the influence of mental or emotional disturbance.
7 The victim was a participant in the Defendant's conduct or
8 consented to the act. The Defendant was an accomplice in
9 the murder committed by another person and his
10 participation was relatively minor. The Defendant acted
11 under duress or under the domination of another person.
12 The capacity of the Defendant to appreciate the
13 criminality of his conduct or to conform his conduct to
14 the requirements of the law was substantially impaired.
15 The age or mentality of the Defendant at the time of the
16 crime. The Defendant was provoked by the victim in
17 committing the murder. The Defendant was below the age of
18 18. The Defendant had mental retardation at the time of
19 the crime. Those are mitigating factors under our statute
20 that a jury can consider as a reason to impose a life
21 without parole. Additional things that jury's can
22 consider, any aspect of Mr. Jones' life up to this point.
23 Whether he had a rough childhood, came from broken home,
24 any aspect of his life can be considered or will be a
25 reason for a Juror to decide to impose a life without

1 parole sentence. Now, can you be fair and impartial as a
2 Juror, considering the State attempting to prove the
3 aggravating factor beyond a reasonable doubt and
4 unanimously. Can you be fair to the State in that regard?

5 A Yes, sir.

6 Q Can you also follow my instructions in considering
7 meaningfully the evidence of mitigation which the Defense
8 will present on, there is no burden of proving mitigating
9 factors. The jury considers anything the Defense
10 presents. Can you give meaningful consideration and
11 follow my instructions on the law and be a fair and
12 impartial Juror considering that evidence for the Defense?

13 A Yes, sir.

14 Q Can you consider all of that evidence, statutory
15 aggravating and any mitigating factors within my
16 instructions on the law and be fair to both sides?

17 A Yes, sir.

18 Q Do you have any personal, moral, religious belief
19 which would prevent you from voting to impose the death
20 penalty?

21 A No, sir.

22 Q Do you have any religious, moral or personal belief
23 which would prevent you from voting for a life without
24 parole sentence?

25 A No, sir.

1 Q The lawyers are going to ask you a few questions.

2 There are no wrong answers.

3 THE COURT: Mr. Young.

4 EXAMINATION

5 By Mr. Young:

6 Q Good afternoon, Ms. Whisenant.

7 A Hi.

8 Q My name is Boyd Young I am one of Tim's lawyers,
9 okay.

10 A Okay.

11 Q Like the Judge told you, we are just going to have a
12 conversation about your thoughts and feelings, no right or
13 wrong answers. Okay.

14 A Okay.

15 Q Did you know anybody else who came in for jury duty
16 on that Monday when you saw everybody in the room?

17 A No, sir.

18 Q All right. I think the Judge has told you he has
19 read you the indictments, five counts of murder, Tim is
20 charged with murdering his children, right?

21 A Yes, sir.

22 Q And the Judge has also told you that he has plead not
23 guilty by reason of insanity.

24 A Yes, sir.

25 Q And that means that he says, I did the killings but

1 because of a mental disease or defect I was unable to
2 understand that legal or moral wrongfulness of my actions.
3 Do you understand that?

4 A Yes, sir.

5 Q You have heard sort of not guilty by reason of
6 insanity before?

7 A Yes, sir.

8 Q And some people think that is just an excuse,
9 especially in a case like this, they are like, that is
10 just a copout, that is not really something that I could
11 give meaningful consideration for. And see myself
12 actually voting for in a case like this, what do you
13 think?

14 A At this point I really can't say because I don't know
15 the facts. I really don't know anything about the case.
16 I mean, I just know what I have been told about he has
17 been accused of, you know, killing his five children.

18 Q Right.

19 A That's it.

20 Q And don't let me put any words in your mouth, okay.

21 A Okay.

22 Q It sounds to me like you are somebody who says that
23 might be an appropriate verdict, not guilty by reason of
24 insanity, if I have heard evidence that he did not
25 understand the legal or moral wrongfulness of his actions

1 and was satisfied that that was correct.

2 A That he was not in his right mind.

3 Q Right.

4 A At the time.

5 Q Is that something that you could realistically
6 consider and you could see yourself--

7 A I could understand that.

8 Q Could you see yourself voting for it if you thought
9 that that was appropriate?

10 A If I had evidence.

11 Q Sure. The Judge is going to tell you the burden is
12 on the Defense to prove it by a preponderance of the
13 evidence, more likely than not.

14 A Right, yes.

15 Q Okay. And you understand that that verdict would end
16 the trial, the jury's job would be done, they would go
17 home?

18 A Yes, sir.

19 Q But if the jury found the Defendant guilty or guilty
20 but mentally ill we would have this second trial about
21 punishment?

22 A Yes, sir.

23 Q Do you understand that?

24 A Yes, sir.

25 Q So in that second trial, all the evidence that the

1 jury, any evidence that the jury heard about not guilty by
2 reason of insanity, they would have said, no, we reject
3 that evidence, he was guilty, he knew what he was doing,
4 he knew the difference between right and wrong, he chose
5 to kill, maliciously kill multiple children. Are you with
6 me on that?

7 A Yes, sir.

8 Q That is where you are sort of starting this phase to
9 decide between life penalty or the death penalty.

10 A Right.

11 Q At that point and time where you found that he knew
12 what he was doing, knew the difference between right and
13 wrong, do you sort of have an idea of which one of the two
14 punishments you think might be appropriate?

15 A I really couldn't say because I am not against either
16 one, just depending on the evidence. That is all I can
17 say, is what I, what I see and what I think.

18 Q Fair enough. And I am going to come back to you a
19 little bit more about some of the types of evidence that
20 you are going to hear about it. Okay?

21 A Okay.

22 Q Given what we are talking about, like where we are,
23 you had this sort of aggravated murder. Are you with me
24 on that?

25 A Yes.

1 Q Can you tell me a little bit about your thoughts and
2 feelings about the death penalty as, in your general
3 philosophy about the death penalty?

4 A I mean, if it was like terrorist, you know, I am
5 thinking that is vicious, that is trying to hurt people.
6 So I guess I would be probably for the death penalty.

7 Q Okay. Like I say, don't let me put any words in your
8 mouth. Okay. Some people think that death penalty is
9 sort of like a necessary evil, a penalty of last resort.
10 Is that where I hear you coming from?

11 A That is not what I am coming from. I am just saying
12 that, like I am just giving an example as, like, that is
13 how for, I mean, I did not create anybody. I, you know, I
14 cannot tell, I am not against the death penalty but I am,
15 it all depends on the circumstances that, the case, the
16 evidence and stuff. I mean, I don't think that everybody
17 should get the death penalty. I mean, I think that people
18 are, you know, that can do things where they are not in
19 their right state of mind.

20 Q Okay. And, correct me if I am wrong, and you also
21 think that people, even if they were guilty of the
22 malicious murder of multiple children, you don't think
23 that they should automatically get the death penalty.

24 MS. MAYES: Objection, Your Honor, that has been
25 asked and answered twice now.

1 THE COURT: I think it has been asked and answered.

2 Move on.

3 Q Sounds like you could, in your mind, believe that the
4 life penalty, life without the possibility parole penalty
5 could be a substantial enough penalty for that type of
6 case?

7 A It could be.

8 Q Okay. And then, we are talking about the evidence,
9 right?

10 A Yes.

11 Q And the Judge has talked to you a little bit about,
12 sort of this mitigating fact, mitigating circumstances
13 that you will hear about, right. And he listed off some
14 and he told you about background and character, you recall
15 that stuff?

16 A Yes, sir.

17 Q How the Defendant was raised, what his home life was
18 like, what his future might be like. Is that stuff that
19 is important to you in deciding whether the punishment
20 should be the life penalty or death penalty?

21 A I don't think so.

22 Q Okay. Tell me why?

23 A Because I came from a broken home but I turned out to
24 be a good person. So, I mean, it doesn't mean that if you
25 are raised. I mean, sorry, I am a little nervous.

1 Q No reason to be nervous.

2 A I am just saying that, what was the question again.

3 Q Sure the background and character, would that be
4 important to you in making your determination about which
5 penalty would be appropriate?

6 A You know, you can have the best parents and still
7 come out a bad apple. And when I say that, I don't mean
8 that, that you are a vicious mean apple. But I am just
9 saying that things might not always be good when it comes
10 to you.

11 Q And it is no right or wrong answer. Some people say
12 that stuff is not important to me. That is fine. Okay?

13 A Yes.

14 Q That is just--

15 A I just think, you know, if you come out of a bad
16 environment, that doesn't mean that you are going to grow
17 to be a bad person.

18 Q No.

19 A Vice, versa.

20 Q Right. For you that would be sort of an excuse that,
21 it just doesn't matter to you?

22 A Yes.

23 Q Okay. Fair enough. This decision that the jurors
24 ultimately make, the life penalty or the death penalty, it
25 is sort of each jurors own individual moral judgment.

1 Does that make sense to you?

2 A I am not quite understanding what you are saying.

3 Q Let me try to explain it a little bit more. There is
4 no right or wrong answer for a Juror. There is no, like
5 if you have this set of aggravating circumstances then
6 this is the appropriate penalty. There is not going to be
7 an instruction like that. Does that make sense to you?

8 A Okay.

9 Q Each Juror gets to decide for herself what value to
10 give to any mitigating circumstance or any aggravating
11 circumstances.

12 A Yes, sir.

13 Q And jury's can decide to give the value of life to
14 any one mitigating circumstance or a collection of
15 mitigating circumstance, does that make sense to you?

16 A Yes, sir.

17 Q And a Juror could say, in South Carolina a Juror
18 could say, I don't even have a reason but I feel like life
19 is the appropriate punishment for me. And I can't tell
20 you why it is but that is what I feel. Can you respect a
21 juror's right to say, I can't tell you why but I feel it
22 is appropriate?

23 A Yes, I am very respectful when it comes to other
24 people's opinions.

25 Q When I say individual moral judgment, and we all make

1 moral judgments in our lives.

2 A Yes, sir.

3 Q For instance, you made your own individual moral
4 judgments about your faith and what is important to you.

5 A Yes.

6 Q You recognize that other people have made different
7 decisions for themselves?

8 A Yes, sir.

9 Q You respect their right to make their own decision
10 about that?

11 A Yes, sir.

12 Q You expect them to respect your right to make your
13 own decision?

14 A I hope so.

15 Q And if you saw somebody being belittled or bullied
16 out of what they had arrived as their individual moral
17 judgment would you stop it?

18 A Yes, sir.

19 Q And if it kept going could you send a note out to the
20 Judge saying, this is going on?

21 A Yes, sir.

22 Q Okay. Did you want to say something else?

23 A No, I mean, I was just, I just got confused there for
24 a second. You talking about like if we were, the jury and
25 one was kind of picking on the other one because the other

1 one was going along with the rest of them or something
2 like that?

3 Q Yes, ma'am.

4 A Yes, sir.

5 Q Right. You would stop that?

6 A Yes sir, because I am an honest person.

7 Q And your oath as a Juror is to make sure that your
8 own individual moral judgment is heard in the courtroom?

9 A Yes, sir.

10 Q Can you do that?

11 A Yes, sir.

12 Q And also, likewise, it would be a violation of your
13 oath for a Juror to give up what they had arrived at as
14 their individual moral judgment just to go along with the
15 majority.

16 A Yes, sir.

17 Q And you would agree that that would just be wrong?

18 A Yes, sir.

19 Q And you would make sure that that didn't happen?

20 A Yes, sir.

21 MR. YOUNG: Your Honor, based on the Court's
22 limitations I will stop there.

23 THE COURT: Ms. Mayes.

24 EXAMINATION

25 By Ms. Mayes:

1 Q Good afternoon.

2 A Hey.

3 Q My name is Suzanne Mayes, I am one of the prosecuting
4 attorneys and we represent the State in this case with the
5 Solicitor's office. I just have a few questions to ask
6 you to follow-up. You heard at the outset of this case,
7 the instructions from Your Honor?

8 A Yes, sir. I mean, sorry, yes Ma'am.

9 Q And one of those was about mitigating factors?

10 A Yes, ma'am.

11 Q And the mitigating factors would potentially be
12 offered if the, in a second phase of this trial. And that
13 is anything that the defense may feel is important,
14 relevant or for consideration?

15 A Yes, ma'am.

16 Q Are you willing to listen to each and every one of
17 those mitigating factors that may be offered during the
18 course of this case?

19 A Yes, ma'am.

20 Q Would you be able to give meaningful consideration to
21 each and every mitigating factor that may be offered by
22 the Defense during the course of this case?

23 A Yes, ma'am.

24 Q And I don't want to pick or choose just one or two
25 things, I think you have got a question about background.

1 A Yes, ma'am.

2 Q And character and how you personally feel. You
3 haven't heard any evidence yet, have you?

4 A No, ma'am.

5 Q So it is possible for you to even measure what kind
6 of weight you would give to evidence you haven't heard?

7 A It was very hard to come up with something.

8 Q So without knowing anything about the facts and
9 evidence that may be presented are you open to hearing all
10 of the evidence?

11 A Yes, ma'am.

12 Q And you would consider each and every one of the
13 mitigating factors in ultimately determining a punishment?

14 A Yes, ma'am.

15 Q Would that potentially include background, childhood,
16 things of that nature?

17 A Yes, ma'am.

18 Q You could consider all of that?

19 A I could.

20 Q And character as well, and that means evidence of
21 good character, evidence of bad character. You would
22 listen and consider all of that?

23 A All of it.

24 Q In deciding a punishment?

25 A Yes.

1 Q If after the close of all evidence, in a second phase
2 of the trial, again we are looking ahead if there were to
3 be a second phase of the trial. If after hearing all of
4 the evidence you found that the mitigating factors support
5 a sentence of life without parole would you be able to
6 make life without parole your choice?

7 A If that is what we came to, the conclusion.

8 Q You mean once you have heard it all and you have had
9 a chance to deliberate with other jurors and reach your
10 own conclusion?

11 A Yes.

12 Q You would be open to that sentence?

13 A Yes, ma'am.

14 Q And if after hearing all of the mitigating factors
15 and all of the aggravating factors offered by the State,
16 you determined that the death penalty was an appropriate
17 sentence, would you be able to render a verdict for the
18 death sentence?

19 A Yes, ma'am.

20 Q With a potential death verdict and again, we are
21 speaking as if there is a second phase of the trial and
22 ultimately that were a determination made by all twelve
23 jurors unanimously who have heard and evaluated the
24 evidence. If it got to that point and you determined that
25 the death sentence was appropriate, there is a verdict

1 form that goes with that where each Juror has to sign
2 their name. Would you be able, just ask you to reflect
3 for a moment, would you be able to sign your name to a
4 death sentence for any person if you found the evidence to
5 be there?

6 A Yes, ma'am.

7 Q Thank you. Nothing further.

8 MR. YOUNG: Follow-up.

9 THE COURT: Okay.

10 EXAMINATION

11 By Mr. Young:

12 Q Ms. Whisenant, like I said, there are no right or
13 wrong answers. I thought I understood you to tell me that
14 the background and character of a Defendant, how they were
15 raised, would not be important to you and then you told
16 Ms. Mayes that you would give all of that stuff meaningful
17 consideration. Can you just sort of tell me where you are
18 on that.

19 A Yes. When you were saying, would I consider
20 background but if background is part of the evidence that
21 I am suppose to look at then, yes, I would consider it.

22 Q Okay. The evidence about, would you agree with me
23 that in deciding whether or not a person should live or
24 die, that we probably should weigh their whole life in
25 making that determination of whether or not we should end

1 it.

2 A Anything that the two of you want to put out there as
3 evidence or for things for us to consider, yes.

4 Q And that is stuff that you would give meaningful
5 consideration and you could say, based on that I am going
6 to vote for life?

7 A Yes.

8 Q Okay. I misunderstood you. Thank you very much,
9 thank you for clearing that up.

10 A Thank you.

11 MR. YOUNG: Thank you, Your Honor.

12 THE COURT: You want anything on the record?

13 MR. YOUNG: No, sir.

14 THE COURT: Ms. Mayes, you need to put anything on
15 the record?

16 MS. MAYES: No sir, Your Honor.

17 THE COURT: Ms. Whisenant, you are qualified as a
18 Juror. What that means is, I need you to check the
19 Lexington County website, directions for what qualified
20 jurors, when to report back will be on that website.

21 JUROR: Okay.

22 THE COURT: It will say, please report back at some
23 date and time. I want you to follow those directions so
24 start checking tonight. Now, until then and if you are,
25 this doesn't mean you are on the jury, it means you are in

1 a pool that the jury is going to be selected from. And
2 you have not been excused already. For instance, people
3 that came in here and their mind made up are excused. You
4 came in, your mind is not made up and you want to hear
5 everything. That is kind of I would qualify. You are in
6 that group, you are a potential Juror and now qualified.
7 Follow the internet directions on when to come back.
8 Until then don't talk about the case, don't let anybody
9 interrogate you, quiz you about the case, suggest anything
10 to you about the case. I don't want you to do any
11 independent research with anything going on about this
12 case because I want you to consider your decision on what
13 you hear in the courtroom presented by the lawyers. You
14 just did it, y'all present it to me with your hands, you
15 did the gesture right here. That is what I want you to
16 base your decision on, not something that has been heard
17 outside the Court House. Can you do that.

18 JUROR: Yes, sir.

19 THE COURT: I will see you back soon. Thank you so
20 much.

21 JUROR: Thank you.

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

24 THE COURT: Bring in 83.

25 (Whereupon, Juror 83, Laguadia Caughman entered the

1 courtroom.)

2 EXAMINATION

3 By The Court:

4 Q How are you?

5 A Okay.

6 Q I will remind you you are under oath. Say and spell
7 your name so Ms. Holston can give you a voice check.

8 A Hello, my name is Laguadia Caughman.

9 L-A-G-U-A-D-I-A. The last name, Caughman,
10 C-A-U-G-H-M-A-N.

11 Q She has a great voice, very nice. I told you my
12 first question, I remind you you are under oath. Have you
13 talked with anybody about the case since Monday?

14 A Well, so my husband, we haven't talked about the case
15 but, of course, he had to know that I was coming for jury
16 duty. But we haven't had any discussions about the case.

17 Q The facts what I am worried about, not, that I have
18 got to Court because Judge Griffith said please report
19 back, the panel, whatever you are, to come back at some
20 particular time. That is perfectly acceptable to talk
21 about scheduling but not particular facts. Has anybody
22 quizzed you on the case except for him on scheduling?

23 A No, I haven't discussed it.

24 Q Okay. Now, there has been information out there,
25 publicity from different sources, from several years ago

1 all the way through to today. I actually read the
2 indictments to the entire jury panel Monday, I had to
3 because that is part of the notification the State gives
4 to Mr. Jones. This is what we are accusing you of, these
5 are accusations, we are ready to start the trial. I read
6 those, that is information that jurors heard. Has any
7 information you have heard from where ever, whenever,
8 cause you to already form an opinion as to what happened
9 in this case?

10 A No.

11 Q You have not formed an opinion?

12 A No.

13 Q Remember, I am looking for beliefs and opinions, I
14 want to make certain you understand the parameters of the
15 candor in here. Your schedule, starting Monday to the
16 next two or three weeks, what have you got?

17 A I am busy.

18 Q What have you got?

19 A So, I no longer work at the company that I listed on
20 that initial sheet. So I am an independent owner and
21 operator of a business. It is a party planning business
22 so if I am not doing shows then that means I am not making
23 money. So for me, like I am trying to network and do as
24 many shows as I can all the time.

25 Q Is this where you do a show at a friend's house?

1 A Yes.

2 Q Sell whatever, selling party planning?

3 A Absolutely. So when I am not doing that I am not
4 making money.

5 Q What did you do before?

6 A I was a business analyst for a company called, do I
7 say?

8 Q Sure you can say.

9 A Seradata.

10 Q That is some computer in Lexington?

11 A Yes.

12 Q Sounds like a big hard drive or something.

13 A Yes, that is what we made.

14 Q Hard drives?

15 A We made, initially we made hard drives but we went
16 into data warehousing.

17 Q You are a Cloud or something?

18 A We have Cloud services.

19 Q I want to talk about your current occupation. How
20 long have you been doing that now?

21 A I have been moonlighting for the past five years.

22 Q Okay. Your parties are in the evenings?

23 A They were in the evenings when I was working my
24 full-time job. But now that I am only doing this
25 full-time a lot of my parties are 3:00, 4:00 o'clock in

1 the afternoon. So I brought my calendar.

2 Q Tell me, do you have any prepaid vacations or
3 anything like that, what do you have on the calendar in
4 that regard.

5 A So, because I am independent operator I don't have
6 like paid vacations.

7 Q That is going to be a change.

8 A My life is a vacation, I would like to think of it.

9 Q That's great.

10 A Yes.

11 Q Consider life a vacation. That means you are doing
12 what you love?

13 A I am doing what I love to do. So for the next two
14 weeks--

15 Q You consider yourself self-employed?

16 A I do.

17 Q Okay. And if you are not there doing that job you
18 are going to close the door, so to speak.

19 A Yes. So for, I have an engagement, for instance, on
20 Monday.

21 Q Tell you what I am going to do. The question I was
22 asking you, I was getting a little reaction from the
23 lawyers. Self-employed people can claim an exception and
24 I went over that initially but now you have changed jobs,
25 you can now claim it.

1 A Yes.

2 Q Would you like to claim your exemption as a
3 self-employed person?

4 A Yes.

5 Q You don't have to.

6 A Yes, I would like to, yes.

7 Q Consider yourself excused and please accept my thanks
8 for coming and being patient with me.

9 A Okay.

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

12 THE COURT: Bring in 143. The last one who has not
13 been presented a summary. I am going to do him right
14 here. Bring him in.

15 (Whereupon, Juror 143, Bryan Ferreira entered the
16 courtroom.)

17 Bryan Ferreira, being
18 first duly sworn, testified as follows:

19 CLERK OF COURT: If you will say and spell your first
20 and last name, please, for the record.

21 JUROR: My name is Bryan Ferriera. Bryan with a Y.
22 My last name is spelled, F-E-R-R-E-I-R-A.

23 EXAMINATION

24 By The Court:

25 Q Mr. Ferreira, you are a little bit late, that is

1 fine, better late than never in this case. My name is
2 Eugene Griffith, I gave some preliminary instructions to
3 the other jurors. I am going to go through some of those
4 questions with you. Since last Monday, basically I am
5 going to ask you the same question that I have asked
6 everybody else and I have already told them that. So I am
7 not going to put you on the spot but, candor, personal
8 opinions and that type of thing, feelings, is acceptable
9 and is actually what we are looking for. We want to hear,
10 in my opinion I think that would not be fair. I want
11 those kinds of answers. Okay.

12 A Okay.

13 Q Honest, candid opinions. Some of the questions
14 aren't going to be opinions like this one. Have you
15 talked to anybody about the case since last Monday?

16 A No.

17 Q Has anybody tried to talk to you about the case since
18 last Monday?

19 A No.

20 Q Have you seen any publicity since four years ago,
21 through today's date including my, I read the indictments
22 to you last Monday which spell out the allegations made by
23 the State and Mr. Jones. Has any information you have
24 come into possession of caused you to create an opinion
25 already as to what happened?

1 A When the charges were listed.

2 Q When I read them out?

3 A Yes.

4 Q That is all you have heard?

5 A That is all I have heard.

6 Q Did that cause you to form an opinion or did you
7 understand my instructions, those were just the State's
8 accusations?

9 A Yes.

10 Q No opinion?

11 A No opinion.

12 Q Now, the State has got the burden of proving its case
13 beyond a reasonable doubt. Okay.

14 A Okay.

15 Q I am going to come back to that. This case has the
16 allegations involving the murder of several children. In
17 that regard the subject matter of this case would involve
18 testimony describing those children. That testimony has
19 been described to me by the parties as being difficult,
20 graphic and unpleasant, it is not going to be easy
21 evidence to receive yet I need to know, this difficult
22 evidence that we may see if you are selected as a Juror
23 and the Court will receive because I have not seen it all.
24 Could you consider difficult and unpleasant and still be
25 fair to both sides?

1 A It would be rather difficult, it is hard to say
2 without seeing evidence. I mean, I can't really say
3 honestly if I wouldn't. But I would just, I don't want to
4 take a chance regarding that because given that it could
5 be graphic and difficult to process that I may have some
6 biases for him once seeing the evidence.

7 Q That is kind of part of the opinion. The lawyers,
8 they want to know, is that going to affect you. Some of
9 them have had things happen in their past, who knows what,
10 revisiting information like that may cause an impact to
11 that person, to you. So would that describe you maybe?

12 A Not in that description, not exactly but just the,
13 the information, I have a, I wouldn't, I don't want to say
14 too much on it but I would find it hard and difficult to
15 process and I just don't want to be put in that situation
16 where I make a wrong decision based on an opinion.

17 Q All right. And, you know, if the receiving of the
18 evidence would cause you to form a prejudiced at that
19 time, that would not be appropriate. Do you think?

20 A No.

21 Q Okay. What is your schedule like over the next three
22 weeks.

23 A I have a business trip staring on Monday.

24 Q You have got two reasons to be excused. Thank you
25 for coming.

1 A Is that it?

2 Q That is it.

3 A Thank you for your time.

4 Q Thank you.

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

7 THE COURT: Let's take about ten minutes and then we
8 will talk.

9 (Whereupon, a short break was taken.)

10 THE COURT: Madam Clerk, I am going to have a brief
11 conference, I don't want the microphones on for a few
12 minutes. This is off the record.

13 (Whereupon, the Court and the attorneys have a brief
14 conference off the record.)

15 THE COURT: For the record, Mr. Monk, can y'all hear
16 me. This is kind of status conference we just had
17 regarding scheduling. This is our tentative schedule.
18 Tomorrow we are down, observing the State Holiday,
19 particularly the County employees of Lexington taking the
20 Holiday. So we are down tomorrow, no court tomorrow,
21 there will be nothing going on. That gives all the
22 attorneys a day to rest but work, get their feet back
23 under them after our intense voir dire of the qualifying
24 jurors. We have a group of qualified jurors who will be
25 notified, via the website, to be back in the Court House

1 10:00 a.m. Monday. 10:00 a.m. Monday we will then attempt
2 to select our jurors via striking. We will deal with that
3 Monday morning. Monday afternoon we have got two or three
4 motions that need to be dealt with regarding some
5 redactions, some statement as well as the Lyle issue case
6 of the issue perhaps. Also Monday afternoon I would like
7 to have an informal status conference again with the media
8 to make certain they have no concerns thus far. Just like
9 we had before, if we need to readdress any issues I will
10 meet with the media Monday afternoon also. Tuesday
11 morning there is an out-of-state witness that is going to
12 be a video presentation testimony recorded to him, be here
13 in the courtroom. That recording will be done in the
14 courtroom, the lawyers will be present and that need not
15 be on the record. That is just presented, when it is
16 presented at trial then it will be on the record.

17 MR. YOUNG: I have never done it before so I don't
18 know if we transcribe it right now or run the videotape
19 it, the video would never be transcribed because it was
20 played.

21 THE COURT: We will decide that Monday afternoon how
22 we are going to deal with that, while Joy will make that a
23 record while he is testifying and be recorded. That may
24 be easier for her.

25 COURT REPORTER: What are we talking about.

1 THE COURT: They are bringing a witness in from
2 somewhere that is going to be offered for testimony later,
3 in another portion of the case, but he is not going to be
4 available later. But he is going to be here in the
5 courtroom Tuesday morning. They are going to video him.

6 COURT REPORTER: We can just use the video, make it a
7 Court's exhibit and show the jury the video.

8 THE COURT: If need be.

9 COURT REPORTER: And we can transcribe it too.

10 THE COURT: That is what I am saying. So you can sit
11 here and listen to it live.

12 COURT REPORTER: Exactly.

13 THE COURT: And transcribe and the video can be
14 presented to the jury also. We will use both, that will
15 be Tuesday. That will not be in front of the jury, that
16 will just to preserve the order presentation of the case.
17 It will be presented when appropriate by the Defense.

18 MR. YOUNG: Yes, sir.

19 THE COURT: We are shooting opening statements
20 starting Tuesday after lunch, probably 1:00, 2:00 o'clock.
21 Opening statements to the jury done Tuesday afternoon
22 starting with witnesses Wednesday morning. Is that
23 consistent with our status conference. That is our
24 schedule right now. We will stand down until Monday
25 morning at 9:30.

1 (Whereupon, the trial will resume Monday, May 13,
2 2019.)

3 May 13, 2019.

4 THE COURT: Do we need to put anything on the record
5 this morning, anything before the jury comes in. If y'all
6 want to do anything on the record about anything before
7 they came in.

8 MR. HUBBARD: Your Honor, there were a couple of
9 jurors that I had asked you to reconsider based on what
10 their schedules were and I can go into that.

11 THE COURT: What do you have, Mr. Young.

12 MR. YOUNG: We have one Juror to address and I need
13 to put some stuff on the record regarding change of venue.

14 THE COURT: Okay. Let's do the change of venue first
15 and then we will address the jurors.

16 MR. HUBBARD: Yes, sir.

17 MR. YOUNG: Your Honor, through our record, my
18 understanding is we had approximately 74 out of the 163, 5
19 people who stood up on Monday a couple of weeks regarding
20 their exposure to pretrial publicity about the case.
21 During voir dire it looks we talked to 54 of those 74
22 jurors and the vast majority of those jurors were
23 subsequently disqualified or found not qualified by Your
24 Honor. With 17 of the 54 that we talked to were
25 eventually found qualified in the pool of 50. Based on

1 those numbers and the fact that the vast majority of
2 people who had exposure to pretrial publicity were
3 disqualified we would renew our change of venue motion.

4 THE COURT: I think about halfway through, if I am
5 remembering right, my questions to the jurors, in spite of
6 any information, publicity, social media, regular media,
7 my publication, anything cause you to form an opinion. If
8 someone answered in the affirmative they were excused,
9 period. If they hadn't we would move forward. So
10 respectfully I think the way the Court presented the
11 influence of any pretrial information, publicity,
12 otherwise was appropriate and even actually, I think the
13 Solicitor asked me to, can you please set that opinion
14 aside. I did not do that on a single Juror and moved
15 forward with all the ones that had no opinion. So
16 respectfully your request for venue change is denied.
17 Your record is protected on that. I think your statistics
18 are about right. About half of them stood up and a large
19 majority of them came through.

20 MR. YOUNG: For Your Honor's information, my
21 understanding is, after we go through selection I need to
22 renew it again to be protected on the record.

23 THE COURT: Okay, all right. So let's go through any
24 jurors that, Solicitor, you mentioned something about some
25 jurors.

1 MR. HUBBARD: Yes, sir.

2 THE COURT: And I think Mr. Young had one also.

3 MR. HUBBARD: Your Honor, there were two jurors in
4 particular I wanted to address. I will begin with,
5 Alvira, he was the man who had a hard time speaking with
6 Your Honor, Spanish was his first language.

7 THE COURT: I remember, Porta Rico.

8 MR. HUBBARD: Yes, sir. And, Your Honor, when you
9 asked him what type he was he really struggled, he kept
10 talking about opportunity. He finally, basically said
11 three because hearing everything but he was troubled. I
12 got up and questioned him, he made clear what he was
13 talking about. He said, if you give life or death you
14 could deprive somebody of opportunity to change and he
15 told his life story. I had been on drugs, I didn't go to
16 rehab but I turned my life around, had kids, I have
17 opportunity. So I asked him, I said, so a life sentence
18 would even be too hard for you. He said, yes, because it
19 denies somebody of opportunity. So here we are in a
20 Capital case and even life, number two would even be too
21 strong for him. That second category. I asked about
22 that. Absolutely denies somebody of opportunity. When
23 the Defense got up and they asked him about that, they
24 said, well, you know, there are things he can do in
25 prison. He goes, all right, maybe limited opportunity for

1 life. But when I clarified as to death he said only two
2 people should have authority. Only two sources of
3 authority should dictate whether somebody lives or dies.
4 One is God Almighty and the other is the individual's
5 himself, he chooses to take his own life. Otherwise no
6 one has a right or authority to take a human life. I
7 think that makes him patently unqualified. Your Honor,
8 both as to life and death. And I think the issue Your
9 Honor struggled with was just getting him to explain what
10 he was talking about. And, Your Honor, it took a while
11 but I think he is just absolutely unqualified. And even
12 looking at the totality of his questions and answers he is
13 unqualified. And, Your Honor, I would just like that on
14 the record. Obviously the State has as much of a right to
15 a fair trial as the Defense. Anyone who got on the jury
16 like that could not do their job. He said the only job he
17 could do was on the first phase because he doesn't punish
18 at that point. But he does not feel he can punish
19 somebody if the only alternatives are life and death. So
20 I would move to have him struck, Your Honor, based on his
21 questions. And it was late in the day, Your Honor, we had
22 done an awful lot. But, Your Honor, I just ask you to
23 reconsider that.

24 THE COURT: Mr. Young.

25 MR. YOUNG: Your Honor, you heard all of those

1 arguments at the time of the qualification, you determined
2 he was qualified. Your Honor had not asked to hear
3 additional arguments after ruling. I think continuing to
4 argue after the Court has ruled is improper. And I
5 understand they have protected their record, Your Honor as
6 made the appropriate rulings with regard to Mr. Alvira. I
7 mean, there is a number of jurors who I don't like their
8 responses either. And, Mr. Johnson said at the end of
9 voir dire, you know, what, he really might be a type one.
10 I am not trying to reargue the rulings made by the Court
11 as to Juror qualifications.

12 MR. HUBBARD: Your Honor, this one is just, it is not
13 that he, it just hurts me, I think he is patently
14 unqualified based on his responses. You had no other
15 Juror that was even fell into the realm of this gentleman,
16 none.

17 THE COURT: All right. Who else have you got. He is
18 one of the one's that I have, I understand, I remember him
19 questioning, I remember him very vividly. Who else you
20 got. I am going to sit on that a minute.

21 MR. HUBBARD: I have got another one, Your Honor, a
22 lady by the name of Desiree Jordan. Your Honor had
23 several jurors, particularly as we went on you asked about
24 photos and could you do it and you had a number of them
25 that said they would certainly try. But Your Honor saw

1 how emotional they were, Your Honor started setting them
2 aside. Ms. Jordan was early on in the process, I think
3 she was the 12th one on the list for us and for Your
4 Honor. She was, basically made a comment, this would
5 traumatize her for the rest of her life if she had to do
6 this. And she was particularly concerned about what she
7 was going to be hearing, the graphic nature of it all.
8 She was very hesitant on the penalties but, Your Honor,
9 the main sticking point with her was the graphic nature of
10 things. I also noticed, Your Honor, she turned 65
11 tomorrow. I think if you gave her the option, would you
12 assert your right to not sit I think she would assert it,
13 Your Honor. I also think if she had come up later in the
14 process Your Honor, based on her answers because no one
15 else said I would be traumatized for the rest of my life.
16 Yes, if you look in the eyes of several people, the school
17 teacher for instance who got teary eyed. This woman was
18 early in that process. She had the white hair, if you
19 remember her and said she would be traumatized for the
20 rest of her life. And I just put that out there because
21 she will literally be 65 tomorrow based on what I see in
22 her DL. And I think if she were offered that opportunity
23 since the trial will actually start Wednesday or tomorrow,
24 I guess, with openings, I think she could assert that
25 privilege and be excused in this case. I think she at

1 least needs that opportunity to be asked that.

2 THE COURT: Mr. Young.

3 MR. YOUNG: Your Honor, once again Your Honor has
4 ruled. She wasn't 65 when she was qualified. She is here
5 today, she is not 65 today. We are picking the jury
6 today. I know the State doesn't like her. The State
7 thinks that she is not a vote for death and they are
8 trying to stack the pool for death. And I get that but
9 that is not how this process works. People make
10 objections to qualification at the time. Your Honor
11 ruled, we don't have the benefit of transcripts and not
12 objecting to that. I think the State has mischaracterized
13 a number of responses for both Juror number 10, Mr. Alvira
14 and Juror number 226, Ms. Jordan, that they were both
15 appropriately qualified by the Court.

16 THE COURT: All right.

17 MR. HUBBARD: One follow-up, Your Honor.

18 THE COURT: What is going to stop her when we start
19 the trial, I am 65 and I choose not to serve and walk
20 away. I don't know that I could stop that.

21 MR. YOUNG: You can, the exception didn't exist at
22 the time when they were qualified.

23 THE COURT: If she says, I am 65 and I am choosing
24 not to serve. What am I going to say, stay or else.

25 MR. YOUNG: Yes.

1 THE COURT: I don't think so.

2 MR. YOUNG: Absolutely, that was at the time they
3 were qualified.

4 THE COURT: I don't think so. If she says, I am
5 claiming to leave that is her, not me. I agree with you,
6 I would encourage her but I think she can walk out.

7 MR. YOUNG: It would be no different than a Juror who
8 came in and said, I, you know, I moved during the trial.
9 Well, you were a Lexington County resident at the time.

10 THE COURT: She was born in '55 so she turns 64.

11 MR. HUBBARD: We have her at 64 now.

12 THE COURT: 55 plus 64 in 2019 would make her 64
13 tomorrow. Still, I don't think she could walk out so I
14 disagree with you on that. And if she says I am 65 and
15 see you later I wouldn't fight her. So, I am not going to
16 make somebody do that when they have a statute saying so I
17 believe she is a year short.

18 MR. HUBBARD: We had her as one year older
19 apparently.

20 THE COURT: Anybody else, Solicitor, from your side.

21 MR. HUBBARD: Those are the two that were a most
22 concern, Your Honor.

23 THE COURT: All right.

24 MR. SECOR: May I, Your Honor.

25 THE COURT: Yes, there were some jurors that y'all

1 had concerns with.

2 MR. SECOR: Yes, sir.

3 THE COURT: Of similar like the way the Solicitor's
4 side has been doing.

5 MR. SECOR: I am not rearguing. It is new
6 information we have discovered since voir dire, Your
7 Honor.

8 THE COURT: Okay.

9 MR. SECOR: Juror number 444, Philip Turner who is
10 the Youth Minister in Columbia, First Baptist Church. His
11 jury questionnaire, question number 29 asked, have you,
12 your spouse or a close personal friend ever been
13 investigated, charged with or convicted of a criminal
14 offense. And Mr. Turner answered that question, no.
15 However in 2017 a juvenile sued Columbia First Baptist for
16 sexual abuse by a Youth Group Leader at the church. And
17 in the suit Mr. Turner is named as a Defendant in addition
18 to the alleged perpetrator of a child sexual abuse.
19 Ultimately the case was settled by First Baptist, they
20 acknowledged the abuse and paid the victim \$300,000.00
21 dollars. And the media article about the case say that
22 law enforcement investigated the case and worked with
23 Columbia First Baptist to try to prevent future episodes
24 of child sexual abuse in the church. It doesn't seem
25 possible to me that Mr. Turner is not subject to a

1 criminal investigation of Columbia First Baptist given
2 that he was a named Defendant in a civil suit and the fact
3 that the media articles indicate that law enforcement
4 worked with various members of the church to try to
5 prevent situations like this occurring in the future. Mr.
6 Turner was a direct supervisor of the perpetrator of the
7 child sexual abuse, was put in very close proximity to the
8 target of the investigation.

9 THE COURT: So it wasn't him?

10 MR. SECOR: I am sorry?

11 THE COURT: It wasn't him?

12 MR. SECOR: No, sir. But law enforcement
13 investigated it and he was a named Defendant and in the
14 civil suit it says that Mr. Turner knew of or should have
15 known of the sexual abuse of the minor and failed to alert
16 authorities or doing anything to protect the child. And
17 it seems to me that the possibility that he was not
18 questioned in the course of the law enforcement
19 investigation seems apocryphal at best. May I approach
20 with the articles, Your Honor?

21 THE COURT: Sure.

22 MR. SECOR: We would just ask that that be made a
23 Court's exhibit.

24 THE COURT: Sure.

25 COURT REPORTER: That will be number 76.

1 (Whereupon, Court's Exhibit 76 was marked for
2 identification only.)

3 MR. SECOR: Your Honor, I don't mean to interrupt. I
4 just wanted to state that the remedy we are seeking is
5 that Juror 444, Mr. Philip Turner be struck for cause for
6 answering untruthfully on the jury questionnaire.

7 THE COURT: You are talking about question number 29,
8 you think his response is misleading?

9 MR. SECOR: I do, sir. The question is, whether you
10 have ever been, you or a spouse or close personal friends
11 have been investigated for a charge with or convicted of a
12 crime. The key word being, investigated. The church was
13 investigated for child sexual abuse but the target of the
14 investigated being McCraw who is directly supervised by
15 Mr. Turner.

16 MR. HUBBARD: Your Honor, just the way I am reading
17 it, it says investigated for or charged with, investigated
18 for, charged with or convicted of a criminal offense. My
19 reading what they gave me, they were looking at other
20 folks who had worked there. He is a named Defendant in a
21 civil case. He was never personally investigated from
22 what I am seeing. So I don't think it is untruthful if
23 that is the basis.

24 MR. SECOR: He was investigated by the Richland
25 County Sheriff's Department. The Institution of the

1 Church was investigated by Richland County Sheriff's
2 Department. They instituted changes within the church to
3 try to prevent this thing from going forward. McCraw was
4 the target, meaning he was the person suspected of the CSC
5 with a minor. Mr. Turner was his direct supervisor at the
6 church and he was accused of having known about it and
7 having not done anything about it. And, again, the
8 chances that he wasn't part of the investigation seems
9 absolutely impossible to me.

10 MR. HUBBARD: This says, you investigated. And if
11 Your Honor wants to follow-up with questions, it is
12 whatever Your Honor thinks. But I don't see him
13 personally being investigated.

14 THE COURT: Here is what I would like to do. I think
15 we speak with all three of them, back under oath back on
16 the witness stand, give them all three another short voir
17 dire. I think that is the way I want to resolve all three
18 of the issues. All right. Any anybody else, I don't know
19 who else downstairs on the third floor saying something
20 has come up with me personally, unreasonable hardship on
21 my family or my personal, something. I am anticipating
22 somebody show up with some of those issues too and we will
23 do those the same way.

24 MR. YOUNG: Your Honor, we object to an additional
25 inquiry as to Juror number 226 and Juror number 10. Given

1 the Court's ruling we would ask the Court to review and
2 require as to Juror number 174 who, in our response, my
3 recollection of his responses was if proven guilty, boom,
4 death. Juror number 221, Mr. Garrett Johnson who at the
5 end of voir dire indicated that he was type one Juror. He
6 should be reevaluated and disqualified. Juror number 302,
7 Mr. David Murphy, gave responses that he was automatic
8 death penalty Juror. Juror number 411 got--

9 THE COURT: Are you going to read off everybody?

10 MR. YOUNG: No, sir. Just the ones I want to--

11 THE COURT: Y'all named three, now y'all are naming
12 off everybody.

13 MR. YOUNG: They have two that they want to re-voir
14 dire and the Court said we are going to call them back up
15 in here and I am, they are going to continue argument
16 after the Court's ruled and the Court is going to let them
17 reargue--

18 THE COURT: You are arguing with me. It is what I am
19 doing going to be fair to both sides?

20 MR. YOUNG: No, sir.

21 THE COURT: It is not?

22 MR. YOUNG: No, sir.

23 THE COURT: I don't like that, I take that
24 personally. I mean, I am trying my best. Y'all are
25 bringing up issues, I think that is a fair way to resolve

1 it. And now you are going into everybody that has
2 answered a type one lean, you are going to bring them back
3 in and do the same thing.

4 MR. YOUNG: Well, Mr. Johnson said he was a type one.
5 Mr. Hall proven guilty, boom, death. Your Honor found
6 them qualified. I thought, my understanding is that I am
7 not allowed to reargue Your Honor's ruling unless Your
8 Honor says, hey, I have had some more time with this, I
9 would like to talk about it some more which is fine. Your
10 Honor is perfectly able to do that. But that is not what
11 has happened. And if the State wants to bring up all the
12 life jurors and re-question them and try to get them
13 disqualified again then we should be able to bring up all
14 the death penalty jurors and re-question them and see if
15 we can get them disqualified.

16 THE COURT: I think what they brought up are three
17 particular or two particular and y'all brought up a third
18 thing or jurors who struggled, particularly number 10, the
19 Hispanic gentleman, Alvira. He struggled with his
20 questions, answering them and part of them was a language
21 issue. But, I mean you don't think it is fair and go back
22 and talk to him again?

23 MR. YOUNG: No, sir.

24 THE COURT: Okay. I kind of think it is,
25 respectfully.

1 MR. YOUNG: I mean, Your Honor ruled that there
2 wasn't a language barrier and that was part of the Court's
3 ruling.

4 THE COURT: And I can rethink that one. That one has
5 troubled me more than any of them is him, has troubled me
6 personally. I thought about him since, I have not just
7 cast him aside from my mind. So I can reconsider my
8 rulings, can't I?

9 MR. YOUNG: Yes, sir.

10 THE COURT: Okay.

11 MR. YOUNG: I would ask that you reconsider your
12 rulings as to 174 and 221, Your Honor.

13 THE COURT: But you listed off a whole bunch of
14 others.

15 MR. YOUNG: I listed up two others, yes sir.

16 MR. HUBBARD: Your Honor, I think your proposal was
17 fine. Just, it is ultimately, is Your Honor satisfied. I
18 can come up with a list of folks I would love to question
19 a little bit more and that I have issues with as well.

20 MR. YOUNG: He has.

21 MR. HUBBARD: When we, when we first started this
22 process, Your Honor was still trying to find where the
23 ditches were, to keep us out of them. And so Your Honor
24 gave a lot of latitude on questions. Initially you
25 started tightening down on some of those questions, a lot

1 of them were absolutely misleading and that is why you
2 tightened on them as we got going on. And so that is why
3 we objected, I remember Mr. Hall took all afternoon, and
4 we just got that one Juror. So I think your proposal is
5 fine, I think I have a good faith basis, for bringing
6 forth the two that I have had based on their responses for
7 you to reconsider. And that is it, Judge.

8 THE COURT: And I think the Defense has a good faith
9 basis of the questions of Mr. Turner. I think that--

10 MR. YOUNG: That is new information, Your Honor. I
11 mean, that is not something that we had available to
12 question him about at the time.

13 THE COURT: Okay.

14 MR. YOUNG: Now, as far as Mr. Hall and Mr. Johnson
15 go, those were the first two jurors qualified. The
16 standards were different and if anybody should be
17 re-questioned should be those two.

18 MR. HUBBARD: They have got the benefit of going into
19 questions, I think misleading questions, our whole
20 argument the entire time we went through this process was
21 casting doubt on otherwise qualified people by the nature
22 of their questions. The way they were, the big loaded
23 questions where they blurred first and second phase. All
24 of those issues, Your Honor, that we raised and Your Honor
25 finally clamped down on that, as you got a feel on how

1 they were doing and how people were responding. So they
2 got the benefit of that on those first two.

3 THE COURT: I mean, there is no question the first
4 several, four or five got extensively more questions, step
5 out and back and forth. It was a lot slower process with
6 them and the findings of the questions. It definitely was
7 there. Anything else?

8 MR. YOUNG: Your Honor, my position would be allow
9 the State to bring back in jurors that they feel are life
10 leaning and re-voir dire them, kept them to additional
11 voir dire amounts to organizing a tribunal uncommonly
12 willing to convict and sentence to death. It is a
13 violation of Mr. Jones Sixth and Fourteenth Amendment
14 rights of due process and a fair trial and should not be
15 permitted. And it is a violation of Rule 18 where the
16 State continues to argue after rulings, in an effort to
17 get the Court to change your mind.

18 THE COURT: All right. I am going to think about it
19 for a minute. I am going to see what jurors show up.
20 Y'all got anything else you need to address. We can stand
21 at ease.

22 MR. YOUNG: We have additional motions, it is my
23 understanding we need to address those this afternoon.

24 THE COURT: There was, I think you had a leftover
25 motion and I think the State, something about a statement,

1 the parts that were going to be redacted need to be
2 addressed this afternoon too. I don't know what motion
3 you have got but I thought there were two or three motions
4 that we need to address this afternoon.

5 MR. YOUNG: And the only thing that is left
6 unresolved, I believe, would be the State's motion for a
7 shuffle.

8 THE COURT: Y'all still want to be heard on that?

9 MR. HUBBARD: No, sir.

10 THE COURT: Okay. What motion you have got so I can
11 entertain where you are coming from before lunch time.

12 MR. YOUNG: This is a motion filed on behalf of Tim
13 Jones, Sr.; July Jones, Jackie Jones, Travis Jones and
14 Tyler Jones and Roberta Thornsberry. But primarily Tim
15 Jones, Sr.

16 THE COURT: Who are those folks you just named off?

17 MR. YOUNG: The victims family members, also Mr.
18 Jones, Jr. family members.

19 THE COURT: I am not sure I understand that. It
20 seems like it is the State's job to represent, communicate
21 with the victims.

22 MR. HUBBARD: It is and, Your Honor, these are not my
23 victims. So we have communicated with the family to the
24 extent they are willing to communicate with us. Your
25 Honor, heard Mr. Tim Jones, Sr., he is dormant. He has

1 been very kind to us, we have been kind to him. But, Your
2 Honor, his situation, my victims are five dead babies.

3 THE COURT: What about, you mentioned a motion, I
4 don't remember the numbers, Mr. Young, it was 100, 101,
5 102, I don't commit the motions to number memory. What
6 were those that were left that I haven't ruled on. I
7 thought that was something else we were going to do this
8 afternoon.

9 MR. YOUNG: I believe Mr. Madsen had the, motion in
10 response to the State's, what was titled as the State's
11 Lyle motion.

12 MS. MAYES: Our motion was in response to a motion
13 they made months ago that we provide them with notice of
14 anything that we might potentially use that would be prior
15 wrong, not just talking about, character evidence in the
16 sentencing phase, et cetera. We responded to their
17 request for information and in that motion we advised them
18 that would be consider character evidence particularly in
19 the sentencing phase that we foresee offering. That is
20 what that motion was, a response to their motion. As to
21 the actual guilt phase in this case, what we foresee
22 coming in is evidence of the drug use and we have hashed
23 this out repeatedly. But the drug use isn't limited to
24 just while he was on the run from law enforcement. It is
25 going, date back to around May of 2014 which we consider

1 to be res gestae evidence of this crime because it relates
2 to his mental state, the same mental state that all of the
3 Defense experts are going to be testifying to. So it is
4 the drug use that we foresee as a prior wrong, it is not
5 404(b) evidence, it is all res gestae in this offense.

6 THE COURT: If we need to be heard on that we will
7 but I thought y'all had more or less, Ms. Mayes gave an
8 accurate summary, y'all understood that is kind of where
9 it was going to fall in each portion of the case. So, Mr.
10 Madsen, if she is incorrect--

11 MR. MADSEN: Judge, what I want to make sure, is they
12 have filed this is 404(b), which as Your Honor knows, they
13 have listed down there propensity. Propensity is no where
14 in 404(b) specifically in the first phase of the trial.
15 Additionally in response to our motion they just kind of,
16 extremely broad. In other words, we think that there
17 might be things that they want to bring in front of the
18 Court that would not meet a clear and convincing standard.
19 And in fact there were a few items that law enforcement
20 themselves had investigated and did not believe that there
21 was sufficient probable cause to bring any charges. Well,
22 certainly if law enforcement is out there or DSS is out
23 there and do not think that it meets their burden of proof
24 how in the world are they going to bring it in under a
25 clear and convincing. But our motion was to make specific

1 anything. Your Honor can see the motions. I mean, it
2 just basically says that an adult or a juvenile subsequent
3 prior to testimony describing discovery material, there is
4 nothing in there that is specific. How are we suppose to
5 answer it. Obviously the Court is going to have to make a
6 determination on whether it meets that clear and
7 convincing threshold, when it is so broad how can the
8 Court do that, how can we answer that. Now, you know,
9 that is the basis for our motion.

10 THE COURT: Well, let's put that on the record just
11 after lunch or just after we get through doing this jury
12 selection. Ms. Frick, are they here?

13 CLERK OF COURT: They are all here, Your Honor. The
14 Clerk is doing the roll call.

15 THE COURT: Let's just stand at ease for a few
16 minutes.

17 (Whereupon, a short break was taken.)

18 THE COURT: For the record, I have given
19 consideration to the State's request and the Defense
20 request and Mr. Alvira caused me concern after qualified.
21 As I was gathering information from him, from the Clerk's
22 office, I guess his personal behavior leaving the Court
23 House, very emotional and crying and loud. That sort of
24 thing. I am going to disqualify him from my own concern.
25 I had concern before the State said anything. And so I am

1 going to excuse him so he will be removed from the list
2 but he will come in the courtroom. Additionally, Mr.
3 Turner, the pastor, I have concerns about him not being
4 forthcoming and likewise will grant the motion to find him
5 not qualified. So he will come off the list. Ms. Jordan,
6 I am going to leave her as is, we will go forward with
7 that as it is. Alvira, my concerns personally, I am very
8 candid with y'all. That one, his whole demeanor was
9 different than anyone else's, the way he talked. He is
10 not qualified and the Reverend, I guess he is a Reverend,
11 because of the, the way the question was written, he could
12 have said it or could not have said it. The fact is, that
13 is a pretty big investigation. That is going to cause me
14 concern on that too so he is off. As I understand it, we
15 now have a list with two removed, all 50 are here. We
16 will go through the process, exercise our strikes on the
17 paper, hear any motions post-strike or Batson or whatever
18 we may need to take up. And once we get that done we will
19 bring the panel in here, in person, and call up the ones
20 who are remained for the jury. And we will take as many
21 alternates as we can get. So, we end up with three or
22 four that is fine, I don't have a certain mental number.
23 Any questions?

24 MR. HUBBARD: No sir, Your Honor.

25 MR. YOUNG: No, sir.

1 THE COURT: Madam Clerk.

2 CLERK OF COURT: The first one is number 174, Kenneth
3 Hall. What say for the State?

4 MR. HUBBARD: Present.

5 CLERK OF COURT: What you say?

6 MR. YOUNG: Excuse Mr. Hall.

7 CLERK OF COURT: Number 221, Garrett Johnson. What
8 say for the State?

9 MR. HUBBARD: Present.

10 CLERK OF COURT: What say for the Defense?

11 MR. YOUNG: Please excuse Mr. Johnson.

12 CLERK OF COURT: Number 473, Jacob Whitten. What say
13 for the State?

14 MR. HUBBARD: Present.

15 CLERK OF COURT: What say for the Defense?

16 MR. YOUNG: Swear.

17 CLERK OF COURT: Number 339, James Prescott. What
18 say for the State?

19 MR. HUBBARD: Present.

20 CLERK OF COURT: What say for the Defense?

21 MR. YOUNG: Swear.

22 CLERK OF COURT: Number 91, Arthus Chavis, Jr. What
23 say for the State?

24 MR. HUBBARD: Present.

25 CLERK OF COURT: What say for the Defense?

1 MR. YOUNG: Excuse.

2 CLERK OF COURT: Number 219, Paul Jennings. What say
3 for the State?

4 MR. HUBBARD: Excuse.

5 CLERK OF COURT: Number 166, Conrad Gore. What say
6 for the State?

7 MR. HUBBARD: Present.

8 CLERK OF COURT: What say for the Defense?

9 MR. YOUNG: Swear.

10 CLERK OF COURT: 231, Tiffany Kent. What say for the
11 State?

12 MR. HUBBARD: Present.

13 CLERK OF COURT: What say for the Defense?

14 MR. YOUNG: Swear.

15 CLERK OF COURT: 293, Jessica Miller. What say for
16 the State?

17 MR. HUBBARD: Present.

18 CLERK OF COURT: What say for the Defense?

19 MR. YOUNG: Swear.

20 CLERK OF COURT: 162, Amy Girardeau. What say for
21 the State?

22 MR. HUBBARD: Present.

23 CLERK OF COURT: What say for the Defense?

24 MR. YOUNG: Excuse.

25 CLERK OF COURT: 302, David Murphy. What say for the

1 State?

2 MR. HUBBARD: Present.

3 CLERK OF COURT: What say you for the Defense?

4 MR. YOUNG: Excuse.

5 CLERK OF COURT: 226, Desiree Jordan. What say for
6 the State?

7 MR. HUBBARD: Excuse.

8 CLERK OF COURT: 411, Scott Spigener. What say for
9 the State?

10 MR. HUBBARD: Present.

11 CLERK OF COURT: What say for the Defense?

12 MR. YOUNG: Excuse.

13 CLERK OF COURT: 179, Tonya Harmon. What say for the
14 State?

15 MR. HUBBARD: Excuse.

16 CLERK OF COURT: 247, Andrew Lewis. What say for the
17 State?

18 MR. HUBBARD: Present.

19 CLERK OF COURT: What say for the Defense?

20 MR. YOUNG: Swear.

21 CLERK OF COURT: 272, Jeremy Mason. What say for the
22 State?

23 MR. HUBBARD: Present.

24 CLERK OF COURT: What say for the Defense?

25 MR. YOUNG: Swear.

1 CLERK OF COURT: 457, Dinah Washington. What say for
2 the State?

3 MR. HUBBARD: Excuse.

4 CLERK OF COURT: 329, Anh Pham. What say for the
5 State?

6 MR. HUBBARD: Present.

7 CLERK OF COURT: What say for the Defense?

8 MR. YOUNG: Give me a minute, please.

9 CLERK OF COURT: Yes, sir.

10 MR. YOUNG: Please swear Mr. Pham.

11 CLERK OF COURT: 464 Tracy Wehr. What say for the
12 State?

13 MR. HUBBARD: Present.

14 CLERK OF COURT: What say for the Defense?

15 MR. YOUNG: Please excuse.

16 CLERK OF COURT: 177, Terrie Hanley. What say for
17 the State?

18 MR. HUBBARD: Present.

19 CLERK OF COURT: What say for the Defense?

20 MR. YOUNG: Please excuse.

21 CLERK OF COURT: 249, Sharon Lindler. What say for
22 the State?

23 MR. HUBBARD: Excuse.

24 CLERK OF COURT: 254, Jeffery Long, Jr. What say for
25 the State?

1 MR. HUBBARD: Present.

2 MR. YOUNG: The State is out of strikes.

3 CLERK OF COURT: I know, I still have to ask them
4 anyway.

5 MR. YOUNG: I thought it changed, I am sorry.

6 CLERK OF COURT: 254, which one for the Defense?

7 MR. YOUNG: Please excuse.

8 CLERK OF COURT: 241 Toshia Latimer-Addison. The
9 State?

10 MR. HUBBARD: Present.

11 CLERK OF COURT: The Defense?

12 MR. YOUNG: Swear.

13 CLERK OF COURT: Number 146, Stacey Foster. The
14 State?

15 MR. HUBBARD: Present.

16 CLERK OF COURT: The Defense?

17 MR. YOUNG: Excuse.

18 CLERK OF COURT: 314, Judy Nixon. The State?

19 MR. HUBBARD: Present.

20 CLERK OF COURT: The Defense?

21 MR. YOUNG: Swear.

22 CLERK OF COURT: 96, Toni Clark. The State?

23 MR. HUBBARD: Present.

24 CLERK OF COURT: The Defense?

25 MR. YOUNG: Swear.

1 CLERK OF COURT: 156, Zachary Gantt. The State?

2 MR. HUBBARD: Present.

3 CLERK OF COURT: The Defense?

4 MR. YOUNG: We do our challenge for cause?

5 THE COURT: If you want. Y'all have got, I mean,
6 either side can do that.

7 MR. YOUNG: You have got our record, Your Honor.

8 THE COURT: So respectfully I am not going to grant
9 your motion for cause on him.

10 MR. YOUNG: Thank you.

11 THE COURT: But you are protected on it.

12 CLERK OF COURT: Strikes are one and two, correct,
13 Your Honor?

14 THE COURT: One and two.

15 CLERK OF COURT: 159, Richard Gentle. The State?

16 MR. HUBBARD: Present.

17 CLERK OF COURT: The Defense?

18 MR. YOUNG: Excuse.

19 CLERK OF COURT: 62, Todd Buehrig. The State?

20 MR. HUBBARD: Present.

21 CLERK OF COURT: The Defense?

22 MR. YOUNG: Excuse.

23 CLERK OF COURT: 495, Amy Wright. The State?

24 MR. HUBBARD: Excuse.

25 CLERK OF COURT: 136, Robin Ehrlich. The State?

1 MR. HUBBARD: Present.

2 CLERK OF COURT: The Defense?

3 MR. YOUNG: Swear.

4 CLERK OF COURT: Your Honor, I am sorry, how many?

5 THE COURT: I would go until we get them all.

6 CLERK OF COURT: 244, LaDonna Lee. The State?

7 MR. HUBBARD: Present.

8 CLERK OF COURT: Defense?

9 MR. YOUNG: Swear.

10 CLERK OF COURT: 56, Elizabeth Brown. The State?

11 MR. HUBBARD: Present.

12 CLERK OF COURT: The Defense?

13 MR. YOUNG: Swear.

14 CLERK OF COURT: 308, Shanna Nelson. The State?

15 MR. HUBBARD: Present.

16 CLERK OF COURT: The Defense?

17 MR. YOUNG: Excuse.

18 CLERK OF COURT: 222, Scott Johnson. The State?

19 MR. HUBBARD: Present.

20 CLERK OF COURT: The Defense?

21 MR. YOUNG: Excuse.

22 CLERK OF COURT: 402, Jason Smith. The State?

23 MR. HUBBARD: Present.

24 CLERK OF COURT: The Defense?

25 MR. HUBBARD: They are out.

1 CLERK OF COURT: That's right, they are, on that one.
2 Okay. 39, Donnie Blackmon.

3 THE COURT: All right. One moment. We are still at
4 four, that would be sixteen total jurors. Is that enough,
5 we have got more, we can go get two more if you like. I
6 think we do get two more.

7 MR. HUBBARD: Let's just go ahead and get what we
8 can.

9 THE COURT: Get two more?

10 MR. YOUNG: I think four is plenty, Your Honor.

11 THE COURT: I am going to get two more. I am going
12 to be conservative. Go ahead.

13 CLERK OF COURT: 39, Donnie Blackmon. What say for
14 the State?

15 MR. HUBBARD: Present.

16 CLERK OF COURT: The Defense?

17 MR. YOUNG: Excuse.

18 CLERK OF COURT: 14, Dawn Applegate. The State?

19 MR. HUBBARD: Present.

20 CLERK OF COURT: The Defense?

21 MR. YOUNG: Swear.

22 CLERK OF COURT: 370, Roger Sandy. The State?

23 MR. HUBBARD: Present.

24 CLERK OF COURT: The Defense?

25 MR. YOUNG: Excuse.

1 CLERK OF COURT: 491, Reba Williams. The State?

2 MR. HUBBARD: Present.

3 CLERK OF COURT: The Defense?

4 MR. YOUNG: Swear.

5 CLERK OF COURT: That is 18, Your Honor.

6 THE COURT: 18. All right. Y'all want to review the
7 strikes or not? Go ahead. I will give you a second and
8 Ms. Frick will do so.

9 MR. YOUNG: Your Honor, the Defense may challenge
10 under Batson for the State exercising all five of the
11 preemptory strikes during the main panel and the ones,
12 additional strikes they used as preemptory strike against
13 women.

14 THE COURT: Mr. Jennings is a woman?

15 MR. YOUNG: No, he is not, Your Honor. I apologize,
16 the State used four out of the six strikes that they used
17 against women, I apologize.

18 THE COURT: Okay. All right, Solicitor.

19 MR. HUBBARD: Yes sir, Your Honor. I am going
20 through our notes, sir. Your Honor, as to Mr. Jennings.
21 Go ahead and start with him. Obviously we did strike a
22 male, a white male. He was the one, if he were Governor
23 for a day would do away with the death penalty. He is the
24 one if Governor for a day would do away with the death
25 penalty and then when I questioned him he said, oh, well,

1 it is the law now. So he was very equivocal. That is why
2 we struck him. Ms. Jordan who I mentioned this morning.
3 Repeatedly talked about she did not want to do this, I
4 don't want to do it because I don't want to experience
5 that. She is the one I raised earlier, Your Honor.
6 Obviously she said she would try to be fair but she made a
7 comment about this haunting her for the rest of her life,
8 something to that effect. That is why we struck her. As
9 to 179, Tonya Harmon. She was the one that said she makes
10 her mind real quick and then she doesn't need to talk to
11 anyone else. I intend to make my decision and I usually
12 stick by it. Basically I don't tend to be persuaded. We
13 can see her in the jury room sitting in a corner, not
14 conversing, not talking. She has reached her opinion when
15 she walked in there. Your Honor, we want jurors that
16 would deliberate, share their thoughts. Most importantly
17 listen to everyone else, to reevaluate their own position
18 to see if they are, in fact, holding a position they think
19 they hold. We believe we are entitled to that. So we
20 struck her. Ms. Washington, she is the only African
21 American we struck and I will note that Your Honor
22 realizes that we presented. We are fine with 241, also an
23 African American; 247, also an African American, both male
24 and female. But as for Ms. Washington, you remember she
25 is the one, she worked at SCDC. She worked in this

1 violent wing. When asked about the death penalty she
2 said, we have got to forgive one another and you have got
3 to forgive yourself. Had nothing to do and completely
4 unresponsive to the question of death penalty. So her
5 first thought was on death, to forgive. That is why we
6 even questioned whether she was even qualified to serve as
7 a Juror. So 226, Desiree Jordan and 457, Dinah
8 Washington, we thought were very questionable if they even
9 qualified to sit based on their responses. So we struck
10 them. Again, Tonya Harmon who we struck, that is because
11 she struck us as someone who would dig her heels. That
12 leaves 249. I am looking at my notes, Judge. Your Honor,
13 her responses were, on the death penalty were what I would
14 say is weak. She had never thought about it before. She
15 answered their question that she would lean to life. And
16 the only limited circumstances she would see death to be
17 applicable would be someone like a Pee Wee Gaskins who was
18 a known serial killer in South Carolina. That was the
19 only answer she could give. We think she would be a very
20 weak Juror and we have an absolute right to strike
21 somebody we think would not give fair consideration for
22 both verdicts, life and death because the State deserves a
23 fair trial too. That was the basis for that, Your Honor.
24 And I will note that there are other females that are
25 still on. Tiffany Kent, Jessica Miller. Tiffany Kent is

1 231; Jessica Miller is 293; Toshi Addison is 241, African
2 American Female; Judy Nixon is 314; Toni Clark is number
3 96. All females, all on the jury. We believe we
4 satisfied, Your Honor.

5 THE COURT: Mr. Young, let me hear you again.

6 MR. YOUNG: Your Honor, looking through the jurors, I
7 believe that the State's reasons to go in for their,
8 exercise their strikes against women are pretextual in
9 that Juror number 272, Jeremy Mason, is a man who gave
10 very similar responses specifically with regard to which
11 death penalty is appropriate, serial killers or mass
12 murderers, while they said they struck a woman whose
13 responses were Pee Wee Gaskins. He said he wouldn't shed
14 a tear if the death penalty was gone. Their response to a
15 number of jurors was that, that they wouldn't have the
16 death penalty if they were Governor. We believe a
17 similarly situated Juror not struck by the State and upon
18 his responses we argue that the State's offered reasons
19 were pretextual.

20 THE COURT: Solicitor.

21 MR. HUBBARD: Your Honor, obviously out of all of
22 this I get five strikes so I have to choose, we do have to
23 make some strategic decisions. But, Your Honor, there is
24 nothing pretextual about this. It is who you think would
25 be a fair Juror. And, Your Honor, that is the call we

1 made, not based on sex, not based on race. But we made
2 that call on who we thought would be best appropriate to
3 listen to both sides. What Mr. Mason also does, he works
4 for a defense firm, he is more familiar with the law.
5 Much more interactive on questioning, think he would be a
6 Juror that back there in the jury room would talk, would
7 speak. The big thing was is he wanted to hear what they
8 had presented as well. And, Your Honor, we think he would
9 be receptive to what we have to show. So we did not have
10 that same confidence on those that we struck.

11 THE COURT: All right. Ms. Jordan, I understand the
12 reasons for that. She was very hesitant or not fully
13 certain whether the graphic nature, testimony would impact
14 here. That is not pretextual in nature. Ms. Harmon, if I
15 remember her right, she is the one that, I don't know what
16 word the Court would use, but kind of called out the
17 lawyers of re-asking the same questions so many times and
18 was very firm, confident in the chair. She said something
19 like, I take my oath very seriously and the graphic
20 testimony will be tough. But she more or less challenged
21 the lawyers to keep re-asking the same question and I have
22 answered the same way each time. She had a personality
23 about herself. I don't find that pretextual either. Ms.
24 Washington, if I remember her. She is the one that worked
25 formerly at the Department of Corrections. Yes. And I

1 find those reasons, excusing her because she was a former
2 employee at the Department of Corrections would not be
3 pretextual. Ms. Lindler, tell those reasons again.

4 MR. HUBBARD: Ms. Lindler was, she was an older
5 female, very meek.

6 THE COURT: I remember her, petite lady.

7 MR. HUBBARD: Yes, sir. And she was very, it was
8 hard to draw her out, she was very less interactive, less
9 thoughtful, said she had not ever thought about the death
10 penalty before. Your Honor, just, obviously when Your
11 Honor talked about the graphic nature of the case too,
12 that seemed to be a concern to her. And she was much more
13 hesitant on the stand with questions. Your Honor, that
14 just caused us concern. Obviously we want somebody back
15 there that can absorb everything because what we have got
16 is graphic. And we just weren't sure that she was the
17 person that can go back there and do that job faithfully.

18 THE COURT: I remember her now.

19 MR. HUBBARD: Your Honor, just so you know, for the
20 record too, we presented a number of other females, we
21 presented 164, Amy Girardeau, they struck her. Tracy
22 Wehr, we presented, they struck her. Terrie Hanley, we
23 presented, they struck her.

24 THE COURT: I think the State has provided a
25 reasonable basis for exercising the strikes on those and

1 the reasons given are not pretextual in nature. You have
2 got limited strikes. I deny the motion to restrike the
3 jury based upon a Batson violation. What else, Mr. Young?

4 MR. YOUNG: That is it, Your Honor.

5 THE COURT: All right. All right, I am not sure the
6 media knows this, before we bring the jury up I want the
7 media to know this. I want this to not be an issue. All
8 the issued called in, there will be 18, there are 18
9 jurors. I am not going to distinguish during the trial
10 between jurors and alternate jurors. I want all of them
11 paying equal attention all the way throughout. So I do
12 not want the media to try to figure out a repoire or
13 suggest who is an alternate and who is a regular Juror
14 because they have been present here in the courtroom. I
15 do not want that disclosed publicly so the jurors can
16 potential come into that information. I don't want that.
17 I know Mr. Monck is listening, he is looking right at me.
18 I don't want that tweeted, who is what. I don't want that
19 out there at all, I think that creates a hardship on my
20 jurors and I am doing it to protect them, for no other
21 reasons. So 18 jurors, 18 jurors will be called in
22 alphabetical order so they won't be aware to that and they
23 will remain 18 jurors throughout the trial until
24 deliberations will end and then they will be determined
25 which ones are doing deliberations. Any questions from

1 any of the media on that before we bring the jury in.

2 MR. MONCK: I believe we understand and I always look
3 at you.

4 THE COURT: Everybody does but you make good eye
5 contact with me. If you go on TV, Mr. Monck, you are
6 going to need some makeup.

7 MR. MONCK: I need more than that.

8 THE COURT: Okay. You are a good sport. You take my
9 good nature ribbing appropriately.

10 MR. YOUNG: Your Honor, I believe I had told the
11 Court that after the jury was struck I would need to renew
12 my motion for change of venue.

13 THE COURT: Yes, sir.

14 MR. YOUNG: I believe that five of the first twelve
15 jurors were jurors that stood up on Monday and exposed to
16 pretrial publicity and one of the alternate's. So based
17 on the overwhelming amount of publicity and the fact that
18 had a jury voir dire, I think that the fact that five of
19 those jurors in for the twelve would deprive Mr. Jones the
20 right to a fair trial and we would, again, ask the Court
21 to consider a change of venue.

22 THE COURT: Okay. I think we have taken an abundance
23 of to try to minimize pretrial publicity information out
24 there and so respectfully I am going to deny your motion
25 for change of venue on that fashion. Let's stand at ease

1 and bring the jury up here, please. Let's take a few
2 minutes because I don't think the elevator can hold
3 everybody.

4 (Whereupon, the jury comes into the courtroom at
5 approximately 10:40 a.m.)

6 THE COURT: Welcome to the courtroom. Thank y'all
7 for being punctual. I understand everybody is here on
8 time. We, the lawyers on both sides and the Clerk have
9 already gone through the process of selecting the jurors,
10 there are 18 jurors that will be called. So I want you to
11 follow the instructions of the Clerk and come up. I will
12 give you more instructions. Those of you who weren't
13 selected, thank you very much for your patience and
14 understanding also. Madam Clerk.

15 CLERK OF COURT: Please bring your belongings with
16 you. Dawn Applegate, Elizabeth Brown, Toni Clark, Robin
17 Ehrlich, Zachary Gantt, Conrad Gore, Tiffany Kent, Toshia
18 Latimer-Addison, LaDonna Lee, Andrew Lewis, Jeremy Mason,
19 Jessica Miller, Judy Nixon, Anh Pham, James Prescott,
20 Jason Smith, Jacob Whitten, Reba Williams. That is the
21 jury, Your Honor.

22 THE COURT: That's it. All right. Those of you not
23 selected, thank you for coming and thank you for your
24 patience. You are free to go.

25 (Whereupon, the remaining jury panel was excused from

1 the courtroom.)

2 THE COURT: The first thing is first. Y'all are 18
3 people, y'all are all jurors. I am not distinguishing
4 between jurors and alternates, that will be at the end. I
5 will say, okay, do it this way. So everybody has got to
6 pay attention equally. A couple of things. I have got a
7 team of law enforcement from the State Law Enforcement
8 Division. They are going to be y'all's security in and
9 out of the Court House so no one will bother y'all,
10 communicate with you during the trial while you are in the
11 Court House. Part of that necessity is because with the
12 media here and they have got equipment and whatnot and all
13 of this equipment will be running when we are, during the
14 trial. Their equipment headquarters is back in what is
15 normally the jury room, it is right beside my chambers.
16 It is smaller, since I have got 18 of you, the room I
17 believe y'all were in earlier is the Grand Jury room, it
18 is bigger and has bathrooms. Y'all will be in there. So
19 it is going to be a little bit longer walk to get back and
20 forth and in front of the elevator and so the SLED Agents
21 make certain while y'all are coming and going to and from
22 the courtroom, to and from the Court House, y'all will be
23 free from somebody saying, hey, you got a minute. No
24 communication. Now and throughout the trial you are not
25 to communicate with anybody, do not discuss the case with

1 each other, don't discuss it. We are not going to go home
2 and do any discussion with our spouses or otherwise. I am
3 going to lean on y'all to tell me when you need a break,
4 when you want to go to lunch, how early to start in the
5 morning and how late to go in the evening. I am thinking
6 8:30 to 9:00, to 12:00 or 12:30, start back at 2:00 and go
7 to 5:30 or so. That is me as a day, a good day's work.
8 If y'all want to start at 8:30 the lawyers will start at
9 8:30. I am trying to minimize your inconvenience. Now,
10 did I end up with any jurors, Madam Clerk, that needed the
11 Friday early thing. I had two jurors that had a early out
12 on Friday. I don't guess we did.

13 CLERK OF COURT: I will check it, Your Honor.

14 THE COURT: Anyway, so, as we go throughout,
15 remember, y'all are under oath to not communicate about
16 the case, not discuss the case, not do any independent
17 research. What y'all get you will get in the courtroom as
18 a group. Tomorrow we will start at 1:00 o'clock, opening
19 statements. There is a couple of more things I have got
20 to deal with, preliminary things to make things run
21 smoother. Everybody likes to get the ball rolling and hit
22 the ground running. This case has presented some
23 challenges because of the, all sorts of things, get
24 witnesses organized coming in from out-of-state. We will
25 start probably the testimony Wednesday morning early. So,

1 when I talk to y'all tomorrow I want to know, Wednesday
2 morning we will start at 8:30 or 9:00. Okay. Now, I am
3 going to select probably two people to kind of be my, not
4 really Foreperson but my communicators. Do you need a
5 break or something and let me know, let the bailiffs know
6 and they will communicate with me and we will take that
7 break. So if something is going on in trial and y'all
8 want a break get the attention of me and we will get out
9 of the courtroom in that fashion. So that is what we will
10 do. Now, before we leave today I am going to put you back
11 down in the, where you sat in the courtroom to get an idea
12 where you are going to park. We have got parking for
13 y'all available and it is going to be underneath, it will
14 be secured, you will come in in a different elevator than
15 other people. So there is a little more going on as to
16 where y'all will park each morning. Now, here, this is
17 important too. I made the decision to not sequester you
18 and put you in a hotel. I want you comfortable to sleep
19 in your own bed. Now, the bargain for that is to not talk
20 about the case, not to do any independent research because
21 that is how, that is what sequestration does, you take the
22 phones, put on movies, no TV, no news. That is a
23 hardship. Part of the bargain is y'all have that
24 responsibility to this trial to not let something outside
25 the Court House influence you and how you make your

1 decision. We have a big responsibility, all 19 of us,
2 Judge and the Jury. I make legal decisions, y'all make
3 factual decisions. We are working together, one can't
4 cooperate without the other. When we start tomorrow I am
5 going to give you compensation books, kind of like the old
6 homework notebooks, they were black and white, I want
7 y'all to get one if you want, nobody is required to take
8 notes. But people like to have that just to jot stuff
9 down. So I went and bought some at Walmart this morning
10 and pens for each of you. And I told the Clerk, I want to
11 give them to them from me. That is what I will do. At
12 night they will be locked up, nobody will be perusing your
13 notes. They will be secured and at the end of the trial
14 you can take home or you can have it shredded. Either
15 one, so those are your notes for your own use. And I will
16 give instructions at the end. So somebody that did not
17 take notes the whole trial that is fine, a note taker's
18 notes don't trump a person who is a good listener,
19 everybody is equal no matter how you receive information.
20 What else. I think those are all of my instructions. For
21 now is basically see you tomorrow at 1:00 o'clock. Go
22 back to 3-c and get additional instructions. I want y'all
23 to meet the SLED agents, they will go down there with you.
24 I want y'all to know what they look like because they are
25 going to be around you enough, I want you to know their

1 names and they are all really nice folks. The bailiffs,
2 you will get to know their names, please don't hesitate to
3 ask if you need something and we will see what we can do,
4 they will make your inconvenience less inconvenient. All
5 right. Now, y'all go to 3-c and if y'all have any
6 particular questions I will be around and I will be
7 available to answer those, it may be that the Clerk sends
8 somebody to ask me and I will send the answer back down.
9 When you get back down y'all can ask questions like that.
10 So without any further instructions to you. Y'all are
11 free to go back down to 3-C.

12 MR. YOUNG: Your Honor, before they are excused.

13 THE COURT: Yes, sir.

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

17 THE COURT: Madam Clerk, can you give the oath to the
18 security team.

19 CLERK OF COURT: Yes, sir.

20 THE COURT: Y'all come up here and place them under
21 oath to do their job diligently and fairly.

22 CLERK OF COURT: Yes, sir. Just stand there. Please
23 state your names starting here.

24 SLED AGENTS: Daniel Remion, R-E-M-I-O-N; Duston
25 Phillips, D-U-S-T-O-N; Wayne Mitchell; Roxine Chapski,

1 R-O-X-I-N-E, C-H-A-P-S-K-I; Charles Coats, no E; Ricky
2 Grubbs.

3 CLERK OF COURT: You as the security team for the
4 jury in the State v. Jones matter, you shall be in charge,
5 you will instruct them where to go and when to go, how to
6 go, you will not speak to them about the case nor shall
7 they speak to you or anyone else about the case. You will
8 ensure that no one comes upon them and discusses any
9 matters about this matter before the Court. You shall
10 secure them and manage them as instructed by the Court
11 until you are relived of such matters by the Court.
12 Please respond by I do or I affirm.

13 (Whereupon, all SLED Agents responded by I do.)

14 THE COURT: Thank you very much. This is your team
15 of agents. And I am going to let them go down, y'all
16 follow the jury down, how about a couple in the front and
17 a couple in the back and go to 3-C. And instruct them on
18 the parking and y'all may take them down and even show
19 them. Okay. Y'all follow the agents.

20 (Whereupon, the jury was excused from the courtroom.)

21 THE COURT: We have got those couple of motions. I
22 would like to do those after lunch. How about 1:00 for
23 those motions. I am going to meet with the media
24 informally to make sure we are on the same basis. I am
25 not going to change anything but just sit down with them

1 to make certain they don't have any other concerns. We
2 will come back at 1:00 for the motions. Y'all stand at
3 ease.

4 (Whereupon, a lunch break was taken.)

5 THE COURT: Let me see two lawyers.

6 (Whereupon, a bench conference was held on the
7 record.)

8 THE COURT: Tiffany Kent is a Juror, she reported
9 that whoever she works for spouse works for the Public
10 Defenders office. We didn't know that.

11 MR. HUBBARD: Her boss' spouse works for the PD?

12 THE COURT: Yes.

13 MR. HUBBARD: Okay.

14 THE COURT: And alerted Lisa a little bit ago. I
15 want y'all to decide what to do with it, we can deal with
16 it tomorrow.

17 MR. HUBBARD: Her name is again?

18 THE COURT: Tiffany Kent.

19 MR. HUBBARD: Okay.

20 THE COURT: Y'all deal with that.

21 MR. YOUNG: Yes, sir.

22 THE COURT: Thank you. Are y'all ready to go on the
23 motions? I think I have two. I am guessing we have two.

24 MR. YOUNG: Yes, sir.

25 THE COURT: We want to deal with that 404 issue

1 first, depending on whose motion it is. The State's
2 position that it is in response to the Defense motion.
3 So, Mr. Madsen, are you handling that, Mr. Madsen?

4 MR. MADSEN: Yes, sir.

5 THE COURT: Let's hear from you first and then I will
6 hear back from the State. I believe it is your motion but
7 if it is not I will still hear both sides.

8 MR. MADSEN: Judge, they filed a motion for, at least
9 a pleading that indicates notice of evidence or prior
10 wrongs, crimes or bad acts. The motion, the notice
11 indicates that during the guilt phase of the trial or any
12 sentencing proceeding conducted that the State will
13 present evidence as to the Defendant's adult and juvenile
14 character, characteristics, mentality, intelligence,
15 background and prior and subsequent adult and juvenile
16 crimes, unlawful acts, crimes of violence, bodily harm
17 including acts of domestic violence and threats of
18 domestic violence, sentences and punishments, parole,
19 probation and other unlawful acts and conducts prior and
20 subsequent adult and juvenile violation of laws, rules,
21 regulations, ordinances and fractions prior and subsequent
22 adult and juvenile crimes, criminal records, punishment--

23 THE COURT: Is that the caption or is that--

24 MR. MADSEN: -- that in it. And I guess my point is
25 this and I am sorry for reading so fast. My point is

1 this, it doesn't tell us, if they plan on introducing
2 something in the first phase of the trial or the second
3 phase of the trial, Your Honor is going to have to rule on
4 the appropriateness of it. We made a motion to basically,
5 for it to be more specific so we know what we are talking
6 about because obviously if they get to a point they put
7 something in or try to put something in and it is not
8 beyond clear and convincing we have got a problem. And as
9 Your Honor knows, we have got 50,000 pages of discovery
10 and this just basically says something in there. And so
11 that was our motion. Additionally, it talks about
12 propensity. I would hope, even though it is captioned
13 that this is first phase and second phase, clearly under
14 404(b) propensity evidence, it is just, doesn't fall under
15 there. And so that was kind of our motion to make it
16 specific, what specific things or actions are they talking
17 about because until we know that the Court doesn't have
18 the ability to rule.

19 THE COURT: All right. Ms. Mayes.

20 MS. MAYES: Yes sir, Your Honor. This is Defense
21 motion 25. If I may approach I am going to go ahead and
22 pass it up to the Court at this time. Based specifically
23 alleged or requested notice for any prior bad acts or
24 prior wrongs, pursuant to South Carolina Rules of
25 Evidence, 401, 402, 403 and 404. And so we are not

1 talking about just 404(b) evidence, Your Honor, it would
2 be any evidence of a prior wrong. This is the State's
3 response and I will note that in their motion, 25, they
4 requested notice within 30 days of trial. In response to
5 that, Your Honor, the State filed this notice.

6 MR. MADSEN: Can I see that.

7 MS. MAYES: Yes, we can get you a copy of that.

8 MR. MADSEN: Let me just make sure we are talking
9 about the same thing.

10 MS. MAYES: The State's notice was filed March 29th
11 of 2019.

12 MR. MADSEN: Okay. I just wanted to make sure.

13 THE COURT: It is the same one, Mr. Madsen?

14 MR. MADSEN: Yes, sir.

15 THE COURT: Okay.

16 MS. MAYES: So, Your Honor, our response was to their
17 original motion. This is not a motion for admission of
18 Lyle evidence, I believe as it was referred to earlier.
19 This is a motion in response to their request pursuant to
20 Rules of Evidence 401, 402, 403 and 404. That would
21 include anything that would potentially be a prior wrong.
22 So in response to that, Your Honor, under that recognition
23 we did provide them with multiple witnesses, their names
24 and I believe the next day additional witnesses as well
25 and made references to anything that could potentially be

1 a prior wrong including the sentencing phase. Well, we
2 are way too premature at this point to be dealing with
3 character evidence in the sentencing phase.

4 THE COURT: They understand that, it was the guilt or
5 innocence side that they were concerned.

6 MS. MAYES: So looking solely at the guilt phase,
7 Your Honor, what we foresee at this time is evidence of
8 the drug use. And Your Honor has heard much of the
9 testimony already that deals with the seizure of drugs on
10 the night of his arrest, September 6th, 2014. Beyond
11 that, Your Honor, there is going to be evidence dating
12 back to May of 2014 that he was purchasing the same type
13 of drugs, street name being Spice but containing the
14 ingredients, AB Pinaca. And that is going to relate to
15 testimony that is going to be offered by the State in
16 response to the NGRI defense. And specifically, they are
17 alleging all of these behaviors which may, according to
18 their presentation, relate to evidence of insanity or
19 mental illness. The State's position in response is that
20 anything going back to May, which is potentially related
21 to his use of this drug, AB Pinaco, is now relevant in
22 response to their case. So, Your Honor, it then becomes
23 res gestae and the State versus McGee I will point there,
24 I will go ahead and pass up a copy of that as well. In
25 State versus McGee, Your Honor, 408 SC 278, 2014, recent

1 case which really reinforce the importance of res gestae
2 testimony when it is relevant to a matter in controversy.
3 And here the evidence of the Spice use would be a integral
4 part of the crime for which he is charged and is needed to
5 aid the fact finder in understanding the context of that
6 crime and specifically the insanity defense that is
7 alleged. Now, with all of that said there were references
8 throughout these recorded audiotapes to his drug use. We
9 did not receive a request from the Defense to redact any
10 of those portions. So based on that we are operating with
11 the understanding that they are not objecting to that but
12 we just want the record to be clear regarding the State's
13 position. That is what we foresee at this stage in the
14 trial, Your Honor, regarding any type of prior bad acts,
15 prior wrong, anything that might be considered character
16 evidence in the guilt phase. Now, we also propose
17 redacting from those confessions, statements, however you
18 want to term them, the references to a DSS investigation.
19 Ordinarily an open or prior DSS investigation would not be
20 admissible in the State's case-in-chief and certainly not
21 in the guilt phase. But, again, they have not requested
22 those portions be redacted. Most likely it is because
23 their experts have made numerous references to that DSS
24 investigation and we expect that to be offered during
25 their testimony. But we just want the record to be clear

1 that if they choose to leave those portions in the
2 statements that that is a strategic decision that they are
3 making because otherwise, Your Honor, those portions would
4 need to be redacted. So that is a little bit of a
5 separate issue but I wanted to go ahead and address it now
6 since it does relate to evidence of prior wrongs during
7 the course of the State's case-in-chief in the guilt
8 phase.

9 THE COURT: Okay, Mr. Madsen, comment on the, it
10 seems Ms. Mayes is representing to the Court that the
11 State intends, wishes to go into the use of the Spice.

12 MR. MADSEN: Okay with that.

13 THE COURT: Okay with that. And all the way to May,
14 prior to the September date. You have received notice of
15 that and that is what they intend to use. The other acts
16 could come in in the sentencing side but not in the--

17 MR. MADSEN: And as Your Honor can see what our
18 concern was.

19 THE COURT: Oh, yeah.

20 MR. MADSEN: And I guess our request was to make more
21 specific.

22 THE COURT: That behavior for your res gestae, Ms.
23 Mayes, is that right?

24 MS. MAYES: Yes sir, Your Honor.

25 THE COURT: Fair enough. So y'all understand that.

1 MR. MADSEN: We are fine with that.

2 THE COURT: All right, what about the references to
3 the statement to the DSS investigation or whatever opened
4 or closed. Because I think it is kind of unclear, there
5 may be one open and close and the other one open and
6 close. But there was several DSS communications on and
7 off.

8 MR. MADSEN: I am going to let Mr. Young address it
9 since it is the statements.

10 MR. YOUNG: Your Honor, the DSS allegations are
11 coming out, if not through the State, it will be coming
12 out through the Defense as part of our--

13 THE COURT: So the statements--

14 MR. YOUNG: --in the insanity case. I don't care if
15 they come out on the State's case.

16 THE COURT: All right, fair enough to you.

17 MR. YOUNG: There were a number of specific
18 allegations alleged in a variety of reports. The first
19 DSS report starts off with a neighbor saying that Tim had
20 threatened to shoot his dog. Now, I don't know if the
21 State intends to offer that. That is what we were asking,
22 does the State intend to offer that statement or they
23 intend to say, DSS was called and got involved based on
24 the family situation.

25 THE COURT: Have y'all discussed that?

1 MS. MAYES: I can clarify that to a certain extent,
2 Your Honor. Because we are so cautious about any
3 testimony regarding DSS in the guilt phase, it is just a
4 strategic decision on their part to leave in the
5 references in his recorded statement of the DSS
6 investigation. We will do that as long as they are on the
7 record saying that they want it in. But that would be the
8 extent of it. Now, once that door is open perhaps their
9 experts or someone else, if the facts of the DSS
10 investigation come into play and that door is open the
11 State may then potentially respond or clarify somehow but
12 we are not offering that evidence beyond what is in the
13 confession case-in-chief unless or until the door is open
14 wider.

15 THE COURT: Is that responsive to your concern?

16 MR. YOUNG: Yes, sir.

17 THE COURT: Okay. I understand her, their posture
18 and I think that is good to understand that.

19 MR. YOUNG: There are a number of references to Mr.
20 Jones' prior criminal record, the fact that he has been in
21 prison before. In these statements those are coming out
22 as part of our case for insanity. However, I do think it
23 needs to be clarified that some of the charges that he
24 plead guilty to, I don't know how much detail they intend
25 to go into it, we don't intend to go into any great

1 detail, there is some charges he plead guilty to, he got
2 sentenced, this is what happened, there were mental health
3 evaluations, there were other things that happened as a
4 result of that sentence which is where we intend to focus.
5 One of those things is that he was charged with burglary
6 which was, which in South Carolina would consider breaking
7 and entering in a motor vehicle as opposed to a burglary
8 because it was going into in an open car in a driveway and
9 it was titled a burglary. In that statement, would be in
10 this statement so we just need to be careful with our
11 language. in South Carolina it needs to be referred to as
12 what it would be inside, if they are intending to get into
13 that level.

14 THE COURT: Ms. Mayes.

15 MS. MAYES: Yes sir, Your Honor. The only statement
16 that I am aware of that is an issue would be the one in
17 the statements that was recorded September 8th, 2014 and
18 that is the statement to FBI Agent Mackey and the Sheriffs
19 Department Investigator Creech. That is on page 77, that
20 is line 25. Mr. Jones makes the statement, I have done
21 time before. And one of the Investigators responds back,
22 okay. We would redact that entire line and the response.
23 Now with that said, there is nothing in the State's
24 case-in-chief in guilt phase that we would offer regarding
25 his record whatsoever. So I am not sure what Mr. Young

1 was referencing.

2 THE COURT: Okay. Anything else need to be redacted
3 first of all?

4 MR. YOUNG: No, sir.

5 THE COURT: Okay. And then they are not going to use
6 in their case-in-chief that you referred to.

7 MR. YOUNG: Yes, sir.

8 THE COURT: That is clear.

9 MR. YOUNG: Yes, sir.

10 THE COURT: But the sentencing side may be a
11 different ballgame, we won't worry about that now.

12 MR. YOUNG: Yes, sir.

13 THE COURT: Okay, good.

14 MR. YOUNG: There was a police report taken in
15 Lexington during the time of separation about threats, the
16 threats about Amber Jones' neck. There is a statement
17 that she gave to law enforcement, I don't know what the
18 State intends, if anything, to do with that.

19 THE COURT: Is she subpoenaed by either side?

20 MR. YOUNG: She is subpoenaed by us.

21 THE COURT: Y'all plan on using Mr. Jones?

22 MS. MAYES: Yes sir, Your Honor. But, again, we have
23 already disclosed to the Court the extent of anything that
24 would be a considered a prior wrong and it is going to
25 relate to drug use. In the State's case-in-chief, in the

1 guilt phase we would not get into any prior threat that he
2 has made against her. Now, I can't control what might
3 happen on cross-examination but we are not eliciting that.

4 THE COURT: I think that, I am clear that she is not
5 predictable in her responses. They are not going to ask
6 her a question and if she responds otherwise we will deal
7 with it.

8 MR. YOUNG: Yes, sir.

9 THE COURT: Okay. Fair enough.

10 MR. YOUNG: There are a number of allegations about
11 abuse against Mr. Jones from both school people, at the
12 school, school personnel, school nurse, school teachers,
13 school counselors.

14 THE COURT: The mandatory reporters or whatever?

15 MR. YOUNG: Yes, sir.

16 THE COURT: All right.

17 MR. YOUNG: And some of the babysitters, some of
18 these reported to DSS, some of them weren't and some were
19 reported by Ms. Jones. So I don't know what, if any,
20 extent the State intends to get into those.

21 THE COURT: All right. What about that, Ms. Mayes?

22 MS. MAYES: Yes sir, Your Honor. Again, guilt phase,
23 case-in-chief, we have already addressed that. If their
24 experts open the door to the DSS investigations we may
25 then respond or clarify. But we just can't predict that

1 before it happens and Your Honor would be made aware.

2 THE COURT: They are not going into it unless it is
3 open. Fair enough.

4 MR. YOUNG: I think that is it for the 404(b) and
5 then we have some other redaction request.

6 THE COURT: Okay. Now, what about, I think I had
7 left an issue unresolved and I would like to address it
8 and it was regarding what instructions will be given to
9 the jury regarding the verdict form and the result of each
10 verdicts. So I want to address that if y'all don't mind.

11 MR. YOUNG: Not at all.

12 THE COURT: All right. This is what, I will let
13 y'all comment on that. I know y'all's respective
14 positions have changed but I studied all the cases that I
15 could find, Poindexter reference, everything on that. I
16 am going to be very consistent and firm in instructions to
17 the jury, this is kind of what I have gotten written down.
18 Y'all can make comments on it but something along the
19 lines that the lawyers are going to not be allowed to
20 present to you on any consequences of any of the four
21 verdicts. The function of the jury is to determine
22 whether the Defendant is guilty or not guilty.
23 Consequences of the verdict are in no way determining
24 guilt or innocence. That is consistent with Poindexter
25 and all the cases that it supports. I think that the jury

1 needs to know that, I may tell them that if y'all don't
2 mind. In the opening, that is not going to be something
3 they are going to be presented on. So, that is what I
4 intend to instruct if the question comes up. All right.

5 MR. YOUNG: Yes, sir. We would object to the
6 instruction and request that the statute be charged.

7 THE COURT: Okay. And you have been consistent on
8 that so that, you have got a good record on that. You can
9 remake it, renew it then.

10 MR. YOUNG: I can tell the Court, there will be times
11 during witnesses testimony where and we will be very
12 careful to alert the Court that at this point and time we
13 would like to proffer some testimony and maybe we would
14 have to send the jury just to take some testimony about
15 what does happen.

16 THE COURT: I think that would be the appropriate way
17 to manage it. Okay. What else we got outstanding. And I
18 told the media regarding the audio/video of the testimony
19 of the extent in the morning, that that was not to be
20 published, tweeted because until he testifies, that is
21 when it comes into the trial. So they may be in here and
22 help us record it but it is not going to be reported on
23 other than maybe a witness was presented in audio/video
24 and it will be preserved. Something like that. We can do
25 that. None of the subject matter of the testimony will

1 not be published ahead of time, out of order. So that is
2 on the shelf, free game if it gets published during trial,
3 if y'all don't use it then it is up to you.

4 MR. YOUNG: Yes, sir. I guess I need to check with
5 the media personnel, they assured me that that is
6 something that they can do, they would be ready to do.

7 THE COURT: I will help you with that. We talked
8 about that exact issue in the media meeting. They want to
9 use that testimony and presentation as a sound check and
10 audio check, everything. So they are counting on it being
11 in here so they can verify their equipment is working like
12 they want it because the jury won't be here and it will
13 give them a good opportunity to do that. So the answer is
14 yes.

15 MR. YOUNG: Thank you.

16 THE COURT: And I thought that was helpful. They
17 were actually glad to have that chance to work with
18 somebody.

19 MR. YOUNG: And it is going to be, there is a brief
20 and I think it is eight slide, power point that goes with
21 it so we will see how it all works together.

22 THE COURT: I think, that also would be helpful to
23 them managing their equipment and the logistics and
24 everything. So they are counting on it.

25 MR. YOUNG: Okay.

1 THE COURT: So, yes, they will be here ready to go at
2 8:30.

3 MR. YOUNG: Thank you.

4 THE COURT: Anything else, Solicitor.

5 MR. HUBBARD: Just following up what Mr. Young said,
6 the slides. We just want to make sure we know that those
7 are.

8 THE COURT: Okay. Now, do y'all want me in here when
9 that testimony is going on or not. Joy is going to take
10 the transcript down and already have it done. So she is
11 going to transcribe it. It is going to audio/video for
12 the jury. She is going to sit here and listen to it and
13 take it down as it comes so she has it done.

14 MR. YOUNG: We want to do it in here.

15 THE COURT: Do you want me in here?

16 MR. YOUNG: Yes, sir.

17 MR. HUBBARD: Yes, sir.

18 THE COURT: I thought you did because if an objection
19 comes up.

20 MR. YOUNG: Yes, sir.

21 THE COURT: I will be here. I was thinking you did.
22 That works good, all the above as far as coordinating that
23 and it helps the media folks in the back and they have
24 been very appreciative of us coordinating with them. So
25 far the media has been an absolute pleasure, they are

1 coordinating with each other and Captain Myrick has done a
2 good job of heading that up. The media meeting went real
3 well.

4 MR. HUBBARD: Your Honor, that does bring up
5 something, we have got Captain Myrick on our witness list,
6 not as a fact witness but just something that I don't
7 think his presence is going to have any impact on. But
8 not as a fact witness. I don't even know if he was here
9 at the time this happened. Just wanted to let Your Honor
10 know.

11 THE COURT: Okay. Got anything else for me take this
12 afternoon.

13 MR. YOUNG: Yes, sir.

14 THE COURT: All right. Mr. Secor.

15 MR. SECOR: May I approach just to make this a little
16 bit easier.

17 THE COURT: Absolutely.

18 MR. SECOR: Your Honor, these are quotes from the
19 interrogation of Mr. Jones after being arrested in
20 Mississippi. They were with Special Agent Mackey and
21 Investigator Creech.

22 THE COURT: Hold on, Mr. Secor. That printer is
23 going to drive me crazy, it is coming through the loud
24 speaker really good. I told the media that also. The
25 media is going to be able to type and tweet during the

1 trial, that is quiet. If it bothers me or Joy or anybody
2 then I will ask them to stop. I am telling y'all that, I
3 will do the same with y'all. So something, I know y'all
4 have got to get stuff done but if something is bothering
5 or interrupting the presentation I will say, please stop,
6 like this. Y'all are subject to that same rule for the
7 Court. So I just noticed, I hadn't heard that printer
8 before but I could hear it in the loud speaker just then.
9 That is how I am going to manage it and the media seemed
10 to like that also and Joy liked it a lot. That is my main
11 concern, was her. Mr. Secor, back where you were.

12 MR. SECOR: Thank you, sir. I guess we should
13 probably make what I handed up as a Court's exhibit just
14 for reference. It is a document, total redactions for
15 statement transcripts. It is obviously a request by the
16 Defense. The things that we would like redacted from the
17 statements. The first one is from recording on page
18 thirteen where the Investigator is speaking with Mr.
19 Jones, he is referencing a conversation that he had with a
20 woman prior to his arrest. And the crux of our argument
21 about that exchange is that the Investigator is, that the
22 information gleamed from the female who referenced is
23 hearsay, without an exception, and in addition it also
24 violates Mr. Jones' right to confrontation, is the
25 information from this female was relayed to law

1 enforcement and testimony on the nature. So we would,
2 base that claim on the Sixth Amendment of the United
3 States Constitution, Fourteen, South Carolina Constitution
4 in Crawford versus Washington, 5401 US 36, 2004. If we
5 can go one at a time.

6 THE COURT: Okay. Y'all ready to address that? Mr.
7 Graham.

8 MR. GRAHAM: Your Honor, my understanding it is
9 objecting because it is hearsay?

10 MR. SECOR: Yes, sir. And confrontation, yes.

11 MR. GRAHAM: It was an interview, he was asked
12 questions that he answered. It is not, his answers are
13 really what is important, I lied, and I lied and I lied to
14 her and told the the kids, talks about the children being
15 deceased. It is facts, otherwise they wouldn't be able to
16 interview anybody and we would never be able to get any
17 taped interviews in. It is not offered for the truth of
18 the matter as far as what day he talked to her on. She
19 is, I believe, is going to testify. So she will be, in
20 fact, isn't that right. She will testify, she will be
21 called at some point. If they want to cross her on the
22 contents and the truth of it they can.

23 THE COURT: All right. The hearsay that she talked
24 to him, is that going to be challenged as not credible. I
25 mean, because, that is one of those hearsay, it could be

1 but if it is not offered for the truth, it is just offered
2 because it was said.

3 MR. GRAHAM: Judge, this would be similar to, when
4 you got two suspects who are being interviewed and the
5 police have them in different rooms and they go from one
6 and the other and they say, we just talked to your
7 codefendant and he said this. I mean, it doesn't matter
8 if it is true or not.

9 THE COURT: Right. That is what I am asking Mr.
10 Secor. It is not to prove it, it is offered that it was
11 said.

12 MR. SECOR: I understand. We can solve the problem
13 regarding the confrontation issue. This is testimony
14 information, it was relayed to law enforcement and is
15 being utilized by law enforcement for the purposes of
16 eliciting information from Mr. Jones. I understand Mr.
17 Graham's argument but our objection to it still stands on
18 those grounds.

19 THE COURT: I am going to not suppress that. That
20 seems to me that he is being interviewed, the information
21 is, you talked to someone on the phone, what did you tell
22 them and the response to it. So that is not really the
23 other end of the conversation as being questioned about.
24 So I kind of disagree with you on that.

25 MR. SECOR: Yes, sir. If I may, also I should have,

1 before I started this argument on the statement I should
2 have renewed our prior objection to interrogation and
3 statements based on the motions filed and arguments heard
4 before this Court, and also, the State was -- on the
5 roadblock in Mississippi. Thank you.

6 THE COURT: All right. For all of those issues you
7 are protected and timely.

8 MR. SECOR: Thank you, sir. The second request to
9 redaction on the sheet they handed up to the Court, from
10 on page 33. The Investigators made a reference to the
11 remains of the Jones children being a pile of and then
12 that gets cut off and Mr. Jones says, give garbage bags.
13 And the Investigator says, five garbage bags. So it looks
14 like there is just garbage there. Okay. And Mr. Jones
15 says, something that is inaudible. And then dead in there
16 was the end of the quote. We would argue that the
17 admission of that is a violation of Rule 403 as being more
18 prejudicial than probative and therefore creates the
19 danger of unfair prejudiced. Mr. Jones had told the
20 Investigators that they, that the remains of the children
21 were in garbage bags. That is true, that is how they
22 found them. But I think the inference by Investigators
23 that they are just thrown out there like garbage is
24 violating Rule 403.

25 THE COURT: Ms. Mayes.

1 MS. MAYES: Yes sir, Your Honor. And that on its
2 face is not prejudicial. It is a fact in the case that
3 each of the children's bodies were put into individual
4 garbage bags. So the fact that he has explained to the
5 officers that the bodies are concealed in garbage bags is
6 an essential fact in the case and it is important and
7 relevant to the State because it goes to criminal
8 responsibility which is now an issue with the insanity
9 defense and also be getting the submission of a guilty but
10 mentally ill verdict. So whenever we have an issue
11 regarding knowledge of guilt and then an attempt to
12 conceal that evidence it is certainly relevant and
13 probative to the issue of criminal responsibility. And
14 that is what it is, Your Honor. He states that he put
15 them in garbage bags and that he then put them off to the
16 side. The fact that they are in garbage bags and he
17 acknowledges that during the course of the interview, it
18 is certainly probative to the State's case.

19 THE COURT: Come back with your prejudicial argument,
20 Mr. Secor.

21 MR. SECOR: Yes, sir. Clearly the evidence that the
22 children's remains were found in black garbage bags is
23 going to come into evidence. That is not what I am asking
24 to suppress. I am asking to suppress that the fact that
25 the investigators says that, infers that, based on the

1 first lines of the statement, you said that they just
2 looked like they were a pile of, and then he ends, Tim
3 says five bags, five garbage bags. And the Investigator
4 infers that Tim is saying that they are, just look like
5 garbage which I don't think was the actual intention of
6 the statement. And under any definition I think that any
7 inference that he is stating either by himself or by,
8 officers suggestion that the children are garbage is
9 highly prejudicial and is not probative of anything. The
10 evidence that they are found, the condition that they are
11 found is going to come in, I can't imagine that in any way
12 it could be kept out.

13 THE COURT: So you are saying that the inference is,
14 is that, you think it is prejudicial, that the jury could
15 infer that Mr. Jones was considering the kids, "garbage"
16 as opposed to the way I heard it, because I am not on the
17 jury, the way I heard it was, it was an inconspicuous five
18 garbage bags out there that you might not notice, if you
19 rode by you wouldn't know what is in it.

20 MR. SECOR: Yes, sir.

21 THE COURT: Just five garbage bags.

22 MR. SECOR: Yes, sir.

23 THE COURT: That is what I heard but I am not the--

24 MR. SECOR: I can understand a person interpreting
25 that way. When I heard it, my first impression was it

1 sounded as though they were being referred to as garbage.
2 And that, I think, certainly I can tell you it is not
3 accurate as to what Mr. Jones thinks or feels but also
4 just a suggestion of it, I think it is prejudicial and
5 that is the basis of my argument.

6 THE COURT: So 403 straight away. And I think that
7 it is probative, it is certainly prejudicial to some
8 extent but I think the probative value that that is how
9 they were found, I think it comes in in spite of the
10 prejudicial nature of it. I think it is outweighed but it
11 is, I understand your argument very clearly.

12 MR. SECOR: Yes, sir. Should I continue?

13 THE COURT: Yes, sir.

14 MR. SECOR: The third one is recording on page 46
15 through 47. The Investigator states, "Nahthan was an
16 accident but you murdered the other four children." Tim
17 responds, "yes." Investigator says, "Okay. Why did you
18 do that. We talked about this earlier." Your Honor, I
19 would base this objection on South Carolina Rule of
20 Evidence 701 regarding lay opinion and 704, regarding
21 opinion on the ultimate issue. This is an Investigator
22 using the word, murder, to define Mr. Jones' conduct.
23 Therefore it is a lay opinion on ultimate issue and it is
24 also a legal conclusion, an admission, lay opinion on
25 ultimate issue.

1 THE COURT: Solicitor.

2 MR. HUBBARD: Yes sir, Your Honor. This is an
3 interview where they are not given legal terms. Let me
4 define what murder is, let me define what accident is
5 because there is a legal definition for that. This is a
6 one on one officer, Tim Jones in a room and based on what
7 Mr. Jones described, he did it with those other four
8 children. The officer goes, so, you are saying that
9 Nahtahn was an accident but you murdered the other
10 children. The importance of that is, Judge, if anybody
11 ever put a question to you, so you murdered somebody.
12 There is not anybody off the street is going to understand
13 the significance of that. They are not going to have a
14 legal definition. They are going to know, I am being
15 asked did I do the ultimate crime. Mr. Jones' response
16 is, yes. The significance of that is, it is the very
17 heart of this case. This is what we are here about. He
18 says, yes, I did that. We are not offering it as a legal
19 definition, no officer is going to sit there and say,
20 like, we did with each Juror. Let me read you a legal
21 definition of what murder is. In fact, the Defense
22 doesn't seem to be upset about there is no legal
23 definition for accident. There is one for that too. But
24 officers aren't going to talk that way. This is just
25 basic knowledge where the Defendant claims one is an

1 accident and his view of what accident is. And then
2 murder and in the most understood term that anyone off the
3 street would understand. You are saying that you
4 committed the really big--

5 THE COURT: Let me ask you this. Do you, does the
6 State plan on, in your closing saying, well, y'all heard
7 the interview and he said, when you asked and here is the
8 issue, here is the ultimate issue, he said yes and
9 therefore--

10 MR. HUBBARD: No sir, I don't. The way I would
11 present it to a jury is, you are going to give the law to
12 this jury but we are going to talk about what he says he
13 actually does. I am going to focus, not so much on this,
14 yes, but that he admits this one is different and that it
15 is intentional of what he does. Because the way he says
16 it, if you go back into the transcript, I am going to
17 focus on that. And then his different statements about
18 what he actually says, not just a one word, yes. I am not
19 going to focus on what the officers said or how he
20 captured it, I am not going to do that. I don't think
21 that would help me at all. And frankly, when the officer
22 testifies, if there is an issue they can always put that
23 question to them about why he chose that terminology. I
24 bet that officer is going to say, I could have easily have
25 said, just intentional killing or something like that. It

1 is just common street language is what they were using.

2 There is no legal conclusion in other words, Your Honor.

3 THE COURT: All right.

4 MR. HUBBARD: One moment, Your Honor. And also, Your
5 Honor has seen just a snippet cutout but I just want to
6 actually change the whole context of the before and after
7 conversation if you take that out.

8 THE COURT: Okay.

9 MR. HUBBARD: Because he is going to revert back to
10 his defenses voices and all of that. So this is the back
11 and forth. That is why I think, if it is just in context
12 I think it is better for both sides to be able to deal
13 with it at that time because Your Honor knows I am not
14 going to stand up and say, you heard him say, he used the
15 word, murder. He didn't.

16 THE COURT: All right. I am going to do this. I am
17 going to allow and not redact it but I am going to direct
18 and restrict the State from using that question as, he
19 admitted, did you commit the murder or murders, whatever
20 the exact language is, and therefore he admitted it. That
21 will be all based, that will be big problems. Because
22 that is the statutory definition we are looking at. That
23 won't be allowed to be argued by the State as that
24 question and response off limits as to proof, the
25 definition of murder, I can't do that, that is, wouldn't

1 be fair. The whole context, the whole interview is fair
2 game but that question cannot be singled out and used by
3 the State.

4 MR. SECOR: The next one, Your Honor, this is a
5 recording, page 22, the Investigator states, "You know it
6 was, you know it was wrong and you know you shouldn't have
7 done it." Again, that would be a lay opinion on the
8 ultimate issue. The ultimate issue there being that Mr.
9 Jones was not, not guilty by reason of insanity meaning
10 inference by the officer that Tim did, in fact, know the
11 difference between moral or legal or wrong, legal wrong.
12 So my objection would be based on South Carolina Rule of
13 Evidence 701 and 704.

14 MR. HUBBARD: Your Honor, again, this is in response,
15 once these officers are clearing up this issue of voices.
16 And they have to go into the issue, do you know something
17 is wrong. It is not a legal conclusion, it is what they
18 have to ask. And it is a follow-up, it is hard for Your
19 Honor, there is one snippet here but they have to ask him,
20 did you know this was wrong. And then follow-up, so you
21 knew it was wrong. It goes directly--

22 THE COURT: How did he answer, how did he answer
23 that?

24 MR. HUBBARD: He said, I can't fix it. I mean, that
25 was his answer to what he did. That goes right to our

1 countering their Defense. Those officers knew from that
2 night that when we came here today, all of these years
3 later, this was going to be the issue so they were trying
4 to pin him down on that. And that is a follow-up.

5 MR. SECOR: Your Honor, they utilized tools to
6 determine Tim's mental state, those questions that SLED
7 provided to Lexington County. They brought down there and
8 they asked him questions. But those questions didn't
9 infer an opinion on the ultimate issue. Those were
10 questions that they asked Mr. Jones, they were hoping to
11 use those to counter a defense of not guilty by reason of
12 insanity but those were just questions. This is a
13 statement by the Investigator saying, you know it was
14 wrong and you know you shouldn't have done it. It is a
15 statement by him, Mr. Jones' response to it, based on my
16 argument, is irrelevant. It is still an opinion by a lay
17 person on an ultimate issue that he was not insane.

18 MR. HUBBARD: Your Honor, it is a question, it is not
19 a statement where the officer says, this officer is not
20 making a conclusion, it is a question, an affirmative
21 question which is what he is suppose to do.

22 THE COURT: That is part of the interview, that is
23 back and forth, that is, I think that comes in.

24 MR. SECOR: Yes, sir. The next one is page 24 where
25 the Investigator states, "Sounds like you were just very

1 angry at him." That is a reference to Nahthan. And my
2 objection or our objection rather to it, is that it is a
3 lay opinion, again, pursuant to South Carolina Rules of
4 Evidence 701. An ultimate issue which would violate Rule
5 704 because this is, this is an attempt by law enforcement
6 to establish malice of the death of Nahtahn.

7 MR. HUBBARD: This is, make sure it is page 24?

8 THE COURT: Yes.

9 MR. HUBBARD: Your Honor, again, it is just like the
10 one before that, it is a snippet out of context where an
11 officer isn't just saying, it sounds like you are angry.
12 It is based on what Mr. Jones has already told about his
13 interaction with his son, Nahthan. So if they, am I
14 correct, it sounds like you are angry at him. That is how
15 it is couched. This is just what is going on in an
16 interview room.

17 THE COURT: It sounds like, to me repeat the question
18 back or make sure I understand what you are saying, thus
19 and so.

20 MR. HUBBARD: Yes, sir.

21 THE COURT: Let me get it straight, thus and so. It
22 is restating what has been stated. That sounds fair to
23 me. I don't believe that is a violation of 704.

24 MR. SECOR: Yes, sir. The last one is page 23 and
25 the Investigator states, they are discussing the condition

1 of Mr. Jones' vehicle, when the children's remains were
2 still in the vehicle. And the Investigator says, "What's
3 going on in that car since they have been sitting for so
4 long." On the sheet that I passed up, I think that the
5 Investigator says a couple of more things. And then Tim
6 does say, "It stinks like shit." Forgive my language.
7 But we would argue that that should be redacted to the
8 statement pursuant to Rule 403 as being more prejudicial
9 than probative and therefore it creates a danger of unfair
10 prejudiced. I understand that law enforcement did not
11 suggest that terminology to him but it is, I think, very
12 upsetting for a person to hear, a person to say that
13 their, the remains of their children stinks like shit.
14 When I heard it it made me feel angry, anger towards Tim.
15 But I understand, you know, there were a lot of things
16 going on with him at that time. So I try to rein in the
17 way that I respond to that. But I think a person would
18 hear that could get very upset considering they are going
19 to know or they are going to believe that at a bare
20 minimum he straggled four of his children. And I just, I
21 do not see the benefit to that, letting the jury hear him
22 refer to the smell of the children's bodies in that way.
23 And I just, I think that there is nothing probative about
24 it other than to just create anger in the jurors and will
25 increase the likelihood that they will respond with

1 passion and prejudice which is something that they are not
2 familiar with. Thank you.

3 THE COURT: Solicitor.

4 MR. HUBBARD: Your Honor, this goes, frankly to the
5 heart of malice. Everything he talks about with his kids,
6 it is, he will make these comments and you are like, my
7 gosh. This man, we are talking about his kids here. It
8 shows who he is. The question actually was from the
9 Investigator, Okay, so they are in the vehicle the whole
10 time. What kind of is happening in the vehicle as far as,
11 how does it smell in there. And he says, it stinks like
12 shit. But that is who Mr. Jones is, throughout the whole
13 statement. On one hand he will talk about, you know, oh
14 my kids. But on the other hand, he can make these
15 comments that are just, are you kidding me. And we need
16 that. And it is going to come right down to, is it an act
17 of malice or is he insane. It is what it is. And if we
18 take something like that and just go with it and build an
19 entire case on one statement I am going to pay for that by
20 the jury. But in the context what was just made, it
21 certainly shows, here is a man, he is just talking about
22 killing his five kids. And he can still speak in terms
23 like that. It shows exactly who we are presenting Mr.
24 Jones to be, it goes to malice. It is absolutely
25 probative.

1 THE COURT: I don't, I agree with you it is
2 prejudicial but I think it is probative and it is a
3 decision for probative outweighing the prejudicial effect.
4 I think, I find that that would be probative because it is
5 in the whole line of questions and answers of the
6 interview. So it will stay in.

7 MR. SECOR: I respectfully request you note my
8 exceptions to the Court's rulings on these issues.

9 THE COURT: Sure. You want to make, Joy, have you
10 made this a Court's exhibit?

11 COURT REPORTER: I have not yet.

12 THE COURT: Okay. I want, we will make it a Court's
13 exhibit, whatever the next one is.

14 COURT REPORTER: That will be 74.

15 THE COURT: 74.

16 (Whereupon, Court's Exhibit 74 was marked for
17 identification only.)

18 THE COURT: All right. Anything else?

19 MR. HUBBARD: Your Honor, one thing, I guess we need
20 clarification from the Defense on is, we had hearings on
21 the car stop, we had hearings on the statements resulting
22 from the car stop. But obviously we are looking at, from
23 the car itself and there was a search warrant, we don't
24 know if they are challenging the search of the vehicle.
25 So we need to know that.

1 MR. YOUNG: Your Honor, my understanding is that the
2 Court had made its final ruling regarding the legality of
3 the stop. All of those warrants that were subsequently
4 taken were after Mr. Jones expressly refused to give
5 consent. And we have, we have entered into a number of
6 stipulations with the State with regard to the chain of
7 custody of the car. We have entered into stipulations
8 regarding the identity of the remains. The one, request
9 of stipulation that we could not agree on was the chain of
10 custody as to the phone but there was an issue with regard
11 to one of the Defense expert's that actually handled the
12 phone. But I believe that that has been resolved and that
13 that guy would not be required for the State to show a
14 complete chain on the phone to produce the records if they
15 needed to produce. As far as the stuff in the car, and
16 this was sort of what we addressed with the Court at the
17 time of the Court's ruling is like we didn't want to have
18 to object every time--

19 THE COURT: The way I understood, the stop legality,
20 constitutional issue, I have ruled the way I ruled.
21 Subject to that you are not going to continually objecting
22 to the search warrant is bad, you are couching everything
23 from the top down rather than the bottom up.

24 MR. YOUNG: Yes, sir. And I didn't want to have to
25 object every time like, this picture was in the car. I

1 don't want to have to reargue this is the fruit of the
2 poisonous tree pursuant to our previous argument.

3 THE COURT: So you are challenging the validity of
4 the search warrant based on the illegality, but you have
5 lost the issue on the initial stop.

6 MR. YOUNG: Yes, sir.

7 THE COURT: Other than that, subject to that, the
8 search warrants and the State's use of them are subject to
9 all of that.

10 MR. YOUNG: Yes, sir.

11 THE COURT: Continually. Okay. So, I guess the
12 answer to Solicitor Hubbard's question being is, yes, you
13 are challenging it but, no, you are not going to have a
14 hearing on it because you have had the hearing and we
15 lost. Fair enough?

16 MR. HUBBARD: That is good, Your Honor.

17 THE COURT: What I remember, a roadside safety
18 checkpoint was the linchpin of everything.

19 MR. YOUNG: Yes, sir.

20 MR. HUBBARD: And my next one, Your Honor, is
21 probably fairly easy. There were three searches on the
22 house after Mr. Jones absconded from the house. It is
23 very clear he was never coming back, technically he
24 abandoned the premises. But we do have three different
25 occasions where law enforcement went in there, September

1 7th and then on the 8th and the on the 9th, took photos
2 and did take a few items from the house. Just want to
3 know, are they challenging the search on the house.

4 MR. YOUNG: We are not challenging the search on the
5 house. I have a question back to the State in that
6 regard. It is where Mr. Secor and I went into the house,
7 as soon as it was released from law enforcement and took a
8 little over a thousand some odd items from the house that
9 we cataloged and turned over to the State. Said this is
10 all the stuff that we took from the house. Let us know if
11 we took anything that you want, if you need to see
12 anything that we took. And then at a later time Ms. Jones
13 was offered an opportunity to say, like, I don't, here is
14 a bunch of stuff that we don't think is relevant as
15 evidence, if she wants any of it. She came by my office,
16 we gave the State a list of the stuff that she took that
17 was released to her. We are going to be trying to
18 introduce items that we took out of the house. The State
19 is on notice of those if they have any problems with
20 those. All of these items are not only viewable in the
21 pictures that we took but they are also items that are
22 clearly viewable and identifiable that the pictures that
23 the State took.

24 THE COURT: All right. So the State is not going to
25 challenge your items, you are not challenging their search

1 warrant when they got theirs?

2 MR. YOUNG: Yes, sir.

3 THE COURT: Fair enough, that sounds like y'all have
4 got an agreement.

5 MR. HUBBARD: Yes, sir. I just and Mr. Young may
6 have given it to us but a list of the items y'all
7 cataloged, you probably gave it to us a long time ago.
8 Can we just get another copy of that to make sure we got
9 it.

10 MR. YOUNG: Yes.

11 THE COURT: Okay. So the search warrant is not going
12 to be challenged but the admission or the use of any of
13 the items from either side are not going to be challenged
14 either.

15 MR. YOUNG: Yes, sir.

16 MR. HUBBARD: And, Your Honor, since we are on that,
17 if there is something, if we get into this, that we think
18 that we might need that they have I will reach out to Mr.
19 Young based on his representation.

20 THE COURT: Okay, good enough.

21 MR. YOUNG: I was going to ask to put a copy of the
22 motions into the record as a Court's exhibit, Your Honor.

23 THE COURT: I think that is appropriate, yes. Can
24 that be a Court's exhibit itself?

25 MR. YOUNG: Yes, sir.

1 THE COURT: I like that, that will be 75.

2 MR. YOUNG: Those are motions 1 through 102.

3 (Whereupon, Court's Exhibit 75 was marked for
4 identification only.)

5 THE COURT: Mr. Hubbard, what have you got.

6 MR. HUBBARD: One final thing, there is a search
7 warrant on the phone. I know they are not consenting to
8 the phone chain itself for where their expert was in the
9 chain but there was, in fact, a search warrant. Are they
10 challenging that search warrant.

11 THE COURT: I thought the phone was found in the
12 truck, in the vehicle.

13 MR. YOUNG: It was.

14 MR. HUBBARD: Yes, sir.

15 THE COURT: So they are challenging subject to the
16 initial stop being improper. Other than that it is okay.
17 Correct?

18 MR. YOUNG: Yes, sir.

19 MR. HUBBARD: Well, the only reason why it is just
20 not the physical phone itself but context. So we have to
21 do a separate search warrant on that. So I want to know,
22 are they challenging that separate search warrant which I
23 think, you can't just take a phone and go into it as Your
24 Honor knows. So they found it in the vehicle, got another
25 search warrant.

1 THE COURT: Both search warrants being not challenged
2 but all subject to the original stop?

3 MR. YOUNG: Your Honor, I will have to look at the
4 beginning. As far as whether, I don't think that anything
5 in the, in my recollection of the search warrants, whether
6 or not there was like a Franks violation or some material
7 misstatement to the Judge or that they were defective in
8 any way. I don't recall, that would be the only basis for
9 an additional challenge.

10 THE COURT: But all of those still come out of the
11 original safety checkpoint objections?

12 MR. YOUNG: Yes, sir.

13 THE COURT: Constitutionality.

14 MR. HUBBARD: Maybe Mr. Young can look tonight and if
15 there is an issue maybe we can address it tomorrow.
16 Obviously there is a lot of information coming out.

17 THE COURT: Okay. All of them, I am presuming, all
18 of them will be the same ruling because they all follow
19 the same path. I mean everything is running the same
20 objection, objection, search warrant, chain. They will
21 run very consistently together.

22 MR. YOUNG: Yes, sir.

23 THE COURT: Okay.

24 MR. YOUNG: I have an updated copy of Dr. Snyder's CD
25 and I have emailed the final, the final version of the

1 report and the presentation. I want to make sure the
2 State has that information. Finally, Your Honor, during,
3 one of the bench conferences when we were talking about
4 scheduling and how all of this was going to work, the
5 Defense had offered to the State if y'all would tell us
6 sort of general, understand it is not ironclad, order of
7 witnesses we can expect tomorrow, that we would
8 reciprocate. I don't know where they are standing on
9 that.

10 THE COURT: That is correct, I suggested it to both
11 of you because of the logistical problem of getting people
12 lined up and ready when appropriate.

13 MR. YOUNG: Yes, sir.

14 MR. HUBBARD: Your Honor, we are jostling our
15 schedule around right now. I have got one out-of-state
16 expert who has got go back home Friday because he has got
17 a daughter graduating. So we are trying to see what we
18 can do on the front end, can we get them before then or
19 are we going to have to bump them until Monday. So right
20 now, I will be honest, we are not real sure and probably
21 won't know until we actually start to get into the meat of
22 it, what to tell him. So he may end up coming here twice
23 for us.

24 THE COURT: So you think you are going to go through
25 Monday, I think that was Mr. Young's question.

1 MR. YOUNG: I am saying like, here is who we are
2 calling, here is who we are going to try and get through
3 on Wednesday. Here is who we are going to try and get
4 through on Thursday. And we would do likewise, we are
5 going to get through the next day, here is who we are
6 going to try to get through the next day. I understand it
7 is not out of the realm of possibility that we get to
8 somebody that, as I said, everything went a lot faster and
9 we are going to get to this person. I just ask them for
10 some courtesy given the nature of approximately 300 or so
11 possible witnesses.

12 MR. HUBBARD: We will try to do that as we are going,
13 Judge. I think overall we may be into Tuesday. But we
14 will try to do that, we have done that before.

15 THE COURT: Y'all do your best with that. I
16 understand nobody can really commit, until you hear the
17 testimony.

18 MR. YOUNG: I am not saying you can't call somebody
19 because you told me on Wednesday. Your Honor, I need to
20 ask the Court if the rulings regarding the statements
21 which were, I believe we were in Laurens and Your Honor
22 made the rulings on the statements that the State intended
23 to offer with regard to Denno and Mr. Jones Fifth
24 Amendment rights, if those rulings are final or if we need
25 to keep objecting whenever the State offers any other

1 statements of Mr. Jones.

2 THE COURT: The ones that I have heard and ruled on
3 thus far are final rulings. If they bring up another
4 statement then we will address that. Y'all alert me if it
5 is a new statement.

6 MR. YOUNG: Yes, sir.

7 THE COURT: Okay.

8 MR. YOUNG: Your Honor, it has come to my attention
9 and I am not sure about this, I believe the State could
10 probably help. But there is a final statement between
11 Officer Creech, I believe it was at the Lexington County
12 Detention center--

13 THE COURT: That they weren't going to use.

14 MR. YOUNG: I believe that they weren't going to use.

15 THE COURT: It was kind of a friendly thing.

16 MR. YOUNG: What do you mean, I did the right thing.

17 THE COURT: Y'all aren't going to use that, are you?

18 MR. HUBBARD: No, sir.

19 THE COURT: I thought that is what they said, they
20 are staying away from it.

21 MR. YOUNG: Okay.

22 MR. HUBBARD: For the record I believe that was on
23 September the 11th of 2014.

24 THE COURT: Anything else. I have got one more
25 thing, sort of logistics. I told the media and I told my

1 security staff, they asked me about coming and going in
2 and out of the courtroom. I believe the way I want to
3 manage the courtroom is once the jury is in here with us
4 everybody stays seated until we take a break. The
5 audience will be required to do the same thing as the
6 lawyers. So I don't want people coming and going and that
7 is how I am going to direct the deputies to manage the
8 courtroom so once you are in you can leave at the break.
9 I don't want people coming and going, it is distracting
10 and it is distracting jurors. So when the jury is in here
11 we are in here. If the jury is not in here we can go. So
12 that is kind of what I want to do. So the backdoor may be
13 locked. So we are not going, I am not going to fuss at
14 you if somebody is needed as a next witness and takes me a
15 minute to get in here because logistically y'all
16 understand 18 jurors out this door, through the glass
17 doors, that is going to take a few minutes every time we
18 take a break. I want the breaks to be kind of firm and
19 regimented in time. I don't want the courtroom in and out
20 while we are in here working.

21 MR. HUBBARD: Just one real quick thing. I know, for
22 instance, they have a printer over there, if they need
23 something ours is actually going to be right across the
24 hall. So if there is a need like that, we understand
25 movement is not good but considering where we are, we are

1 kind of hidden from the jury on that side.

2 THE COURT: If we need something like that alert and
3 I will allow that, the printer or something to be
4 retrieved for a particular witness. But I don't want
5 anybody else, I want the deputies to have clear direction,
6 everybody is to be seated until we are done and break, not
7 have some gray area in there. And we can manage ourselves
8 as far as if we need something, something copied or
9 something printed, we can do that. But I don't want the
10 jury to be distracted, folks that have got no business
11 getting up and down because they are just tired of
12 listening. They signed into come in here they can stay in
13 here.

14 MR. HUBBARD: I didn't know if I need to signal you,
15 if I need to send somebody to grab something.

16 THE COURT: Just let me know as we go. One more
17 thing I wanted to tell y'all. I don't remember what it is
18 but it is something to do with that also. It is something
19 along those lines but we can manage that. I want the
20 courtroom to be relatively little movement by the audience
21 when we have got the jury in here because it is going to
22 be hard to manage. Oh, if we have a bench conference I am
23 planning on doing this. I want it on the record, I am
24 going to cut the microphones off and cut the white noise
25 on, let the jury, I will tell them they can stand up and

1 move around while we are up here talking. I would like to
2 manage it here with the microphones off and white noise, I
3 would like to try to do that. If that doesn't work and we
4 have to send them out we can do that. We will see how it
5 goes.

6 MR. YOUNG: And I understand that and I don't have
7 any objection to that process. It would be normal
8 practice to take Mr. Jones with me, just as far as court
9 security and everybody. I haven't discussed that with Mr.
10 Jones or made up our decision about how he feels about us
11 going up there and then coming back and telling him.

12 THE COURT: I tell you what I will do. I don't mind
13 him coming up here as long as the security detail is
14 comfortable with it. Also as long as we don't bring six
15 or seven lawyers every time, how about two. And we will
16 limit it to the two that are doing the presentation and he
17 can come. We can manage that.

18 MR. HUBBARD: May I make another suggestion. Because
19 in my mind I think it looks horrible for a Defendant
20 walking up there to see a Judge in front of this jury. To
21 me it is almost, I don't like what that is saying. How
22 about this, if it is something where Mr. Jones feels likes
23 he needs to be a party to the conversation that that is
24 when they say, we just let the jury go out and we can
25 handle it here. Otherwise that Your Honor has to be

1 assured that when we are up there that he is okay with his
2 attorneys being up there. Because I really, really don't
3 want that jury seeing him getting up and walking up there
4 and talking with all of us and with you. I think that
5 looks horrible to me, it is sending a message that I can't
6 control. It is almost testifying by action. And I just,
7 I don't like that, I don't think it is proper. And so I
8 think it is just so he can be a part of his defense, he
9 thinks he needs to hear what is going on let us send the
10 jury out. Otherwise he is giving Your Honor permission
11 for his attorneys to come up and speak on his behalf which
12 is what they get paid to do.

13 THE COURT: Let's do it this way. If an issue comes
14 up and I want to talk to the lawyers and I want each
15 lawyer up here, meaning one and one. Come up here and I
16 want an idea of what we are going to put on the record or
17 not and whether we need to manage it differently. But it
18 will be on the record off the mike and with white noise to
19 determine whether we are going to put on the record or
20 not. Something along those lines.

21 MR. HUBBARD: Your Honor, the only other thing that I
22 can think of right now is that at some point we actually
23 need to do a Blair hearing on his competence. I mean
24 obviously the challenge is on the issue of insanity. But
25 as we proceed I think there needs to be a hearing on his

1 competency. If they are going to agree to Dr. Frierson's
2 report coming in as opposed to Dr. Frierson coming in here
3 and testifying on his competency, I am fine with that. I
4 just want Mr. Jones to say he is fine with that. And then
5 would only request that Your Honor making an affirmative
6 finding that you believe, having reviewed that, that he is
7 competent at this time.

8 THE COURT: Okay. Do y'all want to have a Blair
9 hearing in the morning?

10 MR. YOUNG: No, Your Honor, we don't want to have a
11 Blair hearing. We won't consent to the admissibility of
12 Dr. Frierson's competency eval. The Defense has no
13 concerns about Mr. Jones' competency. The Court has
14 interacted with Mr. Jones a number of times. The Court
15 could tell that nobody has any concerns about his
16 competency. He has obviously understood the Court each
17 and every time that he has been personally addressed and
18 there is absolutely no need for a Blair hearing.

19 THE COURT: I am going to review Dr. Frierson's
20 report and make a decision on whether or not to conduct a
21 hearing tomorrow morning.

22 MR. HUBBARD: I would ask for one because I think it
23 is required that the Court make a finding.

24 THE COURT: I will review the report and we will deal
25 with that in the morning. Okay. I think that is all we

1 have got, I will see y'all in the morning at 8:30ish for
2 your witness.

3 MR. YOUNG: Yes, sir.

4 THE COURT: See you then. Thank y'all.

5 (Whereupon, the trial will resume the next morning at
6 8:30 a.m.)

7 May 14, 2019.

8 THE COURT: Are y'all ready?

9 MR. YOUNG: Yes, sir.

10 THE COURT: I have been waiting on y'all.

11 MR. YOUNG: Your Honor, the Defense would call Dr.
12 Travis Snyder to the stand.

13 TRAVIS SNYDER, being
14 first duly sworn, testified as follows:

15 MADAM CLERK: Once you're seated, state your full
16 name spelling your last on the record, please.

17 THE WITNESS: My name is Travis Snyder, S-n-y-d-e-r.

18 DIRECT EXAMINATION

19 By Mr. Young:

20 Q Good morning, Dr. Snyder.

21 A Good morning.

22 Q As you know, we're videotaping your testimony for
23 presentation to the jury at a later time. So thank you
24 for being here and I appreciate the Court for allowing us
25 this opportunity. Can you tell me what you do?

1 A So I'm a neuroradiologist. So I look at MRI's, CT's,
2 and occasionally X-rays of the brain, the neck, sinuses
3 and spine.

4 Q Can you tell me a little bit about your educational
5 background and training as a neuroradiologist?

6 A So I graduated from Florida State with my undergrad,
7 and then I did, went to medical school for four years at
8 Touro University in Nevada. And then following medical
9 school I did a five year radiology residency. And during
10 those five years I learned all about radiology in general
11 including ultrasound, mammography and emergency room and
12 of course neuroradiology as well. And then following the
13 five years of residency I did a year of Fellowship. I
14 went to University of Miami in Jackson Hospital. And
15 during that I worked under only a neuroradiologist and
16 during each month of that year I subspecialized within
17 neuroradiology. So I would do, you know, one month of
18 pediatric neuroradiology, one month of sinuses or head and
19 neck and then one month of tumors or MRI. So that was
20 that year. And then following that, I graduated from that
21 Fellowship in neuroradiology. And then I took a test
22 called CAQ which stands for Certificate of Added
23 Qualifications and then I passed that test. Also I took a
24 separate test so I'm a Board Certified radiologist. And
25 then following that I've been in practice for the past

1 four years now in private practice in Las Vegas.

2 Q And have you ever testified before?

3 A Yes.

4 Q Have you been found to be an expert in neuroradiology
5 before?

6 A Yes.

7 Q Do you know about how many times?

8 A I've probably been in probably ten trials. I'm just
9 sort of estimating, but approximately.

10 Q And the nature of your practice now, can you tell us
11 what it is that you, what do you do now?

12 A So I work for SimonMed, which is, actually, I think
13 it's the largest outpatient imaging company in the United
14 States. And so I read MRI's of the brain mostly or spine
15 from all over the Country but mostly in Nevada, Florida,
16 Arizona and California. And so I spent about ninety
17 percent of my time reading clinical studies for patients.
18 And I spend about five percent of my time doing research,
19 mostly on traumatic brain injury. We have a large
20 database that we've created where I work with the
21 Department of Defense to try to help understand traumatic
22 brain injury in veterans. And I have other research
23 projects on carbon monoxide poisoning and radiation safety
24 and, other, other papers as well. And then I spend about
25 five percent of my time on expert work such as, such as

1 this. Some civil, some criminal. So about ninety percent
2 is private practice, ten percent research, I mean, five
3 percent research and five percent expert work.

4 Q I'm going to show you what's been marked as
5 Defendant's Exhibit number one and ask, can you tell us
6 what that is?

7 A Yes. This is my current CV.

8 Q Is it accurate?

9 A Yes. This is fairly up-to-date.

10 MR. YOUNG: Your Honor, at this time I would move for
11 admission of Defendant's Exhibit number 1 into evidence.

12 (Whereupon, Defense Exhibit 1 was marked for
13 identification only.)

14 MR. GRAHAM: The State would object. I've never seen
15 a CV entered into evidence for the jury to review. If he
16 wants to bring out all that with the jury in testimony, he
17 can do that. So that's according to the --

18 MR. YOUNG: I don't think that that's an appropriate
19 objection.

20 MR. GRAHAM: I mean, I think, he's going to be able
21 to testify. I think the document for the jury back there
22 to review would be improper bolstering anyway.

23 MR. YOUNG: I have always put CV's of my experts into
24 evidence.

25 THE COURT: I'm not, I don't know that I've seen it

1 done. I mean, you asked him all the questions of his
2 background, training, medical training, practice and you
3 offered him as a, certainly going to attempt to offer him
4 as an expert. But why, I mean, why do we need the CV?

5 MR. YOUNG: Because it goes to the qualifications and
6 expertise. I'm happy to go through his whole CV, Your
7 Honor.

8 THE COURT: Well, I mean, do that. His CV, I'm not
9 going to admit it. That's, he can testify to it.

10 Q Can you tell me where all you have licenses and
11 certifications?

12 A Yes. I have a, as I said, I'm a Board Certified
13 radiologist since 2015. I have a CAQ in neuroradiology.
14 I have state licenses in Michigan, Florida, Nevada,
15 Arizona, California, Colorado and New Mexico.

16 Q I think we went through most of your professional
17 experience?

18 A Yes.

19 Q Do you have any academic appointments?

20 A Yes. I'm on faculty for a number of schools, mostly
21 Touro University Nevada. And I take two or three medical
22 students every month. So they come in and they work with
23 me throughout the day and I try to teach them about
24 radiology and neuroradiology. I'm also an instructor at
25 Michigan State University and in Touro University in

1 California as well as Nevada and also at the University of
2 Nevada, Las Vegas School of Medicine. I'm a Clinical
3 Assistant Professor of radiology. And an Adjunct
4 Assistant Professor of radiology at the University of
5 Nevada, Reno.

6 Q Are you a member of any radiological groups or
7 affiliations?

8 A Yes. The American Board of, American Board of
9 Radiology, the American Society of Radiology, American
10 Board of Osteopathic Radiology, American Osteopathic
11 College of Radiology, the American Society of Functional
12 Neuroradiology. And actually, I believe I'm on the
13 American Pediatric Neuroradiology. I don't have that
14 listed here but I'm a part of that as well.

15 Q Do you hold any titles or awards?

16 A I was the Chief Radiology Resident in my Residency.
17 I'm the Nevada Radiation Safety Officer for SimonMed and
18 the Laboratory Director for SimonMed in Nevada. There's a
19 few other things I'm not sure that are that relevant for
20 what we're doing here, but.

21 Q Have you given a number of presentations and
22 lectures?

23 A Yes. Probably over 50 presentations, lectures,
24 articles and abstracts, many of them on traumatic brain
25 injury. The most recent one, a lecture I gave was, that's

1 not on here, was about a month ago at Scripps in San
2 Diego. It's a head trauma conference. It's an
3 International head trauma conference and I was quite
4 honored to give a lecture there on traumatic brain injury.

5 Q Have you published any journal articles?

6 A Yes. I've published a, there's an article on
7 contortionist, that's listed here. I have an abstract on
8 IG4-related hypertrophic pachymeningitis. There's another
9 abstract on carbon monoxide poisoning. There's an article
10 on diffusor tensor imagining, which is just recently
11 published, which is not listed here. It's a review of
12 diffusion tensor imaging. And also an article on EEG in
13 traumatic brain injury patients. And then we're working
14 on quite a number of very exciting articles, as I
15 mentioned, with our research group that hopefully will be
16 coming out in the next year or so.

17 Q And that's listed under your previous research and
18 current research?

19 A Yes, under current research. I'm the principal
20 investigator for, I'm on the lead investigator for the
21 diffuser ten imaging research for Department of Defense.
22 And it's called a BMA group, or H-B-O-T, HBOT grant. And
23 also I'm involved with functional, FMRI, research. And I
24 am the principal investigator for IRB from Touro
25 University over, deals with 350 traumatic brain injury

1 cases. And in those, in that research we're looking at
2 advanced imaging and clinical findings and clinical
3 outcomes based on the imaging. So we're looking at where
4 the injuries are in the brain, what kind of damage that
5 the patients have and how that manifested as far as their
6 clinical outcome, so when they got better. Principal
7 investigator for a volumetric software called NeuroQuant
8 and Alzheimer's disease. And also a, I'm principal
9 investigator on a carbon monoxide study group where we're
10 creating a database of carbon monoxide patients.

11 MR. YOUNG: Your Honor, at this time I would again
12 offer Defendant's Exhibit number 1, a copy of Dr. Snyder's
13 curriculum vitae into evidence.

14 MR. GRAHAM: Same objection, Your Honor.

15 THE COURT: He's testified to everything on there.
16 The testimony is sufficient. The CV does not need to come
17 into evidence, so I'm not letting it in.

18 MR. GRAHAM: Thank you, Your Honor.

19 Q Dr. Snyder --

20 MR. YOUNG: At this time the Defense would move to
21 declare Dr. Snyder as an expert in neuroradiology.

22 THE COURT: Any voir dire?

23 MR. GRAHAM: Just briefly, Your Honor.

24 VOIR DIRE EXAMINATION

25 By Mr. Graham:

1 Q Dr. Snyder, when I'm looking at your curriculum
2 vitae, it looks like you didn't become involved in
3 radiology until 2009 through 2014 at your residency at
4 Michigan State. Is that correct?

5 A Yes.

6 Q And then specifically neuroradiology you had a
7 Fellowship at the University of Miami in Jackson Hospital
8 2014 to '15. So one year there?

9 A Yes. But I should say in medical school I did also
10 learn about radiology. So that would be since, you know,
11 2005, I guess.

12 Q And then you testified to a CAQ Certification in
13 Neuroradiology in 2015. Is that correct?

14 A Yes.

15 Q Is there a Board Certification for neuroradiology?

16 A No, it's not, I mean, the CAQ is the equivalent of a
17 Board Certification, but it's not actually called a Board
18 Certification. It's just, it's a test that you take. The
19 only people eligible to sit for the test are those that
20 have done a one year neuroradiology Fellowship. If you do
21 that year then you have the option to sit for that, for
22 that test. So it's sort of an equivalent but it's not
23 technically a Board Certification. It doesn't exist.

24 Q There is no Board Certification for neuroradiology?

25 A Not for neuroradiology, no.

1 Q And you said your practice is ninety percent
2 clinical. Is that correct?

3 A Yes. That means just reading cases on patients.
4 Patients, yeah.

5 Q And that would be head, neck and spine, I think you
6 said?

7 A Yes.

8 Q So some of those would be neurological and some would
9 not, for neurological purposes?

10 A Well, they're all neuro. I mean, I do some general
11 radiology. So if there's a stat X-ray I'll look at it, or
12 if there's a CT pelvis, or CT abdomen or something that's
13 urgent I can look at it. But mostly I read the neuro. I
14 predominantly focus on neuroradiology.

15 Q And you testified, I think you said, maybe at ten
16 trials as an expert. And was that radiology or
17 neuroradiology?

18 A Mostly neuro, neuroradiology.

19 MR. GRAHAM: Thank you, Doctor.

20 THE COURT: All right. Dr. Snyder will be qualified
21 in the field of, expert in the field of neuroradiology and
22 can offer opinions in that field.

23 CONTINUE DIRECT EXAMINATION

24 By Mr. Young:

25 Q Dr. Snyder, we're here on the case of Tim Jones. Can

1 you tell me how you became involved in Mr. Jones' case?

2 A Yes. I believe someone from your office, perhaps
3 yourself, contacted either myself or my assistant and
4 asked me to review an MRI. And I believe I was referred
5 by, to you by Dr. Bigler.

6 Q Did he send you an MRI?

7 A Yes.

8 Q And how does that come to you?

9 A I'm not sure how this particular one came to me. But
10 a lot of times they're just sent in the mail. The CD with
11 the images are sent in the mail. Sometimes people use
12 Dropbox or some file sharing program to get it to us. So,
13 but in any event it came to me and I reviewed the images.
14 And then I believe we had a phone conversation and I just
15 discussed my findings with you. And then I said if it
16 would be helpful I could make a power point and a report
17 to further explain the imaging findings. So that's what
18 I, that's what I did.

19 Q Let me show you what's been marked as Defendant's
20 Exhibit number 2. I'll ask you, do you recognize that?

21 A Yes.

22 Q What is that?

23 A So this is the report that I did for following review
24 of the imaging findings. And this contains summaries of
25 my opinions on the, on the scan and some literature

1 backing. Some literature references. Peer reviewed
2 literature to support my opinions.

3 MR. YOUNG: Your Honor, at this time Defense would
4 offer Defendant's Exhibit number 2, a copy of Dr. Snyder's
5 report, into evidence.

6 MR. GRAHAM: I'm assuming that's the same one that
7 you sent us earlier?

8 MR. YOUNG: It is.

9 MR. GRAHAM: No objection, Your Honor.

10 THE COURT: Defendant's 2 is admitted without
11 objection.

12 (Whereupon, Defendant's Exhibit number 2 was admitted
13 into evidence.)

14 MR. YOUNG: And, Your Honor, I need to ask that
15 Defendant's Exhibit Number 1 be made a Court's Exhibit.

16 THE COURT: Okay. It will be numbered sequentially
17 after the other. It might be 76, I believe.

18 THE COURT REPORTER: Judge, we're at 78.

19 THE COURT: 78?

20 THE COURT REPORTER: Yes, sir. I had already marked
21 number 1 for the Defense, but I can just change that, I
22 guess. I mean, the CV had already been marked as
23 Defendant's number 1, so I'll just put a Court's Exhibit
24 on there.

25 THE COURT: Also?

1 THE COURT REPORTER: Yeah. And that will be number
2 78.

3 (Whereupon, Court's Exhibit number 78 was marked for
4 identification.)

5 Q Dr. Snyder, I'm going to show you what's been marked
6 as Defendant's Exhibit number 3 and ask you if you
7 recognize those.

8 A Yes. This is my presentation. And in this
9 presentation I've saved key images from Mr. Jones' scan
10 and with arrows to annotate them and there's also some
11 literature references in this.

12 Q And there's ten slides. Are those the slides that go
13 with your report?

14 A Yes.

15 MR. YOUNG: Your Honor, at this time I'd offer these
16 ten slides and Defendant's Exhibit number 3.

17 MR. GRAHAM: No objection, Your Honor.

18 THE COURT: Defendant's 3 without objection.

19 (Whereupon, Defendant's Exhibit number 3 was admitted
20 into evidence.)

21 Q So, Dr. Snyder, you got the CD of Mr. Jones' MRI. Do
22 you know where that MRI was done or when it was done?

23 A It was dated 4/20/18. And as far as where it was
24 done, it looks like it says Palmetto Richland.

25 Q Palmetto Richland?

1 A Yes.

2 Q Thank you. So you opened it up and what did you see?

3 A So, yeah, I can go through all the findings. It was
4 a, first of all, it was a high quality MRI. It was, the
5 technical, the first thing I look at as a
6 neuroradiologist, to make sure the quality of the exam is
7 appropriate. And I think this was a very good quality
8 exam. It was well done with the proper sequences. So
9 MRI's have many different sequences. It's not like a
10 X-ray where you have just one image. There's probably 15
11 different sequences that were performed on Mr. Jones. And
12 the first finding, and the most striking finding that, and
13 I can show this on slide one, is that he has a depressed,
14 yeah, there it is. The jury can see that, or --

15 Q Yes.

16 A Oh, okay. There's a large left frontal depressed
17 skull fracture. And the yellow arrows are pointing to
18 that. And the image on the left is an actual image. So
19 that's taken sort of starting at the top of my head going
20 down. These, these slices are acquired this way. And so,
21 that is kind of through the mid-portion of the brain on
22 the left.

23 Q So this is sort of looking down?

24 A Well, it's looking up actually. It's looking up at
25 the patient. So the, is this a pointer? I can use this?

1 THE COURT: There's a pointer right there. Right
2 here. Here, Doctor, there's a pointer.

3 A Oh, yes. So this, this is the front and the back,
4 and this is actually the right and the left. So it's,
5 we're looking up at the patient and this is flipped. And
6 this is taken through the mid-part of the brain. And this
7 whole area here on the left frontal, this is depressed
8 skull fracture. So it's pretty large, and you don't have
9 to be a neuroradiologist to see that it's abnormal. And I
10 very rarely see something like this when I review images.
11 So it is a large, and this is from old trauma. There's no
12 question that that's the, that's the left frontal
13 fracture. And so the image on the right, this is a
14 frontal view. And so, instead of going, instead of
15 slicing up to down, we're basically slicing front to back.
16 So it's looking at the patient from the front. So this is
17 the right eye, that's the left eye. You can kind of see
18 them there. And then there also is the depressed skull
19 fracture on the left frontal lobe. And here's the normal
20 one on the right. So this is a nice curved linear skull.
21 This one is normal. And then that one is a depressed
22 skull fracture. So that's the first finding. Now, on
23 slide two, the second finding. So these are, again, axial
24 images. So these are taken up to down going through the
25 brain. And this is the right side of the brain, and

1 there's that skull fracture we saw before. And this
2 sequence is different than the previous sequence and this
3 sequence is a special sequence. It's actually quite an
4 expensive sequence to run. I don't know what the, what
5 they, how they do this at their center. But at our center
6 this is expensive to run. And it's the best sequence
7 available for hemorrhage and it's very sensitive for
8 hemorrhage. And the only purpose of this sequence is for
9 hemorrhage. And these, and hemorrhage looks like
10 decreased signal on, on this MRI. And so, the arrow is
11 pointing to that black dot and that's the area of
12 hemorrhage. And there's another one here and there's a
13 third one here. There's at least three areas of
14 hemorrhage. So, and this is not, sort of expected because
15 he has the skull fracture and then he has these
16 hemorrhages which are under the skull fracture which are
17 well seen on this, on this sequence.

18 Q So the fact that the hemorrhages are visible in an
19 old injury, what's the significance of that?

20 A Well, this is, these hemorrhages are consistent with
21 diffuse axonal injury. So that's where there is, there is
22 disruption of the axons, there's disruption of the fiber
23 tracts in the brain, basically the telephone wires of the
24 brain are messed up. And a hemorrhagic diffuse axonal
25 injury, as we see here in Mr. Jones, is very unusual.

1 Most patients that have had trauma do not have this. It's
2 associated with poor prognosis. And, for example, there
3 was a study that was done on one-hundred boxers and boxers
4 are in the ring, you know, in the ring fairly constantly
5 getting hit very hard, knocked out, constantly having head
6 trauma. And in that study of one-hundred boxers not a
7 single boxer had any hemorrhage like, like this. So you
8 have to have a severe trauma which we know he did because
9 he has a large fracture there. And also, these
10 hemorrhages do overtime, they, about thirty percent of
11 them resolve. So it's likely that at the time that this,
12 this trauma occurred that he had more of these. So he
13 probably had more and then they, they, a few of them
14 likely resolved.

15 Q Now, let's go on to your third finding.

16 A Well, so that's, that's where the, that's where the
17 hemorrhage is. So he has a skull fracture and underlying
18 scattered hemorrhages in the left frontal lobe.

19 Q I know what I was going to ask you about. The
20 technology to find these hemorrhages, did that exist 20
21 years ago or has it gotten better?

22 A No, it did not. Twenty years ago this sequence,
23 called susceptibility weighted sequence did not exist.
24 This is a fairly new sequence and we do it at our centers.
25 And we're, you know, quite proud we have it at our

1 centers. But most places do not even have this sequence
2 so, it's, because of it's so expensive. You have to pay
3 the manufacturers to unlock the key. You have to pay GE
4 or Phillips or whoever to get that sequence. So this
5 would not have existed 20 years ago. And this sequence is
6 about four to six times more sensitive than the next best
7 sequence, which is called gradient echo, or GRE. And
8 there's a study by Tong, 2013, which showed how much
9 better the sequence was than the previous one.

10 Q Let's go to your third finding.

11 A So the next slide, slide three shows another finding
12 here. This is showing an area of cortical thinning and
13 scarring. And so the cortex is the, is the outside of the
14 brain. The brain is made up of the gray matter which is
15 the outside of the brain. And then the white matter which
16 is the inside of the brain. And the gray matter, or the
17 cortex, is where electrical signals are generated. And
18 then the white matter is where the basically telephone
19 wire. So it's where the signals kind of go through. It's
20 how the brain is connected. And so, Mr. Jones has an
21 area, this is right under the skull fracture and it's
22 right around all those areas of hemorrhage. And in the
23 image in the upper left you can see the, it should look
24 like this where you have the gray matter outside and the
25 white matter on the inside with the smooth, with smooth

1 transition, whereas here it's very irregular and the
2 cortex is thin. So this cortex is normal up here. It
3 shows a nice gray cortex. But here the cortex is sort of
4 absent and it's all kind of blurred. So that's where he
5 has cortical thinning and scarring. And you can see it as
6 well on the image on the left. This is a coronal image
7 facing us where you see the arrow pointing to it as well
8 there. And I think it's probably best seen on this middle
9 image which is another coronal image, which is in a
10 sequence called FLAIR, F-L-A-I-R, and it's quite a good
11 sequence to look for that sort of pathology. And the
12 cortex should look like this, this gray matter coming all
13 the way around lobulated. This is how the cortex should
14 look normally, whereas here it becomes blurred and it
15 becomes sort of thin. And so that is also likely
16 posttraumatic. It can also be seen, the cortex thinning
17 can also be seen in schizophrenia or schizoaffective
18 disorders. But, I mean, this is right under where he was
19 hit. So I think, you know, posttraumatic etiology would
20 be probably favored.

21 Q And were there any other findings?

22 A Yes. So the next slide we're looking at coronal
23 images of the brain through the mid-portion. So this is
24 right about through going, slicing front to back right
25 about through the mid-portion of the brain at the level

1 almost of the ears. And so, this image on the right, this
2 is the right, this is the left, this is up, this is down.
3 These are the ventricles, which are fluid filled spaces in
4 the middle of the brain. This is normal. And what we're
5 looking at is an area called the hippocampus. And
6 hippocampus is part of the, the medial or the middle
7 aspect of the temporal lobe and the temporal lobe is this
8 area. I'm outlining the whole temporal lobe. So this is
9 the middle, medial part of the temporal lobe. And the
10 hippocampus is this region. And this is the left
11 hippocampus and this is the right hippocampus. And you
12 can see that the right hippocampus is smaller than the
13 left. And this, and the image on the right also shows it
14 in a different sequence, shows that, how the right
15 hippocampus is smaller than the left. And this is
16 secondary, this is an abnormal finding. It's not very
17 common to see this. And hippocampus is an area that's,
18 there's many articles that talk about how it's affected
19 from head trauma. And so certainly that would be
20 consistent with the history of head trauma, especially
21 given all those other findings for head trauma.

22 Q Did you put Mr. Jones' MRI showing the hippocampus
23 compared to a normal hippocampus?

24 A Yes. That's the next slide. And this was, this was
25 for the, for the jury to see the, this is Mr. Jones' brain

1 on the left side of the screen. And this is the same
2 image as before showing how that right hippocampus is
3 decreased. And you can argue the left is a little
4 decreased too. But it's a little tough to say, but the
5 right we can definitely go with as being decreased. And
6 this is a normal patient. So this is just a normal
7 patient that I, you know, see every day reading MRI's.
8 And this is what it should look like. The hippocampus,
9 I'm outlining it with my tracer right here on the right,
10 and that's the left one. And so these are our normal
11 hippocampus and Mr. Jones has that atrophy. And if I
12 could move to the next slide.

13 Q Yes, sir.

14 A So that hippocampus connects to other parts of the
15 brain through this tract called the fornix. And the
16 fornix is a fiber tract that extends from the hippocampus.
17 And it's a little tough to see on imaging but I tried to
18 get some images of it here where the arrow is pointing to
19 it. And you can see how the right one is smaller than the
20 left one. This one's a nice, pretty big left one and this
21 one is slightly smaller. And it's a subtle finding but I
22 think it's real, it's seen on two slices. This one is
23 smaller than this one. And the fornix atrophy is, again,
24 is associated with hippocampal atrophy. So if the
25 hippocampus is atrophied the fornix is also often

1 atrophied because they're connected. And so this, I
2 think, shows it. And also atrophy means injury. So when
3 the brain is injured, first of all it swells, just like
4 when you get a bruise on your, on your hand or anywhere.
5 You get swelling and then following that it shrinks. But
6 the difference is the brain does not heal like, you know,
7 the hand or the foot. It doesn't grow back. So it
8 remains, it remains decreased in size because it was
9 injured.

10 Q Did you do a slide about the hippocampus and its
11 effects?

12 A Yes. The next slide, and this is just to show how
13 prevalent it is that the hippocampus is injured following
14 brain trauma. There's many articles on it and these are
15 some of the articles on it. Let me see. Dr. Bigler, who
16 will be speaking later, is, actually was very instrumental
17 in discovering some of this and many other authors as
18 well. And so, the hippocampus is, it's not, you know my
19 opinion, it's a neurologic fact that the hippocampus is
20 very sensitive to traumatic, from trauma.

21 Q Any other associations with hippocampal atrophy?

22 A Yes. There's, they are a little more than usual. But
23 you can have hippocampal atrophy if you have a seizure
24 disorder. That can cause hippocampal atrophy from
25 seizures. It has been described in, well the temporal

1 horns which are spaces adjacent to the hippocampus have
2 been described as larger in patients with schizophrenia,
3 or schizoaffective disorder. So that would be also a
4 possibility. Patients with carbon monoxide poisoning are
5 very prone to hippocampal atrophy. There's many articles
6 on that. So yeah, head trauma is not the only cause.

7 Q I think you said something about there was a positive
8 correlation between temporal horn enlargement and
9 hippocampal atrophy and schizophrenia. Can you tell us
10 what that means?

11 A So there's a few findings on Mr. Jones that sort of
12 suggest that are, it's a positive correlation with
13 schizophrenia or schizophrenic spectrum. And those are
14 his, he has a thinning of the, of the corpus callosum,
15 which okay, this is the next slide. And this sort of
16 shows it, so let's talk about this. So on the image on
17 the left, this is a, so this is a view we haven't seen
18 before. We've seen the axial view and we've seen the
19 frontal view and now we're seeing a side view. So this is
20 the, this is the front, this is the back, this is up, this
21 is down and this is right through the center. So this is
22 the midline. So this is right between the eyes in the
23 center of the brain. And this is the corpus callosum.
24 This structure where the arrows are pointing to. And this
25 structure, the corpus callosum is the, is really the only

1 structure, there's a few smaller ones, but essentially
2 it's the only structure that connects the right brain to
3 the left brain. And it's made up of a bunch of telephone
4 wires, if you will. Electrical connectors that the right
5 and left brain communicate. So it's a very important
6 structure because without it the two sides of the brain
7 would not communicate. And Mr. Jones shows, see, it's
8 kind of thinned here in the front and in the back and
9 there's a little lump there. And this is more of what a
10 normal one would look like on the right. So in this
11 finding it's not that well described in traumatic brain
12 injury. You can have injuries to the corpus callosum in
13 traumatic brain injury but it potentially could relate to
14 a schizophrenia or schizoaffective type disorder. It's a
15 positive correlation. It's very difficult to diagnose
16 schizophrenia or schizoaffective disorder from an MRI.
17 But I want to be clear to the jury that, that to diagnose
18 schizophrenia or schizoaffective disorder from an MRI is
19 very difficult. But you can suggest that there's a
20 positive correlation. And so, it's possible that he may,
21 he may have one of those conditions but it's not
22 diagnostic on MRI. So the findings of, on MRI are the
23 temporal horn which we've discussed, the corpus callosum
24 thinning, cortical thinning and also frontal and temporal
25 lobe atrophy, all can be seen in schizophrenic or

1 schizoaffective type disorders. And he has, he has many
2 of those findings. So it's possible that it's consistent
3 with, if he has that, but it requires a clinician to make
4 the diagnosis not, not the imaging.

5 Q Got you.

6 A Yeah.

7 Q Dr. Snyder, the nature of Tim's brain injury, is
8 that, I think you talked about there are different
9 classifications, mild, medium, severe, or mild, moderate,
10 severe. How does that work?

11 A Yes. The tract range is classified as mild, moderate
12 or severe. And it's mostly a clinical diagnosis based on
13 how long consciousness was lost for. But there are some
14 imaging correlates such as the hemorrhage and the
15 fracture. And so this is certainly not a mild traumatic
16 brain injury. As we mentioned, this is, this is on the
17 more severe spectrum. And so whether this is moderate or
18 severe would require, you know, his, his clinicians or
19 review of medical records, how, how long he lost
20 consciousness and what his Glasgow Coma Scale was, which
21 is a way to measure neurologic function in someone who has
22 a brain injury. But based on the imaging, this is not a
23 mild brain injury. This is either moderate or, you know,
24 perhaps severe depending on, on those other factors.

25 Q Did you do a slide sort of summarizing your findings?

1 A Yes. So yeah, there's just, they are almost done.
2 This is, I just have basically two summary slides. And
3 this slide just sums up all the findings that we've
4 discussed today for the jury to review or have on hand of
5 the imaging findings. And so the first finding is the,
6 the first thing we saw was the large left frontal anterior
7 depressed skull fracture. We saw left frontal hemorrhagic
8 diffuse axonal injury. Those are all those little areas
9 of decreased signal on SWI. You know, at least three or
10 four of those. Then he has left frontal focal cortical
11 thinning and scarring. And that might be secondary to,
12 probably secondary to a brain contusion from the trauma.
13 And that cortical thinning and scarring is right next to
14 the hemorrhagic diffuse axonal injury. And then he's
15 also, he has right hippocampal atrophy and he has right
16 fornix atrophy. And that is the medial area of the right
17 temporal lobe which is, which is atrophic. And so taken
18 all -- and the fornix attaches to the hippocampus. And so
19 taken altogether, these findings are consistent with a
20 traumatic brain injury or they're not consistent with,
21 they are, I mean this is a certainty that they're related
22 to traumatic brain injury and it's a fairly advanced
23 traumatic brain injury. And then also we talked about the
24 findings which are not diagnostic of but there's a
25 positive correlation between the thinning and irregularity

1 of the corpus callosum, prominence of the right temporal
2 horn, and right hippocampal atrophy, and left frontal lobe
3 atrophy as well. And these findings have been described
4 in schizophrenia and schizophrenic type disorders,
5 clinician requires a clinical correlation.

6 Q You were talking about the damage to these areas of
7 the brain. Can you tell us a little bit about what the
8 significance of those areas are and damage to them?

9 A Yes. So this, the last slide talks about some of
10 this. And this is what's been described for the frontal
11 lobe injuries. There's been many research articles on
12 they've studied patients that have had frontal lobe
13 injuries and what those, the deficits of those patients
14 are. And first of all, the frontal lobe is the most
15 commonly, common area for traumatic brain injury. So that
16 fits with Mr. Jones as well. And some of the symptoms
17 that have been described following frontal lobe injury
18 includes cognitive problems, lower intelligence, lower IQ.
19 And then also problems with executive functions, with
20 personality changes, risk taking, disinhibition and
21 behavior spontaneity. So those are all possible deficits
22 that could occur from someone with a frontal lobe injury.
23 And the hippocampal injury that we saw on the right, that
24 has been, that is associated with emotional centers as
25 part of the limbic system. And that, that also has a

1 pretty high function for memory. So memory is involved in
2 hippocampus. So it certainly would not be surprising if
3 Mr. Jones had some of these symptoms or, I mean I would be
4 surprised if he had no symptoms. I mean I think that
5 someone that has this degree of a traumatic brain injury
6 would have some sort of symptoms and these are the ones
7 that we might expect. And this would require his doctors,
8 you know, to examine him or someone to review the medical
9 records to make that determination of which ones of these,
10 if any, that he had.

11 Q Like, for instance, low IQ. If he doesn't have low
12 IQ, does that mean he doesn't have poor executive
13 functioning? Are they, are the effects related or can
14 they be completely separate?

15 A Well, they can be completely separate. And you can
16 have someone that, for example, has severe memory problems
17 but is very high functioning, or you can have someone who
18 has severe emotional problems but is able to do many
19 things that are, that are considered high functioning.
20 And you, the reverse, you could, there could be someone
21 that is completely cognitively impaired but they're
22 emotionally stable, personalities are fine. So how
23 traumatic brain injury manifests can be very different in
24 different patients. And it, it's hard to predict based on
25 imaging.

1 MR. GRAHAM: Your Honor, I'm going to object to the
2 question and answer. I'm not sure that we're in the
3 Doctor's field anymore. He's a neuroradiologist who reads
4 images. He doesn't actually deal with testing and other
5 types of areas that would actually determine if any
6 deficits that exist or not.

7 MR. YOUNG: I think he's made it clear that he's not
8 saying if, that he did or not. And his opinion as an
9 expert, is it possible that someone has strengths in one
10 area and weaknesses in another.

11 THE COURT: And his expertise in the field of
12 neuroradiology, so he'll limit his opinions to that. So
13 rephrase your question and make certain that's what he
14 does.

15 Q Sure. With somebody with these injuries that we've
16 seen here, could they go to college, is that possible?

17 A Yes.

18 Q And get a degree in computer engineering?

19 A Yes. Based on the frontal, on imagine findings of
20 frontal lobe injury there's, there's a wide variety of
21 symptoms that have been reported, that can be reported,
22 and the same with the hippocampus based on imaging
23 findings. And someone can be, the range that's been
24 reported in the neuro-imaging literature is quite broad in
25 terms of what the problems would be. But I think it's,

1 it's very highly probable that someone with this type of
2 injury will have some sort of deficits and have some sort
3 of symptoms. But I can't say what those might be. But
4 these are the likely possibilities.

5 Q And I understand. I just want to be clear for the
6 jury. You're not saying that based on this imaging
7 you're, that Tim's diagnosed as schizophrenic?

8 A No, I'm not.

9 Q You're saying that based on these images he has a
10 brain injury and other brain changes that are consistent
11 or positively correlated with people who have
12 schizophrenia?

13 A Yes.

14 Q Is it possible for people to have schizophrenia and
15 get a brain injury?

16 A Yes.

17 MR. YOUNG: Thank you. One second. Thank you, Dr.
18 Snyder. Please answer questions the State may have.

19 MR. GRAHAM: Your Honor, can we take a short break?

20 THE COURT: We may. We'll take a short break and be
21 back on the, you can stand down for a few minutes.

22 (Whereupon, a short break was taken.)

23 THE COURT: Your witness.

24 CROSS-EXAMINATION

25 By Mr. Graham:

1 Q Good morning, Dr. Snyder, how are you?

2 A Good morning. Thanks.

3 Q I just want to go through your findings and some of
4 your testimony. You were sent these MRI's in the mail,
5 I'm assuming?

6 A I believe so.

7 Q And what were you asked to do?

8 A To review them to see if there were any positive
9 findings or any abnormalities.

10 Q Were you asked specifically to look for traumatic
11 brain injury?

12 A I don't believe so.

13 Q Were you asked specifically to look for schizophrenia
14 or schizoaffective disorder type findings?

15 A No.

16 Q The film you said was taken on April 20th of 2018.
17 Is that correct?

18 A Yes.

19 Q He would have been a 36-year-old at the time of the
20 MRI. Are you aware of that?

21 A Yes.

22 Q Now, at the time his children were killed, the time
23 he killed his, when he killed his children, that was four
24 years before. You understand that?

25 A I didn't know the timeframe, no.

1 Q Assuming the four year lapse between the time he
2 killed his children and the time that these MRI's were
3 taken, do you understand my question so far?

4 A Yes.

5 Q All right. As far as your findings to the TBI, do
6 you have any idea when that occurred?

7 A No.

8 Q From your reading of the MRI it could have been
9 before or after?

10 A Yes, but I, I don't think there's any question when
11 it occurred, because it was such a devastating injury
12 there should be no debate over when it, I mean, I can't
13 image that it's not known when that injury occurred, so.

14 Q You were not provided any information about when the
15 injury occurred?

16 A No.

17 Q And would it surprise you to know that that frontal
18 lobe fracture of the skull occurred when he was 15 years
19 old?

20 A No, that would not surprise me.

21 Q As far as the findings that go with your discussion
22 about schizophrenia and schizoaffective disorder, those
23 are the thinning and some other abnormalities, correct?

24 A Yes.

25 Q You don't know what his brain looked like in those

1 regards back on August 28th of 2014, do you?

2 A No.

3 Q And you don't know whether those change, whether they
4 were present at the time, or they could have, in fact,
5 happened in those four years since, couldn't they?

6 A I think it would be unlikely that, I mean, the
7 thinning of the corpus callosum, that's, I'm not sure I've
8 seen that sort of develop in a short time period like
9 that. Most of the time it's something that people have
10 had for, you know, most of their lives, if not all of
11 their lives.

12 Q So they're born with it?

13 A I'm not sure if born with it. But potentially, or it
14 develops sort of early. I don't, yeah, I don't know that
15 I've seen that where you have a scan of someone and then
16 four years later there's another scan and then it shows
17 this, these abnormalities. I mean, most, most of this is
18 something that is, that they've had for a long time.

19 Q Well, you talk about three particular things. The
20 thinning and irregularity of the corpus, and I may
21 pronounce it wrong, callosum?

22 A You're right, yes.

23 Q The prominence of the right temporal horn and the
24 right temporal atrophy, correct? Those are the three
25 findings that you say may correlate to schizophrenia or

1 schizoaffective disorder?

2 A Yes and there's two others. There's cortical
3 thinning and there's also the left frontal atrophy. And
4 those also have been described in schizophrenic or
5 schizophrenic type disorder. But given that those are in
6 the same location as the trauma, that I think those are
7 likely from the trauma, not from--

8 Q -- from what I've read of your report, you actually
9 attribute those to being consistent with traumatic brain
10 injury?

11 A Yes.

12 Q Okay. So the only ones that your report talked about
13 being related to schizophrenia or schizophrenic spectrum
14 disorders are the thinning and irregularity of the corpus
15 callosum. Could that be caused by the TBI?

16 A It's possible, but pretty unusual in TBI to have, to
17 have that, especially when there's no, if there's
18 hemorrhages in the corpus callosum, you know, then we
19 might, or shearing injuries in the corpus callosum then
20 maybe it's from that. But it's possible it's from the
21 trauma.

22 Q So as far as the corpus callosum, you don't know
23 whether it's from the TBI or not. Is that fair to say?
24 Could be?

25 A Right. It may not, it may not, I mean, it may not be

1 from schizophrenia, schizoaffective disorder either
2 because, because MRI cannot diagnose reliably
3 schizophrenic or schizoaffective disorder. There's some
4 loose correlations and a lot of it's in the research
5 phase. So there's findings that are suggestive of it or
6 there's a positive correlation. But, but you can't, I'm
7 not saying he has that based on the imaging.

8 Q Right.

9 A Yeah.

10 Q That is one of the questions I was going to ask you.
11 Looking at an MRI you cannot diagnose somebody with
12 schizophrenia or schizoaffective disorder. Isn't that
13 correct?

14 A Not without the, the clinical correlation.

15 Q And that would come from a psychiatrist or some other
16 person?

17 A Yes.

18 Q The prominence of the right temporal horn, that could
19 have been caused by a TBI as well?

20 A Yes.

21 Q The right temporal atrophy, that could have been
22 caused by the TBI as well?

23 A Yes.

24 Q So your testimony is not that he has schizophrenia or
25 schizoaffective disorder?

1 A No, but that there are some findings on MRI that are
2 possibly related to it. There's a positive correlation
3 between the findings on the MRI and schizophrenia or
4 schizophrenic spectrum type disorder. So, I mean, I think
5 it's worth mentioning that if he has that, that it's
6 supported by the MRI. But, but it's, it's not, I can't
7 say that it's more likely than not he has schizophrenia or
8 schizophrenic disorder based on the MRI. There's a few
9 findings that are, that are concordant with that in the
10 right setting.

11 Q But all of those could have been caused by a TBI that
12 he had, correct? That's what you testified to.

13 A Yes.

14 Q You don't know when those came about?

15 A No.

16 Q And just because he has them doesn't mean he has
17 schizophrenia or schizoaffective disorder, isn't that
18 correct?

19 A Yes, you are correct.

20 Q He could actually have the same findings that you
21 have that you're saying there's a correlation to and not
22 have schizophrenia or schizoaffective disorder or any
23 mental health issues. Isn't that true?

24 A Yes.

25 Q You do know, or do you know that he was on Geodon and

1 other antipsychotic medications since the time of his
2 arrest in 2014?

3 A No, I did not know that.

4 Q And you would agree with me that the taking of the
5 medication itself, are you familiar with Geodon?

6 A Not, not well, not very familiar.

7 Q My understanding from the review of his records is if
8 he was taking --

9 MR. YOUNG: I'm going to object. It's outside of the
10 scope.

11 Q If he was taking maximum doses --

12 MR. YOUNG: Your Honor, I objected.

13 THE COURT: Wait. He's changed his question. So I'm
14 going to sustain your objection outside the scope but he
15 may be rephrasing his question.

16 MR. YOUNG: He's not a toxicologist, Your Honor.

17 THE COURT: He's an expert in neuroradiology so he
18 can ask the question. If it's outside the scope, it is,
19 but I've already questioned that.

20 Q Doctor, wasn't, wasn't one of your studies or papers
21 or abstracts have to do with medication and thinning of
22 brain matter?

23 A Which one? Sorry.

24 Q I don't remember the name. But wasn't one of your,
25 on your curriculum vitae one of them, didn't you have some

1 experience in looking at the effects of medication on,
2 occurring?

3 A Oh, well, maybe you're talking, it was, yes. Yes,
4 that was in, yeah, that was when I was, before I was in
5 medical school I worked with a doctor on looking at, on
6 looking at brain voxels and the effect of medication on,
7 on that, yes.

8 Q Correct. And isn't it true that medication can
9 actually cause the effects that you said that you saw?

10 A No, not, not, not to my knowledge. There's some
11 research. And the research that we were doing was
12 looking, it was looking at microscopic voxels. So it was
13 looking at very small voxels. And it was, frankly, that
14 was, it was a little bit discorded, what we were finding
15 and what the literature said. And there are some articles
16 that may talk about how atrophy can occur. But mostly
17 what's, atrophy can occur in the cerebellum, which is in
18 the back of the brain. And that's the most common area
19 that people on antipsychotics such as Haldol specifically,
20 and alcoholism. Alcohol and Haldol can cause cerebellar
21 atrophy and he doesn't have cerebellar atrophy. So I
22 don't think that, the findings that we've described, that
23 I described, are not related to, to medications.

24 Q Not from anything that you've seen?

25 A No, not that, I've never seen these findings. I mean

1 the findings that are related to medication atrophy are in
2 the cerebellum, not in the areas that, that we discussed.
3 And if there are some articles on it, it was, it's more
4 researched based. And, you know, when I was involved in
5 that, that was, you know, like 10, 10 or 15 years ago, so.

6 Q What you can say from a review of Mr. Jones' MRI is
7 that he had a traumatic brain injury. I heard you say
8 that and that's correct?

9 A Yes, a hundred percent.

10 Q What you don't know is what those effects are on Mr.
11 Jones, correct?

12 A Yes. I don't know what those are, but I would, I
13 would, I would suspect he would have some sort of symptoms
14 given how severe his injury was.

15 Q But you never met with him?

16 A No.

17 Q And you never reviewed any records to determine what,
18 if any, effects he had because of the TBI. Is that
19 correct?

20 A Correct.

21 Q He could have suffered cognitive defects like a coma,
22 confusion, shortened attention span, memory problems and
23 amnesia, true?

24 A Those are symptoms that can occur from traumatic
25 brain injury, yes.

1 Q Problem solving deficits, problems with judgment,
2 inability to understand abstract concepts, loss of sense
3 of time and space, decreased awareness of self and others,
4 inability to accept more than one or two step commands
5 simultaneously. Those are other effects that a TBI could
6 show. Is that true?

7 A Yes.

8 Q He could have motor deficits, paralysis or weakness
9 in his limbs, correct?

10 A Those are a little more unusual, the motor, motor
11 deficits from traumatic brain injury. But it's, for
12 example, there's Parkinson's from traumatic brain injury.
13 That's been described. But as far as paralysis it would
14 be very unusual unless there was a direct injury to the
15 motor cortex which is in the front and the back of the
16 brain.

17 Q But I think you said that you've described him as
18 either moderate or severe traumatic brain injury based on
19 your readings of the MRI?

20 A Yes.

21 Q So it is possible that for somebody who suffered the
22 injuries that you say you saw, there could have been motor
23 deficits, correct?

24 A Yeah. The frontal lobes are not as, I mean, motor is
25 not a great deficit for the frontal lobes. There may be

1 some involvement but it's, it's more in the back in the
2 primary motor cortex.

3 Q How about perceptual or sensory deficits?

4 A Well, the visual is in the occipital lobes. So
5 that's above the cerebellum in the back so that would be
6 visual. And then a sensory is mostly considered parietal,
7 so that would be more in the back above. So it's in the
8 back higher. That's parietal. That's where sensory is
9 typically. Frontal lobes may have some effect on that but
10 I don't think as much as the other things we discussed.

11 Q So looking, if I'm beginning to understand now.
12 Looking at his MRI and the TBI that he suffered in which
13 you see, the only area that you would see he would have
14 deficits in is cognition?

15 A No. I mean, I think we have a list of all the things
16 that the frontal lobes are associated. They're with
17 personality, they're with risk, inhibition, judgment,
18 memory. And then also there's, there's emotional problems
19 which are actually more involving the hippocampus. So,
20 but yeah, cognitive is, would be one thing that could,
21 that he may have.

22 Q Well, if I'm looking at, that's a copy of your
23 presentation, I believe, correct?

24 A Yes.

25 Q That's that last slide?

1 A Yes.

2 Q And of all of them, I think this is the only slide
3 that talks about potential damages that you would expect
4 to see from the TBI that you reviewed, correct?

5 A Well, for the frontal lobe. And then hippocampus we
6 kind of talked about separately.

7 Q You just didn't bother to produce a slide for that?

8 A Well, the frontal lobe was the worst, I mean, because
9 he has that skull fracture and the, he has all those
10 hemorrhages in the front. So that's why I made it for the
11 frontal lobe. I mean, I could have made one for the
12 hippocampus as well. But I, in my report I discussed it,
13 but I just didn't make a slide for it.

14 Q The frontal lobe is what you saw as being the worst
15 damage? Fair to say?

16 A Yes, I think it is. But not to minimize the
17 hippocampal damage however.

18 Q The frontal lobe injury could involve motor function?

19 A Yes.

20 Q Memory?

21 A Yes.

22 Q Executive function and personality, risk taking,
23 disinhibition and behavioral sponta --

24 A Yes.

25 Q -- spontaneity --

1 A Yes.

2 Q -- is that correct?

3 A Yes.

4 Q So those would be some symptoms that you would expect
5 the psychiatrist or psychologist to go look at, based on
6 your findings, and see if they existed or not?

7 A Yes. They could evaluate for those. And as we
8 discussed some are probably more likely than others.

9 Q So some or none of those could exist, correct?

10 A Yeah. I'd be, I'd be very surprised if none of those
11 existed.

12 Q It's possible they don't, isn't it?

13 A It's possible, just very unlikely as, very unlikely,
14 in my opinion.

15 Q On page nine of your report under five, at the very
16 bottom, it says, If Mr. Jones demonstrates low IQ,
17 disinhibition, risk taking, difficulties with executive
18 functions, behavioral spontaneity, memory problems or
19 motor deficits it would be consistent with his injuries.
20 However, clinical correlation is recommended. So you're
21 saying somebody else needs to look at those areas --

22 A Yes.

23 Q -- correct?

24 A Yes.

25 Q So is it a true or false statement if I say that

1 after a traumatic brain injury that you have immediate
2 swelling of the brain?

3 A Yes. If the brain is damaged in a macroscopic sort
4 of way, yes.

5 Q Which Mr. Jones was --

6 A Yes.

7 Q -- is that correct?

8 A Yes.

9 Q At what point, is it a year, 18 months, that you
10 would expect whatever symptoms that Mr. Jones was going to
11 have, that he would have them?

12 A I'm not sure --

13 MR. YOUNG: Objection. That's outside the scope of
14 radiology.

15 A I mean, I can answer generally.

16 THE COURT: If it's in the scope, he can generally
17 answer since he knows.

18 A Well, yeah. I mean, a lot of symptoms will manifest
19 immediately. But some take, some will manifest later.

20 There is a inflammatory cascade that occurs following
21 traumatic brain injury, if there's injury, and which can
22 occur, which can, which can continue. In fact, there is a
23 risk of patients with, so there's a recent study, 2018, by
24 Barnes, B-a-r-n-e-s, which looked at patients with
25 traumatic brain injury. Mild traumatic brain injury. So

1 not like Mr. Jones, but just mild traumatic brain injury
2 where they did not lose consciousness. And that study
3 looked at, it was a large number of veterans over, over
4 many years and they found that there's a twofold risk in
5 dementia. So that shows that symptoms can occur decades
6 following a mild traumatic brain injury even without loss
7 of consciousness. So it's tough to say, you know, when
8 symptoms could develop. Some certainly would be expected
9 immediately. And many symptoms actually get better. So a
10 lot of times patients will have most symptoms in the
11 beginning and then they'll just kind of start to generally
12 improve. But some of them, some symptoms never get
13 better, some people are permanently damaged and then some
14 people, they also develop symptoms later, including
15 sometimes decades later.

16 Q So when you talk about symptoms that open decades
17 later, what are you talking about?

18 A Well, I'm talking about dementia from that study or
19 such as, we talked about Parkinson's related to traumatic
20 brain injury. Often that does not occur right away. So
21 things sometimes take longer to manifest.

22 Q As far as what you described in your frontal lobe
23 injury, if it involved motor functions you would expect to
24 see it immediately, yes?

25 A Regarding specific symptoms I'm not sure. I would

1 rather speak generally because I just don't know.

2 Q So you reported that deficits could occur, but you
3 don't know when the deficits might show up?

4 A Right. I mean, individual deficits, I don't know
5 when they would show up. But a lot of them probably more
6 immediately and then some may take, may take longer. And
7 some might be permanent but I don't know which ones would
8 or not. It's a lot of --

9 Q As an expert, you wrote in your report and you're
10 testifying to the jury that these deficits had occurred.
11 But you're now telling me that you don't know when they
12 could occur or when they would go away?

13 A Well, I said that those are deficits associated with
14 frontal lobe injury. And the articles describe the
15 studies done. So that's accurate. And then as far as
16 when they occur, yeah, I don't think that that, I don't
17 know that that's really known.

18 Q So the studies that you read to describe when motor
19 functions occurred, there was nothing in there about when
20 they occurred or when they resolved?

21 A I mean, I studied a lot of papers. Some of them may
22 have talked about that, but I just, I don't know.

23 Q Memory you don't know when that might happen or when
24 it might resolve?

25 A Well, I think all these, a lot of them probably occur

1 at the time of the injury. But some may not, and some may
2 manifest later. And, and, yeah, I don't know.

3 Q Besides Parkinson's and dementia, what else might
4 manifest later?

5 A Any of those symptoms.

6 Q So you're saying that somebody can have a traumatic
7 brain injury and 20 years later begin to have memory
8 problems and you're going to say it's associated with a
9 TBI?

10 A Well, that was what the study from Barnes 2018 found.
11 They found that people that had traumatic brain injury, 20
12 or 30 years later they developed dementia from that injury
13 and they had a twofold, twofold risk of dementia.

14 Q So when you're talking about memory here, you're
15 talking about not memory. You're talking about dementia
16 and Parkinson's that happens 20 years later?

17 A Well, no. I mean, but a dementia is a form of memory
18 loss. So it's, but it's under, I mean, there's memory and
19 then dementia is one form of that.

20 Q Sure.

21 A So it's not equivalent.

22 Q How about other types of memory? Is there anything
23 that you know of or are aware of that says that if you
24 have a memory problem related to a TBI, that it doesn't
25 occur almost immediately and reach whatever its best or