

VOLUME TWO OF FOUR

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM BERKELEY COUNTY

R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

APR 29 2005

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

JESSIE WAYLON SAPP,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

) COURT OF GENERAL SESSIONS
) 02-GS-08-1146, 1683, 1685,
) 1687, 03-GS-08-686

STATE OF SC,)
 vs.)
JESSE WAYLON SAPP,)
 DEFENDANT.)

TRANSCRIPT OF RECORD
VOLUME II OF IV

October 18, 2002
May 2, 2003
May 9-17, 2003
Moncks Corner, SC

ORIGINAL

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE; and a
jury.

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1 Tuesday, May 13, 2003

2 **THE COURT:** Good morning, everyone. Let the
3 record reflect that Mr. Sapp is present. Any matters from
4 the defense before we begin with the jury examination or
5 the juror examination? Do you want me to wait?

6 **MR. ARCHER:** I know Mr. Galmore is supposed to
7 be here and Mr. Johnston.

8 **THE COURT:** Would you like me to wait?

9 **MR. ARCHER:** I would like to wait.

10 **THE COURT:** We will wait a few moments, but we
11 can't wait too long.

12 **MR. ARCHER:** I understand. Bob Johnston is
13 really punctual.

14 **THE COURT:** I understand.

15 Anything from the State before we begin the
16 examination?

17 **MR. HOISINGTON:** Your Honor, there were a number
18 of expert witnesses put -- or at least professional
19 witnesses put on the defense witness list. We would
20 simply ask if they intend to put up any expert testimony
21 that we be given the privilege to their background and
22 their curriculum vitae and any of the reports they may
23 have generated prior to the testimony.

24 **THE COURT:** At this point have you made a
25 decision as to the expert testimony?

1 **MR. ARCHER:** I don't believe we're putting up
2 any. The only expert that we may have it would just be
3 the surgeon who operated.

4 **MR. HOISINGTON:** That's fine if that's the case.
5 As long as it's not an expert with an opinion.

6 **MR. ARCHER:** A ballistic expert, etc., no.

7 **THE COURT:** Very well. If you change -- and
8 that's fine, you're not bound by that, but if you change
9 --

10 **MR. ARCHER:** Mr. Johnston's doing that. I'm
11 basically doing all the cross-examination and the opening.
12 He's doing the witnesses. But I don't think he ran by me
13 any expert that I'm aware of.

14 **THE COURT:** Okay.

15 **MR. HOISINGTON:** That's all, Your Honor.

16 **THE COURT:** Thank you.

17 **MR. ARCHER:** Your Honor, if you want to start
18 that would be fine.

19 **THE COURT:** Let's invite the first juror in this
20 morning, Gregory Franciscus.

21 (WHEREUPON, Gregory Franciscus, a white male,
22 entered the courtroom.)

23 EXAMINATION

24 **BY THE COURT**

25 **Q** Good morning, Mr. Franciscus.

1 **A** Good morning.

2 **Q** How are you this morning?

3 **A** I'm doing fine.

4 **Q** Good. I hope you had a good evening. It was a
5 stressful day, I'm sure, not a normal day for all of
6 us. But I hope you found your evening pretty well
7 and are ready now to resume this matter?

8 **A** Yes, sir.

9 **Q** You remember that I placed you under oath yesterday
10 when I began asking you those questions?

11 **A** Right.

12 **Q** You are still under that oath.

13 **A** Okay.

14 **Q** Is that agreeable with you?

15 **A** I understand.

16 **Q** All right, sir. Since we were last together
17 yesterday, have you discussed this case with anyone
18 or permitted anyone to talk with you about this case?

19 **A** No, sir.

20 **Q** Have you reviewed, sir, any newspaper articles or any
21 television programs about this case?

22 **A** No, sir.

23 **Q** This part of this process is really a continuation of
24 what we started yesterday. And, of course, you heard
25 many times and probably tired of my asking of the

1 witness would it affect their ability to be fair and
2 impartial to both sides. That's the entire purpose
3 of this proceeding, to just discuss with you and to
4 try to ascertain if there's any aspect of this case
5 that would cause you or potentially cause you to have
6 any problem being completely fair and impartial. Do
7 you understand?

8 **A** Yes, sir.

9 **Q** And the questions that will be asked of you this
10 morning, much like yesterday, have no right or wrong
11 answers. They are questions that really are just
12 your personal feelings. And whatever those are that
13 will be the case. Certainly, they are not intended
14 to invade your privacy. Don't think somebody's
15 trying to pry unnecessarily. It's just part of this
16 process. Is that agreeable with you?

17 **A** Yes, sir.

18 **Q** Now, you had indicated yesterday either from specific
19 responses or nonresponses to the Court's questions
20 that there was nothing about this case that you --
21 about which you were made aware that would cause you
22 any problem applying your common sense, your sense of
23 logic and reason, fairly and impartially in analyzing
24 the evidence, which would consist of testimony and
25 exhibits offered through testimony at the appropriate

1 time; and then once doing that, decide for yourself
2 what you find to be credible and believable. Is that
3 correct? There's nothing that would cause you any
4 problem doing that, being fair and impartial?

5 **A** No, I don't have a problem with that.

6 **Q** Okay. You have not made any predeterminations in
7 this case, prejudgments in this case?

8 **A** No, sir.

9 **Q** So basically, as yesterday, as indicated with the
10 questions and today, you come into this process with
11 an open mind, is that true?

12 **A** That's true.

13 **Q** Have you reviewed that list that I gave you
14 describing or depicting the three types of jurors?

15 **A** Yes.

16 **Q** Which type most accurately describes you?

17 **A** I would go with No. 3.

18 **Q** No. 3. Now, you understand that during this process
19 here this morning, I'm going to have to talk with you
20 about a number of things, some including the possible
21 potential penalties in this matter. You understand
22 that by talking with you about it, I'm not suggesting
23 how you should resolve those issues?

24 **A** Okay.

25 **Q** Do you understand that?

1 **A** Yes.

2 **Q** Please don't read anything that I say because I have
3 nothing to do with that determination, that's the
4 jury's determination. Do you understand?

5 **A** That's good.

6 **Q** Okay. If you were a juror in this case, it would be
7 my responsibility to instruct you on the law. Would
8 you listen to that law?

9 **A** Yes.

10 **Q** Would you accept the law and apply that law fairly
11 and impartially to the facts that you ultimately
12 would determine in this case?

13 **A** Yes.

14 **Q** Would that be the case even if you heard a principle
15 of law with which you may differ?

16 **A** I don't understand.

17 **Q** All right. Sometimes -- for instance, I mentioned to
18 you yesterday -- and that's a legitimate question. I
19 mentioned to you my final analysis, I guess you might
20 say, so far as my job is concerned the question about
21 are there any jurors that don't have a driver's
22 license, voter's registration certificate or highway
23 department identification card. I know that you're
24 going to have one because there would be no way for
25 us to get your name.

1 **A** Right.

2 **Q** Do you understand?

3 **A** Uh-huh.

4 **Q** So to me, it's kind of a wasted motion. But it's the
5 law of this state. It's a statute. And I'm --
6 notwithstanding my personal feelings about this
7 statute, I'm going to ask that statute every single
8 time I qualify a jury because it's the law of this
9 state. And I guess similarly, and that may be a poor
10 analogy, but if you heard a principle of law that you
11 may say, that's not a good law or that law needs to
12 be changed, you understand that the commitment that
13 you make to Mr. Sapp and to the State is that you're
14 going to apply that law notwithstanding your
15 feelings.

16 **A** Right, I understand.

17 **Q** And you could do that and would do that?

18 **A** Yes, sir.

19 **Q** Is that correct?

20 **A** Yes, sir.

21 **Q** You understand that if in this particular case -- of
22 course, you are going to decide this case based on
23 the evidence. That's what you've indicated thus far,
24 is that true?

25 **A** That's true.

1 **Q** And the evidence, of course, means that which you
2 hear in this courtroom --

3 **A** Yes.

4 **Q** -- through testimony of witnesses and exhibits. You
5 understand that?

6 **A** Yes.

7 **Q** Nothing that you hear outside of this courtroom can
8 affect your decision whatsoever. Do you understand
9 that?

10 **A** Right.

11 **Q** And if you permit that to happen, of course, that
12 could affect the outcome of this proceeding. Do you
13 understand?

14 **A** Yes.

15 **Q** It's that serious. Do you understand?

16 **A** Right.

17 **Q** Obviously, for that reason, this jury will be
18 sequestered. Do you understand that?

19 **A** Yes.

20 **Q** And that sequestration could be as long as seven to
21 10 days. Do you understand that?

22 **A** Yes.

23 **Q** Would that affect you in any way in this respect,
24 would it cause you to not be able to perform your
25 duties and responsibilities as a juror?

1 **A** No.

2 **Q** That means to carefully, methodically analyze the
3 evidence when the Court gave you that instruction to
4 begin that process.

5 **A** Right.

6 **Q** You understand that if you were to -- the jury were
7 to return a verdict of guilty in the first phase as
8 to the offense of murder -- and you understand also
9 that it's each of the offenses charged, the State has
10 the burden of proving them?

11 **A** Yes.

12 **Q** And that means that they have to present the evidence
13 that would persuade you as a juror beyond a
14 reasonable doubt as to each element of a specific
15 crime. Do you understand that?

16 **A** Yes.

17 **Q** Because I would instruct you if they failed on any
18 element, then you must return a verdict of not
19 guilty. Would you have any problem following that
20 instruction?

21 **A** No, sir.

22 **Q** And likewise, of course, if they were to satisfy you
23 on each element of a crime, would you return a
24 verdict of guilty?

25 **A** Yes, sir.

1 **Q** If you did return a verdict of guilty, obviously, we
2 would go into a second portion of this proceeding.
3 It's a bifurcated proceeding, which I mentioned to
4 you, which would deal with the potential penalty. Do
5 you understand that?

6 **A** Yes.

7 **Q** During that phase of the proceeding, you would
8 make -- may hear facts and circumstances that we
9 would call -- some we would refer to as aggravating
10 circumstances and/or mitigating circumstances. Do
11 you understand?

12 **A** Yes.

13 **Q** Aggravating circumstances are generally defined as
14 those facts and circumstances and situations that
15 would -- basically, our legislature has defined that
16 would aggravate or make worse or worsen the enormity
17 or effect of the murder. Do you understand that?

18 **A** Yes.

19 **Q** Mitigating circumstances are those circumstances that
20 our legislature has defined that would basically
21 reduce or mitigate the effect or extenuating
22 circumstances of the effect of the crime. Do you
23 understand that?

24 **A** Yes.

25 **Q** And that's just a general statement. I will give you

1 a more specific legal discussion during the charge.

2 You understand that?

3 **A** Yes.

4 **Q** If you were a juror and you began your deliberations,
5 could you, depending upon the particular facts and
6 circumstances of that case, including the
7 consideration of aggravating circumstances and
8 mitigating circumstances and applying the law as I
9 would instruct you concerning those matters and all
10 matters, could you reach a conclusion that would
11 return a verdict of life imprisonment without the
12 possibility of parole?

13 **A** Yes, sir.

14 **Q** Likewise, could you, depending upon the particular
15 facts and circumstances of the case, including the
16 consideration of aggravating and mitigating
17 circumstances and applying the law that I would
18 instruct you, return or reach a conclusion and return
19 a sentence of death?

20 **A** Yes.

21 **Q** It would depend on the facts and circumstances?

22 **A** Yes.

23 **THE COURT:** Please answer any questions the
24 State may have and Mr. Sapp.

25 **MR. HOISINGTON:** Thank you, Judge.

EXAMINATION

1
2 **BY MR. HOISINGTON**

3 **Q** Good morning, Mr. Franciscus.

4 **A** Morning.

5 **Q** We were introduced yesterday. I'm Ralph Hoisington.
6 And together with Blair Jennings, the Deputy
7 Solicitor in Berkeley, we'll be presenting the case
8 for the State.

9 **A** Right.

10 **Q** His Honor has asked you a number of questions and
11 actually, you've answered most everything I need to
12 know about you as a potential juror. I would want to
13 point out or ask you if you understand that when you
14 were given those list of three types of jurors,
15 there's no right or wrong answer to it.

16 **A** Right.

17 **Q** And there are people that fall in that position of
18 Juror No. 1 or Juror No. 2 that could either never
19 give the death penalty no matter what the
20 circumstances or might want to give it every time a
21 murder's been committed. Do you understand that
22 there are people that feel that way and quite
23 legitimately?

24 **A** (The juror nodded.)

25 **Q** The problem we have is that would not be fair to

1 either side if we had those type of people on the
2 jury.

3 **A** Uh-huh.

4 **Q** Now, those people that we pick for a jury are going
5 to be asked to make weighty decisions. And I would
6 expect that you would want the State to present you
7 with ample evidence to make that decision. Would
8 that be fair?

9 **A** Yes.

10 **Q** On the other hand, you can understand that the State
11 and the people we represent in this case would want
12 the jurors to be able to do what's right in a case.
13 And, of course, what's right is what they consider
14 right after they've heard everything.

15 **A** Right.

16 **Q** But you would be able to do that?

17 **A** Yes, sir.

18 **Q** So you would be able to listen to all the facts both
19 positive and negative and make a determination of
20 whether life in prison was appropriate?

21 **A** Yes.

22 **Q** Or in the alternative, if you thought the facts
23 supported it and the law allowed it, that the death
24 penalty could be appropriate?

25 **A** Yes.

1 **MR. HOISINGTON:** Thank you, sir.

2 **THE COURT:** Mr. Archer?

3 EXAMINATION

4 **BY MR. ARCHER**

5 **Q** Sir, I noticed that you were in the Air Force.

6 **A** No, I'm an over-the-road truck driver.

7 **Q** Gregory Franciscus?

8 **A** Franciscus, yes.

9 **Q** Have you been in any branch of the service, if so,
10 please answer the following: What branch? You've
11 got the Air Force.

12 **A** Yes, I was in the Air Force.

13 **Q** That was my question, you were in the Air Force?

14 **A** Yes.

15 **Q** I noticed you retired, what is that the rank of, E-4?

16 **A** I didn't retire. I spent four years in the Air
17 Force.

18 **Q** What's E-4?

19 **A** That's sergeant.

20 **Q** Sergeant. Okay.

21 **A** Yes.

22 **Q** And I notice you put down as your religion is a
23 Catholic?

24 **A** Yes.

25 **Q** Would you consider yourself, I'm using a word I'm not

1 really familiar with, but a devout Catholic?

2 **A** I wouldn't really say devout. I practice my religion
3 more for peace of mind than for anything else.

4 **Q** So you go to a Catholic church, say, on every Sunday
5 or every other Sunday?

6 **A** Unfortunately, my job doesn't permit me to be in
7 church every Sunday. A lot of the truck stops have
8 chapel worship and I go to that when available.

9 **Q** I see. Do you have any concerns about the death
10 penalty?

11 **A** I have certain reservations, like anybody else I
12 suppose. But in a case like this, I could weigh the
13 facts and return a verdict of death if I thought that
14 was appropriate.

15 **Q** Would you have any concerns with life without parole?

16 **A** I think life without parole would be a better
17 alternative in a case. But according to the facts, I
18 mean -- the facts, the evidence of the case, you have
19 to make a determination between the two.

20 **Q** Right. Has anything ever happened in your life
21 regarding the death penalty? Have you been familiar
22 with anything in your life regarding this?

23 **A** I don't understand.

24 **Q** Well, has any crimes or anything that was close to
25 you or any relatives, etc., that would affect your

1 opinion one way or the other on the death penalty?

2 **A** No, sir.

3 **MR. ARCHER:** I have no further questions. Thank
4 you.

5 **THE COURT:** Any additional questions from the
6 State?

7 **MR. HOISINGTON:** No, Your Honor. Thank you.

8 **THE COURT:** Mr. Franciscus, thank you, sir. If
9 you would step outside the door, we will be with you in a
10 moment.

11 (WHEREUPON, the juror left the courtroom.)

12 **THE COURT:** What says the State?

13 **MR. HOISINGTON:** I think he's qualified.

14 **THE COURT:** What says the defense?

15 **MR. ARCHER:** Qualified.

16 **THE COURT:** Ask him to come back in, please.

17 (WHEREUPON, the juror entered the courtroom.)

18 **THE COURT:** Thank you, Mr. Franciscus. You have
19 been found to be qualified to be a member of the pool of
20 jurors from which we will select the 14 jurors who will
21 hear this case. Ms. Wiggins has a sheet of paper that has
22 some information for you. We need for you to return to
23 this courtroom on Thursday morning at 9:30 and then we
24 will begin the process of selecting the trial jury.

25 Please understand, sir, that you should not

1 under any circumstances talk about this case with anyone
2 or permit anyone to talk with you about this case. Also,
3 please do not read any articles about this case or watch
4 any news programs about this case while you are out until
5 Thursday morning. And obviously after Thursday, if you're
6 selected, you'll be sequestered. But until then, it's
7 very important that you have no contact with anyone about
8 this case. Have a good day and relax and we'll look
9 forward to seeing you on Thursday morning. Just follow
10 the instructions concerning what you need to bring with
11 you, sir.

12 **THE POTENTIAL JUROR:** Okay.

13 **THE COURT:** Have a good day, sir.

14 Ms. Sisco.

15 (WHEREUPON, Sue E. Sisco, a white female,
16 entered the courtroom.)

17 EXAMINATION

18 **BY THE COURT**

19 **Q** Good morning, Ms. Sisco.

20 **A** Morning.

21 **Q** How are you this morning?

22 **A** Good, thank you.

23 **Q** Good. I hope you were able to have a restful evening
24 last night?

25 **A** Pretty good.

1 Q That's good. I know it was a stressful ordeal
2 yesterday, but I hope it wasn't too bad for you.

3 A It wasn't bad.

4 Q Good. Thank you for coming this morning. We are
5 going to continue that process that we started
6 yesterday. And in that regard, ma'am, I would remind
7 you that you are still under the oath that I imposed
8 yesterday. Is that agreeable with you?

9 A Yes, uh-huh.

10 Q And you are Sue Sisco; is that correct?

11 A That's right.

12 Q Ms. Sisco, have you talked with anyone or permitted
13 anyone to talk with you about this case since
14 yesterday?

15 A No.

16 Q Have you read any newspaper accounts or watched any
17 television news programs about this?

18 A I saw it come on and I flipped it.

19 Q Good. Thank you, ma'am. That's precisely what you
20 should have done. And you didn't listen to any of
21 it; is that correct?

22 A No.

23 Q Okay. Yesterday we went through a process. And that
24 process, as I indicated to you, was to ascertain
25 really whether there was anything about this case

1 that would cause a juror any problems to carefully,
2 methodically and fairly and impartially apply their
3 common sense and their sense of reason. And do you
4 understand that's what all those questions were
5 addressing yesterday? Do you understand?

6 **A** Yes.

7 **Q** As yesterday, the questions that you're going to be
8 asked this morning have no correct answers. Okay?
9 There is no right or wrong answers to any of these
10 questions. Please also understand that the questions
11 that are being asked of you are not intended to
12 invade your privacy or make you uncomfortable.
13 Again, they're just questions that the Court and the
14 attorneys may have to make sure that you would be a
15 juror that could be completely fair and impartial in
16 this proceeding. Do you understand that?

17 **A** Yes.

18 **Q** Do you have any problem with that?

19 **A** No.

20 **Q** You indicated yesterday either in response to the
21 questions or in not responding to the questions that
22 there was nothing about this case that would affect
23 your ability as a juror to apply your sense of
24 reason, your sense of logic, your common sense, if
25 you will, your life's experiences fairly and

1 impartially in the process of analyzing the evidence
2 in this case when the Court gives you that
3 instruction and deciding what you believe to be the
4 true facts of this dispute. Is that true?

5 **A** That's true.

6 **Q** So you come to this today and would come throughout
7 with an open mind, is that true?

8 **A** That's true.

9 **Q** You have not made any predeterminations in this case;
10 is that correct?

11 **A** That's right.

12 **Q** You understand that the questions that I'm asking you
13 today, none of them, including -- I'm going to ask
14 you some questions about the potential penalties, are
15 not to be considered by you or any juror to be a
16 suggestion from the Court of how you are to resolve
17 any of these issues. You understand that?

18 **A** Yes.

19 **Q** And is that agreeable with you as well?

20 **A** Yes.

21 **Q** If you were a juror in this case, you understand that
22 it would be my instruction to give you the law.
23 That's part of my responsibility. You understand
24 that?

25 **A** Yes.

1 Q Would you listen to that law?

2 A Yes.

3 Q Would you accept that law and apply that law fairly
4 and impartially to the facts that you would
5 ultimately determine in this matter?

6 A Yes.

7 Q Would that also apply if you heard a principle of law
8 that may give you some personal concern, but would
9 you set aside that concern and still apply that law
10 notwithstanding your feelings?

11 A Yes.

12 Q You would do that?

13 A Yes.

14 Q It's very important because there may be some
15 principles of law that you -- with which you may
16 differ. But you have promised the State and you have
17 promised Mr. Sapp by your oath that you take that
18 you're going to apply that law fairly and
19 impartially. Do you understand that?

20 A Yes.

21 Q You understand that you will decide this case based
22 on the evidence that you hear?

23 A Yes.

24 Q And evidence consists of the testimony of the
25 witnesses and exhibits and nothing else. Do you

1 understand that, ma'am?

2 **A** Yes.

3 **Q** And that means nothing that you hear outside of this
4 courtroom, nothing that's said to you outside of this
5 courtroom can in any way influence your decision. Do
6 you understand?

7 **A** Yes.

8 **Q** Would you do that?

9 **A** Yes.

10 **Q** Obviously, to assist the jury in that respect, the
11 Court will sequester you. You understand that?

12 **A** Yes.

13 **Q** And that sequestration may last from seven to 10
14 days. Does that cause you any problems?

15 **A** No.

16 **Q** Okay. I know it would be an inconvenience, but the
17 inconvenience would not -- in no way affect your
18 function as a juror or your -- the application of
19 your common sense and sense of reason, is that true?

20 **A** True.

21 **Q** Okay. Now, in this case you understand that the
22 State has the sole burden of proof?

23 **A** Yes.

24 **Q** Mr. Sapp has nothing to prove. As I mentioned to you
25 yesterday, the State brings the charge. The State

1 has the burden to prove each element of those charges
2 beyond a reasonable doubt. Do you understand that?

3 **A** Yes.

4 **Q** Mr. Sapp does not have to explain anything. He has
5 no responsibility or duty to offer any evidence. He
6 doesn't have to respond at all. Do you understand
7 that?

8 **A** Yes.

9 **Q** And that's his right, you understand. Because you
10 would always look to the State. When you began --
11 when you begin that process of analyzing the
12 evidence, the jury, of course, will be asking itself
13 whether the State has met its burden of proof. And
14 to do that, you would be analyzing the elements of
15 each offense. You understand that?

16 **A** Yes.

17 **Q** If you reached a conclusion personally that the State
18 had not met its burden of proof and not convinced you
19 beyond a reasonable doubt on any element, would you
20 return a verdict of not guilty on that offense?

21 **A** Yes, I would.

22 **Q** On the other hand, if you were convinced beyond a
23 reasonable doubt as to each element, would you return
24 a verdict of guilty on that particular offense?

25 **A** Yes.

1 **Q** Okay. This is a bifurcated proceeding. You
2 understand if a jury returns a verdict of guilty on
3 the offense of murder then we would go into a second
4 phase of this proceeding we call the penalty phase.
5 You understand?

6 **A** Yes.

7 **Q** And during that phase, you would hear additional
8 evidence concerning the appropriate penalty for the
9 jury to consider. Do you understand?

10 **A** Yes.

11 **Q** In that connection, you may hear matters that we
12 would call aggravating or mitigating circumstances.
13 Do you understand that?

14 **A** Yes.

15 **Q** Aggravating circumstances have been defined as being
16 incidents, details or occurrences which the general
17 assembly has declared by statute to make worse, that
18 is, aggravate the offense of murder. Do you
19 understand?

20 **A** Yes.

21 **Q** Mitigating circumstances are those incidents,
22 details, occurrences or circumstances which the
23 general assembly has declared also by statute which
24 would reduce the severity of the offense of murder
25 and may be considered as extenuating or reducing the

1 degree of moral culpability or responsibility. Do
2 you understand that?

3 **A** Yes.

4 **Q** If you were a juror, and during the sentencing phase,
5 could you depending on the particular facts and
6 circumstances of that case, including the
7 consideration of aggravating circumstances and
8 mitigating circumstances, and then considering those
9 facts and circumstances, taking the law as I gave it
10 to you and apply that law, could you return a verdict
11 of life without parole?

12 **A** Yes.

13 **Q** If you were a juror in a situation, depending on the
14 particular facts and circumstances, considering the
15 aggravating circumstances and mitigating
16 circumstances and then applying the law that I would
17 instruct you, could you return a verdict of death?

18 **A** I believe so.

19 **Q** It would depend on the circumstances of the
20 particular case?

21 **A** Yes.

22 **THE COURT:** Thank you. Please answer any
23 questions that the State and Mr. Sapp may have for you.

24 **MR. JENNINGS:** Thank you, Your Honor.

25 ///

EXAMINATION

1
2 **BY MR. JENNINGS**

3 **Q** Good morning, Ms. Sisco.

4 **A** Morning.

5 **Q** We were introduced yesterday morning. My name's
6 Blair Jennings. I'm the Deputy Solicitor in Berkeley
7 County and myself and Solicitor Hoisington are
8 representing the State in this case prosecuting
9 Mr. Sapp. Did you receive the sheet yesterday that
10 listed three types of jurors --

11 **A** Yes.

12 **Q** -- with a description of each type --

13 **A** Yes.

14 **Q** -- one, two and three? How would you characterize
15 yourself?

16 **A** No. 3.

17 **Q** No. 3. And you would be able to take all the facts
18 and circumstances of this case, weigh them, and if
19 appropriate, return a sentence of life in prison
20 without parole?

21 **A** Yes.

22 **Q** And also, if appropriate and the facts warranted, I
23 believe you said that you believed you could return a
24 sentence of death?

25 **A** Yes.

1 **Q** Have you had the opportunity with friends, family
2 members to discuss the death penalty? I know it's a
3 controversial topic. Have you ever discussed it with
4 people?

5 **A** Have I ever discussed it?

6 **Q** Yes, ma'am.

7 **A** Yeah, I have.

8 **Q** And if you wouldn't mind, what are your views or
9 thoughts on the death penalty?

10 **A** If the circumstances are right, I believe they should
11 be put to death.

12 **Q** And you believe that that is an appropriate
13 punishment in certain circumstances?

14 **A** Yes.

15 **Q** As part of this process -- and the Judge would
16 certainly give you instruction if we reached that
17 point in the penalty phase, but when the jury went
18 back into the jury room to deliberate Mr. Sapp's
19 sentence, part of your requirement as a juror if you
20 were seated on this jury would be to, in fact, sign
21 your name to a form to his death sentence. Do you
22 understand that?

23 **A** I didn't know that, but I understand it.

24 **Q** Okay. Would you feel comfortable if it got to that
25 point, that all 12 jurors agreed that the death

1 penalty was the appropriate punishment for Mr. Sapp,
2 would you feel comfortable signing your name to that
3 form?

4 **A** Yes.

5 **Q** Would you be comfortable with the fact that although
6 it would be termed as a recommendation, if the jury
7 votes that the death penalty is appropriate that that
8 is the sentence that would be imposed?

9 **A** Yes.

10 **Q** And you would still feel comfortable imposing a death
11 sentence?

12 **A** Yes.

13 **Q** Are you aware of any personal feelings -- and I think
14 you've probably already answered this, but any
15 personal feelings that you have that might inhibit
16 your ability or cause you any reservation to return a
17 sentence of death?

18 **A** No.

19 **Q** And on your jury questionnaire, you stated that you
20 were a Baptist?

21 **A** Yes.

22 **Q** Are there any teachings of the Baptist faith or
23 anything about the Baptist religion that would cause
24 you hesitation, if appropriate, to return a death
25 sentence?

1 **A** Not that I'm aware of, no.

2 **MR. JENNINGS:** Thank you, Your Honor. That's
3 all I have.

4 **THE COURT:** Very well.

5 Mr. Archer?

6 EXAMINATION

7 **BY MR. ARCHER**

8 **Q** Morning, Ms. Sisco.

9 **A** Morning.

10 **Q** I see here that you have been married 42 years.
11 That's quite admirable. You don't see that too often
12 today. Anyway, I see you were born also in New York?

13 **A** Yes.

14 **Q** Do you attend a Baptist church locally?

15 **A** In New York?

16 **Q** No, no, no, locally here in the south.

17 **A** Here, not at the present time.

18 **Q** Okay. So you consider yourself a Baptist, not a
19 Southern Baptist?

20 **A** No.

21 **Q** Do you know the difference between a Baptist and a
22 Southern Baptist?

23 **A** No.

24 **Q** Okay. That's fair. You answered the questions from
25 Mr. Jennings about the death penalty, but let me ask

1 you this. What's your opinion on life without
2 parole?

3 **A** I have mixed feelings on life without parole.
4 Because I feel it's kind of an imposition for us to
5 have to pay for somebody to live in a prison without
6 parole forever as long as they live. So I do have
7 mixed feelings on that. But if the circumstances
8 were such, then I would go that way.

9 **Q** Well, what would you feel the circumstances would
10 have to be?

11 **A** I don't know.

12 **MR. JENNINGS:** Objection, Your Honor.

13 **THE COURT:** Sustained. It's inappropriate.

14 **Q** Let me ask you this, I notice that you put down that
15 you are a Type 3?

16 **A** Yes.

17 **Q** Which is you would make up your mind at that time?

18 **A** Yes.

19 **Q** But what you have just told me, you would be more
20 inclined to go for the death penalty, is that what
21 you're saying?

22 **A** That depends on the circumstances.

23 **Q** All right. So your opinion on life without parole
24 really depends on the circumstances?

25 **A** Right.

1 **Q** All right. Do you understand what mitigating
2 circumstances are? Something good for the defendant,
3 let's assume. There are some good points about the
4 defendant.

5 **A** That's what it means?

6 **Q** Yes.

7 **A** Yes.

8 **Q** Okay. Let's assume that you felt that he should get,
9 because of the crime he committed, the death
10 sentence. Could you then alter that because you
11 found that there were some mitigating circumstances?

12 **MR. JENNINGS:** Objection, Your Honor.

13 **THE COURT:** I sustain that.

14 **Q** Could you tell us -- could you tell us your feelings
15 on anybody personally? Have you been involved with
16 anybody personally with life without parole or death
17 penalty?

18 **A** No.

19 **Q** No. Do you feel that if the police testified that
20 they would be more truthful than anybody else?

21 **MR. JENNINGS:** Objection, Your Honor.

22 **THE COURT:** Sustained, that's inappropriate.

23 **MR. ARCHER:** I have no further questions.

24 **THE COURT:** Very well.

25 Any questions from the State?

1 **MR. JENNINGS:** No, sir.

2 **THE COURT:** You may step down.

3 (WHEREUPON, the juror left the courtroom.)

4 **THE COURT:** What says the State?

5 **MR. JENNINGS:** She's qualified.

6 **THE COURT:** Defense?

7 **MR. ARCHER:** Qualified.

8 **THE COURT:** All right. Bring her back in.

9 (WHEREUPON, the juror entered the courtroom.)

10 **THE COURT:** Ms. Sisco, thank you very much. You
11 have been found to be qualified to be a member of the pool
12 of jurors from which we will ultimately select the trial
13 jury. Ms. Wiggins has a sheet that has some instructions
14 for you that will be helpful to you to let you know -- the
15 first one says return on Thursday morning at 9:30. At
16 that time, we will commence the process of selecting the
17 jury in this case. You'll also note that it gives you
18 instructions about bringing with you sufficient materials
19 to -- if you are so that you would be sequestered, but if
20 you will just follow that instruction.

21 Please remember now that while you are going to
22 be home and about, do not discuss this case with anyone or
23 permit anyone to talk with you about this case as you have
24 done. Do not read any newspaper articles and do not watch
25 any television programs about it. Have a good day today

1 and tomorrow and we'll look forward to seeing you on
2 Thursday morning at 9:30. Thank you. You're free to
3 leave.

4 Let's bring in Michele Hill, please.

5 (WHEREUPON, Michele Hill, a white female,
6 entered the courtroom.)

7 EXAMINATION

8 **BY THE COURT**

9 **Q** Good morning, Ms. Hill.

10 **A** Morning.

11 **Q** How are you this morning?

12 **A** I'm fine.

13 **Q** Good. I'm going to need for you to speak up so that
14 everyone can hear you, please. And I want you to
15 relax. And I hope you had a good evening. We're
16 continuing the process that we started yesterday.
17 And that is pursuing a group of jurors from which we
18 will ultimately select the trial jury. You
19 understand that?

20 **A** Yes.

21 **Q** You understand that you are still under oath in this
22 matter?

23 **A** Yes.

24 **Q** Do you have any problem with complying with that
25 oath?

1 **A** No.

2 **Q** And you have complied with it thus far?

3 **A** Yes.

4 **Q** The questions that you will be asked today are very
5 similar to those questions of yesterday. There are
6 no correct answers. The questions are really just to
7 try to learn about you and to make certain that there
8 is nothing about your background or experience in
9 life that would affect in any way your ability to be
10 fair and impartial in deciding the factual issues in
11 this case. Do you understand that?

12 **A** Yes.

13 **Q** And as I understand, yesterday, you had indicated
14 thus far, either by direct response or by not
15 responding to some of the questions, that at this
16 point you haven't predetermined anything about this
17 case. Is that true?

18 **A** That's correct.

19 **Q** You have an open mind about this case?

20 **A** Yes.

21 **Q** Also, there's nothing about this case that would give
22 you any concern about your ability to apply your
23 common sense, your life's experiences fairly and
24 impartially in the process of analyzing the evidence
25 which consists of testimony of witnesses and

1 exhibits, and deciding at the appropriate time what
2 you believe to be the true facts. Is that true?

3 **A** Yes.

4 **Q** You also indicated, I believe, by your responses that
5 there is nothing that would affect your ability to
6 apply the law fairly and impartially as well to those
7 facts. Is that true?

8 **A** Correct.

9 **Q** Now, have you talked with anyone or permitted anyone
10 to talk with you about this case since we were last
11 together?

12 **A** No.

13 **Q** Have you reviewed any newspaper articles or watched
14 any television programs about the case?

15 **A** No.

16 **Q** Please understand that nothing that I will say to you
17 during this process is to be considered by you in any
18 way to be a suggestion of how you are to resolve any
19 of these issues. Is that agreeable with you?

20 **A** Yes.

21 **Q** I have to ask you a number of questions. Don't
22 construe them to be an indication of how or a
23 suggestion of how you are to resolve a particular
24 fact. Is that acceptable?

25 **A** Yes.

1 **Q** Have you reviewed the list that was given to you
2 yesterday?

3 **A** Yes.

4 **Q** And of the three types of jurors depicted on that
5 list, which one most accurately describes you?

6 **A** No. 3.

7 **Q** No. 3. Now, you understand that our roles are pretty
8 well defined by our law. You, if you were on the
9 jury, would be the sole judge of the facts. It's my
10 responsibility to be the sole judge of the law. Do
11 you understand that?

12 **A** Yes.

13 **Q** Part of that responsibility would be to give you the
14 law at the conclusion of the trial of the various
15 phases if we went into more than one phase. Would
16 you if you were on the jury listen to that law?

17 **A** Yes.

18 **Q** Could you and would you accept it and apply that law
19 as it was instructed?

20 **A** Yes.

21 **Q** Would that be the case also even if you heard some
22 principle of law with which you may differ? And let
23 me tell you why. You have the right to feel a law
24 should be changed, that's your right as a citizen in
25 this country. But one of the commitments and an

1 important part of that commitment is that you will
2 take the law as I give it to you even if you don't
3 agree with it and apply that law fairly. Could you
4 do that and would you do that?

5 **A** Yes.

6 **Q** Because that's the commitment that you will make to
7 the State and that you will make to Mr. Sapp if you
8 are on that jury. Do you understand?

9 **A** Yes.

10 **Q** And as I understand, you would do that?

11 **A** Yes.

12 **Q** Part of the law that I would instruct you as I
13 mentioned to you yesterday is this responsibility of
14 the State to prove the case that they have brought.
15 And they named a number of charges, and the State and
16 only the State has the burden of establishing the
17 necessary elements for each offense. Do you
18 understand that?

19 **A** Yes.

20 **Q** You would never expect nor should you expect Mr. Sapp
21 to prove anything at all or disprove anything because
22 as I instructed you and will continue to instruct
23 you, he has no responsibility in this proceeding at
24 all to do anything. Do you understand that?

25 **A** Yes.

1 **Q** It's solely on the State. If you were on the jury
2 and you reached a point and were beginning the
3 process of analyzing the evidence -- and as I
4 mentioned to you, the State has the burden to
5 establish each element beyond a reasonable doubt.
6 And you, in your analysis, reached a point where you
7 believed the State had not convinced you beyond a
8 reasonable doubt on any particular element, would you
9 return a verdict of not guilty on that particular
10 offense?

11 **A** Yes.

12 **Q** On the other hand, if you were convinced beyond a
13 reasonable doubt as to each element, would you return
14 a verdict of guilty on that particular offense?

15 **A** Yes.

16 **Q** You understand that this is a bifurcated trial. And
17 that means if the jury returns a verdict of guilty on
18 the offense of murder, we would then move into a
19 second phase of this proceeding. Do you understand
20 that? We call that the penalty phase. Do you
21 understand?

22 **A** Yes.

23 **Q** During the penalty phase, you would most likely hear
24 additional evidence. And that evidence may consist
25 of what we call aggravating circumstances or

1 mitigating circumstances. Do you understand that?

2 **A** Yes.

3 **Q** Aggravating circumstances have been defined generally
4 as facts, incidents, details or an occurrence which
5 the general assembly has declared by statute would
6 make worse, that is, aggravate the offense of murder.
7 Do you understand that?

8 **A** Yes.

9 **Q** Mitigating circumstances are generally defined as
10 incidents, details, or occurrences which our general
11 assembly has declared by statute reduces the severity
12 of the offense of murder and may be considered as
13 extenuating or as reducing the degree of moral
14 culpability or responsibility. Do you understand
15 that?

16 **A** Yes.

17 **Q** Would you have any problem following that law and
18 applying the law as it pertains to aggravating
19 circumstances and mitigating circumstances?

20 **A** No.

21 **Q** If you were a juror in that situation in the
22 sentencing phase, could you, depending upon the
23 particular facts and circumstances of the case,
24 including the consideration of the aggravating and
25 mitigating circumstances and considering and applying

1 the law that would be given to you by me, could you
2 reach a conclusion or decision that would result in a
3 life imprisonment without the possibility of parole?

4 **A** Yes.

5 **Q** If you were a juror in that situation, could you,
6 depending upon the particular facts and circumstances
7 of the case, including the aggravating circumstances
8 and mitigating circumstances, and taking the law as I
9 would instruct it to you and applying that law, could
10 you reach a decision with a verdict and return a
11 sentence of death?

12 **A** If there was no doubt, yes.

13 **Q** Okay. Again, that's -- you would be -- the level of
14 proof of the State is beyond a reasonable doubt. Do
15 you understand that?

16 **A** Yes.

17 **Q** And as I mentioned to you and I would give you
18 instruction on that term, a reasonable doubt is a
19 doubt that would make an honest and conscientious
20 juror who is searching for the truth to hesitate to
21 take some action or to act. Do you understand that?

22 **A** Yes.

23 **Q** And that's a very general definition, very -- kind of
24 a broad definition. And I'd give you a much greater
25 detailed definition during the instruction. But you

1 wouldn't have any problem applying the instruction on
2 reasonable doubt as well as any other aspect of the
3 charge; is that right?

4 **A** Right.

5 **Q** And you would follow that instruction?

6 **A** Yes.

7 **Q** You understand that as a part of your
8 responsibilities and duties as a juror, the verdict
9 form will be signed by all jurors. And if the jury
10 returned a verdict of death, you would have to sign
11 that verdict form. Do you understand that?

12 **A** Yes.

13 **Q** And you could do that as a member of the jury?

14 **A** Yes.

15 **Q** If it became necessary?

16 **A** Yes.

17 **THE COURT:** Answer any questions the State may
18 have, please.

19 **MR. HOISINGTON:** Thank you, Judge.

20 EXAMINATION

21 **BY MR. HOISINGTON**

22 **Q** Morning, Ms. Hill. I'm Ralph Hoisington. Blair
23 Jennings and I will be presenting the case for the
24 State. I don't think after you've been through this
25 whole process there's any mystery what both sides are

1 looking for. Obviously, jurors that say they are
2 Type 1 or Type 2 couldn't be fair to one side or
3 another. Is that apparent to you?

4 **A** Yes.

5 **Q** And so, ultimately, what both parties are looking for
6 are people that identify themselves as Type 3 jurors,
7 which you have identified yourself as. I heard you
8 say that you would have to understand that somebody
9 was guilty beyond a reasonable doubt or it was clear
10 evidence of that. And believe me, we want you or
11 anybody that's on a jury to hold us to that burden in
12 a case of this nature. If you were on the jury,
13 we're going to ask you to make very weighty
14 decisions. And you should ask us to present evidence
15 to you sufficient to make that decision and we would
16 expect that. Is that what you were talking about
17 when you said you would have to know for sure?

18 **A** Yes. If your case is proven without reasonable
19 doubt, yes.

20 **Q** Yes, ma'am. Now, everybody that comes into court as
21 a juror has their own opinions and has feelings and,
22 certainly, they're entitled to them. So to the
23 extent you could share any with me, I would
24 appreciate that. And by that, I mean, do you have
25 any philosophical opinions or religious opinions that

1 would weigh into this decision-making process with
2 you?

3 **A** No.

4 **Q** I noticed you put on your questionnaire that you were
5 Catholic?

6 **A** I am.

7 **Q** I believe that at one point the Catholic church was
8 in favor of the death penalty and, subsequently, they
9 now frown upon it. Would that put you in a real
10 awkward position in making that determination?

11 **A** No.

12 **Q** You would act independently at that point?

13 **A** Yes.

14 **Q** Also -- and I don't mean to inquire too much
15 personally, but you have a couple of boys, I guess,
16 somewhere near the age of Mr. Sapp. Would that
17 interfere with your ability to give both the State
18 and the defense a fair trial in this case?

19 **A** No.

20 **Q** So from what I understand, you would be
21 comfortable -- well, comfortable is sometimes an
22 awkward word in something like this. You would be
23 willing to do the duty of a juror. And if the facts
24 called for it and the law allowed it and you thought
25 life in prison without parole was appropriate, you

1 could return such a verdict?

2 **A** Yes.

3 **Q** But on the other hand, after hearing all the evidence
4 and only the evidence, the jury determined -- you, as
5 a juror, determined that he was guilty beyond a
6 reasonable doubt and then only after considering
7 mitigating and aggravating circumstances, if you
8 thought it was appropriate to return a death verdict,
9 you could do that?

10 **A** Yes.

11 **Q** Let me push you one second more if you don't mind. I
12 notice a certain hesitation. Share that hesitation
13 with me.

14 **A** There's -- I believe in the death penalty. It's just
15 something that I wouldn't take lightly.

16 **MR. ARCHER:** I'm sorry. Could she speak up?

17 **THE COURT:** It's something she would not take
18 lightly.

19 If you will keep your voice up. You may have to
20 sit closer to that mic.

21 **THE WITNESS:** It depends on the circumstances of
22 that case, which I really don't know at this point. So
23 there are instances that I do believe the death penalty is
24 warranted.

25 **MR. HOISINGTON:** Well, Ms. Hill, I appreciate

1 it. We wouldn't want jurors that will take it lightly.
2 So thank you for your answers.

3 **THE COURT:** Mr. Archer?

4 EXAMINATION

5 **BY MR. ARCHER**

6 **Q** Good morning. I'm Paul Archer, I'm one of the
7 defense attorneys. I noticed that you put down on
8 your questionnaire that family and close friends have
9 been employed in the government, law enforcement,
10 etc. Would you explain who these people are?

11 **A** One is one I used to work with before he became a
12 police officer. And the other two I know just by
13 acquaintance through association with other people.
14 I don't really know them very well. They would be
15 more of an acquaintance than a friend. But the first
16 one I used to work with. I worked with him for about
17 two, two and a half years before he became an
18 officer. He just became an officer last fall.

19 **Q** And how many years ago was that?

20 **A** I haven't seen him for about a year now.

21 **Q** Okay. So you didn't discuss this case with him?

22 **A** Oh, no.

23 **Q** And how about those others, what did you say, two
24 more that you were acquaintances with?

25 **A** They are actually more friends with other friends of

1 mine. I've met them, I know them, but they aren't
2 really close to me.

3 Q So you don't consider them your friends?

4 A Well, I don't consider them my enemy. But, I mean,
5 they're not -- I'm not close to them, but I do know
6 them.

7 Q Okay. And do you see them socially?

8 A Very rarely.

9 Q Okay. And have you ever discussed this case with
10 them?

11 A No.

12 Q How do you feel about life without parole? Do you
13 feel that's a strict punishment?

14 A Yes.

15 Q And if you thought that that was warranted, you would
16 have no problem? You think that would be a severe
17 enough punishment?

18 A In some cases.

19 Q Let me ask you this, after the guilt phase, if you
20 thought that person should be executed and given the
21 death penalty and then you hear some mitigating or
22 good things about them, could you change your mind on
23 something like that?

24 A You mean after the guilty verdict's already in?

25 Q Well, yes. In other words, he's been found guilty

1 and you think at that time that he should get the
2 death penalty. And then we go into the phase where
3 you're going to hear what the judge says is
4 mitigating circumstances, some good things about the
5 defendant. Could you change your mind on that
6 because you heard these mitigating circumstances?

7 **MR. JENNINGS:** I think the standard is could she
8 consider it, Your Honor.

9 **THE COURT:** Well, first of all, I don't think at
10 that point -- I want to correct something, because at that
11 point she should not have any conclusion about any
12 sentence or the appropriate sentence. Because she's
13 indicated she doesn't have any predeterminations. So that
14 would be improper for her to do that. So I'm going to ask
15 you to rephrase that question. She's indicated she could
16 follow the law.

17 **Q** Okay. So in other words, if you heard some
18 mitigating circumstances, you could follow the law?

19 **A** I would weigh all the evidence, yes.

20 **Q** And then you could give a life sentence without
21 parole?

22 **A** Yes.

23 **MR. ARCHER:** Thank you.

24 **THE COURT:** Any additional questions, Solicitor?

25 **MR. HOISINGTON:** No, Your Honor.

1 **THE COURT:** Let me ask you just a couple of
2 questions, Ms. Hill, following up that. You understand it
3 is a bifurcated proceeding, that in the first part we'll
4 deal with the guilt phase, we call it the guilt phase
5 where you'll hear evidence concerning whether the State
6 meets its burden of proof as to each of these crimes. Do
7 you understand that?

8 **THE WITNESS:** Yes.

9 **THE COURT:** Punishment should not be a part of
10 your consideration at all. Do you understand that?

11 **THE WITNESS:** Yes.

12 **THE COURT:** You've indicated you have made no
13 predeterminations in that connection; is that correct?

14 **THE WITNESS:** Correct.

15 **THE COURT:** And you would not do so until the
16 Court gave you the instruction to begin the deliberations
17 on that aspect of this proceeding if you got to that
18 point. Is that true?

19 **THE WITNESS:** Yes.

20 **THE COURT:** You would keep an open mind until
21 then; is that right?

22 **THE WITNESS:** Yes.

23 **THE COURT:** Okay. One other question that I
24 failed to ask you. Obviously, to facilitate and assist in
25 making sure that you don't have any contact, the jury will

1 be sequestered. Do you understand that?

2 **THE WITNESS:** Yes.

3 **THE COURT:** And that means -- the sequestration
4 could be seven days to 10 days in length. Will that cause
5 you any problem performing your duties as a juror?

6 **THE WITNESS:** I don't think so.

7 **THE COURT:** I know it would be an inconvenience,
8 but that wouldn't interfere with your applying your common
9 sense and sense of reasoning; is that correct?

10 **THE WITNESS:** No, no.

11 **THE COURT:** Any additional questions from the
12 State?

13 **MR. HOISINGTON:** No, Your Honor. Thank you.

14 **THE COURT:** Any additional questions from
15 Mr. Sapp?

16 **MR. ARCHER:** No.

17 **THE COURT:** You may step down, please. We'll be
18 with you in just a second, Ms. Hill.

19 (WHEREUPON, the juror left the courtroom.)

20 **MR. HOISINGTON:** I believe she's qualified,
21 Judge.

22 **THE COURT:** What says Mr. Sapp?

23 **MR. ARCHER:** Qualified.

24 **THE COURT:** Ask her to come in, please.

25 (WHEREUPON, the juror entered the courtroom.)

1 **THE COURT:** Thank you, Ms. Hill. You have been
2 found to be qualified to be a member of the pool of jurors
3 from which we will ultimately select the trial jury. That
4 will take place on Thursday morning at 9:30. Ms. Wiggins
5 has a sheet of paper that gives you some information
6 concerning what you need to do on that morning about
7 bringing something with you. Please be present at 9:30,
8 just come directly to the courtroom.

9 Do not, Ms. Hill, discuss this case with anyone,
10 permit anyone to talk with you about this case. Do not
11 read any newspaper articles about this case or watch any
12 television news programs about this case. Have a good day
13 today and tomorrow and I will see you Thursday morning at
14 9:30. You are free to leave. You can exit through the
15 front door. Thank you.

16 Bring in Ms. Charlene Ward, please.

17 (WHEREUPON, Charlene Ward, a white female,
18 entered the courtroom.)

19 EXAMINATION

20 **BY THE COURT**

21 **Q** Good morning, Ms. Ward.

22 **A** Morning.

23 **Q** How are you?

24 **A** Oh, just fine.

25 **Q** That's good. I hope you had a restful evening?

1 **A** I did.

2 **Q** Good. We are ready to continue now this process that
3 we started yesterday. And you probably have gleaned
4 by now, yesterday there were a number of questions
5 asked of the entire venire, the entire jury panel.
6 None of those questions as I indicated had any
7 correct answers. They were all really designed to
8 help you and to help us make a determination as to
9 whether or not you could be a fair and impartial
10 juror. Is that your understanding?

11 **A** Yes, it is.

12 **Q** We're going to continue that process now. We're
13 going to ask you some further questions. Please
14 understand that none of these questions are intended
15 to invade your privacy at all. We just want to be
16 sure that you are a person that basically, as you
17 have indicated thus far, can be fair and impartial in
18 this case. Is that true?

19 **A** That is true.

20 **Q** Because as I understand it at this point you haven't
21 made any decisions about this matter. Is that true?

22 **A** I have not.

23 **Q** You understand that you are still under oath in this
24 matter?

25 **A** I do.

1 **Q** Have you discussed this case with anyone or permitted
2 anyone to talk with you about this case or read
3 anything about it or watched any news programs?

4 **A** I have not.

5 **Q** Okay. Yesterday you had indicated that you would at
6 the -- be a juror that could at the appropriate time
7 consider the evidence in this case, the evidence
8 being the testimony of witnesses and exhibits that
9 are introduced. At that time then apply your common
10 sense, your sense of logic and reason, fairly and
11 impartially and make a determination as to what you
12 believe to be the true facts of this dispute. Is
13 that true?

14 **A** That is true.

15 **Q** Please understand that nothing that I am saying to
16 you today should be considered by you or any juror to
17 be an indication of how you are to resolve any of
18 those issues. Is that fair to you?

19 **A** I understand that.

20 **Q** And I'm not suggesting a determination should be
21 made. And I would reiterate as I stated yesterday,
22 Mr. Sapp is presumed innocent in this matter, has no
23 burden whatsoever in this process. You understand
24 that?

25 **A** I do understand that.

1 **Q** You don't have any problem with that principle of
2 law?

3 **A** I do not.

4 **Q** It would be my responsibility as the trial judge to
5 give you the law at the conclusion of this case. Do
6 you understand that?

7 **A** I do understand that.

8 **Q** Would you as a juror listen to that law?

9 **A** Yes, I would.

10 **Q** Would you and could you accept that law and apply
11 that law fairly and impartially to the facts that you
12 ultimately may determine in this case?

13 **A** I could.

14 **Q** You understand that there may be some principles of
15 law that you may hear with which you may differ. But
16 part of your commitment that you make to the
17 defendant, to Mr. Sapp, and to the State is that you
18 would apply that law notwithstanding your feelings.
19 Would you do that?

20 **A** Yes, I would.

21 **Q** As I mentioned to you yesterday, part of the law that
22 I would instruct you would be that the burden of
23 proof is solely upon the State in this matter. Do
24 you understand that?

25 **A** I do understand that.

1 **Q** And that means that they have to prove each element
2 of each offense to the standard or level that
3 convinces you beyond a reasonable doubt that that
4 element has been established by the evidence. Is
5 that correct?

6 **A** Right, I do understand that.

7 **Q** If, when you began your process, you reached a
8 conclusion that the State had not convinced you
9 beyond a reasonable doubt as to any particular
10 element of an offense, as to that offense would you
11 return a verdict of not guilty?

12 **A** Yes.

13 **Q** If you were convinced beyond a reasonable doubt as to
14 all elements, would you return a verdict of guilty
15 for that particular offense?

16 **A** Yes.

17 **Q** If the jury should return a verdict of guilty, you
18 understand that there would be a second phase of this
19 proceeding?

20 **A** Yes, as you described yesterday.

21 **Q** And we would call that the penalty phase, you
22 understand that?

23 **A** Yes, uh-huh.

24 **Q** First phase does not deal with any penalty issues,
25 you understand that?

- 1 **A** Yes, I do.
- 2 **Q** It would merely deal with the specific aspects of
3 each offense charged. Do you understand?
- 4 **A** Yes.
- 5 **Q** Do you also understand that to assist you in not
6 having contact and to assist you in making sure that
7 you don't -- there's no outside influence because one
8 of your decisions -- well, one of the important parts
9 of your oath is that your decision will be based on
10 the evidence that you hear in this courtroom. Do you
11 understand that?
- 12 **A** Yes, sir.
- 13 **Q** And nothing outside of this courtroom.
- 14 **A** That is true.
- 15 **Q** You will be sequestered. It could be as long as
16 seven to 10 days. Do you understand that?
- 17 **A** Yes, I do.
- 18 **Q** Would that affect your ability to be a juror in any
19 way?
- 20 **A** No, it would not.
- 21 **Q** Okay. If we went into the second phase of this
22 proceeding, the penalty phase, you would hear
23 additional evidence concerning the appropriate
24 penalty in this matter. Do you understand that?
- 25 **A** Yes, I do.

1 **Q** Some of that evidence we would call aggravating
2 circumstances and mitigating circumstances. Do you
3 understand that?

4 **A** Yes, I do.

5 **Q** Aggravating circumstances are generally defined by
6 our legislature as those matters, those facts,
7 occurrences or details which would aggravate the
8 offense of murder. In other words, the aggravating
9 circumstances when accompanying a murder increases
10 the enormity of it or adds to the injury of the crime
11 of murder. Do you understand that?

12 **A** Yes, I do.

13 **Q** And those are matters specifically provided for by
14 our statute. Do you understand that?

15 **A** Yes, sir.

16 **Q** Mitigating circumstances, likewise, are matters
17 specifically provided by statute and are incidents,
18 details or occurrences which reduce the severity of
19 the offense of murder and may be considered as
20 extenuating or as reducing the degree of moral
21 culpability or responsibility. Do you understand
22 that?

23 **A** Yes, I do.

24 **Q** Would you have any problem as a juror applying the
25 law that I would give you as to aggravating

1 circumstances and mitigating circumstances?

2 **A** I would not.

3 **Q** If you were a juror in this case and considering
4 the -- all the facts and circumstances of the case,
5 including any aggravating or mitigating circumstances
6 and then taking the law as I gave it to you, applying
7 it to those facts and circumstances, could you reach
8 a conclusion that would result in your voting for the
9 imposition of a life imprisonment without the
10 possibility of parole?

11 **A** Yes, I could.

12 **Q** Could you also considering the facts and
13 circumstances of the case, including aggravating
14 circumstances and mitigating circumstances, and then
15 taking the law as I give it to you, applying that law
16 to those facts and circumstances, reach a decision
17 and a conclusion that would result in the death
18 penalty being imposed?

19 **A** Yes, I could.

20 **Q** So you are -- of the three types of jurors, which
21 type most accurately describes you?

22 **A** I'm No. 3.

23 **Q** No. 3 without any question?

24 **A** Without any question.

25 **Q** It depends on the facts and circumstances of the

1 case?

2 **A** That is correct.

3 **Q** Okay. You understand that you would have the
4 responsibility as part -- as a member of the jury,
5 part of the verdict form would require that you sign
6 any sentence you would impose that would provide for
7 a death sentence, you understand?

8 **A** I understand that.

9 **Q** And could you and would you perform that function as
10 a juror?

11 **A** That would be my duty.

12 **THE COURT:** Very well. Thank you. Please
13 answer any questions that the State may have and then
14 Mr. Sapp.

15 **MR. JENNINGS:** Thank you, Your Honor.

16 EXAMINATION

17 **BY MR. JENNINGS**

18 **Q** Morning, Ms. Ward.

19 **A** Morning.

20 **Q** We were introduced yesterday. My name's Blair
21 Jennings. I'm the Deputy Solicitor in Berkeley
22 County. Myself, along with Solicitor Hoisington, are
23 prosecuting this case. Just wanted to ask you a few
24 questions. You noted on your jury return that you
25 had had prior jury service on a drug case?

1 **A** Yes, I did.

2 **Q** And you obviously understand the process that the
3 judge was talking about that it's the responsibility
4 of the State to prove Mr. Sapp guilty beyond a
5 reasonable doubt?

6 **A** Yes, I do.

7 **Q** And when asked to describe your jury experience, you
8 said it was quite a responsibility, which is
9 understandable, and required a lot of thought and
10 soul searching on your part. Could you expound on
11 that a little bit for me?

12 **A** Well, when -- in that particular case, you're dealing
13 with an individual, an elderly black lady. It was
14 hard to conceive that someone who's, like, in their
15 60's would be actually peddling drugs. But the
16 evidence that was presented was enough that we, as
17 the jury, decided that she was guilty.

18 **Q** And so it was -- the circumstances of the case as a
19 whole was the part that required soul searching?

20 **A** Right, right.

21 **Q** You were balancing the facts compared with some
22 preconceived notion about this defendant?

23 **A** Right.

24 **Q** And you would feel -- obviously, in this case, we are
25 going to be dealing with extremely serious and

1 weighty decisions in that a potential -- if Mr. Sapp
2 is found guilty, the potential punishment is the
3 death penalty. And I would certainly expect that
4 that is a -- that is certainly a weighty
5 consideration for any juror to make.

6 **A** It is.

7 **Q** And you feel comfortable that given the proper proof
8 that would convict him of the charge as well as the
9 proper facts and circumstances, you could return a
10 sentence of death?

11 **A** Yes, I could.

12 **Q** Have you had the opportunity with friends or family
13 to discuss the death penalty, either debate it or
14 just talk about its existence?

15 **A** I have some sisters that way in the past, we had
16 discussed it with other cases on a national basis.
17 You know, we had discussed the death sentence and our
18 different feelings.

19 **Q** I'm sorry, what are your views about the existence of
20 the death penalty?

21 **A** Well, I feel that the State of South Carolina -- you
22 know, they passed the law that, you know, the death
23 penalty could be imposed. And the law is the law and
24 the people have spoken. So I mean, it is an option.

25 **Q** How do you feel morally about the death penalty?

1 **A** If it is warranted, I don't have a problem with it.

2 **Q** Okay. And you would certainly -- since it is the
3 law, you would be able to follow Judge Dennis'
4 instruction and weigh the facts and circumstances of
5 this case with that instruction. And if it's
6 appropriate, could return a death sentence?

7 **A** Yes, I could. That is the process of the court and
8 that's why we have it.

9 **Q** And would any aspect of your -- as being a Baptist,
10 as your religious affiliation, would any issues
11 associated with that cause you any hesitation?

12 **A** No.

13 **MR. JENNINGS:** Thank you, Your Honor.

14 **THE COURT:** Mr. Archer?

15 EXAMINATION

16 **BY MR. ARCHER**

17 **Q** Did you hear any of this on the news yesterday?

18 **A** No, I did not.

19 **Q** Okay. I noticed that you -- are you familiar with,
20 besides the murder charges that this is also a
21 distribution drug case, also?

22 **A** Yes, I learned that yesterday when Your Honor read
23 the indictments.

24 **Q** And how do you feel -- because you've already served
25 as a juror on a distribution of drugs, how do you

1 feel -- what's your opinion on this?

2 **A** I think you have to base it on, you know, the
3 particulars of each case. I mean, you have to keep
4 things separate.

5 **Q** I noticed you used the term in that case it was an
6 elderly black lady?

7 **A** Uh-huh.

8 **Q** Does it make a difference to you whether she's black?

9 **A** No, no. None whatsoever.

10 **Q** But you used that term she was an elderly black lady.

11 **A** Right.

12 **Q** I see you put down here you've got a number of people
13 who you are very close to on the police force.

14 **A** Um --

15 **Q** Well, I have it here, just let me get them, please.
16 McCoy Metts.

17 **A** Yes, he's been retired now for probably 15 years off
18 of the city.

19 **Q** And what's your relationship with him?

20 **A** He's a good friend. We boat. A lot of us, we're,
21 like, in a boating-circle-type thing. But he is
22 definitely -- he has left his police career behind,
23 so to speak.

24 **Q** Okay. But you see him on a regular basis?

25 **A** Maybe once every three or four months. I work all

1 the time. I mean, I work from 9 till 7:30, 8:30 at
2 night. I don't see a whole lot of people.

3 Q Well, I'm just asking you about him. I don't care
4 about other people.

5 A Okay. In fact, I haven't seen him in months.

6 Q Okay. Do you plan to see him in the future?

7 A No, huh-uh.

8 Q And you boat with him, is that what it is?

9 A No, a lot of us boat -- we meet up during the
10 summertime at different events.

11 Q Right. So the summertime's coming up, correct?

12 A Right.

13 Q So you're going to see him at these events?

14 A Probably not. As I just mentioned, I work all the
15 time. I really do.

16 Q How about Eddie Whitcock?

17 A Eddie Whitlock?

18 Q Whitlock.

19 A Eddie Whitlock just recently became -- I think he was
20 retired and got chief of police. But he's a friend
21 of my brother. And I don't see him at all.

22 Q But you put him down here?

23 A Well, I thought I needed to be honest about, you
24 know, if you knew anybody on the police force.

25 Q When's the last time you saw him?

- 1 **A** I saw him on Mother's Day.
- 2 **Q** So you just saw him recently?
- 3 **A** Right, uh-huh.
- 4 **Q** Did you discuss the case with him?
- 5 **A** Oh, definitely not. It wasn't even on my mind. It
6 was at a Mother's Day function.
- 7 **Q** And you didn't have any curiosity? He's a police
8 chief, right?
- 9 **A** Would you repeat that, please?
- 10 **Q** He's a police chief --
- 11 **A** Right.
- 12 **Q** -- and you didn't mention anything about this case?
- 13 **A** No.
- 14 **Q** How about Jimmy Moore?
- 15 **A** It was Mother's Day.
- 16 **Q** Okay, so you discussed about your mothers?
- 17 **A** Right. Jimmy Moore, I have not seen in probably a
18 couple of years. He is a retired South Carolina
19 State Trooper who was good friends with my mom and
20 dad. He's much older. He is now a U.S. Marshal down
21 at the federal courthouse. And I haven't seen Jimmy
22 in a long time.
- 23 **Q** But he's friend with your parents?
- 24 **A** My parents are both deceased now. So very rarely
25 would I even see him.

1 **Q** So when was the last time you saw him?

2 **A** Let's see, I was down at the old main office probably
3 about two years ago. Because they marshal the
4 federal courthouse and one of our post offices, the
5 Broad Street Post Office, is in that courthouse
6 facility.

7 **Q** Yes.

8 **A** So the U.S. Marshals kind of patrol, police it. And
9 I ran into him then.

10 **Q** Are you interested in crime shows and things like
11 that?

12 **A** No.

13 **Q** You're not interested in any crimes?

14 **A** No.

15 **Q** Do you read about crimes in the newspaper?

16 **A** No.

17 **Q** Do you read the newspaper?

18 **A** No.

19 **Q** Do you watch television?

20 **A** If I watch television, it's usually -- the news that
21 I watch is usually CNN, Channel 35, cable. Or I'm
22 into like Animal Planet, Discovery, History Channel.

23 **Q** So if CNN comes on with the headlines of a murder,
24 you turn it off?

25 **A** No, I don't turn it off, but --

1 Q So you do watch it?

2 A Yes.

3 Q But you just said before you don't watch it?

4 A Well, I'm looking at the TV. I mean --

5 Q So how about the newspapers, you skip over all the
6 crime stories?

7 A I don't get a newspaper at all.

8 Q You don't get it at all?

9 A No, huh-uh. I don't get a newspaper at all.

10 MR. ARCHER: All right. Thank you.

11 THE COURT: Anything further?

12 MR. HOISINGTON: No, Your Honor.

13 THE COURT: You may step down, Ms. Ward. We'll
14 be with you in a moment. If you step out, we'll be with
15 you in a second.

16 (WHEREUPON, the juror left the courtroom.)

17 MR. JENNINGS: Qualified.

18 THE COURT: Defense?

19 MR. ARCHER: I would make a motion that she's
20 not qualified. She is too closely related to the police.
21 She's already sat on a drug distribution charge. And to
22 be honest with you, I hate to say this, but I don't think
23 she's a good juror.

24 THE COURT: Thank you very much. To be honest
25 with you, I totally differ with you about her conclusions,

1 about her truthfulness. I don't think anything about her
2 prior experience or anything of her answers suggest that
3 she's predetermined anything. So your motion is denied.

4 **MR. ARCHER:** Well, I meant by that, she was
5 talking about watching the news and stuff.

6 **THE COURT:** Let's have an understanding right
7 now so that we set the record straight. I appreciate your
8 opinions. But the rule provides once I rule, that's it.
9 I don't need -- you don't have to worry about explaining
10 yourself. You and I can agree to disagree and that's
11 perfectly all right. It's not going to affect
12 relationships. But let's not have this continuing
13 response once I rule, please. Thank you.

14 **MR. ARCHER:** Yes, sir.

15 **THE COURT:** All right. Bring her in, please.
16 (WHEREUPON, the juror entered the courtroom.)

17 **THE COURT:** Ms. Ward, you've been found to be
18 qualified to be a member of the pool from which -- of
19 jurors that we will select the ultimate jury, the trial
20 jury. That process will occur on Thursday morning at
21 9:30. We need for you to be present at that time.
22 Ms. Wiggins has some information, a sheet from Ms. Brown
23 that will help you prepare for when you come here.
24 Because obviously, if you're selected, the sequestration
25 will start at that time. Please understand that it's very

1 important that you not talk about this case or allow
2 anybody to talk with you about this case. You're not to
3 read any accounts of this case or watch any news programs
4 about this case. I look forward to seeing you on Thursday
5 morning.

6 **THE POTENTIAL JUROR:** Thank you so much, Your
7 Honor.

8 **THE COURT:** At 9:30, if you would come straight
9 to the courtroom.

10 Let's bring in Mr. Peak.

11 (WHEREUPON, James W. Peak, a white male, entered
12 the courtroom.)

13 EXAMINATION

14 **BY THE COURT**

15 **Q** Good morning, Mr. Peak.

16 **A** Morning.

17 **Q** How are you this morning?

18 **A** Pretty good.

19 **Q** You had a good day yesterday?

20 **A** Yes, sir.

21 **Q** Mr. Peak, you haven't talked with anybody about this
22 case or allowed anybody to talk with you about this
23 case since we were last together, have you?

24 **A** No, sir.

25 **Q** Have you read any newspaper accounts or watched any

1 news programs about it, sir?

2 **A** No, sir.

3 **Q** You understand, sir, that you're still under oath in
4 this process?

5 **A** Yes, sir.

6 **Q** We're continuing the process that we started
7 yesterday. And as you probably have learned by now,
8 the questions that we asked yesterday as you noticed
9 were really not questions that had any right or wrong
10 answers. You understand that?

11 **A** Yes, sir.

12 **Q** They really are designed to help us, and as well to
13 help you, to make a determination as to whether there
14 is anything about this case that would affect your
15 ability to be fair and impartial. Would you agree
16 with that?

17 **A** Yes, sir.

18 **Q** So please don't be offended by any of the questions.
19 They are not intended to invade your privacy. But
20 I'm going to ask you some questions as well as the
21 attorneys may ask you some questions as well. Is
22 that agreeable with you?

23 **A** Yes, sir.

24 **Q** Have you reviewed the sheet that described the three
25 types of jurors?

1 **A** I've got it right here.

2 **Q** Sir?

3 **A** I've got it right here, yes, sir.

4 **Q** Have you read it?

5 **A** Yes, sir.

6 **Q** Of those three types, which one most accurately
7 depicts you?

8 **A** It was C, I think.

9 **Q** C or No. 3?

10 **A** No. 3, yeah. Yeah, Type 3.

11 **Q** Okay. You understand that it's my responsibility --
12 as I mentioned to you yesterday, our system works
13 with two judges working together. You, if you were
14 selected on the jury, would become the judge of the
15 facts of this case. Do you understand that?

16 **A** Yes, sir.

17 **Q** It would be my responsibility to be the judge of the
18 law. Is that your understanding?

19 **A** Yes, sir.

20 **Q** As the judge of the facts, you have indicated by your
21 responses thus far that there is nothing about this
22 case that would cause you any problem in applying
23 your common sense, your sense of logic and reason
24 fairly and impartially to deciding what you believe
25 to be the true facts. Is that true?

1 **A** Yes, sir.

2 **Q** You've also indicated that you have not predetermined
3 any issue in this case. Is that true?

4 **A** Yes, sir.

5 **Q** You have come to this process today and would come
6 throughout the process with an open mind. Is that
7 true?

8 **A** Yes, sir.

9 **Q** And you would not change that position until the
10 Court gave you the instruction to begin your
11 deliberations or decide a particular issue. Is that
12 fair to say?

13 **A** Yes, sir.

14 **Q** You would follow that instruction throughout?

15 **A** Yes, sir.

16 **Q** You understand that it would be my instruction to
17 give you the law in this case?

18 **A** Yes, sir.

19 **Q** Would you consider that law and apply that law fairly
20 and impartially?

21 **A** Yes.

22 **Q** Would you do that even if you heard a principle of
23 law with which you differ?

24 **A** Yes, sir.

25 **Q** Because one of the commitments that you make to both

1 sides is that during this process, while you have the
2 right to feel laws should be changed, that's your
3 personal right, you set that right aside if you
4 become a juror because you've promised both sides you
5 will take the law as I give it to you and apply that
6 fairly and impartially -- apply that law fairly and
7 impartially. You would do that, is that true?

8 **A** Yes, sir.

9 **Q** You understand that part of the law that I would give
10 to you that it would be the burden upon the State to
11 prove its case in each of these offenses. Do you
12 understand that?

13 **A** Yes, sir.

14 **Q** In order to do that, they have to prove every
15 element. And I would define those elements of each
16 crime for you in the trial. Do you understand that?

17 **A** Yes, sir.

18 **Q** You would then at the conclusion of that particular
19 portion of the trial be asked to consider the
20 evidence. And as to the guilt phase, you would be
21 making the decision as to whether or not the State
22 had met its burden of proof. Do you understand that?

23 **A** Yes, sir.

24 **Q** Would you -- if you concluded as to any crime that
25 the State had not convinced you beyond a reasonable

1 doubt as to a particular element, would you return a
2 verdict of not guilty for that offense?

3 **A** You're saying if the State had not convinced me?

4 **Q** Yes, sir.

5 **A** Yes, sir, I would.

6 **Q** And you understand they have to prove every element?

7 **A** Yes, sir.

8 **Q** On the other hand, if the State had established and
9 convinced you by the evidence beyond a reasonable
10 doubt as to each element, would you return a verdict
11 of guilty?

12 **A** Yes, sir.

13 **Q** You understand that what you will be considering is
14 the evidence that you hear during the proceeding
15 itself?

16 **A** Yes, sir.

17 **Q** You're not to consider anything outside of this
18 courtroom, anything that you may hear or anything
19 that's said outside of this courtroom. Do you
20 understand that?

21 **A** Yes, sir.

22 **Q** And you would follow that instruction as well, sir?

23 **A** Yes, sir.

24 **Q** Do you understand that to facilitate that, you will
25 be sequestered if you are selected on this jury?

1 **A** Yes, sir.

2 **Q** And that sequestration could be as long as seven to
3 10 days. Do you understand that?

4 **A** Yes, sir.

5 **Q** Would that in any way affect your ability to be a
6 juror in this case?

7 **A** No, sir.

8 **Q** You could perform your duties without being
9 influenced by that sequestration?

10 **A** Yes, sir.

11 **Q** You understand that if the jury returned a verdict of
12 guilty on the murder charge, we would then move into
13 a second portion. We call that the penalty phase?

14 **A** Yes, sir.

15 **Q** Do you understand that during the penalty phase, you
16 would hear additional evidence that you haven't heard
17 in the guilt phase?

18 **A** Yes, sir.

19 **Q** Some of that evidence would be mitigating and
20 aggravating circumstances. Do you understand that?
21 Or could be, you understand that?

22 **A** Yes, sir.

23 **Q** Would you consider those facts as well?

24 **A** Yes, sir.

25 **Q** In making your decision? And you understand that

1 aggravating circumstances are generally defined as
2 facts, incidents, details or occurrences which would
3 make worse, that is, aggravate the offense of murder?
4 Do you understand that?

5 **A** Yes, sir.

6 **Q** In other words, they are the circumstances which the
7 legislature has defined that when accompanying a
8 murder increases the enormity or adds to the injury
9 of that particular crime. Do you understand that?

10 **A** Yes, sir.

11 **Q** Mitigating circumstances are generally defined as
12 incidents, details or occurrences which our general
13 assembly has also declared by statute reduce the
14 severity of the offense of murder and may be
15 considered as extenuating or reducing the degree of
16 moral culpability or responsibility of an individual.
17 Do you understand that?

18 **A** Yes, sir.

19 **Q** If you were on the jury and those factors were
20 presented, would you consider those factors and could
21 you apply the law fairly and impartially in that
22 process concerning aggravating and mitigating
23 circumstances?

24 **A** Yes, sir.

25 **Q** Now, if you were a juror and considering the facts

1 and circumstances in the case, in particular, the
2 facts and circumstances which would include
3 aggravating and mitigating circumstances, then
4 considering the law as the Court gave it to you in
5 applying that law, could you reach a decision which
6 would result in a sentence of life imprisonment
7 without the possibility of parole?

8 **A** Yes, sir, I could.

9 **Q** Also, in considering the facts and circumstances of a
10 case, including aggravating or mitigating
11 circumstances, taking the law as I gave it to you and
12 applying that law fairly and impartially, could you
13 reach a decision that would result in a death penalty
14 being imposed?

15 **A** Yes, sir, I could.

16 **Q** Do you understand that if the jury should vote for
17 the penalty of death that you would be responsible as
18 a juror for signing a verdict form to that effect?

19 **A** Yes, sir.

20 **Q** And you could follow that and perform that function
21 as a juror?

22 **A** Yes, sir.

23 **Q** As I understand your decision on which one, it would
24 depend -- whether it's life imprisonment without the
25 possibility of parole or the death penalty, it would

1 depend on the facts and circumstances of the
2 particular case?

3 **A** Yes, sir, it would.

4 **THE COURT:** Thank you, sir. Please answer any
5 questions the State may have.

6 **MR. HOISINGTON:** Thank you, Judge.

7 EXAMINATION

8 **BY MR. HOISINGTON**

9 **Q** Morning, Mr. Peak.

10 **A** How you doing?

11 **Q** I'm Ralph Hoisington. Deputy Solicitor Blair
12 Jennings will be trying the case with me. We're
13 presenting the case for the State. You went to
14 Hanahan High School?

15 **A** Yes, sir.

16 **Q** You didn't happen to go to school with my
17 sister-in-law, Terri Allen?

18 **A** Terri Allen? She graduated in '84?

19 **Q** Yes, sir.

20 **A** Yes, sir.

21 **Q** The Judge has asked you many of the questions that we
22 would normally want to know the answers to. As you
23 might could glean from this entire process, what both
24 sides are looking for is somebody that's open minded
25 about it and would want to hear all the facts about

1 the case before they made up their mind. You
2 consider yourself that way in this case?

3 **A** Yes, sir.

4 **Q** Is there anything in particular about the death
5 penalty that you would want to share with us that
6 would give you concern about imposing it if the facts
7 were there for you?

8 **A** Not really.

9 **Q** Just would depend on the circumstances and facts of
10 the case?

11 **A** Yes, sir.

12 **Q** So after hearing everything from both sides, if you
13 thought life imprisonment was the appropriate
14 punishment, you could return that verdict?

15 **A** Yes, sir, I could.

16 **Q** On the other hand, if the facts called for it and the
17 law allowed it, you could return a death penalty if
18 you thought that was appropriate?

19 **A** Yes, sir.

20 **MR. HOISINGTON:** Appreciate it.

21 **THE COURT:** Mr. Archer?

22 EXAMINATION

23 **BY MR. ARCHER**

24 **Q** Morning.

25 **A** How you doing?

1 Q You mentioned there was some sort of relationship
2 between, was it your sister or your sister-in-law --

3 A No, he said something about his sister-in-law and me
4 going to school with her. I didn't know it until he
5 brought it up.

6 Q Just expound on that a little bit. Who is it?

7 A Terri Allen, I guess his sister-in-law. She went to
8 high school with me.

9 Q Okay. So Ralph's sister-in-law went to high school?

10 A I do believe that's what he said, yes.

11 Q And would that affect your judgment in any way on
12 this?

13 A No, sir.

14 Q I also noticed that you sort of hesitated when the
15 Judge asked you something about sequestration. It
16 means that you would have to go in a hotel for a
17 while. Would you just go through that again?

18 A You mean I hesitated? No, sir. It really don't
19 bother me. I spent a year in the Middle East. I
20 spent six months isolated on a ship before.

21 Q So that wouldn't bother you?

22 A No, sir.

23 MR. ARCHER: I have nothing further.

24 MR. HOISINGTON: Nothing further.

25 THE COURT: Thank you. Excuse me, I'm sorry.

1 **MR. HOISINGTON:** No problem.

2 **THE COURT:** Following up on something Mr. Archer
3 just asked. As I understand, your relationship with
4 Ms. Allen would not affect your decision --

5 **THE WITNESS:** No, sir.

6 **THE COURT:** -- in this matter one bit?

7 **THE WITNESS:** No, sir.

8 **THE COURT:** Your decision would be fair to the
9 State and would be fair to Mr. Sapp?

10 **THE WITNESS:** Yes, sir, it would be.

11 **THE COURT:** Thank you, sir. You may step down.

12 (WHEREUPON, the juror left the courtroom.)

13 **MR. HOISINGTON:** He's qualified, Judge.

14 **MR. ARCHER:** Qualified.

15 **THE COURT:** Ask Mr. Peak to step back in,
16 please.

17 (WHEREUPON, the juror entered the courtroom.)

18 **THE COURT:** Mr. Peak, you've been found
19 qualified to be a member of the pool of jurors. And from
20 that pool, we will ultimately select the jury panel that
21 will decide this case. That will occur on Thursday
22 morning at 9:30.

23 **THE POTENTIAL JUROR:** Okay.

24 **THE COURT:** Ms. Wiggins has a sheet that's some
25 information from our clerk that may be of benefit to you

1 and assist you when you report on Thursday. I need for
2 you to report at 9:30 and just follow that instruction.
3 But we'll select a jury at that time. And obviously, if
4 you're selected, you will be sequestered at that time.
5 And I think it discusses what to bring with you when you
6 come. While you are out in the community, of course, you
7 are restricted from discussing this case with anyone.
8 You're restricted from allowing anybody to talk with you
9 about the case. Please do not read any articles about it
10 or watch any news programs about it.

11 **THE POTENTIAL JUROR:** Okay.

12 **THE COURT:** I look forward to seeing you on
13 Thursday, sir.

14 **THE POTENTIAL JUROR:** Thank you.

15 **THE COURT:** You're free to go.

16 Ms. McNair.

17 (WHEREUPON, Kathleen L. McNair, a black female,
18 entered the courtroom.)

19 EXAMINATION

20 **BY THE COURT**

21 **Q** Good morning, Ms. McNair.

22 **A** Good morning.

23 **Q** How are you?

24 **A** I'm good.

25 **Q** Are you nervous?

- 1 **A** Yes.
- 2 **Q** Okay.
- 3 **A** It's my first time.
- 4 **Q** I understand. And that's perfectly normal. Not a
5 problem at all. Please relax. Because just like
6 yesterday, what we're doing here, the process is a
7 continuation of what we did yesterday as a whole.
8 And I think you saw from the questions that were
9 asked, there really are no correct answers to any of
10 these questions. You understand that, don't you?
- 11 **A** I understand.
- 12 **Q** You understand, Ms. McNair, that you're still under
13 oath in this matter?
- 14 **A** Yes.
- 15 **Q** And have you talked with anyone about this case or
16 allowed anybody to talk with you about this case
17 since we were last together?
- 18 **A** No.
- 19 **Q** Have you reviewed any newspaper articles or watched
20 any news programs or television about it?
- 21 **A** No.
- 22 **Q** You were given a sheet of paper yesterday when you
23 left. Have you had a chance to read that sheet
24 describing the three types of jurors?
- 25 **A** Yeah, I read it, but I didn't quite understand.

1 **Q** Okay. Well, that's fair enough. Basically, Type 1
2 would be the type that would give the -- if the
3 offense of murder was established, they would always
4 vote to give the death penalty in every situation.

5 **A** Uh-huh.

6 **Q** Type 2 is the type of juror that would, if the crime
7 of murder was established, would always vote for life
8 imprisonment, never impose the death penalty. Type 3
9 is the type of juror that it would depend on the
10 facts and circumstances in a case. And if it
11 warranted -- if that juror concluded by the facts and
12 circumstances, they could find the death penalty is
13 appropriate or the facts and circumstances may
14 justify life imprisonment, but they would consider
15 both of them and decide which one they thought was
16 most appropriate.

17 **A** Uh-huh.

18 **Q** Which one of those types is probably you?

19 **A** Well, as a matter of fact, I don't believe in the
20 death penalty because of my religion.

21 **Q** Okay. Well, let me ask you, when you say you don't
22 believe in it, I appreciate that and I understand
23 that. You further stated that it's a part of your
24 religion?

25 **A** Yeah, that's the only thing.

1 Q Okay. That's no problem. But the law of South
2 Carolina would be and I would instruct you that the
3 death penalty may be warranted in some cases.

4 A I understand.

5 Q You understand?

6 A I understand that.

7 Q But you're saying, as a juror you couldn't consider
8 that law?

9 A No, I couldn't just because of my belief. That's
10 all.

11 Q Your belief would prevent you?

12 A It is my religion, that's it. But otherwise, you
13 know, it should be -- you know, it should be that
14 way. But to me, I can't.

15 Q You could never do that?

16 A I can't decide on that because of my religion. I'm
17 sorry, but --

18 Q I understand. As I said, there are no correct
19 answers to any of these. It's merely how you feel.

20 **THE COURT:** Any additional questions from the
21 State?

22 **MR. HOISINGTON:** Yes, sir, Your Honor.

23 EXAMINATION

24 **BY MR. HOISINGTON**

25 Q Hi, Ms. McNair. I'm Ralph Hoisington.

1 **A** Hi.

2 **Q** You know, we put jurors in such an awkward position.
3 I heard you say you're sorry for your religious
4 belief because you couldn't give the death penalty.
5 You don't need to say you're sorry for that, not in
6 this court. Let me ask you, though, just to make
7 sure I understand. The beliefs that you hold are
8 strongly held; is that correct?

9 **A** It is.

10 **Q** Okay. And it would do a disservice to you to ask you
11 to go against those beliefs, would it not?

12 **A** Well, I think so because of my deep roots, religion
13 from childhood. And my -- I was taught even as a
14 child, you know, that we shouldn't take someone's
15 life because we cannot make life and we should not
16 take it. And it was like that in our household and
17 always has been so.

18 **Q** And believe me, we respect every kind of opinion that
19 we hear in court today. Let me take it just one step
20 further. I understand what you're saying.

21 **A** Uh-huh.

22 **Q** Would it then be impossible if you sat on a jury for
23 you to consider the death penalty based on your
24 beliefs? And let me take it one step further. If
25 you're sitting on a jury with the other 11 jurors and

1 they all said the death penalty and you sort of
2 believe, well, maybe the death penalty if it ever is
3 appropriate might be appropriate here, could you sign
4 your name on the death penalty verdict saying I'm
5 calling for the death of the defendant?

6 **A** Oh, this is hard.

7 **Q** You're not required to.

8 **A** I probably will. But because of my beliefs -- what
9 I'm telling you, I probably would because of the type
10 of crime.

11 **Q** You're saying you probably would call for the death
12 penalty if you thought it was appropriate?

13 **A** Yes, because of the crime.

14 **Q** Okay. So depending on the circumstances of the case,
15 you would set aside your religion?

16 **A** Oh --

17 **Q** Again, we're not trying to put you in a position you
18 can't be in.

19 **A** I understand.

20 **Q** We're just trying to find out -- because if you're on
21 the jury and you realize you couldn't, it would be
22 too late for you to give both sides a fair trial.

23 **A** I understand.

24 **Q** So that's why we ask you up front. So tell me about
25 it again, just tell me what your feelings are about

1 the death penalty.

2 **A** If I put my religion aside, if it wasn't my religion,
3 I believe in it, I will go for the death penalty.

4 **Q** Yes, ma'am. But do you understand you don't have to
5 put your religion aside?

6 **A** I understand.

7 **Q** When you go back there, you are who you are.

8 **A** I am who I am, uh-huh.

9 **Q** Now, knowing you do not have to put your religion
10 aside, would that put you in a position that you
11 couldn't deal with by being on the jury and having to
12 determine the death penalty?

13 **A** I could deal with it. I know I can deal with it
14 because I believe in God. So I could deal with it.

15 **Q** Could you do it if you thought it were appropriate?
16 Could you return a death penalty verdict and sign
17 your name on a death penalty warrant?

18 **A** If it was appropriate, yes.

19 **Q** Appropriate is a term that you would have to make a
20 determination after you hear the facts. Are there --
21 have you had an opportunity to think about the death
22 penalty other than in your -- in the sense of your
23 religion?

24 **A** I did thought about it.

25 **MR. ARCHER:** I'm sorry, I would object. I think

1 she's answered all this.

2 **THE COURT:** I will allow some leeway, but let's
3 move on, Solicitor. I will allow that one more question.
4 She's basically answered that.

5 **MR. HOISINGTON:** Okay.

6 **Q** What religion are you?

7 **A** I'm a Methodist.

8 **Q** And what is the teaching of that religion, regarding
9 the death penalty?

10 **A** Thou shall not kill.

11 **Q** Would that affect your ability to deliberate on a
12 jury?

13 **MR. ARCHER:** Your Honor, I think she's answered
14 that.

15 **THE COURT:** I will allow this. This is a
16 critical issue and I will allow it.

17 Ms. McNair, do you need a moment?

18 (WHEREUPON, the juror was crying.)

19 **MR. HOISINGTON:** Your Honor, I don't think I
20 need to question her anymore. If the record will just
21 reflect --

22 **THE COURT:** The record will reflect Ms. McNair
23 is emotionally distraught at this point.

24 Ms. McNair, would you prefer me to take a brief
25 break to give you an opportunity to collect yourself,

1 ma'am?

2 **THE POTENTIAL JUROR:** (The juror shook her
3 head.)

4 **THE COURT:** I need for you to answer,
5 Ms. McNair.

6 **THE POTENTIAL JUROR:** I'll try and finish.

7 **THE COURT:** Solicitor, as I understand, you have
8 no additional questions?

9 **MR. HOISINGTON:** No additional questions. Thank
10 you.

11 **THE COURT:** Mr. Archer?

12 **MR. ARCHER:** I have no questions.

13 **THE COURT:** Ms. McNair, you may step down,
14 please. We'll be with you in just a moment.

15 **THE POTENTIAL JUROR:** I'm sorry.

16 **THE COURT:** Ms. McNair, I agree with the
17 Solicitor. As I told you, please understand something,
18 you don't apologize ever in this process for your personal
19 feelings. That's not -- your personal feelings are not on
20 trial here, ma'am. You're entitled to feel however you
21 want to feel, okay? You don't have to apologize. Thank
22 you, ma'am. You may step down.

23 **THE POTENTIAL JUROR:** Thank you.

24 (WHEREUPON, the juror left the courtroom.)

25 **MR. HOISINGTON:** Judge, I think clearly this

1 juror has deep-seeded religious beliefs and would
2 substantially impair her ability to sit on a death penalty
3 case. She was in many ways unable to even address the
4 issues herself. She stated she was a Type 2 juror to
5 begin with and only equivocated slightly as to whether she
6 could consider the death penalty. Considering the death
7 penalty is not enough. It's obvious that her beliefs
8 would impair it and she could not give the State a fair
9 trial in this case.

10 **THE COURT:** Mr. Archer?

11 **MR. ARCHER:** Yeah. Your Honor, I think that
12 she's answered a number of times that she would impose the
13 death penalty. She may have been very emotional, but she
14 was very clear in a number of times that she would impose
15 the death penalty and I think she did say she was Type 3.
16 That was her final answer.

17 **THE COURT:** Well, she didn't say she was Type 3.
18 I would agree totally with your analysis that her answer
19 would reflect a Type 3 answer. One of the answers that
20 she --

21 **MR. ARCHER:** I'm sorry, she said she was Type 3.

22 **THE COURT:** No, she really never said she was
23 any one of the types. She said she didn't understand it
24 as I understood it. And basically, in my discussion with
25 this juror, she indicated that she could never impose the

1 death penalty. And then questioning from the solicitor,
2 she indicated yes, she could. My concern -- at this
3 point, I want to read a couple of cases that I have
4 concerning the inconsistent answers. But my concern is
5 that I believe the time when she indicated that she could
6 was going to require her to set aside her religious
7 beliefs. And, of course, that's what we have to make
8 sure. Because that's the concern that I have is whether
9 she can truthfully follow the law and fairly consider all
10 of the circumstances. We'll be at ease for just a moment.

11 **MR. HOISINGTON:** Thank you, Judge.

12 (WHEREUPON, a short break was taken.)

13 **MR. HOISINGTON:** I would point that out, Judge,
14 it does seem like the standard is substantially impaired.

15 **THE COURT:** I see that. All right. Considering
16 the answers given by Ms. McNair, observing also her
17 demeanor in the courtroom during the examination and the
18 questions propounded by the solicitor, which she never
19 answered, became so emotionally distraught by the
20 question, Would that affect your ability to deliberate on
21 a jury, and she never answered the question. Given her
22 answers and her inconsistency or the inconsistency of her
23 answers, given the feelings that she articulated to my
24 questions and to the solicitor's questions that her
25 religious beliefs were very sincere and deep seeded with

1 her in her life, I would conclude that her inability to
2 answer the question affecting her ability to deliberate
3 and constantly apologizing is a human reaction to suggest
4 that she couldn't consider it. And therefore, she felt
5 inadequate because she couldn't. And that would be the
6 only justification for somebody becoming emotionally
7 distraught and apologizing. So given that and given her
8 demeanor and considering the totality and completeness of
9 all of her answers, I would agree that she's not
10 qualified.

11 And the record is clear that Mr. Sapp finds and
12 would argue that she is qualified and has stated --
13 clearly, I don't argue with the position that she
14 indicated at one point that, yes, she could invoke --
15 award the death penalty. But I believe it would
16 substantially affect her ability to consider both
17 sentences, that is her religious belief.

18 (WHEREUPON, the juror entered the courtroom.)

19 **THE COURT:** Ms. McNair, thank you very much for
20 your participation in this process. I appreciate very
21 much your being here. I'm sorry for all the inconvenience
22 it's caused to you. You now have concluded this matter.
23 I would ask, Ms. McNair, until the trial starts and really
24 preferably until it concludes, but at least until it
25 starts that you not discuss this case with anyone. But

1 you will not have to return any further in this matter.

2 Thank you very much.

3 **THE POTENTIAL JUROR:** Okay. I'm sorry. Thank
4 you.

5 **THE COURT:** Thank you.

6 We're going to take about five minutes -- I know
7 the jury's here, but we're going to take about five
8 minutes. I'm going to try to call the last two panels of
9 the day and move them about 30 minutes so we'll have a
10 little break in between.

11 (WHEREUPON, a short break was taken.)

12 **THE COURT:** We're ready. Let the record reflect
13 Mr. Sapp is present. Mr. Page is the first one.

14 Bring in Daniel Page.

15 (WHEREUPON, Daniel C. Page, a white male,
16 entered the courtroom.)

17 EXAMINATION

18 **BY THE COURT**

19 **Q** Good morning, Mr. Page. I'm sorry to keep y'all
20 waiting, but we ran a little bit over. And I hope we
21 didn't inconvenience you too terribly.

22 **A** No, not too bad.

23 **Q** I hope you had a good rest of yesterday and a good
24 evening.

25 **A** It was an interesting day.

1 Q It was an interesting day, not your normal day.

2 A No, not really.

3 Q The process that we started yesterday as you probably
4 gleaned through that process, as I told you, the
5 questions really have no correct answer.

6 A Right.

7 Q They're not designed to try to pry into your
8 background or invade your privacy and that will
9 continue as well with the questions we have today.
10 It will be much like yesterday. You understand that?

11 A Yes, sir.

12 Q There are no correct answers. Don't worry about your
13 responses. All we're interested in finding in this
14 entire process is really geared to help us determine
15 and help you determine whether there is anything
16 about this case that would cause you a problem if you
17 were to be a juror being fair and impartial and
18 applying your common sense, your sense of logic and
19 reason. Do you understand that?

20 A Yes.

21 Q Does that cause you any problem?

22 A No.

23 Q You understand that you are still under oath?

24 A Yes.

25 Q Did you talk with anyone or permit anyone to talk

1 with you about this case or read any articles or
2 watch any news programs since we were last together?

3 **A** No.

4 **Q** Have you had a chance to review that list that -- or
5 sheet that I gave you describing the three types?

6 **A** One, two and -- yes.

7 **Q** Which type most accurately describes you?

8 **A** If I remember correctly, it would be No. 3.

9 **Q** And that's the one that depends on the facts and
10 circumstances?

11 **A** Yes.

12 **Q** And that would describe you most accurately?

13 **A** Definitely.

14 **Q** Your answers that you gave if you responded to the
15 questions or your failure to answer that it didn't
16 apply to you, you understand that by your responses,
17 you have indicated to the State and to Mr. Sapp that
18 there is absolutely nothing about this case that
19 would affect your ability to be fair and impartial.
20 Do you understand that?

21 **A** Yes.

22 **Q** Is that correct?

23 **A** Yes.

24 **Q** You haven't predetermined any issues in this case,
25 have you?

1 **A** No.

2 **Q** You understand that that open mind is a very
3 important aspect of being a juror?

4 **A** Yes.

5 **Q** And that you must keep that open mind until the Court
6 gives you an instruction to begin your deliberation
7 on a particular issue. Do you understand that?

8 **A** Yes.

9 **Q** Would you do that if you were a juror?

10 **A** Yes.

11 **Q** Please understand that the questions that are asked
12 of you today and, specifically, by me are not to be
13 considered by you as a suggestion or indication as to
14 how you are to resolve any particular issue. Do you
15 understand that?

16 **A** Yes.

17 **Q** Also, you understand my role is to give you the law
18 in this case. And it would be your role to take that
19 law and apply it fairly and impartially as a juror.
20 You understand that?

21 **A** Yes.

22 **Q** And you could do that?

23 **A** Yes, sir.

24 **Q** Obviously, in this case, it would be the
25 responsibility of the State, as I have told you,

1 since they bring these charges to prove those
2 charges. Is that your understanding?

3 **A** Yes.

4 **Q** And I believe you indicated yesterday that you
5 understand that Mr. Sapp is presumed innocent and you
6 don't have any problem with that principle of law and
7 applying that principle of law?

8 **A** No, sir.

9 **Q** You understand that Mr. Sapp in this process
10 absolutely has nothing to prove or disprove. You
11 understand that?

12 **A** Yes, sir.

13 **Q** That the only party that has to prove anything is the
14 State. You understand that?

15 **A** Yes, sir.

16 **Q** That, of course, would be accomplished during the
17 trial when you, if you were a juror, would hear the
18 evidence which consists of testimony of the witnesses
19 and exhibits and nothing else. You understand that?

20 **A** Yes.

21 **Q** It would be the evidence that you would -- from that
22 evidence that you would ultimately make your
23 determinations. You understand?

24 **A** Yes, sir.

25 **Q** And you promised both sides that you would not

1 consider anything that occurred or you heard outside
2 of this courtroom.

3 **A** Yes, sir.

4 **Q** You would do that as well?

5 **A** Yes, sir.

6 **Q** Do you understand that if you are selected on this
7 jury, to assist the jury in making certain that no
8 one talks with you inadvertently and it minimizes the
9 type of exposure to that, you would be sequestered?

10 **A** Yes.

11 **Q** That sequestration could be as long as seven to 10
12 days. Do you understand that?

13 **A** Yes, sir.

14 **Q** Would that affect in any way your ability to be a
15 juror?

16 **A** No, sir.

17 **Q** So you would be able to perform your functions
18 notwithstanding the fact that you were sequestered?

19 **A** Yes, sir.

20 **Q** As I told you and mentioned to you, it would be my
21 responsibility as the trial judge to give you the
22 law. And as I understand, you've indicated that you
23 would listen to that law. Is that true?

24 **A** Yes, sir.

25 **Q** You would accept that law as I gave it to you and

1 apply it fairly and impartially to the facts. Is
2 that true?

3 **A** Yes.

4 **Q** You may hear a principle of law which -- with which
5 you personally differ. Do you understand that?

6 **A** Yes.

7 **Q** You understand that part of your duty would be to
8 apply that law even though you felt the way you felt?

9 **A** Yes, sir.

10 **Q** Could you do that and would you do that?

11 **A** Yes, sir.

12 **Q** If the -- in considering this case, when you got to
13 the point where there was two phases, the first phase
14 would be dealing solely with the State's proof of the
15 charges that they've brought. Do you understand
16 that?

17 **A** Yes.

18 **Q** And at the end of that phase, the jury would be asked
19 to decide whether the State had met its burden of
20 proof and whether -- that would be, of course,
21 whether the State has established each element beyond
22 a reasonable doubt. Do you understand that?

23 **A** Yes, sir.

24 **Q** If, in considering the evidence, you should come to a
25 conclusion the State has failed to convince you

1 beyond a reasonable doubt as to an element of a
2 particular offense, would you return a verdict of not
3 guilty for that offense?

4 **A** Yes, sir.

5 **Q** Wouldn't have any hesitation?

6 **A** No, sir.

7 **Q** Also, if the State had convinced you of all of the
8 elements of a particular offense, would you have any
9 hesitation in returning a verdict of guilty?

10 **A** No, sir.

11 **Q** You would follow the instruction?

12 **A** Yes, sir.

13 **Q** You understand that if the State convinced the jury
14 on the offense of murder that it met its burden of
15 proof and the jury returned a verdict of guilty, we
16 would then move into a second portion of this
17 proceeding?

18 **A** Yes, sir.

19 **Q** We call that the penalty phase. You understand that?

20 **A** Yes, sir.

21 **Q** During that phase, you would hear additional evidence
22 in this matter that would deal with what penalty
23 would be appropriate. Do you understand?

24 **A** Yes, sir.

25 **Q** In that, you may hear facts and circumstances that we

1 would call aggravating circumstances and you may hear
2 of mitigating circumstances. Do you understand that?

3 **A** Yes.

4 **Q** Aggravating circumstances and mitigating
5 circumstances are both terms that are defined by our
6 legislature. Do you understand?

7 **A** Yes.

8 **Q** And I would give you the law specifically as to each
9 of those aggravating circumstances and mitigating
10 circumstances. You understand?

11 **A** Yes.

12 **Q** Aggravating circumstances are generally defined as
13 those circumstances and facts which would make worse
14 or aggravate the offense of murder. Do you
15 understand?

16 **A** Yes.

17 **Q** They basically increase the enormity or add to the
18 effect of the murder, of the crime itself. Do you
19 understand?

20 **A** Yes, sir.

21 **Q** The mitigating circumstances are generally those
22 facts and circumstances which would reduce the
23 severity of the offense of murder and may be
24 considered as extenuating or reducing the degree of
25 moral culpability or responsibility. Do you

1 understand?

2 **A** Yes.

3 **Q** If you were a juror and you were considering the
4 facts of a case -- considering all the facts of the
5 case, including aggravating circumstances and
6 mitigating circumstances, and then once receiving the
7 law from the judge, would you apply that law to those
8 facts and circumstances; and then, could you, once
9 doing that, reach a decision which would return a
10 verdict of life imprisonment without the possibility
11 of parole?

12 **A** Yes, sir.

13 **Q** You could do that depending on the facts and
14 circumstances?

15 **A** Yes, sir.

16 **Q** Also, could you, considering the facts and
17 circumstances in a case, including aggravating and
18 mitigating circumstances, taking the law as the Court
19 gave it to you, apply that to those facts and
20 circumstances, could you return a verdict of death?

21 **A** Yes, sir.

22 **Q** Do you understand that part of your function as a
23 juror, part of the responsibility as a juror if it
24 returns a verdict of death would be to sign a verdict
25 form indicating that?

1 **A** Yes, sir.

2 **Q** You could carry out that duty as a juror --

3 **A** Yes, sir.

4 **Q** -- if necessary?

5 **A** Yes, sir.

6 **Q** And as I understand, you've made no prejudgments on
7 anything about this case?

8 **A** No, sir.

9 **Q** And it would depend on the facts and circumstances of
10 the case before you could determine what type of
11 punishment would be appropriate?

12 **A** Yes, sir.

13 **Q** But you would consider both?

14 **A** Would, yes, sir.

15 **THE COURT:** Questions?

16 **MR. JENNINGS:** Thank you, Your Honor.

17 EXAMINATION

18 **BY MR. JENNINGS**

19 **Q** Morning, Mr. Page.

20 **A** Morning.

21 **Q** My name's Blair Jennings. I'm the Deputy Solicitor
22 in Berkeley County. We were introduced yesterday
23 during the general qualification. Myself and
24 Solicitor Hoisington are representing the State in
25 prosecuting Mr. Sapp. And obviously, as you can tell

1 from the entire process, both yesterday and this
2 morning, what the Court is concerned with is finding
3 jurors who can be fair to both sides.

4 **A** Right.

5 **Q** Both, as you have stated yourself, that can consider
6 all the facts and circumstances and if appropriate,
7 return a sentence of life imprisonment without parole
8 or if the facts warranted, could return a sentence of
9 death.

10 **A** Yes.

11 **Q** And you feel comfortable that you are that type of
12 person?

13 **A** Yes.

14 **Q** Do you hold any moral beliefs or any religious
15 beliefs that would affect you in any way in returning
16 a sentence of death?

17 **A** No.

18 **Q** You aware of anything that would affect that if the
19 facts warranted it and the law allowed it?

20 **A** No.

21 **MR. JENNINGS:** Thank you, Your Honor.

22 **THE COURT:** Questions, Mr. Archer -- or excuse
23 me, Mr. Johnston?

24 ///

25 ///

EXAMINATION

1
2 **BY MR. JOHNSTON**

3 **Q** Good morning, Mr. Page.

4 **A** Morning.

5 **Q** I'm Bob Johnston, I'm one of Mr. Sapp's two
6 attorneys. Mr. Page, I just want to look at your
7 questionnaire real quickly here. It says you were in
8 the military?

9 **A** Yes, sir.

10 **Q** How long were you in the military?

11 **A** Four years.

12 **Q** Can I ask what you did in the military?

13 **A** I was in anti-tank assault.

14 **Q** I'm sorry, say that again.

15 **A** Anti-tank assault in the Marine Corps.

16 **Q** Where did you spend your time? Were you ever out of
17 the country?

18 **A** Yes.

19 **Q** Where were you?

20 **A** Okinawa, Japan.

21 **Q** In Japan?

22 **A** Yes, Okinawa.

23 **Q** Did you experience any conflict while you were in the
24 military?

25 **A** No, sir.

1 Q And it says here you're Presbyterian?

2 A Yes, sir.

3 Q What I say to people, I don't want to make you
4 uncomfortable or put you on the spot. What I'm going
5 to ask you about your religion is not typically
6 discussed on a Sunday morning in church.

7 A Correct.

8 Q And people don't have a ready answer and there is no
9 right or wrong answer. It's just a dialogue. Are
10 you readily familiar with your faith's, your
11 religion's, the Presbyterian's view on the death
12 penalty?

13 A I guess I'd have to say no on my religion. I've
14 never had that discussed by anybody in the church or
15 anything.

16 Q Okay. And this questionnaire asked a question about
17 whether you, your family members or close friends
18 were ever the victim of or ever witnessed a crime.

19 A Correct.

20 Q And I believe your questionnaire said your car was
21 broken into, you had some checks stolen. Those
22 checks were cashed at your bank?

23 A Yes.

24 Q It then goes on to say when it asked about the
25 outcome that someone was sent back to prison?

1 **A** Yes. The man who done it, which I never met or seen
2 or anything, was sent back to prison. Only reason I
3 know that is the officer, the detective that talked
4 to us said he had just got out of prison. And then
5 afterwards, they let us -- I want to say it's a vine
6 system [sic] or something that let's you know -- I
7 don't know, I may not be right, that let's you know
8 the outcome, I guess.

9 **Q** Were you a part of the sentencing proceeding in that
10 case at all?

11 **A** No.

12 **Q** The three questions that the judge inquired about,
13 remember there's the Type 1, Type 2?

14 **A** Yes, the statements.

15 **Q** And you stated that you would be in the category of a
16 Type 3?

17 **A** Yes.

18 **Q** Has there ever been a time, you think, that you were
19 a Type 1 or Type 2?

20 **A** No.

21 **Q** Is there -- do you have any concerns with the death
22 penalty?

23 **A** No.

24 **Q** Do you have any concerns with life in prison without
25 parole?

1 **A** No.

2 **Q** Is there anything about the death penalty as far as
3 how you feel about it -- let me reword that. Has
4 your views of the death penalty changed at all since
5 you became a part of this case?

6 **A** No.

7 **Q** Do you have any feelings as to which would be a more
8 appropriate sentence?

9 **MR. JENNINGS:** Objection, Your Honor. He
10 doesn't have any facts to base his decision on.

11 **THE COURT:** I sustain the objection as to the
12 phrase of that question. If you want to rephrase it, I
13 would --

14 **Q** What's more of -- what is the more appropriate
15 sentence in a murder case, life imprisonment without
16 parole or the death penalty?

17 **A** I would assume you have to hear the facts first. I
18 mean, it's kind of a hard question to ask without
19 knowing anything.

20 **Q** Yes, yes, it is. Is there anything you don't
21 understand about a potential death penalty sentence
22 that's of concern to you?

23 **A** No.

24 **MR. JOHNSTON:** I have no further questions.

25 **THE COURT:** Very well.

1 Any additional questions, Mr. Jennings?

2 **MR. JENNINGS:** No, sir.

3 **THE COURT:** You may step down sir. If you would
4 step out, we'll be with you in just a moment.

5 (WHEREUPON, the juror left the courtroom.)

6 **THE COURT:** State?

7 **MR. JENNINGS:** He's qualified.

8 **THE COURT:** Mr. Johnston?

9 **MR. JOHNSTON:** I'm sorry, sir, qualified.

10 **THE COURT:** Ask him to come in, please.

11 (WHEREUPON, the juror entered the courtroom.)

12 **THE COURT:** Mr. Page, thank you very much. You
13 have been found and determined to be qualified to be a
14 member of the pool. From that pool, we will select the
15 trial jury. That will be accomplished on Thursday morning
16 at 9:30. I need for you to report here at that time.
17 Ms. Wiggins has some information that Ms. Brown has
18 prepared for you that will assist you in how to prepare
19 for coming here on Thursday.

20 **THE POTENTIAL JUROR:** Okay.

21 **THE COURT:** Because obviously, once the jury's
22 selected, it will be sequestered at that time. Just be
23 present on Thursday at 9:30. That process, we don't know
24 how much longer it will take, but it shouldn't take too
25 much longer.

1 **THE POTENTIAL JUROR:** Downstairs again, same
2 one?

3 **THE COURT:** Just come here. Now, let me remind
4 you that it is very critical that you not talk with anyone
5 about this case as it has been thus far and continues.
6 Don't allow anyone to talk about it in your presence or
7 talk to you directly. Don't read any newspaper accounts
8 and don't watch any TV programs about it.

9 **THE POTENTIAL JUROR:** Okay.

10 **THE COURT:** Thank you. You're free to leave,
11 sir.

12 Bring in Ms. Simmons.

13 (WHEREUPON, Barbara E. Simmons, a white female,
14 entered the courtroom.)

15 EXAMINATION

16 **BY THE COURT**

17 **Q** Good morning, Ms. Simmons.

18 **A** Morning.

19 **Q** How are you?

20 **A** I'm all right.

21 **Q** I'm sorry that we held you a little bit long. But
22 you try to plan and do the best you can and sometimes
23 it takes a little bit longer. But I appreciate your
24 patience with us. We're going to continue the
25 process that we started yesterday. And as you

1 probably determined and realized early on, there
2 really are no correct answers to any of these
3 questions that we ask of you. You understand that?

4 **A** Uh-huh.

5 **Q** And their purpose is to make sure and to help you and
6 to help us make a determination as to whether you can
7 truly be a fair and impartial juror in this case. Do
8 you understand?

9 **A** Yes, sir.

10 **Q** You understand that you're still under oath?

11 **A** Yes, sir.

12 **Q** And the restriction that was placed on you about
13 talking about this case or allowing anybody to talk
14 with you or reading anything about it, watching any
15 news programs, have you complied with that
16 restriction?

17 **A** Yes, sir.

18 **Q** In every respect?

19 **A** Yes, sir.

20 **Q** We're going to ask you some questions here today.
21 Please understand, again, there are no right or wrong
22 answers. Don't consider them an invasion of your
23 privacy at all. Again, it's just to facilitate the
24 process. Please also understand that I may ask you
25 some questions and I'm not suggesting by my questions

1 and you shouldn't take it as a suggestion as to how
2 you're to resolve any particular issue in this case.
3 Do you understand that?

4 **A** Yes, sir.

5 **Q** Because as I mentioned to you yesterday, this
6 wonderful system works with two judges working
7 together. And my responsibility is the judge of the
8 law. It would be your responsibility as a juror to
9 be the judge of the facts. Do you understand that?

10 **A** Yes, sir.

11 **Q** Would you have any problem observing that difference
12 in roles?

13 **A** No, sir.

14 **Q** Okay. Now, one of the things that we will ask you
15 about -- or let me ask you now, it would be, of
16 course, concerning the potential penalty. And again,
17 I'm not suggesting anything by it. But in that
18 connection, did you have a chance to read the three
19 types of jurors?

20 **A** Yes, I did, sir.

21 **Q** Which one most accurately describes you?

22 **A** No. 3.

23 **Q** No. 3. And basically, as I understand, No. 3 is
24 basically, it would depend on the facts and
25 circumstances of a given case?

1 **A** Yes, sir.

2 **Q** That you don't have any predetermination as to which
3 sentence is appropriate --

4 **A** No, sir.

5 **Q** -- going into a trial?

6 **A** No, sir.

7 **Q** And you haven't made any decision in this case and
8 you've not reached any conclusions; is that correct?

9 **A** That's correct.

10 **Q** You have an open mind?

11 **A** Yes, sir.

12 **Q** You understand that one of the important aspects of a
13 jury is to maintain that open mind until the Court
14 gives the jury the instruction to begin its
15 deliberations?

16 **A** Yes, sir.

17 **Q** Would you follow that commitment?

18 **A** Yes, sir.

19 **Q** And keep that commitment?

20 **A** Yes, sir.

21 **Q** Obviously, the jury would be asked to decide the case
22 considering the evidence and determine from that
23 evidence what they find to be credible and
24 believable. Do you understand that?

25 **A** Yes, sir.

1 Q And the evidence, of course, consists of the
2 testimony of the witnesses and exhibits and nothing
3 else. Do you understand that?

4 A Yes, sir.

5 Q And you would consider that evidence only?

6 A Yes, sir.

7 Q You understand you can't consider anything that
8 occurs outside of this courtroom?

9 A Yes, sir.

10 Q There could be no conversations about it outside of
11 this courtroom?

12 A Yes, sir.

13 Q Does that create any problem for you?

14 A No, sir.

15 Q To facilitate the jury's function and to minimize
16 those types of exposures, you will be sequestered if
17 you're selected. Do you understand?

18 A Yes, sir.

19 Q It could mean sequestration could be as long as seven
20 to 10 days. Does that create any problem for you?

21 A No, sir.

22 Q Would that in any way affect your ability to be a
23 fair and impartial juror?

24 A No, sir.

25 Q My role, as I mentioned to you, would be to give you

1 the law. Do you understand that?

2 **A** Yes, sir.

3 **Q** And would you listen to that law?

4 **A** Yes, sir.

5 **Q** Would you accept the law as I gave it to you and then
6 apply that law fairly and impartially to the facts
7 that you ultimately will determine?

8 **A** Yes, sir.

9 **Q** And would you do that even if you heard some
10 principle of law with which you may differ?

11 **A** Yes, sir.

12 **Q** Because you understand that part of the commitment is
13 you have a right to feel that way, but you have
14 promised the State and you have promised Mr. Sapp
15 that you would set aside your differences and apply
16 that law fairly and impartially; is that correct?

17 **A** Yes, sir.

18 **Q** And you would honor that commitment?

19 **A** Yes, sir.

20 **Q** You understand part of the law that I have already
21 indicated to you and I will instruct you in much more
22 detail, but the State has the burden of proving this
23 case beyond a reasonable doubt. Do you understand
24 that?

25 **A** Yes, sir.

1 **Q** And that persons like Mr. Sapp who are accused of
2 committing criminal offenses are presumed innocent
3 and they don't have a responsibility to prove
4 anything whatsoever. Do you understand that?

5 **A** Yes, sir.

6 **Q** And they don't have a duty to explain anything.
7 Because the only party that has any burden is the
8 State. Would that be consistent with your
9 understanding?

10 **A** Yes, sir.

11 **Q** And you would look to the State to prove its case?

12 **A** Yes, sir.

13 **Q** If the State, in proving the case and I defined the
14 elements of a specific offense, if in your analysis,
15 you were not convinced beyond a reasonable doubt as
16 to one of the elements of an offense, would you have
17 any hesitancy in returning a verdict of not guilty?

18 **A** No, sir.

19 **Q** If you were convinced of all of them, that the State
20 has convinced you beyond a reasonable doubt as to all
21 the elements of an offense, would you have any
22 hesitancy in returning a verdict of guilty?

23 **A** No, sir.

24 **Q** You would follow the instruction whatever it may be?

25 **A** Yes, sir.

1 Q You understand that if the jury returned a verdict of
2 guilty for the offense of murder that there would be
3 a second phase of this proceeding?

4 A Yes, sir.

5 Q We call that the penalty phase. Do you understand
6 that during that phase, you would hear additional
7 evidence in this case?

8 A Yes, sir.

9 Q Some of that evidence may be aggravating
10 circumstances and mitigating circumstances. You
11 understand that?

12 A Yes.

13 Q And you would be asked, of course, to consider all
14 the evidence in the penalty phase as well. Do you
15 understand that?

16 A Yes, sir.

17 Q Including aggravating and mitigating circumstances.
18 And I, of course, would give you instruction as to
19 each of those. You understand?

20 A Yes, sir.

21 Q And you would follow that instruction?

22 A Yes, sir.

23 Q Aggravating circumstances and mitigating
24 circumstances have been defined by our legislature by
25 statute. Generally, aggravating circumstances are

1 defined as those circumstances or facts or
2 occurrences which would make worse or aggravate the
3 offense of murder, that is, to increase the enormity
4 of the offense or add to the effect of the crime. Do
5 you understand that?

6 **A** Yes, I do.

7 **Q** Mitigating circumstances would be those facts and
8 circumstances which would tend to reduce the severity
9 of the offense of murder and may be considered as
10 extenuating or as reducing the degree of moral
11 culpability or responsibility. Do you understand
12 that?

13 **A** Yes.

14 **Q** If you were on the jury and considering all the facts
15 and circumstances of the case, including aggravating
16 and mitigating circumstances, and then taking the law
17 as the Court gave it to you and applying that law
18 fairly and impartially to those facts, could you
19 return a verdict of life imprisonment without the
20 possibility of parole?

21 **A** I'm sorry?

22 **Q** That's all right. Basically, what that says is this,
23 when it became time in a penalty phase, if you were
24 in a penalty phase and the Court instructed you to
25 consider all the evidence in the case, and that

1 evidence could consist of aggravating circumstances
2 and mitigating circumstances, would you consider
3 those and make a determination as to what you find to
4 be credible and believable?

5 **A** Yes, sir.

6 **Q** Once you determined those facts, would you then apply
7 the law that the Court gave to you concerning those
8 issues?

9 **A** Yes, sir.

10 **Q** And would you do that fairly and impartially?

11 **A** Yes, sir.

12 **Q** And in so doing, would you and could you return a
13 verdict of life imprisonment if you were convinced
14 that was the appropriate sentence --

15 **A** Yes, sir.

16 **Q** -- under those facts and circumstances?

17 **A** Yes, sir.

18 **Q** Could you also, same situation, considering all the
19 facts and circumstances, including aggravating and
20 mitigating circumstances, apply the law to the facts
21 that you determine to be -- that have convinced you
22 are most credible and believable, reach a decision
23 which would result in a death penalty being imposed?

24 **A** Yes, sir.

25 **Q** It would just depend on the facts and circumstances?

1 **A** Yes, sir.

2 **Q** You understand that if you were on a jury and the
3 jury determined that the death sentence was the most
4 appropriate under the facts and circumstances,
5 considering aggravating and mitigating circumstances,
6 that you would be required to sign a verdict form as
7 a member of that jury panel indicating that was your
8 verdict?

9 **A** Yes, sir.

10 **Q** Could you do that?

11 **A** Yes, sir.

12 **THE COURT:** Thank you. Please answer any
13 questions either side may have.

14 **MR. HOISINGTON:** Thank you, Judge.

15 EXAMINATION

16 **BY MR. HOISINGTON**

17 **Q** Hey, Ms. Simmons, I'm Ralph Hoisington. Blair
18 Jennings will be trying this case with me. We'll be
19 presenting the evidence for the State. His Honor has
20 asked you about all the questions I need answered. I
21 listened to your answers to them. Obviously, what
22 we're trying to determine, what both sides are trying
23 to determine, is whether we can have jurors that are
24 open minded. You have indicated that you clearly are
25 open minded about the possible punishment.

1 **A** (The juror nodded.)

2 **Q** I would expect and we would welcome that any juror we
3 pick would hold us to the standard of proving the
4 defendant guilty beyond a reasonable doubt. If that
5 is proven, is there anything in your philosophical,
6 religious background that would interfere with your
7 considering and possibly imposing the death penalty
8 in a case?

9 **A** No, sir.

10 **Q** It would all depend on the circumstances, the facts
11 and the law?

12 **A** Yes, sir.

13 **Q** If you thought it was right, it could be life in
14 prison?

15 **A** Yeah.

16 **Q** On the other hand, if you thought the appropriate
17 punishment was death, you could impose that?

18 **A** Yes, sir.

19 **MR. HOISINGTON:** Thank you, ma'am.

20 **THE COURT:** Mr. Johnston?.

21 **MR. JOHNSTON:** Thank you.

22 EXAMINATION

23 **BY MR. JOHNSTON**

24 **Q** Good morning, Ms. Simmons.

25 **A** Morning.

1 **Q** I'm Bob Johnston. I'm one of Mr. Sapp's two
2 attorneys. That's Mr. Archer sitting over there.
3 The solicitor just asked you, one of the last few
4 questions, about feeling comfortable imposing a
5 sentence of the death penalty if the facts warranted
6 it, and then life imprisonment if the facts warranted
7 it. Do you feel equally comfortable either way?

8 **A** Yes, sir.

9 **Q** I would like to spend a minute with you on your
10 questionnaire.

11 **A** Yes.

12 **Q** You're a Baptist?

13 **A** Yes, I am.

14 **Q** Any feelings you hold about the death penalty or life
15 in prison without parole affected by your religion?

16 **A** No, sir.

17 **Q** We've asked everybody this. Do you know the
18 difference between a Baptist and Southern Baptist?

19 **A** Not quite. I'm really not a true active member right
20 now. So...

21 **Q** Okay. Thank you. No one's known yet. Ma'am, have
22 you ever been an employee of a law enforcement
23 agency?

24 **A** No, sir.

25 **Q** And I believe you were once related -- or tell us

1 about that, please.

2 **A** Well, I was married to a police officer.

3 **Q** How long were you married to him?

4 **A** A year.

5 **Q** Okay. How long have you not been married to him?

6 **A** It's been 25 years since we were divorced.

7 **Q** Okay. And is that the only close connection you've
8 had with a member of law enforcement?

9 **A** Yes.

10 **Q** You checked off under one particular question
11 regarding you, your family, close friends having ever
12 been a victim or witness of a crime.

13 **A** Yes, sir.

14 **Q** Could you tell us about that, please?

15 **A** It was my brother-in-law. He was a potato chip
16 delivery man.

17 **Q** Right.

18 **A** And he was robbed at gunpoint. And when it came to
19 identifying the person in a lineup, the person was
20 able to have changed his physical appearance and he
21 couldn't identify him. So it just kind of went out
22 the door.

23 **Q** Was it your brother-in-law?

24 **A** Yeah, it was my brother-in-law.

25 **Q** Was he involved in a lineup?

- 1 **A** Yeah, he was there to pick out the person in the
2 lineup.
- 3 **Q** When was that?
- 4 **A** This was probably 25 years ago, also.
- 5 **Q** Okay. Okay. I didn't understand part of this
6 question when you said, He could not ID the man after
7 he got a razor. You mean shaved?
- 8 **A** Yes, yes.
- 9 **Q** Okay. You, yourself, have been a juror before?
- 10 **A** Yes, sir.
- 11 **Q** Was that a civil case or criminal case?
- 12 **A** I'm not sure about the difference between the two.
13 Can you help me out there?
- 14 **Q** Well, you understand this is a criminal case?
- 15 **A** Yes, uh-huh.
- 16 **Q** Do you know if the case you sat in on, a person was
17 charged with a crime or not?
- 18 **A** I really don't remember.
- 19 **Q** How long ago was this?
- 20 **A** Probably 18 years ago.
- 21 **Q** Okay. All right. Did you enjoy that experience?
- 22 **A** Yeah, it was interesting.
- 23 **Q** Okay. The questionnaire -- or the three questions
24 the judge posed, Type 1, 2 and 3 --
- 25 **A** Yes, sir.

1 Q -- and you said that you would fit into the Type 3
2 category?

3 A Yes, sir.

4 Q Has there ever been a time in your life where you
5 think you would have fit into a Type 1 or Type 2?

6 A I don't believe so.

7 Q Have your views on the death penalty changed over the
8 years?

9 A I don't believe they have.

10 Q Have your views or opinions of the death penalty been
11 altered or changed in the last couple weeks?

12 A No, sir.

13 Q So do you have any concerns about the death penalty?

14 A Not really, not that --

15 Q Do you have any concerns about life imprisonment
16 without parole?

17 A No, sir.

18 Q Do you have any children?

19 A Just a stepdaughter.

20 Q And how old is she?

21 A She's 23.

22 Q Okay. Is there anything about you personally, is
23 there anything that would impair your ability to
24 render a verdict in this case?

25 A No, sir.

1 **Q** Even if you disagreed with the law as the judge
2 instructed you?

3 **A** No.

4 **Q** Okay. Great.

5 **MR. JOHNSTON:** I have no further questions.

6 **THE COURT:** Any additional questions?

7 **MR. HOISINGTON:** No, Your Honor. Thank you.

8 **THE COURT:** You may step down. We'll be with
9 you in just one second, Ms. Simmons.

10 (WHEREUPON, the juror left the courtroom.)

11 **THE COURT:** What says the State?

12 **MR. HOISINGTON:** I believe she's qualified.

13 **THE COURT:** Defense?

14 **MR. JOHNSTON:** Yes, sir, I agree she is.

15 **THE COURT:** Bring her in, please.

16 (WHEREUPON, the juror entered the courtroom.)

17 **THE COURT:** Ms. Simmons, you've been qualified
18 to be a member of the pool of jurors. And from that pool,
19 we will select the trial jury in this case. That process
20 will take place on Thursday morning starting at 9:30. I
21 need for you to report at that time. Ms. Wiggins has some
22 information that Ms. Brown has prepared for you that will
23 facilitate and assist you in what to do and what to bring
24 with you when you come. If you'll just read through that
25 and follow that and her instructions will be very helpful

1 to you.

2 Please understand that while you are out and
3 until Thursday you are still not permitted to talk about
4 this case with anyone or permit anyone to talk with you
5 about this case. You're not to read anything about this
6 case or to watch any news programs about this case. Have
7 a good day and we'll see you Thursday morning. You can
8 exit through the front door.

9 **THE POTENTIAL JUROR:** Okay.

10 **THE COURT:** Before we go on, in reviewing the
11 last one, I want to put as one of the authorities, not the
12 only one, there are other cases, but I knew that I had
13 read one and I found it. I want to place it on the
14 record. Concerning Ms. McNair, I believe that she really
15 probably is as close as could be with that described in
16 State vs. Edward Elmore #1, which is 332 S.E.2d 762, a
17 1985 case that talked about brief equivocation is not
18 sufficient to qualify. Because as the Court noted in that
19 case, the juror may be excused if it is shown that -- in
20 that case, it was his -- this says, her views would be
21 substantially -- her views would substantially impair
22 performance of her duties as a juror, that being her
23 views, her religious views. And the Court is relying on
24 that and other decisions held consistently along those
25 lines to support its decision.

1 Okay. Let's bring in the next juror,
2 Mr. Hendriks.

3 (WHEREUPON, Anthony D. Hendriks, a white male,
4 entered the courtroom.)

5 EXAMINATION

6 **BY THE COURT**

7 **Q** Hello, Mr. Hendriks.

8 **A** Hey.

9 **Q** How are you today?

10 **A** All right.

11 **Q** Good. I hope you haven't gotten mad at me for
12 keeping you cooped up in that room for a while.

13 **A** No.

14 **Q** Sorry it's taken so long. And I apologize to you and
15 I appreciate your patience with us.

16 **A** That's all right.

17 **Q** Yesterday we started a process to determine and to
18 help us determine and select a jury. The ultimate
19 object is to select persons who will decide this --
20 the factual issues of this case. You understand
21 that?

22 **A** Uh-huh.

23 **Q** And I'm -- that I assure you does not offend me at
24 all, I do that, too. When I'm talking to somebody I
25 say uh-huh and huh-uh. We need to make sure and it

1 will help the court reporter tremendously if you can
2 say yes or no. It's not a problem with me. It just
3 helps the record. So if you would do that for me, I
4 would appreciate it.

5 **A** Yes, sir.

6 **Q** You understand that you are still under oath, first
7 of all, in this process?

8 **A** Yes.

9 **Q** Yesterday, you probably heard more than you wanted to
10 hear me ask questions and ask a juror whether or not
11 that would affect their ability to be fair and
12 impartial. Do you understand that that's really the
13 whole purpose of all of this?

14 **A** Yes.

15 **Q** You have indicated thus far either by answering
16 questions or not answering questions that I have
17 posed that there is nothing about this case that
18 would affect your ability to be fair and impartial.
19 Is that true?

20 **A** True.

21 **Q** You've also indicated that you haven't predetermined
22 anything in this case. Is that true?

23 **A** Yes.

24 **Q** And that means that at this point you have an open
25 mind about this whole process. Is that true?

1 **A** Right, uh-huh.

2 **Q** Do you understand that that quality is one of the
3 important parts of a juror's responsibility?

4 **A** Uh-huh.

5 **Q** That that means that a juror has to bring that open
6 mind and keep that open mind until the Court tells
7 the jury to begin its deliberations. Do you
8 understand that?

9 **A** Yes.

10 **Q** Would you follow that instruction?

11 **A** Yes, I would.

12 **Q** And that means you would not decide any issue until
13 the Court told you you may begin that process.

14 **A** Right.

15 **Q** Since we were last together, you haven't talked with
16 anybody about this case or allowed anybody to talk
17 with you about this case, have you?

18 **A** No, sir.

19 **Q** Have you read any newspaper articles about this case?

20 **A** No, sir.

21 **Q** Have you reviewed any television programs?

22 **A** No, sir.

23 **Q** Have you had a chance to review that sheet that had
24 the three types of jurors?

25 **A** Yes, I did.

1 Q Which one most accurately describes you?

2 A I believe it was the last one.

3 Q Type 3?

4 A Yes.

5 Q That's the juror that could decide -- or could impose
6 either a death penalty or a life sentence, life
7 without the possibility of parole, but it just would
8 depend on the facts and circumstances.

9 A Yes.

10 Q And that would be you?

11 A Right.

12 Q Now, you understand that the questions that we have
13 asked thus far and the questions that I will ask of
14 you today is in no way to be considered by you as an
15 indication of how I expect you or what I think you
16 should do on deciding any factual issue. You
17 understand that?

18 A Right, uh-huh.

19 Q It's important that that part always be remembered
20 and observed because that's the purpose of our
21 system. I don't have anything to do with the factual
22 determination because that's the jury's sole
23 responsibility. You understand that?

24 A Yes.

25 Q And you don't have anything to do with the legal

1 responsibility because that's my sole responsibility.

2 **A** Uh-huh.

3 **Q** Do you have any problem following that instruction?

4 **A** Not at all.

5 **Q** That means then that you would listen to the law that
6 I would give to you if you were on the jury.

7 **A** Yes.

8 **Q** Would you accept that law and apply that law fairly
9 and impartially to the facts that you may ultimately
10 determine if you were on the jury?

11 **A** Yes, I would.

12 **Q** You may during this process, I don't know that you
13 will, but you could hear some principle of law that
14 you may think ought to be changed and ought to be
15 different. You may not even like it. But would you
16 apply that law any way?

17 **A** Yes, I would.

18 **Q** Do you understand that's important because you're
19 promising the State and you're promising Mr. Sapp
20 that you will follow the law as I give it to you?

21 **A** Yes, sir.

22 **Q** And you would do that, is that true?

23 **A** Uh-huh, right.

24 **Q** You already know that I have told you that the law of
25 this state and every state in this United States as

1 far as I know is that persons who are accused of
2 committing criminal offenses, like Mr. Sapp in this
3 case, are never required to prove anything. Do you
4 understand that?

5 **A** Yes.

6 **Q** They're not required to prove their innocence or
7 disprove anything. In fact, they don't have to do
8 anything. Do you understand that?

9 **A** Uh-huh.

10 **Q** Because that solely rests -- that burden's solely on
11 the State. You understand that?

12 **A** Yes.

13 **Q** It would be the State's responsibility to present
14 evidence during the trial that you would ultimately
15 consider. Do you understand that?

16 **A** Yes.

17 **Q** That would convince you beyond a reasonable doubt as
18 to the guilt -- as to any and all of these offenses.
19 Do you understand that?

20 **A** Yes.

21 **Q** And that means they would have to produce evidence of
22 each offense and that means prove every element of
23 each offense to the level that you would apply and
24 that is beyond a reasonable doubt. Do you
25 understand?

1 **A** Yes.

2 **Q** If in considering a particular offense, you were not
3 convinced as to one element on that particular
4 offense, the State hasn't convinced you beyond a
5 reasonable doubt, would you return a verdict of not
6 guilty?

7 **A** Yes, I would.

8 **Q** You wouldn't have any hesitancy doing that?

9 **A** Not at all.

10 **Q** On the other hand, if you were convinced beyond a
11 reasonable doubt as to each element, would you have
12 any hesitancy returning a verdict of guilty?

13 **A** No, I wouldn't.

14 **Q** You understand that, of course, evidence would
15 consist of testimony and exhibits that might be
16 introduced and nothing else. Do you understand that?

17 **A** Yes.

18 **Q** And that means that you must not consider anything
19 that occurs or is said to you outside of this
20 courtroom when you make that decision. Do you
21 understand that?

22 **A** Yes.

23 **Q** To help the jury to minimize that type of exposure,
24 you will be sequestered during this trial. Do you
25 understand?

1 **A** Yes.

2 **Q** And that may take seven to 10 days. Does that create
3 any problems for you?

4 **A** No.

5 **Q** Would that in any way affect your ability to be a
6 fair and impartial juror?

7 **A** No.

8 **Q** You understand that if the jury returned a verdict of
9 guilty on the offense of murder, there would be a
10 second portion to this proceeding or a second phase?

11 **A** Yes.

12 **Q** And that portion, we call the penalty portion. And
13 it's during that time that you would hear additional
14 evidence as to what would be the most appropriate
15 sentence. Do you understand that?

16 **A** Yes.

17 **Q** Some of that evidence we call aggravating
18 circumstances, some we call mitigating circumstances.
19 Do you understand that?

20 **A** Uh-huh.

21 **Q** And I would give you an instruction as to each of
22 those because both of those are well defined by our
23 law. Do you understand that?

24 **A** Yes.

25 **Q** Aggravating circumstances are simply those facts and

1 circumstances that would be proven that would tend to
2 make worse or aggravate the offense of murder or
3 increase the enormity or add to the injury of the
4 crime of murder. Do you understand that?

5 **A** Yes.

6 **Q** Mitigating circumstances are simply those facts and
7 circumstances which would tend to reduce the severity
8 of the crime of murder or may be considered as
9 extenuating or reducing the degree of moral
10 culpability or responsibility. Do you understand
11 that?

12 **A** Yes.

13 **Q** You would have no problem following the instructions
14 as to both of those; is that correct?

15 **A** Correct.

16 **Q** Mr. Hendriks, if you were on the jury and reached a
17 point where you were then instructed to begin your
18 deliberations to consider the evidence, to consider
19 the facts and circumstances established by the
20 evidence and what you are convinced to be credible
21 and believable and considering all of that evidence,
22 including any evidence of aggravating circumstances
23 and mitigating circumstances, and then once receiving
24 the law and applying that law to those facts and
25 circumstances, if the law permitted, could you return

1 a verdict of life without parole?

2 **A** I could.

3 **Q** And also, considering all the facts and
4 circumstances, including aggravating and mitigating
5 circumstances, applying the law to those facts and
6 circumstances, could you return a verdict that would
7 require the death penalty be imposed?

8 **A** Yes, I could.

9 **Q** It would depend on the facts and circumstances?

10 **A** Correct.

11 **Q** Is that correct?

12 **A** Correct.

13 **Q** You understand that if the jury votes to return a
14 verdict of death that you and the other jurors will
15 have to sign a verdict form to that effect?

16 **A** Yes, I do.

17 **Q** Could you carry out that responsibility and duty as a
18 juror?

19 **A** Yes.

20 **Q** And as I understand, Mr. Hendriks, you have no
21 predeterminations in this case?

22 **A** No, sir.

23 **Q** And you would have to hear all the facts and
24 circumstances before you would even begin the process
25 of making that determination?

1 **A** Yes, sir.

2 **Q** And receive the law?

3 **A** Uh-huh.

4 **Q** Is that true?

5 **A** That's true.

6 **THE COURT:** Questions from the State, please?

7 **MR. JENNINGS:** Thank you, Your Honor.

8 EXAMINATION

9 **BY MR. JENNINGS**

10 **Q** Morning, Mr. Hendriks.

11 **A** Morning.

12 **Q** My name's Blair Jennings. I'm the Deputy Solicitor
13 in Berkeley County. And myself and Solicitor
14 Hoisington are trying this case, prosecuting
15 Mr. Sapp. I note that you are attending Trident
16 Tech?

17 **A** Correct.

18 **Q** What -- are you studying in any particular field?

19 **A** Commercial graphics.

20 **Q** As far as the death penalty, it's certainly a
21 controversial topic. Have you had the opportunity to
22 think about it, talk about it with friends or family?

23 **A** Somewhat, yeah.

24 **Q** And if you could, just share with me a little bit
25 what your views are on the death penalty.

1 **A** In my opinion, the death penalty should only be used
2 for like the most severe murder -- I mean, in certain
3 situations murder might happen where it's just an
4 accident or even if it's not just an accident but,
5 you know, a person's just in a fit of rage that only
6 for that brief moment, but actually there might be a
7 good person there. But if they're a person that's,
8 you know, had problems their whole life and showed
9 signs that they might do those types of actions, you
10 know, their whole life, then -- if I feel from all
11 the evidence that they do not deserve the death
12 penalty but, you know, if they -- cause, you know, if
13 you kill somebody, they deserve to get a death
14 penalty. But who am I to really judge them unless
15 that's what's right.

16 **Q** I think you feel that in certain circumstances the
17 death penalty is an appropriate punishment?

18 **A** Correct, yeah.

19 **Q** But in your mind, you would have to hear the facts
20 and circumstances of the case to determine whether or
21 not that was the appropriate punishment?

22 **A** Yeah. I would have to be convinced that that's what
23 should be done.

24 **Q** You would have to be convinced that that's the
25 appropriate punishment?

1 **A** Right.

2 **Q** But you do think that that is a viable punishment?

3 **A** Yes, I do.

4 **Q** And that in certain circumstances, both based on the
5 crime that was committed as well as the person's
6 background, that the appropriate punishment is that
7 they should be put to death?

8 **A** Yeah.

9 **Q** But you would be willing to listen to all the facts
10 and circumstances in this case before you made that
11 decision?

12 **A** Right.

13 **Q** Does any aspect of -- you're a Catholic as a
14 religion, does any aspect of that religion, would
15 that have any effect on your ability to return a
16 death sentence?

17 **A** No, not at all.

18 **Q** If you don't mind me asking, where does your father
19 work?

20 **A** He works at Trident Hospital.

21 **Q** Is he a doctor?

22 **A** No, he's like the manager of the food-related
23 services.

24 **Q** Okay. How about your mother?

25 **A** She works in State Farm Insurance.

1 Q Is she an agent, a secretary or what?

2 A Yeah, agent and secretary.

3 Q Okay. What were the circumstances when she was
4 robbed?

5 A Well, she -- on one situation -- on one occasion, she
6 walked in after someone gotten robbed and the person
7 was shot. She didn't see it happen, but she just was
8 there when the guy was hurt. And that, you know, she
9 called -- I don't know if she called the police or
10 not, but she was there for that. And then on a
11 different occasion, she was working at Taco Bell, I
12 believe, and they were robbed. And the guy got
13 caught eventually. She picked him out of a -- not a
14 lineup, but like pictures, mugshots, picked him out
15 of that and he went to jail for that.

16 Q Okay. You are 20 years of age?

17 A Correct.

18 Q And Mr. Sapp is sitting at this table between his two
19 attorneys. You are not the same age, but in close
20 proximity. Would that fact that you are close in age
21 with him cause you any hesitation if the facts
22 warranted it to return a sentence of death?

23 A No, sir.

24 Q And to the best of your knowledge, you would be able
25 to set aside any personal beliefs or religious

1 beliefs and look at this case on its own facts and
2 circumstances and decide what the appropriate
3 punishment is?

4 **A** Yes.

5 **Q** And you would feel comfortable back in the jury room
6 if the appropriate sentence was death that you could
7 sign your name to that form imposing the death
8 sentence on Mr. Sapp?

9 **A** Yes, I could.

10 **MR. JENNINGS:** Thank you, Your Honor.

11 **THE COURT:** Mr. Johnston?

12 EXAMINATION

13 **BY MR. JOHNSTON**

14 **Q** Morning.

15 **A** Morning.

16 **Q** I'm Bob Johnston. I'm one of Mr. Sapp's attorneys,
17 along with Paul Archer.

18 **A** Uh-huh.

19 **Q** We appreciate your time and your help. Mr. Hendriks,
20 you filled out a questionnaire in this case. I think
21 they sent this to your house?

22 **A** Yep.

23 **Q** I just want to ask you a couple questions on here.
24 And excuse me if any of this stuff came up a few
25 minutes ago. Have you served as a juror before?

1 **A** No.

2 **Q** There's a little notation next to the answer on your
3 questionnaire. Do you recall what that is?

4 **A** No.

5 **MR. JOHNSTON:** May I approach the witness, Your
6 Honor?

7 **THE COURT:** I don't think that's his, I think
8 that's the clerk's. Are you talking about the circle
9 notation?

10 **MR. JOHNSTON:** Yeah, actually, that appears to
11 be --

12 **THE COURT:** It's a number, 160.

13 **MR. JOHNSTON:** It looked like a letter in there.

14 **THE COURT:** Ms. Brown put that there, I'm sure.

15 **Q** Okay. That was your brother you said was the victim
16 of a crime?

17 **A** No.

18 **Q** I'm sorry, refresh --

19 **A** My mother. She wasn't really a victim. She just --
20 well, she was a victim, but she didn't get hurt or
21 anything. And she witnessed the other guy.

22 **Q** The time she was a victim, what kind of crime was
23 that?

24 **A** It was armed robbery.

25 **Q** So she was actually robbed?

- 1 **A** Right.
- 2 **Q** Okay. Do you know what the person received as far as
3 a sentence?
- 4 **A** No, I don't.
- 5 **Q** Do you know if he went to prison?
- 6 **A** Yeah, he went to prison, but I'm not sure how long.
- 7 **Q** Okay. How long ago was this?
- 8 **A** Probably like 20 years ago.
- 9 **Q** You don't remember it then?
- 10 **A** No, I just -- I just know from what she told me.
- 11 **Q** Okay. All right. Remember the questions you were
12 asked, the three different types of juror regarding
13 the death penalty?
- 14 **A** Uh-huh.
- 15 **Q** And I believe you said that you were No. 3?
- 16 **A** Right.
- 17 **Q** The No. 1 pertained to someone who was unable or
18 unwilling to give the death penalty.
- 19 **A** Uh-huh.
- 20 **Q** Has that ever been you?
- 21 **A** No, I don't think so. Because I could never say that
22 I could never give anybody the death penalty,
23 especially the -- I mean, like, say they killed a lot
24 of people, they definitely deserve to get the death
25 penalty.

1 Q So would you regard possibly one murder more severe
2 than another murder?

3 A Just one or one case? Are you saying one murder as
4 in one person or one case of murder?

5 Q Well, what I was saying was, you would look at the
6 particular case to make your --

7 A Right, yeah.

8 Q And you could see differences in cases?

9 A Yes.

10 Q And you would also be willing to consider mitigating
11 circumstances?

12 A Yes.

13 Q Sir, where do you work?

14 A I don't currently work anywhere.

15 Q Okay. Is there anything about you that would cause
16 you to not be able to render a verdict in this case?

17 A No, sir.

18 MR. JOHNSTON: Okay. That's all I have. Thank
19 you.

20 THE COURT: Any additional questions from the
21 State?

22 MR. JENNINGS: No, sir.

23 THE COURT: Let me just ask you one thing. I
24 think I understand it, but I want to be clear on it. In
25 response to one of Mr. Jennings' questions, you indicated

1 something that I just want to be sure. You said, if you
2 kill somebody, they deserve to get the death penalty.
3 Does that mean you believe the death penalty is
4 appropriate in every murder case?

5 **THE POTENTIAL JUROR:** No, I'm just saying that
6 if you kill somebody, you should -- I mean, you equally
7 get what you did to someone else. But I can't really be
8 the person to say -- I mean, be the person that sentenced
9 another person to death unless I really thought that --

10 **THE COURT:** Well, given what else you said, you
11 said it would depend on the facts and circumstances. I
12 just want to be sure that you don't have a
13 predetermination if it's murder that death is automatic --

14 **THE POTENTIAL JUROR:** No, sir.

15 **THE COURT:** -- and you work away from that. You
16 would be open minded and you haven't made any
17 determination; is that right?

18 **THE POTENTIAL JUROR:** Correct.

19 **THE COURT:** And you would want to hear all the
20 facts and circumstances before you begin that process?

21 **THE POTENTIAL JUROR:** Yes.

22 **THE COURT:** Thank you.

23 Any additional questions from the State?

24 **MR. JENNINGS:** No, sir.

25 **MR. JOHNSTON:** No, Your Honor.

1 **THE COURT:** Thank you. You may step down, sir.

2 (WHEREUPON, the juror left the courtroom.)

3 **THE COURT:** What says the State?

4 **MR. JENNINGS:** He's qualified.

5 **MR. JOHNSTON:** Qualified.

6 **THE COURT:** Okay. Bring in Mr. Hendriks,
7 please.

8 (WHEREUPON, the juror entered the courtroom.)

9 **THE COURT:** Mr. Hendriks, thank you very much.
10 You have been qualified to be a member of the pool of
11 jurors. And we'll select the trial jury from this pool,
12 that will occur on Thursday morning at 9:30. You will
13 need to be present at that time. Ms. Wiggins has some
14 information Ms. Brown has put together in letter form for
15 you. Just read that and follow that instruction. Please
16 understand that while you're waiting to come back on
17 Thursday, you must not talk with anybody about this case
18 or allow anybody to talk about it in your presence or talk
19 directly to you. Do not watch any news programs about it,
20 do not read any newspapers articles about it. Have a good
21 day and we'll see you on Thursday morning at 9:30. Just
22 come directly to the courtroom at 9:30. Thank you, sir.
23 You can exit through the front door.

24 Ask Ms. Barnhill to please come in.

25 (WHEREUPON, Linda S. Barnhill, a white female,

1 entered the courtroom.)

2 EXAMINATION

3 **BY THE COURT**

4 **Q** Good afternoon, Ms. Barnhill. You came in the
5 morning and now it's afternoon. Thank you very much
6 for your patience. I'm sorry we've kept you so long.
7 I appreciate it. I hope it didn't inconvenience you
8 too much.

9 **A** Not too much, no.

10 **Q** Okay. Yesterday we started this process of trying to
11 select a group of persons from which we will
12 ultimately select the trial jury. Obviously, as you
13 probably quickly determined yesterday, the entire
14 intent of this complete process is to determine
15 whether or not you, particularly now, are that type
16 of juror, that is a person who can be fair and
17 impartial in the application of their common sense,
18 their sense of reason and logic. You, by answering
19 questions or not answering questions yesterday, have
20 indicated to the State and to Mr. Sapp that you are
21 that type of person.

22 You notice yesterday that none of those
23 questions had any proper answer or correct answer.
24 They are really questions that are personal for you.
25 Please understand that we're going to continue to ask

1 you questions and we're not trying to invade your
2 privacy or create any problems for you. We just,
3 again, are just wanting to find out, make certain to
4 aid us, if you will, as well as you to determine
5 whether you can be completely fair and objective in
6 this case. Do you understand that?

7 **A** Uh-huh.

8 **Q** Do you have any problems with that approach?

9 **A** No.

10 **Q** You understand you are still under oath in this
11 process?

12 **A** Yes.

13 **Q** Since we were last together, have you talked with
14 anyone or permitted anyone to talk with you about
15 this case?

16 **A** Well, my husband asked if this was the case because
17 he heard it and I said yes, it was.

18 **Q** And that was the extent of the conversation?

19 **A** Yes. The only other thing we discussed was I was
20 astonished at the number of people that were called
21 to the jury and that was it.

22 **Q** And that was the extent?

23 **A** Yes.

24 **Q** You didn't talk about any of the specifics of it?

25 **A** No.

1 Q Have you read any newspaper accounts of this incident
2 since we were together?

3 A No, I haven't.

4 Q Have you reviewed any news programs about it?

5 A No, I have not.

6 Q Okay. You understand that in the questioning process
7 that nothing that I say to you should be considered
8 by you as an indication of how you're to resolve any
9 factual issue in this case. Do you understand that?

10 A Yes, sir.

11 Q And you won't allow that to happen, will you?

12 A No.

13 Q Basically, you have an open mind as I understand it?

14 A Yes.

15 Q And you have no prejudgments on any issue in this
16 case?

17 A No.

18 Q Let me ask you before I ask you any questions, have
19 you had a chance to review the sheet that contained
20 the three types of jurors?

21 A Yes, I did.

22 Q Which type most accurately describes you?

23 A Three.

24 Q No. 3. Now, you understand that under our process or
25 our system of dispute resolution, at a jury trial we

1 have two judges who work together. And our roles do
2 not overlap. My role and responsibility, of course,
3 is to be the judge of the law. You understand that?

4 **A** Yes.

5 **Q** Your role, if you were on the jury, would be the
6 judge of the facts. You understand that?

7 **A** Yes.

8 **Q** And you would observe that distinction; is that
9 correct?

10 **A** Yes.

11 **Q** That means that you would then listen to the law as I
12 gave it to you during the -- at any portion of the
13 trial should that become necessary?

14 **A** Yes.

15 **Q** Would you accept that law and apply that law fairly
16 and impartially to the facts that you ultimately
17 would determine?

18 **A** To the best of my ability.

19 **Q** Now, in determining those facts, would you keep that
20 open mind throughout the process until the Court gave
21 you a specific instruction to begin your
22 deliberations on a particular issue?

23 **A** Yes.

24 **Q** You would not prematurely decide any issue, is that
25 true?

1 **A** That's true.

2 **Q** If, in giving the instruction on the law, you should
3 hear a principle of law with which you may differ or
4 you may feel that it needs to be changed, could you
5 and would you set aside your difference of opinion
6 and apply that law to those facts and circumstances?

7 **A** Yes.

8 **Q** Even if you didn't agree with the law?

9 **A** Yes.

10 **Q** You understand that's part of the commitment that you
11 will make as a juror, that you will take the law as
12 the Court gives it to you notwithstanding your
13 personal feelings about the law?

14 **A** Yes.

15 **Q** And you would honor that; is that right?

16 **A** Yes.

17 **Q** You understand and we've talked about it thus far
18 that in this type of case in this state and really
19 any state in the United States, persons who are
20 accused of committing criminal offenses are never
21 required to prove anything. Do you understand that?

22 **A** Yes.

23 **Q** We call that the presumption of innocence and we'll
24 talk about that in more detail in the charge. But
25 you don't have any problem applying that principle of

1 law, do you?

2 **A** No.

3 **Q** That means that Mr. Sapp has no responsibility in
4 this process to prove anything at all. He doesn't
5 have to disprove anything. He doesn't have to
6 explain anything. He has no burden to do anything
7 whatsoever. Do you understand that?

8 **A** Yes.

9 **Q** The sole party, the only party that has any burden of
10 proof is the State. You understand that?

11 **A** Yes.

12 **Q** You understand that in the first phase we would deal
13 with the offenses charged. And you will hear
14 evidence at that time and you will consider that at
15 the appropriate time and determine from the evidence
16 whether or not the State has met its burden of proof
17 as to each of those crimes. Do you understand that?

18 **A** Yes, uh-huh.

19 **Q** And you will, of course, be asked to consider the
20 elements of each of the offenses and decide for
21 yourself whether you're convinced beyond a reasonable
22 doubt that a particular element has been established
23 by the evidence. Do you understand that?

24 **A** Uh-huh.

25 **Q** If, in your consideration, you should determine as to

1 any particular offense that the State has failed to
2 convince you beyond a reasonable doubt of a
3 particular element, would you return a verdict of not
4 guilty on that particular offense?

5 **A** Yes.

6 **Q** Would you have any hesitancy in doing that?

7 **A** No.

8 **Q** On the other hand, if you were convinced beyond a
9 reasonable doubt as to each element of the offense,
10 would you return a verdict of guilty on that offense?

11 **A** Yes.

12 **Q** And would you have any hesitancy in doing that?

13 **A** No.

14 **Q** You understand that if the State convinces you and
15 convinces the jury beyond a reasonable doubt on the
16 offense of murder, we would have a second phase, a
17 penalty phase?

18 **A** Yes, sir.

19 **Q** And you understand that it's the evidence that you
20 will be asked to consider, and that consists of
21 testimony of witnesses and the exhibits and nothing
22 else?

23 **A** Yes.

24 **Q** That means you can't consider anything that occurs or
25 is said to you or happens outside of this courtroom.

1 Do you understand that?

2 **A** Yes, sir.

3 **Q** And you would honor that commitment?

4 **A** Yes.

5 **Q** To assist the jury in providing an environment that
6 minimizes that type of exposure, you will be
7 sequestered. Do you understand that?

8 **A** Yes.

9 **Q** And that sequestration may be as long as 10 days. Do
10 you understand that?

11 **A** Yes.

12 **Q** Would that affect in any way your ability to be a
13 fair and impartial juror?

14 **A** No.

15 **Q** You could perform your duties notwithstanding
16 sequestration?

17 **A** Yes.

18 **Q** If we were to go into the second phase we call the
19 penalty phase, at that time you would hear additional
20 evidence. You understand that?

21 **A** Yes.

22 **Q** And that evidence, of course, would deal with what
23 would be the appropriate punishment. Do you
24 understand that?

25 **A** Yes, sir.

1 **Q** In that, you may hear evidence of aggravating
2 circumstances and mitigating circumstances. Both of
3 those terms are defined by our legislature by law.
4 And I would certainly give you those definitions
5 during the trial. But essentially, aggravating
6 circumstances are those facts and circumstances which
7 would tend to make worse or aggravate the offense of
8 murder, or stated another way, increase the enormity
9 of that offense or add to its injury. Do you
10 understand that?

11 **A** Yes.

12 **Q** Mitigating circumstances would be those facts and
13 circumstances which would tend to reduce the severity
14 of the crime of murder and may be considered as
15 extenuating or reducing the degree of some moral
16 culpability or responsibility for the crime. Do you
17 understand that?

18 **A** Yes.

19 **Q** And as I say, I will give you full instruction on
20 both of those terms during the charge. Would you
21 have any problem listening to those instructions and
22 applying that law together with all other law
23 pertaining to this matter?

24 **A** No problem.

25 **Q** If, when you reached the point where you were

1 deliberating in a penalty phase and you considered
2 all the facts and circumstances which you determine
3 from the evidence was most credible and believable,
4 which basically from that evidence you determine to
5 be a fact, including aggravating circumstances,
6 mitigating circumstances, would you and could you
7 then take the law as I gave it to you pertaining to
8 your responsibilities, apply that law and return a
9 verdict that may impose a sentence of life
10 imprisonment without the possibility of parole?

11 **A** Yes, I could.

12 **Q** Could you consider the facts and circumstances in a
13 situation like this, considering all the facts and
14 circumstances, including aggravating circumstances
15 and mitigating circumstances and what you're
16 convinced beyond a reasonable doubt is most probably
17 correct and the truth and credible, then take the law
18 as I gave it to you, apply that law, could you return
19 a verdict that would impose the sentence of death?

20 **A** Yes, I could.

21 **Q** It would just depend on the facts and circumstances?

22 **A** Yes, sir.

23 **Q** Do you understand that if you were on the jury and
24 the jury decided to return or impose a sentence of
25 death that the jury's responsibility would be to sign

1 a verdict form to that effect. Do you understand
2 that?

3 **A** Yes, sir.

4 **Q** And you would be required as a juror to sign with
5 everyone else on that form?

6 **A** Yes, sir.

7 **Q** Could you do that?

8 **A** Yes, I could.

9 **THE COURT:** Thank you. Please answer any
10 questions that either side may have for you.

11 **MR. HOISINGTON:** Thank you, Judge.

12 **THE COURT:** Solicitor?

13 EXAMINATION

14 **BY MR. HOISINGTON**

15 **Q** I'm Ralph Hoisington. Together with Blair Jennings,
16 we'll be presenting the case for the State. His
17 Honor has asked you pretty much everything that we
18 need to know in this case. Obviously, both sides are
19 looking for people who categorize themselves as a
20 Type 3 juror. Let me ask you this, when you read
21 over that form, did it take you any time to realize
22 which one you were? Did you have to debate it with
23 yourself?

24 **A** No, I didn't.

25 **Q** Pretty clear that you wanted to be open minded?

1 **A** Yes.

2 **Q** Is there anything that you could share with us that
3 in your philosophy, your religion, anything in your
4 life history that would cause you concerns about
5 having to make a decision of this magnitude?

6 **A** It is a very difficult decision I think to be made.
7 I would really have to hear, you know, just all the
8 evidence to come to that decision. I think it would
9 be a hard one to make.

10 **Q** Yes, ma'am. You would expect to hold us to the
11 standard of providing you with plenty of information?

12 **A** Yes.

13 **Q** If you reached that level of comfort with the
14 information, you could make a decision of that
15 nature?

16 **A** Yes.

17 **Q** But again, without having heard it, you can't say at
18 this point. But you don't think there's anything
19 that would interfere with your ability to do it?

20 **A** No, I do not.

21 **Q** Except what you heard?

22 **A** Yes.

23 **MR. HOISINGTON:** Thank you, ma'am.

24 **THE COURT:** Mr. Johnston?

25 **MR. JOHNSTON:** Thank you, Your Honor.

1 **THE COURT:** Yes, sir.

2 EXAMINATION

3 **BY MR. JOHNSTON**

4 **Q** Good afternoon. I'm Bob Johnston. I'm one of
5 Mr. Sapp's attorneys, along with Paul Archer. And we
6 appreciate all your time and help. Ma'am, do you
7 have any personal feelings that would cause you to
8 prefer a particular sentence in a case like this?

9 **A** No.

10 **Q** Where were you born?

11 **A** Germany.

12 **Q** In Germany?

13 **A** Yes.

14 **Q** Whereabouts?

15 **A** Augsburg.

16 **Q** And you have lived here how long?

17 **A** Fifty-one years.

18 **Q** Okay. You watch some people's children during the
19 day, do you?

20 **A** My daughter. She's a single parent.

21 **Q** Okay. Does she work?

22 **A** Yes.

23 **Q** Okay. There's a 23 month old and a seven year old?

24 **A** Yes.

25 **Q** Who is watching the children today?

- 1 **A** We're making arrangements.
- 2 **Q** Making arrangements?
- 3 **A** Yes.
- 4 **Q** Has that been easy to do for you?
- 5 **A** No, it hasn't.
- 6 **Q** I'm sorry. So who's watching them?
- 7 **A** The other mother -- grandmother.
- 8 **Q** Okay. Does she work, too?
- 9 **A** No, but she doesn't like children.
- 10 **Q** Oh. Well, that would make it harder, wouldn't it?
- 11 What do you use if she's not around?
- 12 **A** Fortunately, we haven't had that problem.
- 13 **Q** Okay. You're a Lutheran?
- 14 **A** Yes.
- 15 **Q** I don't know much about that. Could you help me?
- 16 **A** I'm not very active in church.
- 17 **Q** Okay. Were you ever?
- 18 **A** In my younger days, yes.
- 19 **Q** Did you study the Lutheran faith?
- 20 **A** Yes, I did.
- 21 **Q** Would you be able to tell us what the Lutheran faith
- 22 says about the death penalty?
- 23 **A** Well, I would have to set that aside and decide for
- 24 myself.
- 25 **Q** Okay. That's fair. But would you know what the

1 Lutheran faith says about the death penalty?

2 **A** Well, I'm sure all faiths do not approve of the death
3 penalty.

4 **Q** I don't know.

5 **A** I don't know specifically.

6 **Q** You don't know what the Lutheran faith says about the
7 death penalty?

8 **A** No.

9 **Q** Okay. Fair enough. I don't either. That's why I'm
10 asking. In answering the judge's questions about the
11 three type of jurors, which one do you think you
12 would fit into? I think you said would a No. 3?

13 **A** Yes.

14 **Q** Can you tell us why you believe you would be a No. 3?

15 **A** I just feel that I shouldn't make any decisions until
16 I hear everything that's available.

17 **Q** Okay. Do you think there was ever a time in your
18 life where you would have been a 1 or a 2? There's
19 no right or wrong answer, just dialogue.

20 **A** I don't know.

21 **Q** I'm sorry?

22 **A** I'm thinking. I'm not sure.

23 **Q** You're not sure?

24 **A** I'm not sure if there was ever a time. Most of my
25 adult life, I've sort of felt that No. 3 would

1 describe me.

2 **Q** Was there ever a time in your adult life when maybe
3 you could only go one way or the other on one of
4 these sentences?

5 **A** No, I don't think so.

6 **Q** Do you have any concerns about the death penalty
7 that -- or questions or confusions that you would
8 need to get cleared up before you could sit as a
9 juror on this case?

10 **A** I don't think so.

11 **Q** Okay. Do you think that life in prison without
12 parole could be an adequate sentence?

13 **A** Hearing everything, possibly.

14 **Q** Okay. And do you equally feel that the death penalty
15 could be an adequate sentence?

16 **A** Upon hearing all the information, yes.

17 **Q** Could you vote for the death penalty if the defendant
18 was found guilty in the first phase but maintained
19 his innocence?

20 **MR. HOISINGTON:** Judge, that's a hypothetical
21 question.

22 **THE COURT:** I would sustain that.

23 **MR. JOHNSTON:** I will withdraw the question.

24 **Q** Is there anything that could cause you to not be able
25 to render a verdict in this case?

- 1 **A** No.
- 2 **Q** Okay. So the other grandmother is watching the
3 children today?
- 4 **A** Yes.
- 5 **Q** Okay. May I ask where the father of the children is?
- 6 **A** He works, but --
- 7 **Q** What does he do?
- 8 **A** He works for a company that puts in security systems.
- 9 **Q** Okay. All right. What would happen if you weren't
10 available and the other grandmother wasn't available
11 to watch the children, then where would you look to?
- 12 **A** I'm not sure.
- 13 **Q** Any ideas?
- 14 **A** We'd try to find some family member, I assume.
- 15 **Q** Okay. What does your daughter think about daycare
16 centers?
- 17 **A** Well, she hasn't needed one because I volunteered to
18 keep them. And now we're faced with the possibility
19 that she's going to have to put them in one.
- 20 **Q** Does she work?
- 21 **A** Yes.
- 22 **Q** Would she take time off to watch the children?
- 23 **A** She would have to if we couldn't find anyone else.
- 24 **Q** That would be okay with her employer?
- 25 **A** I doubt it.

1 **Q** You doubt it. Okay. One last question. If you were
2 on this jury and the other grandmother was not
3 available and your daughter could not get off of work
4 and your daughter's husband could not get off of
5 work, what would you folks do to find someone to
6 watch the children?

7 **A** We would immediately have to go to a daycare center
8 and find someone to keep them.

9 **Q** Okay.

10 **MR. JOHNSTON:** Thank you.

11 **MR. HOISINGTON:** Nothing further.

12 **THE COURT:** Thank you. You may step down.

13 Thank you, ma'am.

14 (WHEREUPON, the juror left the courtroom.)

15 **THE COURT:** What says the State?

16 **MR. HOISINGTON:** Qualified.

17 **THE COURT:** What says the defense?

18 **MR. JOHNSTON:** I'm sorry?

19 **THE COURT:** Qualified?

20 **MR. JOHNSTON:** Your Honor, we all heard the
21 testimony. I've got concerns about this woman setting
22 aside babysitters and the welfare of the children for an
23 uninfluenced period of time while she's sequestered.

24 **THE COURT:** Well, I appreciate that. I don't
25 share that concern.

1 **MR. JOHNSTON:** Okay.

2 **THE COURT:** She's indicated unequivocally it
3 wouldn't. Second thing is, the contact would be minimal.
4 Thirdly, there are other avenues. And that really was
5 close to borderline hypotheticals. How in the world can
6 we know what she would do because she is not faced with
7 it. So I'm not concerned with it because she didn't
8 indicate in body language or response. But I would take
9 that as a motion to strike her for cause and I would deny
10 that motion.

11 **MR. JOHNSTON:** Thank you, Your Honor.

12 **THE COURT:** Bring her in.

13 (WHEREUPON, the juror entered the courtroom.)

14 **THE COURT:** Ms. Barnhill, thank you very much.
15 You have been qualified to be a member of the pool of
16 jurors from which we will ultimately select the trial jury
17 in this case. That process will occur on Thursday morning
18 at 9:30 or we'll begin it Thursday morning at 9:30. I'll
19 need for you to be present at that time. Ms. Wiggins has
20 something from Ms. Brown, some instruction that will help
21 you in preparing to come to court on that date. Please
22 just read those instructions, follow those instructions.

23 Please understand that while you are waiting to
24 return on Thursday, you must not discuss this case with
25 anyone or permit anyone to talk with you about this case.

1 Do not read any accounts, newspaper accounts or any
2 accounts of this matter and do not watch any television
3 programs about this or news accounts about this matter.
4 Have a good day and I'll see you Thursday morning at 9:30.

5 Mr. Massey.

6 (WHEREUPON, Dewey L. Massey, III, a white male,
7 entered the courtroom.)

8 EXAMINATION

9 **BY THE COURT**

10 **Q** Hello, Mr. Massey.

11 **A** Hello.

12 **Q** How are you, sir?

13 **A** Great.

14 **Q** Good. Apologize for the delay in getting to you.
15 Some things you plan and it just doesn't run
16 according to plan. But hopefully, you won't hold
17 that against us. We do the best we can. And I
18 appreciate your patience.

19 **A** Sure.

20 **Q** You understand, sir, that you're still under oath in
21 this process?

22 **A** Yes, I do.

23 **Q** And this process is merely a continuation of that
24 that we started yesterday. And I'm sure that you
25 were able to discern very quickly that the questions

1 that were asked of jurors and, you included, really
2 have no correct answer or response. They are not --
3 there is no right or wrong to any of these questions.
4 They really are designed to help us and to help you
5 determine whether or not there is anything about this
6 case that would affect your ability to be a fair and
7 impartial juror. You understand that?

8 **A** Yes, sir.

9 **Q** Also, you understand that nothing that I'm saying
10 during this process should be considered by you in
11 any way to be a suggestion as to how you are to
12 resolve any of these issues. Do you understand that?

13 **A** Yes, sir.

14 **Q** Because there is a distinct separation between our
15 roles. I'm the judge of the law. If you're on the
16 jury in this case, you would be the judge of the
17 facts. You understand that?

18 **A** Yes, sir.

19 **Q** Let me ask you this. You haven't allowed anybody to
20 talk with you about this case or talk about it in
21 your presence, have you, since yesterday?

22 **A** No, sir.

23 **Q** Have you reviewed any newspaper accounts or any news
24 programs about this on television?

25 **A** I did catch this morning on channel -- the NBC

1 station that they were just picking jurors. I mean,
2 I heard that, but that was it.

3 **Q** That was the extent of it? Anything else?

4 **A** No, sir.

5 **Q** Now, you, by answering questions yesterday or not
6 answering questions, whichever the case may be, have
7 indicated thus far to both sides that there's nothing
8 about this case that would affect your ability to
9 fairly and impartially apply your common sense, your
10 sense of logic and reason in the process of analyzing
11 the evidence at the appropriate time and deciding
12 certain issues about this case. Is that true?

13 **A** Yes, sir.

14 **Q** You haven't predetermined any issues?

15 **A** No, sir.

16 **Q** Have you had a chance, sir, to read the sheet that
17 contained the three types of jurors?

18 **A** Yes, I did.

19 **Q** Which one most accurately describes or depicts you?

20 **A** Juror No. 3.

21 **Q** Okay. And that's a juror -- basically, you're saying
22 by that that it would depend on the case and the
23 facts and circumstances in a given case and you would
24 have to hear all of those facts and circumstances
25 before you could make that determination?

- 1 **A** Yes, sir.
- 2 **Q** So you don't come into this process with any
3 predetermination as to what the appropriate sentence
4 would be?
- 5 **A** No, sir.
- 6 **Q** Okay. It depends on the case; is that correct?
- 7 **A** Yes, sir.
- 8 **Q** You're open minded about that and all other aspects
9 of this case?
- 10 **A** Well, I would like to say I've never been on a jury
11 before. And this was a little like kind of a shock
12 yesterday. At this point I consider myself to be
13 most like Juror No. 3.
- 14 **Q** Okay.
- 15 **A** Last night, it was a little difficult, you know,
16 thinking about it after hearing the type of case and
17 what there -- the possible outcome. But at this
18 point in the game, I definitely consider myself -- I
19 have the ability to look at what's presented to me
20 and make a determination based on the facts in the
21 case.
- 22 **Q** All right. Would you have any problem applying the
23 law?
- 24 **A** No, sir.
- 25 **Q** You would listen to the law that I would give to you?

1 **A** Yes, sir.

2 **Q** And you would take that law and apply that law fairly
3 and impartially to the facts that you would
4 ultimately determine --

5 **A** Yes, sir.

6 **Q** -- once the jury had begun its deliberations, you
7 understand that?

8 **A** Yes, sir.

9 **Q** You understand that part of the commitment that you
10 would make when you took that oath if you were on the
11 jury, a commitment is made to the State and to
12 Mr. Sapp that you do not have any predeterminations
13 or conclusions that you have made prior to the
14 commencement of this process. Do you understand
15 that? In other words, you are starting with a clean
16 sheet. Do you understand?

17 **A** Yes, sir. Yesterday, when you asked about the -- I
18 think you and I had a little interaction about the
19 fact you asked if I had been influenced in any way.

20 **Q** Yes.

21 **A** And I start my morning every day reading the
22 newspaper. It's, you know, staying current on events
23 is important to me. And when I read an article in
24 the paper or I see something on television, yes, I am
25 influenced. But I am able to come in here -- you

1 know, that was months ago, weeks ago. I'm able to
2 come in here and look at what's presented to me as
3 the facts and make a determination from that.

4 **Q** Well, let me give you an example, an analogy if I
5 may, to tell you I understand -- I think I understand
6 what you're saying. In a civil trial, we may be
7 trying something that would involve a personal
8 injury. We've had physicians sit on juries before.
9 Obviously, they have training and background
10 concerning that. The question that's asked of that
11 juror is, can you not disregard your life's
12 experiences or your philosophies, but can you set
13 those aside and prevent those philosophies from
14 affecting your ability to be fair and impartial.
15 That's the key.

16 I mean, one of the things, I guess the greatest
17 display of it is in an ice cream shop. If everybody
18 liked one ice cream, there wouldn't be but one kind.
19 If you asked somebody what their favorite brand is,
20 some people don't like strawberry and they're
21 going -- and that may be the best strawberry ice
22 cream in the world. But if they don't like
23 strawberry, they will never be convinced of that.
24 You don't have any predeterminations, do you?

25 **A** No, sir.

1 Q And when you say you were influenced, am I
2 understanding you that you reached some conclusions
3 about this case?

4 A Well, it's like if I read in the paper today that,
5 you know, somebody was, you know, arrested for drunk
6 driving, then I believe -- that's what I believe to
7 be what's happened. So I guess yesterday when you
8 asked me if I was influenced, I read a little bit
9 about it, heard a little bit about the case, filed it
10 away and never gave another thought to it until
11 yesterday when I sat down in this courtroom.

12 Q By that, you're not suggesting that because you may
13 have read about it or heard that Mr. Sapp was charged
14 that he's done anything? Have you concluded that
15 he's done any of these acts of which he's accused?

16 A Um --

17 Q There's no right or wrong answer, I'm just asking.

18 A Yes.

19 Q You have?

20 A I mean, if I were not in this courtroom, I would have
21 assumed that it's already been decided and I just
22 missed reading it somewhere in the paper.

23 Q Okay. Let me ask you a question. Did you understand
24 that it would be your responsibility to decide this
25 case from the evidence?

1 **A** Yes, sir, that's what was confusing to me yesterday
2 about the question you were asking me was I
3 influenced. Yes, I was at one point. I'm here
4 yesterday hearing that I might be one of the jury
5 people that decided the case.

6 **Q** Okay. And it would depend on the evidence. And that
7 evidence would, of course, consist of the testimony
8 of the witnesses and exhibits. And that occurs in
9 this courtroom. Do you understand that?

10 **A** Yes, sir.

11 **Q** And that's all you may consider.

12 **A** Right.

13 **Q** Would you do that?

14 **A** Yes, I would.

15 **Q** Insofar as the first phase, you would hear evidence
16 concerning the elements of a particular offense. And
17 at the conclusion of that proceeding, the first
18 phase, you will be asked to decide on the basis of
19 the evidence whether the State has met its burden of
20 proof. Do you understand that?

21 **A** Yes, sir, I do.

22 **Q** And you would be asking yourself whether you were
23 convinced beyond a reasonable doubt as to each
24 element. Is that your understanding?

25 **A** Yes, sir.

1 Q If you should conclude on a particular offense that
2 the State had not convinced you of a particular
3 element, would you return a verdict of not guilty?

4 A Yes.

5 Q If you were convinced of all of them, would you
6 return a verdict of guilty?

7 A Yes, sir.

8 Q Would you have any hesitancy in doing either?

9 A No, sir.

10 Q It would just depend on what you were convinced the
11 State had done insofar as meeting its burden; is that
12 correct?

13 A Yes, sir.

14 Q Do you understand that during the trial and
15 throughout the trial that you will be sequestered?

16 A Yes.

17 Q And that sequestration could be as long as 10 days.

18 A Yes -- well, now, I'm aware of 10 days.

19 Q Would that affect you in any way or affect your
20 ability to be a fair and impartial juror?

21 A I have concerns about that based on what I do
22 professionally and also the fact that -- in all
23 fairness, I would probably be a little bit frustrated
24 at a 10-day -- you know, in a situation like that, to
25 be perfectly honest.

1 Q Okay.

2 THE COURT: Answer any questions the State may
3 have.

4 MR. JENNINGS: Thank you, Your Honor.

5 EXAMINATION

6 BY MR. JENNINGS

7 Q Good afternoon, Mr. Massey.

8 A Good afternoon.

9 Q My name's Blair Jennings. We were introduced
10 yesterday during the general qualifications. I'm the
11 Deputy Solicitor in Berkeley County. And I, along
12 with Solicitor Hoisington, are prosecuting this case.
13 You have -- it's obvious I think at this point that
14 what we're trying to find are jurors who can be fair
15 and impartial, who do not have one -- any
16 preconceived ideas as to the guilt or innocence of
17 the defendant and also any preconceived ideas towards
18 the appropriate punishment. And I think you've
19 characterized yourself as that?

20 A That would be correct.

21 Q Obviously, a juror who said that in every
22 circumstance when a murder was committed that the
23 death penalty is the proper punishment would not be
24 fair to Mr. Sapp. You would agree with that?

25 A Yes, I would.

1 Q And likewise, a juror who under no circumstances
2 could return a death sentence and would always impose
3 a sentence of life without parole would not be a fair
4 juror to the State?

5 A Correct.

6 Q You stated that at this point you believe that you
7 were a 3?

8 A Right.

9 Q You could consider the facts and circumstances of the
10 case?

11 A Right.

12 Q What were you prior to that?

13 A Well, what I meant was, this is a -- this is a new
14 experience for me. I certainly -- there have been
15 times when in previous cases that I've read about or
16 heard about felt like the death penalty was
17 appropriate. There were other times when I felt
18 that, you know, that it wasn't appropriate. And this
19 time, I'll be part of the decision-making process
20 myself. And so, I've never done that before. So I
21 know that that is a possible outcome in this case.
22 And so I have to prepare myself for that if I'm
23 chosen. And right now, because I've not seen
24 anything or been a part of any evidence other than
25 what I've read or seen on television, if I were asked

1 that question, what kind of juror at this point would
2 I consider myself, it would be Juror No. 3.

3 **Q** Certainly. And until you hear all the facts and
4 circumstances --

5 **A** Right.

6 **Q** -- you can't make that decision?

7 **A** Exactly.

8 **Q** But you feel comfortable that you would be the type
9 of person if the facts warranted it and the law
10 allowed it, you could return a sentence of death?

11 **A** Yes.

12 **Q** And would you be comfortable signing that death
13 verdict?

14 **A** Comfortable? Not -- I mean, as a human being, no.
15 But based on, you know, what I heard and what I saw,
16 I could do it.

17 **Q** Let me rephrase my question. Would the fact that you
18 had to sign that death verdict prevent you from being
19 able to vote for a death sentence?

20 **A** I don't believe so. I mean, I'm a compassionate
21 person. But there have been cases that I've heard or
22 that I've seen whereas a person around the water
23 cooler at work, I have been vocal that I felt that
24 was the right verdict for that person. So, I, you
25 know, that's where I'm at right now, you know, with

1 this.

2 **Q** And you've obviously had the opportunity in the past
3 to discuss the death penalty?

4 **A** Right.

5 **Q** With friends?

6 **A** Uh-huh.

7 **Q** And family?

8 **A** Uh-huh.

9 **Q** How do you feel from a moral standpoint as to the
10 propriety of the death penalty?

11 **A** I think it's appropriate in some situations.

12 **Q** So you feel it is an appropriate punishment?

13 **A** Yes, I do, uh-huh.

14 **Q** And any moral convictions that you hold, those would
15 not prevent you if the facts warranted it to return a
16 sentence of death?

17 **A** No, sir, I don't believe so.

18 **Q** How about any religious convictions that you hold?

19 **A** No, no, sir.

20 **Q** No aspect of the Baptist faith would prevent you from
21 considering the death penalty?

22 **A** No, no, sir.

23 **MR. JENNINGS:** Thank you, Your Honor.

24 **THE COURT:** Mr. Johnston?

25 **MR. JOHNSTON:** Thank you.

EXAMINATION

1
2 **BY MR. JOHNSTON**

3 **Q** Hi, Mr. Massey?

4 **A** Hello.

5 **Q** I'm Bob Johnston. I'm one of Mr. Sapp's defense
6 attorneys, along with Paul Archer. We do appreciate
7 your time.

8 **A** Sure.

9 **Q** I'm going to be brief. What were your concerns about
10 being sequestered. Could you explain that again,
11 please, sir?

12 **A** I am -- I run a small retail business here in
13 Charleston where I am the manager and operate --
14 it's -- I'm a manager of Ethan Allen. I'm an
15 interior designer and it's locally owned. It's hard
16 for me to be away great lengths of time. I live
17 alone, I have a dog, a cat. You know, I have a lot
18 of friends, but I'd have to impose on someone taking
19 care of my day-to-day routine. And just by nature,
20 it's a little -- it would be unpleasant. I don't
21 think anyone would want to be away from home for 10
22 days --

23 **Q** Right.

24 **A** -- in a situation like this. So that's a little
25 uncomfortable and I'm not really sure whether I'm

1 going to get paid at my full-time job. I mean, we
2 don't have -- it's not a corporation, so I don't
3 really know what our policy is. And I actually do
4 well there. So I guess I need to discuss that and
5 find out.

6 **Q** Okay. The only thing you're familiar about this case
7 would be what you have seen on television and read in
8 the papers?

9 **A** Yes, sir.

10 **Q** Is that fair?

11 **A** That's fair.

12 **Q** You have not learned anything about this case from
13 any other sources?

14 **A** No. I mean, yesterday in here, there was different,
15 you know, things that were said but, no, not really.
16 To be honest with you, you know, I think it was
17 around the first of July, it was probably what, front
18 page news a couple of days, like everything is, and
19 then goes away. I didn't know it was still ongoing
20 until I walked into a room of 400 people yesterday
21 and heard what we were here for.

22 **Q** So it is fair to say that excluding your experience
23 in court yesterday, excluding television, excluding
24 newspapers, you've not learned anything about this
25 case?

1 **A** That is correct.

2 **Q** Okay. Great. And have you ever been previously
3 familiar with the defendant?

4 **A** No, sir.

5 **Q** Okay. Yesterday, the judge read off a list of
6 potential witnesses for the prosecution and for the
7 defense and there was a bunch.

8 **A** Uh-huh.

9 **Q** Did you hear all those?

10 **A** Yes, I did.

11 **Q** Okay. Was there anybody that you are remotely
12 familiar with?

13 **A** I mean, some names I may have recognized, but no one
14 that I believe that I have interacted with
15 professionally or socially.

16 **Q** Just names that maybe sounded familiar?

17 **A** Just -- yes, probably so.

18 **Q** Are you now or have you ever been familiar with the
19 victim's family?

20 **A** I mean, are they -- they're over -- I don't think
21 they were introduced yesterday. No, I don't --

22 **Q** It really doesn't matter where they're sitting, but
23 are you now or have you ever been familiar with the
24 victim's family?

25 **A** No.

1 Q Never?

2 A Never.

3 Q Okay. Great. Thank you, sir.

4 A Certainly.

5 THE COURT: Any additional questions?

6 MR. JENNINGS: No, sir.

7 THE COURT: Thank you, sir. You may step down.

8 (WHEREUPON, the juror left the courtroom.)

9 THE COURT: What says the State?

10 MR. JENNINGS: Your Honor, I would submit that
11 he should be disqualified. I think we have some concerns
12 about his -- he's stated on two occasions that he would
13 have concerns if the trial gets drug out. I think one was
14 his job and he stated secondly from the monetary
15 standpoint. I think that we have concerns whether that
16 would impact his ability to serve.

17 THE COURT: What says the defense?

18 MR. JOHNSTON: Your Honor, I think he's
19 qualified. And if I could respond to Mr. Jennings? I
20 don't think his response was vastly different from the
21 previous person's response in that it would be
22 inconvenient but it would get by. There's other sources
23 to take care of the business, the dog, the home. And I
24 didn't get the feeling that being sequestered was going to
25 be that great of a hardship. As far as losing money, just

1 about anybody who works is potentially going to lose some
2 wages.

3 **THE COURT:** I understand that. And I agree with
4 you. The other person I don't remember saying, I would
5 become bored with it or that would give me a problem. I'm
6 concerned about a number of things of this particular
7 juror. I think he's obviously an intelligent juror. I
8 have no problem with that. And I certainly have no
9 problem with the fact that he's going to be inconvenienced
10 like everyone else and losing money. And I don't know
11 that that would cause any more significant problems,
12 although he did articulate some concerns about his
13 business and said he'd have to check on it which leaves me
14 to wonder where he is in that relation -- if he checks on
15 it and finds out he's going to lose money, how is that
16 going to affect him? So it's really an unknown factor
17 there of what effect the sequestration may have. I think
18 the expression that nobody would like it, I don't think
19 anybody particularly enjoys that, so that doesn't give me
20 any concern.

21 It gives me concern about the frustration, his
22 frustration factor. That coupled with something that he
23 said, that he basically started at a conclusion. And then
24 he said well, I today haven't made any decisions. But he
25 said -- when I asked him, did you conclude that he's done

1 those things and he said yes, I think he would have. I
2 would have failed to read something, that concerns me.
3 He's indicating that he has predetermined a guilt
4 situation. And I'm concerned deeply about that. While
5 he's expressed that he can be open minded, it concerns me
6 greatly that, in frustration, he may resort to and go back
7 to that initial snap judgment he made, which I don't think
8 would be proper. And I don't think he's adequately
9 considering the evidence in the case. For those reasons,
10 I think he's not qualified and I'm going to find him so.
11 Okay.

12 **MR. JOHNSTON:** Thank you.

13 **THE COURT:** Thank you.

14 (WHEREUPON, the juror entered the courtroom.)

15 **THE COURT:** Mr. Massey, thank you very much for
16 your participation in this process. This will conclude
17 your further involvement in the matter. We appreciate the
18 sacrifice that you have made thus far.

19 **THE POTENTIAL JUROR:** Sure.

20 **THE COURT:** Good luck in everything. I would
21 ask that you do me this favor. I can't require it. It's
22 not -- there is -- no punishment is going to come as a
23 result, but until this matter begins and really until it's
24 concluded, I would request that you not discuss this
25 matter with anyone.

1 impartial in applying their common sense, their sense
2 of logic and reason. You understand that?

3 **A** Yes.

4 **Q** You have indicated that thus far by your responses to
5 the Court's questions or your lack of response to the
6 Court's questions, you've indicated that you are that
7 type of juror as I understand. Is that true?

8 **A** Yes.

9 **Q** You haven't predetermined any issue in this case, is
10 that true?

11 **A** No, sir.

12 **Q** You understand, sir, that you are still under oath in
13 this matter?

14 **A** Yes.

15 **Q** Have you permitted anyone to talk with you about this
16 case or talk about it in your presence or have you
17 talked with anybody about this case since we were
18 last together?

19 **A** No, sir.

20 **Q** Have you read any newspaper articles or watched any
21 news programs about this case?

22 **A** No.

23 **Q** Now, I have asked some questions thus far. I'm going
24 to ask you several here today as well. Please
25 understand that I'm not suggesting to you how you're

1 to decide any issue. That will be your ultimate
2 determination if you are on the jury. Do you
3 understand that?

4 **A** Yes.

5 **Q** Because the jury will have to ultimately decide what
6 they find to be the truth in this case. Do you
7 understand that?

8 **A** Yes.

9 **Q** You had a chance to read that sheet that had the
10 three types of jurors?

11 **A** Uh-huh.

12 **Q** Which one of those types best describes you?

13 **A** Probably No. 2.

14 **Q** No. 2 is the type of juror that would say that in a
15 murder case, no matter what the circumstances are,
16 there would never be a situation where you could
17 impose the death penalty?

18 **A** Yes, sir.

19 **Q** And that would be your -- that describes you?

20 **A** Yes.

21 **Q** So am I to understand that it really doesn't matter
22 about the aggravating circumstances or the severity
23 of the crime of murder, that you would never, ever
24 impose a death sentence?

25 **A** No. At one point in time, when I was younger, I

1 thought I could but, you know, now it's different.

2 **Q** So earlier in your life, there had been circumstances
3 where you could have imposed the death penalty?

4 **A** Yes.

5 **Q** Or you thought you could?

6 **A** Uh-huh.

7 **Q** But now at this point of your life, that would never
8 happen?

9 **A** I mean, probably not, you know. Sometimes the system
10 makes mistakes, and I've seen it, and they come back
11 and correct it. So --

12 **Q** I understand that. My question is, that decision
13 would be for the jury, in other words, you would be
14 the system.

15 **A** Uh-huh.

16 **Q** So you would be there to make sure that the process
17 was handled properly. Do you understand that?

18 **A** Yes.

19 **Q** And being a part of that process, part of the law in
20 this state would be that the jury, given certain
21 circumstances, given aggravating circumstances having
22 been established, mitigating circumstances considered
23 in the evidence that the death penalty may be
24 considered. Do you understand that?

25 **A** Yes, sir.

1 Q It's my understanding that you, notwithstanding that
2 that's the law of this state, you could not follow
3 that instruction?

4 A Just from my religious reasons, I wouldn't want to be
5 a part of the death penalty sentence.

6 Q Well, I know you wouldn't want to be. But my
7 question is if you were selected, could you follow
8 the law and could you impose a death sentence if the
9 circumstances warranted it?

10 A Yes.

11 Q You could?

12 A Uh-huh.

13 Q So basically, it's my understanding that you would
14 consider the facts and circumstances of a case?

15 A Yes.

16 Q You understand it would be my responsibility to be
17 the trial judge?

18 A Yes.

19 Q And as the trial judge, it would be my responsibility
20 to give you the law in this matter?

21 A Yes.

22 Q Would you accept the law as I gave it to you?

23 A Yes, sir.

24 Q Would you apply that law fairly and impartially to
25 the facts of this case?

1 **A** Yes.

2 **Q** You understand it would be your duty and your role to
3 decide the facts of the case from the evidence in the
4 case?

5 **A** Yes.

6 **Q** You understand that you're not to decide any issue in
7 this case until the Court gives you an instruction to
8 begin your deliberation?

9 **A** Yes.

10 **Q** Would you keep an open mind at all times until the
11 Court told you and instructed you to begin your
12 deliberations?

13 **A** Yes.

14 **Q** And you would follow that commitment?

15 **A** Yes.

16 **Q** Or you would honor that commitment?

17 **A** Uh-huh.

18 **Q** You know the responsibility's on the State to prove
19 its case in this situation?

20 **A** Yes.

21 **Q** Just because one is accused of committing a criminal
22 offense doesn't mean anything. Do you understand
23 that?

24 **A** Yes, sir.

25 **Q** In fact, the law presumes that that person's

1 innocent. Is that your understanding?

2 **A** Yes.

3 **Q** Do you have any problem with that principle of law?

4 **A** No.

5 **Q** Just because Mr. Sapp has been accused in this case
6 of committing these offenses, you don't expect him to
7 prove anything to you or explain anything to you, do
8 you?

9 **A** No, sir.

10 **Q** Because that burden is solely on the State. Do you
11 understand that?

12 **A** Yes.

13 **Q** If -- during this trial, the first phase, we would
14 hear evidence concerning the offenses charged. Do
15 you understand?

16 **A** Yes.

17 **Q** You would be asked at the conclusion of that portion
18 to decide whether or not the State had met its burden
19 of proof and convinced you beyond a reasonable doubt.
20 Could you do that?

21 **A** Yes.

22 **Q** You would keep an open mind on those issues until you
23 were instructed to begin your deliberations on those
24 issues?

25 **A** Yes.

1 Q In your deliberations, if you concluded that the
2 State had not convinced you beyond a reasonable doubt
3 as to any element of a crime they've charged, would
4 you have any hesitancy returning a verdict of not
5 guilty on that particular crime?

6 A No, sir.

7 Q Do you understand they have to prove all elements?

8 A Yes.

9 Q But on the other hand, if the State has convinced you
10 beyond a reasonable doubt as to -- by presenting
11 evidence that establishes every element of each
12 offense, would you have any hesitancy in returning a
13 verdict of guilty?

14 A No, sir.

15 Q You would follow that instruction?

16 A Yes.

17 Q If you returned a verdict of guilty on the offense of
18 murder, do you understand there would be a second
19 phase?

20 A Yes.

21 Q You understand that throughout this process, you're
22 going to be sequestered if you're on the jury?

23 A Yes.

24 Q Would that affect you in any way serving as a juror?

25 A As sequestered, you mean not discussing?

1 Q You're going to be kept in a motel and brought here,
2 be taken to eat, that sort of thing. And it could
3 last as long as 10 days.

4 A Then my job would have a big problem with that.

5 Q I understand your job. But my question would be,
6 would it affect you as a person applying your common
7 sense, your sense of logic and reason?

8 A No.

9 Q You would be able to perform your duties as a juror?

10 A Yes.

11 Q And not be influenced or affected by that
12 sequestration? I understand it wouldn't be
13 convenient, but it wouldn't affect you?

14 A No.

15 Q If we went into the second phase, we call that the
16 penalty phase. You would hear additional evidence at
17 that time as to what would be the appropriate
18 penalty. Do you understand that?

19 A Yes.

20 Q And I would instruct you on the issue of aggravating
21 circumstances and mitigating circumstances and tell
22 you that if you find beyond a reasonable doubt
23 aggravating circumstances having been established
24 beyond a reasonable doubt, the State has that burden
25 throughout of beyond a reasonable doubt, that you may

1 consider imposing a death sentence. Do you
2 understand that?

3 **A** Yes.

4 **Q** You would also consider mitigating circumstances as
5 well that may be in the evidence. Do you understand
6 that?

7 **A** Yes, sir.

8 **Q** And I would give you instruction and define both of
9 those. And aggravating circumstances are basically
10 defined by our legislature as those facts and
11 circumstances that make worse or aggravate the
12 offense of murder. Do you understand?

13 **A** Yes.

14 **Q** And increase the effect of the crime of murder. Do
15 you understand?

16 **A** Yes.

17 **Q** Mitigating circumstances, just as the name implies,
18 simply are facts and circumstances that would reduce
19 the severity of the offense of murder and may be
20 considered as extenuating or reducing the degree of
21 moral culpability or responsibility of the person.
22 Do you understand that?

23 **A** Yes, sir.

24 **Q** Would you consider all of the facts and
25 circumstances?

1 **A** Yes.

2 **Q** And if in considering the facts and circumstances in
3 the case, considering aggravating circumstances and
4 mitigating circumstances and applying the law, could
5 you return a verdict tha would impose life
6 imprisonment without the possibility of parole?

7 **A** Yes.

8 **Q** Likewise, in considering the facts and circumstances,
9 including aggravating circumstances and mitigating
10 circumstances, and applying the law, could you return
11 a verdict of death?

12 **A** I'm not sure about that one.

13 **Q** Well, a minute ago, you said you could. Are you
14 telling me now that you're not certain?

15 **A** Well, life imprisonment, about the verdict of death
16 --

17 **Q** Sir?

18 **A** You're talking about lethal injection or the electric
19 chair?

20 **Q** Lethal injection or electrocution.

21 **A** I would rather put the verdict on life imprisonment
22 rather than death. So I wouldn't want to bring down
23 a verdict of death.

24 **Q** Would you consider both of them?

25 **A** I would consider it, but, you know...

1 **Q** If you concluded -- and can you -- I'm not asking you
2 to tell me anything, but considering the facts and
3 circumstances, could you return a death sentence?
4 Not just consider it, but could you if the
5 circumstances warranted return a death sentence?

6 **A** I mean, that would be some kind of pressure put on me
7 to, you know, bring back a death sentence, you know.
8 I mean, I would feel pressured into doing that.

9 **Q** I appreciate that. But you need to answer my
10 question. Could you, considering the facts and
11 circumstances if it warranted it, bring back a death
12 sentence?

13 **A** Well, yes or no, I would say no.

14 **Q** No?

15 **A** Yes.

16 **Q** So there are no circumstances that would warrant your
17 signing the death sentence?

18 **A** No.

19 **THE COURT:** Questions from the State?

20 **MR. HOISINGTON:** Thank you, Judge.

21 EXAMINATION

22 **BY MR. HOISINGTON**

23 **Q** Afternoon, Mr. Myers.

24 **A** Afternoon.

25 **Q** I think I understand you pretty clearly. You have

1 pretty strong feelings against the death penalty?

2 **A** Yes.

3 **Q** And you understand that if you were on a jury there
4 is nothing that would require you to vote for the
5 death penalty, nothing in our law that would make a
6 juror vote for the death penalty?

7 **A** Yes.

8 **Q** You would always have an option of life without
9 parole where the defendant could stay in jail for the
10 rest of his life. Are you saying that given that
11 option, you're always going to go with the life
12 without parole option?

13 **A** Yes.

14 **Q** And that your feelings in opposition to the death
15 penalty are so strong that they would substantially
16 impair your ability to even vote for the death
17 penalty in a case?

18 **A** Yes.

19 **Q** Did you also state that the only time you might
20 consider voting is if the other members of the jury
21 put so much pressure on you?

22 **A** Yes.

23 **MR. HOISINGTON:** Thank you, sir.

24 **THE COURT:** Questions, Mr. Johnston?

25 **MR. JOHNSTON:** Thank you, Your Honor.

EXAMINATION

1
2 **BY MR. JOHNSTON**

3 **Q** Hey, Mr. Myers. I'm Bob Johnston. I'm one of the
4 attorneys for Mr. Sapp, along with Mr. Archer, and we
5 appreciate your time.

6 **A** Uh-huh.

7 **Q** Real quickly, sir, do you have a friend or family
8 member that's in law enforcement?

9 **A** Yes.

10 **Q** Okay. Who's that?

11 **A** My brother-in-law.

12 **Q** Where does he work?

13 **A** City of Charleston Police Department.

14 **Q** Okay. You had a friend that was shot and killed at
15 one time?

16 **A** Yes.

17 **Q** I'm sorry. That was Corey Grant?

18 **A** Yes.

19 **Q** When was that?

20 **A** That was back in '95.

21 **Q** Okay. You stated it was ruled an accident?

22 **A** Yes. He was in the military and just one of the
23 guys -- it was in a different state. They -- he
24 didn't know that there was a round in the chamber.

25 So --

1 Q Okay.

2 A Yeah.

3 Q All right. Following up on some of the questions
4 you've been asked by the judge, for the right case --
5 and I'm not saying this is the right case, we don't
6 know where this case is going to go. But for the
7 right case, could you return a verdict for the death
8 penalty if you felt it was appropriate?

9 MR. HOISINGTON: Your Honor, I think that's a
10 hypothetical as well.

11 MR. JOHNSTON: Okay, I'll withdraw the question.

12 Q The three different scenarios that you were given as
13 far as Type 1, Type 2 and Type 3.

14 A Yes.

15 Q I would like to go over these. I think you first
16 said -- I'm not putting words in your mouth. Didn't
17 you first say you were a Type 3 person?

18 A Here today?

19 Q Tell me from scratch, what are you?

20 A Okay. I did say when I was younger, yeah, I thought
21 so.

22 Q Do you recall the three different type questions?

23 A I recall the three, I just don't remember what
24 numbers they are.

25 Q Do you recall the Type 1 is a person who is unable or

1 unwilling to ever give the death penalty?

2 **THE COURT:** That's not correct.

3 **MR. JOHNSTON:** That's not correct?

4 **THE COURT:** No, sir, Type 1 is always the death
5 penalty. Type 2 is never the death penalty. Here it is,
6 Mr. Johnston. Do you want it? That's the old one. I
7 gave you a copy of the types. That's the solicitor's
8 version.

9 **MR. JOHNSTON:** Thank you, Judge.

10 **THE COURT:** That's all right. No problem. I
11 wanted to be sure. You asked it earlier, so I went and
12 got a copy.

13 **MR. JOHNSTON:** It's got Friday's date on it.

14 **THE COURT:** I gave you that Monday morning, Bob.
15 That's all I can do, Pal.

16 **MR. JOHNSTON:** Thank you. I need more paper.

17 **THE COURT:** I understand. Thank you.

18 **Q** Okay. One of these types is a person who can never
19 give the death penalty. Do you recall that?

20 **A** Yes.

21 **Q** Another type of person is one who would always give
22 the death penalty?

23 **A** Uh-huh.

24 **Q** And then there's the third one, the third one who
25 would have to know about the case and the facts and

1 follow the law and find it appropriate or
2 inappropriate. Do you recall that?

3 **A** Yes.

4 **Q** And which of those three are you, sir?

5 **A** I was the one that would never give the death
6 penalty.

7 **Q** That would never?

8 **A** Never.

9 **Q** Okay.

10 **MR. JOHNSTON:** I have no further questions.
11 Thank you, sir.

12 **MR. HOISINGTON:** Nothing further.

13 **THE COURT:** You can step down, Mr. Myers, just
14 for a second, please.

15 (WHEREUPON, the juror left the courtroom.)

16 **MR. HOISINGTON:** Judge, I would submit he is
17 disqualified on two different areas. One, clearly, he
18 would be substantially impaired in imposing the death
19 penalty. And the other area, the only time he would is if
20 he was forced by the other jurors.

21 **THE COURT:** What's the defense position?

22 **MR. JOHNSTON:** We would find him qualified and
23 leave it within the discretion of the Court.

24 **THE COURT:** Thank you. I went through the line
25 of questioning because he answered that he could, but then

1 when we got down to the final questions, he again returned
2 to his original statement that absolutely I could never do
3 it. And he said it again, I could never do it. And what
4 scares me is that's the last thing I want is somebody that
5 would cave in to pressure. And that's what he also
6 indicated he would do. And that's not what I want.

7 So obviously, this juror would -- because of his
8 beliefs, and apparently they are well determined. He
9 indicated -- and I appreciated his candor, that he
10 initially thought he would be Type 3. But as he's grown,
11 he articulated some reason for that in the record, some
12 concerns about the system, he's moved to where he would
13 never do it. And I believe that he would be substantially
14 impaired from considering the sentences, and therefore
15 should be disqualified. Thank you.

16 Bring him in.

17 (WHEREUPON, the juror entered the courtroom.)

18 **THE COURT:** Mr. Myers, thank you so much for
19 your participation and your commitment to this process. I
20 appreciate the sacrifices you have made thus far. This
21 will conclude your further involvement in this proceeding.
22 I'm going to excuse you now. I would ask you as a favor
23 to the Court that you not discuss this matter with anyone,
24 however, until this case has been concluded. That would
25 just help us tremendously.

1 to make sure everybody has a chance to grab a quick
2 snack. So I apologize for the delay getting to you,
3 but I hope it didn't inconvenience you too much.

4 **A** That's all right.

5 **Q** We are continuing the process that we started
6 yesterday. And in that regard, I would remind you
7 that you are still under oath. You understand that?

8 **A** Yes, sir.

9 **Q** You were asked questions about talking about this
10 case beforehand and were instructed not to talk about
11 the case with anyone or allow anyone to talk with
12 you. You also were instructed not to review any
13 newspaper articles or watch any television programs.
14 Have you followed that instruction?

15 **A** Yes, sir.

16 **Q** So no one's talked with you and you've talked with no
17 one and you've reviewed nothing; is that correct?

18 **A** Yes, sir.

19 **Q** Yesterday, we were asking questions and you probably
20 began to understand what I was saying, that there
21 really are no correct answers to any of these
22 questions. Do you understand that?

23 **A** Yes, sir.

24 **Q** There are no right or wrong answers and it really is
25 just what you personally feel in response to these

1 and it really doesn't make any difference. Because
2 the intent of this entire process is to determine
3 whether you, the person, Jennifer Oliver, can be a
4 fair and impartial juror in this proceeding. Do you
5 understand that?

6 **A** Yes, sir.

7 **Q** Thus far, you've indicated by your answers or lack of
8 answers or lack of responses that there is nothing in
9 this case that would cause you any problem in
10 applying your common sense, your sense of logic and
11 reason fairly and impartially. Is that true?

12 **A** Yes, sir.

13 **Q** You hesitated. Is there something, a second thought?

14 **A** Well, the whole fact that maybe the death penalty
15 could be imposed, I don't agree with that at all.

16 **Q** Okay. So of the three types of jurors, what type are
17 you?

18 **A** I'm the type that would never, ever impart the death
19 penalty.

20 **Q** All right. So I believe that was Type 2.

21 **A** Yes, sir.

22 **Q** That no matter what the case, no matter what the
23 circumstance, you just simply would never, ever, ever
24 impose the death penalty?

25 **A** Ever. I would feel that I would be taking somebody's

1 life. And I don't have the power to do that.

2 **Q** Okay. And there's no circumstance that you could
3 consider that would allow you to return a verdict of
4 death?

5 **A** Absolutely none.

6 **THE COURT:** Questions from the State?

7 **MR. JENNINGS:** No, sir.

8 **THE COURT:** Questions from Mr. Sapp?

9 **MR. JOHNSTON:** No, Your Honor.

10 **THE COURT:** Ms. Oliver, thank you very much for
11 your participation in this matter. You are now excused
12 from participation, any further participation. I would
13 ask you, please, ma'am, to just -- I can't require this,
14 but ask that you not talk about this case with anyone
15 until the case is actually concluded. It would help us
16 tremendously. Thank you for your commitment to this
17 process. You are free to leave.

18 **THE POTENTIAL JUROR:** You're welcome.

19 **THE COURT:** I find for the purposes of the
20 record that Ms. Oliver certainly was unequivocal in her
21 statement that she could never impose the death penalty
22 and therefore she would not be qualified to sit as a
23 juror. Anything further from the State?

24 **MR. HOISINGTON:** No, Your Honor.

25 **THE COURT:** Anything further from Mr. Sapp?

1 **A** Yes, sir.

2 **Q** Because there really is no correct answer at all.

3 **A** Okay.

4 **Q** And you're entitled to feel however you feel. Is
5 that fair?

6 **A** Yes, sir.

7 **Q** You understand, sir, that you are under oath in this
8 matter?

9 **A** Yes, sir.

10 **Q** And you understand that you've been restricted from
11 talking about this case or letting anybody talk with
12 you about the case. Have you honored that
13 restriction?

14 **A** Yes, sir.

15 **Q** You haven't reviewed any newspaper articles or
16 watched any television programs, have you?

17 **A** No, sir, I didn't watch no TV at all last night.

18 **Q** Okay. Thank you, sir. You were given a sheet of
19 paper that describes three types of jurors in this
20 type of case. Which one best describes you?

21 **A** I feel the second one.

22 **Q** The second one?

23 **A** Yes, sir.

24 **Q** Meaning, that there are absolutely no circumstances
25 that would ever warrant you imposing the death

1 penalty?

2 **A** No.

3 **Q** Never?

4 **A** Never.

5 **Q** And that's a feeling that you hold dearly?

6 **A** Yes, sir.

7 **Q** And it wouldn't matter how severe the crime?

8 **A** No, sir.

9 **THE COURT:** Questions from the State?

10 **MR. HOISINGTON:** Very briefly.

11 EXAMINATION

12 **BY MR. HOISINGTON**

13 **Q** Again, as His Honor said, we respect everybody's
14 opinion. But you feel it's a pretty strongly held
15 opinion against the death penalty?

16 **A** (The juror nodded.)

17 **Q** And given the opportunity if you were on a jury to
18 vote for life in prison as opposed to imposing the
19 death penalty, even if the facts called for it or
20 warranted it, would you always choose life in prison
21 without parole?

22 **A** I feel that I would, yes, sir. At this moment, I
23 feel I would.

24 **Q** Would the fact of your feelings about the death
25 penalty substantially impair your ability to even

1 consider it if you were on a jury?

2 **A** Yes.

3 **MR. HOISINGTON:** Okay. That's all I have.

4 **THE COURT:** Any questions?

5 **MR. JOHNSTON:** No, Your Honor.

6 **THE COURT:** Thank you. Mr. Potter, you are
7 excused from further participation in this process. I
8 appreciate your commitment to the process. I appreciate
9 your willingness to participate in it as fully as you
10 have. Good luck to you, sir. You're free to leave now.
11 I would ask you, sir, as a favor to the Court that you not
12 talk about this case until it has been concluded. I can't
13 compel you to do that, but ask if you would cooperate to
14 that extent, I would appreciate it.

15 **THE POTENTIAL JUROR:** I sure will.

16 **THE COURT:** Thank you. Good luck to you, sir.
17 You're excused.

18 Ms. Nixon is next.

19 (WHEREUPON, Priscilla D. Nixon, a black female,
20 entered the courtroom.)

21 EXAMINATION

22 **BY THE COURT**

23 **Q** Hello, Ms. Nixon.

24 **A** Hello.

25 **Q** How are you?

1 **A** Good. How are you?

2 **Q** Fine, thank you. Thank you for your patience with
3 us. I'm sorry that we had to keep you waiting so
4 long. We're continuing the process that we started
5 yesterday. We have some questions that we may need
6 to ask you concerning your potential service as a
7 juror in this case. Please understand that there are
8 no correct answers. Don't feel that you should be
9 compelled to give any particular answer. We're
10 interested, really -- you're under oath, you
11 understand?

12 **A** Yes, sir.

13 **Q** A truthful response of how you honestly feel. It
14 doesn't matter -- that doesn't make any difference
15 because there is no correct way to feel. Okay?

16 **A** Okay.

17 **Q** Is that agreeable with you?

18 **A** Yes, sir.

19 **Q** Whatever -- however you feel is important to us and
20 that's what we want to know. Okay?

21 **A** Okay.

22 **Q** You were given a sheet of paper that described the
23 three types of jurors. Which one of those types
24 would you think most accurately depicts or describes
25 you?

1 **A** Type 3.

2 **Q** Type 3?

3 **A** Yes, sir.

4 **Q** And you understand -- and my understanding of Type 3,
5 let's see if we agree on that. Type 3 is the type of
6 juror that could impose the death penalty or could
7 impose life imprisonment, but it just simply would
8 depend on the facts and circumstances of the case?

9 **A** Yes.

10 **Q** Is that true?

11 **A** Yes, sir.

12 **Q** But you would consider both of them?

13 **A** Yes, sir.

14 **Q** And make a determination which you found to be most
15 appropriate, is that true?

16 **A** Yes, sir.

17 **Q** You understand that this whole process, Ms. Nixon, is
18 really designed to help you and to help us make the
19 determination that you could be a fair and impartial
20 judge of the facts of this case. Do you understand
21 that?

22 **A** Yes, I do.

23 **Q** That's the purpose of this process and that's what
24 these questions are designed to do. Is that your
25 understanding?

1 **A** Yes, sir.

2 **Q** Thus far, you have indicated by your responses to the
3 questions, or where the case was that you didn't need
4 to respond by your lack of responses, that there's
5 nothing about this case that would affect your
6 ability to be fair and impartial in applying your
7 common sense, your sense of logic and reason in
8 deciding the true facts of this dispute. Is that
9 true?

10 **A** Yes, sir.

11 **Q** So basically, am I to understand, then, that as you
12 sit here today, you have completely an open mind
13 about this matter?

14 **A** Yes, sir.

15 **Q** You have not made any prejudgments or
16 predeterminations?

17 **A** No, I haven't.

18 **Q** And you understand that as a juror, you, of course,
19 will have to make the decision ultimately -- and in
20 this proceeding, there may be two phases. But in the
21 first phase, we would hear evidence concerning the
22 issues of the crimes that I have mentioned to you,
23 that the State has accused Mr. Sapp of committing.
24 Do you understand that?

25 **A** Yes, I do.

1 Q At this point you haven't made any determinations on
2 that issue; is that right?

3 A No, I haven't.

4 Q And you understand that one of the instructions that
5 I would give you is when -- and that is when the jury
6 may begin its deliberations. Do you understand that?

7 A Uh-huh.

8 Q Until the Court tells you to begin your
9 deliberations, one important part of being a juror,
10 one characteristic of a juror is that they keep the
11 open mind that you have just described. Can you do
12 that?

13 A Yes, I can.

14 Q And you would not change that position until the
15 Court told you to make a decision on certain issues;
16 is that right?

17 A Correct.

18 Q Now, the fact that I'm asking you questions here
19 today or someone may be asking you any questions,
20 please understand that the purpose is just what we've
21 talked about. We're not trying to suggest to you and
22 I'm not trying to suggest to you how you're to decide
23 a certain issue. Is that agreeable with you?

24 A Yes, sir.

25 Q Because as you know and I would instruct you in the

1 jury, the jury is the sole judge of the facts. I
2 don't have anything to do with that process. Do you
3 understand that?

4 **A** Yes, I do.

5 **Q** And nothing that I say or do should be considered by
6 you as a suggestion of how you're to resolve a fact.
7 Is that fair with you?

8 **A** Yes, it is.

9 **Q** Likewise, as a judge of the facts, you don't have
10 anything to do with the law. Do you understand that?

11 **A** Yes, I do.

12 **Q** That's my responsibility. And that would be my
13 responsibility to give you the law at the various
14 portions of this proceeding. Do you understand that?

15 **A** Yes, I do.

16 **Q** Could you as -- if you were sitting as a juror,
17 listen to that law?

18 **A** Yes, I could.

19 **Q** Could you apply that law, accept that law and apply
20 it fairly and impartially to the facts that you would
21 ultimately determine when you began your
22 deliberations?

23 **A** Yes, I could.

24 **Q** If you should hear some law with which you differ or
25 you feel that maybe it should be changed, I respect

1 your right to feel that way. But part of the
2 commitment that you make to the State and to Mr. Sapp
3 in this process is that you will apply the law that I
4 give to you even if you don't agree with it. Can you
5 do that?

6 **A** Yes, I can.

7 **Q** Without any problem?

8 **A** Without any problem.

9 **Q** Okay. You understand that it's the evidence that you
10 will ultimately consider in this trial to determine
11 what you believe to be the -- to determine the true
12 facts. Do you understand that?

13 **A** Yes, I do.

14 **Q** And the evidence consists of the testimony of
15 witnesses and exhibits that might be introduced
16 through that testimony. Do you understand?

17 **A** Yes, I do.

18 **Q** Nothing else. Anything that you hear outside of this
19 courtroom or see should not be considered by you at
20 all in this process. Do you understand?

21 **A** Yes, I do.

22 **Q** And could you follow that instruction as well?

23 **A** Yes, I can.

24 **Q** Do you understand that to help the jury to minimize
25 the exposure to any outside influences, we would

1 sequester the jury during the trial of this case. Do
2 you understand?

3 **A** Yes, I do.

4 **Q** And that sequestration may last up to 10 years -- 10
5 years, 10 days. I assure you, ma'am, that was a
6 misstatement. I don't plan to be trying this case 10
7 years from now. And I know none of these persons do.
8 Sometimes it feels like we've been here for 10 years.
9 But I assure you, 10 days will probably be the top.
10 Do you understand?

11 **A** Yes, I do.

12 **Q** Would that influence or affect you in the performance
13 of your duties as a juror?

14 **A** No, it wouldn't.

15 **Q** You could -- I know it wouldn't be the most
16 convenient situation, but you could set aside that
17 and apply your common sense and sense of logic and
18 reason fairly and impartially, is that true?

19 **A** True.

20 **Q** Now, obviously, the State, as you know and we've
21 talked, has the burden of proving the cases against
22 Mr. Sapp. Do you understand that?

23 **A** Uh-huh.

24 **Q** Mr. Sapp, like anyone else charged with a criminal
25 offense, is presumed innocent. Do you have any

1 problem with that principle of law?

2 **A** No, I don't.

3 **Q** And he -- you can't expect him to prove anything, to
4 answer anything. You shouldn't look to him for
5 anything at all. Would that be a problem to you?

6 **A** No, it wouldn't.

7 **Q** Because the burden rests solely on the State. And
8 you would look at the State then to meet its burden
9 of proof. Is that true?

10 **A** Uh-huh.

11 **Q** In the first phase, which would deal with the guilt
12 of Mr. Sapp, whether the State can meet its burden of
13 proof as to each of these offenses, you would be
14 asking yourself -- because I would define all of the
15 elements of each crime. And you would then when you
16 began your deliberations be asking yourself whether
17 you're convinced beyond a reasonable doubt that that
18 particular element had been established by the
19 evidence. You understand?

20 **A** Yes, I do.

21 **Q** If, in that process, you would -- you were to
22 conclude that you weren't convinced beyond a
23 reasonable doubt as to a particular element of an
24 offense, would you return a verdict of not guilty on
25 that offense?

1 **A** If I wasn't convinced?

2 **Q** Yes, if you weren't convinced of every single element
3 of the offense.

4 **A** Yes, I would.

5 **Q** Because the law that I would instruct you says the
6 State has to prove all of the elements --

7 **A** Uh-huh.

8 **Q** -- to that level. You understand that?

9 **A** Yes, I do.

10 **Q** Likewise, if considering the evidence you were
11 convinced by the evidence that there were -- that all
12 the elements had been established, would you return a
13 verdict of guilty?

14 **A** Yes, I would.

15 **Q** Would you have any hesitancy in either situation?

16 **A** Not if it was proven.

17 **Q** Okay. And if it wasn't, would you have any hesitancy
18 in returning a not guilty verdict?

19 **A** No, I wouldn't.

20 **Q** Okay. If we would get to -- if, in your
21 consideration, the jury should consider and determine
22 that the State has met its burden of proof on the
23 offense of murder, then we would have a second
24 portion or second phase. You understand that?

25 **A** Yes, I do.

1 **Q** In that phase, you would hear additional evidence and
2 that phase would deal with the penalty issue in this
3 case. Do you understand?

4 **A** Yes, I do.

5 **Q** During that portion of the trial, you may hear
6 evidence concerning aggravating circumstances and
7 mitigating circumstances, and those terms are defined
8 by our statutes and laws. And I will give you a
9 complete charge on those particular factors. But
10 essentially, aggravating circumstances are those
11 circumstances and facts that would make worse or
12 aggravate the offense of murder, that is, to increase
13 its enormity or add to the injury of the crime. Do
14 you understand?

15 **A** Uh-huh.

16 **Q** Mitigating circumstances would be those facts and
17 circumstances which may when you consider it reduce
18 the severity of the offense and may be considered as
19 extenuating or reducing the degree of someone's moral
20 culpability or responsibility for the offense. Do
21 you understand that?

22 **A** Yes, I do.

23 **Q** Would you have any problem listening to those -- the
24 charges on those particular issues and applying that
25 law with all other law in your analysis of the

1 evidence at that time?

2 **A** No, I would not.

3 **Q** In that situation, in the penalty portion, if
4 considering all of the facts and circumstances
5 including the mitigating circumstances and
6 aggravating circumstances, taking the law as I give
7 it to you and applying it to those facts and
8 circumstances and you concluded the most appropriate
9 punishment was life imprisonment without the
10 possibility of parole, could you return a verdict on
11 that?

12 **A** Yes, I could.

13 **Q** Of that.

14 **A** Uh-huh.

15 **Q** Or for that?

16 **A** Yes, I can.

17 **Q** If, in considering all of the facts and circumstances
18 in the penalty phase together with the mitigating
19 circumstances and aggravating circumstances, applying
20 the law, could you conclude that the appropriate
21 sentence was a death sentence?

22 **A** If -- if all the evidence -- if all the evidence was
23 there and all of it was for him and not against him,
24 I guess I could, yes.

25 **Q** Well, basically, I will define all of those things.

1 You'll have to ultimately make that decision. But if
2 you decided that the aggravating circumstances had
3 been established beyond a reasonable doubt, you
4 considered the mitigating circumstances and the
5 evidence, and you decided that, well, in this case, I
6 believe the most appropriate punishment was death,
7 would you return a death sentence?

8 **A** Yes, I could.

9 **Q** You could do that?

10 **A** Uh-huh.

11 **Q** You understand that as part of your duty as a juror
12 that if the death sentence was the decision of the
13 jury that you would have to sign a verdict form to
14 that effect? In other words, that you would sign
15 with other jurors indicating that the death sentence
16 should be imposed. Do you understand that?

17 **A** Yes, I do.

18 **Q** Could you perform that function as a juror if you
19 were selected?

20 **A** Yes, I could.

21 **Q** Basically, as I understand then from the essence of
22 what you've indicated to me, it just simply depends
23 on the facts and circumstances and what you are
24 convinced beyond a reasonable doubt has been
25 established. Is that true?

1 **A** That's correct.

2 **Q** And you don't have any prefeelings or
3 predeterminations as to what is most appropriate?

4 **A** No, I don't.

5 **THE COURT:** Please answer any questions the
6 State may have. Thank you.

7 **MR. JENNINGS:** Thank you, Your Honor.

8 EXAMINATION

9 **BY MR. JENNINGS**

10 **Q** Good afternoon, Ms. Nixon.

11 **A** Hello.

12 **Q** My name's Blair Jennings. I work in the solicitor's
13 office and myself, along with Solicitor Hoisington,
14 are prosecuting this case. And you can obviously
15 tell from this process that started yesterday that
16 what we're trying to find is jurors who can be fair
17 to both sides.

18 **A** Uh-huh, I understand.

19 **Q** Just as the juror who would always give the death
20 penalty on any murder case no matter what the
21 circumstances, that juror would not be fair to
22 Mr. Sapp, wouldn't you agree?

23 **A** I agree. I don't feel that way myself.

24 **Q** Okay. And the same logic, a juror who, no matter the
25 circumstances, would always return a sentence of life

1 imprisonment without parole would not be fair to the
2 State if they will not consider a death sentence,
3 correct?

4 **A** Correct.

5 **Q** How do you feel about the death penalty, it's
6 existence?

7 **A** Can I get a minute to let me think about it?

8 **Q** Uh-huh.

9 **A** I don't know. See, it might be a little hard to --
10 if I'm holding somebody's life in my hand with 12
11 other people -- 11 other people, whomever, but it
12 depends on the facts and circumstances and the way
13 the crime was committed or maybe why or what may
14 have -- I'm a little nervous. Excuse me.

15 **Q** That's fine.

16 **A** But I guess, I mean, if -- I have an open mind about
17 things and I try to put myself in people's shoes, you
18 know, just to try to feel the way they are. I cannot
19 do it, but I just try to see why. So --

20 **Q** Do you agree that the death penalty should be an
21 alternative?

22 **A** For every crime of capital murder?

23 **Q** In murder cases, if the law sets out.

24 **A** Not in all of them.

25 **Q** Okay. But do you, if the law allows the death

1 penalty -- in South Carolina, there are specific
2 circumstances that must be present before the death
3 penalty is even a potential sentence. If the law
4 allows it, do you believe the death penalty is an
5 appropriate punishment?

6 **A** Yes.

7 **Q** Okay. So there are cases with facts and
8 circumstances that you could envision yourself
9 returning a sentence of death?

10 **A** Yes.

11 **Q** And likewise, depending on the facts and
12 circumstances, you could return a sentence of life
13 without parole?

14 **A** Yes, I could.

15 **Q** You have six children?

16 **A** Yes, I do.

17 **Q** And I think -- two of them look like they're about 17
18 years old or so?

19 **A** One is my stepson, he'll be 18 in July. And my
20 oldest son is 17.

21 **Q** Okay. Mr. Sapp is not that young. He's in his 20's.
22 Is there anything about the age of your children
23 being in close correlation with the age of Mr. Sapp
24 that would cause you to hesitate to be able to give
25 him a death sentence?

1 **A** No.

2 **Q** You could look past that fact?

3 **A** Yes, I could.

4 **Q** Is there anything about your religion, the Baptist
5 religion that would cause you any hesitation in
6 returning a death sentence?

7 **A** No.

8 **Q** So are you aware of any facts that are outside of
9 this case, in other words, outside of the facts and
10 circumstances that will be proven to you, any outside
11 factors that would affect your ability?

12 **A** No, because the outside factors should not matter.
13 What should matter is what goes on inside the
14 courtroom.

15 **Q** Absolutely. And you're prepared to consider only
16 what is in this courtroom in making your
17 determination?

18 **A** Yes, I am.

19 **Q** As part of the process, at the end of the penalty
20 phase, the judge will give you the instruction about
21 the things that you're to consider, the aggravating
22 circumstances and mitigating circumstances. When the
23 jury -- if you are on that jury and retire to the
24 jury room to deliberate Mr. Sapp's sentence, if all
25 12 jurors agree that a sentence of death should be

1 returned, each juror will have to sign that sentence
2 form.

3 **A** Uh-huh.

4 **Q** Are you prepared to do that?

5 **A** If I felt the same way, yes.

6 **Q** Okay. You would be able to sign that verdict form?

7 **A** If I felt the same way, yes.

8 **Q** And knowing that if a sentence of death was returned
9 by the jury --

10 **MR. ARCHER:** Your Honor, I think she's answered
11 this I don't know how many times. It's almost like a --

12 **THE COURT:** Move on Solicitor, please. I
13 sustain the objection.

14 **Q** The questions that we're asking you are not an
15 attempt to embarrass anybody or any issue such as
16 that, we're just trying to get as much information as
17 we possibly can. You had an incident in 2001 in the
18 Isle of Palms involving a breach of trust?

19 **A** Uh-huh.

20 **Q** What was the outcome of that?

21 **A** What do you mean?

22 **Q** Has it been to court?

23 **A** No, sir. Well, I went to court and I got a fine and
24 I paid it and that was it. I never been to jail or
25 anything like that.

1 **Q** Through the City of Isle of Palms?

2 **A** Anywhere.

3 **Q** Right. But you just went to court in magistrate's
4 court?

5 **A** Yeah.

6 **MR. JENNINGS:** Thank you.

7 **MR. ARCHER:** Your Honor, we'll try to speed this
8 up a little bit. I have no questions.

9 **THE COURT:** Thank you very much. You may step
10 down. If you will step outside for just a minute.

11 (WHEREUPON, the juror left the courtroom.)

12 **THE COURT:** What says the State?

13 **MR. JENNINGS:** She's qualified.

14 **MR. ARCHER:** Qualified.

15 **THE COURT:** I agree. Bring her in, please.

16 (WHEREUPON, the juror entered the courtroom.)

17 **THE COURT:** Ms. Nixon, you've been qualified as
18 a member of the pool from which we will select the trial
19 jury. That will be done on Thursday morning starting at
20 9:30. I'm going to excuse you now until Thursday morning
21 at 9:30, ask that you please report and be in this
22 courtroom at that time. Ms. Wiggins has a sheet that
23 Ms. Brown has prepared that gives you some information
24 which would be helpful to you in preparing to come to
25 court on Thursday. Just follow that instruction that

1 she's provided. Please remember that you are still under
2 the restriction you may not talk about this case with
3 anyone.

4 **THE POTENTIAL JUROR:** I haven't.

5 **THE COURT:** And you shouldn't between the time
6 period between now and Thursday or permit anyone to talk
7 with you about this case. Don't read anything about it or
8 watch any news program.

9 **THE POTENTIAL JUROR:** Okay.

10 **THE COURT:** I look forward to seeing you on
11 Thursday. Thank you. You may exit through the front.
12 Let's bring in Mr. Rollins.

13 (WHEREUPON, Bufford W. Rollins, Jr., a white
14 male, entered the courtroom.)

15 EXAMINATION

16 **BY THE COURT**

17 **Q** Hello, Mr. Rollins.

18 **A** Hello, sir.

19 **Q** How are you doing, sir?

20 **A** Fine, sir.

21 **Q** Thank you for your patience with us. I appreciate
22 your patience with the process. Sorry to keep you
23 waiting. We started the process yesterday and are
24 trying to select a pool of persons from which we
25 would select the trial jury. You understand?

1 **A** Yes, sir.

2 **Q** And, of course, the main factor and the controlling
3 factor is we want persons who are able to be fair and
4 impartial with the application of their common sense
5 and sense of logic and reason. And thus far, you
6 have indicated that you are such a person. Is that
7 true?

8 **A** Yes, sir.

9 **Q** And there's nothing about this case that would cause
10 you any concern about your ability to make a decision
11 that was fair and proper and that you would be fair
12 and impartial. Is that true?

13 **A** Yes, sir.

14 **Q** And when I say fair, it would be fair to the State
15 and be fair to Mr. Sapp; is that correct?

16 **A** Yes, sir.

17 **Q** You understand, sir, that you're still under oath in
18 this process?

19 **A** Yes, sir.

20 **Q** And have you talked with anyone or allowed anybody to
21 talk with you about this case since yesterday?

22 **A** No, sir.

23 **Q** And have you reviewed any newspaper accounts or any
24 television programs?

25 **A** No, sir.

1 Q You were given a sheet of paper that sets forth three
2 types of jurors. Which type of juror most accurately
3 describes you?

4 A No. 3, Type 3.

5 Q And that is a juror that basically could impose a
6 death sentence, could impose a life imprisonment, but
7 it would depend on the particular case and the
8 particular -- I mean -- the particular facts and
9 circumstances of a case; is that right?

10 A Yes, sir.

11 Q You don't have any predeterminations as to what you
12 think is the most appropriate sentence?

13 A No, sir.

14 Q So basically, is it fair to say that thus far and by
15 your response to my questions yesterday or your lack
16 of response, whichever the case may be, that you have
17 an open mind about this dispute at this point?

18 A Yes, sir.

19 Q That's a very important part of being a juror. You
20 understand that?

21 A Yes, sir.

22 Q And, in fact, that open mind has to be maintained by
23 a juror until the Court gives that juror an
24 instruction to begin his or her deliberations. Do
25 you understand?

1 **A** Yes, sir.

2 **Q** Could you honor that commitment to the State and
3 Mr. Sapp and that is to maintain that open mind
4 throughout the process until the Court told you to
5 begin your deliberations on a particular issue?

6 **A** Yes, sir.

7 **Q** You understand that it's your job -- it would be your
8 job as a juror to be the sole judge of the facts in
9 this dispute?

10 **A** Yes, sir.

11 **Q** That -- I have nothing to do with that.

12 **A** Yes, sir.

13 **Q** In fact, nothing that I say now or at any time during
14 the trial should be considered by you as an
15 indication or suggestion of how you are to resolve a
16 factual issue. Can you honor that?

17 **A** Yes, sir.

18 **Q** The fact that I'm asking you questions today
19 shouldn't even be considered by you or taken that I
20 have some feeling about how you should resolve an
21 issue. Is that agreeable with you?

22 **A** Yes, sir.

23 **Q** And you would do that?

24 **A** Yes, sir.

25 **Q** You understand that part of my responsibility would

1 be to give you the law at the conclusion of the
2 trial?

3 **A** Yes, sir.

4 **Q** Is that correct? Would you listen to that law,
5 accept it and apply it fairly and impartially to the
6 facts in this case that you ultimately would
7 determine?

8 **A** Yes, sir.

9 **Q** If you should hear a principle of law with which you
10 may differ or feel that it ought to be changed, could
11 you set aside those feelings for the purpose of this
12 proceeding and take the law as I give it to you and
13 apply it to those facts and circumstances?

14 **A** Yes, sir.

15 **Q** Notwithstanding those feelings; is that correct?

16 **A** Yes, sir.

17 **Q** You understand that the burden of proof is upon the
18 State in this case?

19 **A** Yes, sir.

20 **Q** That Mr. -- just because Mr. Sapp has been accused of
21 these crimes doesn't mean that he's done anything.
22 Do you understand that?

23 **A** Yes, sir.

24 **Q** In fact, he's innocent until the State proves his
25 guilt. Is that -- you agree with that principle of

1 law?

2 **A** Yes, sir.

3 **Q** Do you have any problem with it?

4 **A** No, sir.

5 **Q** So you would then look to the State during the trial
6 to prove its case; is that true?

7 **A** Yes, sir.

8 **Q** And only the State?

9 **A** Yes, sir.

10 **Q** You understand that in this proceeding there would be
11 two parts possibly. First part, we would deal with
12 whether or not the State can establish and prove the
13 offenses it's charged or accused Mr. Sapp of
14 committing. Do you understand that?

15 **A** Yes, sir.

16 **Q** At the appropriate time, you would deliberate on
17 those offenses. And I would give you and define for
18 you, of course, the various elements of those
19 offenses. And you would have to consider the
20 evidence. And the evidence, of course, you know
21 consists of the testimony and of witnesses and
22 exhibits and nothing else. And you would have to
23 make the determination whether you were convinced
24 beyond a reasonable doubt that the State had met its
25 burden. Do you understand that?

1 **A** Yes, sir.

2 **Q** In that process, if you should conclude that the
3 State had failed to meet its burden of proof as to
4 the element of one -- one element or more, because
5 they have to prove all of them, failed on one
6 element, would you have any hesitancy returning a
7 verdict of not guilty for that offense?

8 **A** No, sir.

9 **Q** If you were convinced that the State had -- if you
10 were convinced by the evidence that the State had
11 established all of the elements, would you have any
12 hesitancy returning a guilty verdict?

13 **A** No, sir.

14 **Q** Obviously, as we've stated throughout, what the jury
15 will consider occurs in this courtroom. Do you
16 understand that?

17 **A** Yes, sir.

18 **Q** And you should not and must not consider anything
19 that you hear or happens outside of this courtroom.
20 Do you understand that?

21 **A** Yes, sir.

22 **Q** To assist the jury in minimizing their exposure to
23 outside influences, the jury will be sequestered.
24 Does that create a problem for you?

25 **A** No, sir.

1 Q That sequestration could be up to 10 days. Would
2 that affect your ability in any way to be a fair and
3 impartial juror?

4 A No, sir.

5 Q Now, if you had concluded in the guilt phase and the
6 State had met its burden of proof for the crime of
7 murder and established that Mr. Sapp was guilty of
8 that offense, do you understand that we would go into
9 the second phase?

10 A Yes, sir.

11 Q At that -- during that phase, you would hear
12 additional evidence concerning the appropriate
13 penalty. That's the purpose of that proceeding. Do
14 you understand?

15 A Yes, sir.

16 Q The evidence that you would consider -- or would hear
17 would include aggravating circumstances --
18 potentially aggravating circumstances and mitigating
19 circumstances. Do you understand that?

20 A Yes, sir.

21 Q And I will define those for you in my charge at the
22 conclusion of that phase because those are terms that
23 are defined by our legislature and by statute and I'd
24 give you the definition. Would you have any problem,
25 as with all other law, listening to that, accepting

1 that and then applying that law?

2 **A** No, sir.

3 **Q** Basically, it's simply aggravating circumstances are
4 those circumstances and facts that would make worse
5 or aggravate the offense of murder, that is, to
6 increase its enormity or add to the -- or increase
7 the injury from that crime. Do you understand?

8 **A** Yes, sir.

9 **Q** Also, mitigating circumstances are simply those facts
10 and circumstances that may reduce the severity of the
11 offense of murder and may be considered as
12 extenuating or as reducing the degree of moral
13 culpability or responsibility of an individual. Do
14 you understand?

15 **A** Yes, sir.

16 **Q** If at the conclusion of the penalty phase of the
17 trial involving murder, you should -- after
18 considering all the facts and circumstances,
19 including any aggravating facts and circumstances and
20 any mitigating facts and circumstances, consider and
21 apply the law that the Court gives to you, could you
22 return a verdict of life without the possibility of
23 parole?

24 **A** Yes, sir.

25 **Q** If the facts and circumstances you considered

1 warranted that and that was the most appropriate
2 punishment. Is that correct?

3 **A** Yes, sir.

4 **Q** Could you also, considering in a case of that nature
5 the facts and circumstances that have been
6 established by the evidence, including aggravating
7 circumstances and mitigating circumstances, applying
8 the law, return a verdict of death?

9 **A** Yes, sir.

10 **Q** It would just depend on the facts and circumstances;
11 is that correct?

12 **A** Yes, sir.

13 **Q** Do you understand that if you were to return a death
14 sentence, you would be required to sign that verdict
15 form together with all other jurors?

16 **A** Yes, sir.

17 **Q** Do you understand that? Would you have any problem
18 performing that function, sir?

19 **A** No, sir.

20 **THE COURT:** Please answer any questions the
21 State or Mr. Sapp's attorneys may have.

22 **MR. HOISINGTON:** Thank you, Judge.

23 EXAMINATION

24 **BY MR. HOISINGTON**

25 **Q** Mr. Rollins, I'm Ralph Hoisington. Blair Jennings

1 and I will be prosecuting this case for the State.
2 Judge Dennis has asked you just about every question
3 I need to ask you, too. And I appreciate your
4 candor. I guess my question that I have is when you
5 looked over those three types of jurors, did it ever
6 cross your mind that you might fall into any other
7 category other than 3?

8 **A** No, sir. Because in my job that I do on the outside,
9 I have to have all the facts to make any decision I
10 do and I have been trained that way.

11 **Q** Appreciate that. Is there anything in your
12 background, your philosophy, your religion or
13 anything else that would interfere with your ability
14 to consider both types of penalties in a case?

15 **A** No, sir.

16 **MR. HOISINGTON:** That's all I have. Thank you.

17 **THE COURT:** Mr. Archer?

18 **MR. ARCHER:** I have no questions.

19 **THE COURT:** Thank you. You may come down, sir.
20 Just for a moment, if you will step outside, we'll be with
21 you in a moment.

22 (WHEREUPON, the juror left the courtroom.)

23 **THE COURT:** What says the State?

24 **MR. HOISINGTON:** I believe he's qualified, Your
25 Honor.

1 **MR. ARCHER:** Qualified.

2 **THE COURT:** I agree. Ask him to step in,
3 please.

4 (WHEREUPON, the juror entered the courtroom.)

5 **THE COURT:** Mr. Rollins, you have been found to
6 be qualified to be in the pool of jurors from which we
7 will select the trial jury. That process will begin on
8 Thursday morning at 9:30. I will need for you to report
9 at that time to the courtroom. Ms. Wiggins has some
10 instructions that Ms. Brown has been kind enough to
11 prepare for you. If you will follow those, it will help
12 you in preparing when you come on Thursday. Please
13 remember that you are not to talk about this case with
14 anyone or permit anyone to talk with you about the case.
15 Also, please continue not to watch any news programs or
16 read any news accounts about it.

17 **THE POTENTIAL JUROR:** Yes, sir.

18 **THE COURT:** Have a good day tomorrow and I'll
19 look forward to seeing you on Thursday morning at 9:30.
20 So you're free to leave and you can leave through the
21 front, sir.

22 Bring in Connie Hiott.

23 (WHEREUPON, Connie T. Hiott, III, a white male,
24 entered the courtroom.)

25 ///

EXAMINATION

1
2 **BY THE COURT**

3 **Q** Mr. Hiott, how are you?

4 **A** I'm well, thank you.

5 **Q** Thank you for your patience. Sorry to keep you
6 waiting so long. You can turn around because they're
7 going to want to hear you, too. And that's not a
8 problem.

9 **A** Okay.

10 **Q** We're continuing the process that we started
11 yesterday. As you probably saw and determined very
12 quickly, the questions that were asked and answered,
13 there are no right answers. There's no right or
14 wrong position to take. Whatever your response is,
15 if it's truthful and your true feeling, then it's
16 proper. It's legitimate. I want you to feel
17 comfortable with that because none of these questions
18 are intended to try to change your feelings about any
19 particular issue. They're not trying to make you
20 feel that something else is better. It's just simply
21 we want to find out basically about you as a person.
22 Do you understand that?

23 **A** Yes, sir.

24 **Q** They're not intended to invade your privacy at all.
25 We just really are trying to determine whether you

1 are the potential juror that could be fair and
2 impartial as a judge of the facts of this dispute.
3 Do you understand?

4 **A** Yes, sir.

5 **Q** And that's all we're interested in doing. So please
6 understand that. And I would remind you, Mr. Hiott,
7 that you are still under oath in this matter. Is
8 that agreeable with you?

9 **A** Yes, sir.

10 **Q** Have you talked with anyone about this case or
11 allowed anybody to talk with you about this case?

12 **A** No, sir. But yesterday, I didn't stand up when you
13 said did I have anybody in the court, my family, and
14 my sister is Holly Hiott. She is the court recorder
15 for Judge Pieper. I didn't know she was in the Ninth
16 Circuit, but I did call her and ask her last night
17 and she said yes.

18 **Q** All right. So your sister works for Judge Pieper?

19 **A** Yes, sir.

20 **Q** Did you talk in any way about this case?

21 **A** No, sir, but I talked to her about her last murder
22 case that she was on. She was just finishing up.
23 Because, you know, we spend the weekends together and
24 she's been typing on it every weekend so I asked her
25 a lot about the last one. And, you know --

1 Q You mean since yesterday?

2 A No, no --

3 Q Oh, before?

4 A This was before I was even a juror, a few weeks ago.
5 She's been typing on this thing. But, you know, just
6 questions I asked her and stuff about it. And, you
7 know, some things that she's told me about when you
8 seek the death penalty, you know, I don't know for
9 sure if I should be on here because of what she told
10 me about it.

11 Q Let me ask you a question simply.

12 A Okay.

13 Q You've read the list of types of jurors?

14 A Yes, sir.

15 Q Which one of those types best describes you?

16 A No. 3.

17 Q No. 3.

18 A Yes, sir.

19 Q And I appreciate what you said. I'm going to allow
20 you to elaborate, but let me be sure I understand it.
21 Because you said I'm not sure I should be on here.
22 Well, Type 3 is this type of juror as I understand
23 it, as I interpret that. Type 3 says that you are a
24 person that based on the facts and circumstances of a
25 case, of a particular case, there would be a

1 situation where you could impose a death sentence and
2 there are circumstances where you would think the
3 most appropriate sentence would not be death but
4 would be life imprisonment --

5 **A** Right.

6 **Q** -- without the possibility of parole; is that
7 correct?

8 **A** Yes, sir.

9 **Q** And that describes you?

10 **A** Yes, sir.

11 **Q** So basically, you're saying that it depends on the
12 facts and circumstances of a given case?

13 **A** Yes, sir.

14 **Q** You said you don't think I should be on here. Why
15 then do you feel that way?

16 **A** Well, just something, I asked Holly about why -- how
17 do they decide when they're seeking the death
18 penalty, you know, who decides that. And, um, just
19 she had told me that, you know, when they're
20 absolutely sure of a case, the State's absolutely
21 sure without a doubt is when they pretty much seek
22 that. She said if they had any doubt in their mind,
23 they wouldn't seek that penalty. And so, it's kind
24 of like, I don't know, it's just been hard to get off
25 my mind to think different about the case when that's

1 what I found out this was about.

2 **Q** So basically, what I'm hearing you say is based on
3 what she's told you, you believe that there must be
4 some merit to this case or the State wouldn't be
5 seeking it in the first place?

6 **A** Well, yeah, because I was just asking her on her last
7 case about how they decided that. Because -- well,
8 the last case, that guy went to the same school I
9 went to that they were trying it on and all. And I
10 was asking her who decided if they sought that
11 penalty and she was just explaining that to me. And
12 that was the only reason I was -- thought about it
13 all night. But it was just, you know, I had
14 already -- when I found out this was the case and
15 after what she told me, you know, it just kind of
16 made you think that in your mind. It's kind of hard
17 to get it off.

18 **Q** So basically then, if I said do you have an open
19 mind, truly, you don't have an open mind?

20 **A** Well, not based on what she's told me on the last
21 case, no. I mean, it's nothing to do with this case.
22 I didn't even know I was going to be a juror when we
23 talked about this.

24 **Q** I understand. Again, you don't have to apologize for
25 it. I'm just asking you based on what you've heard,

1 you feel that, yeah, there must be something to this
2 case and you would have to hear something substantial
3 to change that?

4 **A** Yeah, it would be hard to change my mind about it.

5 **Q** Okay.

6 **THE COURT:** Questions from the State?

7 **MR. JENNINGS:** Yes, sir.

8 EXAMINATION

9 **BY MR. JENNINGS**

10 **Q** Mr. Hiott, I think you told the Judge that you would
11 be willing to -- and you said up to this point you
12 would be willing to follow the law in this state?

13 **A** Yes.

14 **Q** Are you still prepared to do that?

15 **A** Yes, sir.

16 **Q** And would you listen to all the evidence that was
17 presented during the trial?

18 **A** Yes.

19 **Q** And at the conclusion of the guilt phase of the trial
20 after having heard all the evidence, would you listen
21 to the charge that Judge Dennis gave you regarding
22 the law?

23 **A** Yes.

24 **Q** And if the State, myself and Solicitor Hoisington,
25 had failed to present sufficient evidence to, in your

1 mind, convince you beyond a reasonable doubt of
2 Mr. Sapp's guilt, could you find him not guilty?

3 **A** Yes, if I felt like you didn't give me enough
4 evidence.

5 **Q** Yes, sir. And you understand that it's the
6 responsibility of the State to prove beyond a
7 reasonable doubt that Mr. Sapp is guilty?

8 **A** Yes.

9 **Q** And you would be able to follow the judge's charge on
10 the law. And if we did not present that type of
11 evidence that could prove his guilt beyond a
12 reasonable doubt, you could find him not guilty?

13 **A** Can you repeat that again?

14 **Q** If there wasn't sufficient evidence to prove to you
15 beyond a reasonable doubt that he was guilty, would
16 you find him not guilty?

17 **A** Yes.

18 **Q** Okay. And likewise --

19 **A** If there wasn't enough evidence.

20 **Q** Beg your pardon?

21 **A** Yeah, if there wasn't enough evidence.

22 **Q** If the State didn't meet its burden.

23 **A** Right.

24 **Q** And likewise, if sufficient evidence was presented to
25 prove him guilty beyond a reasonable doubt, could you

1 in that situation find him guilty?

2 **A** Yes.

3 **Q** And based -- I think you characterized yourself as a
4 Type 3 juror being a person who could listen to all
5 the facts and circumstances of the case in deciding
6 what was the appropriate punishment?

7 **A** Yes.

8 **Q** And if facts and circumstances warranted it, could
9 you return a sentence of life in prison without
10 parole?

11 **A** Yes.

12 **Q** And likewise, if the facts and circumstances
13 warranted it, could you return a sentence of death?

14 **A** Yes.

15 **MR. JENNINGS:** Thank you. That's all I have,
16 Your Honor.

17 **THE COURT:** Mr. Archer?

18 EXAMINATION

19 **BY MR. ARCHER**

20 **Q** Good afternoon.

21 **A** Good afternoon.

22 **Q** You said that your wife told you that it's how much
23 evidence they have against the defendant as to
24 whether or not they seek the death penalty; is that
25 correct?

1 **A** Yes, sir, my sister.

2 **Q** Right. And you believe that?

3 **A** Yes, sir.

4 **Q** So in other words, if the law was that that's not
5 true, there has to be certain aggravating
6 circumstances, you wouldn't follow that then? I
7 mean, you're believing what your sister said.

8 **A** Yes, sir.

9 **MR. ARCHER:** Okay. I have no further questions.

10 **THE COURT:** Any follow up?

11 EXAMINATION

12 **BY MR. JENNINGS**

13 **Q** On this case, you would take the law as Judge Dennis
14 charges it to you and apply that law?

15 **A** I don't understand the question.

16 **Q** In other words, Judge Dennis, at the end of the guilt
17 phase, he will charge you and tell you what the law
18 in South Carolina is to each charge that Mr. Sapp is
19 facing.

20 **A** Yes, sir.

21 **Q** As a juror, would you be able to apply the law as
22 Judge Dennis tells you?

23 **A** Yes.

24 **MR. JENNINGS:** That's all I have.

25 **THE COURT:** Thank you, Mr. Hiott. You may step

1 down. If you will step outside for just a moment, please.

2 (WHEREUPON, the juror left the courtroom.)

3 **THE COURT:** You better read Stone because I
4 tried in fairness to both sides to be fair and remove the
5 appearance of the problem. And I was reversed for doing
6 that because it was for the State. Just understand,
7 I'm -- I heard that message. So -- and what you tried to
8 do, you may want to consider that in certain situations.
9 I know what you want to do. I'm not sure you really want
10 me to grant what you're going to ask me to do. But go
11 ahead.

12 **MR. JENNINGS:** We'll leave it up to Your Honor's
13 discretion..

14 **THE COURT:** I assume you don't think he's
15 qualified.

16 **MR. ARCHER:** He's clearly not qualified.

17 **THE COURT:** Not aside from the fact that he's
18 already said I think, but I've got almost the Court
19 telling him that through a court reporter. You don't want
20 the Court of Appeals looking at that or the Supreme Court.
21 I'm sorry. Thank you very much. I think he would
22 probably be a very fair juror, but he's just been tainted.
23 I'm sorry. I think he's a very fair person and honest
24 about it. And I commend him for his candor. Bring him
25 in.

1 (WHEREUPON, the juror entered the courtroom.)

2 **THE COURT:** Mr. Hiott, thank you so much for
3 your response. And I want to tell you, I just told them,
4 I want to thank you for your candor, sir.

5 **THE POTENTIAL JUROR:** Yes, sir.

6 **THE COURT:** You didn't have to do all that, but
7 you did. And that, again, restores my confidence in this
8 system. And I thank you for sharing that and your
9 feelings and your conversations with your sister.

10 **THE POTENTIAL JUROR:** Yes, sir.

11 **THE COURT:** And you said maybe you don't want me
12 to be on this jury. I'm going to honor that. I think
13 you've -- I appreciate your participation at this point.
14 And I'm going to excuse you from further participation.
15 Thank you so much.

16 **THE POTENTIAL JUROR:** Thanks.

17 **THE COURT:** Thank you so much for your
18 commitment to it and again for how you approached you
19 duties as a juror. I appreciate that.

20 **THE POTENTIAL JUROR:** Thank you.

21 **THE COURT:** Have a great day. You're free to
22 leave. I would ask you, Mr. Hiott, as a favor to the
23 Court, I can't compel you to do this, but as a favor to
24 the Court, I would ask that you not discuss this case
25 until the case has been concluded. Then you can talk

1 about it if you wish.

2 **THE POTENTIAL JUROR:** Okay.

3 **THE COURT:** Thank you. You're free to leave
4 through that door, sir.

5 **THE POTENTIAL JUROR:** Thanks.

6 **THE COURT:** Bring in Mr. DeLeon.

7 (WHEREUPON, Alfred S. DeLeon, a white male,
8 entered the courtroom.)

9 EXAMINATION

10 **BY THE COURT**

11 **Q** Good afternoon, Mr. DeLeon.

12 **A** Good afternoon.

13 **Q** How are you, sir?

14 **A** Good, sir. How about you?

15 **Q** Well, thank you. And I appreciate very much your
16 patience in having to wait so long. Thank you for
17 indulging us in that.

18 **A** Okay.

19 **Q** We started a process yesterday, Mr. DeLeon, in trying
20 to select a pool of jurors from which we could select
21 the trial jury. You understand?

22 **A** Yes, sir.

23 **Q** And obviously, as you probably gleaned from all of
24 the questions yesterday, the intent is to try and
25 find that person, type of person who could fairly and

1 impartially apply their sense of logic and reason and
2 analyze the evidence at the appropriate time and make
3 a determination as to what they find to be the truth.
4 You understand?

5 **A** Yes, sir.

6 **Q** Given your responses yesterday and in the situation
7 where you didn't have to respond, your lack of
8 response, you have indicated thus far that there is
9 nothing about this case that would cause you any
10 problem in applying your common sense and your sense
11 of logic fairly and impartially; is that true?

12 **A** Yes, sir.

13 **Q** You understand that you are still under oath at this
14 point?

15 **A** Yes, sir.

16 **Q** Have you had an opportunity to review the sheet that
17 I gave you describing the three types of jurors?

18 **A** Yes, sir.

19 **Q** Of those three types, which one most accurately
20 describes you?

21 **A** I would say No. 3. It was kind of a struggle.

22 **Q** And I appreciate that. You hesitated. And the
23 reason for that hesitation is why?

24 **A** I went back and forth between 3 and 1. It was
25 just -- I mean, I stayed up pretty much all night in

1 my mind going through things. And I had to go back
2 to 3.

3 Q One being that if a murder was established that the
4 death penalty would be the most appropriate?

5 A Yes, sir.

6 Q But you're now to the point where you would consider
7 both of them; is that right?

8 A Yes, sir.

9 Q And that --

10 A Depending on what the evidence --

11 Q It would depend on the given facts and circumstances
12 of a case; is that correct?

13 A Yes, sir.

14 Q Is that -- would that be important to your decision,
15 the facts and circumstances --

16 A Absolutely.

17 Q -- of a case?

18 A Absolutely.

19 Q This particular case, you have not heard any
20 evidence.

21 A No, sir.

22 Q So you don't have any feelings about what the most
23 appropriate sentence would be?

24 A No, sir.

25 Q And would you keep that open mind throughout this

1 process and until the Court gave you instruction to
2 begin your deliberations on a given point?

3 **A** Yes, sir.

4 **Q** And you would honor that commitment; is that correct?

5 **A** Absolutely.

6 **Q** You understand that the questions that we're asking
7 you and may ask you here today are not intended to
8 embarrass you. They're not intended to invade your
9 privacy. As I stated, there are no right or wrong
10 answers. I don't want you to feel at any point
11 during our discussions here today, be it with me or
12 with any of the attorneys, that you should feel badly
13 or wrong for an opinion. Because the important part
14 is that you share honestly your opinions and not feel
15 that you have any duty to anybody for that opinion.
16 Do you understand that?

17 **A** Yes, sir.

18 **Q** Okay. Now, please understand, as you heard
19 yesterday, our system depends on two judges working
20 together. One, the judge of the facts, which would
21 be the jury; and the other, the judge of the law,
22 which is my responsibility.

23 **A** Yes, sir.

24 **Q** Do you have any problem with maintaining that
25 separation?

1 **A** None at all.

2 **Q** Then please understand that nothing that I say today
3 and if you're selected on the jury at any time during
4 the trial of this case, you should never consider
5 anything that I say to be an indication of how you
6 are to resolve a factual issue. Is that agreeable
7 with you?

8 **A** Yes, sir.

9 **Q** In this case, it would be your responsibility as a
10 juror to determine the issue based on the evidence.
11 And the evidence you know consists of testimony of
12 witnesses and exhibits that are introduced. Is that
13 your understanding?

14 **A** Yes, sir.

15 **Q** Obviously, there could be two parts in this trial.
16 The first part will deal with the specific offenses
17 that Mr. Sapp has been accused of committing. Do you
18 understand?

19 **A** (The juror nodded.)

20 **Q** And it is at that time that we will hear evidence
21 concerning those specific offenses. At this point,
22 as I understand, you don't have any predetermination
23 on that issue as well?

24 **A** That's right.

25 **Q** At this point, you would consider Mr. Sapp to be

1 totally innocent of those offenses; is that correct?

2 **A** Yes, sir.

3 **Q** Because the law presumes the innocence of one who is
4 accused of committing an offense.

5 **A** Yes, sir.

6 **Q** Do you have any problem with that principle of law,
7 sir?

8 **A** No, sir.

9 **Q** You understand that a person accused of a criminal
10 offense doesn't have the duty to prove anything at
11 all or explain anything?

12 **A** Uh-huh, I understand.

13 **Q** And you would never expect Mr. Sapp to do that,
14 correct?

15 **A** Correct.

16 **Q** You would look to the State to meet its burden of
17 proof?

18 **A** Yes, sir.

19 **Q** At the conclusion of the first phase, you would
20 consider the evidence to determine whether or not the
21 State had met its burden of proof. And at that time,
22 if you were not convinced beyond a reasonable doubt
23 that the State had established each element of the
24 specific offense or one of the charges, would you
25 have -- in that case have any hesitancy of returning

1 a not guilty verdict?

2 **A** No, sir.

3 **Q** On the other hand, if you were convinced beyond a
4 reasonable doubt the State had met its burden of
5 proof and by that, I mean, established each element,
6 would you have any hesitancy in returning a verdict
7 of guilty?

8 **A** No.

9 **Q** Obviously, what you are to consider occurs in this
10 courtroom.

11 **A** Yes, sir.

12 **Q** Nothing that occurs outside of this courtroom,
13 nothing that was said, nothing that you hear should
14 ever be considered by you in any way. You understand
15 that?

16 **A** Yes, sir.

17 **Q** To assist the jury and maybe to minimize your
18 exposure to outside influence, the jury will be
19 sequestered during the trial of this case. Do you
20 understand?

21 **A** Yes, sir.

22 **Q** It could mean you could be sequestered possibly as
23 long as 10 days. Do you understand?

24 **A** Yes, sir.

25 **Q** And I see your facial reaction to that. And I

1 understand that very clearly. Not the most
2 convenient, pleasant thing in the world. I
3 understand. My question to you is this, would that
4 sequestration in any way impair or affect your
5 ability to conscientiously apply your common sense,
6 your sense of logic and reason fairly and impartially
7 in this case and make decisions that you would have
8 to make as a juror?

9 **A** No, it wouldn't affect it.

10 **Q** It would not affect it?

11 **A** No, sir.

12 **Q** You understand, sir, if you are selected on this jury
13 and the jury returns a verdict of guilt as to the
14 offense of murder, there would be a second phase?

15 **A** Yes, sir.

16 **Q** That's the penalty phase. And it's during that phase
17 where the jury would hear evidence concerning the
18 appropriate punishment in this particular case.

19 **A** Yes, sir.

20 **Q** Do you understand?

21 **A** Yes, sir.

22 **Q** Some of that evidence may be classified or
23 categorized as aggravating circumstances or
24 mitigating circumstances. You understand?

25 **A** Yes, sir.

1 Q And those terms, I will define both of them for you.
2 They are well defined by our legislature and
3 statutory law. But generally, just broadly speaking,
4 aggravating circumstances are simply those facts and
5 circumstances that would aggravate or make worse the
6 offense of murder or increase its effect or enormity
7 of the crime and its injury. Do you understand that?

8 A Yes, sir.

9 Q Mitigating circumstances would simply be those facts
10 and circumstances that would reduce the severity of
11 the offense of murder and may be considered as
12 extenuating or even reducing the degree of moral
13 culpability or responsibility of the person.

14 A Uh-huh.

15 Q You would, of course, be instructed on both of those.
16 Would you listen to those instructions and consider
17 those instructions with all other law the Court gives
18 to you?

19 A Yes, sir.

20 Q And would you apply that law fairly and impartially
21 to the facts?

22 A Yes, sir.

23 Q In either phase?

24 A Yes, sir.

25 Q And you would do that even if you heard some law with

1 which you may differ?

2 **A** Yes, sir.

3 **Q** Because your oath will be that I'm going to take the
4 law as the Court gives it to me.

5 **A** Yes, sir.

6 **Q** Again, that's part of that separation. Do you
7 understand?

8 **A** Yes, sir.

9 **Q** Am I to understand then that after hearing and
10 determining the facts and circumstances of a case of
11 that nature in the penalty phase and after you have
12 considered the evidence and considered any
13 aggravating circumstances and mitigating
14 circumstances and applying the law, that in some
15 cases, you could return a verdict of life
16 imprisonment without the possibility of parole?

17 **A** Yes, sir.

18 **Q** Also, in those types of cases, after considering all
19 of the evidence including aggravating and mitigating
20 circumstances and applying the law, there are some
21 cases where you could return a death sentence; is
22 that right?

23 **A** Yes, sir.

24 **Q** But it would just depend on the facts and
25 circumstances of a given case?

1 **A** That's correct.

2 **Q** Do you understand that if you were on a jury and you
3 did vote and decide to impose a death sentence that
4 the jury would be required to sign a verdict form
5 indicating that?

6 **A** Yes, sir.

7 **Q** Would you be able to do that, perform that function
8 as a juror?

9 **A** Yes, sir.

10 **THE COURT:** Mr. DeLeon, thank you very much. If
11 you would please answer any questions the attorneys would
12 have.

13 EXAMINATION

14 **BY MR. HOISINGTON**

15 **Q** How are you doing, Mr. DeLeon?

16 **A** How are you doing, Mr. Hoisington?

17 **Q** Let's clarify for the defense, I guess, the business
18 relationship I had with your business back in the
19 past. As I recall, it was years ago and I
20 represented your brother and your business in some
21 alcohol licensing matters. Is that pretty much the
22 extent of it?

23 **A** Yes, sir.

24 **Q** And that was probably four, five or six years ago; is
25 that correct?

1 **A** It might even be longer than that.

2 **Q** And principally, I dealt with your brother and not
3 you; is that right?

4 **A** Correct.

5 **Q** Anything during that representation that would cause
6 you to -- either with the results or lack of results
7 that would cause you to be prejudiced against the
8 State in this case?

9 **A** No, sir.

10 **Q** And, of course, there's nothing that would cause you
11 to be prejudiced against the defendant in this case,
12 is there?

13 **A** No, sir.

14 **Q** Now, I understand that you had to wrestle around a
15 little bit before you decided what category you are
16 in.

17 **A** Yes, sir.

18 **Q** But having reached that conclusion, are you
19 comfortable that you could give both sides a fair
20 shot at the outcome of this case?

21 **A** Yes, sir.

22 **Q** And would want to wait until you heard all the
23 evidence in determining what the appropriate
24 punishment would be?

25 **A** Yes, sir.

1 Q And depending on it, you could go with life in prison
2 --

3 A Either way.

4 Q -- if that was the appropriate punishment in your
5 mind?

6 A Yes, sir, either way.

7 Q Or the death penalty?

8 A Yes, sir.

9 MR. HOISINGTON: Thank you, sir.

10 THE COURT: Mr. Archer?

11 EXAMINATION

12 BY MR. ARCHER

13 Q Afternoon.

14 A Good afternoon.

15 Q I understand there's some relationship with a Wayne
16 DeWitt at the Berkeley County Sheriff's Department.
17 He's the sheriff?

18 A Yes, sir.

19 Q What is the relationship with him?

20 A He's my former brother-in-law. He was married to my
21 sister.

22 Q Is he in court here today? Isn't he sitting over
23 there in the corner somewhere?

24 A Yes, he is.

25 MR. HOISINGTON: We'll stipulate he is in the

1 corner.

2 **Q** So he's listening to your testimony?

3 **THE COURT:** He's in a neutral corner.

4 **Q** And you're aware that the defendant is housed at the
5 Berkeley County Sheriff's Department?

6 **A** Yes, sir.

7 **Q** And you have a close relationship with him?

8 **A** Yes, sir.

9 **Q** You have a close relationship. How about Brian
10 DeWitt. Do you know who he is?

11 **A** Yes, sir, it's his -- I think it's Mr. DeWitt's son
12 if it's the same Brian DeWitt.

13 **Q** And you know him?

14 **A** Yes, sir.

15 **Q** And he's on the State's potential witness list. Are
16 you aware of that?

17 **A** No, sir.

18 **Q** Okay. Well, he is. Let's get into this -- there's
19 an armed robbery, you didn't say whether you were the
20 victim. There was an armed robbery on the
21 questionnaire.

22 **A** My sister was.

23 **Q** And how did you feel at that time about that?

24 **A** At that time I was very young when it happened and I
25 really don't recall a whole lot about it.

1 **Q** And the other question, I'll be very brief with you,
2 you were Type 1 at first, is that what you said, that
3 would be you would always vote for death?

4 **A** No, I'm not Type 1. I mean, I looked at both
5 scenarios.

6 **Q** But I think you testified before that then you slept
7 on it and you became a Type 3. But you were Type 1,
8 you said originally. Isn't that what you testified
9 to?

10 **A** Yes, sir.

11 **Q** And that means, if I read it correctly, in each and
12 every case, you'd vote for death?

13 **A** Yes, sir.

14 **Q** That's what it says. And then you jumped all the way
15 to Type 3?

16 **A** Yes, sir.

17 **MR. ARCHER:** I don't have any further questions.

18 **THE COURT:** Any additional questions, Mr.

19 Hoisington?

20 **MR. HOISINGTON:** No, sir.

21 **THE COURT:** Mr. DeLeon, thank you very much. I
22 ask you please to step outside just for a second. We'll
23 be with you momentarily.

24 (WHEREUPON, the juror left the courtroom.)

25 **MR. HOISINGTON:** I think he's unequivocal about

1 being open minded and being able to consider it. The
2 connections that he has with the -- being the former
3 brother-in-law of the sheriff are matters they can take up
4 in determining a strike, but it certainly wouldn't
5 disqualify him.

6 **THE COURT:** Okay.

7 **MR. ARCHER:** Your Honor, I would -- he would be
8 clearly disqualified. He's sitting across the room
9 listening to his testimony, number one. Number two, one
10 of the witnesses -- he's acquainted with one of the
11 witnesses on the State's witness list. So I think -- I
12 don't think he's qualified.

13 **THE COURT:** Well, and I appreciate it. I
14 understand the feeling. But in this particular case, I'm
15 having to really ignore what the juror has stated, that
16 there's nothing that would affect his ability to be fair
17 and impartial. And I don't think being formerly
18 connected -- certainly, we know that lawyers who represent
19 clients and are not representing them now and they have
20 indicated that it doesn't affect them may be the basis of
21 a strike. But clearly, the law has said it doesn't
22 disqualify the juror. And I think probably the case --
23 this is a case -- I don't question with you and we'll have
24 no problem, if there should be a strike for that in the
25 Batson motion, I would find just cause for it. But I

1 can't as a matter of cause remove this juror. Thank you,
2 Mr. Archer. But I appreciate fully what you have said,
3 sir.

4 **MR. ARCHER:** Thank you.

5 **THE COURT:** Thank you, sir. But I am going to
6 further query this juror about that relationship for the
7 record.

8 (WHEREUPON, the juror entered the courtroom.)

9 **THE COURT:** Thank you, Mr. DeLeon. I want to
10 ask you a couple of questions.

11 EXAMINATION

12 **BY THE COURT**

13 **Q** I understand your relationship with the sheriff, our
14 sheriff. Would that influence in any way your
15 decision in this matter?

16 **A** Absolutely not.

17 **Q** You could fairly and impartially consider the
18 evidence and return a verdict if you found it
19 appropriate against what the State's position would
20 be?

21 **A** Yes, sir.

22 **Q** And likewise, you could return a verdict that would
23 support their position?

24 **A** Yes, sir.

25 **Q** But it would just depend on what you were convinced

1 the evidence led you to do?

2 **A** Yes, sir.

3 **THE COURT:** All right. I find that this juror
4 is qualified.

5 You are in the pool. From that pool,
6 Mr. DeLeon, we will select the trial jury. That process
7 will occur on Thursday morning starting at 9:30. I would
8 ask that you please report at that time. Ms. Brown has
9 been kind enough to prepare some instructions and she'll
10 hand you those. If you'll just follow those instructions,
11 it tells you what you need to do when you report about
12 what to bring with you. Please understand that it's very
13 important that you not talk with anyone about this case or
14 permit anyone to talk with you about it. And you're not
15 to review any news accounts or news programs about it,
16 watch any TV programs about it.

17 **THE POTENTIAL JUROR:** Yes, sir.

18 **THE COURT:** See you on Thursday morning. Have a
19 good day, sir. You're free to leave through this door in
20 the front.

21 **THE POTENTIAL JUROR:** Thank you.

22 **THE COURT:** Let's take about 10 minutes -- five
23 minutes maybe to stretch a second.

24 (WHEREUPON, a short break was taken.)

25 **THE COURT:** Defense ready to proceed? Mr. Sapp

1 is present. Mr. Archer, are you ready to proceed?

2 **MR. ARCHER:** Yes, sir.

3 **THE COURT:** State's ready to proceed?

4 **MR. HOISINGTON:** Yes, sir.

5 **THE COURT:** Let's bring in the next panel
6 starting with Mr. Mitchell.

7 (WHEREUPON, Clarence Mitchell, a black male,
8 entered the courtroom.)

9 EXAMINATION

10 **BY THE COURT**

11 **Q** Hello, Mr. Mitchell.

12 **A** Hello.

13 **Q** How are you, sir?

14 **A** I'm fine, sir. Thanks.

15 **Q** Thank you for being here and being prompt. We're
16 continuing the process that we started yesterday and
17 we're going to continue to ask you some questions
18 today. And those questions are very much like the
19 questions that you heard yesterday. You probably
20 determined very quickly there are no correct
21 responses or right or wrong answers to any of these
22 questions. These are questions that are really
23 intended to help you and I and the others determine
24 whether you could be a fair and impartial juror in
25 this case. Do you understand that?

1 **A** Yes, sir.

2 **Q** Before I ask you anymore, do you understand that you
3 are still under oath in this matter?

4 **A** Yes, sir.

5 **Q** You were given a sheet of paper that describes three
6 types of jurors. Which one of those types most
7 accurately describes you?

8 **A** Type 3.

9 **Q** Type 3. And that means that depending on the facts
10 and circumstances of a case, if someone's convicted
11 of murder, you could vote to impose a life
12 imprisonment without possibility of parole or if the
13 circumstances warranted, a death sentence. Is that
14 true?

15 **A** That's true.

16 **Q** Through the process yesterday, you either indicated
17 by your responses or that you didn't feel it
18 necessary to respond, therefore, your lack of
19 response, that there was nothing about this case that
20 you've heard thus far that would cause you any
21 problem in fairly and objectively, impartially
22 applying your common sense, your sense of logic and
23 reason. Is that true?

24 **A** That's true.

25 **Q** You have an open mind as you sit here today about

1 this matter?

2 **A** Yes, sir.

3 **Q** You have not concluded anything or any issue, is that
4 true?

5 **A** That's true.

6 **Q** You understand that one of the important aspects of a
7 juror is a judge of the facts, because as you know,
8 the jury has the sole responsibility of determining
9 the true facts of a dispute. You understand that?

10 **A** Yes, sir.

11 **Q** I don't have anything to do with that and you don't
12 have anything to do with the legal aspect of this
13 proceeding. Do you understand that?

14 **A** Yes.

15 **Q** If you were sitting on the jury --

16 **A** Yes, sir.

17 **Q** -- would you have any problem observing that
18 distinction or separation, if you will, in our
19 system?

20 **A** No, sir.

21 **Q** Okay. One important aspect is that open mind that
22 you described. And that is that that open mind has
23 to be maintained at all times until the Court gives
24 the jury the specific instruction to begin his or her
25 deliberations in a particular case. You understand

1 that?

2 **A** Yes, sir.

3 **Q** And, of course, at that time it would be your
4 responsibility to apply that common sense and logic
5 fairly and impartially and make those decisions that
6 the Court asks you to address and decide those
7 issues. Is that your understanding as well?

8 **A** Yes, it is.

9 **Q** Okay. Could you and would you honor that commitment
10 to the State and to Mr. Sapp and keep that open mind
11 until an instruction was given to begin your
12 deliberation?

13 **A** Yes, sir.

14 **Q** You understand that persons who are accused of
15 criminal offenses, as Mr. Sapp is today, are never
16 required to prove anything. You understand that?

17 **A** Yes, I do.

18 **Q** They do not have to prove their innocence. They do
19 not have to explain anything. They don't have to
20 answer to anything at all. Do you understand?

21 **A** Yes.

22 **Q** Because the burden of proof is upon the State, and
23 persons who are accused of offenses are presumed
24 innocent until and unless the State proves them
25 guilty beyond a reasonable doubt. Do you understand?

1 **A** Yes, sir, I do.

2 **Q** And you would honor that principle of law as well.

3 Is that true?

4 **A** Yes, sir.

5 **Q** If you were selected in this proceeding, there may be
6 two phases to this trial. One, the first phase, we
7 would deal with the charges that have been made and
8 would hear evidence concerning those charges. And,
9 of course, the burden would be on the State to prove
10 that beyond a reasonable doubt. You understand that?

11 **A** Yes, I do.

12 **Q** At the conclusion of that first phase, the jury would
13 be asked to deliberate and consider the evidence to
14 make a determination as to whether or not the State
15 had met its burden of proof and established the
16 elements of each offense. And therefore, a verdict
17 of guilty would be rendered on that particular
18 offense. Is that your understanding as well?

19 **A** Yes, sir, it is.

20 **Q** If in that process you, in considering the
21 evidence -- and the evidence we know consists of
22 testimony of witnesses and exhibits and nothing else,
23 you agree with that?

24 **A** Yes.

25 **Q** If, in considering that evidence, you should reach a

1 conclusion personally that the State had not
2 convinced you beyond a reasonable doubt of a
3 particular element of an offense, would you as a
4 juror have any hesitancy of returning a verdict of
5 not guilty for that offense?

6 **A** No, sir.

7 **Q** Because the State would not have met its burden; is
8 that correct?

9 **A** Yes.

10 **Q** And, of course, if they have established all of the
11 elements, you would, likewise, have no hesitancy in
12 returning a verdict of guilty; is that true?

13 **A** Yes.

14 **Q** Since the jury must make its determination based on
15 the evidence and that is what the jury would hear in
16 this courtroom, part of this process in this trial
17 will involve the jury being sequestered. Do you
18 understand?

19 **A** Yes, sir.

20 **Q** That sequestration could last, Mr. Mitchell, up to 10
21 days. Would that in any way affect your ability to
22 be fair and impartial as a juror in this case?

23 **A** No, sir.

24 **Q** I know it might not be the most convenient thing, but
25 you would -- it would not interfere with your

1 analysis of the facts or your application of the
2 charge of the law to those facts once you determined
3 those facts to be whatever facts you determine to be
4 true. Is that my understanding?

5 **A** Yes, sir.

6 **Q** If you were to find and -- you and the jury were to
7 conclude the State met its burden of proof as to the
8 offense of murder, then we would have a second phase
9 of this proceeding. Do you understand?

10 **A** Yes, sir, I do.

11 **Q** And it would be at that time you would hear
12 additional evidence concerning the appropriate
13 penalty. And that evidence may include circumstances
14 of aggravation or aggravating circumstances and
15 mitigating circumstances. I would, of course, give
16 you an instruction on what those are. But those are
17 clearly defined by our legislature by statute. And I
18 would instruct you on those particular issues. Would
19 you be able to consider that charge on that law as
20 well as all other legal aspects of this particular
21 case?

22 **A** Yes, sir.

23 **Q** Would you listen to the charge, accept the law as I
24 gave it to you and apply that law fairly and
25 impartially to the facts that you ultimately

1 determine?

2 **A** Yes, sir.

3 **Q** In the charge portion and as part of that separation
4 we've discussed, if you should hear a principle of
5 law with which you may have a difference of opinion
6 or you feel it should be changed, could you set aside
7 that feeling and take the law as I gave it to you and
8 apply it fairly and impartially with all other
9 principles of law?

10 **A** Yes, sir.

11 **Q** Because you would be making that commitment that you
12 would have to take the law as I gave it to you. Do
13 you understand that?

14 **A** Yes, I do.

15 **Q** If -- in the penalty phase in considering the
16 evidence and after determining what you find to be
17 most credible and believable, considering that
18 evidence, including aggravating circumstances and
19 mitigating circumstances, taking the law and applying
20 it, if you felt that the appropriate sentence was
21 life imprisonment, could you return a verdict of life
22 imprisonment without the possibility of parole?

23 **A** Yes, sir, I could.

24 **Q** On the other hand, considering the evidence and all
25 the facts and circumstances established, including

1 mitigating circumstances and aggravating
2 circumstances, could you return a -- and applying the
3 law, could you return a verdict of death if you felt
4 that was the most appropriate punishment?

5 **A** Yes, sir, I could.

6 **Q** It will just depend on the given facts and
7 circumstances that had been established by the
8 evidence, is that true?

9 **A** Yes, sir, it is.

10 **Q** And you couldn't and wouldn't make a decision on that
11 until you had heard the entire case and the law, is
12 that true?

13 **A** Yes, sir.

14 **Q** You understand if you were on the jury and the jury
15 concluded that the death sentence was the most
16 appropriate punishment, you would be asked and
17 required to sign a form indicating that. Is that
18 your understanding?

19 **A** Yes, sir.

20 **Q** Would you have any problem performing that function
21 as a juror?

22 **A** No, sir.

23 **THE COURT:** Thank you so much, Mr. Mitchell, for
24 your responses. Please answer any questions that the
25 attorneys may have for you.

1 **MR. JENNINGS:** Thank you, Your Honor.

2 EXAMINATION

3 **BY MR. JENNINGS**

4 **Q** Good afternoon, Mr. Mitchell.

5 **A** Good afternoon.

6 **Q** My name's Blair Jennings. I work with the
7 solicitor's office. I wanted to ask you a couple of
8 questions briefly. Do you hold any moral beliefs
9 regarding the death penalty that would prevent you
10 from returning a death sentence if appropriate?

11 **A** No, sir.

12 **Q** You believe that if the facts warranted, the death
13 penalty is an appropriate potential punishment?

14 **A** Yes, sir, it is.

15 **Q** And is there any aspect of your religion that would
16 prevent you from returning a death sentence?

17 **A** No, sir.

18 **MR. JENNINGS:** Thank you, Your Honor. That's
19 all I have.

20 **THE COURT:** Mr. Archer? .

21 EXAMINATION

22 **BY MR. ARCHER**

23 **Q** Sir, if you felt under the circumstances that the
24 proper punishment would be life without the
25 possibility of parole, would you give that kind of

1 verdict?

2 **A** Yes, sir.

3 **MR. ARCHER:** I have no further questions.

4 **THE COURT:** Thank you, sir. You may step down,
5 Mr. Mitchell. If you would step outside just for a few
6 moments, we'll be with you in just a minute, sir.

7 (WHEREUPON, the juror left the courtroom.)

8 **MR. JENNINGS:** He's qualified.

9 **MR. ARCHER:** Qualified.

10 **THE COURT:** Agreed, very qualified.

11 Ask Mr. Mitchell to step in, please.

12 (WHEREUPON, the juror entered the courtroom.)

13 **THE COURT:** Mr. Mitchell, you've been qualified
14 to serve further and be in the pool of jurors from which
15 we will select the trial jury of this case. That will
16 occur on Thursday morning beginning at 9:30. I'm going to
17 need for you to report at that time and we'll start the
18 process. Ms. Wiggins has some instructions that Ms. Brown
19 has been kind enough to prepare for you. It gives you
20 what you need to bring with you when you come because,
21 obviously, if you're selected, you'll be sequestered at
22 that time.

23 Please remember that between now and then you
24 are not allowed to talk about this case with anyone or
25 permit anyone to talk with you about this case. Please

1 continue not to watch any news programs about this case or
2 read any newspaper accounts about the case. Have a good
3 day and I look forward to seeing you Thursday morning at
4 9:30. You will just report to the courtroom, sir.

5 **THE POTENTIAL JUROR:** Yes, sir.

6 **THE COURT:** Thank you very much.

7 Mr. MacDougall.

8 (WHEREUPON, Ian S. MacDougall, a white male,
9 entered the courtroom.)

10 EXAMINATION

11 **BY THE COURT**

12 **Q** Hello, Mr. MacDougall.

13 **A** Hello.. How are you?

14 **Q** I'm well. How are you?

15 **A** I'm fine.

16 **Q** Good. Mr. MacDougall, thank you very much. We're
17 continuing that process that we started yesterday.
18 And this entire process, its purpose is to select a
19 pool of jurors from which we will pick the persons to
20 ultimately serve as the judge of the facts in this
21 case -- or judges of facts in this case. Do you
22 understand?

23 **A** Yes, sir.

24 **Q** And, of course, our design and intent is to find
25 jurors who have demonstrated by their responses to

1 our questions and by the information that you've
2 provided that you can serve in that capacity and be
3 fair and impartial in performing their duties as a
4 juror and as a judge. Do you understand that?

5 **A** Yes, sir.

6 **Q** The questions that were asked yesterday as you
7 probably determined really quickly have no correct
8 answers. There is no right or wrong answer. I
9 believe -- are you still in school?

10 **A** Yes, sir.

11 **Q** You're out for the summer, though?

12 **A** Yes, sir.

13 **Q** Okay. And the Citadel is your college?

14 **A** Yes, sir.

15 **Q** Well, this is not like the professor, so you're not
16 going to be graded on this. And you won't fail or
17 pass depending on your answers. These answers to all
18 of these questions are very important answers to you
19 because we're asking questions about how you feel.
20 And we do not -- we're not looking for nor do we
21 expect any given answer. You shouldn't feel concern
22 about your feelings about anything. You're entitled
23 to believe anything you want to believe. And I want
24 you to understand that clearly. Is that acceptable
25 with you?

1 **A** Yes, sir.

2 **Q** Please understand that my questions, the attorneys
3 questions, are not intended to invade your privacy or
4 in any way affect you or give you any concern -- any
5 cause for concern. So don't let that be of concern
6 to you. Is that agreeable?

7 **A** Yes, sir.

8 **Q** You are under oath. You understand that?

9 **A** Yes, sir.

10 **Q** Have you talked with anybody or read anything about
11 this case or watched any news programs since
12 yesterday?

13 **A** Yes, sir.

14 **Q** All right. Tell me what you know.

15 **A** Well, when I got home, my parents asked me. I told
16 them I couldn't tell them about it at first. But I
17 eventually told my dad because I love my father and
18 he's trustworthy. So I just told him what it's
19 about. And he told me not to tell anybody else,
20 which I wasn't going to do. It was just he's my
21 father and he asked me and I couldn't lie to him, so
22 I had to tell him. So I told him what it was about
23 and he said not to say another word about it to
24 anybody even after it's over.

25 **Q** Okay. Did he tell you or give you any indication of

1 how you should be or what you should be or decisions
2 you should make?

3 **A** No, sir.

4 **Q** Did you tell him anything specific about it or did
5 you just tell him the nature of what this was all
6 about?

7 **A** I just told him it was the murder case that pertained
8 to the slaying of a state trooper. I didn't tell him
9 how I felt about it or anything.

10 **Q** All right. You understand based on what I said to
11 you yesterday and the law in this state and every
12 state that Mr. Sapp is merely accused of that?

13 **A** Yes, sir.

14 **Q** You don't think that he's necessarily guilty of that
15 offense as we sit here today, do you?

16 **A** No, sir, I wasn't there, so --

17 **Q** And you didn't suggest that to your father?

18 **A** No, sir.

19 **Q** Okay. You understand that one of legal principles
20 that you will be expected to apply as a juror is that
21 persons who are accused of criminal violations are
22 presumed innocent and not required to prove or
23 disprove anything?

24 **A** Yes, sir.

25 **Q** And do you have any personal problem with that

1 principle of law?

2 **A** No, sir.

3 **Q** And the only person, the only entity that has any
4 burden of proof here is the State. Do you understand
5 that?

6 **A** Yes, sir.

7 **Q** They make the charge, the law says they have to prove
8 that. Do you have basically then an open mind about
9 this process?

10 **A** Yes, sir.

11 **Q** And about these accusations?

12 **A** Yes, sir.

13 **Q** You haven't predetermined anything?

14 **A** No, sir.

15 **Q** Of the three types of jurors, did you read that list?

16 **A** Yes, sir.

17 **Q** Which one best describes you?

18 **A** I picked Type 3.

19 **Q** You picked it or is that the type that really is you?

20 **A** Yes, sir, that's it.

21 **Q** Is that -- does that mean that you are the type juror
22 that could impose a life sentence or could impose a
23 death sentence, but it would just depend on the facts
24 and circumstances of a given case?

25 **A** Yes, sir. I personally, like, the death penalty, of

1 course, like, I just believe it depends on, like, the
2 manner in which the accused -- if he's guilty, if
3 that's actually the way that he planned on doing it,
4 like, I'm not saying he's guilty. I don't know if he
5 is guilty. I wasn't there. But I believe, like,
6 there are circumstances that have to be -- you have
7 to look at to find which manner is best.

8 Q Okay. Do you understand that if we got to that
9 portion of this proceeding, I would define for you
10 the circumstances that the State must establish to
11 exist, we call them aggravating circumstances, that
12 you would have to conclude beyond a reasonable doubt
13 they've been established before you could impose the
14 death penalty?

15 A Yes, sir.

16 Q It's only in limited circumstances, not in every
17 murder case. You understand that?

18 A Yes, sir.

19 Q And you would consider the evidence to make a
20 determination as to whether or not you were convinced
21 those circumstances were present?

22 A Yes, sir.

23 Q And had been established; is that right?

24 A Yes, sir, personally --

25 Q Yes?

1 **A** I really don't want to see another -- I wouldn't want
2 to see a person die. It would be, like -- I believe
3 personally that I could understand the family if he
4 is found guilty would like the death penalty. But
5 personally, I believe that life in prison is more
6 effective for that person than just merely giving him
7 the death penalty.

8 **Q** All right. But my question to you would be -- I
9 appreciate that answer and appreciate your candor.
10 Your preference may be life imprisonment, but you
11 could consider both of them?

12 **A** Yes, sir. Yes, sir.

13 **Q** And if the circumstances were such, you could order
14 or find the death penalty was appropriate?

15 **A** Yes, sir.

16 **Q** It would just depend, again, on the facts and
17 circumstances?

18 **A** I'm just saying, personally, I feel not the death
19 penalty is -- I believe that life in prison is a
20 better, I guess, method, but the death penalty is,
21 like, one way, I believe, that is an option. It just
22 depends on the man's motives and everything else all
23 together.

24 **Q** All right. Do you understand that the first hurdle
25 is in this case, that we wouldn't even get there,

1 because the State has the burden, first of all, of
2 proving the offense that's charged. Do you
3 understand that?

4 **A** Yes, sir.

5 **Q** And you would have to listen to all of the evidence.
6 And then when the Court told you to begin your
7 deliberations, you would have to make a decision as
8 to whether or not the State has convinced you beyond
9 a reasonable doubt as to each element of the offense.
10 Do you understand that?

11 **A** Yes, sir.

12 **Q** At this point do you feel that he is guilty of
13 anything?

14 **A** No, sir.

15 **Q** So you would look to the -- you would look at the
16 evidence when the Court told you to begin your
17 deliberations and then make a decision as to whether
18 or not you were convinced?

19 **A** Yes, sir.

20 **Q** If you were convinced beyond a reasonable doubt the
21 State's met its burden and established every element
22 of each offense, would you return a verdict of
23 guilty?

24 **A** Yes, sir.

25 **Q** Because the State would have met its burden; is that

1 correct?

2 **A** Yes, sir.

3 **Q** If, on the other hand, you were not convinced beyond
4 a reasonable doubt as to one element of an offense,
5 would you return a verdict of not guilty?

6 **A** Yes, sir.

7 **Q** Would you have any hesitancy in either one of those
8 situations?

9 **A** No, sir.

10 **Q** Of course, if you returned a verdict of guilty then
11 we would then go into the second phase of this, we
12 call it the penalty phase, where you hear additional
13 evidence as to what would be the most appropriate
14 penalty. Do you understand that?

15 **A** Yes, sir.

16 **Q** And it's at that time that you would hear evidence
17 and we would call -- some of that evidence you hear
18 could be described as aggravating circumstances or
19 mitigating circumstances. Aggravating circumstances
20 and mitigating circumstances are defined by law and
21 would be a part of the law that I would give to you
22 if you were serving on the jury. Do you understand
23 that?

24 **A** Yes, sir.

25 **Q** Would you have any problem as a juror listening to

1 the law that I gave to you, accepting that law and
2 applying that law fairly and impartially to the facts
3 that you may determine?

4 **A** No, sir.

5 **Q** Even if in this process you should hear a principle
6 of law from which you may differ and you may feel,
7 well, that law should be changed, could you and would
8 you set aside that feeling and take the law as I give
9 it to you and apply it notwithstanding your feelings?
10 In other words, would you apply the law even if you
11 didn't agree with it?

12 **A** Yes, sir.

13 **Q** Okay. You understand that's a commitment that you
14 make because you are going to be the sole judges of
15 the facts and I'm going to be the sole judge of the
16 law. Do you understand that?

17 **A** Yes, sir.

18 **Q** So at the end of this process, after hearing all the
19 evidence, am I to understand from your answers that
20 after considering all the facts and circumstances,
21 including mitigating circumstances, aggravating
22 circumstances and applying the law that you could
23 return a verdict in a case where murder had been
24 established that would impose life imprisonment
25 without the possibility of parole?

- 1 **A** Yes, sir, it just depends on the circumstances.
- 2 **Q** Could you also, considering the facts and
3 circumstances, return a verdict that would impose the
4 death sentence?
- 5 **A** Yes, sir.
- 6 **Q** It will just depend on the facts and circumstances?
- 7 **A** Yes, sir.
- 8 **Q** Do you understand that if you were to find and
9 conclude that a death sentence was the appropriate
10 punishment, that you would have to sign a form
11 indicating that's your decision with all other
12 jurors?
- 13 **A** Yes, sir.
- 14 **Q** Could you perform that function?
- 15 **A** Yes, sir.
- 16 **Q** Do you understand that you're going to be sequestered
17 during the trial of this case?
- 18 **A** Yes, sir.
- 19 **Q** And that means that you may be sequestered for up to
20 10 days. Will that affect your ability in any way to
21 be a juror?
- 22 **A** No, sir.
- 23 **Q** You would be able to perform your functions as a
24 juror fairly and impartially applying your common
25 sense without being affected by sequestration?

1 **A** Yes, sir.

2 **THE COURT:** Please answer any questions the
3 solicitor may have.

4 **MR. HOISINGTON:** Thank you, Judge.

5 EXAMINATION

6 **BY MR. HOISINGTON**

7 **Q** Mr. MacDougall, is that how you pronounce it?

8 **A** Yes, sir.

9 **Q** Is that Scottish?

10 **A** Yes, sir.

11 **Q** How much thought have you given in your life to the
12 appropriateness of the death penalty?

13 **A** Personally, it's never really -- I'm not sure.

14 **Q** Not much until you got called yesterday?

15 **A** Yes, sir.

16 **Q** That's understandable. You do understand that the
17 burden that's placed on the State -- and I represent
18 the State, Mr. Jennings does also. Mr. Sapp comes in
19 here presumed innocent?

20 **A** Yes, sir.

21 **Q** And this issue of the death penalty could never even
22 arise unless the jury, if you were on it, you and the
23 rest of them, were satisfied beyond a reasonable
24 doubt as to his guilt of murder?

25 **A** Yes, sir.

1 **Q** Then it would go into a penalty phase. And only if
2 the jury determined that there were certain
3 aggravating circumstances could you then even
4 consider the death penalty. Do you understand that?

5 **A** Yes, sir.

6 **Q** By aggravating circumstances, that means some
7 statutory events or facts associated with the murder
8 that the law says make it worse. As bad as murder
9 is, the law says some types are worse than others, do
10 you understand that?

11 **A** Yes, sir.

12 **Q** At that point, only then, could you even consider the
13 death penalty. And, of course, you would be given as
14 much information as you are legally entitled to about
15 all the facts of the case, the good and the bad, the
16 mitigation, which would be the things that may
17 explain what happened. If after weighing all that,
18 notwithstanding your feeling on the death penalty,
19 would the feelings you have on the death penalty keep
20 you from being able to consider it as a possible
21 punishment and imposing it if you thought it was
22 right?

23 **A** No, sir.

24 **Q** You would be able to do it if you had to?

25 **A** Yes, sir.

1 Q Tough choice, right?

2 A Yes, sir.

3 Q But you're in the business of making tough choices?

4 A Yes, sir.

5 MR. HOISINGTON: Thank you, sir.

6 THE COURT: Mr. Archer?

7 MR. ARCHER: I'm sorry, I have no questions.

8 THE COURT: Thank you, Mr. MacDougall. You may
9 step down, sir. Just for a moment, if you will step out,
10 we'll be with you in a second.

11 THE POTENTIAL JUROR: Yes, sir. Thank you.

12 THE COURT: Yes, sir. Thank you.

13 (WHEREUPON, the juror left the courtroom.)

14 MR. HOISINGTON: He's qualified.

15 MR. ARCHER: Qualified.

16 THE COURT: I agree. Bring him in, please.

17 (WHEREUPON, the juror entered the courtroom.)

18 THE COURT: Mr. MacDougall, thank you very much,
19 sir. We have determined you are qualified to serve in the
20 pool from which we will select the trial jury in this
21 case. That process will take place on Thursday morning at
22 9:30. I need for you to be back here on Thursday morning
23 at 9:30. Ms. Wiggins has some information that Ms. Brown
24 has prepared for you that will assist you in preparing
25 when you come. Because obviously, if you are selected,

1 you will be sequestered so you'll need to bring with you
2 as that information tells you -- it tells you specifically
3 what you need to do. Please understand that while you are
4 out, do not discuss this case with anyone. I appreciate
5 what your father's said. Tell him now that the judge said
6 his advice is to be followed by you and that includes him.
7 And tell him that he can come talk to me, but you can't
8 talk with him anymore about this --

9 **THE POTENTIAL JUROR:** Yes, sir.

10 **THE COURT:** -- okay? And/or your mother or
11 anyone else.

12 **THE POTENTIAL JUROR:** Yes, sir.

13 **THE COURT:** And tell them that's part of the
14 commitment that you made. You can talk about something
15 else, but don't talk anymore about this case. And you
16 haven't done anything and he told you not to and that's
17 good advice. Do not allow anybody to talk about it in
18 your presence. Don't read any articles about it and don't
19 watch any news programs about it. And I will see you
20 Thursday morning, Mr. MacDougall.

21 **THE POTENTIAL JUROR:** Yes, sir. Thank you.

22 **MR. ARCHER:** Can I just approach for a moment?

23 **THE COURT:** Sure. Y'all approach for a minute
24 before we start this next one.

25 (WHEREUPON, a bench conference was held.)

1 **THE COURT:** Ask Ms. Kitts to come in.
2 (WHEREUPON, Cheryl T. Kitts, a white female,
3 entered the courtroom.)

4 EXAMINATION

5 **BY THE COURT**

6 **Q** Hello, Ms. Kitts.

7 **A** Hi there.

8 **Q** How are you?

9 **A** Just fine.

10 **Q** Good. Ms. Kitts, yesterday we started this process
11 and there was some questions asked. And my
12 observations, especially the one that dealt with what
13 prior knowledge you had, at least apparent to me, it
14 was an emotional time for you.

15 **A** I was scared standing up in front of all these
16 people.

17 **Q** Okay. That's what scared you?

18 **A** Yes. I do not get up in front of crowds.

19 **Q** You were not crying at one point?

20 **A** I figured you would convey it as that and I
21 thought -- but no, I was extremely nervous being up
22 here in front of all these people.

23 **Q** I understand. And I am terribly sorry that you had
24 to sit up there as well. But I just want to be sure
25 because it came at a time when you were responding to

1 a question that's very, very critical in this case.

2 **A** Right.

3 **Q** Your husband is Dwayne Kitts?

4 **A** Right.

5 **Q** He's involved with the youth program and has been for
6 quite some time?

7 **A** Yes.

8 **Q** And in this particular situation, I believe
9 Mr. Johnson was also involved with that program, is
10 that true?

11 **A** Yes.

12 **Q** And were you connected with the family in any way?

13 **A** No, I didn't even know him. And I'll have to agree
14 with someone else who stood up, the Ken Johnson I
15 know is employed at Santee Cooper and goes to my
16 church.

17 **Q** So it's not even the same Ken Johnson?

18 **A** No, no.

19 **Q** You have not had any conversations with your
20 husband --

21 **A** No, he just --

22 **Q** -- concerning this issue?

23 **A** When it happened, we were on vacation and he said,
24 hey, he coached in my program.

25 **Q** And that was the extent of it?

1 **A** Yeah.

2 **Q** You understand and please understand that my
3 questions here are not intended to invade your
4 privacy or certainly not intended to cause you any
5 embarrassment or concern. Because frankly, your
6 answers, none of which today, tomorrow or the next
7 day is there any correct response. The correct
8 response is the truthful response. And it doesn't
9 matter what it is. Because it's your opinion and
10 you're entitled to that. And I want you to feel
11 comfortable with that. And don't -- the fact that
12 we're asking you questions and I may ask you some
13 questions, the attorneys may ask you some questions
14 is in no way to try to indicate to you that you
15 should feel differently or that your response should
16 be one way or the other. Is that agreeable with you?

17 **A** That's agreeable.

18 **Q** Okay. Please understand, also, that in this process,
19 I'm not here to try to suggest to you how you are to
20 resolve any factual issue because as I mentioned
21 yesterday, that's the jury's sole responsibility. I
22 don't have anything to do with that. You understand?

23 **A** I understand.

24 **Q** Okay. You understand that you're still under oath?

25 **A** Yes, sir.

1 Q Okay. Have you talked with anyone about this case --

2 A No.

3 Q -- since yesterday?

4 A When we got dismissed, I did go out to the car and my
5 husband asked me if I didn't know any of the lawyers
6 or the judge. And we just batted that back and forth
7 and that was it. But as far as the rest --

8 Q Didn't talk about the specifics of the case?

9 A No, no.

10 Q Okay. Have you read any newspaper accounts or
11 watched any news programs about the case?

12 A Not recently.

13 Q Since yesterday?

14 A No, not since yesterday.

15 Q Not since the Court instructed you not to do that?

16 A Correct.

17 Q Okay. Of the three types of jurors on that sheet
18 that I gave you --

19 A Yes, sir.

20 Q -- which one do you think best, most accurately
21 describes you as a person?

22 A No. 3.

23 Q Am I to understand, Ms. Kitts, that that means that
24 there are some cases in which you could impose life
25 imprisonment without the possibility of parole, and

1 there are some cases that you could impose the depth
2 sentence, but it would just depend on the facts and
3 circumstances of a given case?

4 **A** Yes, sir.

5 **Q** And as you sit here today with this particular case,
6 you don't have any pre -- you haven't made any
7 prejudgments or predeterminations as to what's
8 appropriate here?

9 **A** No, sir.

10 **Q** Because as I indicated to you yesterday, and I
11 assume -- you didn't indicate any problem with this
12 principle of law and I assume that you don't have a
13 problem with the principle of law that says that
14 basically that persons who are accused of committing
15 criminal offenses are innocent until they're proven
16 guilty by the charging party. Is that your
17 understanding?

18 **A** Yes, sir.

19 **Q** Do you have any problem with that principle of law?

20 **A** No, sir.

21 **Q** So as we sit here today, you don't think Mr. Sapp is
22 guilty of anything?

23 **A** Well, he hasn't been proven guilty. So, I mean --

24 **Q** Well, I appreciate your response. But that wasn't my
25 question. My question is, do you think Mr. Sapp is

1 guilty of anything?

2 **A** Okay, I want to be perfectly honest --

3 **Q** And let me say this, in connection with those charges
4 that I read to you yesterday.

5 **A** I believe -- I mean, if I -- okay. As a juror, I
6 have to erase everything and start -- I know what the
7 papers said, but I have no facts to base that on. So
8 I guess at that point you say not guilty of those
9 charges because I don't know.

10 **Q** Okay.

11 **A** I don't trust the media.

12 **Q** Well, that's fine. That's why we have a proceeding
13 in this courtroom. We don't try people in the media,
14 thank the Lord. But my question is simply this, do
15 you understand that as a juror you will take an oath
16 and you will say to the State of South Carolina and
17 you will say to Mr. Sapp, Mr. Sapp and the State of
18 South Carolina, I do not have any opinion about this
19 case whatsoever; that I have a complete open mind,
20 completely as to all issues and I am here to follow
21 the judge's instructions on the law and perform my
22 duties as a juror. Can you make that commitment to
23 the State and to Mr. Sapp?

24 **A** Well, the question that runs is are you asking me --
25 I don't know. How do I phrase this?

1 Q Remember, there's no correct response.

2 A Right. But I don't know where this puts me. I mean,
3 I know it's very specific that he pulled the trigger,
4 but I don't know that I would classify it as murder.
5 But that's not asking --

6 Q I'm not asking -- I'm not asking you anything -- and
7 let me -- you said something that we all -- it's
8 human nature. We all sometimes want to think where
9 is this going to go and what's the end result going
10 to be? And this is a time -- this is one of the few
11 times in your life that you really don't have to
12 worry about that. Because you just have to tell me
13 what you feel, what your answer is to the question,
14 not how it looks, what it may be. My question is,
15 can you make the commitment that you have a
16 completely -- you're completely open on all these
17 issues, you haven't determined anything and be
18 truthful in that commitment?

19 A I -- well, I guess I would say no, because I'm not
20 sure. I don't want to be untruthful at all.

21 Q Okay. What -- do you feel that he's probably guilty?

22 A I just feel like he pulled the trigger. But, you
23 know, to me, there's a lot of issues that have to be
24 proven as to why.

25 Q So you feel that -- at this point, you can't say what

1 level it is, but you feel that he's probably the
2 person that pulled the trigger?

3 **A** Yes.

4 **Q** Okay. And you come here with that predetermination?

5 **A** Okay.

6 **Q** Is that correct?

7 **A** I mean, that's what's in my brain.

8 **Q** As I said, Ms. Kitts, there's no right or wrong
9 answers.

10 **A** So I guess I would have to say yes.

11 **Q** Okay. Could you set that aside and be open?

12 **A** Yes, I could.

13 **Q** Would you consider the evidence at the appropriate
14 time and decide whether or not you believe the State
15 has met its burden of proof --

16 **A** Yes.

17 **Q** -- beyond a reasonable doubt?

18 **A** Yes.

19 **Q** And my understanding is that based on the facts and
20 circumstances that the State would have to establish,
21 you could impose a life sentence or a death sentence
22 based on those particular facts and circumstances?

23 **A** Yes, sir.

24 **THE COURT:** Solicitor?

25 **MR. JENNINGS:** Thank you, Your Honor.

EXAMINATION

1
2 **BY MR. JENNINGS**

3 **Q** Good afternoon, Ms. Kitts.

4 **A** Good afternoon.

5 **Q** We were introduced yesterday. My name's Blair
6 Jennings. I'm the Deputy Solicitor in Berkeley
7 County. And myself, along with Solicitor Hoisington,
8 is trying this case prosecuting Mr. Sapp. I want to
9 talk to you first about really what is the most
10 critical tenant of criminal law in our country and
11 that's the presumption of innocence. Do you
12 understand that presumption of innocence?

13 **A** Yes, sir.

14 **Q** And that means that as Mr. Sapp sits with his
15 attorney, he is presumed innocent of all these
16 charges.

17 **A** Right.

18 **Q** The burden rests completely on myself and
19 Mr. Hoisington representing Berkeley County to prove
20 him guilty beyond a reasonable doubt. Do you
21 understand that?

22 **A** Yes, sir.

23 **Q** And that Mr. Sapp does not have to produce any
24 witnesses, does not have to present any testimony,
25 does not have to testify himself. You understand

1 that?

2 **A** Yes.

3 **Q** And that if the State fails to provide you with
4 sufficient evidence to prove him guilty beyond a
5 reasonable doubt, that it would be your obligation as
6 a juror to find him not guilty of all these charges?

7 **A** Yes, sir.

8 **Q** Do you feel comfortable that you could honor that
9 presumption of innocence and hold the State to that
10 standard?

11 **A** Yes, I do.

12 **Q** And you could require us to prove Mr. Sapp guilty
13 beyond a reasonable doubt?

14 **A** Yes, I do.

15 **Q** And if we failed to do that, you could vote to find
16 him not guilty?

17 **A** Yes, sir.

18 **Q** And likewise, if we presented evidence which proved
19 to you beyond a reasonable doubt that he was, in
20 fact, guilty, you could return a verdict of guilty?

21 **A** Yes, sir.

22 **Q** Do you have any hesitation that you could provide
23 Mr. Sapp and the State of South Carolina with a fair
24 trial in this matter?

25 **A** No, I don't.

1 Q And I believe you characterized yourself as a Type 3
2 juror; that would be the type of juror who would
3 listen to all the facts and circumstances of a case,
4 and if appropriate, could return a sentence of life
5 in prison without parole.

6 A Yes, sir.

7 Q And likewise, if the facts and circumstances
8 warranted it, you could return a sentence of death.

9 A Yes, sir.

10 Q And you are comfortable with that fact that if the
11 facts warrant it, you could return a sentence of
12 death?

13 A Yes, sir.

14 MR. JENNINGS: Thank you, Your Honor. That's
15 all I have.

16 THE COURT: Questions, Mr. Archer?

17 EXAMINATION

18 BY MR. ARCHER

19 Q Good afternoon.

20 A Hi.

21 Q Ma'am, you testified that you don't trust the media;
22 is that correct?

23 A Yes, sir, I did.

24 Q Okay. And you also testified that he pulled the
25 trigger; is that correct?

1 **A** Yes, sir.

2 **Q** Where did you get that from? The media, obviously?

3 **A** That's why I say it's in my brain. It's not that I
4 really believe it, but it's a fact that has been
5 established through media.

6 **Q** Through the media?

7 **A** Uh-huh.

8 **Q** So you're coming into this trial believing that he
9 pulled the trigger, which may not be true. He may
10 not have pulled the trigger.

11 **A** I don't know that I believe it. I know that's what
12 has been put in my mind by my reading.

13 **Q** Right. So you have testified that you're going to
14 come into this trial believing he pulled the trigger.

15 **MR. HOISINGTON:** I think that's a misstatement
16 of what she said.

17 **MR. ARCHER:** She said he pulled the trigger.

18 **THE COURT:** I think it's a fair question. I'll
19 allow it. I overrule it.

20 **Q** Isn't that true, you said he pulled the trigger. We
21 can read back the notes.

22 **A** I did say that. I mean, according to the media.

23 **Q** Okay. I also noticed that every time we talk about
24 the presumption of innocence and whether you think
25 he's guilty, you hesitated on every single time.

1 Every single time that was asked, you hesitated.

2 Even though the law says a man is presumed innocent,
3 you hesitated. Is that true?

4 **A** I just want to be honest about all my answers. And
5 if I hesitated, I was either thinking, you know, how
6 do I answer this, did I hear the question right or --
7 and I'm just flat out nervous up here.

8 **Q** All right. Let me ask you one other quick question.
9 I didn't quite catch, was it your children were
10 coached by Trooper Johnson or your husband?

11 **A** My husband is the Recreation Director for the Town of
12 Moncks Corner and he assigns the positions of
13 coaching. And he coached in the recreation
14 department.

15 **Q** So he coached the police officer's children, is that
16 what you're saying?

17 **A** Not my husband, no, sir. He is over all the coaches
18 in the Town of Moncks Corner.

19 **Q** And Trooper Johnson was a coach?

20 **A** Yes.

21 **Q** Okay.

22 **A** Yes.

23 **Q** I didn't quite understand that. And how do you feel
24 about that? Do you feel some sympathy there for the
25 family of Trooper Johnson?

1 **A** Well, I'm a mother and, of course, I feel sympathy.
2 But as far as the relationship, I did not know him.
3 And all my husband said was -- when it happened was,
4 He coached in our program.

5 **Q** Let me ask you this, you said you don't trust the
6 media.

7 **A** Yes, sir.

8 **Q** Do you trust the solicitor's office --

9 **MR. JENNINGS:** Objection, Your Honor.

10 **THE COURT:** Sustained.

11 **MR. ARCHER:** I have no further questions.

12 **THE COURT:** Any follow up?

13 **MR. JENNINGS:** No, sir.

14 **THE COURT:** Ms. Kitts, thank you. If you will
15 step down, we'll be with you in just a moment.

16 (WHEREUPON, the juror left the courtroom.)

17 **THE COURT:** What says the State?

18 **MR. JENNINGS:** Your Honor, I think she's
19 qualified. Although she had whatever conception she had
20 when she came in, she clearly said she could set those
21 aside and would honor the presumption of innocence and
22 would hold us to the burden of proving him guilty beyond a
23 reasonable doubt before she made a decision as to his
24 guilt or innocence.

25 **THE COURT:** Well, what says the defendant?

1 **MR. ARCHER:** Well, Your Honor, she clearly said
2 he pulled the trigger and we haven't even started the
3 trial yet, so that's obvious she's not qualified.

4 **THE COURT:** The Court is concerned about the one
5 as you said. It's a fundamental principle. And while
6 there's more to it than just pulling the trigger, it's one
7 part that's already -- and I appreciate her candor, she
8 said, It's in my mind that he did that. And she said
9 that. I'm also deeply concerned and I appreciate her
10 explanation and I understand that. But I'm deeply
11 concerned with her reaction. And then to be picked up by
12 her husband and knowing full well what -- just living in
13 this community, the relationship of Mr. Kitts with his
14 coaches, I just think that the problems are so great here
15 that we have other jurors that are qualified. While she
16 may be able to technically meet it, I don't think she can.
17 I think she's predetermined it and I'm going to excuse her
18 from trying this case.

19 (WHEREUPON, the juror entered the courtroom.)

20 **THE COURT:** Ms. Kitts, thank you very much for
21 your candor. Thank you very much for the seriousness in
22 which you've approached this entire matter and your
23 responses to our questions. You obviously gave a great
24 deal of thought to them and I appreciate that. I am going
25 to excuse you from further participation in this matter.

1 You don't have to come back. I would ask you as a favor
2 to the Court, I can't require you to do this, but that you
3 not talk about this case until it's been concluded. After
4 that, you're free to talk about it if you wish. Have a
5 good day. Thank you so much.

6 **THE POTENTIAL JUROR:** Thank you.

7 **THE COURT:** Ms. White.

8 (WHEREUPON, Cynthia D. White, a black female,
9 entered the courtroom.)

10 EXAMINATION

11 **BY THE COURT**

12 **Q** Hello, Ms. White.

13 **A** Hi.

14 **Q** How are you this afternoon?

15 **A** I'm fine.

16 **Q** Good. Ms. White, we're going to continue the process
17 that we started yesterday. And you probably have
18 determined quickly, and I hope this is how you feel,
19 that the questions that were asked yesterday were
20 really questions to which there truly is no right or
21 wrong answer. Do you agree with that?

22 **A** Uh-huh.

23 **Q** That they are questions that really are designed to
24 help you and to help us make a determination as to
25 whether or not you could be a member of a pool of

1 jurors from which we could select the trial jury in
2 this case. And that pool being jurors who could take
3 and apply their common sense fairly and impartially
4 to the facts to an analysis -- in the analysis of the
5 facts of a case and decide what they believe to be
6 the truth. Do you agree with that?

7 **A** I agree.

8 **Q** Okay. You understand that you're still under oath in
9 this matter?

10 **A** Yes.

11 **Q** Have you talked with anyone about this case or
12 allowed anybody to talk to you about this case since
13 yesterday?

14 **A** No.

15 **Q** Have you reviewed any news accounts of this or read
16 any newspaper articles about it?

17 **A** No.

18 **Q** You had an opportunity to review that sheet that
19 contained the three types of jurors?

20 **A** Yes, I did.

21 **Q** Which type most accurately describes you?

22 **A** The third one.

23 **Q** The third one?

24 **A** Yes.

25 **Q** And that's the type that said there are

1 circumstances -- if facts and circumstances are shown
2 to exist in a murder situation, you could impose life
3 imprisonment without the possibility of parole, and
4 there may be facts and circumstances shown to exist
5 and you are convinced beyond a reasonable doubt
6 exist, you could impose a death penalty?

7 **A** Right.

8 **Q** It just depends on the particular case and the facts
9 and circumstances?

10 **A** Right, the evidence.

11 **Q** And you don't have any predetermination of which you
12 feel to be the most appropriate sentence, do you?

13 **A** No.

14 **Q** It would just depend on the facts of each case?

15 **A** Right.

16 **Q** You understand that we're going to ask you some
17 questions today and continue that same type of
18 questioning. Please understand that none of these
19 questions have any expected answer. Don't feel in
20 any way uneasy about any response because the
21 questions are asking your feelings. And quite
22 honestly, Ms. White, you're entitled to your feelings
23 without any concern from me or anyone else in this
24 courtroom. That's your feelings and you don't have
25 to feel ashamed of those, okay?

1 **A** Okay.

2 **Q** Is that fair?

3 **A** That's fair.

4 **Q** Don't think we're trying to invade your privacy in
5 any way. We're not. Again, it's to help us make
6 that ultimate determination.

7 **A** Okay.

8 **Q** You understand that based on your responses thus far,
9 you have indicated to the State and to Mr. Sapp that
10 you are that type of juror; that there's nothing
11 about this case that would cause you any problem of
12 being fair and impartial and applying your common
13 sense, your sense of logic and reason; is that true?

14 **A** That's true.

15 **Q** You've also said by your response that you have a
16 complete open mind about this matter?

17 **A** True.

18 **Q** You understand that that really is probably one of
19 the most essential qualities of a juror, that open
20 mind?

21 **A** Uh-huh.

22 **Q** As being a judge of the facts of a case and, of
23 course, you know that would be the jury's sole
24 responsibility?

25 **A** Right.

1 Q I don't have anything to do with that.

2 A Right.

3 Q And please remember, that nothing that I'm saying now
4 or that I may say during the trial of this case
5 should be considered by you in any way to be an
6 indication of how you're to resolve the facts.
7 That's your -- if you're on that jury, that's your
8 job, okay?

9 A Uh-huh, I understand.

10 Q You would take an oath when you started this case and
11 make a commitment to the State and a commitment to
12 Mr. Sapp that you would maintain that open mind
13 throughout the trial and not change that in any way
14 until the Court gave you an instruction to begin your
15 deliberation on a particular issue.

16 A I would.

17 Q And you would do that?

18 A I would.

19 Q You would honor that commitment?

20 A Yes, I would.

21 Q Of course, once we got to that point then you would
22 be expected to consider the evidence. And we know
23 the evidence consists of the testimony of witnesses
24 and exhibits and nothing else. You agree with that?

25 A I agree.

1 Q Nothing, of course, that occurs outside of this
2 courtroom, nothing that you hear outside of this
3 courtroom should ever be involved in that process.
4 Would you agree with that?

5 A I agree.

6 Q Okay. Obviously, at the time you would begin your
7 deliberations, just before you start that process,
8 the last thing that will occur is I will give you the
9 instruction on the law. And, of course, that's my
10 responsibility. You understand that?

11 A Yes.

12 Q Would you if you were on a jury be able to listen to
13 the law, would you accept that law and apply that law
14 fairly and impartially to the facts that you would
15 ultimately determine?

16 A I would.

17 Q Could you do that and would you do that even if you
18 heard a principle of law with which you may differ?
19 In other words, you have a right to hear some law and
20 say, I don't agree with that law or I think that law
21 ought to be changed. But could you for the purpose
22 of this proceeding set aside that feeling and apply
23 that law fairly and impartially?

24 A I would because it's the law.

25 Q Because it's the law. And the oath that you take

1 says that you're going to take that law as it exists
2 and apply it fairly and impartially --

3 **A** Right.

4 **Q** -- notwithstanding your personal feelings?

5 **A** Yes.

6 **Q** And you would do that?

7 **A** I would do that.

8 **Q** Obviously, in the first stage of this proceeding, the
9 first part of the trial will deal with the charges
10 that have been brought against Mr. Sapp. And, of
11 course, as I told you yesterday, that's what he's
12 accused of doing. You understand that?

13 **A** Yes.

14 **Q** You understand that Mr. Sapp, as any person in this
15 country charged with a criminal offense, is innocent
16 of those charges until and unless the State or the
17 charging party proves their guilt beyond a reasonable
18 doubt?

19 **A** Yes.

20 **Q** Do you have any problem with that principle of law?

21 **A** No, I don't.

22 **Q** So at this point, you don't consider that Mr. Sapp
23 has done anything at all, do you?

24 **A** Not until I hear all the evidence and see that it --

25 **Q** Well, you wouldn't make that determination until

1 you'd heard the evidence?

2 **A** Until I have heard everything.

3 **Q** But right now, he's as innocent as you or I; is that
4 correct?

5 **A** Right, until I hear the evidence.

6 **Q** Now, when you begin your deliberations on that, that
7 phase, you know the responsibility, of course, is
8 upon the State to prove that? Mr. Sapp doesn't have
9 to prove or disprove anything. Do you agree with
10 that?

11 **A** Yes, sir.

12 **Q** The State will present evidence and you would have to
13 consider that evidence and decide for yourself
14 whether you were convinced beyond a reasonable doubt
15 that each element of each offense has been
16 established.

17 **A** Right.

18 **Q** Do you understand that?

19 **A** Yes.

20 **Q** If the State did not convince you on a particular
21 offense of every element, would you and could you
22 return a verdict of not guilty on that offense?

23 **A** I would have to question it or see other evidence or
24 look into it.

25 **Q** Well, let me just help you there. My instruction to

1 you would be that if at the conclusion when you
2 analyzed it, you reached the conclusion that as to
3 that particular element or any element that I'm not
4 convinced beyond a reasonable doubt, your duty is to
5 return a verdict of not guilty.

6 **A** Right.

7 **Q** Would you do that?

8 **A** Yes.

9 **Q** Because -- and the reason for that is the State
10 failed to convince you.

11 **A** Right.

12 **Q** Because it's their burden. You understand that?

13 **A** Right, I agree.

14 **Q** Would you follow that instruction?

15 **A** Yes.

16 **Q** On the other hand, I would further instruct you that
17 if you after considering the evidence were convinced
18 beyond a reasonable doubt as to each element then you
19 must return a verdict of guilty.

20 **A** Yes.

21 **Q** Would you follow that instruction?

22 **A** I would.

23 **Q** Would you have any hesitancy in either of those
24 cases?

25 **A** No, I wouldn't.

1 **Q** Obviously, if we -- if the State meets its burden of
2 proof on the crime of murder and established all of
3 the elements and convinces you beyond a reasonable
4 doubt and you returned a verdict of guilty, then we
5 would have a second part or a second phase of this
6 proceeding. Do you understand that?

7 **A** Yes.

8 **Q** Do you understand that during this process of the
9 trial you're going to be sequestered?

10 **A** Say what?

11 **Q** You're going to be sequestered. You're going to be
12 kept at a motel for the duration of the trial.

13 **A** Okay.

14 **Q** You'll be with other jurors. You will be taken out
15 to eat. You will all dine together. But you will be
16 kept and literally under watch and key during this
17 trial. Do you understand that?

18 **A** Yes, yes.

19 **Q** Would that -- while it may not be the most convenient
20 thing, would that in any way affect your ability to
21 be an effective and impartial juror?

22 **A** No.

23 **Q** You could set aside any inconvenience and apply your
24 common sense fairly and impartially without being
25 influenced by sequestration?

1 **A** Yes.

2 **Q** During the second phase, if we went to a second
3 phase, the penalty phase, you would hear additional
4 evidence. Do you understand?

5 **A** Okay.

6 **Q** And it's at that time that you would hear evidence
7 concerning the appropriate sentence to be imposed,
8 which the jury would have to decide. Do you
9 understand?

10 **A** Yes.

11 **Q** Some of that evidence, we call -- would be mitigating
12 circumstances. Some, we call aggravating
13 circumstances. And I'll define those terms for you
14 at the appropriate time. And -- because they are
15 well defined by our law. And would you have any
16 problem following that instruction and applying that
17 law fairly and impartially?

18 **A** No.

19 **Q** Aggravating circumstances, as the name implies, are
20 simply facts and circumstances that make -- that
21 worsen the crime of murder, that make it -- that
22 increase the enormity of the crime or the effect of
23 the crime. Do you understand that?

24 **A** Yes, uh-huh.

25 **Q** Mitigating circumstances are simply those

1 circumstances that may be considered extenuating
2 circumstances or may lessen a person's culpability or
3 responsibility for an offense. Do you understand
4 that?

5 **A** Yes, uh-huh.

6 **Q** At the appropriate time, you, in the penalty phase,
7 would then be asked to consider the evidence and
8 apply the law to the facts that you would determine
9 once considering that evidence. In doing that, in
10 considering the mitigating circumstances and
11 aggravating circumstances and applying the law, could
12 you in a certain case return a verdict for life
13 imprisonment without the possibility of parole?

14 **A** Yes.

15 **Q** Likewise, in considering -- at that stage of the
16 penalty phase, considering the facts and
17 circumstances which you conclude to have been
18 established beyond a reasonable doubt, including
19 mitigating circumstances and aggravating
20 circumstances, could you -- and applying the law,
21 could you then return a verdict of death?

22 **A** Yes.

23 **Q** It just would depend on the facts and circumstances
24 proven; is that correct?

25 **A** That's correct.

1 **Q** If you were to return a verdict of death, you
2 understand that part of your responsibilities as a
3 juror would be to actually sign a form along with the
4 other jurors indicating that that would be the
5 sentence?

6 **A** Yes, sir.

7 **Q** Could you perform that function?

8 **A** I could.

9 **THE COURT:** Thank you very much, Ms. White. I
10 would ask you to please answer any questions that any of
11 the attorneys may have of you. Thank you.

12 EXAMINATION

13 **BY MR. HOISINGTON**

14 **Q** Afternoon, Ms. White. I'm Ralph Hoisington.
15 Together, with Blair Jennings, we represent the State
16 in this matter.

17 **A** Hello.

18 **Q** I guess you could understand from this whole process
19 and when you got that form talking about the three
20 types of jurors that there's no right or wrong
21 answers to it?

22 **A** Right.

23 **Q** And that there are jurors that feel so strongly about
24 the offense of murder that they would not consider
25 anything but the death penalty if that were proven?

1 **A** Yes.

2 **Q** And on the other hand -- and, of course, that type of
3 juror would not be fair to the defense because they
4 wouldn't listen to anything or any of the mitigation
5 that may be presented in the case. Is that your
6 understanding of it?

7 **A** Yes.

8 **Q** And there's another type of juror that's just against
9 the death penalty, absolutely across the board always
10 against it.

11 **A** Uh-huh.

12 **Q** And that wouldn't be fair to the people we represent
13 and the people who care about this case either, would
14 it?

15 **A** That's true, yes.

16 **Q** But you've told us you're that type of juror that
17 wants to be open minded and wait until they hear
18 everything?

19 **A** Right.

20 **Q** Is there anything in your upbringing and your
21 background and your philosophy or religious beliefs
22 that would interfere with your being able to render a
23 verdict like this?

24 **A** My religious -- I affiliate with Jehovah's Witnesses,
25 but I'm not a baptized member. So if I were, it

1 would have been, but I'm not.

2 **Q** Well, that helps me understand it. Because I guess I
3 understood that the Jehovah's Witnesses felt they
4 could not sit in any kind of judgment.

5 **A** Right, but I'm not a baptized member, so I won't --

6 **Q** That gives you the freedom to do your civic
7 responsibility?

8 **A** Right.

9 **Q** I appreciate that. And you don't feel like that
10 would interfere with you in any way?

11 **A** No.

12 **Q** So after you've heard all the facts and not until
13 you've heard all the facts, if we've met our burden
14 of proving him guilty beyond a reasonable doubt, you
15 could consider both types of punishment?

16 **A** Yes.

17 **Q** And come back with the one you felt was appropriate
18 in this case?

19 **A** Yes.

20 **Q** If the facts called for it and the law allowed it and
21 the death penalty was that choice and that verdict,
22 you could impose it?

23 **A** Yes.

24 **MR. HOISINGTON:** Thank you, ma'am.

25 **MR. ARCHER:** Sir, I have no questions.

1 **THE COURT:** Thank you, ma'am. Ms. White, you
2 may step down and step out for just a moment. We'll be
3 right with you.

4 (WHEREUPON, the juror left the courtroom.)

5 **THE COURT:** What says the State?

6 **MR. HOISINGTON:** I believe she's qualified.

7 **MR. ARCHER:** Qualified.

8 **THE COURT:** She is. Bring her in, please.

9 (WHEREUPON, the juror entered the courtroom.)

10 **THE COURT:** Ms. White, thank you very much. You
11 have been found to be qualified to serve -- continue to
12 serve as a member of the pool of jurors from which we will
13 select the trial jury. That will occur on Thursday
14 morning starting at 9:30. I will need for you to return
15 to this courtroom at that time. Please remember that you
16 are not to talk about this case with anyone or permit
17 anyone to talk with you about this case. Don't read any
18 newspaper articles or news accounts about the case. Just
19 relax. And Ms. Wiggins has some information that
20 Ms. Brown has been kind enough to prepare that gives you
21 some instruction about what you need to bring with you.
22 Because obviously, if the jury -- if you're selected, you
23 will be sequestered at that point. Have a good day and
24 we'll see you Thursday morning at 9:30. And you can exit
25 through the front door.

1 Mr. Lail.
2 (WHEREUPON, Charles E. Lail, a white male,
3 entered the courtroom.)

4 EXAMINATION

5 **BY THE COURT**

6 **Q** Hello, Mr. Lail.

7 **A** Good day, sir.

8 **Q** Come up and take a seat up here, please, sir. Thank
9 you so much, sir, for your patience. I appreciate
10 it. Mr. Lail, we're continuing the process that we
11 started yesterday. And this entire process is simply
12 designed to develop a pool of jurors from which we
13 can select the trial jury. And, of course, we're
14 looking for jurors, as you can probably glean from
15 what we did yesterday, who feel that they could
16 fairly and impartially apply their common sense and
17 logic at the appropriate time and decide the true
18 facts of this case. Thus far, based on your
19 responses to some of the Court's questions or lack of
20 response, whichever the case may be, you have
21 indicated that you are that type of person; is that
22 correct?

23 **A** Yes, sir.

24 **Q** You understand that you're still under oath in this
25 matter?

1 **A** Yes, sir.

2 **Q** Have you permitted anyone to talk with you about this
3 case or have you talked about this case with anyone
4 since yesterday?

5 **A** No, sir.

6 **Q** Have you reviewed any newspaper article or watched
7 any news program about it?

8 **A** No, sir.

9 **Q** You had an opportunity to review the types of jurors
10 depicted on that sheet?

11 **A** Yes, sir, reviewed it twice.

12 **Q** All right, sir. Which one do you believe best
13 describes you? Which type are you?

14 **A** No. 3.

15 **Q** No. 3?

16 **A** Yes, sir.

17 **Q** And that one, as I recall, is the one that says there
18 are circumstances, facts and circumstances that if
19 are established by the evidence, I could vote the
20 appropriate punishment could be life imprisonment
21 without the possibility of parole and, likewise,
22 there are circumstances in a case, facts and
23 circumstances if established which I could vote the
24 death penalty is the most important --

25 **A** Yes, sir.

1 Q -- or most appropriate punishment?

2 A Yes, sir.

3 Q And it just depends on the facts and circumstances of
4 a given case; is that correct?

5 A Yes, sir. It would have to be different facts for
6 different situations.

7 Q All right, sir. As you sit here today, you don't
8 have any feelings about what would be appropriate in
9 this case?

10 A No, sir.

11 Q Because you haven't heard any of the facts and
12 circumstances?

13 A No facts, no, sir.

14 Q You understand that you will be asked to make these
15 determinations as a juror considering the evidence?

16 A Yes, sir.

17 Q And the evidence alone, you understand that?

18 A Right.

19 Q And, of course, evidence is testimony of witnesses
20 and exhibits that are introduced during the trial of
21 the case. You understand that?

22 A Yes, sir.

23 Q Nothing that occurs outside of this courtroom should
24 ever be considered by a juror, you understand that?

25 A Yes, sir.

1 Q And you would honor that commitment?

2 A Yes, sir.

3 Q As you sit here today, you understand that the law
4 says in this state and really every state that
5 Mr. Sapp is merely accused of these offenses. You
6 understand that?

7 A Yes, sir.

8 Q And he has -- there has been no evidence and as of
9 today, in your mind, he's not guilty of anything; is
10 that right?

11 A No, sir, he's innocent until proven guilty.

12 Q All right, sir. And likewise, Mr. Sapp has no
13 responsibility in this process to establish anything
14 or disprove anything. He certainly doesn't have a
15 duty to prove his innocence. Do you agree with that?

16 A Right.

17 Q Because the burden, as I've indicated to you, rests
18 upon the party that brings the charge or makes the
19 accusation. And in this case, it's the State of
20 South Carolina. Is that your understanding?

21 A Yes, sir.

22 Q So as I understand right now, you have an open mind
23 about these charges?

24 A Yes, sir.

25 Q No predeterminations?

1 **A** No, sir.

2 **Q** You understand that during the trial it would be your
3 responsibility to decide the facts from the evidence.
4 It would be my responsibility to give you the law.

5 **A** Correct.

6 **Q** And you understand that part of that separation
7 between the two, one is, I don't have anything to do
8 with the factual determination.

9 **A** Right.

10 **Q** Okay. Please understand that. And if you're on the
11 jury, nothing that I say now, nothing that I may say
12 during the trial should ever be considered as an
13 indication of how you're to resolve a factual issue
14 because I don't have anything to do with that. Is
15 that agreeable with you, sir?

16 **A** Yes.

17 **Q** Likewise, it would be my -- but on the other hand --
18 not likewise, but on the other hand, it would be my
19 responsibility to charge you the law. And it would
20 be your duty as a juror to accept that law and apply
21 that law fairly and impartially. Would you do that?

22 **A** Yes, sir.

23 **Q** You understand that you make -- will make a
24 commitment to the State and to Mr. Sapp that you
25 would do that?

1 **A** Yes, sir.

2 **Q** You would honor that commitment?

3 **A** Yes, sir.

4 **Q** You would honor that commitment even if you heard a
5 principle of law with which you may differ? In other
6 words, if you heard some law that you said -- that
7 caused you to think, that's not a good law or that
8 law ought to be changed, do you understand that you
9 would be required to set that feeling aside?

10 **A** Well, yes, sir, I would have to go by the laws. I
11 feel like that, yes, sir.

12 **Q** Even if you should differ with them?

13 **A** Even if I differ with them.

14 **Q** Okay. And you could honor that commitment as well?

15 **A** Yes, sir.

16 **Q** Now, during this trial, you understand that the first
17 portion of this proceeding, we would deal with the
18 charges themselves. Do you understand that? And
19 it's at that time that the State would present
20 evidence that you would ultimately consider -- or the
21 evidence would be presented that would ultimately be
22 considered by the jury to determine whether or not
23 the State has met its burden of proof. Do you
24 understand that?

25 **A** Yes, sir.

1 **Q** As I understand, you would keep that open mind. And
2 this is an important part of that commitment, you
3 would keep your open mind until the Court -- until I
4 instructed you to begin your deliberations. Would
5 you do that?

6 **A** Yes, sir.

7 **Q** You would do that?

8 **A** Yes, sir.

9 **Q** Once you began your deliberations in the first part,
10 you would be merely deciding whether or not the State
11 has established beyond a reasonable doubt all of the
12 elements required for a guilty verdict. Do you
13 understand that?

14 **A** Yes, sir.

15 **Q** And I would instruct you in that connection that if
16 the State convinces you beyond a reasonable doubt as
17 to all elements, you must return a verdict of guilty.
18 Okay?

19 **A** Yes, sir.

20 **Q** Also, I would instruct you that if you feel the State
21 failed to meet -- failed to convince you beyond a
22 reasonable doubt as to any element, that as to that
23 particular crime which they failed, you must return a
24 verdict of not guilty.

25 **A** Of not guilty, yes, sir.

- 1 **Q** Because the State would not have met its burden of
2 proof. Do you have any problem with that law?
- 3 **A** No, sir.
- 4 **Q** Would you apply that law?
- 5 **A** Yes, sir.
- 6 **Q** If you returned a verdict of guilty on the offense of
7 murder, we would move into a second portion of this
8 proceeding that we call the penalty phase. Do you
9 understand that?
- 10 **A** Yes, sir.
- 11 **Q** And at that time you would hear additional evidence
12 which would deal with the penalty that should be
13 imposed. Do you understand that?
- 14 **A** Yes, sir.
- 15 **Q** It's at that time you would hear evidence that we
16 call aggravating circumstances or mitigating
17 circumstances. And both of those terms will be
18 defined for you in the charge. But you wouldn't have
19 any problem listening to that law and applying that
20 law --
- 21 **A** No, sir.
- 22 **Q** -- as to aggravating circumstances and mitigating
23 circumstances?
- 24 **A** No, sir, I wouldn't.
- 25 **Q** Okay. At the appropriate time, you would then be

1 asked to make a decision based on the facts and
2 circumstances of the case. And you would be asked to
3 apply the law. And am I to understand -- of course,
4 you haven't heard any of that, but in a situation
5 like this, there are -- that if you considered the
6 facts and circumstances, including aggravating
7 circumstances and mitigating circumstances and
8 applied the law, there are situations in which you
9 would impose and your decision would be to impose a
10 life imprisonment without the possibility of parole?

11 **A** Yes, sir.

12 **Q** There are also, after considering all the
13 circumstances, including aggravating circumstances or
14 mitigating circumstances and applying the law, there
15 are situations where you believe the most
16 important -- or the most appropriate punishment would
17 be the death penalty?

18 **A** Yes, sir.

19 **Q** But it would just depend on those particular facts
20 and circumstances?

21 **A** Yes, sir.

22 **Q** Do you understand that you will be sequestered during
23 the trial of this case?

24 **A** Yes.

25 **Q** Will that create any problem for you performing your

1 duties as a juror?

2 **A** No, sir.

3 **THE COURT:** Please answer any questions the
4 attorneys may have.

5 **MR. JENNINGS:** Thank you, Your Honor.

6 EXAMINATION

7 **BY MR. JENNINGS**

8 **Q** Good afternoon, Mr. Lail. My name's Blair Jennings.
9 I'm the Deputy Solicitor in Berkeley County. And as
10 the judge said, we're simply talking with each juror
11 making sure that each juror can be a fair and
12 impartial juror in this case both for the defendant
13 and for the State. And my understanding from your
14 responses is that you are that type of juror?

15 **A** Yes, sir.

16 **Q** Do you hold any moral beliefs about the death penalty
17 that would prevent you from returning a death
18 sentence?

19 **A** No, sir.

20 **Q** You believe that in the appropriate circumstances,
21 the death penalty is a just punishment?

22 **A** Right, on certain circumstances.

23 **Q** Yes, sir. And you could, if the facts and
24 circumstances were present, return a sentence of
25 death?

1 **A** Yes, sir.

2 **Q** And likewise, if you felt the facts and circumstances
3 justified it, could return a sentence of life in
4 prison without parole?

5 **A** Yes, sir.

6 **MR. JENNINGS:** Thank you. That's all I have,
7 Your Honor.

8 **THE COURT:** Mr. Archer?

9 EXAMINATION

10 **BY MR. ARCHER**

11 **Q** Good afternoon, Mr. Lail.

12 **A** Afternoon.

13 **Q** I see on your application that you have a relative by
14 the name of Allen Lail?

15 **A** Yes, sir.

16 **Q** And he's a sheriff?

17 **A** Yes, sir, deputy sheriff.

18 **Q** And what county, where would that be?

19 **A** Berkeley County.

20 **Q** Berkeley County?

21 **A** Yes, sir.

22 **Q** Do you speak to him often?

23 **A** Occasionally. Maybe once, twice a month.

24 **Q** I see. Have you discussed this case with him?

25 **A** No, sir.

1 Q And have you discussed any other cases with him?

2 A No, sir.

3 Q When you're with him, you don't discuss any crime,
4 any criminal cases?

5 A No, sir, huh-uh.

6 Q The fact that an officer was killed here, would that
7 affect you because your relative is a sheriff?

8 A No, sir.

9 MR. ARCHER: I have no further questions.

10 THE COURT: Very well.

11 Any additional questions, Solicitor?

12 MR. JENNINGS: No, sir.

13 THE COURT: Mr. Lail, you may step down just for
14 a moment. If you would step out, we'll be with you in a
15 second, sir.

16 (WHEREUPON, the juror left the courtroom.)

17 MR. JENNINGS: He's qualified, Your Honor.

18 MR. ARCHER: Judge, I forgot to ask him one
19 question, what's the relationship, brother or --

20 THE COURT: I think he said brother.

21 MR. ARCHER: I would say he's disqualified for
22 that.

23 THE COURT: Should be disqualified?

24 MR. ARCHER: Yes, sir.

25 THE COURT: All right, sir. He has clearly

1 indicated and his response -- just one second.

2 **THE CLERK:** It just says relative.

3 **THE COURT:** It does not, I'll ask him. He's
4 indicated that he hasn't talked with him about it, but I
5 will ask him.

6 (WHEREUPON, the juror entered the courtroom.)

7 **THE COURT:** Mr. Lail, the person that's with the
8 Berkeley County Sheriff's Department, Allen Lail, what
9 relationship is he to you?

10 **THE POTENTIAL JUROR:** Brother.

11 **THE COURT:** Mr. Lail, it has been determined
12 that you are qualified to continue to serve in the pool of
13 jurors from which we will select the trial jury in this
14 case. That will occur on Thursday starting at 9:30. I
15 need for you to return to this courtroom at that time.
16 Please remember that you're still not permitted to talk
17 about this case with anyone. Don't allow anybody to talk
18 with you about this case. Don't read any newspaper
19 accounts or review any -- or view any news programs about
20 this case. Have a good day tomorrow and I'll see you
21 Thursday at 9:30.

22 Ms. Wiggins has some information that you'll
23 find to be helpful. Ms. Brown has been kind enough to
24 prepare some instructions for you because, as you know, if
25 you're selected, you'll be sequestered at that time. If

1 you will just follow those instructions, it should answer
2 any questions you may have. Thank you very much. You're
3 free to leave.

4 **MR. ARCHER:** Your Honor, may I just put
5 something on the record?

6 **THE COURT:** Okay, just a second. All right.
7 Mr. Archer, you had raised an issue for cause and I would
8 be happy to hear you further.

9 **MR. ARCHER:** I'd just like to put on the record
10 that I feel that he's not qualified because his brother is
11 a sheriff.

12 **THE COURT:** Okay. And the fact that his
13 brother's a deputy sheriff, he clearly indicated he had
14 not talked with him. I don't think -- I don't recall his
15 name being listed as being involved. This is a Highway
16 Patrol situation. If it had been a Berkeley County
17 sheriff, I would have probably out of an abundance of
18 caution excused him. It's a different law enforcement
19 agency and, therefore, I do not feel that disqualifies
20 him. Again, that may form the basis for whatever you
21 choose to do with the peremptory challenges. Thank you
22 very much. That motion is denied but your position is
23 protected on the record. Thank you, sir.

24 Let's bring in Mr. Evans, please.

25 (WHEREUPON, Richard E. Evans, a white male,

1 entered the courtroom.)

2 EXAMINATION

3 **BY THE COURT**

4 **Q** Mr. Evans, how are you?

5 **A** Fine. How are you, sir?

6 **Q** Fine. Thank you for your patience. I bet you
7 thought, boy, are they ever going to get to me? It's
8 a long process. But I appreciate your endurance. We
9 started this process actually yesterday, Mr. Evans.
10 And probably you could glean from some of the
11 questions that there really are no correct responses
12 to any of these questions. Because they really deal
13 with how you personally feel about something or what
14 your -- whatever the facts are, they are. That will
15 continue with these questions that we have today for
16 you. Please understand that we're not trying to pry
17 into anything or invade your privacy. Don't feel
18 that you need to defend any position you have or any
19 feeling you have. Because you're entitled to that,
20 sir. You don't owe us any explanation whatsoever.
21 All that I ask and all that anybody asks is that you
22 just simply respond truthfully to the questions. Is
23 that agreeable with you?

24 **A** Yes, sir.

25 **Q** I would remind you that you are still under oath in

1 this matter. You haven't talked with anyone or
2 allowed anybody to talk with you about this case
3 since yesterday, have you, sir?

4 **A** No, sir, just to let my job know I had to come back.

5 **Q** I understand. And that's fine. You told them you
6 had to report today; is that correct?

7 **A** Yes, sir.

8 **Q** But that's the extent of your conversation?

9 **A** Yes, sir.

10 **Q** Have you reviewed any news account or viewed any news
11 program about this case?

12 **A** No, sir.

13 **Q** Given your responses to the questions yesterday, on a
14 whole and as a whole, you have indicated to the Court
15 and to the State and to Mr. Sapp thus far that you
16 are that type of juror that we're seeking; and that
17 is a juror who basically could be fair and impartial
18 in applying his common sense in the process of
19 analyzing the evidence at the appropriate time and
20 making the necessary decisions. of what you believe to
21 be truthful and credible without having any outside
22 influence from anything that's occurred in your life;
23 is that true?

24 **A** Yes, sir.

25 **Q** You were given a sheet that had basically described

1 three types of jurors. Which one of those types of
2 jurors do you believe most accurately describes you?

3 **A** No. 3, sir.

4 **Q** And that means -- as I understand No. 3, that's a
5 juror who could in some cases impose a life
6 imprisonment without the possibility of parole, who
7 could in some cases impose the death penalty, but it
8 just depends on the facts and circumstances of a
9 given case. Is that true?

10 **A** That's correct, sir.

11 **Q** And you don't have any predetermination as to which
12 one of those would be the most appropriate?

13 **A** No, sir.

14 **Q** It just depends on the case?

15 **A** Yes, sir.

16 **Q** You understand that basically in a nutshell, what
17 you're saying to the State and to Mr. Sapp at this
18 point is I am a juror who has an open mind about this
19 process and about these charges. I haven't decided
20 anything. Is that fair -- does that fairly describe
21 you?

22 **A** Yes, sir.

23 **Q** That would include, you know, as I mentioned
24 yesterday, Mr. Sapp has been accused of committing a
25 number of offenses. And I further instructed you

1 that Mr. Sapp, like everyone in this country, is
2 presumed innocent of these charges and is not
3 considered to be -- shouldn't be considered to be
4 guilty until the State and unless the State proves
5 the guilt beyond a reasonable doubt. Do you have any
6 problem with that principle of law?

7 **A** No, sir.

8 **Q** You would be applying it in this case. Is that true?

9 **A** Absolutely, sir.

10 **Q** You would, in that regard, not expect Mr. Sapp to
11 prove or disprove anything. Is that true?

12 **A** Yes, sir.

13 **Q** Because that burden rests solely on the State. You
14 understand that?

15 **A** Yes, sir.

16 **Q** In the first phase of this proceeding, you would be
17 dealing with the issues concerning these various
18 charges. And it would be the State's responsibility,
19 of course, to present evidence at that time. At the
20 conclusion of that portion of this proceeding, the
21 jury would be asked to retire to begin its
22 deliberations and decide whether or not the State has
23 met its burden of proof. Do you understand that?

24 **A** Yes, sir.

25 **Q** Until the Court gives you the instruction to begin

1 your deliberations, part of the commitment that you
2 make to the State and to Mr. Sapp is that you will
3 maintain that open mind. Will you honor that
4 commitment?

5 **A** Yes, sir.

6 **Q** So you will not make any decisions until I instruct
7 you when to begin your deliberations; is that true?

8 **A** Yes, sir.

9 **Q** In the first portion, you will be deciding whether
10 the State's met its burden. And my instruction, in
11 part, will be that if the State establishes beyond a
12 reasonable doubt each element of each offense, then
13 the jury must return a verdict of guilty. Would you
14 have any problem following that instruction?

15 **A** No, sir.

16 **Q** I also would instruct that if, as to any element, you
17 should have a reasonable doubt on that, in other
18 words, the State has not convinced you beyond a
19 reasonable doubt of that particular element, then as
20 to that offense, your responsibility and duty would
21 be to return a verdict of not guilty. Would you have
22 any problem following that instruction?

23 **A** No, sir.

24 **Q** And would you have any hesitancy in either case?

25 **A** No, sir.

1 **Q** You understand that I would have the duty and
2 responsibility to instruct you on the law. And it
3 would be your responsibility as a juror to listen to
4 that law, accept that law and apply that law fairly
5 and impartially to the facts that you ultimately will
6 determine. Would you have any problem following that
7 instruction?

8 **A** No, sir.

9 **Q** Or any instruction?

10 **A** No, sir.

11 **Q** There may be principles of law that you might hear
12 with which you may differ or you may feel that the
13 law should be changed. Do you understand that you
14 would make a commitment that you would apply the law
15 notwithstanding your feelings?

16 **A** Yes, sir.

17 **Q** Could you follow that instruction and would you
18 follow that?

19 **A** Yes, sir.

20 **Q** And honor that commitment?

21 **A** Yes, sir.

22 **Q** Please understand that nothing I'm saying to you now
23 or nothing that I ever say during the trial should
24 ever be considered by you as an indication of how you
25 are to resolve any factual issue. Is that agreeable

1 with you?

2 **A** Yes, sir.

3 **Q** If the jury should return a verdict of guilty on the
4 offense of murder, there would be a second phase of
5 this proceeding. Do you understand that?

6 **A** Yes, sir.

7 **Q** And at that time you would hear additional evidence
8 which may include evidence of terms we call -- or
9 what we call aggravating circumstances or mitigating
10 circumstances. Do you understand that?

11 **A** Yes, sir.

12 **Q** I would define for you during the charge at the end
13 of the second phase what the law -- or how the law
14 defines those and give you express instructions. You
15 would have no problem following those instructions
16 and applying the law --

17 **A** No, sir.

18 **Q** -- concerning aggravating and mitigating
19 circumstances?

20 **A** No, sir.

21 **Q** After the instruction on the law, of course, you
22 would then be expected to retire and make a decision
23 of what you believe to be the most appropriate
24 punishment based on the facts and circumstances as
25 having been established beyond a reasonable doubt.

1 Do you understand that?

2 **A** Yes, sir.

3 **Q** You would also be requested to apply the law, and you
4 would do that as well?

5 **A** Yes, sir.

6 **Q** In that type of situation where a jury returned a
7 verdict of murder, is it my understanding that you
8 would consider all the facts and circumstances,
9 including aggravating circumstances and mitigating
10 circumstances, apply the law and there may be --
11 those facts may warrant you or cause you to want to
12 return a verdict of life imprisonment without parole;
13 is that right?

14 **A** Yes, sir.

15 **Q** And you could do that?

16 **A** Yes, sir.

17 **Q** Also, considering all the aggravating circumstances
18 and mitigating circumstances and other circumstances
19 established by the evidence and applying the law, it
20 may cause you to return a verdict and you feel the
21 most appropriate sentence would be death; is that
22 correct?

23 **A** Yes, sir.

24 **Q** And you could impose either based on the facts and
25 circumstances; is that correct?

1 **A** That's correct, sir.

2 **Q** And it would depend on the facts established; is that
3 true?

4 **A** Absolutely, sir.

5 **Q** If you returned a verdict for death, one of your
6 responsibilities as a juror would be to sign the
7 death verdict with all other jurors. Could you
8 perform that function as well?

9 **A** Yes, sir.

10 **Q** During this trial, you will be sequestered. And
11 would that affect in any way your ability to serve as
12 a juror?

13 **A** No, sir.

14 **Q** That sequestration could be as long as 10 days and
15 that would not in any way impair your ability to
16 apply your common sense, your sense of logic and
17 reason, fairly and impartially?

18 **A** No, sir.

19 **THE COURT:** Thank you very much. If you would
20 please answer any questions the attorneys may have.

21 **MR. HOISINGTON:** Thank you, Judge.

22 EXAMINATION

23 **BY MR. HOISINGTON**

24 **Q** Afternoon, Mr. Evans. I'm Ralph Hoisington.
25 Together, with Blair Jennings, we have the

1 responsibility of presenting the State's case to the
2 jury. His Honor's made it real clear to you, I
3 believe, that Jesse Sapp who is on trial is presumed
4 innocent before any evidence comes before the jury.
5 Do you understand that?

6 **A** Yes, sir.

7 **Q** And if you are picked on a jury, it would be only
8 fair that you as a juror would expect and hold the
9 State to a very strict burden of proof to prove to
10 you beyond a reasonable doubt his guilt. That would
11 be fair, wouldn't it?

12 **A** Yes, sir.

13 **Q** If we did that though, it would be fair -- it would
14 have to be fair to the State that the jurors be able
15 to consider the possibility of the death penalty in
16 this case. You would be able to do that if the facts
17 called for it?

18 **A** Yes, sir.

19 **Q** And the law allowed it?

20 **A** Yes, sir.

21 **Q** And on the other side of the equation, if after
22 hearing all the evidence, all the evidence in
23 aggravation and any in mitigation that may be
24 presented to you, if you think life in prison would
25 be the appropriate punishment you could return that

1 verdict also?

2 **A** Yes, sir.

3 **MR. HOISINGTON:** We appreciate it, sir.

4 **MR. ARCHER:** No questions.

5 **THE COURT:** If you would step down just for a
6 moment, Mr. Evans, we'll be with you in a second.

7 (WHEREUPON, the juror left the courtroom.)

8 **THE COURT:** What says the State?

9 **MR. HOISINGTON:** Qualified, Your Honor.

10 **MR. ARCHER:** Qualified.

11 **THE COURT:** Ask him to come in, please.

12 (WHEREUPON, the juror entered the courtroom.)

13 **THE COURT:** Mr. Evans, you've been found to be
14 qualified to continue to serve in this matter and be a
15 part of the pool of jurors from which we will select the
16 trial jury. That process will take place on Thursday
17 morning at 9:30. I'm going to need for you to report back
18 here at that time. Please remember that you are not
19 permitted and must not discuss this case with anyone or
20 allow them to talk with you about this case, nor should
21 you read any newspaper accounts or watch any news programs
22 about the case.

23 Ms. Wiggins has some information that Ms. Brown
24 has prepared for you that will give you some instruction
25 about what you need to do to prepare for Thursday.

1 Because if you are selected, obviously, you will be
2 sequestered at that time. I look forward to seeing you on
3 Thursday morning. Good luck to you, sir.

4 **THE POTENTIAL JUROR:** Thank you, sir.

5 **THE COURT:** We'll see you then and you just come
6 directly to the courtroom and you may exit through the
7 front. Let's take about five minutes and we'll start the
8 next one.

9 (WHEREUPON, a short break was taken.)

10 **THE COURT:** Let the record reflect Mr. Sapp is
11 present.

12 Defense ready to continue?

13 **MR. ARCHER:** Yes, sir.

14 **THE COURT:** State ready?

15 **MR. HOISINGTON:** Yes, we are, Your Honor.

16 **THE COURT:** Very well. The first one for the
17 next group is Mr. Roosevelt Hatcher.

18 (WHEREUPON, Roosevelt Hatcher, a black male,
19 entered the courtroom.)

20 EXAMINATION

21 **BY THE COURT**

22 **Q** Mr. Hatcher, good afternoon.

23 **A** How are you, Your Honor?

24 **Q** I'm well. How are you, sir?

25 **A** I'm good.

1 **Q** Good. We're continuing the process that we started
2 yesterday when we were qualifying the jury. And as
3 you could tell from a number of the questions, there
4 are truly no right or wrong answers to any of those
5 questions. You may be asked some additional
6 questions here today and that still applies. Do not
7 feel that you should have to answer any certain way.
8 You don't have to explain your feelings. You're
9 entitled to your feelings and whatever opinions you
10 have. And don't feel that they need to be justified
11 in any fashion. Because that's not what we're here
12 to do. We're here just to find out and try to --
13 we're trying to obtain a pool of jurors who can be
14 fair and impartial and not be influenced by any
15 aspect of this case and apply their common sense and
16 sense of logic and reason fairly and impartially and
17 report a verdict. And that's what we're continuing
18 to do here. I would remind you, sir, that you are
19 still under oath in this process. Is that
20 acceptable?

21 **A** Yes.

22 **Q** Mr. Hatcher, have you talked with anyone since we
23 were last together yesterday?

24 **A** About this case?

25 **Q** About this case.

1 **A** No.

2 **Q** You haven't read any newspaper accounts about it,
3 have you?

4 **A** I did turn on the TV and it refreshed my mind about
5 the case because I forgot all about this certain
6 case.

7 **Q** Yesterday?

8 **A** Yes, sir.

9 **Q** What do you remember watching or what do you remember
10 hearing about?

11 **A** Well, it had on the news about Mr. Sass is his name,
12 was accused of shooting this policeman. They showed
13 pictures and everything how they first caught him and
14 everything.

15 **Q** Did that change your opinion about anything?

16 **A** A little bit. If I tell the truth about it, it did
17 change it a little bit. Because I actually forgot
18 about it yesterday. I couldn't even remember the
19 case because I had so many things happening in my
20 life, you know.

21 **Q** So you watched it even though I told you not to watch
22 it?

23 **A** Well, it one of those things that came on.

24 **Q** I understand. What type of juror of the three types
25 are you? Which one best describes you from that

1 sheet that I gave you?

2 **A** I think the one with the death penalty would be hard
3 for me to agree with that.

4 **Q** Are you -- Type 1 says that if the crime of murder is
5 established, you would always vote for the death
6 penalty. Type 2 says if the crime of murder is
7 established, you would always vote for life
8 imprisonment. Type 3 says, I would have to hear the
9 facts and circumstances. Sometimes I may impose the
10 death penalty, sometimes I may impose life
11 imprisonment. Which one are you?

12 **A** Two.

13 **Q** Two. So am I to understand that you would never
14 impose -- vote to impose the death penalty?

15 **A** That's correct.

16 **Q** Under any circumstances?

17 **A** I believe I wouldn't.

18 **Q** Would not.

19 **THE COURT:** Any questions from the State?

20 **MR. JENNINGS:** Yes.

21 EXAMINATION

22 **BY MR. JENNINGS**

23 **Q** Mr. Hatcher, you told us that yesterday, correct,
24 during the general qualification? You came up and
25 said your religious beliefs would prohibit you from

1 returning a death verdict?

2 **A** Yes.

3 **MR. JENNINGS:** That's all.

4 **THE COURT:** Any questions?

5 **MR. ARCHER:** No, sir.

6 **THE COURT:** Thank you very much, Mr. Hatcher.

7 You are excused from further participation in this
8 process. Thank you very much for your commitment to the
9 process, sir. I would ask you as a favor to the Court and
10 this process that you not discuss this matter with anyone
11 until the trial has been completed. If you would do that,
12 we would appreciate it very much.

13 **THE POTENTIAL JUROR:** You have my word.

14 **THE COURT:** Thank you, sir. Have a good day,
15 sir. You're free to leave.

16 Mr. Hatcher, for the record, indicates and
17 confirms what he indicated yesterday and that is that
18 there would be no circumstances in which he could impose
19 the death penalty. Therefore, he should be disqualified
20 and we have disqualified him from further participation.

21 All right. Mr. Simmons is the next juror on the
22 list.

23 (WHEREUPON, John Simmons, a black male, entered
24 the courtroom.)

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EXAMINATION

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BY THE COURT

Q Hello, Mr. Simmons.

A Hey. How are you?

Q I'm fine. How are you doing?

A I'm fine, sir.

Q Good. Mr. Simmons, we're continuing the process that we started yesterday. And we need to ask you some additional questions. I would remind you, sir, that you are still under oath in this matter. Is that agreeable with you?

A Yes, sir.

Q Okay. Did you have the chance, Mr. Simmons, to review the types of jurors that I gave you, that sheet?

A Yes, sir.

Q Which type describes you most accurately?

A Type No. 3.

Q No. 3. And that's a juror, Mr. Simmons, as I understand it, who given certain circumstances and facts, you could vote for life imprisonment as an appropriate punishment or there are circumstances -- facts and circumstances that you would believe the most appropriate punishment would be the death penalty; is that right?

1 **A** Yes. Under the circumstances on -- I don't believe
2 in the death penalty, but on the circumstances of
3 life in prison.

4 **Q** All right. That's what I'm asking.

5 **A** Yes, sir.

6 **Q** You would always vote for life imprisonment?

7 **A** Yes, sir.

8 **Q** Is there any circumstance in which you could vote for
9 the death penalty?

10 **A** It -- just under my -- not under my belief that
11 putting a man in prison -- I mean, to just take a
12 man's life. But I believe in taking them out of
13 society and lock them up.

14 **Q** You believe to -- you would always vote for life
15 imprisonment?

16 **A** Yes.

17 **Q** Never, ever death penalty?

18 **A** No, sir.

19 **Q** And that's your personal belief?

20 **A** Yes, sir.

21 **Q** And that's your religious belief?

22 **A** Yes, sir.

23 **THE COURT:** Any questions from the State?

24 **MR. HOISINGTON:** No questions, Your Honor.

25 **MR. ARCHER:** No questions.

1 **THE COURT:** Thank you very much. And we'll
2 honor that, Mr. Simmons. I would find that based on your
3 responses that you would not be qualified to continue to
4 serve in this matter. I'll excuse you from further
5 participation. But thank you so much for your
6 participation and your commitment to this process.

7 **THE POTENTIAL JUROR:** All right, sir.

8 **THE COURT:** Have a good day. Mr. Simmons, I
9 would ask you as a favor to the Court, however, that you
10 not discuss this case with anyone until we have completed
11 the trial of this case.

12 **THE POTENTIAL JUROR:** Yes, sir.

13 **THE COURT:** Would you do that for me?

14 **THE POTENTIAL JUROR:** Yes, sir.

15 **THE COURT:** Thank you, sir. Good luck to you,
16 sir.

17 **MR. HOISINGTON:** The next juror put on her
18 questionnaire that she was good friends with the victim's
19 family. And I was aware of that and you might just
20 inquire about that first.

21 **THE COURT:** Very well. Thank you so much.
22 Let's ask Ms. Parker to come in, please.
23 (WHEREUPON, Brenda Parker, a white female,
24 entered the courtroom.)

25 ///

EXAMINATION

1
2 **BY THE COURT**

3 **Q** How are you, Ms. Parker?

4 **A** Doing fine, thank you.

5 **Q** Good. Ms. Parker, we're continuing the process that
6 we started yesterday. And I would remind you that
7 you're still under oath in this matter. Is that
8 agreeable with you?

9 **A** Yes.

10 **Q** We're going to continue probably to ask you some
11 questions to ascertain whether or not you can serve
12 as a juror in this matter and be fair and impartial
13 in this case. And in that regard, before I start
14 asking you those questions, it's been called to my
15 attention and I see in your -- in the questionnaire
16 that you completed, the question, have you, any
17 family members or close friends ever been the victim
18 of or witnessed any crime? And you checked yes. And
19 then you have filled out that the victim was Officer
20 Johnson in this case; is that correct?

21 **A** Actually, I thought that it meant neighbors or
22 anybody that I knew. They do live in my neighborhood
23 so, yes, I did check it and put it on there.

24 **Q** Well --

25 **A** I don't know Officer Johnson socially or his wife. I

1 do know his son goes to school with my children and
2 he does -- he is friends with my children.

3 Q Okay. So you see them in that connection?

4 A Yes.

5 Q How closely did they live to you?

6 A Mile and a half. In the same neighborhood,
7 approximately a mile, mile and a half.

8 Q Mile and a half. And it's your feeling that you
9 could set that relationship aside and make a decision
10 which would be -- in this case which would be fair to
11 the State and would be fair to Mr. Sapp?

12 A Yes.

13 Q Even if it meant deciding against the State's
14 position?

15 A Yes.

16 Q You could do that --

17 A Uh-huh.

18 Q -- if you were on the jury?

19 A Yes, I could.

20 Q Given the sheet that was handed to you on yesterday,
21 which one of those jurors best depicts or describes
22 you?

23 A Juror No. 3.

24 Q That means, basically, as I understand it that there
25 are circumstances in which you could vote to impose a

1 death sentence and there are circumstances in which
2 you could vote to impose a life imprisonment without
3 the possibility of parole; is that right?

4 **A** That's correct.

5 **Q** And it would depend on the given facts and
6 circumstances in the case, is that true?

7 **A** That's true.

8 **Q** Now, you understand if you're selected on this jury,
9 what you will be -- what you have indicated thus far
10 and what you will be indicating is that you are the
11 type of juror who has not predetermined any issue in
12 this case; is that correct?

13 **A** Correct.

14 **Q** And that means that you bring to this process and
15 will bring to this process an open mind. Is that
16 true?

17 **A** That's true.

18 **Q** Now, that means as we sit here today, as I instructed
19 you yesterday, the law says that Mr. Sapp is innocent
20 until his guilt is established beyond a reasonable
21 doubt by the evidence and, of course, that's the
22 responsibility of the State. Do you agree with that
23 principle of law?

24 **A** Yes, I do.

25 **Q** So you would never expect Mr. Sapp to prove anything

1 or disprove anything, because in this case he has no
2 burden of proof. Do you agree with that?

3 **A** I agree.

4 **Q** And you do not view him as being anything but
5 innocent at this particular time, is that true?

6 **A** True.

7 **Q** The first portion of this proceeding which you would
8 hear evidence is what we call the guilt phase where
9 you will deal with the specific charges and you will
10 at the appropriate time consider evidence presented
11 and make a determination as to whether or not the
12 State has met its burden of proof. Do you understand
13 that?

14 **A** Yes, I do.

15 **Q** And until the Court gives you an instruction to begin
16 those deliberations, part of the commitment that you
17 make to the State and to Mr. Sapp is that you would
18 keep that open mind. Could you honor that
19 commitment?

20 **A** Yes.

21 **Q** Once you began your deliberations or commenced your
22 deliberations, you further commit that you will
23 consider only the evidence. And the evidence
24 consists of testimony of witnesses and exhibits and
25 nothing else. Would you follow that instruction?

1 **A** Yes.

2 **Q** The law -- it would be my responsibility to give you
3 the law. Would you listen to that law, take that law
4 and apply that law to the facts that you ultimately
5 determine?

6 **A** Yes, I will.

7 **Q** Would you do that fairly and impartially?

8 **A** Yes.

9 **Q** There may be some principle of law with which you may
10 differ or you may have an opinion that the law should
11 be changed. Do you understand that part of the
12 commitment that you make is that you will apply the
13 law notwithstanding your personal feelings?

14 **A** Yes.

15 **Q** Would you honor that commitment?

16 **A** Yes, I would.

17 **Q** You understand that nothing that I say now or say to
18 you at any time to you as a juror during the trial
19 should be considered by you as an indication of how
20 you're to resolve any particular issue?

21 **A** Yes.

22 **Q** Because that's -- I don't have anything to do with
23 the factual determination, you understand?

24 **A** Uh-huh.

25 **Q** If, in considering the evidence in the first portion,

1 you were to conclude that the State had not convinced
2 you beyond a reasonable doubt as to a particular
3 issue, a particular element of the crime, would you
4 have any hesitancy returning a verdict of not guilty
5 as to that crime?

6 **A** No, I would not.

7 **Q** Because part of the instruction is the State has to
8 establish each element. You understand that?

9 **A** Yes.

10 **Q** On the other hand, if considering the evidence you
11 were convinced and the State's met its burden, would
12 you have any hesitancy returning a verdict of guilty?

13 **A** No.

14 **Q** If you should return a verdict of guilty, then -- on
15 the defense of murder, then we would move into the
16 second portion of this proceeding, which we call the
17 penalty portion. You understand?

18 **A** Uh-huh.

19 **Q** And at that time you would hear evidence concerning
20 the appropriate penalty to be imposed in this case.
21 And some of that evidence would be what we call
22 aggravating circumstances. Some of it mitigating
23 circumstances. And I will define for you both of
24 those terms in the charge at the conclusion of the
25 penalty phase -- or at the conclusion of the

1 evidentiary portion of the penalty phase. Would you
2 have any problem listening to that law and applying
3 that law to the facts that you ultimately determine?

4 **A** No.

5 **Q** At the appropriate time, once the jury has heard all
6 the evidence in the penalty phase and received the
7 law, then, of course, the jury would be instructed to
8 make a determination as to what the most appropriate
9 punishment would be. You understand that?

10 **A** Yes, I do.

11 **Q** And am I to understand that there are times when
12 considering the facts and circumstances established,
13 including mitigating circumstances and aggravating
14 circumstances and applying the law, that you could
15 return and feel the most appropriate punishment would
16 be life imprisonment without the possibility of
17 parole?

18 **A** Yes.

19 **Q** Likewise, there are times when you would consider the
20 evidence and the facts and circumstances established,
21 including mitigating circumstances, aggravating
22 circumstances and apply the law, you could return a
23 verdict that would feel the appropriate punishment
24 was a death sentence. Is that true?

25 **A** That's true.

1 **Q** If the jury should conclude that a death was the most
2 appropriate punishment, you understand that you with
3 the other jurors would have to sign a form indicating
4 that?

5 **A** Yes.

6 **Q** Could you perform that function as a juror?

7 **A** Yes.

8 **Q** During the trial of this case, the jury will be
9 sequestered. And that sequestration may be as long
10 as 10 days. Would that in any way affect your
11 ability to serve as an impartial juror?

12 **A** No.

13 **THE COURT:** Thank you, ma'am. Please answer any
14 questions the State may have for you.

15 EXAMINATION

16 **BY MR. JENNINGS**

17 **Q** Good afternoon, Ms. Parker. My name's Blair
18 Jennings. I'm the Deputy Solicitor in Berkeley
19 County. And myself and Solicitor Hoisington are
20 prosecuting this case. You understand clearly, based
21 on your answers to Judge Dennis, how critical the
22 presumption of innocence is?

23 **A** Yes, I do.

24 **Q** And that's the theory that our criminal justice
25 system is based on in this country, that a defendant,

1 until he's -- his guilt has been proven beyond a
2 reasonable doubt is presumed innocent?

3 **A** Yes.

4 **Q** And he does not have to present any evidence, does
5 not have to testify. And that if the State fails to
6 prove him guilty beyond a reasonable doubt, it would
7 be your obligation as a juror to find him not guilty?

8 **A** Yes, sir.

9 **Q** Would you be able to make that finding if that proof
10 was not made to you?

11 **A** Yes, I would.

12 **Q** The -- in your questionnaire where you noted this
13 incident, any aspect of your family's relationship,
14 would that influence your duties as a juror in any
15 way?

16 **A** No.

17 **Q** You would be able to provide Mr. Sapp with a fair
18 trial?

19 **A** Yes.

20 **Q** Would any part of those relationships prevent you
21 from providing the State with a fair trial?

22 **A** No.

23 **Q** And you feel comfortable that if the facts and
24 circumstances warranted it that you could return a
25 sentence of life without parole?

1 **A** Yes.

2 **Q** And likewise, if you found facts and circumstances
3 that warranted the death sentence, you would feel
4 comfortable in rendering that verdict?

5 **A** Yes.

6 **MR. JENNINGS:** Thank you. That's all I have,
7 Your Honor.

8 **THE COURT:** Mr. Archer?

9 EXAMINATION

10 **BY MR. ARCHER**

11 **Q** Good afternoon.

12 **A** Hi.

13 **Q** You put on your questionnaire that Officer Johnson
14 was shot by Jesse Sapp; is that correct?

15 **A** Yes, sir, that's what I put on there.

16 **Q** How did you know he was shot by Jesse Sapp?

17 **A** Through the media.

18 **Q** So you believe that?

19 **A** Well, that's what I was told.

20 **Q** Suppose the facts came out that Jesse Sapp didn't
21 shoot him or he actually missed and he was shot by
22 one of the other police officers in the crossfire,
23 would you believe that?

24 **A** If it was proven? Yes, I would believe it if it was
25 proven.

1 Q Who has to prove it?

2 A The State.

3 Q The State has to prove that another police officer
4 shot him?

5 A I would believe that they would have to prove who
6 shot Mr. Johnson.

7 Q But you already said that Jesse Sapp shot him.

8 A I put that on there because I was asked if I knew
9 anybody that was a victim of a violent crime. And
10 according to the media, that's what happened. So
11 that's what I put to my knowledge.

12 Q So basically, you're coming into the courtroom as a
13 juror with a preconceived notion already that Jesse
14 Sapp killed this police officer?

15 A I didn't say he was guilty or innocent. I just put
16 on there that that's what I was informed through the
17 media. Basically, it's a statement. I was trying to
18 be honest of what I heard.

19 Q So do you believe it or don't you believe it?

20 A I believe Mr. Johnson was shot.

21 Q Okay. But you put down by Jesse Sapp.

22 A Yes, I did.

23 Q Let's -- how close are these relatives or -- they're
24 friends, is that it, the police -- let me get that
25 part of the questionnaire.

1 **A** They are high school acquaintances. I haven't seen
2 them in 23 years.

3 **Q** Is it John Clayton, he's a policeman, City of
4 Charleston?

5 **A** Uh-huh.

6 **Q** Are you close friends with him?

7 **A** Well, I went to high school with him. I know he's a
8 police officer, so I put it on there.

9 **Q** Do you see him?

10 **A** No, not in 23 years.

11 **Q** Okay. How about Lee Clayton, is that a relative of
12 John?

13 **A** No, that's John's brother. And the same would apply,
14 I haven't seen them in 23 years.

15 **Q** And Melissa Johnson?

16 **A** Mr. Johnson's wife, they live in my neighborhood. So
17 I pass her in traffic and, of course, it's my son's
18 friend's mother.

19 **Q** And just let me get this clear, were the children
20 playing in the neighborhood, whose children? Can I
21 just clear that up for a minute?

22 **A** Do they play in the neighborhood?

23 **Q** No, you said that the Johnsons' children play in your
24 neighborhood. I wasn't quite clear what that was
25 about.

1 **A** Their son is friends with my son. Yes, they do play
2 together.

3 **Q** How often do they play together?

4 **A** Once a month, maybe, sometimes twice a month.

5 **Q** Right, so you live in the same neighborhood as the
6 Johnsons?

7 **A** Yes.

8 **Q** And your son is how old?

9 **A** He just turned 16.

10 **Q** And how old is Officer Johnson's?

11 **A** I believe he's 14.

12 **Q** Fourteen. How do you feel about that, about the fact
13 that Officer Johnson was killed and they are friends?

14 **A** I think it's tragic that he died. And I'm glad
15 they're friends. He's a good boy.

16 **Q** Would that affect your decision on the case?

17 **A** No.

18 **MR. ARCHER:** Thank you.

19 **THE COURT:** Anything further?

20 **MR. JENNINGS:** No, sir. .

21 **THE COURT:** All right. Mr. Parker, if you would
22 step out for just a second, we'll be with you momentarily.

23 **THE POTENTIAL JUROR:** Sure.

24 (WHEREUPON, the juror left the courtroom.)

25 **THE COURT:** What says the State?

1 **MR. JENNINGS:** Your Honor, I submit she's
2 qualified. I think the relationship is her son's -- it's
3 between the children. She testified there was not that
4 close relationship between either her or Mrs. Johnson or
5 Trooper Johnson. I think the most telling answer she gave
6 was in response to Mr. Archer when he said, Do you have
7 any preconceived idea that Mr. Sapp shot the Trooper? She
8 said, The State would have to prove it, which I think was
9 consistent throughout all her answers that she would
10 maintain or would give Mr. Sapp certainly every
11 presumption of innocence and would not conclude his guilt
12 until it had been proven to her beyond a reasonable doubt.

13 **MR. ARCHER:** Your Honor, I don't think she's
14 qualified. I think that she came in -- she's going to
15 come into court with a preconceived notion that Jesse Sapp
16 shot Officer Johnson. And I think she was sort of put on
17 the spot here. But I think the best proof of that is
18 what's in writing. It's right there, right on her
19 questionnaire. And I think it's like a contract. It's
20 better than words, it's right in writing.

21 **THE COURT:** I think that Ms. Parker is a
22 conscientious person. I think Ms. Parker is very -- is an
23 intelligent individual who is capable of articulating the
24 correct responses. I'm a parent. And I'm sorry,
25 there's -- I can go along with doing something that might

1 affect my friend, but my children, that's something more
2 powerful than anything that anybody can describe. And to
3 vote for something that would be against what her child
4 may perceive, the risk of that is just too great. There
5 is no need to put this person through that. We have other
6 qualified jurors. I'm going to disqualify her from
7 participation in this case.

8 (WHEREUPON, the juror entered the courtroom.)

9 **THE COURT:** Ms. Parker, thank you very much for
10 your participation in this matter. I'm going to excuse
11 you from further participation. I appreciate very much
12 your commitment to the process. I appreciate your
13 being -- your willingness to be inconvenienced to the
14 extent that you have. Thank you again. Good luck to you.
15 I would ask as a favor to the Court, I can't require you
16 to do this, but I would ask that you not discuss this case
17 until the matter has been concluded. Once it's concluded,
18 you're free to talk about it if you wish. But you're free
19 to leave. Thank you.

20 **THE POTENTIAL JUROR:** Thank you.

21 **THE COURT:** Ask Mr. Causey to come in, please.

22 (WHEREUPON, Herman L. Causey, a white male,
23 entered the courtroom.)

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EXAMINATION

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BY THE COURT

Q Good afternoon, Mr. Causey.

A Hey, sir.

Q How are you?

A Fine.

Q I hope you have had a good day thus far?

A Yes, sir.

Q I'm sorry for the inconvenience of having you waiting and shifting the time on you and all of that. But I appreciate your patience with the Court. Mr. Causey, we're continuing the process that we started yesterday. And in that regard, I would remind you, sir, that you're still under oath. Do you have any problem with that?

A No, sir.

Q Have you talked with anybody about this matter, discussed this case with anybody in any fashion since yesterday?

A No, sir.

Q Have you reviewed any newspaper accounts or watched any television programs about it?

A No, sir.

Q I'm sure by now that you have determined and gleaned that from the questions that we asked, as I stated,

1 that there truly are not right or wrong answers to
2 any of these questions.

3 **A** Right.

4 **Q** And I want to reiterate that now. Because we're
5 going to ask you some additional questions and assure
6 you, sir, that you do not have to explain or
7 apologize or in any way justify any feelings you may
8 have. We'll respect your right as a human being to
9 have those. All we're trying to do, as you
10 constantly heard yesterday, is to really gather a
11 pool of persons from which we can select a trial jury
12 who have demonstrated both in their actions and their
13 responses that they can be fair and impartial in
14 applying their common sense, their sense of logic and
15 reason. Thus far, you have indicated that, either by
16 your responses to the questions or not responding to
17 the questions; is that correct?

18 **A** Yes, sir.

19 **Q** You are that type of person --

20 **A** Yes, sir.

21 **Q** -- you believe at this point?

22 **A** Yes, sir.

23 **Q** I gave you a sheet or asked them to give you a sheet
24 concerning the types of jurors.

25 **A** Yes, sir.

1 Q Have you reviewed that?

2 A Yes, I have, sir.

3 Q Which type do you believe most accurately describes
4 you?

5 A I think No. 2 is. No. 2 would be that, sir.

6 Q You believe as No. 2, that means that you would
7 always -- if someone would be convicted of the
8 offense of murder, you would always feel and could
9 only approve of the punishment that would result in
10 life imprisonment?

11 A Yes, sir, because of my religious beliefs. I have
12 to -- that's --

13 Q I understand that. And there's nothing about the
14 case that would change that at all; is that correct?

15 A Yes.

16 Q That would be in every case?

17 A Yes.

18 THE COURT: Any additional questions from the
19 State?

20 MR. HOISINGTON: No, Your Honor.

21 THE COURT: Any additional questions from
22 Mr. Sapp?

23 MR. ARCHER: No, sir.

24 THE COURT: Thank you so much, Mr. Causey. As I
25 said, we're going to respect that. I'm going to find that

1 you're entitled to that and, therefore, you do not need to
2 be further involved in this case. I will excuse you from
3 further participation because, as you stated, you could
4 not be fair and consider a death penalty.

5 **THE POTENTIAL JUROR:** Yes, sir.

6 **THE COURT:** Thank you. Mr. Causey, I would ask
7 you as a favor to the Court that you would not discuss
8 this case. I can't require you to do it, but if you would
9 not discuss this case until the conclusion of the case, I
10 would appreciate it.

11 **THE POTENTIAL JUROR:** Yes, sir, I would do that.

12 **THE COURT:** Thank you, sir.

13 All right. Ms. Jenkins.

14 (WHEREUPON, Sadie Jenkins, a black female,
15 entered the courtroom.)

16 EXAMINATION

17 **BY THE COURT**

18 **Q** Hello, Ms. Jenkins.

19 **A** Good evening.

20 **Q** How are you?

21 **A** Just fine.

22 **Q** Good. I appreciate your patience today. We've been
23 rearranging your schedule and I thank you for your
24 permitting us to do that. I hope it didn't
25 inconvenience you too much. We have given you a

1 sheet of paper that describes three types of jurors.

2 Have you had a chance to review that?

3 **A** Yes.

4 **Q** Which one -- which type most accurately describes
5 you?

6 **A** The third one.

7 **Q** Okay. And am I to understand that the third one is
8 the juror that says this, there are facts and
9 circumstances if established and proven that would
10 warrant me to conclude that a life imprisonment
11 without the possibility of parole is the most
12 appropriate sentence. Is that true?

13 **A** Uh-huh.

14 **Q** And likewise, there are facts and circumstances if
15 established by the evidence that would -- that I
16 would believe and conclude that the most appropriate
17 punishment was a death sentence. Is that true?

18 **A** Yes.

19 **Q** And it would depend on the facts of a certain case.
20 Is that true?

21 **A** Yes.

22 **Q** And as you sit here today, you don't have a
23 preference as to either of those sentences; is that
24 correct?

25 **A** No.

1 Q It would just depend on the particular case?

2 A Yes.

3 Q Do you understand, ma'am, that you are still under
4 oath in this matter?

5 A Yes.

6 Q And I'm going to have to ask you and the attorneys
7 may ask you some additional questions in this case.
8 Please remember that just like yesterday and this is
9 just a continuation of that, there really are no
10 right or wrong answers to any of these questions.
11 And please remember that you're entitled to your
12 beliefs and opinions. Do not think that you have to
13 justify them or to explain them. Because they are
14 yours and we respect that. Is that agreeable with
15 you?

16 A Yes.

17 Q Don't think we're trying to invade your privacy in
18 any way either. Because the whole purpose of these
19 questions are simply to assist us and you in making
20 that determination as to whether or not you are truly
21 that juror who can sit and fairly and impartially
22 consider all the evidence in this case and decide --
23 and apply the law to that evidence and make a
24 decision which would be fair to the State and to
25 Mr. Sapp. Do you understand that?

- 1 **A** Yes.
- 2 **Q** You have indicated thus far, either by responding to
3 the questions or not responding to some of the
4 questions yesterday that you are that type of juror;
5 is that right?
- 6 **A** Right.
- 7 **Q** And as I understand that, that means you haven't
8 decided any issue in this case. You haven't reached
9 any conclusions in this case. Is that true?
- 10 **A** Right.
- 11 **Q** So you, at this point, have an open mind about the
12 entire case. Is that true?
- 13 **A** Yes, sir.
- 14 **Q** Do you understand that that is probably one of the
15 most important aspects of a juror's service as a
16 judge of the facts to have that open mind?
- 17 **A** Yes.
- 18 **Q** Because one of the things that you will have -- what
19 will happen is if you're on that jury, you will make
20 a commitment to the State and to Mr. Sapp that you
21 will maintain that open mind throughout the process
22 and keep it there until the Court tells you to begin
23 your deliberations to decide certain issues. Would
24 you honor that commitment?
- 25 **A** Yes.

1 **Q** Of course, when I gave you the instruction to begin
2 your deliberations then, of course, you would be
3 expected to fairly and impartially apply your common
4 sense, your sense of logic and reason and make a
5 determination from the evidence what you believe to
6 be the true facts. And would you do that?

7 **A** Yes, sir.

8 **Q** The evidence you know consists of testimony of the
9 witnesses and exhibits that might be introduced and
10 nothing else. Is that your understanding?

11 **A** Yes, sir.

12 **Q** That means that it would be inappropriate for you to
13 ever consider anything in this process that occurs
14 outside of this courtroom or anything that someone
15 may say to you outside of this courtroom. Do you
16 agree with that as well?

17 **A** Yes.

18 **Q** Now, during this process, our roles, your role as a
19 juror and, therefore, the judge of the facts, and my
20 role as a judge of the law, are quite distinct and
21 separate. Do you understand that?

22 **A** (The juror nodded.)

23 **Q** Nothing that I say to you should ever be considered
24 by you as a juror or any other juror to be an
25 indication to you or a suggestion of how you are to

1 resolve one of those factual issues because that's
2 your job. Is that agreeable with you?

3 **A** Yes, sir.

4 **Q** And would you honor that as well?

5 **A** Yes.

6 **Q** Likewise, you don't have anything to do with the law
7 in this particular case. That's my sole
8 responsibility. You understand that?

9 **A** Yes.

10 **Q** And as the trial judge, it would be my responsibility
11 to give you the law and you as a juror would have to
12 listen to that law, accept that law and apply it
13 fairly and impartially to the facts that you would
14 ultimately determine. Could you honor that as well?

15 **A** Yes.

16 **Q** Part of that would be that you might hear some
17 principle of law that you think should be changed or
18 you might not even agree with it.

19 **A** Uh-huh.

20 **Q** But you understand that the commitment that you make
21 to the State and to Mr. Sapp that you promised you'll
22 set that aside and you'll apply that law as well,
23 fairly and impartially. Would you do that?

24 **A** Yes, sir.

25 **Q** Even if you should differ with it; is that correct?

1 **A** Right.

2 **Q** Now, during this process, you understand throughout
3 this process that the State is the only party that
4 has anything to prove. You agree with that?

5 **A** Yes.

6 **Q** As I told you yesterday, the law in this state and
7 every state in this country is that persons who are
8 accused of committing criminal offenses, as Mr. Sapp
9 is in this case, are never required to prove
10 anything, to explain anything. They certainly don't
11 have to prove their innocence. Do you understand
12 that?

13 **A** Yes.

14 **Q** Do you have any problem with that law?

15 **A** No, sir.

16 **Q** And would you and -- do you now and would you
17 constantly apply that law?

18 **A** I will.

19 **Q** And that means that you right now look at Mr. Sapp
20 and you believe he's innocent of these charges. Is
21 that true?

22 **A** Yes, until proven.

23 **Q** Until proven. That's right. Now, you hesitated.
24 Because it really is, that's exactly what that law
25 says. Now, do you have any reservation about that?

1 **A** No, sir.

2 **Q** You're not expecting him to prove anything to you or
3 disprove anything; is that right?

4 **A** Right.

5 **Q** Because I will tell you now that he doesn't have any
6 duty to do that. He doesn't even have to say
7 anything to this and you can never consider that.
8 You understand that?

9 **A** Yes, sir.

10 **Q** Because all you will be considering is whether or
11 not -- and all you will determine in the first phase
12 is whether or not the State has presented evidence
13 that convinces you beyond a reasonable doubt that
14 he's, in fact, guilty of these offenses. Do you
15 understand that?

16 **A** Yes.

17 **Q** And I would charge you further in that connection,
18 Ms. Jenkins, that if when considering these -- the
19 evidence and in deliberating, if you should have a
20 feeling that, well, I'm not convinced -- or at least
21 the State hadn't convinced me beyond a reasonable
22 doubt as to that particular element, it would be your
23 duty to return a verdict of not guilty as to that
24 offense. Do you understand that?

25 **A** Yes.

1 **Q** On the other hand, if you were likewise convinced
2 beyond a reasonable doubt as to every element, then
3 it would be your duty to return a verdict of guilty
4 on that offense. Do you understand that?

5 **A** Yes, sir.

6 **Q** Would you have any hesitancy or problem following
7 that instruction?

8 **A** No, sir.

9 **Q** Now, you understand that if the jury returns a
10 verdict of guilty on the offense of murder then we
11 would have a second phase of this proceeding. We
12 call that a penalty phase.

13 **A** Yes.

14 **Q** It's at that time that you would hear additional
15 evidence which would include evidence of aggravating
16 circumstances, mitigating circumstances. And those
17 are terms that I will define for you during the
18 charge. They are clearly defined by our law and
19 statute and you will be asked to apply that law to
20 the evidence. Would you have any problem doing that,
21 ma'am?

22 **A** No, sir.

23 **Q** At the end of that proceeding, I would give you an
24 instruction just like in the first proceeding and you
25 would be expected to apply that law to the facts that

1 you will ultimately determine. And this time when
2 the jury retires, you would be considering the
3 evidence and applying the law and making a
4 determination as to what you believe to be the most
5 appropriate sentence. Do you understand that?

6 **A** Yes.

7 **Q** Now, am I to understand from your statements thus far
8 that you are a person who would consider all the
9 facts and circumstances established, including
10 aggravating circumstances, mitigating circumstances,
11 that you would listen to the law and apply the law
12 and there are times after doing that, considering
13 that, you may determine that the most appropriate
14 sentence and your vote would be for life imprisonment
15 without the possibility of parole; is that right?

16 **A** Yes.

17 **Q** Likewise, considering the evidence and then including
18 aggravating circumstances and mitigating
19 circumstances and applying the law, there are
20 situations where you would believe the most
21 appropriate sentence would be the death penalty; is
22 that right?

23 **A** Right.

24 **Q** What would determine which one is the fact -- which
25 one you would choose would be the facts and

1 circumstances which are established; is that right?

2 **A** Right.

3 **Q** Beyond a reasonable doubt?

4 **A** Yes.

5 **Q** And you couldn't make that determination and wouldn't
6 make that determination until that had been done; is
7 that correct?

8 **A** Yes.

9 **Q** Do you understand if you were to be on the jury and
10 the jury decided the most appropriate penalty was the
11 death penalty, that you would have to sign a form, a
12 verdict form with the other jurors indicating that
13 fact?

14 **A** Yes.

15 **Q** Would you have any problem as a juror performing that
16 function?

17 **A** No, sir.

18 **Q** Okay. You also understand that during the trial of
19 this case, the jury will be sequestered. That means
20 you will be housed in a motel with the other jurors
21 and y'all will eat together, you will dine together
22 and you will basically be kept together until the
23 trial is complete?

24 **A** Yes.

25 **Q** It could last as long as 10 days. Do you understand

1 that?

2 **A** Yes.

3 **Q** Would that in any way affect your ability to be a
4 fair and impartial juror?

5 **A** No, sir.

6 **Q** Okay.

7 **THE COURT:** Answer any questions the State may
8 have.

9 EXAMINATION

10 **BY MR. JENNINGS**

11 **Q** Good afternoon, Ms. Jenkins.

12 **A** Hello.

13 **Q** My name's Blair Jennings. I'm the Deputy Solicitor
14 in Berkeley County. Have you lived in Berkeley
15 County your whole life?

16 **A** Yes.

17 **Q** Have you lived in Pineville?

18 **A** Yes.

19 **Q** Do you know Ms. Rembert, Alice Rembert, who works in
20 my office?

21 **A** Yes.

22 **Q** How long have you known her?

23 **A** Quite a many years now. Over 20, I should say.

24 **Q** How would you characterize your acquaintance with
25 Ms. Rembert? Are y'all friends or friend in the

1 community?

2 **A** She's a patron of mine. I deliver mail to her house
3 every day.

4 **Q** Okay. Would any part of your relationship with
5 Ms. Rembert have any impact on your serving as a
6 juror in this case?

7 **A** No, sir.

8 **Q** You could provide Mr. Sapp with a fair trial?

9 **A** Yes, sir.

10 **Q** And you could provide the State as well with a fair
11 trial?

12 **A** Yes.

13 **Q** And when we're talking about providing a fair trial,
14 obviously, as the Judge has already questioned you,
15 you would be the type of juror who could consider
16 both a life sentence without parole as well as a
17 death sentence?

18 **A** Yes, sir, I think so.

19 **Q** And when -- I saw you sort of rolled your eyes. What
20 about that caused you hesitation?

21 **A** Nothing, I think I can give a fair trial.

22 **Q** You think you can?

23 **A** Yes, I think I can.

24 **Q** And we obviously understand these are very weighty
25 issues for any juror to consider. The possibility of

1 returning a death sentence is nothing that should be
2 taken lightly. What -- if you could share with me
3 briefly, what are your views on the death penalty?

4 **A** Well, at this point I have no need for it.

5 **Q** Have you had the opportunity to talk about the death
6 penalty with friends or family?

7 **A** No, I haven't.

8 **Q** Do you feel that it is an appropriate punishment in
9 the correct circumstances?

10 **A** No.

11 **Q** You don't feel that it's ever an appropriate
12 punishment?

13 **A** It is an appropriate punishment, yes. I do believe
14 that will be an appropriate punishment if it comes to
15 that point.

16 **Q** And what point is that that you're referring to?

17 **A** I believe if you do the time -- you do the crime, you
18 pay the time.

19 **Q** Okay. You believe that there are certain cases where
20 a murder has been committed, that if the proper facts
21 and circumstances are present, that the death penalty
22 is the appropriate punishment?

23 **A** Yes.

24 **Q** You're not strongly opposed to the death penalty on
25 any moral issues?

1 **A** No.

2 **Q** You belong to the United Methodist Church?

3 **A** Yes, I am.

4 **Q** What is your church's views on the death penalty?

5 **A** Well, at this point we haven't had a discussion on
6 that in our sanctuary, I should say. But we do
7 believe in you do the crime, you pay the time.

8 **Q** So there's no beliefs of your church that would cause
9 you --

10 **A** No.

11 **Q** -- or would prevent you from returning a death
12 sentence?

13 **A** No.

14 **MR. JENNINGS:** Thank you, Your Honor. That's
15 all I have.

16 **THE COURT:** Mr. Archer?

17 EXAMINATION

18 **BY MR. ARCHER**

19 **Q** Good afternoon.

20 **A** Good evening.

21 **Q** I didn't catch your last name. But you're friends
22 with Alice that works at the solicitor's office?

23 **A** We're not friends. She's just a patron on my route.
24 I'm a mail carrier.

25 **Q** Oh, I see.

1 **A** And I know the family.

2 **Q** Okay. And because of that, would that affect your
3 decision if you felt that maybe the proper punishment
4 would be life without the possibility of parole,
5 would that affect it because you were friends --

6 **A** No, no.

7 **Q** So you could give life without the possibility of
8 parole?

9 **A** Yes.

10 **Q** And I noticed you said you think you can when you
11 were talking about punishment. I would rather hear
12 you say, I know I can.

13 **A** I know I can say that.

14 **Q** And if the circumstances warrant it and if you think
15 that life -- that the proper punishment would be life
16 without the possibility of parole, you would have no
17 hesitancy of giving that punishment?

18 **A** No.

19 **MR. ARCHER:** Thank you.

20 **THE COURT:** Anything further?

21 **MR. JENNINGS:** No, sir.

22 **THE COURT:** Ms. Jenkins, I'm going to ask if you
23 would step out for just a moment. We'll be with you in
24 just a second.

25 (WHEREUPON, the juror left the courtroom.)

1 **THE COURT:** What says the State?

2 **MR. JENNINGS:** She's qualified.

3 **MR. ARCHER:** Qualified.

4 **THE COURT:** Thank you. I agree. I was
5 wondering about this group.

6 Ask Ms. Jenkins to come back in, please.

7 (WHEREUPON, the juror entered the courtroom.)

8 **THE COURT:** Ms. Jenkins, thank you so much. You
9 have been qualified to be a member of a pool of the jurors
10 from which we will select the trial jury. That will occur
11 on Thursday at 9:30. I'm going to ask that you please
12 report back to this courtroom at that time. Until
13 reporting, Ms. Jenkins, please remember that you are not
14 permitted and should not discuss this case with anyone or
15 allow anybody to talk with you about the case. Also, I
16 would ask you to continue not to read any newspaper
17 articles about it, nor watch any television programs or
18 news programs about it.

19 Ms. Wiggins has some information that Ms. Brown
20 has been kind enough to put together that will be of
21 assistance to you in instructing you of what to bring with
22 you on Thursday. Because obviously, if you are selected,
23 you will be sequestered at that time. Just follow those
24 instructions. I think they clearly indicate what you need
25 to do. Have a good day tomorrow and we'll see you

1 Thursday morning at 9:30. Thank you.

2 Mr. Ullery, please.

3 (WHEREUPON, Kenneth R. Ullery, a white male,
4 entered the courtroom.)

5 EXAMINATION

6 **BY THE COURT**

7 **Q** Mr. Ullery, good afternoon, sir.

8 **A** Afternoon.

9 **Q** Thank you for your patience. Mr. Ullery, we are
10 continuing the process that commenced yesterday. And
11 it may be necessary to ask you some additional
12 questions. Please -- I'm sure you probably already
13 gleaned and understand fully that as I indicated
14 yesterday there truly are no correct answers to any
15 of these questions. We're not here to try to change
16 your mind about any opinions you may have. We're not
17 here to challenge any of those opinions. Do not feel
18 that you need to defend them or that you should feel
19 uncomfortable about any of those opinions. They are
20 yours and you are entitled to them, sir. Also, don't
21 think that we're trying to invade any privacy that
22 you have. The whole intent of this process is to
23 simply assemble a pool of jurors from which we could
24 select the trial jury. And that pool of jurors or
25 potential judges of the facts would be persons who

1 could and would apply their common sense, their sense
2 of logic and reason, fairly and impartially. Is that
3 fair, sir?

4 **A** Very.

5 **Q** And basically, given your responses thus far, you
6 have indicated that you are that type of juror; is
7 that right?

8 **A** I believe so.

9 **Q** Have you had an opportunity, sir, to reflect on the
10 types of jurors indicated on that sheet?

11 **A** Yes, I have.

12 **Q** I would remind you, sir, that you are still under
13 oath in this matter. Is that agreeable with you?

14 **A** Yes.

15 **Q** Which type -- which of the types most accurately
16 describes you?

17 **A** Without question No. 3.

18 **Q** No. 3. You are then that type of person that has no
19 predetermination as to what the appropriate sentence
20 would be in that situation?

21 **A** No.

22 **Q** That situation, meaning when a person's been
23 convicted of murder; is that correct?

24 **A** That's correct.

25 **Q** You understand and basically, as I understand from

1 Type 3 that you would have to hear all of the facts
2 and circumstances and hear the law and then you would
3 make a decision as to what was appropriate in that
4 particular case.

5 **A** That's correct.

6 **Q** And in making that determination, there are times
7 when you would determine that life imprisonment would
8 be the most appropriate. And there are times when
9 you would believe the death penalty to be the most
10 appropriate. Is that true?

11 **A** Right, depending on the explanation of the law and
12 how the law had to be applied.

13 **Q** And that's fair. That's fine. It basically says at
14 this point I haven't decided anything. At the end of
15 the process, I would listen to the law, I would
16 evaluate the evidence and make my own determination
17 of what I believe to be appropriate when given the
18 facts and the law; is that right?

19 **A** That's correct.

20 **Q** Now, you understand that our roles are very distinct
21 and separate. If you were selected on the jury, you
22 would become a judge of the facts in this case and it
23 would be the jury's sole responsibility to determine
24 the factual issues. You understand that?

25 **A** Yes.

1 Q I have nothing to do with that process, nothing at
2 all. Do you understand that?

3 A Yes, sir.

4 Q Please understand that throughout this process that
5 nothing that I say to you or any questions that I
6 ask, don't consider that to be a suggestion of how
7 you're to resolve any issue. Is that acceptable?

8 A Understood.

9 Q Okay. Also, you have promised and would be promising
10 both the State and Mr. Sapp that you would consider
11 only the evidence when you begin the process of
12 making any determination on any issue given to the
13 jury to decide. Is that true?

14 A Yes.

15 Q That means only the testimony and exhibits that are
16 introduced in the courtroom.

17 A Correct.

18 Q Nothing that occurs outside of this courtroom,
19 nothing that you hear outside of this courtroom
20 should and can ever be considered by a jury in making
21 its determination. Would you agree with that?

22 A Yes.

23 Q Okay. You understand that also that by your
24 statements that you are the type of juror that could
25 be fair and impartial. You're indicating to the

1 State and to Mr. Sapp that you have an open mind at
2 this point in this process. Is that true?

3 **A** Very much.

4 **Q** And one of the important characteristics and
5 qualifications of a juror, I think, is that that open
6 mind be maintained at all times throughout the
7 process and that you not begin to make any
8 determinations until the Court gives you an
9 instruction to begin your deliberations on a
10 particular issue. Do you agree with that?

11 **A** Yes.

12 **Q** And would you do that?

13 **A** Yes.

14 **Q** Now, of course, during the trial, you will hear all
15 of the evidence and the testimony. And part of my
16 job will be to give you the law at the conclusion of
17 the various phases if we have a second phase. You
18 understand that?

19 **A** Yes.

20 **Q** It would be your responsibility to listen to that
21 law, to accept that law and apply it fairly and
22 impartially to the facts that you would ultimately
23 determine. You agree with that?

24 **A** Yes, sir.

25 **Q** Could you do that?

1 **A** Yes, sir.

2 **Q** Would you do that and apply the law even if you heard
3 a principle of law with which you may differ? In
4 other words, you may think the law should be modified
5 or changed, would you nevertheless take the law as I
6 give it to you?

7 **A** Absolutely.

8 **Q** Because that would be your duty.

9 **A** That's correct.

10 **Q** Now, you understand that the first phase of this
11 proceeding we would be dealing with the various
12 charges, the crimes charged. And at that time you
13 would hear evidence concerning those issues. At this
14 point, as I mentioned to you yesterday, Mr. Sapp, as
15 anyone accused of a criminal violation in this
16 country, is presumed innocent. Do you have any
17 problem with that principle of law?

18 **A** None whatsoever.

19 **Q** And that principle of presumption of innocence
20 applies and continues until you get to the point when
21 you consider the evidence. And it would only be
22 changed if you determined the State had met its
23 burden of proof and convinced you beyond a reasonable
24 doubt as to each -- as to any crime. Do you
25 understand that?

1 **A** Yes, sir.

2 **Q** That means as to each element of that particular
3 offense you would be convinced that the evidence
4 establishes that element. Is that true?

5 **A** Yes, sir.

6 **Q** If, in your good consideration of the evidence, you
7 were not convinced beyond a reasonable doubt as to
8 any element of an offense, would you have any
9 hesitancy returning a verdict of not guilty?

10 **A** No.

11 **Q** Also, if you were convinced, would you have any
12 hesitancy of returning a verdict of guilty?

13 **A** No.

14 **Q** If the jury should conclude that the State had met
15 its burden of proof on the offense of murder and
16 returned a verdict of guilty, then we would move into
17 a second portion of this proceeding. We call that
18 the penalty phase. Do you understand that?

19 **A** Yes, sir.

20 **Q** At that time you would hear additional evidence that
21 would be -- would deal with the appropriate
22 punishment. Some of that evidence may be mitigating
23 circumstances, aggravating circumstances. And I will
24 tell you now that I will define both of those terms
25 for you because they are clearly defined by our

1 legislature. You would have no problem listening to
2 that law and applying that law fairly and
3 impartially, would you?

4 **A** No, I wouldn't, that would be my responsibility.

5 **Q** Okay. At the conclusion of the penalty phase, the
6 jury would then be further instructed on the law and
7 then you would be asked to retire to begin your
8 deliberations on the appropriate punishment. Do you
9 understand that?

10 **A** Yes, sir.

11 **Q** Am I to understand from your answers thus far that at
12 that time you would have to consider in a case and
13 you would then consider all the evidence and the
14 facts that you believe to have been established
15 beyond a reasonable doubt, including mitigating
16 circumstances, aggravating circumstances, and that
17 you would take the law, listen to that law and apply
18 it and make a decision as to what was the appropriate
19 punishment?

20 **A** Yes, sir.

21 **Q** And there may be situations based on those facts and
22 circumstances and law that you would decide that life
23 imprisonment without the possibility of parole was
24 the correct sentence?

25 **A** Yes, sir.

1 Q And likewise, there may be situations where you would
2 determine that the death sentence was the most
3 appropriate?

4 A Yes, sir.

5 Q If the jury should conclude that the death sentence
6 was most appropriate, you would be asked and required
7 to sign a form indicating that. Do you understand
8 that? With the other jurors.

9 A Yes, sir.

10 Q Would you have any problem or hesitancy performing
11 that function as a juror?

12 A Not if that's the conclusion I come to after
13 evaluating it.

14 Q During this trial, the jury will be sequestered. And
15 that sequestration may -- could last as long as 10
16 days. Would that affect your ability to serve as an
17 impartial and fair juror in this case?

18 A No, sir.

19 Q You would perform your duties without it being --
20 without any hindrance from that process?

21 A Yes, sir.

22 THE COURT: Answer any questions the State may
23 have, please.

24 MR. HOISINGTON: Thank you, Judge.

25 ///

EXAMINATION

1
2 **BY MR. HOISINGTON**

3 **Q** Is it Mr. Ullery?

4 **A** Yes, sir, Ullery.

5 **Q** I'm Ralph Hoisington, along with Blair Jennings,
6 we'll be presenting the case for the State in this
7 matter. Both sides really are looking for jurors
8 that describe themselves much as you have. And your
9 answers to Judge Dennis' questions pretty much have
10 answered everything I need to know. I would like to
11 ask you this, though. Is there anything in your
12 background, anything in your religious beliefs or
13 philosophical beliefs that would get in the way of
14 you making a reasoned decision as to whether or not
15 the death penalty should apply in a case?

16 **A** No, there's not.

17 **Q** Fairly much open to the facts?

18 **A** Exclusively. The facts would have to dictate the
19 whole situation and the law.

20 **MR. HOISINGTON:** That's all we're looking for.
21 I appreciate it.

22 **THE COURT:** Mr. Archer?

EXAMINATION

23
24 **BY MR. ARCHER**

25 **Q** Hello, Mr. Ullery.

1 **A** Hello, sir.

2 **Q** I see you were born in Rockland County?

3 **A** Rockland County.

4 **Q** I was born and raised in West Chester County right
5 across the river. On your questionnaire, I noticed
6 that you have -- I can't quite read it, something in
7 criminal justice?

8 **A** I have an Associates of Applied Science in Criminal
9 Justice, two-year degree.

10 **Q** Did you ever follow that up in seeking employment?

11 **A** No, sir, I didn't.

12 **Q** Okay. Why was that your degree? Were you just
13 interested in criminal justice?

14 **A** I will try to make it as brief as possible. I
15 finished my first year of college in conjunction with
16 my last year of high school and I received that
17 degree in one year. I was relatively young when I
18 received that degree, too young to really apply for
19 any position in the criminal justice type role,
20 police agency and so forth, and really determined it
21 wasn't a field that I was going to seek as a career
22 and I returned to school for more education.

23 **Q** So you didn't take it because you wanted to be a
24 police officer?

25 **A** That was probably my thinking when a high school kid

1 goes into college. I was very young and really
2 hadn't settled on what I was going to do. But by the
3 time I came out with the degree, I had decided
4 against it.

5 **Q** And would that have any effect on your judgment or
6 opinion on this case?

7 **A** No, sir, none whatsoever.

8 **Q** Okay. I see also that your home was broken into at
9 one time?

10 **A** Yes.

11 **Q** Would you just tell the Court what that's about?

12 **A** Actually, it was -- it turned out to be a lot less
13 than we initially thought. It was a neighborhood
14 friend of my daughter's who had a boyfriend and had
15 actually obtained from his girlfriend the code for
16 our garage door and didn't think anybody was home and
17 was helping himself to some beer out of the
18 refrigerator in our garage. Kind of scared us
19 because we were home, but he was apprehended.

20 **Q** Right. And he was punished, I assume, for that?

21 **A** Honestly, I don't know exactly what happened. I know
22 he was arrested.

23 **Q** On the last page, you write there's a relative and
24 close friends in the police. I would just like to go
25 through them. Ronald Sims, how is he related?

1 **A** Ronald Sims, both -- Ronald Sims, Sr. is my wife's
2 uncle. He was on the Bridgeport Police Department in
3 Connecticut.

4 **Q** Do you see him often?

5 **A** Once every three years or so.

6 **Q** I see. And when you see him, do you discuss criminal
7 cases?

8 **A** No, sir.

9 **Q** Or just more of a social visit?

10 **A** Family.

11 **Q** And how about, it looks like Owen Garrett?

12 **A** Owen Garrett is my brother's brother-in-law, kind of
13 an extended family relationship. I have not seen
14 Owen in -- since I moved to South Carolina. So that
15 would be probably about 15 years since I've seen him.

16 **Q** I don't quite get it. Your brother's brother-in-law?

17 **A** Right.

18 **Q** I don't quite get that.

19 **A** My brother's wife's brother.

20 **Q** In law school, we used to have to go through all
21 these things. I was never good at that, first
22 cousins, removed or whatever. What about Jenny
23 Hilton?

24 **A** Jenny Hilton is a close friend of my wife.

25 **Q** Would any of these -- well, how close is she with

1 your wife?

2 **A** They talk -- not as close since -- she's moved out of
3 state, so they don't see each other as much. I think
4 she sees her about once every two months, sees her or
5 talks to her on the phone.

6 **Q** Have they discussed this case any?

7 **A** I don't know if they have. But if they have, I'm not
8 aware of it.

9 **Q** And it's not been reverted back to you?

10 **A** No, sir.

11 **Q** And knowing all this, would this have any effect on
12 your opinion?

13 **A** None whatsoever.

14 **MR. ARCHER:** Thank you, sir.

15 **THE COURT:** Any additional questions from the
16 State?

17 **MR. HOISINGTON:** No, Your Honor.

18 **THE COURT:** Mr. Ullery, if you would step down
19 just for a second, we'll be right with you, sir.

20 (WHEREUPON, the juror left the courtroom.)

21 **THE COURT:** Solicitor?

22 **MR. HOISINGTON:** We believe he's qualified.

23 **MR. ARCHER:** Judge, I really should make a
24 motion because of his relationship with the police just
25 for the record. But I know he's qualified so maybe I

1 won't make the motion.

2 **THE COURT:** That would really help me with your
3 future motions, because I've written down I'm really
4 impressed with the quality of all of the jurors, but some
5 of them, this guy he would be a superb juror.

6 **MR. ARCHER:** I was just saying maybe for the
7 record it would come back to haunt me on a PCR.

8 **THE COURT:** I did what you did. I understand
9 why you do it. That's not a problem. I'm fully cognizant
10 of that.

11 **MR. ARCHER:** I will withdraw my motion.

12 **THE COURT:** This's an adversary system and I
13 respect it very much. I would find even if you made the
14 motion, Mr. Archer, as I stated, that Mr. Ullery is
15 extremely qualified.

16 Ask him to step in, please.

17 (WHEREUPON, the juror entered the courtroom.)

18 **THE COURT:** Mr. Ullery, thank you so much for
19 your patience. We have found that you're qualified to
20 continue and to be a member of the pool of jurors from
21 which we will select the trial jury. That process will
22 take place on Thursday morning at 9:30. I will need for
23 you to report here at that time. Until then, please, sir,
24 remember that you should not and are not permitted to
25 discuss this case with anyone or permit anyone to talk

1 with you. Also, I would ask you to continue to observe
2 the restriction about reading any newspaper accounts or
3 watching any news programs about it.

4 Ms. Wiggins has some information which Ms. Brown
5 was kind enough to put together for you. It gives you
6 some instruction about what to do for Thursday because,
7 obviously, if you are selected, you will be sequestered at
8 that time. Have a great day tomorrow and we'll see you
9 Thursday morning at 9:30. You can leave through the
10 front, Mr. Ullery.

11 We'll take a few minutes to stretch.

12 (WHEREUPON, a short break was taken.)

13 **THE COURT:** Let the record reflect that Mr. Sapp
14 is present. Mr. Archer, are we ready to continue?

15 **MR. ARCHER:** Yes, sir.

16 **THE COURT:** State ready to continue?

17 **MR. HOISINGTON:** Yes, sir.

18 **THE COURT:** All right. Let's bring in the first
19 juror on this panel and that's Paul Fischer.

20 (WHEREUPON, Paul J. Fischer, a white male,
21 entered the courtroom.)

22 EXAMINATION

23 **BY THE COURT**

24 **Q** Good afternoon, Mr. Fischer.

25 **A** Good afternoon.

1 Q How are you? It's almost evening, I guess, is a
2 better statement.

3 A I'm doing fairly well. And you?

4 Q Good, thank you. And I appreciate your patience with
5 us today in rearranging things. And the lateness of
6 the hour, I'm sorry, but we wanted to go ahead and
7 complete this process today with you if that could be
8 done. And I thank you for your indulgence.

9 A Sure.

10 Q We're continuing the process that we started
11 yesterday, Mr. Fischer. And basically, as you
12 probably determined early on, as I indicated, the
13 questions that have been asked have no correct
14 response. They are merely questions that will assist
15 you and assist us in determining whether or not you
16 are the type of juror who can fairly and impartially
17 apply your common sense, your sense of logic and
18 consider the factual issues in this case, make a
19 determination of what you believe to be the true
20 facts and then fairly and impartially apply the law
21 to those facts so that your decision would be fair to
22 the State and would be fair to Mr. Sapp. Do you
23 agree with that?

24 A I agree.

25 Q Please know that we're going -- we may ask you some

1 additional questions. And again, do not feel that
2 you have to explain any answers or justify your
3 feelings or opinions. You're entitled to those. And
4 nothing that we have done or do today should in any
5 way make you feel uncomfortable about that because
6 that's your right, sir.

7 **A** Okay.

8 **Q** So don't think that we're invading any privacy.
9 Again, we're just -- all we ask is that you
10 truthfully respond to the questions. And will you do
11 that?

12 **A** Yes. Your Honor, is it possible? I think since
13 yesterday, unfortunately today, I heard some
14 information at my place of employment that was
15 overheard conversation that sort of shed light in my
16 mind, a little embarrassingly enough, that I actually
17 knew a little bit more about the incident in question
18 than I thought I did yesterday.

19 **Q** Sure.

20 **A** And with that coming back to light, I think when this
21 happened, I had -- we had just had a baby that was
22 born, so I was a little out of the loop in the news
23 world. But with that coming back to light, I
24 realized that I had a conversation at the time of the
25 incident with someone whose husband, she's a friend

1 of mine, her husband's in law enforcement, and they
2 shared some information with me that her husband in
3 law enforcement has had some dealings with the
4 accused prior to the incident.

5 **Q** All right.

6 **A** And based on all the things I saw sitting here
7 yesterday, I don't know that that hasn't influenced
8 me.

9 **Q** You feel that it has?

10 **A** I do. I feel that it has.

11 **Q** And you would not then be in a position where you
12 could be fair and impartial in this case?

13 **A** Unfortunately, I don't feel so.

14 **Q** So based on what you're telling me, based on the
15 information that you heard -- and I'm always
16 reluctant to use this term because we apply such a
17 negative connotation to it, we shouldn't. But you
18 have a bias in this case now?

19 **A** Yes, sir.

20 **THE COURT:** Okay. Anything further from the
21 State?

22 **MR. JENNINGS:** No, sir.

23 **MR. ARCHER:** No, sir.

24 **THE COURT:** Anything further from Mr. Sapp?

25 I, sir, want to commend you, again, and tell you

1 that what you have just done is one of the reasons when
2 people criticize the jury system, I tell them I don't know
3 what jury system you've dealt with, but the one that I
4 deal with, I'm proud to be a part of it. Because I
5 believe jurors take their job extremely seriously as
6 indicated by what you've just done. Thank you, sir.

7 **THE POTENTIAL JUROR:** Thank you.

8 **THE COURT:** You are excused. Thank you. Have a
9 great day, sir. And again, I apologize to you for the
10 inconvenience.

11 **THE POTENTIAL JUROR:** No, thank you very much.

12 **THE COURT:** Let's have Ms. Altman.

13 (WHEREUPON, Karen D. Altman, a white female,
14 entered the courtroom.)

15 EXAMINATION

16 **BY THE COURT**

17 **Q** Good evening, Ms. Altman.

18 **A** Hello.

19 **Q** Are you ready for supper? It's about that time.

20 **A** I'm fine, recovering from yesterday.

21 **Q** Good. Thank you for your patience. And I apologize
22 for the lateness of the hour. Hopefully, we'll not
23 contain you much longer. But I appreciate your
24 indulgence with the Court and especially for changing
25 the time for your appearance and then being late in

1 getting to you.

2 We are continuing the process that we commenced
3 yesterday. And that, of course, is probably as you
4 quickly determined is simply a process to assist in
5 determining and obtaining a pool of persons who are
6 capable of fairly and impartially applying their
7 common sense and logic and reason in that process of
8 analyzing the evidence in this case and deciding what
9 they believe to be the true facts. And then once
10 determining those true facts, taking the law as I
11 would give it to the jury and applying that law
12 fairly and impartially so they would reach a decision
13 which would be fair to the State and be fair to
14 Mr. Sapp. That's the purpose for this process. And
15 based on your answers yesterday, we have determined
16 thus far that you are one of those persons; is that
17 correct?

18 **A** Yes, sir, I believe so.

19 **Q** Have you had an opportunity to review the types of
20 jurors on that sheet?

21 **A** I did.

22 **Q** And I would remind you, Ms. Altman, that you are
23 under oath in this matter.

24 **A** Uh-huh.

25 **Q** Continue to be under oath. Which juror or type of

1 juror most accurately describes you?

2 **A** I feel the third juror.

3 **Q** Meaning -- and the third juror is that juror that
4 could, in a given -- in a case with certain
5 circumstances and facts established feel that the
6 most appropriate sentence would be life imprisonment;
7 and there may be a case where the facts and
8 circumstances established and the law, you would be
9 convinced that the death penalty would be most
10 appropriate?

11 **A** I would have to decide after hearing the case.

12 But --

13 **Q** And you couldn't decide before then and wouldn't
14 decide?

15 **A** Huh-uh, definitely not.

16 **Q** So you don't have any predetermination or any
17 personally -- and I used this term inadvisably,
18 favored sentence? In other words, it's not one you
19 would most likely apply given a murder conviction?

20 **A** No, sir.

21 **Q** It would depend on the facts in that particular case?

22 **A** Exactly.

23 **Q** You have in answering the questions or not answering
24 the questions, whichever the case may be, have
25 suggested that you have an open mind about this

1 particular case. Is that true?

2 **A** Yes, sir.

3 **Q** You heard me mention some of the law that you will
4 hear. One of those principles is the presumption of
5 innocence, that persons who are accused of criminal
6 offenses are just that, only that, accused of those
7 offenses.

8 **A** Uh-huh.

9 **Q** And that they are innocent until and unless the State
10 proves them guilty beyond a reasonable doubt. You
11 understand that?

12 **A** Yes, sir.

13 **Q** Do you have any problem with that principle of law?

14 **A** No, sir.

15 **Q** You are applying it now?

16 **A** I think that should always be the case.

17 **Q** Very well. So as Mr. Sapp sits here today, it's your
18 feeling that he is innocent of those accusations or
19 those charges. Is that true?

20 **A** I have seen headlines, but I've not thoroughly
21 investigated. I'm going to graduate school and very
22 busy. So as far as -- I have not investigated it
23 thoroughly enough to form an opinion as to what
24 happened.

25 **Q** Okay. So you've reached no conclusions?

1 **A** Right.

2 **Q** And I believe you indicated yesterday that there was
3 nothing about what you had heard that would affect
4 your ability to be -- to maintain an open mind during
5 the trial of this case. Is that true?

6 **A** I will try my best.

7 **Q** Well, I appreciate that answer. And I understand
8 that is a very reasonable answer. But that's an
9 answer that only you know as to whether you can have
10 an open mind. There is not a soul in this room that
11 can answer that question but you. And try my best,
12 could be interpreted to be, well, I'll do the best I
13 can, but it's not totally open.

14 **A** Would you rephrase or repeat the question?

15 **Q** Would you and are you and do you now have an open
16 mind concerning the issues in this case?

17 **A** Yes, sir.

18 **Q** And the primary issue, the first part of the trial
19 will deal with the issues of whether or not the State
20 presents sufficient evidence to convince you beyond a
21 reasonable doubt as to each of these offenses. Do
22 you understand that?

23 **A** Yes, sir.

24 **Q** As I mentioned to you, only the State has the burden
25 of proof. Mr. Sapp doesn't have to prove anything or

1 disprove anything. Do you understand that?

2 **A** Uh-huh.

3 **Q** Is that a yes?

4 **A** Yes, sir.

5 **Q** Don't misunderstand me. I saw the response. She
6 needs you to answer. It will help us, it will help
7 the record. Thank you.

8 **A** I understand.

9 **Q** The oath that you will take when you begin this, the
10 commitment that you will make to the State and to
11 Mr. Sapp is that you will basically maintain that
12 open mind until I direct you to begin your
13 deliberation on a particular issue in this case. Do
14 you understand that?

15 **A** Yes, sir.

16 **Q** Will you do that?

17 **A** Yes, sir.

18 **Q** You will honor that commitment to both sides?

19 **A** I will.

20 **Q** The first issue that you will be asked to resolve
21 will be the issue of whether or not the State meets
22 the burden of proof. And at that time, you will
23 consider the evidence. And the evidence consists of
24 testimony of witnesses and exhibits and nothing else.
25 Do you agree with that?

1 **A** Yes, sir.

2 **Q** Anything that occurs outside of this courtroom,
3 anything that's said outside of this courtroom should
4 never be considered by you as evidence. And will you
5 honor that as well?

6 **A** I will.

7 **Q** When you -- one of the instructions that I would give
8 to you is when you may start your deliberations. And
9 until then you will, as I understand, not decide
10 anything; is that right?

11 **A** Yes, sir.

12 **Q** You understand that my role is to be the judge of the
13 law and I don't have anything to do with the facts in
14 this case. Okay?

15 **A** Yes, sir.

16 **Q** Please understand that that applies now as well as
17 when the trial starts. Nothing that I say or ask you
18 during this process should ever be considered by you
19 as a suggestion of how you're to resolve any factual
20 issue.

21 **A** I understand.

22 **Q** Because that's your sole responsibility as a judge of
23 the facts if you are a juror in this case. Do you
24 understand that?

25 **A** Yes, sir.

1 **Q** Also, consistent with that, since I don't have
2 anything to do with the facts, you're the sole judge
3 of the facts, I'm the sole judge of the law. And
4 that means it's my responsibility to give you the law
5 and it's your duty and responsibility as a juror to
6 listen to that law, accept that law and apply that
7 law fairly and impartially to the facts that you
8 would ultimately determine. Would you honor that
9 commitment?

10 **A** I would.

11 **Q** You may hear a principle of law that causes you some
12 concern or one that you think that law should be
13 modified. And I respect your right to feel that way.
14 But part of the commitment that you make is that you
15 will set that feeling aside. Will you honor that
16 commitment?

17 **A** Yes, sir.

18 **Q** So you would apply law even if you differed with it
19 or disagreed with it?

20 **A** I would.

21 **Q** At the conclusion of the case, when the first part --
22 when you began the process of deciding this case, if
23 on any particular issue or concerning an element of
24 the offense, and I will define those elements for you
25 before you begin your deliberations, if on any

1 element you should reach the conclusion that you
2 aren't convinced beyond a reasonable doubt that the
3 State has established or the evidence has established
4 that particular element, would you and could you
5 return a verdict of not guilty?

6 **A** If I was convinced -- if I was unconvinced --

7 **Q** That you were not convinced that the State had
8 convinced you beyond a reasonable doubt as to that
9 particular element.

10 **A** Yes, sir.

11 **Q** Because I would instruct you that the State has the
12 burden of proving each element to that standard?

13 **A** That I understand.

14 **Q** And to that level. You understand that?

15 **A** Yes.

16 **Q** On the other hand, if you were convinced beyond a
17 reasonable doubt as to every element, would you have
18 any hesitancy in returning a verdict of guilty?

19 **A** No, sir.

20 **Q** If the jury returned a verdict of guilty on the
21 offense of murder, then we would have a second phase
22 of this proceeding. You understand that?

23 **A** Yes, sir.

24 **Q** And it's during that phase that you would hear
25 additional evidence concerning the appropriate

1 sentence in this case. Is that your understanding?

2 **A** Yes, sir.

3 **Q** Some of that evidence would be mitigating
4 circumstances, aggravating circumstances. And both
5 of those terms are well defined by our legislature
6 and I would give you a definition. Would you listen
7 to that charge, apply that charge and that law to
8 those facts?

9 **A** I would.

10 **Q** Fairly and impartially?

11 **A** Yes, sir.

12 **Q** When you had heard all the evidence and then received
13 an additional instruction concerning the sentence
14 portion, you will then be asked to retire to begin
15 your deliberations on what would be the most
16 appropriate sentence. Based on your answers thus
17 far, it's my understanding that after consider -- in
18 this type of case, after considering the evidence
19 presented, what you determine to be the true facts,
20 considering the aggravating circumstances and
21 mitigating circumstances and applying the law, there
22 are times when based on those facts and circumstances
23 and consistent with the law, you would believe that
24 an appropriate sentence would be life imprisonment --

25 **A** Yes, sir.

1 Q -- without the possibility of parole. And you would
2 return a verdict in that case; is that right?

3 A Yes, sir.

4 Q Also, as I understand your responses, there are times
5 when, if you heard the case and once you determined
6 the facts and circumstances considering mitigating
7 circumstances and aggravating circumstances, and
8 applying the law, you would reach a determination
9 that the most appropriate sentence would be the death
10 sentence. Is that true?

11 A Yes, sir.

12 Q And it just depends on the particular facts and
13 circumstances established; is that correct?

14 A Yes, sir, it would.

15 Q Do you understand that if the jury should determine
16 that the death sentence was the most appropriate in
17 this case, you would be required to sign a form
18 stating that fact? You with other jurors, do you
19 understand that?

20 A I do.

21 Q Could you carry out that function as a juror in this
22 case?

23 A Yes, sir.

24 Q Okay. You hesitated. And I understand and I
25 appreciate that. It's a very, very serious

1 responsibility. And I assume that hesitation was
2 that you wanted to give some serious thought to that
3 act; is that correct?

4 **A** That's correct.

5 **Q** Your hesitation is not -- I shouldn't consider that
6 to be your feeling that I don't know whether I could
7 impose the death penalty or not? Because you've
8 already indicated there are circumstances where you
9 could; is that correct?

10 **A** That's right.

11 **Q** Okay. I just want to be sure I didn't misinterpret
12 something. During the trial, the jury will be
13 sequestered and that sequestration could be as long
14 as 10 days. Do you believe that would affect your
15 ability to be a fair and impartial juror?

16 **A** No, sir.

17 **Q** You would deal with the inconvenience and perform
18 your duties as a juror?

19 **A** Yes, sir.

20 **THE COURT:** Thank you. Please answer any
21 questions the State may have.

22 **MR. HOISINGTON:** Thank you, Judge.

23 EXAMINATION

24 **BY MR. HOISINGTON**

25 **Q** Good evening, Ms. Altman. I will ask you a delicate

1 question. John Graham?

2 **A** No relation.

3 **Q** There's a couple of questions, let me inquire about
4 this. You have a 14-year-old daughter?

5 **A** I do.

6 **Q** Did she go to school with the victim's son?

7 **A** She is in the same grade level. They're not in the
8 same class. They are acquaintances passing in the
9 hallway.

10 **Q** Has your daughter ever talked to you about Trooper
11 Johnson's death?

12 **A** She mentioned to me something, I believe it was in
13 the school newsletter written by the son.

14 **Q** Do you feel -- sort of have to look deep on these
15 things. Do you feel that that acquaintance of your
16 daughter with the son of the person that was murdered
17 would put you in an awkward position in having to
18 determine the guilt or innocence and the appropriate
19 punishment of this case?

20 **A** I thought about that. I think my not being
21 acquainted with the person, my not having direct
22 contact will enable me to look at it objectively. If
23 I were directly acquainted with the child or
24 something of that -- you know, more intimately
25 acquainted myself, I'm sure I would be less

1 objective.

2 **Q** And you've never met him yourself?

3 **A** I have not, not that I'm aware of.

4 **Q** You had also mentioned and I think that you were a
5 victim, I believe, of a CDV-type case involving the
6 office in Berkeley County?

7 **A** Yes, sir.

8 **Q** Those matters can be somewhat delicate and involve a
9 lot of emotions. Did you come out of that with any
10 hard feelings or cause you any problems regarding the
11 State's position in this case?

12 **A** No, sir.

13 **Q** So you would be able to look at the case objectively
14 and make a determination of the guilt or innocence
15 without any bias on either side?

16 **A** Yes, sir.

17 **Q** And keeping in mind that he's presumed innocent and I
18 would expect you to hold the State to the burden of
19 proving him guilty beyond a reasonable doubt, you
20 would expect us to present evidence sufficient for
21 that, wouldn't you?

22 **A** I would.

23 **Q** If we have done that to your satisfaction if you are
24 on the jury, would you then be able to set aside that
25 presumption of innocence and find him guilty?

1 **A** Yes, sir.

2 **Q** And if you did that and we proved beyond a reasonable
3 doubt that there were aggravating circumstances in
4 the penalty phase, could you then consider the death
5 penalty?

6 **A** Yes, sir.

7 **Q** And not only consider it, if you thought it was
8 appropriate and in your deliberations with the other
9 11 jurors, y'all determined that the death penalty
10 was appropriate, what His Honor said is you would be
11 required to sign your name to a death verdict which
12 would call for his execution and that would surely be
13 carrying it out. Would you be able to do that as
14 well?

15 **A** Yes, sir.

16 **MR. HOISINGTON:** Thank you.

17 **THE COURT:** Mr. Archer?

18 EXAMINATION

19 **BY MR. ARCHER**

20 **Q** I see on your application you put you've been
21 employed with the -- it's probably a stupid question.
22 But it's SCDR?

23 **A** South Carolina Department of Natural Resources.

24 **Q** Oh, okay. Thank you. I was just wondering what that
25 was. On that criminal domestic violence, he was

1 later charged; is that correct?

2 **A** The way I understand it.

3 **Q** Okay. But I noticed here -- what was the outcome of
4 it? It said did you testify, etc. What happened?

5 **A** I did not. I was not notified of the court date and
6 I did not attend the final hearing. If they tried to
7 reach me, they weren't successful at doing that. So
8 on the final -- the original charge was assault and
9 battery with intent to kill. He fired a firearm at
10 my feet, debris hit my legs. He left the state later
11 came back, turned himself in. And through the
12 process, eventually, I understand that he was charged
13 with criminal domestic abuse or violence. But I have
14 no absolute record of that. That's hearsay on my
15 part as to the final verdict.

16 **Q** So you do not know whether he pled guilty? You have
17 no idea of what the outcome of that case is?

18 **A** Not definitely. The attorney was Chris Beiring and
19 that was his attorney. And I didn't actually have an
20 attorney. I was speaking with the assistant
21 solicitor or Kristi Harrington, the solicitor, just
22 through telephone calls and so forth. So like I
23 said, I have no actual paperwork or anything to let
24 me know that's what the final verdict was.

25 **Q** You're obviously not back with him, I assume?

1 **A** No, sir.

2 **Q** Let me ask you a question, your daughter who's
3 friends with the victim's --

4 **A** Acquaintances.

5 **Q** Acquaintances?

6 **A** Yes, sir.

7 **Q** She must be very upset about this, wasn't she? Did
8 she express that to you?

9 **A** She expressed concern over Nick, I believe is his
10 name. I'm not sure of the child's name, but I think
11 that's what it is. She came home and told me about
12 it at school. She said, I know this classmate of
13 mine and that was his father and the situation. But
14 we had no lengthy discussions about it.

15 **Q** But my question to you is, do you feel that she's
16 over this or is she still upset over this? Did she
17 express that to you?

18 **A** We've not discussed it.

19 **Q** How do you feel about that?

20 **A** How do I feel about what? What is your exact
21 question?

22 **Q** Your daughter being upset, do you feel you're
23 comfortable with the situation?

24 **A** I think that I can look at the whole situation
25 objectively, that I can listen to the details of the

1 case, which I've not done that, and separate that.

2 **Q** You can separate your daughter's hurt?

3 **A** I don't know how hurt she is in the situation. We've
4 not discussed her emotional aspect it to. She
5 mentioned to me that it happened. She mentioned to
6 me about the letter in the school newspaper. But
7 she's not expressed any -- maybe because they're just
8 acquaintances. My concern is she's a 14-year-old
9 girl, but we've not had any lengthy discussion about
10 it.

11 **Q** Has she expressed any anger?

12 **A** Disbelief.

13 **MR. ARCHER:** All right. Thank you. I have no
14 further questions.

15 **THE COURT:** Anything additional questions?

16 **MR. HOISINGTON:** No further questions.

17 **THE COURT:** Okay. I would ask you -- thank you,
18 Ms. Altman. Let me ask you one thing concerning this
19 issue with your daughter. You described them as being
20 acquaintances passing in the hallway. To your knowledge
21 has your daughter -- has the person been in your home at
22 all?

23 **THE POTENTIAL JUROR:** No, sir.

24 **THE COURT:** Do they see each other outside of
25 the school setting?

1 resolved?

2 **A** No, sir, not that I recall. I spoke with her before
3 that time.

4 **MR. HOISINGTON:** Yes, ma'am. Thank you.

5 **THE COURT:** Thank you, Ms. Altman. If you
6 would, step down just for a moment, please.

7 (WHEREUPON, the juror left the courtroom.)

8 **THE COURT:** What says the State?

9 **MR. HOISINGTON:** Your Honor, might I defer to
10 Mr. Archer to see what his position is regarding this?

11 **THE COURT:** Mr. Archer?

12 **MR. ARCHER:** I was going to say I have no
13 opinion, Your Honor. I was going to say I was going to
14 leave it up to you.

15 **MR. HOISINGTON:** If he has no opinion, I would
16 move to have her disqualified. I think that there's a
17 couple of issues that are disturbing that would indicate
18 she's at least on the level of other jurors of having some
19 complications about being able to make a fair decision on
20 it, both involving being a victim in the case with our
21 office and, additionally, having a child that knows the
22 victim's son.

23 **THE COURT:** Now, Mr. Archer, back to you with a
24 motion to have her disqualified.

25 **MR. ARCHER:** I would have her disqualified.

1 **THE COURT:** You would? Okay. Based on both
2 sides' motions, I will disqualify her as a juror. But I
3 do appreciate articulating something I was trying to
4 articulate with the last one and that was the distinction
5 that I was alluding to. But I do appreciate that. Thank
6 you.

7 (WHEREUPON, the juror entered the courtroom.)

8 **THE COURT:** Ms. Altman, I thank you for your
9 participation in this matter. And I thank you for your
10 commitment to this process. At this point I'm going to
11 excuse you from any further participation. Please know
12 that I'm sorry for the inconvenience. But thank you for
13 your willingness to participate and for being a part of
14 the overall process. I can't require you to do this, I'm
15 merely asking it as a favor to the Court, if you would not
16 discuss this case with anyone until the matter has been
17 concluded, we would appreciate it very much. And good
18 luck to you, ma'am. You are now excused.

19 **THE POTENTIAL JUROR:** Thank you.

20 **THE COURT:** Mr. Mustach.

21 (WHEREUPON, Matthew Mustach, a white male,
22 entered the courtroom.)

23 EXAMINATION

24 **BY THE COURT**

25 **Q** Is it Mustach?

1 **A** Mustach.

2 **MR. ARCHER:** Your Honor, I'm sorry. I have an
3 incomplete form. I gave it to you. You should have it.
4 The one filled out.

5 **THE COURT:** Mr. Mustach has filled out the
6 questionnaire. If you need it, I'll be happy to give you
7 mine.

8 **THE CLERK:** He can have mine.

9 **MR. ARCHER:** That's all I need is one.

10 **Q** Mr. Mustach, thank you very much for your patience.
11 I understand it's late. And I apologize for the
12 delay. And we'll try not to contain you much longer.
13 We appreciate your responses thus far. There are
14 some additional questions that we need to ask you.
15 As you noticed yesterday, these questions are --
16 there really are no right or wrong answers to them,
17 no correct answers. The most important thing is that
18 you simply truthfully respond to those questions.
19 And I know you have done that thus far. I would
20 remind you that you are still under oath in this
21 matter.

22 And please understand that while these
23 questions, some of them may seem to be asking private
24 matters, we're not trying to invade your privacy.
25 All of these questions are simply designed to assist

1 us and assist you and aid you in determining whether
2 you can be a fair and impartial juror and, therefore,
3 a member of the pool of jurors from which we will
4 select the trial jury. That's the whole purpose
5 behind this process. Is that acceptable to you, sir?

6 **A** I fully understand, Your Honor.

7 **Q** Okay. Thus far, as I understand it, there's nothing
8 about this case and you have indicated that by your
9 responses or your lack of responses to questions that
10 would cause you or give you any concern about your
11 ability to apply your common sense, your sense of
12 logic and reason fairly and impartially in the
13 process of analyzing the evidence.

14 **A** No, there's not.

15 **Q** Have you had a chance to review the sheet containing
16 the three types of jurors?

17 **A** Yes, sir, I have.

18 **Q** Which one accurately -- most accurately describes
19 you?

20 **A** No. 3.

21 **Q** No. 3. And that's basically, as I understand that
22 type of juror, is a juror that says given certain
23 circumstances, facts and circumstances and the law, I
24 could return a verdict what I would believe the most
25 appropriate punishment would be life imprisonment

1 without possibility of parole, and there are
2 circumstances in accordance with the law that I would
3 believe the most appropriate penalty would be the
4 death penalty. Is that true?

5 **A** Yes, sir, it is.

6 **Q** But it would depend on the facts and circumstances of
7 a particular case. Is that true?

8 **A** Yes, sir.

9 **Q** You don't have any predisposed or predetermined ideas
10 or feelings about it ought to be in every case with
11 the exception of a few. It just has to be case by
12 case?

13 **A** Yes, sir.

14 **Q** And that applies to either life imprisonment or the
15 death penalty?

16 **A** Yes, sir.

17 **Q** You understand in this process that will be your
18 responsibility as a juror if you're selected to be
19 the judge of the facts of this case. Do you
20 understand that?

21 **A** Yes, sir.

22 **Q** And you will take an oath in that regard that you
23 will consider only the evidence at the appropriate
24 time and determine from that evidence what you find
25 to be the true facts. Then once you determine the

1 evidence and the true -- or the true facts on that
2 particular issue, you'll take the law as I give it to
3 you and apply it fairly and impartially to those
4 facts and report a decision which would be fair to
5 the State and would be fair to Mr. Sapp. Do you
6 understand that?

7 **A** Yes, sir.

8 **Q** To facilitate that and a very important aspect of
9 serving as a judge of the facts, you have indicated
10 thus far then that you have an open mind at this
11 point about every issue in this case. Is that true?

12 **A** That is true.

13 **Q** In particular, as I mentioned to you, persons accused
14 of committing criminal offenses in this state and in
15 this country are presumed innocent until and unless
16 the State proves them guilty beyond a reasonable
17 doubt. Do you understand that?

18 **A** Yes, sir.

19 **Q** Do you have any problem with that principle of law?

20 **A** No, sir.

21 **Q** And insofar as that's concerned then, Mr. Sapp, as he
22 sits here today, is innocent of the charges for which
23 he's been accused; is that correct?

24 **A** That's correct.

25 **Q** And you would, as a juror, start the process

1 believing that and that wouldn't change until you
2 reached a point where you were asked to consider the
3 evidence. And then if you considered -- then upon
4 considering that evidence, if you decided what you
5 find to be credible and believable and it was
6 sufficient to convince you beyond a reasonable doubt,
7 then you would return -- you would find him guilty of
8 that particular offense. Is that true?

9 **A** That's true.

10 **Q** In order to do that, I would instruct you that the
11 State has the burden of proving each element of a
12 particular offense to that level of beyond a
13 reasonable doubt. You would have no problem
14 following that instruction?

15 **A** No, sir.

16 **Q** If in your consideration of the evidence, you should
17 reach a determination that you are not convinced
18 beyond a reasonable doubt of a certain element of a
19 particular offense, would you consistent with that
20 instruction return a verdict of not guilty?

21 **A** Yes, sir.

22 **Q** You would. Now, if the jury should return a verdict
23 of guilty on the offense of murder -- and please
24 remember that I'm not suggesting any specific outcome
25 by this, our discussion here. Because you and you

1 alone if you were on the jury would be the sole judge
2 of the facts. You understand that?

3 **A** Yes.

4 **Q** Likewise, it would be my responsibility to be the
5 sole judge of the law. You agree with that?

6 **A** Yes, sir.

7 **Q** And that means that while you have the sole
8 responsibility to determine the factual issues on
9 particular issues, I have the duty and responsibility
10 to give you the law which you are to apply to those
11 facts. Do you understand that?

12 **A** Uh-huh.

13 **Q** That means that you -- and part of the oath that you
14 take, you would be making a commitment to the State
15 and to Mr. Sapp that you would listen to that law,
16 that you would accept that law as I gave it to you
17 and apply that law fairly and impartially to those
18 facts.

19 **A** Yes, sir.

20 **Q** And that's what you would do?

21 **A** Yes, sir.

22 **Q** And that would be the case even if you heard some
23 principle of law with which you may differ?

24 **A** Yes, sir.

25 **Q** Because your oath would be that you have to take the

1 law as I gave it to you; is that correct?

2 **A** It is.

3 **Q** If we went into the second phase and that would only
4 occur if you returned -- if the jury returned a
5 verdict of guilty on murder, do you understand at
6 that phase you would hear additional evidence and
7 that evidence would deal with the appropriate
8 sentence --

9 **A** Okay.

10 **Q** -- to be imposed? And as I understand it, you would
11 listen to all of the evidence in that portion of the
12 proceeding and you haven't made any determination.
13 Is that true?

14 **A** Yes.

15 **Q** And you would keep an open mind. Is that true?

16 **A** Yes.

17 **Q** On the issue of punishment?

18 **A** Yes.

19 **Q** At that point some of that evidence would be
20 mitigating circumstances -- or may be mitigating
21 circumstances or aggravating circumstances. Those
22 are terms that I will define for you in the charge.
23 They are defined by our legislature and I would give
24 you instructions specifically as to those terms. You
25 wouldn't have any problem listening to that charge

1 and applying that law to those facts and
2 circumstances that you would ultimately determine,
3 would you?

4 **A** No, sir, I would not.

5 **Q** At the appropriate time the jury would then be asked
6 to retire to begin its deliberations to decide what
7 would be the most appropriate punishment. Based on
8 your answers thus far, it's my understanding that if
9 you were -- that after determining what you find to
10 be the true facts and circumstances, considering
11 aggravating circumstances and mitigating
12 circumstances and then applying the law, there are
13 situations where you would conclude that the most
14 appropriate sentence would be life imprisonment. Is
15 that true?

16 **A** Yes.

17 **Q** And considering those same facts and circumstances
18 and aggravating facts and -- or some other facts and
19 circumstances, you could conclude that the death
20 penalty would be the most appropriate?

21 **A** Yes, sir.

22 **Q** You understand that if you were to determine that a
23 death sentence was the most appropriate sentence in
24 this case -- and as I understand, it would depend on
25 the facts and circumstances in this case that you

1 would ultimately determine; is that true?

2 **A** Yes.

3 **Q** Before you should find that punishment; is that
4 right?

5 **A** Yes, sir.

6 **Q** You understand that if you did conclude that, you
7 would be required to sign a verdict form stating that
8 fact, you and the other jurors?

9 **A** I wasn't aware of that, but that's fine.

10 **Q** That would be one of your responsibilities. Would it
11 cause you any problem and could you perform that
12 function as a juror?

13 **A** It would not cause me any problem and yes, I could.

14 **Q** Okay. Now, this jury will be sequestered during the
15 trial. And that sequestration could be as long as 10
16 days. Would that in any way affect or impair your
17 ability to be a fair and impartial juror?

18 **A** No, sir.

19 **THE COURT:** Thank you very much, Mr. Mustach.
20 If you would answer any questions the solicitor or
21 Mr. Archer may have.

22 EXAMINATION

23 **BY MR. JENNINGS**

24 **Q** Mr. Mustach, thank you very much. It doesn't sound
25 like this from your answers, but do you hold any

1 philosophical or moral beliefs concerning the death
2 penalty that would prevent you from returning a
3 sentence of death?

4 **A** No, sir.

5 **Q** And on your questionnaire where it was talking about
6 religious affiliation, do you visit any particular
7 denomination of church regularly?

8 **A** We do go to church two times a month. We normally
9 visit different churches, so I don't have a
10 denomination.

11 **Q** Do any of the teachings that you may ascribe to or
12 follow, any of those religious teachings, would that
13 prevent you from returning a death sentence?

14 **A** No, sir.

15 **MR. JENNINGS:** Thank you very much.

16 **THE COURT:** Mr. Archer?

17 EXAMINATION

18 **BY MR. ARCHER**

19 **Q** Sir, how are you?

20 **A** Pretty good.

21 **Q** Actually, good evening.

22 **A** Good evening.

23 **Q** Just the reverse of that, if the situation calls for
24 it, you could also give a life sentence without the
25 possibility of parole?

- 1 **A** Could I?
- 2 **Q** Yes, if it called for that.
- 3 **A** Yes.
- 4 **Q** Let me ask you a question. I noticed on here that
5 you have a relative, a Bill O'Brien, NCPD. Is that
6 North Charleston, North Carolina?
- 7 **A** North Charleston Police Department.
- 8 **Q** North Charleston. And who is Bill O'Brien?
- 9 **A** Bill O'Brien is my wife's mother's new husband, my
10 father-in-law.
- 11 **Q** It's your father-in-law?
- 12 **A** Father-in-law.
- 13 **Q** And how long has he been on the police force?
- 14 **A** Longer than I've known him.
- 15 **Q** And how long have they been married?
- 16 **A** They've been married approximately seven years.
- 17 **Q** Seven years?
- 18 **A** Yes.
- 19 **Q** And you're familiar with the crime happened in North
20 Charleston; is that correct?
- 21 **A** No, I'm not actually.
- 22 **MR. JENNINGS:** That's not correct.
- 23 **THE COURT:** No, that's not correct.
- 24 **MR. ARCHER:** All right.
- 25 **Q** Would that affect this relationship with this police

1 officer?

2 **A** No.

3 **Q** Would that reflect in any way your opinion?

4 **A** No.

5 **Q** It wouldn't make you angry or anything toward the
6 police or against the victim or whatever?

7 **A** No.

8 **Q** It would have no effect whatsoever?

9 **A** No effect whatsoever.

10 **MR. ARCHER:** Thank you.

11 **THE COURT:** Any additional questions?

12 **MR. JENNINGS:** No, sir.

13 **THE COURT:** Thank you very much, Mr. Mustach.

14 If you would step down, we'll be with you in just a
15 second.

16 (WHEREUPON, the juror left the courtroom.)

17 **THE COURT:** Solicitor?

18 **MR. JENNINGS:** He's qualified. And I would just
19 clarify for the record this happened on College Park Road.

20 **THE COURT:** Yes, no question. It's not even --
21 it's Ladson, if anything.

22 Yes, sir?

23 **MR. ARCHER:** I said would you be angry at the
24 victim. I must be getting tired. I meant would you be
25 angry with the defendant.

1 **THE COURT:** I understand.

2 **MR. ARCHER:** I have no problem.

3 **THE COURT:** Very well.

4 Ask him to come back, please.

5 (WHEREUPON, the juror entered the courtroom.)

6 **THE COURT:** Mr. Mustach, you have been qualified
7 to be a member of the pool of jurors from which we will
8 ultimately select the trial jury in this case. That will
9 occur on Thursday morning at 9:30 or that process will
10 begin at that time. I need for you to be present on
11 that -- on Thursday. Please remember and understand that
12 you are still restricted from talking about this case with
13 anyone or permitting anyone to talk about it in your
14 presence or talk to you directly about it. Also, do not
15 watch any news accounts of this case or read any newspaper
16 articles about this case. I look forward to seeing you at
17 9:30.

18 Ms. Wiggins has some instructions that Ms. Brown
19 has been kind enough to put together. They give you an
20 indication of what you need to bring with you because,
21 obviously, if you're selected, you will be sequestered at
22 that time. So just follow those instructions. Have a
23 great day tomorrow and we'll see you Thursday morning at
24 9:30, sir. You can exit through the front door.

25 Mr. McBroom.

1 (WHEREUPON, Hoyt McBroom, a white male, entered
2 the courtroom.)

3 EXAMINATION

4 **BY THE COURT**

5 **Q** Good evening, Mr. McBroom.

6 **A** Good evening.

7 **Q** It's about suppertime, I guess. And thank you for
8 your patience, sir.

9 **A** You're welcome.

10 **Q** We, hopefully, will not keep you much longer. We are
11 continuing that process that we started yesterday.
12 And this process, as I'm sure you've already assessed
13 and gleaned, is a process simply to develop a pool of
14 jurors from which we can select a trial jury. And
15 that pool consists of persons who have demonstrated
16 by their responses or lack of responses, whichever
17 the case may be, as to certain questions that they
18 can be fair and impartial and apply their common
19 sense, their sense of logic and reason, and consider
20 the evidence in this case and determine the true
21 facts and then apply the law. Thus far, you have
22 indicated by your responses and those situations
23 where you didn't respond that you are that type of
24 juror. Is that true?

25 **A** True.

1 Q Have you had the opportunity, sir, to review the
2 sheet of paper depicting the three types of jurors or
3 identifying the three types of jurors?

4 A I have.

5 Q Which one most accurately describes you?

6 A Well, I would probably say No. 1.

7 Q No. 1. That means that if murder is established that
8 you would vote for the death penalty in every case?

9 A Yes, sir.

10 Q And you would never consider life imprisonment if
11 murder's established?

12 A Well, I would take into consideration that the
13 justice system has done the job -- the proper job in
14 convicting him. And if they are murderers, then I
15 feel like they should pay the crime.

16 **THE COURT:** Very well. Questions from the
17 State?

18 EXAMINATION

19 **BY MR. HOISINGTON**

20 Q Mr. McBroom, how are you doing, sir?

21 A Good.

22 Q Ralph Hoisington. Our responsibility is to prosecute
23 this case. And as His Honor has told you or if he
24 hadn't told you, he will, the defendant in this case
25 comes into court presumed innocent. And we don't

1 ever get to a death penalty stage unless the jury, 12
2 seated jurors, believe beyond a reasonable doubt we
3 have proved the case of murder.

4 Now, the questionnaire that is given to you says
5 that juror feels that once a murder has been
6 committed, the death penalty is the most appropriate
7 punishment. Now, many jurors might feel it's the
8 most appropriate punishment. My question is, do you
9 think it's the only punishment that you would
10 consider for any murder?

11 **A** If they're convicted, I would say so.

12 **Q** All right. Let me just explain the process a little
13 bit. There's a number --

14 **MR. ARCHER:** Your Honor, I think he's answered
15 the question.

16 **THE COURT:** Mr. Archer, thank you very much.
17 That's my ultimate determination and I appreciate it, but
18 you're a little premature with that.

19 **MR. ARCHER:** I'm sorry.

20 **MR. HOISINGTON:** Thank you, Judge.

21 **Q** There are many murders, unfortunately, in this county
22 or in many counties. Not all of them carry the
23 possibility of the death penalty. Do you feel even
24 if the law wouldn't allow it, they should be given
25 the death penalty?

1 **A** I would think so.

2 **MR. HOISINGTON:** That's all I have, Your Honor.

3 **THE COURT:** Thank you. Any questions,
4 Mr. Archer?

5 **MR. ARCHER:** I have no questions. I think he
6 said he was No. 1 and I believe he's No. 1.

7 **THE COURT:** Mr. McBroom, thank you very much.
8 And again, like I told you, you don't -- you're entitled
9 to your beliefs and your opinions, sir. And I respect
10 that very much. And one of the things that you have to --
11 that we have to do is make sure that you fairly and
12 impartially consider both possible punishments. There are
13 persons who don't believe the death penalty should ever be
14 appropriate and we have excused those persons. I'm going
15 to excuse you from participation in this case. Thank you,
16 sir, and I appreciate your commitment to this process. As
17 a favor to the Court, I can't require you to do this, but
18 I would ask that you not discuss this case with anybody
19 until the trial has been completed. I would appreciate
20 it.

21 **THE POTENTIAL JUROR:** Okay.

22 **THE COURT:** Thank you, sir. You are free to
23 leave.

24 Ms. Meadow.

25 (WHEREUPON, Mary E. Meadow, a white female,

1 entered the courtroom.)

2 EXAMINATION

3 **BY THE COURT**

4 **Q** Hello, Ms. Meadow.

5 **A** Hello.

6 **Q** How are you?

7 **A** I'm good, thank you.

8 **Q** It's kind of late. And I appreciate your patience
9 with us and willingness to continue in this process.
10 Thank you very much.

11 **A** No problem.

12 **Q** Yesterday, we started the process. And, of course,
13 the whole purpose of this process is to simply
14 accumulate a pool of jurors from which we can select
15 the ultimate trial jury. You understand that?

16 **A** Uh-huh.

17 **Q** And as I'm sure you've gleaned from all of the
18 questions yesterday, what we're looking for are
19 jurors who believe that they could in this particular
20 case fairly and impartially apply their common sense,
21 their sense of logic and reason, determine the true
22 facts from the evidence and then once determining
23 those facts, listen to the law that I would give to
24 you and apply that law and reach a decision on a
25 particular factual issue which would be fair to the

1 State and be fair to Mr. Sapp. Is that a fair
2 assessment of it?

3 **A** Uh-huh.

4 **Q** And based on your responses thus far or lack of
5 responses, whichever the case may be, we have
6 concluded that you are that type of juror. Is that
7 true?

8 **A** Yes, sir.

9 **Q** We need to ask you some additional questions. And
10 just like yesterday, none of the answers to these
11 questions, there's no right or wrong answer. There's
12 no correct answer. You're entitled to your opinions.
13 You don't have to justify them today to anyone in
14 this courtroom or feel that you should feel
15 uncomfortable about any of those opinions. Because
16 they're yours and you're entitled to that. Is that
17 fair?

18 **A** Uh-huh.

19 **Q** And I need for you to do something. You're doing
20 something that we do in conversation. I do it all
21 the time. But in this proceeding, that lady seated
22 in front of you is taking down what we're saying. So
23 it helps her if you will just articulate by words
24 what your response is.

25 **A** Okay.

1 Q Thank you.

2 A Uh-huh.

3 Q Have you had -- first of all, let me remind you that
4 you are still under oath. Is that understood?

5 A Yes.

6 Q Have you had a chance to review the list or that
7 sheet that had the three types of jurors?

8 A Uh-huh.

9 Q And which one most accurately describes you?

10 A Type 3.

11 Q Type 3?

12 A Yes, sir.

13 Q And basically, as I understand the types in reading
14 it, it's my opinion that it's the type of juror that
15 could in some situations vote that life imprisonment
16 without the possibility of parole is the most
17 appropriate sentence, and in other situations, it may
18 be the death sentence; is that correct?

19 A Yes.

20 Q And basically, it would depend on the facts and
21 circumstances of a given case; is that correct?

22 A Yes.

23 Q That means that you don't have any set sentence that
24 you think's appropriate in any given murder
25 situation?

1 **A** I do not.

2 **Q** You have to hear all of the facts of that particular
3 case?

4 **A** Yes, sir.

5 **Q** Would that be true of this particular case?

6 **A** Yes.

7 **Q** Now, of course, you have indicated thus far, because
8 I talked you yesterday about persons who are charged
9 with criminal offenses in the State and in this
10 country, that's merely an accusation. They're
11 innocent until and unless the State proves them
12 guilty. And you agree with that principle of law?

13 **A** Yes.

14 **Q** Do you have any problem with that principle of law?

15 **A** No, not at all.

16 **Q** And so applying that principle, you would agree then
17 today that in your opinion Mr. Sapp is innocent of
18 these charges?

19 **A** I would.

20 **Q** And in that connection, you would never expect
21 Mr. Sapp to prove anything to you or disprove
22 anything because I would instruct you and have
23 instructed you already that the burden of proof is
24 upon the State to prove the charge.

25 **A** Uh-huh.

1 **Q** Do you agree with that?

2 **A** Yes.

3 **Q** You understand that that would be done only when you,
4 as a juror and as a judge of the facts, began your
5 deliberations or commenced your deliberations and
6 considered the evidence, and then after considering
7 that evidence determined that you were convinced
8 beyond a reasonable doubt that the State had met its
9 burden of proof; is that correct?

10 **A** Yes, sir.

11 **Q** This proceeding, the first portion of this
12 proceeding, we will consider those charges. I will
13 give you an instruction in each proceeding. The
14 first one, I will define for you those charges and
15 give you the elements that the State has to prove
16 beyond a reasonable doubt. You would look to the
17 State, as I understand it, to meet its burden of
18 proof; is that correct?

19 **A** Yes, sir.

20 **Q** If, when you commenced your deliberations on those
21 issues, and that is whether or not the State had met
22 its burden of proof, if on any one of those elements
23 you came to the conclusion that you weren't convinced
24 beyond a reasonable doubt as to that element, would
25 you return a verdict of not guilty for that offense?

1 **A** I would.

2 **Q** Because I would -- as you know, the State has to
3 prove every element. And if they fail on one, then
4 the duty -- then the jury has a duty to return a
5 verdict of not guilty. You agree with that?

6 **A** Yes.

7 **Q** Also, if you were convinced on each element, would
8 you have any hesitation of returning a verdict of
9 guilty?

10 **A** I would not.

11 **Q** You would not. And as I understand it, you have an
12 open mind at this point?

13 **A** Yes.

14 **Q** Very -- that is probably one of the most critical
15 characteristics of a trial jury as far as I can see
16 as a judge of the facts, is that open mind that was
17 bring to this process. Do you understand that?

18 **A** Yes, sir.

19 **Q** And it's so important that you maintain that open
20 mind until the Court gives you an instruction to
21 begin your deliberations. Would you do that?

22 **A** Yes.

23 **Q** You will make a commitment to the State and to
24 Mr. Sapp that you will maintain that open mind until
25 I tell you to start your deliberations.

1 **A** I will.

2 **Q** Okay. It would be my responsibility, of course,
3 during the trial of this case in the first phase and,
4 if necessary, in the second phase, to give you an
5 instruction on the law. It would be your duty as a
6 juror to listen to that law, to accept that law and
7 apply it fairly and impartially to the facts that you
8 would ultimately determine. Would you do that?

9 **A** I would.

10 **Q** Part of that instruction would be and my question
11 would be that even if you heard a principle of law
12 with which you may disagree or which you think should
13 be changed -- you have the right to feel that way,
14 but you're going to have to set that feeling aside.
15 Would you do that?

16 **A** I would.

17 **Q** And you would apply the law as I gave it to you?

18 **A** Yes, sir.

19 **Q** If the jury should conclude that the State had met
20 its burden of proof on the offense of murder and
21 returned a verdict of guilty, then we would have a
22 second phase. And you understand that?

23 **A** Yes.

24 **Q** And during the second phase, it's at that time that
25 you would have an opportunity to hear the evidence

1 concerning the most appropriate sentence. You
2 understand that?

3 **A** Yes.

4 **Q** Some of that evidence would include mitigating
5 circumstances and aggravating circumstances. And I
6 would define both of those terms for you fully during
7 the charge portion because our legislature has
8 defined those specifically. You understand that?

9 **A** I do.

10 **Q** And you would follow that instruction just like any
11 other instruction. Is that true?

12 **A** Yes.

13 **Q** In your deliberations, once you reach that point, am
14 I to understand, based on what you've indicated being
15 Type 3, that considering the facts of a certain case,
16 including mitigating circumstances and aggravating
17 circumstances, taking the law as I gave it to you and
18 applying it, there would be occasions when you would
19 return a verdict of life imprisonment?

20 **A** Yes.

21 **Q** Without the possibility of parole?

22 **A** I would.

23 **Q** And there would be circumstances that you would
24 return a verdict of death?

25 **A** Yes.

1 Q It just depends on what's established in this
2 particular case; is that correct?

3 A That's correct.

4 Q If you get to that point?

5 A Right.

6 Q Do you understand if you should conclude that a death
7 sentence was the most appropriate, you and the other
8 jurors would have to sign a verdict form to that
9 effect?

10 A Yes.

11 Q Would you be able to carry out that responsibility or
12 that function as a juror?

13 A I would.

14 Q This -- during this case, the jury will be
15 sequestered and that sequestration will be -- could
16 be as long as 10 days. Would that in any way affect
17 or influence you or your performance as a juror?

18 A No.

19 Q You would be able to function through any
20 inconvenience that may cause and apply your common
21 sense, your sense of logic and reason fairly and
22 impartially?

23 A Absolutely.

24 THE COURT: Thank you. Please answer any
25 questions the attorneys may have. Thank you.

EXAMINATION

1
2 **BY MR. JENNINGS**

3 **Q** Good afternoon, Ms. Meadow. My name's Blair
4 Jennings. I work in the solicitor's office. Myself
5 and Solicitor Hoisington are prosecuting this case.
6 You are at the University of South Carolina?

7 **A** I am.

8 **Q** And what year are you?

9 **A** I'm a senior.

10 **Q** What are you majoring in?

11 **A** Public relations.

12 **Q** Have you had the opportunity either in classes or
13 talking with family or friends to develop some
14 opinions on the death penalty?

15 **A** Yes.

16 **Q** And do you mind sharing with me what those are?

17 **A** To tell you the truth, I really have no opinion one
18 way or the other. I couldn't sit here and tell you
19 that I would agree with it or that I would not. I
20 don't know. It would have to -- it would -- I would
21 have to see.

22 **Q** You have an open mind on the issue?

23 **A** I do.

24 **Q** Do you hold any moral views staunchly against the
25 death penalty?

1 **A** No.

2 **Q** You think that in the -- with the proper facts and
3 circumstances that it is an appropriate punishment?

4 **A** Under certain circumstances, yes.

5 **Q** You listed that you attend a Methodist church?

6 **A** Uh-huh.

7 **Q** Are you aware of what that religion's beliefs or
8 views on the death penalty are?

9 **A** No, I have no idea.

10 **Q** So can I assume that no aspect of those religious
11 beliefs would prevent you from returning a sentence
12 of death?

13 **A** No.

14 **Q** You're 21?

15 **A** I am.

16 **Q** Would the fact that you were close in age with
17 Mr. Sapp or in the same age bracket, would that fact
18 cause you any hesitation or prevent you from
19 returning a sentence of death?

20 **A** No.

21 **Q** Are you aware of any personal views that would
22 prevent you from returning a death sentence if you --
23 if the facts warranted it and the law allowed it?

24 **A** What exactly are you asking?

25 **Q** Just any -- you've said that you have an open mind

1 regarding the death penalty. And as you can tell,
2 the main thing that we're concerned about is having
3 jurors who are fair to both sides.

4 **A** Right.

5 **Q** Obviously, a juror who would always impose a sentence
6 of death in any murder case would not be fair to the
7 defendant.

8 **A** Right.

9 **Q** A juror who would not be able to return or consider a
10 death sentence, obviously, would not be fair to the
11 State and the people that we're representing. I'm
12 just trying to find out if there's anything that
13 you're aware of that when you got back in the jury
14 room considering the potential sentence would prevent
15 you from returning a sentence of death?

16 **A** I don't think so, no.

17 **MR. JENNINGS:** Thank you very much.

18 **THE COURT:** Mr. Archer?

19 EXAMINATION

20 **BY MR. ARCHER**

21 **Q** Ms. Meadow, how are you?

22 **A** Good.

23 **Q** I see you're living in Columbia?

24 **A** I am.

25 **Q** Just quick question. If you would be a juror on this

1 case and the deliberations would go on and on and on,
2 would you rush to any kind of judgment because,
3 obviously, this is some kind of inconvenience, the
4 fact that you're --

5 **A** Would I rush to a decision to get back to Columbia?

6 **Q** Yes, just to get back home.

7 **A** No.

8 **Q** So that wouldn't affect you at all, the fact that you
9 live in Columbia?

10 **A** No, not at all.

11 **Q** I notice on your questionnaire that you were robbed
12 in a restaurant?

13 **A** I was..

14 **Q** Okay. And they never caught the person, is that it?

15 **A** No, they didn't.

16 **Q** Does that make you angry? How do you feel about
17 that?

18 **A** At the time, yes, it made me very angry. Later, I
19 learned that the man who robbed me had used my debit
20 card to buy shaving cream and soap and that type of
21 thing at Wal-Mart. And so then, being privileged and
22 him not being, no, I wasn't mad at that man. He
23 obviously stole because he had to.

24 **Q** That's an honest answer. Thank you. Let me ask you
25 just the opposite of what he said. If the

1 circumstances warrant it and even though he was
2 proven guilty of murder, would there be a possibility
3 that you would agree that life without parole would
4 be an adequate punishment?

5 **A** Yes.

6 **Q** And just one other question. I noticed in there you
7 said your father was in law enforcement. And you
8 said he was South Carolina Tax Department and C.I. --
9 was he in the CIA, is that what that means?

10 **A** C.I.D.

11 **Q** What's that?

12 **A** I don't know exactly.

13 **Q** Okay. Thank you.

14 **A** He did that before when I was young.

15 **Q** But he's not CIA?

16 **A** No.

17 **MR. ARCHER:** Thanks.

18 **THE COURT:** Any additional questions?

19 **MR. JENNINGS:** No, sir.

20 **THE COURT:** Just one question, I think you and I
21 have had this discussion I think yesterday. When you say
22 you're living in Columbia, you're living there because you
23 are going to school there?

24 **THE POTENTIAL JUROR:** Well, I mean, that's why
25 I'm in Columbia, I go to school there.

1 **THE COURT:** I understand, but your residence is
2 still --

3 **THE POTENTIAL JUROR:** Under my parents.

4 **THE COURT:** In Berkeley County?

5 **THE POTENTIAL JUROR:** Right.

6 **THE COURT:** Okay, I just wanted to be sure. I
7 thought that was correct from yesterday but I wanted to
8 verify that.

9 **THE POTENTIAL JUROR:** That's okay.

10 **THE COURT:** Thank you very much. You may step
11 down just for a few moments. If you will step out, we'll
12 be with you momentarily.

13 **THE POTENTIAL JUROR:** Thank you.

14 (WHEREUPON, the juror left the courtroom.)

15 **THE COURT:** What says the State?

16 **MR. JENNINGS:** She's qualified.

17 **THE COURT:** Defense?

18 **MR. ARCHER:** Qualified.

19 **THE COURT:** Ask her to come in.

20 (WHEREUPON, the juror entered the courtroom.)

21 **THE COURT:** Ms. Meadow, it's been determined
22 that you are qualified to be a member of the pool from
23 which we will ultimately select the trial jury. That will
24 take place and commence on Thursday at 9:30. I'm going to
25 ask that you report back to this courtroom at that time

1 and we'll start that process. During the time between now
2 and then, you still are not at liberty to discuss this
3 case with anyone or permit anyone to talk with you about
4 the case. Also, I would ask you to continue not to read
5 any newspaper articles about it or watch any news programs
6 about it. Have a great day tomorrow and we'll see you
7 Thursday. Thank you. You can leave through the front.
8 Thank you, ma'am.

9 **THE POTENTIAL JUROR:** Thank you.

10 **THE COURT:** Mr. Ridley.

11 (WHEREUPON, Justin J. Ridley, a white male,
12 entered the courtroom.)

13 EXAMINATION

14 **BY THE COURT**

15 **Q** Mr. Ridley?

16 **A** How you doing?

17 **Q** Mr. Ridley, how are you, sir?

18 **A** I'm good.

19 **Q** And you've been sitting back there now by yourself
20 and it's late in the evening. And I thank you for
21 your patience, sir.

22 **A** No problem.

23 **Q** We're not going to keep you much longer. We started
24 this process yesterday and went quite lengthy
25 yesterday as well. And this -- during this process,

1 the whole purpose of all of these questions are
2 simply to determine whether you are a person that
3 should be a part of the pool from which -- a pool of
4 jurors that we will select the ultimate trial jury in
5 this case.

6 That pool of jurors are persons who have
7 indicated by their answers to questions or their not
8 answering questions, whichever the case may be, that
9 there's nothing about this case that would cause them
10 any problem in applying their common sense, their
11 sense of logic and reason, fairly and impartially and
12 considering the evidence and deciding what they
13 believe to be the true facts. Is that -- you
14 understand that?

15 **A** Yes, sir.

16 **Q** As I understand from your responses yesterday and
17 thus far, you are that type of person. Is that true?

18 **A** Yes, sir.

19 **Q** You understand that you are still under oath in this
20 matter?

21 **A** Yes.

22 **Q** We're going to ask you some additional questions.
23 And very similar to yesterday, there aren't any
24 correct answers to any of these questions. Only
25 thing that we ask is that you be truthful in your

1 responses. Don't feel like that you need to explain
2 why you feel a certain way. You're entitled to feel
3 any way you want to feel, and that's your right. You
4 don't have to justify anything. We just simply ask
5 that you answer the question completely and fully.
6 We're not trying to invade your privacy. Again, the
7 sole purpose is just to help you and the Court and
8 everyone make a determination as to whether there's
9 anything about this case that would give you any
10 problem. Okay?

11 **A** Yes, sir.

12 **Q** You had a chance to read the sheet that had the three
13 types of jurors?

14 **A** Yes, I did.

15 **Q** Which one most accurately describes you?

16 **A** I would have to say that I was No. 1.

17 **Q** Number 1?

18 **A** Yes, sir.

19 **Q** And I understand No. 1 to mean that once a person's
20 been convicted of murder, the only appropriate
21 sentence that you would ever consider would be a
22 death sentence?

23 **A** Yes, sir.

24 **Q** And you would never consider life in prison?

25 **A** No.

1 **Q** Under any circumstances?

2 **A** No, sir.

3 **THE COURT:** Solicitor, any questions?

4 **MR. HOISINGTON:** No, Your Honor.

5 **MR. ARCHER:** No, sir.

6 **THE COURT:** Thank you very much. As I told you,
7 you're entitled to that opinion. And I respect your right
8 to feel that way. One of the parts that we have to have,
9 of course, is a juror that can consider both sentences.
10 And you have indicated honestly and truthfully that you
11 could not do that. So I'm going to excuse you from
12 further participation in this matter. And thank you from
13 the bottom of my heart for your commitment and, most of
14 all, for giving up your night until 7:30. And I thank you
15 for that. You, again, are the reason why I believe in
16 this jury system. And I thank you for doing that. I
17 can't make you do this, I just ask you as a favor to the
18 Court that you not talk about this case until we have
19 completed the trial of the case. Once we've completed it,
20 you're free to talk about it if you wish. Okay?

21 **THE POTENTIAL JUROR:** Yes, sir.

22 **THE COURT:** Good luck to you. Thank you,
23 Mr. Ridley.

24 **THE POTENTIAL JUROR:** Thank you.

25 **THE COURT:** Have a great evening, sir.

1 Anything from the State?

2 **MR. HOISINGTON:** No, Your Honor.

3 **MR. ARCHER:** No, sir.

4 **THE COURT:** Anything from Mr. Sapp?

5 Thank you all. We'll see you at 9 o'clock.

6 Thanks everybody here for their patience as well. Have a
7 good evening.

8 (WHEREUPON, the proceedings were concluded for
9 the day to be reconvened on Wednesday, May 14th,
10 2003.)

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