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IN THE CIRCUIT COURT OF ADAMS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

CAUSE NO. 02-KR-141

JEFFREY HAVARD

DEFENDANT

VOLUME TWO

* * * * *

TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN A TRIAL IN
THE ABOVE STYLED AND NUMBERED CAUSE BEFORE THE HONORABLE
FORREST A. JOHNSON, JUNIOR, JUDGE OF THE COURT AFORESAID,
AND A JURY OF TWELVE MEN AND WOMEN, ON THE 16TH, 17TH,
18TH, AND 19TH DAYS OF DECEMBER, 2002, IN THE CIRCUIT
COURTROOM OF THE ADAMS COUNTY, MISSISSIPPI COURTHOUSE.

* * * * *

APPEARANCES:

Present and Representing the State:

HONORABLE RONNIE HARPER
District Attorney
Sixth Judicial Circuit District
Natchez, MS 39120

HONORABLE TOM ROSENBLATT
Assistant District Attorney
Sixth Circuit Judicial District
Natchez, MS 39120

Present and Representing the Defendant:

HONORABLE GUS SERMOS
Attorney at Law
P. O. Box 621
Summit, MS 39666

HONORABLE ROBERT CLARK
Attorney at Law
Vidalia, LA

1 You'll be instructed -- I think the Judge has already
2 talked to you to some extent about us not being able to
3 talk with you. You know, as a court, we have certain
4 rules that we have to go by, and one of which is that
5 nobody that's involved in the case can talk with you as
6 you sit here as a prospective juror or if you're selected
7 as a juror at any point in time about anything. That
8 means the lawyers can't talk to you, and I know the Judge
9 talked about that, but the witnesses can't talk to you,
10 the defendant can't talk to you. The Judge can't talk to
11 you. No one involved in the case, even the spectators,
12 are prohibited from talking to you during the course of
13 this trial, and that's a very simple reason for that. If,
14 say for instance, you see me down at the other end of the
15 hall and we're talking about the weather or something like
16 that, and somebody at the other end of the hall sees us
17 talking, they may think we're talking about the case.
18 What's called an appearance of impropriety, and to avoid
19 those, the rule very simply is that we can't talk to you,
20 and no one can. Do all of you understand that?

21 BY THE JURORS: Yes, sir.

22 BY THE COURT: Speak up for me, now.

23 BY THE JURORS: Yes.

24 BY MR. HARPER: And as the Judge said, you wouldn't
25 hold it against us if we don't speak to you or anyone
26 that's involved. Anybody going to do that?

27 BY THE JURORS: No.

28 BY MR. HARPER: Okay. Now, there is one group of
29 people that you can talk to, and that's your bailiffs. If

1 you have any kind of problems or any kind of concerns or
2 something you need to tell to the Court or convey to the
3 Judge, then you're instructed to talk through the
4 bailiffs, and you have several here today. Mrs. Angelethy
5 is one of the bailiffs. Back here. Mr. Young is one of
6 your bailiffs. I believe I saw Mr. Taylor earlier. I'm
7 not sure if he's in the courtroom right now. He's
8 upstairs here. So if you have any kind of concerns or
9 anything you need to tell the Court or the Judge, then you
10 would talk to one of your bailiffs. And, in fact, if
11 somebody tries to talk to you that's not supposed to,
12 you're supposed to tell the bailiffs so they can report
13 that to the court. Do all of you understand that?

14 BY THE JURORS: Yes, sir.

15 BY MR. HARPER: Okay. Now, as the Court told you,
16 this is a criminal case. We talked a little bit about
17 that before, and, as I said, a criminal case is a case
18 where someone is charged with having violated one of the
19 criminal laws or criminal statutes of the State of
20 Mississippi. There are basically two types of cases that
21 are heard in circuit court with juries. Criminal cases
22 and civil cases. Of course, I told you what a criminal
23 case is. A civil case on the other hand is a case where
24 one person files a lawsuit against another person like a
25 car wreck are something like that. How many of you have
26 served on a jury before, hold your number up. Any type of
27 jury. There's also grand jury. So if you've served on
28 any type of jury, hold your number up, please. That
29 would be number two, four, six, eighteen, nineteen,

1 twenty, twenty-three, twenty-nine, thirty-one, thirty-two,
2 thirty-seven, thirty-nine, forty-one, forty-three,
3 forty-six, twenty-five, forty-seven, fifty-five, sixty,
4 sixty-four, sixty-six, seventy, seventy-one, seventy-five,
5 seventy-seven, eighty-one, eighty-six, eighty-seven,
6 ninety-one, ninety-two, ninety-three, ninety-five,
7 ninety-seven, one hundred, one hundred one, one hundred
8 three. Okay. Now, if you can recall of those that raised
9 your numbers, how many served on a criminal case, hold
10 your number up. Two, four, eighteen, twenty-three,
11 thirty-seven, thirty-nine, sixty-four, sixty-six, seventy,
12 seventy-five, eighty-one, ninety-one, ninety-two,
13 ninety-five, and ninety-seven. Okay. Obviously the rest
14 of you would have served on a civil case. Well, there are
15 certain things about a civil case and a criminal case that
16 are different, and I want to ask you some questions,
17 talked to you a little bit about that at this point. If
18 you served on a civil case, you may recall that to make a
19 decision in a lawsuit whether it was a car wreck or
20 whatever, there were, of course, twelve jurors were
21 selected, but it only required nine of you to make a
22 decision. In other words, you could have three people
23 back there that didn't want to agree with everybody else.
24 Said think we ought to go with this side, and the other
25 nine agree and can return a verdict for the other side.
26 In a criminal case, it requires a unanimous verdict, or,
27 in other words, all twelve jurors must agree to return a
28 verdict of guilty, or all twelve jurors must agree to
29 return a verdict of not guilty. Do all of you understand

1 that?

2 BY THE JURORS: Yes, sir.

3 BY MR. HARPER: Okay. Now, talked to you a little
4 bit about who you -- about not being able to talk to
5 people. Now, as jurors or prospective jurors or if you're
6 selected as one of the twelve jurors and whatever number
7 of alternates we select, you will be able to talk with
8 each other during the course, and we'll, as you know, have
9 breaks. We had a lunch break. We'll have other breaks
10 during the course of the day, and you'll be able to talk
11 to each other about the weather or about the ballgame or
12 about gardening or whatever you want to. The only thing
13 you'll be told that you can't talk to each other about is
14 the case. You can't talk to each other about the case
15 until it's completed. Until all the evidence is presented
16 to you. You're what's called the triers of fact. We will
17 bring witnesses in and put the evidence on, the facts on
18 the stand. You'll listen to those. The Judge is going to
19 instruct you as to what the law is, and you'll apply those
20 facts to the law to reach a verdict, but you obviously
21 don't want to talk about it before the end of the case
22 because you haven't gotten all the evidence yet. So to
23 avoid y'all making your mind up before you've heard all
24 the evidence, then the rule very simply is that you don't
25 talk to each other about the case until it's completed and
26 you go back into the jury room to deliberate. Do all of
27 you understand that?

28 BY THE JURORS: Yes, sir.

29 BY MR. HARPER: Can all of you tell me that you'll do

1 that?

2 BY THE JURORS: Yes.

3 BY MR. HARPER: Okay. Now, you will also be
4 instructed that under your oath as a juror, you have a
5 duty and obligation once you go back in there to honestly
6 talk about the case, discuss the facts and the law, and
7 talk about it among yourselves in an attempt to reach a
8 unanimous verdict. Do all of you understand that?

9 BY THE JURORS: Yes, sir.

10 BY MR. HARPER: Can all of you tell me that you'll do
11 that?

12 BY THE JURORS: Yes.

13 BY MR. HARPER: You know, there are some people who
14 will argue with you that the sun don't come up in the
15 morning just for the sake of argument. Certain places
16 there's nothing with wrong with that. Some people do it
17 for fun, but y'all all understand this is not the place
18 for that. Do all of you understand that?

19 BY THE JURORS: Yes.

20 BY MR. HARPER: And can all of you tell me that you
21 will do that. That you'll listen to each other and try to
22 talk about the facts and try to reach a unanimous verdict
23 in this case.

24 BY THE JURORS: Yes.

25 BY MR. HARPER: Okay. Now, in a criminal case the
26 People of the State of Mississippi have what's called the
27 burden of proof. How many have heard of that before?
28 Burden of proof. Hold your number up.

29 (Jurors raise numbers.)

1 BY MR. HARPER: Let me say it a little differently.
2 Most of you raised your numbers, but let me see if I can't
3 get everybody. Beyond a reasonable doubt.
4 (Jurors raise numbers.)

5 BY MR. HARPER: Okay. Pretty much everyone. There's
6 been a lot of publicity about that. That's the burden of
7 proof in a criminal case. Beyond a reasonable doubt.
8 Now, let me say, first of all, that what is meant by the
9 burden of proof very simply means that as we stand here
10 this morning or this afternoon now, it's incumbent upon
11 myself and Tom representing the People of the State of
12 Mississippi to go forward and call witnesses and present
13 them to you to meet the burden. We are required to call
14 witnesses. That's what called the burden of proof. Now,
15 when the founding fathers of this country and this state
16 created the judicial system that we have and created the
17 jury system that we have, they made a very important
18 decision, and that decision was that no one can define
19 beyond a reasonable doubt for you. I can't tell what you
20 it means. Mr. Clark or Mr. Sermos can't tell you what it
21 means. The Judge can't even tell you what it means. They
22 made the decision that each person individually in their
23 own heart and their own mind were to decide what that
24 meant themselves. Do all of you understand that?

25 BY THE JURORS: Yes.

26 BY MR. HARPER: I can tell you this, ladies and
27 gentlemen. It's not beyond all doubt, and it contains the
28 word reasonable. And the question I have for you at this
29 time is whether or not you can be reasonable if you're

1 chosen as a juror in this case whether you can be
2 reasonable in deciding whether you have any doubt as to
3 the defendant's guilt. Is there anyone in here that can't
4 do that? That's a very important question. Now is the
5 time to speak up about that. Is there anyone in here that
6 can't do that? Number twenty. You don't think you could
7 be reasonable? I won't ask you any details. You answered
8 some questions earlier. Is that because of the type case
9 it is?

10 BY JUROR DOBBINS: Uh-hum.

11 BY MR. HARPER: And you don't feel like that because
12 of that that you could be reasonable or fair?

13 (Juror Dobbins shakes her head negatively.)

14 BY MR. HARPER: Number sixty-one. You don't think
15 again for the same reasons.

16 BY JUROR TOWNSEND: Right.

17 BY MR. HARPER: She answered yes. Number five. Sir?

18 BY JUROR JOHNSON: I think with them.

19 BY MR. HARPER: You feel like you couldn't be fair
20 and reasonable because of the type case it is?

21 BY JUROR JOHNSON: No.

22 BY MR. HARPER: And number thirteen?

23 BY JUROR ALLEN: Yes.

24 BY MR. HARPER: Okay. Anyone else? Number
25 eighty-three, eighty-two, and number ninety-four.

26 Again -- and number eighty-nine. Y'all don't feel like
27 y'all could be reasonable in this case?

28 BY THE JURORS: No.

29 BY MR. HARPER: Okay. Thank you. One more. Number

1 twelve. Thank you, ma'am. Let me just say this. This
2 part of the trial, as the Judge told you, is voir dire.
3 It's the only time we get a chance to talk directly to you
4 other than just to talk at you and to actually converse
5 with you, and, of course, the purpose of this is is to try
6 to pick the twelve of you that will be the most fair and
7 impartial jurors that we can get. You know, the Good Book
8 tells us that we're not perfect, and people are influenced
9 by their experiences that they've had in their lives and
10 relationships that they have in their lives, and as a
11 result of that, sometimes their impartiality may be
12 affected by it. Otherwise, everybody could be fair, we'd
13 just get twelve people and the rest of you wouldn't have
14 to be here, but because of that, we bring in this large
15 number of folks, and we talk to each of you and try to
16 ascertain these questions. And, ladies and gentlemen,
17 there are no right or wrong answers to these questions.
18 You know, I am going to ask some questions. I'm sure one
19 of the counsel for the defendant is going to ask some
20 questions, and we're going to be trying to figure out in
21 our minds based on answers you give to questions which
22 twelve of you will be the most fair and impartial, but to
23 be perfectly honest with you, the only people in here that
24 can honestly answer that are y'all. These questions are
25 really for y'all as much as they are for us. Y'all are to
26 think about them and decide whether you feel like you will
27 have some problem in being fair and impartial for whatever
28 reason. Do all of understand that?

29 BY THE JURORS: Yes.

1 BY MR. HARPER: Okay. Another instruction that
2 you'll be given by the Court is concerning what's called
3 the presumption of innocence. How many of you have heard
4 that before?

5 (Jurors raise numbers.)

6 BY MR. HARPER: Pretty much all of you. Let me say
7 it a little differently. Innocent until proven guilty.

8 (Jurors raise numbers.)

9 BY MR. HARPER: Pretty much everybody. All right.
10 That is one of the basic premises or tenants of American
11 law, American jurisprudence is that a person is presumed
12 innocent until proven guilty, and you'll be instructed
13 about this presumption. You understand, ladies and
14 gentlemen, that the Court is not telling you that the
15 defendant is innocent. Do all of you understand that?

16 BY THE JURORS: Yes, sir.

17 BY MR. HARPER: What that very simply means is as we
18 sit here now, not having put any witnesses on or not any
19 testimony, no evidence to you, that if you had to vote
20 right now, you'd have to vote not guilty. Do all of you
21 understand that?

22 BY THE JURORS: Yes.

23 BY MR. HARPER: But that once we do bring those
24 witnesses in and produce that evidence, the witnesses or
25 physical evidence or whatever to the point where we prove
26 beyond a reasonable doubt that the defendant is guilty,
27 then that presumption is no longer with him. Do you all
28 understand that?

29 BY THE JURORS: Yes.

1 BY MR. HARPER: And that can each and every one of
2 you tell me that you can do that. That once that evidence
3 is met that you can disregard that presumption and return
4 a verdict of guilty if the evidence so warrants in this
5 case. Can all of you tell me that you'll do that?

6 BY THE JURORS: Yes.

7 BY MR. HARPER: Anybody that can't? Anybody that
8 will have a problem with that?

9 (No response.)

10 BY MR. HARPER: You understand that every person who
11 has ever been convicted of a crime in the State of
12 Mississippi or convicted of a crime anywhere in the United
13 States of America was presumed innocent before their trial
14 started. Do all of you understand that?

15 BY THE JURORS: Yes.

16 BY MR. HARPER: Okay. Now, I am going to ask a
17 question. It's not intended to embarrass anybody. Again,
18 we're trying to ask questions that we think will help us
19 and help you. So I am going to ask a question. I'm not
20 going to ask any specifics about it. It's not intended,
21 as I said, to embarrass anyone. So if your answer is yes
22 or in the affirmative, if you'll just hold your number up.
23 Is there anyone on the panel who either themselves, a
24 close personal friend, or a family member has ever been
25 charged with a crime. Not necessarily convicted of it,
26 but just charged with a crime. Is anyone on the panel
27 that could answer that question yes. I'll start over
28 here. Is there anyone in the box been charged with a
29 crime. Nineteen, twenty. Anyone in this section here?

1 Twenty-four, thirty-one, fifty-two, thirty-four,
2 fifty-seven, fifty-eight, fifty-nine, sixty-three,
3 sixty-eight, eighty, eighty-six, eighty-seven,
4 eighty-eight, eighty-nine, ninety-one, ninety-four,
5 ninety-eight. Okay. Mr. Berry, I believe. Is that
6 right? You raised your number on that one?

7 BY CIRCUIT CLERK VINES: Ronnie --

8 BY MR. HARPER: I'm sorry. Number thirty-eight --

9 BY JUROR BALES: Number thirty-eight.

10 BY MR. HARPER: Thank you, sir. I'm going to pick on
11 you, Mr. Berry, because I remembered your name real quick.
12 Again, I'm not going to ask you any specific questions,
13 but let me just ask you this. The fact that some
14 experience, whatever it was, be it good or bad or
15 whatever, can you disregard that experience, set it aside,
16 and base your decision today solely on the evidence as you
17 hear it from the witness stand if you're selected as a
18 juror?

19 BY JUROR BERRY: No, sir.

20 BY MR. HARPER: You don't think you could?

21 BY JUROR BERRY: No, sir.

22 BY MR. HARPER: Okay. Thank you, sir. Mr. -- your
23 number again, sir? Thirty-eight. Mr. Bales; is that
24 right, sir?

25 BY JUROR BALES: Yes, sir.

26 BY THE COURT: I'll ask you the same question. Could
27 you disregard that experience, whatever it was, good or
28 bad or however, and base your decision today solely on the
29 evidence as you hear it from the witness stand?

1 BY JUROR BALES: It would be hard to serve.

2 BY MR. HARPER: It would be hard?

3 BY JUROR BALES: Yes, sir.

4 BY THE COURT: Okay. Let me just ask that to
5 generally to all of you that raised your number. If, in
6 fact, it would be hard for you to disregard that fact,
7 raise your number. If you don't think you could put that
8 aside and base your decision solely on the evidence as you
9 hear it from the witness stand. Anyone over here that
10 raised their number? Over here. Thirty-one,
11 thirty-eight, fifty-two, sixty-three. Anyone else?
12 Upstairs, anyone up there that feels like they'd have a
13 problem besides Mr. Berry disregarding that experience?
14 (No response.)

15 BY MR. HARPER: Thank you. I just have a few more
16 questions to ask you concerning this particular case. As
17 the Court has told you, this is a capital murder case,
18 and as you know a capital murder case can result in the
19 imposition of the death penalty. The way that works is if
20 you're selected as a juror, the first thing you would do
21 would be go through what's called the guilt phase of the
22 trial, and you would listen to the evidence and determine
23 as a jury, deliberate to determine whether or not you felt
24 like the evidence warranted a verdict of guilty. Do all
25 of you understand that?

26 BY THE JURORS: Yes.

27 BY MR. HARPER: You wouldn't be concerned -- in that
28 stage of the trial, you are not to be concerned in any
29 way, form, or fashion whatever sentence the defendant may

1 receive or any sympathy anybody might have or anything
2 like that. Do all of you understand that?

3 BY THE JURORS: Yes.

4 BY MR. HARPER: All right. Assuming that we meet
5 the burden and prove to you beyond a reasonable doubt that
6 the defendant is guilty and you return a verdict of
7 guilty, then you'll go in to what's called the sentencing
8 phase. The second phase of the trial where additional
9 information is presented to you whether you make a
10 determination as to whether or not to return a death
11 penalty, and it would require a unanimous verdict to do
12 that and you would basically do deliberation on that
13 matter. Do all of you understand that?

14 BY THE JURORS: Yes.

15 BY THE COURT: Now, the Judge asked you some
16 questions earlier about that, and I just wanted to ask a
17 few more about it. I know several people and I know there
18 were several of you that have raised your number when you
19 asked if you felt like that you just couldn't impose the
20 death penalty under any circumstances. And I understand
21 that and respect that, and, of course, that's certainly an
22 honest answer. So I am not really speaking to you, folks.
23 I know there were several of you. So if you have already
24 raised your number when the Judge asked that, then you
25 don't need to raise your number again. I'm really
26 speaking to the remaining members of the jury panel.
27 Okay. Now, if you would, in answering these questions,
28 you don't need to respond openly. If you'll just hold
29 your numbers up. Now, you understand that the death

1 penalty is a part of the law in the State of Mississippi
2 and also a part of that law is the recognition that good,
3 honest, sincere citizens legitimately opposed to the death
4 penalty, and that there's absolutely nothing wrong with
5 being opposed to the death penalty whether it be for
6 personal reasons, religious reasons, humanitarian reasons,
7 or whatever. There's nothing wrong with that. There is,
8 however, something wrong with being opposed to the death
9 penalty and not bringing it to the Court's attention at
10 this time. So I want to ask you again. Is there anyone
11 after you've had some time to think about this because I
12 know the Judge asked this before lunch, and, as I said,
13 there were several people that raised their number. But
14 I'm asking those remaining ones. Is there anyone after
15 you've had some time to think about it that is opposed to
16 the death penalty that did not raise your hand before?
17 Okay. Number three, number six, number sixteen. Anyone
18 else out here? Number sixty-seven, number thirty-four.
19 Anyone up there that didn't raise your number before.
20 Number ninety-four and number one hundred one. Is there
21 anyone who feels that the death penalty by lethal
22 injection in the State of Mississippi is unfair and unjust
23 in any way besides those that have already raised your
24 number. Now, anyone else? This is a different question.
25 Anyone that feels like the death penalty by lethal
26 injection is unfair or unjust in any way? Anyone?
27 (No response.)

28 BY MR. HARPER: Okay. All right. Is there anyone
29 who would require a confession by the defendant before

1 they would or could vote for the death penalty? Anyone
2 that would require that before you could vote for the
3 death penalty?

4 (No response.)

5 BY MR. HARPER: Again, understanding that this is a
6 death -- conceivable of a possible death penalty case, is
7 there anyone that would require two or more eyewitnesses
8 to the crime to the defendant committing the crime before
9 they could vote for a conviction of guilty in this case or
10 could vote for the death penalty? Anyone?

11 (No response.)

12 BY MR. HARPER: Is there anyone on the jury panel
13 whose church opposes the death penalty to their knowledge,
14 again, other than those that have already raised your
15 number? Number fifty-three. Anyone else?

16 (No response.)

17 BY MR. HARPER: Do you understand that right now is
18 the time to speak out and raise your hand if you have any
19 problems at all with the death penalty before we get
20 started in the case? All of you understand that?

21 BY THE JURORS: Yes.

22 BY MR. HARPER: You understand I mentioned -- I
23 talked about requiring confessions or requiring two or
24 more eyewitnesses or one or two eyewitnesses. You
25 understand that that would be imposing a higher burden on
26 the State as required by law. Do all of you understand
27 that?

28 BY THE JURORS: Yes.

29 BY MR. HARPER: And is there anyone here that's

1 going to require a higher burden on us of that nature
2 before they can return a guilty verdict and the death
3 penalty in this case? Anyone?

4 (No response.)

5 BY MR. HARPER: The Court will indulge me just a
6 moment, Your Honor. I may be pretty close to being
7 through.

8 (Mr. Rosenblatt and Mr. Harper confer.)

9 BY MR. HARPER: Your Honor, with that, we'll
10 tender this panel at this time. Thank you for your
11 patience.

12 BY THE COURT: Mr. Sermos.

13 BY MR. SERMOS: Thank you, Your Honor. One of the
14 things that you're sworn to do today, obviously, is give
15 correct answers or, shall we say, honest responses to any
16 of the questions that the Judge asked you or the district
17 attorney asked you or that I'm going to ask you now.
18 That's all I expect you to do, too, is when I ask you a
19 question, I've got a reason for asking it, and if you
20 would, please, just answer it to the best of your
21 ability. Is anybody here out of this whole group friends
22 with the Judge? Judge Forrest Johnson? Is there anyone
23 here a personal friend of his?

24 (No response.)

25 BY MR. SERMOS: Is anyone here a -- would consider
26 themselves not just an acquaintance, but a personal friend
27 with the district attorney, Ronnie Harper.

28 (No response.)

29 BY MR. SERMOS: How about Mr. Tom Rosenblatt?

1 (No response.)

2 BY MR. SERMOS: Is anyone here that's on the jury
3 panel to be chosen a sworn law enforcement officer of any
4 type? Number forty. And where are you an officer,
5 please?

6 BY JUROR RICHARDSON: I was here in Adams County.

7 BY MR. SERMOS: With the Adams County Sheriff's
8 office.

9 BY JUROR RICHARDSON: Yeah.

10 BY MR. SERMOS: And is there another one back there?
11 Number fifty-nine.

12 BY JUROR SHROPSHIRE: Does it count as being a
13 security guard?

14 BY MR. SERMOS: Pardon?

15 BY JUROR SHROPSHIRE: Does it count as being a
16 security guard?

17 BY MR. SERMOS: Yes. Any other person in here? Yes,
18 sir. Number seventy-seven.

19 BY JUROR ALEXANDER: Mississippi Department of
20 Transportation.

21 BY MR. SERMOS: Law enforcement, DOT.

22 BY JUROR ALEXANDER: Yes.

23 BY MR. SERMOS: Anyone else?

24 (No response.)

25 BY MR. SERMOS: Is anyone here a -- even though it's
26 a sworn agent. A federal agent for FBI or CIA or any
27 other federal law enforcement agency?

28 (No response.)

29 BY MR. SERMOS: How about a fish and wildlife

1 officer?

2 (No response.)

3 BY MR. SERMOS: Is anyone here a reserve officer with
4 the sheriff's department or police department?

5 (No response.)

6 BY MR. SERMOS: Does anyone here have a good friend
7 that's on the sheriff's office or Natchez Police
8 Department with whom you've discussed this case? Anyone
9 here? She's sixty-four.

10 BY JUROR MCDANIEL: Spouse.

11 BY MR. SERMOS: Forty-six. I was looking for that.
12 What's your relationship?

13 BY JUROR MCDANIEL: My husband is a deputy sheriff.

14 BY MR. SERMOS: Okay. One of the things that Mr.
15 Harper said, he said that do you realize that all prior
16 persons that have been convicted of a crime in Mississippi
17 were presumed innocent, and you answered yes. I would
18 like to ask you do you realize that all the people that
19 went to trial and were found not guilty by a jury, they
20 were all presumed innocent, too. Do you understand that?

21 BY THE JURORS: Yes.

22 BY MR. SERMOS: Thank you. And do you understand
23 that under the law that this Judge will give you that
24 whoever is chosen for the jury, that only that jury will
25 determine whether or not Jeffrey Havard is guilty of this
26 crime. Do you all understand that?

27 BY THE JURORS: Yes.

28 BY MR. SERMOS: Is anyone here taking any medication
29 that would affect your ability to listen and pay attention

1 to this trial as it goes on over the next few days. Is
2 anyone over here taking any medication that make them
3 sleep or doze off?

4 (No response.)

5 BY MR. SERMOS: Anyone out here? Yes. Number
6 eighty-two and eighty-three. And what number? Number
7 thirteen. Okay. And sixty-three. Okay. Number
8 thirteen, what are you taking?

9 BY JUROR ALLEN: Medication.

10 BY MR. SERMOS: Okay. And do you have to take it
11 every day?

12 BY JUROR ALLEN: Yes.

13 BY MR. SERMOS: Does it cause you to be drowsy or
14 sleepy?

15 BY JUROR ALLEN: Yes.

16 BY THE COURT: Number sixty-three. What kind of
17 medication are taking, sir?

18 BY JUROR DIXON: Nerve pills.

19 BY MR. SERMOS: I am sorry?

20 BY JUROR DIXON: Nerve pills.

21 BY MR. SERMOS: Would that cause you to be sleepy or
22 drowsy?

23 BY JUROR DIXON: Sometimes.

24 BY THE COURT: And number eighty-eight.

25 BY JUROR KNIGHT: Nerve pills, sugar pills, pressure
26 pills.

27 BY MR. SERMOS: Do they cause you to be drowsy or
28 sleepy?

29 BY JUROR KNIGHT: Sometimes it do. Sometimes.

1 BY MR. SERMOS: Okay.

2 BY JUROR MCKNIGHT: It do.

3 BY MR. SERMOS: Okay. Number eight-two.

4 BY JUROR WHITLEY: Pressure pills and sugar pills.

5 BY MR. SERMOS: Does it --

6 BY JUROR WHITLEY: Sometimes it does. Sometimes it
7 doesn't.

8 BY MR. SERMOS: And how about number eighty-three?

9 BY JUROR PROFICE: Pain tablets that I take and they
10 do make me drowsy.

11 BY MR. SERMOS: Anybody else?

12 (No response.)

13 BY MR. SERMOS: Thank you. Has anyone here that's on
14 this jury panel who's been a victim of a crime? In other
15 words, have you had your house broken into or been
16 attacked or assaulted or something like that. Would you
17 hold your hands over here or your numbers. Number twelve,
18 thirteen. Okay. And number forty-seven, thirty-three,
19 thirty-seven, thirty-eight, forty-eight and sixty-four.
20 And ninety-one and eighty-three. Number sixty-three.
21 Number twelve, what was the kind of crime you were a
22 victim of?

23 BY JUROR VINES: My house was broken into.

24 BY MR. SERMOS: How long ago was that?

25 BY JUROR VINES: About fifteen or sixteen years ago.

26 BY MR. SERMOS: And number thirteen.

27 BY JUROR ALLEN: My house was broken into, and my
28 daughter was assaulted.

29 BY MR. SERMOS: Okay. Number thirty-three.

1 BY JUROR JOHNSON: My house was broken into.

2 BY MR. SERMOS: Number thirty-seven.

3 BY JUROR SMITH: My house was broken into.

4 BY MR. SERMOS: Number sixty-three. What was the --

5 BY JUROR DIXON: My house was broken into.

6 BY MR. HARPER: All right. Number eighty-three, what
7 was the --

8 BY JUROR PROFICE: My house was broken into.

9 BY MR. SERMOS: And I believe number twenty-eight.

10 BY JUROR HAMPTON: Simple assault.

11 BY MR. SERMOS: Against you?

12 BY JUROR HAMPTON: Yes, sir.

13 BY MR. SERMOS: I am sorry. Thirty-eight.

14 BY JUROR BALES: Armed robbery.

15 BY MR. SERMOS: How long ago was that?

16 BY JUROR BALES: Just this past June, I was robbed at
17 knife point.

18 BY THE COURT: And number sixty-four.

19 BY JUROR BALLARD: Purse snatching.

20 BY MR. SERMOS: How long ago did that happen?

21 BY JUROR BALLARD: Three years ago.

22 BY MR. SERMOS: Ninety-one.

23 BY JUROR FORESMAN: Theft of my house.

24 BY MR. SERMOS: Anybody else that has been a victim
25 of a crime that I might have missed? Yes, sir.
26 Eighty-six.

27 BY JUROR THOMAS: My house was broken into. Nothing
28 was stolen.

29 BY MR. SERMOS: And then eighty-two.

1 BY JUROR WHITLEY: Uh-hum. Theft about three or four
2 months ago.

3 BY MR. SERMOS: Thank you.

4 BY DEPUTY WISNER: Forty-seven.

5 BY MR. SERMOS: Yes. I am sorry. Forty-seven.

6 BY JUROR SMITH: My husband's business was broken
7 into. The cars had been broken into it. One of my
8 children was assaulted.

9 BY MR. SERMOS: That was all in the last few years,
10 couple of years.

11 BY JUROR SMITH: Some.

12 BY THE COURT: Is there anybody else I forgot?
13 Sixty-eight.

14 BY JUROR HUFF: People say I shot at them, but I
15 don't have a --

16 BY THE COURT: You need to speak up a little clearer
17 and a little louder.

18 BY JUROR HUFF: People say I shot at them, but I
19 don't know whether I had to be -- I didn't do no time or
20 nothing like that, but it's been a long time ago.

21 BY MR. SERMOS: Okay. I was asking if you had been a
22 victim of a crime.

23 BY JUROR HUFF: Oh.

24 BY MR. SERMOS: Sorry. Number sixty. My husband's
25 business was broken into three or four years ago.

26 BY MR. SERMOS: All right. Number ninety-five.

27 BY JUROR BARNETT: Simple assault.

28 BY MR. SERMOS: And that was against you?

29 BY JUROR BARNETT: Yes, sir. It was.

1 BY MR. SERMOS: And then one hundred four?

2 BY JUROR BLANCHARD: I was held at gunpoint, and my
3 purse was stolen.

4 BY MR. SERMOS: How long ago did that happen?

5 BY JUROR BLANCHARD: June.

6 BY MR. SERMOS: Was that in Adams County?

7 BY JUROR BLANCHARD: Yes.

8 BY MR. SERMOS: Thank you very much. Anybody else
9 been a victim of a crime?

10 (No response.)

11 BY MR. SERMOS: The Court's indulgence
12 one moment, Your Honor. I want to confer with Mr.
13 Harper here.

14 (Mr. Sermos and Mr. Harper confer.)

15 BY MR. SERMOS: All right. This might be a little
16 bit more difficult. I hope not. It's a pretty big jury
17 panel, but does anybody here sitting on the panel see a
18 relative of his or her sitting on the panel also? In
19 other words, is there a husband or wife on here, a cousin
20 or brother or sister or anything like that? If anyone
21 here sees a relative of theirs also sitting on the jury
22 panel, would you please just raise your number. One
23 moment, please. Number nine. Okay. I'm going to write
24 these down. Number nine, number eighty. Eighty-one. One
25 hundred six, ninety-seven, sixty-seven, fifty-nine,
26 forty-six, twenty-five, forty-eight. Number nine, who is
27 your relative -- number three. I'm sorry.

28 BY JUROR VESTAL: My aunt right there.

29 BY MR. SERMOS: Number nine and forty-six. Okay.

1 And, number three, who's your relative in here?

2 BY JUROR MCKNIGHT: Fellow right there in the white
3 shirt.

4 BY MR. SERMOS: Number forty-nine. Right here in the
5 white shirt? Okay. Number twenty-five.

6 BY JUROR SYLVESTER: Fifty-nine.

7 BY MR. SERMOS: Okay. And what is the relationship?

8 BY JUROR SYLVESTER: Cousin.

9 BY MR. SERMOS: Pardon me?

10 BY JUROR SYLVESTER: Cousin.

11 BY MR. SERMOS: Okay. And number forty-eight.

12 BY JUROR CADE: I -- disregard that. I
13 misunderstand. You said on that panel over there.

14 BY MR. SERMOS: Well, all of them here.

15 BY JUROR CADE: Yeah. Vernon Perry.

16 BY MR. SERMOS: Mr. Perry.

17 BY JUROR CADE: Yes, sir.

18 BY MR. SERMOS: What's his number?

19 BY JUROR CADE: Ninety-four.

20 BY MR. SERMOS: All right. Number one hundred
21 sixteen.

22 BY JUROR ISAAC: Yes, sir. I have a relative here.

23 BY MR. SERMOS: Who is your relative in here?

24 BY JUROR ISAAC: Ms. Rosa Griffith.

25 BY MR. SERMOS: Rosa Griffith. Number sixty-seven.
26 Okay. Number ninety-seven.

27 BY JUROR BATES: Eighty.

28 BY MR. SERMOS: What's your relationship?

29 BY JUROR BATES: Cousin.

1 BY MR. SERMOS: Number sixty-seven. Who is your
2 relative in here?

3 BY JUROR GRIFFIN: Yeah. He just -- he just --

4 BY MR. SERMOS: The same one back there. Okay. I
5 want to make sure. I was double checking. All right.
6 And number forty-eight.

7 BY JUROR CADE: You got me.

8 BY MR. SERMOS: Okay. I got that one. I want to
9 make sure. Is that all the people in here that are
10 related? Wait. Number eighty-one.

11 BY JUROR JACKSON: My mother-in-law.

12 BY MR. SERMOS: Which one is she?

13 BY JUROR JACKSON: Ruby Jackson.

14 BY MR. SERMOS: You're Mrs. Jackson. What's your
15 number, please? So eighty-one and one hundred one. Thank
16 you very much. I am checking over -- I'm not going to ask
17 you anything that the Judge or Mr. Harper asked you unless
18 we really need to. I just want to review this and clarify
19 several things. One question is as this case moves
20 forward, do all of you understand that any statements that
21 I make or Mr. Clark makes or that Mr. Harper or Rosenblatt
22 makes, that's not evidence for you to consider? Do you
23 all understand that? What we say is not evidence.

24 BY THE JURORS: Yes.

25 BY MR. SERMOS: If the State -- whoever among you is
26 chosen for the jury, if the State of Mississippi fails to
27 present enough evidence to show you beyond a reasonable
28 doubt that Mr. Havard is guilty, is anyone here have a
29 problem with finding him not guilty?

1 BY THE JURORS: No.

2 BY MR. SERMOS: Any problem with that? Is there
3 anyone here if -- I tell you. One moment, please. Your
4 Honor, may we approach.

5 BY THE COURT: Certainly.

6 (A bench conference was had at the bench about the
7 sentencing phase questions, OUT OF THE HEARING OF THE
8 JURY, the following was made of record, to-wit:)

9 BY MR. SERMOS: Is there -- takes, as Mr. Harper said
10 and the Judge said earlier that these kinds of cases, the
11 jury has to reach a unanimous verdict. Is there anyone
12 here that feels if you were determining that the verdict
13 should be not guilty but all eleven other jurors thought
14 the verdict should be guilty, is there anyone here that
15 feels you would change your mind just because of that and
16 for no other reason?

17 BY THE JURORS: No.

18 BY MR. SERMOS: Anyone feel that way?

19 BY THE JURORS: No.

20 BY MR. SERMOS: One moment, please, Your Honor.

21 BY THE COURT: Certainly.

22 (Mr. Sermos and Mr. Clark confer.)

23 BY MR. SERMOS: Your Honor, I have no further
24 questions.

25 BY THE COURT: Ladies and gentlemen, it's going
26 to be necessary that we take a break at this time.
27 It's been about an hour. Also what remains to be
28 done is it's going to be necessary for the Court and
29 the attorneys to ask maybe some you a few more

1 questions. We're going to do that one at a time. So
2 let's take about a ten-minute recess and then try
3 to -- let's use the facilities down at the end of
4 the hall, and then you need to come back in here and
5 try to have a seat in your same seats and, Mr. Vines,
6 I will let you know who we need to talk to when we
7 get to that. So keep in mind what we said about
8 don't talk to anybody involved in this case.

9 (The following was heard in the chambers of the Judge,
10 OUTSIDE THE PRESENCE OF THE JURY, to-wit:)

11 BY THE COURT: Let the record show that the Court is
12 in chambers with counsel for each side and also the
13 defendant, the Court and the attorneys having completed
14 voir dire. Now, at this time, the Court is going to
15 proceed with individual sequestered voir dire of the
16 jurors who responded that they had would have difficulty
17 under any circumstances applying the death penalty. The
18 Court inquired of the jurors as to whether any jurors
19 would automatically impose the death penalty. The Court
20 further explained to them that's not automatic in any
21 case. That it's to be considered by the jury. This is
22 also what's known as the reverse Witherspoon and no jurors
23 replied to that. There were a number of jurors that did
24 reply to the Court's specific question that they could not
25 apply the death penalty in any situation, regardless of
26 the evidence. Following the lunch break upon questioning
27 by the district attorney, there were several other jurors
28 who over the lunch recess discovered that they too had
29 conscientious scruples against the death penalty, and

1 there were several of those. Now, the question put to
2 them by the district attorney was not in the strongest
3 terms as the Court. It was who was opposed to the death
4 penalty. There were several of those, and, clearly,
5 there's certainly needs to be some question of those
6 because the law is such that you can clearly serve on the
7 jury if you're opposed to the death penalty as long as you
8 will consider the imposition of it. So that is where we
9 are at now, and the Court is going to proceed: We will
10 call them one at a time, and I will allow each side an
11 opportunity to question them further or essentially for
12 the defense to allow an opportunity to rehabilitate the
13 witnesses. So we're going to proceed with the individual
14 voir dire of these particular jurors at this time. I am
15 going to try to go in order. If I seem to miss someone in
16 order, y'all please call my attention to it because I've
17 made notes of who responded to what. The first one I
18 have is Lawrence McKnight, juror number three, and let me
19 say this. This is one that he did not respond upon the
20 State's -- upon the Court's questioning of it, but he's
21 the one that discovered over the lunch hour that he did
22 have problems with it. So let's get Mr. McKnight.

23 (Juror McKnight enters the room.)

24 BY THE COURT: Yes, sir. If you'll just have a seat
25 right there. All right. Mr. McKnight, as I understand,
26 when you came back from lunch, the district attorney asked
27 who was opposed to the death penalty.

28 BY JUROR MCKNIGHT: Uh-hum.

29 BY THE COURT: And I believe you raised your number?

1 BY JUROR MCKNIGHT: Yes.

2 BY THE COURT: Okay. Now, my question to you is
3 this. I asked some questions before lunch and you didn't
4 raise your number then.

5 BY JUROR MCKNIGHT: I was -- I was undecided about
6 that.

7 BY THE COURT: You were undecided. Okay. Now, my
8 question to you is this. You say you're opposed to the
9 death penalty. Of course, you haven't heard any evidence
10 in this case yet.

11 BY JUROR MCKNIGHT: Unh-unh. No.

12 BY THE COURT: But do you feel like that you just
13 couldn't do the death penalty in any case no matter what
14 the evidence, or could you consider the death penalty in
15 this case.

16 BY JUROR MCKNIGHT: I don't think I consider the
17 death penalty on nobody.

18 BY THE COURT: Couldn't consider it on anybody.

19 BY JUROR MCKNIGHT: No.

20 BY THE COURT: All right. I am going to allow
21 further questioning, and due to his response, I will allow
22 the defense to question him further and attempt to
23 rehabilitate him at this time.

24 (Mr. Sermos and Mr. Clark confer.)

25 BY MR. SERMOS: You said that you really didn't think
26 you could consider the death penalty; is that right?

27 BY JUROR MCKNIGHT: Unh-unh.

28 BY MR. SERMOS: Is there any circumstances that you
29 would want to consider the death penalty?

1 BY JUROR MCKNIGHT: Well, I don't believe in taking
2 nobody's life. You know, that's my belief.

3 BY MR. SERMOS: Okay.

4 BY JUROR MCKNIGHT: I consider something else, you
5 know, like time in prison or something like that but not
6 the death penalty.

7 BY MR. SERMOS: Okay. So in other words, even if --
8 you talking about you didn't believe in taking anybody's
9 life, do you mean having the State basically put someone
10 to death like they've done recently? Is that what you
11 mean?

12 BY JUROR MCKNIGHT: No. That's not exactly what I
13 mean. I just don't believe in the death penalty period.

14 BY MR. SERMOS: I have no further questions, Your
15 Honor.

16 BY MR. HARPER: No questions, Your Honor.

17 BY THE COURT: All right. Mr. McKnight, you may
18 return back out there.

19 (Juror McKnight leaves the room.)

20 BY THE COURT: We're going to need Mrs. Linda
21 Simonton next, number four.

22 (Juror Simonton enters the room.)

23 BY THE COURT: Mrs. Simonton, when I was asking
24 questions earlier, I was asking about people's strong
25 feelings about the death penalty, and I believe you
26 indicated that you could not consider it in any case.

27 BY JUROR SIMONTON: That's true.

28 BY THE COURT: Or something to that effect.

29 BY JUROR SIMONTON: That's correct.

1 BY THE COURT: Is that the way you sincerely feel?

2 BY JUROR SIMONTON: I sincerely feel that way.

3 BY THE COURT: Okay. Of course, you haven't heard
4 any of the evidence in this case, but I am going to allow
5 the defense attorney to ask you some further questions
6 about it, but you feel like whatever the evidence is in
7 the case, you just couldn't consider the death penalty
8 because of your personal beliefs?

9 BY JUROR SIMONTON: My religion.

10 BY THE COURT: And your religion.

11 BY MR. SERMOS: Is there -- I am just rephrasing
12 basically what the Judge said, but is there any
13 circumstances in which you feel that you could impose the
14 death penalty if you were on the jury?

15 BY JUROR SIMONTON: I could not.

16 BY MR. SERMOS: I have no further questions, Your
17 Honor.

18 BY THE COURT: Okay. I believe you're a Catholic;
19 are you not?

20 BY JUROR SIMONTON: I am.

21 BY THE COURT: Thank you.

22 (Juror Simonton leaves the room.)

23 BY THE COURT: We need juror number five, Mr. Joseph
24 Johnson.

25 BY MR. SERMOS: I am sorry, Your Honor. What number
26 did you call?

27 BY THE COURT: Number five, Joseph Johnson.

28 (Juror Johnson enters the room.)

29 BY THE COURT: You're Mr. Joseph Johnson?

1 BY JUROR JOHNSON: Yes, sir.

2 BY THE COURT: Mr. Johnson, when I was asking the
3 questions -- this was before lunch -- about who was
4 strongly opposed to the death penalty and could not
5 consider the death penalty in any circumstances --

6 BY JUROR JOHNSON: Yes, sir.

7 BY THE COURT: -- I believe you raised your number?

8 BY JUROR JOHNSON: Yes, sir.

9 BY THE COURT: Now, of course, you haven't heard any
10 of the evidence yet in this case.

11 BY JUROR JOHNSON: No, sir.

12 BY THE COURT: Could you consider the death penalty
13 under some circumstances, or are you just opposed to it in
14 any case?

15 BY JUROR JOHNSON: You know, my church.

16 BY THE COURT: What?

17 BY JUROR JOHNSON: It's the church that -- you
18 know -- my church is in --

19 BY THE COURT: That's your religious belief?

20 BY JUROR JOHNSON: Yes, sir.

21 BY THE COURT: What church is that?

22 BY JUROR JOHNSON: Fourth Street Baptist, Natchez.

23 BY THE COURT: With that being your belief, I'm going
24 to allow one of the attorneys for the defendant to ask you
25 further questions, but that's your religious belief. It
26 doesn't matter the evidence or the circumstances, you
27 couldn't consider the death penalty yourself for voting on
28 it?

29 BY JUROR JOHNSON: It would be hard.

1 BY THE COURT: What?

2 BY JUROR JOHNSON: It would be hard.

3 BY THE COURT: Now, that is a little bit different
4 situation now. If it's -- I understand it would be hard.
5 That's a hard thing for anybody to do, but is it something
6 that you could consider under the right circumstances?

7 BY JUROR JOHNSON: Yes, sir. I could.

8 BY THE COURT: You could?

9 BY JUROR JOHNSON: Yes, sir.

10 BY THE COURT: So, in other words, it's just you -- I
11 think I understand what you are saying.

12 BY JUROR JOHNSON: Okay.

13 BY THE COURT: I am going to allow the -- first, does
14 the State have any questions of this --

15 BY MR. HARPER: Yes, sir. Please the Court, Your
16 Honor. Mr. -- I believe it's Mr. Johnson --

17 BY THE COURT: Johnson.

18 BY MR. HARPER: You say that there are some
19 circumstances that you could consider imposing the death
20 penalty if you were selected as a juror and you could
21 actually consider that?

22 BY JUROR JOHNSON: I probably could.

23 BY THE COURT: Okay. And the fact that you're
24 opposed to it or that your church -- I assume it's a
25 religious belief.

26 BY JUROR JOHNSON: Yeah. It's what it is.

27 BY MR. HARPER: Would that not enter into your
28 ability -- I mean, would that cause you a problem with
29 your religious belief to consider it?

1 BY JUROR JOHNSON: I believe it would.

2 BY MR. HARPER: Sir?

3 BY JUROR JOHNSON: I think it would.

4 BY MR. HARPER: You think it would cause that? To
5 the extent that it would prevent you from considering it?

6 BY JUROR JOHNSON: Yes, sir. It's going to be hard.
7 That's what I believe. Yes, sir.

8 BY MR. HARPER: Let me make sure you understand what
9 I am asking you. You say that your religious beliefs are
10 that you --

11 BY JUROR JOHNSON: That --

12 BY MR. HARPER: -- you shouldn't implement the death
13 penalty.

14 BY JUROR JOHNSON: Yes, sir.

15 BY MR. HARPER: But would you be able to go against
16 your religious beliefs if you were on the jury and
17 seriously consider giving somebody the death penalty, or
18 do you feel like your religious beliefs would prevent you
19 from doing it?

20 BY JUROR JOHNSON: Yeah. Well, it seems like I would
21 be killing someone. So it would be hard for me.

22 BY MR. HARPER: I understand, but the question, I
23 guess, trying to ask in a roundabout way, but the fact
24 that you have a religious belief against it, would that
25 not pretty much prevent you from doing it under any
26 circumstances?

27 BY JUROR JOHNSON: No, sir.

28 BY MR. HARPER: It wouldn't --

29 BY JUROR JOHNSON: No, sir.

1 BY MR. HARPER: -- prevent you? You could consider
2 it?

3 BY JUROR JOHNSON: I could consider it.

4 BY MR. HARPER: That's all I have, Your Honor.

5 BY THE COURT: Okay. There shouldn't be any
6 questions from the defense.

7 BY MR. SERMOS: No questions, Your Honor.

8 BY THE COURT: Okay. Mr. Johnson, thank you. You
9 can go back.

10 (Juror Johnson leaves the room.)

11 BY THE COURT: We need juror number six, Mr. John
12 Jackson.

13 (Juror Jackson enters the room.)

14 BY THE COURT: You're Mr. John Jackson; is that
15 right?

16 BY JUROR JACKSON: Yes, sir.

17 BY THE COURT: Mr. Jackson, when we came back from
18 lunch, I believe the district attorney asked a question
19 about who was opposed to the death penalty that hadn't
20 raised their number before, and I believe you raised your
21 number --

22 BY JUROR JACKSON: Yes, sir.

23 BY THE COURT: -- about that. Now, what I need to
24 know is this. Of course, you haven't heard any of
25 evidence in this case yet.

26 BY JUROR JACKSON: No, sir.

27 BY THE COURT: I understand some people's sincere,
28 personal or religious belief about being opposed to the
29 death penalty.

1 BY JUROR JACKSON: Right.

2 BY THE COURT: But the question is, is it something
3 that you could consider, or is it something that no matter
4 what the evidence is in this case that you're not going to
5 consider voting for the death penalty yourself?

6 BY JUROR JACKSON: No, sir. It's against my
7 religion, and I don't believe -- the Lord gave us life and
8 I don't think man should take it.

9 BY THE COURT: Okay. So it doesn't really matter
10 what the evidence in this case?

11 BY JUROR JACKSON: No, sir.

12 BY THE COURT: That's your personal belief?

13 BY JUROR JACKSON: Yes, sir.

14 BY THE COURT: All right. I am going to allow this
15 attorney -- one of these attorneys to ask you questions.
16 Does the defense have any questions?

17 BY MR. SERMOS: No, Your Honor.

18 BY THE COURT: Well, I certainly respect that, and I
19 appreciate you speaking up about that, sir.
20 (Juror Jackson leaves the room.)

21 BY THE COURT: All right. We need juror number ten,
22 Fiorello.

23 (Juror Fiorello enters the room.)

24 BY THE COURT: You're Ms. Donna Fiorello?

25 BY JUROR FIORELLO: Uh-hum.

26 BY THE COURT: Ms. Fiorello, let's see. I believe
27 when I was asking some questions before the lunch break, I
28 was asking about people strongly opposed to the death
29 penalty.

1 BY JUROR FIORELLO: Uh-hum.

2 BY THE COURT: And I believe my question was
3 something to the affect that I asked who feels so strongly
4 about it that it didn't matter what the circumstances in
5 this case, that you just couldn't consider imposing the
6 death penalty or voting for it yourself, and I believe you
7 raised your number to this. Is that your sincere --

8 BY JUROR FIORELLO: Uh-hum.

9 BY THE COURT: -- beliefs? Is that religious beliefs
10 or personal beliefs that you just --

11 BY JUROR FIORELLO: Just personal.

12 BY THE COURT: Just personal.

13 BY JUROR FIORELLO: A little bit of both.

14 BY THE COURT: Because, of course, you haven't heard
15 any of the evidence in this case yet, but --

16 BY JUROR FIORELLO: No.

17 BY THE COURT: -- does that mean that it doesn't
18 matter what the evidence is in this case that you just
19 can't -- you can't do that yourself? Or is it something
20 that you could consider if the evidence was strong enough?

21 BY JUROR FIORELLO: I could if the evidence was
22 strong enough. I mean, I just -- you know -- I don't want
23 to go by what you hear -- you know -- I want to be put in
24 the situation where I can feel good about whatever I do
25 decide.

26 BY THE COURT: So you're not real fond of the death
27 penalty, I gather from you --

28 BY JUROR FIORELLO: I feel like you're playing with
29 God when you do that.

1 BY THE COURT: I understand that, but what you're
2 telling this Court. This is very important. Listen to
3 what I am saying. You would be willing to listen to the
4 evidence and in some cases you might -- if the evidence
5 was strong enough, you might consider imposing the death
6 penalty and voting for it yourself?

7 BY JUROR FIORELLO: Yes. Yes.

8 BY THE COURT: It would just depend on how strong
9 the evidence was?

10 BY JUROR FIORELLO: Right, right.

11 BY THE COURT: Okay. Does the State have any
12 questions?

13 BY MR. HARPER: Just a few, Ms. Fiorello. I believe
14 you said that you felt like it was playing with God. Do
15 you feel like that if you were selected as a juror, got in
16 there, and started trying to consider it, that you just
17 wouldn't be able to do that whatever the evidence was? Do
18 you feel like that you could --

19 BY JUROR FIORELLO: No, no.

20 BY MR. HARPER: You feel like you could consider it?

21 BY JUROR FIORELLO: I could consider it, yes, but --

22 BY MR. HARPER: I realize it's a drastic measure, but
23 some crimes are drastic.

24 BY JUROR FIORELLO: Yeah. It's just -- you know -- I
25 don't know how to say it. I guess just putting it -- you
26 know -- being secluded and not in the outside view and all
27 --

28 BY MR. HARPER: Right.

29 BY JUROR FIORELLO: -- people have a lot -- you

1 know -- bad influence on people, you know.

2 BY MR. HARPER: Right.

3 BY JUROR FIORELLO: They say things and do things.

4 BY MR. HARPER: I know a lot of people talk about it,
5 but sometimes it's easier to talk about it --

6 BY JUROR FIORELLO: You don't know -- just like you
7 walk outside -- you know -- to go to the restroom and --
8 you know -- you're not supposed to talk about it, and
9 everybody is talking about it and saying things, and you
10 just -- you know -- you just -- I don't -- that's why I
11 kind of seclude myself a little bit.

12 BY MR. HARPER: And you heard some of the questions I
13 asked about requiring witnesses or confession. That
14 wouldn't play into it. Didn't matter the form the
15 evidence took. If the evidence were convincing to you as
16 to his guilt --

17 BY JUROR FIORELLO: Uh-hum.

18 BY MR. HARPER: -- and depending on the facts that
19 are presented and the seriousness of the offenses, you
20 could consider the death penalty if the facts warranted
21 it?

22 BY JUROR FIORELLO: Yes.

23 BY MR. HARPER: That's all I have, Your Honor.

24 BY THE COURT: Thank you.

25 (Juror Fiorello leaves the room.)

26 BY THE COURT: We need number thirteen, Ms. Allen.

27 (Juror Allen enters the room.)

28 BY THE COURT: You're Ms. Allen?

29 BY JUROR ALLEN: Yes.

1 BY THE COURT: Now, Ms. Allen, I know you had a number
2 of responses. What I am concerned with now is your
3 response about the death penalty. I asked a question
4 about who had some strong feelings about the death penalty
5 and could not consider imposing the death penalty in any
6 circumstances whatever the evidence was in this case. My
7 question to you is that how you feel?

8 BY JUROR ALLEN: Yes, sir.

9 BY THE COURT: Now, is it something -- could you
10 consider in the right case if the evidence was strong
11 enough, could you consider it, or are your feelings strong
12 enough that it doesn't matter what the evidence is.
13 That's something you cannot do under any circumstances?

14 BY JUROR ALLEN: I don't think that I would be able
15 to do that.

16 BY THE COURT: Okay. Now when you say you don't
17 think that you would be able to do that, I need to know
18 one way or the other. I need to hear you say that you
19 could consider it under some circumstances, or that it's
20 such that it doesn't matter what the circumstances or the
21 evidence, that you just absolutely can't consider it. And
22 I need you to just think about this and just search your
23 heart and your mind and try to give the Court an honest
24 answer about it.

25 BY JUROR ALLEN: I couldn't.

26 BY THE COURT: You couldn't under any circumstances?

27 BY JUROR ALLEN: No, sir.

28 BY THE COURT: Okay. All right. I am going to allow
29 one of the attorneys to question you further. Does the

1 defense have questions of this juror?

2 BY MR. SERMOS: Your Honor, it's a tangent to that,
3 but if I may ask about --

4 BY THE COURT: Sure.

5 BY MR. SERMOS: -- if her feeling might be because of
6 something she had said earlier when I took notes. Earlier
7 I believe you responded that there had been sex abuse in
8 the family?

9 BY JUROR ALLEN: Yes.

10 BY MR. SERMOS: Whatever that circumstances was, and
11 I won't even really go into that. Is that one thing that
12 would make you feel like you could not impose the death
13 penalty if the facts in this case showed you? Is it
14 because of your feelings coming out of that other
15 circumstance?

16 BY JUROR ALLEN: I don't really know why I feel that
17 way. I just -- I don't know. I just -- that's probably
18 part of it.

19 BY MR. SERMOS: I don't have anything else.

20 BY THE COURT: That's your personal feelings?

21 BY JUROR ALLEN: Yes.

22 BY THE COURT: Okay. Thank you.

23 (Juror Allen leaves the room.)

24 BY THE COURT: All right. We need number sixteen,
25 Mrs. Smith.

26 (Juror Smith enters the room.)

27 BY THE COURT: Mrs. Smith.

28 BY JUROR SMITH: Yes, sir.

29 BY THE COURT: Now, Mrs. Smith, I believe when we

1 came back from lunch, the district attorney was asking
2 some questions.

3 BY JUROR SMITH: Yes.

4 BY THE COURT: One of the questions was who was
5 opposed to the death penalty.

6 BY JUROR SMITH: Yes.

7 BY THE COURT: You didn't raise your number before.

8 BY JUROR SMITH: I had to think about it.

9 BY THE COURT: You had to think about it, and then
10 you raised your number.

11 BY JUROR SMITH: Yes.

12 BY THE COURT: It's perfectly all right for anybody
13 for their personal feelings, but what I need to know is
14 this.

15 BY JUROR SMITH: Uh-hum.

16 BY THE COURT: Are your feelings such that whatever
17 the evidence is, whatever the circumstances in this case
18 which you haven't heard yet, that this is something that
19 you absolutely cannot do. You couldn't vote for the death
20 penalty, or is it something that even though you may feel
21 strongly against it, that you could consider --

22 BY JUROR SMITH: I could consider it.

23 BY THE COURT: -- in the right case --

24 BY JUROR SMITH: Depending on the evidence.

25 BY THE COURT: -- depending on the evidence was
26 strong enough. Okay. So you would be willing to
27 consider it in the right case if the evidence was strong
28 enough.

29 BY JUROR SMITH: Yes, sir.

1 BY THE COURT: Okay. Does the State have any
2 questions?

3 BY MR. HARPER: Just a couple of questions. Ms.
4 Smith, you obviously have some strong feelings about it?

5 BY JUROR SMITH: Yes.

6 BY MR. HARPER: But as I understand what you're
7 saying that if the evidence warranted it, you could return
8 or consider the death penalty as a punishment?

9 BY JUROR SMITH: Yes.

10 BY MR. HARPER: And you could honestly do that? You
11 don't think this other feelings you have about it would
12 prohibit you from doing that?

13 BY JUROR SMITH: No.

14 BY MR. HARPER: And you heard -- I asked some
15 question outside about requiring us to have two witnesses
16 or confession. You wouldn't require us to do more than
17 the law --

18 BY JUROR SMITH: No.

19 BY MR. HARPER: -- which what would be more than --
20 no matter what the form the evidence takes as long as it
21 satisfies you as to the defendant's guilt, you could
22 consider the death penalty if the circumstances of the
23 case were such that you felt like that was strong enough
24 to do that?

25 BY JUROR SMITH: Yes.

26 BY MR. HARPER: That's all I have, Your Honor.

27 BY THE COURT: Thank you. You can go back.

28 (Juror Smith leaves the room.)

29 BY THE COURT: Twenty-two, Carol Black.

1 (Juror Black enters the room.)

2 BY THE COURT: You're Carol Black?

3 BY JUROR BLACK: Uh-hum.

4 BY THE COURT: And, Mrs. Black, when I was asking some
5 questions I believe this morning before the break, one of
6 them was about who had strong feelings about the death
7 penalty.

8 BY JUROR BLACK: Uh-hum.

9 BY THE COURT: And who felt so strongly about it that
10 whatever the evidence was that they couldn't consider
11 themselves voting for or imposing the death penalty in any
12 case, and I believe you raised your number --

13 BY JUROR BLACK: Yes, I did.

14 BY THE COURT: -- to that. Is that personal feelings
15 that you have --

16 BY JUROR BLACK: Yes, it is.

17 BY THE COURT: -- or religious or both?

18 BY JUROR BLACK: Well, I am Catholic, and Catholic
19 states -- is against the death penalty, but aside from
20 that, that's my personal feeling also.

21 BY THE COURT: Okay. My question is this. Does that
22 mean that -- of course, you haven't heard what the
23 evidence is in this case.

24 BY JUROR BLACK: Right.

25 BY THE COURT: Does that mean no matter what the
26 evidence or the circumstances in this case, that that's
27 something that you just can't do?

28 BY JUROR BLACK: That would be difficult for me to
29 do.

1 BY THE COURT: Difficult is a different situation,
2 and I want you to take your time and think about it, now.
3 If it's something -- you can be against it or opposed to
4 it, but as a juror, what I need to know is it something
5 that you would consider if the circumstances or the
6 evidence was strong enough. Is it something that you
7 could consider and possibly vote for the death penalty in
8 the right case, or is it something that in all honesty
9 whatever the evidence or circumstances, you're just not
10 going to be able to do it. Do you understand what I am --

11 BY JUROR BLACK: Yes, I do.

12 BY THE COURT: Just think about that and answer to me
13 the best you can. Just search your heart and mind and
14 just tell me, you know, honestly which category you fall
15 into?

16 BY JUROR BLACK: Well, I think -- I think the latter
17 because it would be very difficult for me to vote death
18 penalty for anybody no matter what the circumstances were.

19 BY THE COURT: So you can't but -- okay. Do you
20 conceive of any circumstances in a case or any evidence
21 where you could do that?

22 BY JUROR BLACK: I don't think so.

23 BY THE COURT: Okay. First of all, any questions by
24 the State?

25 BY MR. HARPER: Yes, sir. Mrs. Smith -- I'm sorry

26 --

27 BY THE COURT: Carol Black.

28 BY JUROR BLACK: Black.

29 BY MR. HARPER: Mrs. Black. I apologize. I'm going

1 to try to --

2 BY JUROR BLACK: Okay.

3 BY MR. HARPER: Mrs. Black, you understand what the
4 Judge is asking you?

5 BY JUROR BLACK: Yes, I do.

6 BY MR. HARPER: I know it's a difficult question, but
7 what we need to know is, and, as I understand what you are
8 saying, that pretty much under no circumstances, whatever
9 the circumstances in the case, could you really consider
10 the death penalty, your feelings being as they are about
11 it. There is nothing wrong with that. I understand that.

12 BY JUROR BLACK: I don't think so. I mean --

13 BY MR. HARPER: You keep saying, "I don't think so."
14 And, of course, that put us in the -- that means that --

15 BY JUROR BLACK: I understand.

16 BY MR. HARPER: You see what I am saying. I don't
17 mean to try to pin you down on that, but that's an
18 important question for both us and the defense in this
19 case.

20 BY JUROR BLACK: I understand.

21 BY MR. HARPER: And I understand it's putting you on
22 the spot, but if you could just think and try to decide in
23 own mind. Do you think there's any possibility or not --
24 or that you couldn't.

25 BY JUROR BLACK: Well, it would be very difficult for
26 me to do it, but if it came down to it, there's a
27 possibility that I could. I mean, it wouldn't -- you know
28 -- it would be hard for me to do.

29 BY THE COURT: I understand, Mrs. Black, but let me

1 just ask you this. You do realize it is the law of the
2 State.

3 BY JUROR BLACK: I understand.

4 BY THE COURT: So what you're telling me is that you
5 would be willing to consider it. Is that a fair
6 statement?

7 BY JUROR BLACK: Possibly yes. I mean, yes. Yes.

8 BY THE COURT: Okay. Well, I thank you, and you can
9 go back now.

10 (Juror Black leaves the room.)

11 BY THE COURT: Mary Prescott, number twenty-six.

12 (Juror Prescott enters the room.)

13 BY THE COURT: Mrs. Prescott, when I was asking some
14 questions before, I was asking about anybody that is
15 seriously opposed to the death penalty, and whatever the
16 evidence and circumstances they would be opposed to that.
17 First of all, this -- you raised your number. Is this a
18 personal or religious belief --

19 BY JUROR PRESCOTT: Uh-hum.

20 BY THE COURT: -- or both? You're a member of the
21 Catholic church?

22 BY JUROR PRESCOTT: I am.

23 BY THE COURT: Now, what I need to know is, of
24 course, you haven't heard any of the evidence in this
25 case. Whatever the evidence is or whatever the
26 circumstances, you're telling the Court that you just --

27 BY JUROR PRESCOTT: I could not.

28 BY THE COURT: -- personally, you could't do it.

29 BY JUROR PRESCOTT: I could listen to the entire

1 case. I could find a guilty verdict, but I could not --

2 BY THE COURT: Okay. I am going to ask the attorneys
3 if they have any questions..

4 BY MR. SERMOS: Is there any set of circumstances
5 that exists that could -- that would urge you or cause you
6 to change your opinion and cause you to -- if they were --
7 let's just say if they were, say, severe enough
8 circumstances that could cause you to want to impose the
9 death penalty on anybody?

10 BY JUROR PRESCOTT: No.

11 BY MR. SERMOS: I have nothing further, Your Honor.
12 (Juror Prescott leaves the room.)

13 BY THE COURT: Robert Montgomery.

14 (A note is brought in to Mr. Harper, and Mr. Harper hands
15 the note to Mr. Clark who leaves the room. Juror
16 Montgomery enters the room.)

17 BY THE COURT: You're Mr. Robert Montgomery?

18 BY JUROR MONTGOMERY: Yes, sir.

19 BY THE COURT: Mr. Montgomery, when I was asking some
20 questions earlier, one of them was about who was opposed
21 to the death penalty.

22 BY JUROR MONTGOMERY: Right.

23 BY THE COURT: And who felt like that whatever the
24 circumstances, the evidence was, that personally they just
25 couldn't vote for the death penalty.

26 BY JUROR MONTGOMERY: Right.

27 BY THE COURT: And I believe you raised your number.

28 BY JUROR MONTGOMERY: Yes, sir.

29 BY THE COURT: Is that the way you personally feel?

1 BY JUROR MONTGOMERY: Yes, sir.

2 BY THE COURT: Is that due to personal beliefs or
3 religious or both of them?

4 BY JUROR MONTGOMERY: Both.

5 BY THE COURT: Both. So it doesn't matter what the
6 evidence or circumstances in this case, that's just your
7 personal beliefs. You couldn't participate in voting for
8 the death penalty?

9 BY JUROR MONTGOMERY: No, sir. I couldn't.

10 BY THE COURT: Does the defense have any questions of
11 Mr. Montgomery?

12 BY MR. SERMOS: Yes, Your Honor. With the Court's
13 indulgence on this. Outside I believe you made the
14 statement when -- I believe it was the district attorney
15 is that your mind was made up about this case?

16 BY JUROR MONTGOMERY: Yes, sir.

17 BY MR. SERMOS: Is what you stated about that, is
18 that the reason that you couldn't consider the death
19 penalty because your mind is made up?

20 BY JUROR MONTGOMERY: Yes, sir. More or less, you
21 know. I just feel like they done investigated. They got
22 who they thought done it, and I just -- you know -- kind
23 of go along with it, I guess.

24 BY MR. SERMOS: Okay. And so even if you do go along
25 with that and stated when you said your mind was made up,
26 even if it is made up --

27 BY JUROR MONTGOMERY: Uh-hum.

28 BY MR. SERMOS: Let's just say that it is. You could
29 still could impose the death penalty?

1 BY JUROR MONTGOMERY: No way.

2 BY MR. SERMOS: I have nothing further, Your Honor.

3 BY THE COURT: Thank you, Mr. Montgomery. You can
4 go.

5 (Juror Montgomery leaves the room. Mr. Clark enters the
6 room.)

7 BY THE COURT: We need number thirty-two, Mrs.
8 Atwell, Barbara Atwell.

9 BY MR. CLARK: Judge, when do you want to address
10 what I went outside for? In response to the note that
11 came in to us back here in the jury room about my client's
12 grandfather talking to jurors, I went out and talked to
13 Mr. Havard himself, William Havard, and he said he knew
14 better than that and that he had not attempted to talk or
15 had not talked with anybody that he knew was on the jury
16 panel, and I did ask him to move out of the hallway and to
17 go either down towards the chancery courtroom area or
18 either downstairs in the lobby somewhere downstairs as
19 opposed to right outside the courtroom which they were
20 going to do.

21 BY THE COURT: For the record, what we're talking
22 about is the defendant's grandfather that was reported
23 that he was in the hall talking to people. The Court is
24 satisfied with what you just reported, Mr. Clark. Okay.
25 If you'll bring in the next one.

26 (Juror Atwell enters the room.)

27 BY THE COURT: You're Mrs. Barbara Atwell?

28 BY JUROR ATWELL: Uh-hum.

29 BY THE COURT: Now, when I was asking the questions

1 earlier, I was asking about who had strong feelings about
2 the death penalty and who felt that no matter what the
3 circumstances, evidence in the case, that the personal
4 beliefs were such that they just could not participate or
5 vote for the death penalty. There was something to that
6 effect.

7 BY JUROR ATWELL: Right. Right.

8 BY THE COURT: And you raised your number, I believe.

9 BY JUROR ATWELL: Right.

10 BY THE COURT: Now, is that your -- that's your
11 feelings?

12 BY JUROR ATWELL: Right.

13 BY THE COURT: Is that your personal or religious or
14 both?

15 BY JUROR ATWELL: Both, I guess.

16 BY THE COURT: Both. Now, is that -- what I need to
17 know is do you feel so strongly about this that it doesn't
18 matter what the evidence or the circumstances of the
19 case, that you just cannot in any case consider the death
20 penalty or participate in voting for the death penalty
21 yourself?

22 BY JUROR ATWELL: Right.

23 BY THE COURT: All right. I am going to allow the
24 defense attorneys to ask you any questions if they care
25 to.

26 BY MR. SERMOS: I have no questions, Your Honor. Mr.
27 Clark --

28 BY JUROR ATWELL: I have a lot of health problems
29 that would kind of -- you know -- prevent me from being on

1 the jury right now.

2 BY THE COURT: From being on the jury. Yes, ma'am.

3 BY JUROR ATWELL: And I've got the flu, I think.

4 BY THE COURT: I'll consider that also, but I needed
5 to know your feelings about that.

6 (Juror Atwell leaves the room.)

7 BY THE COURT: We need number thirty-four, Mrs.
8 Pennington.

9 (Juror Pennington enters the room.)

10 BY THE COURT: You're Mrs. Pennington?

11 BY JUROR PENNINGTON: Yes.

12 BY THE COURT: Okay. Mrs. Pennington, when we came
13 back from lunch, one of the questions the district
14 attorney asked was who was opposed to the death penalty
15 that didn't raise your hands before.

16 BY JUROR PENNINGTON: Uh-hum.

17 BY THE COURT: And I believe you raised your number
18 to that?

19 BY JUROR PENNINGTON: Uh-hum.

20 BY THE COURT: Now, is this a personal belief or
21 religious belief or both?

22 BY JUROR PENNINGTON: Well, I really -- I've never
23 had to do anything like this before, and I don't know if I
24 could do it.

25 BY THE COURT: Okay.

26 BY JUROR PENNINGTON: You know.

27 BY THE COURT: Well, this is what I need to know,
28 Mrs. Pennington, and like I said, there are no wrong or
29 right answers, but what I need to know is this. Are your

1 feelings so strong that whatever the circumstances,
2 whatever the evidence is, that you personally just cannot
3 participate in voting for the death penalty against
4 someone, or even if you have strong feelings against it,
5 is it something that you would be willing to consider and
6 if the evidence and the case was strong enough, that you
7 could -- you know -- possibly vote for that if the
8 evidence was strong enough. So which category do you fall
9 in? And you can take your time to think about it. Just
10 search your heart and your mind, but that's really the
11 question I need to know. Do you understand what I'm --

12 BY JUROR PENNINGTON: Well, if it was -- if it
13 absolutely proven without a doubt, with that -- you know
14 -- I wouldn't have any doubt in my mind. It would be a
15 hard, hard decision. That's not something I would decide
16 lightly.

17 BY THE COURT: I understand that. But what you are
18 saying is, is it something that you could consider or you
19 would be willing to consider.

20 BY JUROR PENNINGTON: Yes.

21 BY THE COURT: It would just be real hard for you to
22 do.

23 BY JUROR PENNINGTON: Very.

24 BY THE COURT: So you don't -- I know some people
25 just say I don't care what the evidence is or
26 circumstances, I just can't do that, but you don't fall in
27 that category?

28 BY JUROR PENNINGTON: No.

29 BY THE COURT: Does the State have any questions to

1 ask her?

2 BY MR. HARPER: Just a few questions. As I
3 understand it, Mrs. Pennington, what you are saying is
4 that you would require a higher burden of proof even
5 though any other case to consider the death penalty. You
6 heard -- I asked some questions about having two
7 eyewitness or confessions, and are you saying that you
8 would require something of that nature before you could
9 even consider the death penalty or are you saying --

10 BY JUROR PENNINGTON: No. I am saying if you prove
11 to me -- if I feel like you proved your case without any
12 reasonable doubt, that I wouldn't have any doubt in my
13 mind. Is that okay to say? That's how I feel.

14 BY MR. HARPER: That's what I want you to say --

15 BY THE COURT: That's the way you feel.

16 BY MR. HARPER: -- what you feel. Certainly.

17 BY JUROR PENNINGTON: Okay.

18 BY MR. HARPER: That's all I have, Your Honor.

19 BY THE COURT: Thank you, Mrs. Pennington.

20 (Juror Pennington leaves the room.)

21 BY THE COURT: We need juror number thirty-five, I
22 think it's a Mr. Thomas.

23 (Juror Thomas enters the room.)

24 BY THE COURT: You're Mr. Thomas, right?

25 BY JUROR THOMAS: That's correct.

26 BY THE COURT: Mr. Thomas, when I was asking some
27 questions before lunch, it was about who had strong
28 feelings against the death penalty and who are the jurors
29 that no matter what the evidence or circumstances was that

1 couldn't personally vote or consider the death penalty
2 against someone, and I believe you raised your number.

3 BY JUROR THOMAS: Yes, sir.

4 BY THE COURT: And that's the way you sincerely feel?

5 BY JUROR THOMAS: Yes, sir. Because I wouldn't want
6 to be the judge of who lived or who died.

7 BY THE COURT: Is that your personal beliefs or
8 religious beliefs or both?

9 BY JUROR THOMAS: That's just the way I feel about
10 it.

11 BY THE COURT: That's the way you feel.

12 BY JUROR THOMAS: Yes.

13 BY THE COURT: What I need to know about this is that
14 you haven't heard any of the evidence. That doesn't
15 matter how strong the evidence is or the circumstances.
16 That's just something you can't do?

17 BY JUROR THOMAS: I wouldn't want to do it.

18 BY THE COURT: You say you wouldn't want to do it.

19 BY JUROR THOMAS: I can't do it. I --

20 BY THE COURT: You can't do it. Okay. So you just
21 can't --

22 BY JUROR THOMAS: I don't feel I have the right to do
23 that. That's just my belief.

24 BY THE COURT: All right. I'm going to allow counsel
25 to ask you some questions.

26 BY MR. SERMOS: If you were to listen to the
27 evidence -- I know you said you couldn't -- it wasn't your
28 right. If you were to listen to the evidence and it was
29 just so overwhelming and gruesome, could that lead you to

1 want to impose the death penalty on somebody?

2 BY JUROR THOMAS: I still don't feel I could change
3 my mind about that because I figure only God could give
4 life and only he had the right to take life. So it's not
5 belief to say who lives or who dies. I am not -- I just
6 can't change my mind about that.

7 BY MR. SERMOS: Nothing further, Your Honor.

8 BY THE COURT: Thank you. I appreciate that. You
9 can go. I mean go back out there right now.

10 (Juror Thomas leaves the room.)

11 BY THE COURT: We need number thirty-eight, Mr.
12 Sales. John Bales.

13 (Juror Bales enters the room.)

14 BY THE COURT: All right. You're Mr. Bales.

15 BY JUROR BALES: Yes, sir.

16 BY THE COURT: Mr. Bales, when I was questioning the
17 jurors earlier, one of the questions I asked was who was
18 strongly opposed to the death penalty and the feelings
19 were such that whatever the evidence and circumstances
20 that they couldn't personally vote for the death penalty
21 themselves, and I believe you raised your number.

22 BY JUROR BALES: Yes, sir.

23 BY THE COURT: Is that the way you personally feel?

24 BY JUROR BALES: Yes.

25 BY THE COURT: Is that a personal belief or religious
26 belief or both?

27 BY JUROR BALES: Both, sir.

28 BY THE COURT: Both.

29 BY JUROR BALES: Both religious and personal.

1 BY THE COURT: What I need to know is that it doesn't
2 matter what the evidence or the circumstances, that you
3 just can't do it in any case.

4 BY JUROR BALES: I would not be comfortable with it.
5 No, sir.

6 BY THE COURT: That's -- I need to ask you about
7 that. You said you wouldn't be comfortable with it. I
8 understand people are opposed to it, and it's a hard thing
9 for anybody, but is it something that if the evidence was
10 strong enough that you could consider it?

11 BY JUROR BALES: No.

12 BY THE COURT: You couldn't?

13 BY JUROR BALES: No, I just -- no.

14 BY THE COURT: You couldn't in any case?

15 BY JUROR BALES: I couldn't make that -- I couldn't
16 make that judgment. No, sir.

17 BY THE COURT: Okay. All right. Mr. Sermos, Mr.
18 Clark, y'all have any questions of this --

19 BY MR. SERMOS: I've just got one short one, Your
20 Honor. You had said earlier out there that you had heard
21 about the case and your wife had?

22 BY JUROR BALES: She's the United Methodist pastor of
23 the Lovely Lane Kingston Methodist Church and involved
24 through the Grace Methodist Church there as one of the
25 counselors at her office, sir.

26 BY MR. SERMOS: If it wasn't for that, do you think
27 you could consider the death penalty?

28 BY JUROR BALES: Not really, sir. I am just not for
29 it.

1 BY MR. SERMOS: I have nothing further, Your Honor.

2 BY THE COURT: Thank you, Mr. Bales. You may go back
3 out there.

4 (Juror Bales leaves the room.)

5 BY THE COURT: We need juror number thirty-nine, Mr.
6 Overton.

7 (Juror Overton enters the room.)

8 BY THE COURT: You're Mr. Overton?

9 BY JUROR OVERTON: Yes. Yes, I am.

10 BY THE COURT: Mr. Overton, when I was questioning
11 the jurors previously, I asked about who had strong
12 feelings against the death penalty, and I was asking about
13 is there anybody that feels so strongly against the death
14 penalty that whatever the evidence or circumstances in
15 this case, that just honestly you couldn't consider or be
16 part of voting for the death penalty. I believe you
17 raised your number to a question --

18 BY JUROR OVERTON: Yes, sir. But I don't remember
19 the question being quite like that --

20 BY THE COURT: Tell what your feelings are.

21 BY JUROR OVERTON: I am old enough I could have went
22 home this morning at ten o'clock, but I felt like I had a
23 civic obligation, and I wanted to fulfill it, and the more
24 and more I got to thinking about this, if it come down to
25 having to vote for the death penalty, I'll be honest, sir.
26 I don't know whether I could or not.

27 BY THE COURT: Well, this is what I need to know. I
28 need to know are you an individual that -- and some people
29 feel this way, that whatever evidence or circumstances --

1 BY JUROR OVERTON: No.

2 BY THE COURT: -- they just can't do it. They can't
3 do it, or --

4 BY JUROR OVERTON: I am not that way.

5 BY THE COURT: -- is it something that even though you
6 may not like it, that you could consider it or be willing
7 to consider it in the right kind of case?

8 BY JUROR OVERTON: I might could do that. I'm not --
9 yeah -- like the people that flew into the World Trade
10 Center, yeah. I'd like to see them --

11 BY THE COURT: Okay. So you could consider it in the
12 right kind of case?

13 BY JUROR OVERTON: Yes, sir.

14 BY THE COURT: Okay.

15 BY JUROR OVERTON: If it came right down to it, I am
16 not sure. I don't know.

17 BY THE COURT: I think I understand what you're
18 saying, Mr. Overton. Does the State have any questions?

19 BY MR. HARPER: No, Your Honor. I don't believe we
20 do.

21 BY THE COURT: Thank you, Mr. Overton.

22 (Juror Overton leaves the room.)

23 BY THE COURT: We need number forty-three, Ms.
24 Oten.

25 (Juror Oten enters the room.)

26 BY THE COURT: You're Ms. Oten?

27 BY JUROR OTEN: Yes.

28 BY THE COURT: Now, Ms. Oten, when I was asking the
29 questions earlier today, one of the questions was who was

1 opposed to the death penalty and who felt so strongly
2 about it that it didn't really matter what the evidence or
3 circumstances were that who couldn't personally
4 participate in voting for the death penalty or something
5 similar to that and you raised your number.

6 BY JUROR OTEN: Right.

7 BY THE COURT: Now, is this a personal belief you
8 have or religious belief or both?

9 BY JUROR OTEN: It's both.

10 BY THE COURT: Both. Okay. Now, my question to you
11 and what I need to know, do you feel so strongly about
12 this that there's just no case or no circumstances that
13 you could consider the death penalty, or could you
14 consider it if the evidence was strong enough in a case?

15 BY JUROR OTEN: Not because of the belief I have, no.
16 It's just I have this personal belief that I can't.

17 BY THE COURT: That's your personal belief?

18 BY JUROR OTEN: Yeah.

19 BY THE COURT: So it doesn't really matter what the
20 evidence or circumstances, that's something you just can't
21 do?

22 BY JUROR OTEN: Right.

23 BY THE COURT: Okay. That's the way you honestly
24 feel?

25 BY JUROR OTEN: Right.

26 BY THE COURT: All right. Defense counsel have any
27 questions of this witness?

28 BY MR. SERMOS: Right. Did you state that you were a
29 former teacher --

1 BY JUROR OTEN: Yes.

2 BY MR. SERMOS: -- of Jeffrey's?

3 BY JUROR OTEN: Yes.

4 BY MR. SERMOS: Does that have anything to do with
5 your decision here or your feelings that you could not
6 impose the death penalty?

7 BY JUROR OTEN: No. It's not that I'm his former
8 teacher. No.

9 BY MR. SERMOS: Thank you. I have nothing further,
10 Your Honor.

11 BY THE COURT: It wouldn't matter who was on trial?

12 BY JUROR OTEN: No.

13 BY THE COURT: Thank you. You may go.

14 (Juror Oten leaves the room.)

15 BY THE COURT: We need juror number forty-four, Ms.
16 McMorris.

17 (Juror McMorris enters the room.)

18 BY THE COURT: You're Ms. McMorris?

19 BY JUROR MCMORRIS: Uh-hum.

20 BY THE COURT: Ms. McMorris, when I was questioning
21 the jurors earlier, one of the questions was who was
22 opposed to the death penalty and who couldn't consider
23 imposing the death penalty regardless of what the evidence
24 was or something to that effect, and I believe you raised
25 your number.

26 BY JUROR MCMORRIS: Uh-hum.

27 BY THE COURT: Is this a personal belief that you
28 have, or is it a religious belief or both?

29 BY JUROR MCMORRIS: Both.

1 BY THE COURT: Both. Now, what I need to know is do
2 you feel so strongly about this that it doesn't matter
3 what the evidence or circumstances in this case, this is
4 something that you just personally couldn't do?

5 BY JUROR MCMORRIS: Yes.

6 BY THE COURT: You couldn't even consider it no
7 matter how strong the evidence was?

8 BY JUROR MCMORRIS: Probably consider it but --
9 (pause)

10 BY THE COURT: That's what I need to know because
11 some people are so opposed to the death penalty that it
12 doesn't matter who's on trial or what the circumstance and
13 the evidence. It's just something that they absolutely
14 can't do, but there are other people that you may have
15 feelings against the death penalty and everything, but
16 it's something that you could consider if the evidence was
17 strong enough or in the right case.

18 BY JUROR MCMORRIS: Yes, sir.

19 BY THE COURT: So do you understand --

20 BY JUROR MCMORRIS: I think that would be --

21 BY THE COURT: Which one? Does that better describe
22 you?

23 BY JUROR MCMORRIS: Yeah. That better describes me.

24 BY THE COURT: Okay. So you're just not totally
25 absolutely a hundred percent opposed to it in every single
26 possible case?

27 BY JUROR MCMORRIS: No.

28 BY THE COURT: Does the State have any questions of
29 this witness?

1 BY MR. HARPER: Yes, Your Honor. Ms. McMorris, I
2 understand your feelings about it, and I mean,
3 certainly -- you know -- there's certainly nothing wrong
4 with it. Everybody has the right to feel certain things,
5 but, of course, you understand it is the law that we have
6 the death penalty --

7 BY JUROR MCMORRIS: Right. Uh-hum.

8 BY THE COURT: But you're saying that you could
9 consider it under -- if the circumstances warranted it.
10 Would you require -- you heard us ask some questions about
11 would you require two witnesses or confession or anything
12 like that. Would it be some situation where you would
13 have to have that kind of evidence before you could
14 consider it or --

15 BY JUROR MCMORRIS: No, not really --

16 BY MR. HARPER: -- or it would be more involved with
17 what the crime was and what the --

18 BY JUROR MCMORRIS: Yes.

19 BY MR. HARPER: And you feel like there are certain
20 crimes that you could consider it in if they were serious
21 enough of what you consider to be heinous enough?

22 BY JUROR MCMORRIS: Yes, sir.

23 BY MR. HARPER: That's all I have, Your Honor.

24 BY THE COURT: You may go.

25 (Juror McMorris leaves the room.)

26 BY THE COURT: Next one I have is number fifty-four,
27 Betty Ward.

28 (Juror Ward enters the room.)

29 BY THE COURT: You're Ms. Ward?

1 BY JUROR WARD: Uh-hum. Right.

2 BY THE COURT: Now, Ms. Ward, when the Court was
3 asking the questions earlier of the jurors, one of the
4 questions I asked was about who was opposed to the death
5 penalty and who felt like that they couldn't participate
6 in voting for the death penalty whatever the evidence was
7 in the case, and I believe raised your number. Now, is
8 this a personal belief you have or religious or both?

9 BY JUROR WARD: Personal.

10 BY THE COURT: Personal?

11 BY JUROR WARD: Uh-hum.

12 BY THE COURT: What I need to know is, is this
13 feeling that you have or this belief so strong that it
14 doesn't matter who's on trial or what the evidence or
15 circumstances is, that you personally just can't be
16 involved in voting for the death penalty against someone?

17 BY JUROR WARD: Yes, sir.

18 BY THE COURT: That's the way you feel?

19 BY JUROR WARD: Uh-hum.

20 BY THE COURT: You couldn't even consider it?

21 BY JUROR WARD: No.

22 BY THE COURT: Okay.

23 BY JUROR WARD: Sorry.

24 BY THE COURT: That's all right. As I said, there is
25 no right or wrong answer. I just need to know what you're
26 feeling, and you've made it pretty clear to the Court.
27 Does the counsel for the defendant have any questions?

28 BY MR. SERMOS: No, Your Honor.

29 BY THE COURT: Thank you. That's pretty clear.

1 (Juror Ward leaves the room.)

2 BY THE COURT: Next one I've got is fifty-eight.

3 Fifty-eight is Margaret Smith.

4 (Juror Smith enters the room.)

5 BY THE COURT: You're Mrs. Smith?

6 BY JUROR SMITH: Uh-hum.

7 BY THE COURT: Now, Mrs. Smith, when I was asking the
8 questions earlier, one of the questions I asked was who
9 was opposed to the death penalty and who felt strongly
10 that they couldn't participate in voting for the death
11 penalty against anyone no matter what the evidence was, or
12 something to that effect, and I believe you raised your
13 number.

14 BY JUROR SMITH: Uh-hum.

15 BY THE COURT: Now, I need to know is this a personal
16 belief you have or religious or both?

17 BY JUROR SMITH: It's personal belief. I don't think
18 my conscience would let me.

19 BY THE COURT: What I need to know is this. Do you
20 feel so strongly about this that it didn't matter who the
21 defendant was, what the circumstances or the evidence
22 was, that that's something you just personally couldn't
23 do?

24 BY JUROR SMITH: I just don't believe I could.

25 BY THE COURT: Now, you say you don't believe you
26 could.

27 BY JUROR SMITH: I don't believe I could.

28 BY THE COURT: Now, some people are -- have strong
29 feelings against the death penalty -- and it's a difficult

1 thing, I understand, but is it something that with the
2 right kind of case or the right circumstances or the
3 evidence that you could consider it?

4 BY JUROR SMITH: Yeah. I guess.

5 BY THE COURT: Okay. You would be willing to consider
6 it?

7 BY JUROR SMITH: Yes.

8 BY THE COURT: You're just saying it would be hard
9 for you to do.

10 BY JUROR SMITH: It would be a hard thing for me to
11 do.

12 BY THE COURT: But you're not one of these people --

13 BY JUROR SMITH: I'm not totally --

14 BY THE COURT: You're not one of these people that's
15 a hundred percent --

16 BY JUROR SMITH: Not a hundred percent, you know,
17 but, you know -- (pause)

18 BY THE COURT: It would be hard for you to do, but
19 you would be --

20 BY JUROR SMITH: Be hard.

21 BY THE COURT: -- willing to consider it?

22 BY JUROR SMITH: Yes.

23 BY THE COURT: Does the State have any questions?

24 BY MR. HARPER: No, Your Honor.

25 BY THE COURT: Okay. Thank you, Mrs. Smith. You
26 can go back out there.

27 (Juror Smith leaves the room.)

28 BY THE COURT: The next one I have is number
29 sixty-one, Mrs. Townsend.

1 (Juror Townsend enters the room.)

2 BY THE COURT: How you are you doing? You're Mrs.
3 Townsend?

4 BY JUROR TOWNSEND: That's right.

5 BY THE COURT: Mrs. Townsend, I know we asked a lot
6 of questions, but when I was asking questions previously,
7 one of the things I asked about who was opposed to the
8 death penalty --

9 BY JUROR TOWNSEND: Yes, sir.

10 BY THE COURT: And who had strong feelings that
11 whatever the evidence is you couldn't consider personally
12 voting for the death penalty.

13 BY JUROR TOWNSEND: Right.

14 BY THE COURT: I believe you raised your number.

15 BY JUROR TOWNSEND: I did.

16 BY THE COURT: Now, is this a personal feeling you
17 have or religious or both or --

18 BY JUROR TOWNSEND: It's personal.

19 BY THE COURT: It's personal.

20 BY JUROR TOWNSEND: I guess it would be a little
21 religious also but mainly personal.

22 BY THE COURT: What I need to know this. Is this
23 something that you feel so strongly about that it doesn't
24 matter who the defendant or what the evidence or the
25 circumstances were that it's something that you just
26 couldn't consider yourself being involved in voting for
27 the death penalty no matter what the case was?

28 BY JUROR TOWNSEND: I couldn't consider voting for it
29 because it would be on my conscience.

1 BY THE COURT: So it doesn't -- you're a hundred
2 percent against it as far as you personally voting for it?

3 BY JUROR TOWNSEND: Yes.

4 BY THE COURT: It wouldn't matter what the -- how
5 strong the evidence was?

6 BY JUROR TOWNSEND: No. I just couldn't --

7 BY THE COURT: Just couldn't consider it yourself?

8 BY JUROR TOWNSEND: No.

9 BY THE COURT: Does the defense have any questions
10 of this witness?

11 BY MR. SERMOS: No, Your Honor.

12 BY THE COURT: Thank you, Mrs. Townsend. I
13 understand. I believe that's pretty clear. You may go
14 back out there.

15 (Juror Townsend leaves the room.)

16 BY THE COURT: Okay. The next one is number
17 sixty-three, Mr. Dixon.

18 (Juror Dixon enters the room.)

19 BY THE COURT: You're Mr. Dixon, right?

20 BY JUROR DIXON: Right.

21 BY THE COURT: Okay. Now, Mr. Dixon, when I was
22 asking some questions earlier, one of the questions was
23 about who was opposed to the death penalty and who
24 couldn't participate or because of their beliefs vote for
25 the death penalty in a cases, and I believe you raised
26 your number.

27 BY JUROR DIXON: Right.

28 BY THE COURT: Now, is this a personal feeling that
29 you have or is it religious or both or --

1 BY JUROR DIXON: It's personal and religious.

2 BY THE COURT: Personal and religious. Now, what I
3 need to know is this. Is this something that you feel so
4 strongly about that it didn't matter who the defendant was
5 or what the evidence was, how strong the evidence or
6 circumstances, that you personally just under no
7 circumstances could you consider voting for the death
8 penalty?

9 BY JUROR DIXON: I couldn't.

10 BY THE COURT: That's the way you feel?

11 BY JUROR DIXON: Yes, sir.

12 BY THE COURT: Okay. Wouldn't matter how strong the
13 evidence was?

14 BY JUROR DIXON: Right.

15 BY THE COURT: All right. Does defense counsel have
16 any questions of this juror?

17 BY MR. SERMOS: No, Your Honor.

18 BY THE COURT: And I believe you stated you're on
19 some pretty strong nerve pills, too.

20 BY JUROR DIXON: Right.

21 BY THE COURT: You may go.

22 (Juror Dixon leaves the room.)

23 BY THE COURT: Juror number sixty-four, Mrs. Ballard.

24 (Juror Ballard enters the room.)

25 BY THE COURT: You're Mrs. Janet Ballard.

26 BY JUROR BALLARD: Uh-hum.

27 BY THE COURT: Mrs. Ballard, when I was asking
28 questions previously, one of the questions was about who
29 was opposed to the death penalty and who had strong

1 feelings such that whatever the evidence was that you
2 couldn't participate personally in voting for the death
3 penalty, and I believe you raised your number.

4 BY JUROR BALLARD: Yes, I did.

5 BY THE COURT: Now, is this a personal belief that
6 you have or religious or --

7 BY JUROR BALLARD: Yes. Personal.

8 BY THE COURT: Just personal. What I need to know
9 is this. Is this a belief that's so strong that it didn't
10 matter who the defendant was on trial and it didn't matter
11 how strong the evidence or what the circumstances were,
12 that that's just something personally you could not under
13 any circumstances participate in voting for the death
14 penalty?

15 BY JUROR BALLARD: Uh-hum. That's correct.

16 BY THE COURT: You couldn't consider it under any
17 circumstances.

18 BY JUROR BALLARD: No, sir.

19 BY THE COURT: Okay. Does the defense have any
20 questions of this juror?

21 BY MR. SERMOS: No, Your Honor.

22 BY THE COURT: Thank you. If you'll go back out and
23 have a seat.

24 (Juror Ballard leaves the room.)

25 BY MR. SERMOS: Your Honor, before you call that
26 if --

27 BY THE COURT: Yes, sir.

28 BY MR. SERMOS: May I address the Court on a motion I
29 had filed right -- last week I filed for the Court to

1 consider voir diring panels, and I wanted to state
2 something on the record.

3 BY THE COURT: Close that door just a minute before
4 we get to the next one. Okay.

5 BY MR. SERMOS: It came to me right now, Your Honor.
6 I didn't want to forget. Your Honor, last week I filed a
7 motion for the Court to allow voir dire in panels of eight
8 to twelve, and at this time, Your Honor, I would like to
9 state that I withdraw that motion, and I didn't ask it to
10 be heard and I want to state for the reasons that I'm
11 withdrawing the motion because I filed that motion to make
12 sure that there would be some way for the defense counsel
13 to have a chance to talk to the jurors that we needed to
14 talk to very closely whether it was in this kind of
15 setting here or out in panels if the Court presumed or
16 decided that was the best way to do it, and I withdraw the
17 motion because I feel it's not necessary, and there was no
18 reason to even present that for the Court this morning.
19 So that motion should stand withdrawn.

20 BY THE COURT: Let the record show that from
21 experience I feel like this is the best way to do it.
22 It's my experience that when you get the jurors back here
23 individually outside the presence of the jurors, I think
24 you're able to ascertain fairly quickly which of the two
25 categories they fall in, and I think that's been the
26 experience here. So let the record so note.

27 BY MR. SERMOS: Thank you.

28 BY THE COURT: The next juror that I have is number
29 sixty-five, Mr. Eddie Young.

1 (Juror Young enters the room.)

2 BY THE COURT: How are you doing? You're Mr. Eddie
3 Young, right?

4 BY JUROR YOUNG: Yes, sir.

5 BY THE COURT: Now, Mr. Young, I know there were a
6 lot of questions asked, but one of the questions that I
7 asked previously was about who was opposed to the death
8 penalty and who had strong feelings about it where they
9 couldn't participate in voting for the death penalty, and
10 I believe you raised your number.

11 BY JUROR YOUNG: Yes, sir.

12 BY THE COURT: Now, is there a personal belief or
13 feeling you have, or is it religious or both of them?

14 BY JUROR YOUNG: It's personal.

15 BY THE COURT: Personal. Okay. What I need to know
16 is this. I need to know whether this is something that
17 you feel so strongly about that it wouldn't matter who the
18 defendant would be, it wouldn't matter how strong the
19 evidence would be or what the circumstances, that you
20 personally just absolutely could not participate in voting
21 for the death penalty against one?

22 BY JUROR YOUNG: Yes, sir. That's correct.

23 BY THE COURT: Or it's not something that you could
24 even consider if the --

25 BY JUROR YOUNG: No, sir.

26 BY THE COURT: -- evidence is strong enough?

27 BY JUROR YOUNG: No way.

28 BY THE COURT: That's your strong personal belief?

29 BY JUROR YOUNG: Uh-hum.

1 BY THE COURT: Does the counsel for the defendant
2 have any questions of this juror?

3 BY MR. SERMOS: No, Your Honor.

4 BY THE COURT: Okay. Thank you. If you'll go back
5 and have a seat.

6 (Juror Young leaves the room.)

7 BY THE COURT: Next one I have is number sixty-six,
8 Willard Ray. Mr. Ray.

9 (Juror Ray enters the room.)

10 BY THE COURT: How you are doing? You're
11 Willard Ray?

12 BY JUROR RAY: Yes, sir.

13 BY THE COURT: Now, Mr. Ray, when I was questioning
14 the jurors earlier, one of the questions I asked was who
15 was opposed to the death penalty and who couldn't
16 participate in voting --

17 BY JUROR RAY: Right.

18 BY THE COURT: -- against someone for the death
19 penalty because of their personal beliefs, and I believe
20 you raised your number.

21 BY JUROR RAY: Yes, sir.

22 BY THE COURT: Is this a personal belief you have --

23 BY JUROR RAY: Personal and religious.

24 BY THE COURT: Personal and religious --

25 BY JUROR RAY: No way -- no kind of way I ever vote
26 for no penalty.

27 BY THE COURT: Okay. It doesn't matter who the
28 defendant was --

29 BY JUROR RAY: Don't make no difference what they

1 have done or what --

2 BY THE COURT: What the circumstances --

3 BY JUROR RAY: There's no way I'd ever vote for no
4 death penalty.

5 BY THE COURT: You'd never consider it?

6 BY JUROR RAY: No, sir.

7 BY MR. HARPER: We'd have no questions, Your Honor.

8 BY THE COURT: I think that's pretty clear. If
9 you'll go back out and have a seat. Excuse me.

10 Does defense counsel have any questions?

11 BY MR. SERMOS: We have no questions, Your Honor.

12 BY THE COURT: You can go back and have a seat.

13 (Juror Ray leaves the room.)

14 BY THE COURT: The next one is number sixty-seven,
15 Rosa Griffin.

16 (Juror Griffin enters the room.)

17 BY THE COURT: You're Rosa Griffin?

18 BY JUROR GRIFFIN: Yes, sir.

19 BY THE COURT: Ms. Griffin, I believe when we came
20 back from lunch, the district attorney asked some
21 questions. One was who was opposed to the death penalty
22 that hasn't raised their number before.

23 BY JUROR GRIFFIN: Uh-hum.

24 BY THE COURT: And I believe you raised your number.

25 BY JUROR GRIFFIN: Yes, sir.

26 BY THE COURT: -- when he asked that question. Now,
27 as I understand, many people are opposed to the death
28 penalty, but even though you may be opposed to it, is it
29 something that you could consider under the right

1 circumstances and if the evidence was strong enough in the
2 case. Even though you are opposed to it, could you
3 consider it in the case, or is it something that you just
4 absolutely no way that you could --

5 BY JUROR GRIFFIN: I don't think I could.

6 BY THE COURT: You don't think --

7 BY JUROR GRIFFIN: I just don't --

8 BY THE COURT: You don't think you could. Let me
9 just -- just think about what I am asking, and I want you
10 to search your heart and mind and tell the Court the best
11 you can. Even though if -- you may be opposed to it and
12 even though it may be a hard thing to do, I need to know
13 even given that, is it something that you might consider
14 or would consider if the case was strong enough, or is it
15 something that didn't matter who was being tried or what
16 the evidence or circumstances were, that you personally
17 absolutely couldn't participate in voting for the death
18 penalty? Which category do you fall --

19 BY JUROR GRIFFIN: I don't -- I don't think I could
20 ever do that.

21 BY THE COURT: You don't think you could ever do
22 that?

23 BY JUROR GRIFFIN: No. No, sir.

24 BY THE COURT: You couldn't even consider the death
25 penalty?

26 BY JUROR GRIFFIN: I don't think it's something I
27 would ever do.

28 BY THE COURT: That's because of your personal or
29 religious beliefs?

1 BY JUROR GRIFFIN: Yes, sir.

2 BY THE COURT: I am going to allow counsel for the
3 defendant to ask you any questions that they have.

4 BY MR. SERMOS: Can you think of any case that you
5 would ever consider it? In other words, any type of crime
6 or case that you would actually consider the death penalty
7 if somebody were found guilty?

8 BY JUROR GRIFFIN: No.

9 BY MR. SERMOS: I have nothing further, Your Honor.

10 BY THE COURT: Thank you. If you'll go back and
11 have a seat.

12 (Juror Griffin leaves the room.)

13 BY THE COURT: The next one I've got is Dan
14 Alexander, number seventy-seven.

15 (Juror Alexander enters the room.)

16 BY THE COURT: You're Mr. Alexander?

17 BY JUROR ALEXANDER: Yes, sir.

18 BY THE COURT: Mr. Alexander, when I was asking
19 questions previously, one of the questions was about who
20 was opposed to the death penalty and who couldn't
21 participate or consider imposing the death penalty because
22 of personal or religious beliefs.

23 BY JUROR ALEXANDER: Yes, sir.

24 BY THE COURT: I believe you raised your number?

25 BY JUROR ALEXANDER: Right.

26 BY THE COURT: Now, is this a personal belief you have
27 or religious or --

28 BY JUROR ALEXANDER: Religious. I am a pastor, and I
29 believe in repentance of sin and condemnation of sin.

1 There's a law between man's law and God laws. I am
2 studying God's law.

3 BY THE COURT: Okay.

4 BY JUROR ALEXANDER: Although I know that man's law
5 has to implemented, but I am on God's law.

6 BY THE COURT: This is what I need to know. I need
7 to know is this something that you feel so strongly about
8 that it wouldn't matter the least bit who was being tried
9 or what the crime was, what the circumstances or how
10 strong the evidence was, that you personally, you just
11 absolutely could not participate in --

12 BY JUROR ALEXANDER: No.

13 BY THE COURT: -- in voting against the death
14 penalty under any circumstances?

15 BY JUROR ALEXANDER: It would be no.

16 BY THE COURT: Or is if -- even if you're opposed to
17 it, if it's something that you would be willing to
18 consider in the right case, I need to know that.

19 BY JUROR ALEXANDER: Not at all, because I am
20 teaching to -- forgiveness of sins. I'm teaching some --
21 yet, I go out and do -- I am judging.

22 BY THE COURT: It doesn't matter what, you're not
23 going to --

24 BY JUROR ALEXANDER: I don't want to be judgment of
25 the stage, you know. You have certain people for certain
26 things in this world. You have certain people who are
27 called to save you. Certain people who are called for the
28 law. You have certain people who are called to uphold the
29 law, and I am in the part of calling on repentance, and

1 I'm going stay on that part. Now, if it had to come down
2 to the fact -- the other law that I had nothing else to do
3 but to call me, honestly call me, the last thing on earth
4 to call me -- you know -- then I have to go -- you know --
5 by the laws of the land.

6 BY THE COURT: Okay.

7 BY JUROR ALEXANDER: You know, I am going by God's
8 law.

9 BY THE COURT: Okay. All right. So you just can't
10 personally consider it?

11 BY JUROR ALEXANDER: Can't consider it. No.

12 BY THE COURT: Does defense counsel have any
13 questions?

14 BY MR. SERMOS: I just want to clarify one thing.
15 You said that certain things came about that you could go
16 by the law of the land.

17 BY JUROR ALEXANDER: No. You have to go -- you have
18 to go by the law of land and law -- God's law. God's law
19 supersedes man's law.

20 BY MR. SERMOS: That's all I need to know. We have
21 no further questions, Your Honor.

22 BY THE COURT: If you'll go back and have a seat.

23 (Juror Alexander leaves the room.)

24 BY THE COURT: The next one I have is number

25 eighty-nine, Mrs. Moore.

26 (Juror Moore enters the room.)

27 BY THE COURT: Have a seat. You're Ms. Moore?

28 BY JUROR MOORE: Yes, sir.

29 BY THE COURT: Ms. Moore, when I was asking questions

1 earlier, one of the questions I asked was who was opposed
2 to the death penalty and who because of their personal
3 beliefs couldn't participate in voting for the death
4 penalty regardless of what the evidence was, and I believe
5 you raised your number.

6 BY JUROR MOORE: Yes, sir.

7 BY THE COURT: All right. Now, is this a personal
8 belief you have or religious or both?

9 BY JUROR MOORE: Personal.

10 BY THE COURT: Personal. Now, what I need to know is
11 this. Is this something that you feel so strongly about
12 that it didn't matter who the defendant was being tried or
13 what the evidence was, how strong it was, or what the
14 circumstances, that you personally you just can't
15 participate in the death penalty in any circumstance?

16 BY JUROR MOORE: No, sir.

17 BY THE COURT: Could you even consider it if the case
18 was strong enough?

19 (Juror shakes head negatively.)

20 BY THE COURT: You're shaking your head no.

21 BY JUROR MOORE: No, sir.

22 BY THE COURT: That's the way you feel?

23 BY JUROR MOORE: Uh-hum.

24 BY THE COURT: All right. Does defense counsel have
25 any questions of this juror?

26 BY MR. SERMOS: No, Your Honor.

27 BY THE COURT: Thank you. You may go back and have a
28 seat.

29 (Juror Moore leaves the room.)

1 BY THE COURT: The next one I need is number
2 ninety-four, Mr. Vernon Perry.

3 (Juror Perry enters the room.)

4 BY THE COURT: How are you doing? Have a seat.
5 You're Mr. Vernon Perry?

6 BY JUROR PERRY: Yes.

7 BY THE COURT: Mr. Perry, when I was asking questions
8 earlier, I think before lunch one of the questions was who
9 was opposed to the death penalty and who felt strongly
10 about it that because of your beliefs you couldn't
11 participate in voting for the death penalty, and I believe
12 you raised your number.

13 BY JUROR PERRY: Uh-hum.

14 BY THE COURT: Now, is this your personal feelings
15 that you have or religious or both?

16 BY JUROR PERRY: Both.

17 BY THE COURT: Both of them. Now, what I need to
18 know is this, Mr. Perry. Is this feeling that you have
19 against the death penalty, your personal feelings, is it
20 so strong that it wouldn't matter who the defendant was or
21 what the case was or --

22 BY JUROR PERRY: No.

23 BY THE COURT: -- or what the circumstances were.
24 It wouldn't matter? You just could personally not
25 participate in.

26 BY JUROR PERRY: I couldn't. My conscience wouldn't
27 let me do it.

28 BY THE COURT: Your conscience wouldn't let you do
29 that. No matter what the evidence was in the case?

1 BY JUROR PERRY: Yes.

2 BY THE COURT: Okay. And that's the way you
3 personally believe?

4 BY JUROR PERRY: Uh-hum.

5 BY THE COURT: Does defense counsel have any
6 questions of this juror?

7 BY MR. SERMOS: No, Your Honor.

8 BY THE COURT: All right. Thank you, Mr. Perry. If
9 you'll go back and have a seat.

10 (Juror Perry leaves the room.)

11 BY THE COURT: The next one -- juror ninety-nine was
12 the one excused for medical reasons. She had responded,
13 but number one hundred one, Ruby Jackson.

14 (Juror Jackson enters the room.)

15 BY THE COURT: You're Mrs. Ruby Jackson?

16 BY JUROR JACKSON: Yes, sir.

17 BY THE COURT: And, Mrs. Jackson, I believe when we
18 came back from lunch, the district attorney asked several
19 questions. One of them was who was opposed to the death
20 penalty that didn't raise their number before when I asked
21 some questions, and I believe you raised your number then.

22 BY JUROR JACKSON: Yes, sir.

23 BY THE COURT: Now, what I need to know is this.
24 Even if you're opposed to it which you've answered the
25 district attorney that you were opposed to it, would you
26 consider the death penalty after you heard all the
27 evidence and the law, or is it something that you just
28 can't do under any circumstances?

29 BY JUROR JACKSON: I don't think I could do that.

1 BY THE COURT: You say you don't think you could?

2 BY JUROR JACKSON: No. I know I couldn't.

3 BY THE COURT: Let me ask you this. Is there any
4 reason why you didn't raise your number earlier when I was
5 asking the questions before lunch. Do you remember that?

6 BY JUROR JACKSON: It really hadn't soaked in.

7 BY THE COURT: Okay. So what I need to know is even
8 though that you are opposed to the death penalty, would
9 you be willing to consider it based on the evidence and
10 the law in this case?

11 BY JUROR JACKSON: I don't believe in the death
12 penalty.

13 BY THE COURT: You just don't agree with it.

14 BY JUROR JACKSON: No.

15 BY THE COURT: So it wouldn't really matter what the
16 evidence was, you just can't consider that?

17 BY JUROR JACKSON: No. I can't consider taking a
18 life.

19 BY THE COURT: Is that your personal feeling or
20 religious or both?

21 BY JUROR JACKSON: Religious and both.

22 BY THE COURT: Both.

23 BY JUROR JACKSON: Both.

24 BY THE COURT: So it wouldn't matter who the
25 defendant was or what the evidence was?

26 BY JUROR JACKSON: No.

27 BY THE COURT: All right. Does counsel for the
28 defendant have any questions?

29 BY MR. SERMOS: No, Your Honor.

1 BY THE COURT: You may go back and have a seat.

2 (Juror Jackson is excused.)

3 BY THE COURT: All right. Let the record show that
4 I believe that's all the jurors that responded to any of
5 the death penalty questioning by either the Court or
6 counsel. The Court has conducted individual voir dire
7 outside the presence of the other juror members, and the
8 Court finds that of the jurors that were questioned here
9 that there were a number of jurors that despite their
10 responses out in open court, I feel like that they have
11 been successfully rehabilitated by questioning by the
12 Court or by defense counsel or by a combination of both,
13 and these jurors -- I will advise both sides that these
14 will not be subject to a challenge for cause as to their
15 beliefs on the death penalty. Those jurors are number
16 five, Joseph Johnson. He stated he could consider. Juror
17 number ten, Donna Fiorello. She could consider it. Juror
18 number sixteen, Laura Smith. She could consider it. All
19 these would be in the right circumstances or the right
20 case. They did not express that they clearly ruled out
21 considering it. Also juror number twenty-two, Carol
22 Black. She didn't think so, but she would consider it.
23 Juror number thirty-four, Mrs. Pennington. She possibly
24 could consider it also. Juror number thirty-nine, Mr.
25 Overton. He could consider it for someone like the World
26 Trade Center. Juror number forty-four, Mrs. McMorris.
27 Possibly in the right case. Juror number fifty-eight,
28 Margaret Smith. She stated that she would be willing to
29 consider it. * So all of these jurors have been

1 successfully rehabilitated so as to prevent their being
2 subject to a challenge for cause as to their feeling on
3 the death penalty. All the other jurors I feel like have
4 stated conclusively that they just could not consider it
5 under any circumstances, and, therefore, they will be
6 subject to a challenge for cause if so made as to their
7 total opposition to the death penalty. What the Court is
8 going to do, we're going to reconvene. I may have a few
9 more other questions of the jurors, and then I'm going to
10 allow a recess so that each side can meet and consider
11 their challenges before we do the final jury section. So
12 I am going to give the defense an opportunity to meet with
13 the defendant and his family or whoever you want to
14 consider who you want to challenge. And I will -- I know
15 there are a number of other jurors that are clearly going
16 to be subject to challenge for cause due to their
17 responses, but we'll take that up when we do the final
18 jury selection. So does everybody understand?

19 BY MR. HARPER: Yes, sir.

20 BY MR. CLARK: Yes, sir.

21 BY MR. SERMOS: Yes, sir.

22 (All parties returned to the courtroom, and the following
23 was made IN THE PRESENCE OF THE JURY, to-wit:)

24 BY THE COURT: Ladies and gentlemen, I appreciate
25 your patience very much. I've been trying to move this
26 along just as quickly as we can given the constraints of
27 the law, and I do very much understand that you have been
28 waiting out here, and I appreciate your patience. I will
29 tell you we're moving along quite satisfactorily in the

1 jury selection process. We're getting close to the end
2 where we can take this final recess before it's been
3 announced who's been selected to serve on the jury. Now,
4 before we do that, there are just a couple of more
5 questions that the Court has, and I realize a lot of you
6 have already answered some questions, but I am going to
7 address this first to this group over here which would be
8 jurors one through twenty, the first group. Let me make
9 these remarks first. Many of you are well aware of that
10 this is a capital murder case. We've been talking about
11 the possibility of the death penalty in the event that the
12 defendant is found guilty. The law requires that the jury
13 that is selected in this case be what we call sequestered
14 which means that they will have to stay overnight in the
15 Eola hotel. There have been some rooms reserved over
16 there. That is what the law requires, and it is an
17 absolute rule of law because of the nature of the case.
18 So, now, first of all, my questions to jurors one through
19 twenty, are there any single parents in this group over
20 here that have small children or children that are still
21 in high school that you're the only one that's with them
22 at home? Anybody over here?

23 BY JUROR ALLEN: Can it be special circumstances?

24 BY THE COURT: Ma'am?

25 BY JUROR ALLEN: It's not a single parent or
26 whatever, but you've got small children that because the
27 other parent worked.

28 BY THE COURT: Well, I understand that, and, like I
29 said, I realize there's some hardships involved, but you

1 also have to realize that I can't just let everybody go
2 home, but that's what I need to know. Single parents with
3 small children at home. Anybody over here? Yes, ma'am.
4 You are --

5 BY JUROR WILLIAMS: Yes, sir.

6 BY THE COURT: Who all lives in your household? Are
7 there any other adults in your household?

8 BY JUROR WILLIAMS: Yes. My mother.

9 BY THE COURT: Your mother. She lives there. Okay.
10 If she had to, she could help out?

11 BY JUROR WILLIAMS: Yes.

12 BY THE COURT: On this next group, this would be
13 juror number twenty-one through whatever the end -- just
14 the one down here. Who over in this group is a single
15 parent that has small children at home? Number thirty-six
16 and seventy-two. Yes, ma'am. Juror number thirty-six,
17 Mrs. Hill. Are there any other adults that live in the
18 house with you?

19 BY JUROR HILL: No, sir.

20 BY THE COURT: How old are your children?

21 BY JUROR HILL: Three years old, ten years old, and
22 sixteen months.

23 BY THE COURT: And you're the only adult there that
24 stays with them at the house?

25 BY JUROR HILL: Yes, sir.

26 BY THE COURT: So, in other words, that would create
27 a very difficult situation if you're not at home. Is
28 there anybody else that could -- do you have any other
29 relative -- and let me say this. If anybody is selected,

1 you'll be allowed to make calls and go by the house and
2 pick up whatever you need and everything, but is there any
3 arrangements that you could make?

4 BY JUROR HILL: My mother could.

5 BY THE COURT: Your mother could keep them?

6 BY JUROR HILL: Yes, sir.

7 BY THE COURT: Okay. Juror number seventy-two. Yes,
8 ma'am. Are you the only adult in the house?

9 BY JUROR GIBBONS: Uh-hum.

10 BY THE COURT: What are your children ages?

11 BY JUROR GIBBONS: Eight and seventeen.

12 BY THE COURT: Eight and seventeen. Is there anybody
13 else at all that if you had to be away for a few days that
14 could keep your children?

15 BY JUROR GIBBONS: Yes, sir. Probably.

16 BY THE COURT: Possibly a relative. All right.

17 Anyone on the group -- up top, juror number seventy-seven

18 on up. Okay. Juror number ninety-six. Okay. Yes,

19 ma'am. Mrs. Jackson.

20 BY THE COURT: What is your children's ages?

21 BY JUROR JACKSON: Seven and four.

22 BY THE COURT: What about that, ma'am?

23 BY JUROR JACKSON: There's someone to watch them.

24 BY THE COURT: There would be somebody else that
25 could if you had to.

26 BY JUROR JACKSON: Yes.

27 BY THE COURT: Okay. Anybody else? Okay. Now,

28 ladies and gentlemen, what we're going to do is this.

29 We're getting very close to the end, and I can't emphasize

1 enough how much I appreciate your patience throughout the
2 day. I hope you understand this is a very -- this is one
3 of the most difficult procedures we have in the law as far
4 as a judge and the selection of a jury, and we try very
5 hard to get this done at a reasonable time. Often this
6 jury selection in a case like this will go well late into
7 the evening, but this has moved along quite
8 satisfactorily. It's going to be necessary to take this
9 final recess. This is going to be a forty-five minute
10 recess, and there's a couple of things. When you come
11 back from that recess, it will be announced who's been
12 selected to serve on the jury in this case. At that time,
13 those of you that are not selected, you'll be through.
14 Those of you that are selected, you'll be allowed to go by
15 your home and get whatever things you need and make a
16 phone call if you have to or whatever about that. So
17 we're down very close to the end. There's a couple of
18 things. Do not talk to anybody about this case. There
19 are some family members on both sides of this case. Don't
20 be talking to anybody, law enforcement authorities or any
21 of the attorneys about this case. That's very important.
22 When you leave this time, you can leave your numbers or
23 hand them to the bailiff as you go out. That might be
24 better. And when you come back in, after the recess, you
25 don't have to worry about sitting in the same seat. You
26 can just sit anywhere out there because when we come back,
27 we're through with the questioning. The only thing that
28 will happen when we come back, it will be announced who's
29 been selected to serve on the jury. So keep that in mind.

1 Court will be recess, and I want everybody back in the
2 courtroom no later than 4:45, and we'll keep this moving
3 along as quickly as we can.

4 (The following was heard in the chambers of the Judge,
5 OUTSIDE THE PRESENCE OF THE JURY, to-wit:)

6 BY THE COURT: Let the record show that the
7 Court is in chambers with counsel for each side, with
8 the voir dire having been completed. Pursuant to
9 request of counsel, the Court is going to take up any
10 challenges for cause at this time. Then we'll recess
11 to allow you to consider your pre-emptory challenges
12 before we do that. So at this time, we're just
13 going to consider the challenges for cause in order
14 to give you a better idea of who's left that you can
15 more effectively look at your pre-emptory
16 challenges. All right. Now, the way the Court will
17 take this up. I'll first ask for any challenges for
18 cause from the State. We'll go through those, and
19 I'll rule on them, and we'll take any challenges for
20 cause by the defense. Who does the State challenge
21 for cause?

22 BY MR. HARPER: Number three, Lawrence McKnight.
23 I believe he was one on the death penalty question.
24 Said he couldn't under any circumstances.

25 BY THE COURT: Let the record show that the
26 Court is going to grant that. That is correct. He
27 was questioned. Each of these individuals were voir
28 dired separately on the death penalty question, and
29 he did state that he couldn't participate in that on

1 anybody. So that will be granted for cause. Number
2 three, Lawrence McKnight.

3 BY MR. HARPER: Number four, Linda Simonton.
4 Same reason, Your Honor.

5 BY THE COURT: That will be granted. The record
6 will reflect her responses on that issue.

7 BY MR. HARPER: Number five, Joseph Johnson. He
8 had indicated in the early -- earlier on the -- I
9 believe it was on the Court's voir dire that he had
10 some knowledge of the case and he couldn't be
11 reasonable. That may have been the response to my
12 question. He could not be reasonable.

13 BY THE COURT: The Court is going to deny that.
14 He was rehabilitated and stated that he could or
15 would be willing to at least consider it.

16 BY MR. HARPER: My motion to have him dismissed
17 for cause was based on a response to another
18 question. When I asked him if they could be
19 reasonable in deciding whether they had any doubt as
20 to the defendant's guilty, and he said he could not
21 be reasonable.

22 BY THE COURT: Well, what says the defendant to
23 this?

24 BY MR. SERMOS: Your Honor, I wrote down that he
25 stated he could not be fair, and I would agree to
26 strike him for cause.

27 BY THE COURT: Okay.

28 BY MR. SERMOS: I mean, I would ask the Court --

29 BY THE COURT: Yes. Let the record show that

1 that as to that juror, the Court did find that his
2 responses to the issue about the death penalty were
3 not sufficient for cause, but I do recall that, and
4 that is a separate matter. And those responses are
5 sufficient. So he will be stricken for cause for the
6 other responses, not for his death penalty response.

7 BY MR. HARPER: Your Honor, please the Court. I
8 can do the death penalty ones first or I can just do
9 them all as we go through --

10 BY THE COURT: Let's do them all.

11 BY MR. HARPER: Number six, John Jackson, as to
12 the death penalty question.

13 BY THE COURT: The record is clear that he
14 should be excused for cause for the death penalty
15 responses.

16 BY MR. HARPER: Number ten, Donna Fiorello. I
17 believe she was rehabilitated on the death penalty
18 question, but she indicated that she knew the baby's
19 family. The defendant had been at her house before
20 and that she could not be fair.

21 BY THE COURT: Let the record show that she was
22 rehabilitated on the death penalty issue. However,
23 her responses were as stated by the district
24 attorney, and the Court noted that. There was some
25 visitation back and forth, and for this reason, she
26 stated that she could not be a fair and impartial
27 juror for that reason. So that will be granted for
28 cause.

29 BY MR. HARPER: Okay. Number eight, Homer

1 Rouse, had indicated that he knew the defendant's
2 grandfather and that he could not be fair.

3 BY THE COURT: The Court had made a note on that
4 also. This was the response of this juror that
5 because of that knowledge or relationship or
6 friendship that he could not be fair. That was his
7 clear response, and that will be granted for cause.

8 BY MR. HARPER: Number thirteen, Your Honor.
9 Sanquanette Allen as to the death penalty as well as
10 several others. She said she couldn't be fair. She
11 said she was in pain. She said she had a case
12 pending, and I think she has small children.

13 BY THE COURT: This juror clearly wanted off the
14 jury panel in the worst way, but she did respond
15 clearly that she could not consider the death penalty
16 in any case, and, therefore, it will be granted, the
17 challenge for cause, as to her responses to the death
18 penalty issue.

19 BY MR. HARPER: The next one would be number
20 twenty, Georgia Dobbins. She indicated that she had
21 read the paper. She had some kind of sex abuse in
22 her family, and she had made up her mind and couldn't
23 be fair.

24 BY THE COURT: I noted on her that she stated
25 she couldn't be reasonable or something to that
26 effect, and I will grant that challenge for cause. I
27 feel like her responses as indicated by the record
28 clearly support that.

29 BY MR. HARPER: Mary Prescott, Your Honor, as to

1 the death penalty. Number twenty-six.

2 BY THE COURT: Let the record show that she
3 stated unequivocally that she couldn't consider the
4 death penalty in any situation because of her
5 religious beliefs and also personal beliefs. So that
6 will be granted for cause. Number twenty-six.

7 BY MR. HARPER: Number thirty, Robert
8 Montgomery. He indicated he could not implement the
9 death penalty.

10 BY THE COURT: The record will so reflect that
11 he couldn't consider it under any circumstances, and
12 that would clearly impair his ability to serve as a
13 juror, and, therefore, that will be granted.

14 BY MR. HARPER: Thirty-two, Barbara Atwell, for
15 the same reason, Your Honor. Death penalty.

16 BY THE COURT: That will be granted also. She
17 couldn't consider the death penalty under any
18 circumstances, and under the law that would impair
19 her ability, and, therefore, that will be granted.

20 BY MR. HARPER: Number thirty-five, Oral Thomas
21 as to the death penalty question.

22 BY THE COURT: Mr. Thomas stated that he just
23 couldn't do it under any circumstances or consider
24 it. That will be granted as to his death penalty
25 responses.

26 BY MR. HARPER: Number thirty-eight, John
27 Bales. The same reason.

28 BY THE COURT: All right. That will be
29 granted. He said he couldn't make that judgment

1 under any circumstances.

2 BY MR. HARPER: The Court will indulge me just
3 one second, Your Honor.

4 (Mr. Harper and Mr. Rosenblatt confer.)

5 BY MR. HARPER: I am sorry, Your Honor. The
6 next one that I would have would be number
7 forty-three, Charlene Oten as to the death penalty
8 question.

9 BY THE COURT: That will be granted. She could
10 not do it under any circumstances.

11 BY MR. HARPER: I think I've already done Mr.
12 Bales, hadn't I, Your Honor?

13 BY THE COURT: Yes, sir.

14 BY MR. HARPER: The next one I have would be
15 number forty-five, Mary Whittington. She said she
16 worked for an insurance company and was close with
17 the defendant's grandparents and she could not be
18 fair.

19 BY THE COURT: That was the response of this
20 juror. That's what I recall. She worked at the
21 insurance company, and they were policy holders, and
22 she'd heard a lot about the case or whatever because
23 of that relationship, she could not be fair. That
24 will be granted for cause.

25 BY MR. HARPER: The next one would be number
26 fifty-four, Betty Ward, as to the death penalty
27 question.

28 BY THE COURT: That will be granted. She
29 stated that she could not consider the death penalty

1 under any circumstances, and that would impair her
2 service as a juror. So that that will be granted.

3 BY MR. HARPER: Number fifty-eight, Margaret
4 Smith. She stated that she was related -- her
5 sister -- I believe she said her sister and
6 brother-in-law are related to the grandmother of
7 somebody, and it would be difficult for her to be
8 fair.

9 BY THE COURT: All right. As to this juror,
10 first of all, she was rehabilitated as to the death
11 penalty question, but the Court had noted that she
12 did respond to matters other than the death penalty,
13 and because of that relationship or knowledge, that
14 she could not be totally fair and impartial in this
15 case. That was her response, and that will be
16 granted for cause as to the non-death penalty
17 responses.

18 BY MR. HARPER: The next one would be number
19 sixty-one, Your Honor. Yolanda Townsend, as to the
20 death penalty question as well as some others. I
21 believe she said she couldn't be fair or --

22 BY THE COURT: That will be granted. Her
23 responses to the death penalty questions were clear
24 that she could not consider it under any
25 circumstances. So that will be granted.

26 BY MR. HARPER: The next one would be number
27 sixty-three, Leandro Dixon, for the death penalty
28 question.

29 BY THE COURT: That will be granted. He could

1 not consider it under any circumstances. That will
2 be granted.

3 BY MR. HARPER: Number sixty-four, Janet Ballard
4 as to the death penalty question.

5 BY THE COURT: That will be granted. She could
6 not consider it under any circumstances.

7 BY MR. HARPER: Number sixty-five, Eddie Young.
8 Same reason.

9 BY THE COURT: That will be granted. He could
10 not consider the death penalty under any
11 circumstances.

12 BY MR. HARPER: Number sixty-six, Willard Ray,
13 as to the death penalty question.

14 BY THE COURT: This juror was clear as anybody
15 could be. He just absolutely could not consider it
16 under any circumstances.

17 BY MR. HARPER: Sixty-seven, Rosa Griffin as to
18 the death penalty question.

19 BY THE COURT: That will be granted. She could
20 not ever do it is what she said, referring to the
21 death penalty.

22 BY MR. HARPER: Number sixty-eight, Your Honor,
23 Louis Huff. I believe he stated earlier this morning
24 that he had been in Whitfield. He made some -- in
25 responding to one question it was obvious to me that
26 he didn't either understand the question or
27 something, and he also left the courtroom for about
28 ten minutes while the voir dire was going on and
29 stayed out -- you know -- an inordinate amount of

1 time. We would ask that he be excused for cause for
2 all those reasons.

3 BY THE COURT: What says the defendant as to
4 Louis Huff?

5 BY MR. SERMOS: We concur, Your Honor, with the
6 State's request.

7 BY MR. CLARK: I believe what Ronnie was talking
8 about was he said that he had me for a lawyer for ten
9 years.

10 BY MR. HARPER: But he also said something about
11 -- asked if anybody had been a victim, and he
12 starting talking about he was -- got convicted of
13 assaulting somebody or something and very --

14 BY MR. CLARK: That's what I represented him on.

15 BY THE COURT: He stated at the beginning of
16 the morning that he had been to Whitfield, and his
17 wife had sent him. So the defendant would concur in
18 striking this juror for cause?

19 BY MR. CLARK: Right.

20 BY THE COURT: Let the record so reflect.

21 BY MR. HARPER: Next one is number
22 seventy-seven. I believe is the name is Dara
23 Alexander?

24 BY MR. ROSENBLATT: Dan Alexander.

25 BY MR. HARPER: I'm sorry. Dan Alexander.

26 BY THE COURT: The Court will strike him for
27 cause due to his responses on the death penalty that
28 he couldn't personally consider the death penalty
29 under any circumstances. That will be granted.

1 BY MR. HARPER: The next one would be Henrietta
2 Whitley, number eighty-two. She indicated that she
3 read about the case in the paper and talked with
4 others, and that she could not be reasonable, and
5 that it would be very difficult for her to be fair.

6 BY THE COURT: The Court did make notations
7 myself about her responses, and I noted that it would
8 be subject to a challenge for cause for those very
9 responses, and that will be granted.

10 BY MR. HARPER: The next one would be number
11 eighty-three, Delores Profice. I believe she
12 indicated on voir dire that she could not be
13 reasonable. She also had indicated this morning that
14 she had a bad ankle and concerned about being able to
15 work or be here, but at any rate, our basis for this,
16 she said she could not be reasonable.

17 BY THE COURT: All right. I believe in response
18 to the district attorney's questioning, that was
19 exactly her response. That she could not be
20 reasonable. I believe she works at the hospital.
21 That was -- I forget the exact reasons why, but I
22 clearly notated that she would be subject to a
23 challenge for cause because she stated clearly she
24 couldn't be reasonable in this case.

25 BY MR. HARPER: The next one would be number
26 eighty-nine, Sacrenette Moore on the death penalty.

27 BY THE COURT: That will be granted. She stated
28 clearly on individual voir dire that she could not
29 be -- could not consider the death penalty under any

1 circumstances. That will be granted.

2 BY MR. HARPER: Number ninety-four, Vernon
3 Perry. Death penalty.

4 BY THE COURT: Okay. Let the record show that
5 will be granted. He stated very clearly he could not
6 do it under any circumstances or even consider the
7 death penalty.

8 BY MR. HARPER: And the next one is one hundred
9 one, Ruby Jackson, on the death penalty.

10 BY THE COURT: All right. That will be granted.
11 She stated also unequivocally that she could not
12 consider the death penalty at all under any
13 circumstances. That will be granted.

14 BY MR. HARPER: The Court will indulge me just
15 one moment. That may be all I had. That's all we
16 have for cause, Your Honor.

17 BY THE COURT: All right. At this time, the
18 Court will take up any challenges for cause by the
19 defendant.

20 BY MR. SERMOS: One moment, please.

21 (Mr. Sermos and Mr. Clark confer.)

22 BY MR. SERMOS: Your Honor, one of the first
23 ones, just certainly one for the Court to look at was
24 number twenty-two, Carol Black. She stated as I have
25 it written down in my notes that she works with one
26 of the witnesses and probably one of the main
27 witnesses, I would think, prior to the act happening.
28 Was Amanda Goodwin, and that she had -- as I recall,
29 she had talked to Ms. Goodwin about the case.

1 BY THE COURT: That is what the Court noted and
2 I will grant that challenge for cause. Juror number
3 twenty-two, Carol Black.

4 BY MR. SERMOS: Then, Your Honor, the
5 twenty-seven said that she knew the Britts. Brenda
6 Knapp, and I really didn't understand how much she
7 said she knew about the case, but she said she knew
8 the Britts. Rebecca Britt and the mother, Mrs.
9 Watson.

10 BY THE COURT: So you're moving to strike her
11 for cause for that reason.

12 BY MR. SERMOS: Yes, Your Honor.

13 BY MR. HARPER: Your Honor, my recollection is
14 she said she could be fair.

15 BY THE COURT: She said she could be fair, but
16 it's obvious from the responses of the jurors that
17 the Britt family or someone in there has been doing a
18 lot of talking to someone, and out of an abundance of
19 caution, I'm going to grant that challenge for cause.
20 Brenda Knapp.

21 BY MR. SERMOS: And, Your Honor, there again, I
22 would offer this for consideration and state --
23 number thirty-one, Theodora Johnson. Works at
24 Blockbuster, and she knows two of the main -- well,
25 at least, the witnesses Barfoot and Bandy.

26 BY THE COURT: Let me stop you. I will grant
27 that --

28 BY MR. HARPER: She said she couldn't disregard
29 her knowledge --

1 BY THE COURT: Yes. The Court is satisfied that
2 her responses merit a challenge for cause. That will
3 be granted.

4 BY MR. SERMOS: And then another one I would ask
5 the Court to consider for cause would be
6 thirty-three, Elizabeth Johnson.

7 BY MR. HARPER: No objection, Your Honor.

8 BY THE COURT: That will be granted. I had
9 noted her responses were not adequate and that will
10 be granted for cause.

11 BY MR. SERMOS: Your Honor, I would just move --
12 I realize we have pre-emptory challenge, but I would
13 ask the Court for number forty. It was a police
14 officer or sworn officer, James Richardson, and I
15 realize, Your Honor, that I didn't ask the question
16 like can you be fair and all these things, but this
17 seems to be such a -- quite a law enforcement driven
18 case as far as facts of the defendant have gotten out
19 everywhere, and I just feel that --

20 BY MR. HARPER: For the record, Your Honor, he's
21 no longer employed with the sheriff's department, and
22 has not been for several years. He's in private
23 business in the oil field business. I think he must
24 have misunderstood the question. I think the
25 question was is anybody in law enforcement, and he
26 responded yes, but I know for a fact and his card
27 indicates that he's not in it now.

28 BY THE COURT: That's what the Court was aware
29 of. I know at one time he had been a deputy sheriff,

1 but the Court's own knowledge, I believe it's been
2 two or three years --

3 BY MR. HARPER: It's been at least three or
4 four years.

5 BY MR. SERMOS: Okay. I will withdraw that,
6 Your Honor.

7 BY THE COURT: I don't think that rises to a
8 challenge for cause.

9 BY MR. SERMOS: Thank you, Your Honor.

10 BY THE COURT: If he were a current sitting
11 deputy, I wouldn't hesitate --

12 BY MR. HARPER: And I know, Your Honor, he was
13 obviously not there when this investigation was
14 initiated.

15 BY THE COURT: I believe he misunderstood the
16 question.

17 BY MR. SERMOS: Okay. I withdraw that then,
18 Your Honor. The next I would move on to consider for
19 cause is number forty-six, Peggy McDaniel, the wife
20 of the chief deputy.

21 BY THE COURT: I am going to grant that. Her
22 husband has been in the courtroom, and her responses,
23 I believe this does cause her a lot of concern --

24 BY MR. HARPER: Even though she was somewhat
25 hesitant to respond that she has a friend on the
26 sheriff's department.

27 BY THE COURT: I'll grant that challenge for
28 cause.

29 BY MR. SERMOS: And then number fifty-three,

1 Amanda Coley stated -- and I wrote down to challenge
2 her. She was related to the deceased. Whether it
3 would be Chloe, but I never did -- I wasn't going to
4 push the relationship in front of the jury.

5 BY THE COURT: She stated that she was related
6 to the --

7 BY MR. SERMOS: That's right --

8 BY MR. HARPER: She said that she was related to
9 the victim, and if I 'm not mistaken, said she could
10 not be fair.

11 BY MR. SERMOS: That's what I thought, too.

12 BY THE COURT: I will grant that challenge for
13 cause. The Court -- that does cause concern, any
14 relationship to the victim. I will grant -- you're
15 moving that she be stricken for cause?

16 BY MR. SERMOS: Yes, Your Honor.

17 BY THE COURT: That will be granted.

18 BY MR. SERMOS: One of the people also, Your
19 Honor, I had removed for cause was number sixty, Jan
20 Scarborough. Said she heard about the case.

21 BY THE COURT: I will grant that. I made a note
22 that she did give a response that she couldn't be
23 fair because of some knowledge, I think through a
24 medical provider. That will be granted for cause.

25 BY MR. SERMOS: And then, Your Honor, I have got
26 also -- I would move the Court for cause for James
27 Shropshire. I believe he stated he was either an
28 officer or security person somewhere. May I ask the
29 district attorney? Did you write anything down,

1 number forty-nine?

2 BY MR. HARPER: I don't know. I think he said
3 he was a security guard.

4 BY MR. ROSENBLATT: He said he was a security
5 guard.

6 BY MR. HARPER: We would have no objection.

7 BY MR. SERMOS: All right.

8 (Mr. Sermos confers with Mr. Clark.)

9 BY MR. HARPER: We have no objection.

10 BY THE COURT: Just a second. You're moving for
11 cause as to fifty-nine, Shropshire or not? The Court
12 recalls that was his response that he asked -- does a
13 security guard.

14 BY MR. HARPER: Right.

15 BY MR. SERMOS: I tell you what. I withdraw
16 that one, Your Honor.

17 BY THE COURT: Okay.

18 BY MR. SERMOS: And, Your Honor, I would go down
19 to the next one and ask -- we have handled number
20 seventy-seven. I am sorry. Erin Wisner, number
21 seventy-three, Your Honor, whose mother works at the
22 sheriff's office. We move that for cause.

23 BY THE COURT: That is a little close. She
24 stated she would try to be fair, but her mother has
25 been a long-time employee of the sheriff's office who
26 is the law enforcement agency that is handling the
27 investigation, and I will grant that challenge for
28 cause if you so desire. Number seventy-three.

29 BY MR. SERMOS: And, Your Honor, I would ask the

1 Court to consider for cause number seventy-eight,
2 Kirby Watts. Teaches and knows about the case is the
3 note I have.

4 BY THE COURT: I so noted that, and I will
5 grant that challenge for cause due to her responses
6 on voir dire.

7 BY MR. SERMOS: One moment, please. It may have
8 been crossed out. I don't have -- Donald Berry,
9 number ninety-eight said that he could not be fair.

10 BY THE COURT: The Court's notes, he heard about
11 the case, and I will grant that challenge for cause.
12 Number ninety-eight, Donald Berry. I noted that
13 response.

14 BY MR. SERMOS: And then the only thing, Your
15 Honor, that I see really that would ask the Court to
16 consider would be one hundred three, Douglas
17 McIlwain, who said his wife worked with the victim's
18 grandmother which would have been Mrs. Lillian
19 Watson.

20 BY THE COURT: I will grant that challenge for
21 cause. Both sides look real careful and any more
22 challenges for cause.

23 BY MR. CLARK: I have some more he didn't have,
24 Judge.

25 BY THE COURT: All right.

26 BY MR. CLARK: In going -- I've got such a mess
27 here. Number sixty-one. Have we dealt with
28 sixty-one?

29 BY THE COURT: Sixty-one has been stricken for

1 cause.

2 BY MR. CLARK: I am sorry. Number fifty-four.

3 BY THE COURT: Fifty-four has been stricken for
4 cause.

5 BY MR. CLARK: Fifty-five?

6 BY THE COURT: Fifty-five has not been stricken
7 for cause. Does the defendant desire to strike her
8 cause?

9 BY MR. CLARK: Yes, sir. My notes show that she
10 had heard about it and talked to several times at
11 work with various people.

12 BY THE COURT: That is correct. I did make
13 some notes. I believe she did state where she would
14 try to be fair, but it was clearly from her responses
15 some hesitancy about being able to be fair --

16 BY MR. HARPER: I believe she said she wasn't
17 sure.

18 BY THE COURT: -- because of this. The Court
19 will grant that challenge for cause by the defense.

20 BY MR. CLARK: Have we looked at number
21 sixty-five?

22 BY THE COURT: Stricken for cause.

23 BY MR. CLARK: We just dealt with one hundred
24 three. One hundred five?

25 BY THE COURT: One hundred five has not been,
26 but one hundred five did give some responses that
27 indicated that he could not be totally fair and
28 impartial in this case.

29 BY MR. CLARK: Something about a health care

1 provider --

2 BY THE COURT: I believe that is correct. I'll
3 grant -- you're moving to strike him for cause?

4 BY MR. CLARK: Yes, sir.

5 BY THE COURT: That will be granted. Number
6 one hundred five, Walter Davis.

7 BY MR. CLARK: Have we dealt with fifty-eight?

8 BY THE COURT: Fifty-eight has been stricken for
9 cause.

10 BY MR. CLARK: Have we dealt with number twenty?

11 BY THE COURT: Been stricken for cause.

12 BY MR. CLARK: Number ten?

13 BY THE COURT: Been stricken for cause.

14 BY MR. CLARK: Number twelve.

15 BY THE COURT: No. Number twelve. I did note
16 that she gave some responses that would subject her
17 to a challenge for cause.

18 BY MR. CLARK: We would make a challenge.

19 BY THE COURT: You would move to strike her for
20 cause?

21 BY MR. CLARK: Yes, sir.

22 BY THE COURT: That will granted. Number
23 twelve, Kimberly Vines.

24 BY MR. CLARK: Number thirteen has been excused;
25 has he not?

26 BY THE COURT: Number thirteen has been excused
27 for cause.

28 BY MR. CLARK: Number eight?

29 BY THE COURT: Excused for cause.

1 BY MR. CLARK: All right. I believe that's all
2 I have, Judge, that he didn't.

3 BY THE COURT: Any others? Mr. Sermos, do you
4 see any others?

5 BY MR. SERMOS: No, Your Honor.

6 BY THE COURT: Let's go through, and I'm going
7 to read out the ones that I show that have been
8 stricken for cause just to make sure everybody's list
9 is correct before you look at the pre-emptory
10 challenges. I'll tell, y'all. I'll just give the
11 numbers. Number three, number four, number five,
12 six, eight, ten, twelve, thirteen, twenty,
13 twenty-two, twenty-six, twenty-seven, thirty,
14 thirty-one, thirty-two, thirty-three, thirty-five,
15 thirty-eight, forty-three, forty-five, forty-six,
16 fifty-three, fifty-four, fifty-five, fifty-eight,
17 sixty, sixty-one, sixty-three, sixty-four,
18 sixty-five, sixty-six, sixty-seven, sixty-eight,
19 seventy-three, seventy-seven, seventy-eight,
20 eighty-two, eighty-three, eighty-nine, ninety-four,
21 ninety-eight. Ninety-nine was stricken especially by
22 the Court for medical reasons when she came to the
23 Court during the recess. One hundred one, one
24 hundred three, one hundred five. Anybody have
25 anything different? Okay. Let the record show the
26 Court will allow a recess at this point for counsel
27 to consider their pre-emptory challenges. By law,
28 each side will be allowed twelve pre-emptory
29 challenges. The State will be required to exercise

1 theirs as to a full panel of twelve before the
2 defense does. All right.

3 (After a recess for the attorneys to go over the jury
4 list, the following was made of record, to-wit:)

5 BY THE COURT: Let the record show that the
6 Court is in chambers with counsel for each side with
7 voir dire having been completed, the Court having
8 previously taken up any and all challenges for cause
9 and the Court having allowed a recess or opportunity
10 for counsel to reflect on their pre-emptory
11 challenges. At this time, the Court will proceed
12 with the pre-emptory challenges. By law, each side
13 will be allowed twelve pre-emptory challenges. The
14 State will be required to exercise theirs as to a
15 full panel of twelve before the defense does.

16 BY THE COURT: All right. What says the State
17 as to Judy Ellzey?

18 BY MR. HARPER: The State will accept, Your
19 Honor.

20 BY THE COURT: Cynthia Ethridge.

21 BY MR. HARPER: State will accept.

22 BY THE COURT: Bridgett Jones.

23 BY MR. HARPER: State will excuse, Your Honor.

24 BY THE COURT: That will be S-1. Amanda Vestal.

25 BY MR. HARPER: State will accept, Your Honor.

26 BY THE COURT: Brenda Hall.

27 BY MR. HARPER: State will accept.

28 BY THE COURT: Erica Williams.

29 BY MR. HARPER: That will be S-2.

1 BY THE COURT: Minnie Mayberry.

2 BY MR. HARPER: State will accept, Your Honor.

3 BY THE COURT: Laura Smith.

4 BY MR. HARPER: S-3.

5 BY THE COURT: Gloria Jackson.

6 BY MR. HARPER: State will accept.

7 BY THE COURT: Louis Roberts.

8 BY MR. HARPER: State will accept.

9 BY THE COURT: Linda Blanton.

10 BY MR. HARPER: The State will excuse Ms.

11 Blanton.

12 BY THE COURT: That will be S-4. Mark Chapman.

13 Number twenty-one.

14 BY MR. HARPER: The Court will indulge me just a
15 moment, Your Honor.

16 (Mr. Harper and Mr. Rosenblatt confer.)

17 BY MR. HARPER: We'll accept Mr. Chapman, Your
18 Honor.

19 BY THE COURT: Joyce Massey.

20 BY MR. HARPER: State will accept.

21 BY THE COURT: Stephanie Partridge.

22 BY MR. HARPER: State will accept.

23 BY THE COURT: Dorothy Sylvester.

24 BY MR. HARPER: State will accept.

25 BY THE COURT: Curtis Hampton.

26 BY MR. HARPER: State will excuse.

27 BY THE COURT: That will be S-5. Willie Thomas.

28 BY MR. HARPER: I'm sorry, Your Honor. The
29 State will accept Mr. Thomas.

1 BY THE COURT: I believe that's twelve jurors,
2 and the State has used five pre-emptory challenges.
3 What says the defendant as to Judy Ellzey?

4 BY MR. SERMOS: We accept, Your Honor.

5 BY THE COURT: That will be juror number one.
6 Cynthia Ethridge.

7 BY MR. SERMOS: We accept, Your Honor.

8 BY THE COURT: That will be juror number two.
9 Amanda Vestal.

10 BY MR. SERMOS: D-1, Your Honor.

11 BY THE COURT: That will be pre-emptory
12 challenge D-1. Brenda Hall.

13 BY MR. SERMOS: Accept, Your Honor.

14 BY THE COURT: Be juror number three. Minnie
15 Mayberry.

16 BY MR. SERMOS: D-2, Your Honor.

17 BY THE COURT: Gloria Jackson.

18 BY MR. SERMOS: We accept, Your Honor.

19 BY THE COURT: Juror number four. Louis
20 Roberts.

21 BY MR. SERMOS: One moment, please, Your Honor.
22 That would be D-3, Your Honor.

23 BY THE COURT: D-3. Mark Chapman.

24 BY MR. SERMOS: We accept, Your Honor.

25 BY THE COURT: Juror number five. Joyce Massey.

26 BY MR. SERMOS: We accept, Your Honor.

27 BY THE COURT: Be juror number six. Stephanie
28 Partridge.

29 BY MR. SERMOS: Be D-4, Your Honor.

1 BY THE COURT: D-4. Dorothy Sylvester.

2 BY MR. SERMOS: We accept, Your Honor.

3 BY THE COURT: Juror number seven. Willie
4 Thomas.

5 BY MR. SERMOS: We accept, Your Honor.

6 BY THE COURT: Be juror number eight. The
7 defense used four pre-emptory challenges on the first
8 panel of twelve. Back to the State. What says the
9 State as to Pennington?

10 BY MR. HARPER: We would excuse Ms. Pennington,
11 Your Honor. That will be S-6.

12 BY THE COURT: S-6. Kenithea Hill.

13 BY MR. HARPER: We'll excuse Ms. Hill.

14 BY THE COURT: That will be S-7. What says the
15 State as to Claver Smith, number thirty-seven.

16 BY MR. HARPER: The State will accept Mr. Smith.

17 BY THE COURT: James Overton.

18 BY MR. HARPER: Accept.

19 BY THE COURT: James Richardson.

20 BY MR. HARPER: Accept.

21 BY THE COURT: Edith Dykes.

22 BY MR. HARPER: Accept.

23 BY THE COURT: I believe that's a full panel of
24 twelve. What says the defendant as to Claver Smith?

25 BY MR. SERMOS: Accept, Your Honor.

26 BY THE COURT: That will be juror number nine.
27 James Overton.

28 BY MR. SERMOS: That will be D-5, Your Honor.

29 BY THE COURT: That will be D-5. James

1 Richardson.

2 BY MR. SERMOS: That will be D-6, Your Honor.

3 BY THE COURT: D-6. Edith Dykes.

4 BY MR. SERMOS: We accept, Your Honor.

5 BY THE COURT: That will be juror number ten.

6 All right. It's back to the State. We need two more
7 jurors. What says the State as to Sue Logan?

8 BY MR. HARPER: We accept, Your Honor.

9 BY THE COURT: And Kensis McMorris.

10 BY MR. HARPER: Excuse.

11 BY THE COURT: That will be S-8. Mary Smith.

12 BY MR. HARPER: Accept.

13 BY THE COURT: That's a full panel. The defense
14 has six challenges remaining. What says the
15 defendant as to Sue Logan.

16 BY MR. SERMOS: D-7, Your Honor.

17 BY THE COURT: That will be D-7. And Mary
18 Smith.

19 BY MR. SERMOS: We accept, Your
20 Honor.

21 BY THE COURT: That will be juror number eleven.
22 All right. It's back to the State. We need one more
23 juror. Ernest Cade.

24 BY MR. HARPER: We would excuse Mr. Cade. That
25 would be S-9.

26 BY THE COURT: Wharlest Jackson, Junior.

27 BY MR. HARPER: We would excuse Mr. Jackson.
28 That will be S-10.

29 BY THE COURT: Francis Brellenthine.

1 BY MR. HARPER: We'll take her, Your Honor,
2 whatever her name is.

3 BY THE COURT: It's back to the defendant. What
4 says the defendant as to juror number fifty, Francis
5 Brellenthine.

6 BY MR. SERMOS: We accept, Your Honor.

7 BY THE COURT: That will be juror number twelve.
8 Now, the Court is going to select two alternates.
9 Pursuant to law, each side will be allowed one
10 pre-emptory challenge as to the alternate again. The
11 State will be required to exercise theirs as to the
12 two alternates first. What says the State as to
13 Taylor.

14 BY MR. HARPER: I'm sorry, Your Honor. We would
15 get one challenge to get two alternates?

16 BY THE COURT: Two alternates, one challenge.

17 BY MR. HARPER: We will accept Mrs. Taylor.

18 BY THE COURT: What about Martha Jackson?

19 BY MR. HARPER: We'll excuse Ms. Jackson.

20 BY THE COURT: That will be the State's
21 alternate challenge. What says the defendant as to
22 Taylor.

23 BY MR. SERMOS: Accept, Your Honor.

24 BY THE COURT: That will be alternate number
25 one. The State having used its challenge, what says
26 the defendant as to Bill Hammett, number fifty-six,
27 as the second alternate.

28 BY MR. SERMOS: We accept, Your Honor.

29 BY THE COURT: Let's read back through these.

1 One number will be Ellzey. Number two will be
2 Ethridge. Number three will be Brenda Hall. Number
3 four is Jackson, Gloria Jackson. Number five, Mark
4 Chapman. Number six, Joyce Massey. Number seven,
5 Dorothy Sylvester. Number eight, Willie Thomas.
6 Number nine, Claver Smith. Number ten, Edith Dykes.
7 Number eleven, Mary Smith. Number twelve, Francis
8 Brellenthine. The first alternate Deanne Taylor, and
9 the second alternate, Bill Hammett. Okay.

10 BY THE COURT: All right. It's the Court's
11 intention to seat the jurors, give them instructions
12 and send them across to get their belongings to stay
13 for the night, and we will start in the morning with
14 the opening statements.

15 (All parties returned to the courtroom and the jurors were
16 called, and the following was made of record,
17 to-wit:)

18 BY THE COURT: The Court come to order.
19 Ladies and gentlemen, I know this has been a long
20 day. This is a very serious matter. I want to tell
21 you how much I appreciate your attendance up here
22 today. I know it's dragged on at times. The only
23 thing I can tell you is that sometimes this process
24 right now where we're at this point lasts not one day
25 but it lasts a number of days. So I do appreciate
26 everyone's cooperation so we've been able to
27 conclude this today. So, again, those of you that
28 because this was the only case summonsed for, that
29 will conclude your jury service. I do very much

1 appreciate your attendance up here. I hope you
2 understand that it's necessary that we have this
3 large number of jurors because there's so many
4 matters that have to be gone through. So it is
5 necessary, and I know this has been inconvenient to
6 you today, but I do appreciate your attendance, and
7 you will be excused. If anybody needs a juror
8 excuse, Binky's office is more than happy to help you
9 with that downstairs, but you will be excused at this
10 time and make sure you get all your about belongings.

11 (All other prospective jurors were excused.)

12 BY THE COURT: Ladies and gentlemen of the
13 jury, you have been selected to serve as the jury in
14 this case. I know some of you have some concerns
15 right now. Let me say this. This case -- there's a
16 good possibility we might be through with this case
17 Wednesday. It could last into Thursday. That's my
18 best estimate of what we're looking at right now.
19 Now, what's going to happen, we're not going to do
20 anything further for today. We're going to recess
21 for the day, and we're going to start at nine o'clock
22 in the morning. Now, arrangements have been made for
23 you to stay at the Natchez Eola hotel. That's close
24 by so the jurors can walk there. You will be given
25 an opportunity to call anyone you need or to go by
26 your home to get some clothing or other matters --
27 somebody will have to go with you because that is the
28 rule of law that we just have somebody just to make
29 sure you are not -- the reason for this sequestration

1 is to make sure that there's no outside contact or
2 influence because this is a very serious matter, and
3 that's why we have this. Now, there will be nice
4 facilities. You'll be over at the Eola. You'll eat
5 your meals there. They'll be provided. I want to
6 explain this to you. If anything comes up, there
7 will be two bailiffs that will be with you. One is
8 Mrs. Thelma Angelethy. Where is Mrs. Angelethy?
9 She's -- there's Mrs. Angelethy right here, and then
10 also Mr. Taylor. Mr. James Taylor. He's right
11 there. They'll be your bailiffs. They will be
12 staying over in the Eola also. If anything comes up,
13 you're to talk to them if any type of emergency or
14 other matters come up. So this evening what's going
15 to happen is you will need to go by and get a few
16 things, clothes, whatever you need. Also you can get
17 anything that you care to read. If you want some
18 reading material, and you can talk to anyone about
19 making any arrangements, but one rule that we have is
20 very important. You're not to talk among yourselves
21 or anyone else about the case until it's time to do
22 so. That is very, very important. Now, also there
23 may be some media coverage on this. You're not to
24 have any access to any newspapers. You can read the
25 newspapers later after this case is over and get
26 caught up on it. I'm going to tell you this. You
27 will not have access to the TV in your rooms. There's
28 a reason for that. We don't expect a lot of media
29 coverage with the Jackson news channels or anything

1 of that nature, but it's not good to have jurors
2 watching all the things that are on TV because it
3 could be something, some crime show or something that
4 might could influence you if you saw that. So that's
5 the reason why. And also you will not be allowed to
6 have unrestricted access to a telephone because the
7 same reason. Don't want you just talking to anybody
8 and everybody. If something comes up, talk to the
9 bailiffs and if it's a message that needs to be
10 passed to family members or something like that,
11 they'll make arrangements for you to talk to someone.
12 I know this is an inconvenience, but that is
13 absolutely necessary under the law. Now, you will be
14 allowed -- your meals, I have -- at the Eola, I am
15 going to allow you to order off the dinner menu.
16 There are a few restrictions, but you'll be
17 ordered -- you'll have a wide selection of food that
18 you can have for that. In the morning, they have a
19 buffet that's already been provided for that you get
20 whatever you want to, and also at the lunch, they
21 have a lunch buffet. So, again, if there's any
22 problems or anything arises that you need to bring to
23 someone's attention, the bailiffs are the ones to
24 address that to. It's most important what I say
25 about not to talk to anyone about this case or even
26 among yourselves. You can talk about what you want
27 to among yourselves, but not about the case because
28 it's not time to do that. We will move the case
29 along as quickly as we can, but that's my -- what I

1 feel honestly looking at this case. Maybe Wednesday.
2 We may go into Thursday on this case. That's the
3 best I can tell you. So at this time, I want the
4 clerk and the bailiffs to assist in letting them call
5 anyone if they need to and to anybody that needs to
6 go by their homes to get things, I want to make sure
7 there's a deputy or somebody with them just to make
8 sure that there's no outside contact. They're not
9 going in your house and go in your things with you.
10 They're just going to wait outside, but it is
11 necessary that there be someone -- and, again, ladies
12 and gentlemen, that's because this is so serious a
13 matter, and it's very important, and the law has to
14 followed exactly. So at this time, court is going to
15 be in recess. I want those arrangements to be made,
16 and, Mrs. Angelethy, and, Mr. Taylor, let's try to
17 have everybody eat together. Again, I am going to
18 give you -- there are certain restrictions on the
19 menu, but I'll give that to you once everybody gets
20 over and gets settled in, we can do that, and in the
21 mornings, if you'll have them meet at a certain time
22 where everybody can kind of eat together maybe. And
23 we're going to start -- so we need to have everybody
24 over here for nine o'clock. And, again, they have
25 rooms over there, and you will know what the rooms
26 are. So if there's any problems, they're the ones to
27 go to about that. So unless either side has anything
28 anything further, court will be recess until nine
29 o'clock.

1 (Court reconvened the next day, December 17, 2002, at 9:00
2 a.m. and the following was heard IN THE PRESENCE OF THE
3 JURY, to-wit:)

4 BY THE COURT: Let the record reflect that the
5 Court has been advised that one of the jurors, Mrs.
6 Gloria Jackson, has developed a medical problem since
7 yesterday. The Court is advised that she has gout
8 and had a badly swollen foot this morning. That she
9 apparently was in a good deal of pain, and it would
10 have been difficult for her to proceed on this
11 morning, and she's in need of medical attention. The
12 Court has made a determination to release this juror
13 because of this medical problem that developed since
14 yesterday. It's apparently -- had gout but she's
15 apparently having to deal with an inflammation of it
16 at this time. So the Court has determined that
17 because of that condition and because of her need of
18 medical treatment and the pain that she was in and
19 the fact this is not likely to subside until she gets
20 medical treatment or until some time passes, the
21 Court has released this juror, and that means that
22 the first alternate would move up to take her place.
23 And we still have one remaining alternate on the
24 jury. So let the record so reflect. Now, ladies and
25 gentlemen, of course, all we got through yesterday
26 was the selection of the jury. We're going to
27 proceed in just a little while with the trial.
28 Throughout the course of the day, I'll be stopping to
29 take breaks. If anybody needs to take a break before

1 I get to a stopping point, all you have to do is just
2 raise your hand or get my attention, and I will be
3 more than happy to stop, and we'll take a break at
4 that point. So don't hesitate to raise your hand and
5 get my attention if you do need to and take a break.
6 Also if at any time you're unable to hear the witness
7 or hear someone, just get my attention again and
8 we'll try to make sure that is taken care of. First
9 of all, before we proceed this morning, are there
10 still a couple of matters that --

11 BY MR. HARPER: Yes, Your Honor. We had some
12 matters that we need to take up prior to starting
13 this morning.

14 BY THE COURT: All right. Ladies and gentlemen,
15 we're going to get started in just a moment, but it's
16 going to take about -- we need about five minutes and
17 we're going to be back here in the jury room, but if
18 you will stay seated. I do need to see counsel and
19 the court reporter, and we'll get started
20 momentarily. Let me say this to the spectators. I
21 know we were very crowded yesterday because of the
22 number of jurors and a lot of interested family
23 members on both sides and those interested were not
24 able to come into the courtroom. So now we have the
25 space available. I want to remind everybody that I
26 realize there are some very strong emotions in this
27 case, in this matter, and this is a court of law and
28 it's going to be conducted as such. So everybody
29 please keep that in mind. We'll be back momentarily.

1 The following was heard OUTSIDE THE PRESENCE OF THE JURY,
2 to-wit:)

3 BY THE COURT: Let the record show that the
4 Court is in chambers at this time with counsel for
5 each side and also the defendant prior to the opening
6 statements in the case. As was announced previously
7 on the record, one of the jurors does have an illness
8 and has been replaced for the reasons stated. As I
9 understand, there are some photographs that the State
10 will be seeking to have introduced, and the Court is
11 going to allow the defendant to state on the record
12 any and all objections to these so this will not be
13 done in the presence of the jury. This will allow
14 you to state your objections outside the presence of
15 the jury, and I will rule on these. Also as I
16 understand there is a large Exhibit 1 that has been
17 admitted by agreement which is simply a map of
18 Natchez showing the various locations that are going
19 to be testified to and also a diagram of the mobile
20 home in question which is simply a diagram. So the
21 Court has allowed this to be marked as Exhibit 1 by
22 agreement.

23 MAP MARKED AS STATE'S EXHIBIT 1

24 BY THE COURT: Also let the record show that
25 yesterday the Court did proceed with the jury
26 selection. The jurors were summonsed as provided by
27 law and has been elected by the defendant to have
28 them served by mail rather than personal service by
29 the sheriff because of concerns that that would open

1 the door for some improper communication between
2 deputies and potential jurors. This was done. We
3 had sufficient jurors up here. The Court heard and
4 granted the challenges for cause and a proper jury
5 was selected yesterday, and we will proceed today
6 with the opening statements and proceed with the
7 evidence. Also before we get to the photographs, I
8 would like to just note one thing for the record. I
9 noticed that there was no request for a mental
10 examination in this case. Often that is done in a
11 serious matter such as this capital murder case. I
12 have observed -- I've observed absolutely nothing
13 with the defendant that would indicate any need to
14 order such an examination, and I presume that the
15 same is with counsel. That there's never been any
16 indication of any reason to --

17 BY MR. HARPER: On behalf of the State, Your
18 Honor, there's never been any indication from either
19 from the actions of the defendant or any information
20 that we received that would indicate to us that that
21 would be something that we would need to initiate.

22 BY THE COURT: And the State does not have an
23 expert lined up that is seeking to testify of that --

24 BY MR. HARPER: No, sir.

25 BY THE COURT: -- anything of that nature --

26 BY MR. HARPER: No, sir.

27 BY THE COURT: -- that would have required an
28 examination by the -- of the defendant. Okay.

29 BY MR. SERMOS: Your Honor, if I may state also,

1 add to the Court's elaboration on that. Shortly
2 after Mr. Clark and I -- after the client was
3 arraigned and we began working on the case, one of
4 our first, if not the very first, meeting or the next
5 meeting at least, we fully discussed with Mr. Havard
6 what sanity, insanity is. That possibility of a
7 examination for that. Also about being someone --
8 what is the levels of competency, either knowing what
9 happened and being able to help your attorneys or
10 counsel assist you, and at no time did either I or
11 Mr. Clark ever discern even the slightest hint that
12 we should seek or ask the Court for a competency
13 evaluation or a sanity evaluation, and also Mr.
14 Havard himself that he didn't feel that that was
15 necessary.

16 BY THE COURT: Okay. All right. Let the
17 record show that the Court has observed and finds
18 that the defendant is clearly without question fully
19 competent to participate in his defense and has done
20 so with his attorneys. Let's get into the
21 photographs, and let's -- if you'll just describe
22 what they are, and I'll let the defense state their
23 objections to the use of these photographs.

24 BY MR. ROSENBLATT: Your Honor, the State has
25 approximately two dozen photographs. Some taken by
26 deputies. Some taken at the Mississippi State
27 Medical Examiner's office, showing various items of
28 evidence related to this case. The photographs are
29 all of eight by ten size and have been mounted on

1 eleven by fourteen foam board for ease in handling.
2 The first photograph is a picture of the mattress pad
3 from the master bedroom. It shows a blood spot on
4 the mattress pad being pointed to by blue gloved
5 hand.

6 BY THE COURT: All right. What are the --
7 assuming there's a proper predicate laid for the
8 photographs and authenticity, does the defense have
9 any specific objections to this photograph as far as
10 the nature or what it depicts?

11 BY MR. SERMOS: I would ask the question. I
12 would presume that they would cover that is whose
13 blood is that supposed to be and then is there a lab
14 to say whose the blood it was?

15 BY MR. ROSENBLATT: This blood is of the mother,
16 Rebecca Britt. The DNA expert will testify to that.

17 BY MR. HARPER: For the record, Your Honor, our
18 purpose for this. All the bed clothes were tested.
19 Any stains that were observed on the bed clothes were
20 tested, and we have results as to what each and every
21 one of them were. Our intent was just to show to the
22 jury and in the case what each stain -- to give a
23 complete picture of what was on the bed. Now, if
24 there's some question as to the relevance of it, then
25 we certainly would have no problem with that. Our
26 concern, to be perfectly frank with the Court, we
27 didn't want to not put it in and then have defense
28 raise some question about why we didn't bring this
29 forward, which, as the Court knows, sometimes that

1 happens. So we were trying to give a complete
2 picture, and if they object to the exhibits that
3 involve stains that don't involve the defendant
4 and/or the victim, then we would have no objection to
5 not presenting those, but on the same vein, we would
6 ask the Court and make a motion in limine to prohibit
7 them from bringing out there were other stains that
8 we didn't bring forward.

9 BY THE COURT: What's the defense's pleasure
10 about that?

11 BY MR. SERMOS: I think it's not relevant, and I
12 think it would just confuse the issue.

13 BY THE COURT: Then the Court will -- until it
14 comes up at trial and unless it comes up, the Court
15 sees no need of any the photographs involving blood
16 that has been identified with the mother or someone
17 other than the alleged victim.

18 BY MR. HARPER: And, Your Honor --

19 BY MR. ROSENBLATT: Or the defendant.

20 BY MR. CLARK: Or the defendant.

21 BY THE COURT: Or the defendant.

22 BY MR. HARPER: And, Your Honor, in light of
23 that, we would move in limine to prohibit the defense
24 from asking questions or making argument that we
25 didn't present all the evidence --

26 BY MR. SERMOS: We don't intend to do that.

27 BY THE COURT: I will conditionally grant that,
28 but it's hard to anticipate the twists and turns that
29 a trial takes, but it's certainly well taken, Mr.

1 Harper.

2 BY MR. SERMOS: Your Honor, if I may add. One
3 of the biggest criteria that may spell whether
4 something like that would have to come in would be
5 whatever the State's own witnesses --

6 BY THE COURT: Right.

7 BY MR. SERMOS: May just gush forward with.

8 BY THE COURT: Unless and until that arises,
9 that will have no relevancy in this trial as I rule
10 at this time.

11 BY MR. ROSENBLATT: Your Honor, there's an eight
12 by ten photograph of the victim, Chloe Madison Britt,
13 taken approximately two months prior to her death
14 for the purpose of identification. This is the only
15 photograph we have of the -- not the only photograph,
16 but one of the more neutral photographs we're able to
17 find of the child prior to death, and, Your Honor,
18 one difficulty is medical personnel will testify that
19 immediately upon death, the baby's head became
20 distended, the face became swollen, and so we felt
21 like it was important to have one pre-death
22 photograph for identification purposes.

23 BY MR. CLARK: The only objection we would have
24 would be to the photograph itself concerning the way
25 the child was dressed. If this was taken two months
26 prior to, then it looks to me she's in a red
27 Christmas suit and some kind of Christmasy snow
28 background and the fore ground to that she's laying
29 on a fuzzy, white rug.

1 BY MR. HARPER: Your Honor, for the record, the
2 only other photograph they had was an obvious
3 Christmas photograph with Santa Clause in it and a
4 Santa Clause hat on the baby. This was the most, as
5 Tom said, the most neutral photograph that we had
6 available. The child was only six months old. So we
7 were very limited of what was available as far as
8 photographs.

9 BY MR. SERMOS: I have an addition to what Mr.
10 Clark said. I would object for two reasons. Number
11 one, Your Honor, the timing of that photograph with
12 the Christmas outfit and it being the week before
13 Christmas right now, and, number two, and this is not
14 an eminent domain case. I don't think we have to
15 have a before and after ruling here on what the
16 victim looked like, especially in the guilt phase,
17 Your Honor.

18 BY MR. ROSENBLATT: We are going to have
19 witnesses that are going to claim that they were
20 associated with this child and treated this child,
21 and we think it's appropriate for them to be able to
22 look at a photograph and identify who we are talking
23 about.

24 BY THE COURT: Let the record show that the
25 Court is going to overrule the objections of the
26 defendant. It is proper in a case such as this to
27 have one -- allow one photograph of the alleged
28 victim while they were alive. I understood -- I have
29 seen the other photograph referred to, and this is

1 clearly the less inflammatory, if there is any
2 inflammatory nature, of the photographs. This does
3 show the alleged victim while she was alive, and the
4 State will be allowed to do that. So that will be
5 marked as Exhibit 2 subject to all the questioning
6 concerning the photographs.

7 PHOTOGRAPH MARKED AS STATE'S EXHIBIT 2

8 BY MR. HARPER: Please the Court, we don't have
9 it with us at this time, but for the record if the
10 Court would like for us to submit that other
11 photograph just for purposes of the record. Not to
12 go to the jury obviously, and we can do that.

13 BY THE COURT: Let the record show that the
14 other photograph clearly shows a little Christmas
15 type suit on. That's no question about that. This
16 is the less troublesome as far as that particular
17 aspect of the picture, and, again, the Court rules
18 that the State is entitled to present one picture of
19 the alleged victim while she was alive.

20 BY MR. ROSENBLATT: The next photograph is the
21 exterior picture of the mobile home which was the
22 residence of Jeffrey Havard and Rebecca Britt.

23 BY THE COURT: Any --

24 BY MR. SERMOS: I want to look and see if this
25 is the back or the front.

26 BY MR. ROSENBLATT: It's the front.

27 BY MR. SERMOS: That's the front. Okay.

28 No objection, Your Honor.

29 BY THE COURT: That will be allowed. That will

1 be Exhibit 3.

2 PHOTOGRAPH MARKED AS STATE'S EXHIBIT 3

3 BY MR. ROSENBLATT: The next photograph is a
4 shot taken at Community Hospital at the time of the
5 arrival of Coroner James Lee. The baby has been --
6 this is after the baby was pronounced dead, and the
7 baby is diapered, and it just shows a picture of the
8 lower half of the baby with the coroner pointing to
9 two bruises on the legs.

10 BY THE COURT: Okay. Objections for the record
11 to this photograph.

12 BY MR. SERMOS: We object to the photograph,
13 Your Honor.

14 BY THE COURT: The Court will overrule the
15 objections. I do find that it appears to have some
16 probative value, and it's not gruesome or anything of
17 that nature. So that will be Number 4.

18 PHOTOGRAPH MARKED AS STATE'S EXHIBIT 4

19 BY MR. ROSENBLATT: Your Honor, the next
20 photograph is a photograph actually taken at the
21 medical examiner's office. It shows a picture of the
22 anal area of the baby.

23 BY MR. HARPER: The injuries thereto.

24 BY MR. SERMOS: Mr. Rosenblatt, would you hand
25 me that so I can show it to Mr. Havard, please.

26 Mr. Sermos shows to the defendant.)

27 BY MR. SERMOS: We object to that, Your Honor.
28 We understand there certainly may be an issue of
29 probative value, but we would object to the

1 photograph.

2 BY THE COURT: And as I understand, one of your
3 objections is that you feel that it overly
4 distorts --

5 BY MR. SERMOS: Overly distorts--

6 BY THE COURT: -- the alleged injuries?

7 BY MR. SERMOS: Right. And we would have -- if
8 anything, we would rather have Dr. Hayne explain
9 that.

10 BY MR. HARPER: In response to that, Your Honor,
11 obviously these type injuries are difficult to see
12 without some assistance in making them visible.
13 There in an area of the body, the anus, that normally
14 would be closed, and to show the injuries, it would
15 be imperative to at least expand them in some way. I
16 don't think it's done in such away that it would make
17 it prejudicial.

18 BY THE COURT: All right. Let the record show
19 that the Court is going to overrule the defense
20 objections and does find that that has probative and
21 will allow it to be used.

22 PHOTOGRAPH MARKED AS STATE'S EXHIBIT 5

23 BY MR. ROSENBLATT: Your Honor, the next
24 photograph is a photograph taken at the state medical
25 examiner's office. It's a frontal view of the upper
26 half of the child's body for the purpose of showing
27 bruises to the forehead of the child.

28 BY THE COURT: Any objection to that?

29 BY MR. SERMOS: Put it this way, Your Honor. We

1 would --

2 BY THE COURT: Or just object --

3 BY MR. SERMOS: Make the objection but also we
4 would certainly expect if the district attorney is
5 going to -- that he will let the witness testify and
6 describe what the witness sees.

7 BY THE COURT: Well, certainly. That goes
8 without saying. Again, what we're doing is allowing
9 the defendant to make these specific objections
10 outside the presence of the jury and, of course, this
11 will be subject to the testimony developing, but
12 based on those objections, the Court will overrule
13 it, and this will be Exhibit 6 showing the upper half
14 of the child's body.

15 BY MR. ROSENBLATT: And, Your Honor, for the
16 record, if I may say that counsel for the defendant
17 have been furnished these photographs long in advance
18 --

19 BY MR. SERMOS: Yes, Your Honor.

20 BY MR. ROSENBLATT: These are just the enlarged
21 pictures for trial --

22 BY MR. SERMOS: We acknowledge that.

23 PHOTOGRAPH MARKED AS STATE'S EXHIBIT 6

24 BY MR. ROSENBLATT: Your Honor, the next
25 photograph is a photograph again taken at the state
26 medical examiner's office showing the face of the
27 child, specifically showing injuries to the nose and
28 mouth area.

29 BY MR. HARPER: On the outside.

1 BY MR. ROSENBLATT: From the outside.

2 BY MR. SERMOS: Let me show it to Mr. Havard.

3 (Mr. Sermos shows photograph to the defendant.)

4 BY THE COURT: Specific objections?

5 BY MR. SERMOS: No specific objections, Your
6 Honor.

7 BY THE COURT: That will be Number 7.

8 PHOTOGRAPH MARKED AS STATE'S EXHIBIT 7

9 BY MR. ROSENBLATT: Your Honor, the next
10 photograph again is taken at the state medical
11 examiner's office with the same basic view as the
12 previous photograph except the upper lip of the child
13 being pulled upward to show the injury to the inside
14 of the upper lip area of the child.

15 BY MR. SERMOS: Let me show those to Mr. Havard,
16 please.

17 (Mr. Sermos shows photograph to the defendant.)

18 BY MR. SERMOS: No specific objection, Your
19 Honor.

20 BY THE COURT: The Court will allow that as
21 Number 8.

22 PHOTOGRAPH MARKED AS STATE'S EXHIBIT 8

23 BY MR. ROSENBLATT: Your Honor, the next
24 photograph is one taken by the deputies at the time
25 of the investigation showing the living room of the
26 mobile home.

27 BY THE COURT: Any objection to that?

28 BY MR. SERMOS: No, Your Honor.

29 BY THE COURT: All right. That will be Number

1 9.

2 PHOTOGRAPH MARKED AS STATE'S EXHIBIT 9

3 BY MR. ROSENBLATT: Your Honor, the next
4 photograph again taken by the deputies in this
5 investigation. Just shows some items on a coffee
6 table, specifically a Blockbuster bag containing
7 rented movies and the bottle of lotion.

8 BY THE COURT: This was part of the crime scene
9 photograph?

10 BY MR. ROSENBLATT: Yes, sir.

11 BY THE COURT: Any objection to this?

12 BY MR. CLARK: The whole -- what did the scene
13 consist of.

14 BY MR. ROSENBLATT: The purpose of the
15 photograph is just to confirm that Rebecca Britt did,
16 in fact, return from Blockbuster video with --

17 BY THE COURT: Okay.

18 BY MR. ROSENBLATT: -- items that she had
19 rented.

20 BY MR. SERMOS: Also, Your Honor, if we may add
21 to that. That little bottle of lotion there on the
22 table was sent to the crime lab, and the crime lab
23 technician studied it and found that it was
24 consistent with the lotion that would be in that
25 bottle. In other words, there was nothing --

26 BY MR. ROSENBLATT: Right. We don't plan on --

27 BY MR. SERMOS: -- outrageous --

28 BY MR. ROSENBLATT: -- testimony about that.

29 BY THE COURT: The Court will allow it for the

1 purpose of Blockbuster bag shown in the photograph.
2 That will be Number 10.

3 PHOTOGRAPH MARKED AS STATE'S EXHIBIT 10

4 BY MR. ROSENBLATT: The next photograph is taken
5 by the deputy showing a pink towel rolled up inside a
6 fitted bed sheet, and both the items were tested for
7 DNA.

8 BY MR. SERMOS: And this is the baby's bed
9 sheet?

10 BY MR. ROSENBLATT: No. This is the master
11 bedroom sheet. The towel had DNA from the baby. The
12 fitted sheet had DNA from the defendant and from
13 Rebecca Britt.

14 BY MR. SERMOS: Can they say what kind of DNA it
15 was like blood or --

16 BY MR. HARPER: I want to say --

17 BY MR. ROSENBLATT: No.

18 BY MR. HARPER: Was either one of those tested
19 for blood?

20 BY MR. ROSENBLATT: I am not sure whether they
21 tested for blood. I have no list.

22 BY MR. HARPER: We have two -- we have two --

23 BY MR. CLARK: What's the relevance of it?

24 BY MR. HARPER: Well, it's got the child's and
25 the defendant's DNA on it.

26 BY MR. ROSENBLATT: This has the defendant and
27 the girlfriend's DNA. The towel has the baby's DNA.
28 This is the towel basically confirming the
29 defendant's statement that he wiped the baby down

1 with the towel.

2 BY MR. HARPER: For the Court's information,
3 these items were all in a pile by the washing machine
4 in the trailer. Apparently having been removed from
5 the bed, which I believe the defendant's statement
6 was that he removed from the bed and put them in
7 there.

8 BY THE COURT: Let's hear specific objections to
9 that photograph.

10 BY MR. CLARK: All right. We don't object to
11 them using the part that has the defendant and the
12 baby's DNA but the part that has the defendant and
13 the mother's DNA. We don't think that should be
14 mentioned --

15 BY THE COURT: That's --

16 BY MR. CLARK: -- because it really is
17 irrelevant.

18 BY THE COURT: That's fair enough. The Court
19 will allow this as Exhibit Number 11, but I don't
20 want the State to make any reference to any of the
21 mother's DNA or blood unless that becomes an issue in
22 this case.

23 BY MR. ROSENBLATT: We will just show it for the
24 purpose of what the deputies found.

25 BY THE COURT: Sure. Sure. That will be Number
26 11.

27 PHOTOGRAPH MARKED AS STATE'S EXHIBIT 11

28 BY MR. SERMOS: And that was on the main bed
29 that the defendant slept in anyway.

1 BY MR. ROSENBLATT: Your Honor, the next item is
2 a photograph taken by the deputies showing one of
3 them holding up the top sheet with suns and clouds on
4 it, and this item was tested for DNA, and the DNA
5 tested positive for the defendant and the child, to
6 the victim, to the exclusion of the mother.

7 BY MR. SERMOS: If I may ask, when they say DNA,
8 they don't give a specific on the crime lab report
9 that I saw as far as the DNA --

10 BY MR. HARPER: Let me clarify what I
11 understand. We have two crime lab analysts. One
12 tested the sheet, and it was positive for human
13 blood. The other tested and it was positive for DNA
14 from the victim and the defendant. I don't think
15 the -- I don't think that the analyst who tested it
16 for DNA can testify that it was one of them's blood,
17 both of them's blood or anybody's blood, but we do
18 have a witness that says that there was human blood
19 on the sheet in this particular sample. Now, whether
20 it was both of them's blood or one of them's blood or
21 some other DNA from the other one, I can't answer
22 that, and I don't think the analyst can, but my
23 understanding, and, Tom, correct me if I am wrong. I
24 think that's my understanding of what our evidence --
25 or what our analysts are going to be able to testify
26 to.

27 BY MR. SERMOS: Your Honor, based on that, and I
28 understand, we would object because we think that
29 will certainly confuse the jury as to what that

1 relevance is and what it means as far as any
2 probative value.

3 BY THE COURT: Wait. What's the probative
4 value?

5 BY MR. ROSENBLATT: Your Honor, the probative
6 value is that this is the sheet on which he was
7 supposedly, according to his statement, changing the
8 baby. Our contention would be that it's the sheet on
9 which he was assaulting the baby, and it's got DNA
10 from the baby, from him, and none from the mother --

11 BY MR. HARPER: In the same sample.

12 BY MR. CLARK: If he handled the baby like he
13 said, that would be consistent with his DNA being on
14 the sheet anyway.

15 BY MR. HARPER: Then that would be relevant.

16 BY MR. CLARK: But, I mean, we don't know what
17 kind of DNA it is. That's the problem, you know.

18 BY MR. HARPER: And as the Court is aware --

19 BY MR. CLARK: The jury may think it's his blood
20 on the --

21 BY MR. HARPER: When they test for DNA, they
22 don't decide what type of DNA and or what substance
23 it is that puts the DNA on that.

24 BY THE COURT: The Court is going to allow this
25 over the objections of the defendant as Number 12. I
26 will caution the State, do not misrepresent the blood
27 on it. You stated what the analyst is able to say
28 even given that, it does have some probative value.

29 BY MR. SERMOS: And the analyst will be here, of

1 course.

2 BY THE COURT: Yes, sir. That's correct. The
3 analyst will be here. Is that right?

4 BY MR. HARPER: Yes, sir. That's our
5 anticipation is that both those analysts will be
6 here. Or excuse me, the analyst --

7 BY MR. SERMOS: Amy Winter.

8 BY MR. ROSENBLATT: Amy Winter.

9 PHOTOGRAPH MARKED AS STATE'S EXHIBIT 12

10 BY MR. ROSENBLATT: Your Honor, the next shot is
11 a shot taken by the deputies of the inside of the
12 baby's crib just to show what appeared to be some
13 blood stains on the baby's sheet.

14 BY THE COURT: Okay. Any objections to that
15 photograph?

16 BY MR. SERMOS: No.

17 BY THE COURT: That will be number thirteen.

18 PHOTOGRAPH MARKED AS STATE'S EXHIBIT 13

19 BY MR. ROSENBLATT: Your Honor, the next
20 photograph is a shot taken at the state medical
21 examiner's office showing the vaginal area of the
22 child to which there were significant injuries.

23 BY MR. HARPER: Again, Your Honor, our purpose
24 in showing that was just to show that there was no
25 injury, but --

26 BY THE COURT: Is there any objection to --

27 BY MR. SERMOS: Yes, Your Honor, we object.

28 Number one, because a state medical examiner spread
29 open in a strange, contorted position, but even so,

1 Your Honor, I think they don't need to present what
2 is a normal vaginal area looks like as what would one
3 look like if it had been abused. Since they don't
4 have one --

5 BY THE COURT: All right. The Court --

6 BY MR. SERMOS: -- then --

7 BY THE COURT: The Court will sustain the
8 objection to that. I see no relevancy or probative
9 value since the State is not contending that this was
10 involved in the crime.

11 BY MR. HARPER: In light of that, Your Honor, we
12 would just simply move in limine to prohibit the
13 defense from making any indications as to why or why
14 not we would not have brought forward this or
15 discussed this.

16 BY THE COURT: Again, that will be conditionally
17 the Court's ruling.

18 BY MR. ROSENBLATT: Your Honor, the next
19 photograph is taken at the state medical examiner's
20 office with the top of the skull removed from the
21 child showing the bloody brain, and the purpose of
22 this photograph is to show the manner of death. The
23 accumulation of blood at the top of the brain is
24 symptomatic of the shaken baby syndrome.

25 BY THE COURT: Objections to this?

26 BY MR. SERMOS: Yes, Your Honor. We object. We
27 consider it to be an extremely gruesome photograph.
28 We feel that Dr. Hayne can explain when he testifies
29 what the cause of death was of the child, and he can

1 explain it with some of the other photographs as far
2 as what he's had -- the Court had admitted, and we
3 think that would be absolutely -- the danger -- the
4 probative value is far outweighed by the danger of
5 unfair prejudice.

6 BY THE COURT: All right. The Court is going to
7 do this. I'm going to sustain that objection. I do
8 want that photograph marked A for identification, but
9 the reason why the Court finds that there is some
10 probative value, clearly what's being contended by
11 the State, but it's also a very gruesome photograph
12 of a peeled back skull of a small child, and the
13 Court finds that the gruesome nature of it outweighs
14 the probative value given that the doctor can still
15 testify to what he found. So I'm going to sustain
16 the defense objection, but, for the record, I do want
17 that one at some point marked as A for identification
18 by the court reporter.

19 PHOTOGRAPH MARKED A FOR IDENTIFICATION

20 BY MR. ROSENBLATT: Your Honor, the next
21 photograph taken at the medical examiner's office
22 shows the back of the baby's head to indicate
23 bruising at the back of the head.

24 BY MR. SERMOS: No objection.

25 BY THE COURT: That will be Number 14.

26 PHOTOGRAPH MARKED AS STATE'S EXHIBIT 14

27 BY MR. ROSENBLATT: And the last photograph is a
28 photograph again taken of the baby's head, turned
29 slightly, showing bruising behind the left ear.

1 BY THE COURT: And this is --

2 BY MR. ROSENBLATT: Taken at the state medical
3 examiner's --

4 BY THE COURT: This is not visible in any of the
5 other pictures?

6 BY MR. ROSENBLATT: Sir?

7 BY THE COURT: This is not visible in any of the
8 other pictures?

9 BY MR. HARPER: No, sir.

10 BY MR. ROSENBLATT: No, sir. It's in the
11 shadows of the other picture.

12 BY THE COURT: Okay. Any objection to that?

13 BY MR. SERMOS: No objection, Your Honor.

14 BY THE COURT: That will be Number 15.

15 PHOTOGRAPH MARKED AS STATE'S EXHIBIT 15

16 BY THE COURT: Those will be the Court's rulings
17 on the specific objections to these, and I will allow
18 the court reporter to go ahead and mark those in
19 order, and they can be used, but, clearly, they will
20 still be subject to the proper testimony coming
21 forward about the photographs. Anything else?

22 BY MR. SERMOS: They only -- I would just ask
23 the Court. I know you always are very understanding,
24 but if things do get -- if some weird thing comes up
25 there and gets confused or anything, we'll just ask
26 you to approach the bench --

27 BY THE COURT: Absolutely.

28 BY MR. SERMOS: Please be indulgent on that.

29 BY THE COURT: That goes without saying, Mr.

1 Sermos. You'll still be reserving any right to
2 object to any other matters that develop about this.

3 (All parties returned to the courtroom and the following
4 was made of record, to-wit:)

5 BY THE COURT: All right. Court will come to
6 order. Ladies and gentlemen, I appreciate your
7 patience. We've handled a few of matters,
8 particularly some photographs, and I think it will
9 help make matters move along a little smoother, and I
10 do appreciate counsel's cooperation on both sides
11 about that. At this time before we start, I am going
12 to ask the clerk, Mr. Vines, if you will to give the
13 jurors the special oath that is required in capital
14 cases before we proceed further.

15 (The special oath is given to the jurors.)

16 BY THE COURT: Let the record show the rule has
17 been invoked. Ladies and gentlemen, the rule being
18 invoked is a longstanding rule of court whereby the
19 witnesses who are to testify in this case and in this
20 trial cannot remain in the courtroom and hear the
21 opening statements and what other witnesses have to
22 say before they testify. So they'll be required to
23 remove themselves from the courtroom, and I'm going
24 to ask each side if there are any witnesses affected,
25 try to make sure they're not in the courtroom.

26 BY MR. HARPER: I think all our witnesses are
27 out.

28 BY THE COURT: Ladies and gentlemen, the next
29 stage of the trial is what's known as opening

1 statements. You have heard very little already about
2 this case. Really you just know the nature of the
3 charge against the defendant. The opening statement
4 is an important part of the trial because it gives
5 the attorneys for each side an opportunity to tell
6 you what they anticipate that the evidence is going
7 to show in this trial. It's very important that you
8 realize and understand that what the attorneys tell
9 you is not evidence. The evidence in this case will
10 come by way of the sworn testimony of the witnesses
11 from the witness stand and also any photographs or
12 other exhibits that the Court allows to be admitted
13 into evidence. But this is very helpful to allow
14 the attorneys to do this because it will give you a
15 much better idea about what this case is all about
16 and about what each side is contending the evidence
17 shows or does not show. That will give you a lot
18 better feel for it, and once the witnesses are called
19 to the witness stand, you'll have a better
20 understanding of what part they may have to play in
21 this case. So at this time, the Court is going to
22 allow the opening statements, first by the State.
23 Mr. Rosenblatt.

24 BY MR. ROSENBLATT: Thank you, Your Honor. Ladies
25 and gentlemen, my name is Tom Rosenblatt, and I stay down
26 at Fort Adams, Mississippi, down in Wilkinson County, and
27 I have the privilege of serving as one of your assistant
28 district attorneys under Mr. Ronnie Harper. Ladies and
29 gentlemen, this case revolves around the last day of the

1 life of Chloe Madison Britt. Chloe Britt is a precious
2 six-month old baby girl, the daughter of Rebecca Britt.
3 And as you can tell from her name, Rebecca was raising
4 this child on her own. Chloe Britt spent most of her last
5 day at Grace Methodist Episcopal Church -- or Grace
6 Methodist Church on Fatherland Road in the day care there,
7 and during voir dire yesterday, you all heard some
8 comments about Grace Methodist Church. Some witnesses.
9 Well, we will have two of the workers at the day care
10 center that will come and testify to you today. And
11 they'll let you know that when Chloe Britt left the day
12 care center at around 5:30 on Thursday afternoon, February
13 21st of this year, that she was fine. And, in fact, one
14 lady, Katie Thompson, will come testify that she changed
15 her just before she went home. And except for some minor
16 diaper rash, she appeared to be perfectly normal. Now,
17 she did have a little ear infection which we know just
18 about all babies do, and she was taking some medication
19 for that. She was under the care of Dr. Ayesha Dar. In
20 fact, she had just been to the doctor on a Tuesday before
21 that Thursday. And Dr. Dar has given her a little
22 medication for the ear. Rebecca Britt picked Chloe up
23 from the day care at 5:30 and took her home. Now, home at
24 that time was a mobile home at 33 Montgomery Road down in
25 Cloverdale, south of International Paper. It was a mobile
26 home that belonged to Mr. William Havard who is the
27 defendant Jeffrey Havard's grandfather. Mr. William
28 Havard had made this mobile home right across from his
29 home available for Jeffrey to live there. Jeffrey and

1 Rebecca had met about two months prior to this incident,
2 and Rebecca had moved in with Jeffrey and had been living
3 with him for about three weeks prior to this day. Rebecca
4 got back home to the mobile home at 33 Montgomery Road
5 with Chloe. Played with Chloe. She fed Chloe and gave
6 Chloe her medicine, and then she put Chloe in her little
7 wind-up swing, and Jeffrey gave Rebecca \$40.00 to go to
8 Natchez Market to pick up some groceries. This is around
9 7:30. Rebecca left the mobile home and went to Natchez
10 Market. Stayed gone for forty-five minutes to an hour.
11 When she came back home, Chloe wasn't in her swing. Chloe
12 was in her bed. Jeffrey says that he had taken the baby
13 and bathed her even though he had never bathed her
14 before. All the bed sheets were off the bed in the master
15 bedroom. Jeffrey had stripped down the bed, rolled all
16 the bed clothes up and set them in front of the washing
17 machine. Rebecca went in to check on Chloe in the bed,
18 walked into the dimly lit room where the crib was, apart
19 from the master bedroom. Said that Chloe sounded like she
20 was breathing funny. So she went over in the dim light
21 and put her hands on her and checked her. Said she was
22 still breathing. In fact, she even picked her up just to
23 make sure she was still breathing and put her right back
24 down. Before she had a chance to do anything else,
25 Jeffrey handed her \$20.00 and told her to go to
26 Blockbuster and pick up some videos to watch that night.
27 He insisted that she go up to Blockbuster even though they
28 had just installed a satellite dish not long before this.
29 He sent her to Blockbuster, and she left the house around

1. 8:30, maybe a little before 8:30, and went to Blockbuster.
2 And came back from Blockbuster, and when she came back in
3 the mobile home, Jeffrey was shut up in the bathroom,
4 spoke to him through the door, went in to check on Chloe.
5 Found Chloe blue, unconscious, and not breathing. She
6 screamed. Jeffrey came out and asked her what's wrong.
7 She said the baby is not breathing. She tried to give it
8 CPR. Her mother is Mrs. Lillian Watson, a nurse at
9 Community Hospital. So she grew up with a nurse for a
10 mama and tried to give the baby CPR. She and Jeffrey got
11 in the car and drove to Community Hospital. Rebecca was a
12 little concerned about the route Jeffrey took, but she
13 assured him she wanted to go to Community Hospital because
14 that's where her mother worked. That's where her mother
15 was a nurse. And so late at night, they pulled up to the
16 Community Hospital Emergency Room some time after nine.
17 They rush in and she hands Chloe to Shelley Smith who was
18 a lab tech at Community Hospital who was on duty that
19 night. And Shelley took the baby, noticed some bruising
20 around the face, rushed her back into the emergency room
21 for treatment. And then came back to talk to Jeffrey and
22 Rebecca in the waiting area to find out what had happened
23 to the baby. So they would know how to treat the child.
24 Rebecca didn't know what had happened to the baby,
25 and Jeffrey said that he didn't know what happened to the
26 baby. The baby was taken back into the emergency room and
27 was treated by a very devoted staff there. Nurse Angel
28 Godbold, Nurse Patricia Murphy, and Dr. Laurie Patterson
29 was the ER doctor on call that night. The baby's

1 pediatrician, Dr. Ayesha Dar, was called to come out, and
2 she arrived shortly thereafter. And you will hear from
3 all these personnel, all the doctors and nurses. The baby
4 was not breathing. They incubated the baby and attempted
5 to resuscitate it. All of them noticed the bruising on
6 the head and mouth. They assumed they were dealing with
7 head trauma even though they got no information about what
8 had happened to the baby from Jeffrey Havard or from
9 Rebecca. As part of the treatment of the child and they
10 were able to get the child somewhat oxygenated, and part
11 of the treatment of the child, they needed to take the
12 child's temperature. They turned the child over to take
13 the temperature rectally, and the doctors and nurses were
14 amazed. The child's anus was gaped open. The child's
15 little bottom that usually you have to work to get a
16 rectal thermometer in was gaped open, and you'll hear them
17 testify to that. They immediately suspected abuse,
18 penetration, and called law enforcement to come out to the
19 hospital. They continued to work on the child, and then
20 in about ten minutes until eleven, Chloe Madison Britt was
21 pronounced dead. Coroner James Lee was called out and
22 came to the hospital, examined the baby, and saw bruises
23 on the legs, saw the bruises to the child's bottom, the
24 signs of penetration, and he ordered an autopsy. The
25 deputies came to the hospital. They interviewed Rebecca.
26 They interviewed Jeffrey. Went to the house and collected
27 physical evidence. Some of that evidence was sent to the
28 crime lab, and you'll hear the results of those tests. It
29 was a top sheet on which DNA from both Jeffrey and the

1 baby was found together. Jeffrey eventually gave a
2 statement to the police with his explanation of what had
3 happened to the child, and you will get to hear his
4 version. As part of the investigation, as Dr. -- as
5 Coroner James Lee requested, an autopsy was done at the
6 State Medical Examiner's office in Jackson. Dr. Stephen
7 Hayne will come and testify for you about his findings and
8 how he confirmed the nurses' and doctors' worst fears this
9 child had been abused and the child had been penetrated
10 and the child had died what he refers to as shaken baby
11 syndrome or trauma to the head. He'll explain that for
12 you today. This child was sexually abused, and during the
13 course of that sexual abuse or shortly thereafter, was
14 killed by Jeffrey Keith Havard, and that, ladies and
15 gentlemen, is Chloe Madison Britt's last day with us.

16 BY THE COURT: Opening statement by the
17 defense. Mr. Clark.

18 BY MR. CLARK: Good morning. I am Robert Clark, and
19 I am one of two defense counsel representing for Jeffrey
20 here. And my other counsel is Gus Sermos who you met
21 yesterday during the voir dire. Chloe Britt was called
22 Maddie by some people that knew her. People at the day
23 care, I believe, will testify concerning what -- how the
24 child was. That she had been there since October the 1st
25 of 2001. She had been a regular person or child that came
26 to the day care there, and that her mother usually brought
27 her. Her grandmother also sometimes picked the child up
28 and came back to see the child while she was there.
29 They've also testified that this was a somewhat sickly