

No. 18-8029

In The
Supreme Court of the United States

OCTOBER TERM 2018

CHARLES RUSSELL RHINES,

Petitioner

v.

DARIN YOUNG, Warden, South Dakota State Penitentiary,

Respondent

**On Petition For A Writ Of Certiorari
To The United States Court of Appeals For The 8th Circuit**

RESPONDENT'S APPENDIX: VOLUME 2 of 2

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182681

1 STATE OF SOUTH DAKOTA)
2 COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

3
4 STATE OF SOUTH DAKOTA,

5 Plaintiff,

6 v.

JURY TRIAL

7 CHARLES RUSSELL RHINES,

93-81

8 Defendant.

VOLUME II OF

9
10 PROCEEDINGS: The following matters were had before the
11 HONORABLE JOHN K. KONENKAMP, Circuit Judge at
Rapid City, South Dakota, on the 5th day of
January, 1993.

12 APPEARANCES: MR. DENNIS GROFF, MR. JAY MILLER, and.
13 MR. MARK VARGO
14 State's Attorney's Office
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Rapid City, South Dakota

15 FOR THE STATE

16 SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

17 JUN 08 1995

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FILED
IN THE CIRCUIT COURT

25 MAR 8 1993

FOR THE DEFENDANT

By *[Signature]* Deputy
Clerk

1 Q One other area. Do you have any particular feelings
2 about the death penalty?
3 A I kind a feel that in a case like this where it's so
4 severe, that's it's just.
5 MR. STONEFIELD: Your Honor, I move for cause on the
6 earlier answers of having formed an opinion.
7 MR. GROFF: No objection.
8 THE COURT: Mr. Cofoid, I will excuse you on this case.
9 Clerk may call in another juror.
10 You have been previously sworn and you are still
11 under oath. Defense make inquire.
12 (Prospective Juror, DELIGHT MCGRIFF, having previously
13 been sworn, testified as follows:)
14 EXAMINATION BY MR. STONEFIELD:
15 Q Tell us your name.
16 A Delight McGriff.
17 Q My name is Mike Stonefield, and I'm one of the
18 attorneys that is representing Mr. Charles Rhines.
19 Mr. Rhines is the man seated in the middle of the
20 table here and this man to his left is Mr. Butler and
21 this is Mr. Gilbert. These are the other attorneys
22 that are working on this case. You sat through the
23 procedure yesterday and had explained to you what we
24 are doing here today?
25 A Yes.

1 Q I would like to reiterate just a little bit that the
2 law allows us to ask these questions or try and get
3 to whether you have any particular knowledge or
4 biases about this case and I'm not attempting to ask
5 you anything that would be embarrassing to you or to
6 pry into your personal life or anything like that,
7 but I would appreciate your complete honesty on any
8 questions. Do you know any of the people seated here
9 in the courtroom, any of the six attorneys, the
10 defense attorney, the Judge or court reporter?
11 A No.
12 Q Did you know or do you have any knowledge of Donnivan
13 Schaeffer or his family?
14 A No.
15 Q Do you know or have any knowledge of Mr. Rhines?
16 A No.
17 Q Were you familiar with the Dig 'Em Donut business
18 here in Rapid City?
19 A No.
20 Q As I'm sure you would understand, when you filled out
21 the questionnaire that was sent to you a month or so
22 ago, it came back to us and the attorneys have had a
23 chance to read over the answers that you gave us.
24 I'd like to ask you a few things about you, yourself.
25 You have three children, is that right?

1 A Yes.

2 Q Have you lived in this area for a long time?

3 A Yeah. I lived in Colorado for about three years,
4 three years ago, but I lived in Rapid City since I
5 was about 19.

6 Q Did you go to school here?

7 A No, I went to school in Louisiana.

8 Q You are working here now at two different jobs, is
9 that right?

10 A Yes.

11 Q Are your children still living around this area?

12 A Two of them and I have one that lives in California.

13 Q Did they all grow up and go to school here too?

14 A Yes.

15 Q Do you have any other family around these parts?

16 A No -- I have two daughters here in Rapid.

17 Q Other than your children?

18 A No.

19 Q The jobs you worked at you have been there, at one of
20 them you have been there for three years or so?

21 A Yes.

22 Q Could you tell us, are there jobs you have had other
23 places you have worked?

24 A Mainly I work for gold companies here in Rapid.

25 Q What kind of work have you done?

- 1 A Everything associated with making Black Hills gold.
- 2 Q Has that's been for a good part of your adult life
- 3 you have done that?
- 4 A Yes.
- 5 Q Do you know anything in particular about this case,
- 6 what this case is about?
- 7 A The only thing I know is what I read in the paper
- 8 that the kid was killed at the donut shop and they
- 9 had picked up someone, but that's all I know about
- 10 it.
- 11 Q How often would you say that you have read articles
- 12 about the case; regularly?
- 13 A No, because I don't get to read the newspaper a lot.
- 14 Q When would you say that you have read or heard
- 15 something -- what would be the last thing that you
- 16 have read or heard about this case?
- 17 A Right when it happened.
- 18 Q Back several months ago?
- 19 A Yes.
- 20 Q So, it would be fair to say that you haven't followed
- 21 it regularly in the media?
- 22 A No.
- 23 Q Have you ever talked about it with anybody?
- 24 A No, not really. I don't have a lot of time to -- it
- 25 might have been brought up at the time we read it in

1 the paper and we felt bad about it, but other than
2 that...

3 Q Do you know, do you remember reading anything
4 recently about it or hearing anything recently about
5 the incident or this trial?

6 A The only thing I heard last night said on the news
7 that the trial was coming up and that's all they
8 said.

9 Q So you were listening to the news about this last
10 night?

11 A Just for a few minutes at work.

12 Q Over the period of months, how many times would you
13 estimate that you read or heard something about the
14 case?

15 A That was the first time last night that I heard
16 anything.

17 Q For a long time?

18 A Yeah.

19 Q When you got the notice a month or so ago and got
20 this questionnaire that you'd be called as a juror in
21 this case, did you talk to anybody about it at that
22 point?

23 A At my job I told them it could be a possibility and
24 that was it.

25 Q Just job-related and no other context?

1 A Right.

2 Q Would you say that from what you have heard or been
3 made aware of over the months, have you formed any
4 kind of opinion about Mr. Rhines?

5 A No, because really I haven't heard anything.

6 Q Would you say that you formed any opinion about the
7 case?

8 A No.

9 Q Any opinion about whether he's guilty or not guilty
10 of these charges?

11 A No, I haven't formed any.

12 Q Have you ever heard any opinions expressed that way
13 by anybody else that you have spoken to?

14 A No.

15 Q One of the things that was talked about yesterday
16 during the orientation was that under the law Mr.
17 Rhines is presumed to be innocent of these charges.
18 Is that something that you are familiar with; have
19 you ever heard that term before?

20 A Yes.

21 Q Is that something that you feel you can apply in this
22 case?

23 A Yes.

24 Q You can presume him to be innocent as he sits here
25 now?

1 A Yes.

2 Q Would you feel that he would have to prove himself
3 innocent?

4 A No, he would have to be proven guilty.

5 Q Would you feel that he would have to present evidence
6 on his own behalf?

7 A His attorneys do that, don't they? I don't know.

8 Q What I am getting at is, if he were to, just as a
9 hypothetical, if he were to use, to rely on his, for
10 his defense on the inability of the State to prove
11 its case, simply to argue that the State has not
12 proven its case, do you think that's something he
13 should be able to do or would you expect to hear
14 something from him, testimony or evidence from him on
15 his own behalf?

16 A Yes. You would expect to. It would depend. I'm not
17 too familiar with this sort of thing.

18 Q If the Judge were to instruct you that he has no
19 obligation to testify and that he can rely for his
20 defense on the inability of the State to prove its
21 case and if the Judge told you that that is what the
22 law is, could you follow that?

23 A Yes.

24 Q Does that seem fair to you or should he have to
25 present something?

1 A That would seem fair.

2 Q I have another question about that area. If you were
3 to sit on this case and you were to listen to
4 everything that was presented for however long it
5 took to present all the evidence and you thought to
6 yourself later on, maybe toward the end of the case
7 or while you were deliberating that I have heard
8 something else or I remember hearing something else
9 or reading something else in the media, and we didn't
10 hear anything about it in the trial, how would you
11 handle that? Would you consider those things that
12 you read or heard elsewhere or do you think you'd be
13 able to not consider them?

14 A Yes. I know we wouldn't be able to read about it and
15 I haven't really read anything about it so far, so I
16 probably wouldn't, because I don't have a lot of time
17 to read anyway.

18 Q You don't think that would be a problem because you
19 really don't have any other outside knowledge of the
20 case?

21 A No.

22 Q So, you are telling us basically that you feel that
23 you could sit here and be an impartial juror on this
24 case?

25 A Yes.

1 Q A few other general questions for you, ma'am. The
2 Judge talked yesterday at some length about the
3 length of the trial and I assume that if you were
4 required to sit for two or three weeks or something
5 like that, it wouldn't be a problem with your job or
6 your home life?
7 A No.
8 Q If it came to a point where you had to be
9 sequestered, which is basically required to stay in a
10 motel for a period of time or not go home that kind
11 of thing, would that present a problem?
12 A No.
13 Q You have not ever served as a juror before?
14 A No.
15 Q You don't have any knowledge of anybody that works in
16 law enforcement, is that right?
17 A No.
18 Q Have you ever served in the military?
19 A No.
20 MR. STONEFIELD: Your Honor, earlier this morning I had
21 our office draw up a list of the witnesses who the
22 State had given notice to us as their potential
23 witnesses and I thought rather than go through each
24 name individually if we could show the prospective
25 juror the list and see if they know anybody on it.

1 MR. GROFF: I wish to have the record reflect that first
2 of all that was not part of any pretrial matters,
3 that was just presented as a matter of convenience
4 for counsel. Despite the fact that that list is
5 there, certainly that wouldn't preclude other
6 officers that were made a part of this to appear. It
7 was just a chronological list that I wished to
8 present, so there may need to be additional questions
9 about law enforcement officers as well.

10 THE COURT: You don't have any objection to showing this
11 list, at least to the prospective jurors?

12 MR. GROFF: No. I wanted to make sure at this stage of
13 the proceedings that there was no misconception of
14 the record that we had limited the State's case to
15 just those witnesses.

16 MR. STONEFIELD: I understand that. I thought this would
17 be a time saver.

18 THE COURT: I think it is.

19 Q (By Mr. Stonefield:) Take a look at this list and
20 can you tell me if you are familiar with any of the
21 names on here and take a little bit of time to review
22 and see if any of those names seem familiar to you.

23 A No; none of them look familiar to me.

24 Q I believe you said you don't have any knowledge of
25 anybody that works in law enforcement in the Rapid

1 City area?

2 A No.

3 Q Another area I want to discuss with you briefly and
4 see if you have any feelings about this. You are
5 going to hear evidence that Mr. Rhines is gay, he's a
6 homosexual, and you are going to hear that at least a
7 couple of the people testifying in this case also are
8 gay. Does that change your feelings about this case
9 or sitting on this case in any way?

10 A No.

11 Q Do you know any gay people?

12 A Not at present, no.

13 Q Have you ever in your life?

14 A I used to work with some.

15 Q Do you have any particular feelings one way or
16 another about the subject?

17 A It really makes me no difference.

18 Q On the questionnaire here you listed that you are not
19 a member of any particular church, is that correct?

20 A No.

21 Q Do you ever attend church?

22 A Occasionally I do.

23 Q Could you tell us what church?

24 A Four Square.

25 Q Is that in town here?

1 A Yeah. It's Assembly of God, and I have been there.
2 Q Would you say that you attend regularly?
3 A No, actually I don't. I go twice a year.
4 Q Do you consider yourself just generally to be a
5 religious person?
6 A Yeah -- well, my way of thinking, yeah.
7 Q One of the things that was discussed yesterday that
8 you probably are aware of in this case, as in any
9 case that is charged as first degree murder or
10 premeditated murder, the State has the opportunity to
11 ask the jury if they convicted the Defendant to
12 impose the death penalty. And the procedure under
13 which such a trial like this is held is different
14 than just about any other kind of a trial in this
15 State, any other criminal trial. We go through two
16 stages. We go through the first stage which is the
17 stage that happens in any criminal trial where
18 evidence is presented and a decision is made by the
19 jury as to whether the Defendant is guilty or not
20 guilty. In this particular case, should the jury
21 find Mr. Rhines to be guilty, then there is a second
22 part of the proceedings, a second trial basically at
23 which new evidence can be presented again and
24 arguments can be made to you as to what the
25 appropriate sentence would be and there are two

1 sentencing possibilities, either a life imprisonment
2 or the death sentence. What you would be required to
3 do as a juror in that second phase, if we would get
4 to it, would be to determine, first of all, whether
5 or not there are special circumstances which exist
6 concerning this case, and if you find that those
7 circumstances exist, then you have to make a second
8 determination as to whether or not the death penalty
9 is appropriate. Knowing that, knowing how this
10 procedure works, can you tell us whether you have any
11 particular feelings one way or the other about the
12 death penalty?

13 A No, I don't. I have never really thought about it a
14 lot.

15 Q Have you ever talked about it with anybody?

16 A No.

17 Q You would say basically that you are neutral on it?

18 A Yeah, I would say that.

19 Q You are saying that you feel that in certain cases
20 you could impose it?

21 A Yes.

22 Q Or you could consider imposing it?

23 A Yes.

24 Q Have you ever discussed it or heard it discussed in
25 regard to this particular case?

1 A No.

2 Q Since the time that you became aware that you might
3 be a juror in this case, have you ever thought about
4 it yourself?

5 A Well, actually -- I didn't until they brought it up
6 yesterday in Court.

7 Q You were not aware that that was a possible penalty
8 until yesterday?

9 A Probably. I just didn't think about it.

10 Q Would you say that your feeling would be such that
11 you would feel that the death penalty would be
12 appropriate for any person found guilty of a
13 premeditated murder?

14 A I think it would depend on the circumstances. It's
15 hard to say.

16 Q What type of circumstances?

17 A How violent the crime was -- I don't really know.
18 It's hard for me to say.

19 Q Do you think you'd have to wait and see what was
20 presented?

21 A Yeah.

22 Q You don't feel that it would be appropriate in every
23 case?

24 A No.

25 Q From what you have heard about or what you may know

1 about this case, have you formed any kind of opinion
2 as to whether it would be appropriate for the person
3 who committed this offense?
4 A No, I haven't formed an opinion, because I haven't
5 heard a lot about this case.
6 Q Just a couple of other things. When we talk about
7 the penalty here of death or the penalty here of life
8 imprisonment, do you have any feelings whether those
9 things really mean what they say or whether they
10 don't mean what they say, for instance, the penalty
11 of life imprisonment? Are you willing to accept, if
12 you are chosen as a juror and impose that sentence,
13 that that's what the person would serve, they
14 wouldn't be paroled out in a few years or something
15 like that?
16 A Yes.
17 Q Do you have any feelings or any kind of knowledge or
18 opinions about that idea?
19 A Not really, no.
20 Q You would be willing to agree that a sentence of life
21 imprisonment would be just that, that the person
22 would spend the rest of their life in prison?
23 A Yes.
24 Q Conversely, you would agree that a sentence of death
25 would mean just that, that a person would be

1 executed?

2 A Yes.

3 Q Kind of a general question, would you consider
4 yourself somebody who, once you have formed an
5 opinion that you think is right, that you would stick
6 to that opinion? Do you think that you are a person
7 that kind of sticks to their guns or in all honesty
8 would you say that you tend to be swayed by other
9 people's opinions?

10 A No, I form my own opinions.

11 Q And you'll stick to them?

12 A Yes.

13 Q Do you think that there's anything else that we
14 should know about you or your knowledge of this case
15 as we go through this procedure?

16 A No. I don't know really anything about this case.

17 MR. STONEFIELD: Thank you, ma'am. We would pass, your
18 Honor.

19 EXAMINATION BY MR. GROFF:

20 Q I have just a few questions for you, ma'am. You have
21 to understand that we have to both ask questions to
22 see if we can have you as a juror. From listening to
23 Judge Konenkamp yesterday and that orientation that
24 he read to you, you understood that you are a
25 prospective juror in this case of State versus

1 Charles Russell Rhines?

2 A Yes.

3 Q And from that orientation do you understand that in
4 this case the State is seeking the death penalty?

5 A No, I didn't, but now I do.

6 Q Do you understand that -- let me make this a little
7 clearer. As Mr. Stonefield just told you, this is a
8 case where if you are selected on the jury, one of
9 the 12 people on the jury, you'd first be called upon
10 to decide whether or not the Defendant was guilty or
11 not guilty, particularly of a charge of first degree
12 murder. Okay? Now, just assuming that you found him
13 guilty of that offense of first degree murder, then
14 there'd be a second stage of the trial where, after
15 hearing additional evidence, you'd decide whether or
16 not this Defendant would receive a sentence of death
17 or a sentence of life imprisonment. Do you
18 understand that?

19 A Yes.

20 Q Now, to get back to what I was telling you before,
21 whether or not you understand the State was seeking
22 the death penalty, should you get to that second
23 stage, as the attorney representing the State, I will
24 be asking you as one of the jurors to impose the
25 death penalty on the Defendant, that is, to put him

1 to the death. Do you understand that now?
2 A Yes.
3 Q Before I go any further, how do you feel about that?
4 A Well, I don't have an opinion on it now, you know.
5 Q Let me ask a couple of other questions then. Before
6 that jury in the second stage could return either a
7 sentence of death or a sentence of life imprisonment,
8 that jury would have to be unanimous; each one would
9 have to vote for the same thing; do you understand?
10 A Yes.
11 Q So, if anyone voted differently, then they couldn't
12 return a verdict one way or the other; do you
13 understand?
14 A Yes.
15 Q Do you understand why it's so important to both the
16 State and to the defense then to individually ask
17 these questions to determine whether or not the
18 jurors could actually reach a decision one way or the
19 other?
20 A Yes.
21 Q In other words, do you understand if I selected a
22 juror who in their own mind in all fairness could not
23 impose the death penalty, that in many ways in terms
24 of seeking the death penalty I'd be wasting my time
25 because I could never get a unanimous jury. Just

1 one, that's all it would take, so I have to look at
2 you as one prospective juror and decide whether or
3 not you could actually impose the death penalty if
4 the evidence and law convinced you it should, okay?
5 A Okay.
6 Q Do you have any religious, personal or moral beliefs
7 that would cause you to be opposed to the death
8 penalty?
9 A No.
10 Q You were talking with Mr. Stonefield and I believe
11 you told Mr. Stonefield that you haven't thought
12 about it much?
13 A The death penalty, no. That's not something you
14 think about, you know.
15 Q And it's something you have never spoken to your
16 friends or relatives about?
17 A It might have been brought up. I don't recall
18 anything about talking about anything like that.
19 Q Without going into specific cases or anything like
20 that that we might have heard about, never has caught
21 your attention as a point of conversation to talk
22 about the death penalty?
23 A No.
24 Q Let's think about it for a moment then. Assuming we
25 are in this courtroom and I want you to look at those

1 chairs over there and the second thing I want you to
2 look at is the Defendant, Mr. Rhines, who is at this
3 table. You see Mr. Rhines?
4 A Yes.
5 Q First thing I want to ask you is, just because he's
6 on trial here today, do you feel any sympathy for
7 him?
8 A No.
9 Q Secondly, I need to ask you, can you envision
10 yourself looking over at those chairs, being one of
11 the jurors who would come back and return a verdict
12 or sentencing verdict putting Mr. Rhines to death?
13 A Yes.
14 Q One other question along those lines. Can you
15 envision yourself, if you were polled, that is, if
16 the Judge asked each individual juror, is that your
17 sentence to put the Defendant to death, can you
18 envision yourself looking at the Judge or the
19 Defendant and saying, yes, that's my verdict; that's
20 my sentence that that man be put to death?
21 A Yes.
22 Q Now, again, how do you feel about that?
23 A Well, what I feel is like if a person is found
24 guilty, beyond a reasonable doubt, and if it's that
25 bad, I feel that that would be the right thing to do,

1 the death penalty.

2 Q Ma'am, I want to ask you a few questions a little bit
3 along the lines Mr. Stonefield was asking you. First
4 of all, just so I understand, you told Mr. Stonefield
5 I think, whether or not you would impose the death
6 penalty that it would depend upon the circumstances
7 of the case.

8 A Yes.

9 Q Now you have had a few more minutes to think about
10 this and I am going to ask you, as you have thought
11 about this sort of thing, even briefly over the years
12 the reading you have done or the conversations you
13 have had with other people, have you thought of any
14 particular type of circumstances where you thought it
15 might be appropriate?

16 A The death penalty?

17 Q Yes.

18 A Well, I have heard a lot of news last night, if it's
19 proven to be, depending on the circumstances of the
20 thing, it's hard for me -- if it was a really vicious
21 crime.

22 Q Now, you brought up something else in your responses
23 to me that I want to ask you about. You know very
24 well that this case is one where if you return a
25 verdict of guilty you are going to have to consider

1 whether or not you impose death or life. What I'm
2 curious about is this, as you know, there are two
3 stages to the trial, and the first stage is you
4 determine guilt or innocence. And this case, like
5 any other case that has to be decided, as the Judge
6 told you, it doesn't have to be to an absolute
7 certainty, but to a standard, our legal standard of
8 beyond a reasonable doubt. You heard that yesterday,
9 did you not, ma'am?

10 A Yes.

11 Q What I'm curious about is this, just because you
12 might have to face the issue of death or life in the
13 second stage, do you think you would somehow hold the
14 State of South Dakota, and particularly me the
15 prosecutor, to a higher standard of proof than just
16 proof beyond a reasonable doubt to somehow maybe
17 avoid getting to that second stage where you'd have
18 to determine death or life, or do you think you could
19 follow the instructions of the Court and just leave
20 it at a standard of proof to just beyond a reasonable
21 doubt?

22 A Yes.

23 Q You wouldn't elevate that standard to an absolute
24 certainty just because this was a death penalty case?

25 A No.

1 Q Do you know, ma'am, of anyone, I'm talking about
2 friends, relatives or acquaintances, do you know of
3 anyone who, if you came back after that second stage
4 and returned a death sentence, that someone might be
5 out there sort of who had strong opposition to death
6 sentences, who might confront you and make it
7 difficult for you after you returned such a sentence?
8 A No.
9 Q So, you feel if you did that and you felt that was
10 proper under the evidence and law, you could go out
11 without any reservation and lead your life and not
12 have to worry about any retribution or retaliation
13 from friends or acquaintances or anything like that?
14 A Yes.
15 Q Now, can you think of any reason at all why you
16 couldn't serve as a juror in this case?
17 A No.
18 MR. GROFF: That's all I have, Judge.
19 THE COURT: Thank you. All right, ma'am, you are a
20 prospective juror on this case. We are going to
21 excuse you temporarily. Do we have her phone number,
22 is that correct? We would ask that if you have not
23 heard from us by a week from today that you call the
24 Clerk's Office to check in and make sure that we have
25 your location.

1 DELIGHT MCGRIFF: Okay.

2 THE COURT: I'll repeat something I mentioned yesterday.

3 It's very important now that you not read any

4 newspaper articles or listen to any radio or watch

5 any television reports concerning this case. It's

6 very important that you not allow yourself to be

7 influenced by these outside sources of information so

8 you can hear the evidence in this courtroom and base

9 your decision on the evidence. Can you promise me

10 you'll not read any newspaper reports about this case

11 or listen to any other media reports on radio or

12 television?

13 DELIGHT MCGRIFF: Yes.

14 THE COURT: We will excuse you temporarily, so I'll let

15 you know when it's time to come back.

16 Sir, you were previously sworn and you are still

17 under oath. Counsel.

18 MR. GILBERT: Thank you.

19 (Prospective Juror RONALD HILTON, having previously been

20 sworn, testified as follows:)

21 EXAMINATION BY MR. GILBERT:

22 Q Would you begin by stating your name?

23 A My name is Ronald Hilton.

24 Q Good morning, Mr. Hilton. I'm Wayne Gilbert and

25 along with me here is Joe Butler and Mike Stonefield

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1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
2 COUNTY OF PENNINGTON) SEVENTH JUDICIAL CIRCUIT

3
4 STATE OF SOUTH DAKOTA,
5 Plaintiff,

6 v. JURY TRIAL
7 CHARLES RUSSELL RHINES, 93-81
8 Defendant. VOLUME V

9
10 PROCEEDINGS: The following matters were had before the
11 HONORABLE JOHN R. KONENKAMP, Circuit Judge at
12 Rapid City, South Dakota, on the 8th day of
13 January, 1993.

14 APPEARANCES: MR. DENNIS GROFF, MR. JAY MILLER, and.
15 MR. MARK VARGO
16 State's Attorney's Office
17 Pennington County
18 Rapid City, South Dakota

19 FOR THE STATE
20 MR. JOSEPH BUTLER
21 Attorney at Law
22 PO Box 2670
23 Rapid City, South Dakota and

24 SUPREME COURT
25 STATE OF SOUTH DAKOTA
FILED
JUN 08 1995

26 MR. WAYNE GILBERT
27 Attorney at Law
28 3202 West Main Street
29 Rapid City, South Dakota and

Alvin Engel
Clerk

30 MR. MICHAEL STONEFIELD
31 Public Defender
32 Pennington County, Pennington County
33 Rapid City, South Dakota

34 FILED
35 IN THE CIRCUIT COURT
FOR THE DEFENDANT

APR 23 1995
[Signature]
By: *[Signature]* Fitzgerald, Clerk
Deputy

ORIGINAL

1 inquire.

2 MR. GILBERT: Thank you, your Honor.

3 (Prospective Juror BENNETT BLAKE, having previously been
4 sworn, testified as follows:)

5 EXAMINATION BY MR. GILBERT:

6 Q State your name please.

7 A Bennett Blake.

8 Q I'm Wayne Gilbert and I'm one of the attorneys for
9 Charles Rhines and he's sitting at the table here
10 with Mike Stonefield and Joe Butler who are also
11 representing him. Good morning, sir. You filled out
12 a questionnaire a month ago and the lawyers for both
13 sides have had a chance to look at it. You have been
14 in the Air Force approximately eight years?

15 A Yes, sir.

16 Q And were you born and raised in Texas?

17 A Yeah.

18 Q In the eight years you have been in the Air Force
19 where have you been?

20 A Two years in Germany.

21 Q And six at Ellsworth?

22 A Yup.

23 Q I noticed you obtained an Associate's Degree at a
24 college in Huntsville, Texas?

25 A I think -- well, I cannot remember. I went to a

1 couple different colleges and I ran track in college
2 and when my grade point average from a regular
3 college and junior college -- my major was in
4 sociology.

5 Q Before you went in the Air Force?
6 A Yes.

7 Q What attracted you to sociology?
8 A The fact that I liked the study of the behavior of
9 people and trying to figure out what is inside a
10 person maybe, stuff like that.

11 Q What do you do in the Air Force?
12 A I'm personnel specialist and I used to work on the
13 minuteman missiles and I have this missing finger that
14 happened before I came in the service at a summer job
15 when I went to school and now I work in the personnel
16 office out there.

17 Q What kind of things do you do?
18 A Separations. We have had a lot of that lately.
19 Q With the early-out type?
20 A Yes.

21 Q You have had a lot of activity and it's in the news
22 and are you snowed under at work, is that the kind of
23 thing if you were called upon to sit as a juror in
24 this case that would effect...
25 A Not at all.

1 Q That wouldn't be a concern being called away from
2 your work a month or so or four or five weeks?
3 A Not a problem.
4 Q You are also active in the Democratic Party and is
5 there a difference between a Texas Democrat and a
6 South Dakota Democrat?
7 A Texas was a Democratic state and I said, hey, let's
8 go cross the board; let's make it a Democratic Party.
9 Q Were your parents Democrats?
10 A Yes, they were.
11 Q In front of you there is a witness list of people who
12 might be called as some of the witnesses in this
13 case. Would you take look at that and see if there
14 are any names you may recognize?
15 A Certainly; one for sure and one maybe.
16 Q Who is the for sure?
17 A Jerry Hammerquist, he's the Rapid Valley Irrigation
18 Supervisor and Harrold Flooster, my wife is from
19 eastern South Dakota, and I can only assume that they
20 may be related.
21 Q Let me ask you about Harrold Flooster first. If
22 Harrold Flooster were to testify in this case, would
23 there be any reason, based on what you know, that you
24 would believe...
25 A No. I wouldn't even know what he looked like. I

1 just had a passing acquaintance with his son. There
2 was a Flooster assigned and we might have had lunch
3 on a chance meeting, and it was a chance meeting that
4 we started talking one day. But, no...

5 Q How about Jerry Hammerquist, would you tend to give
6 his testimony more or less weight because of any
7 contacts you have had with him?

8 A Not a bit.

9 Q The evidence, there will be some evidence here that
10 will show that Mr. Rhines is a homosexual, he's gay
11 and one or two of the witnesses who might be called
12 in this case are also gay and have had relationship
13 with Mr. Rhines. Knowing that, does that cause you
14 to view Mr. Rhines differently at all?

15 A Not at all.

16 Q Do you happen to have any acquaintances or friends or
17 relatives that are gay?

18 A Not that I know of.

19 Q If you were to find out today that one of your
20 friends is gay, would it make any difference towards
21 you as far as your friendship is concerned?

22 A Not really.

23 Q How do you feel about the proposal to allow
24 homosexuals into the armed services?

25 A I feel they have been there for some time.

1 Q To make it official wouldn't make any difference to
2 you?
3 A Not at all.
4 Q Would you say you are in favor of that proposal?
5 A Leaning more toward indifference than favorable. I
6 think if it's a decision of our superiors, well let's
7 just say you'd have to live with it.
8 Q You have never served on a jury before?
9 A No, I haven't.
10 Q Have you heard over the years about the presumption
11 of innocence and the burden of proof and reasonable
12 doubt?
13 A I have seen enough Perry Mason.
14 Q One thing about Perry Mason is also a defense lawyer
15 and he always has something to put on as evidence or
16 does something to show his clients are innocent.
17 Now, do you understand that the burden of proof and
18 guilt beyond a reasonable doubt is actually on the
19 State at all stages of the case and the burden never
20 shifts?
21 A That's correct.
22 Q So that the Defendant is not obligated or expected to
23 put on any evidence of any kind at all; he has three
24 lawyers and we can decide not to put on a thing and
25 you can't hold that against Mr. Rhines; do you agree

1 with that?

2 A Yes, sir. Absolutely.

3 Q Have you had a chance, through your studies or over
4 the years in your life, to give any thought to the
5 death penalty?

6 A Yes, I have.

7 Q Have you come to any opinions or conclusion?

8 A I think it should be a case-by-case basis. I can't
9 say that it should be arbitrary for every crime.

10 Q On the other hand, you are not opposed to it, so it
11 should never be permitted?

12 A You could say this.

13 Q In South Dakota in a criminal case where the State
14 has decided that they want to ask for the death
15 penalty, there could be two trials. There is the
16 trial which the jury is asked to determine whether
17 they think guilt has been proved beyond a reasonable
18 doubt. Here Mr. Rhines is charged with first degree
19 murder, so it would be the State's obligation to
20 prove at the trial that we are now concerned with
21 that he's guilty of first degree murder beyond a
22 reasonable doubt. If they don't prove first degree
23 murder beyond a reasonable doubt, then the jury's
24 function as far as Mr. Rhines in further proceedings
25 is concerned is over. If they do prove guilt beyond

1 a reasonable doubt, then the jury is asked to
2 consider whether there are certain aggravating
3 circumstances that the Judge will instruct you about
4 and define for you, and if the jury in this second
5 part of the trial finds beyond a reasonable doubt
6 that one or more of these aggravating circumstances
7 are present, then the jury considers whether to
8 impose a death sentence. And we hear in the news
9 about how people are sentenced to death and it goes
10 on for years and years and there are appeals and
11 commutations, but the fact is, the death penalty in
12 South Dakota is carried out. So this is not a thing
13 that the jury could be thinking, if we sentence him
14 to death, something else will happen. And the jury
15 is not required to sentence him to death, even if
16 they find an aggravating circumstance. If the jury
17 finds an aggravating circumstance but concludes the
18 death penalty is not appropriate, then there is life
19 imprisonment. In South Dakota that means life
20 without possibility of parole. If Mr. Rhines was
21 sentenced to life, he'd never get out and if the jury
22 finds that there are not aggravating circumstances
23 proved beyond a reasonable doubt, then it would be a
24 life imprisonment situation instead of the death
25 penalty. Now, since you have had a chance to think

1 about the death penalty over the years, do you think
2 that there are any types of cases that come to mind
3 where it is appropriate?
4 A Yes.
5 Q What comes to mind?
6 A Well, if it's indeed a heinous, let's say a crime
7 that goes beyond -- I don't know what we'd consider
8 normal, maybe a normal, something that society is
9 more in tune with, something that's so bizarre and
10 outlandish or something that basically that the jury
11 warrants that the death penalty be imposed.
12 Q It may be that if the jury should get to the second
13 phase after the trial and you listen to the Court
14 define and list these aggravating circumstances, it
15 may be that some of the aggravating circumstances
16 would be as bad as what you just described. It
17 wouldn't necessarily have to be a bizarre type of
18 thing or something that is just horrible or something
19 that's hard to describe; would you be able to follow
20 the Court's instructions and give serious
21 consideration to an aggravating circumstance that
22 maybe doesn't rise to this horrible...
23 A I guess we would have to wait and see what is
24 presented there.
25 Q After you had seen what is presented, would you be

1 able to follow the Court's instructions?
2 A Yes.
3 Q As long as you understood them you'd be able to
4 follow them?
5 A Yes.
6 Q I try to make -- I just interrupted you.
7 A Heck, no, don't worry about it. I finished. I just
8 wanted to say, yes, I could make a decision if so
9 instructed.
10 Q And you'd be able to give serious consideration both
11 to the death penalty and the aggravating
12 circumstances that you would be instructed about as
13 well as going the other way and life without parole?
14 A Once the evidence is presented.
15 Q Have you got an idea in your mind right now as you
16 think would be the worse sentence to give a person,
17 death or life without parole?
18 A In my opinion the worst sentence would be life
19 without parole.
20 Q Do you hold that view so strongly that you think an
21 execution might be doing a Defendant a favor?
22 A Not necessarily. It depends on the circumstances,
23 you know.
24 Q And maybe in your mind if you somehow hypothetically
25 were in a situation you might even want to be

1 executed instead of doing life without parole?
2 A Possibly.
3 Q Have you heard anything about this case?
4 A Initially some standard stuff, but it just went by
5 the wayside. We had a lot of work come up in the
6 office and worked a lot of nights and I didn't keep
7 up with it in the last few months and to be honest it
8 was a surprise to get called in, a real surprise.
9 Q When you got called in, did the name Charles Rhines
10 mean anything to you at all?
11 A Yeah, it did.
12 Q What do you recall hearing about Mr. Rhines before
13 you were called here for jury duty?
14 A The stuff that was in the news and stuff like that,
15 bringing him in from Washington State back to be
16 Rapid City. I figured there'd be a trial at some
17 point, but as far as the specifics of it, no.
18 Q Any other more specifics or more detailed things you
19 can recall as us sit here today?
20 A No, just standard stuff. Again, I remember it when
21 the night back in March it happened because I had to
22 drive to Colorado, and other than that just went into
23 kind of a blur.
24 Q How about since Monday, have you heard anything or
25 read anything?

1 A I followed the Judge's instructions when the local
2 news came on, and I went in the other room and I
3 noticed that the newspaper really cut down in today's
4 paper what they had about it and I don't think there
5 was anything at all. I was more interested in the
6 sport's page to be honest with you.

7 Q Because of anything that you might have read or heard
8 or discussed with friends or family people at work,
9 do you come here today with any ideas one way or the
10 other whether Mr. Rhines is guilty or not guilty of
11 this offense?

12 A Not at all.

13 MR. GILBERT: Thank you. That's all the questions I have
14 EXAMINATION BY MR. GROFF:

15 Q Mr. Bennett, I'm the State's Attorney?

16 A Good morning, sir.

17 Q It's going to be my job during the next couple of
18 weeks to argue the case. I want to ask you just a
19 few questions. I was interested in your sociology
20 degree. Before you pursued that sociology degree,
21 did you think that was what you were going to go
22 into?

23 A I went there with general studies in mind.

24 Q I think what you told me, were you interested in the
25 behavior of people and why they do things?

1 A Yeah, basically, really interested in maybe like more
2 of the co-dependant -- you see a lot of that and my
3 wife has a degree in sociology and we can get into
4 some heated conversations.

5 Q Co-dependency is a very interesting concept, very
6 interesting. I want to talk to you a little bit
7 about the military, and you have been in the military
8 for eight years?

9 A Just went over eight in November.

10 Q Military as you were talking before has a lot of
11 rules?

12 A Absolutely.

13 Q One of the things you get used to doing is following
14 the rules?

15 A Without a doubt.

16 Q Maybe that's something that ties us in with the Court
17 and the Court has the rules which we call
18 instructions and I think Mr. Gilbert cleared this
19 with you that no matter what circumstances you
20 thought might be circumstances which would justify
21 the imposition of the death penalty, you would follow
22 the Court's instructions as to what the aggravating
23 circumstances are in South Dakota, is that right?

24 A Yes, sir.

25 Q As I understand you were down in Texas for how long?

1 A I was born there in '60. I have been in the service
2 24 years.
3 Q Twenty-four years?
4 A Yeah.
5 Q Recalling when you were down in Texas, do you recall
6 hearing about death cases?
7 A Yes.
8 Q That's not something unusual for you?
9 A No, sir.
10 Q Before I go any further, I need to ask you about
11 visualizing yourself on the jury, but first, could
12 you be a little more specific? You were telling Mr.
13 Gilbert about matters that came up in your mind which
14 you thought could justify imposing the death penalty.
15 I think you used the word heinous?
16 A Well, I believe that first of all I have to look at
17 maybe, was it a spontaneous type of thing or
18 premeditated type of thing or what would influence
19 me.
20 Q When it comes to premeditation, can you follow the
21 Court's instructions, what that means under South
22 Dakota law?
23 A Well, I can interpret it in my way. I'm not sure
24 what South Dakota law says, but yeah, I could.
25 Q You were explaining, I'm sorry?

1 A Again, this is an individual decision that I feel,
2 you know, and together it will come together, if it
3 warranted it by the evidence that we will see, I
4 guess, yeah; just breaking it down.

5 Q What you are saying is if the evidence warranted
6 imposing death on this Defendant, Mr. Rhines, you
7 could visualize yourself doing that?

8 A Yes.

9 MR. GROFF: That's all I have. Pass for cause.

10 THE COURT: All right, sir, you remain a prospective
11 juror on this case and we will be in touch with you
12 when we need you to come back, and if you make the
13 final jury panel. In the meantime, it is very
14 important that you continue not to watch, read or
15 listen to any media accounts concerning this case and
16 that you not discuss this case with anyone or allow
17 anyone to discuss it with you or in your presence.
18 Can you promise me you'll not do these things?

19 BENNETT BLAKE: Certainly.

20 THE COURT: If you have not heard from us by Tuesday at
21 noon, I'd ask that you call the Clerk's Office to
22 check in and make sure that we are able to reach you.
23 Thank you, very much. Let's take a ten minute
24 recess.

25 (Recess was taken 9:25 to 9:40.)

1 THE COURT: Defense may exercise. Record will show that
2 the defense has exercised its tenth peremptory and
3 the Clerk will summon another juror.

4 Good morning, Mr. Blair. You were previously sworn
5 in and you remain under oath now?

6 WILLIAM BLAIR: Yes.

7 THE COURT: Defense may inquire.

8 (Prospective Juror, WILLIAM BLAIR, having previously been
9 sworn, testified as follows:)

10 EXAMINATION BY MR. GILBERT:

11 Q For the record state your name please.

12 A William Blair.

13 Q Mr. Blair, I'm Wayne Gilbert, and I'm one of the
14 lawyers for Charles Rhines and he is the man seated
15 at the middle of the table, and the other lawyers are
16 Mike Stonefield and Joe Butler and the three of us
17 represent Mr. Rhines. The questionnaire you filled
18 out a month ago we've had copies of that and have had
19 a chance to look at it and you have not served on
20 jury duty before?

21 A No, I never have.

22 Q Have you ever been called at all?

23 A No.

24 Q Some of the questions that you will be asked by both
25 sides this morning are probing and may seem kind of

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STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
COUNTY OF PENNINGTON) SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,
Plaintiff,
v. JURY TRIAL
CHARLES RUSSELL RHINES, 93-81
Defendant. VOLUME VI

PROCEEDINGS: The following matters were had before the
HONORABLE JOHN K. KONENKAMP, Circuit Judge at
Rapid City, South Dakota, on the 8th and 11th days
of January, 1993.

APPEARANCES: MR. DENNIS GROFF, MR. JAY MILLER, and.
MR. MARK VARGO
State's Attorney's Office
Pennington County
Rapid City, South Dakota

FOR THE STATE
MR. JOSEPH BUTLER
Attorney at Law
PO Box 2670
Rapid City, South Dakota and

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED
JUN 08 1995

MR. WAYNE GILBERT
Attorney at Law
3202 West Main Street
Rapid City, South Dakota and

Alvin Engel
Clerk

MR. MICHAEL STONEFIELD
Public Defender
Pennington County
Rapid City, South Dakota

FOR THE DEFENDANT

Pennington County, S.D.
FILED
IN THE CIRCUIT COURT

MAY 03 1993 1147

By *[Signature]* Clerk
Deputy

ORIGINAL

1 juror. Good afternoon, sir. We swore you in last
2 week so you remain under oath. Defense may inquire.
3 (Prospective Juror DARYL ANDERSON, having previously been
4 sworn, testified as follows:)

5 EXAMINATION BY MR. MIKE STONEFIELD?

6 Q You are Daryl Anderson?

7 A Yes.

8 Q I'm Mike Stonefield and I'm one of the attorneys
9 representing Charles Rhines in this case. Mr. Rhines
10 is the man seated in the middle of the table and this
11 is Mr. Wayne Gilbert one of the attorneys and Mr. Joe
12 Bulter. How are you today?

13 A Just fine.

14 Q You sat through the orientation process a week ago so
15 you have a general idea why it is that we are up here
16 today?

17 A Uhm-uhm.

18 Q I'd ask you to take a look around the courtroom and
19 tell us if you know anybody?

20 A I recognize Mr. Groff here.

21 Q Would tht just be knowing him as the State's
22 Attorney?

23 A Picture in the paper.

24 Q Have you ever had any kind of dealings with him in
25 any type of criminal case?

1 A No.

2 Q Basically you just know who he is?

3 A Yes.

4 Q Do you know anything about Mr. Rhines other than what
5 you might have heard or read in the paper?

6 A I don't know anything about him.

7 Q Did you know Donnivan Schaeffer or have any knowledge
8 of any member of his family?

9 A No.

10 Q One of the things we need to talk about is what if
11 anything you know about this case in particular, so
12 I'd ask you to tell us -- from the questionnaire you
13 indicated that you had some knowledge about the case
14 and I'd ask you to tell us as specifically as you
15 can, what if anything you remember having heard or
16 read?

17 A The thing that I remember is this Schaeffer was a
18 real nice guy. They mentioned that in the paper and
19 just that it was a botched up robbery, turned into a
20 murder.

21 Q And your knowledge, that knowledge you are talking
22 about something you heard about on the news or in the
23 paper.

24 A Right.

25 Q Have you ever in the past few months talked about

1 this case with anybody?

2 A No, just when I was picked for jury duty people would

3 say, hey, you are on this trial, and I said not yet.

4 I don't have any idea but that is about all.

5 Q You live in New Underwood?

6 A Just outside.

7 Q When you say you were picked for the trial, are you

8 talking about when you got this questionnaire a month

9 or so ago?

10 A Right.

11 Q Once you realized you were a potential juror on this

12 case, you did talk to some other people about that?

13 A Just that part, right.

14 Q Did you ever hear anybody express an opinion about

15 Mr. Rhines as to whether he was guilty or not guilty?

16 A Well, you hear comments on like, well, you know what

17 I'd do if I was on there, that type of thing.

18 Q Have you yourself ever expressed any kind of opinion?

19 A Not really.

20 Q Would you say that as you sit here today that you

21 have an opinion one way or the other about whether or

22 not Mr. Rhines...

23 A I would say I wouldn't have an opinion because you

24 can listen to the media and they have pretty much

25 convicted someone already part of the time and that's

1 not right because there are several cases where
2 things have happened that I know that's not true what
3 they print.
4 Q You are saying that although you have read or heard
5 some things about the case, you don't necessarily
6 take everything you hear at face value?
7 You never have been a juror before?
8 A No.
9 Q Have you ever been called up into this kind of a
10 process before to be questioned?
11 A I was subpoenaed over 20 years ago in an attempted
12 murder-kidnapping thing. We came on to a fellow that
13 had been abducted from Iowa and I never did go before
14 the Court.
15 Q You were a possible witness?
16 A Right.
17 Q Have you ever been, you yourself or anybody in the
18 family ever been involved in the criminal system as a
19 witness or having been charged with something?
20 A No.
21 Q One of the things that was discussed during that
22 orientation process the other day were several
23 concepts about criminal law, one of them being that
24 any person that's charged with a crime is presumed to
25 be innocent and that presumption follows with the

- 1 person throughout the entire proceedings and can only
2 be overcome by evidence of guilt beyond a reasonable
3 doubt. Do you remember hearing that?
- 4 A Right.
- 5 Q Is that something that was familiar to you?
- 6 A Yes.
- 7 Q As you sit here right now, do you have any problem
8 applying that presumption to Charles Rhines?
- 9 A No. I have no problem.
- 10 Q You would say that from anything you might have heard
11 or heard other people talk about, you have no opinion
12 whatsoever right now as to his guilt or innocence?
- 13 A I would say I have no opinion.
- 14 Q You indicated on the questionnaire that you have
15 lived in South Dakota at least for your whole life.
- 16 A Right.
- 17 Q But you have lived in Pennington County for 15 years
18 or so?
- 19 A No.
- 20 Q I'm sorry, I'm reading it wrong. You lived in
21 Pennington County your whole life and went to school
22 in New Underwood?
- 23 A Yes.
- 24 Q You are a New Underwood resident your entire life?
- 25 A Right.

1 Q You have one child?
2 A Yes.
3 Q Who apparently would be out of school now?
4 A Yes, she's married.
5 Q Still living around here?
6 A She lives in New Underwood.
7 Q Is she employed anywhere?
8 A She works at New Underwood School, she's a secretary
9 there.
10 Q And you have worked for the highway department for...
11 Q For 24 years.
12 Q Which would be pretty much since you were out of
13 school and you worked for them ever since?
14 A Within a couple of months.
15 Q And you are in charge of the New Underwood division
16 out there?
17 A Right.
18 Q Probably notice I'm reading off your questionnaire
19 here and probably would have expected that I would
20 have access to it.
21 A Right.
22 Q You belong to a Catholic church in New Underwood?
23 A Yes.
24 Q Would you say you go regularly?
25 A No.

1 Q Does your wife attend regularly?
2 A No.
3 Q Some of the questions we may ask may seem to be a
4 little prying and they're not meant to embarrass
5 you and understand the serious nature of this case,
6 but would you describe yourself as a religious
7 person?
8 A Well, I don't know how I would put that. I believe
9 in God, if that's what you mean.
10 Q I know it's kind of a general question. Do you have
11 any particular feelings -- we will talk about this in
12 some more detail. As you sit here now, would you say
13 you have any particular feelings one way or the other
14 about the death penalty?
15 A Well, I feel that if a person is guilty I'd say it's
16 a just thing.
17 Q Would you say again just generally that in your mind
18 you have thought this out quite a bit; is it
19 something you have discussed with other people?
20 A Not necessarily. No, I wouldn't say I discussed it.
21 Maybe with my wife, we talked about it.
22 Q You would say that as a general proposition that you
23 are basically in favor of it?
24 A Yes.
25 Q Did you know what was involved in this case before

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this last week?

A I suspected that it would be, yes.

Q Why was that?

A Well, just the charges that were brought against to me would seem...

Q Let me tell you, procedurally how a case like this goes, and I'll try and explain it and see if you can understand my explanation. The first part of a trial, this is like the first part of any regular criminal trial where evidence is presented and arguments are made and a determination is made by the jury as to whether or not a person charged here, Mr. Rhines, has been proven guilty of what he's charged with, evidence beyond a reasonable doubt and that's, as I said, that's the normal part of any criminal trial. Of course, in a case like this if the jury were to find that he were not guilty of first degree murder, then there'd be no further discussion about penalty or anything like that and the case would just be over. If, however, he were found guilty of first degree murder, which is one of the things he's charged with, then there'd be a second part to the trial and that is one of the things that makes this type of proceeding different than any other criminal trial in this State, in that were he to be found

1 guilty of first degree murder, the jury would have
2 the opportunity to hear new evidence and arguments as
3 to what the sentence should be, because the jury
4 would actually do the sentencing. You may be
5 familiar with the way most or all other cases in this
6 State are handled is that a person, if they're
7 convicted of something, the Court does the
8 sentencing, but in a capital case, in a first degree
9 murder, death penalty case, the jury does the
10 sentencing. And so you understand it, that is part
11 of the reason why we need to talk about this.

12 A Right.

13 Q Now, the way that procedure would work, the way that
14 second part of the trial, if we got to it, the way
15 that would work would be that the State would allege
16 that there were one or more what are called
17 aggravating circumstances surrounding the case, one
18 or more circumstances that happened which raises it
19 into the class of cases where the death penalty can
20 be considered and those one or more circumstances
21 would have to be proved just like the elements of the
22 crime have to be proved and proved beyond a
23 reasonable doubt in order for the jury to consider
24 the death penalty. Now, if the jury first of all
25 found Mr. Rhines guilty of first degree murder, and

1 second of all found one or more of those
2 circumstances to exist, then the jury would have to
3 decide what the appropriate sentence was and there'd
4 be two choices and only two and those would be death
5 by lethal injection, the death penalty or a life
6 sentence in the penitentiary without possibility of
7 parole. Those would be the two possible sentences.
8 Do you feel that you understand at least generally
9 now the procedure?

10 A Yes.

11 Q You indicated in your answer to the general question
12 about the death penalty that you do feel that it's an
13 appropriate penalty. Let me ask you this. If you
14 were to -- I'm asking you to presume some things
15 here, presume you were to sit on the jury and presume
16 you were to find Mr. Rhines guilty of first degree
17 murder, presume you were then going into the second
18 part of the trial the sentencing part and if you were
19 to have found him guilty of first degree murder,
20 would you think the death penalty should
21 automatically follow?

22 A It depends. Like you say the second part of that
23 depending on the evidence that was shown I'd say...

24 Q Just as a general question, are you saying that in
25 your mind the death penalty would not automatically

1 follow.

2 A Right.

3 Q You would want to consider other facts?

4 A Yes.

5 Q Do you have any kind of idea in your mind about what
6 other types of things might be appropriate to
7 consider?

8 A No, I couldn't tell you right now. I can't think of
9 any, but that's a pretty serious matter.

10 Q Can you, in your mind, can you think of any set of
11 circumstances, any type of case that you heard about
12 in the news or anything that pops in your mind where
13 you would think the death penalty would automatically
14 be appropriate?

15 A I could think -- you mean like a Ted Bundy type
16 thing? I thought that was appropriate.

17 Q A lot of people we've talked to mentioned things like
18 that. In a situation like that you would think it
19 would kind of be automatically appropriate for
20 someone convicted of...

21 A I would say in his case I think it was the right
22 thing to do.

23 Q Were you to sit on this kind of a case, do you think
24 you'd want to consider -- I'm just giving you an
25 example here, would one of the things that would be

1 important for you to consider, be the facts involving
2 the earlier life of Mr. Rhines, the person convicted?
3 A I don't know if that would -- I hear so much of that
4 about the parents and being an abused child and I
5 think there is too many times that people fall behind
6 that as an excuse.
7 Q Are you saying that in your mind that that type of
8 evidence would not have any importance?
9 A Right, it wouldn't have any importance. I think it's
10 used too much as far as some of these cases go.
11 People hide behind their past and use it as an
12 excuse.
13 Q You did say that you would want to probably consider
14 other things. I have given you one example there.
15 Can you think of any other particular things that
16 might be that you might think to be important?
17 A No, I really can't.
18 Q I want to talk to you a little bit about the
19 different alternatives of sentencing that we
20 discussed. You understand when I explained that
21 there were, if we were to reach the penalty part that
22 there'd only be two possibly penalties? Are you
23 willing to accept the fact that in this State that a
24 sentence of death, if it was imposed by the jury,
25 that that would be what would actually happen, that

1 Mr. Rhines would be put to death?
2 A Right.
3 Q What I'm getting at basically is, you are willing to
4 accept that as a proposition and not think that well,
5 maybe at some point he would win an appeal or the
6 governor would commute the sentence?
7 A I would say that would probably be a possibility,
8 maybe a remote possibility.
9 Q The point I'm trying to make is, are you willing to
10 accept the fact that at the time if he were sentenced
11 to death, if that was what the jury recommended, that
12 that would be what would happen?
13 A Yes.
14 Q And you would not feel that the decision was any less
15 important because of the remote chance that it might
16 not be carried out?
17 A No, it wouldn't be any less important.
18 Q Likewise with the life in prison, are you willing to
19 accept the proposition that in this State as opposed
20 to a lot of other states that in this State if a
21 sentence of life imprisonment is imposed, that's what
22 the person serves, but they do not become parole
23 eligible and they serve the rest of their natural
24 life in prison?
25 A Yes.

1 Q You mentioned Ted Bundy and that's somebody you have
2 been familiar with in the media and you mentioned
3 that as a possible type of sentence or a possible
4 case where you thought that the death penalty was
5 appropriate. Did you think of any other types of
6 cases where you think it's appropriate?
7 A Well, that's the one that comes to mind now, but I
8 can't think of any -- I'm kind of nervous.
9 Q I understand that. When you hear that kind of story
10 on television or read about it in the paper, the Ted
11 Bundy story, is that something that interests you?
12 Do you have an interest in that at all?
13 A Not necessarily an interest, no.
14 Q Is it something that you'll sit and listen to if it
15 comes on television or something like that?
16 A I watched the movie or whatever.
17 Q Do you remember hearing about the case in Washington
18 State about a week or so ago where a man was
19 sentenced to death or was actually executed by
20 hanging.
21 A Right.
22 Q And you heard or you had some general idea of what he
23 was convicted of doing?
24 A Really, no. I have been busy lately and I haven't
25 had a chance to, but he requested that form of

1339

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1 execution, right?

2 Q From what knowledge you might have had from that
3 case, did you feel that that was appropriate?

4 A Well, I don't know.

5 Q Would you say that you didn't have enough knowledge
6 of it?

7 A Right.

8 Q You would characterize yourself as someone that would
9 want to hear more information or as much information
10 as you could before you'd want to make a decision on
11 something like this?

12 A Right, because it's pretty final.

13 Q Do you have any general types of feelings, based on
14 what we've talked about, how you would feel if you
15 were called to sit on this type of case?

16 A I wouldn't say I would be excited about it but -- I'd
17 sit on the jury.

18 Q You'd be willing to take on that responsibility?

19 A Yes.

20 Q You live outside of town, 20 miles or so. Can you
21 think of any reason why the distance that you'd have
22 to travel if you had to be here every day for several
23 weeks, why that would present any kind of a problem?

24 A It would be snow. That wasn't a problem until a
25 couple days ago.

1 Q It might become a problem again from the sounds of
2 it.
3 A Other than that, I can't see any problem.
4 Q No kind of work problems?
5 A I can have people cover for me. I have people that
6 can cover for me everywhere.
7 Q Do you know of anyone, Mr. Anderson, that works in
8 law enforcement?
9 A Slim McNaughton, he works for the sheriff's
10 department in New Underwood.
11 Q Would you say he's a friend of yours?
12 A I know him to say hi. I don't go out to supper with
13 him or anything like that.
14 Q I'd ask you if you would right now take a look at
15 this list of names and tell us if you recognize any
16 of them?
17 A I recognize Jerry Hammerquist, Don Bahr, I think he
18 works for the sheriff's department.
19 Q Are you friends with Jerry Hammerquist?
20 A Just an acquaintance. He's a rancher by Caputa.
21 Q The list of names there, the reason we went over
22 those, those are people that could possibly be
23 witnesses in this case and if Mr. Hammerquist was
24 called as a witness, your knowledge of him, do you
25 think you might tend to favor his testimony or give

1 it more credibility than that of someone you didn't
2 know?
3 A No.
4 Q Same question on Mr. Bahr?
5 A I wouldn't even recognize him if he walked in the
6 door.
7 Q Just a name that you thought you knew?
8 A Uhm-uhm.
9 Q I take it from what we've talked about earlier you
10 have never been in the military?
11 A No.
12 Q Not even the National Guard?
13 A No.
14 Q Would you describe yourself -- I'll ask you to maybe
15 tell us an opinion about yourself. Would you
16 describe yourself as someone that once you have come
17 to a decision about something and once you are
18 convinced that you are right, would you say that you
19 are a person who has, as the saying goes, you would
20 stick to your guns or would you say you are a person
21 who, and again asking you to describe yourself, who
22 maybe can be a little more easily swayed or
23 convinced?
24 A I could be convinced, yeah. I'm not bull-headed.
25 Q Once you become convinced that you are right about

1 something, would you...

2 A Sure.

3 Q Knowing what this case is about and knowing a little

4 bit more of what we've discussed here, can you think

5 of any particular reason that we should know about

6 why you would say that you couldn't be a fair or

7 impartial juror on this case?

8 A I think I could be.

9 Q Nothing else that you can think of that we should

10 know about?

11 A Nothing.

12 MR. STONEFIELD: Thank you, Mr. Anderson. We will pass..

13 THE COURT: State may inquire.

14 EXAMINATION BY MR. GROFF:

15 Q I am going to talk to you a little bit about the

16 death penalty if is that's okay. Did you understand

17 from Mr. Stonefield that if you get to that second

18 stage, assuming Mr. Rhines is found guilty of first

19 degree murder and then you are going to be basically

20 either considering the evidence you have already

21 heard or considering arguments from me about whether

22 or not that evidence rises to the level of an

23 aggravating circumstance and makes this murder

24 special; do you understand?

25 A Yes.

1 Q The Judge is going to instruct you as to what these
2 aggravating circumstances are and my question to you
3 is this, very simply put, will you follow the Court's
4 instructions as to what our aggravating circumstances
5 are in South Dakota, even if you disagree with
6 them...

7 A Yes, I'd follow the instructions.

8 Q Now, I want to talk to you a little bit about the
9 questionnaire you got in the mail. When you filled
10 that out and mailed it in, did you ever think you'd
11 be here answering these kind of questions?

12 A Yes.

13 Q And, of course, we've got you here now and I want to
14 talk to you about something else that could happen
15 and see how you feel about it?

16 A Okay.

17 Q There is a very real possibility that you'll be
18 picked on this jury and if you are picked on this
19 jury, of course, you may have to make one of the more
20 important decisions in your life on this case. I
21 need to have you work with me and dealing with an
22 assumption here, but I just want to see how you'd
23 feel in this situation. Let's assume you were picked
24 for the jury and you went through that first stage
25 and were convinced beyond a reasonable doubt that Mr.

1 Rhines was guilty of first degree murder and you
2 brought back that verdict and you went back and
3 considered the evidence that you heard and arguments,
4 other evidence you heard in the second stage and went
5 back and deliberated, and once again you found an
6 aggravating circumstance beyond a reasonable doubt
7 and decided the death penalty was appropriate. Not
8 trying to get you to commit to that or anything, but
9 let's assume you had done all that and the next thing
10 that would happen to you is you'd come back in this
11 courtroom and you'd be in one of those chairs and the
12 unanimous verdict would be read of all 12 of you and
13 assuming you thought that was the appropriate thing
14 to do, can you visualize your being in Court and
15 facing the Defendant, Mr. Rhines, and telling him
16 that your verdict is to put him to death?

17 A Yeah.

18 Q Pretty deep breath. Tell me about it; how do you
19 feel?

20 A Like I said, it's a serious thing. You are going to
21 have to have overwhelming evidence for me.

22 Q I'm not sure if the standard of proof is
23 overwhelming.

24 A I know what you mean.

25 Q I understand how you feel. What I'm trying to figure

1 out is no matter your personal feelings, I want to
2 figure out whether or not first of all in that
3 initial stage whether you find him guilty or
4 innocent, you know, I have to present evidence to you
5 that is going to convince you beyond a reasonable
6 doubt if he is guilty, and I think if you listened to
7 Judge Konenkamp the other day he was very explicit
8 that that doesn't mean an absolute certainty. Same
9 thing when we get to that second phase. Before you
10 can even consider the death penalty, you'll have to
11 be convinced that there is an aggravating
12 circumstance that one has been proven, not to an
13 absolute certainty, do you understand?

14 A Right.

15 Q And I realize you want to be convinced in your mind,
16 but do you think you can fairly consider the Court's
17 instructions?

18 A Oh, yes.

19 Q Is there anyone you know, who is so opposed to the
20 death penalty that if you actually rendered that
21 verdict in your case, if you left the building they'd
22 be on your case about, how could you do such a thing?

23 A Well, my wife.

24 Q Tell me about that.

25 A She's opposed to the death penalty.

1 Q You'll have some instruction to follow and evidence
2 to consider and you'll have your wife to consider,
3 which would you consider first?
4 A I'd consider the evidence.
5 Q This wouldn't cause a divorce or anything?
6 A No.
7 Q If you thought it was the right thing to do and you
8 did it, do you think you could carry on your life and
9 not have that be a big issue with your wife?
10 A Yes.
11 Q Has your wife been telling you what to do if you are
12 a juror?
13 A She thinks it's great I'm here though.
14 Q I don't know if that says much for you, sir.
15 A She's been a juror before and she says she thinks it
16 would be a good learning process.
17 Q Now, you were talking with Mr. Stonefield about Ted
18 Bundy and he's sometimes called a serial killer. Do
19 you think you'd have any difficulty sitting on a case
20 where you basically have one Defendant charged, and
21 one alleged victim killed and we are not talking
22 about serial killing here?
23 A I don't think I have a problem with that.
24 Q Explain that to me if you can.
25 A The charge here is he's charged with murder, the same

1 as Mr, Bundy it's just that he multiplied it a few
2 times.

3 Q You'd consider the facts and circumstances of this
4 case, the how and why, to determine whether or not it
5 was appropriate, is that correct?

6 A Yes.

7 Q Can you tell me, Mr. Anderson, one or two questions,
8 can you tell me what are the more important decisions
9 you have made in your life?

10 A Well, getting married. That's about the most
11 important decision that I have made.

12 Q And you have one child and your child is 20?

13 A Yes.

14 Q Boy or girl?

15 A Girl.

16 Q Was that a big decision, having a child?

17 A I wouldn't say. It was an accident, but I'm glad it
18 happened, yes. We actually had two children, the
19 second one was a planned thing.

20 Q Something happened?

21 A Yes.

22 Q We don't have to go into that. Once you make a
23 decision, whether it's marriage or other important
24 decisions in your life, do you tend to second-guess
25 yourself?

1 A Not marriage, no -- I should say no. Small things
2 maybe
3 Q You think you are ready to make a decision like this
4 if called upon, is that correct, sir?
5 A Yes.
6 MR. GROFF: I'd pass for cause. Thank you.
7 THE COURT: Sir, you remain a prospective juror on this
8 case and we will let you know this week whether you
9 have, made the final panel. It's very important you
10 not discuss this case with anyone or allow anyone to
11 discuss it with you or in your presence, and also
12 please do not listen to or watch or read any news
13 media accounts concerning this matter. Can you
14 promise me that?
15 DARYL ANDERSON: I won't do that.
16 THE COURT: Good. And if for some reason we are unable
17 to reach you, I would ask that you check in with us
18 on Wednesday morning and call the Clerk's Office to
19 check in and make sure we haven't been trying to
20 reach you. Thank you. State may exercise.
21 MR. GILBERT: State has exercised its next peremptory,
22 Heidi Lamb and we renew our motion and objection with
23 respect to the other jurors named.
24 THE COURT: The objection is overruled. State's 16th
25 peremptory has been entered and the Clerk will call

182681

1 STATE OF SOUTH DAKOTA)
2 COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

3
4 STATE OF SOUTH DAKOTA,

5 Plaintiff,

6 v.

JURY TRIAL

7 CHARLES RUSSELL RHINES,

93-81

8 Defendant.

VOLUME II OF

9
10 PROCEEDINGS: The following matters were had before the
11 HONORABLE JOHN K. KONENKAMP, Circuit Judge at
Rapid City, South Dakota, on the 5th day of
January, 1993.

12 APPEARANCES: MR. DENNIS GROFF, MR. JAY MILLER, and.
13 MR. MARK VARGO
14 State's Attorney's Office
Pennington County
Rapid City, South Dakota

15 FOR THE STATE

16 SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

17 JUN 08 1995

18 MR. JOSEPH BUTLER
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Rapid City, South Dakota

and

19 *Alfred Engel*
Clerk

20 MR. WAYNE GILBERT
Attorney at Law
3202 West Main Street
Rapid City, South Dakota

and

21
22 MR. MICHAEL STONEFIELD
Public Defender
23 Pennington County, SD
Pennington County
24 IN THE CIRCUIT COURT
Rapid City, South Dakota

25 MAR 8 1993 FOR THE DEFENDANT

By *[Signature]* Clerk
Deputy

ORIGINAL

1 defense counsel and based upon the statutes, the
2 State would challenge for cause the disqualification
3 because of his current circumstance of being under
4 the felony conviction and currently on probation.

5 THE COURT: Any objection?

6 MR. STONEFIELD: No.

7 THE COURT: Mr. Miessner, we will excuse you on this
8 case.

9 You were previously sworn and you are still under
10 oath. Defense may inquire.

11 (Prospective Juror HARRY KEENEY, having previously been
12 sworn, testified as follows:)

13 EXAMINATION BY MR. GILBERT:

14 Q State your name please?

15 A Harry Keeney.

16 Q Mr. Keeney, I'm Wayne Gilbert and along with me here
17 is Joe Butler and Mike Stonefield. The three of us
18 are the defense attorneys for Charles Rhines. As you
19 look around the courtroom here, both in front of the
20 bar and behind it, do you see anyone you recognize or
21 know?

22 A No, sir.

23 Q Mr. Keeney, we have, both sides have had access to
24 the questionnaire you filled out approximately a
25 month ago and I notice in that questionnaire that you

14

1 have seen some newspaper and television accounts of
2 the events that led up to this case, is that right?
3 A Yes.
4 Q Do you subscribe to the Rapid City Journal?
5 A Yes.
6 Q Do you watch the local news stations, the three
7 television stations for the news medium area?
8 A Yes, sir.
9 Q Can you tell us from what you have read in the
10 newspaper and what you have seen on the news what you
11 have heard about this case before you came to Court?
12 A About the only thing I could say is that the young
13 gentleman that was killed was an extremely nice young
14 man, and outside of that, you know, the place where
15 he was killed at Dig 'Em Donuts and I recall he was
16 tied up and knifed in the back of the head, I believe
17 they said and outside of that I don't know anything
18 else to speak of that I can recall right offhand.
19 Q Do you have any feelings, a philosophy or opinions
20 about the death penalty?
21 A Well, I would say in some cases it's justified, the
22 death penalty in some cases would be justified in
23 some individuals.
24 Q Based on what you have heard about the case at this
25 point, do you feel that the death penalty would be

1 justified if someone were to be convicted of first
2 degree murder because of the facts and circumstances
3 as you heard them to be?

4 A I haven't heard any facts either way on that, so you
5 know, I don't know. I guess I haven't formed an
6 opinion on that to be honest with you because I
7 haven't heard the facts one way or the other. I just
8 don't know.

9 Q I understand that, and I appreciate that answer. I'm
10 wondering, based on what you have heard in terms of
11 you heard news reports that the victim was tied up
12 and stabbed in the back of the head as you said,
13 based upon those facts...

14 MR. GROFF: Objection, because those are not facts.

15 MR. GILBERT: Facts -- I'll rephrase it.

16 MR. GROFF: I want to finish my objection.

17 THE COURT: He said he's going to rephrase rather than
18 getting into that.

19 Q Based upon what you have heard, have you at this
20 point formed any opinion as to whether the death
21 penalty would be appropriate in this case?

22 A I guess not. I haven't heard enough of it to form an
23 opinion one way or the other.

24 Q Would you say that there are certain types of cases
25 in which you favor the death penalty?

1 A Yes.

2 Q Have you had a chance to think about what types of
3 cases those are?

4 A I would say anyone that premeditated a murder,
5 planned it out, I would say definitely would say they
6 should be put to death. As far as accidents or
7 something like that I wouldn't say that, but really
8 premeditated murder would be a cause for me to think
9 of a person that would deserve that penalty.

10 Q Now, let me take a couple of minutes to tell you
11 about the process that's involved in a case like
12 this. Mr. Rhines has been charged with first degree
13 murder and we are now selecting a jury that would sit
14 and decide this case. Now, when a person is charged
15 with first degree murder and when the prosecutor has
16 decided to seek the death penalty, there is a trial
17 at which the guilt or innocence of the Defendant is
18 determined. In other words, if you were selected to
19 sit on the jury you would hear evidence as to whether
20 or not the crime of first degree murder was committed
21 and as to whether or not Charles Rhines was the
22 person who committed the crime. And if you were
23 satisfied as a jury unanimously, beyond a reasonable
24 doubt that Mr. Rhines were guilty of first degree
25 murder then there'd be a second trial. Now, if on

1 the other hand, the jury was not satisfied that the
2 case had been proved beyond a reasonable doubt and
3 returned a verdict of not guilty, then it would be
4 over as far as the sentencing and the jury's
5 involvement and the case would be concerned. Going
6 back to if there is a conviction, if there is a
7 conviction then the same jury would reconvene and
8 hear evidence on what they call aggravating
9 circumstances. The State of South Dakota would be
10 obligated to attempt to prove beyond a reasonable
11 doubt that there are one or more aggravating
12 circumstances. And in this case the Court would
13 instruct you in detail about those aggravating
14 circumstances, and if you as a jury were to find
15 beyond a reasonable doubt that one or more of these
16 aggravating circumstances exist, then you could
17 impose the death penalty. You would not be obligated
18 to, but you could, and that would be the jury's
19 decision. And I should tell you, if the jury's
20 decision is to impose the death penalty, the death
21 penalty would be imposed and there is no chance that
22 there'd be a commutation or somebody would step in at
23 the last minute. You'd have to assume that it would
24 be carried out if the death penalty were not imposed.
25 In South Dakota life imprisonment does not have a

15

1 possibility of parole, did you know that?

2 A I guess I didn't know.

3 Q That is in South Dakota, life imprisonment means just
4 that. Knowing about this procedure and getting back
5 to, you said that in a case of planned out
6 premeditated murder, the death penalty would be
7 appropriate or would be justified. If at the end of
8 the first trial you were satisfied beyond a
9 reasonable doubt that there had been a premeditated
10 murder, would you go into the second phase of the
11 trial leaning toward the death penalty?

12 A I would say I'd have to weigh a lot of circumstances
13 and see what the evidence really was, I mean, you
14 know. It's hard for me to give you a correct answer
15 on that, sir, because I would think there'd be a lot
16 of variations on that and I want to give you an
17 honest answer, so I at this time I'll be honest with
18 you, I couldn't give you a good honest answer because
19 I don't know. It would depend on the evidence and
20 things that was, you know, presented to me at that
21 time. Would I need to go in with an open mind, is
22 that what you are saying?

23 Q Yes, that's what I'm getting at.

24 A Well, I guess I'd have to see what the evidence was.

25 Q When you say that, do you have in mind the process

1 that I described, the two stages?

2 A I think -- it's all new to me. Yeah. Like I say,
3 the differential between the two things isn't real
4 clear, to be honest with you.

5 Q Well, let me put it this way. If at the end of the
6 first trial, if you in your mind, and the jury was
7 unanimous, that Mr. Rhines was guilty of premeditated
8 murder, and if at that point, no further evidence was
9 offered on aggravating circumstances, would you
10 consider the death penalty at that point?

11 A I would think so. I mean, you know, if everything
12 pointed that way and -- I would say I would, yes.

13 Q If you were instructed that you had to find beyond a
14 reasonable doubt that there was an aggravating
15 circumstance over and above any evidence that was
16 presented at stage one of the trial, in other words,
17 more evidence on an aggravating circumstance, if you
18 were instructed that you had to find this aggravating
19 circumstance beyond a reasonable doubt, and no
20 additional evidence....

21 MR. GROFF: Objection. May we approach the bench?

22 (Side bar discussion was had.)

23 THE COURT: I'll sustain the objection to the form of the
24 question.

25 Q If at the close of the first stage of the trial you

1 concluded beyond a reasonable doubt that Mr. Rhines
2 was guilty of premeditated murder, and you were
3 instructed that there was an additional aggravating
4 circumstance that had to be found beyond a reasonable
5 doubt before you could consider the death penalty,
6 and in that event would you consider the death
7 penalty, based solely on the premeditated finding
8 that you had made?

9 A Well, if I was instructed I had to find, been
10 presented with enough evidence to convince me that it
11 was premeditated, I would say that I would have to be
12 convinced that there was, like you say...

13 Q If you were convinced that it was premeditated, would
14 that be alone enough in your mind to justify the
15 death penalty?

16 A Well, if I was instructed at this second trial I had
17 to be convinced that it was premeditated, I guess I
18 don't know how to answer you really.

19 Q I'll try and simplify it a little. Do you think that
20 the fact that you would find a murder was
21 premeditated, that fact in and of itself alone would
22 cause you to consider imposing the death penalty?

23 A If it was well planned out and premeditated I would
24 say, yes. If he said he planned it out and
25 everything else and that was his desire and his aim

1 I'd say, yes, and he carried it out.

2 Q Do you know the aggravating circumstances that we
3 have talked about, I haven't identified them for you
4 as to specifically what they are, but would you be
5 able to follow the Court's instructions in that
6 regard as long as you understand them, in other
7 words, more specifically, if the Court provided you
8 with definitions of the aggravating circumstances and
9 they did not include something like planned out as
10 you have described it, would you still lean toward
11 the death penalty, even if that was not included as
12 an aggravating circumstance in the Court's
13 instructions?

14 A I guess I don't see where you are headed there. I
15 guess, am I correct in saying that you are saying if
16 the instructions were not towards the premeditated
17 side and he hadn't planned it out, would I still aim
18 towards the death penalty and I would say that it
19 would depend on other circumstances and other
20 evidence.

21 Q And the Court's instructions?

22 A Right.

23 Q Have you ever served as a juror before in any other
24 type of case?

25 A No, sir.

1 Q Had you ever heard the concept of presumption of
2 innocence before yesterday?
3 A Well, that was what I thought, everybody in the
4 United States, that everybody is innocent until
5 they're proven guilty.
6 Q So you heard about it before?
7 A Sure.
8 Q As we sit here today, since I have asked you a lot of
9 questions about the death penalty and you know that
10 the State has decided to seek the death penalty, does
11 that make you think that maybe Mr. Rhines is guilty
12 since we are so concerned about the death penalty in
13 this case?
14 A Not necessarily, because I don't have any idea of the
15 circumstances. I mean, I guess I'd have to hear all
16 the evidence and all the circumstances and make up my
17 own mind because I don't know anything about Mr.
18 Rhines or anything involved in the case at all. I
19 don't have any idea what's going on or what happened
20 and I'd have to hear everything and weigh everything
21 out in my own mind and go from there.
22 Q If you had to vote right now without hearing any
23 evidence, if you had to vote right now as to whether
24 Mr. Rhines was guilty or not guilty, how would you
25 vote?

1 A Right now I don't know anything about it. I mean I
2 couldn't vote intelligently right now because I don't
3 know. I want to know more about it.

4 Q Would you expect -- do you understand that the
5 defense does not have to offer any evidence of any
6 kind or nature, that it has no burden of proof or
7 persuasion, that it can rely on and argue that the
8 State has not met its burden of proof, that the
9 defense is not obligated at all to bring any evidence
10 forward?

11 A I didn't realize that, I guess, no.

12 Q Would you expect the defense to bring some evidence
13 forward in a criminal case?

14 A I would expect they'd try to prove the gentleman was
15 innocent and what he was charged with and everything
16 wasn't true.

17 Q If the defense didn't try to prove that, would you
18 take that into account and hold that against the
19 defense?

20 A Well, I think it would be leaving -- I'd be honest
21 with you, I think it would be failing.

22 Q It would be what?

23 A I would think that the lawyers that he had would be
24 doing a poor job, to be real honest with you, you
25 know.

1 Q And if you thought that, would you take that into
2 consideration and in how you viewed the evidence at
3 the close of the case?

4 A That's a hard question. There's too many
5 circumstances involved there to answer a question
6 like that as far as I'm concerned. You know, there
7 could be so many variances in there, I couldn't give
8 you an honest answer on it, you know. I don't know.

9 Q Would you expect Mr. Rhines himself to take the
10 witness stand?

11 A I would say that's up to him and the lawyer as far
12 as -- you know -- I don't know that much about this
13 system to make a decision on that.

14 Q If Mr. Rhines didn't take the witness stand, would
15 you think from that fact in and of itself that he
16 must be trying to hide something important, must be
17 guilty or he would have taken the stand?

18 A I wouldn't say that would be necessary, you know. A
19 person -- lot of people handle pressure in different
20 ways. Some people can handle pressure and some
21 people can't. There could be a lot of variance there
22 too.

23 Q There is going to be some evidence in this case that
24 Mr. Rhines is a homosexual and one or two of the
25 witnesses that may be called are also homosexuals.

1 Do you have any opinions about homosexuals as to
2 whether that's sinful or a wrong lifestyle or course
3 of conduct?

4 A I guess a man or lady has to live their own lives the
5 way they see fit and the way they are directed and
6 the way they live it is entirely up to them and so,
7 you know, I don't see where that would have any
8 variance on this case as far as I'm concerned.

9 Q Were you ever in the military?

10 A Yes.

11 Q What branch?

12 A Air Force.

13 Q How long?

14 A Four years.

15 Q Were you stationed overseas?

16 A No, sir.

17 Q So you didn't see any combat duty or anything like
18 that?

19 A No, sir.

20 Q How do you feel about president-elect Clinton's plan
21 to allow homosexuals into the armed services?

22 A Well, he's the Commander In Chief, you know, and I
23 guess to be real honest with you, I don't know that
24 much about homosexuals one way or the other. I
25 really don't.

17

1 Q So you don't have any strong feelings?

2 A No. Like I say, I don't know what they believe or
3 what they do or how they do it or whatever, I just
4 don't know.

5 Q You have four children?

6 A Yes, sir.

7 Q They live in the Rapid City area?

8 A One daughter does.

9 Q The others have moved to other parts of the country?

10 A Yes, sir.

11 Q You keep in close contact with all four of them?

12 A Yes, sir.

13 Q You get together when you can on holidays and that
14 sort of thing?

15 A Yes, sir.

16 Q In front of you on the witness stand there is a paper
17 that has a list of names of people who might be
18 called as witnesses in this case. Could you take a
19 minute and look that over and see if any of the names
20 are familiar to you. Have you had a chance to look
21 at that?

22 A Yes, sir. No names that I recognize.

23 MR. GILBERT: Thank you. I appreciate your honesty in
24 answering the questions.

25 EXAMINATION BY MR. GROFF:

1 Q Mr. Keeney, I have a few questions before you leave.
2 Mr. Gilbert was asking you questions about evidence
3 and things like that and you understand that in a
4 criminal case the burden is on the State to prove its
5 case beyond a reasonable doubt?
6 A Yes, sir.
7 Q And really the burden is on us to produce all the
8 evidence to convince you of that and the Defendant
9 doesn't have to produce any evidence and he can rely
10 on our inability to prove our case; it's his choice
11 whether or not he wants to testify and if he doesn't
12 testify that can't be used against him and that's his
13 right?
14 A Yes, sir.
15 Q Can you follow instructions on all those areas from
16 the Court, the jury instructions?
17 A Yeah, I can.
18 Q In South Dakota here it is not enough to just have a
19 first degree murder in terms of imposing the death
20 penalty, not even enough to have a premeditated
21 murder we have what are called aggravating
22 circumstances that have to be proven in that second
23 stage. Do you think you can wait and consider all
24 the evidence in the second stage, should you decide
25 Mr. Rhines is guilty of first degree murder; can you

1 wait until the second stage and consider all the
2 evidence then and determine whether or not an
3 aggravating circumstance has been proven beyond a
4 reasonable doubt and whether or not, secondly,
5 whether the death penalty is appropriate? Do you
6 think you can wait and make that decision then?

7 A I would think so, you know.

8 Q Once again, would you follow the Court's instructions
9 and consider all that evidence?

10 A Yes.

11 MR. GROFF: That's all I have today. Thank you. Pass
12 for cause.

13 THE COURT: All right, Mr. Keeney we will be in touch
14 with you. If you don't hear from us by next Tuesday
15 at noon, I would appreciate you calling the Clerk's
16 Office to check on the status of the case and see if
17 you are still on the final jury list. And it's very
18 important now that you are still a prospective juror
19 here that you not talk to anybody about this case or
20 allow anyone to talk to you about it or not read or
21 listen to any media accounts about it. Can you
22 promise that you'll do that?

23 HARRY KEENEY: Yes, sir. I should call in to check if I
24 need to check in on any other jury duty or does this
25 take preference?

1 THE COURT: This takes preference. Just check in next
2 Tuesday. Could I speak with counsel?
3 (Side bar discussion was had.)
4 THE COURT: Mr. Meier, you were previously sworn and you
5 are still under oath now. Defense may inquire.
6 (Prospective Juror JACK MEIER, having previously been
7 sworn, testified as follows:)
8 EXAMINATION BY MR. GILBERT:
9 Q State your name so we have a record.
10 A Jack Meier.
11 Q Mr. Meier, you filled out a questionnaire a month ago
12 and we have had a chance to look at it. You finished
13 high school in Falkton?
14 A Yes.
15 Q When did you move to this area?
16 A September, 1972.
17 Q Just shortly after you finished high school?
18 A Yeah, two years.
19 Q You have lived here ever since?
20 A I lived in Kearney, Nebraska for a while.
21 Q Between '72 and now?
22 A Yeah, for a year.
23 Q When was that?
24 A '80, I think.
25 Q Since you filled out the questionnaire, have you

1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
2 COUNTY OF PENNINGTON) SEVENTH JUDICIAL CIRCUIT
3

4 STATE OF SOUTH DAKOTA,
5 Plaintiff,

6 v. JURY TRIAL

7 CHARLES RUSSELL RHINES, 93-81
8 Defendant. VOLUME IV
9

10 PROCEEDINGS: The following matters were had before the
11 HONORABLE JOHN K. KONENKAMP, Circuit Judge at
Rapid City, South Dakota, on the 7th day of
January, 1993.

12 APPEARANCES: MR. DENNIS GROFF, MR. JAY MILLER, and.
13 MR. MARK VARGO
14 State's Attorney's Office
Pennington County
Rapid City, South Dakota

15 FOR THE STATE

16
17 MR. JOSEPH BUTLER
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20 MR. WAYNE GILBERT
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21 Rapid City, South Dakota and

22 MR. MICHAEL STONEFIELD
Public Defender
23 Pennington County
Rapid City, South Dakota

24 FOR THE DEFENDANT
25

1 A Yes, sir.

2 Q As you sit here?

3 A That's the first thing when they arrest somebody for
4 it you know the first impression I get is that he did
5 it.

6 Q Do you still believe that as you sit here today?

7 A Yes.

8 Q In other words, you think he's guilty, is that right?

9 A Yeah. I'm not very open-minded about it.

10 MR. BUTLER: Challenge for cause.

11 MR. GROFF: No objection.

12 THE COURT: All right. We will excuse you on this case.
13 State will call another prospective juror.
14 Ma'am, you were previously sworn and you do remain
15 under oath now.

16 ~~FRANCES CERSOSIMO: I understand.~~

17 THE COURT: Defense may inquire.

18 MR. BUTLER: Thank you.

19 (Prospective Juror FRANCES CERSOSIMO, having previously
20 been sworn, testified as follows:)

21 EXAMINATION BY MR. BUTLER:

22 Q Let's see if I can pronounce your name.

23 A Cersosimo.

24 Q Your name is Frances Cersosimo?

25 A Yes.

1 Q Miss Cersosimo, I have had the opportunity of
2 reviewing the questionnaire that you returned to the
3 Court and those have been made available to us so we
4 can hopefully maybe shorten these examinations up.
5 A Right.
6 Q I noticed in the last question with respect to
7 whether or not you thought you could serve as a
8 juror, you said that you would rather explain it in
9 person than write it out?
10 A Yes.
11 Q I am going to give you that opportunity, okay?
12 A I felt at the time I needed to think about it. When
13 I was younger I was always fascinated by shows on TV
14 like Perry Mason and I thought the courtroom scenes
15 were very interesting and -- I can't believe how
16 nervous I am.
17 Q Just take your time. I know that these are strange
18 surroundings for you and I understand your
19 nervousness, believe me, there is no reason to be.
20 A Anyway I was intrigued by the law but then I had an
21 opportunity -- not an opportunity, but my
22 brother-in-law was charged with involuntary
23 manslaughter with my husband's death, so at that time
24 I was involved in a courtroom scene for real and it
25 was kind of a hard experience and yet interesting,

1 and at the time I felt sorry for some of the people
2 on the jury because it seemed to be so hard on them
3 and at that time I thought to myself, this is
4 something I hope I never have to do. But I put that
5 to the back of my mind all these years because it
6 didn't seem like it was going to be a reality that I
7 would be called and when I got the summons at first I
8 was really surprised and nervous about it but I have
9 had time to think about it and I think this is
10 something that I can do.

11 Q All right. I have read your entire questionnaire so
12 I think I can tie your explanation together. Let me
13 visit with you about some of the questions I am going
14 to have to ask. I hope you understand that I have
15 got to ask you some questions and some of them might
16 be a little bit probing, but I have got to do it. If
17 you think I'm asking them just to be nosy, that isn't
18 the case. Okay?

19 A I understand.

20 Q I noticed you are a painter?

21 A Yes.

22 Q A house painter?

23 A Yes, and I do wallpapering.

24 Q Have I met you before?

25 A I don't believe so.

1 Q Where were you born?
2 A Rapid City.
3 Q Lived here all your life?
4 A Yes.
5 Q Do you have three children?
6 A Yes.
7 Q And you're divorced?
8 A No, I'm married.
9 Q You have three children that live here?
10 A Yes.
11 Q What do they do?
12 A The oldest is Nancy and she is 23 and she's in her
13 fourth year as a learning disability assistant. I
14 have a 21 year old son on the verge of starting
15 school at Vo-Tech and I have a 15 year old son that
16 goes to Central.
17 Q Would you take a look at the list of names before you
18 Miss Cersosimo and see if you recognize any of those
19 names?
20 A I can't say I personally know any of these people.
21 Couple of the names I recognize as possibly law
22 enforcement officers.
23 Q How do you recognize them as being law enforcement?
24 A Having lived in Rapid all my life and seeing the
25 names.

1 Q No personal acquaintanceship?
2 A No.
3 Q Nothing about any of the names you recognize in this
4 case that you think would impact on your ability to
5 be a fair juror in this case?
6 A No.
7 Q Now, the evidence is going to show in this case that
8 the Defendant, Charles Rhines, is a homosexual and it
9 is going to also show that several of the State
10 witnesses may also be homosexuals. You never knew
11 that before, did you?
12 A No, I didn't.
13 Q When I just mentioned that, did that have any impact
14 on your perception on Mr. Rhines?
15 A None whatsoever.
16 Q Do you know, have you got any acquaintances who are
17 homosexual?
18 A No, not personal friends or anything. My daughter
19 recently got married and it had come out that his
20 cousin is a homosexual. I had known this for a long
21 time, just my own observation of him. And my husband
22 had him in class at North and we both agreed he
23 probably was, and knowing my son-in-law's family
24 background and their thoughts on it, I knew it was
25 going to be hard for him.

1 Q Do you consider that that lifestyle is a sinful or
2 immoral lifestyle?
3 A No.
4 Q To each his own?
5 A Well, I don't think that we understand completely. I
6 have come to think that it's probably a genetic thing
7 that they have no control over and they have a right
8 to a life.
9 Q I want to explain to you a little bit about the
10 procedure here, and it is something different than
11 the procedure experienced before. Mr. Rhines is
12 charged with first degree murder in this case and the
13 State has elected to request the consideration of the
14 death penalty. Are you aware of that?
15 A Yes.
16 Q Before I go any further, what do you know about the
17 case?
18 A I know that a young man that worked at Dig 'Em Donuts
19 was stabbed and as a result of the stabbing he died
20 and there was a lot of publicity as far as he was a
21 very nice young man and loved by his family and a lot
22 of things like that were in the paper and then I
23 recall reading some months later that they had
24 extradited someone and charged him.
25 Q On the basis of the information that you have

1 .acquired through the news media, have you formed any
2 judgments?
3 A None whatsoever.
4 Q Let me go back to where I was. He's been charged
5 with first degree murder and the proceedings are
6 this, if you are selected as a juror in this case you
7 will, there could possibly be two phases involved.
8 The first phase would be the determination of guilt
9 and if you were to determine that Mr. Rhines was
10 guilty of first degree murder, there would be a
11 second phase at which the jury would determine the
12 appropriate sentence; do you follow?
13 A I follow.
14 Q And at that second phase there are two options in
15 South Dakota for first degree murder. One option is
16 life imprisonment without parole, and unlike some
17 other states, in South Dakota that means what it
18 says, you serve the rest of your life in prison, or
19 the second option is the imposition of the death
20 penalty; do you follow?
21 A I follow.
22 Q I'd like to ask your views of the death penalty?
23 A I have always believed in the death penalty.
24 Q Can you elaborate on that for me? Is that in every
25 case, every first degree murder?

1 A No, I think it depends on the case, each individual
2 case and the person being tried, if there is maybe a
3 chance for rehabilitation, but taking a life to me is
4 very serious as well.

5 Q I understand that.

6 A If it's possibly premeditated, that would make it
7 more wrong in my eyes.

8 Q Let's assume he's convicted of premeditated murder,
9 would that mean that you felt the death sentence
10 would be appropriate?

11 A I can't say at this time, because I don't know
12 anything yet, and I can't make a logical assumption.

13 Q Can I ask you this I know the questions I'm asking
14 you are rather open-ended and it's difficult to
15 answer, but take your shot at it, will you? What
16 kind of circumstances would you feel may justify the
17 death penalty?

18 A Well, if someone had plotted against someone and
19 thought it out and it was very cruel and the person
20 suffered a great deal and the person really had no
21 remorse.

22 Q Any other circumstances come to mind?

23 A To me that would be the worst, I think. I would like
24 to say this is new for me and I haven't thought about
25 it, the death penalty seriously other than certain

1 circumstances came up, and I thought well, it's right
2 or I trusted that the jury made the right decision.
3 But I found in my lifetime and in my experiences what
4 you think you are going to do in a given circumstance
5 doesn't always happen. So until you get there, you
6 think you are going to do it.

7 Q I'm sure if you are selected as a juror that will be
8 on your mind all the time. You seem to be a
9 thoughtful person. Do you feel that you could be a
10 fair and impartial juror?

11 A Yes, I do.

12 Q Let's assume that you were to, after hearing all the
13 evidence, that you concluded after the guilt phase,
14 assuming you found the Defendant guilty of
15 premeditated murder but concluded that a life
16 sentence would be appropriate, would you stick by
17 your guns? By that I mean, would you keep your
18 opinion and not give in just because you were in the
19 minority?

20 A Yes, I would. If I think I'm right about it, I'm
21 very stubborn.

22 Q But you'll listen to other persons?

23 A My husband, he's a black and white person, right or
24 wrong. With me a lot of things are in the gray area
25 and I try to hear both sides of every situation, but

1 if I think I'm right, I'll be stubborn.

2 MR. BUTLER: Pass for cause.

3 EXAMINATION BY MR. GROFF:

4 Q Mr. Butler just asked you about the -- kind of the
5 converse is what I am going to ask you about, ma'am,
6 and that is, just the same as if you thought death
7 was appropriate. After hearing all the evidence, do
8 you think you'd just as stubbornly stick to your guns
9 if you thought that was the right decision?

10 A Oh, yes.

11 Q I need to ask you a couple of questions about some of
12 the matters addressed in your questionnaire. We did
13 shuffling around because we got copies and we didn't
14 have that back page of it so we got those and we have
15 read that. The first thing I want to ask you about,
16 every prosecutor is unique and I hope I'm unique in
17 the way I put on a case, and you made comments a
18 little bit about your views of the case and how Judge
19 Konenkamp did that back in 1976. I'm not necessarily
20 the same kind of prosecutor as Judge Konenkamp was
21 and can you put that aside, who I am?

22 A Yes.

23 Q And I hope I'm not too theatrical to offend you, but
24 even if I were, do you think you could decide that
25 case?

1 A Yes. I understand this is a different case, too.
2 Q Judge Konenkamp read to you on Monday quite a long
3 orientation and towards the end reaffirmed something
4 he said before and that is something, you need to
5 decide this case without mere bias or sympathy. Do
6 you understand?
7 A Yes.
8 Q Here's what I'm concerned about. Because of the
9 thing you mentioned in 1976, that trial you sat
10 through, I can imagine the kind of emotions that
11 might have brought out in you, but you understand
12 that's over now?
13 A Yeah.
14 Q Do you feel any sympathy today, based upon that
15 experience, for this Defendant because he's on trial
16 in a murder case?
17 A No.
18 Q When we talk about the death penalty we have already
19 talked a little bit about your feelings and some of
20 the circumstances you were thinking about that might
21 justify the imposition. I want to talk to you about
22 the reality of what is happening here. When you got
23 the questionnaire a few weeks back, did you visualize
24 in your mind that you actually might be here speaking
25 to us about the questionnaire?

1 A I knew I would be.
2 Q You thought you might be coming in?
3 A Oh, yeah.
4 Q Well, the same way today, as you think about it,
5 there is a very real chance that you might be on that
6 jury and you might be selected and what I want to
7 talk to you about is you visualizing into the future
8 like you visualized coming to Court. I'm not trying
9 to get any sort of commitment or promise from you
10 about what your verdict might be. I just want you to
11 assume some things and see if you can visualize
12 yourself doing them. Can you visualize yourself
13 being part of a 12-person jury who after hearing the
14 entire case and after really talking about it,
15 decided that the verdict of death was appropriate and
16 then coming into the courtroom as part of that group
17 and facing the Defendant in this case, Mr. Rhines,
18 and having that to be your verdict, that he's going
19 to be put to death, can you visualize yourself doing
20 that?
21 A Yes.
22 Q I know it's difficult to kind of think about for most
23 people. The second part of that is, I don't know if
24 this happened in the case you saw before, but one of
25 the things that can happen, because it has to be a

5

1 unanimous verdict is that every individual can be
2 polled to determine, is that your individual verdict,
3 and that could happen as well. In other words, Judge
4 Konenkamp could ask you, ma'am, is this your verdict
5 putting the Defendant to death, and you'd have to
6 respond in front of him, if it were your verdict,
7 yes, this is my verdict putting you to death Mr.
8 Rhines. Can you visualize yourself doing that?
9 A Yes.
10 Q Once again, it would depend on the facts and
11 circumstances?
12 A Yeah.
13 Q You don't have any...
14 A I would have to be convinced.
15 Q I want to talk about convincing now for a minute.
16 Before I get to that, are there any friends or
17 relatives out there that you think might kind of get
18 down on your case if you came back with a death
19 verdict in a murder case; some people that are really
20 opposed to the death penalty and would say, how could
21 you ever do that?
22 A I know one lady who says she's very much against the
23 death penalty.
24 Q Would that have any effect on that?
25 A No, she has the right to her opinion.

1 Q Now, the other thing you learned from that other
2 experience you went through and you heard again on
3 Monday from Judge Konenkamp was proof in any case,
4 whether a D.W.I. case or some sort of a theft case,
5 the case you sat and listened to or a murder case,
6 the proof has always got to be beyond a reasonable
7 doubt?

8 A Yes.

9 Q And as we get to this case, which probably is the
10 most serious anyone could ever sit on, the standard
11 of proof doesn't change, it's still proof beyond a
12 reasonable doubt, and not proof to an absolute
13 certainty or perfection. Do you understand?

14 A Yes.

15 Q Just because it's a very serious case and I know you
16 are taking it seriously, do you think you'd make the
17 State prove its case to a burden not required by law,
18 which would be an absolute certainty or would you
19 keep the burden where it's always been to proof
20 beyond a reasonable doubt?

21 A This is a very serious case and I would have to be
22 very convinced that what this man is being charged
23 with that he did do it, except I don't know how far
24 you think I have to take it, in my mind to be
25 convinced -- beyond a reasonable doubt or an

1 absolute, I don't know.

2 Q In layman's terms, do you expect a perfect case from
3 me?

4 A From you?

5 Q I'm going to present the case, do you expect a
6 perfect case?

7 A I don't know what a perfect case is.

8 Q I don't know either.

9 A No, I don't expect it.

10 Q You need to be convinced though?

11 A Yes.

12 Q Would you do your best to follow the Court's
13 instructions?

14 A Yes, I would.

15 MR. GROFF: I'll pass for cause. Thank you.

16 THE COURT: Let me remind you that you are now a
17 prospective juror on the case and you remain such.
18 We will notify you probably within a week or so if
19 you made the final jury panel. It is very important
20 in the meantime that you not discuss the case with
21 anyone or let anyone discuss it with you and also
22 that you not listen to or watch any media accounts
23 concerning this case. Will you promise me you'll not
24 do so?

25 FRANCES CERSOSIMO: Yes.

1 THE COURT: If we are unable to reach you for some
2 reason, if you haven't heard from us by next Tuesday
3 at noon, call the Clerk's Office to check in to make
4 sure we are still staying in touch with youu. Thank
5 you, very much.

6 We will continue jury examination at 1:00 o'clock.
7 (A recess was had from 12:00 o'clock to 1:00 o'clock.)

8 THE COURT: State may exercise. State has exercised its
9 seventh peremptory challenge. The Clerk may bring in
10 another prospective juror. You were previously sworn
11 so you still remain under oath.

12 (Prospective Juror DONITA HALEY, having previously been
13 sworn, testified as follows:)

14 EXAMINATION BY MR. STONEFIELD:

15 Q Good afternoon.

16 A Hi.

17 Q Tell us your name.

18 A Donita Haley.

19 Q You and I are acquainted through your friendship with
20 a couple of people who work in the same office that I
21 do?

22 A Yes.

23 Q This is Mr. Butler and this is Mr. Rhines and Mr.
24 Gilbert and you understand why you are up here today?

25 A Yes.

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STATE OF SOUTH DAKOTA)
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,
Plaintiff,

v.

CHARLES RUSSELL RHINES,
Defendant.

JURY TRIAL
93-81
VOLUME IV

PROCEEDINGS: The following matters were had before the
HONORABLE JOHN K. KONENKAMP, Circuit Judge at
Rapid City, South Dakota, on the 7th day of
January, 1993.

APPEARANCES: MR. DENNIS GROFF, MR. JAY MILLER, and.
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MR. MICHAEL STONEFIELD
Public Defender
Pennington County
Rapid City, South Dakota

FOR THE DEFENDANT

1

1 Q You don't think you could presume the Defendant to be
2 innocent?

3 A No, I don't.

4 MR. GROFF: No objection.

5 THE COURT: Thank you, ma'am. We will excuse you. Clerk
6 may call another prospective juror. Mr. Corrin, you
7 were previously sworn in, so you remain under oath at
8 this time?

9 A Okay.

10 Q Defense may inquire.

11 (Prospective Juror ROBERT CORRIN, having been previously
12 sworn, testified as follows:)

13 EXAMINATION BY MR. BUTLER:

14 Q Your name is Robert Corrin?

15 A Correct.

16 Q Mr. Corrin, I'm Joe Butler and I'm one of the
17 attorneys representing Charles Rhines the Defendant,
18 and associated with me is Mr. Wayne Gilbert and Mr.
19 Mike Stonefield and that's Mr. Dennis Groff. Tell me
20 a little bit about yourself, where were you born?

21 A I was born in San Diego, California. My father was
22 in the Navy and I moved here when I was two and lived
23 here ever since. I'm married and have two kids and
24 work at Chemlawn, lawn service, and I have been
25 working there for three years.

1 Q I noticed you went to the School of Mines?
2 A Yes, two years.
3 Q Were you majoring in any specific area?
4 A Computer Science.
5 Q Are you applying what you learned now or is it a
6 completely different field?
7 A We work on computers, but it's a different field.
8 Q Do you have any brothers or sisters?
9 A One brother he lives here in town.
10 Q Mr. Corrin, would you take a look at that list of
11 names in front of you there and see if you recognize
12 any of those names?
13 A No, I don't.
14 Q Those people are potential witnesses. Have you ever
15 served on a jury before?
16 A No, I haven't.
17 Q Have you ever been involved with law enforcement, I'm
18 not talking about speeding tickets, but ever charged
19 with a crime or you or any member of your family?
20 A No.
21 Q Mr. Corrin, you understand the nature of this case,
22 don't you, that Mr. Rhines is on trial for first
23 degree murder?
24 A Right.
25 Q ~~Mr. Rhines is, as the evidence will show, is a~~

1 homosexual and there might be several witnesses who
2 are also homosexuals. Also, you didn't know that
3 before, did you?
4 A No, I didn't.
5 Q What impact does that have on you and your perception
6 of Mr. Rhines?
7 A Not really any. He has the same rights as everybody
8 else does.
9 Q Even you recognize that it is a different lifestyle
10 then yours, but nevertheless he has his right to live
11 his own life?
12 A Right, and that was his choice.
13 Q Are you a member of any church?
14 A Peace Lutheran Church.
15 Q Are you a regular churchgoer?
16 A Yeah.
17 Q You and your family?
18 A Right.
19 Q Mr. Corrin, this case involves the death penalty or
20 what sometimes is called capital punishment, do you
21 understand that?
22 A Yes.
23 Q When did you first find out that it involved capital
24 punishment?
25 A Not until I got the survey in the mail.

1 Q That's when you figured that out?
2 A Yes.
3 Q How much have you heard about this case?
4 A I haven't really heard anything other than probably
5 the most information I got from it was from the
6 survey and the information in the survey is about all
7 I know about the case.
8 Q Do you remember reading about it in the paper?
9 A If I did read anything in the paper about it, I don't
10 recall anything that I read.
11 Q Do you recall seeing anything or hearing anything on
12 the TV?
13 A No. Since I received the survey I have avoided
14 watching TV when that's on or reading anything in the
15 paper about that.
16 Q After you got the survey?
17 A I did.
18 Q That indicates that you are conscientious.
19 A Yeah.
20 Q That's good.
21 Q That you deliberately avoided trying to find out
22 about anything?
23 A Right.
24 Q This type of proceeding is a little bit different
25 than the ordinary criminal proceeding, because of the

1 possibility of capital punishment. It's really going
2 to involve two phases. The first phase is the
3 determination of guilt, that is, whether or not Mr.
4 Rhines is guilty of first degree murder. Then the
5 jury in the second phase, if it determines that Mr.
6 Rhines is guilty of first degree murder, sits in
7 judgment as to the punishment, and at that point, the
8 second point, there really are two alternatives that
9 the jury has. One alternative is life imprisonment
10 without parole and that means in South Dakota just
11 what it sounds like, that is, he would have to spend
12 the rest of his life in jail without the possibility
13 of parole. And of course, the second alternative is
14 the imposition of the death penalty; do you
15 understand that?

16 A Yes.

17 Q Now, from what I can understand about you, ever since
18 you found that out, I bet you have been doing some
19 thinking, haven't you?

20 A Yeah.

21 Q What are your views of the death penalty at this
22 time?

23 A If the evidence showed that he was guilty beyond a
24 reasonable doubt, I could enforce the death penalty,
25 but the evidence would have to be clear.

1 Q Let's assume that the evidence proves premeditated
2 murder, let's just assume that, would you think then
3 that the death sentence should automatically follow?
4 A Not automatically.
5 Q Can you explain that? I know I'm asking some hard
6 questions, but I hope you understand that we have to
7 ask them and I hope you'll be as candid and
8 explanatory as you can?
9 A Could you repeat the question?
10 Q If you found, let's assume at the end of the first
11 phase that the jury determined that the State had
12 proved premeditated murder, beyond a reasonable
13 doubt, do you got that?
14 A Uhm-uhm.
15 Q Would you feel that the death sentence would
16 automatically come into play?
17 A No, I think the way the murder was committed would
18 have to come into play there, if it was unusual and
19 real cruel in any way, that would have to be taken
20 into consideration.
21 Q Would that in and of itself dictate or mandate the
22 death sentence, in your mind?
23 A It's really hard to say. I'd have to hear all the
24 evidence and really consider exactly what happened to
25 come to a conclusion.

1 Q Off the top of your head can you think of some cases
2 which, in your mind, would undoubtedly mandate the
3 death penalty?
4 A Well, the case here recently with the hanging, the
5 little boy, I felt the death penalty was called for
6 there.
7 Q The one in Washington?
8 A Right.
9 Q I believe there were three involved?
10 A Right.
11 Q Sir, the Defendant stated that if you let me out I'll
12 do it again?
13 A Right.
14 Q That's one illustration. Can you think of any
15 others?
16 A I'm not sure of the case but where there was serial
17 killing where they have killed and killed again, in
18 that case I feel the death penalty would be called
19 for.
20 Q Do you think you'd want to hear about if it reached
21 that phase, here about the Defendant's background and
22 his family and so forth and how he was raised; would
23 you want to know about the Defendant as a person?
24 A Yeah, I would.
25 Q Is this a fair statement that you don't necessarily

1 favor the death penalty in all premeditated murder
2 cases; is that a fair statement?

3 A Yes.

4 Q Let's assume that you are selected as a juror and
5 that you come to the first phase and you make the
6 determination that the Defendant is guilty of murder
7 and at the second phase, after hearing all the
8 evidence in both phases, you come to the conclusion
9 that the appropriate sentence is life imprisonment
10 without parole. Let's assume that, and after all the
11 discussion, you are the only one who believes that
12 and the other 11 believe that it should be death,
13 would you be willing to stick by your guns?

14 A Yes, if I came to that conclusion and that's the way
15 I believed, I would stick to my guns and stay with
16 that decision.

17 Q I know that under the circumstances of this case and
18 the system, is there anything that I haven't asked
19 you about, Mr. Corrin, that you feel might render it
20 difficult or impossible for you to sit as a fair and
21 impartial juror?

22 A No, I think I could do a good job.

23 Q Let's assume, do you have any fear at the present
24 time that whatever your decision might be, even
25 though some of your friends or your wife or somebody

1 else might disagree with it, that you wouldn't be
2 afraid to face up with your decision with everybody?

3 A No, I'm sure I could.

4 Q How old are you?

5 A 30.

6 Q Pass for cause.

7 THE COURT: State may inquire.

8 EXAMINATION BY MR. GROFF:

9 Q I just have a few questions of you today. I don't
10 think we have met and I'm Dennis Groff. I'm your
11 State's Attorney and Mr. Miller, as you were coming
12 in -- did you used to be neighbors on Downing Street?

13 A I lived on Downing, but I don't remember him though.

14 Q It's okay. He's out of the neighborhood now?

15 A That's where my mom and dad live.

16 Q I need to talk to you a little bit today about the
17 death penalty. Mr. Butler explained a little bit
18 about this procedure and how we get to that death
19 penalty stage. Do you understand?

20 A Yes.

21 Q I want to clarify a couple of things. Assuming you
22 find Mr. Rhines guilty of first degree murder, then
23 you'd go to that second phase we would be talking
24 about and as State's Attorney what I'd be attempting
25 to prove to you in the second phase would be one or

1 more aggravating circumstances that make this case a
2 special murder case; do you understand?

3 A Uhm-uhm.

4 Q Those are circumstances that are basically enacted by
5 our legislature; do you understand?

6 A Yes.

7 Q Not all murder cases if there is a conviction,
8 justify imposition of the death penalty; do you
9 understand?

10 A Yes.

11 Q I would be attempting to prove one or more
12 aggravating circumstances that would permit you to
13 impose the death penalty. Do you see what I'm
14 saying?

15 A Right.

16 Q Now, if you got to that point, do you think you could
17 follow the Court's instructions concerning what those
18 other aggravating circumstances might be on
19 imposition of the death penalty?

20 A Yeah.

21 Q Do you think you could follow the Court's
22 instructions even if you didn't necessarily agree
23 those were aggravating circumstances?

24 A I could follow the Court's instructions, yeah.

25 Q And then of course even if you did find an

1 aggravating circumstance or more, if you were still
2 looking at all the evidence and deciding it was
3 appropriate to give a life sentence, you wouldn't
4 have to give the death sentence, do you understand?
5 A Yeah.
6 Q When you got the questionnaire, obviously you stopped
7 listening to anything about the case. Did you have
8 an idea that you might actually be called in?
9 A Well, no, just to fill out the questionnaire and get
10 called in for the case, other than that.
11 Q But you did get called in?
12 A Yeah.
13 Q You have been here for quite sometime, I know.
14 I want to ask you the same sort of question. Now
15 that you have been called in, there is a very real
16 possibility that you might be on this jury, and I'm
17 wondering now that you have thought a little bit
18 about the death penalty, I want to have you see if
19 you can visualize what that might be like. Assuming
20 that you did find Mr. Rhines guilty of first degree
21 murder and you went through the entire sentencing
22 phase process and you were convinced that the death
23 penalty was the appropriate sentence, at some point
24 in time if you were on that jury you'd come back with
25 the other 11 jurors and you'd face the Court and Mr.

1 Rhines and that verdict would be read, that verdict
2 imposing death upon him. Can you visualize yourself
3 being part of such a jury returning that type of
4 verdict?

5 A Yeah.

6 Q One other question along those lines and that is,
7 that jury could be called upon individually, one by
8 one, to announce whether or not they agree with that
9 verdict, whether that is their unanimous verdict. If
10 you were called upon, do you think you could
11 visualize yourself facing the Judge or Mr. Rhines and
12 saying, yes, I have considered all the evidence and
13 that's my verdict, to put you to death? Do you think
14 you could do that?

15 A Yeah, after reviewing the evidence if that's the
16 decision I come to I would stand behind it.

17 Q And no matter what your decision was, would you
18 consider the views of the other jurors as you tried
19 to come to the right decision? I think the Court
20 would instruct you that you are to make up your own
21 individual decision as you vote, but in so doing you
22 are to at least consider the views of the other
23 jurors as you reach the decision, and would you try
24 to do that?

25 A I'd consider their opinions, but once I came to my

1 decision I'd stand behind it.

2 Q Pass for cause.

3 MR. BUTLER: I have one more question.

4 THE COURT: I'll permit you that.

5 Q (By Mr. Butler:) I want you to think about this.

6 Which type of sentence do you consider to be more

7 severe, life imprisonment without parole or the death

8 penalty?

9 A The death penalty.

10 THE COURT: Mr. Groff, any further questions in view of

11 that?

12 MR. GROFF: None.

13 THE COURT: Sir, you remain a prospective juror in this

14 case. If you have not heard from us by next Tuesday

15 at noon, call next Tuesday at noon to check in. You

16 are not to discuss this case with anyone nor allow

17 anyone to discuss it with you or let anyone discuss

18 it in your presence, and as always, you are not to

19 read or watch or listen to any media accounts

20 concerning this case. Can you promise me you'll do

21 that? I know you have done it in the past?

22 ROBERT CORRIN: Yes, I will.

23 THE COURT: Thank you. Defense may exercise.

24 The record will show that the defense has exercised

25 its peremptory number eight and the Clerk will summon

1 in another prospective juror. Miss Tree Top, you
2 have previously been sworn in and you remain under
3 oath now. Defense may inquire.

4 (Prospective Juror VERA TREE TOP, having previously been
5 sworn, testified as follows:)

6 EXAMINATION BY MR. STONEFIELD:

7 Q Good afternoon, ma'am. Your name is Vera Tree Top?

8 A Yes, it is.

9 Q My name is Mike Stonefield and I'm one of the
10 attorneys that's representing Charles Rhines who is
11 the man seated in the middle of the table here and
12 this is Mr. Gilbert and Mr. Butler, the other
13 attorneys involved in this case. I assume that from
14 the orientation the other day that you understand why
15 you're here now?

16 A Yes, I do.

17 Q You understand what the procedure is about and what
18 the charge is in this case?

19 A Yes.

20 Q Let me ask you, first of all, do you have any
21 knowledge of Mr. Rhines, other than what you might
22 have read or heard in the media?

23 A No, I don't.

24 Q Did you know Donnivan Schaeffer or do you have any
25 knowledge of his family?

STATE OF SOUTH DAKOTA)
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,
Plaintiff,

v.

JURY TRIAL

CHARLES RUSSELL RHINES,
Defendant.

93-81

VOLUME III A

PROCEEDINGS: The following matters were had before the
HONORABLE JOHN K. KONENKAMP, Circuit Judge at
Rapid City, South Dakota, on the 6th day of
January, 1993.

APPEARANCES: MR. DENNIS GROFF, MR. JAY MILLER, and.
MR. MARK VARGO
State's Attorney's Office
Pennington County
Rapid City, South Dakota

FOR THE STATE

MR. JOSEPH BUTLER
Attorney at Law
PO Box 2670
Rapid City, South Dakota and

MR. WAYNE GILBERT
Attorney at Law
3202 West Main Street
Rapid City, South Dakota and

MR. MICHAEL STONEFIELD
Public Defender
Pennington County
Rapid City, South Dakota

FOR THE DEFENDANT.

1 objected to earlier, with respect to Karl Bachman.
2 This peremptory challenge just exercised is as to
3 Kelli Hagemann who was an individual that falls into
4 that same class of conscionable persons as Karl
5 Bachman, the persons that have personal or moral
6 reservations about the death penalty and also as well
7 as all the grounds urged at the time that the
8 objection was made with respect to Karl Bachman.
9 THE COURT: I will consider the arguments you made at
10 that time in connection with your objection at this
11 time and your objection is overruled, and the State's
12 exercise of Kelli Hagemann will stand.
13 The Clerk will call another prospective juror. Mr.
14 Walton, thank you for your patience. We previously
15 had you sworn in and you still remain under oath at
16 this time.
17 BOBBY WALTON: Okay.
18 THE COURT: Defense may inquire.
19 (Prospective Juror BOBBY WALTON, having previously been
20 sworn, testified as follows:)
21 EXAMINATION BY MR. BUTLER:
22 Q You are Bobby Charles Walton?
23 A Yes, sir.
24 Q I'm Joe Butler and I'm one of the attorneys for the
25 Defendant, Mr Rhines and associated with me is Mr.

1 Wayne Gilbert, another attorney representing Mr.
2 Rhines and Mike Stonefield, also an attorney
3 associated with representing Mr. Rhines.
4 A Okay.
5 Q Mr. Walton, I have had a chance to read your
6 questionnaire that you returned to the Court; do you
7 remember completing that?
8 A Yes.
9 Q So there are some things I know about you from the
10 questionnaire and it isn't because I had a private
11 eye out checking on you. Now, let me find out a
12 little about you. You live here in Rapid City and
13 you have lived here for about seven years?
14 A Yes. I was stationed here in the Air Force and just
15 got out recently.
16 Q Tell me where you were born and just generally what
17 happened up to the present time?
18 A I was born in Chicago, Illinois, and I'm 41 years
19 old. I moved around a lot with my parents in my
20 early years and so I went to various schools around
21 the City of Chicago. I graduated in 1970 from
22 Farigut High School and attended college for a year
23 and a half in a small farming area 70 or 80 miles
24 northwest of Chicago. After a year and a half
25 attending school, funds -- I didn't have the money to

1 continue school, so my father talked me into joining
2 the Air Force and I stayed in for a few years, basic,
3 minimum of four years and got sent overseas and had a
4 good time and came back to the States and put in a
5 couple more years and it just hit me, well, it hasn't
6 been too bad a tour and I stayed on for another tour
7 and 20 years added up and I was stationed here in
8 September of 1985, and at that time I was still
9 married and just served my country here and did what
10 I had to do and as I was winding down near 20 years I
11 talked it over with the wife; where did she want to
12 retire at; did she want to go back to a place where
13 we had been and she liked the area here and we
14 decided to stay here. So, I started looking at
15 buying a home here and everything and once that got
16 settled and everything she decided she wanted to
17 leave, so I'm still here and she's gone.

18 Q Did you buy the home?

19 A Yeah, I was already in the process of getting it and
20 everything when she decided to leave.

21 Q Now you are going back to school?

22 A Yeah. I'm using my GI Bill right now and trying to
23 get my degree in business. Throughout my career I
24 have been taking college courses, but being in the
25 military you have one focus to do a job there, so

1 it's hard to take a lot of classes at that time. So
2 during the course of the 20 years I did accumulate a
3 lot of hours and that one year and a half I did
4 attend school in Illinois and that helped a lot too.
5 So I'm down to needing 24 more semester hours to get
6 my degree in business.

7 Q What did you do in the service, Mr. Walton?

8 A Did various jobs. Actually, my main job was
9 munitions specialist. We took care of building up
10 bombs and missiles and so forth and I had a tour of
11 duty as an instructor for the military as my career
12 field teaching new recruits.

13 Q What does your dad do, any particular occupation?

14 A Well, when I think back 40 years what I did
15 originally when he first moved to Chicago where he
16 was born he worked as a cook and as a car wash guy
17 and the biggest thing he did for most of my
18 upbringing is he was a construction worker.

19 Q Do you have brothers and sisters?

20 A No, sir.

21 Q You are the only child?

22 A Yes.

23 Q Mr. Walton, I want you to take a look at that list of
24 names on the desk ahead of you. Those people may be
25 witnesses in this trial. Would you read that and

1 tell me if there are any on the list who you know?
2 A There is nobody on this list that I recognize.
3 Q Let me ask you this general question. Is there -- I
4 don't want to go into any more specifics if your
5 answer is yes, but have you or any member of your
6 immediate family ever been involved with the law?
7 A No, sir.
8 Q Mr. Walton, the evidence in this case is going to
9 show that the Defendant, Mr. Rhines, is a homosexual,
10 he's gay. Would that fact in and of itself influence
11 your perception of the case or of Mr. Rhines?
12 A No, sir, it wouldn't.
13 Q Again, I don't want to get any more specific than
14 just this general question. Do you have any
15 acquaintanceship with any people who are homosexual?
16 A No.
17 Q To your knowledge do you know anybody?
18 A No.
19 Q Do you have any feelings towards someone with respect
20 to this right, has a right to pursue their own
21 lifestyle?
22 A Everybody has their own thing and as long as they let
23 me do my thing, I don't care.
24 Q You are not a member of any organized church?
25 A No, sir.

1 Q Do you believe in God?
2 A Yes, I do.
3 Q But you don't belong to any organized religion as
4 such?
5 A No. During my upbringing I went to church regularly
6 as a kid.
7 Q Your mother insisted on that?
8 A My father insisted on it, because his father was
9 actually a pastor, you know, but once I guess I
10 joined the military, I got away from it a bit.
11 Q You are going to school and what are the courses or
12 subjects that you are interested in?
13 A Well, I like science a lot, but because I'm pursuing
14 a business degree, I have been taking like accounting
15 classes and business management classes, so that's my
16 focus right now.
17 Q Do you intend on going further on to school after you
18 get your Bachelor's Degree?
19 A I haven't made that decision as off yet. People talk
20 to me say because I have my GI Bill you might as well
21 continue to use it because you are getting paid,
22 however, you know, I'm not getting as much money as I
23 used to when I was active duty. Once I get that
24 degree I might as well get that job and press on with
25 my life.

1 Q That's an alternative you haven't dealt with yet?
2 A Exactly. One step at a time. Get that first degree
3 and pursue maybe a Masters. I don't know yet.
4 Q Now, Mr. Walton, this trial is a little bit different
5 than most in that usually in most criminal
6 proceedings the Judge fixes the sentence. The jury
7 determines guilt or innocence and the Judge fixes the
8 sentence. In this situation, because the State has
9 elected to ask for the death penalty, we have a
10 little different situation here. This trial will be
11 in two phases. The first phase, called phase one
12 will be the determination of whether or not Mr.
13 Rhines is guilty of murder in the first degree; do
14 you understand?
15 A Yes.
16 Q Then if the jury determines that he is guilty of
17 murder in the first degree, then you get to the
18 second phase and that is the determination of
19 punishment. And with respect to murder in the first
20 degree and in South Dakota there are only two
21 alternatives for sentencing; one, life imprisonment
22 without parole, and that means just what it says,
23 life imprisonment for the rest of your life; can't
24 get out; do you understand that?
25 A I understand.

1 Q It's a little different in South Dakota than some
2 other states. The second alternative is death and
3 that means what that says, so if you are selected as
4 a juror and you have to go, I want you to think about
5 this in the aspect of having to go through both
6 phases, at least at this point while I'm visiting
7 with you. I'd like to ask you about your views on
8 the death penalty?

9 A Well, ever since the first day we were here, the
10 Judge told us to think about that and I have been
11 trying to give that some thought. I take a lot into
12 consideration in how we will see other crimes
13 throughout the nation dealing with the death penalty,
14 you know. I think back to the Bundy trial and the
15 one recently in Washington they just had, and I look
16 at the nature of the crime that the person has
17 committed, you know; was he insane at the time he
18 committed the act; was he of sound mind; did he know
19 what he was doing; what provoked him to take another
20 person's life. I look at so many variables and like
21 I say, I don't know this person, and I don't know
22 what drove him to do that. If I was selected I'd
23 have to hear everything involved. I look at it this
24 way, if a person takes another person's life and he
25 knew what he was doing, okay, then I would say, yes,

1 he deserved to be punished the same.

2 Q Let me just pursue that a little bit. If you were to
3 find that he was guilty of premeditated murder, would
4 you think he should receive the death penalty?

5 A Yeah, I would say so.

6 Q That one would follow the other?

7 A Yeah, if he was of sound mind and he knew what he was
8 doing, I would say yeah, because again, there is a
9 lot of variables and I can't judge the person right
10 now.

11 Q Let me explore this a little bit. I know we will be
12 somewhat general here, but would you say that
13 everyone who is guilty of premeditated murder should
14 be sent to the electric chair or death?

15 A No. We can take a lot into consideration again such
16 as say there was a ten year old boy and he happened
17 to stumble upon his father's gun and he may watch a
18 lot of westerns and gangster movies and he goes out
19 and plays with his friends and he's got this gun and
20 it's loaded, and we will say he actually pulls a
21 trigger and kills a kid, should we go ahead and kill
22 him, put him to death. No. There are so many
23 variables that we have to take into consideration.
24 He did not know what he was doing or what the nature
25 of a loaded gun is or to play with one.

1 Q The situation that you just illustrated there would
2 not be premeditated murder.
3 A Right.
4 Q I am going to deal with a situation where we accept
5 as a fact that the murder was premeditated, do you
6 think then that the death penalty should
7 automatically follow?
8 A I don't know -- no -- yeah. Like I say, you take a
9 person like Dahl or Bundy that committed many
10 murders, they knew and it was senseless on what they
11 did to the number of victims, so if you do it once, I
12 don't know, it's hard to say if you just kill one
13 person, you don't deserve to be killed in return.
14 Q You don't believe an eye for an eye or a tooth for a
15 tooth?
16 A No, I do not.
17 Q If the death sentence could bring back the person who
18 was killed, of course, we would all vote for the
19 death sentence?
20 A Of course, but you know that's not going to happen.
21 Q I'm sure you have done a lot of thinking about it and
22 if you are selected as a juror in this case you'll do
23 a lot more?
24 A Oh sure.
25 Q And you'll give it your best shot?

1 A Definitely.

2 Q Mr. Stonefield called my attention to one other
3 thing. Do you have any knowledge about the case?

4 A Very little. Just recently it's been on TV that they
5 caught the person I believe in Seattle, and that's
6 about it. At the time that it happened I was going
7 through my trauma of divorce, so I wasn't reading the
8 paper or watching TV, I wasn't keeping up with
9 nothing. I don't know too much about this at all.

10 Q Anything you heard you could certainly cast aside and
11 rely solely on what you hear in this courtroom to
12 make your decision?

13 A Definitely. During the nature of my job in the
14 military, we always have what we call two sides to a
15 story and I have dealt with a lot of people during my
16 20 years and I don't always take that first opinion.
17 I always get more input about a decision I would have
18 to make in my job I had.

19 Q Were you an athlete?

20 A I played basketball; weight lifting. I love weight
21 lifting. I just went there last night.

22 MR. BUTLER: I could tell that.

23 THE COURT: State may inquire.

24 EXAMINATION BY MR. GROFF:

25 Q Good afternoon, sir. I'm Dennis Groff and I'm the

1 State's Attorney in this case, sir and I just need to
2 ask you a few questions about the death penalty issue
3 if I may. And I want you to realize that if I am
4 being redundant and repeat some things that Mr.
5 Butler did, I'm sorry. This is the last and only
6 chance I'll have a chance to talk to you about the
7 case. In other words, once you are selected we won't
8 have any time either to discuss these issues anymore.
9 It is my understanding that from talking with Mr.
10 Butler now that you are aware that this trial could
11 have two stages?

12 A Right.

13 Q First stage, guilt or innocence, deciding whether or
14 not he's guilty of first degree murder or not; do you
15 understand that?

16 A Yes.

17 Q Assuming that you would do that, then you'd come back
18 for a second stage of the proceedings where you might
19 hear more evidence and more argument concerning what
20 the penalties should be. Now, as State's Attorney
21 what I would be attempting to prove to you in that
22 second stage is an aggravating circumstance. In
23 other words, under our law, not every first degree
24 murder is one that justifies the death penalty; do
25 you understand?

1 A Sure do.

2 Q Our legislature has set forth approximately ten
3 aggravating circumstances which, if you find at least
4 one you could impose the death penalty, if after
5 consideration of that aggravating circumstance you
6 found, and all the other evidence was in in the case
7 you thought it was appropriate. You wouldn't have to
8 but you could; do you understand?

9 A Right.

10 Q Now, if you were to be on this jury before you could
11 return any such verdict, you would have to be
12 unanimous in your verdict, all 12 would have to
13 agree; do you understand?

14 A Yes.

15 Q Since all 12 would have to agree, of course your
16 individual vote would be very important; do you
17 understand that?

18 A Yes.

19 Q That's the reason I'm talking to you about this now.
20 During the course of your life and work in the
21 military, have you discussed the death penalty on
22 very many occasions with people?

23 A No.

24 Q Prior to Monday, when you said you gave it a lot of
25 thought up to today, had you given it much thought at

1 all?

2 A Yeah, I have. The reason why is because of the
3 recent execution of Dahl or Dower in Washington. I
4 thought about that and in a way it was to me it was
5 sort of sickening to watch the demonstrations outside
6 of the prison that night. Some people cheering for
7 his execution, which is childish, in my opinion.

8 Q And just so I'm clear on this, you would do your best
9 if you got to that second stage of the trial to
10 follow the Court's instructions on what the law is in
11 deciding the case?

12 A Right.

13 Q Likewise, if the Court instructed you concerning
14 these aggravating circumstances that you might
15 consider the ones that would have to be proven beyond
16 a reasonable doubt before you could impose the death
17 penalty, would you follow the law as to what they
18 were, even if you disagreed with them?

19 A Well, being military we had a group of checklists we
20 had to follow to get to the next stage of any job and
21 of course we are to uphold those standards and if
22 that's the law of South Dakota to say, okay, this
23 meets this and this meets that, then the next thing
24 is whatever.

25 Q And I am going to go into this a little more

1 specifically. You were talking about the Bundy case
2 in Florida and Dahmer, and you know in this case the
3 Defendant on trial is Mr. Rhines and I think you
4 learned that Monday and I don't recall but, you have
5 been informed that there was a person allegedly
6 killed and his name was Donnivan Schaeffer?

7 A Right.

8 Q And so we are dealing literally with one person and
9 not a series of victims; do you understand?

10 A Sure do.

11 Q And all I'm asking is, do you think you could
12 consider imposing the death penalty where we are
13 dealing with just a single victim, depending on the
14 circumstances?

15 A Yeah, if the evidence all showed clearly that the guy
16 was, you know...

17 Q I understand. Now, I want to talk to you a few
18 minutes about the realty, the possibility of the
19 situation. Specifically, when you got your
20 questionnaire that you filled out for us that we have
21 been working from, did you think in your mind, I'll
22 bet I'll be going to Court and I possibly will be a
23 juror on this case? Did you think about that?

24 A Yes, I thought about that, you know. I usually have
25 bad luck, you know, sometimes... I said, well, here's

1 something else I have got to do.

2 Q This might be bad luck?

3 A Yeah.

4 Q Well, I'm not sure what you'd think about the luck as
5 being picked as a juror, but that could happen in
6 this case; do you understand that?

7 A Yes.

8 Q If you were picked as a juror, thinking about this
9 courtroom and the Judge and the Defendant where he's
10 seated right now and specifically those empty chairs
11 right over there, do you see them?

12 A Yes, I do.

13 Q That's where the jury will probably sit if we try
14 this case in this courtroom, and I just want you to
15 assume for a minute that you have gone through the
16 proceeding and you got through that first stage and
17 you have gone through the second stage and now you
18 are a member of that jury and you have decided as a
19 group, as a jury, that the appropriate verdict in
20 this case is to put Mr. Rhines to death. Are you
21 with me so far?

22 A Yes, I am.

23 Q As you think about it today, can you visualize
24 yourself coming back with such a jury and facing Mr.
25 Rhines and presenting that verdict to the Judge, a

1 verdict of death; can you visualize yourself doing
2 that, depending on the facts and the evidence?
3 A Right; yeah.
4 Q I have to carry it one step further, sir, because as
5 I said, this will be in effect, even though it's a
6 jury coming back, it will be your individual verdict;
7 do you understand, your decision -- and you may be
8 asked after that verdict is read, whether or not that
9 is your individual decision it's what we call polling
10 the jury. Can you visualize yourself, if you are
11 polled and they call out your name, can you visualize
12 yourself saying, yes, that's my verdict, putting this
13 Defendant to death, depending on the facts and
14 circumstances of the case; can you do that?
15 A Sure can.
16 Q Is there anyone, in terms of friends or family,
17 acquaintances who might give you a hard time if you
18 were to return a death verdict in a murder case?
19 A No one.
20 Q That's not something that would be on your mind?
21 A No.
22 Q The last thing I want to ask you about, Judge
23 Konenkamp in Court the other day was reading some
24 orientation instructions to you, do you remember that
25 took about 15 or 20 minutes?

1 A Yes.

2 Q During that discussion he told you about the concept
3 of reasonable doubt, do you remember that and you
4 have heard of that concept, reasonable doubt?

5 A Oh, yes.

6 Q And that is the standard for proof that the State has
7 to prove its case beyond a reasonable doubt; do you
8 understand?

9 A Uhm-uhm. Sure do.

10 Q Last thing I want to go into with you is this, and
11 that is, just because this is a serious case, do you
12 think you'd make the State prove its case, not to
13 what is required, which is proof beyond a reasonable
14 doubt, but to a much higher standard, which is not
15 required, which is an absolute certainty; would you
16 force the State to do something the law didn't
17 require?

18 A That the law required?

19 Q The law requires proof beyond a reasonable doubt.

20 A Right.

21 Q Which is not proof to an absolute certainty or
22 perfection. If you heard Judge Konenkamp, that's
23 what he told you the other day, which would require
24 the case to be proven to a reasonable doubt or would
25 you require a higher standard of proof a standard to

1 an absolute certainty?
2 A In other words, beyond a reasonable doubt, is what
3 you are saying?
4 Q Yeah.
5 A Yeah, that would clear it up a hundred percent for
6 me, yeah I could do that.
7 Q You could follow the Court's instructions instead of
8 trying to put a higher burden of proof because this
9 is a serious case, is that what you are telling us?
10 A Yeah.
11 MR. GROFF: That's all the questions I have. Thank you.
12 Pass for cause.
13 THE COURT: Mr. Walton, you remain a prospective juror on
14 this case and we will be in touch with you to let you
15 know when it's time for you to come back. If you do
16 not hear from us, for example, if we try to reach you
17 and have been unsuccessful, we would ask that you
18 call us, and if you haven't heard from us next
19 Tuesday to check in with us. Also, it's extremely
20 important that you not discuss this case with anyone
21 or allow anyone else to discuss the case with you nor
22 in your presence, and also it is very, very important
23 that you not listen to or read or watch any media
24 accounts about this case. Can you promise me that
25 you'll not do these things?

1 BOBBY WALTON: Yes, sir. Right now I'm a single person
2 and all I do right now is read for school, study and
3 stuff so I watch very little TV. Now or then I rent
4 a movie for my VCR.

5 THE COURT: Very good. We will be in touch with you.
6 Thank you. Let's take a ten minute recess.

7 (A recess was had from 2:55 to 3:15.)

8 THE COURT: Defense may exercise. Defense has exercised
9 its third peremptory and we will call another
10 prospective juror. Sir, thank you for your patience.
11 You have previously been sworn and you remain under
12 oath right now. Defense may inquire.

13 (Prospective Juror DALE LANDIS, having previously been
14 sworn, testified as follows:)

15 EXAMINATION BY MR. STONEFIELD:

16 Q Good afternoon, sir. Your name is Dale Landis?

17 A Yes.

18 Q Mr. Landis, I'm Mike Stonefield and I'm one of the
19 attorneys representing Mr. Rhines, the Defendant.
20 This is Mr. Butler and Mr. Gilbert and Mr. Rhines is
21 the gentleman seated here, and we are representing.
22 You were here a couple days ago during the
23 orientation process?

24 A Yes.

25 Q You understand what we are doing here today then?

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STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
COUNTY OF PENNINGTON) SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,
Plaintiff,

v.

CHARLES RUSSELL RHINES,
Defendant.

JURY TRIAL
93-81
VOLUME VI

PROCEEDINGS: The following matters were had before the
HONORABLE JOHN K. KONENKAMP, Circuit Judge at
Rapid City, South Dakota, on the 8th and 11th days
of January, 1993.

APPEARANCES: MR. DENNIS GROFF, MR. JAY MILLER, and.
MR. MARK VARGO
State's Attorney's Office
Pennington County
Rapid City, South Dakota

FOR THE STATE

MR. JOSEPH BUTLER
Attorney at Law
PO Box 2670
Rapid City, South Dakota and

MR. WAYNE GILBERT
Attorney at Law
3202 West Main Street
Rapid City, South Dakota and

MR. MICHAEL STONEFIELD
Public Defender
Pennington County
Rapid City, South Dakota

FOR THE DEFENDANT

1 THE COURT: I think we better excuse you on this case,
2 Laura.

3 LAURA LAUGHLIN: Thank you, sir. Nice seeing you again.

4 THE DEFENDANT: Could we have a short break?

5 THE COURT: Let's take a ten minute recess.

6 (At which time a recess was taken from 10:40 to 10:55.)

7 THE COURT: The Clerk will call in the next prospective
8 juror. The next one on your list is Mr. Dial and we
9 agreed to excuse him. He was the fellow that had the
10 job in Colorado and we agreed to excuse so we are
11 skipping over him and going to Miss Anderson. We
12 previously swore you in last week, so you remain
13 under oath now for these questions. Defense may
14 inquire.

15 (Prospective Juror MARTHA ANDERSON, having previously
16 been sworn, testified as follows:)

17 EXAMINATION BY MR. BUTLER:

18 Q I'm Joe Bulter and I'm one of the attorneys
19 representing the Defendant Mr. Rhines who I'm
20 pointing to and with me is Mr. Wayne Gilbert and Mr.
21 Mike Stonefield and that's Mr. Dennis Groff, the
22 State's Attorney. Mrs. Anderson we've had the
23 opportunity to review the questionnaire that you
24 completed and sent back to the Court, so I know a
25 little bit about you, however, I would like for you

1 to give me a brief sketch of your background and
2 where you went to school up to the present time?
3 A I was born in San Antonio, Texas and raised in
4 Arlington, Texas, which is in southern Texas and
5 spent my summers in northwest San Antonio, Texas and
6 I met my husband in Arlington and we were married in
7 East Bend and he has been 30 years in the service.
8 We were never stationed out of the United States and
9 we came here for the first time in 1972, two months
10 after the flood and were here seven years and went
11 back to Fort Worth, Texas and then came back here to
12 retire and he's been flying for B&L Aviation ever
13 since. I have been enjoying life by having chickens
14 and ducks and peacocks and enjoying the Hills.
15 Q What did your husband do in the service? Was he a
16 pilot?
17 A No, he was a navigator. He flew KC-97's. He was in
18 maintenance out here then he was an officer.
19 Q I notice you have three children; boys or girls?
20 A All boys. They all live in this area.
21 Q What do they do?
22 A Oldest is a body repairman and the middle boy works
23 for a plumber here in town and the youngest boy works
24 for a souvenir company and lives in Hill City and has
25 a few head of cattle.

1 Q And you have grandchildren?
2 A Yes, three.
3 Q Now, Mrs. Anderson, there is a list of names in front
4 of you there. Would you take a look at that list and
5 see if there are any names you recognize?
6 A The only one I know slightly is Mr. Remboldt and I
7 haven't seen him in several years. We gave him a
8 cat, other than that I don't see anybody.
9 Q Is there anything about your acquaintanceship with
10 him that would tend, if he were called as a witness,
11 for you to give more credence to his testimony than
12 somebody else?
13 A No, sir, I don't believe so.
14 Q You know why you are here, I'm sure.
15 A Yes, sir. I got a letter in the mail from the Judge.
16 Q You are aware that Mr. Rhines is charged here with
17 first degree murder?
18 A Yes.
19 Q Now, the evidence is going to show Mrs. Anderson that
20 Mr. Rhines is a homosexual. Is there anything about
21 by telling you that fact that impacts on your
22 perception of Mr. Rhines either as to his guilt or
23 innocence or as to him as a person?
24 A No, sir. This is his business not mine.
25 Q Do you feel that that lifestyle, although it's

1 different than yours or mine, that that lifestyle is
2 immoral or sinful?

3 A That's a hard question to answer. I couldn't really
4 say. I don't have an opinion on that, to that
5 particular question.

6 Q Over the years, have you ever had an acquaintanceship
7 with any homosexual to your knowledge?

8 A No, I don't think so. There may have been some being
9 in the military, you make acquaintances with a lot of
10 people from different walks of life, and I have never
11 been that prejudice against anybody as long as it
12 didn't affect me.

13 Q In other words, you have your lifestyle to live and
14 others can live their own?

15 A That's kind of my view.

16 Q Let me tell you about the procedure in this case,
17 which is somewhat different than -- it is different
18 than most cases, because of the fact that this is a
19 first degree murder case in which the State has
20 requested the death penalty. When did you first
21 become aware that the State was asking for the death
22 penalty in this case?

23 A When I got the letter from the Judge. I'm not a
24 reader of the newspaper in particular and I'm not one
25 that picks up on things like that. When my husband

1 went to Vietnam in '72 I more or less quit reading
2 the paper per se, because all it was was bad things
3 in there about that and the protests and I just
4 decided it wasn't worth it. I got the letters from
5 him and that's all that mattered.

6 Q How long did your husband serve in Vietnam?

7 A He got his tour curtailed because of all his TDY
8 time. He was there seven or eight months and he
9 wasn't fighting per se, he was flying. He wasn't on
10 the ground, let's put it that way.

11 Q Not a lot of difference. Now, in this procedure I am
12 going to just give you an overview of the procedure
13 so I can ask you some more questions, okay? The
14 first phase of this trial the jury will be asked to
15 determine the Defendant's guilt or innocence of the
16 first degree murder charge, do you understand?

17 A Right.

18 Q And if the jury determines that the Defendant is
19 guilty of first degree murder, then there is a second
20 phase at which the jury fixes the punishment and
21 that's what makes this case a little bit different
22 than most. In most cases the Judge imposes the
23 sentence, and here the jury in the second phase if
24 the jury finds the Defendant guilty of first degree
25 murder in the first phase, imposes the sentence and

1 at that stage the State will assert that there are
2 certain circumstances which aggravate the first
3 degree murder conviction which would justify the jury
4 in considering the death penalty, do you understand?
5 A Okay.
6 Q Now, let me say this, at the second phase where the
7 jury has the two alternatives, one is life
8 imprisonment without parole and in South Dakota that
9 means just what it says, unlike in some other states,
10 that if the jury returns a verdict of life
11 imprisonment without parole that means the Defendant
12 would spend the rest of his natural life in jail.
13 And, of course, the other option, death means again
14 exactly what it says, that the death sentence would
15 be imposed if that was the judgment of the jury; do
16 you understand?
17 A Yes, sir.
18 Q All right. First of all, let me ask you if you have
19 any views, general views about the death penalty?
20 A Well, I really hadn't thought about it. I have never
21 been called for jury duty and like I say, I'm not a
22 person that can't wait to read the paper and see who
23 is killed, or whatever. I'm just not up on all that.
24 I will honestly say that -- some cases, some TV I
25 watch and I'm sure there must be some people that

1 deserve the death penalty. I'm not sure that that's
2 the right thing to do, but I don't know.

3 Q Is this kind of a fair statement, that you don't have
4 any really fixed views on it? I want you to think
5 about it, if you would.

6 A Yeah, I think there are certain cases that I feel
7 that the death penalty would be appropriate. Do you
8 want to state what?

9 Q Yes, if you would.

10 A Raping a child for one thing, I think is a very
11 severe crime, especially if it's an habitual criminal
12 in that case. To me that would be cause for the
13 death penalty.

14 Q Anything else?

15 A That's really the only thing I really have a view on.
16 You watch TV and there are cases I'm sure.

17 Q Let's assume that the Defendant in this case is
18 convicted of first degree murder, premeditated
19 murder, would that in your judgment automatically
20 tell you that the death penalty is in order?

21 A There again, I hate to make a snap decision. I'm
22 just not one to make a snap decision on that.
23 Possibly, I don't know. I'd have to know all the
24 evidence before I would say right off the top of my
25 head. Sorry. That's my honest opinion. I cannot

1 say right off the top of my head that that would
2 require the death penalty. I don't know.

3 Q It's a tough question.

4 A Never being in this situation before it's hard for
5 me -- I'm not a person to make a snap decision on
6 meeting a person or anything else. I just don't do
7 it.

8 Q As I gather it, you have had no particular thoughts
9 on the death penalty other than I suppose what I'm
10 asking you now. Which do you consider to be more
11 severe, the death penalty or life imprisonment
12 without parole?

13 A Ones almost as bad as the other. From what I
14 understand prisons can be quite a bad place to be if
15 you are there for life. I'm sure losing your life
16 would be worse. I'm not an opinionated person.
17 That's the only reason I can give you for not saying
18 right off on the top of my head whether I can answer
19 that question.

20 Q I understand. You are not the first one that hasn't
21 been able to answer it. I notice that you are a
22 member of the Community Lutheran Church in Hill City?

23 A Yes, sir.

24 Q Are you a regular church goer?

25 A No, just whenever I can. I support the church and

1 I'm not an every Sunday type. There again we live
2 out and I have chores to do and the church is at 9:00
3 o'clock in the morning in the wintertime and it's
4 hard. Summer is better for church going because when
5 you have ice to chop and cattle to feed, and I'm the
6 one that does it, I enjoy doing it...

7 Q Have you ever served on a jury before?

8 A No, I never have been called or served.

9 Q As you sit there today, do you have any opinion as to
10 the guilt or innocence of the Defendant?

11 A No, sir, because I really haven't followed the
12 newspaper or whatever. When I got the letter from
13 the Judge I remember reading in the paper when this
14 first happened and other than that, like I say I
15 really didn't keep up with it. My husband or anyone
16 can tell you the only thing I read is the editorial
17 page and classified ads and see if there is anyone
18 there I know.

19 Q Let's see if this is a fair summary of how you feel.
20 As far as the death penalty or whatever the sentence
21 that might be appropriate in this case, you have a
22 completely open mind?

23 A Yes, sir.

24 Q And just because he might be convicted of first
25 degree murder wouldn't mean to you that automatically

1 the death penalty could be imposed?

2 A No, sir, I don't believe so at this point I do not I
3 don't think. Like I say, the circumstances are such
4 that I have never been in this position, so it's hard
5 for me to say.

6 Q You understand that at the second phase the law is
7 never going to tell you you have got to return the
8 death penalty, that's going to be on your conscience.

9 A Yes, sir.

10 Q Let's assume this, that after -- this is after the
11 death punishment phase, that you have heard all the
12 evidence and you have listened to the views of the
13 other members of the jury and you conclude that life
14 imprisonment is the appropriate penalty.

15 A Okay. This is assuming.

16 Q I'm just assuming. Are you such a person that you
17 would stick by your guns and not give in just to be
18 in the majority?

19 A No, sir, I don't do that. If I make up my mind and
20 sometimes it takes awhile, I usually stick by it.

21 MR. BUTLER: Pass for cause.

22 EXAMINATION BY MR. GROFF:

23 Q Mrs. Anderson, as Mr. Bulter introduced me I'm Dennis
24 Groff and I'll be putting on the case the next couple
25 of weeks. The main thing I'd like to talk to you

1 about today is the death penalty. When you got your
2 questionnaire you filled it out and we have a copy of
3 it, did you visualize in your mind that you might be
4 here answering these kinds of questions?

5 A Well, I didn't know. Like I say, I have never been
6 called and I had no idea what to expect and I felt
7 like the orientation we had was very informative and
8 it did help kind of know what was going on.

9 Q I want to work with a couple of things now, because
10 there is a very good chance you will be a juror on
11 the case. It's a very real possibility. I need to
12 work with some assumptions here and I don't want any
13 commitments from you or anything like that, I just
14 want you to visualize yourself being on the jury if
15 that's possible. It's very possible the jury might
16 be here and if we used this courtroom instead of the
17 other courtroom, I want you to assume that you went
18 through that first phase and you considered the
19 evidence and passed on the evidence and you found the
20 Defendant guilty of first degree murder and then you
21 have gone to the second phase and at the second phase
22 after once considering how you heard how the murder
23 was committed and you determined beyond a reasonable
24 doubt that one of the aggravating circumstances was
25 there to make this a special murder and after

1 considering all of the evidence, just assuming now,
2 you decided that the death penalty was appropriate.
3 A That's just assuming that?
4 Q Just assuming. Can you visualize yourself coming
5 back with 11 other people that compiles of that jury,
6 all unanimous in their verdict and having that
7 verdict read and your jury's verdict is imposing the
8 death sentence on the Defendant, Mr. Rhines, can you
9 visualize yourself being part of that?
10 A Yes, sir, I think so. Like I say, there again it's
11 assuming and I think it's a hard decision to make,
12 but if it came to that I don't see any reason why if
13 everyone agrees, and like I say, I have no idea what
14 happens when the jury doesn't all agree, I'm not up
15 on all that.
16 Q The other thing I want to ask you is this, because
17 you know, like any criminal verdict, we have to have
18 unanimous decisions and it's not just enough to have
19 ten to two or one to 11, and assuming you had that
20 unanimous decision and the verdict was read, the next
21 thing that could happen is that you could be asked
22 whether that was your individual verdict. In other
23 words, you could be polled and I really mean to
24 strike some reality here. If that were to occur and
25 that was your verdict and then you were polled one by

1 one and they came to you, Mrs. Anderson, and said, is
2 this your verdict, could you visualize yourself
3 facing the Defendant and the Court and saying, yes
4 that's my verdict putting Mr. Rhines to death?
5 A Well, I wouldn't lie about it.
6 Q I understand that and I'm not saying you would, but
7 can you visualize yourself in that position sitting
8 in judgment facing another person and saying, yes
9 it's my vote that you be put to death?
10 A I would say so. Once you have made your decision up,
11 that's it.
12 Q Does that trouble you somehow as you think about it
13 now?
14 A Not really. Like I say, this is all assuming and all
15 I can do is try to assume that that is the position
16 I'm in.
17 Q Would it be fair to say that that kind of important
18 decision would depend on the facts of the case and if
19 the facts justified it, could you come to that
20 decision?
21 A Yes, sir.
22 Q Now, when we talk about these aggravating
23 circumstances, those are actually circumstances we
24 have set in our law and the way you'll find out is
25 the Judge will give you instructions on those

1 circumstances. Assuming that's done and you get to
2 that second stage and you are considering whether or
3 not I have proven to you that there were one or more
4 aggravating circumstances in this case, do you think
5 you can look at the circumstances the Court will tell
6 you about and judge those circumstances whether or
7 not you agree with them?

8 A Yes, sir.

9 Q So, in other words, if our law is different than you
10 might expect, can you still follow the law?

11 A Yes, sir. I will definitely try to be a law-abiding
12 citizen.

13 Q While we have been talking, you mentioned earlier
14 this case of someone who maybe rapes and kills a
15 child that comes to mind.

16 A Yes, sir.

17 Q Is that a case where you think using that same
18 situation and being polled, that's a case where you'd
19 be pretty comfortable coming back with?

20 A There again it would depend on the evidence.

21 Q What evidence besides what you already told us about
22 would it depend upon?

23 A Well, I think it would depend on whether the person
24 had done this many times.

25 Q In other words, you gave us that example and do you

1 remember the one if someone who is an habitual
2 offender and...

3 A This person had molested children several times and
4 maybe killed one or two, I think I wouldn't have a
5 problem with that.

6 Q And this is assuming that the evidence was there.

7 A I think evidence is the key word there.

8 Q Are you trying to say you'd need, in that sort of
9 case, some sort of a serial killer?

10 A Well, I wouldn't have thought about it that way.

11 Q That's kind of the way you are explaining it to me.

12 A Yes, sir, I guess. Like I say, there again we are
13 assuming a position that I'm not really in.

14 Q Ignoring serial killers for a minute, here we have
15 one Defendant and one victim, a set of facts that you
16 have to look at and determine whether or not, number
17 one, did the person do it, was it first degree murder
18 and secondly was it aggravating where you could come
19 back and impose the death penalty. Can you think of
20 any circumstances that would justify the death
21 penalty.

22 A I think the evidence -- there again in the case that
23 if the evidence has proved that this person has done
24 this crime, if your law says that you need to impose
25 the death penalty or life imprisonment, it would

1 depend, there again on the evidence and the
2 circumstances.

3 Q What you are telling me is, if you found someone
4 guilty of first degree murder when you got to that
5 second stage at least, your first analysis would be
6 to take a look at the case and see if it is
7 justified, the death penalty, based on the law we
8 had?

9 A Yes, sir.

10 Q What I'm trying to get at here before I stop asking
11 you questions is this, fairly and honestly can you
12 tell me, do you think you have any personal
13 reservations about sitting on a jury that's
14 considering the penalty?

15 A No, sir.

16 Q Do you think you would be -- and I'm not being
17 judgmental about this, but do you think you'd go into
18 that second phase of a trial with your own personal
19 beliefs and somehow have a preconceived notion that
20 you'd have to come back with a life sentence?

21 A No, sir. I don't have any preconceived notion of it
22 either way at this point. Like I say, I've never
23 been in this situation before and I'm trying to be as
24 honest as I can. It's hard for me to visualize what
25 you are saying, but I'm trying to answer it the most

1 honest way I can. I mean, it doesn't matter to me
2 one way or the other whether I'm a juror. It's
3 not -- I don't have any reason why I should not be,
4 if I'm selected, because I have no ties to hold me
5 back or keep me from coming.

6 Q As you sit there now and you think of those two
7 options in the second stage, do you kind of think
8 about it in your mind and say, boy I could think
9 about those two options, but I wouldn't be
10 comfortable giving one of them?

11 A No, sir. If you are selected for a jury, I think you
12 just have to do the duty as a juror. Like I say, the
13 orientation I felt was very informative.

14 MR. GROFF: I'll pass for cause. Thank you, ma'am.

15 THE COURT: All right, Mrs. Anderson, just a reminder, I
16 know you don't read newspapers, but I am going to ask
17 you to continue not to read any articles or listen to
18 any news broadcasts concerning this case. Do not
19 discuss this case with anyone one or allow anyone to
20 discuss it with you. We will call you to let you
21 know if you are on the final jury panel and if there
22 is a possibility we are trying to reach you and we
23 are unable to do so, if you would call the Clerk's
24 Office on Wednesday morning and make sure we haven't
25 been able to, haven't been trying to reach you.

1 MARTHA ANDERSON: Thank you.

2 THE COURT: Thank you. All right, the State may
3 exercise. Record will show that the State has
4 exercised its 15th peremptory challenge and the Clerk
5 will summon in the next prospective juror.

6 MR. GILBERT: I would just renew the motion we made as to
7 jurors ~~Bachman, Hagemann, Chadwick, Hanson, Stebbins,~~
8 and ~~Harvey~~ *Heidi Lamb-1349*
1298

9 THE COURT: The number 15 strike was ~~Agnes McDonald and~~
10 your objections are overruled for the same reasons as
11 stated previously. Last week we placed you under
12 oath and you remain under oath for questioning.

13 (Prospective Juror VIRGINIA ANDERSON, having previously
14 been sworn, testified as follows:)

15 EXAMINATION BY MR. BUTLER:

16 Q Mrs. Anderson, I'm Joe Butler and I'm one of the
17 attorneys for Mr. Charles Rhines, the Defendant, and
18 I'm pointing at him now and with me is Mr. Wayne
19 Gilbert and Mr. Mike Stonefield. That is Dennis
20 Groff who is the State's Attorney. Mrs. Anderson, we
21 have had the benefit of your responses on your
22 questionnaire that was sent out, so we already know a
23 little bit about you, however, I would like to have
24 kind of a brief sketch of your personal background
25 and where you were born up to the present time.

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STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
COUNTY OF PENNINGTON) SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,
Plaintiff,
v. JURY TRIAL
CHARLES RUSSELL RHINES, 93-81
Defendant. VOLUME VII

PROCEEDINGS: The following matters were had before the
HONORABLE JOHN K. KONENKAMP, Circuit Judge at
Rapid City, South Dakota, on the 11th and 12th
days of January, 1993.

APPEARANCES: MR. DENNIS GROFF, MR. JAY MILLER, and.
MR. MARK VARGO
State's Attorney's Office
Pennington County
Rapid City, South Dakota

FOR THE STATE
MR. JOSEPH BUTLER
Attorney at Law
PO Box 2670
Rapid City, South Dakota and

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JUN 08 1995

MR. WAYNE GILBERT
Attorney at Law
3202 West Main Street
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David Engel
Clerk

MR. MICHAEL STONEFIELD
Public Defender
Pennington County
Rapid City, South Dakota

FOR THE DEFENDANT
Pennington County, S.D.
FILED
IN THE CIRCUIT COURT

MAY 05 1993

ORIGINAL

By *Bonnie Fitzgerald*, Clerk 14
Deputy

1 THE COURT: We previously swore you in, so you remain
2 under oath at this time.

3 (Prospective Juror WILMA WOODSON, having previously been
4 sworn, testified as follows:)

5 EXAMINATION BY MR. BUTLER:

6 Q Your name is Wilma Woodson?

7 A Yes, it is.

8 Q My name is Joe Bulter and I'm one of the attorneys
9 representing the Defendant, Mr. Rhines, who I'm
10 pointing to now and with me is Mr. Wayne Gilbert and
11 Mr. Mike Stonefield also representing Mr. Rhines?

12 A Okay.

13 Q And that's Mr. Dennis Groff, the State's Attorney.
14 Mrs. Woodson, we have had the chance of reading the
15 responses that you made on the questionnaire, so I
16 know a little bit about you?

17 A Okay.

18 Q I wanted you to know that so you didn't think I had a
19 private eye out snooping. We have had the benefit of
20 this questionnaire, however, I would like to know a
21 little bit about your background, just kind of give
22 me a brief biography about where you were born?

23 A I was born in Cleveland, Ohio and went to John Adams
24 High School and graduated from there. I have three
25 sisters and one brother. My husband is in the

1 military so we've traveled a lot. From Cleveland to
2 Texas and Montana, Alaska, California and now we
3 reside in South Dakota.
4 Q You have two children?
5 A Yes.
6 Q They're both in school I take it?
7 A Not my daughter, she's five years old.
8 Q You work at the hospital up here at Rapid City
9 Regional?
10 A Yes.
11 Q Were you stationed at Fairbanks, Alaska?
12 A Yes.
13 Q How long were you there?
14 A Three years.
15 Q In the Air Force?
16 A Yes.
17 Q What is his position?
18 A E-7 Master Sergeant.
19 Q He's been in...
20 A 20 years.
21 Q Planning on retiring?
22 A Not yet.
23 Q I'd like to have you take a look at that list of
24 names that is before you and see if you recognize any
25 of those names?

1 A No, I don't.

2 Q You are aware that Mr. Rhines is here charged with
3 first degree murder?

4 A Yes.

5 Q The evidence is going to establish, Mrs. Woodson,
6 that Mr. Rhines is a homosexual. Does that fact in
7 and of itself impact upon how you look at Mr. Rhines?

8 A No.

9 Q Over your life have you ever been acquainted with
10 anyone who is a homosexual?

11 A Not to my knowledge.

12 Q Do you believe that the lifestyle of a homosexual is
13 sinful or immoral?

14 A It's sinful; my religious beliefs.

15 Q What are your religious beliefs?

16 A I'm a Baptist.

17 Q Do you regularly go to church?

18 A No.

19 Q Would your view as to the sinful character to
20 homosexuality impact on your decision, if you are
21 selected as a juror either as in the guilt phase or
22 the punishment phase?

23 A No.

24 Q Let me tell you a little bit about the procedure in
25 the case, because it's a little different than what

1 we go through normally. As I told you, this is a
2 first degree murder case and the State, through the
3 State's Attorney, has requested the death penalty and
4 as a result of that, the trial is divided into two
5 phases, the first phase is the determination of
6 whether or not Mr. Rhines is guilty of first degree
7 murder, and if the jury determines that the State has
8 proven, beyond a reasonable doubt that the Defendant
9 is guilty of first degree murder, you go to stage two
10 and at stage two the State would be claiming and
11 proving, attempting to prove an aggravating
12 circumstance which would make the first degree murder
13 somewhat worse, at least in the eyes of the
14 legislature, do you follow me?

15 A Yes.

16 Q And at that point the jury, if the State has proved
17 that beyond a reasonable doubt in the second phase,
18 the jury would have the sentencing obligation. It's
19 unlike most criminal cases, because if the Defendant
20 is found guilty, in most criminal cases the Court
21 imposes the sentence. But here, because of the
22 request for the death penalty it's the jury.

23 A I understand.

24 Q And I want to also mention this before I proceed with
25 another question. If the jury determines death, that

1 is what happens. The Defendant is put to death. On
2 the other hand, if the jury determines that its life
3 imprisonment, life without parole, that means just
4 what it says, unlike in some other states where after
5 serving a period of time people are paroled, with a
6 life sentence that does not happen in South Dakota.
7 Life imprisonment without parole means what it says,
8 do you understand that?
9 A Yes.
10 Q You are willing to accept that?
11 A Yes.
12 Q I'd like to start out, because of the nature of the
13 problem we are facing, to ask you about your general
14 views concerning the death penalty?
15 A It would depend on the facts and how I felt and the
16 circumstances of the crime. It would depend on that,
17 is that what you are asking?
18 Q Yeah. What kind of circumstances -- first of all,
19 let me ask you, you are not opposed to the death
20 penalty per se?
21 A No.
22 Q Why do you believe in the death penalty?
23 A In some cases I feel it's just.
24 Q Why would it be just?
25 A Condition of the crimes, if the Defendant had no

1 remorse or, why did he or she do this, you know.
2 It's hard for me to give you a yes or a no, if that's
3 what you are asking me.
4 Q I don't mean -- I understand that when you get to
5 discussing the death penalty there is no black and
6 white, at least for many of us, but I guess I'm kind
7 of asking you, would you, under certain
8 circumstances, view the death penalty as being
9 punishment?
10 A Yes.
11 Q Would you look at it in the form of society having
12 its revenge?
13 A No.
14 Q You said you are a churchgoer from time to time?
15 A Yes.
16 Q Have you studied the Bible?
17 A Yes, some.
18 Q Is your view about the appropriateness of the death
19 penalty related to the eye for an eye and tooth for a
20 tooth?
21 A No, I'd say not.
22 Q Basically, as I understand it and in what you have
23 told me, your view of the death penalty is that in
24 certain circumstances you would view it as
25 appropriate punishment?

1 A Yes.

2 Q Which would you consider the more severe sentence,
3 life imprisonment without parole or the death
4 sentence?

5 A I would say life imprisonment without parole.

6 Q That's from your perception, right?

7 A Yes. I have to think about these questions.

8 Q If you had your choice, do you think the life
9 imprisonment without parole is more severe?
10 Believe me, you can change your mind.

11 A Yes. I don't know.

12 Q This is just an example of the difficulty of the
13 question. Let me ask you this, do you think that it
14 is a serious matter to think about imposing the death
15 sentence on another human being?

16 A Yes.

17 Q Certainly nothing that should be taken lightly?

18 A No.

19 Q In your life, if you are selected as a juror, can you
20 think of a more difficult decision that you've ever
21 had?

22 A No.

23 Q Do you know of any reason, Mrs. Woodson, why you
24 wouldn't try to be fair and impartial?

25 A No.

1 Q Follow the Court's instructions?
2 A Yes.
3 Q And do what you felt in your mind was right?
4 A Yes.
5 Q Now, you understand that if you are selected as a
6 juror in this case you are one of 12?
7 A Yes.
8 Q After you are deliberating there will be only 12
9 deliberating, and with respect to the imposition of
10 the death penalty. It will take a unanimous verdict.
11 A Yes.
12 Q Now, you will, in your deliberations, consider the
13 views and arguments of your fellow jurors, I'm sure?
14 A Yes.
15 Q But after you have done all that and you arrive at
16 your opinion as to what you think the appropriate
17 sentence is, will you stick by that, even though you
18 are not in the majority?
19 A Yes, I have to go with the way I feel and it's
20 something I have to live with.
21 Q Because you understand that it takes a unanimous vote
22 of every juror for that death penalty?
23 A Yes.
24 Q So, in effect, each vote is one vote?
25 A Yes.

1 Q And you'd give it your best shot, wouldn't you?

2 A Yes.

3 MR. BUTLER: Pass for cause.

4 THE COURT: State may inquire.

5 EXAMINATION BY MR. GROFF:

6 Q Mrs. Woodson, I'm Dennis Groff and I will be
7 presenting the State's case to you. I'm your State's
8 Attorney. What I need to talk to you about briefly
9 today are some of these same death penalty questions,
10 would that be okay?

11 A Yes.

12 Q And we want to just make sure where you are at on
13 this. Can you tell me, you were telling Mr. Bulter
14 that it would depend on the facts and circumstances
15 of the case and how you were saying, when the death
16 penalty might be appropriate, is that what you were
17 telling us?

18 A Yes.

19 Q I'm a little curious and you are not bound by any of
20 this by any means, but can you think of any facts or
21 circumstances from your life as you have gone through
22 it and read the paper, any facts or circumstances
23 where you thought the death penalty might be
24 appropriate?

25 A Yes.

1 Q What kind of cases come to mind as you think about
2 that?

3 A I would say child killings.

4 Q Why do child killings come to mind?

5 A Defenseless, innocent persons.

6 Q I won't pry anymore, because I want to ask you a
7 little bit about the instructions. You served on a
8 jury before so you know you don't make up your mind
9 until you have heard the Court's instructions?

10 A True.

11 Q In the instructions that you are going to get, if you
12 get to that second phase, the Judge will instruct you
13 about some of the aggravating circumstances that
14 might be applicable to this case, and my job in the
15 second phase is to convince you beyond a reasonable
16 doubt that at least one of those aggravating
17 circumstances exists. If I can't do that, then you
18 don't have to consider the death penalty. If I can
19 do that and you are convinced beyond a reasonable
20 doubt, then you can consider the death penalty and
21 you don't have to impose it, but you can consider it,
22 do you understand?

23 A Yes.

24 Q What I am trying to get to briefly is when you look
25 at those aggravating circumstances that the Court

1 instructs you about, do you think you can follow that
2 law, even if you don't agree with it; do you think
3 you can do that?
4 A Yes.
5 Q Because you know you are bound to follow the
6 instructions?
7 A Yes.
8 Q If I could just take a moment with you and the first
9 thing I need to go into, your recollections of when
10 you got the questionnaire that you filled out.
11 A Yes.
12 Q When you got that and sent it back within the time
13 frame you had to send it back, did you visualize that
14 you might actually be here in the courtroom answering
15 these kind of questions?
16 A No.
17 Q And you are here now.
18 A Yes.
19 Q And we've gotten through part of it and what I want
20 you to do, without holding anything against me, I
21 want you to, through a visualization process and this
22 is the last time either side will have a chance to
23 look at you and decide from your responses whether or
24 not you can be on the jury?
25 A Okay.

1 Q I think this may help. I wanted you to assume for a
2 moment, because there is a real possibility you'll be
3 chosen. Assume for a moment that you are actually on
4 this jury and I want you to think about this
5 courtroom and that jury box and I want you to assume
6 now, and I'm not asking for any guarantees or
7 promises, I just want you to assume for our purposes
8 that you have gone through that first phase and I
9 know you haven't heard any evidence, and assume you
10 went through that first phase and you have decided
11 the guilty verdict was appropriate on first degree
12 murder, just an assumption, and assume you got to the
13 second phase and assume you have heard the evidence
14 and the arguments in the second phase and you have
15 gone back and decided that there is an aggravating
16 circumstance.

17 A Okay.

18 Q And let's assume that you, along with your other
19 jurors decided, just decided the death penalty was
20 appropriate. All I'm trying to get to now is, can
21 you visualize yourself coming back in here with those
22 other 11 people and facing the Judge and the
23 Defendant, Mr. Rhines, and actually being part of
24 that jury who would have their verdict read imposing
25 death on this Defendant? Can you visualize yourself

1 doing that if the facts and circumstances indicated
2 that that was the appropriate thing to do?

3 A Yes.

4 Q Secondly, I don't know if this happened up in Alabama
5 or not, but what happens here in South Dakota is the
6 jury is polled because it has to be their individual
7 verdict and they had to vote for it individually,
8 unanimously, plus they are asked one by one, is this
9 your verdict in this case, putting someone to death.
10 Can you actually visualize yourself, if that were
11 your verdict, saying, yes, that is my verdict putting
12 you to death? Can you visualize yourself going
13 through that, if you were convinced that was the
14 right thing to do?

15 A Yes, if I felt that way, yeah.

16 Q Let's back out of that and none of that has happened,
17 but I want to talk to you a little bit about your
18 friends, do you have any friends or relatives who are
19 adamantly opposed to the death penalty?

20 A Not that I know of.

21 Q Can you think of anyone, if you were to render that
22 type of verdict, who, when you left the courthouse
23 and went home would give you a hard time because you
24 did something like that?

25 A No, I can't think of one, no.

1 Q The last thing I want to ask you about is reasonable
2 doubt. In our law, whether it's a D.W.I. case or a
3 speeding case, right down the line, all the way to a
4 murder case, our standard of proof that we have to
5 prove the case by is always proof by beyond a
6 reasonable doubt. It's always the same standard no
7 matter what it doesn't go up like this. Just because
8 this is a murder case and it might involve the
9 consideration of the death penalty, do you think you
10 would make us prove our case, not to a standard of
11 proof beyond a reasonable doubt, but to an absolute
12 certainty?
13 A Yes.
14 Q You'd want to be pretty certain?
15 A Yes.
16 Q But if the Judge told you that absolute certainty
17 wasn't required of the State, that the State had to
18 prove its case beyond a reasonable doubt, could you
19 follow the Court's instructions?
20 A Yes.
21 Q Can you think of of any reason at all now that you
22 have been here about 25 minutes, why you couldn't be
23 on this jury?
24 A To be honest with you, no.
25 MR. GROFF: That's what I was thinking you'd tell me.

1 Pass for cause.

2 THE COURT: Miss Woodson, you remain a prospective juror
3 on this case and we will let you know this week
4 whether you have made it onto the final jury panel.
5 It is very important now that you not discuss this
6 case with anyone or let anyone discuss it with you
7 and also that you not listen to or watch or read any
8 news media accounts of this case. Can you promise me
9 you'll not do these things?

10 WILMA WOODSON: Yes, your Honor.

11 THE COURT: If you haven't heard from us by tomorrow
12 afternoon, I'd ask that you call the Clerk's Office
13 to check in and make sure that we haven't been trying
14 to reach you. Thank you, very much. State may
15 exercise.

16 MR. GROFF: State has exercised, your Honor.

17 THE COURT: State has exercised its 18th peremptory. The
18 Clerk will summon in another prospective juror. Good
19 morning, sir. We previously swore you in last week
20 so you remain under oath for questioning today.

21 GARY CHASTAIN: All right.

22 THE COURT: Defense may inquire.

23 (Prospective Juror GARY CHASTAIN, having previously been
24 sworn, testified as follows:)

25 EXAMINATION BY MR. STONEFIELD:

18268

1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
2 COUNTY OF PENNINGTON) SEVENTH JUDICIAL CIRCUIT

3
4 STATE OF SOUTH DAKOTA,
5 Plaintiff,

6 v. JURY TRIAL

7 CHARLES RUSSELL RHINES, 93-81

8 Defendant. VOLUME VII

9
10 PROCEEDINGS: The following matters were had before the
11 HONORABLE JOHN K. KONENKAMP, Circuit Judge at
12 Rapid City, South Dakota, on the 11th and 12th
13 days of January, 1993.

14 APPEARANCES: MR. DENNIS GROFF, MR. JAY MILLER, and.
15 MR. MARK VARGO
16 State's Attorney's Office
17 Pennington County
18 Rapid City, South Dakota

19 FOR THE STATE
20 MR. JOSEPH BUTLER
21 Attorney at Law
22 PO Box 2670
23 Rapid City, South Dakota and

24 MR. WAYNE GILBERT
25 Attorney at Law
3202 West Main Street
Rapid City, South Dakota and

26 MR. MICHAEL STONEFIELD
27 Public Defender
28 Pennington County
29 Rapid City, South Dakota

30 FOR THE DEFENDANT
31 Pennington County, S.D.
32 FILED
33 IN THE CIRCUIT COURT

MAY 05 1993

ORIGINAL

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JUN 08 1995

Alvin J. Engel
Clerk

By *[Signature]* Bonnie Fitzgerald, Clerk 114 Deputy

1 the state.

2 Q And you said you didn't start high school?

3 A No.

4 Q Have you had any vocational schooling or other kinds
5 of schooling?

6 A Yes.

7 Q It's kind of a difficult question and I don't want to
8 embarrass you, but you said that you didn't really
9 understand what the Court had instructed you about a
10 week ago yesterday and I don't know how else to
11 phrase it but, do you think you'll have trouble
12 understanding and following along?

13 A I believe I would have, I really do.

14 MR. GILBERT: Your Honor, I'd ask that Mr. Pleinis be
15 excused.

16 MR. GROFF: I have no objection.

17 THE COURT: I think we will excuse you on this case, Mr.
18 Pleinis. Thank you, very much for coming in.

19 Clerk will summon another prospective juror. Good
20 morning, sir. We swore you in last week and so you
21 remain under oath at this time?

22 (Prospective Juror MARK DEAN, having previously been
23 sworn, testified as follows:)

24 EXAMINATION BY JOE BUTLER:

25 Q Your name is Mark Dean.

1 A Right.

2 Q I'm one of the attorneys representing Mr. Rhines and
3 I'm Joe Butler. I'm pointing at Mr. Rhines and next
4 to him is Mr. Wayne Gilbert who is associated with me
5 as well as Mr. Mike Stonefield and Mr. Rhines is
6 right there and that is Dennis Groff, the State's
7 Attorney. Mr. Dean we had a chance to look at the
8 questionnaire you returned to the Court and you were
9 asked to list any other known reason why you do not
10 feel you could serve as a juror in this case; do you
11 remember that?

12 A Uhm-uhm.

13 Q And you stated I have been going through a lot of
14 stress because of my divorce and money problems?

15 A Uhm-uhm.

16 Q Do you feel that that would serve as a reason why you
17 couldn't sit on this case?

18 A I guess not actually.

19 Q I don't like to pry into your personal life, but at
20 least you indicated there might be some impact and I
21 would like to visit with you a little bit about it.
22 Apparently you are in the process of a divorce or has
23 it been completed?

24 A No, it's completed.

25 Q And when was it completed?

1 A It's been several months ago.

2 Q And you indicated that you had some financial

3 problems?

4 A Yeah.

5 Q Are those still there?

6 A Yeah -- I don't know.

7 Q Would serving on this jury aggravate those, make them

8 worse?

9 A Not at this point. Actually I haven't been working

10 for a few days any way because of the weather and the

11 weather is a big factor in my job.

12 Q If you were to serve on a jury here for maybe two or

13 three weeks or even a month, you don't think that

14 would impact on you financially?

15 A Well, yeah, it probably would to a point.

16 Q Would it be something that you couldn't handle?

17 A No.

18 Q Okay. Mr. Dean, just give me a brief sketch about

19 your personal background and where you were born and

20 raised and went to school and so forth?

21 A I was born in Hot Springs and I grew up in South

22 Dakota most of my life and graduated from Hill City

23 High School and I have worked in the area pretty much

24 all my life.

25 Q What kind of work do you do?

1 A I work up on Crazy Horse Monument.
2 Q Before that?
3 A I was in mining most of the time and I had a business
4 for six years and I did taxidermy for six years at
5 one point.
6 Q In Hill City?
7 A Yes.
8 Q Your parents still live around here?
9 A No, my mother lives in Rapid and my father is dead.
10 Q Do you have any brothers?
11 A Yes, one brother and two sisters.
12 Q Do they live around here?
13 A My brother lives in Hill City and both my sisters
14 live here in Rapid City.
15 Q What does your brother do in Hill City?
16 A He runs Dakota Stone Company, it's a company my
17 father started quite a few years ago.
18 Q His name is Jim Dean, right?
19 A Yes.
20 Q He's your older brother?
21 A Yes.
22 Q Have you worked at Dakota Stone at all?
23 A I did up until six years ago.
24 Q Worked with your brother?
25 A Yeah.

1 Q Still get along with your brother?
2 A Yeah.
3 Q Mr. Dean, would you take a look at the list of names
4 in front of you and see if you recognize any of those
5 names?
6 A No.
7 Q Do you know recognize any?
8 A No, I don't.
9 Q You indicated in your questionnaire in answer to a
10 question that you heard about the case on the news or
11 read about it and saw it on TV?
12 A Yeah.
13 Q Do you remember what you heard or what you had seen?
14 A Well, that that gentleman had been killed in that
15 donut shop and I guess I really haven't seen much of
16 it. I don't know.
17 Q Anything stick in your mind?
18 A I don't know -- nothing I guess in particular.
19 Q Have you or any member of your immediate family ever
20 been charged with a crime?
21 A I have at one time.
22 Q When was that?
23 A Ten years ago I got a D.W.I.
24 Q Did you plead guilty or was the case tried?
25 A I pled guilty.

1 Q And with the exception of that, nothing else?

2 A No.

3 Q Now, are you aware that the Defendant Mr. Rhines is

4 here charged with first degree murder?

5 A Uhm-uhm.

6 Q And the evidence is going to show, Mr. Dean, that Mr.

7 Rhines is a homosexual. Does that's have affect how

8 you look at Mr. Rhines?

9 A I guess not.

10 Q You said you guess not?

11 A Well, no.

12 Q Have you ever known any homosexuals?

13 A Yeah.

14 Q Were they friends?

15 A Yeah.

16 Q And even though they have a different lifestyle than

17 yourself, you still regard them as your friends?

18 A Yeah.

19 Q Now, Mr. Dean, let me try and explain to you and if

20 you have any questions understanding what I'm saying,

21 don't be embarrassed about asking me to explain them

22 further. This case is a little bit different than

23 most crimes. This case is divided into two phases

24 because the State has requested the death penalty, do

25 you understand?

1 A Yeah.

2 Q The first phase consists of a trial determining
3 whether or not Mr. Rhines is guilty of first degree
4 murder. If the jury determines that the State has
5 proven beyond a reasonable doubt that Mr. Rhines is
6 guilty of first degree murder, then there is a second
7 phase and at the second phase the issue before the
8 jury is whether or not or what the proper or
9 appropriate sentence is and there are only two
10 options at the sentencing phase. If you find him
11 guilty of first degree murder, the two options are
12 life imprisonment without parole or death. You
13 should understand that the death penalty at the
14 sentencing phase is only to be considered as an
15 alternative, if the State proves what we call an
16 aggravating circumstances. That's kind of a thumb
17 nail sketch of whether you can consider the death
18 penalty and what happens at the second phase. I
19 should also emphasize that at no time is the jury
20 required by the Court to impose the death penalty,
21 that's strictly up to the jury, do you understand?

22 A Uhm-uhm.

23 Q Now, before I ask you another question you should
24 understand that in South Dakota life without parole
25 means what it says. If the jury were to impose that

1 sentence, that's exactly what would happen to Mr.
2 Rhines, he would spend the rest of his life behind
3 bars. On the other hand, if the jury imposes the
4 death sentence, that too is what happens. He's put
5 to death.

6 A Uhm-uhm.

7 Q Let me ask you, do you have any particular views
8 about the appropriateness of the death penalty?

9 A I guess it depends on the situation as far as I'm
10 concerned.

11 Q Can you elaborate on that?

12 A Depending on the seriousness of the crime and stuff.

13 Q You have got to understand that you could not reach,
14 consider the death penalty until you had first found
15 that he was guilty of first degree murder and then
16 made an additional finding of the existence of an
17 aggravating circumstance, do you understand that?

18 A Uhm-uhm.

19 Q It's only after that two-step process can you even
20 consider the application of the death penalty.

21 A Right.

22 Q Do you have some circumstances in your mind which
23 would make the death sentence appropriate as far as
24 you are concerned?

25 A I guess to a point I guess, yeah.

1 Q Can you tell me what point?

2 A Well, I don't know. I guess I have seen some
3 situations where I guess I thought it was
4 appropriate, just things that I have seen on
5 television and stuff.

6 Q What kind of situations have you seen?

7 A Well, for one thing to me when there is children
8 involved, when someone does something to children and
9 it's proven they did it, you know, to me that
10 warrants it, I guess.

11 Q What other circumstance, aside from children?

12 A I don't know.

13 Q Let's assume, take the circumstances that you
14 describe that there were children involved, why would
15 you think the death penalty is appropriate in that
16 circumstance as opposed to life imprisonment without
17 parole?

18 A I don't know. I don't know if it is appropriate. I
19 don't know, really. I don't really know what would
20 be, I guess, for sure.

21 Q Would you feel life imprisonment without parole is a
22 very severe sentence in itself?

23 A Yeah.

24 Q Have you ever thought about which, in your mind,
25 would be worse?

1 A Yeah, I guess so.

2 Q Which do you think would be the worse?

3 A I suppose I'd rather be alive than dead.

4 Q So you would think that the death sentence would be
5 more severe?

6 A Yeah..

7 Q As you sit there right now Mr. Dean, have you any
8 thoughts about whether or not the Defendant is
9 guilty?

10 A I don't know. I guess not. I don't know enough
11 about it.

12 Q Well, you understand that you have the presumption of
13 innocence and that the State has to prove the
14 Defendant guilty?

15 A Uhm-uhm.

16 Q So, is it fair to say that you really don't have any
17 feeling about the Defendant being guilty at this
18 point in time on the basis of what you might have
19 read or heard?

20 A I couldn't say -- I don't know.

21 Q Have you reached any conclusion at this point with
22 the sketchy information that you have as to whether
23 or not life imprisonment should be the sentence or
24 death?

25 A I don't know what would be right.

1 Q Would you give the matter a lot of thought before you
2 ever imposed the death sentence?
3 A Yeah.
4 Q Is your child living with you or your wife at the
5 present time?
6 A My wife. We have joint custody.
7 Q She lives in Hill City as well?
8 A They live in Rapid.
9 Q Does she work?
10 A Yes, for the Department of Revenue.
11 MR. GILBERT: Pass for cause.
12 THE COURT: State may inquire.
13 EXAMINATION BY MR. GROFF:
14 Q Mr. Dean, first thing I need to ask you, is there
15 anything about that experience ten years ago that
16 would cause you to think you couldn't be fair to the
17 State?
18 A No.
19 Q In terms of the way you were treated by the
20 prosecution or the Court?
21 A No.
22 Q I want to ask you a little bit about mainly the death
23 penalty today. Did you understand that we have got
24 these two separate phases we might be going through?
25 A Yeah.

1 Q The first phase, of course, if you found Mr. Rhines
2 not guilty, you'd never get to the second phase and
3 it would be all over. Assuming you found him guilty
4 then you'd move on to that second phase and as Mr.
5 Bulter told you, what I'd be trying to prove to you
6 in the second phase is that there was at least one
7 aggravating circumstance that made this case special.
8 In other words, it's not enough to find somebody
9 guilty of murder or premeditated murder, there has to
10 be something aggravating or special about it.

11 A Uhm-uhm.

12 Q Those are circumstances that our legislature has
13 drafted for us and the Court will instruct you what
14 might be relevant to this case and if the Court
15 instructs you what aggravating circumstances you
16 could consider or what would need to be proven before
17 you'd consider the death penalty, do you think you
18 could follow those circumstances, even if you
19 disagreed with them?

20 A I think I could as far as I know.

21 Q In other words, the law tells us what they are and
22 the Judge is going to tell you what the law is and
23 I'm asking you whether or not you think you can
24 follow the law?

25 A Yeah, as far as I know.

1 Q You understand, before you could ever consider
2 imposing the death penalty, I'd have to prove one of
3 those aggravating circumstances beyond a reasonable
4 doubt?
5 A Uhm-uhm.
6 Q Mr. Bulter was asking you about circumstances and you
7 mentioned children was something you thought came to
8 mind as a circumstance that might be appropriate for
9 the death penalty?
10 A Uhm-uhm.
11 Q Why is it that you feel that way with children? I
12 know some of these questions are being asked twice,
13 but this is the only time we have to talk to you.
14 A Well, I guess children are pretty helpless, what
15 happens to them in most circumstances, I don't know.
16 Q Can you think of, if you don't mind, I think it would
17 be helpful to us and if you can't think of any
18 others, that's all right. This isn't a test, but can
19 you think of any other situations at all that you
20 thought about personally or you seen on TV where you
21 thought the death penalty might be appropriate?
22 A One that comes to mind to me is just recently, I
23 can't remember who it was where they hung the
24 gentleman and he admitted to killing those kids and
25 said he would do it again if he got out, and to me

1 that was appropriate.

2 Q In that case was it a concern to you that he killed

3 the kids or a concern that he kind of chose that form

4 of punishment in terms of choosing hanging over some

5 other form of execution?

6 A Doesn't matter to me how they did it, just the fact

7 that -- I don't know, he pretty much said he would do

8 it again and what he did do was pretty bad, I

9 thought, and in that situation I could agree with

10 that. I don't know.

11 Q Are you telling me that as you analyze these kind of

12 cases, one of the things you look at is the how and

13 the why, how it happened and why it happened, is that

14 what you are saying?

15 A Yeah, I guess so.

16 Q I need to ask you some questions a little bit about

17 actually being on the jury, if that would be okay.

18 Do you remember when you got your questionnaire?

19 A Yes.

20 Q When you got your questionnaire and you filled it

21 out, did you ever think, I'm actually going to be

22 there in Court answering these questions?

23 A I thought it was possible, yeah.

24 Q Well, you are here and we are going through it and I

25 need to take you one step further, if I might, and

1 there is a very real possibility now that you are
2 going to be on the jury and if I may, what I am going
3 to try to attempt to do is, take you there to see
4 what it might be like on the jury. As I do that, I'm
5 not trying to get any commitments or promises from
6 you, I just want you to visualize yourself doing some
7 things on the jury?

8 A Okay.

9 Q If you are picked for this jury, and of course, you
10 would deliberate on the first part of the case and I
11 want you to assume that you did so and that you found
12 Mr. Rhines guilty, okay, just an assumption, and I
13 want you to assume that after you had done so you
14 went back and you considered the additional evidence,
15 if any, and you decided whether or not there was an
16 aggravating circumstance. Assume you found one and
17 let's assume then that you, along with your other
18 jurors decided the death penalty was appropriate,
19 just an assumption, you are not committed to that,
20 and also assuming all that, Mr. Dean, if you look
21 over in those chairs over there, if you reach that
22 verdict, sentencing verdict, then at some point in
23 time you would be called into the courtroom after you
24 told the Judge you had a verdict and in front of the
25 Judge and in front of the Defendant, Mr. Rhines, that

1 verdict, that unanimous verdict would be read, a
2 verdict putting Mr. Rhines to death. What I'm trying
3 to find out from you, Mr. Dean is, assuming the facts
4 were there and assuming you were convinced that that
5 was the right thing to do, can you visualize yourself
6 being part of a jury imposing the death penalty upon
7 someone, in this case, Mr. Rhines?

8 A I guess whatever the circumstances ended up being, I
9 don't know, I would do what I felt was right that's
10 all I can say really.

11 Q If I can just take it one step further for you. Same
12 thing, after the jury would return its verdict, as
13 you may know, maybe not, in criminal cases everybody
14 has to agree, in other words, an individual's vote
15 has to count and you couldn't have that individual
16 vote. One of the things that happens after a verdict
17 is returned is that the jury may be polled, that is
18 asked, each one individually, whether or not that is
19 their verdict. In other words, during that polling
20 process your name could be called out and they'd ask,
21 Mr. Dean, whether or not that was your verdict and
22 you'd have to respond before the Court and the
23 Defendant whether or not, yes, that is my verdict
24 imposing death upon someone right in front of you and
25 in that case, Mr. Rhines. Can you visualize yourself

1 being able to do that, if that was your verdict?
2 A If that ended up being a verdict, yes, I guess so.
3 Q Are you uncomfortable at all as you think about it?
4 A A little bit, yeah.
5 Q And can you tell me a little more about it. Is it
6 because us don't sit in judgment on someone else?
7 A It's pretty serious issue to me.
8 Q When you say it is a pretty serious issue to you, I
9 know it's important, but what is the thing that
10 really strikes you about it that makes it so sorry
11 serious?
12 A Well, you are basically making a decision about
13 somebody else's future in life.
14 Q Yeah, whether they're going to live.
15 A Right.
16 Q What I'm trying to determine is whether or not you
17 think you can make that kind of life or death
18 decision?
19 A As far as I know I think I could.
20 Q Do you have some reservations about it?
21 A I don't know. It's just pretty serious to me. It's
22 nothing I would take real lightly.
23 Q Do you think, Mr. Dean, that assuming you found the
24 Defendant guilty of first degree murder and you went
25 to that second stage, do you think as you went into

1 that second stage you'd sort of have a predisposition
2 towards one penalty or the other; do you see what I'm
3 getting at?

4 A Yeah. I don't know. A lot of it depends on a lot of
5 circumstances I guess.

6 Q Have you heard -- strike that. Do you have any
7 friends out there who are opposed to the death
8 penalty?

9 A I don't know. I guess it's not something really that
10 I can remember seriously talking about lately.

11 Q What I'm trying to get at is, let's assume that the
12 death penalty was the verdict of the jury, that you
13 were on and people knew you were on the jury and the
14 case was over and you rendered your verdict and you
15 went back out to your job in the community, can you
16 think of anybody out there that would give you a hard
17 time for coming back with the death penalty in this
18 case?

19 A No, not that I know of.

20 Q Did you understand from Judge Konenkamp the other day
21 what the burden of proof is in a criminal case?

22 A Yes.

23 Q What did you think that was from listening to Judge
24 Konenkamp?

25 A Well, beyond a reasonable doubt, it's got to be.

1 something that pushes it one way or the other, I
2 guess.

3 Q When we deal with the burden of proof, beyond a
4 reasonable doubt, the Judge will instruct you at the
5 end of the case what that means and you'll be able to
6 read the instructions and deliberate. You know
7 that's the same standards we have in a speeding
8 ticket case or a D.W.I. case or a theft case, right
9 down the line, it never changes, it's always proof
10 beyond a reasonable doubt. In other words, it
11 doesn't go up just because the charge is more
12 serious, it's always proof beyond a reasonable doubt.
13 Do you think that you would keep that burden where it
14 is, that proof beyond a reasonable doubt or just
15 because this is a pretty serious case involving
16 possible capital punishment that you'd raise it to an
17 absolute certainty, which has never been required by
18 our law?

19 A I guess I would just try to follow the way it's
20 supposed to go the way we will be instructed to do
21 it.

22 Q Same thing will come up in the second stage when you
23 consider the aggravating circumstances, if any. Once
24 again they'll have to be proven beyond a reasonable
25 doubt, but not to an absolute certainty, are you with

1 me?
2 A Yeah.
3 Q I'm wondering if you will keep the State's burden at
4 proof beyond a reasonable doubt and not raise to an
5 absolute certainty just because this is a murder
6 case? Do you think you can do that?
7 A I think I can.
8 Q What kind of work are you doing now, Mr. Dean?
9 A I do demolition work.
10 Q Who do you generally work for?
11 A Paul Mual.
12 Q Do you work with other people on the job there?
13 A Yeah.
14 Q How many people are on your crew?
15 A Full time there are six of us.
16 Q Generally, does you are crew work together most of
17 the time?
18 A Well, we sort of have our separate jobs we do, but we
19 work together, but yet they have, we have our certain
20 jobs and we basically do ours, I guess .
21 Q Are most of these people in the Hill City area or
22 where do they live at?
23 A Custer most of them.
24 Q How much older is your brother than you?
25 A Year and a half.

1 Q You went to high school together in Hill City?
2 A Uhm-uhm.
3 Q On the questionnaire and during Mr. Butler's
4 questioning you mentioned a little bit about the
5 divorce situation. Did you have a lot of anger about
6 that divorce?
7 A Yeah.
8 Q Would you consider yourself to be a very emotional
9 person?
10 A Not generally. That was a pretty rough time for me.
11 Q If I stayed general about it, could we talk about it
12 a little bit?
13 A Yeah.
14 Q Did it come as a surprise to you when it happened?
15 A Uhm-uhm.
16 Q And I take it you were very close to your daughter?
17 A Yeah.
18 Q You were very close to your child?
19 A Yeah.
20 Q Has it made it difficult in terms of visitation, made
21 it difficult to see your child since the divorce?
22 A No, that's something we never had any trouble with.
23 Q Would it be fair to say that at least in your mind
24 that it was a marriage that you hoped was going to
25 work?

1 A Yeah.

2 Q Even after these many months, are you completely over
3 it?

4 A Not completely.

5 Q There is still a lot of pain involved?

6 A Yeah, a little.

7 MR. GROFF: Thank you for bearing with me. Pass for
8 cause.

9 THE COURT: Mr. Dean you remain a prospective juror on
10 this case and it's very important that you not
11 discuss this case with anyone or let anyone talk to
12 you about it and also that you not read or listen to
13 or view any media accounts concerning this case. Do
14 you promise me you'll not do these things?

15 MARK DEAN: Yeah, I do.

16 THE COURT: We will contact you when we are ready to have
17 you come back in, but in the unlikely event that we
18 are unable to reach you, I'd ask that you call us
19 tomorrow afternoon and check in with us to make sure
20 that we haven't been trying to reach you. Defense
21 may exercise. The record will show that the defense
22 has exercised its 17th peremptory challenge and the
23 Clerk will call in the next prospective juror. Good
24 morning, Miss Woodson?

25 WILMA WOODSON: Good morning, Judge.

1 STATE OF SOUTH DAKOTA)
2 COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

3
4 STATE OF SOUTH DAKOTA,

5 Plaintiff,

6 v.

JURY TRIAL

7 CHARLES RUSSELL RHINES,

93-81

8 Defendant.

VOLUME VIII

9
10 PROCEEDINGS: The following matters were had before the
11 HONORABLE JOHN K. KONENKAMP, Circuit Judge at
12 Rapid City, South Dakota, on the 12th and 13th
days of January, 1993.

13 APPEARANCES; MR. DENNIS GROFF, MR. JAY MILLER, and
14 MR. MARK VARGO
15 State's Attorney's Office
16 Pennington County
17 Rapid City, South Dakota

18 FOR THE STATE

19 MR. JOSEPH BUTLER
20 Attorney at Law
21 PO Box 2670
22 Rapid City, South Dakota and

23 MR. WAYNE GILBERT
24 Attorney at Law
3202 West Main Street
Rapid City, South Dakota and

MR. MICHAEL STONEFIELD
Public Defender
Pennington County
Rapid City, South Dakota

FOR THE DEFENDANT

1 THE COURT: Good afternoon, sir. You timed it just
2 right. We appreciate your patience in waiting all
3 afternoon for us
4 We previously swore you in, so you remain under oath
5 now. The defense may inquire.

6 (Prospective Juror WILLIAM BROWN, having previously been
7 sworn, testified as follows.)

8 EXAMINATION BY MR. STONEFIELD:

9 Q You are William Brown?

10 A Yes.

11 Q I'm Mike Stonefield and I'm one of the attorneys
12 representing Charlie Rhines who's the man seated
13 right here in front of me and this is Joe Bulter
14 another attorney and Wayne Gilbert another attorney
15 on his case. You sat through the orientation process
16 last week and you understand generally what it is we
17 are here for today?

18 A Uhm-uhm.

19 Q You understand that Mr. Rhines is charged with murder
20 in first degree murder?

21 A Yes.

22 Q I'd like to ask you, first of all, and we will be
23 having a number of questions for you, but first of
24 all, if you could tell us what, if anything, you know
25 about this case?

1 A Only thing I know is what I heard on the television.
2 Q I'll ask you to be specific about what you heard on
3 the television as best as you can remember?
4 A That the boy was killed and that he worked in a donut
5 shop, I think and that's about it.
6 Q Anything more than that?
7 A At that time it took them awhile to arrest somebody.
8 Q Have you heard or read anything about the case
9 recently?
10 A Just what is on television, that they're selecting a
11 jury and I knew that from being here.
12 Q Would you say that over the months, over the past few
13 months that your knowledge about this case has come
14 from discussing it with other people or hearing about
15 it on television or reading about it in the newspaper
16 or has it been from all those things?
17 A Just basically television.
18 Q Do you recall ever reading anything in the newspaper
19 about it at all?
20 A I don't get the paper.
21 Q Do you read it at all regularly or at all?
22 A No.
23 Q Have you ever heard anybody express an opinion about
24 Mr. Rhines?
25 A No.

1 Q Have you ever heard anybody express an opinion about
2 Mr. Rhines as to whether he's guilty or not guilty of
3 these charges?
4 A No.
5 Q Have you yourself ever formed any kind of an opinion
6 about that?
7 A No.
8 Q One of the things that was discussed the other day
9 during the orientation process and this is something
10 maybe you are familiar with, was the legal concept of
11 the presumption of innocence; do you remember hearing
12 about that?
13 A Uhm-uhm.
14 Q Do you feel that you understand what that means?
15 A Yes, I think so.
16 Q Any person charged with a crime is presumed to be
17 innocent and that presumption follows him throughout
18 the entire case unless it's overcome by evidence
19 beyond a reasonable doubt?
20 A Yes.
21 Q And do you believe you understand that?
22 A Yeah.
23 Q And you feel that that's a good presumption to have?
24 A Yes.
25 Q As you sit there right now, do you have any problem

1 applying that presumption of innocence to Charles
2 Rhines?
3 A No.
4 Q None whatsoever? Okay. You understand why we have
5 to ask about this?
6 A Oh, yeah.
7 Q I don't mean to seem like I'm prying or anything, I
8 just want to be as clear on a number of things as I
9 can and you understand why we are doing this?
10 A Uhm-uhm.
11 Q You have never served on a jury before?
12 A No.
13 Q You did mention one thing, Mr. Brown, you had a
14 custody case apparently parental custody of your
15 daughter a few years ago?
16 A I have custody of my daughter and we've been in Court
17 ten times and it's been up to the Supreme Court and
18 there is another hearing coming up. It's been in
19 Court since 1986 and it's still in Court.
20 Q And it's still unresolved?
21 A It's been resolved several times.
22 Q But it keeps being opened up again?
23 A Right.
24 Q You have custody now?
25 A Yes.

1 Q That's the daughter you had gone to pick up from
2 school?
3 A Yes.
4 Q She's eight years old?
5 A Uhm-uhm.
6 Q Your employment -- apparently you do a couple of
7 different things and right now you are a carpenter?
8 A Yes.
9 Q And you are also going to school?
10 A Yes.
11 Q At Black Hills?
12 A At the air base.
13 Q Are you going full-time?
14 A Six hours.
15 Q You spend six hours a week in class?
16 A This semester would be, Thursday, from four to ten.
17 Q Just one day a week.
18 A Right.
19 Q But it's six hours?
20 A Yes.
21 Q When does that semester start?
22 A In two weeks.
23 Q Have you registered for the class already?
24 A Uhm-uhm.
25 Q Have you paid any kind of money or anything?

1 A I have a student loan a PEL Grant.

2 Q If you were to be selected on this case and the case

3 were to take several weeks and you were required to

4 be in here every day, would that mean you couldn't

5 take the class?

6 A No, I could make arrangements.

7 Q You understand on Thursday you might not necessarily

8 be able to leave in time to get out there?

9 A Yes.

10 Q Do you understand that we really can't tell you what

11 kind of a time schedule you'd be on or anything like

12 that?

13 A With what?

14 Q With having to be in Court. We can't tell you that

15 we'd start at a set hour or quit at a set hour every

16 day, that kind of thing?

17 A I have made arrangements. I have someone that will

18 watch my daughter if I need to stay late a few days.

19 Q As far as school, do you see any problem with it?

20 A No.

21 Q Even if perhaps you had to miss a Thursday or more

22 than one Thursday altogether?

23 A They're history classes and I can read the book.

24 Q You don't see a problem with that?

25 A No.

1 Q You did mention another thing about your daughter.
2 You indicated in an answer to the questionnaire here
3 that there might be a problem, what you said is, if I
4 was unable to see and spend time with my daughter
5 beyond two to three days, I am a single parent and
6 you indicated that as a possible problem?
7 A Well, I didn't know if during this if you had to stay
8 here overnight the entire time or how you guys run
9 the Court process.
10 Q I can't tell you with any kind of certainty now how
11 you would work it, but I can tell you that there is
12 at least a possibility that you might be required to
13 be sequestered for a time to where you couldn't go
14 home for a time, whether it would be beyond two or
15 three days, that I can't say. Can you see that as a
16 problem of being able to sit on the case if it came
17 to that?
18 A I guess I can make arrangements, if I have to.
19 Q So you are saying that you wouldn't see it as a
20 problem?
21 A No. Well, if I am to sit and it wasn't a month or
22 something.
23 Q I wouldn't anticipate that it would be a month but
24 you understand that I can't tell you that and nobody
25 can tell you right now whether it would happen or if

1 it did how long it would be?
2 A Yes.
3 Q So you are telling us that you don't see it as a
4 problem?
5 A I can make arrangements.
6 Q Is it the kind of thing that might cause you to be
7 concerned to an extent that your attention would be
8 diverted away from the case here?
9 A All I can say is if it was for a very long time.
10 Q What do you mean by a very long time?
11 A A week to me, that would be a little long. She goes
12 to Alaska in the summer, so I don't see her for ten
13 weeks at a time.
14 Q So it has a possibility of being a problem, at least?
15 A Yes.
16 Q Mr. Brown, one of the things that was discussed with
17 you the other day when you went through this
18 orientation process was the fact that the death
19 penalty is potentially involved in this case. Do you
20 remember hearing about this?
21 A Yes.
22 Q Were you aware of that before last Monday?
23 A No.
24 Q I'll take a little time and explain how things would
25 go in a case like this, but as a general question, do

1 you have, as you come into the courtroom here, do you
2 have any opinions one way or another just in general
3 about the appropriateness of the death penalty?
4 A I believe there are times when it's appropriate.
5 Q That's just a general opinion you have?
6 A Yeah.
7 Q Can you give us any kind of idea as to what things in
8 your mind you think it might be appropriate?
9 A On treason, crimes against the government, spying,
10 and so forth, crimes against children.
11 Q Anything else in particular?
12 A Exceptionally brutal maybe.
13 Q Let me take a minute and go through with you the
14 procedure about how this case would work, what would
15 be presented to you if you were to sit. The first
16 part of the case would be just like the first part of
17 any criminal case or the trial of any criminal case
18 where evidence is presented and the jury makes a
19 decision as to whether or not the person charged is
20 guilty and if the person is not proven guilty or the
21 jury doesn't feel that he's been proven guilty that
22 would be the end of the case. There wouldn't be
23 anything further and we wouldn't get into punishment
24 or anything like that if there was an acquittal. If,
25 however, there was a conviction and the jury found

1 that Mr. Rhines was guilty of first degree murder,
2 then we would move on to a second part or second
3 trial basically; do you understand this so far?
4 A Uhm-uhm.
5 Q The death penalty would come into play if the jury
6 found Mr. Rhines guilty of first degree murder and
7 then we would move to a second trial where there
8 could be new evidence and arguments made and then the
9 jury in this case would be the same jury that heard
10 the evidence in the first trial and they would then
11 have to make a decision as to whether or not, first
12 of all, whether or not there were certain
13 circumstances surrounding the case, what the law
14 calls aggravating circumstances, whether one or more
15 of those things surrounded the case, do you
16 understand that so far?
17 A Yes.
18 Q If the jury found there were these circumstances and
19 these circumstances did exist in this case, then the
20 jury would have a second determinations to make and
21 that second determination would be whether the death
22 penalty was the appropriate penalty. So you
23 understand that this could be a two-trial process
24 basically?
25 A Uhm-uhm.

1 Q First part of it would be determining guilt or
2 innocence and if the determination was innocence that
3 would be the end of the case. And if the
4 determination was guilty of first degree murder, we
5 would get into the second part and I explained that a
6 little bit. Do you feel you have understood so far
7 what I have gone through?
8 A Yes.
9 Q Given your opinions about the death penalty, what you
10 feel about the death penalty and what you bring in
11 here, the ideas about it that you bring in here
12 today, I'll ask you to just make some assumptions
13 here, to assume some things. Assuming that you sat
14 on the jury and the jury found Mr. Rhines guilty of
15 first degree murder, assuming that, do you feel then
16 at that point that in your mind the death penalty
17 should follow, automatically?
18 A Not necessarily.
19 Q Do you think you would want to hear other things?
20 A Uhm-uhm.
21 Q You'd be willing to consider other circumstances?
22 A Yeah.
23 Q What kind of other things do you think you'd be
24 interested in hearing about if you have any idea in
25 your mind?

1 A To know what happened and why.

2 Q Can you think of anything else? Could you say that

3 your opinion about the death penalty is such that you

4 can think of certain cases where if the person is

5 proved to have done something that it should

6 automatically follow that they be executed?

7 A I really don't understand what you want.

8 Q Again I'm asking you to maybe make some kind of an

9 assumption here. Can you think, in your mind, of any

10 type of situation any type of crime that you may have

11 heard of or that you can think of in your mind that

12 would be so serious or so severe that the person who

13 did that should be executed, should just

14 automatically be executed?

15 A I don't think anybody should just automatically be

16 executed. It's pretty serious.

17 Q Would you say that there is something, this talk

18 about the death penalty is it something that you ever

19 thought about much in your life?

20 A I have always had just kind of basic opinions, you

21 know, that there are some things that people do.

22 Q Some things?

23 A Some things.

24 Q I'm interested -- you indicated here as far as your

25 education, that you were a sociology student?

1 A Major.

2 Q Your degree is in sociology?

3 A Yes.

4 Q Did your studies in sociology ever involve any
5 discussion study of the death penalty?

6 A Not any class spent on it.

7 Q Do you recall the subject even coming up in a text or
8 in a discussion or anything like that?

9 A It has, yes. I don't recall the specifics.

10 Q You heard about the death penalty being involved in
11 this case since last Monday and have you thought at
12 all about your feelings or re-examined them or
13 anything like that?

14 A I would have to be shown that it was extremely
15 appropriate.

16 Q And I believe we talked before about my question
17 about the automatic nature of it and you said in your
18 opinion it would never be automatic.

19 A Right.

20 Q Is that right?

21 A No.

22 Q Am I right in assuming that?

23 A Yes.

24 Q As you said you'd want to hear other things?

25 A Yeah.

1 Q You indicated on the questionnaire that you are a
2 member of St. Andrews Episcopal Church here in town.
3 Do you attend regularly?
4 A On a monthly basis.
5 Q Does your daughter go with you or more often?
6 A Nope, that's the only time she goes to church.
7 Q Again, a question I want to ask, and I don't mean to
8 seem like I'm prying, but I'll ask, do you consider
9 yourself to be a religious person?
10 A I would call it more spiritual than religious.
11 Q You indicated on the questionnaire here that you
12 lived in South Dakota for most of your life. Where
13 were you born at?
14 A Columbus, Ohio.
15 Q Did you live in Ohio all...
16 A We moved here when I was in second grade.
17 Q Are your parents still living here?
18 A They're both dead.
19 Q What did your father do?
20 A He owned Chris Supply and he serviced music theaters
21 and fixed the sound systems.
22 Q Do you have brothers and sisters?
23 A I have a brother and two sisters. My brother runs
24 Chris Supply now and my sisters live in California
25 and Washington State.

1 Q Do you still stay in touch with them?
2 A Yes.
3 Q Are they younger or older?
4 A One sister is older and my one brother and other
5 sister are younger.
6 Q They all have kids?
7 A Yeah. My brother doesn't.
8 Q As siblings, do you still get together whenever you
9 can?
10 A Yeah, when I go to Alaska the end of the summer to
11 pick up my daughter, I go through California or
12 Washington and visit them.
13 Q One thing I'm curious about, the Court system or
14 having been involved in a fairly lengthy Court
15 process, is there anything about that that you think
16 that we should know that has maybe changed your
17 opinion about the Court system or made you more
18 distrustful of it or would you say maybe it's made
19 you more respectful?
20 A I found that it works.
21 Q Before this incident with the custody incident had
22 you ever been involved in the Court system before?
23 A I had been in Court for driving offenses.
24 Q Minor type things?
25 A Uhm-uhm.

1 Q I don't believe I asked you this, Mr. Brown, one of
2 the things that you are going to hear testimony about
3 is that Charlie Rhines is a homosexual and you are
4 also going to hear testimony that he may have had a
5 relationship with one or more of the people that are
6 witnesses in this case. Hearing that from us, does
7 it in any way change your opinion about him or how
8 you would view him?
9 A No, I don't think so.
10 Q Have you ever known anyone who is gay?
11 A Yeah.
12 Q A friend?
13 A A friend of a friend.
14 Q Would you say that in any way whatsoever that you
15 feel that knowing that about him that you feel that
16 maybe his lifestyle is sinful or that it changes your
17 opinion about him in any kind of a way?
18 A I don't think so.
19 Q Would you take a look at this list of names and if
20 you would read that over and tell us if you recognize
21 any of those names.
22 A I don't recognize any of those names.
23 Q Mr. Brown, there is a very real possibility that
24 you'll be called to serve as a juror on this case, do
25 you think there is anything that we haven't discussed

1 here in this few minutes that wasn't talked about in
2 the questionnaire, anything else that you think we
3 should know about in coming to our decision as to
4 whether or not you should sit on this case; anything
5 that comes to your mind whatsoever?
6 A Well, the only thing I can think of is the next
7 custody hearing is the 10th of February, but I'm sure
8 that can be postponed.
9 Q Do you have an attorney involved in that?
10 A Yes.
11 Q I expect if it was necessary you could probably talk
12 to your attorney about moving it; do you think that
13 could be arranged?
14 A Uhm-uhm.
15 Q Anything else that you can think of?
16 A Only thing I can say, I would want to make sure I did
17 a good job parenting my daughter. That's the only
18 thing, I wouldn't want to be away a long, long time.
19 Q You indicated before you think that from what we've
20 discussed with you at least you think that it could
21 be...
22 A It doesn't sound to me like it would be more than a
23 couple of days
24 Q I want to be clear what you meant by that?
25 A That amount of time would be okay. I'm talking if it

1 goes a month or something.

2 Q You understand that if the trial goes two or three
3 weeks or however long it might go, that you'd be
4 required to be here every day during the day to
5 listen to evidence?

6 A Right.

7 MR. STONEFIELD: Thank you, Mr. Brown.

8 THE COURT: State may inquire.

9 EXAMINATION BY MR. GROFF:

10 Q I'm Dennis Groff and I'm the State's Attorney and if
11 you are picked on the jury I am going to have the
12 chance to present the State's evidence and so I need
13 to ask you some questions, is that all right?

14 A Yes.

15 Q I wanted to mainly go through this procedure on the
16 death penalty and see if you understand it and see if
17 you can follow the law, is that all right?

18 A Yes.

19 Q From talking to Mr. Stonefield, did you understand
20 first of all that we might have two stages here?

21 A Right.

22 Q The first stage is whether or not Mr. Rhines is
23 guilty of first degree murder.

24 A Right.

25 Q If you find him guilty of first degree murder, you

1 move to the second stage, sentencing.
2 A Right.
3 Q What I am going to be attempting to prove at the
4 second stage is that there is at least one
5 aggravating circumstance that makes this first degree
6 murder special; do you understand, something that
7 aggravates it to the point where you can consider the
8 death penalty. Did you understand that from Mr.
9 Stonefield?
10 A Uhm-uhm.
11 Q Now, the first thing I want to ask you is, the Judge
12 is going to instruct you as to what those aggravating
13 circumstances are that you'll have to consider,
14 whether or not they have been proven and what I need
15 to know is, even if you disagree with those, do you
16 think you can follow the Court's instructions?
17 A Uhm-uhm.
18 Q Now, the next thing is, when you get to that second
19 stage, I'm not sure if you will get more evidence
20 from the State or not. In other words, you may just
21 be asked to consider the evidence you heard in the
22 first part of the trial, only now to consider it for
23 sentencing purposes. If that were to occur, do you
24 think you could follow the Court's instructions on
25 that?

1 A Yes.

2 Q That would look into the how and why as to what

3 happened with respect to the alleged death?

4 A Yes.

5 Q What I wanted to get to now for a moment is the

6 concept of being on this jury, if that would be okay.

7 Do you remember when you got the questionnaire, Mr.

8 Brown?

9 A Yeah.

10 Q When you got that questionnaire and filled it out,

11 did you think you might actually be here in Court

12 answering these type of questions?

13 A No, I didn't figure it would go this far.

14 Q As Mr. Stonefield said, there is a real possibility

15 you'll be on this jury now, okay?

16 A Okay.

17 Q So, even though you didn't know you'd be here you

18 actually might be on the jury. What I need to talk

19 to you about is visualizing being on the jury, if

20 that's okay with you. This will require some

21 assumptions when I go through those assumptions I

22 don't want you to necessarily think any of that has

23 happened, I want you to assume it for purposes of

24 putting you in that position. I want you to assume

25 for a moment that you are on the jury and that you

1 have gone through that first stage and just assume
2 now that you have found enough evidence and you
3 believe that Mr. Rhines is guilty and you returned
4 that verdict finding him guilty of first degree
5 murder. Are you with me?

6 A Uhm-uhm.

7 Q Just an assumption, and I wanted you to assume that
8 you get to the second stage and you hear all the
9 evidence in that second stage and you go back and a
10 later, assuming that the jury finds one aggravating
11 circumstance, do you know what we are talking about
12 there, and assume that the jury, after they hear that
13 and consider all the evidence and the Court's
14 instructions, let's assume that the jury, including
15 you, decides unanimously that the death penalty is
16 appropriate, just an assumption now, if that were the
17 case, do you see those chairs over there, Mr. Brown?
18 If we are in this courtroom those are probably the
19 chairs you'd come back to and sit in when your
20 verdict was read?

21 A Okay.

22 Q What I am trying to find out is, based upon our
23 thoughts about the death penalty and knowing about
24 what could be involved, do you think you can
25 visualize yourself, if the facts warrant it, do you

1 think you can visualize yourself coming back with
2 your fellow jurors and having your verdict read, your
3 unanimous verdict read in front of the Court and the
4 Defendant announcing that it was your decision to put
5 him to death. Do you think you could do that if the
6 facts were there?

7 A Yeah, I could. I would have to be convinced.

8 Q I understand, sir. Let's assume after that verdict
9 was read this is kind of the same question. After
10 the verdict was read sometimes in these criminal
11 cases because they have to be a unanimous verdict,
12 each juror is asked individually, is that your
13 verdict, and they'd come to you and say, Mr. Brown,
14 is that your verdict and then once again, not with
15 that unanimity anymore one by one you'd have to
16 announce whether it was or not if you reached that
17 verdict and you were convinced, can you visualize
18 yourself facing the Judge and Defendant saying, yes,
19 that is my individual verdict putting you to death?
20 Do you think you could do that if you were convinced?

21 A If that is the conclusion I had come to.

22 Q I hope I'm not offending you, I just want to see if
23 you can face that moment if it happens?

24 A It sounds frightening.

25 Q Next thing I want to talk to you about a little bit

1 is about the concept of getting hassled after the
2 trial is over. Do you know anyone that is opposed to
3 the death penalty real strongly?

4 A No.

5 Q So you can't think of anyone that necessarily would
6 give you a hard time if you rendered that verdict and
7 left the courthouse; can you think of anybody that
8 would give you a hard time for rendering that
9 verdict?

10 A I don't think so.

11 Q When we are dealing with the proof in the first part
12 on guilt or innocence or whether we are dealing with
13 the proof on the second part on aggravating
14 circumstances, it's always proof beyond a reasonable
15 doubt. Did you hear the Judge talk about that the
16 other day?

17 A Uhm-uhm.

18 Q And to tell you about that again, you know if you get
19 on the case, but one thing it isn't proof to an
20 absolute certainty?

21 A Yes.

22 Q And no matter what the cases are, whether it's a
23 speeding ticket or D.W.I. right down the line any
24 case in our Court system that deals with the criminal
25 or traffic laws has the same standard of proof, in

1 other words, it always stays level, proof beyond a
2 reasonable doubt, it doesn't go up to an absolute
3 certainty just because it gets to be a more serious
4 case, do you understand?

5 A Yes.

6 Q Just because this is a very serious case, do you
7 think you would make the State prove its case to an
8 absolute certainty or could you keep the standard
9 where the law has instructed, to proof beyond a
10 reasonable doubt?

11 A The reasonable doubt sounds to me that you would have
12 convinced me.

13 Q Before I sit down, you told Mr. Stonefield you
14 thought about treason and...

15 A Crimes against children.

16 Q And extremely brutal deaths, is that what you said?

17 A Yes.

18 Q Any other circumstances you can think of that
19 wouldn't make it automatic or circumstances where you
20 think the death penalty might be appropriate?

21 A Not really. I would think of something.

22 Q You would consider the aggravating circumstances
23 instructed to you by the Court?

24 A Oh, yeah.

25 MR. GROFF: Thank you, sir. Pass for cause.

1 THE COURT: Mr. Brown, you do now remain a prospective
2 juror on this case and I should tell you that we
3 probably will know tomorrow whether you'll be on the
4 final jury panel. In the meantime, it's very
5 important that you not discuss this case with anyone
6 or let anyone discuss it with you and you should not
7 allow someone to discuss it in your presence even.
8 Also, you should not listen to or watch or read any
9 news media accounts concerning this case. Can you
10 promise me you'll not do these things?

11 WILLIAM BROWN: Yes.

12 THE COURT: If you have not heard from us by tomorrow
13 afternoon, would you please call the Clerk's Office
14 to check in?

15 WILLIAM BROWN: Yes.

16 THE COURT: Thank you, sir. You are excused for now.
17 Could I see counsel for a minute? Who was the
18 prospective juror who inverted the Golden Rule, do
19 unto to others as they'll do...

20 MR. BUTLER: Frazey. I don't know if he...

21 THE COURT: I'm having some questions in my mind about
22 this gentleman. I know there was a challenge.

23 MR. BUTLER: We were going to make a record that
24 requested an additional peremptory.

25 THE COURT: Well, I'm reconsidering it, so if you want to

1 STATE OF SOUTH DAKOTA)
2 COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

3
4 STATE OF SOUTH DAKOTA,

5 Plaintiff,

6 v.

JURY TRIAL

7 CHARLES RUSSELL RHINES,

93-81

8 Defendant.

VOLUME VIII

9
10 PROCEEDINGS: The following matters were had before the
11 HONORABLE JOHN K. KONENKAMP, Circuit Judge at
12 Rapid City, South Dakota, on the 12th and 13th
days of January, 1993.

13 APPEARANCES: MR. DENNIS GROFF, MR. JAY MILLER, and
14 MR. MARK VARGO
15 State's Attorney's Office
16 Pennington County
17 Rapid City, South Dakota

18 FOR THE STATE

19 MR. JOSEPH BUTLER
20 Attorney at Law
21 PO Box 2670
22 Rapid City, South Dakota and

23 MR. WAYNE GILBERT
24 Attorney at Law
3202 West Main Street
Rapid City, South Dakota and

MR. MICHAEL STONEFIELD
Public Defender
Pennington County
Rapid City, South Dakota

FOR THE DEFENDANT

1 (Prospective Juror JUDY SHAFER, having previously been
2 sworn, testified as follows:)

3 EXAMINATION BY MR. GILBERT:

4 Q Your name is Judy Shafer?

5 A Uhm-uhm.

6 Q Mrs. Shafer, I'm Wayne Gilbert and to your far left
7 is Joe Bulter and Mike Stonefield and the three of us
8 represent Charles Rhines, he's the gentleman seated
9 here in the middle of the table with a gray coat on,
10 the Defendant in this case. Could you look over that
11 list of names that's there in front of you and see if
12 any of them are familiar to you?

13 A No.

14 Q The questionnaire you filled out awhile back, copies
15 of that have been made available to us and obviously
16 not so we can pry into your private affairs, but
17 because of the process that we are going through in
18 making sure that a fair and open minded jury can be
19 seated in this case. I just have a couple of
20 questions about some of the matters on the
21 questionnaire. You are a single parent of two
22 children?

23 A Yes.

24 Q And you live in Hill City some distance away?

25 A Yes.

1 Q If you were seated as a juror in this case and had to
2 sit and come into Rapid City every day for three or
3 four weeks, would that present any hardships or
4 problems for you as far as your family is concerned
5 in taking care of your kids?
6 A No. Their dad lives a block away. He has custody.
7 Q How about as far as your work is concerned, would it
8 be a problem?
9 A Not this time of year.
10 Q Before you came here a week ago yesterday for the
11 first time had you heard anything about this case?
12 A Very little to be honest with you. I knew that a
13 young man was killed in a donut shop. I didn't know
14 if he was stabbed or shot. The other day I seen it
15 on the news, that the man that had done it was, I
16 thought they said he was arrested in a nearby state
17 like Colorado or something. Other than that I don't
18 know too much about it.
19 Q Based on what you have heard, do you come here today
20 with any ideas that Mr. Rhines is probably guilty of
21 this charge?
22 A No.
23 Q You were called as a juror approximately eight years
24 ago, you were called in, but didn't actually serve?
25 A That's right.

1 Q Were you at the point where you were questioned or
2 part of the group of people that were questioned?
3 A No.
4 Q Other than that, you haven't served on a jury before?
5 A No.
6 Q Have you or any member of your family or close
7 friends ever been touched in some way by the criminal
8 justice systems, maybe subpoenaed as a witness or
9 been a victim of a crime or a Defendant?
10 A No.
11 Q Had you heard of the presumption of innocence before
12 the Court's instructions that were read to you a
13 little over a week ago yesterday?
14 A Yes.
15 Q Generally, are you in agreement with that idea?
16 A Yes.
17 Q So, would you agree that the State has the burden of
18 proof beyond a reasonable doubt and that the
19 Defendant is not obligated or shouldn't be expected
20 to put on any evidence at all?
21 A Yes.
22 Q If I were to ask you to assume right now that just
23 assume that the defense in this case doesn't plan on
24 putting on any evidence at all, would that change how
25 you look at the case at all or would you still

1 benefit Mr. Rhines with the presumption of innocence?

2 A Yes, I would benefit him.

3 Q There is going to be evidence in this case that Mr.
4 Rhines is a homosexual and one or two of the
5 witnesses in the case are also homosexuals who might
6 be called, had you heard that before?

7 A No.

8 Q Knowing that, does that change either your view of
9 Mr. Rhines as to how he ought to be treated or what
10 kind of proof ought to be required in a case like
11 this?

12 A No, I have friends that are also.

13 Q And knowing that, that doesn't change your friendship
14 or relationship with them?

15 A No.

16 Q Had you heard or did you know before you came here to
17 Court a week ago yesterday that the State was
18 requesting the death penalty in this case?

19 A Yes.

20 Q Do you have any general views or opinions about the
21 death penalty?

22 A I don't know. I guess I feel if you intentionally
23 take a life you maybe should be prepared to give your
24 own. It would be real hard to do that, though, if
25 that was up to you.

1 Q You mean it would be difficult to actually make the
2 decision?
3 A Right.
4 Q Well, before I get into some of the details about the
5 process involved, you said it would be difficult to
6 make a decision, but do you think, given your beliefs
7 about the death penalty, that you could be part of a
8 jury that would make a decision one way or the other
9 on the death penalty?
10 A Yes.
11 Q Knowing it would be difficult, but you could still do
12 it if you were called on?
13 A Yes.
14 Q When the State requests and asks that the Defendant
15 be executed if he's found guilty, there is a trial
16 here and once the jury is seated where the State
17 presents the proof that it has and asks the jury to
18 find the Defendant guilty of first degree murder.
19 Now, if the jury is convinced beyond a reasonable
20 doubt that the State has proved it and that the
21 Defendant is guilty of first degree murder, then
22 there is a second phase, a second stage maybe even
23 like a second trial and at that second trial the
24 Judge would give you more instructions and would
25 define for you what is called aggravating

1 circumstances. These are situations which make a bad
2 thing worse, because if you get to the second phase
3 that would mean that the jury has unanimously found
4 the Defendant guilty of first degree premeditated
5 murder. At the second stage then the Judge would
6 define these things for you called aggravating
7 circumstances and you would be asked to make another
8 decision, another two decisions, actually. The first
9 decision would be if you find that the aggravating
10 circumstances, that one or more of them have been
11 proved beyond a reasonable doubt, if you are
12 convinced of that unanimously, then you make a second
13 decision and that second decision is, should the
14 Defendant receive life imprisonment or should he be
15 executed. I want to tell you right now that, in
16 South Dakota life imprisonment means life without
17 possibility of parole. If the jury's final decision
18 in this case is that Mr. Rhines should receive a life
19 imprisonment term, he'll never get out. It would be
20 the rest of his life in prison. If the jury's final
21 decision in this case is the death penalty, that will
22 be carried out. In South Dakota there won't be any
23 stay of execution or something to happen to save his
24 life. So, it is the jury's decision and that doesn't
25 happen in any other kind of criminal case. In all

1 other kinds of criminal cases in South Dakota the
2 judge makes the sentence, but because the death
3 penalty is involved here the jury makes the sentence.
4 It doesn't have to be the death penalty. There is no
5 situation where the jury would ever have to. Even if
6 you find an aggravating circumstance, even then you
7 make that decision should it be death or life without
8 parole.

9 When I asked you a few minutes ago if there were
10 circumstances which you could think about that the
11 death penalty would be appropriate, and you said
12 something like, and I may get this wrong, where a
13 person intentionally takes someone else's life then
14 he should be prepared maybe to pay with his own. I
15 think you said something like that. Now, knowing
16 that there is this process you have to go through and
17 there are two stages and that the aggravating
18 circumstances have to be proved beyond a reasonable
19 doubt and even then you are not required to impose
20 the death penalty, do you think that if at the end of
21 the first stage you are satisfied beyond a reasonable
22 doubt that the Defendant has been proved guilty of
23 first degree, premeditated murder, that you'd want
24 right then and there to impose the death penalty or
25 would you want to know more or think about it more?

1 A I think I would probably want to think about it more.
2 Q So there wouldn't be any automatic decision on your
3 part as far as the death penalty is concerned?
4 A No.
5 Q Would you say that you are a religious person?
6 A Not a lot, no.
7 Q Do you believe in God?
8 A Yes.
9 Q Is there anything about the beliefs that you have
10 about religion and God that affect how you view a
11 request for a death penalty in a case?
12 A No.
13 Q Would you say that you place a high value on human
14 life?
15 A Yes.
16 Q Is that why you said that it would be a difficult
17 decision to have to make?
18 A Yes.
19 Q Do you think that if you were on a jury that
20 unanimously found guilty of first degree,
21 premeditated murder, beyond a reasonable doubt, at
22 that point you'd be leaning one way or the other?
23 Would you be kind of leaning towards the death
24 penalty or leaning away from the life imprisonment?
25 A I don't know if I could say either way.

1 Q You'd be entering that second phase if you get that
2 far with an open mind on that?

3 A Uhm-uhm.

4 Q Can you think of any circumstances in which you think
5 the death penalty ought to be automatic, where you
6 don't even need to hear about aggravating
7 circumstances, just think that what's happened is so
8 bad that it just ought to be the death penalty?

9 A No.

10 Q In other words, would it be fair to say that no
11 matter how horrible the murder or crime was you'd
12 want to know more before you made a decision to have
13 a Defendant put to death?

14 A Yes.

15 MR. GILBERT: No further questions.

16 EXAMINATION BY MR. GROFF:

17 Q Ma'am, I'm Dennis Groff and I'm the State's Attorney
18 and I am going to have the chance over the next
19 couple of weeks to present the State's case to you
20 and because I am going to be doing that, one of the
21 things I do first is to pick a jury that could be
22 fair to both sides and do you understand that the
23 State has asked and I have asked for the death
24 penalty in this case, and do you understand that now?

25 A Yes.

1 Q And do you know from what Mr. Gilbert told you that
2 it's not the Judge that does that, 12 people that we
3 select here?
4 A Yes.
5 Q Can you understand how important this process is?
6 A Yes.
7 Q As Mr. Gilbert was telling you, assuming you find Mr.
8 Rhines guilty of first degree murder, then there'd be
9 this second stage and I think you told Mr. Gilbert
10 that you have high regard for human life?
11 A Yes.
12 Q Just based upon that alone, do you think that somehow
13 you can't consider the death penalty?
14 A No.
15 Q I need to let you take a moment here, because we are
16 interested in your thoughts and views, everyone in
17 this room, and can you think of not automatically at
18 all, but any circumstances at all where you think the
19 death penalty might be appropriate. Just take a
20 moment?
21 A Yes, I think there are.
22 Q Now that you have thought about something that might
23 be there, I realize it is not automatic and you know
24 that too but some cases where it might be
25 appropriate, can you tell us what you just thought of

1 please?

2 A I think if you intentionally go to take someone's

3 life, then the death penalty could be appropriate.

4 Q Not automatic, but it could be?

5 A Yes.

6 Q In this case when you get to that second stage, the

7 Judge is going to tell you what aggravating

8 circumstances you may consider, to see if the State's

9 proven them beyond a reasonable doubt, and it's going

10 to be my job, the State's job in that second case to

11 convince you that at least one of these aggravating

12 circumstances is present in this case and it takes it

13 out of this general category of first degree murder

14 and takes it up one more step to murder that you can

15 consider the death penalty on; do you understand?

16 A Yes.

17 Q Do you believe that you can follow the Court's

18 instructions as to what those aggravating

19 circumstances are in South Dakota?

20 A Yes.

21 Q And even if you were to disagree with those

22 instructions or never even thought about them, do you

23 think you could still follow them?

24 A Yes.

25 Q Now, you said to Mr. Gilbert, and I made a note of it

1 here, that you would be able to keep an open mind as
2 you went into that second stage as to whether or not
3 it would be life or death, and then you also told him
4 that you thought in that second stage you might want
5 to know more, is that right?

6 A Uhm-uhm.

7 Q What is the more that you were talking about, what
8 more would you want to know in the second stage?

9 A Maybe explaining a little bit more about the extra
10 circumstances.

11 Q Let me ask you this then. I understand what you are
12 saying and I'll get back to it, but you realize that
13 just because you have heard this evidence in the
14 first part of the case where you are going to decide
15 guilt or innocence, that same evidence would likely
16 be considered as to whether or not on the how and why
17 of it happening, whether or not circumstances were
18 met that made it special, do you understand?

19 A Yes.

20 Q You don't have to say we made that decision let's
21 leave that behind. You would take that into that
22 second stage with you, do you understand?

23 A Yes.

24 Q You were just telling me that in the second stage you
25 would look at the evidence and you would do more

1 analysis as to the why and how?

2 A Yes.

3 Q Based upon your review of that evidence, you would
4 consider whether or not one of these aggravating
5 circumstances was present, is that what you are
6 telling me?

7 A Yes.

8 Q I am going to have to go into this, because I need to
9 know. You said that it would be difficult to go
10 ahead and make that kind of a verdict?

11 A I think it would be difficult for anyone.

12 Q I'm not trying to give you a hard time about that,
13 but what I need to do is get you to visualize what
14 that might be like, so if you can bear with me and
15 follow me for a minute. Do you remember when you got
16 the questionnaire?

17 A Yes.

18 Q And when you got the questionnaire and you filled it
19 out, did you think you might actually be in a
20 courtroom like this deciding or we are deciding
21 whether you can be a fair juror? Did you think you
22 would come down here?

23 A Yes.

24 Q Could you visualize yourself, even though you had
25 that piece of paper at home, being at home and

1 that's what I want to take a step further. Without
2 holding anything against me, could you make some
3 assumptions? I'm not trying to get you to commit to
4 any decision, I am just going to try to get you into
5 that jury box, even though you are not there, and I
6 want you to assume for a moment that you are picked
7 on this jury, because there is a very real
8 possibility you will be. Assume you are on that jury
9 and you listened to the first part of the case and
10 you weighed the evidence carefully and you considered
11 the Court's instructions and you decided beyond a
12 reasonable doubt that Mr. Rhines is guilty of first
13 degree murder, okay?

14 A Uhm-uhm.

15 Q The verdict has been brought back and then we can get
16 to the second stage and let's assume we get to the
17 second stage and you consider the evidence and you
18 carefully consider those aggravating circumstances
19 and you consider everything you hear in that second
20 stage and you go back and deliberate and let's assume
21 that you, as a jury, find that one of those
22 aggravating circumstances is present. Now you don't
23 have to at that point in time come to a conclusion
24 that the death penalty is appropriate, but you may.
25 Do you see what I'm saying?

1 A Uhm-uhm.

2 Q Let's assume for the moment that you come to that
3 conclusion based on the facts you heard and
4 instructions of the Court and you believe the death
5 penalty is the appropriate verdict, then you would
6 come back and you would sit in one of these chairs if
7 we were in this courtroom, and the foreman of the
8 jury would read or pass to the Judge the verdict and
9 that verdict would be read in front of everybody in
10 the courtroom, the Judge, the Defendant, with all of
11 you sitting there facing the Defendant announcing
12 your verdict, which in that case would be putting Mr.
13 Rhines to death. As you think about your views, and
14 I realize you don't have any facts to work with, but
15 as you think about your views, if you were convinced
16 that was the right thing to do, do you think you
17 could visualize yourself being on a jury doing just
18 that?

19 A Yes.

20 Q Now, something else I need to warn you about, and
21 that is, if you are on that jury and it was a
22 unanimous decision, after the verdict was read
23 something else could happen. What could happen is
24 that each individual juror could be polled right out
25 there in front of everybody; is this your verdict

1 putting Mr. Rhines to death, and they'd come to you,
2 ma'am, and ask you and after they asked you then
3 you'd have to respond, yes or no. Can you visualize
4 yourself saying, if you were convinced, it was the
5 right verdict, yes, that's my verdict putting Mr.
6 Rhines to death; can you visualize yourself doing
7 that?

8 A Yes.

9 Q Do you have any friends or relatives or acquaintances
10 who you know are just adamantly opposed to the death
11 penalty?

12 A No.

13 Q Can you think of anyone out there, if you were to go
14 ahead and make a decision like this, I realize a
15 difficult and important decision, but if you made it
16 and you came back in the courtroom and gave a death
17 verdict, can you think of anyone that would give you
18 a hard time, once you left the courtroom and got back
19 with your regular life?

20 A No.

21 Q The last thing I want to talk to you about is, just
22 the burden of proof. Do you remember Judge Konenkamp
23 explained the burden of proof a week ago Monday?

24 A Uhm-uhm.

25 Q That is the same burden that runs throughout our

1 Court system, whether it is a traffic ticket, a
2 D.W.I. or theft case, all the way to a murder case,
3 do you understand?

4 A Yes.

5 Q Even though the cases may seem to get more serious,
6 the standards of proof always stay the same. It
7 doesn't go up just because this is a serious case.
8 Do you think you would some how make the State prove
9 its case beyond what the law requires, that is beyond
10 their level of beyond a reasonable doubt? Are you
11 with me so far?

12 A Yes.

13 Q Up to a level of absolute certainty, which is not
14 required. Do you think you'd make the State proof
15 ~~its case to an absolute certainty and not what the~~
16 law requires?

17 A I'm not sure. I think I'd want to be real, real
18 sure.

19 Q But if the Court told you that didn't mean you had to
20 be sure to a perfection or an absolute certainty, do
21 you think you could follow that law?

22 A Yes.

23 Q Same thing with the aggravating circumstance in the
24 second part, if the Court told you that had to be
25 proven to a reasonable doubt, do you think you could

1 make it be proven to a reasonable doubt, but not take
2 it to this other level, which is not required by law
3 which is an absolute certainty?
4 A Yes.
5 Q Now that you have thought about it, do you think you
6 have any reservations about it?
7 A No.
8 Q One of the reasons you said you'd want to be so
9 convinced is because you know you might face the
10 death penalty?
11 A Yes.
12 Q Even knowing that you are going to face the death
13 penalty possibly in terms of your deliberations, do
14 you think you can be fair to both the Defendant and
15 to the State?
16 A Yes, I think I'm a very fair person.
17 MR. GROFF: No other questions. Thank you. Pass for
18 cause.
19 THE COURT: Ma'am, you remain a prospective juror.
20 MR. GILBERT: Your Honor, excuse me, but could I ask just
21 a couple more questions?
22 THE COURT: Yes.
23 Q (By Mr. Gilbert:) Miss Shafer, I just want to, if I
24 could, and I'd like to ask you to elaborate a little
25 bit on the statement you made that an individual who

1 intentionally takes someone's life should be prepared
2 to give his own. Do you mean by that that you think
3 and believe in an eye for an eye type of thing?

4 A No, I believe that there is always a possibility that
5 that could happen, and if they did there is always
6 that possibility, not for sure, but the possibility.

7 Q You didn't mean like a retribution type of thing?

8 A No. No.

9 MR. GILBERT: That's all.

10 THE COURT: As I was saying, you are a prospective juror
11 in the case. We should know by tomorrow afternoon
12 whether or not you are on the final jury panel. If
13 you haven't heard from us by tomorrow afternoon at
14 3:00, call the Clerk's Office to check in with us.
15 Now, it's very important that you not talk to anyone
16 about this case or let anyone talk to you about it or
17 talk in your presence about it and you should not
18 listen to or read or watch any news media accounts of
19 this case. Can you promise me you'll not do those
20 things?

21 JUDY SHAFER: Yes.

22 THE COURT: Thank you. I'm going to adjourn for today.
23 I'd like to reconvene at a quarter to nine tomorrow
24 morning so we can hear the motion for the additional
25 peremptory challenges, and after that we will proceed

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then to either decide on the issue of the peremptory challenges and then the question of how many and under what method we will select our alternate jurors. I welcome your suggestions on that tomorrow morning as well.

THE COURT: Hearing is adjourned for today.
(At which time the proceedings ended for the day.)