

Nos. 19-6479/19A-484

In The
Supreme Court of the United States

OCTOBER TERM 2019

In re: CHARLES RUSSELL RHINES,

Petitioner.

Petition For An Original Writ Of *Habeas Corpus*

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
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15 FOR THE STATE

16 SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

17 JUN 08 1995

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21
22 MR. MICHAEL STONEFIELD
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24 FILED Pennington County
IN THE CIRCUIT COURT Rapid City, South Dakota

25 MAR 8 1993

FOR THE DEFENDANT

By [Signature] Deputy
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 are 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

182687

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 K. 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 SUPREME COURT MR. JOSEPH BUTLER
21 STATE OF SOUTH DAKOTA Attorney at Law
22 FILED PO Box 2670
23 JUN 08 1995 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 Pennington County
30 FILED Rapid City, South Dakota
31 IN THE CIRCUIT COURT
32 FOR THE DEFENDANT

33 APR 23 1993

34 By *[Signature]* Clerk
35 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 Plooster, 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 Plooster first. If
22 Harrold Plooster 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-dependent -- 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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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 VI

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

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

16 FOR THE STATE

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

and

19 SUPREME COURT
20 STATE OF SOUTH DAKOTA
FILED

JUN 08 1995

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

and

23 *Harold Engel*
Clerk

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

25 FOR THE DEFENDANT

Pennington County, SD.
FILED
IN THE CIRCUIT COURT

MAY 03 1993 1147

By *[Signature]* Deputy
Bonne Fitzgerald, Clerk

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

1 this last week?

2 A I suspected that it would be, yes.

3 Q Why was that?

4 A Well, just the charges that were brought against to

5 me would seem...

6 Q Let me tell you, procedurally how a case like this

7 goes, and I'll try and explain it and see if you can

8 understand my explanation. The first part of a

9 trial, this is like the first part of any regular

10 criminal trial where evidence is presented and

11 arguments are made and a determination is made by the

12 jury as to whether or not a person charged here, Mr.

13 Rhines, has been proven guilty of what he's charged

14 with, evidence beyond a reasonable doubt and that's,

15 as I said, that's the normal part of any criminal

16 trial. Of course, in a case like this if the jury

17 were to find that he were not guilty of first degree

18 murder, then there'd be no further discussion about

19 penalty or anything like that and the case would just

20 be over. If, however, he were found guilty of first

21 degree murder, which is one of the things he's

22 charged with, then there'd be a second part to the

23 trial and that is one of the things that makes this

24 type of proceeding different than any other criminal

25 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

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 J. Angel*
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
24 FILED Pennington County
IN THE CIRCUIT COURT Rapid City, South Dakota

25 MAR 8 1993

FOR THE DEFENDANT

By *[Signature]* Deputy
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

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
12 Rapid City, South Dakota, on the 7th day 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
25 3202 West Main Street
Rapid City, South Dakota and

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

FOR THE DEFENDANT

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

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 Koenenkamp 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 you. 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.