

**SUPPLEMENTAL APPENDIX\***

**Excerpt of Voir Dire, Day 1, February 27, 2018**

**(Examination by Reid's counsel)**

[Ab 236] (TR881) MR. PROCTOR: All right. (TR 882) Now, let's just get into this then so we can get through this quickly. Will you—I'm going to start with you. Let's just say the worst, and I don't know what it is—Mr. Vaught said there's—I'm just going to say the worst murder that there ever could be. I mean there's no defense to it, not self defense, not anything. I mean it was premeditated, it was deliberated, there are—the victim no question whatsoever was, you know, a victim in this. Nothing at all. And [Ab 237] my question is what would your view be about the sentence that should be imposed? And I'll start with you, Mr. Fager.

JUROR JERRY FAGER: I would lean towards the death penalty in that case.

MR. PROCTOR: Okay. And—

JUROR JERRY FAGER: That you're describing.

MR. PROCTOR: And could you tell me why?

JUROR JERRY FAGER: Because you—as you described it I heard there was no—there was no rational reason for the person to have taken that action. They were thinking about it ahead of time, is what I heard from you just now, and therefore it seemed—it seems like that that would be a case that I would consider the death (TR 883) penalty be applied for.

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\* The material reproduced in this Supplemental Appendix comes from the Appellant's Abstract, filed with the Arkansas Supreme Court. See Ark. Sup. Ct. R. 4-2(a)(5) ("The appellant shall create an abstract of the material parts of all the transcripts (stenographically reported material) in the record.")

MR. PROCTOR: All right. Okay.

And I want to come back to you, but I'm just going to ask the same question of each of you. Do you all, the other two, you understand my question.

Mr. Vaught, your—

JUROR JOHN VAUGHT: You're saying a murder beyond a reasonable doubt—

MR. PROCTOR: State's proved their case beyond a reasonable doubt, premeditation, deliberation in capital murder is what's required. The State's got to prove that it was premeditated, deliberated. Mr. Graham's told you about what he anticipates Judge [Ab 238] Wright's going to tell you premeditation and deliberation is. So that's not an issue. I'm not even—I don't want you to even think that.

JUROR JOHN VAUGHT: Would I impose the death penalty?

MR. PROCTOR: My question is what would not—what are your feelings about the death penalty as the appropriate sentence in that situation?

JUROR JOHN VAUGHT: It's appropriate.

MR. PROCTOR: Okay. (TR 884)

JUROR JOHN VAUGHT: Without—beyond a reasonable doubt. Like if somebody murdered somebody and the whole neighborhood saw it, I wouldn't even convene a trial.

MR. PROCTOR: Somebody sneezed and I didn't hear what you said. I'm sorry.

JUROR JOHN VAUGHT: I said if there was a murder—

MR. PROCTOR: Uh-huh?

JUROR JOHN VAUGHT: Premeditated murder where somebody killed a person, and there was witnesses, I wouldn't even—in my mind I wouldn't—I don't think he even deserves a trial.

MR. PROCTOR: You wouldn't even give him a trial.

JUROR JOHN VAUGHT: No, I wouldn't even give him—why waste the money?

MR. PROCTOR: Okay. [Ab 239]

JUROR JOHN VAUGHT: Everybody saw it, everybody knows it.

MR. PROCTOR: Okay. All right. Okay. All right.

Now, so, then in that situation then there—as far as any sort of mitigating circumstance—I mean you—everybody saw it, everybody knows what (TR 885) happened; I mean it's my understanding that your opinion is that your death—

JUROR JOHN VAUGHT: Example would be that shooting at the school.

MR. PROCTOR: Okay.

JUROR JOHN VAUGHT: I wouldn't give the guy a trial.

MR. PROCTOR: Okay. You wouldn't—he didn't even deserve a trial.

JUROR JOHN VAUGHT: I wouldn't even—

MR. PROCTOR: You say it's straight to death.

JUROR JOHN VAUGHT: He's done.

MR. PROCTOR: He's done. Okay. In your mind.

JUROR JOHN VAUGHT: In my mind.

MR. PROCTOR: All right. Okay. Now, let's deal with that. In that situation though would you consider any mitigators? Would any—would mitigation even matter to you?

JUROR JOHN VAUGHT: I wouldn't—I wouldn't consider anything.

MR. PROCTOR: You wouldn't consider anything? [Ab 240]

JUROR JOHN VAUGHT: No, I don't care if he's crazy. It doesn't belong here. (TR 886)

MR. PROCTOR: Okay. Doesn't matter. He doesn't belong on earth.

JUROR JOHN VAUGHT: No.

MR. PROCTOR: Okay. All right.

All right, Ms.—

JUROR MARY ALLEN: Well I feel pretty much the same way he does. I don't—you know, I'm sorry if the kid had a bad background or whatever. It doesn't excuse what he did. He had no right to do that.

MR. PROCTOR: All right. And the key thing that we're looking for though, and Mr. Vaught, I think he said this and this is what I'm asking of you to make sure you're saying it, what you're agreeing with him about this. And that is you're saying that it doesn't matter, mitigators don't matter to you.

JUROR MARY ALLEN: Not if that—not something like that school shooting. Any of that type of stuff. I'm with him. He doesn't deserve a trial or anything else, he should not be allowed in society, point blank, that's it.

MR. PROCTOR: All right.

JUROR MARY ALLEN: Even wolves will kill young that cannot adhere to their society and the (TR 887) pack. [Ab 241]

MR. PROCTOR: Okay. All right. Now, Mr. Fager—

JUROR JERRY FAGER: Uh-huh?

MR. PROCTOR: Have you changed your mind any on this, or are you still where you are? Would you—

JUROR JERRY FAGER: I'm still finding for the right stand.

MR. PROCTOR: You still find what you were standing.

JUROR JERRY FAGER: Yes.

MR. PROCTOR: Okay, you—okay, so let's just deal with this now.

And I'm just going to assume that you—Mr. Vaught, I think I read this in your bios that, you know—and forgive me if I'm wrong, because I was reading through so many of them and I don't want to tie them up wrong. But, you know, I think it was maybe Ms. Allen that said it, that the cost of, you know, locking people up that—is that something that you would think would—

JUROR MARY ALLEN: No, I think they should be put down.

MR. PROCTOR: Okay, you don't even want to – (TR 888)

JUROR MARY ALLEN: I'm sorry, that's my opinion. Boom, you're done.

MR. PROCTOR: Okay. All right.

JUROR MARY ALLEN: You've taken seventeen lives—

MR. PROCTOR: Okay. [Ab 242]

JUROR MARY ALLEN: You have no right to your own.

MR. PROCTOR: Okay.

JUROR MARY ALLEN: Simple as that.

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[Ab 266] (TR 916) MR. GRAHAM: Your Honor, may we approach just briefly?

THE COURT: Yeah.

(AT BENCH DISCUSSION)

MR. GRAHAM: I don't guess it's in limine. When Mr. Proctor asked the question about think about the worst case scenario and it opened up the can of worms about the school shooting in Florida, I think it completely digressed. I don't—

THE COURT: I agree. See, that was my major fear with getting into hypotheticals. If we get into the school shootings scenario. When it's not even remotely. I don't even think it effectively gives you any information as far as jury selection goes, frankly, [Ab 267] because it's so far afield from what we're dealing with here. So I'm going to have to head that off. I agree with Mr. Graham, I'm going to reverse myself.

MR. PROCTOR: What, on the hypotheticals, Your Honor? That if I ask—as long as I don't—(TR 917)

THE COURT: Yeah, you have to shorten that down. If you have a case that is clearly the Defendant is guilty of capital murder and then go from there. I don't want anything to lead us into this school shooting scenario, which is where we've been going, what we keep stacking all the stuff up on.

But I don't mind you asking if someone who is clearly guilty of capital murder what do you think a sentence should be. Okay?

MR. PROCTOR: But I can say premeditated and deliberated, just make sure that I—I mean—

THE COURT: Right, we need to focus.

MR. GRAHAM: I think it was the worst case ever that really—

THE COURT: Yeah, we need to focus it in. It's like I'm not saying—you know, if Hitler was here we'd give him the death penalty. But, I mean, I don't want—

(AT BENCH DISCUSSION CONCLUDED)

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**(Examination by Reid's counsel)**

[Ab 301] (TR 954) MR. PROCTOR: . . . Let's—I want to talk about a situation, not this case, not this case at all, but a situation where there is absolutely, positively no question at all whether or not the murder was premeditated and deliberated. None at all. And the only—nothing. No issue at all. I mean, no issues about the victims, anything else like that, it's just—it was a premeditated, deliberated murder. The definition that was read by Mr. Graham. In that situation where there was a premeditated, deliberated murder, I want to know what your feelings are about the imposition of the death penalty. Do you believe that death would be (TR 955) the appropriate sentence in that case?

Begin with you, Ms. Kellar.

JUROR MICHELLE KELLAR: If it was premeditated and it's been—yeah, I could impose the death penalty.

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**Excerpt of Voir Dire, Day 2, February 28, 2018**

**(Examination by the State's counsel)**

[Ab 843] (TR 1569) MR. GRAHAM: Now, Ms. Allen, if you were part of a jury that recommended a death sentence, each and every juror would have to sign their name to the form saying we recommend the death sentence. Could you ever sign your name to a form that recommended somebody be put to death?

JUROR PAT ALLEN: But I would have the evidence from the trial, right—

MR. GRAHAM: Yes, ma'am.

JUROR PAT ALLEN: —right, to base it on.

MR. GRAHAM: You would have to go through the entire process as I've described it. You would have to find—

Of course, you know, we're—the guilt phase, you'd have already found a capital murder existed, or we don't' even talk about the death penalty. So Defendant's been found guilty of capital murder pursuant to that. You get to the punishment phase and [Ab 844] we go through the process like we talked about. The State has to prove to you beyond a reasonable doubt that an aggravator exists. Then you get to consider the aggravating circumstances versus the mitigating circumstances. (TR 1570) And you have to find beyond a reasonable doubt that the circumstances outweigh the mitigating circumstances. And then the final step is you have to find that those aggravating circumstances justify a sentence of death.

If you made it through that process, could sign your name to a form that said the Defendant is ordered to die?

JUROR PAT ALLEN: It just all comes from here. It just depends on what I hear, I guess I'm trying to say.

MR. GRAHAM: You're not totally closing the door on the possibility that you could do it?

JUROR PAT ALLEN: No.

MR. GRAHAM: But you potentially could do it?

JUROR PAT ALLEN: (NODS HEAD)

MR. GRAHAM: Okay. And then also you might have to be polled if you voted for a death sentence and it was unanimous. Where you'd have to just—or not justify, but the Judge would ask you was that your verdict and you'd have to stand up in open court and say, "Yes, I voted for the Defendant to be put to death." Could you do that?

[Ab 845]

(NO RESPONSE) (TR 1571)

MR. GRAHAM: And I realize it's something you've probably never been asked before and never been asked to think about before. So I don't want you to think I'm picking on you or trying to attack your beliefs.

JUROR PAT ALLEN: I guess if it came to that I—I could do it.

MR. GRAHAM: If you'd followed the process and you found it was justified, you could sign your name to the form and stand up and say that was your verdict?

JUROR PAT ALLEN: Yes.

MR. GRAHAM: Okay.

And Mr. Phillips, kind of the same line of questioning. And everything presupposes the Defendant's already been convicted of capital murder, otherwise we're not talking about the death penalty at all.

Can you hold the State to its burden of proof to prove to you an aggravating circumstance exists beyond a reasonable doubt?

JUROR ROBERT PHILLIPS: Yes, sir.

MR. GRAHAM: And if the State does not prove that to you can you vote for life without parole?

JUROR ROBERT PHILLIPS: Yes. (TR 1572)

MR. GRAHAM: And you'd have to. That's what the law would tell you. [Ab 846]

JUROR ROBERT PHILLIPS: Yeah. Right.

MR. GRAHAM: You have to do that.

At which point in time you engage in the weighing process, if you make it past that step. Weighing the aggravators, weighing the mitigators. Would you listen to all the evidence that was presented in mitigation?

JUROR ROBERT PHILLIPS: Yes, sir.

MR. GRAHAM: And would you engage in a thoughtful and substantial weighing process and give due consideration to all aggravating factors and mitigating factors?

JUROR ROBERT PHILLIPS: Yes, sir.

MR. GRAHAM: If the State proved to you beyond a reasonable doubt that the aggravating factors outweighed the mitigating factors, would you proceed to the next step?

JUROR ROBERT PHILLIPS: Yes, sir.

MR. GRAHAM: If the State did not prove to you beyond a reasonable doubt that the aggravating factors outweigh the mitigating factors, could you vote for life at that point in time, as the law would require you to do? (TR 1573)

JUROR ROBERT PHILLIPS: Yes, sir.

MR. GRAHAM: Then moving on to the third step. If you found the aggravators outweigh the mitigators could you hold the State to its burden of proof to prove to you [Ab 847] that the aggravating circumstances justify a death penalty?

JUROR ROBERT PHILLIPS: Yes, sir.

MR. GRAHAM: And if the State did not prove that to you, could you vote for life without, as you'd be required to do pursuant to the Statute and the law?

JUROR ROBERT PHILLIPS: Yes.

MR. GRAHAM: If the State proved to you that third item, and they've already proved to you the other two items, the answers are yes to all the questions, could you vote for a death penalty?

JUROR ROBERT PHILLIPS: Yes, sir.

MR. GRAHAM: And as I stated, each and every juror would have to sign the verdict form. Could you sign your name to that form?

JUROR ROBERT PHILLIPS: Yes, sir.

MR. GRAHAM: And you might have to stand up and say, "Yes, that was my verdict." Can you do that?

JUROR ROBERT PHILLIPS: Yes, sir. (TR 1574)

MR. GRAHAM: And consequently, if you—we talked a little bit about it, but if you felt like the State had failed in any of those measures and life without parole was what you were mandated to do, could you vote for life?

JUROR ROBERT PHILLIPS: Yes, sir.

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**(Examination by Reid’s counsel)**

[Ab 866] (TR 1595) MR. PROCTOR: Now, after they prove, or if (TR 1596) they are able to prove that there is in fact a capital murder—Which was what? Premeditated and deliberated intent. If they can prove that, then there is, as Mr. Graham said, a three step process that you have to go through before you can even come to the conclusion that death is [Ab 867] appropriate. At each of these steps reasonable doubt is important.

Step number one is going to be are there aggravators. Judge Wright is going to instruct you on what those aggravators are. There are ten, as Mr. Graham said, in the Statute. And these—the State has the burden of proving the existence of these aggravators. Then there are mitigating circumstances. We’ll deal with that. And then there’s a third step that deals with the existence of whether or not death is justified.

Now here’s my question. Are you the sort of person that as soon as you hear—you find premeditated and deliberated capital murder you automatically go to death? Is that how you feel, Ms. Allen?

JUROR PAT ALLEN: I don’t know.

MR. PROCTOR: Okay, Mr. Phillips? (TR 1597)

JUROR ROBERT PHILLIPS: I'm going to have to see the evidence. It's hard for me to say.

MR. PROCTOR: Right. I understand. Exactly. But—that's exactly right. But the only reason I'm asking you this question is in your bio you said something about you believe an eye for eye.

JUROR ROBERT PHILLIPS: Right.

MR. PROCTOR: Okay. And, so, just thinking what that's—your answer to question number forty-one— [Ab 868]

JUROR ROBERT PHILLIPS: Right.

MR. PROCTOR: —is making me think that you're the type of person that says if I find capital murder then that person has to die.

JUROR ROBERT PHILLIPS: Well, like I said and like you were talking about it, there are mitigating circumstances.

MR. PROCTOR: Okay. All right. And that's all I want to hear from you. If you're— if you're saying that you could follow the law, that's what I'm—that's what I'm trying to find out.

JUROR ROBERT PHILLIPS: Right. Yes.

MR. PROCTOR: So you're not the type of person that's going to automatically say, hey, (TR 1598) look, I found premeditated—this murder was premeditated and deliberated, therefore, he must die.

JUROR ROBERT PHILLIPS: I don't know. It just—it depends on how the trial goes. I just don't—I can't say right now what—how I would do it.

MR. PROCTOR: Okay. All right.

Well let me—let me put it like this. There is a process that you have to go through, and there are different steps. If you go—and the Judge tells you that there are three steps to go through, and we're only on step one, and you haven't done steps two and three, can you answer the question as to whether or not you could go through steps [Ab 869] two and three before you make your conclusion.

JUROR ROBERT PHILLIPS: Yea, I'd have to, yes.

MR. PROCTOR: Okay, that's what I'm trying to get to.

See, automatically—there's—there are some people who think it doesn't matter, I'm just going to go through the steps, I'm going to go through the motions, and I'll go through the motions but (TR 1599) I'm not going to really—it doesn't—I'm not going to give it any sort of meaningful consideration, I'm just going to do it, but in the back of my mind I want to—he's going to die. Is that—is that the way you feel?

JUROR ROBERT PHILLIPS: No.

MR. PROCTOR: All right. And you understand what it's like going through the motions. It's like this. You know, I'm a Florida State Seminole. There is no team—and I like the Razorbacks, don't get me wrong, but if it was a choice between Florida

State and Arkansas, I mean I'm sorry, I mean, Florida State's going to win. I'm not going to give any meaningful consideration to any game in which those two people— well, Florida State and Arkansas's playing. Florida State will always win in my mind.

Do you see what I'm saying?

JUROR ROBERT PHILLIPS: I see.

MR. PROCTOR: So are you that type of person, I mean, or would you be neutral enough to say, well, okay, I— [Ab 870]

JUROR ROBERT PHILLIPS: Yeah, I'd have to be neutral enough to say, you know, yeah, I'd have to see what's going. (TR 1600)

MR. PROCTOR: Okay. And that—

JUROR ROBERT PHILLIPS: I'd have to watch the game.

MR. PROCTOR: There you go. That's—and that's the analogy. (LAUGHTER) You'd have to watch. But, see, I don't even have to watch the game. It's like it's over. I mean, Florida State's going to win. And I's just trying to make sure that you're not—you're that type of person that you're going to watch the game.

All right. Okay. All right. Now, Mr.—

JUROR OLIVER THOMAS: Thomas.

MR. PROCTOR: Thomas, the same way.

And you have to forgive me. I'm looking on this cheat sheet to make sure I get your name right.

But do you understand what I was asking Mr. Phillips, that there's a step that Judge Wright's going to inform you have to go through. And what my question is, let's say at step number one you found—before we can even get to capital murder, even get on the table, that you find that there's premeditated deliberated murder, and you find that beyond a reasonable doubt. Are you (TR 1601) going to automatically default to death? [Ab 871]

JUROR OLIVER THOMAS: No.

MR. PROCTOR: Okay. Right. You're willing to, as I say, watch the—I like it, you'll to watch the game.

JUROR OLIVER THOMAS: I'm going to watch the game.

MR. PROCTOR: Okay. All right.

JUROR OLIVER THOMAS: But the last few years I imagine Florida State would beat Arkansas.

(LAUGHTER)

MR. PROCTOR: You're exactly right.

JUROR OLIVER THOMAS: But the best is yet to come.

MR. PROCTOR: I know. But we'll talk about that later.

(LAUGHTER)

MR. PROCTOR: All right.

The—so—all right, so that's stage number—step number one. Step number two is the mitigators. And again, the mitigators could be anything. There are some that are listed in the Statute. Okay? And the Statutes, you know, list out some and then we can present some. And then you can, based upon what you hear in the evidence (TR 1602) and things, you could come up with some yourself. But there may be mitigators that might exist and what will happen is that through this process you have [Ab 872] to weigh. But the mitigators, the standard of proof is different than the aggravators. I think Judge Wright is going to tell you that with an aggravating circumstance—and the best way we could say it until you go through the trial and hear it is

it's something that makes the Legislature says that these ten things make a murder a capital murder.

Okay?

JUROR ROBERT PHILLIPS: All right.

MR. PROCTOR: All right. And if you find one of those ten things then it's a capital murder, beyond a reasonable doubt. But the mitigators are different. The mitigators—

THE COURT: Mr. Proctor, that's not correct. It's already been a capital murder.

The ten things are what would invoke the death penalty.

MR. PROCTOR: Oh. Death. You're right. There you go. The Judge is right. The Judge is—he knows the law.

(LAUGHTER) (TR 1603)

He is exactly right. It has already been a—it's late. It has already been a capital murder established.

What, Ms. Allen, what the Judge was correcting me on was this. It's already been a capital murder. What the issue is whether death should be imposed. Okay. And, so, what the Legislature says is in order for death to be imposed there are ten factors that [Ab 873] if you find one of those then if the State proves it beyond a reasonable doubt then there's a step two that you're able to go to. Okay? And the step two that you're able to go to says that the aggravating circumstances that you find beyond a reasonable doubt have to be weighed against the mitigators.

And what a mitigating, it could be anything. Anything that you may find would be mitigating. Or it could be one of the ones that are listed. You know, it could be the person's age, or their history of work, or whatever. Those could be mitigators.

Or, you know, you may find something else is a mitigator. But you have to find—you can find those beyond the preponderance of the (TR 1604) evidence. Now that's different than beyond a reasonable doubt. Because beyond a reasonable doubt is what I was telling you all about pausing and hesitating in the graver transactions of life.

Remember that?

But preponderance of the evidence is just slightly, if it tip the scale one way it makes it a preponderance. Does that make sense?

(AFFIRMATIVE NODS BY JURORS)

So if we had a scale and if I tip it one way then you've found that that mitigator exists.

JUROR ROBERT PHILLIPS: All right.

MR. PROCTOR: All right. So that—that's different than the State's burden of proving beyond a reasonable doubt. So you look at the mitigators—if we—you make [Ab 874] decision as to whether these mitigators exist and then you weigh them, and you get into weighing and you determine if beyond a reasonable doubt the State has proved that the aggravating circumstances outweigh the mitigating circumstances beyond a reasonable doubt. Okay?

My question again to you is this. If you are at that point are you still willing to go through (TR 1605) the entire process and wait before you make your decision?

JUROR ROBERT PHILLIPS: Yes.

MR. PROCTOR: Ms. Allen?

JUROR PAT ALLEN: Yes.

MR. PROCTOR: And Mr. Thomas?

JUROR OLIVER THOMAS: Yes.

MR. PROCTOR: Okay. Then, finally, even after you've done that there's still—some people call it mercy—you still have the ability to determine that death is justified beyond a reasonable doubt. Do you understand that?

JUROR OLIVER THOMAS: Yes.

JUROR ROBERT PHILLIPS: Yes.

JUROR PAT ALLEN: Yes.

MR. PROCTOR: Okay. All right.

So everything that's—with everything that's done, again—and I know you've said [Ab 875] different things on your bios about—and at the time, in fairness to you, you didn't—I'm sure when you all were answering those bios you didn't really realize that you may even be sitting on a case involving death. Or maybe you thought about it. But would you be able to follow the process (TR 1606) and give meaningful consideration to each of those steps before you imposed any sentence?

JUROR ROBERT PHILLIPS: Yes.

JUROR PAT ALLEN: Yes.

JUROR OLIVER THOMAS: Yes.