

NO. 20-1742

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IN THE SUPREME COURT OF THE  
UNITED STATES

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AKIL JAHI aka PRESTON CARTER,  
Petitioner

v.

STATE OF TENNESSEE,  
Respondent.

---

ON PETITION FOR WRIT OF CERTIORARI TO THE  
COURT OF CRIMINAL APPEALS OF TENNESSEE, WESTERN DIVISION

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APPENDIX TO RESPONDENT'S BRIEF IN OPPOSITION

---

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## **APPENDIX A**

## AFFIDAVIT OF AKIL JAHI

County of Davidson	]
	]
State of Tennessee	]

I, Akil Jahi, an adult resident of Davidson County, Tennessee, swear as follows:

1. I remember that I was brought back to the Shelby County Jail after I was granted a new sentencing hearing. I was in the Shelby County Jail for a long time before Coleman Garrett spoke with me and told me he was my attorney. If his records reflect that he spoke with me over the phone one month after his appointment that sounds correct, and that would be the first time he ever talked to me. He told me he wanted me to stay in Shelby County Jail, so he could visit me and prepare for my resentencing hearing.

2. Coleman Garrett never visited me in the Shelby County Jail. Neither did his second chair counsel, Howard Manis.

3. At some point prior to sentencing I was returned to Riverbend Prison in Nashville, Tennessee.

4. I only met with Coleman Garrett and Howard Manis a few times prior to my re-sentencing. If Mr. Garrett's time records reflect one meeting outside of court in April, 1999 in Shelby County, and one meeting at Riverbend in December of 1999, that sounds correct. I do not remember other meetings prior to the start of my resentencing. If there was a meeting or meetings in the days immediately prior to my resentencing, they were not memorable to me.



A. J.

5. During my meetings with Mr. Garrett, he did most of the speaking. He talked at me, and told me what I should do when I testified. He did not practice my testimony, ask me questions like I was testifying, or tell me he was going to yell at me at trial.

6. During my meetings with Mr. Garrett, he asked very few questions. The only questions I specifically remember involved getting contact information for my family—he wanted phone numbers. I do not remember him asking any specific questions about my life, my childhood, my drug and alcohol use, or about any other subjects. I do not remember having a conversation with him, where he listened to what I had to say.

7. During my meetings with Mr. Garrett, he never discussed the aggravating factors that the State would use to seek the death penalty. He did not explain the legal elements of those factors. He did not discuss with me anything we could do to challenge or lessen those factors. He did not ask me if I was willing to agree that those aggravating factors applied. He did not tell me that he intended to tell the jury that the aggravating factors applied.

8. If I had been given the opportunity, I would not have agreed that my conduct involved “torture” and was “heinous, atrocious and cruel.” If I had been given the opportunity, I would have wanted to let the jury know that my prior felony involved stealing candy for my children’s lunch. I would not have agreed that he should concede both aggravating factors. Mr. Garrett never gave me any opportunity to set these objectives.

9. During my meetings with Mr. Garrett, he never discussed the statutory mitigating factors that might be available at my resentencing. He did not discuss with me the statutory mitigating factor that my ability "to appreciate the wrongfulness of [my] conduct or to conform my conduct to the requirements of the law was substantially impaired as a result of mental disease or defect or intoxication...which substantially affected [my] judgment." It was always my objective to explain to the jury that I had been extremely intoxicated—to an unusual degree—on the night of the crimes, and that but for my extreme intoxication I would not have acted as I did. Mr. Garrett never talked to me about this objective. Mr. Garrett never told me that he was going to tell the jury that this mitigating factor did not apply. I would not have agreed to give up the "substantially impaired" mitigating factor. I would not have agreed that the "substantially impaired" mitigating factor did not apply. It was contrary to my objectives and wishes, when Mr. Garrett told the jury that my use of drugs and alcohol was "not a factor to take into consideration."

10. During my discussions with Mr. Garrett, he never asked questions about my childhood, or my past experiences. He did not ask about my brother who was killed in a train accident, or my sister who had sickle cell anemia. It was my objective that all mitigating evidence be presented to the jury, so they would be able to make a fair decision about my life. Mr. Garrett never told me that he was going to tell the jury that there was nothing in my childhood that could be considered mitigation; that statement was contrary to my objectives.

11. During my discussions with Mr. Garrett, I do not remember him discussing my mental state at the time of the crimes. If he had asked me, he would have learned that I did not plan, premeditate, or intend to kill anyone. If he had asked me, he would have learned that the crimes happened while I was extremely, and unusually, intoxicated. He would have learned that I did not kill anyone in "cold blood." He should have known that I pled guilty to a reckless killing, not premeditated murder.

12. It was my objective that I be sentenced for what I had done—a reckless killing during a burglary, while extremely intoxicated. It was not my objective to be sentenced for a premeditated murder, or a cold-blooded killing—a crime I did not plead guilty to.

13. During my meetings with Mr. Garrett, I do not remember him ever discussing what type of murder I had been found guilty of. I was surprised and upset when he told the jury I had committed "cold-blooded" murder, and that I had planned the murder. He did not have my permission to change the nature of my guilty plea. He acted contrary to my objectives. I did not plead to premeditated murder, and I did not wish to be sentenced for premeditated murder.

14. I wanted to live. I did not want to be sentenced to death. I had (and continue to have) extreme remorse for what I did.

15. During my meetings with Mr. Garrett he did not warn me that he would tell the jury that I probably deserved the death penalty, and that imposing the death penalty would be easy. I do not agree that I deserved death, and I do not think it

should have been easy for the jury to impose death. When Mr. Garrett conceded that I probably deserved to die, this was contrary to my objective to live. If Mr. Garrett had taken the time to talk to me before resentencing, he would have known that I wanted to live.

16. During my meetings with Mr. Garrett, he talked at me, and told me to show remorse. He did not talk to me about whether I actually felt remorse—though I did. He did not prepare me for his questioning. He did not warn me that he was going to yell at me, and accuse me of being a cold-blooded killer. He did not warn me that he was going to make fun of my job in landscaping, and suggest that I was just a criminal. If he had warned me that he was going to do those things, I would have told him that I objected. If he had warned me, I would have told him that he was just going to make me “shut down.” I do not do well when people yell at me and threaten me. If he had taken the time to get to know me, he would have learned that yelling at me, and mocking me, was not going to make me look remorseful, instead it would make me get quiet and angry inside. By yelling at me, and treating me like a monster, Coleman Garrett did not advance any of my objectives. He kept the jury from seeing my remorse.

17. During my meetings with Mr. Garrett he never asked me about my name change. He did not tell me that he thought I had converted to Islam. In fact, at the time of my resentencing I was still a Baptist. Mr. Garrett never asked me what Akil Jahi means. I had read the Book of Golden Names, and I had learned that Akil means “one who uses reason.” That same book said that Jahi meant “dignity.” My

name change was not a religious change. My name change was and is very meaningful to me, and it reflects the person I have tried to become in prison.

18. It was contrary to my objectives for Mr. Garrett to mock my name change, and to suggest that it reflected a religious change. I know that Mr. Garrett told the jury that a reason they could spare my life was because I had changed in prison. My name change could have been positive evidence of this change. But, Mr. Garrett never asked me if I wanted the jury to know about why I had changed my name—as he never learned that information, himself. Mr. Garrett's false statement about my name change, and mockery of my name change, was contrary to my objectives.

19. Mr. Garrett never asked for my input. He never sought my approval for any of his decisions. He never gave me any opportunity to object to his choices. He had complete control over my defense, and I had no say in how it was conducted. In 2000, with my limited education and life experience, I had no idea that I could object to what he was doing. Even during trial, when it seemed like he was trying to get me sentenced to death, I thought I had to sit quietly and accept his decisions. I did not know I had the right to set the objectives of my own defense.

20. I never had the opportunity to voice my concerns to Mr. Garrett as I did not know that he was going to admit to the aggravators, say that there were no mitigators, and state that I deserved to die, because he never discussed those things with me. At trial, I sat behind the attorneys in the courtroom and they did not consult with me on any decisions they made. I did not know how to object to the arguments Mr. Garrett made during trial. Mr. Garrett controlled all the decisions that were made.

FURTHER, AFFIANT SAITH NOT.

Akil Jahi  
AKIL JAHI, Assistant

SWORN TO and subscribed before me  
this 1<sup>st</sup> day of April, 2019.

Tracy Pennebaker  
Notary Public



My commission expires May 6, 2019

## **APPENDIX B**

W2800-02204-CC A-23-00

IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS

THIRTIETH JUDICIAL DISTRICT

DIVISION V

STATE OF TENNESSEE,

Appellee,

v.

FILED 1-19-01

WILLIAM R. KEY, CLERK

BY CLERK D.C.

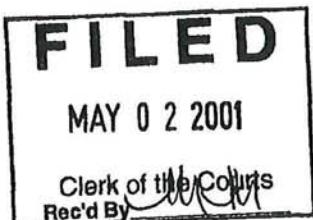
CASE NOS. 93-09760-61

PRESTON CARTER  
Appellant.

Volume 4. of 7 Volumes  
SENTENCING  
FEBRUARY 14, 15, 16, 17, 2000

The Honorable John Kerry Blackwood, Special Judge

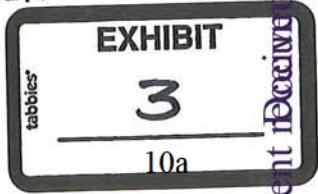
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MARY M. SHUSTER  
CERTIFIED OFFICIAL COURT REPORTER

Vol. 4

APPENDIX B



Document received by the Clerk of the Tennessee Supreme Court.

## APPEARANCES

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## 5 STATE OF TENNESSEE

6

7 V. CASE NO. 93-09759-50

8

9 PRESTON CARTER

10

11                   This cause came on to be heard on the 14<sup>th</sup> day of  
12 February, 2000, before the Honorable John Kerry Blackwood,  
13 Special Judge:

14

15 (The court, counsel, and court personnel met  
16 with prospective jurors in the auditorium of the  
17 Criminal Justice Complex.)

18

19 (The court introduced the case, the assistant district  
20 attorneys general, and defense counsel to the  
21 prospective jurors.)

22

23 (The court advised the prospective jurors  
24 concerning sequestration.)

25

1 (The court allowed prospective jurors to approach  
2 the court individually to discuss any possible  
3 problems with sequestration or serving on the jury.)

4

5 (All excused prospective jurors were duly  
6 noted by the clerk.)

7

8 (The court addressed the prospective jurors  
9 concerning completion of questionnaires  
10 and returning on Tuesday, February 15<sup>th</sup> for  
11 jury selection in Division V of Criminal Court.)

12

13 (The prospective jurors were sworn in by the  
14 court.)

15

16 (Questionnaires were passed out to prospective  
17 jurors.)

18

19 (The above proceedings were noted, not  
20 transcribed.)

21

22 (Court adjourned February 14, 2000.)

23

24 (Prospective jurors remained to complete  
25 questionnaires.)

1 (The trial continued on February 15, 2000.)

2

3 MR. HARRIS: Your Honor, I wanted, for the  
4 record—defense has filed three motions.

5 One motion they have filed was a motion in limine  
6 to prohibit testimony regarding the underlying facts of the  
7 crime used to establish the aggravator. We are not going to  
8 do that anyway, but I did want to reiterate to the court, and so  
9 I think they're going to withdraw that because we're not going  
10 to—we're not going to put that proof on, but we are going to  
11 put on, and rely on that aggravator; that the defendant was—is  
12 he out—he's not out here.

13 THE COURT: We need to bring him in.

14 SERGEANT HALL: Yes, sir.

15

16 (The defendant was returned to the courtroom.)

17

18 MR. HARRIS: Your Honor, they're going to  
19 withdraw that motion, but I wanted to reiterate that we are  
20 going to rely on that aggravator, and I think that we have a  
21 right to under the case of State of Tennessee v. Harris and  
22 Thompson cited at 919 S.W.2d, Page 323, and looking at Page  
23 8 of the opinion, it states that we can use aggravators that  
24 were not used in the first trial. We can bring them up and use  
25 them because it cites Apollo v. Arizona case, which is a U.S.

1 Supreme Court case. And I think the cogent language is, is  
2 that in a-in so-holding, we join the majority of jurisdictions which  
3 have adopted the analysis of the court—the Supreme Court in  
4 Poland and concluded that the capital sentencing trial is not a  
5 series of mini trials, and there is no such thing as an acquittal  
6 from an aggravating circumstance.

7 Accordingly, the state is free, at re-sentencing, to  
8 introduce proof of any aggravating circumstance which is  
9 otherwise legally valid. And what happened, I believe, in the  
10 prior case, is if we introduce uncontested evidence that the  
11 defendant had been convicted of aggravated robbery  
12 before, the jury found that the heinous, atrocious, and  
13 cruel—they found that aggravating circumstance and found  
14 that it outweighed the mitigating. It never addressed the  
15 aggravated-robbery conviction. So the question is: Can we  
16 now use that aggravated-robbery—that aggravated-robbery  
17 conviction in a subsequent sentencing hearing? And this  
18 question is answered in this case, and it says that we can.

19 So I want to make that clear. We are not—and I  
20 have told Mr. Manus, there is law, now, that you can use  
21 evidence of—go—actually go to the heart of that crime and  
22 bring in proof of it. We are not going to do that, but we do  
23 want to rely on it. So he's going to withdraw that motion, I  
24 think. Is that a correct statement of what we've agreed on?

25 MR. MANIS: Your Honor, the motion was filed out

1 of a conversation that Mr. Harris and I had during one of the  
2 discovery sessions where he had indicated to me that he was  
3 considering subpoenaing the fact witness with the underlying  
4 aggravated robbery. It is our position and was our position, at  
5 that time, that that would not have been appropriate under  
6 what we believe the sentencing guidelines and the rules for  
7 this re-sentencing would have been. We do not dispute the  
8 fact that he has a right to try to prove the aggravator of the  
9 crime, in and of itself, through the issuance of the clerk and the  
10 documentation. That's not at issue. It was strictly if he had  
11 chosen to call the fact witness. So based on his statement to  
12 the court that he's not calling that fact witness, this is a moot  
13 motion, but it was filed out of the precaution that that may  
14 have occurred.

15 MR. GARRETT: Your Honor, on that note, if I may  
16 intervene, if Mr. Manis will forgive me, with respect to that  
17 aggravator. This matter is somewhat confusing because of  
18 the prior proceedings and the aggravators that were filed in  
19 connection with that case. Now, Mr. Harris is talking about  
20 that they have the right to use aggravators that were not used  
21 in that case and what have you. I think the confusion here is,  
22 is that I don't know if I have seen, in this record, since the  
23 remand, a notice from the state regarding the aggravators  
24 that they intend to rely upon in this case--whether they're the  
25 same old aggravators or new ones that they didn't rely upon

1 or what have you.

2 I don't know if we have, and I think it would be  
3 helpful, if it is not required by the rules, because it's going to  
4 dictate what we can say to the prospective jurors in the voir  
5 dire. We need to have some idea regarding what  
6 aggravators we are going to be talking about in this case. I  
7 don't want to be putting prospective jurors on notice of some  
8 criminal conduct by my client that the state does not even  
9 intend to bring up.

10 MR. HARRIS: I think I can clarify that. We're going  
11 to rely on the heinous, atrocious, and cruel, that was found by  
12 the Supreme Court that we have proved in the first trial. They  
13 said we've proved that. The other one we're going to rely on  
14 is what I have told you all in discovery; that we were going to  
15 rely on the aggravated-robery conviction—the prior  
16 aggravated-robery conviction, and we've got the  
17 indictment number on that. Mr. Henderson has got the jacket  
18 on it. We'll prove that through the clerk. And I'd also told you  
19 we were going to use the same witnesses we did in the prior  
20 hearing, so they are on notice that we're going to use those  
21 too.

22 Those, Your Honor, are the only two. And we do  
23 not intend to rely on any others. Is that correct, Mr.  
24 Henderson.

25 MR. HENDERSON: Correct.

1 THE COURT: I believe those were the two that  
2 were relied upon at the previous trial as well. All right, sir.

3 Anything else, gentlemen?

4 MR. HARRIS: Your Honor, the defense also filed  
5 two other motions that I think we can handle-

6 MR. MANIS: Before we get to that, just for  
7 clarification—and I assume it's due to the possible  
8 Middlebrooks' problems. You'd originally, in the first trial, gone  
9 with a third aggravator with regards to the underlying felonies  
10 not pled to as felony murder. You pled felony murder, to wit,  
11 aggravated burglary; but there was also the aggravated  
12 circumstance of rape/robbery. And just for clarification  
13 purposes, because I think it's relevant to voir dire, the state is  
14 only going forward on the two that they've announced, not  
15 this third one that was not found.

16 MR. HARRIS: That's correct. We do not feel that  
17 we are prohibited from bringing in evidence of those crimes,  
18 but to say that they are an aggravator, we are not going to do  
19 that. We have never told you all we were going to do it.  
20 There is a Middlebrook problem. I don't really think there is  
21 now, but I'd rather just stay away from that issue-

22 THE COURT: Right.

23 MR. HARRIS: Because it's all included within the  
24 heinous, atrocious, and cruel, that the Supreme Court has  
25 already validated.

1 MR. MANIS: And I think, at the appropriate time,  
2 we may need to address that on the record because, based  
3 on the Kozalinni case law that the evidence must pertain  
4 specifically to an aggravated-statutory aggravator and can't  
5 be just a general argument as to aggravation. I think the state  
6 may—we will ask, at the appropriate time, for the court's ruling  
7 as to whether or not the specific evidence of these other  
8 crimes goes directly to one of the statutory aggravators.

9 THE COURT: That's an evidentiary matter.

10 MR. MANIS: Right.

11 THE COURT: All right, sir.

12 MR. HARRIS: And the Supreme Court addressed  
13 that in their opinion—or the Court of Criminal Appeals  
14 addressed that when Judge Jones, I believe, in his opinion  
15 stated that one of the things that factored into the aggravator,  
16 as to Kenneth Jackson, was the fact that he knew that his wife  
17 was being raped at the time. And so that, I think— The other  
18 two motions, Your Honor, one of them is on the availability to  
19 instruct the jury on the availability of life without parole. Your  
20 Honor, that's already been ruled on by the Supreme Court in  
21 the hearing, and I would submit it without argument.

22 MR. MANIS: We'll submit it as well.

23 THE COURT: I believe it's not available.

24 MR. HARRIS: And the other motion, Your Honor, is  
25 to prohibit victim-impact evidence and argument. And Mr.

1 Henderson pointed out to me, this morning, the proper way to  
2 do that. I had tried the Richard—tried the Richard Odom  
3 case, and we did it the proper way, and I had forgotten—Mr.  
4 Henderson pointed out to me the proper way to do it is to  
5 prove the aggravators first, and then to let the court know that  
6 we're getting into that area, and then prove the victim-impact  
7 evidence if the court—

8 THE COURT: Finds an aggravator.

9 MR. HARRIS: —deems it necessary and probative.  
10 And the prevailing case is Nesbitt, which puts us—gives our  
11 guidelines. So what we're asking the court to do is just follow  
12 Nesbitt and let us put on all of our proof on the aggravators,  
13 and then go into the victim/witness impact—or the victim-  
14 impact evidence, and we'll conform to Nesbitt. I think they  
15 give either four or five areas that you can explore—four or five  
16 limited areas, and I don't remember all of them, but there is a  
17 case.

18 THE COURT: Go ahead, Mr. Manis.

19 MR. MANIS: Your Honor, under the new law, and  
20 under the revised statute, that may actually be the proper  
21 procedure. But I am continually reminded, under the fact  
22 that some of the rulings that are not in our favor that we're  
23 relying on the law as it took place when this crime occurred. I  
24 would remind the court that the statute was subsequently  
25 changed to provide for victim-impact testimony at the time of

1 the original— At the time of the crime, the victim-impact  
2 statute was not in place. Furthermore, even with it in place,  
3 we go back to the Kozalinni case, which has been cited many  
4 times, again, through Black, which still says there's an eighth  
5 amendment argument that it has to go to an aggravated  
6 statutory aggravator or to disprove a mitigator. And anything  
7 that doesn't go to either of those two elements is irrelevant as  
8 to sentencing.

9 Now, the procedure that Mr. Harris is talking about  
10 may be appropriate had this matter gone forward today on  
11 today's law, but we're to go forward on the law that was in  
12 place back in 1993, which did not included the victim-impact  
13 statute. And I would state that the testimony by the victim's  
14 family, with regards to impact and so forth, is so highly  
15 prejudicial and a violation of our client's constitutional rights,  
16 the eighth amendment, as well as the statutory requirements  
17 set out in Kozalinni and Black.

18 THE COURT: All right. And the court's going to  
19 overrule your objection with regards to the admissibility of the  
20 victim-impact statement. The court's going to follow the  
21 ruling as delineated in Nesbitt with regard to the victim-impact  
22 evidence.

23 Is there anything else, gentlemen?

24 MR. HARRIS: Your Honor, before we—before the  
25 trial, Mr. Manis and Mr. Garrett had approached me and

1 asked about the procedure for picking the jury—if we could  
2 know what—the first forty—or the number that they were going  
3 to be called in. I told them I didn't care; that it was up to the  
4 judge and for them to check with the court, and whatever  
5 you said was fine with me. So that's where we are on that  
6 matter. I have no position on it. I think that's something that's  
7 within the court's discretion. I don't think the state and the  
8 defense, in league, can tell the court how to do that because  
9 I think this is something that's within the court's discretion, but I  
10 have no opinion on it. I don't care which procedure we use.  
11 I don't think there's any prejudice to either party using either  
12 one, and I think it's just something that's within the court's  
13 province.

14 THE COURT: Gentlemen.

15 MR. GARRETT: Your Honor, please, we had  
16 requested earlier, from the jury commissioner, that we be  
17 provided with a list of the prospective jurors for the specific  
18 purpose of being able to prepare for voir dire and go over  
19 the—start going over the jury questionnaires when we got those  
20 in hand and the sequence that they would show up on the list  
21 because that would help us in knowing who was coming first  
22 and utilize our time more effectively.

23 I think that, in the cases that I've tried since we've  
24 started using this computerized list, it has been indicated that  
25 this is a computerized random selection of jurors, and we have

1 followed this in the sequence that they have set out on this list.  
2 That's the purpose of the list, as opposed to the old card  
3 system when we pull the names out of the barrel. And we  
4 were anticipating that they jurors would be called in  
5 accordance with the list that we've been provided, and we  
6 have prepared accordingly, and we would ask the court to  
7 follow that process.

8 THE COURT: You're asking that-out in the country  
9 where I come from, we just put them in a big box and pull  
10 them out. We don't know who is coming. But you're saying  
11 that you would prefer, this time, that we call them as they're  
12 listed on the list?

13 MR. GARRETT: That is correct, Your Honor. I think  
14 this is our city effort to improve upon the country policy and  
15 procedure that's being followed, not that that is what it's  
16 going to turn out to be. But I specifically had a conversation  
17 with Mr. Tony regarding the method of selection for this list,  
18 and he's informed me that this was the random selection as  
19 indicated by the pool sequenced numbers that's listed on the  
20 document itself in the third column. It shows that that's the  
21 pool sequence numbers. And Your Honor is correct, we're  
22 asking that we follow this list because that's the way we have  
23 prepared to proceed this morning, and that is according to  
24 the jury commissioner.

25 THE COURT: If the state doesn't have any

1 objection—it's not the way I normally do it, but I don't have any  
2 problem doing it this way.

3 MR. GARRETT: Thank you, Judge.

4 THE COURT: In other words, we're just going to call  
5 them as their name appears on the list. Right?

6 MR. GARRETT: Yes, sir.

7 THE COURT: All right. That will be fine with the  
8 court.

9 And as you know, we put twelve in the box and six  
10 in the front.

11 Anything else, gentlemen, before we bring the jury  
12 in? (Pause.) Anything else before we bring the jury in?

13 MR. HARRIS: No, sir.

14 MR. GARRET: No, Your Honor, not from the  
15 defense.

16 MR. HENDERSON: No, sir, Judge.

17 THE COURT: All right.

18 SERGEANT HALL: The first sixty.

19

20 (Sixty prospective jurors were brought into the  
21 courtroom.)

22

23 THE COURT: Ladies and gentlemen, welcome  
24 here today. Thank you. As your name is called by the  
25 officers, please come around and have a seat in the jury box

1 as you're directed by the officers.

2 SERGEANT HALL: If your name is called, you'll  
3 come forward. Bring with you all your personal property.  
4 You'll enter the arena area through the gate on your left. The  
5 first person's whose name is called will come forward and be  
6 seated on the back row—the row against the wall, the third  
7 seat from the end. You will not sit in the chairs with the backs  
8 turned.

9 The next person whose name is called will come  
10 forward and be seated to the first person's right.

11 The next person to that person's right until that row  
12 is filled, then we'll fill the second-middle row.

13 And then the front row in like fashion.

14 Kimberly Gipson.

15 Kary Goetzka.

16 Carlotta Hill.

17 Elizabeth Graves.

18 Ann Geissler.

19 Freddie London.

20 Dennis Cline.

21 Ines Gillespie.

22 Lucy Billings.

23 Willie Grandberry.

24 DeAndre' Farley.

25 Candy Lively.

1 Diane Holt.  
2 Darneta West.  
3 Tabitha Conover.  
4 Henry Hall, Jr.  
5 Vicki Scherf.  
6 Tressia Rainey.

7 THE COURT: Good morning, once again, ladies  
8 and gentlemen. Thank you for responding to your call as  
9 jurors here today. As I've told you, the case that we'll be  
10 trying—yesterday I mentioned the nature and circumstances of  
11 the case. I'm going to, once again, introduce to you the  
12 attorneys that will be prosecuting the defendant in this case  
13 here today.

14 This is Mr. Jerry Harris, Mr. Reginal Henderson,  
15 Assistant District Attorneys here in Shelby County.

16 Mr. Howard Manis and Mr. Coleman Garrett, who  
17 represent the defendant in this case.

18 And seated behind Mr. Garrett and Mr. Manis is the  
19 defendant, Mr. Preston Carter, the defendant on trial here  
20 today.

21 At this time, ladies and gentlemen, the attorneys  
22 will question you regarding your qualifications to serve as jurors  
23 in this case.

24 MR. HARRIS: Good morning, ladies and  
25 gentlemen.

1 PROSPECTIVE JURORS: (Simultaneously) Good  
2 morning.

3 MR. HARRIS: I hope I speak up loud enough so  
4 you folks back there can hear me. That's never really been a  
5 problem, but I will keep my voice up as best I can.

6 The reason we're here today is for a re-sentencing  
7 hearing as to Mr. Preston Carter on two cases that occurred  
8 within a few minutes of each other; one in which Thomas  
9 Jackson was killed; one in which Tensia Jackson was killed.  
10 They were husband and wife.

11 Now, the defendant has already been found  
12 guilty, and that is not an issue. The issue in the case, as the  
13 judge explained to you yesterday, is punishment. In this case,  
14 there are two punishments that the defendant can receive.  
15 One is life imprisonment, and the other one is death. We  
16 asked you to fill out the questionnaires, and I appreciate all of  
17 you doing it and answering the questions. We want to ask  
18 you some questions about the death penalty. And in asking  
19 these questions, I want to put people at ease by telling you  
20 this: There are no right or wrong answers. I have my opinions,  
21 which are totally irrelevant here. Other people have their  
22 opinions; they're just as good as mine. This is America.  
23 Everybody has a right to his opinion and has a right to be  
24 proud of his or her opinion. What the law says, though, is this:  
25 Pardon me, just in the last year or so, I found out I need

1   glasses, sometimes, to read, and here they are. I used to look  
2   at people—they'd lose their glasses, and I'd say, "Why can't  
3   somebody keep up with their glasses?" and here I am doing  
4   the same thing.

5                   The law says this—and keep in mind just what I  
6   said—that everybody has got the right to their opinion, and  
7   we're not here to debate this with you. There is nobody—we  
8   could stay here for a full ten years talking about this question  
9   of the death penalty—whether it's—whether you believe in it or  
10   not, and we wouldn't change anybody's minds. That's not  
11   what we're here to do is to change your mind. You keep the  
12   opinion you've got. Nobody wants to influence you or  
13   change you. All we want to know is how you feel.

14                  The reason your opinion, on the death penalty, is  
15   important is this: In the state of Tennessee, if the state proves  
16   to you that aggravating circumstances exist that are set out  
17   by law, and that these aggravating circumstances outweigh  
18   mitigating circumstances, if you find any, the verdict shall be  
19   death, period.

20                  And if I can read that to you, and hopefully this will  
21   be a little clearer:

22                  "If the jury unanimously determines at least one  
23   statutory aggravating circumstance or several statutory  
24   aggravating circumstances have been proven by the state,  
25   beyond a reasonable doubt, and such circumstance or

1 circumstances have been proven, by the state, to outweigh  
2 any mitigating circumstances, beyond a reasonable doubt,  
3 then the sentence shall be death."

4 So what all of that means is, is that the state and  
5 the defense both have a right to jurors who can consider the  
6 death penalty—and not only just consider it but can follow this  
7 law and can say, "Well, the state did this, then the verdict is  
8 this." We've heard all the proof, and the verdict is this.

9 Now, we don't want anybody here, when we ask  
10 you these questions, to drop your head and say, "Well, you  
11 know, it's—this is not something where there are right answers.  
12 If you believe one way, and the lady next to you believes  
13 another way, that's okay. That's fine. That's the way life is.  
14 And we want everybody here to have—if you're not selected,  
15 you walk out of here with square shoulders feeling everything is  
16 fine because it will be.

17 What we want to do is find twelve jurors that can  
18 follow this law. And we know that there are some people  
19 who have religious convictions or just personal convictions,  
20 and they could not, in any circumstances, do that. They  
21 could never vote for the death penalty. That's fine. Just let  
22 us know. That's all we're asking you to do.

23 Now, I'll try to be brief. Hopefully—I'm going to  
24 start with Ms. Gibson.

25 Now, with all of this in mind, if the state meets their

1 burden of proof—if we show you the existence of aggravating  
2 circumstances, and we show you that they outweigh the  
3 mitigating circumstances—if there is any proof of mitigation,  
4 can and will you vote for the death penalty? Can you do  
5 that?

6 PROSPECTIVE JUROR: Yes.

7 MR. HARRIS: Do you think that's fair?

8 PROSPECTIVE JUROR: Yes.

9 MR. HARRIS: Now, I can't explain everything in a  
10 couple of minutes, but the way this works is the state puts on its  
11 proof of aggravating circumstances. We've got to prove to  
12 you that these circumstances exist beyond a reasonable  
13 doubt. All right.

14 Then Mr. Garrett and Mr. Manis can put on proof, if  
15 they choose, of mitigation. I can't tell you what mitigation is.  
16 It's whatever you say it is. That's up to you. And you can  
17 draw from their proof, if you feel there's mitigation, that's fine.

18 Then you go back there, and you weigh those two  
19 things—the aggravating circumstances and the mitigating  
20 circumstances. If the aggravating circumstances outweigh  
21 the mitigating circumstances, your verdict shall be death.

22 Your verdict has to be unanimous. Now, do you  
23 think that's fair?

24 PROSPECTIVE JUROR: Um-hum. Yes, sir.

25 MR. HARRIS: Can you do it?

1 PROSPECTIVE JUROR: Yes, sir.

2 MR. HARRIS: Will you listen to our proof that  
3 comes from Mr. Henderson and I, and will you listen to the  
4 proof of Mr. Manis and Mr. Garrett?

5 PROSPECTIVE JUROR: Yes.

6 MR. HARRIS: All right. Would you pronounce your  
7 name, sir, because, you know, I used to pride myself on being  
8 able to do that, and I make mistakes sometimes. Would you  
9 pronounce it? It's not that hard; it's just if you say it for me, it  
10 would help me.

11 PROSPECTIVE JUROR: Goetzka.

12 MR. HARRIS: Goetzka. That's easy. All right. Mr.  
13 Goetzka, the same questions that I asked Ms. Gipson. Can  
14 you do that?

15 PROSPECTIVE JUROR: Yes, sir.

16 MR. HARRIS: If the state— And Ms. Gipson, let's  
17 get back to you just a minute. If the state doesn't meet their  
18 burden of proof, or if we do meet our burden of proof as to  
19 aggravators, but you hear his proof, and you say, "Well, you  
20 know, Mr. Harris and Mr. Henderson, they proved the existence  
21 of the aggravating circumstances, but I'm thinking that the  
22 mitigation outweighs it—or that if the state hasn't prove that the  
23 aggravating circumstances outweigh the mitigating, could  
24 you bring back a verdict of life?

25 PROSPECTIVE JUROR: Yes.

1 MR. HARRIS: All right. Could you do that, sir?

2 PROSPECTIVE JUROR: Yes, sir.

3 MR. HARRIS: Do you think that's fair the way we  
4 do this?

5 PROSPECTIVE JUROR: Yes, sir.

6 MR. HARRIS: Is that fair in your mind?

7 PROSPECTIVE JUROR: Yes.

8 MR. HARRIS: Now, the judge is going to give you a  
9 lot clearer instructions than what I've told you. But basically,  
10 what we're saying is you hear the proof, and you follow the  
11 law, and you bring back the verdict that conforms to the  
12 proof and the law. Can you do that?

13 PROSPECTIVE JUROR: Yes.

14 MR. HARRIS: All right. Ms. Hill. How are you this  
15 morning?

16 PROSPECTIVE JUROR: Fine.

17 MR. HARRIS: I've read your questionnaire, and you  
18 put—you answered Question 42, the one about the death  
19 penalty—you said, "I believe that the death penalty is the  
20 appropriate form of punishment in all first-degree-murder  
21 cases," and then you said, "Although I do not believe the  
22 death penalty ever ought to be imposed as long as the law  
23 provides for it, I could vote to impose it if I believed it was  
24 warranted in a particular case." What did you mean by that?  
25 You're saying—are you just saying you want to listen to

1 everything and make your mind up—is that what you were  
2 saying?

3 PROSPECTIVE JUROR: Yes, sir.

4 MR. HARRIS: Okay. And there's one thing, Ms.  
5 Gipson and Mr. Goetzka, that I want to—and all of you—I want  
6 you all to understand: We're not trying, on voir dire—we're not  
7 trying to extract a promise from you. You haven't heard any  
8 proof. We're not saying, "Ms. Gipson, will you give us the  
9 death penalty?" You haven't heard the proof.

10 What we're saying is: "After you've heard the  
11 proof, if we've proved our case, will you?" That's what we're  
12 doing. And Ms. Hill, I'm reading yours to say—and I want you  
13 to talk, and I'll be quiet in a second, is that you don't  
14 necessarily like the death penalty, but you will follow the law.  
15 Now, you enlarge on that and tell me—

16 PROSPECTIVE JUROR: Well, I feel that I'd have to  
17 hear what's going on first before I judge anybody.

18 MR. HARRIS: Okay.

19 PROSPECTIVE JUROR: So really, I don't believe in it,  
20 but—

21 MR. HARRIS: Can you follow the law?

22 PROSPECTIVE JUROR: Yes, sir.

23 MR. HARRIS: All right. Do you think the law is fair?

24 PROSPECTIVE JUROR: Yes, sir.

25 MR. HARRIS: All right. And if the state shows you

1 the aggravating circumstances outweigh the mitigating  
2 circumstances, would you vote to impose the death penalty?

3 PROSPECTIVE JUROR: Yes, sir.

4 MR. HARRIS: All right. Ms. Graves.

5 PROSPECTIVE JUROR: Yes, sir.

6 MR. HARRIS: How are you this morning?

7 PROSPECTIVE JUROR: All right.

8 MR. HARRIS: I read yours, and I believe your  
9 answer, as far as the death penalty, was—if you'll just let me  
10 fumble through this just for a moment—I believe your answer  
11 was: "I believe that the death penalty is the appropriate form  
12 of punishment in some murder cases, and I could return a  
13 verdict of death if I believed it was warranted."

14 Now, is that—that's what you feel?

15 PROSPECTIVE JUROR: Yes, sir.

16 MR. HARRIS: Now, will you listen to all of the  
17 proof?

18 PROSPECTIVE JUROR: Yes, sir.

19 MR. HARRIS: Okay. And will you base your verdict  
20 on what you hear?

21 PROSPECTIVE JUROR: Yes, sir.

22 MR. HARRIS: And what's presented here in court,  
23 and the judge's guidelines?

24 PROSPECTIVE JUROR: Yes, sir.

25 MR. HARRIS: All right. And I'm going to get this

1 wrong. Is it Geissler?

2 PROSPECTIVE JUROR: Geissler.

3 MR. HARRIS: Geissler. Thank you. I always guess  
4 wrong. If you'll bear with me just a moment. We read these  
5 all yesterday, but we read about a hundred of them—right at a  
6 hundred, and I can't remember everything.

7 Now, I believe you stated the same; that you felt  
8 that it was appropriate in some cases, and in some you didn't.  
9 And I think that's a fair statement of what any reasonable  
10 person would say is that you wanted to listen to the evidence.

11 Isn't that correct?

12 PROSPECTIVE JUROR: Yes, sir.

13 MR. HARRIS: Now, I also noticed here that you  
14 have some religious feelings. And let me tell you, first of all,  
15 we don't want to try to change those or anything. Those are  
16 feelings that we respect. And what I want to know is this:  
17 Sometimes people say when God's law and man's law can  
18 coexist, even if there are problems because this is our form—this  
19 is our law. Other people say, "No, uh-uh."

20 And so what I'm asking you is where are you on this  
21 because I don't want you conflicting on this. I don't want you  
22 torn. There are other people is what I'm trying to say, and if  
23 you can do this, fine. We're not asking you for a promise.  
24 We're just asking you if you can consider and follow the law.

25 I don't want you getting back there on Thursday or

1 Friday and say, "Well, I know I felt like this on Monday, but I've  
2 thought about it more, and my religious feelings are bothering  
3 me." See what I'm saying?

4 PROSPECTIVE JUROR: Um-hum.

5 MR. HARRIS: Now, what do you think?

6 PROSPECTIVE JUROR: Well, that's a tough  
7 question.

8 MR. HARRIS: It is.

9 PROSPECTIVE JUROR: I've always felt that some  
10 people deserve the death penalty, but I've never been the  
11 one who had to make the decision about it.

12 MR. HARRIS: Sure, it's an easy decision when  
13 somebody else is making it.

14 PROSPECTIVE JUROR: I mean, they've taken  
15 somebody's life, which wasn't their right, so what gives me the  
16 right to say they should die. That's the conflict I have.

17 MR. HARRIS: Okay. Are you telling me that you  
18 can't tell us now whether you could follow the law or not?

19 PROSPECTIVE JUROR: I think I could. I mean I  
20 think I could, you know, based on what I hear.

21 MR. HARRIS: Do you think the procedure is fair; is  
22 that the aggravating circumstances have to be proved, and  
23 then if you listen to his proof as to mitigation, and then you  
24 decide which one outweighs the other?

25 PROSPECTIVE JUROR: (No audible response.)

1 MR. HARRIS: It's not an emotional decision. It's  
2 you listen, and it should be a dispassionate decision where  
3 you are saying, "Well, this has got this much weight, and this  
4 has got less weight. This has got more; this has got less." And  
5 you discuss it with your other jurors. Could you do that?

6 PROSPECTIVE JUROR: I think so. Yes.

7 MR. HARRIS: All right. Do you think that, in an  
8 appropriate case, if we show you the aggravating  
9 circumstances outweigh the mitigating circumstances, you  
10 could come back with a verdict of death?

11 PROSPECTIVE JUROR: Yes.

12 MR. HARRIS: The law says you shall. Could you do  
13 that?

14 PROSPECTIVE JUROR: Yes.

15 MR. HARRIS: All right. Thank you.

16 Mr. London, I've read your questionnaire, and it  
17 looks to me like you may have some religious feelings that  
18 would keep you from voting for the death penalty in any  
19 case.

20 PROSPECTIVE JUROR: Right.

21 MR. HARRIS: All right. Now, I'm going to ask you  
22 this question, and you tell—if you would, speak up loud enough  
23 to where the judge and everyone else can hear you:  
24 Mr. London, do you have religious feelings which would  
25 prevent you from ever imposing the death penalty under any

1 circumstances?

2 PROSPECTIVE JUROR: Yes, I do.

3 MR. HARRIS: All right. Could everyone hear that?

4 PROSPECTIVE JURORS: (Simultaneous audible and  
5 inaudible responses.)

6 MR. HARRIS: He said, "Yes, I do." Is that  
7 right?—that's what you said?

8 PROSPECTIVE JUROR: Yes.

9 MR. HARRIS: Now, are these feelings that you  
10 have held in your heart and in your mind for a number of  
11 years?

12 PROSPECTIVE JUROR: Yes, sir.

13 MR. HARRIS: Are they convictions that you hold  
14 true to your heart?

15 PROSPECTIVE JUROR: Yes, sir.

16 MR. HARRIS: All right. That's all I would ask. So,  
17 could I say this—is it fair to say that you are unalterably—and by  
18 that I just mean that you are just steadfastly opposed to the  
19 death penalty and could not vote for its imposition no matter  
20 what the fact situation is?

21 PROSPECTIVE JUROR: No matter what.

22 MR. HARRIS: No matter what. Okay. Thank you,  
23 Mr. London. Your Honor, we would respectfully challenge for  
24 cause based upon his religious feelings.

25 MR. GARRETT: Voir-dire, Your Honor.

1 THE COURT: All right, sir.

2 MR. GARRETT: Thank you. Mr. London, as the  
3 judge has told you, my name is Coleman Garrett; and Mr.  
4 Manis and I have been appointed to represent Mr. Carter in  
5 this cause; and I need to find out a little more about your  
6 conviction about the death penalty. You don't mean, by  
7 your statement, that you could not vote for the death penalty  
8 that you couldn't kill someone, do you?

9 PROSPECTIVE JUROR: I couldn't.

10 MR. GARRETT: Sir.

11 PROSPECTIVE JUROR: I feel like I shouldn't—it's not  
12 for me to judge another person.

13 MR. GARRETT: I understand. You feel like  
14 someone else should do that judging.

15 PROSPECTIVE JUROR: Exactly.

16 MR. GARRETT: As opposed to yourself.

17 PROSPECTIVE JUROR: Exactly.

18 MR. GARRETT: You understand that as a citizen of  
19 this community, this state, this nation, that we have certain  
20 civic duties that we are called upon to perform from time to  
21 time.

22 PROSPECTIVE JUROR: From time to time.

23 MR. GARRETT: You understand that?

24 PROSPECTIVE JUROR: Um-hum.

25 MR. GARRETT: You understand that those duties

1 go along with the freedoms that we enjoy in this society. You  
2 understand that?

3 PROSPECTIVE JUROR: Yes, I do.

4 MR. GARRETT: Do you understand that one of  
5 those duties that we have is to serve as jurors when called  
6 upon, from time to time, to make decisions regarding  
7 penalties that apply to individuals who have been found guilty  
8 of certain crimes?

9 PROSPECTIVE JUROR: (No audible response.)

10 MR. GARRETT: Let me ask you, Mr. London, do you  
11 believe in war?

12 PROSPECTIVE JUROR: Do I believe in it?

13 MR. GARRETT: Yes, sir.

14 PROSPECTIVE JUROR: No, sir, I don't.

15 MR. GARRETT: Would you kill if the enemy was on  
16 your doorstep?

17 MR. HARRIS: Your Honor, I don't want to trifle, but I  
18 think we're going a little far afield as to his qualifications to  
19 serve on this particular case and follow the law of the state of  
20 Tennessee. He's repeatedly said he can't do it.

21 THE COURT: I'll ask you to restrict your questions to  
22 his ability to be fair and impartial in this case in position to the  
23 death penalty.

24 MR. GARRETT: Mr. London, you think that Mr.  
25 Carter is entitled to a fair hearing in this case, don't you?

1 PROSPECTIVE JUROR: Yes, sir, I do.

2 MR. GARRETT: Do you think it's fair for him to have  
3 only people on the jury who believe in the death penalty?

4 PROSPECTIVE JUROR: No, I do not.

5 MR. HARRIS: Your Honor, I object to that question  
6 because the law says that the state has the right to twelve  
7 people who will, in proper proof, vote for the death penalty.

8 THE COURT: The objection is sustained.

9 MR. GARRETT: No further questions, Your Honor.

10 MR. HARRIS: You Honor, we would renew our  
11 challenge for cause.

12 THE COURT: The court grants it. Mr. London, you  
13 may be—you may step down, please, sir. I think you report  
14 back to the jury commissioner.

15

16 (Freddie London was excused for cause.)

17

18 THE COURT: Let me see counsel just a minute,  
19 please, sir.

20

21 (The bench conference commenced.)

22

23 THE COURT: I'm going to try to do what you all do  
24 down here. At home, I would put somebody else in the box.  
25 Do you all do that down here?

1                   MR. HARRIS: I think what we do—I'd just say, go  
2 ahead and do these we've got, and we'll move these up  
3 here as they come up after we're through.

4                   MR. GARRETT: That will be fine with me. That's  
5 easier to keep up with.

6                   THE COURT: All right.

7

8                   (The bench conference was concluded.)

9

10                  MR. HARRIS: Mr. Cline, can you follow the law as  
11 I've explained it to Ms Gipson and to others?

12                  PROSPECTIVE JUROR: Yes, sir.

13                  MR. HARRIS: All right. Do you think that the  
14 procedure is fair?

15                  PROSPECTIVE JUROR: Yes, sir.

16                  MR. HARRIS: Can you bring back a verdict-- If the  
17 state meets their burden of proof, can you bring back a  
18 verdict of death?

19                  PROSPECTIVE JUROR: Yes, I could.

20                  MR. HARRIS: After you've heard all of the proof; if  
21 you feel that the mitigating circumstances taken into  
22 consideration with the aggravating circumstances, that the  
23 state has not proved that the aggravating circumstances  
24 outweigh the mitigating circumstances, can you bring back a  
25 verdict of life?

1 PROSPECTIVE JUROR: Yes.

2 MR. HARRIS: All right. Now, I believe Ms.  
3 Gillespie?

4 PROSPECTIVE JUROR: Um-hum.

5 MR. HARRIS: All right. Your Honor, I think that was  
6 one of the questionnaires that we didn't have a name on—or  
7 either it was too vague—we couldn't—the copy came  
8 out—have you all gotten—

9 MANIS: Actually, Your Honor, the name was on  
10 the last page, not the front page. It's in the stack, it's just—

11

12 (There was a pause in the proceedings.)

13

14 THE COURT: Okay.

15 MR. HARRIS: I've got it.

16 THE COURT: You've got it.

17 MR. HARRIS: Right here. Your Honor, if the court  
18 could pardon me.

19 THE COURT: Yes.

20

21 (There was a pause in the proceedings.)

22

23 MR. HARRIS: Ms. Gillespie, in reading your  
24 questionnaire, I think you checked, "I could never, under any  
25 circumstances, return a verdict of death." Is that correct?

1 PROSPECTIVE JUROR: Yes.

2 MR. HARRIS: All right. Is this based—is this a feeling  
3 that is based on religion or on personal beliefs or a  
4 combination?

5 PROSPECTIVE JUROR: Personally, I just don't  
6 believe in the death penalty. I believe if a person do  
7 something wrong, they should serve their time—get life in prison  
8 without parole.

9 MR. HARRIS: But you could not— Are you—I'm  
10 sorry to interrupt you, but are you telling me that you could  
11 not, based on your personal feelings, return a verdict of  
12 death?

13 PROSPECTIVE JUROR: No, I don't think I could.

14 MR. HARRIS: All right. Are these long-held feelings  
15 that you've had for years and years?

16 PROSPECTIVE JUROR: I just don't believe in the  
17 death penalty.

18 MR. HARRIS: Have you believed that way for a  
19 long time?

20 PROSPECTIVE JUROR: Uh-huh.

21 MR. HARRIS: For many years?

22 PROSPECTIVE JUROR: Yeah.

23 MR. HARRIS: Okay. Is this something you've  
24 discussed with people in your church or with your other family  
25 members?

1 PROSPECTIVE JUROR: No, I haven't discussed it.

2 MR. HARRIS: All right. Now, are you telling me  
3 that under no circumstances or under any factual situations  
4 could you impose the death penalty?

5 PROSPECTIVE JUROR: No.

6 MR. HARRIS: All right. Are you so unalterably—and  
7 I mean by that, steadfastly opposed to the death penalty that  
8 you could, under no circumstances, under any factual  
9 situations, ever vote for the imposition of the death penalty. Is  
10 that what you're telling me?

11 PROSPECTIVE JUROR: Yes.

12 MR. HARRIS: Your Honor, we would respectfully  
13 challenge for cause.

14 THE COURT: Mr. Garrett.

15 MR. GARRETT: May we have just a moment, Your  
16 Honor?

17 THE COURT: Yes, sir.

18

19 (There was a pause in the proceedings.)

20

21 MR. GARRETT: Ms. Gillespie, you consider yourself  
22 a law-abiding citizen. Is that correct?

23 PROSPECTIVE JUROR: Yes.

24 MR. GARRETT: You make a good-faith effort to  
25 follow the law?

1 PROSPECTIVE JUROR: Yes.

2 MR. GARRETT: If the law, as in this case, says that if  
3 you find that the aggravating circumstances surrounding the  
4 murders outweigh any mitigating circumstances, then the  
5 penalty shall be death, can you follow that law?

6 PROSPECTIVE JUROR: No, I can't follow that law.

7 MR. GARRETT: You can't follow that. Can you  
8 think of any scenario or any circumstances under which you  
9 could vote in favor of the death penalty even if it involves  
10 someone that's very close to you—a heinous crime committed  
11 against someone that was very close to you, you still couldn't  
12 consider the death penalty?

13 PROSPECTIVE JUROR: No.

14 MR. GARRETT: That's all I have, Your Honor.

15 THE COURT: Ms. Gillespie, thank you very much,  
16 please, ma'am. You may step down, please.

17

18 (Ines Gillespie was excused for cause.)

19

20 MR. HARRIS: Ms. Billings, can you follow the law?

21 PROSPECTIVE JUROR: Yes, sir.

22 MR. HARRIS: If the state meets their burden of  
23 proof and shows you that the aggravating circumstances  
24 outweigh the mitigating circumstances, can you vote for  
25 death—for the death penalty?

1 PROSPECTIVE JUROR: Yes, sir.

2 MR. HARRIS: Likewise, if we don't, can you vote for  
3 life?

4 PROSPECTIVE JUROR: I can.

5 MR. HARRIS: Can you listen to both sides?

6 PROSPECTIVE JUROR: I can.

7 MR. HARRIS: All right. Thank you. Mr.

8 Grandberry, I believe you're a pastor; is that correct?

9 PROSPECTIVE JUROR: Yes, sir.

10 MR. HARRIS: What is your—I read it in here. I can't  
11 remember what church.

12 PROSPECTIVE JUROR: St. James.

13 MR. HARRIS: Where is that?

14 PROSPECTIVE JUROR: Millington.

15 MR. HARRIS: All right. And I believe you brought a  
16 Bible. Is that correct?

17 PROSPECTIVE JUROR: Commentary.

18 MR. HARRIS: Sir.

19 PROSPECTIVE JUROR: A volume of commentary,  
20 yes.

21 MR. HARRIS: Sure. And I read your response, and  
22 you said that because of your religious feelings and your  
23 religious beliefs you could never impose the death penalty. Is  
24 that correct?

25 PROSPECTIVE JUROR: That's correct.

1                   MR. HARRIS: Now, you've heard me talk to the  
2 other jurors, and believe me, I'm not here to change your  
3 mind. You understand that?

4                   PROSPECTIVE JUROR: Yes, sir.

5                   MR. HARRIS: But I have to ask these questions  
6 even though I think the answer is obvious: Based on your  
7 religious feelings, are you so unalterably—and by that I mean  
8 steadfastly opposed to the death penalty that you could  
9 never, under any factual circumstance, vote for its imposition?

10                  PROSPECTIVE JUROR: I could never.

11                  MR. HARRIS: All right, sir. And are these feelings  
12 that you have held for a long time?

13                  PROSPECTIVE JUROR: Yes, sir.

14                  MR. HARRIS: And I believe you further said you're  
15 a pastor. Is that correct?

16                  PROSPECTIVE JUROR: Yes, sir.

17                  MR. HARRIS: In other words, you stand in the  
18 pulpit, and you're under that light, and you've got to do what  
19 you believe—you're under all that light, aren't you?

20                  PROSPECTIVE JUROR: I don't know how much  
21 light, but—

22                  MR. HARRIS: You know what I mean, you're the  
23 man—

24                  PROSPECTIVE JUROR: Yes, sir.

25                  MR. HARRIS: Or you're the person—not the man—

1 PROSPECTIVE JUROR: Yes, sir.

2 MR. HARRIS: You're the person that's up there  
3 that's leading other people in your religion. Is that correct?

4 PROSPECTIVE JUROR: Yes, sir.

5 MR. HARRIS: All right. And I'm sure you take that  
6 seriously?

7 PROSPECTIVE JUROR: Yes, sir.

8 MR. HARRIS: Your Honor, based on that, we  
9 would respectfully challenge for cause.

10 THE COURT: Mr. Garrett.

11 MR. GARRETT: Thank you, Your Honor.

12 Mr. Grandberry.

13 PROSPECTIVE JUROR: Yes, sir.

14 MR. GARRETT: Not that I didn't hear your answers.  
15 I heard you real clear.

16 PROSPECTIVE JUROR: All right.

17 MR. GARRETT: I just wanted to ask you a question  
18 about your questionnaire, on Question 46, which asks, "In your  
19 opinion, should any defendant who is found guilty of first-  
20 degree, premeditated murder be automatically sentenced to  
21 death."

22 You said, no.

23 "Why not?"

24 "Each case may be different."

25 Do you remember that answer?

1 PROSPECTIVE JUROR: Yes, sir.

2 MR. GARRETT: You indicate there that you don't  
3 think it should be automatic, but you didn't say it should never  
4 happen.

5 PROSPECTIVE JUROR: Well, the question didn't—it  
6 said "automatic," which automatically drew me to the  
7 conclusion that it shouldn't be automatic. But of course, I  
8 don't believe in it, period. I don't believe that others should  
9 finalize another's life and sit in that judgment.

10 I do believe that a person found guilty of murder  
11 should be sentenced to life imprisonment without ever the  
12 possibility of parole, but I don't believe that, in a calm  
13 environment, that others should sit and say that this person  
14 should die.

15 MR. GARRETT: And you do believe that this  
16 defendant, like any other defendant, is entitled to a fair  
17 hearing?

18 PROSPECTIVE JUROR: Yes, sir.

19 MR. GARRETT: Thank you for your honesty, Mr.  
20 Grandberry. That's all, Your Honor.

21 THE COURT: Anything else?

22 MR. HARRIS: No, sir, Your Honor, we would renew  
23 our challenge for cause.

24 THE COURT: Granted. Thank you, Mr. Grandberry.  
25 You may step down.

1 (Willie Grandberry was excused for cause.)

2

3 MR. HARRIS: Mr. Farley.

4 PROSPECTIVE JUROR: Yes, sir.

5 MR. HARRIS: How are you this morning?

6 PROSPECTIVE JUROR: All right.

7 MR. HARRIS: Mr. Farley, I believe you're response  
8 as to the death penalty is that you believe it is an appropriate  
9 form of punishment in some cases?

10 PROSPECTIVE JUROR: Yes, sir.

11 MR. HARRIS: Now, can you follow the guidelines of  
12 the law?

13 PROSPECTIVE JUROR: Yes, sir.

14 MR. HARRIS: Now, do you feel that the guidelines  
15 are fair—in other words, the aggravating circumstances and  
16 the mitigating circumstances?

17 PROSPECTIVE JUROR: Yes, sir.

18 MR. HARRIS: You think they're fair?

19 PROSPECTIVE JUROR: Yes, sir.

20 MR. HARRIS: All right. Ms. Lively.

21 PROSPECTIVE JUROR: Good morning.

22 MR. HARRIS: Good morning. I'm sorry it's taking us  
23 a minute to go through these, but believe me, these things  
24 have saved us a lot of time and you all, too. You don't have  
25 to listen to us ask each and every juror all of these questions.

1 I read your response here, and I believe you said  
2 that you could never, under any circumstances, vote for the  
3 death penalty. Is that correct?

4 PROSPECTIVE JUROR: Yes, I could.

5 MR. HARRIS: Ma'am.

6 PROSPECTIVE JUROR: I can.

7 MR. HARRIS: You can?

8 PROSPECTIVE JUROR: Uh-huh.

9 MR. HARRIS: Okay. I notice that this is yours here  
10 where you circled it. "I could never, under any  
11 circumstances, return a verdict of death."

12 Now, did you think about it overnight, or why are  
13 you changing now to say you could? I mean, what's  
14 happened?

15 PROSPECTIVE JUROR: Well, I just wanted to, you  
16 know, hear everything and make sure that, you know—I  
17 wanted to make sure that the death penalty—

18 MR. HARRIS: All right. You know, we're not trying  
19 to extract a promise from you. You hear all this proof, and  
20 you come back and say, "Well, you know, Mr. Harris and Mr.  
21 Henderson, they did what they said they were going to do,  
22 but we heard the defendant's side, and we think life is the  
23 appropriate punishment. That's your prerogative.

24 PROSPECTIVE JUROR: Um-hum.

25 MR. HARRIS: But what we're asking is, is to find

1 twelve jurors, who, in a proper case, if the state meets their  
2 burden of proof, and if the defense is unable to bring forth  
3 mitigation that is sufficient, will you vote for the death penalty?

4 PROSPECTIVE JUROR: Yes, I will.

5 MR. HARRIS: Do you think the process and the  
6 procedures we use in this proceeding are fair?

7 PROSPECTIVE JUROR: Fair, yes, sir.

8 MR. HARRIS: All right. You realize we put on our  
9 proof, and he can put on whatever proof he wants that's  
10 proper under the law. If the state meets their burden of  
11 proof, can and will you follow the law and vote for the  
12 imposition of the death penalty?

13 PROSPECTIVE JUROR: Yes, sir.

14 MR. HARRIS: Now, one thing I forgot to ask—we  
15 didn't put this on the questionnaire—is this: When you go back  
16 there in the jury room, what you do is deliberate. Deliberate is  
17 a two-part process. It's you listening and also you putting in  
18 your opinion. It's a two-part process. And it's also having an  
19 open mind—being able to go in and say, "Hey, you know, I'm  
20 going to deliberate. I'm going to listen to what my other jurors  
21 say and reflect on that and make up my mind."

22 Now, could each of you all do that? I'm going to  
23 ask you all, too, down here. Can each of you all deliberate  
24 with your fellow jurors?

25 PROSPECTIVE JURORS: (Simultaneous audible and

1 inaudible responses.)

2 MR. HARRIS: Okay. Can everybody back there?

3 PROSPECTIVE JURORS: (Simultaneous audible and

4 inaudible responses.)

5 MR. HARRIS: Some people get back, and this is no  
6 reflection on you—just people get back there, and they say:  
7 "This is the way it is. I've got a degree from such and such,  
8 and I know more than you all. This is the way it is. I'm not  
9 changing my mind. I've got a monopoly on knowledge. I  
10 graduated from this and that or what. Or I'm this and that,  
11 and I know all this."

12 And they don't deliberate. It doesn't happen very  
13 much, but that's what we're looking for is to be sure that  
14 we've got twelve people who can go back there and  
15 deliberate. It doesn't mean you have to agree with your  
16 fellow jurors. It doesn't mean that you have to change your  
17 heart-felt condition—conviction. Excuse me. Your heart-felt  
18 conviction. But it does mean that you would listen and not  
19 just go in and be arbitrarily: "Well, I'm right and everybody  
20 else is wrong. Why are you all here," type of situation. So all  
21 of you all could deliberate.

22 Now, as part of that, the law is, is this: The verdict  
23 has to be unanimous. But even if you deliberate, and you  
24 say, "Well, I listened to them, and I know they are wonderful  
25 people, but I just—I think I'm right, and I just can't change my

1 mind. You've got that right. That's your right. You don't  
2 have to agree with the other people just because there's  
3 more of them than there is of you. That's part of it. But we  
4 ask that you go in with a mind that you would listen to and  
5 deliberate with. And everybody says they can do that.

6 Right?

7 PROSPECTIVE JURORS: (Simultaneous audible and  
8 inaudible responses.).

9 MR. HARRIS: Okay. So, I'm down on this row now.  
10 And it's Ms. Holt. Is that correct?

11 PROSPECTIVE JUROR: Yes, sir.

12 MR. HARRIS: And you said, "I'm not sure if I believe  
13 the death penalty is appropriate or not; however, I could  
14 return a verdict of death if the law and evidence indicated it.  
15 And is that the way you feel?

16 PROSPECTIVE JUROR: Absolutely.

17 MR. HARRIS: Now, are you telling me that if you  
18 share all the proof—excuse me for turning my back on you, but  
19 if you hear all the proof, and the law—the judge will read you  
20 the law, and you'll carry it back there with you. You hear all  
21 of the proof, and you reflect on it. If the state has met their  
22 burden of proof, and shown you that the aggravating  
23 circumstances outweigh the mitigating circumstances, will you  
24 vote for the death penalty?

25 PROSPECTIVE JUROR: Yes, sir.

1 MR. HARRIS: All right. Do you think that's fair?

2 PROSPECTIVE JUROR: Yes.

3 MR. HARRIS: And will you listen to all the proof—not  
4 just what we bring in, but all the proof?

5 PROSPECTIVE JUROR: Yes.

6 MR. HARRIS: Okay. Will you deliberate— You've  
7 already answered this, but will you deliberate with your fellow  
8 jurors?

9 PROSPECTIVE JUROR: I will.

10 MR. HARRIS: I keep asking that because it's one of  
11 the most important questions. Because the jury--there will be  
12 twelve people there. We used to say there was five or six  
13 hundred years of living experience— Your Honor, I'm sorry, I  
14 think I'm interrupting a cell-phone conversation.

15 THE COURT: All right, sir.

16 MR. HARRIS: I didn't mean to do that.

17 THE COURT: Didn't mean to have the cell phone,  
18 either.

19

20 (There was a pause in the proceedings.)

21

22 THE COURT: Go ahead, sir.

23 MR. HARRIS: Okay. All right. I forgot what I was  
24 saying. That's good. But anyway. No, what I was saying  
25 was the deliberation part of it. We used to say there was five

1 or six hundred years of experience on a jury. In other words,  
2 what that means is there's a lot more intelligence up there,  
3 with no disrespect to us four. I mean, we can't know as much  
4 as you twelve. I don't care. There is no way we could have  
5 been as far and done as much as twelve jurors.

6                   Fortunately, the juries have gotten younger, so  
7 there probably won't be five hundred years of experience on  
8 the jury, but there will be a whole bunch because the  
9 average age will be somewhere around thirty/thirty-five-some  
10 over, some under, but that's about the average. But the  
11 point is, is there's a lot of knowledge on the jury. You can  
12 learn things, and they can teach you things, and you can  
13 teach them things. So that's why we ask you to deliberate.  
14 Is that fair?

15                   PROSPECTIVE JUROR: That's fair.

16                   MR. HARRIS: All right. Okay. And Ms. West, good  
17 morning.

18                   PROSPECTIVE JUROR: Good morning.

19                   MR. HARRIS: Just a minute.

20

21                   (There was a pause in the proceedings.)

22

23                   MR. HARRIS: Your Honor, based on what her  
24 response was about knowledge of the case, could we ask if  
25 she could approach the bench--Question 39.

1 THE COURT: All right.

2

3 (The bench conference commenced.)

4

5 MR. HARRIS: Your Honor, I was just thinking,  
6 Question 39, I don't know if that indicates some prior  
7 knowledge of the case, and I didn't want to place that out in  
8 front of the other jurors, but do you know something about this  
9 case because I noticed, in your questionnaire, that you called  
10 the defendant Preston.

11 PROSPECTIVE JUROR: No, I was reading--

12

13 (Simultaneous Speech.)

14

15 THE COURT: You don't remember anything at all  
16 about this case?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Nothing about the defendant?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Okay.

21

22 (The bench conference was concluded.)

23

24 MR. HARRIS: I think a fair reading of your response  
25 to this is that you would consider both punishments?

1 PROSPECTIVE JUROR: Right.

2 MR. HARRIS: And if the state met their burden of  
3 proof, after you've heard all of the proof, that you could  
4 return a verdict of death; and also you're comfortable with life  
5 imprisonment also?

6 PROSPECTIVE JUROR: Right.

7 MR. HARRIS: And can you follow the law?

8 PROSPECTIVE JUROR: Yes.

9 MR. HARRIS: All right. That's fine.

10 MR. GARRETT: Your Honor please, may we  
11 approach.

12 THE COURT: Um-hum.

13

14 (The bench conference commenced.)

15

16 MR. GARRETT: The defendant needs to go to the  
17 restroom, Judge.

18 THE COURT: Oh. Okay. Go ahead.

19

20 (The bench conference concluded, and there  
21 was a pause in the proceedings.)

22

23 THE COURT: Mr. Harris.

24 MR. HARRIS: Ms. Conover. Is that correct, Ms.  
25 Conover?

1 PROSPECTIVE JUROR: Yes, sir.

2 MR. HARRIS: Excuse me. Your Honor.

3

4 (The bench conference commenced.)

5

6 MR. HARRIS: We've got a problem here with  
7 Question 30.

8 PROSPECTIVE JUROR: Let me see.

9 MR. GARRETT: There's no problem if-

10 MR. MANIS: We understand what the state-

11 MR. HARRIS: She's been real emotional. It looks  
12 like she's been crying. We might want to bring her up here.

13 MR. MANIS: That's fine. We're not opposed to  
14 letting her go. That's not a problem with us whatsoever.

15 MR. HARRIS: Let's talk to her and see because  
16 she's real emotional. She's crying.

17 MR. MANIS: I don't know that she has to go  
18 through this again. It's fine with us.

19 MR. GARRETT: We don't have a problem with that.

20 MR. HARRIS: Should we just let it-

21 MR. MANIS: That's fine with us.

22 THE COURT: I'm going to explain to her that-

23

24 (The bench conference was interrupted.)

25

1 THE COURT: Ms. Conover, would you step over  
2 here, please.

3

4 (Ms. Conover joined the bench conference.)

5

6 THE COURT: Good morning. We appreciate your  
7 comments about your past experiences, and under those  
8 circumstances we feel like it would be best that you be  
9 excused from the case. We appreciate your answers. Thank  
10 you very much. You're excused.

11 PROSPECTIVE JUROR: Thank you.

12

13 (The bench conference was concluded.)

14 (Tabitha Conover was excused for cause.)

15

16 MR. HARRIS: Mr. Hall, can you follow the law?

17 PROSPECTIVE JUROR: Yes, sir.

18 MR. HARRIS: And I read your questionnaire, and I  
19 think you pretty well stated the way you feel about it. Can  
20 you listen to the evidence from both sides and bring back a  
21 verdict that the law--based on the law and the evidence?

22 PROSPECTIVE JUROR: Yes, sir.

23 MR. HARRIS: And follow the law that the judge  
24 gives you?

25 PROSPECTIVE JUROR: Yes, sir.

1 MR. HARRIS: If I say this wrong, please—Ms. Scherf.

2 PROSPECTIVE JUROR: Okay.

3 MR. HARRIS: I got it.

4 PROSPECTIVE JUROR: You got it.

5 MR. HARRIS: All right. Okay. I believe—I'm not  
6 even going to thumb back through here, but I believe that  
7 you cannot vote for the death penalty under any  
8 circumstances. Is that correct?

9 PROSPECTIVE JUROR: That's correct, sir.

10 MR. HARRIS: Okay. Is this based on personal or  
11 religious feelings or a combination of both or—

12 PROSPECTIVE JUROR: A combination of both.

13 MR. HARRIS: A combination of both. Are these  
14 feelings that you have held for a long number of years?

15 PROSPECTIVE JUROR: Yes, they are.

16 MR. HARRIS: All right. And as I've told you, I'm not  
17 here to change—that's not what we're here for. But are you  
18 so steadfastly or unalterably opposed to the death penalty  
19 that you could not vote for the imposition of the death penalty  
20 no matter what circumstances were presented to you?

21 PROSPECTIVE JUROR: No matter what, I could not.

22 MR. HARRIS: And these are religious and personal  
23 feelings that you've held for a number of years?

24 PROSPECTIVE JUROR: Yes, sir, they are.

25 MR. HARRIS: Okay. Thank you, ma'am.

1 PROSPECTIVE JUROR: You're welcome.

2 MR. HARRIS: Your Honor, I would respectfully  
3 challenge for cause.

4 THE COURT: Mr. Garrett.

5 MR. GARRETT: No questions, Your Honor.

6 THE COURT: Thank you, ma'am. Ms. Scherf, you  
7 will be excused for cause.

8

9 (Vicki Scherf was excused for cause.)

10

11 MR. HARRIS: Ms. Rainey, good morning.

12 PROSPECTIVE JUROR: Good morning.

13 MR. HARRIS: I've read your questionnaire. It  
14 appears that you're saying--what you're saying is that you can  
15 follow the law in an appropriate circumstance.

16 PROSPECTIVE JUROR: Yes, sir.

17 MR. HARRIS: Is that correct?

18 PROSPECTIVE JUROR: Yes, sir.

19 MR. HARRIS: All right. You've heard the questions  
20 I've asked the other jurors.

21 PROSPECTIVE JUROR: Yes.

22 MR. HARRIS: Is going over those questions with you  
23 going to help anything?

24 PROSPECTIVE JUROR: No.

25 MR. HARRIS: All right. So you can follow the law,

1 and you can go over—and you can deliberate with your other  
2 jurors.

3 PROSPECTIVE JUROR: Yes, sir.

4 MR. HARRIS: That's the one I don't want to get—

5 PROSPECTIVE JUROR: Yes.

6 MR. HARRIS: You can deliberate with them.

7 PROSPECTIVE JUROR: Yes.

8 MR. HARRIS: Mr. Hall, can you deliberate with your  
9 fellow jurors?

10 PROSPECTIVE JUROR: Yes, sir.

11 MR. HARRIS: All right. Thank you. Pass for cause.

12 THE COURT: Mr. Garrett/Mr. Manis.

13 MR. GARRETT: Thank you, Your Honor.

14 Ladies and gentlemen, let me point out what I see  
15 is the purpose of this gathering. This case is somewhat unusual  
16 because we are not here dealing with the guilt or innocence  
17 of the defendant. It's already been decided. Simply put,  
18 the issue that you've got to deal with—you've individually got  
19 to deal with is whether Preston Carter should die or live. That's  
20 the issue.

21 It's more than can you follow the law. Can you kill  
22 Preston Carter.

23 MR. HARRIS: Objection, Your Honor. That's not a  
24 proper statement.

25 THE COURT: Ladies and gentlemen, disregard that

1 comment, please.

2 MR. GARRETT: The state is seeking the death  
3 penalty in this case. The defense is asking you to sentence  
4 Preston Carter to life in prison. The process by which you get  
5 to the ultimate decision, as Mr. Harris has indicated by  
6 weighing certain so-called aggravating factors against  
7 certain mitigating factors. The bottom line is the same  
8 ultimate decision.

9 Mr. Harris told you that your decision must be  
10 unanimous. Your decision must be unanimous to sentence  
11 Mr. Carter to death. One person can decide that he lives.  
12 One person can decide that he lives.

13 You must be able to follow the law. You must be  
14 able to consider imposing the death penalty. But obviously, if  
15 you say you can't even consider that—you can't consider  
16 imposing the death penalty, you can't serve on the jury.

17 Ms. Gipson, do you believe in the death penalty?

18 PROSPECTIVE JUROR: Yes, sir.

19 MR. GARRETT: How strongly would you say you  
20 believe in the death penalty.

21 PROSPECTIVE JUROR: Strong.

22 MR. GARRETT: Real strong.

23 PROSPECTIVE JUROR: Not real strong, but strong.

24 MR. GARRETT: Strong.

25 PROSPECTIVE JUROR: Do you think the death

1 penalty is imposed in enough cases?

2 MR. HARRIS: Your Honor, I think that's irrelevant to  
3 this issue. This case is going to be decided on its own merits,  
4 and any consideration of any other case or any other facts of  
5 any other case is improper.

6 THE COURT: That will be sustained.

7 MR. MANIS: Your Honor, I understand the court  
8 has ruled, but it is one of the questions in the questionnaire.

9 MR. HARRIS: That doesn't make it relevant.

10 MR. MANIS: Well, my point being, Your Honor, is  
11 that there may be some instances where we'd like to question  
12 them about the answers that are in the questionnaire.

13 THE COURT: I understand, and as long as it  
14 purports to relevancy of their qualifications.

15 MR. MANIS: Thank you.

16 MR. GARRETT: You indicated, Ms. Gipson, that you  
17 felt that life in prison was substantial punishment for someone  
18 who was found guilty of first-degree murder. Is that correct?

19 PROSPECTIVE JUROR: Yes, sir.

20 MR. GARRETT: You said because a person will be  
21 locked up for their life. Is that-

22 PROSPECTIVE JUROR: Yes, sir.

23 MR. GARRETT: Would your answer be different,  
24 ma'am, if you had reason to believe that the person wouldn't  
25 be locked up for their life?

1 PROSPECTIVE JUROR: Yes, sir.

2 MR. GARRETT: What would your answer be then?

3 PROSPECTIVE JUROR: So what are you asking me?

4 If he did get life in prison, would I choose the death penalty?

5 Is that what you're asking?

6 MR. GARRETT: Yes, ma'am.

7 PROSPECTIVE JUROR: Yes, sir.

8 MR. GARRETT: Let me ask you, Ms. Gipson, if you  
9 were informed that this defendant killed two people in cold  
10 blood, would you need to know anything else before you vote  
11 for the death penalty?

12 PROSPECTIVE JUROR: I still would want to know the  
13 evidence and why and stuff.

14 MR. GARRETT: If you knew that this defendant,  
15 thinking that the victims were drug dealers, went to their  
16 apartment to rob them of their drugs and money, and found  
17 out that they had the wrong apartment but kicked the door in  
18 anyway and went in and shot the victims in the head with a  
19 shotgun killing both husband and wife and left a three-year-  
20 old baby in the apartment. Would you need to know  
21 anything else before voting for the death penalty?

22 PROSPECTIVE JUROR: No, sir.

23 MR. GARRETT: Would it make any difference to  
24 you if the defendant said he was sorry?

25 PROSPECTIVE JUROR: No.

1                   MR. GARRETT: Can you think of anything that the  
2 defendant could say that could make any difference to you?

3                   PROSPECTIVE JUROR: It's not what he would say to  
4 me that's important.

5                   MR. GARRETT: But would you need to know  
6 anything other than the facts that I have told you to vote for  
7 the death penalty.

8                   PROSPECTIVE JUROR: Could you repeat that,  
9 please.

10                  MR. GARRETT: If you found out that this individual  
11 thought that he was robbing a drug house, and it turned out  
12 to be otherwise, but he went in and killed the people anyway,  
13 would you need to know anything else before imposing the  
14 death penalty?

15                  PROSPECTIVE JUROR: No, sir.

16                  MR. GARRETT: May we approach, Your Honor.

17

18                  (The bench conference commenced.)

19

20                  MR. MANIS: Your Honor, since my understanding  
21 of the jury charge is going to include the twenty-five-year-  
22 eligibility-for-parole paragraph that was added, I just-before  
23 we got into it, I wanted to get a clarification from the  
24 court-some of these answers, especially with this lady, goes  
25 directly to the idea of no parole and never getting out of jail,

1 and we would just like, before we got into it, to be able to  
2 question them on will that change their answer knowing that  
3 he will be eligible after a specific twenty-five years because  
4 that's what they will be instructed under the law; and if that  
5 changes their opinion—that makes it to where they don't  
6 believe that it's an appropriate sentence, we need to know  
7 that. So I should be able to adequately determine if they are  
8 a death-eligible jury or not.

9 MR. HARRIS: I couldn't hear what he was saying,  
10 Judge. I'm sorry. Are you challenging for cause?

11 MR. MANIS: No, no, no. Before we got any  
12 further, we wanted to get a clarification—

13 THE COURT: Well, I believe what the question is, is  
14 they want to explore the question by advising the jury that if  
15 they imposed a sentence of life, that the defendant would be  
16 eligible for parole after twenty-five years. Would that make  
17 them—

18 MR. HARRIS: But that's misleading because the  
19 sentences were ordered to be served consecutively, and  
20 while this was sent back for re-sentencing, the consecutive  
21 part of it is law. If the court remembers—read the opinion—if  
22 I'm wrong—I don't know what the law presently is about  
23 parole—of charging twenty-five years, but it's misleading  
24 because he's got two twenty-five years because these are to  
25 be served consecutively.

1                   And the Supreme Court reversed the case as far as  
2 the actual sentences, but they did not reverse it as to  
3 consecutive sentences.

4                   MR. GARRETT: If that is the case, then the question  
5 becomes whether the jury would be informed that he's got to  
6 serve a minimum of twenty-five–two, twenty-five-year  
7 consecutive sentences.

8                   MR. MANIS: I don't think there's any dispute that  
9 the pattern jury instruction is going to include the twenty-five-  
10 year requirement. I mean that's in the TPI instruction.

11                  MR. HARRIS: But was it charged in the first trial?

12                  THE COURT: It was charged in the first trial, but I  
13 think that since that time—of course the question is whether or  
14 not that still happened because I think now they've made life  
15 sentences fifty-one years; but I think at the time that he was  
16 sentenced, the regulations required him to serve twenty-five  
17 calendar years. So I really guess that's what the court has to  
18 charge.

19                  MR. MANIS: There are three separate charges that  
20 any crimes between 1989 and 1995 gets the twenty-five-year  
21 instruction.

22                  THE COURT: Twenty-five-years instruction.

23                  MR. GARRETT: In this case, then, we're talking  
24 about fifty because we're talking about stacking it.

25                  MR. MANIS: Well, Your Honor, quite honestly, if we

1 could get an instruction of fifty-one years, I think we wouldn't  
2 be imposed to it, but we don't think legally we can do that.

3 THE COURT: That's right.

4 MR. HARRIS: I don't think the fifty-one years  
5 applies.

6 MR. MANIS: No, we know it doesn't. We wouldn't  
7 have been opposed to it if it did. That was our point. We just  
8 want to be able to—since we know they're going to be  
9 instructed as to the eligibility of parole at twenty-five years,  
10 that makes a number of these people's answers a clear  
11 indifference to their opinion because they've used words like  
12 "Life without parole, never being let out of jail, parole  
13 eligibility."

14 THE COURT: Okay. What else. Do you have any  
15 other comments? It might help if you would pose to the court  
16 what question you intend to ask.

17 MR. GARRETT: "If you knew that this defendant  
18 would have to serve at least fifty years before being  
19 considered for parole"—

20 THE COURT:—"would you then vote for death?" Is  
21 that what you're—

22 MR. GARRETT:—"would that make a difference in  
23 your opinion as to whether you would vote for life or death?"

24 MR. MANIS: Your Honor, I would also like to ask  
25 this individual—"By giving the life sentence, he's going to, at

1 some point in time, possibly be eligible for parole. Does that  
2 effect your opinion as to the appropriateness of a life  
3 sentence?"

4 MR. HARRIS: The only thing is, I think they shouldn't  
5 be advised of that because that is misleading because the  
6 state of the law now is he's eligible for parole in twenty-five  
7 years--they could change it next month, and he'd be eligible  
8 in seven years.

9 MR. MANIS: But that would only goes to people  
10 that are convicted after 1995.

11

12 (Simultaneous speech.)

13

14 THE COURT: I have a difficulty with throwing out  
15 "X" number of years--if you could focus your question, to such  
16 an extent, that it would indicate that it would be a substantial  
17 number of years, that would be subject to"--but I just hate to  
18 throw out "X" number of years out there and ask if he knew he  
19 had to serve fifty years before he would be eligible for parole--  
20 or if you knew he had to serve twenty-five years before he was  
21 eligible for parole, would that change your opinion?" I hate  
22 to throw out just a blanket number of years out there, but if  
23 you could get at it in a different method. If you--I think that it  
24 would be, at some point in time where the defendant might  
25 be eligible for parole or might be eligible for release, that

1 might be different.

2 MR. MANIS: Well, can I ask for one clarification  
3 first. I understand Mr. Harris' position–this idea of consecutive  
4 sentences remains. Is that the court's ruling already; that  
5 whatever sentence they give, it's consecutive already.

6

7 (Simultaneous speech.)

8

9 MR. HARRIS: That's already been ruled on, and it  
10 wasn't brought up on appeal.

11 THE COURT: If the court ruled consecutive  
12 sentences, and an appellate court did not reverse it, then I  
13 think it's law.

14 MR. MANIS: Then what I would ask is that they be  
15 informed of that because my concern is the language in the  
16 instruction is going to say twenty-five years. Now, without  
17 informing that it's consecutive, they have a right to believe  
18 him to be eligible for parole after twenty-five years, and that's  
19 not the case; it's fifty; which is a substantial difference in  
20 whether or not this person will ever make it to the street again;  
21 which it appears, from their answers, to be one of their  
22 concerns.

23 THE COURT: Well, I think that can be addressed  
24 when I explain to them that each of these cases—that  
25 although they're being tried together, they are separate and

1 distinct cases; and, you know, their verdict, as to each case,  
2 must be separate and distinct based upon the proof so they  
3 know they're trying two separate cases.

4 MR. GARRETT: And I think, just to go that extra  
5 step, that he would serve a minimum of the twenty-five years  
6 on each to run consecutive.

7 THE COURT: I'm going to say that these instructions  
8 are equally applicable to each case, so the implication to the  
9 jury is--well, go ahead--

10 MR. MANIS: Well, I guess my concern is it's--I think  
11 that we've been questioning them about an unimaginable  
12 amount of time. We'll get one set of answers, but if we--  
13 because the number twenty-five is a number which I think  
14 people can realistically see someone getting back out on the  
15 street, and that may bring up other concerns. And that's the  
16 only reason why I think it's important to define that it's not  
17 going to be less than fifty because of the consecutive ruling;  
18 or at least be able to address that the statute is going to--see,  
19 they're going to be given a piece of paper that reads, "After  
20 twenty-five years," and without any further instruction beyond  
21 that, they're going to rightfully be able to think that after  
22 twenty-five years, he's going to be eligible for parole, and that  
23 may change their opinion as to the appropriateness of a life  
24 sentence, and that's not accurate in the case. I think that's  
25 misleading to them.

1 MR. HARRIS: I think the proper question is this: The  
2 defendant may be eligible for parole at one time. Would this  
3 affect your verdict and not go any further than that--don't say  
4 any number of years.

5 MR. GARRETT: No, no, no, because you see, the  
6 reason we want to get into it is because of the response of this  
7 perspective juror on their questionnaire—No. 45.

8

9 (There was a pause in the proceedings.)

10

11 THE COURT: I think I can change it this way: The  
12 court's already ruled that the possibility of parole is not  
13 applicable in this case, so what I think the court is going to tell  
14 the jury, at this time, is that in this case they're going to  
15 be—they're going to be considering death or life imprisonment,  
16 and life without the possibility of parole is not a consideration  
17 in this case.

18 MR. HARRIS: Okay.

19 THE COURT: And then you can go back and  
20 frame your questions by saying, "If you understand now, that  
21 life without the possibility of parole is not a consideration," then  
22 the rest of the question.

23 MR. GARRETT: For the record, Your Honor, I would  
24 like to, at this time, request permission to question the jurors  
25 about whether it would make a difference in their decision in

1 this case if they were informed that this individual may have to  
2 serve a minimum of fifty years before he would be eligible for  
3 parole. I'm making that request for the record.

4 THE COURT: And I think the court is going to deny  
5 that request. At this time, the court is going to make a  
6 comment that some comment has been made, in voir dire,  
7 about the reference to life without parole—and I'm going to  
8 tell the jury that the punishment of life without parole is not a  
9 consideration in this case; but that they will be considering  
10 that the punishment is going to be life imprisonment.

11 MR. GARRETT: Would the court respectfully note  
12 defense's exception.

13 THE COURT: Yes.

14 MR. MANIS: May we take a short recess. I need  
15 to use the restroom.

16 THE COURT: All right.

17

18 (The bench conference was concluded.)

19

20 (There was a pause in the proceedings.)

21

22 MR. HARRIS: Your Honor, may I approach the  
23 bench with Mr. Garrett.

24 THE COURT: All right.

25

1 (The bench conference commenced.)

2

3 MR. HARRIS: May we take five minutes.

4 THE COURT: Yes, sir.

5 MR. HARRIS: I'm going to walk down to my office  
6 and just check on something. It will take five minutes.

7

8 (The bench conference was concluded.)

9

10 THE COURT: Ladies and gentlemen, we're going  
11 to take about five minutes for a recess. These officers will  
12 take you to the jury room. Please come back and sit, and  
13 you be seated in your seat that you're now presently  
14 occupying. And then please be back in five minutes. The  
15 court stands in recess for five minutes.

16

17 (Recess.)

18

19 (The defendant was returned to the courtroom.)

20

21 (The prospective jurors was returned to the  
22 courtroom.)

23

24 THE COURT: Now, ladies and gentlemen, before  
25 we begin, I want to bring your attention to during the

1 questioning, the term "Life without the possibility of parole—or  
2 life without parole," that term has been alluded to by some of  
3 the jurors. I'm going to instruct you that that is not an option  
4 or an alternative in this case. The court will be instructing you,  
5 at the conclusion of this proof, that you are to consider two  
6 punishments, and those punishments are death or life in prison.

7 Mr. Garrett.

8 MR. GARRETT: Thank you, Your Honor. (Pause.)  
9 Ms. Gipson, did you hear the judge's comments a minute  
10 ago.

11 PROSPECTIVE JUROR: Yes, sir.

12 MR. GARRETT: Is that important to you in which  
13 way you vote on this case?

14 PROSPECTIVE JUROR: No, sir.

15 MR. GARRETT: Not important.

16 PROSPECTIVE JUROR: No.

17 MR. GARRETT: (Pause.) Mr. Goetzka.

18 PROSPECTIVE JUROR: Yes, sir.

19 MR. GARRETT: You heard me, in talking to Ms.  
20 Gipson, indicate that Mr. Preston Carter had engaged in some  
21 heinous conduct, have you not?

22 PROSPECTIVE JUROR: Yes.

23 MR. GARRETT: Let me tell you further, Mr. Goetzka,  
24 that we're not talking about whether or not he is guilty or not  
25 guilty. We're not talking about whether there's any question

1 about that, whatsoever, because on this record, Mr. Carter  
2 wasn't found guilty, he pled guilty to two counts of murder in  
3 the perpetration of a felony. He killed two people. So we're  
4 not here to determine whether he did. We are here to  
5 decide what his punishment is to be. That's the decision that  
6 you've got to make. And Mr. Goetzka, you'll hear proof that  
7 Preston Carter went to the Jackson's residence thinking he  
8 was going to a drug dealer's home—an apartment that was  
9 inhabited by drug dealers but found out otherwise; but even  
10 after knowing that, kicked the door in, went in, shot the man in  
11 the head; his wife became hysterical, shot her in the head; left  
12 a three-year-old child in the apartment. Would you need to  
13 know anything else before you decide this case?

14 PROSPECTIVE JUROR: No, sir.

15 MR. GARRETT: What would your decision be, Mr.  
16 Goetzka, be based on those facts?

17 PROSPECTIVE JUROR: Death penalty.

18 MR. GARRETT: Okay. You made it real clear, in  
19 your questionnaire, that you feel that the death penalty is not  
20 imposed often enough?

21 PROSPECTIVE JUROR: Yes, sir.

22 MR. GARRETT: You make it real clear that you  
23 believe in an eye for an eye?

24 PROSPECTIVE JUROR: Yes, sir.

25 MR. GARRETT: So he's killed these people—he's

1 admitted to killing these people, in your opinion, he should  
2 die?

3 PROSPECTIVE JUROR: Yes, sir.

4 MR. GARRETT: You don't need to hear anything  
5 else?

6 PROSPECTIVE JUROR: Not after what you just told  
7 me, sir.

8 MR. GARRETT: So all of this talk about aggravators  
9 and mitigators doesn't mean anything to you, does it?

10 PROSPECTIVE JUROR: In some special  
11 circumstances, yes.

12 MR. GARRETT: In this particular case?

13 PROSPECTIVE JUROR: From what you've said to  
14 me, no, sir.

15 MR. GARRETT: May we approach, Your Honor.

16

17 (The bench conference commenced.)

18

19 MR. GARRETT: Judge, I'm going to ask for a strike  
20 for cause.

21 MR. HARRIS: I want to voir-dire him.

22 THE COURT: Go ahead.

23 MR. GARRETT: Let me ask this while we're here.  
24 I'm sure they have a right to voir-dire him. In terms of the  
25 procedure to strike him for cause, I want to make sure—and this

1 is really the reason that I asked to approach in terms of what  
2 the process is. I know what we're dealing with. People have  
3 said that they can't impose the death penalty. But for cause  
4 situations like this, does the court want us to approach the  
5 bench on every occasion we make that request or just  
6 announce it from the floor—what's the protocol now?

7 THE COURT: When you begin to start  
8 thinking—exercising your peremptory challenges, if you have  
9 any challenges for cause, if you'll write the word "cause" out  
10 for them, then we'll take them up at that time.

11 MR. GARRETT: Could we then proceed—

12 MR. HENDERSON: Your Honor, if that issue isn't  
13 brought up until that time, we would have to go back and  
14 then voir-dire that particular juror if you understand what I'm  
15 saying.

16 THE COURT: Okay. Aren't you talking about these  
17 particular— If it's for the ability of the death penalty, then we'll  
18 do them individually.

19 MR. MANIS: That's the same procedure, just  
20 reverse it.

21 THE COURT: Just reverse it. Yes, sir.

22

23 (The bench conference was concluded.)

24

25 THE COURT: Mr. Harris.

1                   MR. HARRIS: Sir, now, do you remember when I  
2 asked you, on voir dire, if you would listen to all of the proof  
3 before making your decision, can you do that?

4                   PROSPECTIVE JUROR: Yes.

5                   MR. HARRIS: What he's told you is true. There's no  
6 question about it. But in America, both sides get their say.  
7 What we ask you to do is listen to both sides. Will you do that?

8                   PROSPECTIVE JUROR: Yes, sir.

9                   MR. HARRIS: And if the state doesn't prove to you  
10 that the aggravating circumstances outweigh the mitigating  
11 circumstances, your burden should be life. Could you do  
12 that?

13                  PROSPECTIVE JUROR: I believe so.

14                  MR. HARRIS: All right. That's all we're asking you  
15 to do. And it's sort of a trick question: "Is that all you need to  
16 find death." What you've all told me is that you'll listen to all  
17 of the proof before making that decision. Can you do that?

18                  PROSPECTIVE JUROR: Yes, sir.

19                  MR. HARRIS: Do you think that's fair?

20                  PROSPECTIVE JUROR: Yes.

21                  MR. HARRIS: That's what the state has asked you  
22 to do, haven't we? We didn't say, "Just listen to us." You've  
23 got to hear proof from that witness stand, and then you've got  
24 to hear his side. Will you do that?

25                  PROSPECTIVE JUROR: Yes.

1 MR. HARRIS: Is that procedure fair to you; that  
2 each side should get their say?

3 PROSPECTIVE JUROR: Yes.

4 MR. HARRIS: And that you should listen to it?

5 PROSPECTIVE JUROR: Yes.

6 MR. HARRIS: And will you do that?-- I'm sorry, I've  
7 already asked you that once or twice, but can you do that?

8 PROSPECTIVE JUROR: Yes.

9 MR. HARRIS: All right. And you'll base your  
10 verdict on the law the judge charges and the evidence you  
11 hear from the witness stand.

12 PROSPECTIVE JUROR: Yes.

13 MR. HARRIS: Thank you. One other—that's okay.

14 One thing that I meant to bring out, and I didn't, is this: This is  
15 really two sentencing hearings. You've got two victims.

16 You've got one, Mr. Jackson; and one, Ms. Jackson. You'll

17 have a verdict as to each one of them. They can be the

18 same, or they can be different; but you'll have two

19 verdicts—one as to one indictment as to Thomas

<sup>20</sup> Jackson—where Thomas Jackson is the victim; and

21 Tensia Jackson. Could you do that—give separa-

22 each one? They can be the same, but they have to be

23 separate. Can you do that?

24 PROSPECTIVE JURORS

25 MR. HARRIS: All right.

1 THE COURT: Mr. Garrett.

2 MR. GARRETT: Thank you, Your Honor.

3 Mr. Goetzka, because it is the way our system is  
4 designed, you would agree that even Mr. Preston Carter is  
5 entitled to a fair hearing, wouldn't you?

6 PROSPECTIVE JUROR: Yes, sir.

7 MR. GARRETT: But you've already told me that  
8 based upon the facts that I've posed to you, that you don't  
9 need to hear anything else to make your decision in this case;  
10 isn't that what you said?

11 PROSPECTIVE JUROR: You were asking me what  
12 my opinion would be at this time, so yes.

13 MR. GARRETT: If Mr. Carter bursted in that  
14 apartment and shot Mr. Jackson in the head and then killed  
15 his hysterical wife and left a baby in the apartment, Mr.  
16 Goetzka, would you need to hear anything else before  
17 making your decision.

18 MR. HARRIS: Your Honor, I think that's been asked  
19 and answered.

20 THE COURT: Yes, sir, asked and answered.

21 MR. GARRETT: Mr. Goetzka, you understand that  
22 I've told you, and Mr. Harris has agreed, that those are the  
23 facts in this case that relates to what the defendant has done.  
24 You realize that only you know whether you've already made  
25 up your mind about what your decision would be. You

1 understand that, don't you?

2 PROSPECTIVE JUROR: Yes, sir.

3 MR. GARRETT: There's no way that I can know  
4 whether you've already made up your mind.

5 PROSPECTIVE JUROR: (No audible response.)

6 MR. GARRETT: You understand that if you've  
7 already made up your mind, then that's not fair—it's not right.

8 PROSPECTIVE JUROR: Yes, sir.

9 MR. GARRETT: Have you already made up your  
10 mind.

11 PROSPECTIVE JUROR: I don't believe so. I  
12 answered that question when I did not know that was, in fact,  
13 the facts. I thought that may have been a hypothetical  
14 question.

15 MR. GARRETT: So now that you know that those  
16 are the facts; that in fact Mr. Carter did this, heinous act—acts,  
17 does it make a difference?

18 PROSPECTIVE JUROR: Yes, because I said I would  
19 listen to the whole.

20 MR. GARRETT: You know, if you say that you  
21 believe in the death penalty, and that you can listen to the  
22 law, you basically qualify as a juror.

23 PROSPECTIVE JUROR: Yes.

24 MR. GARRETT: Or if you say that you can't  
25 consider imposing the death penalty, under any

1 circumstances, you're out the door automatically. Do you  
2 understand that?

3 PROSPECTIVE JUROR: Yes, sir.

4 MR. GARRETT: Do you want to serve on this jury?

5 PROSPECTIVE JUROR: It's my duty, sir.

6 MR. GARRETT: Do you want to serve on this jury.

7 MR. HENDERSON: Objection. It's not relevant  
8 whether he wants to or not.

9 THE COURT: That will be sustained.

10

11 (There was a pause in the proceedings.)

12

13 MR. GARRETT: May we approach, Your Honor.

14

15 (The bench conference commenced.)

16

17 MR. GARRETT: I'm not hard of hearing, Your  
18 Honor, and I heard and understand the court's ruling. I'd just  
19 like to note my exception.

20 THE COURT: Yes, sir.

21 MR. GARRETT: I think it is highly relevant as to  
22 whether someone would want to serve on a jury of this nature  
23 in terms of what their motivation would be. I think it's a proper  
24 question, and I ask the court to note our exception to the  
25 court's ruling on the question.

1 THE COURT: Yes, sir.

2

3 (The bench conference was concluded.)

4

5 MR. GARRETT: Ms. Hill.

6 PROSPECTIVE JUROR: Yes.

7 MR. GARRETT: When you filled out your  
8 questionnaire, one of the answers under No. 42, that you  
9 circled, was that, "I believe that the death penalty is the  
10 appropriate form of punishment in all first-degree-murder  
11 cases. Is that right?

12 PROSPECTIVE JUROR: Yes, sir.

13 MR. GARRETT: You know that Preston Carter has  
14 pled guilty to first-degree murder.

15 PROSPECTIVE JUROR: Yes.

16 MR. GARRETT: Two counts of first-degree murder?

17 PROSPECTIVE JUROR: Yes, sir.

18 MR. GARRETT: Do you still need to know more  
19 before you decide whether death is the appropriate  
20 sentence or not?

21 PROSPECTIVE JUROR: No, sir.

22 MR. GARRETT: You've already made up your  
23 mind?

24 PROSPECTIVE JUROR: Yes, sir.

25 MR. GARRETT: Would it be fair to say that under

1 the circumstances, Mr. Carter would have to prove something  
2 to you in order for you not to vote for death?

3 PROSPECTIVE JUROR: Sir.

4 MR. GARRETT: Would it be fair to say that Mr.  
5 Carter would have to prove something to you in order for you  
6 not to vote for death in this case?

7 PROSPECTIVE JUROR: No, sir, because he already  
8 admit that he did it.

9 MR. GARRETT: So as far as you're concerned,  
10 you've already made up your mind?

11 PROSPECTIVE JUROR: Yes, sir.

12 MR. GARRETT: Nothing else matters?

13 PROSPECTIVE JUROR: No, sir.

14 MR. GARRETT: Move for cause, Your Honor.

15 MR. HENDERSON: May I voir-dire, Your Honor.

16 THE COURT: All right. I'll let the state, and I'll rule.

17 MR. HENDERSON: Ms. Hill, by way of clarification,  
18 let me explain a few things to you. Now, you've heard some  
19 indications about what the proof is going to be in this case  
20 and whether it's agreed to or not, but you understand  
21 everybody understands that, at this point in this proceeding,  
22 nothing is really before you. In other words, if we don't prove  
23 this case by the witnesses, then there is no proof before you.  
24 Do you understand that, Ms. Hill?

25 PROSPECTIVE JUROR: Yes, sir.

1 MR. HENDERSON: And do you also understand  
2 that whatever mitigation there is—and you know, there may be  
3 a myriad of reasons—whatever they are—for the circumstances  
4 surrounding what Mr. Carter did or didn't do.

5 PROSPECTIVE JUROR: Yes.

6 MR. HENDERSON: You know, in that particular  
7 incident with the Jackson's.

8 PROSPECTIVE JUROR: Yes.

13 PROSPECTIVE JUROR: Now I do.

14 MR. HENDERSON: In other words, the lawyers are  
15 asking you questions about your position and how you're  
16 going to be fair and impartial to give a fair trial to both Mr.  
17 Carter and the state. That's what we're doing up here. But  
18 when we make statements about the proof or tell you  
19 something about the case, that's not proof. That's not proof.  
20 Nothing Mr. Coleman has said or Mr. Harris has said is proof in  
21 this case. The proof comes from over here, and then that  
22 proof is what you apply to the law that the judge will give you  
23 later on in the case. But you haven't heard anything yet that  
24 is proof. You have heard the lawyers talking to you. Do you  
25 understand the difference?

1 PROSPECTIVE JUROR: Yes, sir.

2 MR. HENDERSON: And what we're trying to do  
3 here today is to make the determination of whether we can  
4 get jurors who are fair and impartial based on, you know, what  
5 we're talking about what the law is. And that law says that  
6 you will hear proof, and that if you—in order for you to find, in  
7 this case, let's say the death penalty, as Mr. Harris has  
8 explained to you, and has been talked about, the law says  
9 that there has to be—the state has to prove aggravating  
10 circumstances, and those aggravating circumstances have to  
11 outweigh any mitigating circumstance.

12 Now, you haven't heard, actually, any proof of  
13 any aggravating circumstance. You've heard lawyers talk to  
14 you about the case. You haven't heard any proof of any  
15 mitigating circumstances—or what the circumstances were.  
16 What we have asked you is whether or not, (1), would you  
17 listen to both side, and your answer was what?

18 PROSPECTIVE JUROR: Yes, sir.

19 MR. HENDERSON: And after listening to both sides,  
20 would you be able to deliberate and then make a  
21 determination after you hear the proof, which you haven't  
22 heard yet?

23 PROSPECTIVE JUROR: But he admitted that he did  
24 it.

25 MR. HENDERSON: In other words, we're talking

1 about sentencing and guilt. So my question to you is that, at  
2 this point, you haven't heard anything—nothing has been  
3 proven as far as the guilt phase—excuse me, as far as the  
4 penalty phase of this case, what the sentence is going to be.  
5 The sentencing still has to be based on proof. Okay.

6 PROSPECTIVE JUROR: Okay.

7 MR. HENDERSON: So what I'm asking you is will  
8 you be able to listen to the proof in the case, from both sides,  
9 before you make your decision; or are you telling us that  
10 regardless, you've made up your mind now; that you aren't  
11 going to listen to the proof from both sides because you don't  
12 know what that proof is.

13 PROSPECTIVE JUROR: (Inaudible.)

14 MR. HENDERSON: You said what, now?

15 PROSPECTIVE JUROR: I will listen to both sides.

16 MR. HENDERSON: Okay. And I don't want—and  
17 don't get me wrong. I don't want to force you into a decision  
18 because those are legitimate, you know, concerns, by both  
19 sides about people who have made up their minds, and I just  
20 want to make it clear that you haven't actually heard any  
21 proof of anything in this case yet, and that's for everybody.  
22 The lawyers have said, "This is what the facts are," and so  
23 forth; but again, you really haven't heard the actual proof yet.  
24 Okay. And what we need to know is will you wait to hear  
25 that proof before you make your minds up from both sides?

1 And if you can't, or you're not, we need to know that too. So  
2 that's what I'm asking you now.

3 PROSPECTIVE JUROR: I don't know.

4 MR. HENDERSON: Can you follow the law?

5 PROSPECTIVE JUROR: Yes.

6 MR. HENDERSON: If the law says, in this case, you  
7 have to hear both sides, will you do that?

8 PROSPECTIVE JUROR: Yes, sir.

9 MR. HENDERSON: And both sides being the state's  
10 proof, then proof by the defense—that's Preston Carter's proof,  
11 and then deliberate and make up your mind, will you follow  
12 that procedure?

13 PROSPECTIVE JUROR: Yes, sir.

14 MR. HENDERSON: Will you have an open mind,  
15 and will you make your decision based on strictly what comes  
16 from there—from the witness stand and the judge's—the law  
17 that you're going to apply to it. Can you follow that  
18 procedure?

19 PROSPECTIVE JUROR: Yes, sir.

20 MR. HENDERSON: Will you follow that procedure?

21 PROSPECTIVE JUROR: I'll do my best. Yes, sir.

22 MR. HENDERSON: And so, in this case, are you  
23 going to—that's what you're telling the court; that you're going  
24 to do that?

25 PROSPECTIVE JUROR: Yes, sir.

1 MR. HENDERSON: All right, Judge.

2 MR. MANIS: Your Honor, if I may for a second.

3 This is a very tough thing, to stand up in front of a  
4 room full of people that you don't know and to ask very  
5 personal and serious questions, and we're not trying to pry for  
6 information that we don't feel we have to know to ask these  
7 questions. And we're not—Ms. Hill, I hope you don't feel we're  
8 picking on you. There's an answer that you gave that I'd like  
9 to find out a little more about. And that is, everyone  
10 understands, seems to understand, as Mr. Henderson pointed  
11 out, we do not skip proof. We're just trying to get an idea  
12 based on what we think the proof is going to be.

13 But in this case, it's a little different. There is not a  
14 guilt and innocence phase; it's strictly a sentencing phase.  
15 We do know that Preston Carter has entered a guilty plea to  
16 two counts of felony murder. He has admitted to killing two  
17 people. That's undisputed. It's not an issue of whether he  
18 did or he didn't do that. And before, when Mr. Garrett was  
19 asking you some questions, you said, based on the fact that  
20 he admitted to that, that you felt that the death penalty was  
21 the only option. Is that correct?

22 PROSPECTIVE JUROR: Yes.

23 MR. MANIS: And do you still feel that right now?

24 PROSPECTIVE JUROR: Eighty percent, yes.

25 MR. MANIS: When you say eighty percent, could

1 you expand on that? What does that mean?

2 PROSPECTIVE JUROR: It also means—probably  
3 means me saying, "Yes, the death penalty."

4 MR. MANIS: Knowing that we are not going to  
5 be—or are able to put on any proof that says we didn't do this,  
6 we are not responsible for what we pled guilty to, does that  
7 change your mind any?

8 MR. HARRIS: Your Honor, may we approach.

9

10 (The bench conference commenced.)

11

12 MR. HENDERSON: Your Honor, I have a problem  
13 with the particular form of that question because I think that's  
14 misleading because I don't think he's saying that they're not  
15 going to put on any mitigation, but that's certainly the  
16 implication that's going to be going to this person that he's  
17 asking the question to.

18 MR. MANIS: I'll be glad to clear it up. It wasn't—in  
19 other words, we're not going to deny that we did it.

20 MR. HARRIS: I've lost track of where we are.

21 I thought that he challenged for cause, and we've voir-dired,  
22 and now we was going to have a ruling, and then—

23 MR. MANIS: And I was just trying to address the  
24 final issue as to cause.

25 THE COURT: Ask her about one or two more

1 questions with regard to her ability on the question of cause,  
2 Mr. Manis.

3

4 (The bench conference was concluded.)

5

6 MR. MANIS: Ms. Hill, I'll just ask you one last  
7 question. Going back to the jury question, No. 42, where you  
8 answered, "I believe that the death penalty is the appropriate  
9 form of punishment in all first-degree murder cases. Is that still  
10 your opinion?

11 PROSPECTIVE JUROR: Yes, sir.

12 MR. MANIS: That's all.

13 THE COURT: Approach the bench.

14

15 (The bench conference commenced.)

16

17 THE COURT: Any further argument with regard to  
18 the challenge for cause.

19 MR. HENDERSON: What I'd like to point out to the  
20 court is whether or not she believes it's appropriate, a lot of  
21 people have opinions as to what they think is appropriate; the  
22 question is whether or not she would be willing to listen to all  
23 the proof, and she said that she would.

24 I'd also like to point out that it wasn't mentioned,  
25 but she also marked out here, "Although I do not believe that

1 the death penalty ever ought to be imposed," and they  
2 neglected to ask that question. That's No. 3 that she also  
3 marked on here—No. 3.

4

5 (There was a pause in the proceedings.)

6

7 MR. MANIS: Your Honor, her question—the last  
8 question asked to her was did she believe the death penalty is  
9 the appropriate form of punishment in all—and I stressed all—  
10 first-degree-murder cases, and she said yes.

11 THE COURT: I'm going to grant the challenge for  
12 cause.

13 (The bench conference was concluded.)

14

15 THE COURT: Ms. Hill, you can step down, please.  
16 Thank you, ma'am.

17

18 (Carlotta Hill was excused for cause.)

19

20 THE COURT: Let me ask the ones of you who are  
21 still on this panel, to the exclusion of the prospective jurors in  
22 the audience: Since there is no way that either side can  
23 know what's on your mind, all we can do is ask. I'm going to  
24 ask if there's anyone who would raise their hand, in an  
25 affirmative answer, to the question of whether knowing that

1 Preston Carter has pled guilty to two murders, and knowing  
2 that he bursted into these people's homes in the middle of the  
3 night, and without going through all of the gory details, shot  
4 this young man in the head and shot his hysterical wife in the  
5 head, with a sawed-off shotgun, and killed both of them and  
6 left their three-year-old child in the apartment—not just in the  
7 apartment, but in the closet with her dead daddy, how many  
8 of you, like Ms. Hill, already made up your minds knowing  
9 those to be the facts, how many of you have already made  
10 up your mind as to what the penalty should be in this  
11 case?—anybody?

12 PROSPECTIVE JURORS: (No audible response.)

13 MR. GARRETT: See we can all sit here and say,  
14 "Yeah, I can follow the law, and I can sit here and listen." Of  
15 course you can, but it doesn't tell us whether you've already  
16 made up your minds. Ms. Graves.

17 PROSPECTIVE JUROR: Yes.

18 MR. GARRETT: Have you already made up your  
19 mind?

20 PROSPECTIVE JUROR: No, sir.

21 MR. GARRETT: Ms. Graves, in your questionnaire,  
22 you were asked in Question, No. 46, "In your opinion, should  
23 any defendant who is found guilty of first-degree,  
24 premeditated murder, be automatically sentenced to death.  
25 Your answer was "Yes." We know that Preston Carter has

1 admitted to two cases of first-degree murder. Do you think he  
2 should be automatically sentenced to death as you've said in  
3 your questionnaire?

4 PROSPECTIVE JUROR: Not before I hear all the  
5 evidence. Not before I hear both sides.

6 MR. GARRETT: So are you retracting the answer  
7 that you gave to this question?

8 PROSPECTIVE JUROR: Yes.

9 MR. GARRETT: When you were asked, "Why or why  
10 not," you explained that, "If you take a life after planning it,  
11 then that person should get death." You didn't seem to be  
12 confused about what your position was at that time, did you?

13 PROSPECTIVE JUROR: No, I mean if you think  
14 about killing somebody or think about him going about  
15 through this just knowingly, this is what you're going to do,  
16 that's why I answered the question, "Yes."

17 MR. GARRETT: In this case, the case that's before  
18 you right now that you are being considered a prospective  
19 juror on, in this case, Preston Carter did what he had planned  
20 to do—went over to the house in the middle of the  
21 night—12:00—12:30 under cover of darkness, kicked in the door  
22 of a young, unsuspecting couple. Shot them in the head.  
23 Those facts. Do you think he should automatically get the  
24 death penalty?

25 PROSPECTIVE JUROR: No. Not without hearing all

1 the evidence.

2 MR. GARRETT: Thank you, ma'am.

3

4 (There was a pause in the proceedings.)

5

6 MR. GARRETT: Mr. Cline.

7 PROSPECTIVE JUROR: Yes.

8 MR. GARRETT: I don't need to repeat the  
9 circumstances surrounding Preston Carter's guilty pleas, do I?

10 PROSPECTIVE JUROR: No.

11 MR. GARRETT: You accept that as a given, don't  
12 you?

13 PROSPECTIVE JUROR: Yes.

14 MR. GARRETT: That that's what he did.

15 PROSPECTIVE JUROR: Yes, sir.

16 MR. GARRETT: That's what he pled guilty to.

17 PROSPECTIVE JUROR: Yes, sir.

18 MR. GARRETT: Do you need to hear anything else  
19 before you make up your mind?

20 PROSPECTIVE JUROR: Is that all the facts of both  
21 sides?

22 MR. GARRETT: Yes, sir. Those are the facts relative  
23 to what he pled guilty to. Those are the facts that put him in  
24 that seat right there that's got him before this panel to  
25 consider what his punishment should be. It won't be all of the

1 proof that's presented. You've heard the state and defense  
2 both say we're going to try to do is put on proof in addition to  
3 what you know so far that we label aggravators and  
4 mitigators, and we use all of these fancy names and ask you  
5 about whether you can follow the law and whether you can  
6 listen. And of course you can listen. You're not deaf. You  
7 can follow the law. Of course you can. But you don't have  
8 to. That's why we ask these questions. You don't have to.

9 You see, aggravators are things that the state will  
10 be asking you to take into consideration in deciding to meat  
11 out the most severe punishment that's permissible.

12 On the other hand, the defense will try to point out  
13 certain mitigating factors to ask you to not vote for the death  
14 penalty. That's a sentence of something less than death. So  
15 we'll be going back and forth about these are our  
16 aggravators; whether they outweigh the mitigators and what  
17 have you. And you can go through that exercise; and that's  
18 what we are asking you; whether you are capable of doing.  
19 But we don't want you going through that process if you have  
20 already made up your mind. That's a waste of time.

21 PROSPECTIVE JUROR: I agree if you've already  
22 made up your mind. I don't think I have.

23 MR. GARRETT: Okay. I'm concerned about the  
24 qualification, "I don't think I have." Have you partially?  
25 Could you expound on that?

1 PROSPECTIVE JUROR: I have not made up my  
2 mind yet.

3 MR. GARRETT: Okay. In your questionnaire, you  
4 indicated that you believe that the death penalty was used to  
5 settle them. What's the basis for that answer.

6 MR. HARRIS: Your Honor, once again, we—I know  
7 that's in the questionnaire, and we didn't object to it being in  
8 there; that's fine; but it's really irrelevant.

9 THE COURT: It will be sustained.

10 MR. GARRETT: May we approach, Your Honor.

11 THE COURT: Yes.

12

13 (The bench conference commenced.)

14

15 MR. GARRETT: I'd ask the court to look at the  
16 answers to Mr. Cline's questionnaire—answers to questions 43,  
17 45, and 46. Now, if the answers to these questions are not  
18 relevant, then the questionnaire is not relevant, and that  
19 whole exercise was a waste of time. We're trying to get  
20 some insight as to what these folks think and why they think  
21 what they do. But now we're being told that we can't do  
22 that because it's not relevant. The court is tying our hands.

23 MR. HENDERSON: After he answers the question  
24 about whether or not—the prior question that this juror—that  
25 Garrett asked him—he said, "Have you made up your mind

1 yet?" "No, I have not." And he was unequivocal about that.  
2 I think at that point, you know, because when these people  
3 answer these questions, they don't know anything about  
4 anything. They're trying—we don't know how much of this  
5 questionnaire they understood. They can't ask us questions  
6 like, "If I write this, does it mean that? Are you asking this."  
7 So, they're writing that, but I don't think that after it's been  
8 established, as in Mr. Cline's case, where he says, "No, I  
9 haven't made my mind until I hear the rest of the proof," I  
10 don't think that's relevant. I mean, you know—

11 MR. GARRETT: The time to have raised that was  
12 during the time that these questionnaires were passed out for  
13 review by all parties before they were submitted to the  
14 prospective jurors. The state knew what the facts were in this  
15 case at that time. The defense knew what the facts were.  
16 That's why we drafted and designed that questionnaire and  
17 passed it to the other side for their consideration. They voiced  
18 no objection to that.

19 MR. HARRIS: Those answers will give an insight just  
20 like if I ask a guy whether he likes golf. I mean, to me that's  
21 important, but it's really irrelevant, and that's what I'm saying.

22 THE COURT: I think these questionnaires are more  
23 to look at and get a general background of the person's  
24 belief, but I think when you question them for their  
25 qualifications on this particular jury, that they're going to be

1 limited to their legal qualifications to serve, as opposed to  
2 these philosophical questions they may have. So I'll note  
3 your exception.

4 MR. GARRETT: Further inquiry, Your Honor. The  
5 objection was to Question 43. I obviously want to inquire  
6 about the answers to Questions 45 and 46. I mean, do I have  
7 permission to go forward with those?

8 MR. HARRIS: We're not objecting to them. That  
9 goes to the life sentence. I think that's relevant.

10 MR. GARRETT: I just wanted to get clarification. I  
11 want to be able to follow the court's instruction.

12 MR. HENDERSON: We're going to get in a situation  
13 where we're going to be questioning why, with every question  
14 for every juror, about these questions. I think when you get to  
15 the point, and you're asking the jurors— All I can say, I think  
16 the court is right about they're for some insight. And when  
17 you ask the juror about what their beliefs are, and he says,  
18 "Well, you know, I can listen to the proof, and I can do all  
19 those things," and then you start, more or less, cross-examining  
20 him with his questions, and then asking, "Why did you say this?  
21 And why did you say this? And why did you say this?"

22 MR. HARRIS: The questionnaires are designed to  
23 facilitate the selection of a good jury, but they're also  
24 designed to facilitate the movement of a trial. We've got  
25 forty-six questions here.

1                   THE COURT: We have to remember that they  
2 answered those questions in a vacuum not knowing what the  
3 case was going to be about. I'll let you go on with those, but  
4 I think what the court's going to do, I think we're going to  
5 need to break for lunch at this time, so I think that's what the  
6 court will do.

7                   MR. GARRETT: Yes, Your Honor.

8

9                   (The bench conference was concluded.)

10

11                  THE COURT: All right. Ladies and gentlemen,  
12 what the court will do is to break for lunch at this time, and we  
13 will stand in recess until 1:15. All of these jurors will be  
14 excused until 1:15. Do you take these back to the jury room?  
15 If you'll follow them, and please, when you come back,  
16 please remain in your same seats, please.

17

18                  (The prospective jurors were excused from  
19 the courtroom.)

20

21                  THE COURT: Stand in recess until 1:15.

22

23                  (Lunch recess.)

24

25                  (The defendant was returned to the courtroom.)

1 (The prospective jurors were returned to the  
2 courtroom.)  
3

4 MR. GARRETT: Thank you, Your Honor. Mr. Cline, I  
5 believe that we were talking, before the break, and I'd like to  
6 continue, please, with my questions regarding your positions  
7 and so forth. Okay.

8 PROSPECTIVE JUROR: Okay.

9 MR. GARRETT: Mr. Henderson, a few moments  
10 ago, told the panel that what the lawyers say are not facts.  
11 The evidence—the facts come from the witness stand. And  
12 that's true. But I want to make sure that we understand that  
13 when I tell you, and Mr. Harris has told you why we're here  
14 and what Preston Carter has pled to; that there's no confusion  
15 about whether that, in fact, happened. You don't have any  
16 questions about that, do you?

17 PROSPECTIVE JUROR: No.

18 MR. GARRETT: You understand what my client has  
19 pled to?

20 PROSPECTIVE JUROR: I understand what you've  
21 told me he's pled to.

22 MR. GARRETT: Okay. Again, you don't question  
23 that?

24 PROSPECTIVE JUROR: No.

25 MR. GARRETT: If you already have a mindset as to

1 what your vote would be in this case at this time, would you  
2 tell us?

3 MR. HENDERSON: Objection, Your Honor.

4 THE COURT: You all approach the bench.

5

6 (The bench conference commenced.)

7

8 MR. HENDERSON: Your Honor, I think we're  
9 recovering the same ground again with this same individual.  
10 It's the same question that was asked--whether he had  
11 already made up his mind. He said that he hadn't; that he  
12 would listen to all of the proof, and I don't know where we're  
13 going, but--

14 MR. GARRETT: Judge, you know, I apologize if I'm  
15 repeating some questions. I don't know exactly where I left  
16 off. If the court will bear with me, I'll move along with the  
17 questions, and I don't mean to be redundant. I didn't know  
18 exactly where--

19 MR. MANIS: I think that specific question was  
20 asked to No. 2--the other gentlemen--not to--he had not asked  
21 this gentleman had he made his mind up.

22 MR. HENDERSON: He had asked Mr. Cline.

23 MR. GARRETT: I don't remember the answer.

24 THE COURT: If you'll go ahead, and then we'll  
25 move on, that's fine; but let's not go repeating around.

1 MR. GARRETT: Yes, sir. I understand the court will  
2 allow me to ask that.

3 THE COURT: Ask that and move on.

4 MR. GARRETT: Okay.

5

6 (The bench conference was concluded.)

7

11

PROSPECTIVE JUROR: Yes, sir.

12

13 Question No. 45, which reads: "In your opinion, is life in prison  
14 a substantial punishment for someone who is found guilty of  
15 first-degree, premeditated murder?" And your answer was,  
16 no, you don't think life in prison is a substantial punishment.

17

17 PROSPECTIVE JUROR: Not for premeditated  
18 murder.

10

19 MR. GARRETT: You understand that Mr. Preston  
20 Carter has pled guilty to premeditated murder?

31

PROSPECTIVE JUROR: Yes, I understand that

22

22 MR. GARRETT: So you don't think that life in prison  
23 would be a substantial punishment for him, do you?

84

24 PROSPECTIVE JUROR: If we're asked to make a  
25 decision on all the facts, then that's what I'm here to do.

1 MR. GARRETT: But my question to you, in light of  
2 your answer to a question in the questionnaire: It says, "Mr.  
3 Carter has pled guilty to two counts of premeditated murder."

4 MR. HARRIS: Excuse me for interrupting, but I think  
5 he pled guilty to murder during the perpetration of a felony. I  
6 believe that's right.

7 THE COURT: Yes. That's right.

14 PROSPECTIVE JUROR: I think I'm getting confused  
15 on what you're asking me now.

16 MR. GARRETT: Let's go back to the questionnaire.  
17 Again, you indicated, on your questionnaire, that you don't  
18 believe that life in prison was a substantial punishment for  
19 someone who was guilty of first-degree, premeditated murder.  
20 Is that correct?

21 PROSPECTIVE JUROR: That's correct.

22 MR. GARRETT: When you were asked why, your  
23 response was, "Why should tax payers be burdened  
24 supporting the life of someone who has planned and killed  
25 someone else. Is that correct?

1 PROSPECTIVE JUROR: That's correct.

2 MR. GARRETT: So is that a factor that you would  
3 take into consideration as to whether you would vote for life or  
4 death?

5 PROSPECTIVE JUROR: That was answered based  
6 on how I felt in general, yesterday.

7 MR. GARRETT: Okay. In this particular case, is that  
8 a factor that you would take into consideration as to whether  
9 you vote for life or death? If you vote for life; that the  
10 taxpayers are going to have the burden of footing the bill.

11 PROSPECTIVE JUROR: It's a feeling I carry in  
12 general, so I guess it would be a factor.

13 MR. GARRETT: It would be a factor. It would be a  
14 factor that you would take into consideration in deciding how  
15 you would vote in this case. Is that fair?

16 PROSPECTIVE JUROR: In this case, I said I would  
17 listen to all of the facts and make a decision based on the  
18 facts.

19 MR. GARRETT: And would you also—would a factor  
20 in your decision be whether the taxpayers would have to foot  
21 the bill for someone—for Mr. Carter to spend life in prison?

22 PROSPECTIVE JUROR: If that's one of the factors, I  
23 would have to consider it, but that is a feeling that I have.  
24 Yes.

25 MR. GARRETT: That is a feeling that you would take

1 along with you to deliberate on this case. Is that right?

2 PROSPECTIVE JUROR: I guess I would have to if  
3 that's a feeling that I have. Yes, sir.

4 MR. GARRETT: In answer to Question No. 46, which  
5 reads: "In your opinion, should any defendant who is found  
6 guilty of first-degree, premeditated murder be automatically  
7 sentenced to death?" What was your answer?

8 PROSPECTIVE JUROR: I believe I wrote yes.

9 MR. GARRETT: So you think if this defendant pled  
10 guilty to first-degree murder, you think death should be  
11 automatic?

12 PROSPECTIVE JUROR: If it was premeditated and  
13 planned, yes.

14 MR. GARRETT: You heard my statement of some of  
15 the facts surrounding crimes that Mr. Carter committed.  
16 Right?

17 PROSPECTIVE JUROR: Yes, sir.

18 MR. GARRETT: Went over to this couple's house in  
19 the middle of the night, kicked in the door, shot the husband in  
20 the head, shot his hysterical wife in the head with his sawed-off  
21 shotgun, ransacked the house looking for whatever, left there  
22 with a three-year-old child in the closet with her dead father.  
23 Does that fit your definition of premeditated murder?

24 MR. HARRIS: Your Honor, this is irrelevant.

25 MR. HENDERSON: That's a legal question.

1 THE COURT: That will be sustained.

2 MR. GARRETT: Based on those facts, Mr. Cline, do  
3 you think Mr. Carter should automatically be sentenced to  
4 death?

5 PROSPECTIVE JUROR: That's all the facts?

6 MR. GARRETT: Yes.

7 PROSPECTIVE JUROR: (No audible response.)

8 MR. GARRETT: In answer to Question No. 46, that I  
9 just read to you, sentencing a person to death automatically if  
10 they're found guilty of premeditated murder, when asked  
11 why, you said, "They know and plan the murder of someone  
12 else." So if the case turns out that Mr. Carter knew and  
13 planned the murders of two other people, would it make any  
14 difference to you as to what the punishment would be if he  
15 showed remorse for his act?

16 PROSPECTIVE JUROR: I think I wrote down the way  
17 I feel.

18 MR. GARRETT: But the question is a little different.  
19 If Mr. Carter has killed these people, as he has pled to, and as  
20 I have told you, deciding what his punishment should be,  
21 would it make any difference to you if he showed remorse for  
22 his conduct?

23 PROSPECTIVE JUROR: Again, I don't feel like I know  
24 everything that's here. You keep sprinkling a little more out-a  
25 little bit more of it out-

1 MR. HARRIS: Your Honor, that's what our objection  
2 is. He's kicking out certain facts of these and this and saying,  
3 "If this is all you knew," I don't think that's a fair line of  
4 questioning to ask the juror's opinion on things without--unless  
5 they know all the proof and all the facts.

6 THE COURT: The court concurs with that  
7 assessment and asks you to move on, Mr. Garrett.

8 MR. GARRETT: The court will note my exception.

9 THE COURT: The court will note your exception.

10

11 (There was a pause in the proceedings.)

12

13 MR. GARRETT: May we approach, Your Honor.

14

15 (The bench conference commenced.)

16

17 MR. MANIS: Your Honor, we would ask that he be  
18 struck for cause based on the answer that he gave; that when  
19 he would go back in deliberation, he would consider, as a  
20 factor to be the fact that the taxpayers are going to be  
21 responsible for paying to keep this man alive; that is not one of  
22 the factors which is appropriate for his consideration. I mean  
23 it's limited to the aggravators and the mitigators that are  
24 statutory—and the mitigators that are presented.

25 THE COURT: I understand that, but he's never

1 been told that that's not what he can consider. He should be  
2 told that's something that can be considered.

3

4 (Simultaneous speech.)

5

6 MR. HENDERSON: That's right. To my knowledge,  
7 Your Honor, when he was asked that question, he said, "If that  
8 was the facts," and see, that ain't the facts.

9 THE COURT: I'm going to deny the request for  
10 cause.

11 MR. HARRIS: May I voir-dire.

12 THE COURT: I denied it.

13 MR. HARRIS: Oh. Okay. I'm sorry.

14

15 (The bench conference was concluded.)

16

17 MR. GARRETT: Ms. Billings.

18 PROSPECTIVE JUROR: Yes.

19 MR. GARRETT: What's your occupation.

20 PROSPECTIVE JUROR: Well, I'm self-employed, and  
21 I teach people psychology, and I teach people alcohol and  
22 drug counseling, and I work as a conservator for sixty mentally  
23 developed (indiscernible). Those are all contract pieces.

24 MR. GARRETT: On the basis of what you've heard  
25 about this case so far-

1 PROSPECTIVE JUROR: Um-hum.

2 MR. GARRETT: –do you think the question of  
3 rehabilitation should be an important factor to consider when  
4 deciding whether to vote one way or the other as to the  
5 penalty in this case?

6 PROSPECTIVE JUROR: Well, I'll have to think about  
7 that for a moment because that wasn't in any of the  
8 instructions that I've had so far about making a decision one  
9 way or another. So, I do have twenty years of experience in  
10 rehabilitation, so it's going to color it in some way.

11 MR. GARRETT: In terms of a factor to take into  
12 consideration, do you think that would be an appropriate  
13 factor to take into consideration?

14 PROSPECTIVE JUROR: I'm sure that it would be  
15 important to me. I wouldn't give twenty years of my life  
16 without it being important.

17 MR. GARRETT: Mr. Farley.

18 PROSPECTIVE JUROR: Yes, sir.

19 MR. GARRETT: Can you think of any reason why  
20 you shouldn't serve on this jury?

21 PROSPECTIVE JUROR: No, sir. No.

22

23 (There was a pause in the proceedings.)

24

25 MR. GARRETT: Your questionnaire–Question 45:

1 "In your opinion, is life in prison a substantial punishment for  
2 someone who is found guilty of a first-degree, premeditated  
3 murder?" You say no. Why?

4 PROSPECTIVE JUROR: Because you don't know  
5 the circumstances of the case. I'll have to hear all the facts  
6 and hear the system of it before you judge on it.

7 MR. GARRETT: All right. (Pause.) When you were  
8 asked, in your questionnaire, why not, you said because they  
9 were not given a chance to live out their life. Who are you  
10 talking about?

11 PROSPECTIVE JUROR: The people in general.  
12 They didn't—he didn't give them a choice when he went in  
13 there.

14 MR. GARRETT: So when you filled this out, you were  
15 of the opinion that life in prison wouldn't be a substantial  
16 punishment for one who was found guilty of first-degree  
17 murder because he didn't give the victims an opportunity to  
18 live out their lives. Is that right?

19 PROSPECTIVE JUROR: Okay, but if you read on, on  
20 the next question, I answered why I thought that.

21 MR. GARRETT: Yes, sir. But before we get to that  
22 question, if you can just stay with me on this one for a moment.  
23 You answered 45, and you said that they were not given a  
24 chance to live out their life. You're talking about the victims.

25 PROSPECTIVE JUROR: Yes.

1                   MR. GARRETT: And there you're saying that you  
2 don't think that the person who committed the act should be  
3 allowed to serve life in prison because he killed somebody. Is  
4 that correct?

5                   PROSPECTIVE JUROR: That's not what I'm saying.

6                   MR. GARRETT: Sir.

7                   PROSPECTIVE JUROR: I said, no, that's not what  
8 I'm saying.

9                   MR. GARRETT: I misunderstood you. (Pause.) Ms.  
10 Lively.

11                  PROSPECTIVE JUROR: Um-hum.

12                  MR. GARRETT: Can you think of any reason why  
13 you shouldn't serve on this jury?

14                  PROSPECTIVE JUROR: No, sir.

15                  MR. GARRETT: Do you think that you can be fair,  
16 reasonable?

17                  PROSPECTIVE JUROR: Yes, sir.

18                  MR. GARRETT: And listen to the proof in this case.  
19 Is that right?

20                  PROSPECTIVE JUROR: Yes, sir.

21                  MR. GARRETT: Ms. Lively, do you belong to a  
22 group that advocates increased use of the death penalty?

23                  PROSPECTIVE JUROR: No, sir.

24                  MR. GARRETT: Do you realize that that's what you  
25 indicated, unless I'm reading it wrong, on your-

1 PROSPECTIVE JUROR: No. No.

2 MR. GARRETT: What's No. 44: "Do you belong to  
3 any group that advocates," and under there it says, "(1),  
4 increased use of death penalty," and you checked that.  
5 That's a mistake?

6 PROSPECTIVE JUROR: Yes, that's a mistake.

7 MR. GARRETT: You don't belong to any group that  
8 advocates increased use of the death penalty?

9 PROSPECTIVE JUROR: No, I don't.

10 MR. GARRETT: All right. Question 45, you  
11 indicated that you didn't believe that life in prison was a  
12 substantial punishment for someone who was found guilty of  
13 first-degree, premeditated murder. Is that right?

14 PROSPECTIVE JUROR: Uh-huh.

15 MR. GARRETT: Can you tell me why you don't  
16 believe that that would be substantial punishment-life in  
17 prison?

18 PROSPECTIVE JUROR: Well, I'm not sure why.

19 MR. GARRETT: Well, if you don't think that  
20 substantial punishment—that life in prison is substantial  
21 punishment for someone who is found guilty of first-degree  
22 murder, what do you think substantial punishment would be?

23 PROSPECTIVE JUROR: Death.

24 MR. GARRETT: Death?

25 PROSPECTIVE JUROR: Um-hum.

1 MR. GARRETT: Can you think of any other options  
2 that would be appropriate?

3 PROSPECTIVE JUROR: Um-um.

4 MR. GARRETT: You heard statements regarding Mr.  
5 Carter's conduct.

6 PROSPECTIVE JUROR: Um-hum.

7 MR. GARRETT: Have you made up your mind what  
8 you think his penalty should be?

9 PROSPECTIVE JUROR: Not exactly. I haven't  
10 heard everything.

11 MR. GARRETT: When you say, "Not exactly," I take  
12 that to mean that you're leaning one way or the other.

13 PROSPECTIVE JUROR: Um-well, I guess so—either  
14 way.

15 MR. GARRETT: Either way?

16 PROSPECTIVE JUROR: Yeah.

17

18 (There was a pause in the proceedings.)

19

20 MR. GARRETT: Do you think, Ms. Lively, that  
21 rehabilitation is a factor that you could take into consideration  
22 in deciding whether he should live or die?

23 PROSPECTIVE JUROR: Yeah.

24 MR. GARRETT: Do you think that remorse is a factor  
25 that you can consider in deciding whether he should live or

1 die?

2 PROSPECTIVE JUROR: Yeah.

3

4 (There was a pause in the proceedings.)

5

6 MR. GARRETT: Would the court indulge me just a  
7 moment, please.

8

9 (There was a pause in the proceedings.)

10

11 MR. GARRETT: Mr. Holt.

12 PROSPECTIVE JUROR: Yes, sir.

13 MR. GARRETT: I sort of guessed, but some of the  
14 answers to your questions on this questionnaire got my  
15 attention.

16 PROSPECTIVE JUROR: Yes, sir.

17 MR. GARRETT: You say, "I believe that the death  
18 penalty is the appropriate form of punishment in all first-  
19 degree murder cases." Do you still feel that way?

20 PROSPECTIVE JUROR: Yes, sir.

21 MR. GARRETT: Have you heard anything that's  
22 been said since we've been talking about this case to  
23 change your mind one way or the other about your belief?

24 PROSPECTIVE JUROR: All the facts. I haven't  
25 heard all the facts. I just have heard one side of the facts.

1 MR. GARRETT: What one side have you heard?  
2 PROSPECTIVE JUROR: Just the defendant's side.  
3 MR. GARRETT: You mean about what he did?  
4 PROSPECTIVE JUROR: What he did. Yes, sir.  
5 MR. GARRETT: You understand that what he  
6 did—what he's pled to is murder in the perpetration of a felony,  
7 which carries the same punishment as first-degree murder. Is  
8 that right?

9 PROSPECTIVE JUROR: Yes, sir.  
10 MR. GARRETT: Do you understand that, in this case  
11 on the sentencing options that you have, it's death or life in  
12 prison?

13 PROSPECTIVE JUROR: Yes, sir.

14 MR. GARRETT: Does that have any bearing on  
15 your belief that you believe all persons convicted of first-  
16 degree murder should be—that death is the appropriate  
17 penalty?

18 PROSPECTIVE JUROR: Yes, sir.

19 MR. GARRETT: Do you think death is the  
20 appropriate penalty for Mr. Carter?

21 PROSPECTIVE JUROR: I've only heard one side of  
22 the story, sir.

23 MR. GARRETT: If nothing changes in the facts that  
24 you hear about what this-

25 MR. HARRIS: Your Honor, I apologize for

1 interrupting, but-

2 MR. HENDERSON: Your Honor, I think you know  
3 where we're going. I can come up if you want me to.

4 THE COURT: All right. Rephrase your question,  
5 please. Approach the bench, please.

6

7 (The bench conference commenced.)

8

9 MR. HENDERSON: I think it's improper for you to  
10 get him to make an answer based on a hypothetical that,  
11 frankly, is probably not going to be true in the first place. And  
12 then based on that answer, you know, head toward a cause  
13 issue, and I think that's not proper to say, "If nothing changes,"  
14 or is he saying that there's going to be no proof in mitigation?  
15 Is that what he's saying? He's not saying that at all, and I  
16 think that it's an improper way—it's unfair to the juror to be  
17 presented a hypothetical like that when he knows it's not true.

18 MR. GARRETT: Your Honor, the problem is I didn't  
19 get a chance to finish my question.

20 THE COURT: All right, what is your question.

21 MR. HENDERSON: What is it?

22 MR. HARRIS: "Would your verdict be death?"

23 That's probably what your question is.

24 MR. GARRETT: If nothing changes about the facts  
25 as to what my client pled to, would your verdict be life or

1 death.

2 THE COURT: I think the fair way to get to it, and I  
3 know where you're trying to go with this. I think you can tell  
4 them about what he did. But they have to state affirmatively  
5 that that fact alone would prevent them—or preclude them  
6 from listening to the rest of the proof, and that they would  
7 automatically vote for death. Now, if they'll say that—"I've  
8 heard what you said about what Mr. Carter did, and that will  
9 preclude me from listening to all other proof and weighing it  
10 and considering both options," then they can be excused for  
11 cause. But I think they have to give—they have to properly  
12 state that that fact alone, what he did, wouldn't preclude  
13 them from weighing the evidence.

14 MR. GARRETT: Yes, sir.

15

16 (The bench conference was concluded.)

17

18 MR. GARRETT: Mr. Hall.

19 PROSPECTIVE JUROR: Yes, sir.

20 MR. GARRETT: Question 46: In your opinion,  
21 should any defendant who is found guilty of first-degree,  
22 premeditated murder be automatically sentenced to death.  
23 You said yes. Is that right?

24 PROSPECTIVE JUROR: Yes, sir.

25 MR. GARRETT: Do you still feel that way.

1 PROSPECTIVE JUROR: I'll hear on all sides of the  
2 facts, sir.

3 MR. GARRETT: Have you heard anything so far  
4 that would preclude you from considering other proof to be  
5 introduced in this case?

6 PROSPECTIVE JUROR: I'll hear on both sides of the  
7 facts. I've just heard one side—today, I've just heard one side.

8

9 (There was a pause in the proceedings.)

10

11 MR. GARRETT: Ms. Rainey, can you think of any  
12 reason why you shouldn't serve on this jury?

13 PROSPECTIVE JUROR: No.

14 MR. GARRETT: Did you know anything about this  
15 case before being called up for jury duty in this instance?

16 PROSPECTIVE JUROR: Did I know anything about  
17 it?

18 MR. GARRETT: Yes, ma'am.

19 PROSPECTIVE JUROR: No.

20 MR. GARRETT: Did you hear about this case at all?

21 PROSPECTIVE JUROR: No.

22 MR. GARRETT: Now, do you believe that the death  
23 penalty is the appropriate form of punishment in all first-  
24 degree murder cases?

25 PROSPECTIVE JUROR: Not until I hear both sides.

1 MR. GARRETT: Are you saying, in your opinion, if a  
2 defendant is found guilty of first-degree, premeditated  
3 murder, he should be automatically sentenced to death. Is  
4 that correct?

5 PROSPECTIVE JUROR: Yes.

6 MR. GARRETT: Is that the way you feel about this  
7 case?

8 PROSPECTIVE JUROR: Not until I hear both sides.

9 MR. GARRETT: Have you heard the old adage, an  
10 eye for an eye, a tooth for a tooth?

11 PROSPECTIVE JUROR: Um-hum.

12 MR. GARRETT: You've heard of that?

13 PROSPECTIVE JUROR: Um-hum.

14 MR. GARRETT: Do you believe that?

15 PROSPECTIVE JUROR: Do I b

16 MR. GARRETT: Yes, ma'am.

17 PROSPECTIVE JUROR: Um-hum.

18 MR. GARRETT: You say, in your t

19 Question 46, "Because I feel if you take someone's life,

20 should be taken." Is that how you feel?

21 PROSPECTIVE JUROR: Yes.

22 MR. GARRETT: An eye for an eye; a tooth for a

23 tooth?

24 PROSPECTIVE JUROR: (No audible response.)

25 MR. GARRETT: Isn't that the same thing?

1 PROSPECTIVE JUROR: Like I said, until I hear both  
2 sides—  
3

4 (There was a pause in the proceedings.)  
5

6 THE COURT: Did you pass the jury?  
7

8 MR. HENDERSON: I think he said yes, Your Honor.  
9

10 THE COURT: Did you pass the jury, please?  
11

12 MR. GARRETT: Yes, sir.  
13

14 THE COURT: All right, sir. Now, before we exercise  
15 the first round of challenges, I'm going to move these four up  
16 to the empty seats.  
17

18 All right. Ms. Holt, would you take the first seat.  
19

20 Ms. West, the fourth seat on the back row.  
21

22 Mr. Hall, the third seat.  
23

24 Ms. Rainey, you're the fifth seat.  
25

18 (There was a pause in the proceedings.)  
19

20 MR. GARRETT: Judge, we just need--  
21

22 THE COURT: Yes.  
23

24 MR. GARRETT: I kind of got my list turned around  
25 here. I need to know the numbers that those four jurors took.  
26

27 THE COURT: Mrs. Holt is up there at the  
28 top--pardon me for pointing.  
29

1 Ms. West is on either the fourth or the third seat.

2 Ms. Lively— No, Mr. Hall, is on the third seat there.

3 And Ms. Rainey is right there.

4

5 (There was a pause in the proceedings.)

6

7 MR. MANIS: Your Honor, may we approach.

8

9 (The bench conference commenced.)

10

11 MR. MANIS: A couple of things. First, with the  
12 court's permission, if our jury consultant can step between  
13 the—to consult with us. Once one has been removed, we'll  
14 have an open panel. Are you going to fill in before we do  
15 any more strikes? How are we going to proceed, basically.

16 THE COURT: I don't know how you do it, but after  
17 five people are knocked off, then the next five are going to go  
18 up into the box, and—

19

20 (Simultaneous speech.)

21

22 MR. MANIS: I guess my question is: Is this round, if  
23 someone is bumped, obviously that opens up—we don't have  
24 a complete jury, and we immediately start filling the front rows  
25 back in, or are we going to do a number of rounds first?

5 MR. MANIS: Okay.

6

7 (The bench conference was concluded.)

8

9 (There was a pause in the proceedings.)

10

11 MR. MANIS: Your Honor, could we approach one  
12 more time for clarification on one thing.

13 THE COURT: Um-hum.

14

15 (The bench conference commenced.)

16

17 MR. MANIS: It should have been brought up is  
18 once we have them—executed our—

19 THE COURT: Can you go back?

20 MR. MANIS: Can we go back?

21 THE COURT: I'll let you do that. I don't know how  
22 you do it in Memphis, but I'll let you-

23 MR. HENDERSON: That's the way we do it here.

24 MR. MANIS: We just wanted to make sure that

25 was--

1 (Peremptory challenges were exercised.)

2

3 THE COURT: Mr. Cline and Ms. Rainey will be  
4 excused. Please have a seat. The officers will direct you to  
5 where you should go now.

6

7 (Dennis Cline was excused peremptorily.)

8

9 (Tressia Rainey was excused peremptorily.)

10

11 THE COURT: The next two jurors will take their seats  
12 in the jury box. And after those two jurors have been seated,  
13 then the next six jurors will be seated in the seats—six seats in  
14 front of the jury box.

15 SERGEANT HALL: Gertrude Arnold.

16 Kelly Didato.

17 Michael Miller.

18 Justin Hipner.

19 Rodney Risby.

20 Joseph Anderson.

21 James Stafford.

22 Thomas Stephenson, Sr.

23

24 (There was a pause in the proceedings.)

25

1 SERGEANT HALL: Call another?

2 THE COURT: Yes, sir.

3 SERGEANT HALL: Betty O'Neal.

4 MR. HENDERSON: Good afternoon.

5 PROSPECTIVE JURORS: (Simultaneously) Good  
6 afternoon.

7 MR. HENDERSON: I'm going to ask you, first of all,  
8 the new perspective jurors, when you all were seated out  
9 there, were you able to hear the lawyers when they were  
10 asking the questions?

11 PROSPECTIVE JURORS: (Simultaneous audible and  
12 inaudible responses.)

13 MR. HENDERSON: Everyone was?

14 PROSPECTIVE JURORS: (Simultaneous audible and  
15 inaudible responses.)

16 MR. HENDERSON: I'm asking you that to try to  
17 maybe not go through all of the questions again. I'm just  
18 going to briefly go through it. You heard the part about the  
19 aggravating circumstances, and what you'll have to be  
20 doing—weighing it—listening to both sides of the proof?

21 PROSPECTIVE JURORS: (Simultaneous audible and  
22 inaudible responses.).

23 MR. HENDERSON: Everyone heard that?

24 PROSPECTIVE JURORS: (Simultaneous audible and  
25 inaudible responses.)

1 MR. HENDERSON: Did anyone have a problem,  
2 just right off the bat with that? In other words, is there anyone  
3 here just have their mind made up?

4 PROSPECTIVE JURORS: (Simultaneous audible and  
5 inaudible responses.)

6 MR. HENDERSON: Mr. Risby?

7 PROSPECTIVE JUROR: Yes.

11 PROSPECTIVE JUROR: Right.

12 MR. HENDERSON: And you understand that you  
13 haven't heard any real proof yet either way.

14 PROSPECTIVE JUROR: I haven't heard any proof,  
15 but I have, you know, my beliefs and my standards. And  
16 based on, you know, the facts of what was said and  
17 everything, you know, and the way it happened, I feel that,  
18 you know, death is, you know, warranted.

19 MR. HENDERSON: Okay. But of course you  
20 haven't heard any of the defense proof about what they're  
21 going to put on with regards to mitigation?

22 PROSPECTIVE JUROR: That's my opinion.

23 MR. HENDERSON: And I'm not trying to change  
24 your opinion at all. I just want to make sure that I'm  
25 understanding what you're telling me. So you're saying even

1 though you haven't heard anything—or you haven't been told  
2 anything about anything else about what they're putting on  
3 because actually none of it's been put on, but you haven't  
4 even heard anything about it. Before you even hear  
5 anything about any of the other facts, you've already made  
6 up your mind. Is that what you're saying?

7 PROSPECTIVE JUROR: Based on what he said  
8 about the way it went down. I mean that's the way I feel;  
9 that that's my sentence.

10 MR. HENDERSON: And I understand what you're  
11 saying, based on what Mr. Garrett said. Okay. But what my  
12 question is, is that the judge will charge you and tell you that  
13 you're to follow the law, and the law, in this case about the  
14 aggravating circumstances versus any mitigating  
15 circumstances and whether or not you find proof beyond a  
16 reasonable doubt. And more than that, you have to listen to  
17 all the proof before you can make a decision. So my  
18 question to you is: Even though you haven't heard all the  
19 proof, are you saying that regardless of what that proof might  
20 be, under any circumstance, you've already made up your  
21 mind?

22 PROSPECTIVE JUROR: Bottom line, you stick a gun  
23 in somebody's face and tell them to give you something, and  
24 they give it to you, and you know, you've got no reason to  
25 shoot them, and then you shoot this person, and then you go

1 on and shoot this other person, and then you want to come  
2 and you want to say that, you know, you can be rehabilitated  
3 or you've changed, or whatever. You know, these people  
4 didn't have a chance to be rehabilitated or changed or  
5 whatever.

6 MR. HENDERSON: I understand. So your answer  
7 would be, at this point, that you have made up your mind; it  
8 doesn't make any difference what the rest of the proof is.

9 PROSPECTIVE JUROR: I've made up my mind.

10 MR. HENDERSON: All right.

11 THE COURT: Any objection to it?

12 MR. MANIS: No objection to striking for cause,  
13 Your Honor.

14 THE COURT: Mr. Risby, you can step down, please,  
15 sir.

16

17 (Rodney Risby was excused for cause.)

18

19 MR. HENDERSON: Anyone else?

20 PROSPECTIVE JURORS: (No audible response.).

21 MR. HENDERSON: Mr. Anderson, is there any  
22 reason why you don't think that you can sit and be a fair and  
23 impartial juror?

24 PROSPECTIVE JUROR: I answered one question,  
25 choose life.

1 MR. HENDERSON: Excuse me.

2 PROSPECTIVE JUROR: I would choose life.

3 MR. HENDERSON: Okay. And I guess my question  
4 would be: Are you saying you would make your decision  
5 before you heard all the proof, and it didn't make any  
6 difference what the proof might be. I mean, am I confusing  
7 you?

8 PROSPECTIVE JUROR: A little.

9 MR. HENDERSON: I wasn't trying to do that. All  
10 right. You said that you choose life.

11 PROSPECTIVE JUROR: Yes.

12 MR. HENDERSON: Okay. Now, obviously—

13 PROSPECTIVE JUROR: Choose life over death.

14 MR. HENDERSON: Okay. Obviously, you've heard  
15 no proof.

16 PROSPECTIVE JUROR: No.

17 MR. HENDERSON: Okay. And what that proof  
18 might be, would that have any—would that change your mind,  
19 or is your decision already made regardless of what that proof  
20 is?

21 PROSPECTIVE JUROR: Strongly leaning that way.

22 MR. HENDERSON: Okay. So if the state brought  
23 forth proof, and the facts proved that, beyond a reasonable  
24 doubt, that the aggravating circumstances outweighed the  
25 mitigating circumstances, let's say, the defense put on, you still

1 could not give the death penalty.

2 PROSPECTIVE JUROR: It would be difficult.

3 MR. HENDERSON: I hate to be picky about that.

4 You say it would be difficult. Do you have a belief as to why

5 you wouldn't do it—you can't do it—or—

6 PROSPECTIVE JUROR: A strong religious belief

7 would be one.

8 MR. HENDERSON: A strong religious belief. May

9 we approach, Your Honor.

10

11 (The bench conference commenced.)

12

13 THE COURT: Go ahead.

14 MR. HENDERSON: (Inaudible.)

15 THE COURT: I'm sorry. I still didn't hear you.

16 MR. MANIS: I don't believe he's established cause

17 yet. He said it would be difficult, and I think it needs to be

18 developed further. And you know, this is a difficult decision

19 no matter what the circumstances.

20

21 (Simultaneous speech.)

22

23 MR. HENDERSON: I can go into something based

24 on what he said; he specifically wrote in here—"I choose life."

25

1 (There was a pause in the proceedings.)

2

3 MR. HARRIS: If you'll turn the page around.

4

5 (There was a pause in the proceedings.)

6

7 MR. MANIS: But he does choose No. 3, Your  
8 Honor, which means he can consider.

9 THE COURT: I'd agree that he has not yet made a  
10 challenge for cause. I thought Mr. Henderson was asking for  
11 the juror to approach the bench.

12 MR. HENDERSON: I was asking for the juror. I was  
13 going to ask him about his religious beliefs.

14 MR. MANIS: Your Honor, I think we've handled  
15 everything out here for the most part.

16 THE COURT: Yes.

17

18 (The bench conference was concluded.)

19

20 MR. HENDERSON: Mr. Anderson, I believe you  
21 indicated that you had some religious beliefs that would be in  
22 conflict with the death penalty, or am I putting words in your  
23 mouth?

24 PROSPECTIVE JUROR: That would be a fair  
25 statement.

1 MR. HENDERSON: All right. And are these some  
2 beliefs that you've held for awhile?

3 PROSPECTIVE JUROR: Yes.

4 MR. HENDERSON: And I see that you are  
5 Catholic?

6 PROSPECTIVE JUROR: Yes.

7 MR. HENDERSON: And these beliefs are in your  
8 religion that you're following?

9 PROSPECTIVE JUROR: And personal, too.

10 MR. HENDERSON: You're a minister?

11 PROSPECTIVE JUROR: (Indiscernible) minister.

12 MR. HENDERSON: Okay. You're a member of a  
13 number of societies, I see, here. You're a member of MADD.  
14 Is that right?

15 PROSPECTIVE JUROR: Right.

16 MR. HENDERSON: And there are a lot of them on  
17 here, I don't know what they're—they're abbreviations. Let  
18 me ask you: You put, in Question No. 45, as alluded to earlier,  
19 "In your opinion, is life in prison a substantial punishment for  
20 someone who is found guilty of first-degree, premeditated  
21 murder?" You said yes.

22 And it says, "Why or why not?" And you said,  
23 "Choose life." Do you mean if someone is guilty of murder or  
24 pleads to murder that, under no circumstances, could you do  
25 anything but find life, and you couldn't find the death penalty,

1 or that couldn't be your verdict?

2 PROSPECTIVE JUROR: Yes.

3 MR. HENDERSON: Is that what you mean.

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: You may voir-dire him.

6 MR. MANIS: Mr. Anderson, we all have our  
7 opinions—some are for the death penalty, some against the  
8 death penalty, some are neutral to the death penalty, some  
9 of us have never thought through it, and some of us have  
10 never been put in this position and have had to. I'm sure that  
11 a lot of us, last night—a lot of you all last night, probably for the  
12 first time, really had to sit down and think deeply about what it  
13 is that you believe when it comes to this issue.

14 My question is this: One of the questions that was  
15 asked of you, and there were six answers—in a case where a  
16 death penalty is possible, could you ever give it, could you  
17 never give it, or are there some times when you could give it?  
18 And your answer was: "Although I do not believe that the  
19 death penalty ever ought to be imposed, as long as the law  
20 provides for it, I could vote to impose it if I believed it was  
21 warranted in a particular case depending on the evidence,  
22 the law, and what I learned about the defendant.

23 So forgetting everything that's been said today,  
24 okay, because it's been made very clear, nothing is evidence  
25 until it gets in through that chair. We're dealing with an idea

1 of whether or not you can impose a penalty which is justified  
2 under the law under certain circumstances. Okay. I'm not  
3 asking you right now to tell me, "Yes, I can give the death  
4 penalty," or "No, I could never give the death penalty." All I  
5 need to know, and all the court needs to know, and what we  
6 are really asking all of you is, under the right set of  
7 circumstances, could you follow the law if the law provides  
8 that a possible punishment is death?

9 PROSPECTIVE JUROR: It would be difficult.

10 MR. MANIS: But could you do it?

11 PROSPECTIVE JUROR: If I was put up against the  
12 wall, maybe.

13 MR. MANIS: Well, and no one is going to threaten  
14 you to do that, and I don't want it to come off that way. And  
15 this is most difficult because we're dealing with people's  
16 personal feelings that they hold dearly. And I guess what we  
17 all have to weigh that against is what we know we're going to  
18 be instructed what the law is. You all will be instructed, at  
19 some point in time, that based on the crime which my client  
20 has pled guilty to, there are two possible sentences; life and  
21 death. And after all the proof has been put on, you will have  
22 an opportunity to weigh statutory aggravating circumstances  
23 that you feel have been proven, beyond a reasonable doubt,  
24 versus mitigation proof that we put on; then each one of you,  
25 individually, will be able to decide, on your own, whether or

1 not you believe those statutory aggravators outweigh the  
2 mitigation proof beyond a reasonable doubt. That's what the  
3 law—that's what I anticipate the judge is going to instruct you  
4 that the law is. And each one of you is going to be able to  
5 make that decision. And all I really need to know, at this  
6 minute is, and I'm not holding you to the fact that you're  
7 going to give one way or the other, is that knowing that what's  
8 going to be asked of you, can you sit through the proof and  
9 hear the proof and take the law that will be instructed to you  
10 from the court and weigh it knowing that you do have some  
11 personal opinions. We all have personal opinions about these  
12 things. And I guess what we're trying to find out is knowing  
13 that we all have these opinions, can we put that aside and  
14 deal with what the law is and what's being asked of us as  
15 jurors, as lawyers, as the judge, and so forth. And that's all we  
16 need to know. And if that is a yes, then that's all we need to  
17 know to know that's what we need to know.

18 PROSPECTIVE JUROR: Intellectually, I could  
19 probably do it. I would lean very strongly towards the life  
20 side.

21 MR. MANIS: Am I to understand, then, that you  
22 would be able to follow the law, then?

23 PROSPECTIVE JUROR: Yes, sir.

24 MR. HARRIS: Your Honor.

25 THE COURT: Let me ask you a further question.

1 I'm having difficulty with your questions about difficulty--when  
2 you say difficult. But are your beliefs--are your feelings or  
3 whatever--your concerns--are they such--are they so ingrained  
4 that those decisions are going to substantially impair your  
5 ability to listen to the law, weigh the evidence in this case?  
6 Will those beliefs that you have about this subject matter, will  
7 they substantially impair your ability to listen to the evidence,  
8 weigh it, and render a verdict in the case according to the  
9 law that the court will charge you?

10 PROSPECTIVE JUROR: (Pause.) I'd have to say no.

11 THE COURT: All right.

12

13 (There was a pause in the proceedings.)

14

15 MR. HENDERSON: Is there anyone else? Did I miss  
16 anyone?

17 PROSPECTIVE JURORS: (No audible response.)

18 MR. HENDERSON: All right. Mr. Stafford. Do you  
19 know of any reason why you can't sit and listen to the proof  
20 and be fair and impartial in making your determination--that is  
21 weighing the evidence on both sides?

22 PROSPECTIVE JUROR: No, sir.

23 MR. HENDERSON: And I believe you indicated that  
24 you believe that the death penalty is an appropriate form of  
25 punishment in some murder cases--"I could return a verdict of

1 death if I believe it was warranted in a particular case  
2 depending on the evidence, the law, and what I learned  
3 about the defendant." That's accurate?

4 PROSPECTIVE JUROR: Yes, sir.

5 MR. HENDERSON: Ms. Arnold.

6 PROSPECTIVE JUROR: Um-hum.

7 MR. HENDERSON: You indicated that you believe  
8 that the death penalty is an appropriate form of punishment in  
9 all first-degree murder cases. Based on what you—the few  
10 things that have been talked about in court today, is that  
11 something that you hold to?

12 PROSPECTIVE JUROR: Yes, sir.

13 MR. HENDERSON: In other words, would you be  
14 able to—even though you hold that opinion, would you be  
15 able to listen to other proof before you made a final  
16 determination?

17 PROSPECTIVE JUROR: Yes, sir.

18 MR. HENDERSON: All right. In other words, if the  
19 defense puts on mitigation proof, or proof for the defendant,  
20 would you be able to, at the end of the trial when you  
21 deliberate, to weigh the proof that the state has put on, as  
22 well as the proof that the defense has put on, and make a  
23 determination from that?

24 PROSPECTIVE JUROR: Yes, sir.

25 MR. HENDERSON: Okay. Even though you

1 indicated that you felt that the death penalty is appropriate in  
2 murder cases?

3 PROSPECTIVE JUROR: Right.

4 MR. HENDERSON: I don't know if I'll pronounce it  
5 right. Is it Didato?

6 PROSPECTIVE JUROR: Yes. Kelly Didato.

7 MR. HENDERSON: All right. Ms. Didato, you  
8 indicated, on your questionnaire, that you had a personal  
9 experience. Is that correct?

10 PROSPECTIVE JUROR: Yes.

11 MR. HENDERSON: With regards to someone pulling  
12 a gun. And without going through all the details, is that  
13 something that would keep you from being fair in this case?

14 PROSPECTIVE JUROR: No.

15 MR. HENDERSON: And I think you also indicated  
16 that you think that the death penalty is appropriate in the  
17 proper cases and based on the evidence?

18 PROSPECTIVE JUROR: Yes.

19 MR. HENDERSON: And so you're telling the court  
20 today that you can listen to the proof, weigh the proof, and  
21 your jury verdict will be based on what you hear from all the  
22 proof?

23 PROSPECTIVE JUROR: Yes.

24 MR. HENDERSON: Mr. Miller.

25 PROSPECTIVE JUROR: Um-hum.

1 MR. HENDERSON: I don't know. You skipped  
2 some questions on here, and I don't know if that was an  
3 oversight or you were tired or you just didn't want to answer  
4 them.

5 PROSPECTIVE JUROR: Not too much English.

6 MR. HENDERSON: Excuse me.

7 PROSPECTIVE JUROR: I did not understand them.

8 MR. HENDERSON: You didn't understand them?

9 PROSPECTIVE JUROR: Yeah.

10 MR. HENDERSON: Okay. Well, let me ask you this:  
11 Do you have any ideas, one way or another, about when the  
12 death penalty is appropriate?

13 PROSPECTIVE JUROR: Explain.

14 MR. HENDERSON: Let me rephrase that. Do you  
15 think that whatever your particular beliefs are, do you think  
16 that you could listen to the witnesses that come forth and then  
17 listen to the law that the judge gives you and then make your  
18 determination as to what your verdict should be?

19 PROSPECTIVE JUROR: Right.

20 MR. HENDERSON: In other words, what this whole  
21 thing is about, can you be fair? That's really what this is all  
22 about, can you be fair to both sides because I'm sure that's  
23 what the defense wants, and that's what the state wants.

24 PROSPECTIVE JUROR: Right.

25 MR. HENDERSON: And you can be fair. And as

1 part of being fair, listen to all the proof in making a  
2 determination.

3 PROSPECTIVE JUROR: Yes, sir.

4 Can you do that?

5 PROSPECTIVE JUROR: Yes, sir.

6 MR. HENDERSON: All right. Mr. Hipner?

7 PROSPECTIVE JUROR: Yes.

8 MR. HENDERSON: Basically the same question.

9 You indicate, for the most part, that it depends on what the  
10 circumstances are.

11 PROSPECTIVE JUROR: Um-hum.

12 MR. HENDERSON: In other words, in a criminal  
13 case such as this, what the evidence shows you?

14 PROSPECTIVE JUROR: Um-hum.

15 MR. HENDERSON: And is that what you would use  
16 to reach your verdict?

17 PROSPECTIVE JUROR: Yes, sir.

18 MR. HENDERSON: Okay. And of course you'd be  
19 able to deliberate with your other jurors.

20 PROSPECTIVE JUROR: Yes.

21 MR. HENDERSON: So, from your perspective, is  
22 there any reason why you think you can't be fair and impartial  
23 and render your verdict based on the proof that's presented  
24 and the law His Honor gives you?

25 PROSPECTIVE JUROR: Not at this time, no.

1 MR. HENDERSON: All right. Ms. O'Neal.  
2 PROSPECTIVE JUROR: Yes.  
3 MR. HENDERSON: All right. You also indicated  
4 that you believe about the death penalty--whether or not it's  
5 appropriate--your determination would be made--let me say  
6 this--that you think that it's warranted in certain cases?

7 PROSPECTIVE JUROR: That is correct.

8 MR. HENDERSON: And would I be going too far to  
9 say that, again, that would be based on the evidence that's  
10 presented?

11 PROSPECTIVE JUROR: No.

12 MR. HENDERSON: Okay. You indicated that  
13 premeditated is the key word--or key condition, I guess, is what  
14 you have on here. And of course you've also indicated some  
15 other things like competency and sanity. Would it be a fair  
16 statement to say that what you would have to hear is all the  
17 proof, and that's what you would base your verdict on?

18 PROSPECTIVE JUROR: Yes, sir.

19 MR. HENDERSON: All right. And you don't have  
20 any preconceived idea, one way or another, that if the  
21 person committed this crime, he gets the death penalty or  
22 gets life?

23 PROSPECTIVE JUROR: I have only heard a little bit.

24 MR. HENDERSON: So you can be fair and  
25 impartial, and that's what it comes down to.

1 PROSPECTIVE JUROR: That's right.

2 MR. HENDERSON: Did I miss anybody? I don't  
3 think I did. Your Honor, I would pass for cause.

4 THE COURT: All right, sir.

5 MR. MANIS: Before I get into some individual  
6 questions, there were some statements that I made earlier  
7 when I was speaking to Mr. Anderson, and I want to make sure  
8 everyone—even the people in the back—understand and that  
9 it's clear to them because it's what I think is the basis of what's  
10 going to happen is the judging of statutory aggravators and  
11 mitigation proof and how the jury, whoever the twelve people  
12 are that are selected are going to have to use that  
13 information that's given to us because I think it's very  
14 important that we remember no proof has been given. The  
15 only thing we all know is that Preston Carter, our client, has  
16 entered two guilty pleas to felony murder, murder in the  
17 perpetration of a felony, aggravated burglary. That's the  
18 only fact that exists at this point in time. Everything else will  
19 come from there. We can say what we want. You can say,  
20 "Well, I've heard one side and not the other." You haven't  
21 heard either side yet. And the twelve people that will  
22 eventually be chosen will hear both sides.

23 The state's burden will be to take what are listed  
24 as statutory aggravators that they are going to assert that they  
25 can prove and try to establish those. And they'll need to

1 establish them beyond a reasonable doubt. I'm sure we've  
2 all watched TV shows—old ones were "L.A. Law" and now  
3 there's "The Practice," and stuff like that. And all of you have  
4 fixed ideas of what beyond a reasonable doubt to a moral  
5 certainty is. And basically the way it's been defined,  
6 throughout my law school days and trial and listening to other  
7 lawyers—older lawyers—learned lawyers, is it's the type of doubt  
8 that you can rest easy on. It's, you know, not all doubt, but  
9 it's that ten days later or twenty days later, when you reflect  
10 on what you've done, that you don't have any lingering  
11 doubt about it. And that's what we're talking about.

12 And so the first analysis that the state is going to try  
13 to establish is their statutory aggravators beyond a reasonable  
14 doubt. And once they've attempted to do that, then we will  
15 put on our mitigation proof. The difference is that besides the  
16 listed mitigation proof—litigation options—excuse me, mitigation  
17 options that are available, there is an additional one:  
18 Anything else that you deem to be mitigable—something  
19 that you personally feel mitigates this circumstance.

20 And what is most unique about that is that for all  
21 twelve of you, that may be twelve different things. Does  
22 everyone understand what I'm saying about that? Does  
23 anyone have any questions of what that means? Something  
24 that may be mitigation to you, Ms. Lively, may not be  
25 mitigation to Ms. Geissler.

1 PROSPECTIVE JUROR: Geissler.

2 MR. MANIS: Geissler. Excuse me. I'm Manis, and-

3 MR. HARRIS: Your Honor, we've already—I thought

4 we were going with the five here and the two there; that's

5 seven, Your Honor.

6 THE COURT: I'll let him go just a little bit further.

7 MR. HARRIS: We've already voir-dired these other

8 people for three hours.

9 THE COURT: All right. Try to wrap it up, then,  
10 please.

11 MR. MANIS: As I stated, the mitigation proof may  
12 be something to one person and something else to someone  
13 else. It doesn't—it's not something that any unanimity amongst  
14 the group has to be, and I want you to remember that, when  
15 you're hearing the proof, that that is—and once the proof gets  
16 on that you are the decider of those facts.

17 Ms. Arnold, I really just have one question for you,  
18 and I just want to make sure that we're clear. On No. 42 in  
19 the questionnaire: You did answer, "I believe that the death  
20 penalty is the appropriate form of punishment in all first-  
21 degree murder cases." Do you feel that way?

22 PROSPECTIVE JUROR: Yes, sir. I'll—

23 MR. MANIS: So—I'm sorry. I don't mean to cut you  
24 off.

25 PROSPECTIVE JUROR: I do feel that way, but there

1 is someone in my family that is serving time now, in prison, and  
2 they're on death row and stuff.

3 MR. MANIS: Do you feel comfortable talking  
4 about that amongst the group, or would you rather us  
5 approach the bench to discuss that further?

6 PROSPECTIVE JUROR: The bench.

7 MR. MANIS: Your Honor, may we approach to  
8 discuss that.

9 THE COURT: All right.

10

11 (The bench conference commenced.)

12

13 THE COURT: Okay, ma'am. Go ahead.

14 PROSPECTIVE JUROR: My ex-brother-in-law is in  
15 prison on death row for first-degree murder in the state  
16 penitentiary, and I feel that I, you know, couldn't be– you  
17 know my pressure, like last month it was 219/129, and I'm  
18 severe hypertension–

19 THE COURT: Do you feel like that's going to–the  
20 stress of this case is going to be such that it's going to affect  
21 you?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Any objection?

24 PROSPECTIVE JUROR: No.

25 THE COURT: You can be excused.

1 (The bench conference was concluded.)

2

3 (Gertrude Arnold was excused for cause.)

4

5 MR. MANIS: Another thing is anything we ask you  
6 something that you feel is a little too personal to share with the  
7 group here, if you like, you have an opportunity to not say it  
8 out loud. Please let us know, and if it's appropriate, we'd be  
9 glad to at least ask the judge if he will allow us to do that.

10 Ms. Didato.

11 PROSPECTIVE JUROR: Didato.

12 MR. MANIS: You did have a personal experience  
13 similar—well, related to crime—not similar to this, but related to  
14 crime. Is that, in any way, going to affect your ability to  
15 receive the evidence?

16 PROSPECTIVE JUROR: No.

17 MR. MANIS: Do you feel comfortable that you can  
18 follow the law even with that background?

19 PROSPECTIVE JUROR: Yes.

20 MR. MANIS: Thank you. Mr. Miller.

21 PROSPECTIVE JUROR: Yes, sir.

22 MR. MANIS: Can I ask you, in Poland—and that's  
23 where you're from, correct?

24 PROSPECTIVE JUROR: Yes.

25 MR. MANIS: Is there capital punishment there?

1 PROSPECTIVE JUROR: Yes.

2 MR. MANIS: And is there full jury trials with  
3 members of society being the deciders of the punishment?

4 PROSPECTIVE JUROR: Yes.

5 MR. MANIS: Did you ever have any experience on  
6 any of those to be on a jury there?

7 PROSPECTIVE JUROR: No.

8 MR. MANIS: Did you feel that, in Poland, that the  
9 punishments were appropriate there—the use of the death  
10 penalty, did you feel it was appropriate?

11 PROSPECTIVE JUROR: Sometimes.

12 MR. MANIS: So you feel in some circumstances it is  
13 an appropriate punishment?

14 PROSPECTIVE JUROR: Yes.

15 MR. MANIS: Has that opinion changed since  
16 you've come to this country?

17 PROSPECTIVE JUROR: No.

18 MR. MANIS: Do you feel that that's the  
19 appropriate punishment in all murder cases?

20 PROSPECTIVE JUROR: That's difficult.

21 MR. MANIS: I'm sorry.

22 PROSPECTIVE JUROR: That's difficult.

23 MR. MANIS: Let me see if I can rephrase it.  
24 Maybe that will help.

25 PROSPECTIVE JUROR: Okay.

1 MR. MANIS: If you know—if you're asked to make a  
2 decision about a punishment between life and death—

3 PROSPECTIVE JUROR: Um-hum.

4 MR. MANIS: And you know the person that you're  
5 going to have to judge has killed someone.

6 PROSPECTIVE JUROR: Yes.

7 MR. MANIS: Do you feel that the only appropriate  
8 punishment is death?

9 PROSPECTIVE JUROR: Well, something was wrong,  
10 so I need to listen to the whole stuff, and then I would make a  
11 decision.

12 MR. MANIS: Let me ask you this: From what you  
13 need—so you're saying that you need to hear proof as to the  
14 circumstances before you decide what is appropriate. Is that  
15 correct?

16 PROSPECTIVE JUROR: That's correct.

17 MR. MANIS: And I'm not—I don't want to put words  
18 in your mouth. I'm trying to understand.

19 PROSPECTIVE JUROR: Correct.

20 MR. MANIS: What if the only proof that you would  
21 hear would have to do with things completely different with  
22 guilt and innocence just with regards to other factors that  
23 have nothing to do with guilt and innocence?

24 PROSPECTIVE JUROR: Yes.

25 MR. MANIS: Once again, you would need to hear

1 what was said, and then you'd make a decision?

2 PROSPECTIVE JUROR: Yes.

3 MR. MANIS: Thank you for your honesty.

4 PROSPECTIVE JUROR: Thank you.

5 MR. MANIS: Mr. Hipner, I see you're from  
6 Washington.

7 PROSPECTIVE JUROR: Um-hum.

8 MR. MANIS: It's beautiful up there. How long  
9 have you been here?

10 PROSPECTIVE JUROR: Ten years.

11 MR. MANIS: A little different.

12 PROSPECTIVE JUROR: Somewhat.

13 MR. MANIS: Are you a student at Memphis State?

14 PROSPECTIVE JUROR: I just graduated.

15 MR. MANIS: What did you get your degree in?

16 PROSPECTIVE JUROR: Marketing.

17 MR. MANIS: Sir, anything you've heard today that  
18 makes you think that you may not be able to be an  
19 appropriate candidate to sit on this jury?

20 PROSPECTIVE JUROR: No.

21 MR. MANIS: Mr. Anderson, we had a lengthy  
22 discussion a few minutes ago. May I have a moment, Your  
23 Honor.

24

25 (There was a pause in the proceedings.)

1 MR. MANIS: Mr. Stafford, I noticed, from going  
2 through your questionnaire, that you sat on a jury before.

3 PROSPECTIVE JUROR: Yes.

4 MR. MANIS: What kind of a jury was it?

5 PROSPECTIVE JUROR: It was a criminal trial.

6 MR. MANIS: Here in Shelby County?

7 PROSPECTIVE JUROR: Yes.

8 MR. MANIS: How long ago was that?

9 PROSPECTIVE JUROR: Eight, nine years ago.

10 MR. MANIS: I'm not going to tell you how long it's  
11 been since I've been called for jury duty, because I'm not  
12 sure what the system is, but somehow people keep getting  
13 called, and others keep missing.

14 PROSPECTIVE JUROR: I didn't think I would have to  
15 come back this often--this quick, but--

16 MR. MANIS: Did you enjoy that experience?

17 PROSPECTIVE JUROR: I wouldn't say I enjoyed it,  
18 but it was interesting. I learned a lot about the law from  
19 listening to situations because it's not as you first think it is.

20 MR. MANIS: Do you think you learned a lot from  
21 that?

22 PROSPECTIVE JUROR: Oh, yes.

23 MR. MANIS: Do you have an opinion as to  
24 whether or not the death penalty should be given in all death  
25 cases?

1 PROSPECTIVE JUROR: I think you have to look at all  
2 the evidence before you make up your mind because there  
3 are extenuating circumstances in some cases.

4 MR. MANIS: Let me ask you, what, in your mind,  
5 are some types of extenuating circumstances that would be  
6 relevant to you and to your consideration in a murder  
7 case—not-forgetting what you've heard about what these  
8 facts are, but just in a murder case. What things might you  
9 consider as extenuating?

10 PROSPECTIVE JUROR: I would have to look at  
11 each individual case before I could make a decision like that.  
12 You know, everything has to be your conscience based on  
13 facts at the time.

14 MR. MANIS: In the—when you sat the first time,  
15 were there any situations where certain jurors were holding  
16 out, as they say, or had a different opinion as to the majority of  
17 the group?

18 PROSPECTIVE JUROR: There was only one that had  
19 a different opinion, and the only disappointing fact about  
20 that, when it was all over, is that person sided with the other  
21 eleven members, and the statement was made, going out,  
22 that I still believe it was the other way, which I disagreed with.

23 MR. MANIS: How did you feel about that  
24 statement?

25 PROSPECTIVE JUROR: I disagreed with it. I felt like

1 it should have been, you know, a clear decision made. And  
2 something like was mentioned a minute ago, you have a  
3 clear conscience about that.

4 MR. MANIS: So you felt this man or  
5 woman—whoever it was—should have stood up for what they  
6 believed in instead of folding, I guess?

7 PROSPECTIVE JUROR: Yeah. It only took about an  
8 hour, and it wasn't enough deliberation, on that person's part,  
9 to have made a conscious decision. That's how I felt.

10 MR. MANIS: Let me ask you this: If the tables  
11 were turned, and you had been the one by yourself, do you  
12 feel that the pressure of others could make you change your  
13 mind?

14 PROSPECTIVE JUROR: It would not in my case.

15 MR. MANIS: Have you seen how that can  
16 happen, though?

17 PROSPECTIVE JUROR: Yes, I have seen it.

18 MR. MANIS: In an attempt to get a right or a just  
19 decision, in your experience, it would have been best if that  
20 person held out and stood their ground?

21 PROSPECTIVE JUROR: Well, I won't say hold out  
22 and stand their ground, but just if you're unclear about your  
23 decision, you should ask to see portions of the evidence  
24 again, maybe ask some of the other members, "Why do you  
25 believe how you believe," so you can make a good judgment

1 on it, and I don't think that was done in that particular case.

2 MR. MANIS: Ms. O'Neal, a couple of questions  
3 with regards to your questionnaire. In Question No. 45, "In  
4 your opinion, is life in prison a substantial punishment for  
5 someone who is guilty of first-degree murder?" The answer is  
6 no. Then I wrote down, "Why or why not?" "Premeditated is  
7 the key." Are you saying that in premeditated murders, that  
8 life is not substantial enough?

9 PROSPECTIVE JUROR: The question stated  
10 premeditated, so if the evidence is proved to me that it was  
11 premeditated, then yes, I would go with the death penalty,  
12 but I would have to hear both sides of it.

13 MR. MANIS: I guess my question is a little different.  
14 Let me try to rephrase it. In a first-degree, premeditated case,  
15 okay, when you were told that it was a premeditated murder,  
16 is life a possible sentence that you can consider?

17 PROSPECTIVE JUROR: It would depend on the  
18 evidence.

19 MR. MANIS: Okay. So what you're saying, just so I  
20 understand, it's not the premeditation is the key as to whether  
21 or not life or death is the appropriate sentence. There are  
22 other factors.

23 PROSPECTIVE JUROR: There are other factors.  
24 Right.

25 MR. MANIS: And you mentioned 2, what I assume

1 would be 2, and that was competency and sanity. Are  
2 those—is that an exclusive list, or are there others?

3 PROSPECTIVE JUROR: There are others, but those—  
4 guess it would have to be—again, depending on the  
5 evidence.

6 MR. MANIS: Right. And I guess what I need to  
7 know, is, in a situation where insanity or competency isn't an  
8 issue, are there still other factors available that could  
9 determine whether or not those sentences are appropriate, or  
10 would that be the appropriate sentence to you at that point  
11 in time?

12 PROSPECTIVE JUROR: The evidence would have  
13 to determine that.

14 MR. MANIS: Excuse me one second, Your Honor.  
15 (Pause.) That's all I have. Thank you.

16

17 (There was a pause in the proceedings.)

18

19 THE COURT: Just a minute. I was doing something  
20 else. Mr. Miller, would you move up and take that seat  
21 behind you that's vacant.

22

23 (Peremptory challenges were exercised.)

24

25 THE COURT: Mr. Goetzka and Ms. Gipson, you'll

1 be excused.

2

3 (Kimberly Gipson was excused peremptorily.)

4

5 (Kary Goetzka was excused peremptorily.)

6

7 THE COURT: Mr. Hipner, will you take the fifth seat  
8 back there.

9 And Mr. Anderson, would you take the last seat  
10 back there.

11

12 (Peremptory challenges were exercised.)

13

14 THE COURT: Mr. Anderson will be excused.

15

16 (Joseph Anderson was excused peremptorily.)

17

18 THE COURT: And Mr. Stafford, would you take that  
19 chair, please.

20

21 (Peremptory challenges were exercised.)

22

23 THE COURT: Ms. Geissler—is that right?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: You'll be excused, please, ma'am.

1 (Ann Geissler was excused peremptorily.)

2

3 THE COURT: Ms. O'Neal, you'll take that chair.

4

5 (Peremptory Challenges were exercised.)

6

7 THE COURT: Mr. Miller and Ms. O'Neal will be  
8 excused. I'll let you step down, Please.

9

10 (Betty O'Neal was excused peremptorily.)

11

12 (Michael Miller was excused peremptorily.)

13

14 THE COURT: And what the court's going to do is  
15 now take about a ten-minute recess. If you'll follow the  
16 officer, they'll take you to the jury room, and we'll stand in  
17 recess for about ten minutes. Please come back and take  
18 the same seats.

19

20 (Recess.)

21

22

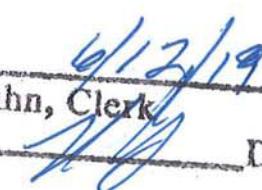
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25 End of Volume I

## **APPENDIX C**

IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS  
THE THIRTIETH JUDICIAL DISTRICT

AKIL JAHI, fka PRESTON CARTER, )  
Defendant/Petitioner-Applicant, ) No. P-28413  
v. ) Prior Case Nos. 93-09760  
STATE OF TENNESSEE, ) 93-09761  
Plaintiff/Respondent. )  
Filed 6/13/19  
Heidi Kuhn, Clerk  
BY   
D.C.

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REPLY IN SUPPORT OF PETITIONER'S MOTION TO REOPEN

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Petitioner Akil Jahi (fka Preston Carter) respectfully submits this Reply in support of his Motion to Reopen.

**I. Mr. Jahi's sentencing hearing violated McCoy's holding guaranteeing Mr. Jahi the right to decide the objectives of his own defense.**

Mr. Jahi's trial counsel deprived him of "the ability to decide whether to maintain his innocence" of the most serious charges and to set the objective of his defense, a violation of Mr. Jahi's Sixth Amendment rights that entitle him to a new sentencing hearing under *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018). The State's response ignores Mr. Jahi's plea to a lesser crime of reckless felony murder and trial counsel's unauthorized decision to contradict that plea and defeat Mr. Jahi's objectives by conceding premeditated murder, conceding critical sentencing factors, and opining that Mr. Jahi deserved to die.

The distinctions the State draws between this case and *McCoy* only show that the violations of Mr. Jahi's constitutional right to set the objectives of his defense are worse than those that required a new trial in *McCoy*. Here, Mr. Jahi's narrow guilty plea formally recorded some of his objectives with counsel and the Court, making it at least the equal of *McCoy*'s free-form objections. Mr. Jahi's decision "to admit guilt to [a lesser] crime as part of his defense objective did not give defense counsel the authority to admit guilt to the [more serious] crime," *State v. Horn*, 251 So. 3d 1069, 1076 (La. 2018) (applying *McCoy*), but that is exactly what happened here. After Mr. Jahi entered a negotiated guilty plea to a lesser crime, his trial counsel conceded guilt on the most serious crime charged and abandoned strong arguments related to aggravating and mitigating factors essential to avoiding a death sentence.

The State also claims that other violations of Mr. Jahi's constitutional rights somehow bar this specific claim. Under Tennessee law, however, "a motion to reopen is the proper vehicle for a claim . . . that asserts a newly recognized constitutional right, even when the issue was arguably waived." *Keen v. State*, 398 S.W.3d 594, 607 (2012). Although the State wants to reframe this as an ineffective assistance of counsel claim, "we do not apply our ineffective-assistance-of-counsel jurisprudence" in situations like this where "a client's autonomy, not counsel's competence, is in issue." *McCoy*, 138 S. Ct. at 1510–11. The structural error of depriving Mr. Jahi of his autonomy to decide the objectives of his defense exists apart from ineffective-assistance claims that also justify vacating Mr. Jahi's sentence. The same is true of Mr. Jahi's intellectual disability under current medical standards as recognized in

*Hall v. Florida*, 572 U.S. 701, 722–24, (2014), and *Moore v. Texas*, 137 S. Ct. 1039, 1048–49 (2017), a factor that compounded the harm by leaving Mr. Jahi ill-equipped to intervene as trial counsel actively undermined the objectives of his defense.

Rather than diminish the importance of applying *McCoy* faithfully in this case, the State's response highlights “the importance of correctly resolving constitutional issues,” including “serious constitutional implications of first impression.” *Keen*, 398 S.W.3d at 607. Mr. Jahi’s case presents the serious constitutional issue of whether trial counsel can disregard objectives and the clear plea of an intellectually disabled defendant by conceding guilt of a more serious offense, and abandoning strong arguments about aggravating and mitigating factors that determine life or death. *McCoy* holds that he cannot. This Court should reopen Mr. Jahi’s post-conviction proceedings to hold likewise.

## **II. *McCoy*’s holding is a new rule of constitutional criminal law.**

*McCoy*’s “broadly written” holding establishes “a defendant’s autonomy to choose the objective of his defense” and bars defense counsel from overruling or ignoring those determinations. *Horn*, 251 So. 3d at 1076. It acknowledges a defendant’s right to decide *what* goals to pursue based on his own values, not simply *whether* to waive other narrowly defined rights. *McCoy* acknowledges that a defendant “may wish to avoid, above all else, the opprobrium that comes with admitting [particular elements of a charged crime]” and that “his lawyer must abide by that objective and may not override it.” *McCoy*, 138 S. Ct. at 1508, 1509. By acknowledging a defendant’s autonomy regarding overall goals—not just binary decisions about “whether to plead guilty, waive a jury, testify in his or her own behalf,

or take an appeal,” *Jones v. Barnes*, 463 U.S. 745, 751 (1983), *McCoy* articulated a “newly discovered fundamental right.” *McCoy*, 138 S. Ct. at 1512 (Alito, J., dissenting). It is different in kind and different in scope from the dicta, concurrences, and denials of relief the State cites as prior authority establishing these rights.

The State cites *Jones v. Barnes*, 463 U.S. 745, 751 (1983) and *Wainwright v. Sykes*, 433 U.S. 72, 93, n. 1 (1977) (Burger, C.J., concurring), to assert that the *McCoy* holding does not articulate a new constitutional right, but neither of these cases supports this proposition. Dicta in *Jones* references a defendant’s “ultimate authority” over binary decisions about “whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal” but holds that a defendant has *no right* to insist that counsel raise any particular nonfrivolous claims. *Jones*, 463 U.S. at 751–53. Thus, *McCoy*’s new rule reserving decisions about fundamental objectives to defendants cuts back against *Jones*’s deference to counsel on matters of litigation strategy and substantially expands the scope of defendants’ autonomy from yes-no decisions to a broader autonomy over fundamental goals. Similarly, the footnote in the *Wainwright* concurrence that the State cites describes limits on defendants’ rights by stating that “[o]nly such basic decisions as whether to plead guilty, waive a jury, or testify in one’s own behalf are ultimately for the accused to make.” *Wainwright*, 433 U.S. at 93, n. 1 (1977) (Burger, C.J., concurring) (emphasis added). Like the above-quoted passage from *Jones*, this articulates of a narrow set of yes-no rights, wholly distinct from *McCoy*’s recognition of the nuanced right to decide the objective of one’s defense.

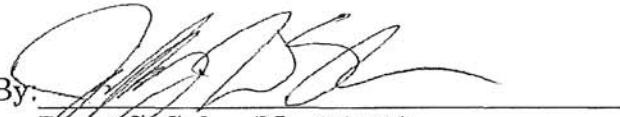
### **III. *McCoy* must be applied retroactively.**

*McCoy*'s new rule of constitutional criminal law must be applied retroactively because it "requires the observance of fairness safeguards that are implicit in the concept of ordered liberty." Tenn. Code Ann. § 40-30-122. Unauthorized admissions of guilt and other concessions contrary to a defendant's express objectives "is error structural in kind" because it "blocks the defendant's right to make the fundamental choices about his own defense." *McCoy*, 138 S. Ct. at 1512. These kinds of "[c]onstitutional issues should rarely be foreclosed by procedural technicalities," *Van Tran v. State*, 66 S.W.3d 790, 799 (Tenn. 2001), and the *McCoy* rule is precisely the kind of critical new constitutional rule that requires retroactive application in post-conviction proceedings.

\* \* \*

For the foregoing reasons, Petitioner respectfully requests that the Court grant his Motion to Reopen.

Respectfully submitted,

By: 

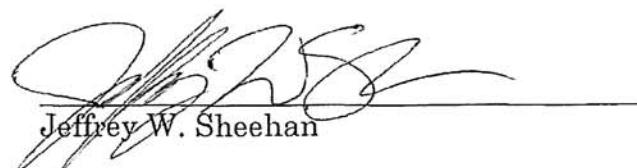
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#### CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was sent by United States mail to counsel for Respondent, Steve Jones, Office of the District Attorney General, 201 Poplar Street, Suite 301, Memphis, Tennessee 38103-1945, on this the 10th day of June, 2019.

  
Jeffrey W. Sheehan