

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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4 **BRIAN KERRY O'KEEFE,**)

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Supreme Court No. **Electronically Filed**
Apr 08 2011 08:58 a.m.
District Court Case No. C250630
Tracie K. Lindeman

EIGHTH JUDICIAL DISTRICT
COURT; THE HONORABLE
MICHAEL P. VILLANI,
DISTRICT COURT JUDGE,

Respondents,

And

THE STATE OF NEVADA,

Real Party in Interest.

APPENDIX

TO PETITION FOR WRIT OF MANDAMUS OR IN THE
ALTERNATIVE, A WRIT OF PROHIBITION
AND REQUEST FOR STAY OF TRIAL

VOLUME 2

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COPY
DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

FILED
OCT 14 2009

John L. Linn
CLERK OF COURT

THE STATE OF NEVADA,
Plaintiff,

vs.

BRIAN KERRY O'KEEFE,
Defendant.

CASE NO. C-250630

DEPT. NO. 17

**Transcript of
Proceedings**

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

MONDAY, MARCH 16, 2009

JURY TRIAL - DAY 1

APPEARANCES:

FOR THE PLAINTIFF:

PHILLIP SMITH, ESQ.
STEPHANIE GRAHAM, ESQ.
Deputy District Attorneys

FOR THE DEFENDANT:

RANDALL H. PIKE, ESQ.
PATRICIA A. PALM, ESQ.
Special Public Defenders

COURT RECORDER:

MICHELLE RAMSEY
District Court

TRANSCRIPTION BY:

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1 LAS VEGAS, NEVADA, MONDAY, MARCH 16, 2009, 9:26 A.M.

2 (Court called to order)

3 (Outside the presence of the jury)

4 THE COURT: All right, this is C-250630, State of
5 Nevada versus Brian O'Keefe. Is it O'Keefe or O'Keefe?

6 THE DEFENDANT: O'Keefe, sir.

7 THE COURT: O'Keefe, all right. Mr. Pike, his
8 attorney, Mr. Smith and Ms. Graham for the State. The State's
9 motion to admit evidence of other crimes.

10 MR. SMITH: And Judge, I'm paying attention to you.

11 THE COURT: All right. Proceed. Proceed.

12 MR. SMITH: Judge, it's the State's position that the
13 testimony of Cheryl Morris at the preliminary hearing clearly
14 establishes at that the defendant had a motive to kill Ms.
15 Witmarsh (phonetic) and that the defendant relayed to Cheryl
16 Morris that he had a deep seeded animosity towards Ms. Witmarsh
17 for testifying against him at a previous battery domestic
18 violence trial.

19 Our proffer would be that we intend to call a
20 detective who would be able to testify that he obtained
21 certified copies of the Judgment of Conviction from that
22 domestic violence charge showing that he was, in fact
23 convicted.

24 Also, he would be able to testify that he personally
25 determined the length of his prison sentence because, as I

1 stated in my motion, the defendant specifically stated to
2 Cheryl Morris that Ms. Witmarsh had taken away three years his
3 life.

4 So we would -- we would put the detective on to say
5 that he did investigation into the defendant's criminal records
6 at the Nevada Department of Corrections and it did, in fact,
7 reveal that he spent three years in prison.

8 So the State submits that we have certainly met the
9 burden that it has probative value, especially because this is
10 an open murder charge. To support a conviction of first degree
11 murder the State has to show deliberation and premeditation and
12 intent.

13 And with the defendant making statements that he
14 specifically wanted to "kill the bitch" because she had
15 testified against him, I submit that this is clearly a motive
16 evidence contemplated by NRS 48.045.

17 That being said, it's the State's position that your
18 Honor has to weigh the probative value versus the prejudicial
19 value. I submit that it is certainly more probative than
20 prejudicial because it clearly establishes motive. The State
21 is not going to make any argument that he's necessarily a bad
22 guy because of that. It's simply one part of the entire story
23 of this case, and I submit that it should certainly be admitted
24 into evidence.

25 THE COURT: All right. Mr. Pike?

1 MR. PIKE: Thank you, your Honor. For the record, in
2 anticipation of this -- this issue coming in, we conducted a
3 thorough cross-examination of Cheryl Morris at the time of the
4 preliminary hearing so that there would be a record and you
5 could actually read the full transcript as to what she was
6 going to say. That's the reason we don't have to actually have
7 witnesses called in at this point in time because the -- as you
8 can see from the documents that have been filed, this is not a
9 case that has a great deal of varied issues in it, would (sic)
10 have developed a number of them.

11 In relationship to this one, this -- you're dealing
12 with Cheryl Morris. Cheryl Morris is a girlfriend of the
13 defendant that was an interim girlfriend after he had gotten
14 out of prison, and they had established a relationship. Cheryl
15 and Mr. O'Keefe, in fact, had resided together, were boyfriend
16 and girlfriend, they had shared a joint account, they bought a
17 car together, they had done a number of things like that. And
18 she is a jilted girlfriend in that as soon as the deceased in
19 this, Victoria Witmarsh re-contacted Mr. O'Keefe -- and he did
20 not contact her. He did not seek her out. He did not attempt
21 to reestablish the relationships after this.

22 But he -- Mrs. Witmarsh contacted him. They
23 reestablished a relationship. If -- if this had any probative
24 value it would be in a case where the issue of the identity of
25 an individual who had killed Mrs. Witmarsh may be at issue.

1 This is -- this is a couple that had reestablished themselves.
2 They'd been very public about their reuniting. He -- Mr.
3 O'Keefe had taken her to the union hall where they had worked
4 together. They were a couple to the neighbors around the
5 apartment where they had been. They were -- had gone into a --
6 my client was involved in a rehab program through the union at
7 MINDS. So he had gone forward in relationship to them
8 appearing together, and Mrs. Witmarsh had appeared with him
9 during that period of time.

10 There is a reason why hearsay statements are
11 considered as inherently unreliable unless they meet certain
12 criteria. And this is certainly one, because it is not -- the
13 issue is not whether this was a planned homicide or anything
14 like that.

15 In fact, given the alcohol -- the obvious
16 intoxication of Mr. O'Keefe at the time, the intoxication and
17 drug -- and overdosage not to the extent of death, but a high
18 amount of an anti-depressant along with the .24 alcohol level
19 in the deceased as a result of the autopsy. It appears that
20 these two were -- were not anywhere near their normal state of
21 mind during that period.

22 So for a jilted girlfriend to come in and say he told
23 me that he was -- you know, he would kill her because of this,
24 I think is far more prejudicial than probative because she has
25 her own motives for doing that.

1 THE COURT: Well doesn't this -- the State's
2 presented it as motive -- purpose of motive or intent of your
3 client. Doesn't it relate to that? Because I think -- if the
4 court or if the jury and the court believes the former
5 girlfriend and she had said that the defense -- and I'm -- she
6 took, you know, three years out of my life and he's got a ax to
7 grind, isn't that relevant to motive and intent?

8 MR. PIKE: It would be if this was -- appeared to be
9 a premeditated type of criminal offense where he was trying to
10 hide from police, or establish an alibi or do anything at all
11 like that. In circumstances where we have two drunk people
12 involved in it, I just don't -- I don't see where it meets that
13 probative versus prejudicial test.

14 THE COURT: All right. Anything further, Mr. Smith?

15 MR. SMITH: Judge, my reply would be Mr. Pike has
16 raised some issues that are right for cross-examination when
17 Ms. Morris gets on the stand. But the point here is if the
18 State made a prima facie showing that it does have probative
19 value and that it outweighs the prejudicial value, and I think
20 it does.

21 Surely there are several interpretations as to what
22 the evidence is going to show in this case, but the State is
23 entitled to a little deference if we can show that our theory
24 of the case supports the probative value of that testimony, and
25 it, in fact, does.

1 Furthermore, the fact that he -- the defendant didn't
2 try and establish an alibi or anything of that nature, I mean,
3 we hear that premeditation can be as quickly as successive
4 thoughts of mind. And I'm sure your Honor can think of a
5 theory that State could put forward that uses testimony of Ms.
6 Morris, despite the fact that the defendant did not give an
7 alibi or didn't do any of the things that Mr. Pike put forward
8 that one would normally expect in a case of premeditation and
9 deliberation. I submit that we've met our burden and it should
10 come in.

11 THE COURT: Anything further, Mr. Pike?

12 MR. PIKE: No, your Honor.

13 THE COURT: Mr. Pike, were you the defense attorney?
14 Did you cross-examine this witness at the lower stage?

15 MR. PIKE: Yes, I was, your Honor.

16 THE COURT: Okay.

17 MR. PIKE: The -- in --

18 THE COURT: She made these statements, correct, under
19 oath?

20 MR. PIKE: Pardon?

21 THE COURT: She made these statements?

22 MR. PIKE: She did make those --

23 THE COURT: She relayed the -- right.

24 MR. PIKE: -- statements under oath and they were
25 subject to cross-examination. The -- the statement about

1 taking three years out of his life, Mr. O'Keefe spent basically
2 a year in custody in Clark County Detention Center. While that
3 was pending Ms. -- Mrs. Witmarsh visited him in -- in jail,
4 also in prison and then reconnected with him afterwards.

5 They -- their relationship really didn't end for a
6 period of three years. So if the court is going to allow it
7 in, then I'm going to have to have kind of a wide range on the
8 investigation of the detective in relationship to visitation
9 logs, Mrs. Witmarsh's contact with him. It does present a -- a
10 bit of the Gordian knot or a messy situation as far as
11 examination. And I don't think it's -- it's so -- it's so
12 insightful that it would -- it becomes a -- a hot poker of
13 probative value for the State.

14 THE COURT: All right. I think the prior acts here
15 and the statements are relevant to the charge. With the
16 testimony under oath they've been proven by clear and
17 convincing evidence. And Mr. Pike, I do find that the
18 probative value is not substantially outweighed by the
19 prejudicial effect of this, so I'm going to allow that
20 testimony to come in. And we start in 20 minutes; is that
21 correct?

22 MR. PIKE: That's correct, your Honor. In
23 relationship to this, we've got -- if we could go ahead and
24 take some time and take care of some housekeeping matters for
25 the trial.

1 As the court has seen, we have exchanged our proposed
2 jury instructions. I filed a hard copy, or provided a hard
3 copy to the clerk. In addition to that, the documents, as part
4 of the reciprocal discovery that I provided to counsel, I've
5 made a -- a list of exhibits and have provided those to the
6 clerk also.

7 THE COURT: All right.

8 MR. PIKE: In anticipation in this case, it -- the
9 trial may go where Mr. O'Keefe may decide to testify or not
10 testify. In the event that he does elect to testify, we do
11 have some issues in relationship to a prior conviction of a
12 burglary in which the charging documents indicated the burglary
13 was for purposes of a sexual assault. The sexual assault was
14 found to be -- there was insufficient evidence to support the
15 sexual assault allegations. And at that offense, he was just
16 convicted of a burglary and a misdemeanor battery.

17 If he takes the stand, we will go ahead and preview
18 the conviction for the burglary and the battery. Although, if
19 -- since the court has issued the ruling that -- that battery's
20 probably going to come forward.

21 I'm going to request that before the State be allowed
22 to further impeach in relationship to the burglary, that
23 because we will establish that within the ten year time period
24 and since we will establish it, that there really is nothing to
25 impeach. And if there is any portion of the sexual assault

1 that comes in in relationship to that, of which he was
2 acquitted, then we'd be bringing a motion for a mistrial.

3 And I don't anticipate the State's going to do that.
4 I'm just -- I'm just telling you there's some -- there's a
5 couple hot issues that you need to be aware of that are in the
6 --

7 MR. SMITH: There are some land mines --

8 MR. PIKE: -- past.

9 MR. SMITH: -- in this case.

10 MR. PIKE: There are.

11 MR. SMITH: There are plenty of land mines.

12 MR. PIKE: And there --

13 THE COURT: You're not going to do that, Mr. Smith,
14 are you?

15 MR. SMITH: I'm not going to go into the sexual
16 assault. Judge, I'm going to keep my impeachment, if he
17 testifies with regards to his prior felonies, as sanitary as
18 possible. When were you convicted, what jurisdiction and what
19 was the crime, that's it. Even with the DV third.

20 THE COURT: All right. That's all you're allowed to
21 do.

22 MR. SMITH: The only details, Judge -- I'm sorry, I
23 just want to make sure --

24 MR. PIKE: That's okay. No, no, this is what --

25 MR. SMITH: -- Randy knows.

1 MR. PIKE: -- it's for.

2 MR. SMITH: The only detail I'm going to go into with
3 regards to the prior DV obviously is who the witness was that
4 testified against him, because that -- I mean, that kind of
5 comes in. But other than that, the other convictions I'm going
6 to stay away from them with the exception of what's allowed by
7 law.

8 THE COURT: Can you make sure your witness doesn't
9 blurt something out?

10 MR. SMITH: And I certainly won't bait him.

11 MR. PIKE: And then in relationship --

12 THE COURT: You know, we had a mistrial --

13 MR. PIKE: Yeah.

14 MR. SMITH: Right.

15 THE COURT: -- in the next department first witness.

16 MR. SMITH: First witness. Well, we don't anticipate
17 that happening here.

18 MR. PIKE: We don't. We -- and in relationship to
19 the -- the other issues, there are some prior, of course,
20 because it is a -- was a third offense domestic violence, there
21 were two prior misdemeanor convictions for battery domestic
22 violence. I guess, we're just going to have to kind of deal
23 with those if Mr. O'Keefe takes the stand in relationship to
24 whether they're going to bring them in as other bad acts. If
25 they're just going to stick to the felonies, then we won't, but

1 I don't --

2 MR. SMITH: And again, I'm not going to ask the
3 defendant about any of his priors, with the exception of ones
4 that are -- have already been deemed admitted. But, of course,
5 the State reserves his right to cross-examine him if were the
6 defendant to open the door, as it were, to any -- any acts he
7 may have allegedly committed against Mrs. Witmarsh.

8 MR. PIKE: That's correct, and we have -- and may the
9 --

10 THE COURT: I'm sure you've counseled your client
11 carefully.

12 MR. PIKE: We have. In fact, Ms. Palm is present
13 here. In going through this, we've indicated to Mr. O'Keefe
14 that those misdemeanors may not be used as impeachment
15 materials unless he opens the door by indicating that there was
16 never any problems him and Mrs. Witmarsh, or we're trying to
17 just stick to prospective Lee from when they reunited after he
18 got out of prison this time, which -- and I think if we can
19 successfully do that, then we're not going to have an issue
20 with the prior DVs except for the -- the one felony as motive.

21 And if during cross-examination there's anything
22 that's blurted out or Mr. O'Keefe elects to talk about that,
23 then it kind of -- it opens the door for State. So as they're
24 being careful with their witnesses, Mr. O'Keefe, if he'll pay
25 attention right now during trial then he'll understand the --

1 the potential land mines or doors that he will open.

2 THE COURT: Mr. O'Keefe, do you understand what your
3 attorney just stated?

4 THE DEFENDANT: Yes, your Honor, I do.

5 THE COURT: Okay, because if you blurt something out
6 or you don't listen to the question carefully and answer
7 something that's not being asked, you may open the door, and
8 it's going to -- perhaps the other domestic violence issues
9 will come in, and I'm sure that will adversely impact your
10 case.

11 MR. PIKE: And the one other --

12 THE COURT: Do you understand that, sir?

13 THE DEFENDANT: Yes, I do, your Honor.

14 THE COURT: All right.

15 THE DEFENDANT: I do.

16 THE COURT: Okay.

17 THE DEFENDANT: I do have something I'd like it
18 mention, if I may.

19 THE COURT: Well, why don't you talk to Mr. Pike
20 first see if you want to advise the court of it.

21 MR. PIKE: In relationship to -- again, back to
22 Cheryl Morris. Now, there are two aspects of the testimony,
23 and I didn't cover one of it. The Court's ruled on the aspect
24 in relationship to the now testify.

25 The other is the means. As the transcript indicated,

1 we went through and because she was saying that he would --
2 that Mr. O'Keefe said that he would threaten her or would kill
3 her, she demonstrated that he would stab her with a knife, or
4 he said that he would stab her with a knife in the sternum, the
5 center of the sternum which I'm pointing at right now for the
6 record and which she pointed to at the time of the preliminary
7 hearing.

8 In fact, the -- the death producing wound is under
9 the armpit forward with the -- the blade facing back towards
10 the back, the cutting edge facing back towards that. So that
11 is dissimilar enough that I -- I think that that portion of the
12 testimony is not -- is not probative and certainly is
13 prejudicial if it's says he's going to do it with a knife and
14 then pointing to a specific area that is, given the size of the
15 victim in this case, is probably no more than a foot away.

16 MS. PALM: And your Honor, if I could just clarify
17 that for a second because her -- she made statements that he
18 had told her and demonstrated to her how he would kill people
19 with a knife. That, I think, is completely irrelevant and had
20 nothing to do with Victoria Witmarsh. She never said that he
21 was going to do that exactly to Victoria Witmarsh. Just that
22 she had said he said he was going to kill Victoria Witmarsh.
23 Those are two separate things.

24 So in reference to him demonstrating how he would
25 kill people with the knife, we would ask that they caution her

1 not to go into that because that hasn't been noticed as a bad
2 act, as well as any prior domestic violence against her has
3 also not been noticed.

4 MR. PIKE: We've done that.

5 MS. PALM: Okay.

6 MR. PIKE: Yeah.

7 MS. PALM: Sorry, I was late to the game.

8 MR. SMITH: Judge -- Judge, the defendant's stating
9 to another person that he has the ability to kill somebody in a
10 specified means is not a bad act. It's not a crime to say --
11 for instance, if I'm a sniper and I'm in the Marine Corp., and
12 I tell one of my friends, "You know, I'm really good with a 30
13 odd 6 from 500 yards," it's not a crime.

14 But then if I go ahead and use -- and kill somebody
15 with that same means, certainly the Government in prosecuting
16 me should be able to use evidence that I indicated that I have
17 a proficiency at killing somebody in that manner. That's not a
18 bad act, and that's our position. That's why we didn't file
19 the motion -- we didn't file a motion saying, you know, we
20 should be able to get in that the defendant or stated to Ms.
21 Morris that he has a proficiency with knives and can use them.
22 That's not a bad act.

23 THE COURT: I'm not interpreting it as a bad act, so
24 --

25 MR. SMITH: And so Ms. Morris should certainly be

1 allowed to testify to that.

2 THE COURT: I'm going -- she will be allowed to
3 testify to that.

4 MR. SMITH: Thank you.

5 THE COURT: Anything else, Mr. Pike?

6 MR. PIKE: No, your Honor.

7 THE COURT: Ms. Palm? Anything else, Mr. Smith?

8 MR. SMITH: We have one thing, Judge. One of our
9 officers, Christopher Hutcherson, when he arrived at the scene,
10 the defendant made some spontaneous statements. Specifically
11 the one that we want to address is one where the defendant
12 allegedly stated to Officer Hutcherson, "Let's go, let's do the
13 ten years."

14 It's the State's position that that's a statement
15 showing a consciousness of guilt. Now, I know it's kind of a
16 double whammy in that the defendant is saying "let's do the ten
17 years", which if it comes out in that fashion, the jury would
18 then be given evidence regarding sentencing.

19 So what the State wanted to suggest with the defense
20 counsel's agreement, and with your Honor even ruling that it's
21 admissible, is that Officer Hutcherson be allowed to say
22 something to the effect that the defendant stated, "Let's go,
23 let's do the prison time," or "Let's go, let's do something
24 like that."

25 But to sanitize it where he doesn't say the quantity

1 of the time, but we submit that we still should be allowed to
2 have the officer relay the underlying effect of the defendant's
3 statement because it does show a consciousness of guilt, at
4 least from our position.

5 THE COURT: Ms. Palm, is that yours or Mr. Pike's?

6 MR. PIKE: That's mine.

7 MS. PALM: No, I'm sorry, I'm not prepared for that
8 one.

9 MR. PIKE: Oh, okay. I've got it. In relationship
10 to that, they're attempting to use this as an adoptive
11 admission. And I think they're theory under that is Harrison
12 v. State (phonetic), to bring that in.

13 And in dealing with that, that is -- that's -- that
14 case is looked on with disfavor in subsequent cases. And
15 clearly, there's -- there's a lot of problems that deal with
16 adoptive admissions is number one. Then you have to go through
17 the issues of whether or not it was knowing whether he was
18 intoxicated, whether or not it's a violation of his Miranda
19 rights because the officers are in there.

20 And if that is going to come in, then probably we're
21 going to have to then put in the entire, or at least major
22 portions of the videotaped interrogation of the defendant in
23 which he denies doing anything to her, denies stabbing her,
24 denies anything. And in fact, is -- denies the fact that she's
25 even dead until she is told -- until he's informed of that by

1 the -- the police officers.

2 MR. SMITH: And Judge, if I could jump in. I think
3 Mr. Pike has the chronologically confused. We're not talking
4 about the taped statement that he gave to Detective Bunn and
5 Wildemann. We're talking about the patrol officers at the
6 scene as they're leading him to the patrol car. Before
7 homicide detectives have even responded, the defendant makes a
8 spontaneous statement. He says three things. He says, "I
9 swear to God, I didn't mean to hurt you, V," V probably be
10 Victoria Witmarsh. He said, "Let's go, let's do the ten
11 years." And there was a third statement that he said, "I swear
12 to --

13 MS. PALM: "What did I do wrong?"

14 MR. SMITH: "What did I do wrong?"

15 MS. PALM: And the other thing, your Honor, is he
16 said other things such as, "She tried to stab me," "she stabbed
17 herself." Or if they want to put that in, then all of his
18 other statements have to come in under the rule of completeness
19 because they can't have it one-sided of his spontaneous
20 statements at the scene.

21 MR. SMITH: And that's something we've contemplated.
22 And if your Honor wants to rule that all the other things come
23 in, we'll deal with that. But right now we're focusing on the
24 admissibility, should we choose to introduce that evidence
25 through Hutcherson of that particular statement --

1 THE COURT: And isn't it --

2 MR. SMITH: -- and how to sanitize it.

3 THE COURT: The positive statements for your client
4 were made at about the same time he's making these other
5 statements en route to the parole vehicle?

6 MS. PALM: Apparently. We have no discovery --

7 MR. SMITH: Yes.

8 MS. PALM: -- on Hutcherson other than a handwritten
9 note, so we don't know the timing of his statement or the
10 circumstances of his statement other than the representations
11 made here today.

12 MR. SMITH: I can represent that they appear to be
13 around the same time. I mean, he said --

14 THE COURT: While they're walking towards the car?

15 MR. SMITH: While they're walking to -- and there's
16 like five or six patrol officers all within earshot, and he
17 says different things while -- and different officers hear
18 separate statements. So it is -- they are pretty
19 contemporaneous.

20 THE COURT: Well, I think in all fairness, you know,
21 those statements need to come in.

22 MR. SMITH: If we -- I agree.

23 THE COURT: Right.

24 MR. SMITH: And I don't dispute that. But because of
25 the particular nature of the statement saying, "Let's go, let's

1 do the ten years," I wanted to address that with the court
2 first.

3 MR. PIKE: And there is one other housekeeping matter
4 also. We --

5 THE COURT: Let me -- let me finish --

6 MR. PIKE: Okay.

7 THE COURT: -- up with this issue here.

8 MR. PIKE: Thank you. I'm sorry.

9 THE COURT: Obviously, the jury's advised that
10 they're not to be concerned about punishment. You know, that's
11 a statement made -- you know, allegedly made by your client. I
12 don't know that, you know, that we're going to redact something
13 that he made, you know, allegedly made. Unless the parties can
14 come to some agreement to sanitize that in some fashion.

15 MR. SMITH: And I'm hoping that we can. I mean would
16 you guys have an opposition to our officer saying that he said,
17 "Let's go, let's do the prison time," or something like that?
18 Because I really don't want him to say, "Let's go, let's do the
19 ten years." I think --

20 MR. PIKE: Well, the -- there -- unfortunately -- and
21 I appreciate Counsel's desire to do that. Because of the time
22 frame that's involved and because of the issues of the
23 deceased's medical condition and -- and exactly what she was --
24 was doing with her health -- she had cirrhosis of the liver,
25 Hep C, she was taking anti-depressants, she was underweight,

1 she -- she had a great deal of medical issues. Whether the
2 reference is, is let's go do ten years or we -- you know, I
3 want you to recover so we can have a good ten years together so
4 that we can deal with issues like that, I don't think that we
5 can pull that time frame out.

6 Now, the jury's going to be informed during the --
7 the selection process that if they find -- make a finding of
8 first degree murder, that they're going to do the sentencing, I
9 guess, unless the stipulation's been entered into.

10 MR. SMITH: It hasn't, but I --

11 MR. PIKE: Okay. But it -- and so during this period
12 of time they'll learn that there's a potential 20 year sentence
13 that's involved and not a ten year sentence.

14 So I don't think the prejudice as far as the ten
15 years is -- is that key. And that's a tactical decision that I
16 -- we're kind of forced to make at this point in time. So the
17 State has offered what they believe to be corrective or
18 sanitizing language, and it doesn't fit with what -- if we
19 sanitize it then it just, in my opinion, becomes more
20 noticeable, more directed towards prison. And I think that
21 with the ten years basically we can deal with it in other ways.

22 THE COURT: All right. Anything else, Mr. Smith?

23 MR. SMITH: No, Judge. I -- at this point we'd
24 submit it.

25 THE COURT: Anything else from any other party on any

1 issue?

2 MR. PIKE: Any issue, okay.

3 THE COURT: Okay.

4 MR. PIKE: We do have a --

5 MR. SMITH: We have some --

6 MR. PIKE: -- one other issue that came up, or two
7 issues. Let me address them. The State had noticed Mr.
8 Witmarsh as an identification witness in relationship to this
9 case. Because we have stipulated to identity, there -- he is
10 not going to be in the case in chief. He may or may not be a
11 rebuttal witness. That's so speculative that, as a family
12 member and as the husband of the deceased, I don't think we're
13 in a position to stop him from being out of the courtroom
14 during the time of the trial.

15 So they have withdrawn him for purposes of their case
16 in chief, and they don't anticipate him for rebuttal, but that
17 may happen. So I -- he may or may not be in the courtroom.
18 That's -- that's fine.

19 MR. SMITH: So to me -- to the State it seems like
20 their waiving any exclusionary rule.

21 MS. PALM: No, we're not.

22 MR. SMITH: We -- no?

23 MR. PIKE: No, as far as him --

24 MS. PALM: As far as him --

25 MR. SMITH: Is that's what I mean. I mean --

1 MS. PALM: Okay.

2 MR. SMITH: -- as far as him. I don't mean --

3 MS. PALM: Okay.

4 MR. SMITH: -- in general.

5 MR. PIKE: No, no, just as far as him, yeah.

6 THE COURT: All right. So --

7 MR. SMITH: I'm not that slick.

8 THE COURT: The rule will be waived as far as applies
9 to him.

10 MR. PIKE: Right.

11 THE COURT: Is that agreed?

12 MR. PIKE: Yes.

13 THE COURT: Both sides?

14 MR. SMITH: Sure.

15 THE COURT: Okay.

16 MR. SMITH: And I would just hope they wouldn't in
17 turn argue if he says anything in rebuttal that because he had
18 the opportunity to sit here and hear all that, that's why he
19 said x, y, and z.

20 THE COURT: Well, I'm --

21 MS. PALM: That's -- that's fair argument, your
22 Honor, if he's going to sit in here.

23 THE COURT: That's fair argument, so.

24 MR. SMITH: Okay. All right, fair enough.

25 THE COURT: If you want to just exclude him --

1 MR. SMITH: We'll figure out what we're going to do.

2 MR. PIKE: That -- we'll leave it to their choice.

3 THE COURT: All right.

4 MR. SMITH: Okay.

5 THE COURT: Anything else?

6 MR. PIKE: We ran into a witness problem. We had Dr.
7 Hyatt (phonetic) who was going to be toxicologist expert in
8 relationship to the medication and the alcohol that was being
9 taken by the deceased. There was a problem. We contacted his
10 employer. He was gone. He was out of the jurisdiction. We
11 couldn't contact him. Because the State and the defense had
12 both invoked the right to a speedy trial, we were able to
13 obtain and retain Dr. Christiansen, Dr. Tawni Christensen to
14 come and review the protocols on the medication.

15 She has agreed to take this and appear as an expert
16 witness. She took all of the information, prepared a report.
17 I provided that to counsel over the weekend. They have that.
18 And -- and she would not testify any differently than Dr. Hyatt
19 in relationship to the medication. And it was an issue that I
20 highlighted at the time of the preliminary hearing.

21 I requested that Dr. Christensen get the -- the
22 report to me as quickly as possible so that we could go ahead
23 and give it to the State, they could have the ME review it, and
24 if necessary, they may bring her -- either address it during
25 her direct testimony or call -- recall her as a rebuttal

1 witness, or attempt to obtain a rebuttal witness during that
2 period of time.

3 But they I think graciously have indicated that
4 because it was not our fault and because we're just try willing
5 to save this trial date, that they would waive the -- the
6 advance notice on an expert.

7 MR. SMITH: That's correct, Judge. The State did
8 waive any notice requirement. We have no problem with Dr.
9 Christensen testifying in lieu of their doctor previously
10 noticed.

11 I am going to kind of put the court on notice that we
12 anticipate perhaps doing a quick voir dire outside the presence
13 of the jury with her because we want to make sure that her
14 testimony is limited in scope and not kind of getting into
15 issues that we don't think she can testify to as an expert in
16 her particular field.

17 MR. PIKE: And that would be appropriate.

18 THE COURT: All right. Anything else?

19 MR. PIKE: We anticipate that we'll be picking a jury
20 most of this morning. I believe the State has a number of
21 witnesses available for this afternoon if we complete it, so
22 we'll be ready to do opening arguments and cross-examination.
23 The witnesses that they've anticipated calling are civilian
24 witnesses that were the first ones into the apartment.

25 MR. SMITH: That's correct.

1 THE COURT: You know we typically start at 9:30 for
2 the entire week.

3 MR. SMITH: Okay.

4 THE COURT: All right.

5 MR. SMITH: Okay.

6 MR. PIKE: Thanks.

7 THE COURT: Anything else? Smith.

8 MR. PIKE: We have --

9 MR. SMITH: Not -- not -- oh, I'm sorry, go ahead.

10 MR. PIKE: We our witnesses all scheduled for
11 Thursday.

12 MR. SMITH: Not now. I anticipate we might have to
13 litigate some other issues, so.

14 THE COURT: All right.

15 MR. SMITH: But -- but for now I think -- and for
16 today we're good.

17 THE COURT: Okay. All right.

18 MR. PIKE: Okay.

19 THE COURT: We'll be back in a couple of minutes --

20 MR. SMITH: Okay.

21 THE COURT: -- when the jury shows up.

22 (Court recessed at 9:58 a.m. until 10:22 a.m.)

23 (Court called to order)

24 (In the presence of the prospective jurors)

25 THE COURT: Good morning, ladies and gentlemen. I am

1 Judge Michael Villani. I am the presiding judge of Department
2 17, and you've been summoned here as potential jurors for this
3 case. This is a criminal case and it's, as I mentioned, State
4 of Nevada v. Brian O'Keefe.

5 First off I'd like to thank all of you for showing
6 up. My staff has heard this numerous times, but I think it's
7 important that I tell all of you that, you know, jury service
8 is very important whether it's a civil or criminal case. Our
9 system of justice does not work unless we have people willing
10 to sit as a juror to hear our cases.

11 This last week we had an automobile accident case,
12 and we needed a jury for that case. This is a criminal case,
13 and we need a jury for this particular case. And I hope all of
14 you accept it as your civic duty.

15 I'm very mindful that all of you either have a job or
16 are looking for a job and you have family activities, maybe you
17 have some social activities that you would rather attend to.
18 But please understand that we need to have juries for our
19 system to work. As you know, many countries around the world
20 don't even allow -- don't allow juries. They actually don't
21 allow trials, as you know unfortunately.

22 All of you received a jury summons in the mail, and
23 I'm sure all of you jumped for joy and said, "Great, I get to
24 be on a jury panel," Right? Let me see a show of hands.
25 Well, this jury summons has Michael Villani on it. Judges are

1 not exempt from jury summons. They're not exempt from serving
2 on a jury.

3 And I made it -- as you know, you had to call the
4 night before to see if your number was low enough, and all of
5 you, your numbers were low enough. I had to do the same and my
6 number was low enough and I had one of the badges you're
7 wearing. And this jury summons was for October 6th of last
8 year. I went down there, at I think 7:30 or 8:00 in the
9 morning, and they told me and as well as a couple hundred
10 people to come back at 1:00 o'clock to see if we -- you know,
11 if they needed some more jurors.

12 I came back at 1:00 o'clock. They called my number
13 and they said well, we need you to go to Department, was it 3?
14 To Department 3, and along with 50, 60 other people I was in
15 the second row of the gallery and various jurors were excused.
16 I made it into the jury box, and low and behold on a civil case
17 I case I was selected as a juror. The trial went two and a
18 half weeks long, okay. And so this case is not two and a half
19 weeks long, okay.

20 But I tell you that because I had to serve and
21 actually, there's another judge in this court, Judge Togliotti,
22 who received a summons I think about three or four years ago,
23 and she was selected. Actually, she was the foreperson of that
24 particular jury. It was a civil case as well. And so we're
25 not exempted.

1 And during those two and a half weeks I had to
2 continue all my cases. I had get -- on certain matters I had
3 to have a senior judge come in and hear my calendar, certain
4 matters that had to go forward, some trials. Other judges had
5 to pick that up.

6 And I tell you that because it may not have been that
7 convenient for me -- well, it wasn't. But it was my civic duty
8 and it was important that I serve as a juror. And again, it
9 went two and a half weeks long. It was a civil case. It was
10 two doctors suing each other on some business matters. And so
11 I hope all of you take into consideration when I ask you if it
12 would be an extreme hardship for you to serve.

13 Because again, you know, it's almost like look to
14 your right, look to your left, if it's not you, then you're
15 saying well, the other person should do it, not me.

16 In this courtroom, I think it was last year we had a
17 construction defect case, which is -- you may have seen it in
18 the newspaper where, you know, there's problems with roofs or
19 whatever, an entire development. The trial went six months.
20 We had jurors for the six-month trial, okay. This is a one
21 week trial, so all you should be happy that we're not asking
22 you to serve for six months.

23 And I've got a trial coming up at the end of this
24 year that's going to go six weeks. And so if you're not picked
25 here we'll be more than happy to call you back for that jury.

1 No, I'm just kidding. We won't do that. All right?

2 So at this point I'm going to -- we've done a roll
3 call. I'm going to have my clerk swear all of you in, because
4 we're going to through a question process to see if you would
5 be best suited to hear this particular case.

6 THE CLERK: Please stand. And raise your right hand.

7 (Prospective jurors sworn)

8 THE CLERK: Please be seated.

9 THE COURT: The reason why we put you under oath,
10 ladies and gentlemen, is we go through a process called voir
11 dire, and that's where we seek to find out just use some of
12 your background, your personal information. No one here is
13 trying to delve too deep in your personal background or to
14 embarrass you on any issues.

15 But it's important that the parties get an
16 understanding of your background and your feelings on certain
17 topics to see if you would be suited for this type of case.
18 And maybe you're suited for a civil case, or maybe you are
19 suited for this type of case. So there's no right or wrong
20 answers. The only right -- the only good answer is a truthful
21 answer.

22 The process we'll go through as follows: That I will
23 ask the panel general questions, and if you're going to answer
24 yes to the question, you just raise your hand, I'll call upon
25 you. And we need you to stand up. And everytime you're called

1 upon, please give us your full name and the last three numbers
2 on your badge. As you can see, I think we have about 60 people
3 here, and so it's hard for all of us to try to memorize your
4 names in a short amount of time.

5 So you may be called upon ten times. Please every
6 time please stand up, give us your name and the last three
7 numbers of your badge. When I direct the questions to the
8 panel here, we'll go first to the jury box area, the gallery
9 here on my right or sort of in front of me, and the gallery to
10 the my left. And so if you're going to answer yes, raise your
11 hand, wait for me to call you, stand up and then we'll go
12 through the process.

13 If at any time you cannot hear one of the questions,
14 just say, "I didn't hear you." Or sometimes we'll go through
15 halfway through the panel and someone in the gallery, in the
16 jury box area says, "Oh, I meant say yes. I meant to -- you
17 know, I do -- I am going to answer in the affirmative to a
18 particular question." Just raise your hand and, you know,
19 we'll come back and call upon you, okay? Again, there's no
20 wrong answer. The only wrong answer is if one that's not
21 truthful. So we hope all of you will be truthful.

22 And at this point I'm just going to have the
23 attorneys introduce themselves. One of deputy district
24 attorneys here will give you a very brief statement of the type
25 of case we have. They're not going to argue the case right

1 now. Just a very brief statement. They'll introduce their
2 co-counsel and any potential witnesses that may be called in
3 this case. Please listen very carefully to these names because
4 I'm going to ask you if you know any of these individuals, and
5 we'll do the same with the defense here. They'll do the same.
6 So please listen very carefully.

7 MR. SMITH: Good morning, everyone. My name is
8 Philip Smith. This is Stephanie Graham. We are the deputy
9 district attorneys assigned to prosecute this case on behalf of
10 the State of Nevada. To give you guys a brief synopsis of this
11 case, it's a homicide case. The State of Nevada has charged
12 the defendant with the crime of murder.

13 We have alleged that on November 5th, 2008, at
14 approximately 11:00 o'clock p.m., the defendant killed his on
15 again, off again girlfriend. Pursuant to that duty we have a
16 bunch of witnesses, and there's about 20 of them that we
17 anticipate calling throughout the course of this trial.

18 They are a Dr. Jacqueline Benjamin, who is one of the
19 Clark County coroners. A Chris Hutcherson who is an officer
20 from Metro. Russell Shoemaker (phonetic), who is a sergeant
21 with Metro. Marty Wildemann, who is a homicide detective with
22 Metro. Daniel Ford, who is a crime scene analyst for Metro.
23 Chris Bunn, who is a homicide detective for Metro. Dan
24 Newberry (phonetic), who's a sergeant in the homicide division
25 of Metro. Jocelyn Maldonado, who is a crime scene analyst.

1 Brian Santarossa who's a patrol officer with Metro. Todd Conn,
2 also a patrol officer with Metro. Jeremiah Ballejos, again a
3 patrol officer with Metro. Sean Taylor, who's also a patrol
4 officer for Metro.

5 An individual named Charles Toliver, his wife Joyce
6 Toliver. Todd Armbruster, a Jimmy Hatchcos, Cheryl Morris, a
7 John Stallings, who is a coroner investigator for the coroner's
8 office. Robbie Dahn who is a crime scene analyst for Metro.
9 Jennifer Bas who is a forensic scientist at Metro. And Edward
10 Guenther who is also a forensic scientist for Metro. And I
11 believe that is it. Thank you.

12 THE COURT: All right, thank you. Mr. Pike or Ms.
13 Palm?

14 MR. PIKE: Thank you very much, your Honor. I'm kind
15 of trapped in here. Let me come around. May it please the
16 Court, counsel, prospective jurors, my name's Randy Pike. I'm
17 with the Clark County Special Public Defender's Office. This
18 is my co-counsel, Patricia Palm, who's a deputy with my office.
19 And this is my client Brian O'Keefe. Brian O'Keefe stand up so
20 jury can -- and part of this is -- thank you very much.

21 And part of this is -- thank you very much -- and
22 part of this process is to find out if you know any of us or if
23 you know any of the witnesses, so that's the reason that we're
24 doing this. And Ms. Palm and myself are fortunate enough to
25 have been assigned this case and to represent Brian in this

1 case.

2 These are a list of the witnesses that the defense
3 may be calling during the time of this trial. You'll notice
4 that some of the witness names are the same as the State's.
5 The witnesses are our witnesses, and they may be called by us
6 or by the State, and it's a testimony that we -- are important.
7 So forgive me if I say some of the same names.

8 And the potential witnesses for the defense are Todd
9 Armbruster, Jeremiah Ballejos, Jacqueline Benjamin, Keith
10 Valasco (phonetic), Christopher Bunn who is with Metro.
11 Chelsea Collins, also with Metro. Tracy Berger, Todd Conn.

12 Custodian of records, they may either be called in
13 person or just by way of an affidavit to verify documentation.
14 And that would be the custodian of records of Las Vegas
15 Metropolitan Police Communications. Custodian of records of
16 Las Vegas Metropolitan Police records. Custodian of records of
17 Monte Vista Hospital, and custodian of records of Clark County
18 Detention Center, and custodian of records of Southern Nevada
19 Adult Mental Health Services.

20 Officer Daniel Ford, Officer Richard Fombuena
21 (phonetic), Jimmy Hatchcos, Christopher Hutcherson, custodian
22 of records of IDEW Plus Credit Union, Officer Travis Ivy
23 (phonetic), Officer Teresa Kieger (phonetic), Robin Kulzic
24 (phonetic). I'm probably pronouncing that wrong. Elaine
25 Lourinepp (phonetic), Jocelyn Maldonado, Detective Clifford

1 Mogg, Cheryl Morris, CSA George Schiro, Dr. Tawni Christiansen,
2 an ER physician here in Las Vegas, Nevada. Officers Kate
3 Murphy (phonetic), Daniel Newberry, Dean O'Kelly (phonetic).
4 Officers Eduardo Pasos (phonetic), Dean Reyes (phonetic), Brian
5 Santarossa, Russell Shoemaker and Sean Taylor.

6 Robert Paisano (phonetic), a counselor here in Las
7 Vegas, Norma Tenyo (phonetic), the Tolivers. You've heard
8 Charles and Joyce. Martin Wildemann, a Detective Wildemann.
9 Robert Wilson, Natalie Aulstin (phonetic), Elizabeth O'Keefe,
10 Shawn O'Keefe, Thomas O'Keefe, Patricia O'Keefe, and Joseph
11 Perez, who is an investigator from our office.

12 As I read that list it seemed long. We anticipate
13 that the trial is not going to last any longer than a week in
14 relationship to this. As I indicated we'll be defending Mr.
15 O'Keefe in this tragic case. Thank you.

16 THE COURT: Thank you, Mr. Pike. Ladies and
17 gentlemen, through this process you may answer yes to certain
18 questions that may relate to bias or prejudice or some of your
19 background information. And all of us have a bias or a
20 prejudice. We're not just talking about, you know, race or sex
21 or sexual orientation or just, you know, there's a myriad of
22 other areas of things that we like or dislike. Maybe you have
23 a bias against a green shirt or a blue shirt.

24 And I just mention that as -- because if you are
25 selected or the questioning process we'll go through, whether

1 or not if you do have a particular bias, can you put that aside
2 for this particular case? If you are selected as a juror in
3 this case, can you base a decision, if any you may make on the
4 case, on the evidence you hear from the witness box and any
5 exhibits that will be admitted into the evidence?

6 So if you have a bias or prejudice, and the Court as
7 well as the attorneys will delve into that, but the bottom line
8 is can you put that aside and base a decision on evidence you
9 hear in this case only? I can tell you in the trial I had last
10 week, which was an automobile accident, as you know, in the
11 newspapers a lot of things about our rates go up, whether
12 that's true or not, there's frivolous lawsuits, whether or not
13 that's true or not, you know, it's not for us to debate here
14 today.

15 We had a potential juror said he thought there was
16 too many frivolous lawsuits. Well, we asked that potential
17 juror, well, can you put that aside, and you know, not every
18 lawsuit's frivolous, and this individual said that's true. You
19 know, he doesn't know. He wants to hear the facts of the case.
20 And, in fact, I think ended up being on the jury, and there was
21 an award for the plaintiff around \$200,000.

22 So clearly that juror was able to put his bias aside
23 and listen to the evidence of the particular case we had last
24 week and then, you know, ruled in favor of the plaintiff. And
25 so that's what we ask you in this case. If you do have any

1 bias or prejudice, you know, the bottom line is can you put
2 that aside and give both sides a fair trial? That's what --
3 that's all we're seeking here.

4 A lot of times potential jurors will say, well, I
5 don't have any faith in the system. Well, if you have faith in
6 yourself, perhaps you'll have faith in the system if you're
7 selected as a juror, that you'll make sure everything's done
8 properly and that you'll base a decision on the evidence, all
9 right? So I just wanted to give you that preliminary statement
10 here.

11 First off, does anyone here know any of the
12 attorneys, the parties involved, or any of the potential
13 witnesses? And I'll ask the jury box area first. Any hands?
14 Nope. The gallery to my right or in front of me? Nope. And
15 to my left. Okay, no one's answered in the affirmative.

16 This case is scheduled to go between four to five
17 days. Is there anyone here that would have an extreme hardship
18 serving on this jury? All right, we will go to the back row
19 first. Yes, ma'am.

20 PROSPECTIVE JUROR NO. 609: Jody Montonya, 609. I'm
21 self-employed, Judge, so if I'm chosen for this jury, I'll lose
22 the current project that I have proposed for this month, which
23 will mean I lose income for this month.

24 THE COURT: Okay. And what type of work do you do,
25 Ma'am?

1 PROSPECTIVE JUROR NO. 609: I do producing of TV
2 commercials.

3 THE COURT: I'm sorry?

4 PROSPECTIVE JUROR NO. 609: I'm a producer of TV
5 commercials.

6 THE COURT: All right. Do you have any assistance or
7 anyone else that can help with your --

8 PROSPECTIVE JUROR NO. 609: No, sir, I'm the only
9 one.

10 THE COURT: Okay. All right, thank you, Ma'am.
11 Anyone else in the back row? Or in the second row? I think we
12 saw -- yes, ma'am.

13 PROSPECTIVE JUROR NO. 649: I'm a single woman --

14 THE COURT: And your name and badge number.

15 PROSPECTIVE JUROR NO. 649: Patricia Salinas, 649.

16 THE COURT: All right.

17 PROSPECTIVE JUROR NO. 649: I have one income. I'm
18 barely making it right now. If I was to serve on this jury, I
19 wouldn't be able to pay my rent.

20 THE COURT: What type of work do you do, Ma'am?

21 PROSPECTIVE JUROR NO. 649: I work for a doctor. And
22 not only that, but I am a convicted felon so I don't know --

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 649: -- what happened to me.

25 THE COURT: Okay. Well --

1 PROSPECTIVE JUROR NO. 649: I saw on the thing it
2 that it says --

3 THE COURT: Actually, I was going to ask that
4 question as well. Because a lot of times your employers will
5 -- if you are selected on a jury, will continue to pay you.
6 That's up to the employers. Usually if you work for a
7 government agency, I think they typically do. But some private
8 employers will also do that if you ask them because they know
9 you're doing your civic duty, all right? So keep that in
10 mind.

11 And also, if anyone's selected on the jury, if they
12 feel they need a letter to their employer -- most employers
13 will believe you hopefully, but if you need a letter, I'll be
14 more than happy to provide it for you, all right? And there
15 was someone else in the second row. Yes, ma'am.

16 PROSPECTIVE JUROR NO. 655: Christy Dalo, 655.

17 THE COURT: All right.

18 PROSPECTIVE JUROR NO. 655: I also am -- I come from
19 a single income family of seven. So if I were to serve, I
20 would not be able to bring home a paycheck.

21 THE COURT: Okay, and what type of work do you do,
22 Ma'am?

23 PROSPECTIVE JUROR NO. 655: I work in retail at
24 Target.

25 THE COURT: Okay. Is there another -- other shifts

1 you can do, like can they double up for you or --

2 PROSPECTIVE JUROR NO. 655: No.

3 THE COURT: -- start up on the weekend?

4 PROSPECTIVE JUROR NO. 655: I am a team lead in the
5 department that I work in, and there are only three of us, and
6 we don't work the full store hours, so what hours would --

7 THE COURT: We typically would go 9:30 to 5:00.

8 PROSPECTIVE JUROR NO. 655: Yeah, and my department
9 closes at 9:00 so it would only -- if I left here, it would
10 probably give me three hours of work a day.

11 THE COURT: All right. All right, thank you, Ma'am.

12 PROSPECTIVE JUROR NO. 655: Thank you.

13 THE COURT: Anyone else in the second row? Anyone in
14 the front row? All right, front row of the -- yes.

15 PROSPECTIVE JUROR NO. 674: Marie Pinillos, 674. I'm
16 the legal secretary, I'm the only secretary in the firm right
17 now.

18 THE COURT: Okay. Who do you work for?

19 PROSPECTIVE JUROR NO. 674: Kevin Helm.

20 THE COURT: All right. That's Helm & Associates,
21 right?

22 PROSPECTIVE JUROR NO. 674: Yes. Yes.

23 THE COURT: Okay. I'm sure Mr. Helm will understand,
24 okay. All right, thank you, Ma'am.

25 PROSPECTIVE JUROR NO. 674: Um-h'm.

1 THE COURT: Anyone in the gallery in the front row to
2 my right? Second row? Yes, sir?

3 PROSPECTIVE JUROR NO. 727: All right. Robert Wilk,
4 727. I'm a full-time student and I'm kind of in the middle of
5 mid-terms right now.

6 THE COURT: What school do you go to, sir?

7 PROSPECTIVE JUROR NO. 727: UNLV. And I don't have
8 any excused absences to give up in school right now, and I'll
9 end up losing my grade.

10 THE COURT: All right, thank you, sir. Anyone else
11 in the second row? Anyone in the back row? Yes, ma'am.

12 PROSPECTIVE JUROR NO. 761: Chelsey Horton, 761. I'm
13 also a full-time student.

14 THE COURT: Where are you a student at?

15 PROSPECTIVE JUROR NO. 761: Nevada State.

16 THE COURT: Okay. Thank you, Ma'am. Anyone in the
17 gallery to my left? Front row. We've got two people on the
18 second row. Yes, sir.

19 PROSPECTIVE JUROR NO. 813: .James Fraser, 813. I'm
20 self-employed. I'm the only -- I'm a one-man job.

21 THE COURT: What type of work do you do, sir?

22 PROSPECTIVE JUROR NO. 813: I'm a custom fabricate
23 medical devices.

24 THE COURT: Thank you, sir. And there was someone
25 else in the second row I thought I saw. Yes, ma'am?

1 PROSPECTIVE JUROR NO. 805: Sigrid Fisher, 805. I
2 have a child that I have no one to take him to school or to
3 stay with him during the week.

4 THE COURT: Normally during the week do you take him
5 to school?

6 PROSPECTIVE JUROR NO. 805: I drop him off at school,
7 yes, at 8:00 o'clock.

8 THE COURT: Okay. Well, like I said, we wouldn't --
9 if you are selected, we typically we start at 9:30 --

10 PROSPECTIVE JUROR NO. 805: Okay.

11 THE COURT: -- in the morning. Okay.

12 PROSPECTIVE JUROR NO. 805: Okay.

13 THE COURT: All right, thank you, Ma'am. Was there
14 another hand? Yes, in the back row.

15 PROSPECTIVE JUROR NO. 748: I'm also a single mom of
16 two kids and I --

17 THE COURT: Your number and your name?

18 PROSPECTIVE JUROR NO. 748: Oh, I'm sorry. Carrie
19 Bundy, 748.

20 THE COURT: Yes.

21 PROSPECTIVE JUROR NO. 748: I'm a single mother with
22 two kids, and I don't believe I'm getting paid for this, and a
23 whole week of lost wages is a huge chunk of my mortgage
24 payment.

25 THE COURT: Okay. Well, did you get paid.

1 PROSPECTIVE JUROR NO. 748: 40 bucks a day or
2 something?

3 THE COURT: Somewhere around there, right.

4 PROSPECTIVE JUROR NO. 748: Yeah.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR NO. 748: (Indiscernible) like
7 that.

8 THE COURT: All right. Thank you, Ma'am. And as I
9 mentioned before, none of the questions here are to embarrass
10 anyone, but is there anyone here is a convict felon? Who has a
11 felony conviction? All right, we'll go to the back row. Yes,
12 ma'am? Hang on one second. Yes, ma'am.

13 PROSPECTIVE JUROR NO. 614: 614. And I don't know if
14 I'd be able to serve because I'm kind of hard of hearing.

15 THE COURT: All right.

16 PROSPECTIVE JUROR NO. 614: And what if I can't hear
17 what's going on in the courtroom?

18 THE COURT: All right. Well, we have some headphones
19 that will be provided to you and they work excellent. Okay?

20 PROSPECTIVE JUROR NO. 614: (Indiscernible).

21 THE COURT: All right, we'll get them to you right
22 now. Ma'am, have you heard all of the questions so far?

23 PROSPECTIVE JUROR NO. 614: Well, I've been hearing
24 bits and pieces because I -- I just --

25 THE COURT: Okay, we had -- I had the attorneys

1 identify themselves --

2 PROSPECTIVE JUROR NO. 614: Well, I heard the
3 witnesses.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR NO. 614: I don't know any of the
6 witnesses. I don't know any of them.

7 THE COURT: Okay, Ma'am, can you hear me okay?
8 Thumbs up. All right, was there anyone in the jury box area
9 who has been convicted of a felony? Yes, ma'am, and your name
10 again.

11 PROSPECTIVE JUROR NO. 649: Patricia Salinas.

12 THE MARSHAL: Stand up, please.

13 THE COURT: Okay. Was that here in Nevada, Ma'am?

14 PROSPECTIVE JUROR NO. 649: Yes.

15 THE COURT: In Clark County?

16 PROSPECTIVE JUROR NO. 649: Yeah.

17 THE COURT: Okay. And how long ago was that?

18 PROSPECTIVE JUROR NO. 649: About a year ago.

19 THE COURT: Ma'am, do you have a middle initial?

20 PROSPECTIVE JUROR NO. 649: A.

21 THE COURT: A? Okay. Ma'am, do you remember which
22 judge you were in front of?

23 PROSPECTIVE JUROR NO. 649: No.

24 THE COURT: A female judge or a male judge?

25 PROSPECTIVE JUROR NO. 649: It was a male. Actually,

1 the judge I was supposed to see was not there that day, so at
2 the last minute I saw someone else.

3 THE COURT: Do you remember who your attorney was,
4 Ma'am? We're just trying to make sure we have the right
5 person.

6 PROSPECTIVE JUROR NO. 649: Andrew Levy (phonetic).

7 THE COURT: Okay, Ma'am, that was a gross
8 misdemeanor.

9 PROSPECTIVE JUROR NO. 649: But now I have a
10 convicted felon thing. I just couldn't find it today.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR NO. 649: Because I had to
13 register.

14 THE COURT: Because you may have been charged --

15 PROSPECTIVE JUROR NO. 649: No, I had to register.
16 Yeah, I had pay the \$6 to register. And everytime I move, I
17 have to go fill out a form.

18 (Pause in proceedings)

19 THE COURT: All right. We're just checking
20 something, Ma'am. Okay, Ma'am, and that was back in 2005?

21 PROSPECTIVE JUROR NO. 649: Uh-huh.

22 THE COURT: Okay. The official court records show --

23 PROSPECTIVE JUROR NO. 649: I know it went on for a
24 couple years.

25 THE COURT: Right. It does show -- it was for a

1 gross misdemeanor, Ma'am.

2 PROSPECTIVE JUROR NO. 649: Then why am I having to
3 go down and do the convicted felon thing?

4 THE COURT: You may need to check with your attorney
5 because it was a gross misdemeanor.

6 PROSPECTIVE JUROR NO. 649: No, that wasn't the --
7 this was something else. I've been doing it for ten years now.

8 (Pause in proceedings)

9 THE COURT: Was the other one in this state, as well?

10 PROSPECTIVE JUROR NO. 649: Um-h'm, I had -- well, I
11 had to go down there to the -- in the corner to the city.

12 THE COURT: Well, I understand that. But the
13 conviction, was it in this state, in Clark County? Here in Las
14 Vegas?

15 PROSPECTIVE JUROR NO. 649: I think Clark County. It
16 was in the city area.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR NO. 649: Because I had to go down
19 to the city hall over there and register. Because I had one
20 from 1994 that's a gross misdemeanor as well.

21 THE COURT: The other one we have is a gross
22 misdemeanor as well, Ma'am. We'll double check that, okay.

23 PROSPECTIVE JUROR NO. 649: No, I -- I have to go
24 down there --

25 THE COURT: All right. We'll double --

1 PROSPECTIVE JUROR NO. 649: -- every time I --

2 THE COURT: -- check that.

3 PROSPECTIVE JUROR NO. 649: Okay.

4 THE COURT: All right, anyone else in the jury --
5 second row of the jury box? Front row? Anyone in the gallery
6 to my right? Gallery to my left? Okay. Is there anyone here
7 that has any type of a physical hardship meaning language
8 issue, bad back, or some people are diabetic, hypoglycemic,
9 anything along those lines? Okay, we'll go to the jury box
10 area. Yes, ma'am?

11 PROSPECTIVE JUROR NO. 622: Clara Romero, 622.

12 THE COURT: Yes.

13 PROSPECTIVE JUROR NO. 622: I had a serious head
14 injury in 1991 with a cognitive dysfunction, but it has
15 corrected itself somewhat, but I do have some short-term --
16 short-term memory issues.

17 THE COURT: And that's a condition you have now,
18 Ma'am?

19 PROSPECTIVE JUROR NO. 622: Yes.

20 THE COURT: Okay. So that would in effect that if
21 someone testified today and we asked you about that person on
22 Wednesday, you might not remember everything they said?

23 PROSPECTIVE JUROR NO. 622: Very possibly not.

24 THE COURT: Okay. All right, thank you, Ma'am.

25 Anyone else in the jury box area? Second row. Yes, ma'am.

1 We'll go second row. Yes.

2 PROSPECTIVE JUROR NO. 649: I'm Patricia Salinas,
3 649. I just had surgery on my shoulder on my rotary cuff.

4 THE COURT: Rotator cuff, yeah. Okay. Are you under
5 medication right now?

6 PROSPECTIVE JUROR NO. 649: Yes.

7 THE COURT: What type of medication?

8 PROSPECTIVE JUROR NO. 649: Percocet and Lortabs
9 (indiscernible).

10 THE COURT: Okay, did you take -- did you take that
11 today, Ma'am?

12 PROSPECTIVE JUROR NO. 649: I have to everyday.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR NO. 649: Every four hours.

15 THE COURT: All right, and someone else? Yes, ma'am.

16 PROSPECTIVE JUROR NO. 672: Terri Hunter, 672. I
17 have IBS that I control with medication.

18 THE COURT: Okay. And Ma'am, if at any time you need
19 a break, if you are selected, just raise your hand, and we
20 accommodate our jurors, okay? Thank you, Ma'am. Anyone in the
21 gallery to my right? And gallery to my left? All right.

22 Does anyone here have a problem with the English
23 language as far as understanding and being able to read the
24 English language? Anyone in the jury box area? No. Anyone in
25 the gallery to my right? No. Gallery to my left? No. All

1 right, thank you.

2 UNKNOWN PROSPECTIVE JUROR: Excuse me, Judge?

3 THE COURT: Yes?

4 UNKNOWN PROSPECTIVE JUROR: He said he doesn't
5 understand English.

6 THE COURT: Okay. What's your name, sir?

7 UNKNOWN PROSPECTIVE JUROR: Fernando. 710.

8 THE COURT: You speak Spanish, sir?

9 PROSPECTIVE JUROR NO. 710: (Inaudible).

10 THE COURT: All right, thank you. All right, is
11 there anyone here, either yourself, a family member, or anyone
12 closely associated with you work in any type of law
13 enforcement? Again, yourself, a family member, or anyone
14 closely associated with you involved in law enforcement? Okay,
15 we'll go to the back row first. Yes, ma'am?

16 PROSPECTIVE JUROR NO. 609: Jody Montonya, 609. I
17 have several friends that are either detectives, officers or
18 correction officers.

19 THE COURT: With Metro?

20 PROSPECTIVE JUROR NO. 609: Yes, sir.

21 THE COURT: Okay. And the fact that you have some
22 friends with Metro -- well, none of the witnesses identified
23 here is quite a few Metro officers, you don't know them?

24 PROSPECTIVE JUROR NO. 609: No, sir, I don't.

25 THE COURT: Okay. The fact that you have some Metro

1 friends, would that in any way cause you to be biased or
2 prejudiced against either side in this case?

3 PROSPECTIVE JUROR NO. 609: No, sir.

4 THE COURT: Okay. You wouldn't feel that you'd be --
5 they would look down upon you if you voted a certain way in
6 this case?

7 PROSPECTIVE JUROR NO. 609: No, sir.

8 THE COURT: All right. Thank you, Ma'am. Anyone
9 else in the back row? Okay, second row? Yes, sir.

10 PROSPECTIVE JUROR NO. 633: Kirk Livernash, 633. I
11 have a brother-in-law and sister-in-law that are both jailers.

12 THE COURT: Here in Clark County?

13 PROSPECTIVE JUROR NO. 633: No, in Washington State.

14 THE COURT: Okay. Same question to you, sir, the
15 fact that you have some relatives that are involved in law
16 enforcement, would that cause you to be biased or prejudiced
17 for either side in this case?

18 PROSPECTIVE JUROR NO. 633: I don't believe so.

19 THE COURT: Okay, well, that was --

20 PROSPECTIVE JUROR NO. 633: Well, I'll say no.

21 THE COURT: Okay, well, let's make sure, okay? Let's
22 try again.

23 PROSPECTIVE JUROR NO. 633: No. No.

24 THE COURT: Okay. You hesitated initially, sir.

25 Because your relatives, they don't know anything about this

1 case and they're not going to know any of the evidence of the
2 case.

3 PROSPECTIVE JUROR NO. 633: No.

4 THE COURT: So do you feel any pressure one way or
5 the other if you were selected to vote a certain way?

6 PROSPECTIVE JUROR NO. 633: No.

7 THE COURT: Okay. Thank you, sir. Anyone else in
8 the second row? Yes, ma'am.

9 PROSPECTIVE JUROR NO. 654: Dawn Fraley, 654. My
10 nephew's a California highway patrolman.

11 THE COURT: Okay. Is he a patrol officer on the
12 highways?

13 PROSPECTIVE JUROR NO. 654: Um-h'm.

14 THE COURT: Actually the highway? Okay. Same
15 question to you Ma'am, do you have any bias or prejudice
16 against either side in this case?

17 PROSPECTIVE JUROR NO. 654: No.

18 THE COURT: Would you feel compelled to vote a
19 certain way if you were selected as a juror?

20 PROSPECTIVE JUROR NO. 654: No.

21 THE COURT: Okay. Thank you. And I think we had
22 someone back here. Yes, ma'am.

23 PROSPECTIVE JUROR NO. 626: Nancy Mirolock, 626. I
24 have an ex-brother-in-law that's -- this is back in Illinois,
25 though. And a niece and a nephew and a friend that's a highway

1 -- Nevada Highway Patrol.

2 THE COURT: Okay, the niece and nephew, are they in

3 --

4 PROSPECTIVE JUROR NO. 626: That's back in Illinois.

5 THE COURT: Okay. And are they patrol officers or
6 are they detectives? Do you know what type of work they --

7 PROSPECTIVE JUROR NO. 626: My brother-in-law's
8 retired and my ex-brother-in-law is retired, and my nephew's in
9 -- I forgot the initials, but it's alcohol and --

10 THE COURT: ATF, alcohol, tobacco, firearms?

11 PROSPECTIVE JUROR NO. 626: That, thank you.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR NO. 626: And my niece is a lawyer
14 assistant.

15 THE COURT: Okay. Like a DA or --

16 PROSPECTIVE JUROR NO. 626: I'm not sure back in
17 Illinois. I'm really not sure. I just know she's involved
18 with the jury.

19 THE COURT: All right, and then you said that there
20 was here had --

21 PROSPECTIVE JUROR NO. 626: A friend that's a highway
22 patrol.

23 THE COURT: Here in Nevada?

24 PROSPECTIVE JUROR NO. 626: Yes.

25 THE COURT: Okay. How often do you see that friend?

1 PROSPECTIVE JUROR NO. 626: Off and on. Actually,
2 she's the wife of my son's best friend, so --

3 THE COURT: Once a month? Once -- twice a year?

4 PROSPECTIVE JUROR NO. 626: About every three months
5 at least.

6 THE COURT: Okay. Again, same question to you,
7 ma'am, would you feel any pressure on you to be biased or
8 prejudiced towards either side or --

9 PROSPECTIVE JUROR NO. 626: No.

10 THE COURT: Okay. You wouldn't feel any pressure if
11 you were selected to vote a certain way in this case?

12 PROSPECTIVE JUROR NO. 626: No.

13 THE COURT: All right, thank you, ma'am. Anyone else
14 in the second row? Yes, ma'am.

15 PROSPECTIVE JUROR NO. 622: Clara Romero, 622. I was
16 married to a police officer. Now divorced.

17 THE COURT: Okay. Was that an officer here in Clark
18 County?

19 PROSPECTIVE JUROR NO. 622: Yeah.

20 THE COURT: Same question to you ma'am, do you have
21 any bias or prejudice towards anyone in law enforcement?

22 PROSPECTIVE JUROR NO. 622: No.

23 THE COURT: You might have that with your ex-husband,
24 I don't know, but --

25 PROSPECTIVE JUROR NO. 622: Actually, no.

1 THE COURT: Okay, good. It's always best to be
2 amicable. Anyone else in the second row? Anyone in the front
3 row? Gallery over there to my right, front row? Anyone? No.
4 Second row, yes, sir.

5 PROSPECTIVE JUROR NO. 717: Robert Richardson, 717.
6 My niece is a key attendant for Metro.

7 THE COURT: I'm sorry, your number again, sir?

8 PROSPECTIVE JUROR NO. 717: 717.

9 THE COURT: Okay, I'm sorry, your niece is what with
10 Metro?

11 PROSPECTIVE JUROR NO. 717: Key attendant for Metro.
12 Handing the keys out to the cars. I think she just got the
13 job.

14 THE COURT: Oh, okay. All right. Same question to
15 you, sir, again, you don't know any of the officers that have
16 been identified here?

17 PROSPECTIVE JUROR NO. 717: No.

18 THE COURT: Okay. And do you have any bias or
19 prejudice against either --

20 PROSPECTIVE JUROR NO. 717: No.

21 THE COURT: -- side? And would you feel compelled in
22 any way, sir, or pressure --

23 PROSPECTIVE JUROR NO. 717: No.

24 THE COURT: -- because your niece works for Metro?

25 PROSPECTIVE JUROR NO. 717: No, sir.

1 THE COURT: All right, thank you. Anyone else in the
2 second row? Yes, ma'am.

3 PROSPECTIVE JUROR NO. 719: Giselle Moreno, 719. My
4 husband's a policeman for Metro.

5 THE COURT: In Metro here? Is a patrol officer?

6 PROSPECTIVE JUROR NO. 719: Patrol.

7 THE COURT: Okay. And again, did you -- do you know
8 any of the officers that have been identified in this case?

9 PROSPECTIVE JUROR NO. 719: No, sir.

10 THE COURT: And I would tell everyone here, if you
11 are selected as a juror, ma'am, if anyone ask you about, you
12 know, what you're doing, the most anyone can state is that I am
13 a juror, and I'm a juror in a criminal case, and that's the
14 extent you can tell anyone about your service here.

15 When the case is over then you can talk about the
16 case. Would you feel compelled in any way to -- or I'm sure
17 your husband would understand the rules, but we would put you
18 -- we would order you, ma'am, that you would be precluded from
19 talking to your husband about the case. Would you be able to
20 follow that order?

21 PROSPECTIVE JUROR NO. 719: Yes, sir.

22 THE COURT: Okay. And would you feel pressured in
23 any way to -- if you were selected to vote a certain way in
24 this case because your husband is with Metro in.

25 PROSPECTIVE JUROR NO. 719: No.

1 THE COURT: All right, thank you, ma'am. Anyone in
2 the second row? At the far end.

3 PROSPECTIVE JUROR NO. 730: Catherine Bertles, 730.
4 I have a brother that's a corrections officer but in the City
5 and County of Denver and a brother in the highway patrol in
6 Colorado.

7 THE COURT: All right. Same question to you, ma'am,
8 do you feel any bias or prejudice for or against either side in
9 this case in.

10 PROSPECTIVE JUROR NO. 730: No.

11 THE COURT: And would you feel any pressure to vote a
12 certain way if you were selected?

13 PROSPECTIVE JUROR NO. 730: No.

14 THE COURT: All right, thank you, ma'am. Anyone else
15 in the second row? We'll go to the back row far left. Yes,
16 sir.

17 PROSPECTIVE JUROR NO. 777: Oh, my name's Ismael
18 Ruiz, 777, and my cousin is a correctional officer up in
19 Tahachepi (phonetic).

20 THE COURT: Okay. And how close are you to those
21 individual because they live out of state, correct?

22 PROSPECTIVE JUROR NO. 777: Yeah, they live out of
23 town.

24 THE COURT: Okay. Would you feel any -- do you have
25 any bias or prejudice for or against either side in this case?

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PROSPECTIVE JUROR NO. 717: No, not at all.

THE COURT: And would you feel any pressure, sir, if you were selected to vote a certain way?

PROSPECTIVE JUROR NO. 777: No, not at all.

THE COURT: Okay. Thank you, sir. And how did you get that number 777?

PROSPECTIVE JUROR NO. 777: (Indiscernible).

THE COURT: All right, anyone else in the back row? I thought I saw a hand. Nope. Gallery to my left? Front row, yes, ma'am.

PROSPECTIVE JUROR NO. 785: Ashleigh Whalen, 785. I have two uncles that are police officers and one that works in --

THE COURT: I'm sorry, I missed the first part.

PROSPECTIVE JUROR NO. 785: Oh, I have two uncles that officers in California and one that works in the prison.

THE COURT: Okay. The two uncles, do you know what -- are they patrol officers, are they detectives, sergeants?

PROSPECTIVE JUROR NO. 785: No, they're just like normal like officers (indiscernible).

THE COURT: Okay. So you don't know what specific -- what department they're involved in?

PROSPECTIVE JUROR NO. 785: No.

THE COURT: Okay. And that same question to you. Do

1 you have any bias or prejudice toward either side in this case

2 --

3 PROSPECTIVE JUROR NO. 785: No.

4 THE COURT: -- because your uncles are involved?

5 PROSPECTIVE JUROR NO. 785: No.

6 THE COURT: -- you know, a correction officer? Would
7 you feel any pressure to vote a certain way if you were
8 selected?

9 PROSPECTIVE JUROR NO. 785: No.

10 THE COURT: All right, thank you, ma'am. Anyone else
11 in the front row? Anyone in the back row? Yes, sir.

12 PROSPECTIVE JUROR NO. 813: James Fraser, 813. My
13 brother's a police officer in Madera, California. Patrol
14 officer.

15 THE COURT: Sir, would you have any bias or prejudice
16 against either side in this case?

17 PROSPECTIVE JUROR NO. 813: No, sir.

18 THE COURT: Would you feel any pressure because your
19 brother's in law enforcement to vote a certain way?

20 PROSPECTIVE JUROR NO. 813: No, sir.

21 THE COURT: All right. Thank you, sir. Any other
22 hands? Is there anyone here, again, either yourself, a family
23 member or anyone closely associated with you ever been a victim
24 of a crime? All right, yes, ma'am, second row.

25 PROSPECTIVE JUROR NO. 622: Clara Romero, 622. I

1 personally was a victim, and I had a first cousin who was
2 murdered.

3 THE COURT: Okay, you say you were personally a
4 victim.

5 PROSPECTIVE JUROR NO. 622: Yes.

6 THE COURT: And what type of crime was that, ma'am?

7 PROSPECTIVE JUROR NO. 622: Sexual.

8 THE COURT: Okay. Was that here in Clark County,
9 ma'am?

10 PROSPECTIVE JUROR NO. 622: No, it wasn't.

11 THE COURT: About how long was that?

12 PROSPECTIVE JUROR NO. 622: That was in 1991.

13 THE COURT: All right. And then you said there was
14 one other.

15 PROSPECTIVE JUROR NO. 622: Yes, I had a cousin who
16 was murdered.

17 THE COURT: Was that here in Clark County?

18 PROSPECTIVE JUROR NO. 622: No, it wasn't.

19 THE COURT: About how long ago was that?

20 PROSPECTIVE JUROR NO. 622: Sometime before '91.

21 THE COURT: All right. Thank you, ma'am. Anyone
22 else in the -- yes, sir.

23 PROSPECTIVE JUROR NO. 633: Kirk Livernash, 633. I
24 have been -- my house has been broken into three different --
25 on three different occasions.

1 THE COURT: All right. Burglary at your home, yes?

2 PROSPECTIVE JUROR NO. 633: Burglary at the home.

3 THE COURT: All right, sir, and were those situations
4 reported to the police?

5 PROSPECTIVE JUROR NO. 633: Yes.

6 THE COURT: Okay. Were you satisfied with the work
7 the police did on that case.

8 PROSPECTIVE JUROR NO. 633: Yes.

9 THE COURT: Okay. And no, right?

10 PROSPECTIVE JUROR NO. 633: Yes and no.

11 THE COURT: All right. I sense some no. The fact
12 you perhaps were not satisfied with the work the police did,
13 would that cause you to hold that against any officers that may
14 testify in this case?

15 PROSPECTIVE JUROR NO. 633: No.

16 THE COURT: Or against either side in this case?

17 PROSPECTIVE JUROR NO. 633: No.

18 THE COURT: All right, because you understand that's
19 a separate incident?

20 PROSPECTIVE JUROR NO. 633: Absolutely.

21 THE COURT: Nothing to do with this case?

22 PROSPECTIVE JUROR NO. 633: Yes.

23 THE COURT: All right, thank you, sir. And sir, how
24 long ago were those burglaries.

25 PROSPECTIVE JUROR NO. 633: One was eight months, and

1 the other one was two years ago.

2 THE COURT: Okay. Did you ever have to go to court
3 on any of those cases, sir?

4 PROSPECTIVE JUROR NO. 633: No.

5 THE COURT: All right, thank you, sir. Anyone else
6 in the second row? Yes, sir, at the end.

7 PROSPECTIVE JUROR NO. 656: Brian Keith Snyder, Sr.
8 Badge No. 656. I was -- my house was broken into four times
9 back in 1984 in San Bernardino, California.

10 THE COURT: You said four times?

11 PROSPECTIVE JUROR NO. 656: Four times.

12 THE COURT: All right. And were the police -- were
13 the authorities called --

14 PROSPECTIVE JUROR NO. 656: Yes.

15 THE COURT: -- on those case, sir? And were you
16 satisfied with the work they did?

17 PROSPECTIVE JUROR NO. 656: Yes, at least I got my
18 gun back.

19 THE COURT: Okay. All right. And do you have any --
20 would that cause you to have any bias --

21 PROSPECTIVE JUROR NO. 656: No.

22 THE COURT: -- or prejudice against either side?

23 PROSPECTIVE JUROR NO. 656: No.

24 THE COURT: All right, thank you, sir. Anyone else
25 in the second row? Yes, ma'am.

1 PROSPECTIVE JUROR NO. 649: Patricia Salinas, 649.

2 In 2000, my husband was murdered by his sister's roommate.

3 THE COURT: Okay. You talked about that before,
4 correct? No, 2004, okay.

5 PROSPECTIVE JUROR NO. 649: In, in 2000. The year
6 2000.

7 THE COURT: When?

8 PROSPECTIVE JUROR NO. 649: Year 2000.

9 THE COURT: All right. Anyone else in the jury box
10 area? In the gallery to my right, front row, yes, sir, with
11 the black shirt.

12 PROSPECTIVE JUROR NO. 685: Jose Vasquez, 685. My
13 cousin was murdered in '03. (Indiscernible).

14 THE COURT: I'm sorry, sir, your number again?

15 PROSPECTIVE JUROR NO. 685: 685.

16 THE COURT: Oh, okay, there we go. You said your
17 cousin was murdered?

18 PROSPECTIVE JUROR NO. 685: Yeah, in 2003.

19 THE COURT: Okay. And was that here in Clark County,
20 sir?

21 PROSPECTIVE JUROR NO. 685: Yes, it was.

22 THE COURT: I'm assuming the police officers were
23 contacted in that case?

24 PROSPECTIVE JUROR NO. 685: Yeah.

25 THE COURT: All right.

1 PROSPECTIVE JUROR NO. 685: Yes.

2 THE COURT: Did that matter go to trial, sir?

3 PROSPECTIVE JUROR NO. 685: I believe it did, but
4 actually, it went to trial for -- he also, I guess, who
5 murdered his wife, so that's what he went to trial for. He
6 never got to the point of my cousin, because I guess he
7 committed suicide in prison or something. So he never got
8 convicted for my cousin's murder, but he did get arrested for
9 it.

10 THE COURT: Okay. Well, we have a similar charge in
11 this case, sir. Would you -- do you have any bias or prejudice
12 against the defendant in this case?

13 PROSPECTIVE JUROR NO. 685: No.

14 THE COURT: And sir, if you were selected, you would
15 base any decision not on what happened in your family, but what
16 occurred in this case --

17 PROSPECTIVE JUROR NO. 685: (Indiscernible).

18 THE COURT: -- and any witnesses testifying.

19 PROSPECTIVE JUROR NO. 685: Was that a yes or no
20 question?

21 THE COURT: Right. I just want to know, sir, is that
22 --

23 PROSPECTIVE JUROR NO. 685: Is that a -- can you read
24 it --

25 THE COURT: Well --

1 PROSPECTIVE JUROR NO. 685: Can you (indiscernible).

2 THE COURT: Sure, sure. I just want to make sure
3 that if you are selected in this case, sir, that the situation
4 involving your family member would not come into play in this
5 particular case.

6 PROSPECTIVE JUROR NO. 685: No.

7 THE COURT: Are you positive, sir?

8 PROSPECTIVE JUROR NO. 685: Positive.

9 THE COURT: All right, thank you, sir. Anyone else
10 in the front row? Yes, sir.

11 PROSPECTIVE JUROR NO. 687: My name is Gary Obata.
12 My badge number is 687. I had actually a -- I had a cousin
13 that was shot and killed by a sniper in Fresno, California, and
14 they never caught the person.

15 THE COURT: How long ago was that, sir?

16 PROSPECTIVE JUROR NO. 687: That was about 20 years
17 ago.

18 THE COURT: Okay, and same question to you, sir,
19 because you had someone that was killed, do you -- would that
20 cause to you have any bias or prejudice against the defendant
21 or State in this case?

22 PROSPECTIVE JUROR NO. 687: No.

23 THE COURT: Can you put that matter aside if you are
24 selected in this case?

25 PROSPECTIVE JUROR NO. 687: Yes.

1 THE COURT: All right. Thank you, sir. Anyone else
2 in the front row?

3 MR. SMITH: Judge, I think you got some --

4 THE COURT: Oh, you have one more, sir?

5 MR. SMITH: You had some others.

6 THE COURT: I'm sorry, sir.

7 PROSPECTIVE JUROR NO. 687: I had a neighbor that was
8 murdered by Richard Ramirez in southern California.

9 THE COURT: About how long ago was that, sir?

10 PROSPECTIVE JUROR NO. 687: That was --

11 THE COURT: And wasn't that the Hillside (phonetic)
12 or something?

13 MR. SMITH: Yeah.

14 MS. GRAHAM: Yes.

15 MR. SMITH: That's him.

16 PROSPECTIVE JUROR NO. 687: (Indiscernible).

17 THE COURT: Okay. And again, the same question.
18 Would that have any impact on your ability to perform your
19 services here, sir? .

20 PROSPECTIVE JUROR NO. 687: No.

21 THE COURT: All right, thank you, sir.

22 PROSPECTIVE JUROR NO. 687: And then I had one last
23 one.

24 THE COURT: Oh, one more? Okay.

25 PROSPECTIVE JUROR NO. 687: I have a lot of

1 (indiscernible). I had an associate when I worked for
2 Albertsons (indiscernible) murder.

3 THE COURT: And when was that, sir?

4 PROSPECTIVE JUROR NO. 687: I can't even remember.

5 MR. SMITH: That was in the 90s.

6 PROSPECTIVE JUROR NO. 687: It was probably ten years
7 ago.

8 MR. SMITH: In the 90s.

9 PROSPECTIVE JUROR NO. 687: (Indiscernible).

10 THE COURT: Okay.

11 MR. PIKE: Your Honor, can we approach?

12 THE COURT: All right.

13 MR. PIKE: Thank you.

14 (Off-record bench conference)

15 THE COURT: Anything else, Mr. Obata?

16 PROSPECTIVE JUROR NO. 687: No, that was it. Thank
17 you.

18 THE COURT: All right, thank you, sir. Yes, sir, in
19 the second row.

20 PROSPECTIVE JUROR NO. 656: Brian Keith Snyder, Sr.
21 Badge 656. I forgot how long ago, but my brother --
22 ex-brother-in-law. That's what I call him.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 656: His name is Brian Main
25 (phonetic). He held up a couple back in, I think it was

1 Corona, California. I think it was ten years ago, and he was
2 on PCP, and he was -- SWAT was called out (indiscernible) and
3 SWAT was called out, and he was shooting at the SWAT. That was
4 like -- I think it was like 10, 11 years ago back in
5 California.

6 THE COURT: Back in California, okay.

7 PROSPECTIVE JUROR NO. 656: Yeah.

8 THE COURT: All right, thank you, sir.

9 PROSPECTIVE JUROR NO. 656: Um-h'm.

10 THE COURT: Is there anyone else in the front row?
11 Yes, sir.

12 PROSPECTIVE JUROR NO. 698: My name is Robert, 698.
13 My brother was killed in '92.

14 THE COURT: Was that here in Clark County, sir?

15 PROSPECTIVE JUROR NO. 698: Yes, it was.

16 THE COURT: Was that situation investigated by the
17 police?

18 PROSPECTIVE JUROR NO. 698: Yes, it was.

19 THE COURT: All right. Were they able to catch the
20 perpetrator?

21 PROSPECTIVE JUROR NO. 698: They caught him for
22 another murder.

23 THE COURT: Okay. Did that case go to trial, sir?

24 PROSPECTIVE JUROR NO. 698: I believe so.

25 THE COURT: All right. Did you have to testify in

1 that case?

2 PROSPECTIVE JUROR NO. 698: No, I did not. I believe
3 my niece did.

4 THE COURT: Okay. And the fact that your -- you said
5 it was your brother?

6 PROSPECTIVE JUROR NO. 698: Yes.

7 THE COURT: All right, was the victim of that crime.
8 Would that cause you to be biased or prejudice against either
9 side in this case?

10 PROSPECTIVE JUROR NO. 698: Oh, no, revenge is God's
11 hands.

12 THE COURT: I'm sorry?

13 PROSPECTIVE JUROR NO. 698: Revenge is in God's
14 hands.

15 THE COURT: I can't hear.

16 MR. SMITH: He said revenge is in God's hands.

17 PROSPECTIVE JUROR NO. 698: I said revenge is in
18 God's hands.

19 THE COURT: Okay. All right. Thank you, sir.

20 PROSPECTIVE JUROR NO. 698: Um-h'm.

21 THE COURT: Anyone else in the front row? Anyone in
22 the second row? Yes, sir.

23 PROSPECTIVE JUROR NO. 727: I've been jumped, my
24 car's been broken into it.

25 THE COURT: Your name and --

1 MR. SMITH: What's your badge number?

2 PROSPECTIVE JUROR NO. 727: Robert Wilk, 727.

3 THE COURT: Yes, sir.

4 PROSPECTIVE JUROR NO. 727: I've been jumped, I've
5 had my car broken into six times, my mom's been mugged. And
6 yeah --

7 THE COURT: Okay.

8 PROSPECTIVE JUROR NO. 727: And like my car's been
9 broken into probably three times this year. Once every month.

10 THE COURT: Okay. You said you were jumped once.

11 PROSPECTIVE JUROR NO. 727: Yes.

12 THE COURT: When was that?

13 PROSPECTIVE JUROR NO. 727: That was three years ago.

14 THE COURT: Was that here in Clark County?

15 PROSPECTIVE JUROR NO. 727: Yes. Right off the
16 spaghetti bowl.

17 THE COURT: Okay. You had someone just trying to
18 take your wallet or --

19 PROSPECTIVE JUROR NO. 727: No. They sideswiped my
20 truck on the freeway and then off at the side road he and his
21 friend basically jumped me.

22 THE COURT: And sir, were those situations, were they
23 all investigated by the police department?

24 PROSPECTIVE JUROR NO. 727: When I was jumped, yeah,
25 they were caught and taken to jail. My vehicle being jacked up

1 all the time, nothing's come of it because there's not really
2 anything, they couldn't find anything and they've all been in
3 different locations.

4 THE COURT: All right, sir.

5 PROSPECTIVE JUROR NO. 727: And my mom -- but my mom
6 being mugged in a casino, it's just -- they couldn't catch the
7 guy at all.

8 THE COURT: And how long was that involving your
9 mother?

10 PROSPECTIVE JUROR NO. 727: That was last year, about
11 middle of last year.

12 THE COURT: And sir, those various situations, were
13 you satisfied with the work that law enforcement did on those
14 cases?

15 PROSPECTIVE JUROR NO. 727: I'm going to say more
16 frustrated.

17 THE COURT: All right.

18 PROSPECTIVE JUROR NO. 727: So, no.

19 THE COURT: Okay. The fact that you may be
20 frustrated with law enforcement, would that cause you to have
21 any bias or prejudice against police officers that may testify
22 --

23 PROSPECTIVE JUROR NO. 727: It will affect --

24 THE COURT: -- in this case?

25 PROSPECTIVE JUROR NO. 727: -- my judgment, yes, I'll

1 say that.

2 THE COURT: I'm sorry?

3 PROSPECTIVE JUROR NO. 727: Yes, it will affect my
4 judgment.

5 THE COURT: And why is that, sir?

6 PROSPECTIVE JUROR NO. 727: Because like I've always
7 felt like I've been on the short end of the stick, and
8 everybody in my family always feel that way, so it's kind of
9 engrained in how we've been living.

10 THE COURT: Well, if you were selected in this case,
11 sir, you wouldn't want either side to feel that they got the
12 short end of the stick, would you?

13 PROSPECTIVE JUROR NO. 727: This is true, but I'm
14 going to be honest, there is going to be an engraving always at
15 the very bottom of my stomach or whatever.

16 THE COURT: As far as --

17 PROSPECTIVE JUROR NO. 727: It's just like decision-
18 making, and like there's always going to be something in the
19 back of my mind thinking -- like I would always try my best to
20 be impartial, but there's always a lingering feeling in my
21 mind.

22 THE COURT: Do you feel because of a lingering
23 feeling that you have a bias against the State or against the
24 defendant?

25 PROSPECTIVE JUROR NO. 727: I would say it would be a

1 bias against the State.

2 THE COURT: Okay. And sir, if you were selected as a
3 juror in this case, what we would ask you to do is base any
4 decision you may make in this case upon the evidence and the
5 witness's testimony in this case and any exhibits into
6 evidence. Could you do that, sir?

7 PROSPECTIVE JUROR NO. 727: I could definitely do
8 that, yes, sir.

9 THE COURT: Okay. Are you sure, because you say you
10 had some bad --

11 PROSPECTIVE JUROR NO. 727: I mean, it'll be that,
12 but I'll have to look at this one, what's right here, is so as
13 much I can try that. It's kind of conflicting, yes, but.

14 THE COURT: Well, we just want to make sure that both
15 sides, if you are selected, will have a fair trial from you.

16 PROSPECTIVE JUROR NO. 727: From me, yes. I'll go
17 with that, yes. I will look at what's right here at this time,
18 not from (indiscernible) back there, so whatever's back there
19 has to be in my past.

20 THE COURT: All right, thank you, sir. Anyone else
21 in the second row? Well, we'll go back to the left. Yes, sir.

22 PROSPECTIVE JUROR NO. 717: Robert Richardson, 717.
23 When I first met my brother-in-law he was a prisoner with the
24 State of Nevada. And then about 15 years ago my home was
25 robbed.

1 THE COURT: Okay, about 15 years ago there was a
2 burglary?

3 PROSPECTIVE JUROR NO. 717: My home was robbed, yes.

4 THE COURT: Okay. Was that here in Clark County?

5 PROSPECTIVE JUROR NO. 717: Yes.

6 THE COURT: Okay. And was that investigated by the
7 police department?

8 PROSPECTIVE JUROR NO. 717: Yes.

9 THE COURT: Okay. Were you satisfied with the work
10 they do?

11 PROSPECTIVE JUROR NO. 717: Yes.

12 THE COURT: All right. The fact that you've been a
13 victim of a crime, would that cause you to have any bias --

14 PROSPECTIVE JUROR NO. 717: No.

15 THE COURT: -- for either side?

16 PROSPECTIVE JUROR NO. 717: No.

17 THE COURT: Okay. Thank you, sir. Anyone else in
18 the second row? Anyone in the back row? Yes, sir.

19 PROSPECTIVE JUROR NO. 771: David Brunelle, 771.

20 THE COURT: Yes, sir.

21 PROSPECTIVE JUROR NO. 771: I was a victim. I tried
22 to trying to stop a burglary in Sacramento and the suspect
23 suspect hit me and fractured my eye over the bone. It was like
24 (indiscernible).

25 THE COURT: I'm sorry?

1 PROSPECTIVE JUROR NO. 771: Fractured
2 (indiscernible).

3 THE COURT: Okay. And how long ago was that, sir?

4 PROSPECTIVE JUROR NO. 771: 11/11/2002.

5 THE COURT: Okay. Was that situation investigated by
6 law enforcement?

7 PROSPECTIVE JUROR NO. 771: Yes.

8 THE COURT: Okay. Were you satisfied with the work
9 they did on that case?

10 PROSPECTIVE JUROR NO. 771: No.

11 THE COURT: Okay, and why weren't you satisfied?

12 PROSPECTIVE JUROR NO. 771: I think fingerprints
13 should have been taken and they weren't.

14 THE COURT: And the fact that you weren't satisfied
15 with the work that the California authorities did, sir, would
16 that have any impact on you if you were selected in this case?

17 PROSPECTIVE JUROR NO. 771: Not at all.

18 THE COURT: All right, thank you, sir. Anyone else
19 in the back row? In the gallery to my left? Front row? Half
20 the front row. Okay, we'll start here on the far right. Yes,
21 ma'am.

22 PROSPECTIVE JUROR NO. 785: Ashleigh Whalen, 785. My
23 ex-boyfriend right now is actually being tried for murder.

24 THE COURT: Here in Clark County?

25 PROSPECTIVE JUROR NO. 785: No, in like in

1 California.

2 THE COURT: Okay. Are you a witness in that case?

3 PROSPECTIVE JUROR NO. 785: Not that I know of, no.

4 THE COURT: Okay. Are you still have a -- I know
5 he's an ex-boyfriend, but are you still have contact with him?

6 PROSPECTIVE JUROR NO. 785: I do.

7 THE COURT: Okay. The fact that your ex-boyfriend's
8 charged with murder presently, and there's, I guess, a pending
9 case?

10 PROSPECTIVE JUROR NO. 785: Um-h'm.

11 THE COURT: Is that a yes?

12 PROSPECTIVE JUROR NO. 785: They're going to trial
13 (indiscernible).

14 THE COURT: Okay. Would that cause you to be -- have
15 any bias or prejudice against either side in this case?

16 PROSPECTIVE JUROR NO. 785: I don't know, to be
17 honest with you.

18 THE COURT: Okay. Why do you think it might?

19 PROSPECTIVE JUROR NO. 785: I just -- being with him,
20 and like being like being, like because he was always like --
21 like in trouble with the police, that I just always had like a
22 negative attitude towards the police.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 785: I've had to deal with
25 them for so long.

1 THE COURT: So you felt he was being treated unfairly
2 in the past?

3 PROSPECTIVE JUROR NO. 785: Right, sometimes, yeah.

4 THE COURT: And that situation's in another state,
5 correct?

6 PROSPECTIVE JUROR NO. 785: Yes.

7 THE COURT: Okay. And you don't know any of the
8 officers in this case, correct?

9 PROSPECTIVE JUROR NO. 785: No, not at all.

10 THE COURT: Okay. And so do you think you have a
11 bias or prejudice against any officers that may testify here?

12 PROSPECTIVE JUROR NO. 785: No.

13 THE COURT: Okay. So you could put -- can you put --

14 PROSPECTIVE JUROR NO. 785: I could put aside, yeah.

15 THE COURT: Okay. Can you be fair to both sides?

16 PROSPECTIVE JUROR NO. 785: Yes, I can.

17 THE COURT: Okay. Without any hesitation?

18 PROSPECTIVE JUROR NO. 785: No, I can.

19 THE COURT: Okay. All right, thank you, ma'am. And
20 there was -- yes, ma'am.

21 PROSPECTIVE JUROR NO. 788: Carol Murakowski, 788. I
22 had property stolen out of my front yard.

23 THE COURT: Okay. About how long ago was that,
24 ma'am?

25 PROSPECTIVE JUROR NO. 788: About a month.

1 THE COURT: Okay. Was that investigated by the
2 police.

3 PROSPECTIVE JUROR NO. 788: No, it was a gazing ball.

4 THE COURT: Okay. Okay.

5 PROSPECTIVE JUROR NO. 788: Yeah.

6 THE COURT: All right.

7 PROSPECTIVE JUROR NO. 788: It wouldn't affect this.

8 THE COURT: That would not affect this, okay. Thank
9 you, ma'am. Yes, ma'am.

10 PROSPECTIVE JUROR NO. 789: Juliette Congleton, No.
11 789. I was a victim of a crime, racism, so in 1996 we went to
12 court. He got five year probation.

13 THE COURT: Okay. And was that here in Clark County?

14 PROSPECTIVE JUROR NO. 789: No, Washington State.

15 THE COURT: Okay. And were you satisfied with the
16 work the law enforcement did in your case?

17 PROSPECTIVE JUROR NO. 789: Yes.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 789: I wasn't quite satisfied
20 with their judgment, but I was like paranoid for like a year
21 because that was a second year I was in America, and I was
22 speaking English -- speaking a little bit, but not really
23 fully, and I was involved in that situation. It was -- I was
24 having a difficult time for like year.

25 THE COURT: Okay. And you've understood everything

1 here so far?

2 PROSPECTIVE JUROR NO. 789: Yes.

3 THE COURT: Okay, great. And ma'am, your previous
4 situation, can you put that aside if you were called to be a
5 juror in this case?

6 PROSPECTIVE JUROR NO. 789: I will be honest,
7 probably I can do that, but I always have that fears in me.

8 THE COURT: Okay. Well, and I'll tell you this,
9 ma'am, and it applies to everyone here. We can't erase our
10 past, you know, things that have happened to us as a child or
11 as an adult, but what the question is, you know, can you put
12 that aside if you're selected here and base any decision you
13 may make in this case on the evidence, the testimony you hear
14 from the witness stand, and any exhibits?

15 Because if you are called as a juror, that's where
16 your decision needs to be made based upon testimony and
17 exhibits in this case. Could you do that, ma'am?

18 PROSPECTIVE JUROR NO. 789: Yes, sir.

19 THE COURT: Okay. All right. Without hesitation?

20 PROSPECTIVE JUROR NO. 789: Yes.

21 THE COURT: Okay. All right, thank you. Anyone else
22 in the front row? I thought I saw a third hand. No. Second
23 row? No. Okay.

24 PROSPECTIVE JUROR NO. 622: Your Honor --

25 THE COURT: Yes.

1 PROSPECTIVE JUROR NO.622: -- can I ask you a
2 question, please?

3 THE COURT: Sure.

4 PROSPECTIVE JUROR NO.622: Clara Romero, 622. I
5 remember the charge, but I don't remember who it was -- who it
6 happened to. Could you refresh my memory on that?

7 THE COURT: As far as?

8 PROSPECTIVE JUROR NO. 622: The charge that we're
9 going to be judging.

10 THE COURT: It's a charge of murder.

11 PROSPECTIVE JUROR NO. 622: Against whom? Was it a
12 spousal thing?

13 THE COURT: Okay, we're getting --

14 MR. PIKE: On again, off again girlfriend.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 622: Well, then I think I need
17 to disclose the fact that the -- what happened to me was the
18 same thing.

19 THE COURT: Okay. All right, thank you, ma'am.
20 Anyone else? Anything else?

21 The next question is either yourself, a family member
22 or anyone closely associated with you ever been accused of a
23 crime? And we're not talking about traffic matters, but anyone
24 accused of a crime? Anyone in the jury box area? Okay, we'll
25 go over here. Yes, ma'am.

1 PROSPECTIVE JUROR NO. 622: My nephew served seven
2 years with drug issues, but that doesn't affect me in any way.

3 THE COURT: Okay. All right, how long ago was that?

4 PROSPECTIVE JUROR NO. 622: He's still on probation.
5 I don't remember the year, your Honor, but he's still on
6 probation.

7 THE COURT: Okay, was that here in Nevada?

8 PROSPECTIVE JUROR NO. 622: No, sir.

9 THE COURT: Okay, thank you, ma'am. Anyone -- yes,
10 ma'am.

11 PROSPECTIVE JUROR NO. 655: Christy Dalo, 655. When
12 I was really on my dad -- this was back in Hawaii -- he
13 actually served time for stabbing someone. And then I have two
14 brothers who one is currently incarcerated in California for
15 drug charges, and then the other one is back in Hawaii. He was
16 sent back to be tried there for drug charges as well, and --
17 I'm sorry.

18 THE COURT: Go ahead.

19 PROSPECTIVE JUROR NO. 655: Oh, the one that's in
20 Hawaii, when we first moved here, he was charged with, I don't
21 know, attacking someone with a friend of his in a
22 (indiscernible) somewhere. I don't really know the details.

23 THE COURT: You said the situation with your father,
24 how long ago was that, ma'am?

25 PROSPECTIVE JUROR NO. 655: Very long. Probably

1 around 1980. No, before 1980. Like maybe around '78, '76.

2 THE COURT: Okay. So he was charged?

3 PROSPECTIVE JUROR NO. 655: Yes.

4 THE COURT: Or he was accused of the crime? Did he
5 go to court?

6 PROSPECTIVE JUROR NO. 655: Yes, and he actually
7 served time in Hawaii.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 655: At (indiscernible).

10 THE COURT: And was he charged with murder?

11 PROSPECTIVE JUROR NO. 655: No, the guy didn't die.

12 It was a well known guy, and they got into an argument over a
13 pool game, and my dad stabbed him in the stomach.

14 THE COURT: All right. And were you involved in any
15 way in that prosecution? Were you a witness or --

16 PROSPECTIVE JUROR NO. 655: Oh, no, I was very young.

17 THE COURT: Okay. The fact that your father had been
18 accused of that crime, would that cause you to have any bias or
19 prejudice against the State who prosecutes crimes?

20 PROSPECTIVE JUROR NO. 655: No.

21 THE COURT: Or how about the defense?

22 PROSPECTIVE JUROR NO. 655: No.

23 THE COURT: Okay. And the other situations, tell us
24 a little bit about those.

25 PROSPECTIVE JUROR NO. 655: With my brothers?

1 THE COURT: Yes.

2 PROSPECTIVE JUROR NO. 655: What do you want me to
3 tell you?

4 THE COURT: No, I mean, what -- were they -- do you
5 think they were treated fairly in those cases? Were you a
6 witness in any of those cases?

7 PROSPECTIVE JUROR NO. 655: I wasn't a witness, and
8 yes, I think they were treated fairly.

9 THE COURT: Okay. Do you have any, you know, bias or
10 any ill feelings towards prosecutors or the police department
11 --

12 PROSPECTIVE JUROR NO. 655: No.

13 THE COURT: -- because of that?

14 PROSPECTIVE JUROR NO. 655: No.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 655: In fact, my fiance was
17 recently a corrections officer, and he was also in a police
18 academy, so no.

19 THE COURT: Okay. All right, thank you, ma'am.

20 PROSPECTIVE JUROR NO. 655: Okay.

21 THE COURT: Anyone else? Yes, sir.

22 PROSPECTIVE JUROR NO. 656: Brian Keith Snyder, Sr.,
23 656. I don't know how long, but my uncle, he was served in the
24 Maryland State penitentiary for 25 years for selling drugs to
25 an undercover agent back in Maryland. And then he moved out

1 from there to California, he was also caught selling drugs.
2 But I guess the person that he was selling drugs to kind of got
3 even with him, killed him, and so that's it.

4 THE COURT: Well, based upon those situations, sir,
5 do you feel under the circumstances that he was treated fairly?

6 PROSPECTIVE JUROR NO. 656: My uncle?

7 THE COURT: Yes.

8 PROSPECTIVE JUROR NO. 656: He got what he -- he got
9 what he was asking for.

10 THE COURT: Okay. All right.

11 PROSPECTIVE JUROR NO. 656: Let's put it that way.
12 I'm just being honest.

13 THE COURT: No, that's all we want you to do sir, for
14 anybody here. Would that cause you to favor either side in
15 this case?

16 PROSPECTIVE JUROR NO. 656: No.

17 THE COURT: What happened to your uncle?

18 PROSPECTIVE JUROR NO. 656: No.

19 THE COURT: All right, thank you, sir. Anyone else
20 in the second row? Front row? Yes, ma'am.

21 PROSPECTIVE JUROR NO. 679: Diamond Rozek, 679.

22 THE COURT: Yes.

23 PROSPECTIVE JUROR NO. 679: My mom (indiscernible)
24 felon.

25 THE COURT: All right.

1 PROSPECTIVE JUROR NO. 679: And my mom and my
2 roommate are both felons.

3 THE COURT: All right.

4 PROSPECTIVE JUROR NO. 679: And my boyfriend
5 (indiscernible), I guess he got convicted on drug charges
6 (indiscernible).

7 THE COURT: Now, you say your boyfriend. Has he been
8 arrested? Has he been charged? Has he gone to court --

9 PROSPECTIVE JUROR NO. 679: Yes.

10 THE COURT: -- on those charges?

11 PROSPECTIVE JUROR NO. 679: Yeah.

12 THE COURT: Okay. Is he a felon?

13 PROSPECTIVE JUROR NO. 679: No.

14 THE COURT: Okay. What'd he get, a gross misdemeanor
15 or a misdemeanor?

16 PROSPECTIVE JUROR NO. 679: I'm not sure.

17 THE COURT: Okay. Was that here in Clark County?

18 PROSPECTIVE JUROR NO. 679: Um-h'm.

19 THE COURT: Is that a yes? You got to --

20 PROSPECTIVE JUROR NO. 679: Yes.

21 THE COURT: We've got to pick up your name.

22 PROSPECTIVE JUROR NO. 679: Yes. Sorry. Yes.

23 THE COURT: You have a very low voice. I want to
24 make sure we pick it up. Okay, about how long ago was that,
25 ma'am?

1 PROSPECTIVE JUROR NO. 679: Like three or four years
2 ago.

3 THE COURT: Okay. Was he prosecuted by the District
4 Attorney's Office?

5 PROSPECTIVE JUROR NO. 679: I'm not sure. It was
6 before I met him.

7 THE COURT: Okay. But he was prosecuted here in
8 Clark County?

9 PROSPECTIVE JUROR NO. 679: Yes.

10 THE MARSHAL: Did he go to prison?

11 PROSPECTIVE JUROR NO. 679: No, he just went to jail.

12 THE COURT: Do you know if he had to go on probation?

13 PROSPECTIVE JUROR NO. 679: I don't think so.

14 THE COURT: Okay. The fact that your brother --
15 excuse me, your boyfriend was -- had some charges against him
16 and they may have been -- he may have been prosecuted by the
17 District Attorney's Office, I don't know, maybe a city
18 attorney's office, but do you feel you have any ill will
19 towards the DAs in this case or the DAs office?

20 PROSPECTIVE JUROR NO. 679: No.

21 THE COURT: Okay. And you said there was your mother
22 and --

23 PROSPECTIVE JUROR NO. 679: Yeah, my mother and my
24 roommate are felons.

25 THE COURT: Okay. Here in Clark County? I mean,

1 from cases arising out of Clark County or Nevada?

2 PROSPECTIVE JUROR NO. 679: I'm not sure. I know my
3 mom -- I don't know why she's gotten arrested a few times.

4 THE COURT: Okay. About how long ago was her
5 conviction?

6 PROSPECTIVE JUROR NO. 679: I'm not sure if this was
7 the right one, but I think she was in Idaho and it was I think
8 it was when I was born, in '89.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 679: And it was on drug
11 charges.

12 THE COURT: All right. And there's one other you
13 had. There was another relative.

14 PROSPECTIVE JUROR NO. 679: Her roommate.

15 THE COURT: Yes.

16 PROSPECTIVE JUROR NO. 679: I don't know her.

17 THE COURT: Okay. Does she have a felony conviction?

18 PROSPECTIVE JUROR NO. 679: Yeah. I don't know if
19 it's on that charge, though.

20 THE COURT: All right.

21 PROSPECTIVE JUROR NO. 679: But I know she's a felon
22 now.

23 THE COURT: Okay. She's on probation now?

24 PROSPECTIVE JUROR NO. 679: No.

25 THE COURT: Okay. Was she prosecuted here in Clark

1 County?

2 PROSPECTIVE JUROR NO. 679: I don't know.

3 THE COURT: All right. Do you have any ill will
4 towards law enforcement or the deputy district attorneys in
5 this case?

6 PROSPECTIVE JUROR NO. 679: No.

7 THE COURT: All right, thank you, ma'am. Anyone else
8 in the jury box area? Anyone in the gallery to my right?
9 Front right? We'll go to the second row.

10 PROSPECTIVE JUROR NO. 717: Robert Richardson, 717.
11 When I met my wife her brother was a prisoner, and I have a
12 nephew right now in jail.

13 THE COURT: Your brother-in-law, was he prosecuted
14 here in Nevada?

15 PROSPECTIVE JUROR NO. 717: Oh, yeah. Yes.

16 THE COURT: Okay. Was he prosecuted by the District
17 Attorney's Office, if you know?

18 PROSPECTIVE JUROR NO. 717: I'm not sure. That was
19 before I met her.

20 THE COURT: And you said there was another family
21 member?

22 PROSPECTIVE JUROR NO. 717: Yeah, he have a nephew in
23 jail right now.

24 THE COURT: In Nevada?

25 PROSPECTIVE JUROR NO. 717: Yes.

1 THE COURT: Okay. Was he prosecuted here in Clark
2 County or --

3 PROSPECTIVE JUROR NO. 717: Yes.

4 THE COURT: Okay. And more than likely he was
5 prosecuted by the District Attorney's Office, sir. Does that
6 cause you to have any ill will --

7 PROSPECTIVE JUROR NO. 717: No.

8 THE COURT: -- towards the DAs here in this case?
9 Without hesitation?

10 PROSPECTIVE JUROR NO. 717: Without hesitation.

11 THE COURT: All right, thank you, sir. Anyone else
12 in the second row? We'll go to the back row. Yes, ma'am, in
13 the corner.

14 PROSPECTIVE JUROR NO. 748: Carrie Bundy, 748. I
15 don't know if I need to mention it, but my ex-husband has a
16 bench warrant out for his arrest.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR NO. 748: (Indiscernible).

19 THE COURT: Okay. You need a number for secret
20 witness or anything? Actually, you know, putting that aside,
21 is it a bench warrant out of Nevada or out of -- you said the
22 another state.

23 PROSPECTIVE JUROR NO. 748: I think it's out of Clark
24 County, to be honest with you.

25 THE COURT: Okay. Is that for a criminal case or --

1 because you can get a bench warrant from civil cases.

2 PROSPECTIVE JUROR NO. 748: He wrote a bad check, and
3 I guess the amount was such that it turned into a bigger deal.

4 THE COURT: Okay. And do you know if that 's being
5 prosecuted by the District Attorney's Office?

6 PROSPECTIVE JUROR NO. 748: I don't know. I think --
7 I don't think anybody can find him.

8 THE COURT: Okay. But more than likely it is, ma'am,
9 because if it's over a certain amount. Would that cause you to
10 have any ill will or ill feeling towards the DAs in this case
11 or the DAs Office in general?

12 PROSPECTIVE JUROR NO. 748: No.

13 THE COURT: Okay. All right, thank you, ma'am.
14 Anyone else in the gallery to my right? Anyone to the left?
15 All right, yes, sir.

16 PROSPECTIVE JUROR NO. 797: Bryan Linford, 797. My
17 dad is a convicted felon about 15 years ago, two different
18 felonies for monetary reasons.

19 THE COURT: All right. And it's theft charges?

20 PROSPECTIVE JUROR NO. 797: Yeah.

21 THE COURT: Okay, was that here in Nevada, sir?

22 PROSPECTIVE JUROR NO. 797: No, it was in Dallas,
23 Texas.

24 THE COURT: Okay. About how long was that, sir?

25 PROSPECTIVE JUROR NO. 797: About 16 years ago, I

1 think.

2 THE COURT: Okay. Do you have any ill will or ill
3 feelings towards prosecutors in general or the prosecutor's
4 office in this case?

5 PROSPECTIVE JUROR NO. 797: No.

6 THE COURT: All right, thank you, sir. There was
7 someone else in the front row. Yes, ma'am.

8 PROSPECTIVE JUROR NO. 803: Deborah Swick, 803. I
9 have a cousin in prison in California, the three strikes you're
10 out.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR NO. 803: He's been in there for
13 about two years.

14 THE COURT: All right. And how close are you to that
15 cousin?

16 PROSPECTIVE JUROR NO. 803: I was before he went in.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR NO. 803: However, you know, family
19 members (indiscernible) so.

20 THE COURT: Okay. And you had mentioned the three
21 strikes law, and in some situations may or may not be fair --

22 PROSPECTIVE JUROR NO. 803: Right.

23 THE COURT: -- on that third strike. Does that cause
24 you to have an ill feeling towards prosecutors in general or --

25 PROSPECTIVE JUROR NO. 803: No.

1 THE COURT: -- prosecutors in this state?

2 PROSPECTIVE JUROR NO. 803: No, he's actually where
3 he should be.

4 THE COURT: Okay. All right.

5 PROSPECTIVE JUROR NO. 803: (Indiscernible) so.

6 THE COURT: That's not going to cause you to favor
7 the prosecution in this case, is it?

8 PROSPECTIVE JUROR NO. 803: No, no, no.

9 THE COURT: All right, you'll be fair to both sides?

10 PROSPECTIVE JUROR NO. 803: Yeah.

11 THE COURT: Great. Thank you, ma'am. Anyone else
12 in the front row? Anyone in the second row? I thought I saw a
13 hand. Yes, ma'am.

14 PROSPECTIVE JUROR NO. 805: Sigrid Fisher, 805. I
15 have a brother-in-law in federal prison.

16 THE COURT: All right. Was that for any crimes
17 committed in Nevada?

18 PROSPECTIVE JUROR NO. 805: Yes.

19 THE COURT: Okay. Was he prosecuted down the
20 southern part or northern Nevada?

21 PROSPECTIVE JUROR NO. 805: Southern.

22 THE COURT: Okay. And you said a brother-in-law?

23 PROSPECTIVE JUROR NO. 805: Yes.

24 THE COURT: Okay. And about how long ago was he
25 convicted?

1 PROSPECTIVE JUROR NO. 805: I think he's been in for
2 at least two years.

3 THE COURT: All right. Do you know what the charges
4 were?

5 PROSPECTIVE JUROR NO. 805: It had to do with Crazy
6 Horse Too and all the stuff that went on there.

7 THE COURT: Okay. All right, do you have any ill
8 will or ill feelings towards prosecutors in general or the
9 prosecutor's office in this case?

10 PROSPECTIVE JUROR NO. 805: No.

11 THE COURT: All right.

12 PROSPECTIVE JUROR NO. 805: Not at all.

13 THE COURT: Okay, thank you, ma'am. Anyone else in
14 the second row gallery to my left? Anyone else? Yes, ma'am.

15 PROSPECTIVE JUROR NO. 679: Diamond Rozek, 679.

16 THE COURT: Yes, ma'am.

17 PROSPECTIVE JUROR NO. 679: I forgot one. I have a
18 friend who is in, I think, in prison. And it (indiscernible).

19 THE COURT: You mean Springs?

20 PROSPECTIVE JUROR NO. 679: Yeah. He was a part of
21 -- he wasn't like put in for murder, but he was a part of like
22 a similar case where there was a fight and he was
23 (indiscernible), but he was on probation (indiscernible).

24 THE COURT: Okay. More than likely, ma'am, that case
25 was prosecuted by the Clark County District Attorney's Office.

1 Because of that fact, do you have any feelings towards the DAS
2 in general or the DAS in this particular case? All right,
3 thank you, ma'am. Anyone else?

4 Has anyone here had any prior jury service, whether
5 it's a grand jury or a jury for a trial? Anyone in the jury
6 box area? We usually get at least one in there. Okay, how
7 about in the gallery to our right? Okay, we'll go to the
8 second row.

9 PROSPECTIVE JUROR NO. 730: Catherine Bertles, 730.

10 THE COURT: And ma'am, I've got a question. This
11 would apply to -- you said 730, okay. The question is if
12 you've been -- had prior jury service, and let me go through
13 the question. Was it a civil or criminal case? Were you the
14 foreperson of the case? And without telling us what the
15 verdict was, did that jury reach a verdict? So civil or
16 criminal case, were you the foreperson, did they reach a
17 verdict?

18 PROSPECTIVE JUROR NO. 730: One was criminal. Two
19 were civil. I was never floorperson or foreperson. And --

20 THE COURT: Did they reach a verdict? Did she reach
21 a decision?

22 PROSPECTIVE JUROR NO. 730: Yes. Every time, yes.

23 THE COURT: Okay. And you were not the foreperson?

24 PROSPECTIVE JUROR NO. 730: No, (indiscernible).

25 THE COURT: Okay. So there was two or three civil

1 and one criminal?

2 PROSPECTIVE JUROR NO. 730: Two civil and one
3 criminal.

4 THE COURT: Okay. Were they all here in Clark
5 County?

6 PROSPECTIVE JUROR NO. 730: No, this was in Adams
7 County, Colorado.

8 THE COURT: Okay. And about how long ago were those
9 -- how long ago was that jury service?

10 PROSPECTIVE JUROR NO. 730: Well, it was over 18
11 years ago.

12 THE COURT: All three of those?

13 PROSPECTIVE JUROR NO. 730: Yeah, all three of them
14 were prior to 18 years.

15 THE COURT: Okay. All right, thank you, ma'am.
16 Anyone else in the second row? Back row? Well, there's one
17 more second row. Red top. Yes, ma'am.

18 PROSPECTIVE JUROR NO. 728: Linda Tijerina, 728. I
19 did civil, and I was not the foreperson, and we did come to a
20 resolution.

21 THE COURT: Okay. Was that here in Clark County?

22 PROSPECTIVE JUROR NO. 728: Yes, it was.

23 THE COURT: About how long ago was that?

24 PROSPECTIVE JUROR NO. 728: 14 years ago.

25 THE COURT: Okay. Do you remember what type of case

1 besides civil? Was it like a contract case, medical
2 malpractice, automobile accident?

3 PROSPECTIVE JUROR NO. 728: Yes, it was regarding
4 insurance.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR NO. 728: And it was a little bit
7 of a malpractice suit.

8 THE COURT: All right. Okay, thank you, ma'am.
9 Anyone else in the gallery area to my right? Yes, ma'am in the
10 back row.

11 PROSPECTIVE JUROR NO. 743: Megan Trenkler, 743.
12 Approximately three years ago, criminal case, and we did reach
13 a verdict.

14 THE COURT: Were you the foreperson?

15 PROSPECTIVE JUROR NO. 743: Yes.

16 THE COURT: Okay. And was that here in Clark County?

17 PROSPECTIVE JUROR NO. 743: Yes.

18 THE COURT: Okay. Was that prosecuted by the
19 District Attorney's Office, do you know?

20 PROSPECTIVE JUROR NO. 743: Yes.

21 THE COURT: Okay. You don't any of the DAs here in
22 this case?

23 PROSPECTIVE JUROR NO. 743: No.

24 THE COURT: Okay. All right, thank you, ma'am.

25 Anyone in the gallery to my left, prior jury service? Yes,

1 sir, in the blue shirt.

2 PROSPECTIVE JUROR NO. 813: James Fraser, 813. I was
3 on a jury, served on a civil malpractice case, Fresno County.

4 THE COURT: Okay, and about how long ago was that,
5 sir?

6 PROSPECTIVE JUROR NO. 813: About 15 years ago.

7 THE COURT: Okay. And were you the foreperson?

8 PROSPECTIVE JUROR NO. 813: No, sir.

9 THE COURT: And did that jury reach a decision?

10 PROSPECTIVE JUROR NO. 813: Yes, sir.

11 THE COURT: Okay. Thank you, sir. And there was
12 someone -- two other people in the back row. Yes, ma'am.

13 PROSPECTIVE JUROR NO. 810: Margaret Carns, 810. I
14 was on a jury in (indiscernible) county, California. It was a
15 criminal case, insurance fraud, and I was not the foreperson or
16 whatever.

17 THE COURT: And did that jury reach a verdict?

18 PROSPECTIVE JUROR NO. 810: Yes.

19 THE COURT: All right, thank you, ma'am. I'm sorry,
20 how long ago was that, did you say?

21 PROSPECTIVE JUROR NO. 810: Probably about 20 years
22 ago.

23 THE COURT: 20? Okay, thank you. And one more
24 person. Yes, ma'am.

25 PROSPECTIVE JUROR NO. 805: Sigrid Fisher, 805. I've

1 had two civil cases. I was not the foreman in either one and
2 we did come to a decision.

3 THE COURT: Okay. Were those here in Clark County?

4 PROSPECTIVE JUROR NO. 805: Yes.

5 THE COURT: And about how long ago were those two
6 services?

7 PROSPECTIVE JUROR NO. 805: The latest one was, I
8 believe, 2006.

9 THE COURT: All right. And then the one prior to
10 that?

11 PROSPECTIVE JUROR NO. 805: Ten years ago.

12 THE COURT: Ten years ago? All right, thank you,
13 ma'am. Ladies and gentlemen, I'm just going to go down the
14 list right now, and we'll start with Mr. -- is it Dettre?

15 PROSPECTIVE JUROR NO. 605: Yes.

16 THE COURT: Okay. And if you could stand up, sir,
17 just so we can hear you better. You'll notice by the jury box
18 area there's some microphones up on the banister there.
19 Unfortunately, these microphones do not amplify what's being
20 stated. They merely pick up what's being stated. So that's
21 why we have you stand up so we can pick them up.

22 As you know, we don't have a court stenographer, as
23 you notice. So everything here is being recorded. So that's
24 why we have you stand up. And unfortunately, in the gallery
25 area, as you see, there isn't any microphones in front of the

1 little pony wall there. The microphones that we're utilizing
2 to record your answers are at the attorney's table. So again,
3 if you can -- especially in this part here, if you can speak up
4 so we can make sure we pick you up on the microphone.

5 All right, Mr. -- is it Dettre?

6 PROSPECTIVE JUROR NO. 605: Dettre.

7 THE COURT: Okay. This will be the question for
8 everyone here is, if you're employed, what do you do? If you
9 have a spouse or significant other, what do they do for their
10 work? And if you have any children, give us their ages. And
11 if they're at working age, tell us what they do for a living.
12 So again, just I'm going to recap. Do you work, what do you
13 do, spouse or significant other, what do they do, children,
14 what are their ages, and if they're of working age, what type
15 of work are they involved in.

16 PROSPECTIVE JUROR NO. 605: Yes, I am employed. I do
17 collections for a loan company. I'm single and no children.

18 THE COURT: All right, thank you, sir. Ms. Andrews.

19 PROSPECTIVE JUROR NO. 606: Yes, I'm employed. I'm a
20 dispatcher for Triple A Road Service. I am married and he is
21 unemployed.

22 THE COURT: Okay. And what type of work does he do?

23 JUROR NO. 606: Actually, we're going through the --
24 he doesn't have permission to work here in the U.S. yet. He's
25 from Brazil, so he was working in prosthetics back in Brazil.

1 THE COURT: Okay. And do you have any --

2 PROSPECTIVE JUROR NO. 606: (Indiscernible).

3 THE COURT: -- any children, ma'am?

4 PROSPECTIVE JUROR NO. 606: No children.

5 THE COURT: Okay, thank you very much. Ms. Montonya.

6 PROSPECTIVE JUROR NO. 609: As I stated earlier, I'm
7 a producer for TV commercials home video. I'm single. I have
8 no children.

9 THE COURT: All right, thank you, ma'am. Mr. -- is
10 it Eral?

11 PROSPECTIVE JUROR NO. 613: Yes. I'm retired in
12 (indiscernible). I have two sons in their 40s who live
13 Minnesota, and they're both employed. One is a stockbroker and
14 the other one is a IT for a phone company.

15 THE COURT: And sir, before you were retired, what
16 type of work were you involved in.

17 PROSPECTIVE JUROR NO. 613: I was a petroleum
18 wholesaler.

19 THE COURT: Okay. All right, thank you, sir. Ms. --
20 is it Chelini?

21 PROSPECTIVE JUROR NO. 614: Chelini. I'm married,
22 estranged from my husband. I work at Sam's Town. Have I three
23 children. One son lives out of state. He's in the mechanic
24 business. I have two daughters that live in town. They're
25 both with children of their own.

1 THE COURT: Okay. Do they work outside the home,
2 ma'am?

3 PROSPECTIVE JUROR NO. 614: Yes.

4 THE COURT: And what do they do?

5 PROSPECTIVE JUROR NO. 614: My daughter works at an
6 auction. She's a supervisor at dealer registration. And my
7 other daughter works for a company in town, but looking for
8 (indiscernible).

9 THE COURT: Like some type of security work or --

10 PROSPECTIVE JUROR NO. 614: Yes, sort of like,
11 um-h'm.

12 THE COURT: Okay. All right, thank you. Mr.
13 Ferguson.

14 PROSPECTIVE JUROR NO. 616: I own my own company.
15 It's a air conditioning, plumbing and construction company. I
16 have two children. I am married, and my wife sells time
17 shares.

18 THE COURT: And the children, are they of working age
19 or --

20 PROSPECTIVE JUROR NO. 616: I wish. No, 10 and 9.

21 THE COURT: All right, thank you, sir. Mr. Williams.

22 PROSPECTIVE JUROR NO. 618: I am a full-time law
23 student at the UNLV Boyd School of Law right now. I'm engaged,
24 and my fiance works at the State, and she works for the
25 Division of Children and Family Services as a supervisor of a

1 unit that deals with children in foster care that have severe
2 emotional disturbances.

3 THE COURT: Do you have any children, sir?

4 PROSPECTIVE JUROR NO. 618: I do not.

5 THE COURT: All right, thank you, sir. Mr. -- is it
6 Pramshafer?

7 PROSPECTIVE JUROR NO. 620: Yes. I'm in the sales
8 and marketing department at the Tropicana Hotel. My wife is a
9 fitness instructor. We have two kids, 14-year-old son and an
10 11-year-old daughter.

11 THE COURT: Thank you, sir. Ms. Romero.

12 PROSPECTIVE JUROR NO. 622: I -- I'm semi-retired. I
13 work part time in real estate investing. I have two sons. One
14 is a mortgage broker. One owns a medical supply. And I am not
15 married.

16 THE COURT: All right, thank you. Ma'am. Ms. -- is
17 it Mirolock?

18 PROSPECTIVE JUROR NO. 626: That's correct. Okay,
19 I'm retired, although I do occasionally work through Manpower.
20 I was supposed to start a job tomorrow. I'm married. My
21 husband is retired, and I have one son, he's 40 years old and
22 he works for NDOT.

23 THE COURT: Okay. And did your husband do before he
24 was retired?

25 PROSPECTIVE JUROR NO. 626: He was -- his last job

1 was at Bloomingdale's.

2 THE COURT: Okay, like sales person or --

3 PROSPECTIVE JUROR NO. 626: I don't remember the
4 title, but it was just to help the sales, retail.

5 THE COURT: Okay. And what did you do before you
6 retired, ma'am?

7 PROSPECTIVE JUROR NO. 626: I was 25 years at
8 Caesars. My last assignment was in the sales department.

9 THE COURT: All right, thank you, ma'am. Mr. -- is
10 it Livernash?

11 PROSPECTIVE JUROR NO. 633: Yes. I'm regional sales
12 manager for Suchef (phonetic) plumbing products out of Kansas
13 City. My wife is a teacher's assistant. My oldest son is a
14 sales representative. They have -- my second son is a air
15 traffic controller. My daughter is a 911 dispatcher out of
16 Washington State. And then I have twin boys at Green Valley
17 High School.

18 THE COURT: All right, thank you, sir. Ms. Salinas.

19 PROSPECTIVE JUROR NO. 649: I do medical collections.
20 I'm a widow. I have no children.

21 THE COURT: Thank you, ma'am. Ms. Fraley.

22 PROSPECTIVE JUROR NO. 654: Um-h'm. I'm
23 self-employed in mortgage lending, and my husband is
24 self-employed fabricator for race cars, and we have no
25 children.

1 THE COURT: All right, thank you, ma'am. Ms. Dalo.

2 PROSPECTIVE JUROR NO. 655: Yes. I work at Target in
3 retail. I have five children; 15, 13, 8, 3 and 1. And my
4 fiance is currently unemployed.

5 THE COURT: All right, thank you, ma'am. Mr. Snyder.

6 PROSPECTIVE JUROR NO. 656: I'm a truck driver. I
7 work for Star Nursery. I'm what they call on-call basis. My
8 wife, she (indiscernible) sales associate for Wal-Mart. And we
9 have a 22-year-old son. Right now he works for the Clark
10 County School District as a custodian, and he also is going
11 through the Clark County fire training academy. He also is
12 going through college.

13 THE COURT: All right. Great, thank you, sir. Mrs.
14 Murrieta. Is it Murrieta?

15 PROSPECTIVE JUROR NO. 663: Yes. I work in an
16 opthamology office as an office assistant. I'm also attending
17 school (indiscernible) and we have two children ages 5 and 1.

18 THE COURT: All right, thank you, ma'am. Mr. -- is
19 it McCaldin.

20 PROSPECTIVE JUROR NO. 668: McCaldin. Unemployed,
21 single, no kids.

22 THE COURT: Okay. When you are working, what type of
23 work do you perform, sir?

24 PROSPECTIVE JUROR NO. 668: I've had a million jobs.

25 THE COURT: Okay. Any particular field or area?

1 PROSPECTIVE JUROR NO. 668: I've done work with fence
2 contractors. I've been -- I mean, I've done a little of
3 everything.

4 THE COURT: All right. All right, thank you, sir.
5 Ms. Hunter.

6 PROSPECTIVE JUROR NO. 672: (Indiscernible).

7 THE COURT: Okay.

8 PROSPECTIVE JUROR NO. 672: I have five children.
9 Three of them are married, and they all have jobs.

10 THE COURT: What type of work do they do?

11 PROSPECTIVE JUROR NO. 672: My oldest is 32 and he is
12 single and having fun. He's a river guide during the summer
13 and works at (indiscernible) resort in winter. And then I have
14 a daughter who's a doctor's office receptionist. I have a --
15 well, I have a daughter that's a stay-at-home mom. A son that
16 works for a hospital in South Carolina. And an a daughter
17 that's a hairdresser in Utah.

18 THE COURT: And are you --

19 PROSPECTIVE JUROR NO. 672: And I am. I'm married.
20 My husband is a service manager for a fire safety equipment
21 company here in Vegas, and I am a pre-schoolteacher.

22 THE COURT: All right, thank you, ma'am. Ms. -- is
23 it Pinillos?

24 PROSPECTIVE JUROR NO. 674: Pinillos.

25 THE COURT: Pinillos?

1 PROSPECTIVE JUROR NO. 674: Um-h'm. Legal secretary,
2 divorced. What was the other one?

3 THE COURT: Okay, do you have any children?

4 PROSPECTIVE JUROR NO. 674: Oh, no children.

5 THE COURT: Okay, thank you. Ms. -- is it Rozek?

6 PROSPECTIVE JUROR NO. 679: Yeah. (Indiscernible).

7 THE COURT: I'm sorry, you're what?

8 PROSPECTIVE JUROR NO. 679: Urban Outfitters inside
9 Planet Hollywood. And I don't have any kids.

10 THE COURT: All right. And not married or
11 significant other?

12 PROSPECTIVE JUROR NO. 679: Boyfriend.

13 THE COURT: Okay. And what does he do?

14 PROSPECTIVE JUROR NO. 679: He works inside -- he
15 works in a coffee shop inside the Palms Casino.

16 THE COURT: All right, thank you. Mr. Saunders.

17 PROSPECTIVE JUROR NO. 680: Divorced, two children.
18 One 19, military. One 17, still in high school. I'm a union
19 plumber working through 525 Plumber and Pipefitters Union here
20 in Las Vegas.

21 THE COURT: Okay. I'm sorry, did you say -- are
22 you --

23 PROSPECTIVE JUROR NO. 680: I'm a union plumber here
24 in Las Vegas.

25 THE COURT: No, are you married? Do you have a

1 significant other?

2 PROSPECTIVE JUROR NO. 680: Divorced.

3 THE COURT: Okay. Thank you, sir. Mr. Vasquez.

4 PROSPECTIVE JUROR NO. 685: I'm an auto technician.

5 I'm single and no kids.

6 THE COURT: All right, thank you, sir. Mr. Obata.

7 PROSPECTIVE JUROR NO. 687: I work for Albertsons.

8 I'm a store director. I am divorced. My ex-wife is actually
9 going to nursing school right now. My significant other, she
10 works for the Traberdy Kennedy (phonetic) family, and I have
11 four kids; 16, 13, 11 and 7. And I watch them on Thursdays.
12 And then I have two step-children; 6 -- 18 and 11.

13 THE COURT: All right, thank you, sir. Mr. McFate.

14 PROSPECTIVE JUROR NO. 690: McFate.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 690: I work in retail sales.

17 I'm single, no kids.

18 THE COURT: All right, thank you, sir. Mr. Clark.

19 PROSPECTIVE JUROR NO. 698: I'm unemployed, but my
20 girl, she have a job at Crispy Cream, and I have a
21 three-week-old son.

22 THE COURT: Sir, when you working, what type of work
23 do you normally do?

24 PROSPECTIVE JUROR NO. 698: Moving. Like Starving
25 Students. I was working for Starving Students, and I move

1 people houses.

2 THE COURT: Okay. All right, thank you, sir. Is it
3 Leabres?

4 PROSPECTIVE JUROR NO. 700: Yes. My husband and I
5 are both retired. We do came out of retirement and both of us
6 hold part-time jobs right now.

7 THE COURT: Both part-time what?

8 PROSPECTIVE JUROR NO. 700: Part-time jobs.

9 THE COURT: What type of jobs?

10 PROSPECTIVE JUROR NO. 700: My husband used to be a
11 civil engineer for the city of San Jose in California. But now
12 he works as a courier dispatcher for Quest Diagnostics.

13 THE COURT: Okay. And --

14 PROSPECTIVE JUROR NO. 700: And I used to be a
15 medical technologist for Stanford University where I retired,
16 and I was -- and now I work as a host person cashier for Red
17 Rock Casino as part time.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 700: And I have one son who's
20 27, and he's a licensed broker for Nevada and California.

21 THE COURT: All right, thank you, ma'am. Mr. -- is
22 it Villasenor? Did I pronounce that correct?

23 PROSPECTIVE JUROR NO. 708: Yes.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR NO. 708: I'm a test engineer,

1 married. My wife doesn't work, and I have three children.

2 THE COURT: Okay. How old are the children, sir?

3 PROSPECTIVE JUROR NO. 708: Youngest is 3. Oldest is
4 15.

5 THE COURT: Okay. You said a test engineer. What
6 type of work? I mean specifically.

7 PROSPECTIVE JUROR NO. 708: I'm in the gaming
8 industry. I test slot machines.

9 THE COURT: Okay. All right, thank you, sir. Mr.
10 Morales. Oh, Mr. Morales, you have the language problem; is
11 that correct?

12 PROSPECTIVE JUROR NO. 710: Reinaldo Morales.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR NO. 710: No.

15 THE COURT: All right, sir, we'll mover on. Why
16 don't you hand the microphone to the next individual. Is it
17 Mr. --

18 PROSPECTIVE JUROR NO. 716: Qneibi.

19 THE COURT: How do you pronounce it?

20 PROSPECTIVE JUROR NO. 716: Qneibi.

21 THE COURT: Sir, you can sit down. Thank you.

22 PROSPECTIVE JUROR NO. 716: Qneibi. I'm married.
23 We're both unemployed. No kids.

24 THE COURT: Okay. What type of work do you normally
25 do, sir?

1 PROSPECTIVE JUROR NO. 716: I used to be a manager
2 for car rental agency, Alamo Nationals.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 716: And after that I was a
5 sales also in car rental industries.

6 THE COURT: And how about your wife, sir?

7 PROSPECTIVE JUROR NO. 716: She's unemployed right
8 now. She's a nurse.

9 THE COURT: Okay. Thank you, sir. Mr. Richardson.

10 PROSPECTIVE JUROR NO. 717: I work for Southwest
11 Airlines. I'm married. My wife is a manicurist. I have two
12 children; a 28-year-old daughter who's an RN. And a
13 21-year-old son who is an electrician.

14 THE COURT: All right, thank you, sir. Ms. Moreno.

15 PROSPECTIVE JUROR NO. 719: Yes. Married. I'm a
16 cardiac sonographer. My husband's a policeman. I have three
17 children; 11, 8 and 7.

18 THE COURT: Thank you, ma'am. Mr. Wilk.

19 PROSPECTIVE JUROR NO. 727: I'm a full-time student.
20 I work for Light Group as a promoter and a graphic designer,
21 and I'm single, no kids.

22 THE COURT: Thank you, sir. Ms. -- how do you
23 pronounce that?

24 PROSPECTIVE JUROR NO. 728: Linda Tijerina.

25 THE COURT: Thank you.

1 PROSPECTIVE JUROR NO. 728: I'm married. I'm not
2 working at the moment. My mother just passed away. I
3 previously worked at Safe Nest here, a shelter for abused women
4 and children here in Las Vegas, Nevada. And I am married. My
5 husband is not working, and I have two children. One is a
6 full-time student in southern California. The other one is 26
7 years old and graced me with two twins about three months ago.

8 THE COURT: All right, thank you, ma'am. Ms. Little.

9 PROSPECTIVE JUROR NO. 729: Yes, I'm married. I'm a
10 department manager at Wal-Mart and have one daughter. She's
11 24.

12 THE COURT: What does your husband do?

13 PROSPECTIVE JUROR NO. 29: He just recently started
14 at the (indiscernible) as a engineer.

15 THE COURT: All right. Thank you, ma'am. Ms.
16 Bertles.

17 PROSPECTIVE JUROR NO. 730: I'm self-employed massage
18 therapist, divorced. My 20-year-old son is an unemployed
19 part-time student.

20 THE COURT: All right, thank you, ma'am. Ms.
21 Sizemore.

22 PROSPECTIVE JUROR NO. 736: I'm married. I work with
23 Boyd Gaming Corporate Office, the IT finance department. My
24 husband works at the Stratosphere, accountant manager. Two
25 adult sons. One's a cable installer and a buser.

1 THE COURT: All right, thank you, ma'am. Ms.
2 Trenkler.

3 PROSPECTIVE JUROR NO. 743: Hi. I'm married. I work
4 for Travelers Insurance as a case manager. My husband is a
5 full-time student, nursing student. We have two children; 18
6 and 5.

7 THE COURT: All right, thank you, ma'am. Ms. Bundy.

8 PROSPECTIVE JUROR NO. 748: I'm an escrow assistant
9 at a title company, and I have two kids; 9 and 13.

10 THE COURT: All right, are you married or have a
11 significant other?

12 PROSPECTIVE JUROR NO. 749: Nope, single.

13 THE COURT: All right, thank you, ma'am. Mr. Derkas.

14 PROSPECTIVE JUROR NO. 750: Yes, pit manager at MGM.
15 Also own a small business, heating and air conditioning.
16 Married. Wife doesn't work. Works -- I mean, takes care of
17 kids. Two kids.

18 THE COURT: Got to be careful.

19 PROSPECTIVE JUROR NO. 750: Better make that clear.
20 Works very hard. 15-year-old son. 11-year-old daughter.

21 THE COURT: All right, thank you, sir. Ms. Horton.

22 PROSPECTIVE JUROR NO. 761: I work for the City of
23 Henderson with kids, and I'm also a dental assistant and
24 single, no kids.

25 THE COURT: All right, thank you, ma'am. Is it

1 Silva?

2 PROSPECTIVE JUROR NO. 765: Silva.

3 THE COURT: Silva.

4 PROSPECTIVE JUROR NO. 765: Yes, I'm also married,
5 two kids. Both are a student; 14 and 15. And I do enrollment
6 claim with the insurance company. My husband working at
7 Mandalay Bay.

8 THE COURT: Your husband does what?

9 PROSPECTIVE JUROR NO. 765: Working at Mandalay Bay.

10 THE COURT: All right, thank you, ma'am. Mr. -- was
11 it Brunelle?

12 PROSPECTIVE JUROR NO. 771: Yes, sir. I'm married,
13 no kids, and retired.

14 THE COURT: Okay, what did you do before you retired?

15 PROSPECTIVE JUROR NO. 771: I was a California
16 highway patrol officer.

17 THE COURT: Okay. And what did your wife do?

18 PROSPECTIVE JUROR NO. 771: Lots of things. She was
19 a teacher for awhile. She did taxes. She was in the Army
20 National Guard. She was in the Air Force.

21 THE COURT: All right, thank you, sir. Mr. -- is it
22 Hocevar?

23 PROSPECTIVE JUROR NO. 775: Hocevar.

24 THE COURT: Hocevar.

25 PROSPECTIVE JUROR NO. 775: Yeah. I am a heavy

1 equipment operator. My girlfriend is a part-time student at
2 University of Phoenix, criminal justice program. She's also a
3 server. No kids.

4 THE COURT: All right, thank you, sir. Mr. Ruiz.

5 PROSPECTIVE JUROR NO. 777: Yes. I am married, and I
6 work as a registration rep at a hospital. I have a
7 three-year-old little girl.

8 THE COURT: All right. And what does your wife do,
9 sir?

10 PROSPECTIVE JUROR NO. 777: No, she's a stay-at-home
11 mom, and she's a former teacher, but currently staying home
12 right now.

13 THE COURT: All right, thank you, sir. Ms. Shin.

14 PROSPECTIVE JUROR NO. 781: I am married. Both my
15 husband and I --

16 THE COURT: Let me give --

17 PROSPECTIVE JUROR NO. 781: I'm married. My husband
18 and I are both retired, and we don't have children.

19 THE COURT: Okay. And --

20 PROSPECTIVE JUROR NO. 781: And he has three from his
21 previous marriage.

22 THE COURT: Okay. Let's start with you, ma'am.
23 Before you retired, what type of work were you involved?

24 PROSPECTIVE JUROR NO. 781: I was working for a
25 jewelry company.

1 THE COURT: All right. And how about your husband?

2 PROSPECTIVE JUROR NO. 781: He was a hotel engineer.

3 THE COURT: Okay, thank you, ma'am. Ms. Whalen.

4 PROSPECTIVE JUROR NO. 785: I'm single, and I work
5 for a promotions company for the night clubs.

6 THE COURT: Okay. You have any children, ma'am?

7 PROSPECTIVE JUROR NO. 785: No.

8 THE COURT: All right, thank you. Is it Ms.
9 Murakowski?

10 PROSPECTIVE JUROR NO. 788: Yes. I'm a retired art
11 teacher, and single and no children.

12 THE COURT: Thank you, ma'am. Ms. Congleton.

13 PROSPECTIVE JUROR NO. 789: I'm married. I'm working
14 as a sales assistant manager at the retail store, and my
15 husband's a chef, no kids.

16 THE COURT: All right, thank you, ma'am. Mr.
17 Linford.

18 PROSPECTIVE JUROR NO. 797: I'm married. I am a --
19 I'm a shop manager for a construction company here in town, a
20 part-time student, and I volunteer with the boy scouts. My
21 wife is also volunteers of the boy scouts. She's a
22 stay-at-home mom. We have two kids. Two boys; 3 and 1, and
23 she also left teaching here in Clark County to work as a
24 creative director for a scrapbook company.

25 THE COURT: All right, thank you, sir.

1 PROSPECTIVE JUROR NO. 797: You're welcome.

2 THE COURT: Mr. Ezell.

3 PROSPECTIVE JUROR NO. 798: Yes. I'm married, I have
4 two children ages 2 and 4 months. My wife is a stay-at-home
5 mom, and I'm an elevator mechanic.

6 THE COURT: All right, thank you, sir. Ms. Swick.

7 PROSPECTIVE JUROR NO. 803: Cage shift manager at New
8 York New York.

9 THE COURT: Can you pick that up a little bit higher.

10 PROSPECTIVE JUROR NO. 803: Cage shift manager at New
11 York, New York. Single, no kids.

12 THE COURT: All right, thank you, ma'am. Ms.
13 Fisher.

14 PROSPECTIVE JUROR NO. 805: I'm married. I work for
15 Aetna. My husband works for the Wynn, and we have a child
16 that's almost five.

17 THE COURT: Thank you, ma'am. Ms. -- is it Gretner?

18 PROSPECTIVE JUROR NO. 808: Gretter.

19 THE COURT: Gretter, I'm sorry.

20 PROSPECTIVE JUROR NO. 808: I'm unemployed. I'm a
21 part-time student. I have a boyfriend who works at Home Depo
22 and I have no kids.

23 THE COURT: All right, thank you, ma'am. Ms. Carns.

24 PROSPECTIVE JUROR NO. 810: I'm accounts payable
25 supervisor at the Sun Coast (phonetic). My husband works at

1 the M, and we have no kids.

2 THE COURT: All right, thank you, ma'am. Mr. Fraser.

3 PROSPECTIVE JUROR NO. 813: I own a central
4 fabrication business in town. My wife's an appliance
5 salesperson, and my son's 18 years old, high school kid.

6 THE COURT: All right, thank you, sir. Ladies and
7 gentlemen, I have completed my general questions for you, and
8 at this point I turn the questioning over to the attorneys.
9 We're about five minutes to noon. I think you've been here
10 since 7:30 this morning; is that right or 7:30 or 8:00, which I
11 don't know why they have you call in so early when you don't
12 have to be in the courtroom until 10:00, but like I said, I was
13 there with you as well, so I understand that.

14 What we're going to do is we're going to break for
15 our lunch hour. We're going to come back at 1:00. And at that
16 time the attorneys I'm assuming will have some follow-up
17 questions to the questions I asked, and they may have some
18 additional questions for you pretty much in the same format.

19 Now, although you have not been selected as a juror
20 in this case, I'm going to read you an admonishment as if you
21 were a juror. And please listen very carefully to this because
22 it's very important that you follow this admonishment to the
23 letter.

24 During this recess it is your duty not to converse
25 among yourselves or with anyone else on any subject connected

1 with this trial or to read, watch or listen to any report over
2 commentary on the trial by any person connected with the trial
3 or by any medium of information, including without limitation,
4 newspaper, television, radio or the Internet.

5 And you're not to form or express an opinion on any
6 subject connected with this case until this matter is submitted
7 to the jury panel for deliberations.

8 So we will see you back at 1:00. Please wait outside
9 the courtroom. The marshal will escort you in, and I think the
10 marshal will tell you please try to remember about where you're
11 seated. You'll have the same chair. Counsel approach with
12 their notes.

13 (Court recessed at 11:55 a.m. until 1:07 p.m.)

14 (Outside the presence of the prospective jurors)

15 THE COURT: All right, on the record.

16 THE MARSHAL: How long's it going to be?

17 MR. PIKE: It will be fairly short.

18 MR. SMITH: Six minutes.

19 THE COURT: We're going to stop as soon as our
20 technician is ready.

21 MR. PIKE: Your Honor, in an effort to save time,
22 I've gone through the proposed exhibits -- or photographs that
23 the State has. I have -- or I don't have objections to almost
24 all of them. And the ones that I do have objections to are a
25 cumulative objection.

1 There are a number of photographs that contain a
2 non-life threatening bruises, and we do not know how old they
3 are. We've questioned the ME about those at the time of the
4 preliminary hearing, who indicated that because the deceased
5 had cirrhosis of the liver, that she would bruise very easily
6 and that it didn't attribute to any of these -- the bruises
7 that they found in relationship to the cause of death in this,
8 and I don't believe they can set a time frame as to how fresh
9 or how old they were or how they were incurred.

10 And so for that reason, I object to the photographs
11 that show bruises. There is a picture of -- there are some
12 autopsy pictures that just are kind of inflammatory of the body
13 lying there. The cause of death is simply a cut right here.
14 There is an autopsy photograph that shows that wound cleaned
15 up. They do have a picture of it that shows the wound before
16 it was cleaned and swabbed. That is okay.

17 But other than that, that's just the objection that I
18 have to those pictures that contain the bruises and would be
19 unduly inflammatory to the jury.

20 THE COURT: Do you know which numbers they are?

21 MR. PIKE: No, she was marking them at the time.

22 THE COURT: Okay, because I can't really address that
23 until I see them. During the next break, if both counsel can
24 make --

25 MR. PIKE: Yeah, you can just look at them. But

1 that's the only objection and we -- to save time, we we're
2 trying to accommodate.

3 THE COURT: No, I appreciate that.

4 (Prospective jurors reconvene at 1:10 p.m.)

5 (In the presence of the prospective jurors)

6 THE MARSHAL: Officers and members of the court,
7 Department 17 potential jurors. You may be seated, ladies and
8 gentlemen. Let's check to make sure all cell phones are turned
9 off, please. Probably should do a roll call.

10 THE CLERK: Justin Dettre.

11 PROSPECTIVE JUROR NO. 605: Here.

12 THE CLERK: Ronda Andrews-Rosa.

13 PROSPECTIVE JUROR NO. 606: Here.

14 THE CLERK: Jody Montonya.

15 PROSPECTIVE JUROR NO. 609: Here.

16 THE CLERK: James Eral.

17 PROSPECTIVE JUROR NO. 613: Here.

18 THE CLERK: Judy Chelini.

19 PROSPECTIVE JUROR NO. 614: Here.

20 THE CLERK: Daniel Ferguson.

21 PROSPECTIVE JUROR NO. 616: Here.

22 THE CLERK: Paul Williams.

23 PROSPECTIVE JUROR NO. 618: Here.

24 THE CLERK: Michael Pramshafer.

25 PROSPECTIVE JUROR NO. 620: Here.

1 THE CLERK: Nancy Mirolock.
2 PROSPECTIVE JUROR NO. 626: Here.
3 THE CLERK: Kirk Livernash.
4 PROSPECTIVE JUROR NO. 633: Here.
5 THE CLERK: Dawn Fraley.
6 PROSPECTIVE JUROR NO. 654: Here.
7 THE CLERK: Christy Dalo.
8 PROSPECTIVE JUROR NO. 655: Here.
9 THE CLERK: Brian Snyder.
10 PROSPECTIVE JUROR NO. 656: Here.
11 THE CLERK: Araceli Murrieta.
12 PROSPECTIVE JUROR NO. 653: Here.
13 THE CLERK: James McCaldin.
14 PROSPECTIVE JUROR NO. 668: Here.
15 THE CLERK: Terri Hunter.
16 PROSPECTIVE JUROR NO. 672: Here.
17 THE CLERK: Marie Pinillos.
18 PROSPECTIVE JUROR NO. 674: Here.
19 THE CLERK: Diamond Rozek.
20 PROSPECTIVE JUROR NO. 679: Here.
21 THE CLERK: John Saunders.
22 PROSPECTIVE JUROR NO. 680: Here.
23 THE CLERK: Jose Vasquez.
24 PROSPECTIVE JUROR NO. 685: Here.
25 THE CLERK: Harley McFate.

1 PROSPECTIVE JUROR NO. 690: Here.

2 THE CLERK: Robert Clark.

3 PROSPECTIVE JUROR NO. 698: Here.

4 THE CLERK: Cyrina Leabres.

5 PROSPECTIVE JUROR NO. 700: Here.

6 THE CLERK: Martin Villasenor.

7 PROSPECTIVE JUROR NO. 708: Here.

8 THE CLERK: Rawhi --

9 PROSPECTIVE JUROR NO. 716: Here.

10 THE CLERK: Oh, thank you. Robert Richardson.

11 PROSPECTIVE JUROR NO. 717: Here.

12 THE CLERK: Giselle Moreno.

13 PROSPECTIVE JUROR NO. 719: Here.

14 THE CLERK: Robert Wilk.

15 PROSPECTIVE JUROR NO. 727: Here.

16 THE CLERK: Linda Tijerina.

17 PROSPECTIVE JUROR NO. 728: Here.

18 THE CLERK: Barbara Little.

19 PROSPECTIVE JUROR NO. 729: Here.

20 THE CLERK: Catherine Bertles.

21 PROSPECTIVE JUROR NO. 730: Here.

22 THE CLERK: Donna Sizemore.

23 PROSPECTIVE JUROR NO. 736: Here.

24 THE CLERK: Megan Trenkler.

25 PROSPECTIVE JUROR NO. 743: Here.

1 THE CLERK: Carrie Bundy.
2 PROSPECTIVE JUROR NO. 748: Here.
3 THE CLERK: Joseph Derkas.
4 PROSPECTIVE JUROR NO. 750: Here.
5 THE CLERK: Chelsey Horton.
6 PROSPECTIVE JUROR NO. 761: Here.
7 THE CLERK: Libian Silva.
8 PROSPECTIVE JUROR NO. 765: Here.
9 THE CLERK: David Brunelle.
10 PROSPECTIVE JUROR NO. 771: Here.
11 THE CLERK: James Hocevar.
12 PROSPECTIVE JUROR NO. 775: Here.
13 THE CLERK: Ismael Ruiz.
14 PROSPECTIVE JUROR NO. 777: Here.
15 THE CLERK: Betty Shin.
16 PROSPECTIVE JUROR NO. 781: Here.
17 THE CLERK: Ashleigh Whalen.
18 PROSPECTIVE JUROR NO. 785: Here.
19 THE CLERK: Carol Murakowski.
20 PROSPECTIVE JUROR NO. 788: Here.
21 THE CLERK: Juliette Congleton.
22 PROSPECTIVE JUROR NO. 789: Here.
23 THE CLERK: Bryan Linfoord.
24 PROSPECTIVE JUROR NO. 797: Here.
25 THE CLERK: Calvin Ezell.

1 PROSPECTIVE JUROR NO. 798: Here.

2 THE CLERK: Deborah Swick.

3 PROSPECTIVE JUROR NO. 803: Here.

4 THE CLERK: Sigrid Fisher.

5 PROSPECTIVE JUROR NO. 805: Here.

6 THE CLERK: Kressenia Gretter.

7 PROSPECTIVE JUROR NO. 808: Here.

8 THE CLERK: Margaret Carns.

9 PROSPECTIVE JUROR NO. 810: Here.

10 THE CLERK: And James Fraser.

11 PROSPECTIVE JUROR NO. 813: Here.

12 THE COURT: All right, thank you. Ladies and
13 gentlemen, now as I mentioned before, I've completed by general
14 questioning and now the attorneys will take their turns. Mr.
15 Smith or Ms. Graham?

16 MR. SMITH: Thank you, Judge. Judge, will I ask the
17 panel as a whole in your court or one by one?

18 THE COURT: Yeah, you can do that, or just focus in
19 on individuals, or do both.

20 MR. SMITH: Okay. Ladies and gentlemen, I appreciate
21 your patience throughout this process, and certainly I it tell
22 you on behalf of the State and the defendant that we certainly
23 appreciate your willingness to be here.

24 I just have about five or six questions for
25 everybody, and I'm just going to ask the panel as whole and

1 kind of mimic what the judge did. So if you have something to
2 offer in regards to my questions, just raise your hand and I'll
3 get along to you.

4 The first thing I want to know is if anyone here has
5 had a negative experience with law enforcement, besides things
6 that you've already divulged. Now, let me qualify that. I
7 don't mean a traffic ticket. I think we can all agree that
8 that's a negative experience.

9 What I mean, folks is if you've come into contact
10 with an officer of the law, and they were mean or rude or nasty
11 to you or did something that might have left a bitter taste in
12 your mouth from that point forward. Is there anyone here with
13 any experience like that? Okay, good. Oh, we do? I remember
14 you actually. What's your -- can you identify your badge
15 number for me.

16 PROSPECTIVE JUROR NO. 727: I'm 727.

17 MR. SMITH: 727.

18 THE MARSHAL: Can you have him stand up, please so --

19 MR. SMITH: Can you stand up for us, yeah. 727, Mr.
20 Wilk. Right?

21 PROSPECTIVE JUROR NO. 727: Yes.

22 MR. SMITH: Okay.

23 PROSPECTIVE JUROR NO. 727: Well, I used to be -- I
24 skateboarded when I was younger, so I guess you could say I was
25 stereotype type thing where I would like, kid with the

1 stateboard, and you'd always hear about kids always getting
2 harassed by cops.

3 MR. SMITH: Sure.

4 PROSPECTIVE JUROR NO. 727: Okay, we'll just go along
5 with the lines of that.

6 MR. SMITH: Okay.

7 PROSPECTIVE JUROR NO. 727: Or I'm walking down the
8 street or even more recently. Well, I don't skate anymore, but
9 sometimes walking downtown, I live in the area, just always
10 kind of looking at me or just bothering or like even when I
11 walk home I get followed sometimes, and just really
12 (indiscernible).

13 MR. SMITH: Okay. When was the last time you would
14 say you had a negative experience with law enforcement like
15 that.

16 PROSPECTIVE JUROR NO. 727: Well, like early last
17 year -- like last year like in November, December, just getting
18 constantly followed home.

19 MR. SMITH: Okay. You --

20 PROSPECTIVE JUROR NO. 727: From going from when I
21 was younger just like a kid walking around with a skateboard,
22 what are you doing, stop right there, all the time being
23 checking me or something.

24 MR. SMITH: Did it ever progress into anything where
25 they may have detained you or put you in handcuffs or anything

1 like that?

2 PROSPECTIVE JUROR NO. 727: Well, when I was with a
3 group of friends, yeah, they were saying well, it was for our
4 safety, but we were just sitting there for like two hours. Of
5 course, that was when we were younger.

6 MR. SMITH: Okay. You realize that there's going to
7 be a lot of law enforcement officers testifying in this trial?

8 PROSPECTIVE JUROR NO. 727: Yes.

9 MR. SMITH: Would you hold any of that stuff against
10 these officers?

11 PROSPECTIVE JUROR NO. 727: Well, most of that stuff
12 was when I was younger.

13 MR. SMITH: Okay.

14 PROSPECTIVE JUROR NO. 727: And I kind of understand
15 that.

16 MR. SMITH: Okay.

17 PROSPECTIVE JUROR NO. 727: I read about it trying to
18 see what their reason about it. These guys, I wouldn't hold it
19 against them.

20 MR. SMITH: And you understand the defendant isn't
21 charged with riding a skateboard?

22 PROSPECTIVE JUROR NO. 727: No, he's definitely not.

23 MR. SMITH: Okay. All right, thank you. Anyone
24 else? Now, folks, this is a murder trial, but it's kind of
25 unique in that it's not a stranger murder. It's a domestic

1 violence related murder. Meaning that the defendant and victim
2 (indiscernible) were in a domestic relationship.

3 Because of that, we'd like to know if there's anyone
4 here who's been a victim of or a suspect of domestic violence
5 or if you had a friend or closely family member that's been
6 either a victim of or a suspect of domestic violence? Yes,
7 ma'am, what's your badge number? Can you stand for us.

8 PROSPECTIVE JUROR NO. 679: 679.

9 MR. SMITH: Okay.

10 PROSPECTIVE JUROR NO. 679: Just my mother was a
11 victim (indiscernible) my father.

12 MR. SMITH: Okay. Are your mother and father still
13 together?

14 PROSPECTIVE JUROR NO. 679: (Indiscernible).

15 MR. SMITH: How long ago was this?

16 PROSPECTIVE JUROR NO. 679: (Indiscernible).

17 MR. SMITH: Okay.

18 MS. GRAHAM: I can't hear the answer.

19 MR. SMITH: 18 years ago she said.

20 MS. GRAHAM: Okay.

21 MR. SMITH: Okay, thank you. Actually, I do have an
22 a couple of questions for you. Did law enforcement ever get
23 involved?

24 PROSPECTIVE JUROR NO. 679: I'm not sure.

25 MR. SMITH: Okay. All right. Thank you. Anyone

1 else? Okay, I'll start with the first row here, ma'am. What's
2 your badge number?

3 PROSPECTIVE JUROR NO. 626: 626.

4 MR. SMITH: 626.

5 PROSPECTIVE JUROR NO. 626: This was like over 30
6 years ago, so I don't know if it would qualify.

7 MR. SMITH: You don't know if what?

8 PROSPECTIVE JUROR NO. 626: It's over 30 years ago.

9 MR. SMITH: Okay. Was it you, or someone close to
10 you?

11 PROSPECTIVE JUROR NO. 626: My parents.

12 MR. SMITH: Okay. You were a little younger back
13 then?

14 PROSPECTIVE JUROR NO. 626: Yeah.

15 MR. SMITH: Okay.

16 PROSPECTIVE JUROR NO. 626: However, I was married
17 and had a baby.

18 MR. SMITH: I gotcha. Did law enforcement ever get
19 involved in.

20 PROSPECTIVE JUROR NO. 626: Yes, they did. They were
21 called.

22 MR. SMITH: Did anything -- you don't have to go into
23 exquisite detail, but did anything happen? Any charges get
24 pressed or anything like that?

25 PROSPECTIVE JUROR NO. 626: No.

1 MR. SMITH: Okay. And I think there was someone in
2 the back row. Yes, ma'am. What's your badge number first?

3 PROSPECTIVE JUROR NO. 606: Badge number 606.

4 MR. SMITH: Okay.

5 PROSPECTIVE JUROR NO. 606: My mother. My mother and
6 father.

7 MR. SMITH: Your mother and father had some DV
8 incidents?

9 PROSPECTIVE JUROR NO. 606: Oh, yeah. Yes.

10 MR. SMITH: Were they mutual or one sided?

11 PROSPECTIVE JUROR NO. 606: One sided.

12 MR. SMITH: Father to mother, or mother to father?

13 PROSPECTIVE JUROR NO. 606: Father to mother.

14 MR. SMITH: I'm just asking because I don't want to
15 make any presumptions. Did you ever personally witness any of
16 this?

17 PROSPECTIVE JUROR NO. 606: Yes.

18 MR. SMITH: Was law enforcement ever contacted?

19 PROSPECTIVE JUROR NO. 606: Every time.

20 MR. SMITH: Did it ever result in any charges being
21 filed against your father?

22 PROSPECTIVE JUROR NO. 606: No, because they told her
23 if she did that he could get released like in a day or two.

24 MR. SMITH: Okay. So is it suffice to say that your
25 mother never really pressed charges?

1 PROSPECTIVE JUROR NO. 606: No.

2 MR. SMITH: Okay. Thank you, ma'am. Anyone else in
3 this back row? How about over here in the gallery? Okay.

4 PROSPECTIVE JUROR NO. 717: 717. I had ex-coworker
5 (indiscernible).

6 MR. SMITH: You have an ex-coworker --

7 PROSPECTIVE JUROR NO. 717: (Indiscernible) somebody.

8 MR. SMITH: In jail for domestic violence?

9 PROSPECTIVE JUROR NO. 717: Yes.

10 MR. SMITH: Was it here in Clark County?

11 PROSPECTIVE JUROR NO. 717: Yeah.

12 MR. SMITH: And when you say jail, you mean at the
13 detention center or the prison?

14 PROSPECTIVE JUROR NO. 717: Indian Springs.

15 MR. SMITH: Okay. How well did you know him?

16 PROSPECTIVE JUROR NO. 717: Oh, we golfed once every
17 two or three months, and I did work with him.

18 MR. SMITH: Okay. Do you know who the alleged victim
19 was?

20 PROSPECTIVE JUROR NO. 717: Um-h'm, his wife.

21 MR. SMITH: Okay. Did he ever talk to you about any
22 of --

23 PROSPECTIVE JUROR NO. 717: No.

24 MR. SMITH: Okay. Do you think law enforcement
25 treated him fairly or do you think he got a bad wrap?

1 PROSPECTIVE JUROR NO. 717: No. He got what he got.

2 MR. SMITH: Okay. Let me ask you this, would you
3 hold anything that happened between you and your coworker
4 against either party in this case?

5 PROSPECTIVE JUROR NO. 717: No.

6 MR. SMITH: Okay. Thank you, sir. Anyone else back
7 in the gallery? Yes, ma'am.

8 PROSPECTIVE JUROR NO. 748: Carrie Bundy, 748.

9 MR. SMITH: 748. 748.

10 PROSPECTIVE JUROR NO. 748: Well, would stalking
11 count? It's not really domestic violence, but --

12 MR. SMITH: It -- okay, did someone stalk you?

13 PROSPECTIVE JUROR NO. 748: Yes.

14 MR. SMITH: Was it like a person you were in a
15 relationship with?

16 PROSPECTIVE JUROR NO. 748: I was four years ago.
17 But still, you know.

18 MR. SMITH: Yeah, that certainly counts. Okay, so
19 you were in a relationship with someone approximately four
20 years --

21 PROSPECTIVE JUROR NO. 748: Um-h'm.

22 MR. SMITH: -- and they are still currently stalking
23 you?

24 PROSPECTIVE JUROR NO. 748: Well, he won't leave me
25 alone.

1 MR. SMITH: Is there an active case against him?

2 PROSPECTIVE JUROR NO. 748: No, because every time I
3 threaten a restraining order he backs off just enough.

4 MR. SMITH: Okay. Have you contacted law enforcement
5 at all about this situation? No, ma'am?

6 PROSPECTIVE JUROR NO. 748: Um-um.

7 MR. SMITH: Okay. Is that it?

8 PROSPECTIVE JUROR NO. 748: Yeah.

9 MR. SMITH: Okay, thank you.

10 PROSPECTIVE JUROR NO. 748: Um-h'm.

11 MR. SMITH: Anyone else back in the gallery? Over on
12 this side? How about over here? Anyone in the first row? I
13 see you. Anyone in the first row? Yes, ma'am, you in the
14 second row.

15 PROSPECTIVE JUROR NO. 808: It was my mother.

16 MR. SMITH: Okay, what's your badge number for us?

17 PROSPECTIVE JUROR NO. 808: 808.

18 MR. SMITH: 808. I think you're going to have to
19 speak up a little louder so that microphone can get you. Okay,
20 you say it was your mother?

21 PROSPECTIVE JUROR NO. 808: Yes, it was.

22 MR. SMITH: Was she a victim or a suspect?

23 PROSPECTIVE JUROR NO. 808: She was a victim.

24 MR. SMITH: (Indiscernible).

25 PROSPECTIVE JUROR NO. 808: Well, it was -- now it's

1 my (indiscernible), but back then (indiscernible).

2 MR. SMITH: Okay. How long ago was it?

3 PROSPECTIVE JUROR NO. 808: I was in -- well, it was
4 a lot. It was a lot of years of it. I witnessed and saw and
5 watched all of it.

6 MR. SMITH: Okay. So -- an I don't mean to embarrass
7 you. I just want to make sure I understand everything that
8 you're saying. So you're saying that your now step-father and
9 your mother --

10 PROSPECTIVE JUROR NO. 808: He was on alcoholic at
11 the time.

12 MR. SMITH: Okay.

13 PROSPECTIVE JUROR NO. 808: So he would be in drunken
14 rages and take everything out on my mom. The cops would be
15 called.

16 MR. SMITH: Okay. What would happen when the cops
17 would show up?

18 PROSPECTIVE JUROR NO. 808: It was enough for -- he
19 wouldn't -- like I don't -- I don't remember like when the cops
20 would come. Like I would see the cops coming and stuff, but I
21 was always put in the room as a child.

22 MR. SMITH: Yeah.

23 PROSPECTIVE JUROR NO. 808: But I know that he never
24 went to jail on any of the counts for it.

25 MR. SMITH: Okay.

1 PROSPECTIVE JUROR NO. 808: And he never arrested and
2 nobody (indiscernible).

3 MR. SMITH: Okay.

4 PROSPECTIVE JUROR NO. 808: But he -- my mom left him
5 and he stopped drinking so then they got married.

6 MR. SMITH: Okay. So kind of a happy ending?

7 PROSPECTIVE JUROR NO. 808: Yeah.

8 MR. SMITH: Okay. Thank you, I appreciate that.

9 PROSPECTIVE JUROR NO. 808: You're welcome.

10 MR. SMITH: Anyone else back there? Okay, great.

11 Now, folks, this is obviously a serious case, and at the end of
12 this trial the State, we're going to ask you to make a very,
13 very important decision and that is whether or not we've met
14 our burden of proof to prove that the defendant is guilty of a
15 crime.

16 As it stands now he's innocent because everyone has
17 the presumption of innocence until, of course, the State
18 produces evidence to you that changes that and we show that
19 he's guilty. Some people for whatever reason, be it religious
20 or, you know, they can't make monumental decisions. Some
21 people can't sit in judgment of another person. And
22 fundamentally, folks, that's what we're asking you to do.

23 We're going to show you some evidence, and we're
24 going to ask you to make a judgment. Is there anyone here, for
25 whatever reason, that feels that they cannot sit in judgment of

1 another person and find them guilty of a crime so long as the
2 State proves its case to you today, excuse me, throughout the
3 course of this trial beyond a reasonable doubt. Okay.

4 Now let me ask the panel this. How many people watch
5 the show CSI? Not surprising. Okay. As you've heard, the
6 State's going to call some forensic scientists during this case
7 and some crime scene analysts. Now, I'm sure a lot of you
8 realize that some of the things that they can accomplish on
9 that show can't be duplicated in real life.

10 MS. PALM: Your Honor, may we approach?

11 THE COURT: All right.

12 (Off-record bench conference).

13 THE COURT: Go ahead, Mr. Smith.

14 MR. SMITH: Thank you. Just to make this easy, is
15 there anyone here who believes that everything that see on that
16 show CSI can be duplicated in real life?

17 PROSPECTIVE JUROR NO. 626: I'm not sure what you
18 mean by that.

19 MR. SMITH: Well --

20 PROSPECTIVE JUROR NO. 626: I mean, I think it can be
21 duplicated, but not in the time frame that they're duplicating
22 it in.

23 MR. SMITH: Well, sure, it's certainly not in a half
24 an hour segment with five or six commercials. I agree. Yeah,
25 I'll move on from that question. I think the vast majority, I

1 think you guys get my point.

2 Now, is there anyone here or does anyone here have a
3 close family member or anything like that that has been
4 diagnosed with depression? Okay. I don't -- I certainly don't
5 want you to go into any details, but what I'd like to know is
6 if -- actually, can you identify your badge number for us.

7 PROSPECTIVE JUROR NO. 674: Sure, absolutely. It is
8 674.

9 MR. SMITH: Okay. Have you had interactions with
10 this person?

11 PROSPECTIVE JUROR NO. 674: It would be me --

12 MR. SMITH: Okay.

13 PROSPECTIVE JUROR NO. 674: -- so yes.

14 MR. SMITH: Okay. As soon as the question left my
15 mouth, I was like watch, she's going to say yeah, it's me.
16 Okay. Judge, can we approach?

17 THE COURT: All right.

18 (Off-record bench conference).

19 MR. SMITH: At any point have you been prescribed any
20 medication for that?

21 PROSPECTIVE JUROR NO. 674: Yes. It's been several
22 years though, so.

23 MR. SMITH: Okay. All right. And I'm sorry, what
24 was your number again?

25 PROSPECTIVE JUROR NO. 674. It is 674.

1 MR. SMITH: Okay. Did you ever have any adverse
2 reactions to any medication that you were prescribed?

3 PROSPECTIVE JUROR NO. 674: No, I don't think so.

4 MR. SMITH: Okay. And you said it's been several
5 years, so --

6 PROSPECTIVE JUROR NO. 674: Um-h'm.

7 MR. SMITH: -- am I safe to assume that you've since
8 ceased taking those pills.

9 PROSPECTIVE JUROR NO. 674: Yes.

10 MR. SMITH: Okay. Thank you. Anyone else? Okay.
11 Yes, ma'am.

12 PROSPECTIVE JUROR NO. 679: 679.

13 MR. SMITH: Yes, ma'am.

14 PROSPECTIVE JUROR NO. 679: My mom.

15 MR. SMITH: Your mom was diagnosed with depression?

16 PROSPECTIVE JUROR NO. 679: Yeah. It was like four
17 to five years ago.

18 MR. SMITH: Okay. Was she on any medication?

19 PROSPECTIVE JUROR NO. 679: Yeah, she took Zoloft,
20 but (indiscernible) car accident.

21 MR. SMITH: Okay.

22 PROSPECTIVE JUROR NO. 679: (Indiscernible).

23 MR. SMITH: So did she have some adverse reactions to
24 it?

25 PROSPECTIVE JUROR NO. 679: I guess it was like it

1 made her like -- I guess it just made drowsy and she would like
2 pass out while she was driving.

3 MR. SMITH: Okay. Now, did you often have occasions
4 to observe her demeanor while she was on the medication?

5 PROSPECTIVE JUROR NO. 679: No, it didn't last long.

6 MR. SMITH: Okay. All right, thank you. This first
7 row. Yes, sir. Yes, ma'am, I'm sorry. I'll go in order.

8 PROSPECTIVE JUROR NO. 626: Okay, 626.

9 MR. SMITH: 626.

10 PROSPECTIVE JUROR NO. 626: My mother was. That was
11 back in the 70s.

12 MR. SMITH: So your mother was diagnosed with
13 depression back in the 70s? Was she placed on a regimen
14 prescription?

15 PROSPECTIVE JUROR NO. 626: Yes. She was
16 hospitalized for a short time.

17 MR. SMITH: Okay. How long would you say that
18 lasted?

19 PROSPECTIVE JUROR NO. 626: She -- it wasn't that
20 long. It was so long ago I'm trying to remember. I don't --
21 what, maybe two, three weeks.

22 MR. SMITH: Okay.

23 PROSPECTIVE JUROR NO. 626: I don't think it was -- I
24 don't think it was a month like.

25 MR. SMITH: Okay. And yes, sir, you --

1 PROSPECTIVE JUROR NO. 626: (Indiscernible).

2 MR. SMITH: I'm sorry go ahead, yes, ma'am.

3 PROSPECTIVE JUROR NO. 626: And I was also diagnosed
4 and took medication.

5 MR. SMITH: Okay. And how long were you on
6 medication for that?

7 PROSPECTIVE JUROR NO. 626: I think I probably took
8 it for about a month.

9 MR. SMITH: Okay. Thank you, ma'am. Yes, sir.

10 PROSPECTIVE JUROR NO. 633: 633.

11 MR. SMITH: Yes, sir.

12 PROSPECTIVE JUROR NO. 633: My wife is diagnosed with
13 the depression.

14 MR. SMITH: Okay.

15 PROSPECTIVE JUROR NO. 633: And anxiety, so I think
16 it's --

17 MR. SMITH: Got ya. Prescribed medication?

18 PROSPECTIVE JUROR NO. 633: Yes.

19 MR. SMITH: Is she currently on it?

20 PROSPECTIVE JUROR NO. 633: Yes.

21 MR. SMITH: How long has she been taking the
22 medication?

23 PROSPECTIVE JUROR NO. 633: Six, seven years.

24 MR. SMITH: Okay.

25 PROSPECTIVE JUROR NO. 633: It's more for the anxiety

1 than it is the depression.

2 MR. SMITH: Got ya. Have you had an ample
3 opportunity to kind of observe her demeanor while she was on
4 the medication.

5 PROSPECTIVE JUROR NO. 633: Yes.

6 MR. SMITH: Okay, good. Thank you, sir. Yes, ma'am.

7 PROSPECTIVE JUROR NO. 626: The anxiety counts. I
8 still take anxiety medication from time to time when the need
9 arises.

10 MR. SMITH: Okay. I'm going to get to you. Was
11 there anyone else in this first row? No, okay. Yes, sir.

12 PROSPECTIVE JUROR NO. 605: 605.

13 MR. SMITH: Okay.

14 PROSPECTIVE JUROR NO. 605: (Indiscernible).

15 MR. SMITH: Okay.

16 PROSPECTIVE JUROR NO. 605: I was diagnosed about
17 five years.

18 MR. SMITH: Okay.

19 PROSPECTIVE JUROR NO. 605: Took medication for about
20 a month.

21 MR. SMITH: Okay. Has it been a while since you've
22 been taking the medication yet?

23 PROSPECTIVE JUROR NO. 605: Yeah.

24 MR. SMITH: Okay, thank you. Yes. Was your -- okay.
25 Anyone else in this back row? Yes, sir, Mr. Williams?

1 PROSPECTIVE JUROR NO. 618: Paul Williams, 618.

2 MR. SMITH: Yes, sir.

3 PROSPECTIVE JUROR NO. 618: My mother and my adopted
4 brother were both diagnosed with depression.

5 MR. SMITH: Okay. Recently?

6 PROSPECTIVE JUROR NO. 618: They're both diagnosed
7 still.

8 MR. SMITH: Got ya.

9 PROSPECTIVE JUROR NO. 618: (Indiscernible) I'm still
10 there.

11 MR. SMITH: Got ya. Are they taking medication?

12 PROSPECTIVE JUROR NO. 618: They both are.

13 MR. SMITH: How long ago were they diagnosed?

14 PROSPECTIVE JUROR NO. 618: My mother 1997, I'll say.
15 And my brother goes back to the early 90s.

16 MR. SMITH: Okay. You've seen them on their
17 medication, interacted with them.

18 PROSPECTIVE JUROR NO. 618: I have is.

19 MR. SMITH: Okay. Thank you, sir. Anyone else back
20 here?

21 THE COURT: Mr. Smith, I think we had someone in the
22 front row.

23 MR. SMITH: (Indiscernible). Okay, yes, ma'am.

24 PROSPECTIVE JUROR NO. 672: 672.

25 MR. SMITH: 672.

1 PROSPECTIVE JUROR NO. 672: Um-h'm.

2 MR. SMITH: Okay, Ms. Hunter.

3 PROSPECTIVE JUROR NO. 672: Yes. I was diagnosed
4 with anxiety about 28 years ago.

5 MR. SMITH: Okay.

6 PROSPECTIVE JUROR NO. 672: And I've been on
7 medication since because that's what created my -- they say it
8 was because of my IBS so --

9 MR. SMITH: Got ya.

10 PROSPECTIVE JUROR NO. 672: -- it's combined.

11 MR. SMITH: Okay.

12 PROSPECTIVE JUROR NO. 672: So it's an ongoing
13 medication because it could take -- it helps the IBS.

14 MR. SMITH: Got ya.

15 PROSPECTIVE JUROR NO. 672: Just wanted to let you
16 know.

17 MR. SMITH: Thank you, ma'am. I appreciate your
18 candor. Anyone else up here? How about over here? Yes,
19 ma'am. Number 700.

20 PROSPECTIVE JUROR NO. 700: Yeah.

21 MR. SMITH: Okay.

22 PROSPECTIVE JUROR NO. 700: Fourteen years ago --

23 MR. SMITH: Can you stand up for us so your voice can
24 carry to that microphone?

25 PROSPECTIVE JUROR NO. 700: Fourteen years ago I was

1 diagnosed (indiscernible).

2 THE MARSHAL: Can't hear her.

3 PROSPECTIVE JUROR NO. 700: (Indiscernible) stress.

4 THE COURT: Ma'am, excuse me, repeat your answer. Do
5 you have the microphone, Cliff?

6 MS. GRAHAM: Testing.

7 PROSPECTIVE JUROR NO. 700: I'm talking to you
8 directly. Do I have to do this?

9 MR. SMITH: Yes, ma'am, because they want to record
10 everything --

11 PROSPECTIVE JUROR NO. 700: Oh, I see.

12 MR. SMITH: -- we're saying.

13 PROSPECTIVE JUROR NO. 700: Okay.

14 MR. SMITH: Okay.

15 PROSPECTIVE JUROR NO. 700: I said that 12 or 14
16 years ago, I don't remember, because of my job stress having
17 been in the medical profession I became an insomniac, so I was
18 diagnosed with a slight depression.

19 MR. SMITH: Okay.

20 PROSPECTIVE JUROR NO. 700: I was working at Stanford
21 and I followed the naturopathic course of medication
22 (indiscernible).

23 MR. SMITH: Okay. How long were you on the
24 prescription regimen?

25 PROSPECTIVE JUROR NO. 700: I think for about three

1 months.

2 MR. SMITH: Okay.

3 PROSPECTIVE JUROR NO. 700: And then I got evaluated
4 by a physician.

5 MR. SMITH: Okay.

6 PROSPECTIVE JUROR NO. 700: But I took off six months
7 of leave.

8 MR. SMITH: Okay.

9 PROSPECTIVE JUROR NO. 700: LOA.

10 MR. SMITH: Okay. All right, thank you very much.
11 Anyone else in this first row? Second row? You jumped. Oh,
12 okay. Third row? Yes, sir.

13 PROSPECTIVE JUROR NO. 775: 775. I had a sister who
14 was diagnosed clinically depressed.

15 MR. SMITH: How long --

16 PROSPECTIVE JUROR NO. 775: Early part of this
17 decade.

18 MR. SMITH: Okay. So a sister diagnosed with
19 depression early part of this decade.

20 PROSPECTIVE JUROR NO. 775: Um-h'm.

21 MR. SMITH: Do you know if she was prescribed any
22 medication?

23 PROSPECTIVE JUROR NO. 775: She was.

24 MR. SMITH: Do you know how long she stayed on
25 medication?

1 PROSPECTIVE JUROR NO. 775: I don't know all the --
2 about a year or two.

3 MR. SMITH: Okay. Were you able to --

4 PROSPECTIVE JUROR NO. 775: She lived in another
5 state so --

6 MR. SMITH: Okay.

7 PROSPECTIVE JUROR NO. 775: -- I mean, I never
8 noticed anything firsthand until after she told me about it.

9 MR. SMITH: Okay. So just so I understand, you were
10 never really able to observe how she reacted on the drugs?
11 Okay. All right. Thank you, sir. Anyone else back here?

12 PROSPECTIVE JUROR NO. 771: 771. And my father and
13 my brother both diagnosed bipolar, on medication, maintenance
14 medication.

15 MR. SMITH: Are they still taking the medication now?

16 PROSPECTIVE JUROR NO. 771: Yes.

17 MR. SMITH: How long have they been on that regimen?

18 PROSPECTIVE JUROR NO. 771: Years, 20 years.

19 MR. SMITH: You interacted with them a lot? A
20 little?

21 PROSPECTIVE JUROR NO. 771: No.

22 MR. SMITH: No? Okay. Thank you. Anyone else back
23 here? First row over here. Anyone?

24 PROSPECTIVE JUROR NO. 789: 789, Juliette Congleton.
25 My mother has a depression problem for over 25 years, and my

1 mother's side, couple aunts has the same problems.

2 MR. SMITH: Okay. Do they take prescriptions?

3 PROSPECTIVE JUROR NO. 789: Yes.

4 MR. SMITH: Have you been able to observe them
5 while they're on these prescriptions?

6 PROSPECTIVE JUROR NO. 789: Yes.

7 MR. SMITH: Okay, thank you, ma'am. Anyone else in
8 this first row? Second row?

9 PROSPECTIVE JUROR NO. 813: 813. My late wife was
10 diagnosed with depression. She took medication for that.

11 MR. SMITH: For how long, sir?

12 PROSPECTIVE JUROR NO. 813: It had to have been over
13 20 years. Is she was on it before I had met her.

14 MR. SMITH: Okay. Thank you very much, sir. I have
15 about two more questions. At the end of this case, folks, the
16 judge is going to read you a set of instructions that contain
17 the law that apply to this case. And as you see here today,
18 some of you may have some preconceptions. My question is, is
19 there anyone here who feels that they cannot set aside any
20 preconceptions that they may have and apply the law that's
21 going to be given by the judge at the end of this case to the
22 facts of this case? No one? Okay. Court's indulgence, Judge.
23 Can we approach, Judge?

24 THE COURT: All right.

25 (Off-record bench conference).

1 MR. SMITH: Folks, I believe I just have but one last
2 question and that is if anyone here is in a trade union? I
3 think there was one individual who said that he was, but anyone
4 else? Okay, all right, let's start back here. What's your
5 badge number, ma'am?

6 PROSPECTIVE JUROR NO. 609: 609.

7 MR. SMITH: Okay.

8 PROSPECTIVE JUROR NO. 609: I can't remember if it
9 was a state worker's union I joined years and years ago.

10 MR. SMITH: Okay.

11 PROSPECTIVE JUROR NO. 609: I'm not hardly active in
12 it but I am a member.

13 MR. SMITH: Okay. Thank you. Yes, sir.

14 PROSPECTIVE JUROR NO. 633: 633.

15 MR. SMITH: Yes, sir.

16 PROSPECTIVE JUROR NO. 633: The laborer's union out
17 of Washington, I'm still a member.

18 MR. SMITH: Okay, thank you, sir. Anyone else over
19 here? Saw some hands back here.

20 PROSPECTIVE JUROR NO. 680: 680. Plumber's
21 Pipefitters Local 525 out of Las Vegas.

22 MR. SMITH: What's your badge number, sir?

23 PROSPECTIVE JUROR NO. 680: 680.

24 MR. SMITH: 680, okay, got ya. Anyone else? Yes,
25 sir.

1 PROSPECTIVE JUROR NO. 717: 717.

2 MR. SMITH: Yes, sir.

3 PROSPECTIVE JUROR NO. 717: Transportation worker's
4 union.

5 MR. SMITH: Currently an active member?

6 PROSPECTIVE JUROR NO. 717: Yes.

7 MR. SMITH: Okay. Yes, ma'am.

8 PROSPECTIVE JUROR NO. 765: 226 culinary union.

9 MR. SMITH: What's your badge number?

10 PROSPECTIVE JUROR NO. 765: 765. (Indiscernible).

11 MR. SMITH: You say you're in the culinary union?

12 PROSPECTIVE JUROR NO. 765: Um-h'm.

13 MR. SMITH: Okay. Active member?

14 PROSPECTIVE JUROR NO. 765: Yes.

15 MR. SMITH: Okay. Anyone else? Yes, sir.

16 PROSPECTIVE JUROR NO. 775: 775.

17 MR. SMITH: Yes, sir.

18 PROSPECTIVE JUROR NO. 775: (Indiscernible) union out
19 of California.

20 MR. SMITH: Thank you, sir. Anyone else over here?
21 How about over here? Yes, sir.

22 PROSPECTIVE JUROR NO. 798: 798. (Indiscernible)
23 local 18 (indiscernible).

24 MR. SMITH: Thank you. Anyone else? Yes, sir.

25 PROSPECTIVE JUROR NO. 618: I'm sorry.

1 MR. SMITH: No problem.

2 PROSPECTIVE JUROR NO. 618: 618. It's SCIU
3 (phonetic) service employees (indiscernible).

4 MR. SMITH: Got ya. Are you active member?

5 PROSPECTIVE JUROR NO. 618: I'm not.

6 MR. SMITH: Oh, okay. Okay, so I lied, I do have
7 another question. Anyone here either served in the armed
8 forces, or have a friend or family member that served in the
9 armed forces? I opened Pandora's box it seems. Okay. Let's
10 start up front here.

11 PROSPECTIVE JUROR NO. 663: 663.

12 MR. SMITH: Okay.

13 PROSPECTIVE JUROR NO. 663: My sister and my
14 brother-in-law.

15 MR. SMITH: Are they currently on active duty?

16 PROSPECTIVE JUROR NO. 633: Yes.

17 MR. SMITH: Okay. Yes, ma'am, number 672.

18 PROSPECTIVE JUROR NO. 672: 672. I have a brother
19 who's been in the Persian war and Iraq twice.

20 MR. SMITH: Is he currently on active duty?

21 PROSPECTIVE JUROR NO. 672: No.

22 MR. SMITH: Okay.

23 PROSPECTIVE JUROR NO. 679: 679.

24 MR. SMITH: Yes, ma'am.

25 PROSPECTIVE JUROR NO. 679: My step-dad used to be

1 (indiscernible) and (indiscernible).

2 THE MARSHAL: Can't hear her.

3 MR. SMITH: She said her step-dad used to be in the
4 Army.

5 PROSPECTIVE JUROR NO. 679: And I have a close friend
6 in the Marines.

7 MR. SMITH: Okay. How about this second row right
8 here? Okay.

9 PROSPECTIVE JUROR NO. 626: Okay, my husband was in
10 the Army before we were married.

11 MR. SMITH: And your badge number, ma'am?

12 PROSPECTIVE JUROR NO. 626: Oh, I'm sorry, 626.

13 MR. SMITH: Okay. You say your husband was in the
14 Army?

15 PROSPECTIVE JUROR NO. 626: Yes.

16 MR. SMITH: Okay.

17 PROSPECTIVE JUROR NO. 626: And my son was in Desert
18 Storm.

19 MR. SMITH: Okay. Yes, sir.

20 PROSPECTIVE JUROR NO. 633: 633.

21 MR. SMITH: Yes, sir.

22 PROSPECTIVE JUROR NO. 633: My oldest son was in the
23 Air Force, and my nephew is currently in Iraq.

24 MR. SMITH: Thank you, sir. Yes, ma'am.

25 PROSPECTIVE JUROR NO. 654: 654.

1 MR. SMITH: Yes, ma'am.

2 PROSPECTIVE JUROR NO. 654: My father was in the U.S.
3 Army. My brother is retired 20 years -- 22 years Army. I have
4 a nephew in -- actively in the Marines, and another nephew
5 actively in the Navy.

6 MR. SMITH: Okay. Thank you, ma'am. Anyone else in
7 this first row? Yes, sir.

8 PROSPECTIVE JUROR NO. 656: 656.

9 MR. SMITH: Yes, sir.

10 PROSPECTIVE JUROR NO. 656: I have my oldest brother,
11 he was served in Vietnam and then my youngest brother, he was
12 in the Navy, and I have a close friend that's in the Marine
13 Corp.

14 MR. SMITH: Okay. Any of those people on active
15 duty?

16 PROSPECTIVE JUROR NO. 656: No.

17 MR. SMITH: Okay. Thank you, sir. How about this
18 back row? Yes, sir.

19 PROSPECTIVE JUROR NO. 605: 605.

20 MR. SMITH: Yes, sir.

21 PROSPECTIVE JUROR NO. 605: My best friend and my
22 roommate was in the military.

23 MR. SMITH: Here locally? Thank you, sir. Yes,
24 ma'am.

25 PROSPECTIVE JUROR NO. 606: My former roommate, also

1 very close personal friend was in the Air Force. He's been
2 active for one year. And I also have two other close friends
3 that are over in Iraq right now.

4 MR. SMITH: And for the record, your badge number is?

5 PROSPECTIVE JUROR NO. 606: Oh, I'm sorry, 606.

6 MR. SMITH: Thank you. Yes, ma'am.

7 PROSPECTIVE JUROR NO. 609: 609. My nephew who was a
8 Marine was killed in Iraq. I don't know what area of the
9 military (Indiscernible).

10 MR. SMITH: Okay.

11 MS. GRAHAM: What was the last part?

12 MR. SMITH: She said she definitely has anger issues
13 towards that. Can we explore that a little bit?

14 PROSPECTIVE JUROR NO. 609: Absolutely.

15 MR. SMITH: Okay. When you say you have anger
16 issues, do you have anger issues towards the situation in Iraq
17 or the U.S. Government?

18 PROSPECTIVE JUROR NO. 609: Our former president and
19 the military (indiscernible).

20 THE MARSHAL: She needs to stand up because the
21 recorder's not picking her up.

22 MR. SMITH: Okay, can you repeat that for us.

23 PROSPECTIVE JUROR NO. 609: Yeah, I just said I have
24 issues with the former president and the military and the fact
25 that he was even in that position. I just have anger towards

1 him. His father was also killed. So it was just a big problem
2 in my family that it's not only my brother, but then my nephew.

3 MR. SMITH: Okay. The reason why -- let me elaborate
4 why I asked that question and perhaps you can make a better
5 assessment as to if it affects you in this case.

6 Let's say you were to find out that a witness or
7 somebody that's called to stand was a veteran, or a person who
8 had served in the military or a person who's serving in the
9 military, would you necessarily ascribe a greater amount of
10 credibility to their testimony or take away from the
11 credibility of their testimony just because you find out that
12 they've been in the military?

13 PROSPECTIVE JUROR NO. 609: No.

14 MR. SMITH: Okay. So with that understanding, you
15 think the fact that what happened to your family members would
16 bear on your ability to sit as a fair juror in this case?

17 PROSPECTIVE JUROR NO. 609: Not fair, just
18 (indiscernible) in general.

19 MR. SMITH: Would you be able to set that aside and
20 focus on the evidence that the State's going to present to you
21 in this case?

22 PROSPECTIVE JUROR NO. 609: Yes, but I'm slightly
23 concerned about the evidence since you brought that up. I'm
24 hoping that it's not going to be gory details because I don't
25 do well with that type of thing. To answer your question, no,

1 I don't have any bias towards someone's testimony.

2 MR. SMITH: Okay. And I'm not only concerned bias
3 against their testimony but bias towards their testimony as
4 well.

5 PROSPECTIVE JUROR NO. 609: I understand.

6 MR. SMITH: You understand that?

7 PROSPECTIVE JUROR NO. 609: None of that.

8 MR. SMITH: Okay. Anyone else? Yes, sir.

9 PROSPECTIVE JUROR NO. 613: 613.

10 MR. SMITH: Yes, sir.

11 PROSPECTIVE JUROR NO. 613: Myself and four brothers
12 military.

13 MR. SMITH: All veterans?

14 PROSPECTIVE JUROR NO. 613: Three of were Vietnam and
15 two were peace time.

16 MR. SMITH: Okay. Thank you, sir. Yes, ma'am.

17 PROSPECTIVE JUROR NO. 614: And 614. My grandson is
18 active in the Air Force.

19 MR. SMITH: Here locally?

20 PROSPECTIVE JUROR NO. 614: No, he's stationed in
21 Texas.

22 MR. SMITH: Okay. Thank you, ma'am. Yes, sir.

23 PROSPECTIVE JUROR NO. 616: 606. I have a nephew
24 who's in Iraq.

25 MR. SMITH: Thank you, sir.

1 PROSPECTIVE JUROR NO. 618: 618. My adopted brother
2 was in the Army. My grandfather was in the Navy.

3 MR. SMITH: Thank you, sir.

4 PROSPECTIVE JUROR NO. 620: 620. My father was in
5 the Army.

6 MR. SMITH: Thank you, sir. Anyone over here?
7 (Indiscernible).

8 THE MARSHAL: When you get the microphone, can you
9 stand up, please?

10 PROSPECTIVE JUROR NO. 700: 700. Three of my cousins
11 are in the U.S. Air Force. One in the U.S. Navy, and my nephew
12 got wounded in Afghanistan.

13 MR. SMITH: Okay.

14 PROSPECTIVE JUROR NO. 700: (Indiscernible). No one
15 is in active duty.

16 MR. SMITH: Okay. Thank you, ma'am. Next.

17 PROSPECTIVE JUROR NO. 690: 690. My father was in
18 the military.

19 MR. SMITH: What branch?

20 PROSPECTIVE JUROR NO. 690: The Army.

21 MR. SMITH: Okay. Thank you, sir.

22 PROSPECTIVE JUROR NO. 685: 685. I got a cousin
23 currently in the Navy, and my uncles have served in the Navy.

24 PROSPECTIVE JUROR NO. 680: Two uncles served in the
25 Navy, World War II. My father served 35 years on the George

1 Patton. My brother served in Korea during the 60s, and one
2 brother retired from military, graduate of West Point. I got
3 one brother who's reserves, 33 years.

4 MR. SMITH: Okay. For the record, sir, what's your
5 badge number?

6 PROSPECTIVE JUROR NO. 680: 680.

7 MR. SMITH: Thank you. Second row. Here you go,
8 sir.

9 PROSPECTIVE JUROR NO. 717: 717. My father was a
10 Marine.

11 MR. SMITH: 717, your dad was a Marine. Got it.

12 PROSPECTIVE JUROR NO. 719: 719. My husband was a
13 Marine. My two nephews are in the Navy.

14 MR. SMITH: Got it.

15 PROSPECTIVE JUROR NO. 727: 727. My uncle was in
16 Vietnam. He was in the Army. I have two friends in the Air
17 Force. I have one friend in the Navy, and I have one friend in
18 the Marines.

19 MR. SMITH: You know somebody in all four branches,
20 huh? Except the Coast Guard.

21 PROSPECTIVE JUROR NO. 728: 728. My husband was in
22 Vietnam, and my father was in the Army.

23 MR. SMITH: Okay. Thank you, ma'am.

24 PROSPECTIVE JUROR NO. 743: 743. My mother was Air
25 Force, my father Army, my brother Army.

1 MR. SMITH: Okay.

2 PROSPECTIVE JUROR NO. 748: 748. I have three
3 sisters in the Navy, nephew just enlisted in the Army, brother
4 was in the Army as well.

5 MR. SMITH: Thank you, ma'am.

6 PROSPECTIVE JUROR NO. 750: 750. I did four years in
7 the Air Force. Father is retired Air Force, and I got a nephew
8 in Afghanistan right now.

9 MR. SMITH: Thank you, sir.

10 PROSPECTIVE JUROR NO. 765: 765. My father was in
11 military in Cuba in the Army -- Navy.

12 MR. SMITH: Thank you, ma'am.

13 PROSPECTIVE JUROR NO. 771: 771. And I was in the
14 Air Force, my wife was in the Air Force. She was also in the
15 California Army National Guard. Both brothers in the military,
16 father in the Air Force. Nobody's active.

17 MR. SMITH: Okay. Thank you, sir.

18 PROSPECTIVE JUROR NO. 775: 775. Both my
19 grandfathers served over seas in World War II. One in the Air
20 Force, one in the Army. Three uncles, two in the Navy, one in
21 the Marines who did tours in Vietnam. And also my sister's in
22 the Army Reserves. She's headed to Iraq in the next few days.

23 MR. SMITH: Thank you.

24 PROSPECTIVE JUROR NO. 777: 777. Most my family
25 served. No one active duty, and my wife was also pretty much

1 around the world from a military family.

2 MR. SMITH: Okay. Thank you, sir. This first row
3 over here.

4 PROSPECTIVE JUROR NO. 788: 788. My father was in
5 the Army, and I have a cousin in the Navy.

6 MR. SMITH: Thank you, ma'am.

7 PROSPECTIVE JUROR NO. 789: 789. My father was in
8 Korean Army for 20 years, and he was in a Vietnam. My
9 father-in-law's in Marine. He was in World War II.

10 MR. SMITH: Okay.

11 PROSPECTIVE JUROR NO. 789: And then my uncle was in
12 a Korean where he was captured in North Korea for 40 years.

13 MR. SMITH: 40?

14 PROSPECTIVE JUROR NO. 789: Yes.

15 MR. SMITH: Okay. Thank you.

16 PROSPECTIVE JUROR NO. 797: My father was in the
17 Navy. 797.

18 MR. SMITH: Okay.

19 PROSPECTIVE JUROR NO. 798: 798. My father was in
20 the Air Force.

21 MR. SMITH: Thank you, sir.

22 PROSPECTIVE JUROR NO. 803: Pardon me, 803. Two
23 uncles in the Navy, one in the Marines, father was in the Army,
24 brother was Air Force, as well as cousin.

25 MR. SMITH: Okay.

1 PROSPECTIVE JUROR NO. 803: Two of them did Vietnam.
2 My dad was in the Korean war.

3 MR. SMITH: Okay.

4 PROSPECTIVE JUROR NO. 803: And I do have a friend,
5 best friend's whose cousin who I knew was killed over in Iraq.

6 MR. SMITH: Okay. Thank you.

7 PROSPECTIVE JUROR NO. 805: 805. My dad was in the
8 Army, and my uncle was in Vietnam.

9 MR. SMITH: Thank you, ma'am.

10 PROSPECTIVE JUROR NO. 808: 808. My dad was in the
11 Army, my grandfather was retired Navy command officer, my
12 cousin is active Marines right now. His brother just got out
13 of the Army. His wife is -- just got out of the Navy.

14 MR. SMITH: Okay.

15 PROSPECTIVE JUROR NO. 808: And that's it.

16 MR. SMITH: Okay. Thank you.

17 PROSPECTIVE JUROR NO. 810: My dad and my uncle were
18 in the Air Force. 810.

19 MR. SMITH: Okay.

20 PROSPECTIVE JUROR NO. 810: My father-in-law was a
21 Marine.

22 MR. SMITH: Okay. Thank you, ma'am.

23 PROSPECTIVE JUROR NO. 813: My oldest brother was in
24 Vietnam. He was a Marine. My other older brother was retired
25 from the Army, and I served seven years in the Army.

1 MR. SMITH: And what's your badge number, for the
2 record?

3 PROSPECTIVE JUROR NO. 813: 813.

4 MR. SMITH: Thank you, sir. Judge, I'll pass the
5 panel for cause. Thank you.

6 THE COURT: All right, thank you. Ms. Palm or Mr.
7 Pike?

8 MR. PIKE: Thank you, your Honor. Now we've gone
9 through a bunch of questions and it's kind of almost like the
10 Jerry Springer part where we run around and try and get the
11 answers to questions. But you kind -- what we're trying to do
12 is just see if there's any biases that you might have coming
13 into this because of who you may affiliate with, or the
14 witnesses may be and/or any preconceived notions because, as
15 Counsel has indicated, you're making a very -- a number of very
16 important decisions during this period of time.

17 So I want to touch on some of those issues. Is there
18 -- as a collective group, how many of you at this point in
19 time, having heard what you've heard, would go ahead and say
20 that Brian O'Keefe is guilty? Just raise hands. Nobody.
21 Good. Then everybody believes in the presumption of innocence
22 and that the State has to carry its burden of proof.

23 How many of you believe that it is appropriate that
24 the burden of proof is beyond a reasonable doubt? That was
25 kind of a reverse question, so I'm going to concentrate on the

1 people that didn't raise their hands.

2 So if you -- I guess it would be better to ask the
3 questions. As we're discussing what is a reasonable doubt, do
4 you have a preconceived notion what that would be? Sir? No?
5 Okay. These are -- if there's a term like that, a term of art,
6 the judge is going to give you some instructions, and you have
7 to listen to those instructions.

8 Do you believe as we sit here -- does anybody believe
9 as we sit here today that the defense has to put on witnesses
10 in order to have the jury find him not guilty? Okay. Sir?
11 Okay. Kind of explain to me what you expect the defense's role
12 to be.

13 PROSPECTIVE JUROR NO. 613: To prove the person is
14 innocent.

15 MR. PIKE: Okay. Now, I'd ask the question about
16 beyond a reasonable doubt, and State has the burden to prove
17 that. Do you think at any point in time that burden shifts
18 over to the defense?

19 PROSPECTIVE JUROR NO. 613: I would think so to a
20 point.

21 MR. PIKE: Okay. And you don't believe that if the
22 defense was to not call any witnesses, that you could go ahead
23 and find the defendant not guilty?

24 PROSPECTIVE JUROR NO. 613: I just want to hear both
25 sides.

1 MR. PIKE: The Constitution says an individual has a
2 right to not testify in a trial. If Mr. O'Keefe were to not
3 testify, would you hold that against him?

4 PROSPECTIVE JUROR NO. 613: No.

5 MR. PIKE: But you'd expect if you didn't hear from
6 him or from defense witnesses, then you wouldn't be able to
7 find him not guilty?

8 PROSPECTIVE JUROR NO. 613: I'm saying that I think
9 if he has witnesses that would give proof that he wasn't
10 guilty, that's what I would like to see.

11 MR. PIKE: Okay. And those may be some of the same
12 witnesses that the State's calling because witnesses are
13 witnesses. Would you agree with that?

14 PROSPECTIVE JUROR NO. 613: True.

15 MR. PIKE: If the judge was to instruct you that you
16 -- that the defense need not call a witness at all, and you
17 could still find the defendant not guilty, would you be able to
18 follow that instruction? And just be honest. There is no --
19 there is no --

20 PROSPECTIVE JUROR NO. 613: I -- yes, I would. I
21 could follow that, yes.

22 MR. PIKE: Okay. Let me explain. There is no real
23 right answer in this. It's you feel how you feel, and you
24 perceive things the way that you perceive them, and we're not
25 judging. It's just if there's something that you feel about

1 this case or sitting as a juror and it makes you feel a little
2 bit uncomfortable -- and I'm sorry if I made you feel a little
3 uncomfortable, sir. I hate to use people as an example, but
4 it's kind of my job.

5 And so if you feel uncomfortable, then that's to make
6 you think. And if you think well, maybe I should sit on a
7 different jury, instead of this case, then at any point in
8 time, let me know, or let the judge know that that may be your
9 decision at this point in time. And understanding that and
10 with the -- what you feel about the nature of this case and
11 what's going on, would you feel comfortable sitting as a juror
12 in this case?

13 PROSPECTIVE JUROR NO. 613: I would probably rather
14 go to a different trial.

15 MR. PIKE: Okay. Thank you. Challenge for cause.
16 Now having gone through that, again, let me go back. I started
17 with a question about the -- if you believe the defense has to
18 put anything on. Is there anything about the colloquy that
19 we've had -- the conversation that I've had with this gentleman
20 that causes you to think well, maybe I shouldn't sit on this
21 jury? Raise your hand.

22 PROSPECTIVE JUROR NO. 679: Well, (Indiscernible)
23 that if you didn't testify, I think I -- like that would want
24 to me like why, you know.

25 MR. PIKE: Okay. If the judge told you you couldn't

1 consider that at all, would you listen to what the judge had to
2 say?

3 PROSPECTIVE JUROR NO. 679: I don't know.

4 MR. PIKE: You don't know? Okay, would you give us
5 your badge number for the record?

6 PROSPECTIVE JUROR NO. 679: 679.

7 MR. PIKE: Thanks.

8 PROSPECTIVE JUROR NO. 613: Do you want my number?

9 MR. PIKE: Yes, please.

10 PROSPECTIVE JUROR NO. 613: 613.

11 MR. PIKE: And ma'am, would you please give us your
12 badge number and --

13 PROSPECTIVE JUROR NO. 609: 609.

14 MR. PIKE: Okay.

15 PROSPECTIVE JUROR NO. 609: Well, my thought process
16 would be, you said if we had a choice, I would prefer to sit on
17 a civil than a criminal.

18 MR. PIKE: Okay. Is it something -- I think you
19 indicated that you have some concerns also about gory details.

20 PROSPECTIVE JUROR NO. 609: Yes, sir.

21 MR. PIKE: Okay. And in this case there is -- it is
22 a homicide that is alleged.

23 PROSPECTIVE JUROR NO. 609: Correct.

24 MR. PIKE: And so there are some autopsy photos and
25 some things like that. Do you think that if you were exposed

1 to those, that would cause you undue stress or emotional
2 stress?

3 PROSPECTIVE JUROR NO. 609: Yes, sir.

4 MR. PIKE: Okay. And you don't feel with that that
5 you would be comfortable sitting on this jury?

6 PROSPECTIVE JUROR NO. 609: That's correct. I think
7 I could make a fair decision. I just would be personally
8 affected by it.

9 MR. PIKE: Okay. And do you feel that that personal
10 affect that would cause upon you to sit on this jury is such a
11 nature that you believe it would be appropriate to ask the
12 judge recuse on this case and go back and serve on a civil
13 jury.

14 PROSPECTIVE JUROR NO. 609: I would prefer that, yes.

15 MR. PIKE: Okay. All right, anybody in reference to
16 that question? Coming back --

17 THE COURT: I think there was perhaps someone in the
18 back row, Mr. Pike, but --

19 MR. PIKE: Okay.

20 THE COURT: -- if I could just interject at this
21 time, and I probably should have mentioned this earlier, ladies
22 and gentlemen. In a criminal case, the State bears the burden
23 of proving the defendant guilty beyond a reasonable doubt. If
24 they do not prove each and every material element of the charge
25 beyond a reasonable doubt, then it's your duty to find the

1 defendant not guilty. So you can't go, he looks guilty or he's
2 -- you know, people wear a green shirt, they must be guilty.
3 No, the State has the burden to prove each and every material
4 element of the crime beyond a reasonable doubt. If they don't,
5 it will be your duty to find him not guilty.

6 Furthermore, in a criminal case, a defendant does not
7 need to present any evidence, does not need to call any
8 witnesses for you to find him not guilty. The reason is the
9 State must prove their case beyond a reasonable doubt. If they
10 don't prove the case beyond a reasonable doubt within the
11 definition that I will give you in the jury instructions, it is
12 your duty to find the defendant not guilty. Does anyone -- is
13 anyone here not understand what I just stated? There being no
14 hands, thank you. I'm sorry, Mr. Pike, go ahead.

15 PROSPECTIVE JUROR NO. 626: I'm sorry --

16 THE COURT: Yes.

17 PROSPECTIVE JUROR NO. 626: -- could I? So just
18 hypothetically speaking --

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 626: -- after, you know, all
21 the testimony's been heard and I have a doubt --

22 THE COURT: You have a reasonable doubt, and I will
23 give you the definition of reasonable doubt at the end ever the
24 trial. And you fit the definition to the facts of the case.

25 PROSPECTIVE JUROR NO. 626: Let me just -- can I --

1 THE COURT: Sure, go ahead.

2 PROSPECTIVE JUROR NO. 626: -- expand on my
3 hypothetical?

4 THE COURT: Sure. Sure.

5 PROSPECTIVE JUROR NO. 626: Okay. And there was no
6 witnesses for the defense.

7 THE COURT: It doesn't matter. The State has the
8 burden of proving the defendant guilty beyond a reasonable
9 doubt. Defense does not have to call --

10 PROSPECTIVE JUROR NO. 626: I can't use that as if I
11 have a doubt to weigh into it, is what you're saying?

12 THE COURT: Well, it's not a doubt, okay. Again, I
13 will give the definition of a reasonable doubt, okay?

14 PROSPECTIVE JUROR NO. 626: Okay.

15 THE COURT: And then the jurors will decide using
16 that definition, is there a reasonable doubt of the defendant's
17 guilt or innocence, and that's for the jury to decide within
18 the definition I give. Now the jury instruction will include
19 the law of the entire case, various issues of credibility, of
20 expert testimony, et cetera.

21 And so all we ask you as a juror is just to follow
22 the law. And I think someone had mentioned earlier even if you
23 disagree with the law, if you were selected as a juror, you've
24 taken an oath that you will follow the law. Just as the
25 attorneys may disagree with some of my rulings, they may

1 disagree with some of the law that exists, but they're bound to
2 follow the law.

3 And that's all we're asking you as a juror if you
4 will follow the law. And the law in Nevada and the law in the
5 country says that a defendant is presumed innocent, first off.
6 That the State must prove, or the Government must prove a
7 defendant guilty beyond a reasonable doubt. And that a
8 defendant need not present any evidence for you to make that
9 finding because the burden's on the State.

10 If they failed in their burden, even if this
11 defendant doesn't present any evidence, it's your duty to find
12 the defendant not guilty. All right? Any questions, ma'am?

13 PROSPECTIVE JUROR NO. 626: Yeah, it was just that,
14 you know, I guess that. Okay.

15 THE COURT: All right. Thank you.

16 MR. PIKE: It's just that it's like in any sort of a
17 situation you want to hear both sides.

18 PROSPECTIVE JUROR NO. 626: Right.

19 MR. PIKE: Okay. But --

20 PROSPECTIVE JUROR NO. 626: Legally we don't have to
21 hear both sides.

22 MR. PIKE: Well, legally, as the judge has indicated,
23 again, it's just like pushing a rock off a hill. If you only
24 push the rock so far and gravity never gets its say in what
25 happens, and if the rock isn't pushed all the way over, the

1 rock never falls.

2 If the State doesn't prove its case beyond a
3 reasonable doubt, you cannot convict anybody. And that's a
4 poor analogy, but I hope that explains it a little bit. It
5 gives you a better idea.

6 Since you have that much of a concern and because
7 this is a serious murder case, would you feel -- are you
8 uncomfortable sitting on this case or on this murder case in
9 this courtroom?

10 PROSPECTIVE JUROR NO. 626: No, I -- since it is a
11 serious case, I have to be convinced, but --

12 MR. PIKE: If you were sitting at the table beside
13 myself and Ms. Palm and you were charged with the offense of
14 murder, would you feel comfortable with somebody having your
15 mindset being, sitting on this jury?

16 PROSPECTIVE JUROR NO. 626: Yes.

17 MR. PIKE: In reference to the comments that the
18 judge has made, does anybody have any concerns or feel that
19 they would have a difficult time following that instruction
20 regarding reasonable doubt? Let the record show nobody's
21 raised their hands in reference to that.

22 In the -- this case there may be some testimony in
23 relationship to alcoholism as well as depression, or
24 rehabilitation, or AA or any, or things like that. Is there
25 anybody here that -- let me ask this question in reverse

1 because it will probably be a short one.

2 Anybody here that has never had a drink of a
3 alcoholic beverage in their life? Okay. One, two, three, four
4 people -- five people, okay.

5 Is there anything about the fact that alcohol may be
6 involved that would cause you to be concerned or not want to
7 sit on this jury? And your name, ma'am -- or your jury number
8 and name.

9 PROSPECTIVE JUROR NO. 672: 672.

10 MR. PIKE: Okay. And you shook your head in the
11 negative, so you said no, you --

12 PROSPECTIVE JUROR NO. 672: No.

13 MR. PIKE: -- feel comfortable sitting --

14 PROSPECTIVE JUROR NO. 672: Yes.

15 MR. PIKE: In reference to the other individuals that
16 raised their hands, sir, yes?

17 PROSPECTIVE JUROR NO. 716: (Indiscernible).

18 MR. PIKE: Okay. Is there -- your badge number?

19 PROSPECTIVE JUROR NO. 716: My badge number is 716.

20 MR. PIKE: Okay. You've never had a drink of
21 alcoholic beverage?

22 PROSPECTIVE JUROR NO. 716: No, sir.

23 MR. PIKE: Okay. And have you been around people
24 that have --

25 PROSPECTIVE JUROR NO. 716: Yes, I have.

1 MR. PIKE: -- consumed alcohol?

2 PROSPECTIVE JUROR NO. 716: Yes, I have.

3 MR. PIKE: Okay. You have -- your concerns in not
4 drinking alcohol, is that a religious personal --

5 PROSPECTIVE JUROR NO. 716: Yes, it's religious.

6 MR. PIKE: -- choice? Okay. And also, having
7 watched what alcohol does to people -- --

8 PROSPECTIVE JUROR NO. 716: Yes, I have.

9 MR. PIKE: -- and that confirms --

10 PROSPECTIVE JUROR NO. 716: Yes.

11 MR. PIKE: -- your choice in reference to that.

12 PROSPECTIVE JUROR NO. 716: Yes, I have.

13 MR. PIKE: So you have been exposed to it, and if you
14 had to hear some testimony that alcohol may be involved in some
15 people that are involved in the case, is that something you'd
16 consider but not judge somebody?

17 PROSPECTIVE JUROR NO. 716: Of course not.

18 MR. PIKE: Thank you very much.

19 PROSPECTIVE JUROR NO. 716: Thank you.

20 MR. PIKE: And yes, ma'am. Your badge number.

21 PROSPECTIVE JUROR NO. 743: 743.

22 MR. PIKE: Okay. And the same question to you.
23 You've chosen not to consume alcoholic beverages?

24 PROSPECTIVE JUROR NO. 743: In a way that's kind of
25 to me borderlines religious upbringing inasmuch as the religion

1 I was brought up we were taught drugs and alcohol are total
2 choice. So how it affects someone, yes, it could be, let's say
3 for example you're driving, you kill somebody because you're
4 driving drunk, okay? Should we excuse you from that because it
5 was the alcohol? No, you chose to drink.

6 So I was taught that if alcohol or drugs is involved,
7 that's a choice. That doesn't excuse anyone.

8 MR. PIKE: Okay. And in reference to that, if you
9 receive an instruction -- well, let me rephrase the question.
10 Alcohol, or alcohol consumption certainly may not be a defense.
11 It may cause people to act irrationally. Do you agree with
12 that?

13 PROSPECTIVE JUROR NO. 743: I agree with that.

14 MR. PIKE: It could cause people to not behave as
15 they normally would.

16 PROSPECTIVE JUROR NO. 743: I agree with that.

17 MR. PIKE: Now, if and the consequences, it's like
18 drunk driving, getting behind a deadly weapon which is
19 basically what a car is when you're driving it drunk.

20 PROSPECTIVE JUROR NO. 743: Right.

21 MR. PIKE: Then there's a specific crime that's
22 associated or a penalty associated with that.

23 PROSPECTIVE JUROR NO. 743: Correct.

24 MR. PIKE: So if there is a specific mental state
25 that's required, and alcohol may affect somebody to the point

1 where they could not achieve that state, does the mere fact
2 that alcohol was involved, would that in your mind cause you to
3 convict somebody of a higher offense or a lesser offense?

4 PROSPECTIVE JUROR NO. 743: I say more yes than no
5 because again, it's a choice. Nine out of ten times my belief
6 is that person knows how alcohol affects -- affect them,
7 because they've done it before. Okay. So if they choose to do
8 it yet again knowing what happens to them.

9 MR. PIKE: And so if there is -- if the judge were to
10 instruct you about the affects of alcohol or, and how that may
11 affect a level of culpability, then you'd be more inclined to
12 follow your own instincts on what -- what your belief is?

13 PROSPECTIVE JUROR NO. 743: Probably, because I just
14 -- just through life experience.

15 MR. PIKE: Thank you very much. And, I'm sorry --

16 PROSPECTIVE JUROR NO. 743: 743.

17 MR. PIKE: 743. All right. Sir?

18 PROSPECTIVE JUROR NO. 777: 777.

19 MR. PIKE: 777?

20 PROSPECTIVE JUROR NO. 777: Yes. And it was just my
21 choice. My parents, my wife, pretty much (indiscernible) you
22 know, a slight drinker, just by choice.

23 MR. PIKE: Okay. And you don't have any preconceived
24 notions about the use of alcohol or how it affects other
25 people?

1 PROSPECTIVE JUROR NO. 777: I understand definitely
2 the consequences of something that is abused, certainly, but at
3 the same time I'm kind of a person that's going
4 (indiscernible).

5 MR. PIKE: Have you ever had any friends that were
6 alcoholics that would relapse?

7 PROSPECTIVE JUROR NO. 777: I would know maybe one or
8 two. Not close friends, but sure, there's always one or two
9 you know that (indiscernible).

10 MR. PIKE: Okay. And then they tried sobriety and
11 relapsed?

12 PROSPECTIVE JUROR NO. 777: Yes, at least once.

13 MR. PIKE: And there was one other person. Yes.

14 PROSPECTIVE JUROR NO. 781: I'm just allergic to all
15 alcohol.

16 MR. PIKE: Oh, okay. So do you have friends and
17 acquaintances that drink? And your badge number, I'm sorry,
18 ma'am.

19 PROSPECTIVE JUROR NO. 781: 781.

20 MR. PIKE: Okay. Have you seen people under the
21 influence of alcohol?

22 PROSPECTIVE JUROR NO. 781: Yes.

23 MR. PIKE: And, sir, your badge number.

24 PROSPECTIVE JUROR NO. 797: 797.

25 MR. PIKE: And you have never drank alcohol?

1 PROSPECTIVE JUROR NO. 797: (Indiscernible).

2 THE COURT: Okay. And why is that?

3 PROSPECTIVE JUROR NO. 797: Religious choice,
4 personal choice.

5 MR. PIKE: And you seem -- but you -- have you had an
6 opportunity to see how alcohol affects people when they drink
7 too much?

8 PROSPECTIVE JUROR NO. 797: Yes.

9 MR. PIKE: So you understand how it affects people?

10 PROSPECTIVE JUROR NO. 797: (Indiscernible).

11 MR. PIKE: Okay, thank you. In reference to this --
12 the questions regarding CSI or CSAs and with people that come
13 in, is there anybody here that disagrees with the concept that
14 the police should conduct a full investigation of a crime
15 scene?

16 PROSPECTIVE JUROR NO. 626: I'm sorry, I didn't hear
17 the question.

18 MR. PIKE: Okay, I'm sorry. Let me rephrase it.
19 Probably a poor question anyway. Does everybody here believe
20 that when the police come into a crime scene, that they should
21 conduct a thorough investigation? Okay, everybody agrees with
22 that.

23 Do you believe that when the police come into a scene
24 and they impound a piece of evidence, that that piece of
25 evidence should be examined or preserved for testimonial

1 purposes or presentation in trial? Does everybody believe
2 that?

3 And going into this case, as we've indicated before,
4 there actually is two parts to a murder case. The deputy
5 district attorney described the decision about guilt or
6 innocence. Now, some people come into a case and say, well,
7 it's all or nothing. In -- the defendant in this case is
8 charged with an open murder case. That includes first degree
9 murder, second degree murder and the manslaughter charges, if
10 the judge instructs you on those.

11 Does anybody have any preconceived notions about if
12 someone is charged with a murder that they must be guilty of
13 murder and not a lesser offense? There is no affirmative
14 response from the gallery.

15 PROSPECTIVE JUROR NO. 626: I still didn't quite
16 understand the question.

17 MR. PIKE: Okay, if somebody's charged with murder,
18 do you think they have to be found guilty of murder or could
19 they be found guilty of a lesser offense?

20 PROSPECTIVE JUROR NO. 626: Well, I guess there's all
21 degrees, depending upon the circumstances, I suppose.

22 MR. PIKE: Okay.

23 PROSPECTIVE JUROR NO. 626: Never -- you understand
24 I've never been in a courtroom before, so I don't know --

25 MR. PIKE: And your badge number?

1 PROSPECTIVE JUROR NO. 626: 626.

2 MR. PIKE: That's okay.

3 PROSPECTIVE JUROR NO. 626: So, (Indiscernible).

4 MR. PIKE: The State has to -- if the State doesn't
5 prove first degree murder, that it's premeditated, deliberate,
6 malice aforethought, then there's a possibility of second
7 degree murder.

8 PROSPECTIVE JUROR NO. 626: Right.

9 MR. PIKE: If they don't prove that, then there's a
10 possibility of manslaughter.

11 PROSPECTIVE JUROR NO. 626: Right.

12 MR. PIKE: And if they don't prove that, there's a
13 possibility of voluntary or involuntary manslaughter or
14 accident defenses in reference to that. There's -- is there
15 anybody here that believes that before that they could not
16 acquit Mr. O'Keefe if it was determined it was an accident?
17 There being no affirmative response.

18 PROSPECTIVE JUROR NO. 626: I don't know. Sorry, but
19 I'm being honest here. If it was an accident, yeah, I -- there
20 are accidents.

21 MR. PIKE: Okay. There are. And there are accidents
22 that occur everyday. Now, the next step is sentencing. Is
23 there anybody in the -- in any event that the State proves its
24 case beyond a reasonable doubt of first degree murder, the
25 jury's going to be called to render a decision as to what the

1 penalty will be. There are only three potential penalties for
2 first degree murder. One is life in prison with the
3 possibility of parole after 20 years have been served. And
4 that's doubled with the use of a deadly weapon.

5 The other one is, 20 years to 50 years in Nevada
6 state prison, and that would be doubled if (indiscernible) the
7 knife is the alleged deadly weapon in this case. And the third
8 one is death by incarceration or life without the possibility
9 of parole. Is there anybody in the courtroom here that
10 believes that life without the possibility of parole means that
11 they're going to get out of prison someday?

12 PROSPECTIVE JUROR NO. 626: Yes.

13 MR. PIKE: Okay.

14 PROSPECTIVE JUROR NO. 626: That's what I've always
15 heard, anyway.

16 MR. PIKE: Okay. In Nevada we have a truth in
17 sentencing law. If I told you that if you sentence somebody to
18 life in prison without the possibility of parole and that means
19 that they die in prison, do you believe that now?

20 PROSPECTIVE JUROR NO. 626: You just said that was
21 the law and yes, what you --

22 MR. PIKE: Okay. I'm trying to --

23 PROSPECTIVE JUROR NO. 626: -- believe
24 (Indiscernible).

25 MR. PIKE: -- see, am I an authority figure or not to

1 tell you that. And believe me, you've been told by everybody
2 else that somebody eventually gets out. That's not --

3 PROSPECTIVE JUROR NO. 626: Right, but you just said
4 that they wouldn't get out so I believe you, yes.

5 MR. PIKE: Okay.

6 PROSPECTIVE JUROR NO. 626: I should be able to
7 believe it. Well, wait a minute you're a lawyer.

8 MR. PIKE: And it's true, and the judge would advise
9 you of that.

10 PROSPECTIVE JUROR NO. 626: Okay.

11 MR. PIKE: That there is truth in sentencing laws in
12 the state of Nevada. And so if I told you that somebody is not
13 eligible for parole even for consideration to get out of prison
14 until they have served at least 20 years, is there anybody that
15 does not believe that? Prior to coming into court today and me
16 telling you that, how many of you didn't believe that? Okay.
17 The record will reflect there are a number of jurors that
18 reflected that.

19 .Now I -- and I ask you those questions to ask you
20 this question, that is a serious decision and it's only in
21 these cases where the jury makes the sentencing decisions. And
22 anything below first degree murder, the judge makes the
23 decision. But in the event that you go through and there is
24 finding in that, is there anybody here that for religious,
25 moral or personal reasons would not feel comfortable in sitting

1 on or rendering a sentence of imprisonment if there is a
2 conviction? Okay. Your number, name, and your concerns.

3 PROSPECTIVE JUROR NO. 679: 679.

4 MR. PIKE: Okay.

5 PROSPECTIVE JUROR NO. 679: I don't know, I just
6 don't feel like (indiscernible).

7 MR. PIKE: Okay. Can you pick that up?

8 THE COURT: No.

9 PROSPECTIVE JUROR NO. 679: I just -- I don't know if
10 I can put somebody in (indiscernible).

11 MR. PIKE: Okay. Anybody else that would have
12 concerns about that? Thank you, your Honor, have I no further
13 questions.

14 THE COURT: All right, counsel approach, please.

15 (Off-record bench conference).

16 THE MARSHAL: Okay, come to order, please.

17 THE COURT: Ladies and gentlemen, all the questioning
18 has been completed, and it's now time for the parties to go
19 through what's called peremptory challenges, and it takes some
20 time. That's where the parties by a secret ballot in effect
21 will excuse the jurors from this particular panel. Again, it's
22 done on a secret ballot. And it does take some time. We've
23 been going for awhile, so let's just take our personal break
24 right now. Let's take a short break.

25 So during this recess it is your duty not to converse

1 among yourselves or with anyone else on any subject connected
2 with the trial, to read, watch or listen to any report over
3 commentary on the trial by any person connected with the trial
4 or by any medium of information, including without limitation,
5 newspaper, television, radio or the Internet.

6 And you're not to form or express an opinion on any
7 subject connected with this case until it matter is submitted
8 to you for deliberation, if you are selected as a juror. So
9 we'll just see you back as soon as your personal break has been
10 completed. Please, again, wait for the marshal to escort you
11 back in and remember where you're seated, please. Thank you.

12 (Prospective jurors recessed at 2:23 p.m.)

13 (Outside the presence of the prospective jurors)

14 THE COURT: Okay, let the record reflect that we're
15 outside the presence of the jury. Why don't we just go ahead
16 and Mr. Pike, you had a challenge for Mr. Eral, James Eral,
17 E-r-a-l, Juror No. 613.

18 MR. PIKE: Yes, your Honor. I went through and I
19 wanted to question him about the -- his requirement feeling
20 that the defense somehow had to present something. It was
21 during that period of time that the Court subsequently asked
22 the -- or instructed the jury more on reasonable doubt and
23 burden of proof.

24 And so then in the subsequent questioning he didn't
25 add anything to that, but what he did do, what I was concerned

1 about, was that he never really backed away from that position
2 and felt that we should -- we had a burden, we had to prove
3 something, we had to prove his innocence.

4 THE COURT: All right, thank you. Mr. Smith.

5 MR. SMITH: Judge, we certainly didn't have a chance
6 to rehabilitate that juror. Your Honor did admonish him about,
7 you know, how it works in our system of justice. So if your
8 Honor were inclined to remove him for cause, we would at least
9 like the chance to rehabilitate him so it's for the -- okay.

10 THE COURT: I think he followed up and said he would
11 make a fair decision. He would follow the rules of the court
12 as far as that there's no burden on defense to present any
13 evidence. So the challenge -- I'm going to deny the challenge.
14 And just for the record, we had agreed upon -- actually, let's
15 go over the previous numbers.

16 At the first break we had agreed -- all parties had
17 agreed on excusing Juror No. 622, 649, 687, 710. And then just
18 recently I met with counsel at the bench and there's agreed
19 upon -- it was agree upon that we would excuse from further
20 consideration Juror No. 618, 655, and is that 813 is I had?

21 MR. PIKE: 813, yes, your Honor.

22 THE COURT: 813. Is that correct, everybody?

23 MR. SMITH: Yes, Judge.

24 MR. PIKE: Yes.

25 THE COURT: All right. And I think that's it. And

1 we'll just be back as soon as the jury's ready. And Cliff, can
2 they use the bathroom back here?

3 THE MARSHAL: Yes, sir.

4 THE COURT: Okay. And if you could also tell your --
5 any witnesses you may have, if they're going to use the
6 bathroom or smoking area, please go one floor up or one floor
7 down because we have jurors around here. So for all witnesses,
8 one floor up, one floor down and as well as for smoking.

9 I had -- we lost two jurors in one day. We had a
10 juror that was out in the smoking area and a family member of
11 someone went out to smoke and whoever got on the phone was
12 giving a blow-by-blow play of the testimony --

13 MR. SMITH: Oh, that's not good.

14 THE COURT: -- in front of the juror. And so then we
15 lost one on another one over the night. Just called and said I
16 don't want to come back, I'm not going to come back, and you
17 can't make me come back, and they didn't come back. So we lost
18 two jurors within 24 hours, so.

19 MS. PALM: But we can --

20 THE COURT: You can go back here, yes.

21 MR. SMITH: And Judge, one last question.

22 MS. GRAHAM: We can use the bathroom back there, you
23 said, Judge.

24 THE COURT: Yes.

25 MS. GRAHAM: Okay.

1 MR. SMITH: One last question. We're doing 14? 12
2 and 2 alternates?

3 THE COURT: Yes, right.

4 MR. SMITH: So it's 1 through 8 and then --

5 THE COURT: You'll have 10 preemptory challenges.

6 MR. SMITH: Right, okay.

7 THE COURT: Yes.

8 MR. SMITH: And it's 1 through 8 and then --

9 THE COURT: No, I'm sorry 9. We'll have --

10 THE CLERK: (Indiscernible).

11 MR. SMITH: Yeah, how are they going to sit.

12 THE MARSHAL: You'll have 1 through 7.

13 MR. SMITH: And then 8 through 14? Thank you.

14 THE COURT: And you get one preemptory challenge for
15 the alternate. So you'll have 9 preemptory challenges.

16 MR. SMITH: Okay.

17 THE COURT: All right, so we just go straight through
18 9.

19 MR. SMITH: Okay.

20 MR. PIKE: Okay.

21 THE COURT: All right. And again --

22 MR. PIKE: Are they alternate seats or --

23 THE COURT: And you're aware of the seats, right?

24 MR. SMITH: 3 and 5.

25 MR. PIKE: 3 and 5.

1 THE COURT: Okay.

2 MR. PIKE: The hot seats are 3 and --

3 THE COURT: We had one where they came out 13 and 14
4 seats. Seats 13 and 14 were the alternates.

5 THE MARSHAL: But if you smoke, there's no smoking on
6 this floor. So you got to go up one or down one to smoke
7 (indiscernible), so.

8 THE COURT: Okay, Mr. Pike?

9 MR. PIKE: Got it. Thank you. That's right.

10 THE COURT: Okay.

11 MR. SMITH: So, Judge, when they come back in,
12 because as of now there's 8 seated in the back or are we -- are
13 they --

14 THE MARSHAL: 1 through 7. 8 through
15 (indiscernible).

16 THE COURT: Well, let me give you a sheet. Why don't
17 you check with Michelle. I meant Kristin. Excuse me. She'll
18 give you the sheet.

19 MR. SMITH: Okay.

20 THE COURT: You'll each have your own copy of the
21 sheet, so you'll see --

22 MR. SMITH: Okay. Okay.

23 THE COURT: -- all of them.

24 MR. SMITH: All right, got it.

25 (Court recessed at 2:29 p.m. until 2:41 p.m.)

1 (In the presence of the prospective jurors)

2 THE COURT: All right, the State will now exercise
3 their first preemptory challenge.

4 MR. SMITH: Thanks, Judge.

5 THE COURT: All right, defendant's first. All right,
6 State's second. Defendant's second. All right, State's third.
7 All right, defendant's third. State's fourth. Defendant's
8 fourth. Defendant's fourth. I'm sorry, State's fifth. All
9 right, defendant's fifth preemptory challenge. Defendant's --
10 excuse me plaintiff's sixth. Defendant's sixth preemptory
11 challenge. State's seventh. Defendant's seventh. All right,
12 State's eighth. Defendant's eighth. All right, the State's
13 ninth and final preemptory challenge. All right, defendant's
14 ninth and final preemptory challenge.

15 It appearing to the Court that all preemptory
16 challenges have either been exercised or waived, the clerk will
17 now call the roll of the members who will be impaneled to hear
18 this case.

19 THE CLERK: Okay, Juror No. 1 is Justin Dettre.
20 Thank you. Juror No. 2 is Jody Montonya. Juror No. 3 is James
21 Eral. Juror No. 4 is Judy Chelini. Juror No. 5 is Nancy
22 Mirolock. Juror No. 6, Kirk Livernash. Juror No. 7, Dawn
23 Fraley. Juror No. 8, Araceli Murrieta. Juror No. 9, James
24 McCaldin. Juror No. 10, Marie Pinillos. Juror No. 11, Jose
25 Vasquez. Juror No. 12, Harley McFate. Juror No. 13, Robert

1 Clark. And Juror No. 14, Martin Villasenor.

2 THE COURT: Ladies and gentlemen, those of you who
3 are not seated in the jury box, I'd like to thank you for your
4 time today. Please understand it was not a waste of your time.
5 We must go through this process to make sure that we can
6 empanel a jury. On a particular case I had, we went through
7 jury selection for two full days, and I believe there was
8 another trial that went for a whole week of this process.

9 And it's important that you did come down here and
10 perform your civic duty. At this time you're released from my
11 courtroom. You're instructed to go back down to the third
12 floor, jury commissioner, and advise them that you were in
13 Department 17, you were not selected, and they'll process you
14 out. Again, thank you very much for your time.

15 The clerk will now provide the oath of office to the
16 jurors.

17 THE CLERK: Please stand and raise your right hand.

18 (JURY PANEL SWORN)

19 THE MARSHAL: You may be seated.

20 THE COURT: Congratulations, ladies and gentlemen,
21 having been selected for this case. One thing I will tell you
22 in a criminal case we have 12 jurors that deliberate. Now,
23 there's 14 in the box. Jurors No. 13 and 14, that does not
24 mean you are the alternates for this case.

25 The alternate chairs have been randomly selected

1 which means two of you will be alternates in this case. If
2 someone becomes ill or someone finds out they know something
3 about the case or there's some legal cause that one of the
4 jurors have to be excused, then the alternate would take their
5 place. Again Jurors No. 13 and 14 are not necessarily
6 alternates. So it's important that everyone pay attention
7 closely -- close attention to the evidence because it's a very
8 important case, all right?

9 At the end of the trial I will read to you and
10 provide you a copy of the jury instructions. Each of you will
11 have your own copy of the jury instructions, which are the law
12 that applies to this particular case. I'm going to read you
13 some preliminary instructions that will aid you in this trial,
14 so give you a head's up of some things to expect and some basic
15 law for you to keep in mind as you hear the testimony in this
16 particular case.

17 Ladies and gentlemen, you are admonished that no
18 juror may declare to a fellow juror any fact relating to this
19 case as of his own knowledge, and if any juror discovers during
20 the trial or after the jury has retired that he or she or any
21 other juror has personal knowledge of any fact in controversy
22 in this case, he or she shall disclose such situation to me in
23 the absence of the jurors want.

24 This admonishment means that if you learn during the
25 course of the trial that you were acquainted with the facts of

1 this case, or the witnesses, and you have not previously told
2 me of that relationship, you must then disclose that fact to
3 me. You communicate to me through the court marshal.

4 This is a criminal case brought by the State of
5 Nevada against the defendant. This case is based upon an
6 Information. The clerk will now read the Information and state
7 the plea of the defendant.

8 THE CLERK: District Court, Clark County, Nevada,
9 State of Nevada, plaintiff versus Brian Kerry O'Keefe,
10 defendant. Case No. C-250630, Department No. 5, Amended
11 Information. David Roger, District Attorney, within and for
12 the County of Clark, State of Nevada, in the name and by the
13 authority of the State of Nevada informs the court that Brian
14 Kerry O'Keefe, the defendant above-named, having committed the
15 crime of murder with use of a deadly weapon, open murder,
16 felony NRS 200.010, 200.030, 193.165.

17 On or about the 5th day of November, 2008, within the
18 County of Clark, State of Nevada, contrary to the form force
19 and effect of statutes in such cases made and provided --
20 (indiscernible). I'm sorry. Within the County of Clark, State
21 of Nevada, contrary to the form, force and effect of statutes
22 in such cases made and provided and against the peace and
23 dignity of the State of Nevada did then and there willfully,
24 feloniously, without authority of law and with premeditation
25 and deliberation and with malice aforethought kill Victoria

1 Witmarsh, a human being, by stabbing the said Victoria Witmarsh
2 with a deadly weapon, to wit: A knife.

3 Signe,d, David Roger, District Attorney. Signed by
4 Phillip Smith, Deputy District Attorney to which the defendant
5 has entered a plea of not guilty.

6 THE COURT: Ladies and gentlemen, you should
7 understand that the Information just read to you is simply a
8 description of the charge made by the State against the
9 defendant. It is not evidence of anything. It does not prove
10 anything. Therefore, the defendant starts out with a clean
11 slate. The defendant has plead not guilty and is presumed
12 innocent.

13 This is a criminal case and there are two things you
14 must keep in mind at all times. First, the defendant is
15 presumed innocent unless and until proved guilty beyond a
16 reasonable doubt. The defendant is not required to present any
17 evidence or prove his innocence. The law never imposes upon a
18 defendant in a criminal case the burden of calling any
19 witnesses or introducing any evidence.

20 Second, to convict, the State must prove beyond a
21 reasonable doubt the crime was committed, the defendant is a
22 person who committed the crime. It will be your duty to decide
23 from the evidence to be presented whether defendant is guilty
24 or not guilty. You are the sole judges of the facts. You will
25 decide what the facts are from the evidence which would be

1 presented. The evidence will consist of testimony of witnesses
2 and documents and other things received into evidence as
3 exhibits.

4 You must apply the facts of the law which I shall
5 give you, and in that way reach your verdict. It is important
6 you you perform your duty of determining the facts diligently
7 and conscientiously. For ordinarily there is no way of
8 correcting an erroneous determination of the facts by the jury.

9 You should not take anything I may say or do during
10 the trial as indicating my opinion as to how you should decide
11 the case, or to influence you in any way in your determination
12 of the fact. At times I may even ask questions of witnesses.
13 If I do so, it is for the purpose of bringing out matters which
14 should be brought out and not in any way to indicate my opinion
15 about the facts, or to indicate that the weight or value you
16 should give to the testimony of a witness.

17 In deciding the facts of the case you may have to
18 decide which witnesses to believe and which witnesses not to
19 believe. You may believe everything a witness says, only part
20 of it or none it. And in considering the weight or value of
21 the testimony of any witness, you may consider the appearance,
22 attitude and behavior of the witness when testifying, and a
23 number of other things including the witness's ability to see
24 or hear, or know of the things the witness testifies to, the
25 quality of the witness' memory, the inclination of the witness

1 to speak truthfully, whether or not the witness has any
2 interest in the outcome of the case or any motive, bias or
3 prejudice. Whether the witness is contradicted by anything the
4 witness said or wrote before the trial, and how reasonable is
5 the witness's testimony when considered with other evidence
6 which you believe.

7 In deciding whether or not to believe a witness, keep
8 in mind that people sometimes forget things. You need to
9 consider whether a contradiction is an innocent lapse of memory
10 or an intentional falsehood, and that may depend upon whether
11 it has to do with an important fact or only a small detail.
12 The weight or value of evidence does not necessarily depend on
13 the number of witnesses testifying for one side.

14 You must consider all of the evidence and you may
15 decide the testimony of a smaller number of witnesses on one
16 side has more weight or value than that presented by a larger
17 number of witnesses on the other side.

18 There are two kinds of evidence, direct and
19 circumstantial. Direct evidence is testimony about what the
20 witness personally saw, heard or did. Circumstantial evidence
21 is indirect evidence. It is proof of one or more facts from
22 which you can find another fact. By way example, if you wake
23 up in the morning and see the ground, the sidewalks and the
24 street are all wet and water a running down the gutter, you may
25 find from those facts that it rained during the night. It is

1 proof of one or more facts from by you can find another fact.
2 If you are awake during the night and saw the rain fall, that
3 would be direct evidence, which is something you personally
4 saw.

5 You may consider both direct and circumstantial
6 evidence in deciding the case. The law permits you to give
7 equal weight or value to both. But it is for you it decide how
8 much consideration to give any evidence.

9 Certain things are not evidence and you must not
10 consider them as evidence in deciding the facts of this case.
11 Statements and arguments by attorneys, questions and objections
12 of the attorneys, testimony I instruct you to disregard, and
13 anything you may see or hear if the court is not in session,
14 even if what you see or hear is done or said by one of the
15 parties or by one of the witnesses.

16 Remember, evidence is sworn testimony by a witness
17 while court is in session and documents and other things
18 received into evidence as exhibits. There are rules of law
19 which control what can be received into evidence. When a
20 lawyer asks a question or offers an exhibit into evidence and
21 the lawyer on the other side thinks that it is not permitted by
22 the rules, that lawyer may object. If I overrule the
23 objection, the question may be answered or the exhibit
24 received. If I sustain the objection, the question cannot be
25 answered and the exhibit cannot be received.

1 Whenever I sustained an objection to a question,
2 ignore the question and do not guess what the answer might have
3 been. Sometimes I may order evidence stricken from the record
4 and tell you to disregard or ignore such evidence. This means
5 when you are deciding the case, you must not consider the
6 evidence which I have told you to disregard.

7 It is a duty of a lawyer to object to evidence which
8 the lawyer believes may not be permitted by the rules. You
9 should not be prejudiced in any way against the lawyer what
10 makes objections on behalf of the party the lawyer represents.
11 Also, I might find it necessary to admonish a lawyer. If I do,
12 you should not be prejudiced towards the lawyer or the client
13 because I have found it necessary to admonish the lawyer.

14 You will be given the opportunity to ask written
15 questions of the witnesses called to testify in this matter.
16 After both sides have completed the questioning of the witness,
17 the jury at that time and only at that time may ask a question
18 of the witness. Please raise your hand, write your question
19 down on a piece of paper that will be provided to you. Write
20 down your juror number and then hand it to the marshal. The
21 marshal will then provide the question to me, and I'll confer
22 with counsel to see if it a legally proper question. If it a
23 legally proper question, the question will be asked the
24 witness. If it is not, then it will not be asked. The jury
25 should not give undue weight to any questions that they have

1 presented to a witness.

2 Until this case is submitted to you, do not talk it
3 each other about it or about anyone who has anything to do with
4 it until the end of the case when you go to the jury room to
5 decide your verdict. Do not talk with anyone else about this
6 case or anyone who has anything to do with it until the trial
7 has ended and you have been discharged as jurors. Anyone else
8 includes members of your family and your friends. You may tell
9 them that you're a juror in a criminal case, but don't tell
10 them anything else about it until after you have been
11 discharged by me.

12 Do not let anyone talk to you about the case or about
13 anyone who has anything to do with it. If someone should try
14 to talk to you, please report it immediately by contacting the
15 marshal. Do not read any news stories, listen to any radio
16 broadcasts or watch any television reports or do any Internet
17 research about the case, or about anyone who has anything to do
18 with it. Do not to any research or make any investigation
19 about the case on your own. You may be tempted to visit the
20 crime scene. Please do not do so.

21 In view of the time that has elapsed since this case
22 has come to trial, substantial changes may have occurred to the
23 location in question. Also, in making an unauthorized visit
24 without the benefit of explanation, you may get an erroneous
25 impression. Therefore, please avoid going near or past the

1 locations until after this case has been completed.

2 At the end of the trial you will have to make your
3 decision based upon what you recall of the evidence. You will
4 not have a written transcript to consult and it's difficult and
5 time-consuming for the court recorder to play back lengthy
6 testimony. I urge you to pay close attention to the testimony
7 as it is given.

8 If you wish, you may take notes to help you remember
9 what a witness said. If you do take notes, please keep them to
10 yourself until you and your fellow jurors go to the jury room
11 to decide case. Do not let note-taking distract you so that
12 you do not hear other answers by the witness. You should rely
13 on your own memory of what was said and not be overly
14 influenced by the notes of other jurors.

15 Do not make up your mind about what the verdict
16 should be until after you have gone to the jury room to decide
17 the case and you and your fellow jurors have discussed the
18 evidence. It is important that you keep an open mind
19 throughout this trial.

20 During the course of the trial the attorneys for both
21 sides and all court personnel, other than the marshal, as well
22 as the Court, as well as the judge, are not permitted to
23 converse with members of the jury. These individuals are not
24 being anti-social, but they are bound by the law and rules of
25 ethics. To do so might contaminate your verdict.

1 The trial will proceed in the following manner: The
2 deputy district attorneys will make an opening statement, which
3 is an outline to help you understand what the State expects to
4 prove. Next the defendant's attorney may, but does not have
5 to, make an opening statement. Opening statements serve as an
6 introduction to the evidence which the party making the
7 statement intendeds to prove.

8 The State will then present its evidence, and counsel
9 for the defendant may cross-examine the witnesses. Following
10 the State's case, the defendant may present evidence, and the
11 deputy district attorney may cross-examine the witnesses.
12 However, as I have said, the defendant is not obligated to
13 present any evidence.

14 After all the evidence has been presented, I will
15 instruct you on the law. After the instruction on the law has
16 -- after instruction of the law have been read to you, each
17 side has the opportunity to present oral argument. What is
18 said in oral argument is not evidence. The arguments are
19 designed to summarize and interpret the evidence.

20 Since the State has the burden of proving the
21 defendant guilty beyond a reasonable doubt, the State has a
22 right to open and close the arguments. After the arguments
23 have been completed, you will retire to deliberate your
24 verdict. At this time, is the State ready for their opening?

25 MR. SMITH: Yes, Judge.

1 THE COURT: All right, go ahead.

2 STATE'S OPENING STATEMENT

3 MR. SMITH: May it please the Court, counsel. Folks,
4 despite the fact that this is a murder trial, I don't really
5 have a long and ornate opening statement because fundamentally
6 the facts of this case are pretty simple.

7 The State anticipates that the evidence that you're
8 going to see throughout this trial is going to show that on
9 November 5th, 2008, here in Clark County, Nevada, the
10 defendant was living with his on again, off again girlfriend, a
11 woman by the name of Victoria Witmarsh. They had been seeing
12 each other for several years dating back to 2001.

13 I say "on again and off again", but obviously in
14 November 2008 they were on again, and in fact, they were living
15 together at a residence located off a street called El Parque.
16 Now, Ms. Witmarsh was actually estranged from her husband. Her
17 actual legal name was Mrs. Victoria Witmarsh. But at the time
18 she was in a relationship with the defendant, Brian O'Keefe.

19 Mrs. Witmarsh had been estranged from her husband for
20 several years, and in fact, she had a daughter with that
21 husband. The daughter's name was Alexandra. Now, on the night
22 in question, November 5th, 2008, it's the State's position that
23 the defendant and Victoria Witmarsh got into what we'll call
24 for now an argument or an altercation.

25 Now, by no means are we conceding this was mutual

1 combat but something happened, and the evidence is going to
2 show you what exactly happened. At the conclusion of this
3 altercation, it's the State's position that the evidence is
4 going to show you that the defendant, in fact, stabbed Victoria
5 Witmarsh and that she died.

6 We also anticipate that the evidence is going to
7 prove to you this was no self-defense, this was not an
8 accident, and it was not a suicide. And that's what we have to
9 prove. We have to prove that the death of Ms. -- Mrs. Witmarsh
10 was unlawful.

11 We anticipate that we are going to prove that the
12 death in this case was nothing less than an intentional act
13 committed by the defendant against Mrs. Witmarsh. You're also
14 going to hear evidence indicating that the defendant had a
15 motive to kill Mrs. Witmarsh and that he had what we'll
16 describe as an underlying ill will towards Mrs. Witmarsh, which
17 we submit is going to help us meet our burden of proving beyond
18 a reasonable doubt that this was an intentional act.

19 And at the conclusion of all the evidence in this
20 case, we are going to ask you to return a verdict of guilty to
21 the crime of first degree murder. Thank you.

22 THE COURT: All right, thank you. Mr. Pike, do you
23 wish to exercise your right for opening at this time?

24 MR. PIKE: Yes, your Honor.

25 THE COURT: All right.

DFENDANT'S OPENING STATEMENT

MR. PIKE: May it please the Court, ladies and gentlemen of the jury, counsel, Ms. Palm and Brian, this is an opportunity that I have to preview the defense's version, Mr. O'Keefe's version, and try to pull together some of the evidence that's going to be produced to you so that when it comes forward to you, it will -- it goes in context.

Sometimes we have to call witnesses out of order. So the best thing I can describe in opening statement is like a picture on a puzzle box because sometimes we put a piece over here in the corner, and it isn't until we bring in the other pieces that that makes sense and it all kind of fits in.

So once you understand the theory of the State as they presented it, now we're going to show you what the evidence is going to show in this case and why it would be appropriate to come back not with a verdict of guilty of murder in this case.

This is the case of the State versus Brian O'Keefe. It is a case about tragedy and not about murder. It starts out with the State alleging this premeditation. That he thought about it. He had the malice, the ill will that they talked about. But it's not supported by the physical evidence that's going to come in.

This is the apartment where all these events occurred. It was not done in a secret or a premeditated or

1 where somebody snuck to where someone was at and then killed
2 them and tried to get away from what was happening.

3 It was this on again, off again girlfriend. They
4 were living together. They were living in this apartment and
5 neighbors were around. They walked up. This is where they
6 came. The door was open. The evidence is going to show that
7 when the neighbors came, they came in the door. It was open.
8 This is not something that was done in secret, which is what
9 you would reasonably expect or would interpret as a
10 premeditation or planning.

11 They were a couple. They lived together. He gave
12 her flowers. They had their clothing together. They kept an
13 apartment. They kept a clean apartment. They had gotten over
14 their past problems. They were hoping for that happy ending
15 that we heard about. And they were back together.

16 The physical evidence will show that this is a couple
17 who was preparing for a future together. This is, again, the
18 bathroom, the closet space. It appears to be equally divided.
19 They're working side by side with the union. We'll bring in
20 union members to show that as a couple they were open. This is
21 not something where anybody was keeping a secret. They were
22 back together.

23 Victoria and Brian were inseparable around the union
24 and they worked together, and everybody knew that they were
25 there. Physical evidence will show they were looking forward

1 to Christmas together. This is an invitation to a Christmas
2 party that was found on the table and photographed by the Las
3 Vegas Metropolitan Police Department as they were investigating
4 the location in the apartment and trying to put all the --
5 together everything that happened during this period of time.

6 This is the knife that was used. Now, you're not
7 going to actually have that knife brought in. Biologically the
8 deceased suffered from cirrhosis of the liver and Hep C, and so
9 there's a biological issue. So you will see the photographs
10 that were done. The CSIs examined it to determine whose blood
11 was where to give you the significance about it, explain it,
12 and they'll provide the physical evidence from which you can
13 interpret the physical events that occurred.

14 And notice that the protection here. That that
15 portion of the knife and that where they -- the blood was
16 located on it and what the processing revealed, it revealed
17 some interesting things. That there was a mixture of profile,
18 both Brian and Victoria's blood was on the handle. Victoria's
19 blood was there. It was a mixture of blood both here, and
20 there was male blood, Brian's blood was right there.

21 And as you look at where this all occurred, then
22 you're brought into the situation that this blood and Brian's
23 blood, where his blood came from, came from a wound that was
24 consistent with a defensive wound. This is a picture of
25 Brian's hands. They came in and photographed where he was cut.

1 As an attempt to defend himself, he grabbed a knife or to stop
2 Victoria's use of the knife during that evening.

3 The gathered blood evidence, the meaning, the
4 interpretation of that blood evidence and the events were --
5 and for instance, this is a picture of blood evidence that you
6 will see going to the bathroom, hence to find clothing to help
7 do things, to try and provide provide health care, or to stop
8 or help Victoria during that period of time.

9 There will be no evidence brought in this case,
10 physical evidence, that Mr. O'Keefe was the attacker. You'll
11 see the evidence is -- that you're going to be receiving will
12 come in from a number of sources. And it will come in from
13 autopsy reports, CSA reports, the DNA reports that I showed
14 you, and the physical evidence.

15 This is something that the State did in preserving in
16 their evidence. They put covers over the hands to determine
17 whether or not there was any scratch marks or any DNA that may
18 have indicated that there was any sort of a defensive
19 scratching or anything by Victoria. And so -- and if there
20 was, it would have been Brian's DNA under her fingernails.
21 There wasn't.

22 This was not a situation where Victoria was ever in
23 the defensive position. Blood evidence -- also as it --
24 because of the injury, it was just a single knife wound to this
25 side here. There was a fair amount of bleeding because of the

1 cirrhosis of the liver. That acts much like hemophilia in that
2 the blood cannot clot and the evidence that you will see will
3 show you that Victoria suffered from this, and so she bled more
4 quickly and more profusely than someone who didn't suffer from
5 that. And the blood went down this side, and it appeared to
6 pool on a portion of her pants.

7 She was wearing a dark outfit, and the only thing
8 that could really show up the blood I'm reference to it, and
9 this is -- I apologize for this not being a good picture, but
10 it was a white piping that she had on her pants. So in an
11 effort to determine where that blood was coming from, the
12 evidence that you're going to receive will appropriately show
13 that as Brian was attempting to assist her, that after he was
14 cut, he removed the pants and started to put them into the
15 hamper in the bathroom and sure enough his blood from where he
16 received those cuts was down in the cuff of the pants.

17 The lack of the arm strength of Mrs. Witmarsh, as you
18 can see Mrs. Witmarsh was in her 50s. She was slight. She did
19 not have a lot of meat on her arms, I guess is a delicate way
20 to put it. Or flexible enough as they grabbed the knife that
21 it would have allowed for the knife to move into the position
22 where it ultimately just hit her at her at a wrong spot.

23 Well, the blood evidence further that you're going to
24 see will be collected as to what's contained on the bed where
25 the initial -- the body had rolled, had rolled again and then

1 went on in the stages of motion. And that will be explained by
2 the CSAs, as well as for State, as well as our own CSA,
3 (indiscernible) Schiro who will testify in reference to that.

4 This is the (indiscernible) wound. This is
5 photograph (indiscernible) from Metro and it shows it in
6 context here with the arm. The physical evidence that is going
7 to be presented to you again, will show you that it was a stab
8 or an insertion type wound. There was no physical evidence
9 that showed these two people were involved in any slashing
10 type, or any type of long along fight, or anything like that
11 because there aren't a series of wounds that are related to it.
12 There's just two. They have to deal with that.

13 Evidence of the single puncture wound is also shown
14 in the clothing because it was a jacket that was on over a top
15 that was -- had the matching pants, and they were -- this is
16 how dark they were, and this is how difficult even the
17 photographs that we have to see where the blood was coming from
18 during that period of time. And remember, it was night at the
19 time that this occurred and it was dark.

20 The nature of the blood, again, you'll see the
21 clothing evidence and photographs -- photograph evidence of
22 that (indiscernible) Mr. O'Keefe, which further we'll go
23 through and show the defense's position. The blood -- and it
24 all comes down to what condition were these two people in when
25 this happened? What was their frame of mind and what were they

1 thinking, what was going on?

2 Civilian witnesses are going to come in, the
3 neighbors. The heard the noise and they came up first. And
4 they called the police and the police came. When the
5 civilians, the neighbors came up, Brian -- they said Brian was
6 drunk. He was intoxicated, and he was over the body of Mrs.
7 Witmarsh at the time. He was incoherent, he was yelling, he
8 was talking to her, he was yelling at them. Most of all he was
9 intoxicated. An officer can verify that by saying he was
10 intoxicated. He was unsteady on his feet, had dilated pupils.
11 He reacted in such a manner that they had to taser him to move
12 him out of the bedroom and away from Victoria.

13 Again, now, the interpretation as the Judge indicated
14 is for you as to not running from the scene. We'll have
15 evidence of that. Staying with her, calling for help, trying
16 to get the neighbors to call for help. And you interpret those
17 as circumstantial evidence. There's evidence of trauma to
18 Brian's back. That's another picture of Brian that was taken
19 police officers at the time.

20 The intoxication of Mrs. Witmarsh, along with
21 suffering from the Hepatitis C, the cirrhosis of the liver, she
22 also suffered from depression, and she had -- she took
23 anti-depressants for that. At the time of the autopsy, it was
24 found that at the time that all this occurred she had a blood
25 alcohol of .24. That's about three times the legal limit. You

1 can't operate a motor vehicle after .08, and it was three times
2 with that.

3 In addition to that, she had a high amount of
4 anti-depressant medication that was inside of her. We're going
5 to bring in a doctor to testify about what that combination of
6 drugs does to somebody, and some of the possible side effects
7 that it would cause upon somebody, and what they may do under
8 -- when they're under the influence of that combination of
9 drugs and alcohol.

10 You'll hear testimony on what they were building
11 together. That they had been attending alcohol counseling
12 together. And unfortunately, these -- this is a couple that we
13 now know never should have got back together. Why did they?
14 Who initiated this? This was not a situation where Mr. O'Keefe
15 sought out and stalked her, tried to chase down Mrs. Witmarsh
16 and reestablish a relationship. In fact, Brian had had a
17 relationship and was living with a Cheryl Morris. She'll come
18 in and testify in relationship to that.

19 And it was Mrs. Witmarsh that reinitiated the
20 relationship between the two of them, and she basically came in
21 and forced Cheryl out. And then these two people that Brian
22 and Victoria Witmarsh, who had met at rehab, and had a long
23 history of alcoholism, fell off the wagon hard. And
24 (Indiscernible) the pills and the alcohol. And unfortunately
25 that results in the death, a tragic death, of Mrs. Witmarsh. A

1 lady in her 50s who was loved by family, her friends and by
2 Brian.

3 At the conclusion of the evidence, once you put all
4 of that together and you examine the evidence that's done in
5 relationship to that, then I'm going to be able with a clear
6 conscious, and you will be able to return a -- not a verdict of
7 first degree murder.

8 Because the intoxication, as it affects a person's
9 ability to decide what they're going to do, you will find that
10 that is a consideration that you'll have to make to determine
11 whether or not this is a second degree murder. The
12 instructions, again, will talk about the voluntariness, the
13 voluntary intentional acts if they cause an injury and whether
14 or not in is a voluntary or decided or planned act that
15 occurred. The evidence will not support that.

16 In addition to that, if it is a involuntary action,
17 or a negligent action that was involved, then you can even
18 consider that for one of the possible layers of guilt, if you
19 believe that there is guilt at all.

20 Reaction to the knife, the location of the wound, how
21 it occurred, the motion of the bleeding, all of this physical
22 evidence will allow you to determine the accidental nature of
23 this injury incurred as a reaction to a knife that was
24 presented to Mr. O'Keefe.

25 And Mr. O'Keefe would react to something like that.

1 He's been trained. He'd served in the Airborne. He's a bronze
2 star Metal of Valor recipient, and he has come from that to
3 this, an intoxicated state, reacting to a knife and with the
4 knowledge of what Victoria would do and what a person believed,
5 and then reacts, results in that.

6 So at the close, at the conclusion of this case the
7 evidence is going to say this was either a negligent act
8 between two extremely intoxicated people, and it was an
9 accidental, or it was -- this was a negligent act that caused
10 an involuntary manslaughter. And we'll come back and ask for
11 that as a return, at the close of this case. Thank you very
12 much.

13 THE COURT: Thank you, Mr. Pike. Is State ready to
14 call our first witness?

15 MR. SMITH: We are, Judge.

16 MS. GRAHAM: We are, Judge. State calls Joyce
17 Toliver.

18 THE MARSHAL: Mr. Toliver, if you'll remain standing,
19 please, and raise your right hand and face the clerk.

20 JOYCE TOLIVER, STATE'S WITNESS, SWORN

21 THE CLERK: Please be seated. Will you please state
22 your name and spell it for the record.

23 THE WITNESS: Joyce Toliver, J-o-y-c-e, T-l-o-i-v-e-r
24 (sic).

25 MS. GRAHAM: We should have set this up ahead of

1 time.

2 THE COURT: There's a button on the -- Michelle's
3 coming down. She'll -- here we go.

4 MS. GRAHAM: Sorry. We need a tech person. Thank
5 you.

6 DIRECT EXAMINATION

7 BY MS. GRAHAM:

8 Q Good afternoon, Joyce.

9 A Good afternoon.

10 Q Do you currently reside -- where do you currently
11 reside?

12 A 5001 El Parque, Apartment 29, Las Vegas, Nevada,
13 89146.

14 Q Is that in Clark County, Nevada?

15 A Clark County, Nevada.

16 Q Tell the jury how long you've lived there?

17 A Ten -- it will be eleven years in July.

18 Q And who do you live with, Joyce?

19 A My husband, Charles Tlover.

20 Q Charles Tlover?

21 A Um-h'm. Yes.

22 Q So how long have you and Charles been married?

23 A Valentine's Day it was 30 years.

24 Q 30 years? And on November 5th, 2008, you both lived
25 there.

1 A Correct.

2 Q Were you familiar with the neighbors that lived
3 directly upstairs from you?

4 A No.

5 Q Okay. Could you identify them if you saw them?

6 A I could probably identify the man. They -- he was
7 only there for like two months.

8 Q Okay.

9 A And he had like about three different women in them
10 two months. Matter of fact, I didn't know the last one. I had
11 saw her like one time, but.

12 Q Okay. And the last one you meaning (sic) the victim
13 in the case?

14 A The victim, correct.

15 Q Okay. If I showed you a picture of the victim, which
16 you know now as Victoria Witmarsh --

17 A Um-h'm.

18 Q -- would you be able to recognize her?

19 A Probably so.

20 Q Okay. I'm showing the defense what's been marked as
21 Proposed State's 4. Okay.

22 MR. PIKE: And for the record, we stipulate to the
23 admission of this document and to the identity much Mrs.
24 Witmarsh --

25 THE COURT: Okay.

1 MR. PIKE: -- throughout the proceedings.

2 THE COURT: The document will be admitted.

3 (State's Exhibit 4 admitted)

4 BY MR. SMITH::

5 Q If you could just take a look at the screen there,
6 Joyce. Do you recognize that woman?

7 A It looks like her with no make up, but.

8 Q Okay. Looks the woman that lived upstairs from you?

9 A Yeah. A little small because her face is a little
10 bigger, but, yeah.

11 Q Okay. And do you see the male that lived upstairs
12 with Victoria Witmarsh in the courtroom today?

13 A Would he be over there. Yeah, I think.

14 Q Does he look different to you?

15 A He got glasses on and look older.

16 Q Okay. Could you point to him and describe what he's
17 wearing other than the glasses because I see three people with
18 glasses at that table.

19 A Okay. The gentleman to my left, your right, with the
20 tie on, but they all got on ties.

21 Q What color tie does he have?

22 A The --

23 MR. PIKE: We'll stipulate to the identity of Mr.
24 O'Keefe.

25 MS. GRAHAM: Okay.

1 THE COURT: The record will reflect identification of
2 the defendant.

3 THE WITNESS: He looks older.

4 BY MS. GRAHAM:

5 Q Now Joyce, I want to draw your attention,
6 specifically, to November 5th of 2008 this past year.

7 A Okay.

8 Q And you -- in the evening hours.

9 A All right.

10 Q Were you at home that evening?

11 A Yes, I was.

12 Q And approximately, 9:00 p.m. what were you doing at
13 that point?

14 A Getting ready for One Life to Live. I work during
15 the day so I watch the stories at night to fall asleep on, so
16 One Life to Live came on -- comes on about 9:00 --

17 Q Okay.

18 A -- an I had already took my shower. I was in the
19 bedroom between like 8:45 getting ready for 9:00 o'clock. My
20 husband was asleep, and that's what I was doing at 9:00
21 o'clock.

22 Q Okay. And where were you --

23 A I was in --

24 Q -- getting ready to watch --

25 A -- in my bed sitting up just like this getting ready

1 to watch.

2 Q All right.

3 A Don't miss my shows at night.

4 Q So the television -- all right. In your bedroom.

5 A In my bedroom.

6 Q And you said Charles was sleeping?

7 A He was sleep. He was sleep.

8 Q So was he in bed next to you or --

9 A Yeah, he was in bed --

10 Q -- was he --

11 A Yeah, he was in bed next to me.

12 Q Okay.

13 A Sometimes he sleeps on the couch, but most of the
14 time he was in the bed with me next to me because he -- after
15 he eats and take his shower, he's out for the count.

16 Q Okay.

17 A I'm up watching my stories. And then it got kind of
18 loud. It was a lot of noise going on, and I -- my first
19 reaction, I always turn my remote up to try to drown it out.

20 Q Let me stop you right there.

21 A Okay.

22 Q Okay. That night you were getting ready to watch One
23 Life to Live, and you in your bed.

24 A Right.

25 Q Did you hear your neighbors upstairs, Victoria and

1 Brian? Do you hear anything that caused you some concern?

2 A Sure, this (witness pounds on desk). All that, and
3 all from the top and all from the side, yeah.

4 Q Okay. And that was going on while you were watching
5 TV?

6 A While I was trying to watch the TV. I turned the
7 remote up so I could hear louder, but it got just as loud.

8 Q What did you think was going on?

9 A I thought they were fighting.

10 Q Okay.

11 A I could hear crying.

12 Q I'm sorry?

13 A I could hear crying.

14 Q You could hear crying?

15 A A woman crying, right.

16 Q You could hear a woman crying.

17 THE MARSHAL: Judge, we like have to them one talk at
18 a time (indiscernible).

19 THE COURT: Right. I think you're talking over each
20 other.

21 THE WITNESS: Oh, okay.

22 THE COURT: And ma'am --

23 MS. GRAHAM: Okay.

24 THE COURT: -- let the counsel finish her question --

25 THE WITNESS: Okay.

1 THE COURT: -- and then she'll let you finish your
2 answer.

3 THE WITNESS: Okay.

4 THE COURT: Okay?

5 BY MS. GRAHAM:

6 Q When you say you heard all this thumping and
7 commotion and crying, how long was it that you heard all of
8 this crying and commotion?

9 A I think it had started before I had really noticed
10 what was going on, because like I said, I was -- I was in the
11 bed watching my story, and I could hear a little crying, and a
12 lot of thumping, and a lot of thumping, and crying again.
13 There was crying throughout the whole thumping.

14 Q So you couldn't enjoy One Life to Live?

15 A No, I couldn't.

16 Q Okay. At some point did Charles wake up because of
17 the commotion upstairs?

18 A Oh, yes, he did.

19 Q Okay, tell me what happened.

20 A He said what the fuck is --

21 MR. PIKE: Objection.

22 THE WITNESS: -- going --

23 MR. PIKE: Objection. Hearsay.

24 THE COURT: Okay. Listen to the question, ma'am.

25 She asked you, tell me what happened, okay. Did anything

1 happen in your apartment at that point?

2 THE WITNESS: Besides my husband waking up, no. They
3 were still -- it was going on so loud it woke him.

4 BY MS. GRAHAM:

5 Q Okay. And when Charles woke up, what did he say?

6 A He said what the fuck --

7 MR. PIKE: Objection, your Honor. Hearsay.

8 MS. GRAHAM: Present sense impression, your Honor, as
9 to what Charles Tloiver did next when he woke up.

10 MR. PIKE: Charles Tloiver is in the room outside.

11 THE WITNESS: Yeah, he can tell you.

12 THE COURT: I'm going to sustain the objection.

13 MR. PIKE: Thank you.

14 THE WITNESS: So what --

15 BY MS. GRAHAM:

16 Q Go ahead.

17 THE COURT: I sustained the objection. Don't answer
18 the question.

19 THE WITNESS: Okay.

20 THE COURT: Wait until the next question.

21 MS. GRAHAM: Okay.

22 BY MS. GRAHAM:

23 Q So Charles woke up.

24 A Yes.

25 Q Okay. And then what did you do?

1 A I just looked at him because what he had said.

2 Q Okay. And did at any point in time because of what
3 was going on upstairs, did you try to get the attention -- did
4 anybody try to get the attention of upstairs to --

5 A I took the broom and --

6 Q -- get them to quiet --

7 A -- punched it upstairs, but that didn't work.

8 Q Okay.

9 A So they would stop. Because it was really loud. It
10 was very loud.

11 Q Okay.

12 A So --

13 Q And once Charles -- after the broom incident -- you
14 poked the broom upstairs and is that what happened?

15 A Yeah.

16 Q Okay. After that it didn't quiet down?

17 A Nope.

18 Q Okay. What happened next?

19 A It got very loud. It was a big loud thump like that.
20 It was real loud, and I could hear somebody was moaning and she
21 was like (making moaning sounds), and my husband, that's when
22 he ran upstairs and said this got to stop. This is too --

23 Q Okay.

24 A And he went upstairs.

25 Q So at that point --

1 A And while he was going out the door, I could just --
2 the moaning kept going, then it just stopped.

3 Q Okay. And when you say moaning, what did it sound
4 like?

5 A (Making a moaning sound). Then it was (making
6 moaning sound). So I just had this real bad feeling. I said
7 something's really wrong, you know.

8 Q What did you think was going on?

9 MR. PIKE: Objection. Speculation.

10 THE COURT: Sustained.

11 BY MS. GRAHAM:

12 Q After Charles left, I assume he left your home to go
13 upstairs?

14 A Yes.

15 Q At any point did he come back down stairs?

16 A Oh, yes.

17 Q And what, if anything, did he say to you?

18 A He said baby --

19 MR. PIKE: Objection. Hearsay.

20 THE COURT: Sustained.

21 MS. GRAHAM: Court's indulgence.

22 BY MS. GRAHAM:

23 Q When you heard the moaning, did you know where the
24 moaning was coming from?

25 A Upstairs.

1 Q Did you hear anybody call for help?

2 A Nope.

3 Q Okay. So nobody was calling for you to call 911?

4 A Nope.

5 MS. GRAHAM: Court's indulgence.

6 BY MS. GRAHAM:

7 Q So while you were watching One Life to Live and the
8 moaning -- or all of the commotion upstairs had started, how
9 long do you think that that went on, the thumping?

10 A It had -- for about a hour or so.

11 Q And how do you know about an hour?

12 A Because like I said, I was getting ready for bed.
13 One Life to Live was -- I mean, All My Children was just fixing
14 to go off, so that had to be like about 8:40. So between 8:40
15 and the whole episode of One Life to Live that's a whole hour.
16 So I'd say an hour and something.

17 Q Okay. And it went on for about an hour until Charles
18 actually woke up?

19 A Went upstairs, yep.

20 Q All right.

21 MS. GRAHAM: I'll pass the witness at this time.

22 THE COURT: Cross-examination.

23 MR. PIKE: Thank you, your Honor.

24 CROSS-EXAMINATION

25 BY MR. PIKE:

1 Q Mrs. Tloiver --

2 A Yes.

3 Q -- I'm Randy Pike. I think we spoke, didn't we?

4 Sometime ago. I'm showing you a picture of --

5 A That's upside down.

6 Q -- whoops. Of an apartment complex, and do you
7 recognize that apartment complex?

8 A Yes, I do.

9 Q Is that the apartment complex where you lived on the
10 day in question?

11 A Yes, it is.

12 Q Did you ever go inside the apartment that was right
13 above your apartment?

14 A No.

15 Q Okay. And so you didn't socialize with Brian or
16 Victoria?

17 A No.

18 Q Did you know them by their first name as Brian and
19 Victoria?

20 A Not her, but Brian. We spoke.

21 Q And you knew Brian through social interaction just
22 around the apartment complex?

23 A Yeah.

24 Q Did you ever have occasion -- well, you said that
25 you'd come and you'd gone to bed. I assume, and correct me if

1 I'm wrong, I guess I'll put it in the form of a question, that
2 you didn't see Victoria or Brian come home that evening and go
3 up to their apartment?

4 A No, I didn't.

5 Q So you have no independent way of knowing if they
6 were intoxicated or not intoxicated during that period of time?

7 A No, I wouldn't.

8 Q And the noise progressed throughout the one hour
9 episode of the show that you were watching?

10 A Yes.

11 Q Then your husband, when the noise awoke him and he
12 tried to quiet it down with the broom, and I assume he did
13 that, hit the broom on the ceiling?

14 A Yeah.

15 Q Okay. Did you do anything like that --

16 A I did that once, too. A couple times.

17 Q Okay.

18 A We both had done it.

19 Q And then your husband did that. And then he went
20 outside and at some point in time you went to follow him
21 outside; isn't that correct?

22 A No.

23 Q Do you go out -- did you go outside when he came back
24 down?

25 A When he came back in yelling what he had saw what was

1 going on, yeah --

2 Q Okay, when --

3 A -- I went back outside --

4 Q -- he came --

5 A -- with him.

6 Q All right. When he came back down and he was yelling
7 at that time, you went out to see what was going on. And about
8 what time was that in the evening?

9 A I'd say after 10:00.

10 Q About 10:15 or closer to 10:30 or --

11 A No, about --

12 Q -- you don't know?

13 A -- 10:00 -- yeah, it was about -- it's 10:00 -- it
14 was 10:00 something.

15 Q When you went outside, what neighbors were out there?

16 A I think Robin was out there because she dialed 911
17 because he -- Cookie had asked her to dial 911.

18 Q Now, just tell me who you saw and not what they said.

19 A Just her.

20 Q Just her? Did you see the police arrive?

21 A The police, yeah, when they -- when they showed up,
22 yeah. I was out there when the police arrived.

23 Q Okay. And then when the police arrived did you go
24 back inside to your apartment?

25 A Yes, I did.

1 Q Did you come back outside and see the police after
2 they had arrested anybody?

3 A No.

4 Q Okay. Thank you.

5 MR. PIKE: I have no further questions.

6 THE COURT: All right. Any redirect?

7 MS. GRAHAM: Just briefly.

8 REDIRECT EXAMINATION

9 BY MS. GRAHAM:

10 Q Joyce, when you say that Charles left -- and does he
11 have a nickname, by the way?

12 A Cookie.

13 Q Cookie, because I noticed you mentioned on cross
14 somebody named Cookie.

15 A Yeah.

16 Q So Charles, your husband, is actually Cookie?

17 A Cookie, right.

18 Q Okay. When Cookie came back down you said he was
19 excited and yelling?

20 A Yeah.

21 Q Is that correct?

22 A Yes.

23 Q What was his demeanor?

24 A He was like, "Baby, he done killed that girl up
25 there."

1 MR. PIKE: Wait.

2 THE WITNESS: Oops.

3 MR. PIKE: Objection, your Honor.

4 MS. GRAHAM: Judge, that was an excited utterance.

5 He came in --

6 THE COURT: Is he going to be here to testify?

7 MS. GRAHAM: Yes.

8 THE COURT: I'm going to sustain the objection.

9 THE WITNESS: First time in court.

10 THE COURT: That's all right, ma'am.

11 BY MS. GRAHAM:

12 Q So what was his demeanor when he came in?

13 A I'm not saying nothing. I don't know what to say.

14 THE COURT: You can't talk about what he said --

15 THE WITNESS: Okay.

16 THE COURT: -- under most circumstances.

17 THE WITNESS: Okay.

18 THE COURT: Okay, but the question what was his

19 demeanor? How was he acting?

20 THE WITNESS: He was like was moving fast. He was
21 not nervously, but something was wrong.

22 BY MS. GRAHAM:

23 Q Okay.

24 A Excited, overwhelmed.

25 Q Excited, overwhelmed?

1 A Let me see another word. Yeah, very overwhelmed.

2 Q And during that excited overwhelmed state after he
3 just returned from down stairs, he made statements to you; is
4 that right?

5 A Yes, he did.

6 Q Okay. And what were those statements?

7 MR. PIKE: Objection, Honor.

8 MS. GRAHAM: Judge, that's excited utterance.

9 THE COURT: No, I think I'm going to --

10 MR. SMITH: Can we approach, Judge --

11 THE COURT: All right.

12 MR. SMITH: -- briefly, please?

13 THE COURT: Okay.

14 (Off-record bench conference)

15 THE COURT: I'm going to overrule the objection.

16 MR. PIKE: Thank you, your Honor.

17 BY MS. GRAHAM:

18 Q Okay. Cookie was awoken by you say the thumping.

19 A Correct.

20 Q Okay. Just to refresh the jury's -- and the broom
21 didn't work, didn't stop all the thumping and the commotion.

22 A Nope.

23 Q So he left the apartment. How long do you think he
24 was up there?

25 A Oh, about --

1 Q Upstairs, meaning the apartment upstairs?

2 A I'd say about maybe -- maybe six or seven -- wasn't
3 even ten minutes, I don't think.

4 Q Okay, and he came --

5 A Because he was right back down.

6 Q -- back down, and you had just testified that he was
7 excited and kind of hyper. What were your words -- what was
8 his demeanor exactly?

9 A Like I said, overwhelmed, excited. He was all of the
10 above.

11 Q Okay. And he made statements to you during that
12 state?

13 A Yes.

14 Q And what did he say to you?

15 A He said, "Baby, he done killed that girl up there."

16 Q Okay. And what was your reaction?

17 A I was like, "Baby, he didn't killed her. Who? What?
18 What?" He's like, "For real, baby, I know when someone's
19 dead." Then he told me what he had saw when he went up there.

20 Q Okay. All right. Now, when you say you heard the
21 moaning upstairs --

22 A Um-h'm.

23 Q -- could you tell if it was an animal, a human?

24 A It was -- it was a human.

25 Q Okay.

1 A Because I had been crying off and on during the
2 evening and then the moaning.

3 Q Okay. And when you said you heard crying, you
4 testified earlier that you heard a woman crying.

5 A Yeah.

6 Q Is that the same person that you heard moaning?

7 MR. PIKE: Objection, your Honor.

8 THE WITNESS: Yes.

9 MR. PIKE: Calls for speculation, exceeds the scope
10 of cross.

11 THE COURT: I'm going to sustain the objection. You
12 can ask it in a different way, Counsel.

13 MS. GRAHAM: Okay. Court's indulgence.

14 BY MS. GRAHAM:

15 Q Did the moaning sound like a male or a female?

16 A Like a female.

17 MS. GRAHAM: No further questions at this time.

18 THE COURT: All right. Any recross?

19 MR. PIKE: Very briefly.

20 RE CROSS-EXAMINATION

21 BY MR. PIKE:

22 Q During the period of the time you didn't hear a
23 yelling male voice, did you?

24 A No.

25 Q Didn't hear any male voice that was said any

1 threatening words or anything at all like that, did you?

2 A No.

3 Q Thank you.

4 MR. PIKE: Nothing further.

5 THE COURT: Okay. Any questions from the jurors?

6 All right. Thank you, ma'am. You're instructed not to discuss
7 your testimony with any other witness involved in this case
8 until this matter is finally resolved.

9 THE WITNESS: Okay.

10 THE COURT: Thank you for your time, ma'am.

11 THE WITNESS: You're welcome.

12 THE COURT: Next witness by the State.

13 MS. GRAHAM: State calls Charles Cookie Tloiver to
14 the stand.

15 THE MARSHAL: Mr. Tloiver, if you'll just remain
16 standing, please. Raise your right hand and face the clerk.

17 CHARLES COOIE TLOIVER, STATE'S WITNESS, SWORN

18 THE CLERK: Please be seated. Will you please state
19 your name and spell it for the record.

20 THE WITNESS: Charles Edward Toliver, T-o-l-i-v-e-r.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MS. GRAHAM:

24 Q Charles, I see that you've got a name tag on. And do
25 you have a nickname that you go by?

1 A Cookie.

2 Q Cookie.

3 A Uh-huh.

4 Q Okay. And Cookie, do you live at 5001 El Parque,
5 Building C, Apartment 29?

6 A Yes, ma'am.

7 Q In Clark County, Nevada?

8 A Yes, ma'am.

9 Q And how long have you lived there?

10 A Eleven years.

11 Q Eleven years?

12 A Uh-huh.

13 Q And who do you live there with?

14 A Me and my wife Bonita.

15 Q Okay. And is that the woman that just left the --

16 A Yes, ma'am.

17 Q -- courtroom?

18 A Yes.

19 Q Does she have another name?

20 A Joyce.

21 Q Joyce, okay.

22 A Yes.

23 Q Okay.

24 A I'm sorry.

25 Q Are you familiar with the neighbors that lived

1 upstairs from you on November 5th, 2008?

2 A Just from seeing them. Me working in my parking lot,
3 they coming through stop and speaking, and they might be
4 upstairs on the balcony, and when I come in they right above me
5 so I holler, keep going.

6 Q And when you say "they," who do you mean? Was it --

7 A Him and his girl.

8 Q Okay. So a male and a female?

9 A Yes.

10 Q Okay. And do you recognize that male in the
11 courtroom today?

12 A The male?

13 Q Yes.

14 A Yeah.

15 MR. PIKE: We'll stipulate to the identity of Brian
16 O'Keefe.

17 MS. GRAHAM: Okay.

18 THE COURT: All right.

19 BY MS. GRAHAM:

20 Q And if I showed you an a photo of the woman that
21 lived with Mr. O'Keefe, would you recognize her?

22 A Yeah, I'm pretty sure, yeah.

23 Q Okay.

24 MS. GRAHAM: Showing Mr. Toliver what's been marked
25 as State's Proposed 4.

1 THE COURT: Well, it's been admitted, I believe. Is
2 that correct?

3 MR. PIKE: That's correct.

4 MR. SMITH: It has been admitted.

5 THE COURT: It's State's 4.

6 THE WITNESS: Yes.

7 BY MS. GRAHAM:

8 Q You recognize that woman?

9 A Yes.

10 Q And that's the woman that lived upstairs with --

11 A Yes.

12 Q -- Mr. O'Keefe. Okay. I want to draw your attention
13 specifically to the night of November 5th, 2008. Were you at
14 home that evening?

15 A Yes, I was.

16 Q Okay. And around 10:00 p.m. so or what were you
17 doing?

18 A I was asleep, but from the noise woke me up.

19 Q Okay. What noise? .

20 A Boom, boom, boom, you know. Banging.

21 Q Where was it coming from?

22 A Upstairs from above my bedroom.

23 Q Okay. Are you a light sleeper?

24 A Pretty much heavy, you know, if I'm tired. It all
25 depends on how much I done did that day. I eat, sleeps hard.

1 Then even though I've had a little light day, I come and eat a
2 little bit, you know, I don't sleep too hard. It takes a
3 minute for me to go to sleep, but I don't sleep that hard.

4 Q Okay.

5 A But this particular night I was pretty much tired.

6 Q Okay.

7 A And it just woke me up.

8 Q Something woke you up upstairs?

9 A Yes.

10 Q Okay. And can you describe for the jury what kind of
11 sound that was.

12 A You want me to do it here?

13 Q Sure.

14 A (Banging on the table).

15 Q And that was loud enough to wake you up?

16 A Yes. Well, it was going on for a minute, but --

17 Q And when you say a minute, do you mean a minute --

18 A Well --

19 Q -- 60 seconds?

20 A -- from what my wife told me, it was going on -- when
21 I finally woke up from the last loudness, I -- I'm like excuse
22 my language, but what the hell is going on up there, you know.

23 Q Okay. So you immediately woke up --

24 A Yes.

25 Q -- and -- okay.

1 A Yes.

2 Q And what did do you?

3 A I laid there for a little while longer, you know, for
4 maybe 10 or 15 minutes later.

5 Q Did the noise stop?

6 A The -- it came back. I said, "Well, let me go up
7 here and see what's going on."

8 Q Okay. At that point what did you think was going on
9 up there?

10 A Well, fighting.

11 Q Okay. And you're fairly certain it was fighting?

12 A Yeah.

13 Q Yeah?

14 A No doubt about it.

15 Q What made you think it was fighting?

16 A Because of the (banging on the table), you know, and
17 then, you know, just noise.

18 Q Okay.

19 A You know. Ain't nobody going to be walking that
20 heavy and doing that kind of -- making that kind of noise.
21 Because I've been there in that apartment for like eight years,
22 you see, in that particular apartment. But I was in the other
23 apartment before I moved there, and I never heard that kind of,
24 you know, walking around ain't going to make that kind of
25 noise --

1 Q Okay.

2 A -- you know. You see what I'm saying?

3 Q All right. So while you were awake, how long do you
4 think that that noise, the fighting was going on?

5 A While I was awake?

6 Q While you were awake.

7 A About 15 -- about -- it was -- it was off and on.

8 Q Okay.

9 A -- for maybe 15 minutes --

10 Q All right.

11 A -- you know.

12 Q Did you do anything inside your apartment to try to
13 get their attention to stop the noise?

14 A Well, I think before I -- you know, I think my wife
15 used the broom to --

16 Q The old broom trick.

17 A -- to hit the -- hit the ceiling before I woke up --

18 Q Okay.

19 A -- you know. So I didn't do nothing. I just went on
20 up there --

21 Q Okay.

22 A -- you know. When I got up there -- after awhile
23 after I was woke and then it continuously, so I just --

24 Q Okay. And why did you decide to go up there?

25 A Because it was really disturbing me.

1 Q Okay.

2 A And I'm tired, and I had been working all that day,
3 and I couldn't sleep -- go back to sleep.

4 Q And what was your intention?

5 A Just go up there and ask them could they please keep
6 it down a little bit.

7 Q Okay. And so what did you do?

8 A Well, first of all, when I came home my door -- I was
9 at the bottom of the steps and looked up there, and I seen the
10 door was open.

11 Q Okay, let me stop you right there. I'm showing
12 what's been --

13 MR. PIKE: Admitted. No objection.

14 MS. GRAHAM: It's already been admitted.

15 BY MS. GRAHAM:

16 Q State's Exhibit 6. Do you recognize that, Cookie?

17 A Yes, ma'am.

18 THE COURT: Actually, it wasn't previously admitted.
19 It will be admitted now.

20 MR. PIKE: Thank you, your Honor.

21 THE COURT: Okay.

22 MS. GRAHAM: Thank you, Judge.

23 (State's Exhibit 6 admitted)

24 BY MS. GRAHAM:

25 Q Can you tell the jury what that's a photo of?

1 A That's a photo of my apartment.

2 Q Okay. Show the jury -- now you can touch that
3 screen, actually --

4 A Okay.

5 Q -- and show the jury --

6 THE COURT: You can draw on the screen.

7 THE WITNESS: Oh, okay, okay.

8 BY MS. GRAHAM:

9 Q -- where your apartment was.

10 A My apartment is right at the bottom of these steps.

11 Q Okay. And so your door, point to your door.

12 A My door is right here.

13 Q Okay. And you came out of your door.

14 A I came out of my door and came to the bottom of the
15 steps.

16 Q Okay. What did you do then?

17 A I looked upstairs and I seen that the door was open.

18 Q Okay. The door was open?

19 A The door was open.

20 Q As it is depicted right now in that photo?

21 A Yeah, it was open just like that.

22 Q Okay.

23 A So I walked on upstairs and stuck my hand in the door
24 and hollered, "hey, hey" --

25 Q Okay.

1 A -- you know.

2 Q And did anybody respond?

3 A Yes, a few minutes later.

4 Q Okay. Who was that?

5 A He came out of the door -- out of the bedroom --

6 THE COURT: Sir, the question was who responded to
7 you?

8 THE WITNESS: The guy.

9 BY MS. GRAHAM:

10 Q Okay.

11 A Keefe, -- Brian.

12 Q And when you say -- Brian?

13 A Yeah.

14 Q Okay.

15 A He came out of the bedroom door and he hollered,

16 "Come get her, come get her," you know, and I'm like --

17 Q What did you think he meant?

18 A I didn't know what -- first I thought maybe she had
19 ran out the door before I came in because the door was open. I
20 looked around and -- "come in here and get her."

21 Q And --

22 A So --

23 Q -- what did you do?

24 A -- I walked on in and I looked in the bedroom and
25 seen her on the floor.

1 Q Okay. Who?

2 A The lady.

3 Q Okay. And when you say she was on the floor, what
4 exactly did you see, Cookie?

5 A From like the foot of the bed I just seen her legs,
6 cause her body was on the other side of the bed. So from her
7 waist down no clothes. Just a top on.

8 Q Okay.

9 A And he reached down and picked her up and was holding
10 her, "Baby, baby, don't do me like this."

11 Q All right.

12 A "Wake up." So excuse me language again, your Honor,
13 "Man, what the hell have you done," you know. And then I
14 looked --

15 Q Is that the way you said it?

16 A Yeah. "Man, what the hell have you done."

17 Q Okay.

18 A And then I --

19 Q And what did he say?

20 A I don't -- well, I was kind of in a shock so I just
21 turned around and ran out the house.

22 Q Why were you in shock if somebody was just laying
23 there?

24 A Because I know -- cause when I seen her arms had
25 dropped, I know something was wrong and all the blood on the

1 bed.

2 Q So there was blood?

3 A Yeah, on the bed. So I just left, ran out --

4 Q Okay.

5 A -- you know, because I didn't want nothing to happen
6 to me, so I got on out of there. And from the looks of his
7 face, man, you know, I was scared. To be honest with you, I
8 was just scared and I left. Ran outside and hollered for help.

9 Q Okay. So Cookie, when you went in and you said,
10 "What the hell have you done," --

11 A Yeah.

12 Q -- what was his response?

13 A He didn't say nothing. He was just telling her to
14 wake up.

15 Q Did he ask you to call for help?

16 A No. He didn't say nothing like that. He just --

17 Q It was obvious she was bleeding?

18 A Beg your pardon?

19 Q It was obvious that there was blood everywhere?

20 A Yeah.

21 Q And he didn't ask you to call for help?

22 A So I kind of figured something had happened --

23 Q Okay.

24 A -- you know, so I -- like I said, I just got on up
25 out of there.

1 Q And Cookie, when you say it was obvious something it
2 had happened, what did you think happened?

3 MR. PIKE: Objection. Speculation.

4 THE COURT: Sustained.

5 BY MS. GRAHAM:

6 Q You said that you saw his face and it frightened you.

7 A Yeah. It was like a look I had never seen on him
8 before.

9 MR. PIKE: Objection. Well, Court's indulgence. I'm
10 sorry, could I hear the question again?

11 THE COURT: What was the question, Counsel? What did
12 you see in his face, is that --

13 BY MS. GRAHAM:

14 Q Cookie, you testified that you saw his face and if
15 frightened --

16 A What kind of look you said I seen on his face. It
17 was just a look I had never seen before --

18 Q What do you mean?

19 A -- you know, on him. It was, you know, scary
20 looking, scary looking feeling -- look. You know, it was just
21 mad look, you know.

22 Q Okay.

23 A Knowing I'm fixing to go now, you know, and I left.

24 Q And that was enough for you to --

25 A Go holler for help.

1 Q Okay.

2 A Yeah.

3 Q All right. And you did holler for help?

4 A Yes.

5 Q And --

6 A When I got -- when I got out the door, it was someone
7 standing downstairs, and I hollered -- told her to call the
8 police.

9 Q When you say "her," do you know who it was?

10 A Yes. I can't recall her name. Anyway, she was --
11 she was supposed to come to court, too. Well, she was here,
12 you know.

13 Q Okay.

14 A Damn, I can't recall.

15 Q Was it somebody that lived at the apartment --

16 A Yeah, it was somebody --

17 Q -- complex?

18 A -- that lived in the apartments.

19 Q Okay.

20 A Yeah, one of maintenance guy's wives.

21 Q Okay.

22 A Yeah.

23 Q And what did you do after you asked somebody to call
24 for help?

25 A Ran downstairs, then that's when I went and got Todd.

1 Q And Todd is -- who's Todd?

2 A Todd is one of the other witnesses which is outside.

3 Q Okay. Is he also a neighbor?

4 A Yes, he's a neighbor.

5 Q All right. Okay. So you went and got Todd, and then
6 what happened?

7 A I brought Todd back upstairs. I said man, come and
8 -- come see this. He came upstairs, and when we went both went
9 back in the bedroom he was still on the floor holding her. He
10 told Todd to get the hell out of here. I said, "Come on, Todd,
11 let's go get the police." We left out. And by that time -- by
12 the time we got to the steps we heard all the police coming.

13 Q Okay.

14 A They made everybody go in our apartments.

15 Q All right. So when you and Todd went in, Brian's
16 response was, "Get the hell out of here?"

17 A "Get the hell out of here."

18 Q At any time did he ask you to call the police?

19 A No.

20 Q Did he ask you to come and assist with Victoria?

21 A No. He didn't say nothing like that. He just -- we
22 just turned around and left out of there.

23 Q Okay.

24 A Yeah.

25 Q And when you got back downstairs, did you go back --

1 what did do you after that?

2 A Well, when we got back down stairs, by then the
3 police had came.

4 Q Okay.

5 A They made everybody go in their apartments.

6 Q Okay.

7 A That's it.

8 Q And did you give a statement to the police?

9 A Yes, I did.

10 MS. GRAHAM: Court's indulgence.

11 BY MS. GRAHAM:

12 Q Cookie, you were able to look inside the bedroom, did
13 you see any weapons inside the bedroom?

14 A Well, I don't know if it was a weapon or not, but I
15 just seen a -- something up under the cover sticking out like a
16 little handle or something.

17 Q And a handle --

18 A It looked like a little handle under the blanket
19 because it was like I just got a glimpse of it, because what we
20 made look over that way I seen all the blood on the bed.

21 Q Right.

22 A And that's when I'm fixing to go.

23 Q And what -- a handle of what?

24 A I just seen like a -- something like black --

25 Q A bucket?

1 A Like a knife or something.

2 Q Okay.

3 A I don't know exactly what it was because I didn't
4 bother it --

5 Q All right.

6 A -- you know, I just left.

7 Q Okay. And did you eventually go back to your
8 apartment?

9 A Went back to -- went downstairs and that's when I
10 went and got Todd.

11 Q Okay.

12 A Yeah.

13 Q And did you eventually go back into your apartment?

14 A Yeah.

15 Q Okay. And what, if anything, did you you say to your
16 wife at that point?

17 A I said, "I think he had killed the lady upstairs."

18 Q Why did you think that?

19 A All this blood, and then her arms, when I seen her
20 arms drop, know something was wrong.

21 Q Okay.

22 A Yeah.

23 MS. GRAHAM: Court's indulgence. I'll pass the
24 witness at this time, Judge.

25 THE COURT: Cross-examination.

1 MR. PIKE: Thank you.

2 CROSS-EXAMINATION

3 BY MR. PIKE:

4 Q Good afternoon, Cookie.

5 A How you doing, sir?

6 Q I'm doing good. How are you?

7 A Just fine.

8 Q Good. In reference to this event, the apartment in
9 -- that we're talking about is directly above yours, and you
10 indicated you've gone into that apartment.

11 A Yes.

12 Q And the apartment number is No. 35; is that correct?

13 A Yes, sir.

14 Q I'm going to show you a photograph that's marked as
15 Defense Exhibit No. H.

16 MR. PIKE: And I've previously shown this to counsel
17 for the State. I believe they have no objection to its
18 admission.

19 MR. SMITH: That's correct, Judge, we have no
20 objection.

21 THE COURT: All right, it will be admittedD.

22 (Defendant's Exhibit H admitted)

23 BY MR. PIKE:

24 Q And I'll represent to you that this is a picture
25 that's the inside of that Apartment No. 35.

1 A Um-hum.

2 Q Does at that -- can you verify that? Is that focused
3 at all?

4 A Well, not really because I don't remember seeing all
5 that in that apartment.

6 Q Okay. When you went into the apartment were the
7 lights on or was it dark inside the apartment?

8 A Well, let me see, the think the bedroom -- I think it
9 was -- the lights was off. I can't remember. I ain't going to
10 say it was. I ain't going it was off. I just don't remember.

11 Q And you can't remember. You couldn't see very well
12 what was going on in there?

13 A Because really, when I'm a little nervous or
14 something, I ain't, you know --

15 Q You were a little bit nervous and so what you were
16 seeing, you're just trying to recollect as best as what you can
17 and testify here truthfully in court today, aren't --

18 A That's right.

19 Q -- you? Okay. And Defense Proposed Exhibit No. I.
20 That's another photograph of inside that apartment. And is
21 that kind of laid out the same as your apartment?

22 A Yeah.

23 THE COURT: Has this been admitted yet?

24 MR. PIKE: I'm going to ask --

25 THE COURT: You're showing it.

1 MR. PIKE: I've already shown it to defense -- or
2 State, so they have no --

3 THE COURT: But we don't show it to the jury until
4 it's been admitted.

5 MR. PIKE: Okay, thank you.

6 MR. SMITH: No objection, Judge.

7 THE COURT: Okay. It will be -- adwhat number is
8 this?

9 MR. PIKE: This is I.

10 THE COURT: All right, it will be admitted.

11 (Defendant's Exhibit I admitted)

12 MR. PIKE: Okay.

13 BY MR. PIKE:

14 Q And so this is kind of the layout of the apartment?

15 A Yeah.

16 Q Okay. And I'm going to show you Defense Proposed
17 Exhibit No. M, which the State has no objection to.

18 MR. SMITH: Correct.

19 THE COURT: All right, it will be admitted then.

20 (Defendant's Exhibit M admitted)

21 MR. PIKE: Thank you.

22 BY MR. PIKE:

23 Q Now, when you go into that apartment and you went
24 through the entry of door number -- or door with the 35 on the
25 front of it --

1 A Uh-huh.

2 Q -- -- you're looking across and this is looking from
3 inside of that door --

4 A Okay, yeah.

5 Q -- and you're looking -- and you're looking back into
6 where the bedrooms are at.

7 A Right. The corner right there.

8 Q Okay.

9 A That's the bedroom.

10 Q And which bedroom was it that you saw the young -- or
11 the lady that was --

12 A The bedroom to the right.

13 Q Could you point to that and kind of --

14 A Right here.

15 Q Okay.

16 A That's where I was standing right there.

17 Q Did you actually go into that bedroom --

18 A Yes, I did.

19 Q -- the first time you went in?

20 A First time I went -- second time, too.

21 Q Second time in? You went in both times?

22 A Yeah. Well, see the first time I went in, I went
23 through and he was still standing right there by the bed. The
24 second time I went in, I came right to the door because I
25 wasn't fixing to go up in there no more. No, I wasn't fixing

1 to go in there no more.

2 Q And going in at that point in time, did you ever hear
3 any female voice, any moaning or anything that you felt might
4 have been -- that came from the woman that was in there?

5 A No. But my wife when I came --

6 Q I understand. Just did you hear it?

7 A No.

8 Q Okay.

9 A Because it was all -- I guess it was -- when I seen
10 her arms like this, I know something was -- wasn't right.

11 Q What --

12 A She was all over.

13 Q Now, you said that Brian was over, and he was holding
14 her. Can you kind of demonstrate --

15 A Sure can.

16 Q -- that for the jury?

17 A Like around her waist. You know, like that. Holding
18 her.

19 Q And he was talking to her?

20 A Talking to her. "Baby, baby, wake up. Don't do me
21 like this."

22 Q Okay.

23 A Those are the exact words he say.

24 Q And you'd been outside of the apartments earlier that
25 day when they came home?

1 A Yeah, I works in the apartment in the parking lot.

2 Q Right. And in fact, you oftentimes will do car
3 repairs for friends and neighbors and --

4 A Yes, I do.

5 Q -- customers that need things done in a hurry --

6 A Yes, I do.

7 Q -- in the apartment complex right in the parking lot?

8 A Yes, I do.

9 Q And so you were out there on the night before this
10 happened when Brian and Victoria came home?

11 A Yes, but I'm going to tell you -- I don't remember
12 seeing them that day, though. I don't even -- I don't remember
13 seeing them that day.

14 Q Okay. And you remember talking with me and my
15 investigator sometime shortly after this happened and saying
16 that you did see them go in that day?

17 A No, I did not tell you that. I said I had -- I had
18 been seeing them through -- you know, I have seen them, but I
19 didn't tell you I seen them that particular day, now.

20 Q Okay.

21 A Yeah.

22 Q And you've seen them outside of their apartment --

23 A Off and on.

24 Q -- drinking together off and on?

25 A Yeah.

1 Q And again, this would be on the stairwell or the
2 landing up there, you've seen Victoria and Brian out there
3 drinking together?

4 A By the window.

5 Q Right.

6 A Well, they had chairs up there at that time, yeah.

7 Q And when you came up to the open door of the
8 apartment, you didn't have to push it any further --

9 A No, I didn't.

10 Q -- to get in?

11 A I just --

12 Q It was wide open?

13 A It was open and I just stuck my hand in there first,
14 but when I didn't see nobody, I wasn't going up in there until
15 I seen him come out of the bedroom, and I -- and I went up
16 there with a little attitude, to be honest with you. But when
17 I seen this look in his face, I kind of like, "Whoa, say man,
18 can you just keep it down a little bit, whatever you doing up
19 here." And that's when he told me to come in the room, "Come
20 get her," you know.

21 Q And you -- you'd said that you were looking through
22 that, you'd come in with an attitude and you were kind of
23 angry --

24 A I was angry because he woke me up.

25 Q -- and you went up, and then you heard him say, "Come

1 get me" (sic). He didn't try and fight you.

2 A No.

3 Q Didn't try and keep you out of the apartment?

4 A No. No, he didn't do all that.

5 Q He told you to come and get her, come get her, and so
6 he didn't try and stop you, didn't come forward at you with any
7 sort of a weapon or anything like that?

8 A No.

9 Q You didn't get close enough to him to smell him to
10 determine whether or not he smelled of alcohol?

11 A I didn't smell -- I don't know whether he -- I don't
12 know.

13 Q He wasn't acting rational that evening, was he?

14 A He was what?

15 MR. SMITH: Objection, Judge. Calls for speculation
16 as to rational.

17 THE COURT: It's sustained.

18 MR. PIKE: Okay. Point taken.

19 BY MR. PIKE:

20 Q You'd seen Brian both sober and intoxicated prior to
21 this time, hadn't you?

22 A Yeah.

23 Q Okay. And his actions and as you saw him that
24 evening, you -- and in the circumstances that you saw him,
25 pretty consistent with him being in an intoxicated state from

1 what you'd observed before, wasn't it?

2 A You said --

3 Q Did he appear to be drunk to you, intoxicated, have
4 alcohol --

5 A Well --

6 Q -- affecting him?

7 A -- he wasn't staggering or nothing like that when he
8 was talking to me. It was just that look on his face.

9 Q Like shock?

10 A Like crazy look, you know, like --

11 Q Like crazy. Like he wasn't in his regular mind?

12 A No, I ain't going to say like he was -- like a drunk
13 look. Wasn't no look like that. It was like he crazy look,
14 sir.

15 Q He was -- he was trying to pick her up. Trying to
16 wake her up. From the language that you're saying that, that's
17 what you were perceiving that to be.

18 A Yeah.

19 Q All right. You never saw a knife in Brian's hands?
20 He didn't --

21 A No, I didn't see --

22 Q -- come at you with a knife?

23 A -- nothing in his hand. No, I didn't see none of
24 that.

25 Q He didn't come at you with any sort of a weapon --

1 A No --

2 Q -- or anything else?

3 A -- he did not.

4 Q And then you went an out, you called down to some
5 people, and the woman that you asked to call 911, that was
6 Robin?

7 A Robin.

8 Q Does that refresh your recollection?

9 A Robin.

10 Q Okay. And did you ask anybody to call an ambulance?

11 A I just said call the police.

12 Q Okay. And then you went with Todd, and where did
13 Todd live?

14 A Apartment 2.

15 Q Okay. And that's not in the building that we have
16 here. It's another part of the complex?

17 A Yeah, back over towards the front by the mailbox.

18 Q And Todd went with you, and you both went back up?

19 A Yes, sir.

20 Q When you went back up there, did you go up with the
21 intent to see if you could provide medical assistance --

22 A No, we went --

23 Q -- to the --

24 A I went --

25 Q -- to the lady?

1 A -- back up there to show him what was going on why
2 there was this noise, you know. This noise above me, you know.
3 Come look and see what he -- check this lady out, man. I told
4 -- this is what I told him. I said, "Come, man. I think this
5 lady is dead up here, man." So we both walked back up there.
6 And when he looked, that's when he seen what was going on.

7 Q And by going back up, you had Todd with you, you
8 weren't fearful of your life?

9 A Yeah, I'm scared.

10 Q You went up -- you went up to try and see what
11 assistance you could be.

12 A I didn't go up there to try to be no assistance, now.
13 I just went up there to show him what was going on, that was
14 it.

15 Q For what purpose? Just to show him?

16 A Show what was going on. This lady is bleeding like
17 hell.

18 Q I understand, but --

19 A Yeah.

20 Q -- that's what I'm asking. Okay. And there were a
21 number of rags or --

22 A It was like covers --

23 Q -- (indiscernible) that you saw --

24 A -- on the bed if that's what you're trying to ask me,
25 yeah.

1 Q Okay. And when you went back down, you tried to calm
2 yourself and tried to make some sense out of the situation.
3 And then when the police came you felt that it was under
4 control and you went back into your apartment.

5 A They told us to go back in our apartments.

6 Q And did you follow the orders of the police --

7 A Yes, I did.

8 Q -- officer? Did you ever lookout during the time
9 when the police were there to see if they had Brian under
10 arrest?

11 A No.

12 Q Okay. After the police told you to go in, did you
13 ever come back out that evening while the police --

14 A After they was --

15 Q -- were still there?

16 A After -- well, he kept coming in my house asking me
17 questions.

18 Q And you gave a statement to the police during that
19 period of time?

20 A Yes. Yes.

21 Q All right. And you weren't there when -- or did you
22 see any of the Las Vegas fire --

23 A Police.

24 Q -- and rescue people come?

25 A Let me see, I just seen when they was taping

1 everything off.

2 Q Okay. And after that, you didn't see anything else
3 that evening?

4 A Man, it was time for me to go bed, go to sleep. I
5 was tired.

6 Q Okay.

7 MR. PIKE: All right, Court's indulgence. Nothing
8 further, your Honor.

9 THE COURT: Redirect?

10 MS. GRAHAM: Just briefly, Judge.

11 REDIRECT EXAMINATION

12 BY MS. GRAHAM:

13 Q Cookie, when you were shown a picture of the living
14 room, were you focused on the living room at that time?

15 A In his living room?

16 Q Yeah. I mean, you --

17 A No, not really. No.

18 Q Right.

19 A You know, I was -- I wasn't really focused on -- I
20 don't even know if it was light or dark in there --

21 Q Okay.

22 A -- to be honest with you.

23 Q Okay. I want to talk about that crazy look you said.
24 Is that crazy look, was that a look that was asking you for
25 help?

1 A No.

2 Q No?

3 A It was just a mad look, you know. Just a -- man, I
4 don't even -- I can't even describe it, to be honest with you.

5 Q Try to describe it to the jury.

6 A Well, it was like he was -- he's shocked, put it that
7 way.

8 Q How did it make you feel?

9 A Scary. Like scared me.

10 Q Scared you?

11 A Scared me.

12 Q Scared you?

13 A Yeah. I looked and it scared me.

14 Q Okay.

15 A You know, because, you know, from the time I be
16 seeing him my parking lot, it was a look that I had been
17 seeing. You follow what I'm trying to say?

18 Q Exactly.

19 A Yeah.

20 Q You hadn't seen that look from him before.

21 A Yeah, from him.

22 Q And you said that lady was bleeding like hell. And
23 when he (sic) was bleeding like hell --

24 A No. All the blood was on the bed --

25 Q Okay.

1 A -- you know, so I -- I couldn't see really her body.
2 All I could see was her legs from the foot of the bed, you
3 know. Like this is the bed, this the end of the bed. All I
4 could see was her legs and not her body --

5 Q Okay.

6 A -- because she didn't have on no clothes.

7 Q And when you brought Todd up there, what was the
8 purpose of bringing Todd in there?

9 A To show him that, man, somebody need to call the
10 police because this is what's going on up here.

11 Q Okay.

12 A You see what I'm saying?

13 Q Right, I do. Thank you, Cookie.

14 A No problem.

15 MS. GRAHAM: No further questions.

16 THE COURT: Any recross?

17 RE CROSS-EXAMINATION

18 BY MR. PIKE:

19 Q On the way up both times, either the first time or
20 the second time, you didn't hear any voices or yelling going
21 back and forth? Is that a no?

22 A No. No, sir. I'm sorry.

23 Q Okay. No, that's okay. We're recording it, so --

24 A Okay.

25 Q -- I just need to ask that.

1 A No, I didn't. I didn't.

2 MR. PIKE: I don't have any further questions. Thank
3 you very much.

4 THE COURT: Any questions from any of the jurors?
5 Yes, we do. The marshal will pick up your question. Counsel
6 approach, please.

7 (Off-record bench conference).

8 THE COURT: Sir, we have a question from one of the
9 juror, okay. And this is referring to the night in question,
10 sir.

11 THE WITNESS: Okay.

12 THE COURT: Was there a noise from upstairs previous
13 to the sudden outburst of noise? Did you hear anything, sir?

14 THE WITNESS: From like other nights you saying?

15 THE COURT: No, this night in particular.

16 THE WITNESS: No, judgment that loud noise that woke
17 me up. That was it. Now see if anything else going on -- I
18 was sleep. My wife was watching a movie -- a TV.

19 THE COURT: Okay.

20 THE WITNESS: And she heard it, not me.

21 THE COURT: All right. Thank you, sir. Any follow
22 up by the State to that question?

23 MS. GRAHAM: No, Judge.

24 THE COURT: Any follow up by the defense?

25 MR. PIKE: Yes, your Honor, just very briefly.

FURTHER RECROSS-EXAMINATION

1
2 BY MR. PIKE:

3 Q So your wife had testified that there was a period of
4 time and that you -- because of the noise or because she woke
5 you up?

6 A Because of the noise.

7 Q Okay. And then it took you about how long from the
8 time that you heard the noise until you went up?

9 A About 15 minutes.

10 Q All right.

11 A See, it wasn't -- I woke up like -- it was almost --
12 it was about 10:00 -- about 10:00 -- about 10:15, 10:20, that's
13 when I went up there.

14 Q Thank you.

15 MR. PIKE: Nothing further.

16 THE COURT: Any follow up by the State.

17 MS. GRAHAM: No, Judge.

18 THE COURT: All right, thank you, sir. You are
19 instructed not to discuss your testimony with any other witness
20 involved in this case until this matter is finally resolved.

21 THE WITNESS: I'm going -- I'm fixing to go home.

22 THE COURT: That's fine.

23 THE WITNESS: All right. I'm fixing to go home. I
24 got work to do.

25 THE COURT: All right. Thank you, sir.

1 THE WITNESS: Thank you.

2 MR. PIKE: Your Honor, we -- we also served the
3 Tolivers. We release them from their subpoena --

4 THE COURT: Okay.

5 MR. PIKE: -- so they're relieved from their
6 obligation.

7 THE COURT: Mr. Toliver, you understand that -- I
8 guess you received a subpoena from the defense. Since you've
9 testified now, you don't need to come back any other day.

10 THE WITNESS: No more? You through with me?

11 THE COURT: I think so.

12 THE WITNESS: Thank you, sir.

13 THE COURT: Thank you, sir.

14 MR. PIKE: Thank you.

15 THE COURT: Next witness for the State.

16 MR. SMITH: Judge, the State calls Todd Armbruster.

17 THE MARSHAL: And sir, if you'll remain standing,
18 please. Raise your right hand and face the clerk.

19 TODD ARMBRUSTER, STATE'S WITNESS, SWORN

20 THE CLERK: Please be seated. Will you please state
21 your name and spell it for the record.

22 THE WITNESS: Excuse me?

23 THE CLERK: State your name and spell it for the
24 record.

25 THE WITNESS: Todd Armbruster, A-r-m-b-r-u-s-t-e-r.

1 THE CLERK: Thank you.

2 MR. SMITH: May I proceed, Judge?

3 THE COURT: Yes.

4 MR. SMITH: Thank you.

5 DIRECT EXAMINATION

6 BY MR. SMITH:

7 Q Mr. Armbruster, where do you presently reside, sir?

8 A At 5001 El Parque.

9 Q How long you been living there?

10 A Four years.

11 Q Now, are you just a resident there or do you --

12 A Maintenance man.

13 Q Okay. So you also work on the premises?

14 A Yes.

15 Q Okay. I'm going to draw your attention back to
16 November 5th, 2008. Were you at the El Parque residence on
17 that day?

18 A Yes.

19 Q Did something unusual occur approximately 11:00
20 o'clock p.m. that day?

21 A Yeah.

22 Q Why don't you tell us what happened.

23 A Cookie come running down to my apartment saying to
24 call 911. Something had happened in the apartment above him,
25 No. 35. So I went up to his pardon me, and --

1 Q To whose apartment?

2 A No. 35, Brian's.

3 Q Okay, do you see Brian present in court today?

4 A Yes.

5 Q Can you point to him for the record and identify --

6 A Right there.

7 Q -- what he's wearing.

8 A Right there.

9 THE COURT: Far left on the table, sir?

10 THE WITNESS: Far left on the table.

11 MR. PIKE: We'll stipulate to the identity of --

12 THE COURT: Record reflect --

13 MR. PIKE: -- Brian O'Keefe.

14 THE COURT: -- identification of the defendant.

15 Thank you.

16 MR. PIKE: Thank you.

17 MR. SMITH: Thank you, Judge.

18 BY MR. SMITH:

19 Q So Cookie runs down stairs and tells you to call 911.

20 A Right.

21 Q And what else does Cookie say to you?

22 A He said -- he said he thought that girl upstairs was
23 dead.

24 Q Okay. So then what do you do?

25 A I went running up to that apartment.

1 Q Okay. Do you go inside the apartment?

2 A Yes.

3 Q What happens when you go inside the apartment?

4 A I went in the living room. I didn't see anything. I
5 went into the bedroom and saw Brian standing over Victoria.

6 Q Okay. Had you seen Victoria previously?

7 A Not that day. I've seen her before, yeah.

8 Q That's my question.

9 A Yeah.

10 Q Had you seen her on a previous --

11 A Yes.

12 Q -- occasion? Showing you what's been admitted as
13 State's Exhibit 4. Is that a picture of Victoria that you
14 speak of?

15 A Yes.

16 Q Okay. What else happened?

17 A Like I said, he was standing over --

18 Q He being the defendant, Brian O'Keefe?

19 A Yes.

20 Q Okay.

21 A He stood up, saw me, stepped forward and took a swing
22 at me, and I told him to back up or else he's going to end up
23 on the floor like -- you know, like he was (sic).

24 Q Okay.

25 A And he dropped his arms and screamed at me to get the

1 hell out of his apartment. And I turned around and beat feet.

2 Q Okay. Now, had you known the defendant and Victoria
3 Witmarsh?

4 A I knew who they were.

5 Q Okay. But my question did you have a social
6 relationship with --

7 A No, I didn't.

8 Q -- them at all? Okay. What happened after you, as
9 you put it, beat feet?

10 A I went to the neighbors and called 911.

11 MR. PIKE: Your Honor, in reference to the 911 tapes,
12 we're not going to require custodian of records. We've
13 received the appropriate indicators that these are true and
14 correct copies of the 911 tapes. So we have no objection to
15 either being played.

16 THE COURT: All right.

17 MR. SMITH: And for the record, I have State's
18 Proposed Exhibit 2 and 3.

19 THE COURT: All right, they'll be admitted.

20 (State's Exhibits 2 and 3 admitted)

21 Thank you, Mr. Pike.

22 MR. PIKE: Thank you.

23 MR. SMITH: May I publish to the jury, Judge?

24 THE COURT: Yes.

25 MR. SMITH: Thank you.

1 (911 recording played at 4:39 p.m.)

2 BY MR. SMITH:

3 Q Is that your voice there?

4 A Yes.

5 (911 recording played at 4:39 p.m.)

6 BY MR. SMITH:

7 Q Okay. Now, Mr. Armburster, when you first entered
8 the apartment and first saw the defendant Brian O'Keefe, where
9 was he standing?

10 A Right above her.

11 Q Okay. And where was she at?

12 A She was on the floor at the foot of the bed.

13 Q Okay. Was she moving?

14 A No.

15 Q Did you touch anything inside the apartment?

16 A No.

17 Q Did you happen to see any weapons?

18 A No, I didn't.

19 Q Did you look to see if there were any weapons?

20 A I saw him standing over her, on the floor and some
21 blood rags, stuff on the bed, and that was it.

22 Q Okay. How long would you say you were in the
23 apartment?

24 A A couple minutes.

25 Q Now, on the 911 call we heard that you said he was

1 pretty drunk.

2 A I -- I can smell alcohol. His eyes were all
3 bloodshot. That's what I -- why I thought he might have been
4 drunk, but --

5 Q Okay.

6 A Because I know he drank a lot on the patio in front
7 of his place.

8 Q Okay. My question is so -- just so I make sure I
9 understand it. Are you saying that you thought he was drunk
10 merely because his eyes were bloodshot?

11 A Yeah.

12 Q Could you smell alcohol --

13 A No.

14 Q -- on him? Was that a no?

15 A No, I could not.

16 Q Okay. When you went upstairs to the apartment, was
17 the door open or closed?

18 A Open.

19 Q After you ran down -- after you left the apartment,
20 what did you do?

21 A After I made the 911 call?

22 Q Yes, sir.

23 A The police told everybody to go inside their
24 apartment, to stay in there.

25 Q Okay. Did you reside in your apartment alone or with

1 someone else?

2 A Robin Colaxe (phonetic).

3 Q Who's Robin Colaxe?

4 A A friend of mine's wife.

5 Q Okay. Did she serve any employment function at the
6 El Parque apartments?

7 A Yeah, well, she cleaned the apartments and acted like
8 an outside manager.

9 Q Okay. Do you know if she called 911?

10 A Yeah, she -- I told her to call before I ran up the
11 stairs.

12 Q Okay.

13 MR. SMITH: Judge, I'd ask for permission to publish
14 State's Exhibit 3.

15 MR. PIKE: No objection.

16 THE COURT: All right. And it will be admitted as
17 well.

18 MR. PIKE: This would be an appropriate time.

19 (911 recording was played at 4:44 p.m.)

20 BY MR. SMITH:

21 Q Whose voice is that, sir?

22 A That's Robin's.

23 Q That's Robin's?

24 A Yeah.

25 Q Okay.

1 (911 recording was played from 4:44 p.m.)

2 BY MR. SMITH:

3 Q Okay. Mr. Armburster, how many times would you say
4 you had seen Victoria Witmarsh throughout the time she lived in
5 the El Parque residence?

6 A Just four or five times a week for about two months.

7 Q Okay. Can you describe for the jury her body
8 composition? I mean was she a --

9 A Small, slender.

10 Q Okay. And when you say small --

11 A Short, short, slender, petite.

12 Q Okay. When you walked in the apartment and saw Mrs.
13 Witmarsh on the ground, do you know whether or not she had any
14 clothes on?

15 A All she had on was a -- like a blue sweater bunched
16 up to about here. A long sleeve blue one.

17 Q Is it your testimony, then, that she didn't have any
18 clothes on on the bottom half of her body?

19 A No, she didn't.

20 Q Thank you, sir.

21 MR. SMITH: Judge, I'll pass the witness.

22 THE COURT: Cross.

23 MR. PIKE: Thank you very much.

24 CROSS-EXAMINATION

25 BY MR. PIKE:

1 Q Good afternoon, Todd.

2 A How you doing?

3 Q Now, some of your responsibilities over at that
4 apartment complex are to be like an on-site manager. Would
5 that be a correct statement?

6 A Yes.

7 Q So part of what you would do would be to get to know
8 the people so you could recognize them and kind of know who
9 should be there, and who shouldn't.

10 A Correct.

11 Q And I'm showing you or I'm going to show --

12 MR. PIKE: The State has no objection. I've shown
13 them too.

14 BY MR. PIKE:

15 Q I'm going to show you a picture of the apartment
16 complex marked Defendant Proposed Exhibit G.

17 MR. PIKE: The State has no objection to it being
18 admitted.

19 MR. SMITH: That's correct, Judge. .

20 THE COURT: All right, it will be admitted.

21 (Defendant's Exhibit G admitted)

22 BY MR. PIKE:

23 Q And I'm going to ask you if you recognize this it,
24 and if it accurately depicts the apartment that you went into
25 that evening.

1 A Yes.

2 Q Okay. And that's Apartment No. -- Apartment No. 35.

3 Can you mark that? Just touch the screen and it will leave a
4 mark on it. Kind of circle it. There you go. When you went
5 up, and after having listened to Robin's 911 call, does that
6 kind of refresh your memory that was the door was open when you
7 went up that night?

8 A I said it -- yeah, I said it was open.

9 Q It was? Okay. And when you went into the apartment,
10 is -- would that fairly and accurately depict the inside of the
11 apartment? And the picture I'm showing you has been admitted
12 as Defense Exhibit H.

13 A That's from the hallway to the front door.

14 Q All right. And you recognize that because you've
15 been in those apartments and done repairs and taken care of
16 them over the years.

17 A Right.

18 Q And Defendant's Exhibit M, which has been admitted
19 into evidence, is that looking into that apartment?

20 A From the front door.

21 Q From the front door? Okay, and looking into that,
22 which bedroom was the lady lying in? When you went into that
23 apartment, were the lights on inside of the apartment?

24 A Yes.

25 Q Which ones? Were they on --

1 A In the bedroom.

2 Q -- inside the -- I'm sorry?

3 A The bedroom.

4 Q The bedroom?

5 A Yeah.

6 Q And what about that overhead light?

7 A Yeah, I -- if I remember right, that light was on. I
8 can't remember.

9 Q And when you went in, you obviously recognized both
10 of them. And your perception of them at that point in time was
11 that he was drunk?

12 A Well, I just said I couldn't smell alcohol, but his
13 eyes were bloodshot. I --

14 Q Okay.

15 A I wasn't sure what he was.

16 Q And he appeared to be intoxicated?

17 A Appeared something.

18 Q He appeared to be disoriented?

19 A I'm not -- I don't know if he's disoriented or not.
20 He's was near -- he was standing over her, so.

21 Q Well, let me -- do you you remember appearing at a
22 previous hearing --

23 A Yeah.

24 Q -- in this matter and offering testimony? And --
25 Bates Number 60.

1 MR. PIKE: May I approach the witness, your Honor?

2 THE COURT: Yes.

3 BY MR. PIKE:

4 Q I was there at the preliminary hearing and a few
5 questions were asked of you at that time.

6 A Um-h'm.

7 Q I'm going to show you some testimony that was offered
8 during that period of time. I'd just kind of --

9 A Okay.

10 Q -- ask you to read that to yourself.

11 A Yeah, I just read it.

12 Q Okay. And does that refresh your recollection?

13 A Um-h'm.

14 Q And at that time, did he appear to be not only
15 intoxicated but also disoriented as to what was going on?

16 A Yes.

17 Q And when you saw him there, can you tell me when you
18 first walked into that, where was he at in relationship to
19 Victoria?

20 A Down by her feet, or her knees, he was bending over.

21 Q Was he standing or kneeling?

22 A Bending.

23 Q Bending over? And you said that he reacted towards
24 you, disoriented, took a swing at you?

25 A Um-h'm.

1 Q Is --

2 A Yes.

3 Q -- that yes? I'm sorry.

4 A Yes.

5 Q And you told him to calm down?

6 A Yeah. Yes.

7 Q And did he -- and he did calm down?

8 A Yes.

9 Q And you were going in there trying to determine what
10 you should do next?

11 A Yes.

12 Q And you felt that the appropriate thing was to go
13 down and call for an ambulance?

14 A Yes.

15 Q And that was your first present sense objective was
16 to try and get medical help up there --

17 A Yes.

18 Q -- for her? You didn't know if he was alive or dead?

19 A Right.

20 Q And in going through that, part of what made you form
21 that present sense impression or what you saw or what you
22 heard, did you hear Brian talking to Victoria?

23 A Yes.

24 Q And again, what did he say?

25 MR. SMITH: Objection, Judge. Calls for hearsay.

1 MR. PIKE: Based upon -- it's information that is
2 he's basing his opinion on whether to call for medical help.
3 Present sense impression of Brian O'Keefe, excited utterance
4 (indiscernible).

5 MR. SMITH: Well, Judge it's still his statement; and
6 it's offered -- it would -- we presume it would be offered for
7 the truth --

8 THE COURT: I'm going to sustain the objection.

9 BY MR. PIKE:

10 Q Without saying what he said -- well, without saying
11 what Brian said, you heard him talking to Victoria?

12 A Yes.

13 Q And then you went and called for an ambulance. Now,
14 the -- and the entire time that you went up there, Brian didn't
15 try and keep you out of the apartment?

16 A Other than take a swing at me and tell me to get the
17 hell out.

18 Q Right. Didn't come at you with a weapon?

19 A No.

20 Q Didn't try and lock door?

21 A No.

22 Q Didn't try and close any doors on you?

23 A No.

24 Q Didn't try and shove you out of the apartment?

25 A No.

1 Q Other than the swing, he wasn't swearing at you,
2 wasn't yelling at you? When you came up towards the apartment,
3 you didn't hear any yelling or screaming --

4 A No.

5 Q -- or fighting or anything at all, did you?

6 A No.

7 Q And then when you left the apartment, Brian didn't
8 try and run out of the apartment?

9 A No.

10 Q He didn't try and leave the scene.

11 A No.

12 Q He didn't try and break away or leave that apartment
13 or leave Victoria, did he?

14 A No.

15 MR. PIKE: Have I in further questions.

16 THE COURT: Any redirect.

17 MR. SMITH: Briefly.

18 REDIRECT EXAMINATION

19 BY MR. SMITH:

20 Q Mr. Armbruster, how long did it take the police to
21 arrive from the time you left the apartment?

22 A It seemed like just a couple minutes.

23 Q So was it pretty quick?

24 A Pretty quick.

25 Q Okay. Now, while you were inside the apartment,

1 after Mr. O'Keefe took a swing at you, were you asked to call
2 for medical assistance or anything?

3 A No.

4 Q Okay.

5 MR. SMITH: No further questions.

6 THE COURT: Any further cross, Mr. Pike?

7 MR. PIKE: Thank you.

8 RECROSS-EXAMINATION

9 BY MR. PIKE:

10 Q And as Brian -- as you saw Brian during that period
11 of time, and you saw him get up from where he was looking at
12 Victoria, he appeared to be stumbling and not very steady on
13 his feet, didn't he?

14 A Yeah.

15 MR. PIKE: No further questions.

16 THE COURT: Anything further?

17 MR. SMITH: Nothing, Judge. Thank you.

18 THE COURT: Any questions from the jurors? All
19 right, no. Sir, you're instructed not to discuss your
20 testimony with any other witness involved in this case until
21 this matter is finally resolved. Thank you for your time, sir.

22 THE WITNESS: All right.

23 THE COURT: Do we have a witness that will take a
24 short amount of time or --

25 MR. SMITH: We do actually have a short witness.

1 THE COURT: All right.

2 MR. PIKE: You're Honor, we'll also relieve this
3 witness from --

4 THE COURT: Okay.

5 MR. PIKE: -- the defense subpoena.

6 THE COURT: All right.

7 MR. PIKE: So this is your -- all of your
8 appearances.

9 THE WITNESS: Okay.

10 MR. PIKE: Thanks.

11 THE COURT: All right, next witness.

12 MR. SMITH: State's next witness, Judge, is Jimmy
13 Hathcox.

14 THE MARSHAL: Mr. Hathcox, if you'll remain standing,
15 please. Raise your right hand and face the clerk.

16 JIMMY HATHCOX, STATE'S WITNESS, SWORN

17 THE CLERK: Please be seated. Will you please state
18 your name and spell it for the record.

19 THE WITNESS: Jimmy Hathcox, H-a-t-h-c-o-x.

20 THE CLERK: Thank you.

21 THE COURT: Go ahead, Counsel.

22 MR. SMITH: Thank you, Judge.

23 DIRECT EXAMINATION

24 BY MR. SMITH:

25 Q Mr. Hathcox, where do you presently reside?

1 A 5001 El Parque, Apartment 36.

2 Q How long you been living there?

3 A About a year.

4 Q Is Apartment 36 next to Apartment 35?

5 A Yes.

6 Q Are you familiar with the occupants of Apartment 35
7 back on November 5th, 2008?

8 A Yes.

9 Q And who resided there?

10 A Brian O'Keefe and his girlfriend.

11 Q Okay, do you see Brian O'Keefe present in court
12 today?

13 A Yes, I do.

14 Q Now, will you identify for the record what he's
15 wearing.

16 A Right here.

17 THE COURT: He's on the far left?

18 THE WITNESS: Yeah, I see him right here.

19 MR. PIKE: We'll stipulate to the identity, your
20 Honor. Thank you.

21 THE COURT: Record reflect identification of the
22 defendant.

23 MR. SMITH: Thank you, Judge.

24 BY MR. SMITH:

25 Q And the -- you you said his girlfriend. Would that

1 be a female occupant?

2 A Yes.

3 Q I'm showing you what' been admitted as State's
4 Exhibit 4. Is that a photograph of the female occupant?

5 A Yes, sir, it looks like her.

6 Q Let's see if I can focus it. Is that a picture of
7 her?

8 A Yes, it looks like her.

9 Q Now I want to draw your attention, sir, to
10 approximately 10:00 o'clock p.m. on November 5th, 2008.
11 Anything unusual happen?

12 A I heard some noises over there, and I heard a --
13 well, what are you referring to exactly? I mean, I --

14 Q Let's start with the noises. You say you hear noises
15 at 10:00 o'clock p.m.?

16 A Yeah. Yeah, I heard -- I heard noises coming out of
17 apartment. I don't remember the exact time. It was around
18 there, yeah.

19 Q Okay. Do you remember writing a handwritten
20 statement?

21 A Um-h'm.

22 Q Pursuant to the police arriving afterwards?

23 A Right.

24 Q Would looking at your handwritten statement refresh
25 your recollection as to what time you began hearing noises

1 coming from the apartment?

2 A Yeah, it was probably -- it was probably around
3 10:00. It was probably around 10:00 I heard some noises, some
4 thumping noises coming out of there. And then a little bit
5 after that I heard a loud bang on the rail outside, and I
6 opened up the door and looked, and when I looked out I saw
7 Brian going into his apartment because I was looking out of
8 mine. I looked at him, he looked at me, he had kind of a weird
9 look on his face. I just closed the door. And then probably
10 about 15 minutes later I heard Cookie from down stairs yelling
11 call the cops, and I went to my door, and when I got to my
12 door, Cookie and Todd were there.

13 And Todd had went into the apartment, and I said --
14 and then I didn't -- so I just kind of basically turned around
15 and went back into my apartment --

16 Q Okay, let --

17 A -- at that point.

18 Q -- me ask you this. Going back to the time when you
19 opened your door and you look out and you exchange a look with
20 the defendant, Brian O'Keefe --

21 A Right.

22 Q -- and then he goes back into his apartment? Is that
23 a yes?

24 A Yes.

25 Q Did you continue to hear anything coming from his

1 apartment?

2 A Yeah, I kept hearing a little bit some noises over
3 there.

4 Q Okay. And then at some point you just testified
5 Cookie comes out?

6 A Cookie apparently had heard the noise from down
7 stairs and went up there, and he walked in and saw what he saw,
8 and came out and was yelling call the police. That's when I
9 went out my front door and looked in, but I didn't go in the
10 apartment.

11 Q Okay. Now, can you describe that look you saw on the
12 defendant?

13 A It was a look like I ain't never seen on his face
14 before. It was a --

15 Q Okay.

16 A -- scary looking look to me. I just closed the door
17 and said h'm, you know.

18 Q Okay. Now, let me ask you this, throughout the time
19 that they had resided in Apartment No. 35, how many occasions
20 would you say you saw Victoria Witmarsh?

21 A I've seen them together almost everyday.

22 Q Okay. Can you describe her stature, her body
23 composition?

24 A Her size, you mean?

25 Q Yes, sir.

1 A She was a small girl. Probably around five foot,
2 five foot, one, real thin, frail like. Kind of, you know, just
3 small girl.

4 Q Okay. Do you recall giving a recorded statement to
5 the police regarding the incidents of that night?

6 A Yes.

7 Q Do you recall telling the police that she was
8 actually a little bitty thing?

9 A Yes, she is. Shows a little bitty thing, yeah.

10 Q Okay.

11 MR. SMITH: No further question, Judge.

12 THE COURT: Cross.

13 CROSS-EXAMINATION

14 BY MR. PIKE:

15 Q Good afternoon, sir.

16 A How you doing?

17 Q I'm showing you Defendant's Exhibit No. G, which has
18 been admitted into evidence. And do you recognize those
19 apartments?

20 A Um-h'm.

21 Q Is that a yes?

22 A Yes.

23 Q I'm sorry, we're recording it --

24 A Okay, yes, yes.

25 Q -- so yes, I do that. And your apartment would be

1 36.

2 A Right.

3 Q This apartment?

4 A Right.

5 Q And evening that -- of the events that we're talking
6 about, the door was open when you came out and when you heard
7 the noise on the guardrail out here?

8 A No, when I heard the noise on the rail, the door was
9 closed. He was going in, and I just opened my door and kind of
10 looked out, and I saw him, and he saw me, and I just kind of
11 closed my door and went back in.

12 Q And went in, and then you didn't come back out until
13 you heard Cookie.

14 A Right.

15 Q All right. Now, you'd been able to see Mr. O'Keefe
16 and the Victoria coming in and out of the apartment and also
17 you'd seen prior to Victoria moving in there, you saw Brian
18 with a Cheryl Morris. Do you remember Cheryl?

19 A Yes.

20 Q And during the time that you saw them out there, I'll
21 represent to you that there are other witnesses that indicated
22 that there was some chairs kind of out on the balcony down
23 towards the end there.

24 A Yeah, there were.

25 Q And the building kind of ends right there --

1 A Right.

2 Q -- doesn't it?

3 A Right.

4 Q So it's almost like a little patio that has access
5 from your apartment and from Brian and Victoria's apartment?

6 A Right.

7 Q And there's chairs out there and you'd seen Brian
8 there with Cheryl, and you'd seen them out there drinking
9 before.

10 A Right.

11 Q And when Cheryl moved away did it seem to you that
12 Brian's drinking got worse?

13 A Maybe a little -- maybe --

14 MR. SMITH: Judge, I'm going to make an objection.
15 I'm going to make an objection to the relevance.

16 MR. PIKE: Intoxication is at issue in --

17 THE COURT: Overrule the objection.

18 BY MR. PIKE:

19 Q Did it appear to you that he had been drinking more?

20 A Maybe a little bit more, yeah.

21 Q All right. And you saw the interaction between
22 Victoria and Brian when they'd come up the stairs and go into
23 their apartment, and you'd seen them on their day-to-day
24 travels to and from their apartment.

25 A Yes.

1 Q During that period of time did they appear to be a
2 couple?

3 A Yes.

4 Q They were open about their relationship?

5 A Yes.

6 Q She had moved in?

7 A Yes.

8 Q And they appeared to be a loving couple?

9 A Yes.

10 MR. PIKE: No further questions.

11 THE COURT: Redirect?

12 MR. SMITH: Briefly, Judge.

13 REDIRECT EXAMINATION

14 BY MR. SMITH:

15 Q Mr. Hathcox, your observation of Mr. O'Keefe that
16 night, would you describe it that in your opinion you thought
17 he was angry at any point?

18 A He said -- he had a -- he had a look on his face that
19 night when I looked at him that I hadn't actually seen on his
20 face before. It looked -- he looked pissed, yeah.

21 Q Okay.

22 MR. SMITH: No further questions.

23 THE COURT: Any further cross?

24 RECROSS-EXAMINATION

25 BY MR. PIKE:

1 Q Prior to the time that you heard Cookie yelling, and
2 you didn't hear noise for like an hour?

3 A Well, did I hear noise, yeah, before I heard Cookie
4 yelling, yes.

5 Q But was it for a short period of time or for a longer
6 period of time?

7 A What do you mean?

8 Q About how long did it last? Maybe ten minutes?
9 Maybe five minutes? Maybe an hour?

10 A Well, the first noises I heard probably lasted 20
11 minutes or so, you know, on and off.

12 MR. PIKE: Okay. No further questions.

13 MR. SMITH: Just briefly.

14 THE COURT: Yes.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. SMITH:

17 Q And, sir, I just want to make sure the record's
18 clear. It's your testimony that the noises began, to your
19 recollection, approximately 10:00 o'clock p.m.?

20 A Yes, sir.

21 Q Okay.

22 MR. SMITH: No further questions.

23 THE COURT: Any questions by the jurors? Yes, write
24 down your question and your juror number, please. Counsel
25 approach.

1 (Off-record bench conference).

2 THE COURT: Ladies and gentlemen, I had mentioned
3 before that certain questions would be reviewed by the Court as
4 well as the attorneys, and we're not legally able to ask this
5 particular question. All right, thank you, sir, for your time.
6 You're instructed not to discuss your testimony today with any
7 other witness involved in this case until this matter is
8 finally resolved. Thank you for your time, sir.

9 THE WITNESS: Thank you.

10 THE COURT: All right, ladies and gentlemen, it's
11 just six minutes after 5:00. We're going to end -- we're going
12 to take a recess for the evening at this point. Every morning
13 I have a motion calendar. Tomorrow I have a criminal calendar
14 and Mondays and Wednesdays are my civil calendar. Tuesday,
15 Thursdays are my criminal calendar. And I should be done about
16 9:15. I just got to sort of change gears here before we start
17 the trial. So if we can have everyone back at 9:30.

18 Sometimes cases go a little bit longer, but we
19 endeavor to start promptly at 9:30, but hopefully we're not any
20 later than 9:30. But please bear with us if we're a few
21 minutes late because like I said, I have about 19 matters I
22 have to resolve tomorrow morning before this case resumes
23 again.

24 So we'll you back at 9:30. During this evening
25 recess it is your duty not to converse among yourselves or with

1 anyone else on any subject connected with the trial or to read,
2 watch or -- excuse me. You're not to converse among yourselves
3 or with anyone else on any subject connected with the trial or
4 to read, watch or listen to any report over commentary on the
5 trial by any person connected with the trial or by any medium
6 of information, including without limitation, newspaper,
7 television, radio or the Internet.

8 You're not to form or express an opinion on any
9 subject connected with this case until in matter is finally
10 submitted to you. We'll see you back at 9:30 tomorrow morning.

11 (Jury recessed at 5:08 p.m.)

12 (Outside the presence of the jury)

13 THE COURT: All right, anything we need to resolve
14 before I leave the bench?

15 MS. GRAHAM: Should we resolve the photos because --

16 MR. SMITH: Yeah, we should because we probably want
17 to start getting into that stuff tomorrow.

18 THE COURT: Oh, have you those photos? Well, let's
19 -- you know what, let's -- can you guys stick around for a few
20 minutes? Do you have the numbers of the photos that are in
21 dispute? For the record, we're outside the presence of the
22 jury.

23 Okay, there was Proposed Exhibit 32. Ms. Palm or Mr.
24 Pike, are you familiar with --

25 MS. PALM: Randy. Mr. Pike.

1 MR. PIKE: Yes.

2 THE COURT: -- Proposed 32?

3 MR. PIKE: Yes.

4 THE COURT: Do you have an objection to that one?

5 MR. PIKE: I do. The ones that have been separated
6 apart I have objections on. Maybe if we came up to the bench,
7 we can go through them with the Court, and --

8 THE COURT: All right.

9 MR. PIKE: -- I can identify my objection.

10 THE COURT: That's 32.

11 MR. PIKE: 32. I objected. It shows the autopsy
12 photograph with bruising on the left arm in relationship to the
13 case. It -- again, the bruising, as I've indicated, the doctor
14 testified at the time of the preliminary hearing, was
15 occasioned by her cirrhosis and she cannot identify them as
16 contemporaneous with or associated with this event.

17 THE COURT: All right, Mr. Smith.

18 MR. SMITH: And Judge, that -- it's the State's
19 position that that's not what the medical examiner testified
20 to. What the medical examiner testified to is that a person
21 who suffers from cirrhosis, granted they may bruise easier than
22 a person who does not suffer from cirrhosis. That being said,
23 any argument based on that would go to the weight of that
24 evidence and not the admissibility, especially when now we have
25 evidence that there was a struggle this took place in this

1 apartment for at least an hour.

2 We should be able to put in these pictures that
3 corroborate our theory of the case that this was not just
4 simply the defendant stabbing her in a fit of -- or at a sudden
5 heat of the moment or that this was a quick incident, but
6 rather that this was a long drawn out affair.

7 Furthermore, it's certainly probative because it
8 helps to counter any claim that the defendant is going to make
9 that this was self-defense.

10 THE COURT: Mr. Pike, was the testimony of the doctor
11 that although someone can bruise easier, that this is
12 specifically related to cirrhosis of the liver only?

13 MR. PIKE: It -- she just testified that cirrhosis of
14 the liver would cause someone to bruise more easily. If the
15 Court's concerned about whether or not these could be tied into
16 this event, then I think that at the time that the ME comes in,
17 there should be a proffer with her present as to whether or not
18 she can identify the time frame as to this.

19 Insofar as a struggle that has been suggested, there
20 is nothing in the photographs of the apartment to show that
21 anything is disturbed, that there was anything to indicate that
22 there was a fight, anything other than slammed doors, banging
23 on walls. But as far as a physical altercation, we don't have
24 any evidence of that yet. Just loud noises.

25 THE COURT: You're saying you object to all which

1 would be 32 through 38.

2 MR. PIKE: It's ostensibly all of them.

3 MR. SMITH: All much them.

4 MR. PIKE: All of them.

5 THE COURT: Okay. Well, I think I'll just hear from
6 the medical examiner. You can just show the photographs before
7 they're -- you know, before you show them to the jury and then
8 see if she -- you know, that they can state this is strictly
9 related to a medical condition, I mean, in and of itself, or if
10 this is consistent with someone being grabbed or punched or
11 pushed, et cetera.

12 MR. SMITH: Well, is what she's going to say is that
13 it could be consistent with a person being battered, you it
14 could also be consistent with a person bruising easier due to
15 them having --

16 THE COURT: Okay.

17 MR. SMITH: -- cirrhosis. So means the threshold of
18 its admissibility, and it would just -- it's the State's
19 position that it would fall on Mr. Pike and Ms. Palm to argue
20 the weight of that evidence --

21 THE COURT: Right.

22 MR. SMITH: -- but not the admissibility itself.

23 THE COURT: Well, right now I'm just not -- I'm not
24 admitting the evidence --

25 MR. SMITH: Okay.

1 THE COURT: -- because we need to have --

2 MR. SMITH: Sure.

3 THE COURT: -- the foundation.

4 MR. SMITH: Well, we wouldn't show it to any --

5 THE COURT: Right.

6 MR. SMITH: -- of these witnesses.

7 THE COURT: Okay.

8 MR. SMITH: It would be the coroner.

9 THE COURT: Right.

10 MR. PIKE: But the remainder of the photographs of
11 the scene, of the area and the other photographs --

12 THE COURT: Okay, let's go over those, then. 44.

13 MR. PIKE: It's the same thing, your Honor, the
14 bruising that was there.

15 THE COURT: Is this strictly the bruising objection
16 versus any other objection that as long as it's related to --

17 MR. PIKE: Right.

18 THE COURT: Well, we'll see what the medical examiner
19 has to say. I thought there were some photographs that someone
20 may have said was overly gruesome or --

21 MR. SMITH: Yeah, are you talking about the one --

22 MR. PIKE: There's --

23 MR. SMITH: -- of the --

24 MR. PIKE: There's some that have blood on the -- the
25 bruising on her body can be shown without showing the entire

1 body laid out on the gurney, so --

2 THE COURT: Well, I haven't seen a quote, gruesome
3 photograph yet. Do you have -- is it in this stack? I've gone
4 through all the stacks, and all the other ones just show
5 bruising. And this is in No. 60?

6 MR. SMITH: Judge, that's not too gruesome. I've
7 certainly seen worse.

8 MR. PIKE: Well, we're in a horrible profession to
9 say what is gruesome and what isn't.

10 THE COURT: We had a bad one in a civil case couple
11 weeks back, so --

12 MR. PIKE: Oh, okay.

13 THE COURT: Now, I mean, I'm just -- like I say, I'm
14 going to wait for the medical examiner. But No. 60 just does
15 not seem overly gruesome. I mean, it's --

16 MR. PIKE: And I'm just -- and out of an abundance of
17 caution, just so long as they bear -- if they can meet the
18 threshold that they show relevant injuries that are potentially
19 relevant to this case. And Counsel's correctly stated the
20 burden that he has, and we can -- we'll address that with the
21 coroner --

22 THE COURT: All right.

23 MR. PIKE: -- when she testifies.

24 THE COURT: There's really nothing I can do right at
25 this point until we hear the coroner. Anything else?

1 MR. PIKE: The remainder of the photographs can be
2 admitted other than --

3 THE COURT: Okay.

4 MR. PIKE: -- the State's.

5 THE COURT: Can you tell the clerk which numbers so
6 she knows.

7 MS. PALM: Did you guys look at ours?

8 MR. SMITH: No.

9 THE COURT: All right.

10 MS. PALM: (Indiscernible).

11 THE COURT: Yeah, we're off the record.

12 (Court recessed at 5:15 p.m. until Tuesday,

13 March 17, 2009, at 9:30 a.m.)

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

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