

IN THE SUPREME COURT FOR THE STATE OF NEVADA

DEANGELO R. CARROLL,
Appellant,
v.

THE STATE OF NEVADA,
Respondent.

No. 64757

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Tracie K. Lindeman
Clerk of Supreme Court

Appeal

From the Eighth Judicial District Court
Clark County
The Honorable Valerie Adair, District Judge

APPELLANT'S APPENDIX
(Volume 4)

MARIO D. VALENCIA
Nevada Bar No. 6154
1055 Whitney Ranch Dr., Ste. 220
Henderson, NV 89014
(702) 940-2222
Counsel for Deangelo R. Carroll

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DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAY 18 2010

Conrad Husted

THE STATE OF NEVADA,

Plaintiff,

VS.

DEANGELO RESHAWN CARROLL

Defendant.

CASE NO: ~~BY, C212667~~
DEPT NO: ~~XXI~~ DENISE HUSTED, DEPUTY

C212667

Transcript of Proceedings

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 1
JURY VOIR DIRE

MONDAY, MAY, 17, 2010

Part 1

APPEARANCES:

FOR THE STATE:

MARC DiGIACOMO, ESQ.
Chief Deputy District Attorney
GIANCARLO PESCI, ESQ.
Chief Deputy District Attorney

FOR THE DEFENDANT:

DANIEL M. BUNIN, ESQ.
THOMAS A. ERICSSON, ESQ

RECORDED BY JANIE OLSEN, COURT RECORDER
TRANSCRIBED BY: KARReporting and Transcription Services

KARR REPORTING, INC.

1 **LAS VEGAS, NEVADA, MONDAY, MAY 17, 2010, 9:57 A.M.**

2 (Court was called to order.)

3 (In the presence of the jury.)

4 THE COURT: All right. Court is now in session.

5 This is the time for Case No. Cl -- excuse me, C212667,
6 plaintiff State of Nevada versus Deangelo Carroll, defendant.

7 Let the record reflect the presence of the State
8 through the deputy district attorneys, Giancarlo Pesci and
9 Marc DiGiacomo; the presence of the defendant, Deangelo
10 Carroll, along with his attorneys, Dan Bunin and Tom Ericsson;
11 the officers of the Court and the members of the prospective
12 jury panel.

13 Good morning, ladies and gentlemen. You are in
14 Department XXI of the 8th Judicial District Court for the
15 State of Nevada. My name is Valerie Adair and I am the
16 presiding judge.

17 As you've probably ascertained from filling out the
18 questionnaires, you have been summoned here today to possibly
19 serve as jurors in a capital murder case.

20 Let me first take this opportunity to introduce you
21 to the Court staff with whom you may be coming into contact.
22 Seated next to me is Ms. Denise Husted. Ms. Husted is the
23 official court clerk. It is her job to keep the official
24 record in this case, to mark the exhibits and administer the
25 oath to the witnesses as well as to the jurors.

 KARR REPORTING, INC.

1 Seated next to her is Ms. Janie Olsen. Ms. Olsen is
2 our official court recorder. It is Ms. Olsen's job to record
3 everything that is said during these proceedings and to make
4 sure an accurate transcript is prepared. I tell you this
5 because there is a point in time when you all may be speaking.
6 Please be aware that you are being recorded and please speak
7 up audibly so that Ms. Olsen can take down everything that
8 you've said and make sure that an accurate transcript is
9 prepared.

10 You've already come into contact with our bailiff,
11 Marshal Jeff Wooten. Officer Wooten is the person with whom
12 you will have direct contact, and should you need to contact
13 the Court, meaning me, for any reason, you would do so by
14 contacting Officer Wooten.

15 The attorneys for the State will now introduce
16 themselves to you. They will very briefly tell you the nature
17 of the State's case as well as any witnesses that they'll be
18 calling in their case.

19 MR. DIGIACOMO: Thank you, Judge.

20 Good morning, ladies and gentlemen. My name is Marc
21 DiGiacomo. I'm a deputy district attorney here in Clark
22 County, and along with my partner, another deputy district
23 attorney, Giancarlo Pesci, we've been assigned to prosecute
24 the case of State of Nevada versus Deangelo Carroll.

25 Mr. Carroll is accused, in May of 2005, of being an

1 employee for the Palomino Club, which is North Las Vegas,
2 right across from Jerry's Nugget. He's accused of being
3 requested by the owner of the Palomino to kill a former
4 employee by the name of Timothy J. Hadland.

5 Mr. Carroll is accused of thereafter finding a hit
6 man, luring the victim to a dark location, driving the hit man
7 to that location, and then after the murder, driving the hit
8 man back to the Palomino where he got him -- paid for his
9 money -- or for the killing.

10 In this case there'll be a number of names that
11 you'll hear that won't necessarily be witnesses but will be
12 relevant as to whether or not you know -- or know about
13 certain people as well as a number of witnesses that we intend
14 to call to establish the charges against Mr. Carroll.

15 If you could listen to the names of witnesses that
16 I'm going to read off here, if you know any of them, you'll
17 later be asked about whether or not you know them and how you
18 know them.

19 There is a Henderson police officer by the name of
20 Kenneth Simpson, a medical examiner by the name of Dr. Gary
21 Telgenhoff. There is Detective Marty Wildemann of the Las
22 Vegas Metropolitan Police Department. There is a SWAT officer
23 by the name of Manuel Rivera, a Detective Theresa Kyger, a
24 Detective Michael McGrath, a crime scene analyst by the name
25 of Larry Morton, Officer Patrick Ledbetter, a fingerprint

1 examiner by the name of Fred Boyd, crime scene analyst Louise
2 Rhenhart, firearms examiner James Krylo, crime scene analyst
3 Jeffrey Schmink, crime scene analyst Stephanie Smith, and
4 Officer Jason Lefenyero, a crime scene analyst Kristin
5 Grammas, a DNA analyst by the name of Julie Marshner.

6 There is the alleged shooter in this case. His name
7 is Kenneth Counts. There are actually three Luis Hidalgos
8 that you'll hear referenced from. There's Luis Hidalgo, Sr.
9 He has those dealings with the Palomino Club directly.

10 There's the owner of the Palomino Club whose name is Luis
11 Hidalgo, Jr. He's also going to be referred to throughout the
12 trial as Mr. H. There is his son Luis Hidalgo, III who's also
13 referred to throughout the trial as Luis or Little Lou.

14 There's Anabel Espindola. There's a Jayson Taoipu.
15 There is a Rontae Zone, an Ismael Madrid of the Pajit Karson,
16 Alan Hadland, Michelle Schwanderlik, also known as Arial.

17 We'll be calling a custodian of records for Sprint
18 Nextel. I can't tell you their name, but if any of you work
19 with cellphone companies or with Sprint, we'd want to know
20 that.

21 There's a Steven Blaujette, Gary McWharter and also
22 a person from the Yellow Cab Company to come in and testify to
23 records, Alana Hadland, Dorie Gibbs, also used to be known as
24 Dorie Luecher, Alex Hadland, Jennifer Hadland, Omar Manner,
25 and a former detective with the Las Vegas Metropolitan Police

1 Department named Detective James Vaccaro.

2 Thank you.

3 THE COURT: All right. Thank you, Mr. DiGiacomo.

4 Ladies and gentlemen, in a moment counsel for the
5 defense will introduce themselves to you along with their
6 client.

7 An accused in a criminal case is never required to
8 call any witnesses or present any evidence. However, if there
9 are witnesses, they'll give you those names at this time.

10 Mr. Bunin, Mr. Ericsson.

11 MR. BUNIN: Thank you, Your Honor.

12 Good morning. My name is Dan Bunin. I'm a private
13 attorney. I'm a partner in the firm of Bunin & Bunin. This
14 is Tom Ericsson. He's also a private attorney. And together
15 we represent Deangelo Carroll. And this is Deangelo right
16 here. He is accused of the crimes that were just stated by
17 the prosecution.

18 We firmly believe when you hear all the evidence in
19 this case you're going to see that Deangelo Carroll is
20 absolutely not guilty of murder, and, in fact, the prosecutor
21 named the person who's guilty of the murder in this case. His
22 name is Kenneth Counts. And you'll see, the evidence will
23 show, it's undisputed, that he was the shooter. And I believe
24 you're going to see the evidence will show that Deangelo
25 Carroll did not know anything about a killing and that Kenneth

1 Counts on his own shot and killed the man. So we firmly
2 believe that when you hear the evidence, you're going to
3 believe and find Deangelo Carroll not guilty.

4 In addition to the witnesses just stated by the
5 prosecution, there are possible witnesses that we may call.
6 We may call none of them, but either one we might call, and I
7 want you to hear the names just in case you know any of them
8 so you can tell us and we can deal with it at that point.

9 So here are the names. There's Janique Carroll,
10 Felicia Arkaletta, Joseph Arkaletta, Calvin Williams, Richard
11 Frankie, Janae Morris, Dantonio Williams, corrections officer
12 Denton, Virginia Carroll, Lisa Page, Violet Dillon, Michelle
13 Pruitt, Katie Hunt, Lisa Grippentraub, Norton Roitman, and
14 David Schmidt.

15 Thank you.

16 THE COURT: All right. Thank you, Mr. Bunin.

17 Ladies and gentlemen, the clerk is now going to call
18 the role of the panel of prospective jurors. When your name
19 is called, please answer present or here.

20 Ms. Husted.

21 THE CLERK: Thank you, Your Honor.

22 Badge 26, Lut Au Yeung.

23 PROSPECTIVE JUROR NO. 026: Here.

24 THE CLERK: Is that correct?

25 PROSPECTIVE JUROR NO. 26: Yes.

1 THE CLERK: Badge 32, Darlene Eaves.
2 PROSPECTIVE JUROR NO. 032: Here.
3 THE CLERK: 34, Stacey M. Long.
4 PROSPECTIVE JUROR NO. 034: Here.
5 THE CLERK: 38, Kandice Vigilia.
6 PROSPECTIVE JUROR NO. 038: Here.
7 THE CLERK: Thank you. 49, Jolena Wright.
8 PROSPECTIVE JUROR NO. 049: Here.
9 THE CLERK: 54, Steven Pedrola.
10 PROSPECTIVE JUROR NO. 54: Here.
11 THE CLERK: 60, Katherine Floyde. Not present.
12 61, Kevin Johnson.
13 PROSPECTIVE JUROR NO. 061: Here.
14 THE CLERK: 64, Jason Sleeter.
15 PROSPECTIVE JUROR NO. 064: Present.
16 THE CLERK: 66, Yul Melonson.
17 PROSPECTIVE JUROR NO. 064: Here.
18 THE CLERK: 67, Ricky Briggs.
19 PROSPECTIVE JUROR NO. 067: Here.
20 THE CLERK: 68, Ginger Ortiz.
21 PROSPECTIVE JUROR NO. 068: Here.
22 THE CLERK: 71, Vanida Fripp.
23 PROSPECTIVE JUROR NO. 074: Here.
24 THE CLERK: 74, Richard Sharpe.
25 PROSPECTIVE JUROR NO. 074: Here.

1 THE CLERK: 76, Cindy Ternay.
2 PROSPECTIVE JUROR NO. 076: Here.
3 THE CLERK: 78, Stephen Bates.
4 PROSPECTIVE JUROR NO. 078: Here.
5 THE CLERK: 81, Michael Redondo.
6 PROSPECTIVE JUROR NO. 081: Here.
7 THE CLERK: 82, William Hartfield.
8 PROSPECTIVE JUROR NO. 082: Here.
9 THE CLERK: 092, Sharon E. Overton.
10 PROSPECTIVE JUROR NO. 092: Here.
11 THE CLERK: 96, John Harvey. 96 --
12 PROSPECTIVE JUROR NO. 096: Here.
13 THE CLERK: -- John Harvey.
14 103, Michael Esquer. Not present.
15 116, Rosann Katona.
16 PROSPECTIVE JUROR NO. 116: Here.
17 THE CLERK: 119, John Turner.
18 PROSPECTIVE JUROR NO. 119: Here.
19 THE CLERK: 120, Valerie J. Keith.
20 PROSPECTIVE JUROR NO. 120: Here.
21 THE CLERK: 125, Tammy Cottam.
22 PROSPECTIVE JUROR NO. 125: Here.
23 THE CLERK: 126, Gloria Torres-Gamboa.
24 PROSPECTIVE JUROR NO. 126: Here.
25 THE CLERK: 132, Christie Baker.

1 PROSPECTIVE JUROR NO. 132: Here.
2 THE CLERK: 135, Sandra K. Mitchell.
3 PROSPECTIVE JUROR NO. 135: Yeah.
4 THE CLERK: 136, Warren Koch.
5 PROSPECTIVE JUROR NO. 136: Here.
6 THE CLERK: Is that how you say it?
7 PROSPECTIVE JUROR NO. 136: Koch.
8 THE CLERK: Koch. I'm sorry.
9 138, Nicole Delong.
10 PROSPECTIVE JUROR NO. 138: Here.
11 THE CLERK: 143, Sharon Bennett. Not present.
12 149, Michael Hicks. Not present.
13 151, Maria Silva.
14 PROSPECTIVE JUROR NO. 151: Here.
15 THE CLERK: 152, Dennis Johnson.
16 PROSPECTIVE JUROR NO. 152: Dennis Johnson.
17 THE CLERK: 154, Jennifer Lee. Not present.
18 158, Patrick Gallahan.
19 PROSPECTIVE JUROR NO. 158: Present.
20 THE CLERK: 163, Tasha Adsuara-Iglesias.
21 PROSPECTIVE JUROR NO. 163: Here.
22 THE CLERK: 165, Tiffany Ortiz.
23 PROSPECTIVE JUROR NO. 165: Here.
24 THE CLERK: 168, Howard Hotchkiss.
25 PROSPECTIVE JUROR NO. 168: Yeah.

1 THE CLERK: 172, Kenneth Lieberman.
2 PROSPECTIVE JUROR NO. 172: Here.
3 THE CLERK: 173, Alexandra Kopp.
4 PROSPECTIVE JUROR NO. 173: Here.
5 THE CLERK: 175, Erin Schwartz.
6 PROSPECTIVE JUROR NO. 175: Here.
7 THE CLERK: 181, Cindy Strebing.
8 PROSPECTIVE JUROR NO. 181: Here.
9 THE CLERK: 183, Sean Trodahl.
10 PROSPECTIVE JUROR NO. 183: Present.
11 THE CLERK: 185, Gordon Zorn.
12 PROSPECTIVE JUROR NO. 185: Present.
13 THE CLERK: 191, James Kerr.
14 PROSPECTIVE JUROR NO. 191: Here.
15 THE CLERK: 193, Elvie Malasarte.
16 PROSPECTIVE JUROR NO. 193: Here.
17 THE CLERK: 196, Fortis Ford.
18 PROSPECTIVE JUROR NO. 196: Here.
19 THE CLERK: 199, Edwin Arevalo. Not present.
20 204, Lori Hershenhouse. Not present.
21 209, Ruth Crisler.
22 PROSPECTIVE JUROR NO. 209: Here.
23 THE CLERK: 210, Emilio Dizon.
24 PROSPECTIVE JUROR NO. 210: Here.
25 THE CLERK: 211, Robert A. Mathias, II.

1 PROSPECTIVE JUROR NO. 211: Here.
2 THE CLERK: 217, Julie McNicholas.
3 PROSPECTIVE JUROR NO. 217: Here.
4 THE CLERK: 218, Brittney Clark.
5 PROSPECTIVE JUROR NO. 218: Here.
6 THE CLERK: 227, Shaina Brown.
7 PROSPECTIVE JUROR NO. 227: Present.
8 THE CLERK: 230, Brittany Webb.
9 PROSPECTIVE JUROR NO. 230: Here.
10 THE CLERK: Brittany Webb.
11 THE COURT: She's here.
12 THE CLERK: Okay. 231, Kerry S. Loso.
13 PROSPECTIVE JUROR NO. 231: Present.
14 THE CLERK: 238, Lita King.
15 PROSPECTIVE JUROR NO. 238: Here.
16 THE CLERK: 239, Edward Baier.
17 PROSPECTIVE JUROR NO. 239: Here.
18 THE CLERK: 240, Francis Yang. Not present.
19 241, Cynthia Boswell.
20 PROSPECTIVE JUROR NO. 241: Here.
21 THE CLERK: 247, William Brodfuehrer.
22 PROSPECTIVE JUROR NO. 247: Here.
23 THE CLERK: Is that correct?
24 PROSPECTIVE JUROR NO. 247 Brodfuehrer.
25 THE CLERK: Brodfuehrer, okay.

1 256, Judy Madden.
2 PROSPECTIVE JUROR NO. 256: Here.
3 THE CLERK: 259, Hugo Mendoza.
4 PROSPECTIVE JUROR NO. 259: Here.
5 THE CLERK: 263, Bill J. Grattan.
6 PROSPECTIVE JUROR NO. 263: Here.
7 THE CLERK: 266, Laura Cox.
8 PROSPECTIVE JUROR NO. 266: Here.
9 THE COURT: All right. Is there anyone whose name

10 was not called?

11 Ladies and gentlemen, the questioning of the jury at
12 the beginning of the case is done under oath. The clerk is
13 now going to administer the oath to the panel of prospective
14 jurors, if everyone could please stand.

15 (Jury panel sworn.)

16 THE COURT: Ladies and gentlemen, in addition to
17 what you filled out on the questionnaires, we are going to
18 commence examination of prospective jurors in this case.
19 During this process you will be asked questions bearing on
20 your ability to sit as fair and impartial jurors. The Court,
21 the lawyers, the defendant and everyone involved in this case
22 are all obviously deeply interested in having this matter
23 tried by a jury composed of 15 people who are open-minded and
24 neutral and have no bias or prejudice toward or against either
25 side. In order for us to accomplish this, it is necessary for

1 me to ask you some questions. The attorneys will then be
2 given the opportunity to ask you questions.

3 It is, of course, not our desire to prior
4 necessarily into your personal lives; although, the
5 questioning can, at times, become quite personal. Please
6 understand that our only objective is to ascertain whether or
7 not there is a reason that you cannot serve on this particular
8 kind of a jury. There are 25 district court departments in
9 this building, all of which have jury trials. Some are
10 criminal, some are civil. So if you are unable to serve on
11 this kind of a jury, you may be able to serve on a different
12 kind like a real estate dispute or something of that nature.

13 It is important that you know the significance of
14 full, complete and honest answers to all of the questions we
15 are about to ask you. I caution you not to try to hide or
16 withhold anything touching upon your qualifications to serve
17 as a juror in this particular matter.

18 Now I'm going to ask some general questions
19 addressing the 12 individuals at the jury box as well as those
20 of you seated in the audience. If you wish to respond to any
21 of my questions in the affirmative, please raise your hand and
22 when I call on you, please state your name and your badge
23 number for the record.

24 Additionally, for those people seated in the
25 audience, if I call on you, so that we can make sure we pick

1 up your voice, please stand when you respond to my question.

2 All right. Is there anyone who believes they may be
3 acquainted with either of the deputy district attorneys,
4 either Mr. DiGiacomo or Mr. Pesci? All right. No one.

5 Is there anyone who believes they may be acquainted
6 with the defendant Mr. Deangelo Carroll?

7 Is there anyone who believes they may be acquainted
8 with either of the defendants' attorneys, either Mr. Dan --
9 yes, sir? Your name and badge number, please, sir.

10 PROSPECTIVE JUROR NO. 183: I'm Sean Trodahl, my
11 last three is 183.

12 THE COURT: All right. And you believe you know
13 Mr. Carroll?

14 PROSPECTIVE JUROR NO. 183: Mr. Ericsson.

15 THE COURT: All right. And how is it that you know
16 Mr. Ericsson, professionally or personally?

17 PROSPECTIVE JUROR NO. 183: I know him personally.

18 THE COURT: Personally, okay. Do you know him -- do
19 you socialize with him or --

20 PROSPECTIVE JUROR NO. 183: I do. We share a common
21 sport. We rope, team rope together.

22 THE COURT: Okay. And so are you on the same team
23 with him or have you been on opposing teams?

24 PROSPECTIVE JUROR NO. 183: It's just general. It's
25 same -- sometimes same, sometimes -- I've been to his

1 productions that he puts on personally outside of here.

2 THE COURT: All right. Thank you. Have a seat for
3 right now, sir.

4 Anyone else who believes they may be acquainted with
5 either of the defense attorneys, either Mr. Ericsson or
6 Mr. Bunin?

7 All right. No one.

8 Is there anyone who believes they may be acquainted
9 with any of the witnesses whose names were read by
10 Mr. DiGiacomo for the State?

11 Yes.

12 PROSPECTIVE JUROR NO. 165: My name's Tiffany Ortiz
13 and I'm a former employee of Sprint and Nextel.

14 THE COURT: Okay. I'm sorry. What was your badge
15 number?

16 PROSPECTIVE JUROR NO. 165: 165.

17 THE COURT: All right. All right. And you're a
18 former employee of Sprint?

19 PROSPECTIVE JUROR NO. 165: Mm-hmm.

20 THE COURT: You have to say yes or no because --

21 PROSPECTIVE JUROR NO. 165: Yes.

22 THE COURT: -- because we need to pick that up. All
23 right.

24 This young man, by the way, is my law clerk whose
25 job is to do legal research. I didn't introduce him.

1 What did you do for Sprint?

2 PROSPECTIVE JUROR NO. 165: I was a collections
3 manager.

4 THE COURT: Okay. And how long ago did you leave
5 Sprint as the collections manager?

6 PROSPECTIVE JUROR NO. 165: 2003 or 2004.

7 THE COURT: Okay. And one final question. How long
8 did you work for them all together?

9 PROSPECTIVE JUROR NO. 165: A year and a half.

10 THE COURT: All right. And actually this is the
11 final question. What do you do now?

12 PROSPECTIVE JUROR NO. 165: I work for [inaudible]
13 as an adjustor.

14 THE COURT: You're a claims adjustor?

15 PROSPECTIVE JUROR NO. 165: [Inaudible].

16 THE COURT: Okay. Thank you. Have a seat for right
17 now.

18 Anyone else who believes they may be acquainted with
19 any of the witnesses whose names were read by Mr. DiGiacomo?

20 All right.

21 Anyone who believes they may be acquainted with any
22 of the witnesses whose names were read by Mr. Bunin?

23 All right. No one.

24 Is there anyone who believes they may have read,
25 seen or heard anything about this case prior to coming into

1 court today?

2 All right. We'll start with the gal in --

3 PROSPECTIVE JUROR NO. 032: Darlene Eaves --

4 THE COURT: Yeah. Ma'am, you can go ahead and sit
5 because you're in the jury box. All right.

6 And don't tell me what you think you may have read,
7 seen or heard, but where do you think you may have learned
8 something --

9 PROSPECTIVE JUROR NO. 032: News when the crime
10 happened.

11 THE COURT: I'm sorry?

12 PROSPECTIVE JUROR NO. 032: The news when the crime
13 happened.

14 THE COURT: Okay. And do you recall if you think it
15 was in the newspaper or television or both?

16 PROSPECTIVE JUROR NO. 032: ABC news.

17 THE COURT: ABC news. Okay. So the Channel 13
18 news. Okay.

19 So that was just the report of the crime. You
20 haven't seen anything subsequently in the media about the case
21 or anything like that?

22 PROSPECTIVE JUROR NO. 032: No, Your Honor.

23 THE COURT: Okay. And I saw a hand way in the back
24 row.

25 PROSPECTIVE JUROR NO. 218: Brittney Clark, 218,

1 same as her, just on the news when it came out and also an
2 article on the Internet.

3 THE COURT: Okay. Let's talk first about the news
4 when it came out. Was that the newspaper or the television --

5 PROSPECTIVE JUROR NO. 218: TV.

6 THE COURT: TV news. And was there a familiar
7 station that you recall seeing something on?

8 PROSPECTIVE JUROR NO. 218: I believe it was 5, but
9 I don't particularly know.

10 THE COURT: Okay. Is that the station that you
11 normally watch?

12 PROSPECTIVE JUROR NO. 218: Yes.

13 THE COURT: Okay. And was that just when the crime
14 occurred? Do you remember?

15 PROSPECTIVE JUROR NO. 218: Yeah, it was around
16 then.

17 THE COURT: Okay. Have you seen anything in the
18 media since about the case?

19 PROSPECTIVE JUROR NO. 218: Articles on the
20 Internet.

21 THE COURT: Okay. Now, how is it that you happen to
22 be looking at the Internet for articles about this case?

23 PROSPECTIVE JUROR NO. 218: I wasn't looking. It
24 was just on the -- like the bulletins.

25 THE COURT: Okay. Okay. Do you read -- I know a

1 lot of people read their newspapers on the Internet. Are you
2 one of those people?

3 PROSPECTIVE JUROR NO. 218: Yeah.

4 THE COURT: Okay. What newspapers do you read on
5 the Internet?

6 PROSPECTIVE JUROR NO. 218: The RJ, pretty much
7 [inaudible].

8 THE COURT: I'm sorry?

9 PROSPECTIVE JUROR NO. 218: I don't get any sent to
10 me, so I read all my news online.

11 THE COURT: Okay. All right. Have a seat for right
12 now.

13 Anyone else thinks they may have -- yes, ma'am.
14 Yes.

15 PROSPECTIVE JUROR NO. 238: Lita King, 238, same
16 thing, I saw it on the news.

17 THE COURT: Okay. And I'm sorry, 238, you say?

18 PROSPECTIVE JUROR NO. 238: Yes.

19 THE COURT: All right. So you are Ms. King?

20 PROSPECTIVE JUROR NO. 238: Yes.

21 THE COURT: All right. And you saw it on the news
22 when it happened?

23 PROSPECTIVE JUROR NO. 238: Yes.

24 THE COURT: And do you recall what station or
25 stations that would have been?

1 PROSPECTIVE JUROR NO. 238: It was NBC.
2 THE COURT: I'm sorry?
3 PROSPECTIVE JUROR NO. 238: NBC, Channel 3.
4 THE COURT: Channel 3, okay. Have you seen anything
5 since that time about -- okay. All right. Thanks. Have a
6 seat for right now.
7 And the man in the -- I believe it's a salmon
8 colored shirt.
9 PROSPECTIVE JUROR NO. 096: 096, and I heard
10 something on the news on Fox.
11 THE COURT: Okay. And do you recall when you would
12 have seen something on the news?
13 PROSPECTIVE JUROR NO. 096: In 2005.
14 THE COURT: Okay. When it occurred?
15 PROSPECTIVE JUROR NO. 096: Yeah.
16 THE COURT: All right. And nothing since that time?
17 PROSPECTIVE JUROR NO. 096: I'm sorry?
18 THE COURT: Nothing since that time?
19 PROSPECTIVE JUROR NO. 096: No.
20 THE COURT: Sir, what was your badge number again,
21 please? 96?
22 PROSPECTIVE JUROR NO. 096: 096.
23 THE COURT: Mr. Harvey. All right. Thank you, sir.
24 All right. Ladies and gentlemen, this case --
25 because of the holidays, there may be a break in the case.

1 The guilt phase of the case is expected to last either through
2 the end of this week, possibly into the first day or so into
3 the following week. Cases involving first-degree murder are
4 unique in that the jury sets the penalty, not the Court. If
5 and only if there is a conviction, you would be sitting for
6 the penalty phase. Because of the holiday of the Memorial Day
7 weekend, that might take place after the Memorial Day weekend.
8 We realize a lot of people have travel plans involving the
9 weekend, the holiday weekend, so we would not begin until
10 Wednesday following Memorial Day for those people who are
11 traveling out of town and what not, and then we should be
12 finishing up that week.

13 Now, is there anyone -- I know that sounds like a
14 very long time, but if you factor in the break, it really
15 isn't, especially given the length of many, many trials that
16 occur here in Clark County. Some of you may see some of the
17 trials on the news, some of the construction defect cases.
18 The medical malpractice trials that are covered on the news
19 you may seen. Those take many weeks to try. So I understand
20 that this is -- can be very inconvenient for people, but
21 please understand, in the sort of spectrum of trials that we
22 have here in this jurisdiction, it really is not that long.

23 Additionally, we live, obviously, in a community
24 where many, many people work in the service industry, many
25 people work in the casino industry and don't get paid or don't

1 get their tip income for serving as jurors. Unfortunately, I
2 cannot excuse everyone who is going to be missing work or may
3 not be making their income because they are here, because if I
4 did that, probably 80 percent of you would get up and walk
5 out.

6 It is my job to make sure we have enough prospective
7 jurors so that both sides can exercise all of their challenges
8 and have a completely fair and impartial and totally unbiased
9 jury.

10 Having said that, is there anyone for whom serving
11 as a juror in this matter would constitute an extreme or undue
12 hardship?

13 All right. We'll start with the lady in chair
14 No. 3, Ms. Long.

15 PROSPECTIVE JUROR NO. 034: Hi, my name is Stacey
16 Long. I only work six months out of the year, so it kind of
17 does put a dent into my income. I also have two young
18 children. My husband works graveyards so me having to be here
19 kind of puts an impact on both of us.

20 THE COURT: Okay. Let me ask you this: What do you
21 do for a living?

22 PROSPECTIVE JUROR NO. 034: I'm a cabana host at MGM
23 Grand.

24 THE COURT: Okay. So that's the pool season?

25 PROSPECTIVE JUROR NO. 034: Yeah.

1 THE COURT: Okay. And what does your husband do?
2 PROSPECTIVE JUROR NO. 034: He works for Republic
3 Services.
4 THE COURT: Okay. And I'm assuming that pool season
5 starts in what, May?
6 PROSPECTIVE JUROR NO. 034: It starts like --
7 usually March is -- and then when we go out and we end
8 October, sometimes before then. It kind of depends on the
9 weather when it decides to turn.
10 THE COURT: Okay. And how -- you said you have two
11 children?
12 PROSPECTIVE JUROR NO. 034: I have a five-month-old
13 son and a six-year-old daughter.
14 THE COURT: Okay. And who watches your children
15 when you're at work?
16 PROSPECTIVE JUROR NO. 034: My daughter is in
17 kindergarten until 11:30 in the afternoon. My husband then
18 gets up and watches her, and he's also home with my son except
19 on Fridays when he goes to daycare at my work.
20 THE COURT: Okay. And then I'm sorry if I already
21 asked this. What does your husband do for a living?
22 PROSPECTIVE JUROR NO. 034: He drives a truck for
23 Republic Services.
24 THE COURT: Oh, you -- okay.
25 PROSPECTIVE JUROR NO. 034: Graveyard shift.

1 THE COURT: All right. And I saw some hands over on
2 this side of the room. Yes, the gentleman in the green shirt.

3 PROSPECTIVE JUROR NO. 074: Richard Sharpe, 74. I'm
4 scheduled to leave the country on the 31st of May. I've paid
5 over \$8,000 which I would have to forfeit if I had to change,
6 and I also am 71 years old.

7 THE COURT: That's not an excuse anymore.

8 PROSPECTIVE JUROR NO. 074: Your Honor, I believe
9 under the law it is.

10 THE COURT: No, I'm kidding. 71 isn't -- we have
11 plenty of excellent jurors that are beyond 71. That was the
12 point of my comment. Isn't 71 the new 50?

13 PROSPECTIVE JUROR NO. 074: Oh, yes, Your Honor.

14 THE COURT: All right. And, sir, a couple of
15 questions I need to follow up. You said you're leaving the
16 country on May 31st. When are you returning?

17 PROSPECTIVE JUROR NO. 074: June 16th.

18 THE COURT: All right. Did you bring anything with
19 you, a copy of your airline ticket or anything like that?

20 PROSPECTIVE JUROR NO. 074: I brought it the last
21 time but I'm afraid I didn't bring it this time.

22 THE COURT: Okay. All right. Sir, thank you. Have
23 a seat for right now.

24 And the lady, I believe, next to you also raised her
25 hand. Yes, ma'am.

1 PROSPECTIVE JUROR NO. 076: Cindy Ternay, 76. I'm a
2 full-time grad student. I'm trying to accelerate my finals
3 for this term because my son is returning back from Iraq on
4 the 9th of June.

5 THE COURT: Okay. Where are you a student?

6 PROSPECTIVE JUROR NO. 76: At Western Governor's
7 University in Utah. I have proctored exams that I take
8 locally.

9 THE COURT: Okay. When are your exams scheduled?

10 PROSPECTIVE JUROR NO. 076: I have one scheduled on
11 the 26th of May.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR NO. 076: And then the other one I
14 haven't scheduled yet. I'm trying to get it in before the
15 9th.

16 THE COURT: Okay. Thank you. Have a seat.

17 Anyone else in that front row?

18 Yes, the gentleman in the salmon colored shirt,
19 Mr. Harvey.

20 PROSPECTIVE JUROR NO. 096: 096, John Harvey. My
21 wife and I owned our own business prior to the recession in
22 '08. It took me -- we lost our business and it took me two
23 years to gain employment in Las Vegas. I just recently got
24 hired in the middle of March. Basically I can't afford to pay
25 my rent or my mortgage if I'm here serving.

1 THE COURT: All right. And, sir, what kind of a job
2 did you get?

3 PROSPECTIVE JUROR NO. 096: I work for Veolia
4 Transportation, the bus company in Vegas.

5 THE COURT: Okay. Are you a driver?

6 PROSPECTIVE JUROR NO. 096: Yes, ma'am.

7 THE COURT: All right. And does your wife work?

8 PROSPECTIVE JUROR NO. 096: No, she's unemployed.

9 THE COURT: All right. Thank you.

10 And did I see any other hands? Yes, the lady in
11 the --

12 PROSPECTIVE JUROR NO. 116: Rosann Katona, 116. I
13 have two reasons. My daughter's due to have her baby any
14 time. I have reservations to fly to San Diego to help her.
15 Her husband's on crutches right now and they need my help.

16 And also, I'm being treated for sciatic nerve
17 problems and I -- I can't sit for a long period of time. And
18 also, I worked for law enforcement and we had such budget cuts
19 that we are really cut down with employees.

20 THE COURT: Okay. Let me ask you this: When is
21 your daughter due?

22 PROSPECTIVE JUROR NO. 116: She's due any time now.
23 I don't know -- well, she's due -- you know, in two weeks -- a
24 week, but that's her due date.

25 THE COURT: Okay. Have a seat. Right.

1 PROSPECTIVE JUROR NO. 116: I don't know when --

2 THE COURT: Right.

3 PROSPECTIVE JUROR NO. 116: Yeah. Yeah.

4 THE COURT: All right. Thank you. Have a seat.

5 And obviously everyone that has raised their hands, just so
6 you know, is not going to be excused.

7 The gentleman in the green, the lime green.

8 PROSPECTIVE JUROR NO. 119: My name's John Turner.

9 THE COURT: Yes.

10 PROSPECTIVE JUROR NO. 119: 119.

11 THE COURT: Thank you.

12 PROSPECTIVE JUROR NO. 119: Right now I'm going
13 through a lot of mental stress. My son just left to go to
14 Afghanistan for a year. He was in Iraq last year for a year.
15 My daughter just was married three months ago and now she's
16 getting a divorce and I can't -- I just -- my mind's just not
17 here for anything.

18 THE COURT: All right. Sir, have a seat. Thank
19 you.

20 And just so we -- to address the concern of the lady
21 who has sciatic problems, often we have people who do have
22 back and other problems. They can't sit for long periods of
23 times. I know these chairs are very uncomfortable. We do
24 accommodate that. If you are someone who has back problems
25 that needs to get up, you'll notice I shift around a lot, we

1 seat those jurors in the back row of the jury panel box so
2 that you can stand up during the trial if you need to.

3 Also, we often get jurors who are diabetic and have
4 other blood sugar issues. If you are diabetic and you need to
5 bring a snack, you know, like a protein bar or something like
6 that, it's absolutely fine, you know, to do that in the jury
7 box. So just be aware of that.

8 And also, if anyone does have any medical issues
9 that we need to address during the trial by frequent breaks
10 and other things like that, if you make my bailiff, Officer
11 Wooten, aware of that, we do accommodate those types of
12 issues.

13 For the hearing impaired, we have headphones that we
14 will put on so that we can make sure that you're able to hear
15 everything that's going on.

16 All right. I saw some hands in the second row. All
17 right. The gentleman -- I'm sorry, the lady in the corner
18 there.

19 PROSPECTIVE JUROR NO. 151: Maria Silva, it is 151.

20 THE COURT: All right.

21 PROSPECTIVE JUROR NO. 151: Actually, my English is
22 not so good to understand everything.

23 THE COURT: Okay. Have a seat. We'll get to that
24 issue a little bit later.

25 Yes, the gentleman in the white T-shirt.

1 PROSPECTIVE JUROR NO. 152: 152, Dennis Johnson.
2 I'm an electrician with [inaudible]. We've done work for the
3 Palomino Club. I don't want to jeopardize that, and --

4 THE COURT: Okay. I'm sorry. You've got to speak
5 up a little bit louder. You're an electrician. You're a
6 union electrician. And what did you say?

7 PROSPECTIVE JUROR NO. 152: We have done jobs for
8 the Palomino Club and various companies that we have.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 152: And I was also out for
11 11 months and I just got back to work for two weeks.

12 THE COURT: Okay. Where are you working?

13 PROSPECTIVE JUROR NO. 152: I work with Shaw, the
14 power house at [inaudible].

15 THE COURT: I'm sorry. Where?

16 PROSPECTIVE JUROR NO. 152: Harry Allen Station.

17 THE COURT: Harry Allen Station. Okay. Is that
18 like a restaurant or --

19 PROSPECTIVE JUROR NO. 152: It's a power house.

20 THE COURT: It's a -- okay. Have a seat.

21 Yes, the lady in the white sweater.

22 PROSPECTIVE JUROR NO. 163: Tasha Adsuaras-Iglesias,
23 Badge No. 163. I'm taking my mom to dialysis three times a
24 week, which is Monday, Wednesday, and Fridays at this time and
25 she's now getting home care where I need to be there.

1 THE COURT: Okay. Who's taking your mom today?
2 PROSPECTIVE JUROR NO. 163: My brother took off from
3 school to take her this morning at 9:30.
4 THE COURT: Okay. And where does your brother go to
5 school?
6 PROSPECTIVE JUROR NO. 163: He goes to the Las Vegas
7 Art Institute on Green Valley Parkway.
8 THE COURT: Okay. Have a seat.
9 And did I see any other hands in that row?
10 Yes, the gentleman with the glasses.
11 PROSPECTIVE JUROR NO. 172: My name is Kenneth
12 Lieberman, Juror No. 172. I am a diabetic and I'm happy to
13 hear that I can indeed glucose tablets because I do get spikes
14 up and down.
15 THE COURT: Okay.
16 PROSPECTIVE JUROR NO. 172: The real problem I have
17 is that I just started working about six months ago for a
18 limousine service. If I do not work, I do not get paid. I
19 have major bills, no savings whatsoever, and this would really
20 put a major hardship on me.
21 THE COURT: Okay. And are you married, sir?
22 PROSPECTIVE JUROR NO. 172: Yes, sir -- yes, ma'am.
23 THE COURT: What does your wife do?
24 PROSPECTIVE JUROR NO. 172: She's a casino cashier.
25 THE COURT: Okay. Have a seat. All right. And I

1 believe -- yes, the lady --

2 PROSPECTIVE JUROR NO. 173: Alexandra Kopp, 173.

3 I'm scheduled to leave the country the week after Labor -- or
4 sorry, Memorial Day.

5 THE COURT: Okay. And where are you going?

6 PROSPECTIVE JUROR NO. 173: Canada.

7 THE COURT: And how long will you be gone?

8 PROSPECTIVE JUROR NO. 173: Five days, until the
9 morning of June the 3rd, which I believe is a Thursday, until
10 the Monday, four days.

11 THE COURT: All right. Have a seat. Did you bring
12 anything with you, an airline ticket or --

13 PROSPECTIVE JUROR NO. 173: I can pull it up on my
14 phone, if necessary.

15 THE COURT: Okay. We'll just have you show my
16 bailiff.

17 And then the gentleman in the blue.

18 PROSPECTIVE JUROR NO. 239: Yes, it's Badge No. 239.
19 My name's Ed Baier. I'm a bartender on the Strip for over 20
20 years. I depend on my tips. I'm in debt. I know I've heard
21 this from other people too, but I have a few other reasons. I
22 lost my father about three months ago and I have to get back
23 to Nebraska to pick up my personal things in a little while,
24 and like this lady says, she has -- I've got the same thing
25 she's got. I have sciatica. When I sit for a while, it

1 hurts. I know you have accommodations for that.

2 Also, my wife is on [inaudible]. She has bad
3 arteries. She does work with me at work and I just hate to be
4 away from her because I kind of -- I want to keep an eye on
5 her. And this, of course, is the first time I've been called
6 and I'm just trying to get my head above water because I
7 depend on my tips.

8 THE COURT: All right. Thank you, sir. I'm sorry,
9 one more question.

10 PROSPECTIVE JUROR NO. 239: Yes.

11 THE COURT: How long were you out of work?

12 PROSPECTIVE JUROR NO. 239: No, I haven't been --

13 THE COURT: Oh, you haven't been out of work. Okay.

14 PROSPECTIVE JUROR NO. 239: I depend on my tips
15 every day to keep my head above water because I'm so much in
16 debt.

17 THE COURT: Right.

18 PROSPECTIVE JUROR NO. 239: And every day I lose,
19 it's getting me farther and farther in debt.

20 THE COURT: All right. Thank you, sir.

21 Anyone else in that back row?

22 Yes, we'll go with the gentleman with the earphones.

23 PROSPECTIVE JUROR NO. 231: My number's 231, Kerry
24 Loso.

25 THE COURT: Yes.

1 PROSPECTIVE JUROR NO. 231: I'm currently in
2 litigation with the IRS.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 231: And by being a juror, it
5 would keep me from taking care of this matter.

6 THE COURT: Okay. Do you have a pending court date?

7 PROSPECTIVE JUROR NO. 231: I don't remember
8 offhand. It's sometime during this month. I'm not sure when.

9 THE COURT: Okay. Do you have -- is it in United
10 States District Court or is it in another Court? Is it like a
11 separate sort of administrative thing?

12 PROSPECTIVE JUROR NO. 231: [Inaudible].

13 THE COURT: Okay. If you get a case number, we can
14 look that up for you.

15 PROSPECTIVE JUROR NO. 231: All right. Thank you.

16 THE COURT: Yes, the lady with the glasses.

17 PROSPECTIVE JUROR NO. 227: Shaina Brown, 227. I
18 work for the animal foundation. We're an organization -- they
19 do not provide monetary -- they don't provide money for
20 serving on a jury. Financially that would give me a hardship
21 [inaudible] And I wouldn't be able to meet all the goals if I
22 have to serve for two weeks.

23 I also recently had my car totaled so that's another
24 financial hardship on me and I have no savings right now.

25 THE COURT: All right. Are you married?

1 PROSPECTIVE JUROR NO. 227: I am engaged.

2 THE COURT: Okay. Have a seat for right now.

3 Anyone else on that back row?

4 All right. Turning it to this side of the room, the
5 lady in the -- it looks like green in the front row.

6 PROSPECTIVE JUROR NO. 135: Sandra Mitchell, 135.

7 My stepfather just passed away on Thursday and the funeral's
8 tomorrow in Louisiana and I'd like to get there and be with my
9 mom.

10 THE COURT: Okay. You have proof?

11 PROSPECTIVE JUROR NO. 135: Yes.

12 THE COURT: All right. Thank you.

13 Jeff, would you get that, please.

14 All right. Thank you. I verified that. I'm sorry
15 for your loss.

16 All right. Also in that front row?

17 Yes, the lady in the white.

18 PROSPECTIVE JUROR NO. 126: My name is Gloria Torres
19 Gamboa. My number is 126. I understand some English but not
20 very well.

21 THE COURT: All right. Thank you. Have a seat for
22 right now. We'll get to that.

23 Did I see any other hands in that front row?

24 All right. Turning to the back row, the lady in the
25 glasses.

1 PROSPECTIVE JUROR NO. 181: My name's Cindy
2 Strebing, Badge No. 181. I'm a single mom. I can't afford to
3 be off of work right now, and in order for me to be off of
4 work, they have to find a replacement from another store to
5 fill my spot and I have no other income.

6 THE COURT: All right. What do you do for a living?

7 PROSPECTIVE JUROR NO. 181: I'm a bookkeeper at
8 Smiths.

9 THE COURT: Okay. And you said you're a single
10 parent?

11 PROSPECTIVE JUROR NO. 181: Yes.

12 THE COURT: How many children do you have?

13 PROSPECTIVE JUROR NO. 181: I have one teenage
14 daughter.

15 THE COURT: Okay. All right. Have a seat for right
16 now.

17 And the gentleman in the red T-shirt.

18 PROSPECTIVE JUROR NO. 183: Sean Trodahl, Badge 183.
19 I'm subpoenaed to appear in the family courts on the 24th for
20 a determination of parental rights trial.

21 THE COURT: Okay. Okay. So that would be Monday,
22 May 24th. And what time is your hearing? Do you know?

23 PROSPECTIVE JUROR NO. 183: I believe it is 1:30 in
24 the afternoon.

25 THE COURT: Okay. So either -- if we got you out of

1 here by 1:30, you'd be able to do that?

2 PROSPECTIVE JUROR NO. 183: Correct.

3 THE COURT: All right.

4 Yes, sir.

5 PROSPECTIVE JUROR NO. 185: Gordon Zorn, 185. I own
6 a business and I'm the only employee. I'm a licensed
7 inspector for Nevada and that's it. Plus, I have medical
8 issues where I take a lot of medication and frequent rest room
9 breaks.

10 THE COURT: Diuretics and that sort of thing. And
11 again, we can accommodate that. What kind of business do you
12 have?

13 PROSPECTIVE JUROR NO. 185: Home inspection.

14 THE COURT: Okay. So like when people are selling
15 or buying homes, you go in and inspect them; is that what you
16 do?

17 PROSPECTIVE JUROR NO. 185: Correct.

18 THE COURT: Okay. All right. Did -- yes, the lady
19 in the black.

20 PROSPECTIVE JUROR NO. 193: Elvie Malasarte, Badge
21 No. 193. I have a son who has extracurricular activities that
22 I drive around. My husband works in Texas Monday through
23 Friday. He only comes here on the weekends.

24 THE COURT: All right. And what -- how old's your
25 son?

1 PROSPECTIVE JUROR NO. 193: 15.

2 THE COURT: What are his activities?

3 PROSPECTIVE JUROR NO. 193: Swimming and actually
4 he's got a band concert this afternoon and it's -- I need to
5 help him to school.

6 THE COURT: Okay. How's he -- because they tell you
7 you have to be here all day, how's your son getting to the
8 band concert today?

9 PROSPECTIVE JUROR NO. 193: I don't know yet. For
10 now I told him to walk home from school, so I don't really
11 know yet.

12 THE COURT: Okay. Have a seat.

13 Yes, the lady in the corner.

14 PROSPECTIVE JUROR NO. 241: Cynthia Boswell, Badge
15 No. 241.

16 THE COURT: Yes.

17 PROSPECTIVE JUROR NO. 241: I have -- have to go to
18 a service office today at 1:30. I'm due to have my
19 gallbladder taken out at any time, and I don't know when it's
20 scheduled.

21 THE COURT: So it's not actually a preoperative
22 visit. It's sort of a pre-preoperative visit?

23 PROSPECTIVE JUROR NO. 241: Well, today they will
24 look over the scans, and they were going to schedule surgery,
25 today at 1:30.

1 THE COURT: All right. Thank you. Have a seat.

2 Anyone else in that back row?

3 All right. Is there anyone who is not a United
4 States citizen?

5 All right. Is there anyone who has previously been
6 convicted of a felony crime?

7 All right. In a moment, ladies and gentlemen, I'm
8 going to confer with counsel in the back. From time to time
9 during the course of these proceedings, I'll confer with
10 counsel either up here at the bench or in the hallway. When I
11 do, feel free, if you want, to stand up and stretch in place
12 or whatnot. As I said before, I know these chairs are not
13 very comfortable. If you need to get a drink of water or
14 something like that, please get the marshal's attention.

15 And I'll see counsel in the hallway, please.

16 (Pause in proceedings)

17 THE COURT: All right. At this time Badge Number 34,
18 Ms. Long, I'd ask you to get up and have a seat in the
19 audience.

20 At this time Badge Number 74, Mr. Sharpe, you are
21 excused from these -- this case. You may be called to serve
22 when you return from the country.

23 PROSPECTIVE JUROR NO. 074: Thank you, Your Honor.

24 THE COURT: Return to the country, excuse me. All
25 right. And Officer Wooten will direct you from the courtroom.

1 At this time Badge Number 96, Mr. Harvey, is excused.

2 At this time Badge Number 116, Ms. Katona, is
3 excused.

4 At this time Badge Number 135, Ms. Mitchell, is
5 excused. And again, you may be called to come back at a later
6 time.

7 At this time Badge Number 173, Ms. Kopp, is excused.

8 At this time Badge Number 183, Mr. Trodahl, is
9 excused from this department. You may be reassigned to a
10 civil matter.

11 At this time Badge Number 227, Ms. Brown, is excused.

12 At this time Badge Number 241, Ms. Boswell, is
13 excused.

14 (Pause in the proceedings)

15 THE COURT: I'll see counsel at the bench, please.

16 (Off-record bench conference)

17 THE COURT: All right. And, Ms. Husted, would you
18 please call up a juror to take Chair Number 3 in the box.

19 THE CLERK: Yes, Your Honor. Badge 78, Stephen
20 Bates.

21 THE COURT: Mr. Bates, come on down here, please, and
22 have that empty chair there in the front row of our jury box.

23 All right, ladies and gentlemen, that concludes my
24 questions. The attorneys will now question the members of the
25 prospective jury panel.

1 Is the State ready to proceed with Juror Number 1.

2 MR. PESCI: Yes, Your Honor. Thank you.

3 Sir, I apologize. I don't know how to pronounce your
4 name. How do I say it?

5 PROSPECTIVE JUROR NO. 026: Lut is fine.

6 MR. PESCI: Who? Okay. Scattered throughout this
7 courtroom there are microphones, so we'll have to kind of keep
8 our voices up, because that woman right here has got earphones
9 on. If she can't hear us, she's going to let us know.

10 PROSPECTIVE JUROR NO. 026: Okay.

11 MR. PESCI: So we'll try hard and keep our voices up.

12 I wanted to ask you some quick questions about what
13 you wrote down in your questionnaire. I'm sure all of you
14 didn't realize that you'd be kind of scrutinized about what
15 you wrote, and we're going to do follow up. Please nobody
16 take anything personal. We're just trying to figure out
17 everybody's position.

18 There was a decision -- or a comment that you made
19 generally about kind of juries, about the idea, if I'm
20 summarizing this properly, about somewhat trepidation or fear
21 of putting it in the hands of a jury. Is that accurate?

22 PROSPECTIVE JUROR NO. 026: Sort of. Yeah, I guess
23 you can say. I mean, I deal with a lot of people all the
24 time. It just seems like, you know, people just don't make
25 good decisions all the time. So --

1 MR. PESCI: That's all right. Everybody's entitled
2 to their opinion. Don't worry about that. But I wanted to
3 discuss especially in the context of a case like this, because
4 Her Honor has explained if -- if the jury comes back a with a
5 decision of first degree murder, then the decision of penalty
6 is the jury's. So it's not only the determination of guilt,
7 in that situation it's also the determination of penalty. So
8 with that in mind, how does -- does that make you even more
9 nervous, or how does at that affect your thought about the
10 whole process?

11 PROSPECTIVE JUROR NO. 026: Yeah, I would say so. I
12 mean, just because -- I don't know. I think normal people
13 just -- it's just -- I don't know. I'm nervous I guess.

14 MR. PESCI: Okay. That's fine. We're going to be
15 asking a ton of questions about your opinions about the death
16 penalty, and so we'll follow up on that and ask you -- you
17 talked about how if it's a first degree murder you feel the
18 death penalty should almost always be imposed.

19 PROSPECTIVE JUROR NO. 026: If it's first degree
20 murder, then, yes. I mean, I strongly believe in the death
21 penalty.

22 MR. PESCI: All right. The defense is going to talk
23 to you about and you're going to hear from the Court if we get
24 to penalty that there is the concept of mitigators or things
25 that you can consider to take into consideration for a

1 sentence less than death. Would you be able to at least
2 consider mitigation or some things that you might hear about
3 the defendant if we were to get to that point?

4 PROSPECTIVE JUROR NO. 026: I don't know about -- if
5 it's first degree murder, I -- you know, I don't know about
6 any mitigation. I'm just not so sure. I mean, I do believe
7 in the death penalty, and I think in terms of it's first
8 degree -- I mean, sure lesser degrees, but if it's first
9 degree murder --

10 THE COURT: Let me ask you this. You say first
11 degree murder. And you haven't been instructed on the law,
12 obviously, and I don't do that in the middle. The
13 instructions on the law come at the end of the case right
14 before the closing arguments and before deliberations. But
15 when you say first degree murder, what does that mean to you?

16 PROSPECTIVE JUROR NO. 026: It means that you planned
17 it out, I mean, premeditated.

18 THE COURT: Premeditated, okay.

19 PROSPECTIVE JUROR NO. 026: You know. And, you know,
20 you have -- at least competent enough to, you know, plan it
21 and, you know, carry it through. So I think that's -- in my
22 opinion that's what -- that's what I think first degree murder
23 is.

24 THE COURT: All right. Thank you.

25 Go on, Mr. Pesci. Sorry.

1 MR. PESCI: Thank you, Judge.

2 You indicated also that there was something dealing
3 with domestic violence. Could you expand on that a little bit
4 more.

5 PROSPECTIVE JUROR NO. 026: Oh. It was just talking
6 about what I think about, you know, judges or lawyers in
7 general. I just think, you know, there's a lot of -- is
8 impartial, I said no, you know, everybody's partial to some
9 degree. It's just a case that I was involved with, not
10 closely involved with, though, as a close friend. It was --

11 MR. PESCI: Can I stop you just for a second.

12 PROSPECTIVE JUROR NO. 026: Yeah.

13 MR. PESCI: Because the way you wrote your answer is
14 it almost seems as if you were in court with this friend. Is
15 that accurate?

16 PROSPECTIVE JUROR NO. 026: I was right outside of
17 the court. I was speaking with the lawyer because I had to
18 translate for one of the witnesses to the lawyers because they
19 couldn't communicate. But it wasn't an official translation.

20 MR. PESCI: Sure. And here's my question. As
21 District Attorneys were actually responsible with prosecuting
22 cases, including domestic violence cases. And so my question
23 is do you recall is that in this building, or --

24 PROSPECTIVE JUROR NO. 026: That was in the other
25 building.

1 MR. PESCI: In a different building?

2 PROSPECTIVE JUROR NO. 026: Yeah, in a different
3 building.

4 MR. PESCI: Do you know if it was Municipal Court or
5 Justice Court?

6 PROSPECTIVE JUROR NO. 026: I don't. I don't know.
7 It's the building nearby the big one.

8 MR. PESCI: All right. And do you recall if it was
9 the District Attorney's Office or if it was the City
10 Attorney's Office?

11 PROSPECTIVE JUROR NO. 026: I don't know.

12 THE COURT: Was it the building like about a block or
13 so away?

14 PROSPECTIVE JUROR NO. 026: Yeah. It's --

15 THE COURT: Or was it the big City Hall building?

16 PROSPECTIVE JUROR NO. 026: I don't --

17 THE COURT: You don't remember. Okay. It was
18 probably the former courthouse.

19 MR. PESCI: And then you indicated here that you kind
20 of felt that the person accused was innocent, and you -- is
21 that an accurate depiction of it, you said the father was
22 innocent?

23 PROSPECTIVE JUROR NO. 026: Oh. Oh. Do you mean for
24 that case?

25 MR. PESCI: Yes.

1 PROSPECTIVE JUROR NO. 026: Yes, the accused was
2 innocent. And the accuser actually gave up the case because
3 of non -- you know, not enough because of the witness against
4 her. So I was just saying when he was in the court it just --
5 it was automatically assumed he was, you know, guilty of some
6 domestic violence. So, you know, it's --

7 MR. PESCI: Okay.

8 PROSPECTIVE JUROR NO. 026: I'm just saying there are
9 biases and stuff like that.

10 MR. PESCI: And you felt to some degree that the
11 court in that particular case, that court, different court,
12 seemed bias against --

13 PROSPECTIVE JUROR NO. 026: Yeah. I mean, I think
14 domestic violence in general I think there is some biases. I
15 mean, so I'm just saying courts in general can be biased.

16 MR. PESCI: All right. We're going to pass for
17 cause. Thank you, Judge.

18 THE COURT: All right. Thank you.

19 Mr. Ericsson, will it be you --

20 MR. ERICSSON: Thank you, Your Honor.

21 THE COURT: -- to question Potential Juror Number 1.

22 MR. ERICSSON: Good morning, sir.

23 PROSPECTIVE JUROR NO. 026: 'Morning.

24 MR. ERICSSON: I want to follow up on some of the
25 responses that you made in the questionnaire that you filled

1 out.

2 PROSPECTIVE JUROR NO. 026: Uh-huh.

3 MR. ERICSSON: When you were asked if you could
4 consider any mitigation or any -- actually, let me back up.

5 You were informed that there are four different types
6 of potential sentences for a first degree murder conviction,
7 and those being life with possibility of parole, life without
8 the possibility of parole, a definite term of years in prison,
9 or the death sentence. And then you were asked if you could
10 consider what they call mitigation issues of the defendant,
11 his background, things of that, in coming up with a potential
12 verdict in a case like this. And you -- you indicated that
13 you could not fairly, according to your response here,
14 consider mitigation issues. Explain to me what you mean by
15 that.

16 PROSPECTIVE JUROR NO. 026: I'm not quite sure --
17 those mitigations that you listed, I just don't think those
18 should be much of an issue. I mean, I do believe, you know --
19 I was following order, death penalty. So I just don't think
20 those would be much of an issue.

21 MR. ERICSSON: Okay. And in fact you wrote that if
22 it were a first degree murder conviction you'd feel it's
23 always appropriate to impose a death sentence.

24 PROSPECTIVE JUROR NO. 026: Sure.

25 MR. ERICSSON: And when you were asked if there was

1 anything about yourself that would prevent you from sitting as
2 a fair and impartial juror, you indicated yes, there is
3 something about you that would prevent you from being a fair
4 juror in this type of case; is that correct?

5 PROSPECTIVE JUROR NO. 026: Yeah. I mean, I'm pretty
6 opinionated, so probably.

7 MR. ERICSSON: Thank you.

8 Your Honor, may we approach?

9 THE COURT: You may.

10 (Off-record bench conference)

11 THE COURT: All right. Thank you.

12 State may question Potential Juror Number 2.

13 MR. PESCI: Thank you.

14 Ma'am, you've got a Masters in social work?

15 PROSPECTIVE JUROR NO. 032: Yes, I do.

16 MR. PESCI: And what do you do now for a living?

17 PROSPECTIVE JUROR NO. 032: I work for the State of
18 Nevada. I work with mentally ill, I work with the -- in their
19 homes providing support and care for them.

20 MR. PESCI: Do you ever have interaction with any
21 other agencies within the State of Nevada that be tied to the
22 criminal justice system?

23 PROSPECTIVE JUROR NO. 032: I come into court with
24 clients.

25 MR. PESCI: Okay. Have you ever testified on their

1 behalf, or do you kind of bring them to court to facilitate
2 them?

3 PROSPECTIVE JUROR NO. 032: Just recently I testified
4 for a client.

5 MR. PESCI: Okay. And was it -- normally is it the
6 State that's calling you as a witness, or how does that
7 normally work out as far as when you testify?

8 PROSPECTIVE JUROR NO. 032: This time I went as
9 testifying for the client because it was an assault case.

10 MR. PESCI: Okay.

11 PROSPECTIVE JUROR NO. 032: And she's been my client
12 for four years, and not a very high-functioning client. And I
13 went in to assist the client.

14 MR. PESCI: Okay. Do you ever deal with or interact
15 with law enforcement based on your job?

16 PROSPECTIVE JUROR NO. 032: Yes.

17 MR. PESCI: Okay. And generally speaking would you
18 hold that against the State or would you hold that against the
19 defendant, the fact that you have this interaction with law
20 enforcement?

21 PROSPECTIVE JUROR NO. 032: No.

22 MR. PESCI: Okay. Do you feel as if you can trust an
23 officer, or do you feel as if they, like every other witness,
24 should be questioned and should be subjected to
25 cross-examination [inaudible]?

1 PROSPECTIVE JUROR NO. 032: They should be subjected
2 to cross-examination.

3 MR. PESCI: Okay. Kind of jumping to the death
4 penalty questions, there was -- your opinion you talked about
5 swiftness with the death penalty; is that accurate?

6 PROSPECTIVE JUROR NO. 032: Yes.

7 MR. PESCI: Okay. And then, you know, the crazy
8 thing about this questionnaire is we ask you about six
9 different ways about the death penalty, so sometimes they seem
10 to be slightly different. And I wanted to follow up on one of
11 them. And you indicated that -- in I think it was Question
12 38, it was a question about automatically going with death or
13 automatically going against death.

14 Is it all right if I approach her, Your Honor?

15 THE COURT: Yeah. That's fine.

16 MR. PESCI: Because you haven't seen these in a
17 while. Can I show you that for a second. So in 38 it appears
18 as if you've checked --

19 PROSPECTIVE JUROR NO. 032: See, the reason I'm
20 against -- against the death penalty is because of the appeal
21 process.

22 MR. PESCI: Okay.

23 PROSPECTIVE JUROR NO. 032: It costs more money to
24 execute somebody in this country and more time, and -- than
25 what originally should have been, as far as my belief is. I

1 had always been for the death penalty until I found out about
2 the cost and the time and the fact that a felon is allowed to
3 live longer than the person that they may have killed.

4 MR. PESCI: So, understanding your feelings about it
5 based on those cost issues, are those feelings such that you
6 would automatically vote against it because you wouldn't want
7 to create that cost, or would you vote for it? See, 'cause
8 they're going to --

9 PROSPECTIVE JUROR NO. 032: That's where mitigating
10 circumstances comes in, okay, on this one, all right, in the
11 sense of you have to hear. There's not a black-and-white for
12 me on that. Like I said, I was always for the death penalty
13 until I realized how much it cost.

14 MR. PESCI: Okay. I guess what I'm saying to some
15 degree is you've talked about swiftness and wanting swiftness
16 about it. I suspect that they're going to be concerned about
17 that, they'll ask you questions about that. And so what I'm
18 trying to gather is you're not the person that will
19 automatically vote for it because you feel strongly about it
20 or strongly against it?

21 PROSPECTIVE JUROR NO. 032: No, I'm not.

22 MR. PESCI: Will you be able to consider the
23 different penalties?

24 PROSPECTIVE JUROR NO. 032: Yes.

25 MR. PESCI: Because technically, speaking, if

1 someone's found guilty of first degree murder, there's
2 options, there's four options. Death is never required. It's
3 not something that you have to do because you've come back
4 with a guilty verdict of first degree murder. So the question
5 is can you consider the other options, which are life without
6 the possibility of parole, a fixed term of years, and things
7 of that nature.

8 PROSPECTIVE JUROR NO. 032: Yes.

9 MR. PESCI: Okay. We're going to pass for cause.

10 THE COURT: All right. Thank you, Mr. Pesci.

11 The defense may follow up with Potential Juror Number
12 2.

13 MR. BUNIN: You know, I'm going to just jump straight
14 into some of the issues you were discussing with Mr. Pesci
15 just now. I want to go over the sheet you filled out just to
16 make sure I understand what you're talking about, okay.

17 One of the questions, it was Question 36, said, "Do
18 you believe the death penalty should always be imposed if the
19 defendant is found guilty of intentional murder no matter what
20 the circumstances?" And your answer to that was yes. Do you
21 remember filling that out?

22 PROSPECTIVE JUROR NO. 032: (No audible response)

23 MR. BUNIN: So your belief is so long as he's found
24 guilty of first degree murder there are no other circumstances
25 you need to consider. At that point your personal belief is

1 that the death penalty is the only appropriate sentence?

2 PROSPECTIVE JUROR NO. 032: Yeah.

3 MR. BUNIN: Okay. So if in --

4 PROSPECTIVE JUROR NO. 032: Just because your father
5 beat you doesn't mean it's okay to murder.

6 MR. BUNIN: Well, and that's exactly consistent with
7 how you answered a different question. We asked you about
8 potential mitigators, meaning if we get to a guilty -- to a
9 penalty phase in this case would you consider things such as
10 what you just said about a childhood, maybe mental health
11 issues. There's a lot of issues that could be taken into
12 consideration. You don't believe those are factors that you
13 could --

14 PROSPECTIVE JUROR NO. 032: Unless you're thoroughly
15 psychotic, no.

16 MR. BUNIN: All right. So you honest answer if I ask
17 you so long as it's a first degree murder conviction there's
18 nothing else that you would take into consideration at that
19 point, you believe death is the only appropriate sentence?

20 PROSPECTIVE JUROR NO. 032: (No audible response)

21 MR. BUNIN: Yes?

22 PROSPECTIVE JUROR NO. 032: Yes.

23 MR. BUNIN: I appreciate it.

24 Can we approach, Judge?

25 THE COURT: Sure.

1 (Off-record bench conference)

2 THE COURT: All right. The State may question
3 Potential Juror Number 3.

4 MR. PESCI: Mr. Bates?

5 PROSPECTIVE JUROR NO. 078: Yes.

6 MR. PESCI: All right. [Unintelligible] is death
7 penalty questions right now, so we'll get to that. And if I'm
8 gathering from what you indicated, you think the death penalty
9 should be abolished?

10 PROSPECTIVE JUROR NO. 078: That's correct.

11 MR. PESCI: You're anti death penalty such that you
12 would not consider the other options -- or consider that
13 option?

14 PROSPECTIVE JUROR NO. 078: That's right, yes.

15 MR. PESCI: And that you could never vote for a
16 sentence of death?

17 PROSPECTIVE JUROR NO. 078: That's right.

18 MR. PESCI: And there's no way you could change about
19 that? We're not trying to change you, I just -- there's no
20 way you're going to change that; right?

21 PROSPECTIVE JUROR NO. 078: That's correct.

22 MR. PESCI: Okay. So we'll --

23 THE COURT: Any questions for Mr. Bates?

24 MR. ERICSSON: Yes, Your Honor. Briefly.

25 THE COURT: All right.

1 MR. ERICSSON: Good morning, sir.

2 PROSPECTIVE JUROR NO. 078: Good morning.

3 MR. ERICSSON: Now, in filling out this you've
4 indicated that you have extensive training -- you're an
5 attorney; is that correct?

6 PROSPECTIVE JUROR NO. 078: I'm not a member of the
7 bar. I'm a law school graduate.

8 MR. ERICSSON: Okay. So you have probably given a
9 fair amount of thought to the death penalty over the years --

10 PROSPECTIVE JUROR NO. 078: Yes.

11 MR. ERICSSON: -- is that fair to say?

12 PROSPECTIVE JUROR NO. 078: That's right.

13 MR. ERICSSON: That's often something that's
14 discussed in law school quite a bit?

15 PROSPECTIVE JUROR NO. 078: Yeah.

16 MR. ERICSSON: And you're -- you may -- you're
17 probably aware of this, that after the evidence is presented
18 to the jurors that the Judge will present to the jury jury
19 instructions that outline the law of Nevada, and in Nevada one
20 of the potential penalties for a first degree murder
21 conviction is the death penalty.

22 PROSPECTIVE JUROR NO. 078: Uh-huh.

23 MR. ERICSSON: Now, you've indicated that you have
24 strong feelings against the death penalty. What I would like
25 to know is if you were instructed that the law of Nevada is

1 that the death penalty is one of the four options of
2 sentencing for a first degree murder conviction, would you be
3 able to consider all four of those options, including the
4 death penalty if that were instructed to you as the law in
5 Nevada?

6 PROSPECTIVE JUROR NO. 078: No, I don't believe I
7 would.

8 MR. ERICSSON: Okay. Thank you for your honesty.

9 THE COURT: All right. Thank you.

10 State may question Potential Juror Number 4.

11 MR. PESCI: How are you, ma'am?

12 PROSPECTIVE JUROR NO. 038: Good.

13 MR. PESCI: Okay. You said that you had some medical
14 assistant degree.

15 PROSPECTIVE JUROR NO. 038: Just like phlebotomy,
16 that kind of stuff. Nothing major.

17 MR. PESCI: Okay. And do you -- do you work with
18 that now? You work in a casino right now?

19 PROSPECTIVE JUROR NO. 038: I was at Boulder Station.
20 I just retired.

21 MR. PESCI: Well, good. All right. You talked about
22 a situation in which there was a custody issue.

23 PROSPECTIVE JUROR NO. 038: Yes.

24 MR. PESCI: And you felt that case was not
25 investigated enough; is that accurate?

1 PROSPECTIVE JUROR NO. 038: Correct.

2 MR. PESCI: All right. Who investigated it, do you
3 know?

4 PROSPECTIVE JUROR NO. 038: State of Nevada.

5 MR. PESCI: All right. And did you have to come to
6 court?

7 PROSPECTIVE JUROR NO. 038: Yes.

8 MR. PESCI: Okay. What court?

9 PROSPECTIVE JUROR NO. 038: I don't know, actually.

10 MR. PESCI: All right. That's fine. And how long
11 ago?

12 PROSPECTIVE JUROR NO. 038: It would have been
13 years ago.

14 MR. PESCI: Okay. Have you had any issues with that
15 since then, anything resurface as far as custody and having to
16 go to court?

17 PROSPECTIVE JUROR NO. 038: Yes.

18 MR. PESCI: Okay. Since that 10-year-ago time has
19 there been more investigation or not?

20 PROSPECTIVE JUROR NO. 038: No.

21 MR. PESCI: Have you felt kind of the same way that
22 you did 10 years ago about the system?

23 PROSPECTIVE JUROR NO. 038: Yes.

24 MR. PESCI: All right. I'm just going to kind of be
25 a little specific. We're kind of a part of the system where

1 we represent the system to a degree. Should we be concerned
2 based on your feelings about the system on your situation?

3 PROSPECTIVE JUROR NO. 038: Not -- not with this
4 case. I mean, it was a -- it was child custody involving
5 molestation, and I don't -- I don't believe even though all
6 the evidence, that it was looked into and even with
7 requestioning from the, you know, opposing side, they said,
8 can we reopen this case, and it still wasn't. And it just
9 kind of felt like, you know -- I'm not even sure how to say
10 it, like, you know, you're guilty, that's it, you know. And
11 it was the one protecting the child that ended up being the
12 criminal.

13 MR. PESCI: Okay. Were police actually involved?

14 PROSPECTIVE JUROR NO. 038: Yes.

15 MR. PESCI: Was there a criminal case, as well?

16 PROSPECTIVE JUROR NO. 038: Yes.

17 MR. PESCI: All right. And we're going to have
18 police officers coming here to testify. Based on that
19 experience do you feel you can give them kind of a fair
20 opportunity to hear their testimony, or would that kind of
21 influence your assessment of them?

22 PROSPECTIVE JUROR NO. 038: I believe I can be fair
23 about it. I mean, I --

24 MR. PESCI: Okay.

25 PROSPECTIVE JUROR NO. 038: I mean, I believe they

1 were doing their job, just I just don't think it got -- it may
2 have been the time frame. You know, that's when, you know,
3 people were just throwing that stuff out.

4 MR. PESCI: You indicate later on in your
5 questionnaire that you consider yourself very scientific.

6 PROSPECTIVE JUROR NO. 038: I just like to see like
7 hundred percent. I'm just not very -- I like to see both
8 sides, and I can see both sides, but I have a hard time making
9 decisions. I'm not very [unintelligible] at all. I kind of
10 just see all of it.

11 MR. PESCI: You'd like to see everything.

12 PROSPECTIVE JUROR NO. 038: Right.

13 MR. PESCI: Okay. Here's a general concept Her Honor
14 is going to explain to you, and I'll touch on it. If I go too
15 far, please stop me. But the defendant is not required to
16 present any evidence, kind of going to this whole story
17 aspect. The burden is completely upon the State, Mr.
18 DiGiacomo and myself. We have to prove the case beyond a
19 reasonable doubt. He doesn't have to do -- the defendant
20 doesn't have to do anything. That's our legal system. Would
21 you feel as if you didn't get the whole story if that's what
22 happened, the State put on evidence and the defense didn't?
23 I'm not saying that's what they're going to do, but just if
24 that were to happen.

25 PROSPECTIVE JUROR NO. 038: No, I don't --

1 MR. PESCI: Can you then confine yourself to what the
2 Court tells you as far as just looking at the evidence
3 admitted to the evidence?

4 PROSPECTIVE JUROR NO. 038: Yes.

5 MR. PESCI: Okay. And then you've indicated as far
6 as the death penalty -- you said it's your -- you don't really
7 have a problem with or you're for it if you're a hundred
8 percent sure.

9 PROSPECTIVE JUROR NO. 038: Yes.

10 MR. PESCI: Okay. So you want to know definitively
11 before you make a determination [inaudible]?

12 PROSPECTIVE JUROR NO. 038: Yes.

13 MR. PESCI: Okay. We'd pass for cause, Judge.

14 THE COURT: All right. Thank you.

15 Defense may question Potential Juror Number 4.

16 MR. BUNIN: Thank you, Your Honor.

17 Can you please say your last name for me again.

18 PROSPECTIVE JUROR NO. 038: Vigilia. The G is like
19 an H, Vigilia.

20 MR. BUNIN: Thank you. I didn't want to --

21 All right. I'm going to follow up with a couple of
22 things Mr. Pesci just talked to you about, and then I want to
23 talk a little bit about penalty phase, too. But, you know,
24 there are a lot of issues a juror you're going to have to
25 confront you've probably never dealt with before. And some of

1 them are concepts like the one Mr. Pesci talked about. He
2 talked about burden of proof. And I think he made it pretty
3 clear, but, you know, just to clarify, as Mr. Carroll sits
4 here today is he innocent, or is he guilty?

5 PROSPECTIVE JUROR NO. 038: I don't know.

6 MR. BUNIN: And I'm not being -- lawyer trick
7 questions I shouldn't be asking, but law presumes that he's
8 innocent. So as he sits here today before you hear any
9 evidence, the law would say he's an innocent man. Do you
10 agree with that concept?

11 PROSPECTIVE JUROR NO. 038: Yes.

12 MR. BUNIN: And the reason is -- it's not to try to
13 be tricky, it's that the prosecution, they have the sole
14 burden to prove beyond a reasonable doubt facts that show
15 every element of the allegations, meaning at this point
16 they've offered you no facts at all, so they haven't yet met
17 their burden. So as Deangelo sits here he's not guilty. Does
18 that make sense?

19 PROSPECTIVE JUROR NO. 038: Yes.

20 MR. BUNIN: Do you believe that? I mean, some people
21 would listen to what I'm saying, and these are fairly basic
22 concepts, but a lot of people just simply don't believe it.
23 They'll say, no, I don't believe that's truly the state of
24 things even though the law may say that.

25 PROSPECTIVE JUROR NO. 038: I believe that.

1 MR. BUNIN: Okay. Good. So you understand that it's
2 only the burden of the prosecution to prove beyond a
3 reasonable doubt that Deangelo is guilty of anything. The
4 defense has no obligation to do anything.

5 PROSPECTIVE JUROR NO. 038: Right.

6 MR. BUNIN: So that would mean at the end of the
7 case, at the end of the prosecution's case, because under the
8 rules they go first because they're the ones with the burden,
9 the defense may choose to put on no evidence at all. Deangelo
10 may or may not testify, but we might make a choice where he's
11 not going to and we're not going to put on any evidence. How
12 do you feel about that? What if the defense chose to put on
13 no evidence whatsoever after the prosecution was done with
14 their case?

15 PROSPECTIVE JUROR NO. 038: I agree with that. I
16 mean, they may not need to. They may not have enough proof to
17 ... you know, where the defendant would need to do anything.

18 MR. BUNIN: And that's exactly right. So it's
19 possible that once the prosecution put their entire case on,
20 the defense might say, you know what, they didn't prove
21 anything beyond a reasonable doubt, why should we put any
22 evidence on.

23 PROSPECTIVE JUROR NO. 038: Right.

24 MR. BUNIN: It's also possible the defense will put
25 on evidence but possibly Deangelo wouldn't testify at all.

1 How would you feel about that?

2 PROSPECTIVE JUROR NO. 038: That's perfectly fine
3 with me.

4 MR. BUNIN: Okay. Well, I ask because it's not fine
5 with everybody. You know, a lot of people say, I would rather
6 have heard, or they say, well, if he's not testifying there's
7 got to be some sinister reason why. Can you think of some
8 reasons why a person might choose not to testify, a person
9 who's innocent?

10 MR. PESCI: Judge, I apologize. Can we approach?

11 THE COURT: Sure.

12 (Off-record bench conference)

13 MR. BUNIN: So, just to follow up, I mean, you know,
14 do you think it's a reasonable possibility that a person like
15 Deangelo might want to testify because he's nervous about
16 testifying?

17 PROSPECTIVE JUROR NO. 038: Sure.

18 MR. BUNIN: And is it reasonable for him to possibly
19 not testify just because, you know, maybe he's not
20 particularly well spoken or well educated compared to the
21 attorneys that are going to cross-examine him? Is that a
22 reasonable --

23 PROSPECTIVE JUROR NO. 038: Yes.

24 MR. BUNIN: And you wouldn't hold that against him if
25 you were in the jury room?

1 PROSPECTIVE JUROR NO. 038: No.

2 MR. BUNIN: You know, it's possible if he doesn't
3 testify you would receive an instruction talking about the
4 fact that you can't comment on the fact that a person chose
5 not to testify and you can't hold it against him in any way.
6 Is that something you believe in, and is it something you can
7 do?

8 PROSPECTIVE JUROR NO. 038: Yes.

9 MR. BUNIN: If you were in the jury room and, you
10 know, the 12 of you are in there discussing the case and you
11 determine the guilt or innocence and somebody in the room
12 says, you know what, that guy should have testified, I don't
13 like that he didn't testify, I'm going to hold it against him.
14 Are you the type of person that would maybe tell the bailiff
15 or tell whoever's appropriate that somebody's not following
16 the instructions give to you? Do you have that personality
17 type?

18 PROSPECTIVE JUROR NO. 038: Yes.

19 MR. BUNIN: You'd feel comfortable doing that?
20 Because a lot of people -- you know, you've got 11 people
21 surrounding you in there. They could get aggressive.

22 PROSPECTIVE JUROR NO. 038: [Inaudible] for 11 years,
23 we're not here to make friends.

24 MR. BUNIN: That's great. That's exactly right. All
25 right. You know, I want to talk a little bit about penalty

1 phase. Honestly, as a defense attorney, you know, I hate the
2 idea of even talking about this right now, because we're kind
3 of putting the cart before the horse. I want to make it clear
4 we're talking about penalty phase because we have to, not
5 because we want to. And what I mean by that is we absolutely
6 firmly believe that Deangelo is not guilty of murder, and if
7 you don't find him guilty of first degree murder, there's
8 never going to be a penalty phase. But we're obligated to
9 talk about the penalty phase just in case, because we have no
10 other opportunity to talk to you. So you understand that's
11 why we're bringing this up right now. So we have to do it.
12 We just don't like the fact that we have to do it.

13 But let me ask you, and I know you filled out the
14 questionnaire. And if recall, you weren't against the death
15 penalty, but it wasn't something that you were -- is it
16 accurate to say it's not something you're completely
17 comfortable with, you kind of fall somewhere in the middle?

18 PROSPECTIVE JUROR NO. 038: Right. Well, actually,
19 I'm not opposed to the death penalty, I'm opposed to being the
20 one to implement it, being a part of that process. That's
21 what I'm uncomfortable with. I don't want to be the one that
22 says yes or no to that part of it, that penalty part of it.

23 MR. BUNIN: I understand. But I don't know that
24 anybody wants to do anything like that.

25 PROSPECTIVE JUROR NO. 038: And that's my whole part

1 of being uncomfortable is that particular area. The rest of
2 it I have no problem with, making the decision or, you know,
3 deciding whether or not they were guilty or innocent. But
4 then the penalty phase is what makes me most uncomfortable.

5 MR. BUNIN: The fact that you're uncomfortable with
6 it, despite that discomfort, if you're told in order to get on
7 this jury you have to be able to equally consider all
8 possibilities, from a definite term of years to a term of
9 years to life, to life without, or death, you have to be able
10 to take these into consideration even though you might not be
11 comfortable. Is that something you can do fairly?

12 PROSPECTIVE JUROR NO. 038: I want to say yes, but
13 I'm not a hundred percent sure that I could be [inaudible].

14 MR. BUNIN: You would try your best?

15 PROSPECTIVE JUROR NO. 038: Yes.

16 MR. BUNIN: You think it's possible you could be
17 fair, but you're not a hundred percent sure how you'd react
18 when it really came down to a death penalty? Is that a --

19 PROSPECTIVE JUROR NO. 038: Right.

20 MR. BUNIN: -- fair way of putting it?

21 You know, you listed in this that you could consider
22 mitigating factors. And by mitigating factors what happens is
23 in the penalty phase the prosecution will argue there's
24 certain aggravators that in their opinion should get you to
25 consider the death penalty, and they have to prove these

1 aggravators beyond a reasonable doubt. The defense will argue
2 certain mitigators. And you can take into consideration
3 whatever mitigator you want even if the defense doesn't argue
4 it. And each one of you as a juror would say, well, I think
5 the mitigators are -- the aggravators were not proven beyond a
6 reasonable doubt, these are the mitigators that I believe are
7 important for whatever subjective reason you believe it, and
8 then you can make your choice, you can say, look, they've
9 proven it and it's death, or they haven't. And there are many
10 mitigators that -- I mean, there's no -- there's no box,
11 there's no checklist. We're not going to say, well, there's
12 mental health, there's abuse as a child, he's an alcoholic.
13 That's not how it is. The mitigators are pretty much anything
14 that you believe is something could be properly taken into
15 consideration, and if you choose life it's never
16 inappropriate. Do you understand the law agrees with that?

17 PROSPECTIVE JUROR NO. 038: (No audible response)

18 THE COURT RECORDER: I'm sorry. I didn't hear that.
19 I mean her.

20 PROSPECTIVE JUROR NO. 038: Yes. I'm sorry. Yes.

21 THE COURT RECORDER: Thank you.

22 MR. BUNIN: Some of the mitigators listed in the
23 sheet are defendant's mental health, mental status, childhood
24 experiences of Deangelo, his education level, his -- maybe his
25 IQ, his intelligence level. Do you think those things are

1 proper to take into account when considering the sentence of a
2 person if he's been convicted of first degree murder?

3 PROSPECTIVE JUROR NO. 038: Yes.

4 MR. BUNIN: Would you agree that if a person is
5 convicted of first degree murder the reason the law gives
6 these four choices is because some cases are deemed more
7 heinous than others, even though it's first degree murder? I
8 mean, it's absolutely, you know, among the worst things you
9 can be convicted of. The law says certain people are
10 deserving of certain punishments compared to others.

11 PROSPECTIVE JUROR NO. 038: Yes.

12 MR. BUNIN: So what you do is you look at it and say,
13 who are the worst types of offenders that have been convicted
14 of first degree murder and who would fall lower on the scale
15 after first degree murder. Does that make sense?

16 PROSPECTIVE JUROR NO. 038: Yes.

17 MR. BUNIN: Can you think of the type of people that
18 you might consider the worst types of offenders say if they're
19 convicted of first degree murder?

20 MR. PESCI: Judge, objection.

21 THE COURT: Yeah. That's sustained.

22 MR. BUNIN: Well --

23 THE COURT: If you want to approach, you can.

24 MR. BUNIN: May I?

25 THE COURT: Yes.

1 (Off-record bench conference)

2 MR. BUNIN: I think I've bothered you enough. Thank
3 you.

4 THE COURT: All right. Thank you, Mr. Bunin.
5 State may question Potential Juror Number 5.

6 MR. DiGIACOMO: Thank you, Judge.
7 Is it Ms. Wright?

8 PROSPECTIVE JUROR NO. 049: Yes.

9 MR. DiGIACOMO: You've indicated that you work at a
10 local casino. What is it that you do for the casino?

11 PROSPECTIVE JUROR NO. 049: I doing accounting.

12 MR. DiGIACOMO: The accounting?

13 PROSPECTIVE JUROR NO. 049: I doing the express
14 office accounting.

15 THE COURT: You're a microphone person.

16 PROSPECTIVE JUROR NO. 049: Oh.

17 MR. DiGIACOMO: Yes. How long have you been --

18 THE COURT: And also --

19 I'm sorry to interrupt you.

20 -- you need to hold it up, because it won't pick up
21 if you hold it down.

22 MR. DiGIACOMO: How long have you been doing that?

23 PROSPECTIVE JUROR NO. 049: Almost eight years.

24 MR. DiGIACOMO: Almost eight years now? Okay. There
25 was a lot of questions asked in the questionnaire about the

1 death penalty. I'm going to skip to those, and maybe I'll go
2 back to a few other things, okay.

3 PROSPECTIVE JUROR NO. 049: Okay.

4 MR. DiGIACOMO: Generally before you ever got this
5 questionnaire had you ever thought about the death penalty
6 before?

7 PROSPECTIVE JUROR NO. 049: Yes.

8 MR. DiGIACOMO: And in thinking about the death
9 penalty is it something that you believe in, or you don't
10 believe?

11 PROSPECTIVE JUROR NO. 049: Dependent only is that
12 what kind of murder it is.

13 MR. DiGIACOMO: Okay. All right. And that's our
14 question, is at least in some situation you could consider the
15 death penalty or you think at least that it's an appropriate
16 punishment in some murder cases. Is that a fair
17 characterization of your beliefs?

18 PROSPECTIVE JUROR NO. 049: Sorry, I'm not understand
19 the question. My English is not good enough to answer it.

20 MR. DiGIACOMO: Okay. That was going to be my
21 question. You've been here now about two hours, two and a
22 half hours, somewhere in that range.

23 PROSPECTIVE JUROR NO. 049: Uh-huh.

24 MR. DiGIACOMO: During that time period have you been
25 able to understand what's being said back and forth?

1 PROSPECTIVE JUROR NO. 049: No, I'm not really
2 understand.

3 MR. DiGIACOMO: Okay.

4 THE COURT: Where are you from originally?

5 PROSPECTIVE JUROR NO. 049: China.

6 THE COURT: Okay. And how long have you lived in the
7 U.S.?

8 PROSPECTIVE JUROR NO. 049: I living here 26 years.

9 THE COURT: Okay. Mr. DiGiacomo.

10 MR. DiGIACOMO: Thank you. And you said you worked
11 in accounting. Do you -- do you work with people who speak
12 English?

13 PROSPECTIVE JUROR NO. 049: Yes.

14 MR. DiGIACOMO: Okay. Are you able to at least
15 communicate enough with them to be able to do your job?

16 PROSPECTIVE JUROR NO. 049: Yeah. Only it is for
17 accounting stuff.

18 MR. DiGIACOMO: Okay. So it's the words we're using
19 here in the courtroom that's causing you some confusion?

20 PROSPECTIVE JUROR NO. 049: Yes.

21 MR. DiGIACOMO: All right. Let me ask you just a
22 couple more questions, and I think the Judge may have a couple
23 of questions for you, too, okay.

24 You had indicated on your questionnaire that
25 basically it depends on the type of case, you'd consider the

1 death penalty depending on what the type of case was.

2 PROSPECTIVE JUROR NO. 049: Yes.

3 MR. DiGIACOMO: Okay. But then you also indicated
4 that you wouldn't consider mitigation. Did you -- is that one
5 of the words you were confused by?

6 PROSPECTIVE JUROR NO. 049: Yes.

7 MR. DiGIACOMO: All right. Mitigation are things
8 like the defendant's background. You understand what I'm
9 saying? Stuff like that. What his childhood was like, other
10 factors that influence his behavior. Can you understand what
11 I'm talking to you right now about? No?

12 PROSPECTIVE JUROR NO. 049: No.

13 MR. DiGIACOMO: Okay. Thank you.

14 THE COURT: How far did you go in -- where -- first
15 of all, where are you from in China?

16 PROSPECTIVE JUROR NO. 049: Canton.

17 THE COURT: From Canton, okay. And how far --- did
18 you ever go to school here in the United States?

19 PROSPECTIVE JUROR NO. 049: Yes.

20 THE COURT: Where did you -- college or high school
21 or what?

22 PROSPECTIVE JUROR NO. 049: I get the BA accounting
23 degree in UNLV.

24 THE COURT: Okay. Well, now, is that -- so you have
25 a BA, not a BS? Bachelor of Arts.

1 PROSPECTIVE JUROR NO. 049: Yes.

2 THE COURT: Okay. Now, I'm assuming at UNLV you have
3 to take other types of classes to get a Bachelor of Arts
4 degree, not just accounting. Is that true?

5 PROSPECTIVE JUROR NO. 049: Yes.

6 THE COURT: Okay. So maybe like history and English.
7 What kind of other types of classes do you have to take to get
8 a degree at UNLV?

9 PROSPECTIVE JUROR NO. 049: You take all of the basis
10 [sic], regular classes, all of them. Then take most of the
11 like business classes.

12 THE COURT: Mostly business, but kind of everything.
13 And in China -- did you finish high school in China?

14 PROSPECTIVE JUROR NO. 049: Yes.

15 THE COURT: Okay. And then you have an accounting
16 degree here in the United States?

17 PROSPECTIVE JUROR NO. 049: Uh-huh.

18 THE COURT: Are you a CPA?

19 PROSPECTIVE JUROR NO. 049: No.

20 THE COURT: Okay. I'll see counsel up here at the
21 bench, please.

22 (Off-record bench conference)

23 THE COURT: Defense, any questions for Ms. Wright?

24 MR. ERICSSON: No, Your Honor. Thank you.

25 THE COURT: All right. Thank you.

1 State may question Potential Juror Number 6.

2 MR. DiGIACOMO: Thank you.

3 Good morning, sir. How are you?

4 PROSPECTIVE JUROR NO. 054: Fine.

5 MR. DiGIACOMO: Sir, there's a couple of questions
6 that have to relate to some of the things we haven't actually
7 talked about here. And I'm going to start kind of at the
8 middle of your questionnaire. You wrote an answer that
9 concerns your opinion as it relates to prosecutors that
10 obviously as a prosecutor gives me some concern. So do you
11 recall what you wrote about your opinion of prosecutors?

12 PROSPECTIVE JUROR NO. 054: Well, see, it's been
13 about a week. No, I think I remember.

14 MR. DiGIACOMO: Okay.

15 PROSPECTIVE JUROR NO. 054: It has to do with
16 sometimes -- and I'm not saying all prosecutors, of course --

17 MR. DiGIACOMO: Sure.

18 PROSPECTIVE JUROR NO. 054: -- but there are some
19 prosecutors out there that are willing to convict an innocent
20 man to further their careers.

21 MR. DiGIACOMO: Sure. And, you know, that's -- I
22 guess the question I had isn't so much that you had that
23 problem, I just want to know what the basis of that opinion
24 is.

25 PROSPECTIVE JUROR NO. 054: Just things that I've

1 heard and things that I've seen like on TV and stuff like
2 that, and things that I have read in different papers and like
3 that.

4 MR. DiGIACOMO: Obviously --

5 PROSPECTIVE JUROR NO. 054: Just over the years.

6 MR. DiGIACOMO: Right. Obviously you don't know Mr.
7 Pesci and I; right?

8 PROSPECTIVE JUROR NO. 054: No. No. I'm not -- like
9 I'm saying, I'm not saying all of them. But I have read about
10 some, yeah.

11 MR. DiGIACOMO: Sure. You'd agree with me that
12 there's probably good prosecutors, there's probably bad
13 prosecutors?

14 PROSPECTIVE JUROR NO. 054: Oh, yeah. Absolutely.

15 MR. DiGIACOMO: And, you know, it would be hard to
16 lump any particular person of any profession into one group of
17 good or bad.

18 PROSPECTIVE JUROR NO. 054: Right. But it gives me
19 my suspicions.

20 MR. DiGIACOMO: Okay.

21 PROSPECTIVE JUROR NO. 054: It's a healthy suspicion.

22 MR. DiGIACOMO: And I guess that leads me back to you
23 have -- either a family member or yourself had some contact
24 with the criminal justice system.

25 PROSPECTIVE JUROR NO. 054: Right.

1 MR. DiGIACOMO: Was your opinions of prosecutors
2 based on that interaction?

3 PROSPECTIVE JUROR NO. 054: It kind of opened my
4 eyes, yeah.

5 THE COURT: We're going to have -- I'm sorry to
6 interrupt you. We're going to have Ms. Wright hand you the
7 microphone.

8 PROSPECTIVE JUROR NO. 054: Oh. Okay.

9 THE COURT: Go ahead, Mr. DiGiacomo.

10 MR. DiGIACOMO: Thank you.

11 Do you think the prosecutor in that case was
12 overzealous?

13 PROSPECTIVE JUROR NO. 054: Yeah.

14 MR. DiGIACOMO: And do you think that outcome of that
15 just kind of colored your views of the way prosecutors handle
16 themselves?

17 PROSPECTIVE JUROR NO. 054: Yeah.

18 MR. DiGIACOMO: Is there something -- should Mr.
19 Pesci and I have any concerns that you might think that we
20 would be career driven and not care about whether or not the
21 truth is brought out in the courtroom?

22 PROSPECTIVE JUROR NO. 054: No. But it would kind of
23 make me particular attention --

24 MR. DiGIACOMO: Sure.

25 PROSPECTIVE JUROR NO. 054: -- to what -- you know,

1 how you guys handle it and like that.

2 MR. DiGIACOMO: Would you -- could you give us a
3 guarantee that you'd listen to the evidence in the courtroom
4 and make --

5 PROSPECTIVE JUROR NO. 054: Absolutely.

6 MR. DiGIACOMO: -- a decision from the evidence, not
7 from --

8 PROSPECTIVE JUROR NO. 054: Right.

9 MR. DiGIACOMO: -- whether or not you like myself,
10 Mr. Pesci or any of the defense attorneys? At the end of the
11 day you might not like any of us.

12 PROSPECTIVE JUROR NO. 054: Right.

13 THE COURT: Or even at the beginning of the day.

14 MR. DiGIACOMO: Thanks.

15 But at the end of the day you'll listen to the
16 witnesses, you'll decide their credibility, you'll weigh the
17 evidence, and make a determination?

18 PROSPECTIVE JUROR NO. 054: Absolutely.

19 MR. DiGIACOMO: Now let me jump to kind of the flip
20 side here. You know, as prosecutors I was concerned about
21 what you think of prosecutors. But I think as a defense
22 attorney they might be concerned about what your opinions of
23 the death penalty are. You believe in the death penalty?

24 PROSPECTIVE JUROR NO. 054: Absolutely.

25 MR. DiGIACOMO: Okay. In fact, you think it's used a

1 little too -- not -- not often enough.

2 PROSPECTIVE JUROR NO. 054: Yeah, not often enough.

3 MR. DiGIACOMO: Okay. Do you think that at the end
4 of the day that, you know, if you find Mr. Carroll guilty of
5 first degree murder you're going to consider all four possible
6 punishments, or do you think if find him guilty of first
7 degree murder you're going to jump automatically to the death
8 penalty?

9 PROSPECTIVE JUROR NO. 054: It would be the death
10 penalty.

11 MR. DiGIACOMO: Okay. Is there anything that I'm
12 going to be able to say to change your mind about that?

13 PROSPECTIVE JUROR NO. 054: If I think he's involved
14 with deliberately taking somebody else's life, I think he
15 should pay with his.

16 MR. DiGIACOMO: Okay. And so I'm guessing by that
17 you wouldn't consider the other possibilities, life with the
18 possibility of the parole, life without the possibility of
19 parole, term of years. It was be, hey, this guy's guilty of
20 first degree murder, deliberately killing somebody, I think he
21 deserves the death penalty?

22 PROSPECTIVE JUROR NO. 054: Deserves the death
23 penalty.

24 MR. DiGIACOMO: Thank you very much, sir.

25 THE COURT: All right. Submit it?

1 MR. DiGIACOMO: Yes, Your Honor.

2 THE COURT: Any questions from the defense?

3 Approach?

4 MR. ERICSSON: Yes.

5 (Off-record bench conference)

6 THE COURT: All right. Thank you.

7 State, you may question Potential Juror Number 7.

8 Yeah. We're just going to pass the microphone down.

9 My court recorder was giving me looks, so we're just going to
10 use the microphone from now on.

11 MR. DiGIACOMO: Sir, you -- how are you, Mr. Johnson?

12 PROSPECTIVE JUROR NO. 061: Great.

13 MR. DiGIACOMO: You indicated that you took some
14 classes in political science back at San Jose State
15 University.

16 PROSPECTIVE JUROR NO. 061: Yes.

17 MR. DiGIACOMO: Okay. But then when asked about
18 criminal justice or law, you didn't have any classes in that.
19 So you're -- I guess the classes were different as it relates
20 to, you know, government and those type of things.

21 PROSPECTIVE JUROR NO. 061: It was just a general
22 poly sci class.

23 MR. DiGIACOMO: Okay. You have a very interesting
24 job. Were you an air traffic controller before you were a
25 supervisor?

1 PROSPECTIVE JUROR NO. 061: Yes. For 25 years.

2 MR. DiGIACOMO: Twenty-five years. You indicated
3 that you have some friends that are in law enforcement. Are
4 they local law enforcement officers?

5 PROSPECTIVE JUROR NO. 061: Yes.

6 MR. DiGIACOMO: Okay. And you said you don't really
7 have any discussions with them on law-related factors; right?

8 PROSPECTIVE JUROR NO. 061: No.

9 MR. DiGIACOMO: At the end of the day obviously --
10 are they -- do they work with Metro?

11 PROSPECTIVE JUROR NO. 061: Yes.

12 MR. DiGIACOMO: Okay. There's going to be some Metro
13 detectives that are coming here, and they're going to testify.
14 Obviously your relationship to any other people in Metro, you
15 can set that aside and judge the facts solely from the
16 evidence that's presented to you?

17 PROSPECTIVE JUROR NO. 061: Yes.

18 MR. DiGIACOMO: You indicated that you had some
19 contact with the criminal justice system but essentially it
20 all worked itself out, and the right result, I'm guessing,
21 came --

22 PROSPECTIVE JUROR NO. 061: Yes.

23 MR. DiGIACOMO: -- came about; right?

24 PROSPECTIVE JUROR NO. 061: Yes.

25 MR. DiGIACOMO: Generally do you think that means

1 that the criminal justice system is fair and treats people
2 fairly, or not?

3 PROSPECTIVE JUROR NO. 061: I believe, yes, that
4 eventually it does treat people fair, that the right outcome
5 normally comes out.

6 MR. DiGIACOMO: Right. Obviously it was a little
7 unfair your case for at least a period of time, but at the end
8 of the day the right result resulted?

9 PROSPECTIVE JUROR NO. 061: Yes.

10 MR. DiGIACOMO: Anything about that experience that
11 would cause you to have any concerns about sitting here and
12 judging the facts in this particular case?

13 PROSPECTIVE JUROR NO. 061: No.

14 MR. DiGIACOMO: You had indicated that you'd
15 previously served on a jury. Was that here?

16 PROSPECTIVE JUROR NO. 061: In California.

17 MR. DiGIACOMO: In California. Was it a criminal or
18 civil case?

19 PROSPECTIVE JUROR NO. 061: Civil.

20 MR. DiGIACOMO: Okay. Did you actually get to the
21 point where you wound up in the back room deliberating a
22 verdict?

23 PROSPECTIVE JUROR NO. 061: Yes.

24 MR. DiGIACOMO: All right. Were you the foreperson
25 of the jury?

1 PROSPECTIVE JUROR NO. 061: I was in a jury.

2 MR. DiGIACOMO: You were in the jury, but were you
3 the foreperson, or were you just --

4 PROSPECTIVE JUROR NO. 061: I was not the foreperson.

5 MR. DiGIACOMO: Okay. And did you guys actually
6 reach a verdict?

7 PROSPECTIVE JUROR NO. 061: No, we didn't. They
8 pleaded while we were in deliberation.

9 MR. DiGIACOMO: Okay. Anything about that experience
10 that would cause you any concern in sitting on a jury here in
11 Nevada?

12 PROSPECTIVE JUROR NO. 061: No.

13 MR. DiGIACOMO: You did have the best answer to
14 Question 26, which was, "I don't like to sit around and do
15 nothing all day." Unfortunately, for most of the jurors
16 that's what's going to happen at least for several days.

17 You'd indicated that you believe in the death
18 penalty.

19 PROSPECTIVE JUROR NO. 061: In most circumstances I
20 do.

21 MR. DiGIACOMO: Okay. When you say most
22 circumstances, what do you mean by that?

23 PROSPECTIVE JUROR NO. 061: I believe that the system
24 is flawed at times, and so there's times where we see that
25 later on evidence came forward and it turned out that the

1 person was not guilty and that person was given the death
2 penalty.

3 MR. DiGIACOMO: Okay. Would you agree with me that
4 those are the exceptions, not the usual case?

5 PROSPECTIVE JUROR NO. 061: Correct.

6 MR. DiGIACOMO: Okay. And I guess that's probably
7 what your answer -- or why your answer is that you want a
8 confession or clear indication of guilt before you'd be
9 willing to consider it.

10 PROSPECTIVE JUROR NO. 061: Yes.

11 MR. DiGIACOMO: Okay. You also indicated in here,
12 and you're not alone, that you thought life without the
13 possibility of parole would actually be worse punishment for
14 somebody than the death penalty.

15 PROSPECTIVE JUROR NO. 061: At times, yes.

16 MR. DiGIACOMO: Why is that?

17 PROSPECTIVE JUROR NO. 061: Death at times is quick,
18 and it's over. A person that's been in -- I mean, other than
19 the costs, but at times the costs with the death penalty can
20 increase, also. And so I go back and forth over those
21 questions at times. But sometimes somebody sitting in jail
22 for -- without the possibility of parole can be worse.

23 MR. DiGIACOMO: You would agree with me that somebody
24 who sits in jail with life without the possibility of parole,
25 at least from your standpoint, right, you know, you would

1 think that that person might think about their crime, they'd
2 have to think about it for the rest of their lives, as opposed
3 to what you said, the quick and easy death answer; right?

4 PROSPECTIVE JUROR NO. 061: If they have any kind of
5 conscience, yeah.

6 MR. DiGIACOMO: Right. You'd agree with me, though,
7 that maybe some people in this world just don't have a
8 conscience?

9 PROSPECTIVE JUROR NO. 061: Correct.

10 MR. DiGIACOMO: And maybe that wouldn't be the worst
11 punishment for them, although it might be for us?

12 PROSPECTIVE JUROR NO. 061: Correct.

13 MR. DiGIACOMO: Do you think that you could sit here
14 and listen to all the testimony and make a decision as to
15 guilt or innocence of Mr. Carroll?

16 PROSPECTIVE JUROR NO. 061: Yes.

17 MR. DiGIACOMO: And likewise, if we ever got to the
18 position where he was convicted of first degree murder, do you
19 think you could consider all the evidence presented and reach
20 a decision as to the appropriate punishment of all the four
21 possibilities that are out there in Nevada?

22 PROSPECTIVE JUROR NO. 061: Yes.

23 MR. DiGIACOMO: If you were one of the people that
24 was accused in this particular case, would you want 12 people
25 like yourself sitting on this jury?

1 PROSPECTIVE JUROR NO. 061: Yes. I think I'm fair.

2 MR. DiGIACOMO: You think you're a fair person?

3 PROSPECTIVE JUROR NO. 061: Yes.

4 MR. DiGIACOMO: Thank you very much, sir.

5 Judge, we'd pass for cause.

6 THE COURT: All right. Thank you.

7 Mr. Ericsson, you may question Potential Juror Number
8 7.

9 MR. ERICSSON: Good morning, Mr. Johnson.

10 PROSPECTIVE JUROR NO. 061: Uh-huh.

11 MR. ERICSSON: I just want to start off by, one, just
12 making sure -- and this is kind of a general statement for
13 everybody -- that we understand that this process of asking
14 all those fairly intrusive questions is -- can get tedious and
15 is not easy for you. But I hope everyone understands the
16 importance of what both sides are trying to do. The objective
17 for everyone in this, prosecutors, as well as the defense
18 attorneys, is to have 12 jurors who are fair and impartial and
19 are appropriate for this type of case. I believe the Judge
20 mentioned earlier that there are civil cases, there are other
21 types of cases that some people might be a more appropriate
22 jury for than this type. Probably the most serious case that
23 goes on in this courthouse is a death penalty case.

24 As my co-counsel indicated, we are in the difficult
25 position of talking about penalty issues before we even get to

1 the guilt or innocence phase, which is going to be the first
2 part of the trial. And we believe that after that we won't
3 even have to deal with the penalty issues. But because this
4 is the only time we get to speak with potential jurors, we
5 have to go through those issues.

6 Now, one of the things that was asked in the
7 questionnaire is a lot of questions related to your position
8 on the death penalty. And you've indicated -- you've seen the
9 list of the four different potential sentences that can be
10 imposed if somebody is found guilty of a first degree murder
11 in the state of Nevada. And you are comfortable with imposing
12 any of those four penalties; is that correct?

13 PROSPECTIVE JUROR NO. 061: I don't know about
14 comfort, but, yes, I could -- believe I would fairly be able
15 to make a decision on those penalties.

16 MR. ERICSSON: One of the issues that was brought up
17 earlier is the burden of proof that the State of Nevada has.
18 The prosecutors must prove beyond a reasonable doubt every
19 element of the charges that have been brought against Mr.
20 Carroll. Do you have any problems in that concept of the law,
21 that the State has the burden of proof beyond a reasonable
22 doubt?

23 PROSPECTIVE JUROR NO. 061: No.

24 MR. ERICSSON: And would you have any problem or
25 hesitancy of coming back after the trial, after you've heard

1 all of the evidence, if you felt that the State had not met
2 its burden of proof, of coming back in this room and rendering
3 a not guilty verdict?

4 PROSPECTIVE JUROR NO. 061: No.

5 MR. ERICSSON: And on the flip side of that, if you
6 felt that they had met every element of the charges beyond a
7 reasonable doubt, would you have a problem coming back and
8 rendering a guilty verdict?

9 PROSPECTIVE JUROR NO. 061: Not at all.

10 MR. ERICSSON: You may be aware that the because the
11 State has the burden of proof, they are the first ones to
12 present their evidence, their witnesses in the trial. One of
13 the instructions that you'll be given from the Judge is that
14 you are not to come to any opinions or decisions regarding the
15 final outcome in this case until after you've heard all of the
16 evidence and from both sides. Do you think that you would be
17 able to hold off judgment until you've had the opportunity to
18 hear all of the evidence before you came to an opinion as to
19 whether Mr. Carroll is guilty or innocent?

20 PROSPECTIVE JUROR NO. 061: I mean -- yes. I mean, I
21 would definitely ever -- every attempt not to -- to hold off
22 any type of judgment, yes.

23 MR. ERICSSON: Thank you very much. I have no
24 further questions.

25 Pass for cause.

1 THE COURT: All right. Thank you.

2 State, you may question Potential Juror Number 8.

3 MR. PESCI: Thank you, Judge.

4 As the microphone's coming down I'll ask. You said
5 you served on a jury before, but I believe it settled or
6 negotiated before you got to a verdict?

7 PROSPECTIVE JUROR NO. 064: We were lined up to come
8 into the court, and the -- we were dismissed back to the jury
9 room because it had settled right before we sat for the trial.

10 MR. PESCI: Okay. Do you know if it was criminal cr
11 if it was civil?

12 PROSPECTIVE JUROR NO. 064: It was a criminal trial.
13 Forgery, I believe.

14 MR. PESCI: Was it here in this jurisdiction, or
15 somewhere else?

16 PROSPECTIVE JUROR NO. 064: Yes, it was here.

17 MR. PESCI: How long ago?

18 PROSPECTIVE JUROR NO. 064: The best I can recall was
19 six or seven years ago.

20 MR. PESCI: Okay. And you also indicated that you
21 have some friends that are involved in the criminal justice
22 system.

23 PROSPECTIVE JUROR NO. 064: I am the dive master for
24 Sports Chalet. There are instructors that are in law
25 enforcement. I'm not sure which level, but I know them more

1 professionally as divers than -- I don't fraternize with them
2 outside of dive activities.

3 MR. PESCI: Okay. And then was there a friend also
4 are you from Illinois originally?

5 PROSPECTIVE JUROR NO. 064: South Bend, Indiana.

6 MR. PESCI: Okay. I think you said there was a
7 friend back there that's in law enforcement.

8 PROSPECTIVE JUROR NO. 064: Oh. There was a lawyer.
9 One of the people that I grew up with is a lawyer in Chicago.
10 He comes out here and visits on occasion.

11 MR. PESCI: Okay. As far as the death penalty
12 questions you were asked, it seems as if you indicated that
13 you -- you're not against it, it would depend on the
14 circumstances of the case.

15 PROSPECTIVE JUROR NO. 064: Needs to be weighed
16 appropriately.

17 MR. PESCI: You indicate that you can consider all
18 four potential penalties.

19 PROSPECTIVE JUROR NO. 064: Yes.

20 MR. PESCI: And you wouldn't vote automatically for
21 or against the death penalty?

22 PROSPECTIVE JUROR NO. 064: No, I would not.

23 MR. PESCI: We would pass for cause.

24 THE COURT: All right. Mr. Bunin, you may follow up
25 with this potential juror.

1 MR. BUNIN: Mr. Sleeter; right?

2 PROSPECTIVE JUROR NO. 064: Sleeter, yes.

3 MR. BUNIN: Let me start by asking a couple of
4 questions really from either phase of the trial, but really
5 maybe more on the guilt phase. You know, as part of your job
6 as a juror you have to judge credibility of witnesses that
7 testify. You know, you don't think just because somebody
8 takes an oath means they're going to fairly tell the truth on
9 the stand, do you?

10 PROSPECTIVE JUROR NO. 064: You need to, you know,
11 pay attention to the person, what they're saying. I'm not a
12 poker player. I don't know tells.

13 MR. BUNIN: Have you ever been in a situation where
14 you've had to judge credibility before?

15 PROSPECTIVE JUROR NO. 064: No, I have not.

16 MR. BUNIN: Can you think of things that you might
17 look for? Not poker tells, but can you think of anything you
18 might look for maybe from a person on the stand, or listen for
19 that might help you determine a person's credibility?

20 PROSPECTIVE JUROR NO. 064: Appearing nervous,
21 jittering, you know, agitation.

22 MR. BUNIN: Absolutely. What about a person --
23 inconsistency. What if a person says one thing at one time
24 but another thing at another time and that comes out during
25 their examination on the stand? Is that something that you

1 would take into consideration for credibility?

2 PROSPECTIVE JUROR NO. 064: Look at, you know, how
3 the question was asked. You know, people's memories aren't
4 perfect. You may remember details that, you know, may have
5 been missed the first time recalling them.

6 MR. BUNIN: Sure. And then, you know, on that topic,
7 ability to remember, would something about -- if a person may
8 have been using drugs or alcohol [inaudible] and they're
9 describing them today, do you believe that that use could
10 affect their memory of the event?

11 PROSPECTIVE JUROR NO. 064: Drugs or alcohol usually
12 impairs recollection.

13 MR. BUNIN: Sure. And then I guess another thing you
14 might look for or maybe just agree with me would be an
15 incentive. Maybe some people on the stand have a certain
16 incentive to say certain things and maybe not other things.
17 Is that something that for you could weigh in the credibility
18 of a witness?

19 PROSPECTIVE JUROR NO. 064: You know, I don't know
20 the exact circumstances.

21 MR. BUNIN: Yeah. And you'd listen for that while
22 they were on the stand?

23 PROSPECTIVE JUROR NO. 064: I'd be paying attention,
24 yes.

25 MR. BUNIN: Okay. And, you know, there are a couple

1 of types of witnesses that you see. You see just regular
2 people called to be witnesses, people that may have just
3 witnessed part of the event, and then there are other
4 witnesses that are more professional, police officers and
5 crime scene analysts and people like that. Do you think that
6 the fact a person is a police officer makes him inherently
7 more credible than a person who's not a police officer when
8 they testify?

9 PROSPECTIVE JUROR NO. 064: Police officer is a job.
10 You know, they're human just like everybody else.

11 MR. BUNIN: So is that -- I mean, you would agree
12 that a police officer, then, isn't necessarily somebody who is
13 more credible than anybody else just because he's a police
14 officer?

15 PROSPECTIVE JUROR NO. 064: They're trained in law
16 enforcement, you know, but infallible, no.

17 MR. BUNIN: Well, I mean, police have very hard jobs.

18 PROSPECTIVE JUROR NO. 064: Very much so.

19 MR. BUNIN: They have to investigate the crime and do
20 everything right, and they eventually get cross-examined by
21 people like me and Mr. Ericsson, so it's not an easy job, and
22 everybody acknowledges that. But, you know, some people I
23 guess I've found over the years might have a hard time seeing
24 an attorney trying to maybe even aggressively at times
25 cross-examine a police officer. Do you think as defense

1 attorneys we should try and point out maybe mistakes that are
2 made in an investigation or conclusions that may have beer
3 jumped to or tactics that we think are inappropriate, do you
4 think it's proper for a defense attorney to point that out --

5 PROSPECTIVE JUROR NO. 064: All things need to be
6 looked at, yes.

7 MR. BUNIN: Okay. You wouldn't hold that against the
8 defense for doing something like that?

9 PROSPECTIVE JUROR NO. 064: No, I would not.

10 MR. BUNIN: And again, when the officer answers the
11 questions, one fact that you won't take into consideration is
12 he's an officer therefore he must be more credible. You'll
13 look at all the surrounding circumstances and determine
14 whether or not the information you're getting is accurate?

15 PROSPECTIVE JUROR NO. 064: Yeah. The person doing
16 their job, you know, doing what they are, you know, supposed
17 to be doing.

18 MR. BUNIN: Okay. Another topic that we haven't
19 really talked about yet, and, I mean, when you look at
20 Deangelo, you know, I don't know what anybody initially first
21 thinks. But Deangelo has said to me, you know, I'm a black
22 man and the alleged victim in this case is not black, he's
23 white, and, you know, am I going to have a hard time getting
24 through this trial or are these things that I'm supposed to be
25 scared of.

1 MR. PESCI: Can we approach?

2 THE COURT: Yes, please.

3 (Off-record bench conference)

4 MR. BUNIN: So, you know, I guess what I'm getting at
5 is do you think it's a legitimate concern when the person
6 accused of the crime is black and the person who died is
7 white? Should we as the defense be concerned about race?

8 PROSPECTIVE JUROR NO. 064: If I was on the defense,
9 yes, I would be concerned about that.

10 MR. BUNIN: And I have to ask you personal questions,
11 and I'm sorry about that. You understand --

12 PROSPECTIVE JUROR NO. 064: This [inaudible] a
13 problem.

14 MR. BUNIN: Okay. Is there -- is there anything
15 about Deangelo's race that would bother you?

16 PROSPECTIVE JUROR NO. 064: No, there isn't. You
17 know, back high school I was a wrestler, I competed
18 heavyweight against another African-American. You know, we
19 were, you know, training partners, battled for the position,
20 and we did everything to make each other stronger. I would
21 say that I try to be fair and just with everybody that I meet.

22 MR. BUNIN: Do you think -- I know these are horrible
23 questions at times, but there are many people that give very
24 different answers to all of these questions. Do you think
25 Deangelo's more likely to be guilty because he's black?

1 PROSPECTIVE JUROR NO. 064: It's a person behind a
2 desk. Skin color doesn't -- shouldn't weigh into anything.

3 MR. BUNIN: And is the crime that occurred any worse
4 because the victim is white?

5 PROSPECTIVE JUROR NO. 064: No. As I said, you know,
6 it is a person -- you know, a person doing something to
7 another person, you know. Skin color, race, ethnicity, you
8 know, shouldn't be played into -- played into factors.

9 MR. BUNIN: And you as a juror, would you feel
10 comfortable ignoring those factors completely in determining
11 not only guilt or innocence but what the punishment should be?

12 PROSPECTIVE JUROR NO. 064: Well, I should be
13 colorblind, yes.

14 MR. BUNIN: So if we get to the point -- and again, I
15 don't think we're ever going to get there, but if we get to
16 the point where there's going to be a penalty phase in this
17 case, that would mean that Deangelo is convicted of first
18 degree murder. And as the sheet that you filled explained to
19 you, there's four possibilities. Can you equally and honestly
20 consider all of those possibilities?

21 PROSPECTIVE JUROR NO. 064: I can weigh things, you
22 know, from start to finish, you know, all the different
23 levels, and apply the appropriate one.

24 MR. BUNIN: And you understand you'll hear evidence
25 from the prosecution about what are called aggravators, you'll

1 hear some evidence from the defense about what are called
2 mitigators, and then you personally have to weigh these and
3 determine whether or not death is appropriate or life is
4 appropriate? You understand?

5 PROSPECTIVE JUROR NO. 064: Yes.

6 MR. BUNIN: Is that something you're comfortable
7 doing?

8 PROSPECTIVE JUROR NO. 064: Yes. I can. I can
9 weigh those factors.

10 MR. BUNIN: Can you foresee a possibility where you
11 believe life with the possibility of parole could be
12 appropriate in a first degree murder case?

13 PROSPECTIVE JUROR NO. 064: Life -- when it comes
14 down to sentencing, you know, a lot of [inaudible] to death
15 penalty, life without parole, you know, is a very serious
16 concern. You know, a possibility with parole is a factor.
17 You know, a set number of years is a factor.

18 MR. BUNIN: Those are all factors you would consider?

19 PROSPECTIVE JUROR NO. 064: Yes.

20 MR. BUNIN: And you understand, you know, life with
21 parole would mean a 40-year minimum sentence and potentially
22 life as a maximum sentence? Do you understand?

23 PROSPECTIVE JUROR NO. 064: Uh-huh. Yes.

24 MR. BUNIN: Do you believe that 40 means 40 years?

25 PROSPECTIVE JUROR NO. 064: You know, I've seen

1 enough TV shows, you know, with, you know, good behavior and
2 things like that. You know, I don't know how -- you know, I
3 don't believe 40 years is 40 years.

4 MR. BUNIN: And I hear that, and I think I can tell
5 you honestly I don't think anybody in the room would dispute
6 that 40 does mean 40 in Nevada. Meaning if a person is
7 sentenced to 40 years minimum and life maximum, they must
8 serve 40 years, no exception, before there's a possibility of
9 them getting paroled. Do you understand?

10 PROSPECTIVE JUROR NO. 064: Okay. I do now.

11 MR. BUNIN: And I understand many jurisdictions do
12 that differently, and maybe the rules were different at one
13 time, but today, as we sit here in Nevada, anybody convicted
14 and sentenced to 40 to life must do 40 years from the date of
15 conviction before they can even consider giving him parole.
16 Make sense?

17 PROSPECTIVE JUROR NO. 064: Makes sense.

18 MR. BUNIN: And they don't to ever give him parole.
19 That's the rule. And that's something that you can consider
20 as a punishment?

21 PROSPECTIVE JUROR NO. 064: It can be considered,
22 yes.

23 MR. BUNIN: And would you consider that a fairly
24 serious punishment, too?

25 PROSPECTIVE JUROR NO. 064: Forty years is a good

1 chunk of a person's life.

2 MR. BUNIN: The four choices are, you know, a term of
3 years, 40 being the minimum --

4 PROSPECTIVE JUROR NO. 064: Uh-huh.

5 MR. BUNIN: -- live, 40 being the minimum, life
6 without, and death. Would you agree those are all very
7 substantial punishments?

8 PROSPECTIVE JUROR NO. 064: Yes, they are.

9 MR. BUNIN: I'll pass for cause, Your Honor.

10 THE COURT: All right. Thank you.

11 State, you may question Potential Juror Number 9.

12 MR. PESCI: Thank you, Judge.

13 Sir, you've indicated that you watch Channel 718. I
14 apologize. What's on 718? We asked of ton of crazy
15 questions. One was like what channels are good.

16 PROSPECTIVE JUROR NO. 066: I can't remember what's
17 on 718 right now.

18 MR. PESCI: Okay. You said you watched the -- I
19 can't remember, either. I was trying to remember what was on
20 718, but no big deal. What do you like to watch on TV?

21 PROSPECTIVE JUROR NO. 066: Well, I watch a lot of
22 sports.

23 MR. PESCI: A lot of sports. Okay. Is there a
24 particular sport that you like?

25 PROSPECTIVE JUROR NO. 066: Basketball.

1 MR. PESCI: Basketball. You served on a jury before?
2 PROSPECTIVE JUROR NO. 066: Yes.
3 MR. PESCI: And was that here?
4 PROSPECTIVE JUROR NO. 066: Seattle, Washington.
5 MR. PESCI: Seattle. And you had a lot of contacts
6 with -- well, not a lot. You had some contacts with law
7 enforcement in Seattle?
8 PROSPECTIVE JUROR NO. 066: Well, I have a cousin
9 that's a judge.
10 MR. PESCI: Okay. Do you feel as if you have to
11 explain yourself to him based on whatever your verdict is, or
12 do you think you can make your decision regardless of having
13 to talk it over with him afterwards?
14 PROSPECTIVE JUROR NO. 066: I wouldn't have to talk
15 to her. It's a female, my cousin.
16 MR. PESCI: Oh. Now, you -- what kind of a case was
17 it in Seattle?
18 PROSPECTIVE JUROR NO. 066: It was a criminal.
19 MR. PESCI: Criminal case. Was there a verdict?
20 Without saying what the verdict was, was there a verdict?
21 PROSPECTIVE JUROR NO. 066: Yes.
22 MR. PESCI: And were you the foreperson?
23 PROSPECTIVE JUROR NO. 066: No.
24 MR. PESCI: You work for the postal service now?
25 PROSPECTIVE JUROR NO. 066: Yes.

1 MR. PESCI: You're a manager. What do you do?

2 PROSPECTIVE JUROR NO. 066: Actually, I run the whole
3 state of Nevada.

4 MR. PESCI: Do you really?

5 PROSPECTIVE JUROR NO. 066: Yes.

6 MR. PESCI: Okay. Are there times when you have to
7 make determinations between two parties that might not see
8 things the same way?

9 PROSPECTIVE JUROR NO. 066: That's all time, union
10 and management.

11 MR. PESCI: Okay. So you have to sometimes hear
12 people give two versions of the same event?

13 PROSPECTIVE JUROR NO. 066: Yes, I do.

14 MR. PESCI: And based on your years of experience do
15 you think you can have -- do you have the ability to make a
16 determination as to what you think happened?

17 PROSPECTIVE JUROR NO. 066: Based on the factual
18 data, yes.

19 MR. PESCI: Okay. And sometimes that'll be contrary
20 to one of the people or more than one person that's in front
21 of you?

22 PROSPECTIVE JUROR NO. 066: Correct.

23 MR. PESCI: Do you have any problem with that?

24 PROSPECTIVE JUROR NO. 066: No problems.

25 MR. PESCI: Okay. We asked some general questions

1 about kind of the players in the criminal justice system, and
2 one of the questions you answered talking about prosecutors
3 was -- let's see how you worded it exactly -- is "They will
4 win by any means." Was that based on your Seattle experience?

5 PROSPECTIVE JUROR NO. 066: Well, pretty much, you
6 know, like people said they watch TV, everything, you know,
7 and you watch movies, and it's like what they said, it's what
8 you can prove and no prosecutor will normally take a case they
9 probably can't prove. So you go for the win.

10 MR. PESCI: Okay. And then there was the question
11 about Public Defenders, and you indicated you thought they
12 were public servants.

13 PROSPECTIVE JUROR NO. 066: Depending on who -- who
14 they have as their -- you know, their job is to find the
15 loopholes in the case.

16 MR. PESCI: Okay. Do you think that we as the State
17 would do anything to win, or do you think we would put on the
18 evidence and let you decide?

19 PROSPECTIVE JUROR NO. 066: I think you'd put on a
20 case where the evidence would show that the person was guilty,
21 so you wouldn't put anything on that would contradict your
22 case.

23 MR. PESCI: Okay. All right. Do you have any
24 problem with the concept of the burden of proof being on the
25 State of Nevada, meaning us as the prosecutors?

1 PROSPECTIVE JUROR NO. 066: Well, it's kind of like
2 the contract. The contract is the union, discipline is
3 management, so I understand the burden of proof.

4 MR. PESCI: Okay. And you normally carry that
5 burden?

6 PROSPECTIVE JUROR NO. 066: Yes. Most of the
7 discipline ones, yes, we do.

8 MR. PESCI: And at times can people think or construe
9 your efforts as negative towards them?

10 PROSPECTIVE JUROR NO. 066: Yes, at times.

11 MR. PESCI: Well, you're -- I'm assuming in your
12 position you're just putting forth the facts, you're trying to
13 discern the facts, and you're not trying to hurt someone in
14 particular.

15 PROSPECTIVE JUROR NO. 066: No. We're just trying to
16 find out what the root cause and the facts are, yes.

17 MR. PESCI: Do you think you could be fair to both
18 sides?

19 PROSPECTIVE JUROR NO. 066: Yes, I can.

20 MR. PESCI: And if you're sitting where Mr. DiGiacomo
21 and I are, are you comfortable with you as a juror?

22 PROSPECTIVE JUROR NO. 066: Yes.

23 MR. PESCI: If you're sitting over where Mr. Carroll
24 is, are you comfortable with you as a juror?

25 PROSPECTIVE JUROR NO. 066: Yes.

1 MR. PESCI: All right. Pass for cause.

2 THE COURT: All right. Thank you, Mr. Pesci.

3 Mr. Ericsson.

4 MR. ERICSSON: Thank you, Your Honor.

5 Good afternoon. We've crossed the noon barrier.

6 PROSPECTIVE JUROR NO. 066: Yeah. I'm hungry, too.

7 I'm doing great. Yeah, I'm hungry.

8 THE COURT: Did you say you're hungry?

9 PROSPECTIVE JUROR NO. 066: Yes.

10 THE COURT: We'll take a break soon.

11 MR. ERICSSON: I appreciate the detail and the
12 honesty seem very apparent in your responses to this
13 questionnaire. And I just want to follow up on a few things.

14 Do you -- do you believe that -- that an innocent
15 person could be charged with a murder charge in this state?

16 PROSPECTIVE JUROR NO. 066: Yes, there could be
17 evidence that could have him look like he's the guilty party,
18 yes.

19 MR. ERICSSON: Okay. Is there -- there are some
20 people who, you know, have a pretty strong opinion that if
21 someone is charged with something that serious that, you know,
22 the cops wouldn't have got that wrong. But you understand
23 that there are occasions where law enforcement can make a
24 mistake and have somebody who is innocent charged with very
25 serious charges?

1 PROSPECTIVE JUROR NO. 066: Yes.

2 MR. ERICSSON: Now, if you -- at the end of this if
3 you found -- came to the conclusion that somebody was guilty
4 of first degree murder, that there was an intentional killing,
5 it wasn't self defense, it wasn't an accident or any type of
6 issue where the person did not intend to kill, would you still
7 be able to consider all four of the sentencing options in that
8 situation?

9 PROSPECTIVE JUROR NO. 066: Yes.

10 MR. ERICSSON: So you would be able to consider the
11 option of death --

12 PROSPECTIVE JUROR NO. 066: Yes.

13 MR. ERICSSON: -- is that correct? And if you felt
14 that -- if you found that beyond a reasonable doubt it was an
15 intentional killing, first degree murder, you would be able to
16 consider the penalty of life with the possibility of parole
17 after 40 years?

18 PROSPECTIVE JUROR NO. 066: Yes.

19 MR. ERICSSON: We obviously have a very short time to
20 try to get some understanding of who you are and if you're the
21 right type of person to sit on this type of very serious case.
22 And I'll just end with this question. If you were either Mr.
23 Carroll or the prosecutor sitting at these tables today, would
24 you feel comfortable with somebody with your background and
25 real-life perceptions sitting in judgment on this case?

1 PROSPECTIVE JUROR NO. 066: Yes.

2 MR. ERICSSON: Thank you very much.

3 THE COURT: All right. Pass?

4 MR. ERICSSON: Pass for cause.

5 THE COURT: State, you may question Potential Juror
6 Number 10.

7 MR. DiGIACOMO: Thank you.

8 Is it Mr. Briggs?

9 PROSPECTIVE JUROR NO. 067: Yes.

10 MR. DiGIACOMO: Mr. Briggs, I'm going to jump to the
11 end of your questionnaire, and talk to you a little bit about
12 the death penalty. Obviously you believe in it.

13 PROSPECTIVE JUROR NO. 067: Yes.

14 MR. DiGIACOMO: Had you ever thought about it before
15 you filled out the questionnaire a week or two ago, whenever
16 it was?

17 PROSPECTIVE JUROR NO. 067: No. No.

18 MR. DiGIACOMO: Since the time you've kind of filled
19 it out have you thought a little bit more about it?

20 PROSPECTIVE JUROR NO. 067: Yes. Yeah.

21 MR. DiGIACOMO: So let me ask you -- because I know
22 we asked it in so many different ways that it might have been
23 somewhat confusing, so I just want to ask you, now that you've
24 sat here, you've heard everything everybody's had to say, at
25 the end of the day do you think you could consider all four

1 forms of punishment should you reach the point where you'd be
2 considering that?

3 PROSPECTIVE JUROR NO. 067: Yes.

4 MR. DiGIACOMO: Would you agree with the statement
5 that, you know, in some cases, in murder cases, the death
6 penalty is appropriate and some it's not?

7 PROSPECTIVE JUROR NO. 067: Right. Right.

8 MR. DiGIACOMO: The last question I want to ask you
9 is about kind of at the conclusion you kind of explained that
10 it seems like when you were about 10 years or 11 years old
11 there was some interaction with the Palomino Club.

12 PROSPECTIVE JUROR NO. 067: Yeah. I have a bad case
13 about that place.

14 MR. DiGIACOMO: Right. But that was a long time ago,
15 long before the current owners --

16 PROSPECTIVE JUROR NO. 067: I still have --

17 MR. DiGIACOMO: Sure.

18 PROSPECTIVE JUROR NO. 067: ... a problem with it.

19 MR. DiGIACOMO: Okay. Well, let me ask you this. If
20 you hear that, for example, Mr. Carroll worked at the Palomino
21 Club, is that going to cause you --

22 PROSPECTIVE JUROR NO. 067: It would -- it would
23 bother me.

24 MR. DiGIACOMO: It would bother you?

25 PROSPECTIVE JUROR NO. 067: Yes.

1 MR. DiGIACOMO: The ultimate question in this is can
2 you set that aside and look at the facts --

3 PROSPECTIVE JUROR NO. 067: No.

4 MR. DiGIACOMO: -- or is it such that this is not
5 something you should be doing since it involves the Palomino
6 Club?

7 PROSPECTIVE JUROR NO. 067: It bothers me, yes.

8 MR. DiGIACOMO: Thank you very much.

9 We'll submit it.

10 THE COURT: Any questions from the defense?

11 MR. BUNIN: Can we approach, or --

12 THE COURT: Yeah.

13 (Off-record bench conference)

14 THE COURT: All right. State, you may question
15 Potential Juror Number 11.

16 MR. PESCI: Thank you, Judge.

17 Now, you've served on a jury before?

18 PROSPECTIVE JUROR NO. 068: Yes, I have.

19 MR. PESCI: Was it a criminal or a civil?

20 PROSPECTIVE JUROR NO. 068: There was one criminal,
21 one federal.

22 MR. PESCI: So you served twice?

23 PROSPECTIVE JUROR NO. 068: Yes.

24 MR. PESCI: When was -- which one was the most
25 recent?

1 PROSPECTIVE JUROR NO. 068: The federal. Medical
2 malpractice.

3 MR. PESCI: Was that here in town?

4 PROSPECTIVE JUROR NO. 068: Yes.

5 MR. PESCI: And in the non-federal case, what was
6 that one about?

7 PROSPECTIVE JUROR NO. 068: It was forgery.

8 MR. PESCI: Forgery. Was that here in with the
9 County, as opposed to federal?

10 PROSPECTIVE JUROR NO. 068: Yes.

11 MR. PESCI: Either time were you the foreperson?

12 PROSPECTIVE JUROR NO. 068: No.

13 MR. PESCI: And generally your experience -- I think
14 you said that you enjoyed it, it was a good thing.

15 PROSPECTIVE JUROR NO. 068: It was interesting.

16 MR. PESCI: Interesting. It may not be the best use
17 of time, but it's interesting?

18 PROSPECTIVE JUROR NO. 068: Well, no. It's to
19 find out how the system works and, you know, we've always been
20 told it's our civic duty. So, yeah, interesting.

21 MR. PESCI: Okay. I think you said you took some
22 criminal justice classes in college.

23 PROSPECTIVE JUROR NO. 068: I took one semester
24 years ago.

25 MR. PESCI: Nothing since then?

1 PROSPECTIVE JUROR NO. 068: No.

2 MR. PESCI: You've indicated that there was some
3 experience with your family with the criminal justice system
4 and that you felt that the way it was handled was appropriate.
5 Is that accurate?

6 PROSPECTIVE JUROR NO. 068: Yes.

7 MR. PESCI: Okay. Do you hold any ill will towards
8 the State of Nevada? Were we the prosecuting agency?

9 PROSPECTIVE JUROR NO. 068: Yes. No ill will. I
10 mean, they deserve what they did.

11 MR. PESCI: Okay. And then as far as the death
12 penalty goes, I believe your indication was -- is that you can
13 consider all the different possible punishments, including the
14 death penalty.

15 PROSPECTIVE JUROR NO. 068: I could. I don't really
16 have an opinion one way or the other at this point.

17 MR. PESCI: Right. You wouldn't automatically vote
18 for it or against it?

19 PROSPECTIVE JUROR NO. 068: No.

20 MR. PESCI: All right. We'll pass for cause.

21 THE COURT: All right. Thank you.

22 Defense, you may question Potential Juror Number 11.

23 MR. BUNIN: Good afternoon.

24 PROSPECTIVE JUROR NO. 068: Hello.

25 MR. BUNIN: I'm also hungry.

1 THE COURT: Well, I'm hungry, too. And we will be
2 taking a break in a few minutes.

3 MR. BUNIN: You know, have you thought much about the
4 death penalty before you were faced with this questionnaire
5 recently?

6 PROSPECTIVE JUROR NO. 068: No.

7 MR. BUNIN: Never something you debated with anybody
8 or considered from, I don't know, watching a news program or a
9 radio or TV show, anything like that?

10 PROSPECTIVE JUROR NO. 068: No.

11 MR. BUNIN: Have you thought about it since you
12 received this, which has been about a week?

13 PROSPECTIVE JUROR NO. 068: No.

14 MR. BUNIN: No? All right. You have a fresh mind.

15 You know, do you believe it's something that you
16 could impose if a person was found guilty of first degree
17 murder?

18 PROSPECTIVE JUROR NO. 068: I believe I could listen
19 to and discuss with everyone and -- yes.

20 MR. BUNIN: Do you agree that all four possibilities
21 if a person's convicted of first degree murder, a long term of
22 years, life with the possibility of parole, life without, and
23 death are all legitimate options?

24 PROSPECTIVE JUROR NO. 068: Yes.

25 MR. BUNIN: Are there any of those options that you

1 would just discard saying, that one's just not appropriate?

2 PROSPECTIVE JUROR NO. 068: No.

3 MR. BUNIN: Do you -- well, let's talk about some of
4 the things you would consider if a person is convicted of
5 first degree murder. Do you believe -- we asked about this in
6 the questionnaire -- that there are mitigating factors that
7 are legitimate to take into consideration of a person who's
8 convicted of a crime? And by mitigating factors I mean things
9 in his background that might help explain and, you know, tell
10 you who he is, and then maybe you would take that into
11 consideration in determining if he should get the most severe
12 of the four options or the least severe of the four options?

13 PROSPECTIVE JUROR NO. 068: I believe there's that
14 possibility, there's mitigating circumstances.

15 MR. BUNIN: And by mitigating circumstances -- you
16 know, we listed a few in here. Do you think these are all
17 legitimate, such as the health of the person accused, the
18 mental status of a person accused, the age, childhood
19 experiences, his overall education, you know, maybe things
20 that he experienced when he was a kid or just naturally
21 whether or not he's a particularly intelligent person? Are
22 these all things that are legitimate to take into
23 consideration when you look at mitigation?

24 PROSPECTIVE JUROR NO. 068: I don't think all of them
25 are.

1 MR. BUNIN: Which ones don't you agree with?

2 PROSPECTIVE JUROR NO. 068: Well, I believe that
3 mental status would be a mitigating circumstances, or IQ could
4 be a mitigating circumstances, but the other ones no.

5 MR. BUNIN: Childhood experiences, maybe if a person
6 had an unstructured and very difficult childhood, is that
7 something that you would consider?

8 PROSPECTIVE JUROR NO. 068: I would talk with
9 everyone, and, you know, they could discuss it with me. But
10 off the top of my head, no.

11 MR. BUNIN: You don't think you can consider that at
12 all as a mitigating factor?

13 PROSPECTIVE JUROR NO. 068: Well, I could consider it
14 --

15 MR. BUNIN: Oh.

16 PROSPECTIVE JUROR NO. 068: ... with people discussing
17 it with me. I mean, you know, I could be persuaded, I
18 imagine. But off the top of my head, no. I mean, I wouldn't
19 automatically say that.

20 MR. BUNIN: Okay. You know, people discussing with
21 you, that's something I've asked a lot of jurors. I used to
22 call it the Friday question. I'm just kind of asking you
23 about your own personality. I call it the Friday question
24 because, you know, a lot of times jury trials end on a Friday
25 at 5:00 or 6:00 o'clock, everybody kind of wants to go home,

1 but the judge says, go back and deliberate and do your best.
2 And let's -- a situation a couple hours into it where you
3 disagree with most people in the room and you're feeling a lot
4 of pressure to change your mind. Are you the type of
5 personality that would kind of go with the flow just to get
6 the thing done if 10 or 11 people were -- really disagreed
7 with you anyway, or are you the type of person who would only
8 change your mind if you personally felt it was appropriate to
9 change?

10 PROSPECTIVE JUROR NO. 068: No. I -- it would have
11 to be my -- my idea.

12 MR. BUNIN: Okay.

13 PROSPECTIVE JUROR NO. 068: I couldn't be talked into
14 that. This is a person's life.

15 MR. BUNIN: Appreciate that. And we asked a question
16 kind of similar to that on the questionnaire here about if you
17 have a strong personality. But, you know, I was -- people to
18 think the through, because it is a hard thing, I guess, if 11
19 people are saying, come on, we all disagree with you, we want
20 to go home, we don't want to come back Monday, just please
21 come our way, you're not the person that would ever be
22 pressured by that sort of argument anyway?

23 PROSPECTIVE JUROR NO. 068: No. Because it's
24 someone's life. I mean, I think I would take that pretty
25 seriously.

1 MR. BUNIN: You know, I was talking a minute ago
2 about credibility and how you judge credibility of people that
3 testify. Have you ever had to judge people's credibility
4 before?

5 PROSPECTIVE JUROR NO. 068: Just in the two juries I
6 served in.

7 MR. BUNIN: Oh, I guess so. Well, the things that I
8 discussed with Mr. Sleeter -- that's one I can remember the
9 name -- do you think those were -- would you agree with things
10 we talked about, the general demeanor on the stand,
11 consistency of statements on the stand, you know, ability to
12 remember what occurred, or incentive to maybe say certain
13 things are all legitimate factors to consider when weighing
14 credibility?

15 PROSPECTIVE JUROR NO. 068: Yes.

16 MR. BUNIN: Did you find it difficult to weigh
17 people's credibility when you were a juror in other cases?

18 PROSPECTIVE JUROR NO. 068: No.

19 MR. BUNIN: No? It's something you're comfortable
20 doing?

21 PROSPECTIVE JUROR NO. 068: Yes.

22 MR. BUNIN: All right. And then, you know, I don't
23 want to get back into it in a lot of detail right now,
24 partially the hunger factor, but we will get back into it for
25 sure later. But do you think race is a legitimate issue for

1 the defense to be concerned about?

2 PROSPECTIVE JUROR NO. 068: I think they should be
3 concerned about it. I'm not.

4 MR. BUNIN: It's not an issue for you?

5 PROSPECTIVE JUROR NO. 068: Not for me.

6 MR. BUNIN: If you were in the jury room and a juror
7 was using race as an issue, is that -- what would you do in a
8 situation like that?

9 PROSPECTIVE JUROR NO. 068: I would try to take race
10 off the table. I mean, it shouldn't be a circumstance.

11 MR. BUNIN: Okay. And to you does it make the crime
12 -- is it any more or less serious because the person who died
13 is white and the person who's being charged with the crime is
14 black?

15 PROSPECTIVE JUROR NO. 068: No.

16 MR. BUNIN: Okay. For you you feel no prejudice at
17 all, you don't think --

18 PROSPECTIVE JUROR NO. 068: I work in a very diverse
19 industry, deal with a lot of different people, so --

20 MR. BUNIN: Okay. We'll probably into more detail on
21 that later. But I appreciate your answers.

22 I'll pass.

23 THE COURT: All right. Thank you, Mr. Bunin.

24 At this point in time we're going to go ahead and
25 excuse from this department the following people. Officer

1 Wooten will give additional instruction at the doorway. Badge
2 Number 25, Mr. Yeung; Badge Number 32, Ms. Eaves; Badge Number
3 78, Mr. Bates; Badge Number 49, Ms. Wright; Badge Number 54,
4 Mr. Pedrola. And Badge Number 67, Mr. Briggs. Officer Wooten
5 will give you instruction at the door.

6 For the rest of us, we're going to go ahead and take
7 our lunch break at this time. Before I excuse the rest of you
8 for the lunch break, a couple of things I must tell you.

9 First of all, obviously you haven't heard any
10 evidence or any testimony in this case. However, you have
11 heard discussion about what the case is about. During our
12 lunch break please don't discuss anything that's transpired in
13 the courtroom with each other or with anyone else. "Anyone
14 else" would include members of your family and your friends.
15 You may, of course, tell them that you are participating in
16 jury selection in a criminal jury trial, but please do not
17 discuss anything else relating to this case.

18 Additionally, do not read, watch, listen to any
19 reports of or commentaries on any subject matter relating to
20 the trial, don't do any independent research by way of the
21 Internet or any other medium. Obviously don't visit the
22 location of the Palomino Club during our lunch break, and
23 please don't do anything else to form or develop an opinion on
24 any matter relating to this trial.

25 One final thing. Court personnel, other than the

1 bailiff, and the attorneys, the parties are precluded from
2 speaking directly with members of the jury until the case is
3 completely over. So, should you see one of these people in
4 the hallway or the elevator during the break, please don't
5 think that they're being unfriendly or antisocial. They are
6 precluded by the law and the rules of ethics from
7 communicating or speaking to the members of the jury.

8 We're going to be in recess for an hour. We'll take
9 until 1:25. If anyone has any questions regarding where to
10 meet or anything like that, please direct those questions to
11 Officer Wooten in the hallway.

12 Also, if everyone would please remember where they
13 are seated. You do need to take those seats again when we
14 return from the lunch break.

15 Did you want to know if you could leave --

16 PROSPECTIVE JUROR NO. 066: Can we just leave our
17 stuff here?

18 THE COURT: Yes. If anyone has any personal
19 property, they can leave it in the courtroom. The courtroom
20 will be secured during the lunch break.

21 Having said that, I need all of the prospective
22 jurors to please exit and follow Officer Wooten through the
23 double doors.

24 (Prospective jurors recessed at 12:26 p.m.)

25 THE COURT: Sue, we have what, five qualified? All

1 right. I just need to put on the record that all of the for
2 cause challenges from the defense, and I think there was one
3 for the State, were granted.

4 Additionally, with respect to Potential Juror Number
5 49, the defense had a concern based on her responses that she
6 was not completely familiar sufficiently with English. So
7 based on that conversation at the bench I did excuse her at
8 the defense's request.

9 Does that comport with everyone's recollection?

10 MR. PESCI: Yes.

11 MR. BUNIN: Yes.

12 THE COURT: Okay. Just a housekeeping matter. We
13 have the remainder of the jurors coming back at 12:30 [sic],
14 I'm assuming. Well, I have to let them eat. We're going to
15 take -- we're all going to take our lunch now. What I wanted
16 to do, there's no room for them anyway, finish with almost
17 everybody in here until we get to the ones we had put on the
18 end for hardship and whatnot. Just also to put that on the
19 record, we all agreed in the hallway for those people to be
20 excused or placed at the end due to hardship issues. So when
21 we get through more, then we'll break, send those people out,
22 and we'll have to bring the new ones in and do our speech and
23 all of that with them. But, I don't know, maybe we'll get
24 really lucky and --

25 MR. PESCI: Judge, if I could --

1 MR. DiGIACOMO: I'm surprised at how far we've gone,
2 actually.

3 THE COURT: Well, you guys are doing really great in
4 terms of focusing right on the issues and everything. I think
5 that's why we've gotten as far as we have.

6 Yes.

7 MR. PESCI: If I can really fast, Juror Number 66,
8 Mr. I think it's Melonson --

9 THE COURT: Right.

10 MR. PESCI: -- as he was walking out he said to me
11 that 718 is TNT.

12 MR. DiGIACOMO: He's got Cox Cable apparently.

13 MR. PESCI: So just wanted to --

14 THE COURT: Oh.

15 MR. BUNIN: I know it is. That's where I watch
16 basketball, too. He's exactly right.

17 MR. PESCI: He just said that. I wanted everybody to
18 know that, and I just shook my head, and that's the end of
19 that.

20 THE COURT: Okay. All right. Well, maybe they think
21 they can talk to you if it's not in the hallway or in the
22 elevator.

23 All right. Go to lunch. You guys can leave your
24 stuff spread out. The courtroom's locked.

25 (Court recessed at 12:29 p.m., until 1:38 p.m.)

1 THE COURT: I just need to inform everyone my
2 bailiff, when we took the lunch break, observed a juror
3 crying. He asked her what was wrong. Her dog died. She had
4 called her mother and learned that her dog had died. And then
5 Jeff asked her, well, are you going to be okay, do we need you
6 to come back. She said, no, she would be okay. But if you
7 guys see someone crying --

8 It was Juror No. 114?

9 THE MARSHAL: 217, McNicholas.

10 THE COURT: Juror No. 217, McNicholas. If you see
11 her crying, I wanted you to know it has nothing to do with the
12 case. It's just because of the dog.

13 MR. BUNIN: And I guess it's worth saying that as we
14 were going to the elevators, the person that was in the
15 electricians union, the IBEW --

16 THE COURT: Right.

17 MR. BUNIN: -- looked at me and asked how I'm doing
18 right after you admonished him. And I just kind of looked
19 down and didn't say anything and that was the end of it.

20 THE COURT: Okay. I'll just remind them again.

21 MR. BUNIN: Sure.

22 MR. DiGIACOMO: That is the electrician issue? No,
23 no, no.

24 THE COURT: Yeah, he's -- we put him at the end.

25 MR. BUNIN: We put him at the end anyway.

1 MR. DiGIACOMO: Oh, okay.

2 THE COURT: Yeah, he's at the end anyway.

3 MR. DiGIACOMO: 217, dog died. Oh, that's sad.

4 THE COURT: McNicholas was crying in the hallway, and
5 then crying down to the cafeteria.

6 MR. PESCI: I can give her dog. Would that make her
7 happy?

8 THE MARSHAL: Are we ready for the jury, Your Honor?

9 THE COURT: Is everybody ready?

10 Yeah.

11 THE MARSHAL: Jury is coming in.

12 (Prospective jury panel enters at 1:40 p.m.)

13 THE COURT: All right. Court is now back in
14 session. The record will reflect the presence of the State
15 through the deputy district attorneys, the presence of the
16 defendant and his counsel, the officers of the court, and the
17 members of the prospective jury panel.

18 And the State may question the prospective juror in
19 chair No. 12.

20 MR. DiGIACOMO: Thank you, Judge.

21 Is it Ms. Tripp?

22 PROSPECTIVE JUROR NO. 071: Fripp.

23 MR. DiGIACOMO: Fripp. You indicated in your
24 questionnaire that you're a legal assistant in a personal
25 injury law firm. What does that mean you do all day? What do

1 you do?

2 PROSPECTIVE JUROR NO. 071: Oh, that was ten years
3 ago.

4 MR. DiGIACOMO: Oh, ten years ago.

5 PROSPECTIVE JUROR NO. 071: Yeah.

6 MR. DiGIACOMO: So you don't currently work for a law
7 firm?

8 PROSPECTIVE JUROR NO. 071: No. No.

9 MR. DiGIACOMO: Nothing about that experience,
10 obviously, would be relevant in this courtroom?

11 PROSPECTIVE JUROR NO. 071: Absolutely not.

12 MR. DiGIACOMO: Okay. There was a lot of questions
13 in here that led into the criminal justice system, and like
14 many people you probably haven't really had much contact with
15 it. Is that a fair characterization?

16 PROSPECTIVE JUROR NO. 071: Yes.

17 MR. DiGIACOMO: Okay. And so when you're asked
18 certain questions about like the death penalty, you indicated,
19 well, basically I hadn't thought about it so I don't know
20 where I stand. Have you thought about it all since the time
21 you filled this out?

22 PROSPECTIVE JUROR NO. 071: I mean, I've thought
23 about it before, just in -- you know, if I was watching some
24 show, Lock Up or something like that, and thought about it
25 before, had some conversations here and there, but never

1 really -- not really.

2 MR. DiGIACOMO: Okay. Do you think you believe in
3 the death penalty as a form of punishment?

4 PROSPECTIVE JUROR NO. 071: Yeah.

5 MR. DiGIACOMO: Do you think that if you were to sit
6 here throughout a couple of weeks and listened to the evidence
7 first, and if we got through the guilt phase and found Mr.
8 Carroll guilty, do you think you could sit and judge the
9 evidence and decide on a punishment for him?

10 PROSPECTIVE JUROR NO. 071: Absolutely.

11 THE RECORDER: Ma'am, could you hold the microphone
12 up, please.

13 MR. DiGIACOMO: You had also indicated, like many
14 people, that you think maybe life without the possibility of
15 parole is worse than the death penalty.

16 PROSPECTIVE JUROR NO. 071: Yes.

17 MR. DiGIACOMO: Why, for you, do you think that?

18 PROSPECTIVE JUROR NO. 071: Because I think death is
19 pretty quick, and I believe that if somebody is sitting in
20 jail for a long time, and if they're like any human being
21 would think about what -- I think it -- it gives them time to
22 think about what they've done, you know, more time to reflect
23 on what they did and what their crime was.

24 MR. DiGIACOMO: And that's a common refrain from lots
25 of jurors, in fact.

1 PROSPECTIVE JUROR NO. 071: Uh-huh.

2 MR. DiGIACOMO: As a matter of fact, another juror
3 said that earlier.

4 PROSPECTIVE JUROR NO. 071: Yes.

5 MR. DiGIACOMO: Would you agree with that other juror
6 that, you know, there are some people that don't have a
7 conscience and maybe they wouldn't sit around thinking about
8 it for the rest of their lives?

9 PROSPECTIVE JUROR NO. 071: Yeah.

10 MR. DiGIACOMO: Do you think maybe for that type of
11 person the death penalty might be worse than life without the
12 possibility of parole?

13 PROSPECTIVE JUROR NO. 071: Yeah.

14 MR. DiGIACOMO: That pretty much covers my questions.
15 Is there anything that any of us have asked that you felt --
16 either side asked of any of the other jurors that you think
17 might be important to tell us?

18 PROSPECTIVE JUROR NO. 071: I honestly can't
19 remember.

20 MR. DiGIACOMO: Okay. Good answer. Let me ask you
21 this. Do you think you're a fair person?

22 PROSPECTIVE JUROR NO. 071: Absolutely.

23 MR. DiGIACOMO: Do you think if you were accusec. of a
24 crime you'd want 12 people with your state of mind sitting on
25 a jury deciding whether or not you had or had not committed

1 the crime?

2 PROSPECTIVE JUROR NO. 071: Yes.

3 MR. DiGIACOMO: Thank you very much.

4 Judge, we pass for cause.

5 THE COURT: Thank you.

6 Mr. Ericsson.

7 MR. ERICSSON: Thank you, Your Honor.

8 THE COURT: You may follow up.

9 MR. ERICSSON: Good afternoon, ma'am.

10 PROSPECTIVE JUROR NO. 071: Hello.

11 MR. ERICSSON: You've indicated in your responses to
12 the questionnaire that you could consider all four of the
13 potential sentences in a -- if you were to find Mr. Carroll
14 guilty of first degree murder; is that right?

15 PROSPECTIVE JUROR NO. 071: Yes.

16 MR. ERICSSON: And I want to make -- just follow up
17 on that a little bit. If -- if you were to find him guilty of
18 a murder that was premeditated and intentional, that there
19 wasn't accidental or any type of self-defense or anything like
20 that, would you -- would you still be able to find -- would
21 you still be able to consider all four of the options?

22 PROSPECTIVE JUROR NO. 071: Yes, depending on the
23 evidence that was shown.

24 MR. ERICSSON: You -- you've heard some questions
25 earlier this morning about -- about mitigation. And that was

1 one of the questions you answered in the questionnaire as to
2 whether you would be able to listen if there were a penalty
3 phase to the mitigation issues such as intelligence level or
4 background or other things like that. And you indicated that
5 you would be able to consider those in coming to a decision as
6 to the appropriate penalty. Is that still your -- your
7 feeling on that issue?

8 PROSPECTIVE JUROR NO. 071: Yes.

9 MR. ERICSSON: Do you have any -- any concerns that
10 you would have difficulty in holding the prosecutors to their
11 burden of proof in a case like this, that they would have to
12 prove every element of the charges beyond a reasonable doubt?

13 PROSPECTIVE JUROR NO. 071: No.

14 MR. ERICSSON: And lastly, we're limited in to really
15 knowing exactly how a person feels and, like I said earlier,
16 we are just trying to find people who are appropriate for this
17 type of very serious case. Do you feel that -- that you have
18 the proper frame of mind and prospective to be able to be
19 completely fair to both Mr. Carroll and the prosecution in a
20 case like this?

21 PROSPECTIVE JUROR NO. 071: Yes.

22 MR. ERICSSON: Thank you very much.

23 I would pass for cause.

24 THE COURT: All right. Thank you.

25 Ms. Husted, please call up the next six prospective

1 jurors.

2 THE CLERK: Badge No. 81, Michael Redondo in seat
3 one.

4 Badge No. 82, William Hartfield in seat two.

5 Badge No. 92, Sharon Overton in seat three.

6 Badge No. 19 -- I'm sorry. Badge No. 120, Valerie
7 Keith in seat five.

8 Badge No. 125, Tammy Cottam in seat six.

9 And badge 126. Gloria Torres-Gamboa in seat ten.

10 THE COURT: Ma'am, I need you in that empty seat
11 there in the middle.

12 All right. The State may question the juror in chair
13 No. 1.

14 MR. DiGIACOMO: Mr. Redondo?

15 THE RECORDER: Excuse me. Did they pass the
16 microphone down?

17 THE COURT: Yes, he has it.

18 PROSPECTIVE JUROR NO. 081: I have it.

19 THE RECORDER: Thank you.

20 MR. DiGIACOMO: Sir, it indicates that you're a
21 production tech and that you fill canisters with various types
22 of industrial gases. What's it -- what's it used for?

23 PROSPECTIVE JUROR NO. 081: It's used for industrial
24 uses, medical uses, and specialty gases.

25 MR. DiGIACOMO: Do you have any specialized training

1 or experience that allows you to do that or --

2 PROSPECTIVE JUROR NO. 081: Yes.

3 MR. DiGIACOMO: Okay. What is that?

4 PROSPECTIVE JUROR NO. 081: Hazmat training and also
5 training throughout the company.

6 MR. DiGIACOMO: Not a lot of other questions I'm
7 going to ask you. I just want to go a little bit through your
8 questionnaire just because we ask so many questions in so many
9 different ways. So let me start first with jury service. You
10 were previously on a jury?

11 PROSPECTIVE JUROR NO. 081: Yes.

12 MR. DiGIACOMO: Was it here or was it in another
13 state?

14 PROSPECTIVE JUROR NO. 081: In California.

15 MR. DiGIACOMO: In California. Do you remember if it
16 was criminal or civil?

17 PROSPECTIVE JUROR NO. 081: Criminal.

18 MR. DiGIACOMO: And do remember the type of charge?

19 PROSPECTIVE JUROR NO. 081: Yes.

20 MR. DiGIACOMO: What was it?

21 PROSPECTIVE JUROR NO. 081: Rape.

22 MR. DiGIACOMO: Okay. And without telling us what
23 the result was, did you wind up in the back room and
24 deliberate?

25 PROSPECTIVE JUROR NO. 081: Yes.

1 MR. DiGIACOMO: And were you the foreperson of the
2 jury?

3 PROSPECTIVE JUROR NO. 081: No.

4 MR. DiGIACOMO: Did you guys reach a result?

5 PROSPECTIVE JUROR NO. 081: Yes.

6 MR. DiGIACOMO: You indicated that you thought, you
7 know, jury service was your civic duty. Did you find that to
8 be a positive experience in California, or a negative
9 experience?

10 PROSPECTIVE JUROR NO. 081: Positive.

11 MR. DiGIACOMO: My only other questions center on the
12 death penalty. And I think it's pretty clear. You basically
13 say in certain cases it's appropriate, and certain cases it's
14 not.

15 PROSPECTIVE JUROR NO. 081: Correct.

16 MR. DiGIACOMO: At the end of the day after you hear
17 all the evidence, can you weigh all four possible punishments
18 against Mr. Carroll and make the decision between those four
19 punishments?

20 PROSPECTIVE JUROR NO. 081: Yes.

21 MR. DiGIACOMO: Do you think you'd be a fair juror?

22 PROSPECTIVE JUROR NO. 081: Yes.

23 MR. DiGIACOMO: Thank you very much, sir.

24 Judge, I pass for cause.

25 THE COURT: All right. Thank you.

1 Mr. Bunin.

2 MR. BUNIN: Thank you.

3 Good afternoon, Mr. Redondo.

4 PROSPECTIVE JUROR NO. 081: Good afternoon.

5 MR. BUNIN: I want to talk about a few things before
6 we talk about penalty phase, what I talked about with some
7 other jurors and just see what your thoughts are. And, you
8 know, I kind of asked this question of one of the other
9 prospective jurors, but as Deangelo sits here today, is he
10 considered guilty?

11 PROSPECTIVE JUROR NO. 081: I don't know.

12 MR. BUNIN: And, again, you understand that the
13 prosecutors in this case are the only ones that have a burden
14 of proof, meaning they're obligated to show beyond a
15 reasonable doubt each and every element of the crimes charged
16 or you must find not guilty. That'll be the rule. Do you
17 understand?

18 PROSPECTIVE JUROR NO. 081: Yes.

19 MR. BUNIN: And it -- at this point they've provided
20 no evidence. So would you agree that at least at this point,
21 hearing no evidence, Deangelo would be presumed innocent?

22 PROSPECTIVE JUROR NO. 081: Yes.

23 MR. BUNIN: Do you believe that? I mean, as you sit
24 here -- because maybe I'm wrong, but I see a little
25 hesitation. You're a poker room -- are you a dealer or are

1 you a manager?

2 PROSPECTIVE JUROR NO. 081: No, my wife is.

3 MR. BUNIN: Oh, your wife is. I'm sorry. I read it
4 wrong. [indecipherable]. But as you sit here today, do you
5 believe you can look at Deangelo and say he is absolutely
6 innocent and believe that until such a time occurs, if it ever
7 occurs, could the State prove beyond a reasonable doubt the
8 elements of the crime? Or do you believe that because he's
9 here he must be guilty of something?

10 PROSPECTIVE JUROR NO. 081: No, I believe you're
11 innocent until proven guilty.

12 MR. BUNIN: Okay. Do you absolutely believe that?

13 PROSPECTIVE JUROR NO. 081: Yes, I do.

14 MR. BUNIN: And you can look at him right now and
15 honestly say this is an innocent person and until the State
16 proves, if they ever do, you will find him not guilty?

17 PROSPECTIVE JUROR NO. 081: Yes.

18 MR. BUNIN: Could you do that without hesitation if
19 you didn't believe the State proved beyond a reasonable doubt
20 each and every element of the crime that he is not guilty?

21 PROSPECTIVE JUROR NO. 081: Yes.

22 MR. BUNIN: Okay. And, again, along that same theme,
23 how would you feel if Deangelo did not testify at trial?

24 PROSPECTIVE JUROR NO. 081: It wouldn't matter to me.

25 MR. BUNIN: And, you know, this is a decision that

1 Deangelo makes at the conclusion of the State's case with
2 advice from Tom and myself. But if the State goes through
3 their entire case and the defense believes they didn't prove
4 beyond a reasonable doubt the elements, we may make a
5 strategic decision and say there's no reason to put on
6 evidence. Is that something that you're okay with, or would
7 you as a juror be upset when you go back in the deliberation
8 room and you saw no evidence from the defense?

9 PROSPECTIVE JUROR NO. 081: No, I'd be okay with
10 that.

11 MR. BUNIN: And you understand under the rules it's
12 just absolutely clear that the defense has no obligation
13 whatsoever to put on any evidence if they choose not to?

14 PROSPECTIVE JUROR NO. 081: Yes.

15 MR. BUNIN: And you're okay with that?

16 PROSPECTIVE JUROR NO. 081: Yes.

17 MR. BUNIN: There were a couple things we haven't
18 talked about, is you're going to hear evidence in this case,
19 and part of the evidence is going to have to do with a gun and
20 a gunshot wound. You know, do you have any personal
21 experiences with people that own or use guns that will affect
22 your ability to be fair in a case like this?

23 PROSPECTIVE JUROR NO. 081: No.

24 MR. BUNIN: You're also going to hear -- and I want
25 everybody to think about this because I'll ask others as we

1 move along during the day. But you're going to hear
2 allegations that people involved in this case were possibly
3 using drugs or alcohol. Do you have personal experiences of
4 family or people you know or whoever that -- that affect your
5 ability to be fair if you hear that certain people in this
6 case may have used drugs or alcohol?

7 PROSPECTIVE JUROR NO. 081: No.

8 MR. BUNIN: It wouldn't bother you at all?

9 PROSPECTIVE JUROR NO. 081: No.

10 MR. BUNIN: Nothing that would affect you?

11 PROSPECTIVE JUROR NO. 081: No.

12 MR. BUNIN: Okay. Let's talk a little bit about the
13 penalty phase. And I - I will keep repeating that I hate the
14 fact that I have to talk about the penalty phase, but I'm
15 going to do it at least one more time right now. I'm talking
16 about it because we have to. We're obligated to. Do you
17 understand?

18 PROSPECTIVE JUROR NO. 081: Yes.

19 MR. BUNIN: And, you know, I have no other
20 opportunity to speak to anybody in the panel, so this is our
21 one chance to talk to you. But we firmly believe that
22 Deangelo is not guilty and we're never going to get to a
23 penalty phase. This is just something we're obligated to do.
24 Is that fair game that we're going to talk about this?

25 PROSPECTIVE JUROR NO. 081: Yes.

1 MR. BUNIN: Okay. Have you ever thought much about
2 the death penalty before?

3 PROSPECTIVE JUROR NO. 081: No.

4 MR. BUNIN: Do you believe in the death penalty? Is
5 it something that we should have as a policy?

6 PROSPECTIVE JUROR NO. 081: I don't --

7 MR. BUNIN: No real answer?

8 PROSPECTIVE JUROR NO. 081: No real answer. I just
9 don't -- I've just never thought about it.

10 MR. BUNIN: Okay. You didn't -- I know it's been
11 about a week since you filled this out.

12 PROSPECTIVE JUROR NO. 081: Yeah.

13 MR. BUNIN: Did you sit and think about it a little
14 bit, or did you just fill it out as best you could and didn't
15 really [inaudible]?

16 PROSPECTIVE JUROR NO. 081: Well, I haven't thought
17 about it, and I don't think I will think about it until after
18 the case is over.

19 MR. BUNIN: All right. Do you agree -- are you okay
20 with the law when it says if a person is convicted of first
21 degree murder, there are four choices that all must be
22 considered as legitimate choices?

23 PROSPECTIVE JUROR NO. 081: Yes.

24 MR. BUNIN: And you're okay with every one of those
25 choices?

1 PROSPECTIVE JUROR NO. 081: Yes.

2 MR. BUNIN: Are you the type of person that would
3 consider a term of years or life for a person that's been
4 convicted of premeditated murder, first degree murder?

5 PROSPECTIVE JUROR NO. 081: Yes.

6 MR. BUNIN: Would you also consider the death penalty
7 as an option?

8 PROSPECTIVE JUROR NO. 081: Yes.

9 MR. BUNIN: Do you think that there are -- well,
10 let's talk about how you evaluate that sort of thing. I know
11 you've never really thought about it before, most people never
12 would. Most people would never be in a situation where they
13 made this type of impact. You know, the law essentially is
14 saying there is four options, and some options some people
15 believe are worse than others. I would submit that death is
16 probably the worst option, although a lot of people think that
17 life without might be the worst option. And then, you know,
18 the best option, I suppose, would be a term of years, 40 years
19 to 100 years, or life with the possibility of parole, 40 to
20 life. But they're all -- would you agree those are all pretty
21 substantial punishments?

22 PROSPECTIVE JUROR NO. 081: Yes.

23 MR. BUNIN: Now, what the law essentially is saying
24 is everybody treated -- I mean, everybody convicted of first
25 degree murder is not to be treated the same way. There are

1 different grades of people that commit first degree murder.
2 So you have to evaluate the person to determine if he falls in
3 what you believe are the worst or the -- the least of those
4 four categories. Is that something you're comfortable doing?

5 PROSPECTIVE JUROR NO. 081: Yes.

6 MR. BUNIN: And we ask you in this questionnaire, in
7 order to do that you have to listen to the prosecution, and
8 they're going to argue about aggravated factors or they're
9 going to give you reasons that they have to prove beyond a
10 reasonable doubt outweigh any mitigating factors that the
11 defense will argue. And unless the prosecution does that, the
12 law says you would pick some sort of life choice. Do you
13 agree with that law?

14 PROSPECTIVE JUROR NO. 081: Yes.

15 MR. BUNIN: Is that something you could do without
16 hesitation where you listen to all the arguments and in the
17 end you conclude the prosecution did not show beyond a
18 reasonable doubt the aggravators outweigh the mitigators, I
19 saw some reasonable doubt, therefore I must decline? Could
20 you do that without hesitation?

21 PROSPECTIVE JUROR NO. 081: Yes.

22 MR. BUNIN: And obviously you are, you said that you
23 could pick the death penalty if you believe the opposite is
24 true?

25 PROSPECTIVE JUROR NO. 081: Yes.

1 MR. BUNIN: And then mitigating factors, they listed
2 some in this questionnaire. Do you believe these are all
3 legitimate things to look at when considering what the -- and
4 by these I mean some of the things we listed, the age of the
5 defendant, mental health issues, family environment, how the
6 person was raised, you know, potential allegations of abuse,
7 or a non-structured family environment. Are those all things
8 that are legitimate to consider when deciding how to punish
9 somebody for committing a crime?

10 PROSPECTIVE JUROR NO. 081: Yes, I'd have to listen
11 to all the evidence and facts to make a decision on that.

12 MR. BUNIN: And you would weigh all of them before
13 you made a decision?

14 PROSPECTIVE JUROR NO. 081: Yes, I would.

15 MR. BUNIN: Do you want to be on this jury?

16 PROSPECTIVE JUROR NO. 081: You know, it doesn't
17 really matter to me. If I get chosen, I get chosen. It's
18 just I feel like it's a duty as a civilian to be here.

19 MR. BUNIN: I'll pass for cause, Your Honor.

20 THE COURT: All right. Thank you.

21 The State may question the potential juror in chair
22 No. 2, Mr. Hartfield.

23 MR. PESCI: Thank you.

24 Sir, what is your exact position at UMC? You're a
25 manager?

1 PROSPECTIVE JUROR NO. 082: Security supervisor,
2 public safety.

3 MR. PESCI: Do you deal with or interact with Metro
4 or other police agencies within that job?

5 PROSPECTIVE JUROR NO. 082: Yes.

6 MR. PESCI: And you didn't recognize any of the names
7 that we read off?

8 PROSPECTIVE JUROR NO. 082: No.

9 MR. PESCI: The fact that you deal with them, would
10 that be something that would affect your ability to be fair to
11 both sides?

12 PROSPECTIVE JUROR NO. 082: No.

13 MR. PESCI: And if I've understood correctly, you
14 were actually a transit officer in D.C.?

15 PROSPECTIVE JUROR NO. 082: Yes.

16 MR. PESCI: And then after that security in --

17 PROSPECTIVE JUROR NO. 082: Detroit.

18 MR. PESCI: -- Detroit.

19 PROSPECTIVE JUROR NO. 082: Uh-huh.

20 MR. PESCI: So you have a lengthy history in law
21 enforcement?

22 PROSPECTIVE JUROR NO. 082: Yes.

23 MR. PESCI: Okay. Let's just kind of cut to the
24 chase. Should they be nervous if these -- if you were on the
25 jury?

1 PROSPECTIVE JUROR NO. 082: Maybe.

2 MR. PESCI: That's fair. Thank you. Well, let me --
3 let me ask you this, then. Kind of focus in with that in mind
4 towards the death penalty. Is it fair to say that you had
5 strong feelings about the death penalty?

6 PROSPECTIVE JUROR NO. 082: Yes.

7 MR. PESCI: And that you're in favor of the death
8 penalty?

9 PROSPECTIVE JUROR NO. 082: Yes.

10 MR. PESCI: And you've indicated actually on one of
11 these questions that you could consider all four possible
12 sentences?

13 PROSPECTIVE JUROR NO. 082: Yes.

14 MR. PESCI: So even though you might feel that you're
15 in favor of that penalty, you could consider life without the
16 possibility of parole or a fixed term of years or something
17 like 40 to life?

18 PROSPECTIVE JUROR NO. 082: Yes.

19 MR. PESCI: It would depend on the facts and
20 circumstances of the case?

21 PROSPECTIVE JUROR NO. 082: Yes.

22 MR. PESCI: All right. They might be concerned just
23 based on the fact that in other responses you said that
24 murderers should be prosecuted to the fullest extent of the
25 law. Does that mean that you automatically go with the death

1 penalty, or does that mean that you could consider the other
2 circumstances?

3 PROSPECTIVE JUROR NO. 082: Pretty much consider
4 other circumstances and the elements of the crime and the
5 preponderance of the evidence presented.

6 MR. PESCI: All right. There was -- there was
7 somebody, I think, in your family who was charged with a
8 crime; is that correct?

9 PROSPECTIVE JUROR NO. 082: Yes.

10 MR. PESCI: And then there was a question as to how
11 that affected your overall feelings of the -- of the system.
12 I didn't see an answer there. How did that affect your --

13 PROSPECTIVE JUROR NO. 082: It was my brother. He
14 committed some robberies in Detroit and he did some prison
15 time.

16 MR. PESCI: Do you feel that the system treated him
17 fairly?

18 PROSPECTIVE JUROR NO. 082: Yes.

19 MR. PESCI: Would you hold that against the State?

20 PROSPECTIVE JUROR NO. 082: No.

21 MR. PESCI: Would you hold it in some way against the
22 defense?

23 PROSPECTIVE JUROR NO. 082: No.

24 MR. PESCI: Do you think you could be fair to both
25 sides?

1 PROSPECTIVE JUROR NO. 082: Yes.

2 MR. PESCI: Pass for cause, Judge.

3 THE COURT: All right. Thank you.

4 The defense may question the juror in chair No. 2.

5 MR. ERICSSON: Thank you, Your Honor.

6 Good afternoon, sir.

7 PROSPECTIVE JUROR NO. 082: Good afternoon.

8 MR. ERICSSON: We all chuckled at your response of
9 should the defense be a little concerned about some of your
10 responses.

11 PROSPECTIVE JUROR NO. 082: Okay.

12 MR. ERICSSON: Is it -- there are some -- some
13 answers that you gave that I do want to go through because I'm
14 sure that you can appreciate the -- the position that -- that
15 we're in to make sure that we've got jurors who are the right
16 type for -- for this -- for this kind of case.

17 And you've -- I'll go to the last question. I'm
18 sorry, it's the second to the last question and your response.
19 And in that question you were asked is there anything that you
20 know about yourself or this case that would prevent you from
21 sitting as a fair and impartial juror? And you checked the
22 box, yes. And under your explanation you indicated police
23 security background.

24 That coupled with when you were asked if you believe
25 the death penalty should always be imposed if the defendant is

1 found guilty of intentional murder no matter what the
2 circumstance is, you checked yes on that box as well. Is --
3 is that an accurate reflection of your opinion?

4 PROSPECTIVE JUROR NO. 082: Yes.

5 MR. ERICSSON: And in question 38 you also -- you
6 checked that your beliefs about the death penalty are such
7 that you would automatically vote in favor of the death
8 penalty regardless of the facts and circumstances of the case.
9 And you checked yes in that box as well. Is that -- is that
10 still your opinion?

11 PROSPECTIVE JUROR NO. 082: Pretty much.

12 MR. ERICSSON: Thank you. And I appreciate your
13 honesty. This is a case that obviously is important to
14 everybody. Thank you, sir.

15 THE COURT: I want to clarify something. You're
16 standing between --

17 MR. ERICSSON: Sorry.

18 THE COURT: I couldn't see you. Because you -- your
19 answers were a little different, and maybe I just misheard you
20 between your first group of answers and sort of your second
21 group of answers. And there's no right or wrong answers
22 because we're talking about people's opinions and how they
23 feel, so it is what it is.

24 You said you could consider all four punishments, but
25 then later you said, no, I think that death is appropriate for

1 intentional, you know, first degree murder. Can you kind of
2 clarify just in your own words what your feelings are on the
3 subject? And, again, you know, there is no right or wrong
4 answer. We're just interested in finding out how people feel
5 about this.

6 PROSPECTIVE JUROR NO. 082: Pretty much as far as
7 murder goes, I think that the intentional killing of a person
8 that's premeditated with the wrong thought of mind or malice,
9 I think that I would have to rule for the death penalty. I
10 couldn't waiver on the fact about a person's background or
11 other mitigating circumstances. Because they knew exactly
12 what they were doing, I feel, at the time.

13 THE COURT: Okay. So you -- you think just based on
14 the crime, you think death is appropriate regardless of what
15 the mitigating circumstances might be such as some of the
16 things we've talked about, someone's background, their
17 intellectual or cognitive ability, their mental health
18 situation; is that what you're -- is that your opinion?

19 PROSPECTIVE JUROR NO. 082: Yes.

20 THE COURT: All right. Thank you.

21 Any other questions, Mr. Ericsson?

22 MR. ERICSSON: No, Your Honor.

23 THE COURT: All right. Thank you.

24 MR. ERICSSON: Your Honor, may we --

25 THE COURT: Yeah, you can approach.

1 (Off-record bench conference)

2 THE COURT: All right. I think Ms. Overton is next
3 in chair No. 3. And, State, you may question the prospective
4 juror in -- in chair No. 3.

5 MR. PESCI: Thank you, Judge.

6 Ma'am, when you worked in -- it was New York City in
7 corrections?

8 PROSPECTIVE JUROR NO. 092: I'm fine. How are you?

9 MR. PESCI: I got tissues for you, though.

10 PROSPECTIVE JUROR NO. 092: That's okay.

11 MR. PESCI: How are you, ma'am?

12 PROSPECTIVE JUROR NO. 092: I'm doing good. Thank
13 you.

14 MR. PESCI: May I ask you some questions?

15 PROSPECTIVE JUROR NO. 092: You may.

16 MR. PESCI: All right. Thank you. When you were
17 working in New York City in corrections, obviously you dealt
18 with a lot of other people in law enforcement; is that
19 correct?

20 PROSPECTIVE JUROR NO. 092: Exactly.

21 MR. PESCI: And if I understood you retired; was it
22 in 2006?

23 PROSPECTIVE JUROR NO. 092: Yes.

24 MR. PESCI: Did you move out here then?

25 PROSPECTIVE JUROR NO. 092: Yes.

1 MR. PESCI: Have you dealt with or had any
2 interaction with law enforcement people since then?

3 PROSPECTIVE JUROR NO. 092: Yes.

4 MR. PESCI: Do you maintain lots of contacts with
5 people from back home?

6 PROSPECTIVE JUROR NO. 092: Here and there, yes.

7 MR. PESCI: Okay. Do you think that you would
8 automatically believe what an officer says just because it's
9 an officer?

10 PROSPECTIVE JUROR NO. 092: Oh, no.

11 MR. PESCI: Okay. Would you automatically disbelieve
12 what an officer said because it's an officer?

13 PROSPECTIVE JUROR NO. 092: Just depends.

14 MR. PESCI: It just depends. Okay. You had -- you
15 talked about your feelings in the death penalty. And you
16 expressed that your -- it depends on the situation, but you're
17 not against the death penalty?

18 PROSPECTIVE JUROR NO. 092: No. No.

19 MR. PESCI: You're not against it?

20 PROSPECTIVE JUROR NO. 092: No.

21 MR. PESCI: Okay. But even with that, you did
22 indicate that you could consider all four possible forms of
23 punishment?

24 PROSPECTIVE JUROR NO. 092: Exactly.

25 MR. PESCI: And you would not automatically vote for

1 the death penalty?

2 PROSPECTIVE JUROR NO. 092: Oh, no.

3 MR. PESCI: Or automatically against the death
4 penalty?

5 PROSPECTIVE JUROR NO. 092: Oh, no.

6 MR. PESCI: Are there any questions that have been
7 asked of everyone else that you would like to answer that we
8 didn't get to?

9 PROSPECTIVE JUROR NO. 092: No.

10 MR. PESCI: And then if I could just really quickly,
11 you said that you think that the laws are not strict enough.

12 PROSPECTIVE JUROR NO. 092: Exactly.

13 MR. PESCI: Could you explain that a little bit?

14 PROSPECTIVE JUROR NO. 092: You want me to elaborate
15 on that?

16 MR. PESCI: A little bit, though.

17 THE COURT: Maybe not. No, I'm kidding.

18 PROSPECTIVE JUROR NO. 092: I just see the recidivism
19 rate is ridiculous.

20 MR. PESCI: With -- with that feeling, is it -- is it
21 such that they should be concerned that you would
22 automatically go with the harshest punishment because of the
23 fear of the recidivism?

24 PROSPECTIVE JUROR NO. 092: I'll put it to you like
25 this. How many times does it take for someone to get the

1 point or how many times does it take for someone to make a
2 point?

3 MR. PESCI: Okay. Do you feel as you'd be making a
4 point with your verdict?

5 PROSPECTIVE JUROR NO. 092: It depends on what's
6 presented before me.

7 MR. PESCI: So then your decision would be based on
8 the facts of this case and not any other situation?

9 PROSPECTIVE JUROR NO. 092: It's not what you know.
10 It's what you can prove.

11 MR. PESCI: All right. Would you hold us to our
12 standard?

13 PROSPECTIVE JUROR NO. 092: I sure would.

14 MR. PESCI: Thank you.

15 Pass for cause.

16 THE COURT: All right. Thank you.

17 Mr. Bunin.

18 MR. BUNIN: Good afternoon.

19 PROSPECTIVE JUROR NO. 092: Good afternoon.

20 MR. BUNIN: How are you?

21 PROSPECTIVE JUROR NO. 092: I'm wonderful; and
22 yourself?

23 MR. BUNIN: I feel safer right now. You know, I want
24 to cut right to one of the answers that you gave in your
25 questionnaire, and we really do appreciate -- the only wrong

1 answer you can give is one that's not honest.

2 PROSPECTIVE JUROR NO. 092: Uh-huh.

3 MR. BUNIN: Okay? Otherwise what we just need to
4 know are the honest answers, no matter what your opinion.
5 Like the Judge said, there's no right or wrong. Whatever your
6 opinion is, that's your opinion. It's on number -- somewhere
7 near the back, 36.

8 And here was the question, and it says do you believe
9 the death penalty should always be imposed if the defendant is
10 found guilty of intentional murder no matter what the
11 circumstances. And it looks like you underlined intentional
12 and then you checked the box yes; is that correct?

13 PROSPECTIVE JUROR NO. 092: Read that again.

14 MR. BUNIN: Do you -- want me to show it to you?
15 Would that help?

16 PROSPECTIVE JUROR NO. 092: Yeah. Yeah, because, you
17 know, that was the sixth, that was a long time ago for me.

18 MR. BUNIN: Okay. I'm showing No. 36 on page 11.

19 PROSPECTIVE JUROR NO. 092: Okay.

20 MR. BUNIN: On the very bottom of the page.

21 PROSPECTIVE JUROR NO. 092: No. 36, do you believe
22 the death penalty should always be imposed if defendant is
23 found guilty of intentional murder no matter what the
24 circumstances are?

25 MR. BUNIN: It looked to me like you underlined the

1 word intentional when you checked the box yes.

2 PROSPECTIVE JUROR NO. 092: Yeah, I had no -- it's a
3 sticky situation. That's a -- that's a trap question you ask
4 there.

5 MR. BUNIN: You know --

6 PROSPECTIVE JUROR NO. 092: It's not fair.

7 MR. BUNIN: We often try to ask not fair questions,
8 but not --

9 PROSPECTIVE JUROR NO. 092: That's not fair.

10 MR. BUNIN: -- not to you guys.

11 PROSPECTIVE JUROR NO. 092: Yeah, I really shouldn't
12 have answered that at all. I should've scribbled both of them
13 out.

14 MR. BUNIN: Okay. So --

15 PROSPECTIVE JUROR NO. 092: Because it's not fair.

16 MR. BUNIN: Well, why do you think that question is
17 not fair?

18 PROSPECTIVE JUROR NO. 092: Because it's all
19 extenuating circumstances. You say intentional. It's just
20 it's hard to say.

21 MR. BUNIN: Well, first degree murder --

22 PROSPECTIVE JUROR NO. 092: Uh-huh.

23 MR. BUNIN: -- is always intentional.

24 PROSPECTIVE JUROR NO. 092: Yes.

25 MR. BUNIN: So what we're asking you is if a person

1 is convicted of first degree murder, that's intentional
2 premeditated murder --

3 PROSPECTIVE JUROR NO. 092: Uh-huh.

4 MR. BUNIN: -- do you think that that person -- that
5 the death penalty should always be imposed?

6 PROSPECTIVE JUROR NO. 092: Back to, again, it just
7 depends.

8 MR. BUNIN: What does it depend on?

9 PROSPECTIVE JUROR NO. 092: Well, I believe a child
10 murderer, there shouldn't be no questions asked. That's a
11 done deal.

12 MR. BUNIN: Okay.

13 PROSPECTIVE JUROR NO. 092: I mean, it's just -- I --
14 I can't honestly answer that and give you a definite yes or
15 no. I'm not going to do that.

16 MR. BUNIN: Well, can you envision any circumstance
17 where a person is convicted of first degree murder that they
18 should not get the death penalty? And I'm just asking you
19 this based on your answers to these questions.

20 PROSPECTIVE JUROR NO. 092: Uh-huh. Uh-huh.

21 MR. BUNIN: So that I understand what your thoughts
22 are. Okay? So please don't -- I'm not trying to come after
23 you at all. I'm trying to --

24 PROSPECTIVE JUROR NO. 092: Oh, no.

25 MR. BUNIN: -- get your best answers. Can you

1 envision any scenario where a person can be convicted of
2 intentional first degree murder --

3 PROSPECTIVE JUROR NO. 092: I can think of a lot of
4 them.

5 MR. BUNIN: -- and you would not want to impose the
6 death penalty.

7 PROSPECTIVE JUROR NO. 092: Those I would, the ones
8 that I'm thinking of.

9 MR. BUNIN: Okay. And these are people that in your
10 mind committed intentional murder and there are certain
11 scenarios -- well, describe to me, then, some of the scenarios
12 that you --

13 PROSPECTIVE JUROR NO. 092: A gentleman threw an
14 infant out a window, a gentleman pushed a woman in front of a
15 train. That's intentional. I believe that.

16 MR. BUNIN: But you -- you're saying those scenarios
17 you would not want to impose the death --

18 PROSPECTIVE JUROR NO. 092: No, I would.

19 MR. BUNIN: You would.

20 PROSPECTIVE JUROR NO. 092: I would, yes.
21 Definitely.

22 MR. BUNIN: And I'm asking you if there's any
23 scenario of intentional killing where you would not want to
24 impose the death penalty, or if in your mind does first degree
25 murder mean death penalty, and then other types, maybe the

1 second degree, other types of murder you might learn about,
2 those are the ones that don't mean death penalty?

3 So what I'm asking you is is there any scenario in
4 first degree murder where you would not impose the death
5 penalty? You've given me a lot of scenarios where you would.
6 And like I said, there's no wrong answer unless it's not an
7 honest answer. The only one I'm looking for is your -- your
8 most honest answer.

9 PROSPECTIVE JUROR NO. 092: I could think of a couple
10 where I wouldn't impose the death penalty.

11 MR. BUNIN: And what do you mean by that?

12 MR. PESCI: Judge, I apologize. Can we approach?

13 THE COURT: Sure.

14 (Off-record bench conference)

15 THE COURT: I have like a bubble in my ear. That's
16 why I'm doing this. I'm echoing in my own head. Again, we're
17 talking -- it's kind of difficult because we ask these
18 questions and we haven't instructed anyone on the law, and the
19 five of us all are operating with one definition, and you may
20 or may not be operating with the same definition of some of
21 these terms that the five of us, meaning the lawyers, are
22 operating with.

23 By first degree murder we mean intentional,
24 deliberate, premeditated murder. Not murder itself, not some
25 kind of self defense or accidental killing or anything like

1 that. Those are not on the table. So I think what Mr. Bunin
2 is asking is are there cases where murder was intentional,
3 premeditated, where you think because of circumstances
4 surrounding the crime itself, or mitigating factors in the
5 defendant's background that the death penalty would not be
6 appropriate, that the appropriate penalty would be life
7 without the possibility of parole, or life with the
8 possibility of parole after a number of years have been
9 served? Can you conceive of those situations?

10 PROSPECTIVE JUROR NO. 092: Yes. Yes.

11 THE COURT: Okay. Now, mitigation, you heard the
12 lawyers question other prospective jurors about mitigation,
13 and you saw some of the factors listed on the questionnaire.
14 Do you think that some or all of those factors are important
15 things that you would consider in determining the appropriate
16 punishment?

17 PROSPECTIVE JUROR NO. 092: Definitely.

18 THE COURT: Okay. Go on, Mr. Bunin.

19 MR. BUNIN: So you can envision a scenario where a
20 person is convicted of first degree murder and then there are
21 certain mitigating factors you would take into consideration;
22 is that correct?

23 PROSPECTIVE JUROR NO. 092: Definitely.

24 MR. BUNIN: And in taking those into consideration,
25 could you possibly conclude, despite the fact that it was

1 intentional murder, that you should not impose the death
2 penalty?

3 PROSPECTIVE JUROR NO. 092: Definitely.

4 MR. BUNIN: Okay. Now, I want to ask you just based
5 on some of your other answers, so please don't jump on me too
6 hard. In fact, I'm going to start with one the prosecutor
7 asked the last prospective juror. If you were on the jury,
8 should the defense be a little nervous?

9 PROSPECTIVE JUROR NO. 092: No.

10 MR. BUNIN: Would you want 12 people just like you if
11 you were in Deangelo's position?

12 PROSPECTIVE JUROR NO. 092: Oh, yeah.

13 MR. BUNIN: You would?

14 PROSPECTIVE JUROR NO. 092: Uh-huh.

15 MR. BUNIN: Why is that?

16 PROSPECTIVE JUROR NO. 092: Because I'm fair.

17 MR. BUNIN: Okay.

18 PROSPECTIVE JUROR NO. 092: Very fair.

19 MR. BUNIN: Do you view defense attorneys or
20 prosecuting attorneys as any different?

21 PROSPECTIVE JUROR NO. 092: I -- I don't know how to
22 -- I don't know how to answer that question.

23 MR. BUNIN: I made it a little tricky there. I
24 shouldn't ask it that way.

25 PROSPECTIVE JUROR NO. 092: Yeah. Exactly.

1 MR. BUNIN: You wrote something under defense
2 attorneys. I think it's a little rough.

3 PROSPECTIVE JUROR NO. 092: Yeah, it's rough. Don't
4 - don't go there. Just leave it alone. Leave it alone.

5 MR. BUNIN: I'm landing on it and going right there,
6 so I'm sorry.

7 PROSPECTIVE JUROR NO. 092: Okay.

8 MR. BUNIN: Because, you know, we're looking at 12
9 people that -- this isn't the only [indecipherable], but this
10 is a very serious thing.

11 PROSPECTIVE JUROR NO. 092: I understand that.

12 MR. BUNIN: And, you know, my client is on trial for
13 murder.

14 PROSPECTIVE JUROR NO. 092: Uh-huh.

15 MR. BUNIN: A murder we don't believe he committed.
16 And I don't know if you're the type of juror that can sit
17 there and say, yeah, right, the defense attorneys don't
18 believe he committed this murder; yeah, right, the defense
19 attorneys truly don't think this guy did it. And I say that
20 because of your answer to this question.

21 PROSPECTIVE JUROR NO. 092: Exactly.

22 MR. BUNIN: So we're going to take a look at it.

23 MR. PESCI: I apologize. Can we approach before
24 that's --

25 THE COURT: Uh-huh.

1 MR. PESCI: -- finished out?
2 THE COURT: Yeah. Oh, I'm sorry.
3 MR. PESCI: I didn't know if you said we could, so --
4 THE COURT: I nodded. I did something.
5 (Off-record bench conference)
6 MR. BUNIN: So going right where you just told me
7 not to go.
8 PROSPECTIVE JUROR NO. 092: Okay. Go there. Go
9 ahead.
10 MR. BUNIN: I was going to have you, you know, talk
11 about this answer. Okay?
12 PROSPECTIVE JUROR NO. 092: Uh-huh.
13 MR. BUNIN: And we're thick skinned. We can take
14 this, so don't worry about.
15 PROSPECTIVE JUROR NO. 092: Okay.
16 MR. BUNIN: You said defense attorneys -- why don't
17 you read your answer. No. 24 on page seven.
18 PROSPECTIVE JUROR NO. 092: Okay.
19 THE COURT: You can just read it to yourself.
20 PROSPECTIVE JUROR NO. 092: Uh-huh.
21 MR. BUNIN: And then do you believe that's true in
22 all circumstances?
23 PROSPECTIVE JUROR NO. 092: No, it's in some
24 circumstances. It's back to the same thing I said. It's not
25 what you know. It's what you can prove.

1 MR. BUNIN: Do you have any idea, I guess, if that's
2 true here today?

3 PROSPECTIVE JUROR NO. 092: No, I don't.

4 MR. BUNIN: Is this opinion of yours --

5 PROSPECTIVE JUROR NO. 092: Uh-huh.

6 MR. BUNIN: -- is this something the defense should
7 be concerned about?

8 PROSPECTIVE JUROR NO. 092: No.

9 MR. BUNIN: Okay. Are we staring on an equal playing
10 field? In other words --

11 PROSPECTIVE JUROR NO. 092: I don't know what you
12 know, and you don't --

13 MR. BUNIN: And -- and forgetting what the attorneys
14 know ---

15 PROSPECTIVE JUROR NO. 092: Uh-huh.

16 MR. BUNIN: -- does the defense or the prosecution,
17 do they have any inherent advantage before we even start this?
18 In other words, do you just inherently believe the prosecution
19 has a little more legitimacy than the defense and you might
20 give credit to what they say more so than -- than defense when
21 you listen to a case?

22 PROSPECTIVE JUROR NO. 092: No, I don't think so.

23 MR. BUNIN: Never?

24 PROSPECTIVE JUROR NO. 092: No.

25 MR. BUNIN: How are you going to judge, then, the

1 evidence that comes in?

2 PROSPECTIVE JUROR NO. 092: What's before me, what's
3 presented to me, before me.

4 MR. BUNIN: By whom?

5 PROSPECTIVE JUROR NO. 092: By both parties. But
6 your -- in your case, you're not doing any presenting. They
7 are.

8 MR. BUNIN: That's right. So you -- so you won't
9 consider anything presented by the defense if we choose not to
10 present it; right?

11 PROSPECTIVE JUROR NO. 092: You can't present -- if
12 you don't give nothing, I can't -- I can't make a decision.

13 MR. BUNIN: So then the real question becomes -- and
14 what you say -- you know, I want to be clear on what you mean
15 because what you say does concern me a little. You say if we
16 don't present anything as the defense, you can't make a
17 decision.

18 PROSPECTIVE JUROR NO. 092: Right.

19 MR. BUNIN: Do you understand that the -- that the
20 defense has no obligation to present anything.

21 PROSPECTIVE JUROR NO. 092: Exactly. So I can't make
22 a decision on anything on your behalf because you're not
23 making anything. They are.

24 THE COURT: Let me ask --

25 MR. BUNIN: Maybe we're not communicating.

1 THE COURT: I'm sorry. Yeah. Let me ask -- let me
2 ask the question. You understand that in our constitutional
3 system, regardless from a death penalty case to a misdemeanor
4 case --

5 PROSPECTIVE JUROR NO. 092: Uh-huh.

6 THE COURT: -- the State has the burden of proving
7 the defendant's guilt beyond a reasonable doubt. We all hear
8 that, but do you understand what that means?

9 PROSPECTIVE JUROR NO. 092: Uh-huh.

10 THE COURT: Basically what that means is the State
11 has the burden to prove that each and every element of the
12 crime and that the defendant committed each and every element
13 beyond a reasonable doubt, and there'll be an instruction on
14 what that means at the end of the case. But essentially what
15 that means is even if the defense does nothing, doesn't
16 cross-examine the witness, you know, sits over there reading
17 Sports and Leisure, if the State doesn't prove the defendant
18 guilty beyond a reasonable doubt, if they don't meet their
19 burden, they don't put on the right evidence or enough
20 evidence according to the collective minds of the jurors --

21 PROSPECTIVE JUROR NO. 092: Uh-huh.

22 THE COURT: -- he is entitled to a verdict of not
23 guilty --

24 PROSPECTIVE JUROR NO. 092: Exactly.

25 THE COURT: -- regardless of what the defense

1 attorneys may or may not do. Are you comfortable with that
2 idea?

3 PROSPECTIVE JUROR NO. 092: Exactly. It's just what
4 I said. It's not what you know. It's what you can prove.

5 THE COURT: Okay. And you understand that the
6 defense, because of our system, the defense is not required to
7 prove anything?

8 PROSPECTIVE JUROR NO. 092: Exactly.

9 THE COURT: Okay. And you're comfortable with that?

10 PROSPECTIVE JUROR NO. 092: No problem.

11 THE COURT: All right. Thank you.

12 Sorry for the interruption, Mr. Bunin.

13 MR. BUNIN: Thank you.

14 And so meaning you wouldn't hold it against the
15 defense if they chose to put on no evidence whatsoever?

16 PROSPECTIVE JUROR NO. 092: No. No.

17 MR. BUNIN: It wouldn't hurt the -- the defense's
18 chance of getting a not guilty verdict if we chose to put no
19 evidence on? You would only consider the evidence that the
20 prosecution put on?

21 PROSPECTIVE JUROR NO. 092: Exactly.

22 MR. BUNIN: And if they -- if they put on a lot of
23 evidence, but in your mind it doesn't rise to the level of
24 beyond a reasonable doubt --

25 PROSPECTIVE JUROR NO. 092: I can't make a decision.

1 MR. BUNIN: Well, see that -- and I think we maybe
2 just communicate a little differently. You say you can't make
3 a decision. To me, if they don't -- if the prosecution does
4 not present evidence that rises to a level of reasonable doubt
5 and you had to vote either guilty or not guilty, how would you
6 vote?

7 PROSPECTIVE JUROR NO. 092: Not guilty.

8 MR. BUNIN: Okay. So you would make a decision, but
9 the decision would be for not guilty?

10 PROSPECTIVE JUROR NO. 092: Exactly.

11 MR. BUNIN: I think we understand each other. Good.
12 Can I have Court's indulgence?

13 THE COURT: All right.

14 MR. BUNIN: We're talking about you.

15 PROSPECTIVE JUROR NO. 092: I know. It's okay. I'm
16 used to it.

17 MR. BUNIN: I think you can handle it. I'm trying to
18 see if there's anything else, I'm sorry, really quickly that
19 you wrote down that I wanted to talk about. You do believe
20 the death penalty is the worse type of punishment that there
21 could possibly be?

22 PROSPECTIVE JUROR NO. 092: I think it's easy.

23 MR. BUNIN: You think it's easy?

24 PROSPECTIVE JUROR NO. 092: Uh-huh.

25 MR. BUNIN: Do you think that life without the

1 possibility of parole would be harder than the death penalty?

2 PROSPECTIVE JUROR NO. 092: I think so.

3 MR. BUNIN: In a lot of ways that could be considered
4 a worse punishment than death?

5 PROSPECTIVE JUROR NO. 092: Yes. It's torture every
6 day.

7 MR. BUNIN: All right. Is there anything else that
8 we've talked about just in terms of how evidence is presented
9 and the burdens of proof and everything else that -- that you
10 would like to comment on? Is there anything else that you
11 think I need to know about you before we make our -- our
12 decision? Is there anything that we said to any of the other
13 jurors, because we don't want to keep repeating ourselves
14 other than a little bit to everybody as we go along, that you
15 would like to talk about?

16 PROSPECTIVE JUROR NO. 092: No.

17 MR. BUNIN: All right. Thank you.

18 PROSPECTIVE JUROR NO. 092: You're welcome.

19 MR. BUNIN: Pass.

20 THE COURT: Pass? All right. Thank you.

21 The State may question Ms. Keith in chair five.

22 MR. PESCI: Thank you.

23 Ma'am, how are you?

24 PROSPECTIVE JUROR NO. 120: I'm fine. Thank you.

25 MR. PESCI: I want to start off right. It -- it says

1 here that at some point your husband was the victim of a
2 crime.

3 PROSPECTIVE JUROR NO. 120: Yes.

4 MR. PESCI: Was that here in Las Vegas?

5 PROSPECTIVE JUROR NO. 120: Yes.

6 MR. PESCI: How long ago?

7 PROSPECTIVE JUROR NO. 120: '08, '09.

8 MR. PESCI: Okay. And you did not indicate which
9 crime. What -- what was the crime?

10 PROSPECTIVE JUROR NO. 120: Well, he was riding his
11 scooter down the road close to the sidewalk when a young man
12 in his '20s took a Billy club and hit him in the face as he
13 drove past him, knocked him unconscious off his motor scooter
14 and caused him injuries.

15 MR. PESCI: Okay. You explained that you felt that
16 the criminal justice system moved slowly and that it didn't
17 communicate enough with the -- with the victim. Are you
18 referring to the situation with your husband?

19 PROSPECTIVE JUROR NO. 120: Yes.

20 MR. PESCI: Okay. Do you know was it -- was it our
21 office that prosecuted?

22 PROSPECTIVE JUROR NO. 120: City Attorney.

23 MR. PESCI: The City Attorney's office?

24 PROSPECTIVE JUROR NO. 120: Uh-huh.

25 MR. PESCI: Uh-huh.

1 PROSPECTIVE JUROR NO. 120: It hasn't done anything.
2 MR. PESCI: Nothing has come from it?
3 PROSPECTIVE JUROR NO. 120: Nothing.
4 MR. PESCI: And it was, what, six years ago?
5 PROSPECTIVE JUROR NO. 120: No, '09.
6 MR. PESCI: '09. Okay. Do you feel as if you would
7 hold that against the State of Nevada or the police officers
8 that would come and testify in this case?
9 PROSPECTIVE JUROR NO. 120: No.
10 MR. PESCI: Do you think you could be fair to the
11 defendant in this case considering the fact that your family
12 has been the victim of a crime? Not this crime, but a
13 different crime.
14 PROSPECTIVE JUROR NO. 120: Hold it against him? No.
15 MR. PESCI: So you can be fair to both sides?
16 PROSPECTIVE JUROR NO. 120: Yes.
17 MR. PESCI: All right. Touching on the death
18 penalty, you indicated that you did not like it, but that in
19 certain circumstances it could be appropriate.
20 PROSPECTIVE JUROR NO. 120: Correct.
21 MR. PESCI: Help me to understand more your feelings
22 about not liking it. What in particular are you referring to?
23 PROSPECTIVE JUROR NO. 120: Putting someone to death.
24 MR. PESCI: Is it -- is it the actual putting to
25 death, or is it being part of the decision to have someone put

1 to death?

2 PROSPECTIVE JUROR NO. 120: I think both. I don't
3 know if I would sleep well if I did make a decision that
4 someone needed to be put to death. I wouldn't be happy about
5 it, but some crimes I think it's called for --

6 MR. PESCI: Okay.

7 PROSPECTIVE JUROR NO. 120: -- whether you like it or
8 not.

9 MR. PESCI: I think that's reflected in your answers
10 where you said you could consider all possible forms of
11 punishment.

12 PROSPECTIVE JUROR NO. 120: Yes, definitely.

13 MR. PESCI: Even the death penalty, notwithstanding
14 you don't like it?

15 PROSPECTIVE JUROR NO. 120: Correct.

16 MR. PESCI: Okay. Do you have any problems,
17 sometimes either religious or moral, of standing in judgment
18 of another human being?

19 PROSPECTIVE JUROR NO. 120: No, I don't -- I don't
20 believe so.

21 MR. PESCI: So nothing prevents you or concludes you
22 from having to make a determination on the evidence in this
23 case based on some personal or religious belief?

24 PROSPECTIVE JUROR NO. 120: No.

25 MR. PESCI: You think you could be fair to both

1 sides?

2 PROSPECTIVE JUROR NO. 120: Yes.

3 MR. PESCI: Pass for cause.

4 THE COURT: All right.

5 Mr. Ericsson.

6 MR. ERICSSON: Thank you, Your Honor.

7 Good afternoon, ma'am.

8 PROSPECTIVE JUROR NO. 120: Hello.

9 MR. ERICSSON: We're starting to obviously repeat
10 ourselves on a lot of these issues, but I -- I apologize for
11 that. I hope you can understand that we do need to make sure
12 we have the best feeling for your personal opinions on these
13 important issues for this case.

14 PROSPECTIVE JUROR NO. 120: Yes.

15 MR. ERICSSON: The -- the fact that your husband was
16 a victim of a very serious violent crime, do you think that
17 would affect you in listening to a case that has allegations
18 of the most violent crime there is, that is first degree
19 murder.

20 PROSPECTIVE JUROR NO. 120: No. That's an individual
21 situation. It may be personal, and the person that did it to
22 him I may not like, but that has nothing to do with anybody
23 here or anything that's going on here.

24 MR. ERICSSON: Okay. In one of your responses you've
25 indicated that your -- your husband is disabled.

1 PROSPECTIVE JUROR NO. 120: Correct.

2 MR. ERICSSON: Is he disabled because of that attack?

3 PROSPECTIVE JUROR NO. 120: No, he was disabled
4 first.

5 MR. ERICSSON: Okay.

6 PROSPECTIVE JUROR NO. 120: And that just kind of
7 added to problems.

8 MR. ERICSSON: I want to -- to focus in on your
9 opinions about the death penalty.

10 PROSPECTIVE JUROR NO. 120: Okay.

11 MR. ERICSSON: You've indicated that you can consider
12 all four of the options provided for in Nevada law. And I
13 want to focus, make sure that you understand that when we're
14 talking about a first degree premeditated murder that -- that
15 we're talking about an intentional murder. No excuses such as
16 accident or self defense or anything like that, but an
17 intentional taking of the life of another person. If after
18 you heard all the evidence you came back and the jury found
19 that -- that Mr. Carroll was guilty of first degree
20 intentional murder, would you still be able to consider all
21 four options?

22 PROSPECTIVE JUROR NO. 120: Yes.

23 MR. ERICSSON: You will be able to consider life with
24 the possibility of parole after 40 years?

25 PROSPECTIVE JUROR NO. 120: Yes.

1 MR. ERICSSON: And obviously you would be able to
2 consider the death penalty?

3 PROSPECTIVE JUROR NO. 120: Correct. May I let you
4 know something?

5 MR. ERICSSON: Please.

6 PROSPECTIVE JUROR NO. 120: On the form it asked if
7 we had close friends or relatives that had dealings with the
8 courts. And I do have a friend that's in Ely for murder. Not
9 a close friend, but a long time friend from the early '70s.

10 MR. ERICSSON: Okay.

11 PROSPECTIVE JUROR NO. 120: Not someone that we saw
12 on a continuous basis, but someone that -- well, the second
13 person we met in '72 when we moved here. So we've just known
14 him for a long time. And like I said, we don't -- didn't see
15 him often. We did in the beginning, but as time went, you
16 know, that was further and further down the road. But we do
17 converse. We write. He calls occasionally. He's in prison,
18 life with the possibility of parole. But since it didn't, you
19 know, it says close, I wasn't sure how to answer that
20 question.

21 MR. ERICSSON: And I appreciate you bringing that --
22 that up because it's important to -- to both sides. So I'll
23 ask you some questions about that.

24 PROSPECTIVE JUROR NO. 120: Okay.

25 MR. ERICSSON: How long ago was it that -- that he

1 went to trial or entered a plea or --

2 PROSPECTIVE JUROR NO. 120: I believe he's been in
3 prison for 15 years now.

4 MR. ERICSSON: Okay.

5 PROSPECTIVE JUROR NO. 120: Close to -- somewhere
6 around there.

7 THE COURT: Do you ever visit him up there?

8 PROSPECTIVE JUROR NO. 120: No. We did fill out
9 paperwork and we're approved to, but since that time my
10 husband's disability happened, and then everything has kind of
11 prevented us from going up to Ely.

12 THE COURT: All right. Thank you.

13 Go on, Mr. Ericsson.

14 MR. ERICSSON: Thank you, ma'am.

15 Ma'am, is there anything about that -- that friend of
16 yours serving time for murder that would affect your ability
17 to be fair to either side in this case?

18 PROSPECTIVE JUROR NO. 120: No.

19 MR. ERICSSON: During the course of this trial you
20 will likely see photographs of the victim in this case.

21 PROSPECTIVE JUROR NO. 120: Uh-huh.

22 MR. ERICSSON: We're not disputing that someone was
23 shot and killed in this case. The -- the fact that whoever is
24 selected to sit on this jury will -- will have to view very
25 difficult graphic photographs of someone who has been killed.

1 is that something that would cause you concern in being able
2 to -- to sit and be impartial on this -- in this case?

3 PROSPECTIVE JUROR NO. 120: No.

4 MR. ERICSSON: And -- and lastly, if you were either
5 sitting at the prosecution table or -- or at the defense
6 table, would you be completely comfortable with your outlook
7 on -- on life and your life experiences sitting in this type
8 of a case?

9 PROSPECTIVE JUROR NO. 120: I believe so. Yes.

10 MR. ERICSSON: Thank you very much.

11 Your Honor, we pass for cause.

12 THE COURT: All right.

13 State, you may question juror No. 6.

14 MR. DiGIACOMO: Thank you, Judge.

15 Ms. Cottam?

16 PROSPECTIVE JUROR NO. 125: Uh-huh.

17 MR. DiGIACOMO: Earlier when the Judge asked the
18 question about hardship, you didn't answer but you filled out
19 some information.

20 PROSPECTIVE JUROR NO. 125: Right.

21 MR. DiGIACOMO: Okay. And without getting into the
22 specifics, since the time you filled this out have you been
23 able to resolve that situation, or is it still a problem?

24 PROSPECTIVE JUROR NO. 125: It's a problem, but it's working
25 itself.

1 MR. DiGIACOMO: Okay. You were asked a question
2 about your general attitude towards law enforcement. You said
3 good, and then you added mostly. What did you mean about
4 that?

5 PROSPECTIVE JUROR NO. 125: There's good cops,
6 there's bad cops.

7 MR. DiGIACOMO: Sure. Like any job; right?

8 PROSPECTIVE JUROR NO. 125: Right.

9 MR. DiGIACOMO: And without getting too personal, you
10 checked off the answer about arrested or charged before,
11 family member or friends --

12 PROSPECTIVE JUROR NO. 125: Right.

13 MR. DiGIACOMO: -- or something like that. Okay.
14 And then you answered that and you said they were doing their
15 job. Do you think whoever it was that was charged was treated
16 appropriately by the system?

17 PROSPECTIVE JUROR NO. 125: Yes, I do.

18 MR. DiGIACOMO: Okay. I'm going to ask you a couple
19 of questions about your feelings about the death penalty. It
20 sounds like you believe in it.

21 PROSPECTIVE JUROR NO. 125: Yes.

22 MR. DiGIACOMO: That you're -- that you believe it's
23 not used enough.

24 PROSPECTIVE JUROR NO. 125: Yes.

25 MR. DiGIACOMO: Despite that fact, after sitting here

1 and listening to kind of the way the system works, that you
2 have to be willing to consider all four punishments, are you
3 someone who can sit there and consider all four punishments?

4 PROSPECTIVE JUROR NO. 125: Yes.

5 MR. DiGIACOMO: And lastly, there was a question
6 where you indicated that life without the possibility of
7 parole you think might be worse than the death penalty.

8 PROSPECTIVE JUROR NO. 125: Yes, for some.

9 MR. DiGIACOMO: Okay. You would agree with me that
10 there is -- that there may be some people out there where it's
11 not the worst possible punishment?

12 PROSPECTIVE JUROR NO. 125: Right.

13 MR. DiGIACOMO: Anything that anybody has asked that
14 you think it's important for the lawyers to know about you?

15 PROSPECTIVE JUROR NO. 125: No.

16 MR. DiGIACOMO: And could you be fair?

17 PROSPECTIVE JUROR NO. 125: Yes.

18 MR. DiGIACOMO: Thank you very much, ma'am.

19 Judge, we pass for cause.

20 THE COURT: Thank you.

21 Mr. Bunin.

22 MR. BUNIN: Thank you, Judge.

23 Ms. Cottam; is that how you say it?

24 PROSPECTIVE JUROR NO. 125: Yes.

25 MR. BUNIN: You had listed some reasons, and I don't

1 want to get into too many personal things with you, but on the
2 back of the sheet why you might have trouble concentrating if
3 you had to get on this jury.

4 PROSPECTIVE JUROR NO. 125: Yes.

5 MR. BUNIN: Is that still --

6 PROSPECTIVE JUROR NO. 125: No.

7 MR. BUNIN: Okay. That's resolved, at least for now?

8 PROSPECTIVE JUROR NO. 125: Yes.

9 MR. BUNIN: Okay. So if you had to sit for a week or
10 two you would be able to concentrate ---

11 PROSPECTIVE JUROR NO. 125: Yes.

12 MR. BUNIN: -- and listen to all the evidence?

13 PROSPECTIVE JUROR NO. 125: Yes.

14 MR. BUNIN: That's great. Now, I want to talk about
15 some of your answers on the questionnaires. You obviously
16 believe in the death penalty.

17 PROSPECTIVE JUROR NO. 125: Yes.

18 MR. BUNIN: Is it -- can you explain? I mean, I know
19 this is not an easy thing, besides it's just intuitive, but
20 why do you believe in the death penalty?

21 PROSPECTIVE JUROR NO. 125: Because I feel an eye for
22 an eye. That's the way I feel.

23 MR. BUNIN: And that's what you wrote --

24 PROSPECTIVE JUROR NO. 125: Right.

25 MR. BUNIN: -- exactly what you wrote on the sheet.

1 You think it should be used more and you believe in an eye for
2 an eye.

3 PROSPECTIVE JUROR NO. 125: Right.

4 MR. BUNIN: Is that --

5 PROSPECTIVE JUROR NO. 125: I think if we had that
6 instated that I don't think there would be so many crimes.

7 MR. BUNIN: Okay. And by an eye for an eye, explain
8 what you mean by that.

9 PROSPECTIVE JUROR NO. 125: It means if somebody goes
10 out and steals, I think the person that was stolen from, they
11 should be able to go take a possession from the person that
12 stole from them.

13 MR. BUNIN: I like that. What does it mean in a case
14 like this?

15 PROSPECTIVE JUROR NO. 125: I think if there is no
16 reasonable doubt, that it was proven that somebody in this
17 case went up to another person and shot the person, yes, I
18 think that the death penalty should be there.

19 MR. BUNIN: In every -- in every case? And just so I
20 understand your --

21 PROSPECTIVE JUROR NO. 125: No, not in every case.
22 It depends on the circumstances.

23 THE COURT: So you feel like it should be an option?

24 PROSPECTIVE JUROR NO. 125: Yes.

25 THE COURT: Okay.

1 MR. BUNIN: Well, just -- just so I'm clear, because
2 I wasn't exactly sure how you meant this. You know, there are
3 -- I'm not going to give you a line of the law right now.
4 You're eventually going to get instructions --

5 PROSPECTIVE JUROR NO. 125: Right.

6 MR. BUNIN: -- from the Judge as to what the law is.
7 But not every killing is a crime. Not every killing is a
8 first degree murder. There are other options.

9 PROSPECTIVE JUROR NO. 125: Right.

10 MR. BUNIN: And I wasn't sure if you were talking
11 about some other option or if you were specifically talking
12 about premeditated first degree murder. You know, you wrote
13 on here death penalty should be used more, and eye for an eye.
14 Do you mean if it's -- in every circumstance where it's
15 specifically premeditated first degree murder, in every one of
16 those circumstances do you think the death penalty is
17 appropriate for the person who did it?

18 PROSPECTIVE JUROR NO. 125: I think it would depend
19 on the circumstances.

20 MR. BUNIN: Well, and what do you mean by that?

21 PROSPECTIVE JUROR NO. 125: I mean, if -- if they did
22 it, there has to be a reason. Sometimes -- you know,
23 sometimes it's just, you know, it's go out and blow somebody
24 away just for the heck of it. You know, there are circum --
25 certain circumstances that there is just cause.

1 MR. BUNIN: Okay. Just cause to have committed a
2 killing?

3 PROSPECTIVE JUROR NO. 125: Yes.

4 MR. BUNIN: Is that what you mean?

5 THE COURT: Not legally you mean, but --

6 PROSPECTIVE JUROR NO. 125: Right. I mean, like --

7 THE COURT: Jealousy or --

8 PROSPECTIVE JUROR NO. 125: Right. Exactly.

9 MR. BUNIN: Okay. So if you had an explanation like
10 that, is it possible, then, that that's somebody that you
11 wouldn't think should get the death penalty? And, again, only
12 the honest answer. There's no --

13 PROSPECTIVE JUROR NO. 125: Right.

14 MR. BUNIN: -- no wrong answer.

15 PROSPECTIVE JUROR NO. 125: It would still depend on
16 the circumstances.

17 MR. BUNIN: Okay. I want to narrow down what that
18 means with you a little bit. I know it's a hard thing, but,
19 again, we're trying to pick, you know, the best 12 jurors to
20 hear --

21 PROSPECTIVE JUROR NO. 125: Right.

22 MR. BUNIN: -- a case such as this, one where a
23 person is charged with first degree murder and a death penalty
24 as an option. And it's a very serious thing. So I want to be
25 able to narrow down what you mean. And I'm not totally

1 following you. And it's not your fault. I might just be
2 missing it. So I just want to, you know, kind of --

3 PROSPECTIVE JUROR NO. 125: Right.

4 MR. BUNIN: You keep -- you said a couple of times it
5 depends on the circumstances. Number one, what depends on the
6 circumstances, whether or not you think death is appropriate?

7 PROSPECTIVE JUROR NO. 125: Yes.

8 MR. BUNIN: Now, tell me the circumstances that you
9 mean where you think death would always be appropriate.

10 MR. DiGIACOMO: Objection, Judge.

11 THE COURT: That's sustained.

12 MR. BUNIN: What I'm getting at with that -- with
13 that question is are you saying that if it's -- if a person
14 doesn't make a mistake, he killed somebody on purpose, he
15 meant to do it, is that a situation where you would always go
16 for the death penalty?

17 PROSPECTIVE JUROR NO. 125: Yes.

18 MR. BUNIN: Okay. And when you say depends on the
19 circumstances, you're talking about cases where a person may
20 have committed a crime and killed somebody, but it wasn't
21 necessarily premeditated and intentional.

22 PROSPECTIVE JUROR NO. 125: Right.

23 MR. BUNIN: So every time where it's premeditated and
24 intentional, those are the ones where you think it should
25 always be the death penalty?

1 PROSPECTIVE JUROR NO. 125: Yes.

2 MR. BUNIN: Okay.

3 Can we approach, Your Honor?

4 THE COURT: Yeah.

5 Let's go ahead, actually, this is a good time for our
6 afternoon recess. We're going to take about ten minutes for
7 the afternoon recess. And I would just remind everyone of the
8 admonition. Don't talk about the case or do anything relating
9 to the case during the afternoon recess.

10 Once again, I would also remind everybody, the
11 lawyers and the parties and the -- everyone other than the
12 marshals in uniform cannot speak directly to members of the
13 jury.

14 Yes, ma'am.

15 PROSPECTIVE JUROR NO. 092: I want to know, they got
16 these laptops up here.

17 THE COURT: Right.

18 PROSPECTIVE JUROR NO. 092: Are they keeping
19 information on the jury in these laptops?

20 THE COURT: I don't believe so. You'll see the
21 lawyers will work -- they might say, you know -- I don't know
22 what they write on their notes because they don't share those
23 with me. But it -- you'll see throughout the trial that the
24 attorneys use the laptops to keep their notes and their
25 questions and other things like that.

1 PROSPECTIVE JUROR NO. 092: And that paper that he
2 was reading, you have a copy, he has a copy, and they have a
3 copy?

4 THE COURT: Right. All the papers have is -- I get a
5 copy, just so you know, that has all of the details on it.
6 That only goes to the Court. And everything with your
7 personal information is shredded by a uniformed marshal. It
8 all goes through the shredder so there's no danger of any of
9 your personal identifying information being disseminated or
10 anything like that. The bailiff shreds what I have, which is
11 everything. They just have your names and -- and like that,
12 and, of course, the questionnaires.

13 PROSPECTIVE JUROR NO. 092: Okay.

14 THE COURT: All right?

15 PROSPECTIVE JUROR NO. 092: Thank you.

16 THE COURT: All right. Everyone needs to follow the
17 marshals through the double doors.

18 (Prospective jury panel recessed at 2:42 p.m.)

19 MR. PESCI: Judge, we need your marshal.

20 THE COURT: Oh.

21 MR. ERICSSON: You all right?

22 THE COURT: Ma'am, just stay there. Oh, my goodness.

23 PROSPECTIVE JUROR: She's bleeding.

24 THE COURT: Oh, okay.

25 PROSPECTIVE JUROR: Are you having a baby? Are you

1 pregnant?

2 THE COURT: No, she's okay.

3 MR. PESCI: Do you want me to have her sit down,
4 Judge?

5 THE COURT: Yeah, go ahead.

6 Can you guys call somebody?

7 THE CLERK: Yeah, we need somebody.

8 THE COURT: Ma'am, we're going to call downstairs and
9 get somebody for you. Okay?

10 She's having a bit of a medical situation.

11 Do you want to go in the back? And he's going to
12 take you and we'll get someone from downstairs.

13 (Off-record discussion.)

14 (Court recessed at 2:46 p.m. until 3:07 p.m.)

15 (Outside the presence of the jury.)

16 THE COURT: We do need to just put on the record
17 that Juror No. 126, Ms. Torres-Gamboa has been excused. She
18 was having a medical situation that manifested at the break.

19 THE MARSHAL: Jury is coming in.

20 (Prospective jury panel enters at 3:13 p.m.)

21 THE COURT: All right. Court is now back in
22 session. The record will reflect the presence of the State
23 through the deputy district attorneys, the defendant and his
24 counsel, the officers of the court, and the members of the
25 prospective jury panel.

1 And had the defense finished with Ms. Cottam?

2 MR. BUNIN: Yes, Your Honor.

3 THE COURT: And did the State have anything else for
4 Ms. Cottam?

5 MR. DiGIACOMO: I want to ask her a couple of
6 questions.

7 Sorry.

8 PROSPECTIVE JUROR NO. 125: It's okay.

9 MR. DiGIACOMO: It's kind of gone, you know, back and
10 forth a little bit, and so I just wanted to clarify a little
11 bit with you.

12 PROSPECTIVE JUROR NO. 125: Okay.

13 MR. DiGIACOMO: Okay? We talked a little bit about
14 it, and I guess it's kind of hard to ask you questions in a
15 vacuum. You know, you don't know anything about the facts in
16 the case ---

17 PROSPECTIVE JUROR NO. 125: Right.

18 MR. DiGIACOMO: -- other than the little bit we told
19 you. At the end of the day the only thing we want are fair
20 jurors.

21 PROSPECTIVE JUROR NO. 125: Right.

22 MR. DiGIACOMO: So without knowing what the
23 definition of first degree murder is, just in a general
24 concept, it seemed to me that you were talking a little bit
25 about what the motivations of a person are. It might be

1 something that you were willing to consider something less
2 than death, like why he committed the killing.

3 PROSPECTIVE JUROR NO. 125: Right.

4 MR. DiGIACOMO: It may not be a legal excuse or a
5 defense to the case, but if you find out they had a good
6 reason for doing it, let's say, that might be something you
7 would take into consideration.

8 PROSPECTIVE JUROR NO. 125: Yes.

9 MR. DiGIACOMO: Okay. So at least without knowing
10 anything about the facts in the case, in that situation at the
11 very least you would at least consider something other than
12 death.

13 PROSPECTIVE JUROR NO. 125: Yes.

14 MR. DiGIACOMO: Okay. And so if you learned certain
15 information about kind of the reasons behind or the
16 motivations behind the crime, that's something you would
17 consider in considering all four of the possible punishments?

18 PROSPECTIVE JUROR NO. 125: Yes.

19 MR. DiGIACOMO: And you think you could do that?

20 PROSPECTIVE JUROR NO. 125: Yes.

21 MR. DiGIACOMO: Thank you.

22 THE COURT: And just to make it clear, now, you
23 understand motive doesn't mean self defense, because then we
24 wouldn't be in --

25 PROSPECTIVE JUROR NO. 125: Yes.

1 THE COURT: So you're talking, just so I understand,
2 things other than possible self defense as a motive?

3 PROSPECTIVE JUROR NO. 125: Right.

4 MR. BUNIN: Can -- can I follow up?

5 THE COURT: Sure.

6 MR. BUNIN: Thank you.

7 You know, just because, Ms. Cottam, the last thing
8 you said to me when we were talking about the different things
9 you would consider when looking at the death penalty, I wanted
10 to make sure we were talking about the same thing. I'm
11 concerned that we were -- you were talking about premeditated
12 first degree murder or maybe some other type of killing that
13 was not necessarily first degree murder. And what I said to
14 you, you know, you wrote that the death penalty should be used
15 more and you think an eye for an eye is appropriate.

16 And then I said so what you're saying there is
17 anytime the killing is one that is deliberate, it's
18 purposeful, it's a first degree murder where it's
19 premeditated, it's not an accident, you know, it's done on
20 purpose, in that situation you think the death penalty is
21 appropriate every time. And I think you agreed with me,
22 but --

23 PROSPECTIVE JUROR NO. 125: Yes.

24 MR. BUNIN: Do you agree with me?

25 PROSPECTIVE JUROR NO. 125: Yes.

1 MR. BUNIN: Okay.

2 THE COURT: So -- so when would you be considering
3 motive then? And, again, there's no right or wrong answer.
4 We just want to know what your opinions are.

5 PROSPECTIVE JUROR NO. 125: I think --

6 THE RECORDER: Ma'am, you need to turn --

7 PROSPECTIVE JUROR NO. 125: -- if it was --

8 THE RECORDER: -- the microphone on.

9 PROSPECTIVE JUROR NO. 125: -- premeditated, then --

10 THE RECORDER: I'm sorry.

11 PROSPECTIVE JUROR NO. 125: Yes.

12 THE RECORDER: You need to turn the microphone on.

13 THE COURT: Okay.

14 THE RECORDER: All right. Thank you.

15 THE COURT: Yes. What -- what did you mean?

16 PROSPECTIVE JUROR NO. 125: I mean, if it's
17 premeditated, then, yes, I do think that it should be the
18 death penalty.

19 THE COURT: Okay. So when would you be thinking
20 about if a motive was important or what the motive might've
21 been in determining what the appropriate penalty would be of
22 the four?

23 PROSPECTIVE JUROR NO. 125: The death penalty.

24 THE COURT: Okay. Well, you obviously were -- and,
25 again, I hate -- we hate to put you on the spot.

1 PROSPECTIVE JUROR NO. 125: Right.

2 THE COURT: But you obviously were thinking of
3 something where motive could be important. What kind of
4 things would those be?

5 PROSPECTIVE JUROR NO. 125: I mean, like self
6 defense, like, you know, that kind of thing.

7 THE COURT: Okay.

8 MR. BUNIN: Can we approach?

9 THE COURT: Yes.

10 (Off-record bench conference)

11 THE COURT: All right. And, Ms. Husted, I need you
12 to call up the next prospective juror.

13 THE CLERK: Yes, Your Honor. That's badge 132,
14 Christie Baker.

15 THE COURT: Yes?

16 PROSPECTIVE JUROR NO. 071: On the questionnaire, I
17 answered one of my questions incorrectly. It asked if I knew
18 anybody that was in law enforcement.

19 THE COURT: Yes.

20 PROSPECTIVE JUROR NO. 071: And I completely spaced,
21 I'm sorry, but I have a sister-in-law in New York that's a
22 police officer.

23 THE COURT: Okay.

24 And, ma'am, you don't need to stand there. Go ahead
25 and have that empty seat and I'll just follow up briefly with

1 juror No. 12.

2 And is she with New York City Police?

3 PROSPECTIVE JUROR NO. 071: Yes.

4 THE COURT: And what -- is she patrol in a uniform or
5 does she do detective work or anything like that?

6 PROSPECTIVE JUROR NO. 071: I don't know.

7 THE COURT: Okay. So you're not --

8 PROSPECTIVE JUROR NO. 071: I don't really talk to
9 her about work or anything like that.

10 THE COURT: Okay. Anything about that relationship
11 that could impact your ability to be fair and impartial to
12 both sides?

13 PROSPECTIVE JUROR NO. 071: No.

14 THE COURT: All right. Thank you.

15 And we'll let the State question the juror in chair
16 No. 10.

17 MR. PESCI: Thank you, Judge.

18 Ma'am, how are you?

19 PROSPECTIVE JUROR NO. 132: Good.

20 MR. PESCI: Good. You indicated when we were kind of
21 going through the people that are involved in the criminal
22 justice system, we specifically talked about defense attorneys
23 and public defenders and DAs. And you talked about a hard,
24 stressful career. And then when it came t the victims of a
25 crime, you said you were unsure. What do you mean by that?

1 PROSPECTIVE JUROR NO. 132: Victims of crime --

2 THE RECORDER: I'm sorry, ma'am. Could you hold up
3 - thank you.

4 PROSPECTIVE JUROR NO. 132: Victims of crime being
5 like it depends on the victim of a crime.

6 MR. PESCI: Depends on maybe what the crime is?

7 PROSPECTIVE JUROR NO. 132: [nods head yes].

8 MR. PESCI: Okay. And then in that same area you
9 talk about how you were unsure about the death penalty, at
10 least that's what you checked off in that area. And does that
11 depend basically on the facts and circumstances of the case?

12 PROSPECTIVE JUROR NO. 132: Yes.

13 MR. PESCI: In one answer you said that you lean
14 towards the death penalty.

15 PROSPECTIVE JUROR NO. 132: Yes.

16 THE RECORDER: Sorry. The microphone has been
17 turned off again.

18 MR. PESCI: Do you think the batteries are gone?

19 PROSPECTIVE JUROR NO. 132: Must be. It's on.

20 THE COURT: Maybe we could keep going and just kind
21 of try to project until we get new batteries in the
22 microphone.

23 MR. PESCI: All right. We'll give it a shot. You
24 explained that you -- even though you might lean towards the
25 death penalty, you could consider all four of the possible

1 potential punishments?

2 PROSPECTIVE JUROR NO. 132: Yes.

3 MR. PESCI: Okay. And that you would not
4 automatically vote for the death penalty or against the death
5 penalty?

6 PROSPECTIVE JUROR NO. 132: Correct.

7 MR. PESCI: Is there anything about you that makes it
8 difficult or such as you don't want to do as far as standing
9 in judgment of another human being?

10 PROSPECTIVE JUROR NO. 132: No.

11 MR. PESCI: Could you be fair to both sides?

12 PROSPECTIVE JUROR NO. 132: Yes.

13 MR. PESCI: And if you were where I'm sitting, would
14 you want someone like you?

15 PROSPECTIVE JUROR NO. 132: Yes.

16 MR. PESCI: And if you were --

17 THE RECORDER: I'm sorry, ma'am. Could please hold
18 that microphone up? Thank you.

19 PROSPECTIVE JUROR NO. 132: Yes.

20 MR. PESCI: Last one. If you were where the
21 defendant is, would you want someone like you?

22 PROSPECTIVE JUROR NO. 132: Yes.

23 MR. PESCI: All right. Thank you.

24 Pass for cause.

25 THE COURT: Thank you, Mr. Pesci.

1 Defense.

2 MR. ERICSSON: Good afternoon. It's Ms. Baker?

3 PROSPECTIVE JUROR NO. 132: Correct.

4 MR. ERICSSON: You've -- have you been able to hear
5 the questions when --

6 PROSPECTIVE JUROR NO. 132: Yes.

7 MR. ERICSSON: -- you were sitting out in the
8 audience? Any concern or issues in your mind with the -- the
9 fact that in our constitutional system that the State has the
10 burden of proving every element of -- of any charges they have
11 brought beyond a reasonable doubt?

12 PROSPECTIVE JUROR NO. 132: I'm sorry. Ask that
13 again?

14 MR. ERICSSON: I kind of lost you?

15 PROSPECTIVE JUROR NO. 132: Yeah.

16 MR. ERICSSON: Do you have any personal concerns or
17 problems with -- with holding the State to their burden of
18 proof in a criminal case such as this?

19 PROSPECTIVE JUROR NO. 132: No.

20 MR. ERICSSON: And do you have any concern in your
21 mind if -- if after the State presented all of their evidence
22 that we as a defense did not present any evidence would --
23 well, let me rephrase that question. Do you understand that
24 -- that the defendant, Mr. Carroll, does not have to present
25 any type of defense in a case such as this?

1 PROSPECTIVE JUROR NO. 132: Yes.

2 MR. ERICSSON: And that if the State does not meet
3 its burden of proof would you have any problem in coming back
4 and -- and telling these prosecutors that -- that it's your
5 opinion that they failed to reach the beyond a reasonable
6 doubt standard and rendering a not guilty verdict?

7 PROSPECTIVE JUROR NO. 132: No.

8 MR. ERICSSON: And your response to the question
9 about your -- characterize your current feelings about the
10 death penalty, and you indicated that if convicted of murder
11 would lean towards the death penalty. Would you explain how
12 you feel about that, or what you mean by that?

13 PROSPECTIVE JUROR NO. 132: That would depend, again,
14 on the circumstances of the case. But I'm not against it, but
15 I'm not for it completely.

16 MR. ERICSSON: Okay. If -- if after you heard all
17 the evidence that you, as a member of the jury, came back and
18 found Mr. Carroll guilty of first degree murder, of
19 intentional, deliberate murder of another individual, would
20 you in that circumstance be able to consider all four of the
21 penalties provided in Nevada?

22 PROSPECTIVE JUROR NO. 132: Yes.

23 MR. ERICSSON: You would be able to consider imposing
24 the death penalty; is that right?

25 PROSPECTIVE JUROR NO. 132: Yes.

1 MR. ERICSSON: And on the other end you would be able
2 to consider imposing a sentence, a life sentence with the
3 possibility of parole at some point?

4 PROSPECTIVE JUROR NO. 132: Yes.

5 MR. ERICSSON: You were asked whether you would be
6 able to consider mitigation factors if you were -- got to the
7 penalty phase in a case like this. Is it your belief that --
8 that there are certain types of background issues or -- or
9 mitigation factors that have been listed before that -- that
10 could cause you to render a non death decision in a case even
11 if somebody was guilty of intentional first degree murder?

12 PROSPECTIVE JUROR NO. 132: Yes.

13 MR. ERICSSON: With your background and life
14 prospective, any concerns that you have in being able to be
15 completely fair to both sides in this case?

16 PROSPECTIVE JUROR NO. 132: No.

17 MR. ERICSSON: Thank you, ma'am.

18 Pass for cause, Your Honor.

19 THE COURT: All right. Thank you.

20 At this time I would excuse badge No. 125, Ms.
21 Cottam.

22 PROSPECTIVE JUROR NO. 125: Thank you.

23 THE COURT: You are excused from this department.

24 And also badge No. 82, Mr. Hartfield. Sir, you are
25 excused from this department. Officer Wooten will direct you

1 from the courtroom.

2 And, Ms. Husted, if you would please call up the next
3 prospective jurors.

4 THE CLERK: Badge No. 136, Warren Koch, in seat six.

5 THE COURT: No, he's in seat two.

6 THE CLERK: In seat two.

7 THE COURT: Sir, if you would just have that empty
8 seat, chair number two there, please.

9 THE CLERK: And then badge No. 138, Nicole Delong, in
10 seat six.

11 THE COURT: Right.

12 THE CLERK: Okay.

13 THE COURT: All right. The State may question the
14 juror in chair number two, Mr. Koch.

15 MR. PESCI: Thank you, Judge.

16 How are you, sir?

17 PROSPECTIVE JUROR NO. 136: Doing well.

18 MR. PESCI: Is the microphone picking up now?

19 THE RECORDER: Yes, it is.

20 MR. PESCI: Okay.

21 I'm going to stand here so the Judge can see you.

22 PROSPECTIVE JUROR NO. 136: Okay.

23 MR. PESCI: Sir, you said you work within social
24 work?

25 PROSPECTIVE JUROR NO. 136: Yes.

1 MR. PESCI: And what specifically do you do?

2 PROSPECTIVE JUROR NO. 136: I'm a medical social
3 worker at University Medical Center in the pediatric emergency
4 room.

5 MR. PESCI: In the emergency room do you ever deal
6 with police officers?

7 PROSPECTIVE JUROR NO. 136: All the time.

8 MR. PESCI: And those interactions, have -- have they
9 affected your assessment of police officers overall?

10 PROSPECTIVE JUROR NO. 136: No.

11 MR. PESCI: Would you give them more weight or less
12 weight if they came in or officers came in and testified?

13 PROSPECTIVE JUROR NO. 136: No, not necessarily.

14 MR. PESCI: Would you judge the case based on the
15 facts of the case?

16 PROSPECTIVE JUROR NO. 136: Yes.

17 MR. PESCI: Okay. When it comes to jury service,
18 you've served on a jury before.

19 PROSPECTIVE JUROR NO. 136: Yes, I have.

20 MR. PESCI: Were you the foreperson?

21 PROSPECTIVE JUROR NO. 136: No, I wasn't.

22 MR. PESCI: Okay. Without going into specifics about
23 that verdict, could you -- was it -- was it here in Las Vegas?

24 PROSPECTIVE JUROR NO. 136: Yes.

25 MR. PESCI: How recently?

1 PROSPECTIVE JUROR NO. 136: 1995.

2 MR. PESCI: Would you apply the laws as Her Honor
3 gave it now as opposed to what you might remember back in '95?

4 PROSPECTIVE JUROR NO. 136: The laws were a little
5 different back then, so --

6 MR. PESCI: Right. That's the whole thing is that --

7 PROSPECTIVE JUROR NO. 136: Right.

8 MR. PESCI: -- whatever she tells you, that's the
9 law.

10 PROSPECTIVE JUROR NO. 136: Right.

11 MR. PESCI: Will you apply that?

12 PROSPECTIVE JUROR NO. 136: Yes.

13 MR. PESCI: Perfect. Do you want to say something?

14 PROSPECTIVE JUROR NO. 136: Well, if the law -- I
15 mean, going to in regards to first degree murder, I think that
16 the law says that we need to consider the four. I have a
17 difficult time considering all four. I -- I consider the
18 death penalty to be -- in first degree murder to be the thing.

19 MR. PESCI: Okay. And kind of going to your answer
20 on that, I think you said that if the person planned this and
21 took a life, then the other options are not -- I think the
22 word you said was equivalent to the crime?

23 PROSPECTIVE JUROR NO. 136: Yes.

24 MR. PESCI: All right. And we don't necessarily take
25 issue with that, whether it's equivalent or not.

1 PROSPECTIVE JUROR NO. 136: Uh-huh.

2 MR. PESCI: The real issue is whether or not you
3 could consider. Not -- not trying to weigh them, it's can you
4 consider all the potential options.

5 PROSPECTIVE JUROR NO. 136: I would lean more towards
6 that because I believe everyone has a conscience and we've got
7 the, you know, responsibility to utilize that.

8 MR. PESCI: Sure. And that -- that makes sense that
9 you'd lean towards it because you can have that opinion. I
10 think later on in your questionnaire, in 38 specifically, it
11 asks if you would automatically vote for the death penalty or
12 automatically vote against it and you said no to both.

13 PROSPECTIVE JUROR NO. 136: Right.

14 MR. PESCI: So it's not an automatic situation, if we
15 can prove guilt automatically he gets death? Is that
16 accurate, that you would not do that?

17 PROSPECTIVE JUROR NO. 136: Yes.

18 MR. PESCI: That was really convoluted on my part.
19 I'm sorry.

20 THE COURT: So -- so what would you do?

21 PROSPECTIVE JUROR NO. 136: I would consider all
22 four, but I naturally lean towards the death penalty.

23 THE COURT: Okay. But not automatically?

24 PROSPECTIVE JUROR NO. 136: Not automatically.

25 THE COURT: Okay.

1 MR. PESCI: All right. Pass for cause.

2 Thank you.

3 THE COURT: All right. Thank you.

4 Mr. Bunin.

5 MR. BUNIN: Thank you, Judge.

6 And, sir, you know, we appreciate your honest answers
7 here today. I do want to go over your questionnaire with you
8 a little bit because, you know, I think maybe you -- you've
9 given answers a little bit different than you gave on the
10 sheet. And I could be wrong. Let's talk about it a little
11 bit --

12 PROSPECTIVE JUROR NO. 136: Okay.

13 MR. BUNIN: -- and see what's right. One of the
14 questions says if you were a juror could you fairly consider
15 all possible forms of punishment. And then the choices were
16 yes or no, and you put no. And then you put if the person
17 planned this and took a life, the other options are not
18 equivalent to the crime.

19 So what you're saying is is you couldn't be fair to
20 the four options, that if you believe it was premeditated
21 murder you would pretty much always pick the death penalty.

22 PROSPECTIVE JUROR NO. 136: In most situations, yes,
23 I would.

24 MR. BUNIN: And you don't believe you would fairly
25 consider all four options?

1 PROSPECTIVE JUROR NO. 136: I would consider all fair
2 options, but by some people's standards it might not be fair.

3 MR. BUNIN: In other words, are you saying that you
4 wouldn't -- again, I'm not trying to get -- you know I'm not,
5 I hope.

6 PROSPECTIVE JUROR NO. 136: Yeah, I know.

7 MR. BUNIN: I'm just asking questions that we have to
8 ask. And, again, the only right answer you give is the honest
9 one.

10 PROSPECTIVE JUROR NO. 136: Right.

11 MR. BUNIN: Whatever that may be. It seems to me
12 that what you're saying is you -- you really may not consider
13 all four options.

14 PROSPECTIVE JUROR NO. 136: That may -- that may be
15 the case. I mean, I would -- I would want to go ahead and do
16 what is right if you ask me to be a part of this jury, but my
17 natural bend is going to be lean towards the death penalty.

18 MR. BUNIN: And, in fact, in the very next question
19 on here, the question is would you automatically vote either
20 for or against the death penalty? You marked yes, and then
21 you wrote I would vote for, meaning you would automatically
22 vote for the death penalty, that's your feeling, at least, in
23 a first degree murder case.

24 PROSPECTIVE JUROR NO. 136: My typical in first
25 degree, yes, it would be a bend towards voting that way.

1 MR. BUNIN: Well, the question is would you
2 automatically do it. And you put yes on that. And I just
3 want to know if that's your honest answer, that you really
4 would just go yes if it was first degree murder.

5 PROSPECTIVE JUROR NO. 136: I would, yes.

6 MR. BUNIN: And, in fact, in the next section we talk
7 about mitigating factors. And I know you know exactly where
8 I'm going. You know, we talked about them already, some of
9 the ones that a person may have that we would ask you to
10 consider, their age, their mental health, their family
11 background. And you wrote, no, I would not consider those
12 factors fairly. And you even wrote the words these factors
13 are irrelevant. And that is how you feel; isn't it?

14 PROSPECTIVE JUROR NO. 136: Yes.

15 MR. BUNIN: Is that an honest statement?

16 PROSPECTIVE JUROR NO. 136: Yeah.

17 MR. BUNIN: So you wouldn't consider those in
18 considering the death penalty in -- in this case?

19 PROSPECTIVE JUROR NO. 136: No. No.

20 MR. BUNIN: Can we approach, Your Honor?

21 THE COURT: Well -- sure.

22 (Off-record bench conference)

23 THE COURT: All right. Let me -- sometimes I think,
24 you know, the questions that the lawyers ask can get in the
25 way of the answers. And I know all of us lawyers do that.

1 But let me ask you this. Sometimes I think I can learn more
2 about someone's opinion and their feelings just by listening
3 to them talk without me trying to figure out, well, is this
4 what you mean, is this what you're saying? So why don't you
5 just tell me in your own words?

6 Now, obviously we don't get to a penalty phase unless
7 the jurors collectively have unanimously voted that the
8 defendant is guilty beyond a reasonable doubt of murder in the
9 first degree. That has to have occurred first. If that
10 occurs and only if that occurs, then, as I said at the
11 beginning, the jurors in a first degree murder case, it's the
12 only time the jurors determine the appropriate penalty.

13 So let's just say hypothetically you're on a jury.
14 It doesn't have to be, you know, any -- any case of an alleged
15 first degree murder. The jury has rendered a verdict, meaning
16 unanimously, of murder in the first degree, and you're
17 considering the penalty along with your fellow jurors
18 collectively. And when you say you could consider the four
19 penalties, but mitigation you didn't think it was, I think
20 relevant was the word that you used. Can you kind of tell me
21 what you mean?

22 PROSPECTIVE JUROR NO. 136: Mitigation is irrelevant,
23 but motive sometimes is.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR NO. 136: Motive -- I mean, if

1 there are different motives that may lead an individual to go
2 ahead and commit a crime, some of those motives would be less
3 and would have less impact in regards to going ahead and
4 giving the death penalty.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR NO. 136: I would consider
7 depending on the motive.

8 THE COURT: Okay. And, again, it's not self defense
9 because that's not first degree murder. So I'm -- this is an
10 objection. If someone else asked it, I would probably sustain
11 the objection. But what -- to sort of clarify, you're not
12 talking about first -- I mean, you're not talking about a
13 situation of self defense?

14 PROSPECTIVE JUROR NO. 136: No. I'm only talking
15 about first degree murder.

16 THE COURT: Okay. So you think that there's some
17 first degree murders that maybe are worse than others because
18 of what motivated the individual to -- to commit the killing;
19 is that what you're saying?

20 PROSPECTIVE JUROR NO. 136: Right.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR NO. 136: Yes.

23 THE COURT: And that's something that you would
24 consider?

25 PROSPECTIVE JUROR NO. 136: Yes.

1 THE COURT: Okay. And we talked about some of --- I
2 mean, again, as --- as has been pointed out previously,
3 anything could be mitigation if in the minds of a juror or the
4 jury together it is mitigation. You said you don't think
5 mitigation is -- is relevant ever? I mean, you don't think
6 that -- or do you think that there is anything that you could
7 learn about a defendant's background, condition, physical
8 condition, mental condition that would be relevant for you to
9 consider in determining an appropriate punishment?

10 PROSPECTIVE JUROR NO. 136: The only think that I may
11 consider is psychological or, you know, very large
12 developmental delays within the individual. Other than that,
13 I see individuals all the time that have come from horrible
14 backgrounds that do great. And on the opposite side, I see
15 individuals that come from great backgrounds that do
16 absolutely heinous things. And so from that standpoint, the
17 mitigating information that we will receive, it's not going to
18 carry much weight with me unless those two things that I said.

19 THE COURT: Okay. All right

20 State, do you wish to follow up with Mr. Koch?

21 MR. PESCI: No.

22 THE COURT: Defense?

23 MR. BUNIN: Yes, thank you.

24 THE COURT: So just to be clear, the mitigating
25 factors you just mentioned, can you tell me what those are

1 again that you would consider?

2 PROSPECTIVE JUROR NO. 136: The two that I mentioned
3 there were if there is severe psychological problems. I mean,
4 if you've got someone who is a paranoid schizophrenia that
5 does actions that are just outside of their mind. They may
6 have written down at one time that they're planning, have
7 plans to kill someone, and then days later all of the sudden
8 go through with it, but then there's this period of time where
9 they came back to themselves and they're going almost in and
10 out of the reality state. That's an individual I would not
11 consider, you know, that -- that mitigating circumstance. I
12 would go ahead and consider, and would not consider the death
13 penalty.

14 MR. BUNIN: Any other mitigating circumstances you
15 would consider, or do you believe they're all irrelevant?

16 PROSPECTIVE JUROR NO. 136: The others -- the other
17 one that I was mentioning is if you've got someone that has an
18 IQ typically that's below 70 percent, I would consider that
19 that individual would have a difficult time being able to have
20 a true abstract thought. And from that standpoint, I would be
21 hesitant to go ahead and give them the death penalty.

22 MR. BUNIN: Other than that, you wouldn't find any
23 other factor relevant?

24 PROSPECTIVE JUROR NO. 136: No.

25 MR. BUNIN: While I'm looking for what I thought I

1 was looking for, can you tell me, you know, your thought --
2 obviously you favor the death penalty. Can you tell me --

3 PROSPECTIVE JUROR NO. 136: Yeah.

4 MR. BUNIN: -- why, why you think it's a good thing?

5 PROSPECTIVE JUROR NO. 136: I believe that an
6 individual has a conscience and that they recognize that -- I
7 mean, some people's consciences are definitely clouded a lot
8 more than others. But for the most part no one ever
9 appreciates when someone that they're close to, their life is
10 taken. And in the same way I know that individuals recognize
11 and it goes through their mind prior to, if it's meditated
12 upon, if they thought about it, and taking the steps, I think
13 that they -- that shows that -- that there is a problem with
14 them being, you know, among -- among us. I just think that
15 that is the equal and fair punishment.

16 MR. BUNIN: So -- and I think that's exactly
17 consistent with what you wrote. So just tell me if I'm wrong
18 and -- and I'm not trying to bash you or any of your answers.

19 PROSPECTIVE JUROR NO. 136: Right.

20 MR. BUNIN: I want --

21 PROSPECTIVE JUROR NO. 136: No, no.

22 MR. BUNIN: -- to be very clear on that. So correct
23 me if I -- if I push -- I don't mean to push too hard.

24 PROSPECTIVE JUROR NO. 136: Okay.

25 MR. BUNIN: I have a way of asking questions like a

1 lawyer. I can't help it.

2 PROSPECTIVE JUROR NO. 136: Yeah, that's your job.

3 MR. BUNIN: You say that the death penalty should be
4 used in cases when another life is taken with intent and
5 premeditated; correct?

6 PROSPECTIVE JUROR NO. 136: Uh-huh.

7 MR. BUNIN: Do you -- that's yes? You have to say
8 yes --

9 PROSPECTIVE JUROR NO. 136: Yes. Yes.

10 MR. BUNIN: -- or no because we're on the record. So
11 - and that's what you wrote on characterize your feelings
12 about the death penalty. Now, you just talked about two
13 narrow mitigating circumstances that you would take into
14 account. But beyond that, do you believe it should be used
15 every time intent and premeditation is proven?

16 PROSPECTIVE JUROR NO. 136: Well, we also have to go
17 back to the motives.

18 MR. BUNIN: And that's what I want to ask about too,
19 because I don't know if I understand exactly what you mean by
20 that. I mean, I just might be missing something. Like what
21 are you talking about when you say motive has to be taken into
22 consideration. I want to make sure we're talking about first
23 degree murder and nothing else.

24 PROSPECTIVE JUROR NO. 136: Maybe I have the wrong
25 interpretation or wrong definition for motive, but when the

1 motive is not going to bring an individual -- I don't know.
2 It's hard to define.

3 MR. BUNIN: Are you talking about where -- I mean,
4 are we maybe talking about something other than intentional
5 murder? Maybe some type of killing in --

6 PROSPECTIVE JUROR NO. 136: No, no. I'm talking
7 about intentional murder.

8 MR. BUNIN: Okay.

9 PROSPECTIVE JUROR NO. 136: But when an individual
10 may feel that they've distanced themselves because they're not
11 actually the one that's, say, like pulling the trigger, but,
12 you know, is still engaged in it, I'm still --

13 MR. BUNIN: So you're saying he actually physically
14 did the act, but may not have known what he was doing?

15 PROSPECTIVE JUROR NO. 136: No, not that. No.

16 MR. BUNIN: I'm sorry.

17 PROSPECTIVE JUROR NO. 136: That's okay.

18 MR. BUNIN: Go ahead.

19 PROSPECTIVE JUROR NO. 136: That's okay.

20 MR. BUNIN: You can explain.

21 PROSPECTIVE JUROR NO. 136: You know, the individual
22 takes part in it, but isn't the individual that actually, say,
23 like pulls the trigger. There was an intent to go ahead and
24 see the individual die, but that individual wasn't actually
25 the one who pulled the trigger.

1 MR. BUNIN: So you're somebody could be convicted of
2 intentional first degree murder, but they didn't actually
3 commit the killing. They were just -- somebody else actually
4 did it?

5 PROSPECTIVE JUROR NO. 136: Yes.

6 MR. BUNIN: And in that situation you don't think the
7 death penalty would be appropriate?

8 PROSPECTIVE JUROR NO. 136: It's -- it's sort of up
9 in the air for me.

10 MR. PESCI: Judge, I apologize. I want to interject
11 an objection. This is hypothetical as to what someone would
12 vote. That's inappropriate.

13 MR. BUNIN: Well, we're trying --

14 THE COURT: Yeah, I think the question isn't --

15 Is that a situation where it not -- wouldn't be
16 appropriate, but may not be appropriate?

17 MR. BUNIN: May not be appropriate. Is that a
18 situation where the death penalty may not be appropriate?

19 PROSPECTIVE JUROR NO. 136: Yeah, maybe.

20 MR. BUNIN: Would you, on any situation of intention
21 and premeditated murder, would you consider just a term of
22 years? Is that one of the possibilities you would consider or
23 is that one you would just throw out?

24 PROSPECTIVE JUROR NO. 136: Minimum of 40 years?

25 MR. BUNIN: 40 -- 40 years minimum. Where it's not

1 life on the top, but it's a long term. Somewhere between 40
2 and 100 years.

3 PROSPECTIVE JUROR NO. 136: Yeah.

4 MR. BUNIN: Is that one that you would consider?

5 PROSPECTIVE JUROR NO. 136: Yes.

6 MR. BUNIN: And you would consider a life with the
7 possibility of parole too?

8 PROSPECTIVE JUROR NO. 136: Yes.

9 MR. BUNIN: I'm going to jump to another subject. I
10 think we covered this fairly well. But I talked to a couple
11 of different jurors earlier.

12 PROSPECTIVE JUROR NO. 136: Uh-huh.

13 MR. BUNIN: And I keep talking to you. I hope you're
14 okay with it.

15 PROSPECTIVE JUROR NO. 136: That's fine.

16 MR. BUNIN: I talked to a couple of jurors earlier
17 about race.

18 PROSPECTIVE JUROR NO. 136: Uh-huh.

19 MR. BUNIN: And something -- maybe it's something --
20 is it something the defense should be concerned about in a
21 case where the defendant in this case is black and the person
22 who died is white. Do you believe that's something that we
23 should be concerned about?

24 PROSPECTIVE JUROR NO. 136: From my standpoint?

25 MR. BUNIN: Yes.

1 PROSPECTIVE JUROR NO. 136: No.

2 MR. BUNIN: And, you know, when you're saying from
3 your personal standpoint race is not an issue --

4 PROSPECTIVE JUROR NO. 136: Right.

5 MR. BUNIN: -- do you think that there's a legitimate
6 concern that race is taken as a -- to be an issue sometimes?

7 PROSPECTIVE JUROR NO. 136: For some individuals I'm
8 sure it has because of their experiences.

9 MR. BUNIN: Uh-huh. And you don't believe, at least
10 as far as you're concerned on that jury --

11 PROSPECTIVE JUROR NO. 136: No.

12 MR. BUNIN: As you sit and look at Deangelo now, is
13 he guilty, not guilty?

14 PROSPECTIVE JUROR NO. 136: At this point I think the
15 right answer is not guilty, so --

16 MR. BUNIN: Because I keep saying that. But -- but
17 what do you believe?

18 PROSPECTIVE JUROR NO. 136: Well, you haven't
19 presented any of the facts so I can't -- I can't make --

20 MR. BUNIN: So if somebody said, all right, we're
21 done, you 12 go back and deliberate, what's your vote?

22 PROSPECTIVE JUROR NO. 136: I can't -- I can't vote.

23 MR. BUNIN: Well, you can vote.

24 PROSPECTIVE JUROR NO. 136: I could, but I'm not
25 going to give a vote because there's no evidence. I'd have to

1 vote not guilty.

2 MR. BUNIN: Okay. Why don't you tell everybody here
3 Deangelo is not guilty until --

4 PROSPECTIVE JUROR NO. 136: He is not guilty.

5 MR. BUNIN: So do you agree with the fact that the
6 State has to prove beyond a reasonable doubt --

7 PROSPECTIVE JUROR NO. 136: Oh, yeah. Yes.

8 MR. BUNIN: And would you hold them to that burden if
9 you were a juror?

10 PROSPECTIVE JUROR NO. 136: Yes.

11 MR. BUNIN: Would you also hold them to the burden in
12 the death penalty phase if there is one of proving beyond a
13 reasonable doubt that the aggravators outweigh the mitigators?

14 MR. DiGIACOMO: Objection. That's a misstatement of
15 the law.

16 THE COURT: Right. That's sustained.

17 MR. BUNIN: Would you hold them to the legal burden
18 that's going to be explained to you by the Judge, but they --
19 they must prove their aggravators. And would you hold them to
20 the burden as the Judge instructs you?

21 PROSPECTIVE JUROR NO. 136: Yes.

22 MR. BUNIN: And I guess where I have trouble going
23 here, and I'm sorry, Judge, but I'm still trying to figure out
24 if you would consider mitigators. And I think you -- you've
25 given very narrow situations.

1 MR. PESCI: Judge, objection. Asked and answered.

2 THE COURT: Well, I'll just let Mr. Bunin finish his
3 question before I determine to sustain or overrule the
4 objection.

5 MR. BUNIN: That's the only [indecipherable]. You've
6 given -- you would consider aggravators, like you just said,
7 that the -- that the State was asked to you during the penalty
8 phase as to what -- in determining whether or not there should
9 be a death penalty.

10 PROSPECTIVE JUROR NO. 136: Uh-huh.

11 MR. BUNIN: Yes?

12 PROSPECTIVE JUROR NO. 136: Yes.

13 MR. BUNIN: And other than the couple of mitigators
14 that you stated to me, you wouldn't consider any mitigators
15 when -- when -- other than the few that you've already stated?

16 PROSPECTIVE JUROR NO. 136: Just the couple that I've
17 stated.

18 MR. BUNIN: Okay.

19 THE COURT: All right.

20 MR. BUNIN: Can -- can we approach?

21 THE COURT: Sure.

22 (Off-record bench conference)

23 THE COURT: Let's see, next up is the juror in chair
24 number six. And the State may question prospective juror
25 number six.

1 MR. PESCI: Thank you, Judge.
2 How are you?
3 PROSPECTIVE JUROR NO. 138: I'm fine. Thank you.
4 MR. PESCI: Do you have eh microphone? We're all
5 set? Now, you said your husband is in the Air Force?
6 PROSPECTIVE JUROR NO. 138: Yes.
7 MR. PESCI: Is he stationed here?
8 PROSPECTIVE JUROR NO. 138: Yes.
9 MR. PESCI: Is he gone often?
10 PROSPECTIVE JUROR NO. 138: Yes.
11 MR. PESCI: Have you spent any time in the military?
12 PROSPECTIVE JUROR NO. 138: No.
13 MR. PESCI: You indicated in kind of your overall
14 assessment of -- of punishment that we should face our
15 consequences.
16 PROSPECTIVE JUROR NO. 138: Yes.
17 MR. PESCI: Is that an accurate statement?
18 PROSPECTIVE JUROR NO. 138: Yes.
19 MR. PESCI: Okay. And with that in mind, however,
20 does that definitively mean that the consequence must be the
21 death penalty?
22 PROSPECTIVE JUROR NO. 138: No, not at all.
23 MR. PESCI: Could you consider all four options?
24 PROSPECTIVE JUROR NO. 138: Absolutely.
25 MR. PESCI: And you said you're a research analyst?

1 PROSPECTIVE JUROR NO. 138: Yes.

2 MR. PESCI: What do you do exactly?

3 PROSPECTIVE JUROR NO. 138: I work for a DOD
4 contractor. My job is to find jobs to keep the people within
5 my company employed.

6 MR. PESCI: Okay. Do you interact with law
7 enforcement with that job?

8 PROSPECTIVE JUROR NO. 138: No. It's Department of
9 Defense only.

10 MR. PESCI: Do you have any problems standing in
11 judgment of another human being?

12 PROSPECTIVE JUROR NO. 138: No.

13 MR. PESCI: Can you be fair to both sides?

14 PROSPECTIVE JUROR NO. 138: Yes.

15 MR. PESCI: We'll pass for cause, Judge.

16 THE COURT: All right. Thank you.
17 Defense.

18 MR. ERICSSON: Thank you, Your Honor.

19 I know it's getting late. It's 4:00 and you folks
20 have been here since early this morning. And I appreciate
21 your -- your patience. But I hope you understand the
22 importance for us to go through these questions with you.

23 Anything about your background that you think either
24 side should be aware of that would affect your ability to be
25 fair to both sides?

1 PROSPECTIVE JUROR NO. 138: No, not at all.

2 MR. ERICSSON: If -- jumping to the penalty phase.

3 And, again, we only get to that if -- if Mr. Carroll is found
4 guilty of first degree murder.

5 PROSPECTIVE JUROR NO. 138: Yes, sir.

6 MR. ERICSSON: And that's -- that's not accidental,
7 that's not self defense, that's not heat of passion. That is
8 intentional, willful murder of another person. If you were
9 seated on the jury and someone was found guilty of intentional
10 first degree murder, would you be able to consider all four of
11 the sentences that Nevada provides?

12 PROSPECTIVE JUROR NO. 138: Yes, I would.

13 MR. ERICSSON: Would you be able to consider the
14 death penalty?

15 PROSPECTIVE JUROR NO. 138: Yes.

16 MR. ERICSSON: And on the other end you'd be able to
17 consider life with the possibility of parole?

18 PROSPECTIVE JUROR NO. 138: Yes.

19 MR. ERICSSON: Do you have any concerns or issues
20 with -- with the law in Nevada that someone charged of a crime
21 does not have to take the stand?

22 PROSPECTIVE JUROR NO. 138: No.

23 MR. ERICSSON: And can you imagine situations or
24 scenarios in your mind where an innocent person for whatever
25 reason elects not to take the stand in his or her trial?

1 PROSPECTIVE JUROR NO. 138: I think it's a personal
2 choice. It's a choice made between a defendant and his
3 lawyers, based on his best interest. I don't see a problem
4 with it either way.

5 MR. ERICSSON: In this case obviously an individual
6 died. He was shot and killed. Whoever is seated in this case
7 will be shown graphic photographs of the victim. You think
8 that seeing something like that would affect your ability to
9 - to be impartial and be fair to both sides?

10 PROSPECTIVE JUROR NO. 138: I don't think death is
11 pretty, regardless of how it gets there, so, no, I don't think
12 that it would cloud my judgment in either direction.

13 MR. ERICSSON: Tell me your -- your opinion. You
14 were asked a question about whether you could consider
15 mitigation in a penalty phase. What is your opinion of -- of
16 mitigating factors?

17 PROSPECTIVE JUROR NO. 138: I think we shouldn't be
18 allowed to make excuses, but I couldn't come up with an
19 example of what I would think that would be. I would have to
20 hear what was presented to me and make a decision based on
21 what was presented to me.

22 MR. ERICSSON: Okay. And what do you mean by -- by
23 your statement that -- that, you don't think we should be able
24 to make excuses?

25 PROSPECTIVE JUROR NO. 138: Under the pretense of

1 premeditated it pretty well knocks out, you know, someone had
2 a gun to my head and forced me to do something that I would
3 not have ordinarily done.

4 MR. ERICSSON: Okay. And make sure we're talking
5 about the same thing here. We're talking about a situation
6 where a person has been found guilty of --

7 PROSPECTIVE JUROR NO. 138: Right.

8 MR. ERICSSON: -- premeditated murder. It's not --
9 you weren't forced to do it by somebody else under threat of
10 physical harm or anything like that. It is intentional
11 murder. And in that situation would you be able to consider
12 mitigating factors, background, history, education,
13 intelligence level, things like that, in deciding what an
14 appropriate sentence would be for an individual?

15 PROSPECTIVE JUROR NO. 138: Yes.

16 MR. ERICSSON: Do you have any -- any concerns with
17 that concept in -- in your mind?

18 PROSPECTIVE JUROR NO. 138: Not to sound blas, but
19 once evidence is presented, then I would make my decision
20 based on what information I had been given to mitigation as
21 well as whether or not there are any mitigating circumstances
22 presented.

23 MR. ERICSSON: Do you feel that the law in Nevada is
24 appropriate where -- and you'll hear the detailed law from the
25 Judge, but that even in a first degree murder case a jury is

1 to consider mitigation factors in deciding the appropriate
2 sentence for -- for a person?

3 PROSPECTIVE JUROR NO. 138: Yes, I think that's
4 appropriate.

5 MR. ERICSSON: Thank you very much.

6 THE COURT: Pass?

7 MR. ERICSSON: We pass for cause.

8 THE COURT: All right. Thank you.

9 I believe we're on State's first.

10 MR. DiGIACOMO: We are, Judge.

11 Judge, the State would thank and excuse juror who is
12 in seat number four, juror No. 38, Ms. Vigilia.

13 THE COURT: Ma'am, thank you very much for being here
14 and your willingness to serve as a juror. You are excused at
15 this time. And just exit through the double doors.

16 And, Ms. Husted, please call up the name of the next
17 prospective juror.

18 THE CLERK: Yes, Your Honor.

19 Badge 151, Maria Silva.

20 THE COURT: Ma'am, have that empty seat there in the
21 front row of the jury box. And before I turn you over to the
22 DAs, you had raised your hand earlier about your English.
23 Where are you from originally?

24 PROSPECTIVE JUROR NO. 151: I was born in LA, but I
25 was raised in Mexico.

1 THE COURT: Okay. Did you go to school in Mexico?
2 PROSPECTIVE JUROR NO. 151: Yes.
3 THE COURT: How far did you go in school?
4 PROSPECTIVE JUROR NO. 151: [indecipherable]
5 University in Mexico.
6 THE COURT: You went to the University in Mexico?
7 Did you graduate?
8 PROSPECTIVE JUROR NO. 151: Yes.
9 THE COURT: What's your degree in?
10 PROSPECTIVE JUROR NO. 151: Marketing.
11 THE COURT: In marketing?
12 PROSPECTIVE JUROR NO. 151: Uh-huh.
13 THE COURT: And what do you do for a living now?
14 PROSPECTIVE JUROR NO. 151: I'm sorry?
15 THE COURT: What do you do for a job?
16 PROSPECTIVE JUROR NO. 151: Right now?
17 THE COURT: Right.
18 PROSPECTIVE JUROR NO. 151: I'm working at Wal-Mart.
19 THE COURT: At Wal-Mart? What do you do at Wal-Mart?
20 PROSPECTIVE JUROR NO. 151: I was on the cash office
21 making deposits.
22 THE COURT: Okay. So you do like the accounts
23 receivable? You make deposits?
24 PROSPECTIVE JUROR NO. 151: Yeah. Well, count all
25 the money from the registers.

1 THE COURT: Oh, from the registers. Okay. Like how
2 much is there and then you fill out the bank statement?

3 PROSPECTIVE JUROR NO. 151: Right.

4 THE COURT: Okay. And then how long have you lived
5 here in Clark County?

6 PROSPECTIVE JUROR NO. 151: Four years.

7 THE COURT: Where did you live before Clark County?

8 PROSPECTIVE JUROR NO. 151: I was living in Michigan.

9 THE COURT: In where? Michigan?

10 PROSPECTIVE JUROR NO. 151: In Michigan.

11 THE COURT: What did you do there for -- for work?

12 PROSPECTIVE JUROR NO. 151: Wal-Mart.

13 THE COURT: Also at Wal-Mart. Okay. And then
14 obviously being born here you're a United States -- you're a
15 born United States citizen. Okay.

16 State, you may question Ms. Silva.

17 MR. DiGIACOMO: Thank you, Judge.

18 And you had indicated that you had some trouble
19 speaking -- you're understanding English; right?

20 PROSPECTIVE JUROR NO. 151: I understand just the
21 basic words.

22 MR. DiGIACOMO: A lot of what we talked about in
23 here, have you understood all of it, or is there some that
24 you're missing?

25 PROSPECTIVE JUROR NO. 151: I'm missing some words of

1 some -- there are some things that I don't understand the
2 words.

3 MR. DiGIACOMO: Now, you seem to speak it pretty
4 well. Is reading and writing English a problem for you as
5 well?

6 PROSPECTIVE JUROR NO. 151: Just in like terms like
7 mitigations and other words that I don't understand, so I
8 don't [indecipherable] I mean, I would not like to give over
9 an answer on that.

10 MR. DiGIACOMO: And, you know, we've kind of said
11 this before, there's really no wrong answer. We're just
12 trying to figure out kind of your level of -- of understanding
13 of English. Because there's a lot of questions in here that
14 just weren't answered. Were you not answering them because
15 you didn't understand what was being said?

16 PROSPECTIVE JUROR NO. 151: Usually when I'm just
17 writing or answering the questions I have my dictionary. So
18 when I was answer the questionnaire, I didn't have my dictionary
19 at that time so that's why it -- I just --

20 MR. DiGIACOMO: Okay. As we're sitting here talking
21 have you gone back to your dictionary to look at it to figure
22 out words sometimes, or have you kind of just had that tucked
23 away?

24 PROSPECTIVE JUROR NO. 151: Well, I was looking in
25 my dictionary for like mitigations, but I didn't -- and what

1 means mitigation, where -- I don't -- I didn't find anything,
2 just that translation mitigation mean English into Spanish.
3 But the meaning of the word [inaudible].

4 MR. DiGIACOMO: Okay. Let me ask you this question.
5 Have you ever thought about the death penalty before? Do you
6 know what I'm saying when I say the death penalty?

7 PROSPECTIVE JUROR NO. 151: Yes, a little bit.

8 THE COURT: Well, what do you think it -- what does
9 it mean to you?

10 PROSPECTIVE JUROR NO. 151: It's -- well, that means
11 that it's somebody -- it's something bad. There's --
12 [inaudible]. It's something that you do something wrong you
13 have -- how do I say it?

14 MR. DiGIACOMO: Can we approach?

15 THE COURT: Sure.

16 (Off-record bench conference)

17 THE COURT: Ms. Silva, thank you very much for being
18 here. We're going to go ahead and excuse you from this
19 department. Just -- thank you. Hand over the microphone, and
20 thank you very much for your participation. Just through the
21 double doors.

22 And, Ms. Husted, call you the next prospective juror.

23 THE CLERK: Yes, Your Honor.

24 158, Patrick Gallahan.

25 THE COURT: And, sir, if you would just have that

1 empty chair there in the front row please. Just have a seat.

2 And, State, you may question Mr. Gallahan.

3 MR. PESCI: Thank you.

4 Sir, are you presently working in a warehouse?

5 PROSPECTIVE JUROR NO. 158: At the Mirage.

6 MR. PESCI: At Mirage? And before that you were a
7 bartender?

8 PROSPECTIVE JUROR NO. 158: That's correct.

9 MR. PESCI: Was that here in Las Vegas?

10 PROSPECTIVE JUROR NO. 158: It sure was.

11 MR. PESCI: How long have you been here in Vegas?

12 PROSPECTIVE JUROR NO. 158: 1980.

13 MR. PESCI: Okay. As a bartender, have you ever had
14 any crimes occur while you were working?

15 PROSPECTIVE JUROR NO. 158: Yes.

16 MR. PESCI: Were you the victim of a crime?

17 PROSPECTIVE JUROR NO. 158: Once.

18 MR. PESCI: Did the police respond?

19 PROSPECTIVE JUROR NO. 158: Yes, they did.

20 MR. PESCI: And do you know if they every apprehended
21 the individual?

22 PROSPECTIVE JUROR NO. 158: They did.

23 MR. PESCI: Did you have to go to court and testify?

24 PROSPECTIVE JUROR NO. 158: I had to go to court, but
25 he pleaded guilty so I didn't have to testify.

1 MR. PESCI: All right. Do you feel that -- do you
2 feel that that was handled appropriately?

3 PROSPECTIVE JUROR NO. 158: Yes.

4 MR. PESCI: Would you hold that against the State or
5 the defendant the fact that you had been a victim of a crime
6 and the case had been negotiated?

7 PROSPECTIVE JUROR NO. 158: Not at all.

8 MR. PESCI: You, in fact, have had some interaction
9 with the criminal justice system. Did you -- you indicated
10 you thought it was handled appropriately?

11 PROSPECTIVE JUROR NO. 158: I'm not sure what I --
12 what I put down on that.

13 MR. PESCI: All right. I think there was a
14 driving --

15 PROSPECTIVE JUROR NO. 158: Oh, yeah, when I was 19.
16 Yeah.

17 MR. PESCI: Okay.

18 PROSPECTIVE JUROR NO. 158: That was fine.

19 MR. PESCI: Do you feel as if it was handled
20 appropriately?

21 PROSPECTIVE JUROR NO. 158: Oh, yeah.

22 MR. PESCI: You wouldn't hold that against anybody
23 here?

24 PROSPECTIVE JUROR NO. 158: No.

25 MR. PESCI: Okay. When it comes to the death

1 penalty, is it fair to say that you're -- you're not opposed
2 to it?

3 PROSPECTIVE JUROR NO. 158: Correct.

4 MR. PESCI: But in order for you to vote for it, you
5 would have to know 100 percent?

6 PROSPECTIVE JUROR NO. 158: Yes.

7 MR. PESCI: Okay. Can you consider all four possible
8 punishments, the other three besides the death penalty?

9 PROSPECTIVE JUROR NO. 158: Yes.

10 MR. PESCI: Okay. Would you -- would you definitively
11 go against the death penalty or definitively for the death
12 penalty?

13 PROSPECTIVE JUROR NO. 158: Again, it would have to
14 be what the evidence was.

15 MR. PESCI: Okay.

16 PROSPECTIVE JUROR NO. 158: And how it was presented.

17 MR. PESCI: Do you have any reason why you cannot sit
18 in judgment of another human being?

19 PROSPECTIVE JUROR NO. 158: I don't like to judge a
20 human being.

21 MR. PESCI: That's understandable. I guess -- but is
22 it -- is it such that you couldn't make a determination as to
23 whether somebody was guilty or not because of that?

24 PROSPECTIVE JUROR NO. 158: No.

25 MR. PESCI: Could you do that if you were asked to?

1 PROSPECTIVE JUROR NO. 158: Yes.

2 MR. PESCI: Do you feel you can be fair to both
3 sides?

4 PROSPECTIVE JUROR NO. 158: Definitely.

5 MR. PESCI: Thank you.

6 We pass for cause.

7 THE COURT: All right. Thank you.

8 Defense, you may question Mr. Gallahan.

9 MR. BUNIN: Thank you.

10 Mr. Gallahan?

11 PROSPECTIVE JUROR NO. 158: That's correct.

12 MR. BUNIN: In answering these questions on the
13 questionnaire here, you said that you could fairly consider
14 the mitigators listed at least on this particular
15 questionnaire. Do you remember that?

16 PROSPECTIVE JUROR NO. 158: Yes.

17 MR. BUNIN: The mitigators being, I know it's not
18 important right now, but, you know, childhood experiences,
19 mental status, health, age, education, just general
20 background.

21 PROSPECTIVE JUROR NO. 158: Uh-huh.

22 MR. BUNIN: You have to say yes or no.

23 PROSPECTIVE JUROR NO. 158: Yes.

24 MR. BUNIN: Believe me, when the record picks that
25 up, you can't tell later if that uh-huh was a yes or a no.

1 Okay. When you're -- when we're talking about mitigating
2 factors, you know, somebody -- I want to know what you think
3 that means or at least I want to make sure we're on the same
4 page. Somebody else talked about it being an excuse. And do
5 you understand that we're -- if we get to a penalty phase,
6 that means somebody has already been convicted of premeditated
7 first degree murder. Do you understand?

8 PROSPECTIVE JUROR NO. 158: I understand that.

9 MR. BUNIN: So we're not saying in any of these
10 factors that there wasn't a first degree murder. What we're
11 saying is you need to understand who this person is before you
12 make a decision about -- before sentencing. Do you
13 understand?

14 PROSPECTIVE JUROR NO. 158: I do. There -- there is
15 a question though. The mil -- miligating factors --

16 MR. BUNIN: Mitigating, yes.

17 PROSPECTIVE JUROR NO. 158: -- are they brought up in
18 the penalty phase or in the trial phase?

19 MR. BUNIN: These would only be in the penalty phase.
20 So if we get to a penalty phase, you're going to have to
21 determine one of the four possible sentences, that being a
22 term of years, life with the possibility of parole, life
23 without the possibility of parole, or death. Could you
24 consider all four of those factors?

25 PROSPECTIVE JUROR NO. 158: Yes, I could.

1 MR. BUNIN: And during that phase is when the defense
2 may present evidence of mitigating factors that explain to you
3 certain things about the defendant that we think you should
4 take into consideration when considering those four sentences.
5 These things that we list under mitigating factors, is that
6 fair game? Is that something that you think you should fairly
7 consider when determining what the sentence should be?

8 PROSPECTIVE JUROR NO. 158: Yeah. It -- again, it
9 would be how it was presented, and when I heard them as far as
10 how it would affect my judgment.

11 MR. BUNIN: And, you know, essentially what we're
12 saying with the law is that after there has been a conviction
13 of first degree murder, if there is going to be a conviction,
14 but after there has been a conviction, the law says that you
15 almost, you know, rate a particular person that's convicted.
16 In other words, you have to determine is he the worst of the
17 worst, and that would lead to the death penalty, or does he
18 not fall in that category, and that can lead to something as
19 low as a term of years, here being 40 years minimum, 100
20 maximum. Do you agree that all four of the possibilities are
21 pretty serious punishments?

22 PROSPECTIVE JUROR NO. 158: Oh, definitely.

23 MR. BUNIN: And do you -- do you agree that -- I know
24 I asked this question earlier and a lot of people really do
25 think differently, but do you agree 40 means 40?

1 PROSPECTIVE JUROR NO. 158: Yes.

2 MR. BUNIN: So if you sentenced a person to 40 years
3 minimum, you understand and agree that they wouldn't be
4 eligible for parole for 40 years.

5 PROSPECTIVE JUROR NO. 158: Correct.

6 MR. BUNIN: And they may not get it.

7 PROSPECTIVE JUROR NO. 158: I understand.

8 MR. BUNIN: Okay. And that -- are you comfortable
9 enough being in a situation where you're sitting in a jury and
10 having to make these types of decisions?

11 PROSPECTIVE JUROR NO. 158: I've never -- never done
12 it. I can't answer that truthfully, but as a civic duty, I
13 under -- understand that part of it. Yeah, I could do it.

14 MR. BUNIN: You can truthfully say you'll try your
15 best?

16 PROSPECTIVE JUROR NO. 158: Yes.

17 MR. BUNIN: Okay. I know it's a difficult situation
18 to be in. You know, talking just briefly about the -- not the
19 penalty phase, and, again, I'm hoping we don't get to a
20 penalty phase, but we've talked about a lot of different
21 things. I don't know if you have anything you'd like to ask
22 or if you have any comments you want to make.

23 We talked about the burden of proof is solely on the
24 prosecution, that the defense doesn't have to put on a case.
25 We've talked about how you judge and weigh credibility or the

1 difference between lay witnesses and police officer witnesses.
2 Is there anything among those topics that -- that we talked
3 about that you would like to comment on and anybody we have
4 agreed or disagreed or talked about with anybody?

5 PROSPECTIVE JUROR NO. 158: No, not really.

6 MR. BUNIN: I'll pass for cause, Your Honor.

7 THE COURT: All right. Thank you.

8 Defense's challenge.

9 MR. BUNIN: We would thank and excuses juror No. 3,
10 Your Honor, Mr. Koch.

11 THE COURT: Mr. Koch, thank you for being here and
12 your participation and your willingness to serve as a juror.
13 You are excused. If you would just exit through the double
14 doors.

15 And, Ms. Husted, if you would please call up the next
16 prospective juror.

17 THE CLERK: Yes, Your Honor.

18 Badge No. 165, Tiffany Ortiz.

19 THE COURT: And, Ms. Ortiz, if you would just have
20 that empty chair down there in the front row of the jury box.

21 State, Mr. DiGiacomo, you may question Ms. Ortiz.

22 MR. DiGIACOMO: Thank you, Judge.

23 Now, it looks like you used to work for Nextel as a
24 fraud investigator.

25 PROSPECTIVE JUROR NO. 165: Yes, I did.

1 MR. DiGIACOMO: Okay. Now, was that before Sprint
2 and Nextel combined or --

3 PROSPECTIVE JUROR NO. 165: No, I lost my job twice
4 to Sprint.

5 MR. DiGIACOMO: Okay. And you were also a manager
6 for a Sprint call center as well?

7 PROSPECTIVE JUROR NO. 165: Yes. When I originally
8 worked for Sprint it was in their collections department. I
9 was laid off because they went to Bermuda. And so I then got
10 a job with Nextel where I was a collections representative
11 because they didn't have manager positions, then I was
12 promoted to the fraud department.

13 MR. DiGIACOMO: And then they -- was this before --
14 there was also Sprint PCS, I guess.

15 PROSPECTIVE JUROR NO. 165: Yeah, and they merged,
16 and they bought Sprint, and I refused to work for Sprint
17 again, so I resigned and found employment elsewhere.

18 MR. DiGIACOMO: Anything -- obviously you don't have
19 a lot of love for Sprint. You know, there's going to be some
20 Sprint records that are introduced here. There's nothing
21 about your prior employment that's going to cause you to go,
22 I'm not going to listen to this?

23 PROSPECTIVE JUROR NO. 165: No, it's going to be
24 completely different from what I -- I did collections. I did
25 not analyze anything. Completely different department, and it

1 wouldn't cause any heartbreak to me one way or another.

2 MR. DiGIACOMO: Let me ask you that question ther
3 too. Did you have any experience or knowledge about how a
4 cell phone works, cell sites, and what information cell cite
5 records from Sprint can tell people in a jury, any of that
6 type of stuff?

7 PROSPECTIVE JUROR NO. 165: I know that they can ping
8 from certain sites, and I know that it does record inbound and
9 outbound calls, only if the phone was picked up in most cases
10 is where it can pick up. I know it can -- there is data from
11 message -- my text messages that could be requested at some
12 point, but that would have to be subpoenaed. So me,
13 personally, as a manager, wasn't able to go in there and look
14 at every text message that you sent. That was somebody else's
15 capability on the back end.

16 MR. DiGIACOMO: Okay.

17 PROSPECTIVE JUROR NO. 165: So they do have databases
18 for that.

19 MR. DiGIACOMO: And then generally my question for
20 you would be if we called -- we are going to call somebody
21 from Sprint Nextel who is sent out here who knows how to read
22 these records and testify as to exactly how it works, you
23 would rely upon their testimony as to what they say as opposed
24 to what your knowledge is? You can set that aside and listen
25 to the testimony?

1 PROSPECTIVE JUROR NO. 165: Absolutely because that's
2 completely different from what I did. I only called you and
3 told you you had a bill to pay. That was it.

4 MR. DiGIACOMO: Okay. You also indicated that your
5 current fiancis an ex police officer?

6 PROSPECTIVE JUROR NO. 165: Yes.

7 MR. DiGIACOMO: Merely because he was a police
8 officer and there will be police officers coming in here --
9 you would agree with me there are good police officers and
10 there are bad police officer; right?

11 PROSPECTIVE JUROR NO. 165: Correct.

12 MR. DiGIACOMO: So you can judge the credibility of
13 police officers from the stand like any other witness?

14 PROSPECTIVE JUROR NO. 165: Correct.

15 MR. DiGIACOMO: You also indicated that your sister
16 had some problems with the law.

17 PROSPECTIVE JUROR NO. 165: Absolutely.

18 MR. DiGIACOMO: Do you think she was treated fairly
19 by the system?

20 PROSPECTIVE JUROR NO. 165: Absolutely.

21 MR. DiGIACOMO: You also indicated that your toddler
22 had some doctor appointments. Is that something that --

23 PROSPECTIVE JUROR NO. 165: I've already made
24 arrangements with family to bring her to those appointments.

25 MR. DiGIACOMO: And then obviously the big question,

1 or at least the time that we spent a lot of time on here is
2 the death penalty. And now that you've sat here and read this
3 questionnaire you know that there's four possible punishments.
4 Are you somebody that if you get to that point, if you found
5 that Mr. Pesci and I have proven beyond a reasonable doubt
6 that Mr. Carroll has committed first degree murder, do you
7 think that you're someone that could consider all four forms
8 of punishment?

9 PROSPECTIVE JUROR NO. 165: Yes.

10 MR. DiGIACOMO: Do you think you'd be a fair juror?

11 PROSPECTIVE JUROR NO. 165: Yes.

12 MR. DiGIACOMO: Thank you very much.

13 Pass for cause.

14 THE COURT: All right. Before we move into
15 questioning from the defense, ladies and gentlemen, we're
16 going to take a break. We're going to take a 35 minute break.
17 At the end of the break I want you all to convene out in the
18 hallway and to remain in the hallway until Officer Wooten
19 comes and gets you.

20 Once again, the admonition about discussing the case
21 or doing anything relating to the case is still, of course, in
22 effect during our 35 minute break. On this particular break,
23 I need everyone to take all of their personal belongings with
24 them from the courtroom. Do not leave anything in your
25 chairs.

1 THE MARSHAL: If you haven't already done so, make
2 sure you down to the third floor and get your stamps for your
3 parking pass, then come back up here. Do not mingle with the
4 jurors that already in line outside.

5 THE COURT: Right. And during the break, obviously,
6 you can go get a coffee or something like that. Just --

7 PROSPECTIVE JUROR: What time are we going to get out
8 of here? That's what I want to know.

9 THE COURT: I don't know. Any other questions, that's Officer
10 Wooten's job.

11 (Court recessed at 4:18 p.m. until 4:24 p.m.)

12 (In the presence of the jury.)

13 THE COURT: Counsel approach.

14 (Off-record bench conference)

15 THE COURT: All right. Court is now in session.
16 This is the time for Case No. C212667, plaintiff State of
17 Nevada versus Deangelo Carroll, defendant.

18 The record will reflect the presence of the State
19 through the deputy district attorneys Giancarlo Pesci and Marc
20 DiGiacomo; the presence of the defendant, Deangelo Carroll,
21 along with his attorneys, Dan Bunin and Tom Ericsson; the
22 officers of the Court and the second half of the members of
23 the prospective jury panel.

24 Good afternoon, ladies and gentlemen. You are in
25 Department XXI of the 8th Judicial District Court for the

1 State of Nevada. My name is Valerie Adair and I am the
2 presiding judge.

3 As I'm sure you've ascertained from filling out the
4 questionnaire, you have been summoned here today to
5 potentially serve as jurors in a capital murder trial.

6 Let me first take this opportunity to apologize to
7 all of you. I know that you had to come in and fill out the
8 questionnaire. I also know that you've been waiting around
9 all day and I think that's probably one of the most difficult
10 things for jurors. I want to apologize for that.

11 As you can see, this courtroom is not very big. We
12 had to divide the panel of prospective jurors into two parts
13 because we simply could not fit all of you into the courtroom
14 at the same time. We have been in session all morning with
15 the first part -- well, all morning and afternoon with the
16 first part of the panel. That is why you had to remain
17 downstairs because, as I said, there simply was not room for
18 everyone in the courtroom. I know that can be a very boring
19 and long day and I want to apologize for that.

20 Counsel for the State is going to introduce
21 themselves to you. They are going to briefly tell you the
22 nature of the State's case and they are going to give you the
23 names of any witnesses which the State may be calling.

24 Please listen very carefully to the names of the
25 witnesses as they are read to you.

1 Mr. DiGiacomo.

2 MR. DIGIACOMO: Thank you, Judge. Good afternoon,
3 ladies and gentlemen. My name is Marc DiGiacomo. I'm a
4 deputy district attorney here in Clark County. Along with a
5 fellow deputy district attorney Giancarlo Pesci, we've been
6 assigned to prosecute the case of State of Nevada versus
7 Deangelo Carroll.

8 Mr. Carroll is accused, in 2005, of being an
9 employee of the Palomino Club, which is an adult cabaret that
10 is in North Las Vegas across from Jerry's Nugget. He is
11 accused of being requested by the owners and managers of the
12 Palomino to have a former employee by the name of Timothy
13 Hadland killed. He's thereafter accused of finding a hit man,
14 luring the victim to a dark location, driving the hit man to
15 that location and eventually bringing the hit man back to the
16 Palomino Club to be paid for killing Mr. Hadland.

17 In order to establish that -- those facts, we're
18 going to call a number of witnesses. I'm going to read those
19 names out loud. If you recognize any of the names, you're
20 later going to be asked about them.

21 In addition to the witnesses, we're also going to
22 name some other people whose names you're going to hear but
23 may not necessarily hear their testimony throughout the case.

24 There's an officer from Henderson by the name of
25 Kenneth Simpson. There's a medical examiner by the name of

1 Dr. Gary Telgenhoff, Detective Marty Wildemann, a SWAT officer
2 by the name of Manuel Rivera, Detective Theresa Kyger,
3 Detective Michael McGrath, crime scene analyst Larry Morton,
4 Officer Patrick Ledbetter, a fingerprint examiner by the name
5 of Fred Boyd, a crime scene analyst by the name of Louise
6 Rhinehart, a firearms examiner by the name of James Krylo,
7 crime scene analyst Jeffrey Schmink, crime scene analyst
8 Stephanie Smith, and Officer Jeff -- Jason Lefenyero, a crime
9 scene analyst Kristin Grammas, a DNA analyst by the name of
10 Julie Marshner.

11 There is the alleged shooter in this case by the
12 name of Kenneth Counts. There is actually three different
13 Luis Hidalgos that you may hear testimony about. There's Luis
14 Hidalgo, Sr. He's the oldest of the Hidalgos. He doesn't
15 have a direct relationship with the Palomino Club. You'll
16 hear testimony about Luis Hidalgo, Jr., who was the owner at
17 the time of the Palomino Club. His name is also Mr. H, people
18 know him as. There is Luis Hidalgo, III, which is Mr. H's
19 son. They call him Luis or Little Lou.

20 There's Anabel Espindola. There's Jayson Taoipu.
21 There's a Rontae Zone, an Ismael Madrid, a Pajit Karson, Allen
22 Hadland, Michelle Schwanderlik.

23 There's a custodian of records from Sprint Nextel.
24 I don't know their names specifically to give you, but that
25 person will come in here. If any of you have ever worked for

1 Sprint Nextel, we need to know that.

2 Steven Blajette, Gary McWharter. Also, the
3 custodian of records for Yellow Cab Company may come in and
4 testify. Alana Hadland, Dorie Gibbs or Dorie Luecher, Alex
5 Hadland, Jennifer Hadland, Omar Manner and a former detective
6 with the Las Vegas Metropolitan Police Department by the name
7 of Jimmy Vaccaro.

8 Thank you.

9 THE COURT: All right. Thank you, Mr. DiGiacomo.

10 Ladies and gentlemen, counsel for the defense will
11 now introduce themselves to you along with their client.

12 An accused in a criminal case is never required to
13 call any witnesses or present any evidence whatsoever.
14 However, if there are any witnesses which the defense may
15 call, they will give you those names at this time.

16 Mr. Bunin.

17 MR. BUNIN: Thank you.

18 Good afternoon. My name is Dan Bunin. I'm a
19 private attorney. I'm a partner in the firm of Bunin & Bunin.
20 This is Tom Ericsson. He's also a private attorney. Together
21 we represent Deangelo Carroll and he is the defendant in this
22 case.

23 You're going to hear evidence presented from the
24 prosecution and after you hear all that evidence, the evidence
25 will not show that Deangelo Carroll committed murder and we

1 believe that you'll find him not guilty.

2 Now, I'm going to read some witness names. Other
3 than the witnesses stated just now by the prosecution, these
4 are other people you may hear from but you won't necessarily
5 hear from from the defense.

6 Janique Carroll, Felicia Arkaletta, Joseph
7 Arkaletta, Calvin Williams, Richard Frankie, Janae Morris,
8 Antonio Williams, a corrections officer whose last name is
9 Denton, Virginia Carroll, Lisa Page, Violet Dillon, Michele
10 Pruitt, Katie Hunt, Lisa Grippentraub, Norton Roitman, and
11 David Schmidt.

12 Thank you.

13 THE COURT: All right. Thank you, Mr. Bunin.

14 Ladies and gentlemen, the clerk is now going to call
15 the roll of the panel of prospective jurors. When your name
16 is called, please answer present or here.

17 Ms. Husted, please call the roll.

18 THE CLERK: Badge 154, Jennifer Lee.

19 PROSPECTIVE JUROR NO. 154: Here.

20 THE CLERK: 266, Laura Cox. I think she's in the
21 last one.

22 THE COURT: Right.

23 THE CLERK: 267, Daisy --

24 PROSPECTIVE JUROR NO. 267: Present.

25 THE CLERK: Thank you.

1 269, Michelle Rinaldi.
2 PROSPECTIVE JUROR NO. 269: Present.
3 THE CLERK: 271, Eloise Price.
4 PROSPECTIVE JUROR NO. 271: Present.
5 THE CLERK: 284, Dan Smith.
6 PROSPECTIVE JUROR NO. 284: Present.
7 THE CLERK: 294, Freda Davis.
8 PROSPECTIVE JUROR NO. 294: Here.
9 THE CLERK: 300, Brandy Kuntz.
10 PROSPECTIVE JUROR NO. 300: Present.
11 THE CLERK: 302, Abraham Ruelas.
12 PROSPECTIVE JUROR NO. 302: Here.
13 THE CLERK: 307, Salvador Avila.
14 PROSPECTIVE JUROR NO. 307: Here.
15 THE CLERK: 308, Richard Rettinger.
16 PROSPECTIVE JUROR NO. 308: Here.
17 THE CLERK: Or Rettinger. How do you say that?
18 PROSPECTIVE JUROR NO. 308: Rettinger.
19 THE CLERK: 320, Kevin Peterson.
20 PROSPECTIVE JUROR NO. 320: Here.
21 THE CLERK: 323, Aracely Sorto-De-Mc --
22 PROSPECTIVE JUROR NO. 323: Present.
23 THE CLERK: Thank you 326, Gerald Hill.
24 PROSPECTIVE JUROR NO. 326: Here.
25 THE CLERK: 327, Tamara Collins.

1 PROSPECTIVE JUROR NO. 327: Here.
2 THE CLERK: 330, Spanzian Dawson.
3 PROSPECTIVE JUROR NO. 330: Here.
4 THE CLERK: 331, Li Belanger. Not present.
5 342, Gary Markel.
6 PROSPECTIVE JUROR NO. 342: Here.
7 THE CLERK: 343, Antionette Champion.
8 PROSPECTIVE JUROR NO. 342: Here.
9 THE CLERK: 353, Righard Tagg.
10 PROSPECTIVE JUROR NO. 353: Here.
11 THE CLERK: 354, Elizabeth Stessel.
12 PROSPECTIVE JUROR NO. 354: Here.
13 THE CLERK: 356, Norma Koot.
14 PROSPECTIVE JUROR NO. 356: Here.
15 THE CLERK: 360, Cristopher Pennewell. Not present.
16 369, Stefani Galvan.
17 PROSPECTIVE JUROR NO. 369: Here.
18 THE CLERK: 376, Carol Druan.
19 PROSPECTIVE JUROR NO. 376: Here.
20 THE CLERK: 377, Javier Michel.
21 PROSPECTIVE JUROR NO. 377: Here.
22 THE CLERK: 378, Simonetta Meza.
23 PROSPECTIVE JUROR NO. 378: Here.
24 THE CLERK: 380, Christopher Gebase.
25 PROSPECTIVE JUROR NO. 380: Present.