

1 MR. SCISCENTO: But then you also tell me you grew  
2 up in Orange County.

3 PROSPECTIVE JUROR CHASTAIN: Orange County. Orange  
4 County is mixed culture. Did you ever live in Orange County?

5 MR. SCISCENTO: I guess I'm thinking Irvine and --

6 PROSPECTIVE JUROR CHASTAIN: Irvine -- that's like  
7 by the beach and things, like by Newport Beach.

8 MR. SCISCENTO: And I guess inland then, that you  
9 come from?

10 PROSPECTIVE JUROR CHASTAIN: Yeah. You know. I  
11 don't think race or religion plays a -- plays any kind of  
12 value on where people live. I mean, certain areas are more  
13 restricted than others, but even in Newport Beach, you'll find  
14 different races, religions and all the good things there. You  
15 know?

16 MR. SCISCENTO: Okay. I have no further questions.

17 THE COURT: Mr. Figler, in light of what we've  
18 discussed at the bench, do you have a few more supplemental  
19 questions?

20 MR. FIGLER: Yeah, Judge. Perhaps we, procedurally,  
21 should approach to see how we're going to do --

22 THE COURT: Okay.

23 (Off-record bench conference)

24 THE COURT: Okay. We will make a record of that  
25 later. First peremptory challenge by the State? Should

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1 exercise or waive?  
2 MR. DASKAS: Court's indulgence.  
3 MR. GUYMON: Judge, the State would thank and excuse  
4 Juror Number 554.  
5 THE COURT: Okay. I'm doing it by position, Gary.  
6 Which --  
7 MR. GUYMON: I'm sorry. Position number 3.  
8 THE COURT: Thank you, Mr. -- Ms. Riley. You are  
9 excused.  
10 Mr. Shink? 568, then, excused or absent -- no,  
11 there's Mr. Shink. Okay.  
12 The State may inquire.  
13 MR. DASKAS: Thank you, Judge.  
14 Mr. Shink, in your questionnaire, I believe you  
15 indicated that you felt like a sentence of life in prison  
16 without parole was worse than a sentence of death. Was that  
17 your answer?  
18 PROSPECTIVE JUROR SHINK: Yes.  
19 MR. DASKAS: Tell me why you believe that to be  
20 true.  
21 PROSPECTIVE JUROR SHINK: Personally, I think it's a  
22 waste of money to put somebody in for life. I think 50 years  
23 should be maximum.  
24 MR. DASKAS: So you think 50 years should be the  
25 maximum punishment?

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1 PROSPECTIVE JUROR SHINK: Yeah. No, is -- no, the  
2 person that murders somebody -- yeah, they should pay, I'm for  
3 the death penalty, even if it's multiple or single. It don't  
4 matter what -- what kind of weapon he used or nothing.

5 MR. DASKAS: Perhaps I'm a little confused then, and  
6 I wanna make sure I understand your answer and your belief.  
7 If a defendant is convicted of what we'll call first degree  
8 murder.

9 PROSPECTIVE JUROR SHINK: Yeah.

10 MR. DASKAS: Can you think of a situation where the  
11 death penalty would be an appropriate punishment?

12 PROSPECTIVE JUROR SHINK: Yes.

13 MR. DASKAS: All right. Can you also think of a  
14 situation when someone's convicted of first degree murder,  
15 where life in prison with the possibility of parole is the  
16 appropriate punishment or do you set that aside entirely?

17 PROSPECTIVE JUROR SHINK: Yeah, I would, 'cause  
18 if -- if he's up for murder then there usually the death  
19 penalty's always up, unless the defense can really show a good  
20 cause.

21 MR. DASKAS: You were in Court earlier when there  
22 was a discussion, a hypothetical situation about a 7-Eleven  
23 robbery. You heard that hypothetical?

24 PROSPECTIVE JUROR SHINK: Yeah.

25 MR. DASKAS: And the hypothetical was a defendant on

1 trial who was simply the getaway driver who didn't know that  
2 his partner had a loaded gun and was robbing the clerk with a  
3 loaded gun. Can you imagine a situation involving the getaway  
4 driver where perhaps that person should be given a chance at  
5 parole, even though he's convicted of first degree murder?

6 PROSPECTIVE JUROR SHINK: Yeah. He could. Yeah. I  
7 go for the --

8 MR. DASKAS: If you could create your own society, I  
9 assume that you would have the death penalty in your society,  
10 in your government?

11 PROSPECTIVE JUROR SHINK: Yes, but I would use it in  
12 a different way.

13 MR. DASKAS: Tell me how you would use it?

14 PROSPECTIVE JUROR SHINK: I wouldn't use it the way  
15 this country uses it, because it takes 20 to 30 years by the  
16 time the appeals run out or longer and I -- so I would -- I  
17 would recommend using it if the prison get crowded, so I'd put  
18 the numbers in the barrels and drawing 'em out.

19 MR. DASKAS: You believe the -- all right. You  
20 think the imposition of the death penalty should be much more  
21 swift than it is in our society?

22 PROSPECTIVE JUROR SHINK: Yes, it should be.  
23 Course, you don't wanna do it like Iran does, like they did  
24 last year.

25 MR. DASKAS: I understand. You've heard the

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1 discussion about the State's burden in this case to prove the  
2 defendant's guilt beyond a reasonable doubt?

3 PROSPECTIVE JUROR SHINK: Yeah.

4 MR. DASKAS: Do you agree with that concept?

5 PROSPECTIVE JUROR SHINK: Yeah.

6 MR. DASKAS: If you're selected as a juror in this  
7 case and if you're convinced that the defendant is guilty and  
8 you're convinced beyond a reasonable doubt and you promise the  
9 State that you would vote for verdicts of guilty in the first  
10 phase of this trial?

11 PROSPECTIVE JUROR SHINK: Yes.

12 MR. DASKAS: And if, after hearing the evidence in  
13 the penalty area, if in your mind, you believe that this is  
14 the appropriate case for the punishment of death, do you have  
15 the ability to come out of that deliberation room and mark the  
16 box that says, I vote for death?

17 PROSPECTIVE JUROR SHINK: Yes.

18 MR. DASKAS: Thank you.

19 THE COURT: Pass for cause?

20 MR. DASKAS: Yes, Judge.

21 Joe.

22 MR. SCISCENTO: Mr. Shink?

23 PROSPECTIVE JUROR SHINK: Shink.

24 MR. SCISCENTO: Shink. Mr. Daskas just asked you  
25 about the scenario of the 7-Eleven driver, where he was just

1 them in the right direction. As towards their future, maybe  
2 they'll aspire to greater things and not have to do crimes to  
3 further themselves.

4 MR. SCISCENTO: Do you think that would have a  
5 deterrent effect on crimes then if it was --

6 PROSPECTIVE JUROR JENKINS: I believe it would.

7 MR. SCISCENTO: Have you done anything to further a  
8 child's future?

9 PROSPECTIVE JUROR JENKINS: I do different work with  
10 school. I go to UNLV and so we work with the kids sometimes.  
11 We'll do social work or have different days for them, we'll  
12 help them out.

13 MR. SCISCENTO: You go to UNLV right now?

14 PROSPECTIVE JUROR JENKINS: Yes, I do.

15 MR. SCISCENTO: And you're a junior?

16 PROSPECTIVE JUROR JENKINS: Yes -- well, now I'm a  
17 senior.

18 MR. SCISCENTO: Do you live here -- okay. Thanks.  
19 I keep forgetting, it's been a while since I had summer school  
20 or summers off. You've lived in Las Vegas for nineteen years?

21 PROSPECTIVE JUROR JENKINS: Yes.

22 MR. SCISCENTO: Okay. And what are you studying in  
23 -- at University of Nevada?

24 PROSPECTIVE JUROR JENKINS: Engineering.

25 MR. SCISCENTO: Okay. If you're faced -- you're on

1 this jury and you're faced with eleven other people telling  
2 you that your views are wrong, will you change your mind?

3 PROSPECTIVE JUROR JENKINS: No, I wouldn't.

4 MR. SCISCENTO: Have you ever been in that situation  
5 before when you felt it was just easier just to go along with  
6 the group?

7 PROSPECTIVE JUROR JENKINS: I've been in that  
8 situation before but I've always stuck with my beliefs.

9 MR. SCISCENTO: If I can, if it's not too  
10 embarrassing, may I inquire as to what the situation was?

11 PROSPECTIVE JUROR JENKINS: Sure. It was a  
12 situation with the school. They were -- it was a certain  
13 project we were working on and they wanted to take the easy  
14 way out, they didn't want to put in the extra work and it was  
15 either take the easy way out and get a worse grade or put in  
16 the extra work and get a better grade. So, I just went  
17 against them and I ended up doing the project on my own.

18 MR. SCISCENTO: Okay. In this case though, I mean,  
19 I don't know if there were eleven people there who maybe were  
20 telling you, no, no, no, let's do it this way.

21 PROSPECTIVE JUROR JENKINS: Right.

22 MR. SCISCENTO: How many people were there?

23 PROSPECTIVE JUROR JENKINS: There were six -- well,  
24 five others.

25 MR. SCISCENTO: And you could stand by your

1 convictions and your beliefs against the tide of eleven other  
2 people?

3 PROSPECTIVE JUROR JENKINS: Right.

4 MR. SCISCENTO: You grew up mostly in Las Vegas, you  
5 were born in Florida?

6 PROSPECTIVE JUROR JENKINS: Correct.

7 MR. SCISCENTO: Okay. And you left there at a young  
8 age?

9 PROSPECTIVE JUROR JENKINS: Yes.

10 MR. SCISCENTO: Have you ever been any -- have your  
11 -- any -- lived in any other place for short periods of time?  
12 I mean I know you've lived in Vegas most your life but you may  
13 have lived or stayed the summer in another part of the  
14 country?

15 PROSPECTIVE JUROR JENKINS: I lived in Boston for a  
16 year.

17 MR. SCISCENTO: I'm sorry.

18 PROSPECTIVE JUROR JENKINS: I lived in Boston for a  
19 year.

20 MR. SCISCENTO: Which part of Boston?

21 PROSPECTIVE JUROR JENKINS: In the university -- I  
22 went to Boston University for awhile.

23 MR. SCISCENTO: In the Back Bay?

24 PROSPECTIVE JUROR JENKINS: Yes.

25 MR. SCISCENTO: On the other side of Back Bay is



1 called North Town, have you been out to North Town?

2 PROSPECTIVE JUROR JENKINS: Yes, I've been to North  
3 Town.

4 MR. SCISCENTO: That's a predominantly Italian  
5 section.

6 PROSPECTIVE JUROR JENKINS: Right.

7 MR. SCISCENTO: Out there it's very prejudicial,  
8 would you agree?

9 PROSPECTIVE JUROR JENKINS: Yes, I agree.

10 MR. SCISCENTO: It's not a place that a person of  
11 color or any other origin other than Italian you want to be  
12 after dark, would you agree?

13 PROSPECTIVE JUROR JENKINS: I'd agree.

14 MR. SCISCENTO: You think that color plays in role  
15 in whether a person could get a fair trial?

16 PROSPECTIVE JUROR JENKINS: I don't think it should  
17 play a role, no. If the jury is selected the way, you know,  
18 in a way that there are no prejudices then there shouldn't be.

19 MR. SCISCENTO: Well, I'm not asking though, should  
20 it play a role. I'm saying do you think it does?

21 PROSPECTIVE JUROR JENKINS: Sometimes I believe that  
22 it does.

23 MR. SCISCENTO: How can we overcome that?

24 PROSPECTIVE JUROR JENKINS: I don't know if it can  
25 ever be overcome. There are always going to be prejudices in

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1 society, all we can do is try to educate people better and  
2 hopefully, things will get better.

3 MR. SCISCENTO: Now, if you were on this jury and  
4 you found that the defendant, Mr. White, is guilty and you  
5 were -- then you had to go on to the penalty phase, you could  
6 consider all forms of punishment?

7 PROSPECTIVE JUROR JENKINS: Yes, I could.

8 MR. SCISCENTO: Without giving more preference to  
9 one over the other?

10 PROSPECTIVE JUROR JENKINS: Right.

11 MR. SCISCENTO: You'd have no problem reviewing all  
12 the evidence?

13 PROSPECTIVE JUROR JENKINS: No, I wouldn't.

14 MR. SCISCENTO: What of that information would you  
15 rely upon in making your determination?

16 PROSPECTIVE JUROR JENKINS: I think the person's  
17 character, their background, you know, whether they feel any  
18 remorse for the crime.

19 MR. SCISCENTO: Severity of the crime is important  
20 too?

21 PROSPECTIVE JUROR JENKINS: Right, severity.

22 MR. SCISCENTO: So maybe one more crime of -- they  
23 mentioned before the Oklahoma City bombing, that kind of thing  
24 is a severe crime?

25 PROSPECTIVE JUROR JENKINS: Right.

1 MR. SCISCENTO: And that may warrant more  
2 consideration for the death penalty?

3 PROSPECTIVE JUROR JENKINS: Correct.

4 MR. SCISCENTO: But you wouldn't shut out the  
5 possibility of any forms of punishment in this case?

6 PROSPECTIVE JUROR JENKINS: No, I wouldn't, I'd  
7 consider all forms.

8 MR. SCISCENTO: Even if you wanted to get out of  
9 here earlier and go on a summer break?

10 PROSPECTIVE JUROR JENKINS: Even if I wanted to  
11 leave early.

12 MR. SCISCENTO: Okay. You --

13 PROSPECTIVE JUROR JENKINS: I mean a person's life  
14 is at stake, you know. You have to take the time and consider  
15 them also.

16 MR. SCISCENTO: You promised you would go if this  
17 takes -- and I'm throwing it out -- this out there, it may not  
18 go this long but if it goes three or four weeks --

19 PROSPECTIVE JUROR JENKINS: Right.

20 MR. SCISCENTO: -- and your friends are out there  
21 going to Lake Mead and all -- I'm serious as I can, because I  
22 know when I was in college if there was a plane leaving for  
23 some vacation spot I'd be on it.

24 PROSPECTIVE JUROR JENKINS: Right.

25 MR. SCISCENTO: You promise though that you wouldn't

1 just rush to judgment on this?

2 PROSPECTIVE JUROR JENKINS: Yes, I do.

3 MR. SCISCENTO: And would you hold up against the  
4 rest of the jury members if they said you were wrong?

5 PROSPECTIVE JUROR JENKINS: Yes, I could.

6 MR. SCISCENTO: Because you believe you are right?

7 PROSPECTIVE JUROR JENKINS: Right.

8 MR. SCISCENTO: Pass for cause, Your Honor.

9 THE COURT: Thank you. State's fourth to exercise  
10 or waive.

11 MR. GUYMON: Judge, the State would thank and excuse  
12 juror seated number -- seat number four, Juror Number 573.

13 THE COURT: Thank you, Ms. Calvert. You're excused.

14 And --

15 MR. FIGLER: Your Honor, we have that  
16 contemporaneous?

17 THE COURT: Sure.

18 MR. FIGLER: Thanks, Judge.

19 THE COURT: State versus Patrick McMillin.

20 (Colloquy between the Court and Clerk)

21 THE COURT: Oh, did I say state? I'm sorry. It's  
22 getting late in the day.

23 Would counsel approach the bench, please?

24 (Off-record bench conference)

25 THE COURT: Oh, folks. As long as you're -- come on

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1 back up here, we also have this little note from Mr. McMillin.

2 (Off-record bench conference)

3 THE COURT: Okay. Mr. McMillin, they've considered  
4 at the bench the note that you've written us and you are  
5 excused. Thank you very much.

6 Hans Weding.

7 The State may inquire.

8 MR. DASKAS: Thank you, Judge. Good afternoon.

9 PROSPECTIVE JUROR WEDING: Hello.

10 MR. DASKAS: Let me see if I -- if I wrote this down  
11 correctly. I made notes on your questionnaire and one of  
12 things I wrote was that you were in favor of the death penalty  
13 but that you could not vote for the death penalty. Maybe I  
14 wrote that down wrong?

15 PROSPECTIVE JUROR WEDING: No, I didn't write that.  
16 I don't remember writing that.

17 MR. DASKAS: Okay. Let me ask you then, would you  
18 say that you're in favor or agree with the death penalty as a  
19 possible form of punishment in a murder case?

20 PROSPECTIVE JUROR WEDING: Yes.

21 MR. DASKAS: Do you feel like you have the capacity  
22 to vote for death given the right set of circumstances for the  
23 appropriate defendant?

24 PROSPECTIVE JUROR WEDING: Sure.

25 MR. DASKAS: I'll say it again, I apologize for

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1 being repetitive but you understand it's a very real  
2 possibility in this case in this courtroom that a week and a  
3 half from now we will stand before you, possibly, and ask you  
4 to return a verdict of death. Do you understand that?

5 PROSPECTIVE JUROR WEDING: I understand.

6 MR. DASKAS: And despite that realistic possibility,  
7 you feel like that's something you can do?

8 PROSPECTIVE JUROR WEDING: Yes.

9 MR. DASKAS: There's been quite a bit of discussion  
10 about the State's burden in this case of proving the  
11 defendant's guilt beyond a reasonable doubt. You understand  
12 it's the same burden in every criminal case in every courtroom  
13 across the United States?

14 PROSPECTIVE JUROR WEDING: Yes.

15 MR. DASKAS: There's nothing magical about the  
16 burden in this courtroom in this case.

17 PROSPECTIVE JUROR WEDING: No.

18 MR. DASKAS: Do you feel like you understand that  
19 concept and that you can abide by that instruction in this  
20 particular case?

21 PROSPECTIVE JUROR WEDING: Yes.

22 MR. DASKAS: And that if you're convinced of the  
23 defendant's guilt you can return a verdict of guilty?

24 PROSPECTIVE JUROR WEDING: If needed, yes.

25 MR. DASKAS: What are your thoughts about the

1 Metropolitan Police Department here in Las Vegas?

2 PROSPECTIVE JUROR WEDING: I don't know, they're  
3 okay, I guess. I had some prior convictions so -- but that  
4 was a while ago and I served my time, so.

5 MR. DASKAS: I appreciate your honesty, it's not my  
6 intention to ask you personal questions or embarrass you  
7 unintentionally -- intentionally, I guess. The contact or  
8 interaction you've had with police officers, do you believe  
9 you can set that aside and give the State of Nevada a fair  
10 trial in this case?

11 PROSPECTIVE JUROR WEDING: I think I could, yeah.

12 MR. DASKAS: Your contact with law enforcement, did  
13 that ever result in a case being filed against you?

14 PROSPECTIVE JUROR WEDING: You mean was I arrested  
15 or --

16 MR. DASKAS: Yes.

17 PROSPECTIVE JUROR WEDING: Yes, I was.

18 MR. DASKAS: And were you ever prosecuted by the  
19 Clark County District Attorney's Office?

20 PROSPECTIVE JUROR WEDING: I don't -- I don't -- I  
21 don't know if it was DA. I'm not sure.

22 MR. DASKAS: Might have been the city attorney, I  
23 take it?

24 PROSPECTIVE JUROR WEDING: It was probably DA.

25 MR. DASKAS: You realize that's the same office that

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1 Mr. Guymon and I work for?

2 PROSPECTIVE JUROR WEDING: Right. Like I say, it  
3 was a while ago so I don't --

4 MR. DASKAS: And I appreciate that. Your prior  
5 experience that you've had --

6 PROSPECTIVE JUROR WEDING: Mm-hmm.

7 MR. DASKAS: -- can you set that aside and give us a  
8 fair shake in this case?

9 PROSPECTIVE JUROR WEDING: Yeah, I probably could.

10 MR. DASKAS: All right. Well -- and I need to know  
11 that you can, that you can --

12 PROSPECTIVE JUROR WEDING: Yes.

13 MR. DASKAS: -- listen to the evidence and judge the  
14 evidence in this case and make a decision based on the  
15 evidence and not your past experiences?

16 PROSPECTIVE JUROR WEDING: Yes.

17 MR. DASKAS: You promise you'll do that?

18 PROSPECTIVE JUROR WEDING: Yeah.

19 MR. DASKAS: Again, maybe my notes are inaccurate,  
20 but one of things I wrote on your questionnaire was that you  
21 didn't think you could be fair because of your prior arrests  
22 or prior contact with law enforcement. Was I incorrect when I  
23 wrote on that?

24 PROSPECTIVE JUROR WEDING: I don't think I wrote  
25 that. I don't remember what I wrote.

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1 MR. DASKAS: Okay. And understand, maybe I gleaned  
2 it myself from your answers and that's what I came up with. I  
3 could be wrong. As you sit here today, can you promise me  
4 that you'll be fair to both sides in this case, despite  
5 whatever opinions you may have had in the past about the  
6 police department or the DA's office?

7 PROSPECTIVE JUROR WEDING: Would I be fair?

8 MR. DASKAS: Yes.

9 PROSPECTIVE JUROR WEDING: I'd have reservations, I  
10 think.

11 MR. DASKAS: Elaborate on that if you would for me,  
12 please?

13 PROSPECTIVE JUROR WEDING: I don't know, I just --  
14 it's still like a sore spot for me. But, like I say, I could  
15 try to be fair.

16 THE COURT: Mr. Weding, of course they're entitled  
17 to fairness. It could be a sore spot and, of course, I think  
18 almost every juror we -- jury we've had in the last ten years,  
19 somebody's been convicted of something and they still sat as a  
20 juror. But they're also entitled to have you decide this case  
21 on your honest feelings when somebody testifies from the  
22 witness stand and not based on some past experience. Do you  
23 think you can do that?

24 PROSPECTIVE JUROR WEDING: Yeah, I could do that.

25 THE COURT: Go ahead, Mr. Daskas.

1 MR. DASKAS: You feel like the police -- in the  
2 situations you had, do you feel like the police treated you  
3 fairly?

4 PROSPECTIVE JUROR WEDING: To a point they did.

5 MR. DASKAS: At what point did they stop treating  
6 you fairly?

7 PROSPECTIVE JUROR WEDING: There were some incidents  
8 involved that they made a bigger issue out of certain things  
9 that were, you know, that weren't there.

10 MR. DASKAS: Did you believe that they were perhaps  
11 overzealous?

12 PROSPECTIVE JUROR WEDING: I little bit, yeah.

13 MR. DASKAS: Did -- maybe I asked you this, if I  
14 did, I apologize. Did -- in any of your contact with law  
15 enforcement result in any case going to trial?

16 PROSPECTIVE JUROR WEDING: No, it didn't go to  
17 trial.

18 MR. DASKAS: You do believe, however, that it was  
19 the DA's office, the Clark County DA's office that prosecuted  
20 a case or cases that you've had in the past, correct?

21 PROSPECTIVE JUROR WEDING: Mm-hmm, I think so.

22 MR. DASKAS: Do you feel like you were treated  
23 fairly by the prosecutor or prosecutors who handled those  
24 cases?

25 PROSPECTIVE JUROR WEDING: Yeah.

1 MR. DASKAS: Do you feel like you got what you  
2 deserved?

3 PROSPECTIVE JUROR WEDING: Yeah, I did.

4 MR. DASKAS: How do you feel about people being held  
5 accountable for their choices and decisions that people make?

6 PROSPECTIVE JUROR WEDING: How do I feel about them  
7 being accountable for their actions?

8 MR. DASKAS: Do you think people should be held  
9 accountable for their actions?

10 PROSPECTIVE JUROR WEDING: Yes, I do.

11 MR. DASKAS: In your dealings with law enforcement,  
12 do you feel like you were ultimately held responsible or  
13 accountable for a decision or choices that you made?

14 PROSPECTIVE JUROR WEDING: Yes, I do.

15 MR. DASKAS: Do you believe that you can hold this  
16 defendant responsible for his actions, accountable for his  
17 choices that he --

18 PROSPECTIVE JUROR WEDING: Yes, I do.

19 MR. DASKAS: Can you promise me that you'll set  
20 aside any feelings you have about Metro or the DA's office and  
21 give both sides in this case a fair trial?

22 PROSPECTIVE JUROR WEDING: Yes.

23 MR. DASKAS: Thank you.

24 THE COURT: Pass for cause.

25 MR. DASKAS: Yes, Judge.

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1 THE COURT: Defense may inquire.  
2 MR. SCISCENTO: I know I'm not even going to get  
3 that correct. How do you pronounce your last name?  
4 PROSPECTIVE JUROR WEDING: Weding.  
5 MR. SCISCENTO: Weding.  
6 PROSPECTIVE JUROR WEDING: Mm-hmm.  
7 MR. SCISCENTO: That's easy enough. I guess I just  
8 can't -- my copy's not that good.  
9 THE COURT: You haven't -- you haven't personally  
10 been to one of those, have you, Joe?  
11 MR. SCISCENTO: Not yet, Your Honor. I've managed  
12 to avoid that.  
13 You were born in California?  
14 PROSPECTIVE JUROR WEDING: Yes.  
15 MR. SCISCENTO: And your mother and father are from  
16 Germany?  
17 PROSPECTIVE JUROR WEDING: Right.  
18 MR. SCISCENTO: What part of California?  
19 PROSPECTIVE JUROR WEDING: L.A.  
20 MR. SCISCENTO: What part of L.A.?  
21 PROSPECTIVE JUROR WEDING: Panorama City, North  
22 Hollywood.  
23 MR. SCISCENTO: Out by Losko and Woodland Avenue out  
24 there?  
25 PROSPECTIVE JUROR WEDING: Panorama City?

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1 MR. SCISCENTO: Yeah.

2 PROSPECTIVE JUROR WEDING: I don't know.

3 MR. SCISCENTO: St. Genevive's [phonetic] High  
4 School?

5 PROSPECTIVE JUROR WEDING: I don't know, I didn't go  
6 to high school there.

7 MR. SCISCENTO: You grew up in L.A. though, mostly?

8 PROSPECTIVE JUROR WEDING: I'm -- I was young, yeah.  
9 Came to Vegas when I was five, five or six.

10 MR. SCISCENTO: Oh, so you lived in -- you lived in  
11 Las Vegas most your life?

12 PROSPECTIVE JUROR WEDING: Most of it, yeah.

13 MR. SCISCENTO: You believe in the death penalty,  
14 and I didn't really quite under -- I couldn't hear you over  
15 there. You believe in the death penalty but you might have  
16 trouble enforcing or voting for it.

17 PROSPECTIVE JUROR WEDING: I don't understand that  
18 voting for it?

19 MR. SCISCENTO: All right.

20 PROSPECTIVE JUROR WEDING: I mean if it's the right  
21 circumstance, you know, if it's -- you know, like -- like  
22 murder or killing somebody, yeah. You know, the severity.

23 MR. SCISCENTO: So you have no problem voting to  
24 impose the death penalty in the case if the circumstances  
25 warrant it?

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1 PROSPECTIVE JUROR WEDING: Right.

2 MR. SCISCENTO: What, in your mind, are the  
3 circumstances that warrant it?

4 PROSPECTIVE JUROR WEDING: Taking another life,  
5 pretty much.

6 MR. SCISCENTO: And that's it, taking somebody's  
7 life is an automatic for you?

8 PROSPECTIVE JUROR WEDING: I don't see why not, no.  
9 That's not -- it is.

10 THE COURT: I couldn't hear you, Mr. Weding. What?

11 PROSPECTIVE JUROR WEDING: Taking someone's life.

12 THE COURT: But he's saying would you automatically  
13 say that taking someone's life you must give him the death  
14 penalty?

15 PROSPECTIVE JUROR WEDING: Well, given the  
16 circumstances.

17 THE COURT: Go ahead, Joe.

18 MR. SCISCENTO: So taking somebody's life, you think  
19 is an automatic death penalty case? You would vote --  
20 automatically vote to impose the death penalty?

21 PROSPECTIVE JUROR WEDING: Blatantly, yeah. Yeah.

22 MR. SCISCENTO: If you -- and the District Attorney  
23 brought this up before about the Jack-in-the -- sorry -- the  
24 7-Eleven scenario and he asked you all the way to the other  
25 end, multiple murders if somebody's involved and actually does

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1 the shooting and you, as a jury member, say he did it and find  
2 him guilty and now we're going towards the penalty. Could  
3 you, as a jury member, give that person life with the  
4 possibility of parole?

5 PROSPECTIVE JUROR WEDING: This is the one that  
6 committed the murder?

7 MR. SCISCENTO: Multiple murders, yes. Could you  
8 vote to have that person get paroled?

9 PROSPECTIVE JUROR WEDING: I don't think so.

10 MR. SCISCENTO: Okay. So, if you were sitting on a  
11 jury that convicted -- found a person guilty of committing  
12 multiple murders and you said that the person who did it is  
13 actually the one that did it, you couldn't consider life with  
14 the possibility of parole for that person?

15 PROSPECTIVE JUROR WEDING: No.

16 MR. SCISCENTO: No? Move for cause, Your Honor.

17 THE COURT: Traverse?

18 MR. DASKAS: Please, Judge. Let me see if I can't  
19 narrow this down a little bit. We're not asking what your  
20 decision's going to be in any particular case, but here's the  
21 ultimate question. The Judge is going to give you some  
22 instruction and the instructions are going to say that there  
23 are four possible forms of punishment in a murder conviction  
24 case. Can you promise me that you'll follow the instructions  
25 that the Judge gives you?

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1 PROSPECTIVE JUROR WEDING: Yes.  
2 MR. DASKAS: And --  
3 THE COURT: Those instructions mean, Mr. Weding,  
4 that it's never automatic that you must oppose the death  
5 penalty even for first degree murder. Do you understand that?  
6 PROSPECTIVE JUROR WEDING: Yes.  
7 THE COURT: Well, it seems like when Mr. Sciscento  
8 was asking you the question you had indicated that you would  
9 automatically vote for --  
10 PROSPECTIVE JUROR WEDING: Oh, for the death  
11 penalty.  
12 THE COURT: Right.  
13 PROSPECTIVE JUROR WEDING: Okay.  
14 THE COURT: Is that a misunderstanding?  
15 PROSPECTIVE JUROR WEDING: Yeah, it was.  
16 THE COURT: Okay.  
17 MR. DASKAS: As you -- I apologize, Judge, were you  
18 done?  
19 THE COURT: Well, cause challenge is overruled.  
20 MR. DASKAS: Thank you, Judge.  
21 MR. SCISCENTO: Your Honor --  
22 THE COURT: You may ask any further questions that  
23 you'd like, Joe.  
24 MR. SCISCENTO: Your Honor, it wasn't that he would  
25 automatically vote for the death penalty is that he would not

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1 consider life without.

2 THE COURT: I think he said that he would. Go ahead  
3 and ask more questions, if you'd like, Joe.

4 MR. SCISCENTO: Briefly follow up with you. Mr.  
5 Weding, again I want to see if I understand this. If we -- if  
6 you were sitting as a jury member and you found that a person,  
7 that you were sitting in judgment of, you found them guilty of  
8 committing multiple murders, and you found that they were the  
9 one that committed that murder -- those murders, could you,  
10 sitting as a jury member now, then say, okay, I'll consider  
11 giving him life without -- life with the possibility of  
12 parole?

13 PROSPECTIVE JUROR WEDING: Right.

14 MR. SCISCENTO: Yeah, could you do this?

15 PROSPECTIVE JUROR WEDING: Yes.

16 MR. SCISCENTO: So you could, even though you  
17 consider it a heinous crime, you consider he was the shooter,  
18 you could still say I will consider giving him life with.--

19 PROSPECTIVE JUROR WEDING: Consider.

20 MR. SCISCENTO: What are his chances of you giving  
21 that?

22 PROSPECTIVE JUROR WEDING: It just would depend  
23 on --

24 MR. DASKAS: Judge, that's improper. The question  
25 is can he consider that.

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1 MR. SCISCENTO: I --

2 THE COURT: No, I think that that's the basis for a  
3 peremptory challenge but that's entirely different from for  
4 cause. What he's saying is, you'd consider it, but you  
5 probably wouldn't do it. Can you give him any indication of  
6 how probable that is?

7 PROSPECTIVE JUROR WEDING: It just would depend on  
8 the circumstance.

9 MR. SCISCENTO: Which --

10 THE COURT: Move on to another area.

11 MR. SCISCENTO: Can I follow up with what kind of  
12 circumstances those are, Your Honor?

13 THE COURT: I think you could deduce from the move  
14 on to the other -- another area. No.

15 MR. SCISCENTO: Are there other -- the incidents  
16 that you had with the Metropolitan Police Department, whatever  
17 they were, that wouldn't cause you to have any biases against  
18 them, would it? Either way, either yes or no or for or  
19 against?

20 PROSPECTIVE JUROR WEDING: No.

21 MR. SCISCENTO: So you're assured at me -- that  
22 anybody who gets up there and testify, you won't give them  
23 more credence because either they're wearing a uniform or  
24 they're not wearing a uniform?

25 PROSPECTIVE JUROR WEDING: Give them anymore

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1 credence?

2 MR. SCISCENTO: Yes, to their testimony or give  
3 anymore weight to their testimony?

4 PROSPECTIVE JUROR WEDING: No, I wouldn't.

5 MR. SCISCENTO: What about somebody who gets up --  
6 got up here to testify and the State gave them some incentive  
7 to testify, as freedom, how would you feel about that?

8 PERSPECTIVE JUROR WEDING: Well, I don't understand  
9 what you mean?

10 MR. SCISCENTO: If somebody was testifying and said  
11 the reason they were testifying was the State promised they  
12 wouldn't go to prison if they testified, what kind of weight  
13 would you give to that person?

14 PERSPECTIVE JUROR WEDING: If they -- if they  
15 testified they got freedom?

16 MR. SCISCENTO: Yes.

17 PERSPECTIVE JUROR WEDING: I wouldn't give any  
18 weight at all.

19 MR. SCISCENTO: You think they would tell the truth,  
20 they wouldn't have a motivation to lie?

21 PERSPECTIVE JUROR WEDING: Hopefully.

22 MR. SCISCENTO: But don't you think that they would  
23 have a motivation to lie?

24 PERSPECTIVE JUROR WEDING: Yeah.

25 MR. SCISCENTO: You've never been on a jury before?

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1 PERSPECTIVE JUROR WEDING: I was on a jury -- well,  
2 no, no, I never have been because of my prior convictions they  
3 wouldn't.

4 MR. SCISCENTO: The defendant in a criminal trial  
5 should require to prove his or his -- his or her innocence,  
6 and you agree with that?

7 PERSPECTIVE JUROR WEDING: I do.

8 MR. SCISCENTO: You don't a think a person is  
9 innocent until proven guilty?

10 PERSPECTIVE JUROR WEDING: Oh, I believe he's  
11 innocent until -- until the facts are all there and --

12 MR. SCISCENTO: And then he must -- so you think  
13 that once he's proven guilty then he's got to prove his  
14 innocence?

15 PERSPECTIVE JUROR WEDING: Right.

16 MR. SCISCENTO: Okay. So no matter what we're doing  
17 right now, we assume Mr. White, as he sits over there, is  
18 presumed innocent?

19 PERSPECTIVE JUROR WEDING: Right.

20 MR. SCISCENTO: And until they make the burden of  
21 proof, until they make it to you --

22 PERSPECTIVE JUROR WEDING: Right.

23 MR. SCISCENTO: -- Mr. White must be found innocent  
24 and you're okay with that concept?

25 PERSPECTIVE JUROR WEDING: I'm okay with that.

1 MR. SCISCENTO: And you can stand by that  
2 conviction?  
3 PERSPECTIVE JUROR WEDING: Sure.  
4 MR. SCISCENTO: You have some college education?  
5 PERSPECTIVE JUROR WEDING: I do.  
6 MR. SCISCENTO: Okay. You attended college, and  
7 you're in the Navy Reserve right now?  
8 PERSPECTIVE JUROR WEDING: I was.  
9 MR. SCISCENTO: Was. Okay. What did you do in the  
10 Navy?  
11 PERSPECTIVE JUROR WEDING: I was a cook.  
12 MR. SCISCENTO: A gunner?  
13 PERSPECTIVE JUROR WEDING: A cook.  
14 MR. SCISCENTO: A cook, I'm sorry. Have you ever  
15 been back over to Germany?  
16 PERSPECTIVE JUROR WEDING: Yes.  
17 MR. SCISCENTO: Okay. You don't have any biases  
18 against a person of different colors or anything like that?  
19 PERSPECTIVE JUROR WEDING: No. I grew up with all  
20 that, but --  
21 MR. SCISCENTO: You're able to shed it?  
22 PERSPECTIVE JUROR WEDING: Yeah.  
23 MR. SCISCENTO: You know from Germany there's a new  
24 neo-Nazi party that's coming out, you ever --  
25 PERSPECTIVE JUROR WEDING: I don't know of it, no.

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1 MR. SCISCENTO: -- subscribe to that kind of belief?  
2 PERSPECTIVE JUROR WEDING: No.  
3 MR. SCISCENTO: I believe they're called the skin  
4 heads.  
5 PERSPECTIVE JUROR WEDING: Yeah, I know that.  
6 MR. SCISCENTO: And I don't mean to comment about  
7 your hair.  
8 PERSPECTIVE JUROR WEDING: I get that a lot.  
9 MR. SCISCENTO: Mine is going too. That kind of  
10 thought, the neo-Nazis and the skin heads and the sharks or  
11 whoever, you don't fall in line with any of that --  
12 PERSPECTIVE JUROR WEDING: No, I don't.  
13 MR. SCISCENTO: -- or that thought? We'll pass for  
14 cause, Your Honor.  
15 THE COURT: Thank you. Defense's fourth to exercise  
16 or waive.  
17 MR. SCISCENTO: The defense would like to thank and  
18 waive Juror Number 560, Mr. Baker.  
19 THE COURT: Thank you, Mr. Baker, you're excused.  
20 And when we come back from our second afternoon  
21 recess, Mr. Paull, you'll be able to take that seat.  
22 Folks, let me remind you again, in case you've got  
23 to let somebody know when you're going to be home, we're going  
24 to go not beyond 5:30, and I'm now believing we will be going  
25 to 5:30.

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1           During this recess you're admonished not to talk or  
2 converse among yourselves or anyone else on any subject  
3 connected with this trial; read, watch or listen to any report  
4 of or commentary on the trial, or any person connected with it  
5 by any medium of information including, without limitation,  
6 newspaper, television or radio; or to form or express any  
7 opinion on any subject connected with this matter until it's  
8 finally submitted to you.

9           We'll be in recess until 4:30.

10           (Court recessed at 4:20 p.m. until 4:35 p.m.)

11           (Prospective jurors are present)

12           THE COURT: The State may inquire.

13           MR. GUYMON: Good afternoon, Mr. Paull.

14           PERSPECTIVE JUROR PAULL: Hello.

15           MR. GUYMON: Do you have any reservations about  
16 serving as a juror in this case?

17           PERSPECTIVE JUROR PAULL: No, I don't.

18           MR. GUYMON: Any reservations about passing judgment  
19 on the conduct of Donte Johnson in this case?

20           PERSPECTIVE JUROR PAULL: No, I don't.

21           MR. GUYMON: Do you have any thoughts about holding  
22 a person responsible for their choices?

23           PERSPECTIVE JUROR PAULL: Nope.

24           MR. GUYMON: Do you feel as though our criminal  
25 justice system holds people responsible for their choices?

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1 PERSPECTIVE JUROR PAULL: I believe it does.

2 MR. GUYMON: Do you think people should be held  
3 responsible for their choices?

4 PERSPECTIVE JUROR PAULL: Absolutely.

5 MR. GUYMON: So that's an absolute, is that right?

6 PERSPECTIVE JUROR PAULL: Yes.

7 MR. GUYMON: Okay. With regards to having the  
8 responsibility of holding Donte Johnson responsible for his  
9 choices on the date in question, that's something you are able  
10 to do fairly, is that correct?

11 PERSPECTIVE JUROR PAULL: I believe so.

12 MR. GUYMON: All right. We've talked to a little  
13 bit about the penalties in this case, prior to filling out the  
14 questionnaire had you given much thought to the death penalty  
15 in the State of Nevada?

16 PERSPECTIVE JUROR PAULL: Not really.

17 MR. GUYMON: I take it you've thought a little bit  
18 about it now?

19 PERSPECTIVE JUROR PAULL: Certainly.

20 MR. GUYMON: Can you share with me your thoughts  
21 regarding the death penalty?

22 PERSPECTIVE JUROR PAULL: Well, first degree murder  
23 I believe does cause for -- have cause for an equal  
24 punishment. I'm not always sure that -- I look back on the  
25 case of Dr. K., Dr. Kavorkian and I'm not really in agreeance

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1 with what his penalty was. But for any other crimes of, you  
2 know, against humanity, yeah, absolutely, I believe murder and  
3 I believe the penalty should be death.

4 MR. GUYMON: Can you envision cases where any one of  
5 the four penalties may be a just or fair penalty?

6 PERSPECTIVE JUROR PAULL: Yes.

7 MR. GUYMON: That is to say you could consider say  
8 life with the possibility of parole, is that correct?

9 PERSPECTIVE JUROR PAULL: I have some hesitation on  
10 that.

11 MR. GUYMON: Okay. You may not be crazy about that  
12 choice, but is that a choice you can consider?

13 PERSPECTIVE JUROR PAULL: Yes.

14 MR. GUYMON: Okay. And I'm gonna kind of come to  
15 the other end that is the death penalty, is that a choice you  
16 can consider?

17 PERSPECTIVE JUROR PAULL: Yes.

18 MR. GUYMON: Could you personally impose it if you  
19 felt as though it was just?

20 PERSPECTIVE JUROR PAULL: Yes.

21 MR. GUYMON: Okay. I appreciate the seriousness  
22 and --

23 PERSPECTIVE JUROR PAULL: Well, we're talking about  
24 checking off a box that condemns a man to death.

25 MR. GUYMON: That's what we're talking about.

1 PERSPECTIVE JUROR PAULL: Yeah. Yeah.  
2 MR. GUYMON: A huge responsibility.  
3 PERSPECTIVE JUROR PAULL: Yeah.  
4 MR. GUYMON: You would agree?  
5 PERSPECTIVE JUROR PAULL: Yes.  
6 MR. GUYMON: Is it something that you can -- is that  
7 a burden you can bear?  
8 PERSPECTIVE JUROR PAULL: Well, sitting on the jury  
9 I think it's something that we all have to share together.  
10 MR. GUYMON: Sharing the responsibility with twelve  
11 persons, can you share that responsibility if you believe that  
12 it's appropriate?  
13 PERSPECTIVE JUROR PAULL: Yes.  
14 MR. GUYMON: Could you say I personally believe it's  
15 appropriate, and I personally would check that box?  
16 PERSPECTIVE JUROR PAULL: Yes.  
17 MR. GUYMON: You would agree it's perhaps a very  
18 difficult check to make?  
19 PERSPECTIVE JUROR PAULL: Absolutely.  
20 MR. GUYMON: Or a decision to make?  
21 PERSPECTIVE JUROR PAULL: Yes.  
22 MR. GUYMON: Can you promise me that, and that is  
23 that as difficult it might be, whatever decisions you make in  
24 this case will they be just and fair?  
25 PERSPECTIVE JUROR PAULL: Yes.

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1 MR. GUYMON: Despite the consequences?

2 PERSPECTIVE JUROR PAULL: Yes.

3 MR. GUYMON: Is there anything, of all the questions  
4 asked today, and we've asked many of them repeatedly, is there  
5 anything you'd like to tell us that I've not asked you about?  
6 What should we --

7 PERSPECTIVE JUROR PAULL: No. No, actually sitting  
8 through what I've been through today I'm -- I appreciate what  
9 you've explained, and I understand -- I understand everything  
10 pretty well.

11 MR. GUYMON: Okay.

12 PERSPECTIVE JUROR PAULL: Yeah.

13 MR. GUYMON: Is there anything we should know about  
14 your life's experiences before you begin serving as a juror in  
15 this case?

16 PERSPECTIVE JUROR PAULL: Nothing that I can think  
17 of.

18 MR. GUYMON: Thank you. We'll pass for cause.

19 THE COURT: Thank you. Defense may inquire.

20 MR. FIGLER: Thank you, Judge.

21 Good afternoon, Mr. Paull.

22 PERSPECTIVE JUROR PAULL: Hello.

23 MR. FIGLER: The prosecutors asked you, and they've  
24 asked some other people too about being accountable for your  
25 choices, do you remember those questions? Yes?

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1 PERSPECTIVE JUROR PAULL: Yes.

2 MR. FIGLER: Okay. Do you think that everybody in  
3 the world should be accountable for their own choices?

4 PERSPECTIVE JUROR PAULL: Yes, they should.

5 MR. FIGLER: Okay. So if people engage in a risky  
6 lifestyle they have to be accountable for their choices too,  
7 right?

8 PERSPECTIVE JUROR PAULL: Yes. If they know the  
9 risks involved, yes.

10 MR. FIGLER: Okay. Now, your wife is a -- or your  
11 spouse is a nurse?

12 PERSPECTIVE JUROR PAULL: Yes.

13 MR. FIGLER: Okay. Now, have you ever had  
14 discussion about that job -- that job function being a nurse?

15 PERSPECTIVE JUROR PAULL: Of course.

16 MR. FIGLER: And part of that is saving people's  
17 lives?

18 PERSPECTIVE JUROR PAULL: Mm-hmm.

19 MR. FIGLER: Yes?

20 PERSPECTIVE JUROR PAULL: Yes.

21 MR. FIGLER: Sorry, it's just for the recording.  
22 Now, would you agree that a life is valuable even if that  
23 person is reprehensible in that situation?

24 MR. GUYMON: Judge, I'm going to object under Rule  
25 7.70, subsection (b), that's argument of the case.

1 MR. FIGLER: If it's argument of the case, that is a  
2 general question.

3 THE COURT: Tell me again what it was, Dayvid, I'm  
4 doing something else also.

5 MR. FIGLER: Well, his spouse is a nurse and saves  
6 people, and I was just asking if the consideration of that  
7 type of activity depends on the character of the individual  
8 who presents himself with an injury.

9 MR. GUYMON: Well, Judge, that's different, the  
10 question was do you consider all life to be valuable, and now  
11 he's arguing the case.

12 MR. FIGLER: I'm not arguing the case, I'm asking  
13 about the nursing situation.

14 THE COURT: Do you consider all life to be valuable?  
15 Overruled.

16 MR. FIGLER: Thanks. In those situations, say your  
17 spouse is there as a nurse and a person, a very bad person  
18 presents themselves, do you think they shouldn't save that  
19 person's life?

20 PERSPECTIVE JUROR PAULL: She should save anyone's  
21 life regarding what they may have been involved in.

22 THE COURT: I now see the point listening to it, and  
23 I will reverse the earlier objection and sustain it -- the  
24 earlier ruling and sustain it. Go ahead with your next  
25 question.

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1 MR. FIGLER: You wrote something in answer to one of  
2 your questions and I want to quote you so you could explain to  
3 me what you meant.

4 PERSPECTIVE JUROR PAULL: Great.

5 MR. FIGLER: When asking you about what your general  
6 thoughts about the benefit of imposing a death penalty, you  
7 responded, excellent, the death sentence keeps me pure of  
8 intention, do you recall writing something like that?

9 PERSPECTIVE JUROR PAULL: Yeah, I do. Mm-hmm.

10 MR. FIGLER: Can you explain that?

11 PERSPECTIVE JUROR PAULL: Well, I have my bouts of  
12 road rage, and I have, you know, issues in the shopping --  
13 shopping lines, you know, where I might want to go out and  
14 kill somebody, but obviously, you know, laws and penalties  
15 would keep me from doing anything like that. I think -- I  
16 really think that if everyone is aware of the penalty of their  
17 actions, then they should not be causing any actions.

18 MR. FIGLER: So you think that -- just tell me if  
19 this sums up right, that the existence of the death penalty in  
20 the State of Nevada keeps you from doing certain things that  
21 -- not saying that you would do them, but it takes it  
22 completely out of the ball park that you would even consider  
23 doing those things?

24 PERSPECTIVE JUROR PAULL: Yes. Absolutely.

25 MR. FIGLER: Okay. So it's a deterrent to average

1 citizens, is that what you're saying?

2 PERSPECTIVE JUROR PAULL: It's an average -- yeah,  
3 absolutely, yes. Maybe it doesn't, you know, pertain to me so  
4 much, it's just in -- in theory it just -- it should be a  
5 deterrence enough.

6 MR. FIGLER: What do you think the best argument is  
7 against the death penalty?

8 THE COURT: Dayvid, let me excuse you for a personal  
9 thing that concerns Ms. Patterson.

10 Your mother called said she can't find somebody to  
11 pick up your child --

12 PERSPECTIVE JUROR PATTERSON: I took care of it.

13 THE COURT: Oh, you did?

14 PERSPECTIVE JUROR PATTERSON: Yeah, but thank you  
15 anyway.

16 PERSPECTIVE JUROR PAULL: Again, you know, I really  
17 haven't given much thought to the death penalty before this  
18 proceeding, sir.

19 MR. FIGLER: Okay. We -- you've been hearing all  
20 our discussions about it as you sat in the audience and  
21 listened to what different people had to say, do you think  
22 that there's an argument against the death penalty?

23 PERSPECTIVE JUROR PAULL: Well, just in, you know,  
24 what cause -- excuse me, what brings a person to the point of  
25 being prosecuted or brought to -- being presented with the

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1 death penalty. I don't really have an argument against it, I  
2 don't think there is an argument against it, I suppose.

3 MR. FIGLER: So you think there's an argument  
4 against the death penalty?

5 PERSPECTIVE JUROR PAULL: I really don't think there  
6 is.

7 MR. FIGLER: Now, I asked some other jurors about  
8 how we all understand that death as a sentence is completely  
9 irrevocable, correct?

10 PERSPECTIVE JUROR PAULL: Correct.

11 MR. FIGLER: All right. Now, are you the type of  
12 person who if you -- if you decided that the correct  
13 punishment after hearing all the evidence, after following the  
14 law, after doing what you're told to do is death, would you  
15 just walk away from that, or would you carry that with you?

16 PERSPECTIVE JUROR PAULL: Oh, I believe I'd carry it  
17 with me.

18 MR. FIGLER: Okay. And you realize that you would  
19 be responsible in that situation for the death of another  
20 living creature, correct?

21 PERSPECTIVE JUROR PAULL: That's true.

22 MR. FIGLER: You agree that killing is wrong in the  
23 general, correct?

24 PERSPECTIVE JUROR PAULL: Yes.

25 MR. FIGLER: Now, there was some questions raised



1 earlier, a hypothetical posed to some of the potential jurors  
2 about this 7-Eleven and that type of situation, I want to ask  
3 the opposite of that question that was posed to you by the  
4 prosecutors -- or posed to the other jurors by the  
5 prosecutors, if you found beyond a reasonable doubt that a  
6 person committed first degree murder, or multiple murders,  
7 could you, as everyone is saying, check the little box that  
8 says you get the possibility of parole, could you bring  
9 yourself to checking that box? Having decided already that  
10 they did it, no doubt that they did it in your mind.

11 PERSPECTIVE JUROR PAULL: Well, that would be -- I  
12 would be the least inclined to check that.

13 MR. FIGLER: Least inclined to check that, why is  
14 that?

15 PERSPECTIVE JUROR PAULL: Well, I would like to see,  
16 you know, a minimum amount of time served before even parole  
17 is even considered.

18 MR. FIGLER: So you wouldn't give that one your full  
19 consideration?

20 PERSPECTIVE JUROR PAULL: I wouldn't.

21 MR. FIGLER: Okay. Even if the law explained to you  
22 that you're to listen and consider the evidence and weigh it,  
23 ultimately your position, as I understand it, is that that's  
24 not an option you want to consider?

25 PERSPECTIVE JUROR PAULL: That's correct.

1 THE COURT: That's not what I hear you saying, Mr.  
2 Paull, what I heard you saying was you're unlikely to do that,  
3 but you'd consider it. Is Mr. Figler hearing you right or am  
4 I?

5 PERSPECTIVE JUROR PAULL: Well, it's -- I just -- I  
6 just don't really -- maybe I'm changing my mind here, maybe  
7 I'd just like to say that I really probably wouldn't consider  
8 the option of parole.

9 MR. FIGLER: Challenge for cause at this time, Your  
10 Honor.

11 THE COURT: Traverse?

12 MR. GUYMON: Let me ask you on that very issue then,  
13 the four possible punishments, I understand you may favor one  
14 versus another, but can you consider all four punishments  
15 before making a decision? In other words, can you keep an  
16 open mind and listen to all the mitigation and apply all the  
17 evidence and make a decision that's fair?

18 PERSPECTIVE JUROR PAULL: Well, if I'm asked to I  
19 suppose I would have to.

20 MR. GUYMON: Okay. And that's what's being asked of  
21 each and every juror and that is that they can consider, we're  
22 not necessarily asking you which one you like the most right  
23 now, now is not the time to do that --

24 PERSPECTIVE JUROR PAULL: Right.

25 MR. GUYMON: -- but can you consider, can you keep

1 an open mind and consider each of the four possible  
2 punishments in this case?

3 PERSPECTIVE JUROR PAULL: Yes, I can.

4 MR. GUYMON: Will you do that?

5 PERSPECTIVE JUROR PAULL: Yes, I will.

6 MR. GUYMON: You prefer one over another as we speak  
7 now, is that correct?

8 PERSPECTIVE JUROR PAULL: I believe so.

9 MR. GUYMON: Okay. But without hearing the facts it  
10 wouldn't be fair to pick one yet would it?

11 PERSPECTIVE JUROR PAULL: No, it wouldn't.

12 MR. GUYMON: Okay. Can you keep an open mind on all  
13 four of those then?

14 PERSPECTIVE JUROR PAULL: I will do that.

15 MR. GUYMON: Thank you.

16 THE COURT: Challenge for cause overruled. Any  
17 further questions, Mr. --

18 MR. FIGLER: Yes, Judge, thank you.

19 THE COURT: Go ahead.

20 MR. FIGLER: Do you remember sweet Ms. Calvert who  
21 is right behind you, the little lady in the yellow?

22 PERSPECTIVE JUROR PAULL: Oh, yes, that's right.

23 MR. FIGLER: Okay. Did you listen to her answers?

24 PERSPECTIVE JUROR PAULL: Yes, I did.

25 MR. FIGLER: Now, do you agree with her that there

1 should be different views on a -- on a jury, especially one  
2 considering such the finality of a death penalty, do you agree  
3 with her on that?

4 PERSPECTIVE JUROR PAULL: Do I believe that there  
5 ought to be different views?

6 MR. FIGLER: Yes.

7 PERSPECTIVE JUROR PAULL: Yes, I believe there  
8 should be different views.

9 MR. FIGLER: Okay. So you don't think a jury should  
10 be comprised solely of people who have your kind of belief, of  
11 a strong belief in the death penalty?

12 PERSPECTIVE JUROR PAULL: I agree.

13 MR. FIGLER: So how did it make you feel when you  
14 saw that she wasn't allowed to be on this jury?

15 PERSPECTIVE JUROR PAULL: I really don't have a  
16 feeling one way or the other.

17 MR. FIGLER: You don't care about that?

18 PERSPECTIVE JUROR PAULL: No.

19 MR. FIGLER: Now, do you believe in the idea of a  
20 jury by your peers?

21 PERSPECTIVE JUROR PAULL: Yes.

22 MR. FIGLER: Okay. What do you think that means?

23 PERSPECTIVE JUROR PAULL: Well, I think that it  
24 means to have a good cross-section of people that might be  
25 able to represent me.

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1 MR. FIGLER: Now, you stated earlier that you didn't  
2 think that there was a really good reason against the death  
3 penalty, you've had a little time and we talked about it a  
4 little bit more, is there anything else that you have thought  
5 about since I asked the question, maybe about five minutes  
6 ago, that would be of interest?

7 PERSPECTIVE JUROR PAULL: No.

8 MR. FIGLER: Okay. Would you agree it's a morally  
9 complicated issue?

10 PERSPECTIVE JUROR PAULL: I believe it is, yeah.

11 MR. FIGLER: The imposition of death on another  
12 human being?

13 PERSPECTIVE JUROR PAULL: Yes.

14 MR. FIGLER: Would you agree -- would you agree that  
15 it has deep religious implications as well?

16 PERSPECTIVE JUROR PAULL: I believe it could, mm-  
17 hmm.

18 MR. FIGLER: Now, do you have any viewpoint about  
19 who the death penalty in general gets imposed against in our  
20 society?

21 PERSPECTIVE JUROR PAULL: I'm sorry, I don't  
22 understand?

23 MR. FIGLER: Okay. Has there been a recent case  
24 that you felt someone should have gotten the death penalty?

25 PERSPECTIVE JUROR PAULL: Well, I think actually the

1 system has pretty much done its job, and although, you know, I  
2 think everybody has their own position on, you know, the high  
3 profile cases, I think when the evidence was presented and  
4 everyone got a look at their cases it came out fairly.

5 MR. FIGLER: Okay. What I'm asking is, is your  
6 opinion though, because that's what most important to me right  
7 this very second, more so than anyone else's. The kind of  
8 cases that you think deserve the death penalty, you've thought  
9 of that before, correct?

10 PERSPECTIVE JUROR PAULL: Yes.

11 MR. FIGLER: Okay. Now, can you give me a specific  
12 example of a case that you felt someone deserved the death  
13 penalty, whether they got it or not --

14 PERSPECTIVE JUROR PAULL: Certainly.

15 MR. FIGLER: -- a case that you felt?

16 PERSPECTIVE JUROR PAULL: Yes.

17 MR. FIGLER: And what would that case be?

18 PERSPECTIVE JUROR PAULL: O.J.

19 MR. FIGLER: O.J., you felt he should have gotten  
20 the death penalty?

21 PERSPECTIVE JUROR PAULL: Yeah.

22 MR. FIGLER: Okay. Even though he was found not  
23 guilty by a jury, correct?

24 PERSPECTIVE JUROR PAULL: That's correct.

25 MR. FIGLER: So do you think that the government

1 should have chased him down after that, even though he was  
2 found not guilty by his peers?

3 PERSPECTIVE JUROR PAULL: No.

4 MR. FIGLER: Now, what type of factors do you think  
5 would be important in that type of case to make you determine  
6 that that person deserved the death penalty?

7 PERSPECTIVE JUROR PAULL: Well, I --

8 MR. GUYMON: Judge, I'm going to object to trying  
9 the O.J. case now, we're getting into the facts of that case,  
10 it's a completely different case, it's not relevant.

11 THE COURT: I think you've had sufficient  
12 supplemental voir dire in light of the questionnaires and all  
13 these questions here to terminate this. I -- you have a  
14 challenge for cause, that's been overruled. The voir dire is  
15 terminated as to this.

16 Would you folks approach the bench.

17 (Off-record bench conference)

18 THE COURT: Mr. Campitelli, of course I can write a  
19 letter saying that you must be here every day, if you're  
20 picked in the next forty minutes, whether they pay you or not  
21 is outside my control, and all I can do you is give you my  
22 condolences if you feel you can't afford to miss a payday,  
23 lots of people are going to miss paydays. So you're stuck on  
24 there unless you're excused in one of these next eight  
25 preemptory challenges. Everyone in this room who isn't retire

1 is going to probably -- or most people, lose some money. But  
2 I'll be glad to write letters, I indicated earlier today  
3 indicating to them that you're here on a serious matter doing  
4 your jury duty.

5 The State's fifth to exercise or waive.

6 MR. DASKAS: The State would thank and excuse Juror  
7 Number 571.

8 THE COURT: As I've told you before I'm going by the  
9 place in the box, I don't even write down the juror's number.

10 MR. DASKAS: I'm sorry, seat number seven, Judge, I  
11 apologize.

12 THE COURT: Okay.

13 THE CLERK: Next will be Robert --

14 THE COURT: Hold on for one second. Would you  
15 approach the bench for a second?

16 MR. DASKAS: Sure, Judge.

17 (Off-record bench conference)

18 THE COURT: Okay. Thank you, Ms. Fuller, you're  
19 excused.

20 Mr. Davis.

21 The State may inquire.

22 MR. DASKAS: Thank you, Judge.

23 Mr. Davis, it's late in the day I'll try to get  
24 through this as quickly as possible. And let me get right to  
25 the questions about punishment in a murder case. Page 9 of



1 your questionnaire, and I'm going to read what you wrote down,  
2 you said I don't believe in the death penalty.

3 PERSPECTIVE JUROR DAVIS: That's true.

4 MR. DASKAS: You believed that when you wrote that  
5 in the questionnaire and I take it that you still believe it  
6 today?

7 PERSPECTIVE JUROR DAVIS: That's right.

8 MR. DASKAS: Based on the fact that you simply do  
9 not believe in the death penalty, is it true that you could  
10 not consider it as an option in this case?

11 PERSPECTIVE JUROR DAVIS: That's right.

12 MR. DASKAS: You -- as you've been told that there  
13 are four possible forms of punishment and one of them is  
14 death, your belief is such that you cannot consider death as a  
15 punishment because you simply are opposed to the death  
16 penalty?

17 PERSPECTIVE JUROR DAVIS: That's right.

18 MR. DASKAS: Challenge for cause, Judge.

19 THE COURT: Traverse.

20 MR. FIGLER: Good afternoon.

21 PERSPECTIVE JUROR DAVIS: Hey.

22 MR. FIGLER: Now, again, I think everyone respects  
23 everyone's position on this very difficult issue in society,  
24 you understand that, correct?

25 PERSPECTIVE JUROR DAVIS: Right.

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1 MR. FIGLER: And you understand that some people  
2 believe that they can't impose the death penalty unless it was  
3 a very specific compelling reason to do so, you understand  
4 that?

5 PERSPECTIVE JUROR DAVIS: Yes, I do.

6 MR. FIGLER: Okay. And you remember when I was  
7 talking with Ms. Calvert up there and she was talking about  
8 her initial views upon the death penalty and I ran through a  
9 bunch of questions with her, do you remember that?

10 PERSPECTIVE JUROR DAVIS: Mm-hmm.

11 MR. FIGLER: Okay. So what I really want to do is  
12 kind of go through the same questions with you just to -- just  
13 sort of get to the heart of it because that's really  
14 important. I mean let me ask you just straight out, do you  
15 think that a set of jurors who are sitting to decide whether  
16 or not somebody should get the death penalty or not should  
17 have different viewpoints on it, do you agree with that basic  
18 concept?

19 MR. DASKAS: This is improper traverse.

20 THE COURT: Yes, it is.

21 MR. FIGLER: Okay.

22 THE COURT: Sustained.

23 MR. FIGLER: Let's put it this way, well there are  
24 some people who can't consider or conceive of a case where the  
25 death penalty is appropriate, they can't imagine there are

1 certain circumstances when it might be appropriate, like what  
2 we've been using as other examples, the World Trade Center, or  
3 the little kids in the --

4 PERSPECTIVE JUROR DAVIS: I still don't agree with  
5 it, just I believe two wrongs don't make a right.

6 MR. FIGLER: Okay.

7 THE COURT: Mr. Davis, let me interrupt Mr. Figler  
8 for a minute. I understand you're against the death penalty,  
9 I understand you don't like the death penalty, the question  
10 really is this, is that invariable in all cases you would  
11 never vote to impose the death penalty, not on Hitler?

12 PERSPECTIVE JUROR DAVIS: No, I wouldn't. I'd have  
13 like hard labor, but I don't believe in killing someone.

14 THE COURT: So the worst imaginable murderer you  
15 would still be invariable opposed to the death penalty?

16 PERSPECTIVE JUROR DAVIS: That's right.

17 THE COURT: Go ahead, any additional traverse, Mr.  
18 Figler?

19 MR. FIGLER: Yes, Your Honor.

20 Let me refer you to your questionnaire that you  
21 filled out, you did say that you would consider the death  
22 penalty in certain circumstances. Now, let's focus on the  
23 word consider, is that true, did you fill that out truthfully?

24 PERSPECTIVE JUROR DAVIS: I don't recall that.

25 MR. FIGLER: Now, if I -- if I show it to you do you

1 remember doing it?

2 PERSPECTIVE JUROR DAVIS: I'm sure I did if, you  
3 know, that's what you see.

4 MR. FIGLER: Okay. So I want to focus on that word  
5 consider again, because are you a law abiding citizen?

6 PERSPECTIVE JUROR DAVIS: Yes.

7 MR. FIGLER: Okay. So if you're instructed that you  
8 have to follow certain laws, you'd do that, correct?

9 PERSPECTIVE JUROR DAVIS: Yes.

10 MR. FIGLER: Okay. Now, like I asked Ms. Calvert  
11 let me ask you, have there been times in your life when you  
12 considered doing something and then just didn't do it, like  
13 buying a car or a house or a job or something like that?

14 PERSPECTIVE JUROR DAVIS: Yes.

15 MR. FIGLER: Okay. So you understand the difference  
16 between actually doing and considering something, right?

17 PERSPECTIVE JUROR DAVIS: Right.

18 MR. FIGLER: Now, if the Judge was to instruct you  
19 on the law and say that you have to consider everything in a  
20 particular case, can you follow that law to consider things?

21 PERSPECTIVE JUROR DAVIS: I can consider stuff,  
22 yeah.

23 MR. FIGLER: Okay. So let me ask you this, in the  
24 first part of the trial, you're to determine the guilt or  
25 innocence of a person, see if the prosecutors have proved

1 beyond a reasonable doubt something, and you're instructed on  
2 the law to do that, can you do that, can you follow that?

3 PERSPECTIVE JUROR DAVIS: Yes.

4 MR. FIGLER: Without any hesitation?

5 PERSPECTIVE JUROR DAVIS: Right.

6 MR. FIGLER: Good. Now, if it comes to a penalty,  
7 you leave that behind and you go into this new area where the  
8 Judge will again instruct you, you consider aggravating  
9 circumstances, mitigating, you make findings one way or  
10 another, and then you decide what of the penalties, and you  
11 consider all of them, would be appropriate, now can you follow  
12 that law?

13 PERSPECTIVE JUROR DAVIS: I could, but death would  
14 not be one of them.

15 MR. FIGLER: Okay. Death would be something that  
16 you would not feel comfortable checking off as they say,  
17 correct?

18 PERSPECTIVE JUROR DAVIS: That's right.

19 MR. FIGLER: Okay. But you would listened to the  
20 law and followed the law that you can consider it, correct?

21 PERSPECTIVE JUROR DAVIS: Well, I wouldn't consider  
22 it. It's against my beliefs.

23 MR. FIGLER: Okay. And where do those beliefs come  
24 from?

25 MR. DASKAS: Judge, I'm going to renew my objection.

1 THE COURT: Let me interrupt Mr. Figler again. 33C  
2 is what he was talking about, Mr. Davis, you said would you  
3 say that you're generally, circle one, and you circled would  
4 consider death penalty in certain circumstances, did you just  
5 not understand that question because of the way it was  
6 phrased?

7 PERSPECTIVE JUROR DAVIS: Right.

8 THE COURT: So you're telling us in court today  
9 under oath you'd never impose the death penalty.

10 PERSPECTIVE JUROR DAVIS: That's right, unless I  
11 walked in the house and it was my family, they're dead on the  
12 ground or something, then, you know, I'd take care of it right  
13 there.

14 THE COURT: Well, that's not the death penalty,  
15 that's you killing somebody in your house.

16 PERSPECTIVE JUROR DAVIS: That's right.

17 THE COURT: You sit on a jury, you have the vote,  
18 you're never voting for the death penalty?

19 PERSPECTIVE JUROR DAVIS: No, sir.

20 THE COURT: Invariably not.

21 PERSPECTIVE JUROR DAVIS: No, Your Honor.

22 MR. FIGLER: I have two questions to follow up,  
23 Judge.

24 THE COURT: Make them quick.

25 MR. FIGLER: You understand that no person in this

1 room ever has to vote for the death penalty, correct?

2 PERSPECTIVE JUROR DAVIS: That's right.

3 MR. FIGLER: And would you stand by your belief if  
4 you weren't convinced that this was a particular circumstance  
5 where they should impose a death penalty.

6 MR. DASKAS: That's improper traverse, Judge.

7 THE COURT: Improper traverse. Challenge for cause  
8 is sustained.

9 MR. FIGLER: I'd like to continue, Judge, with five  
10 more questions.

11 THE COURT: I'm sure you would, and when you get to  
12 final argument, Mr. Figler, if we ever get to the penalty  
13 phase, which you have insured us that you don't believe we  
14 will, you can bring them up again then, but we're going to  
15 pick a jury today, not engage in arguments to the jury. Thank  
16 you.

17 Mr. Davis, you're excused, thank you.

18 PERSPECTIVE JUROR DAVIS: Thank you, sir.

19 THE COURT: Mr. Lockinger.

20 The State may inquire.

21 MR. GUYMON: Good afternoon, Mr. Lockinger.

22 PERSPECTIVE JUROR LOCKINGER: Good afternoon.

23 MR. GUYMON: I know it's late, I'll try to be brief.  
24 Give me your thoughts on being a juror in this particular  
25 case.

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1           PERSPECTIVE JUROR LOCKINGER: Basically I think it's  
2 a very serious case, I don't have a whole lot of thoughts  
3 other than that.

4           MR. GUYMON: Can you fairly judge the evidence in  
5 this case?

6           PERSPECTIVE JUROR LOCKINGER: I believe so, yes.

7           MR. GUYMON: Will each witness be given a chance to  
8 be believed despite his or her choices?

9           PERSPECTIVE JUROR LOCKINGER: Yes.

10          MR. GUYMON: Okay. Police officers will they be  
11 given a chance to be believed?

12          PERSPECTIVE JUROR LOCKINGER: Yes.

13          MR. GUYMON: Others the same chance?

14          PERSPECTIVE JUROR LOCKINGER: Mm-hmm. Yes.

15          MR. GUYMON: All right. You indicated, and I don't  
16 mean to bring any personal embarrassment on anyone, you  
17 indicated that you had a brother in prison for a bank robbery?

18          PERSPECTIVE JUROR LOCKINGER: Yes, that's correct.

19          MR. GUYMON: All right. Does -- do you have any  
20 thoughts or opinions on your brother's case?

21          PERSPECTIVE JUROR LOCKINGER: I think he was  
22 probably guilty, so I don't have a problem with the sentence.

23          MR. GUYMON: Do you feel like the punishment was  
24 fair?

25          PERSPECTIVE JUROR LOCKINGER: Yes.



1 MR. GUYMON: Let me ask you, and the first area that  
2 I started with before I went to your brother, the fact that  
3 you're going to be called upon to pass judgment on the conduct  
4 of the defendant, does that cause you any uneasiness?

5 PERSPECTIVE JUROR LOCKINGER: No.

6 MR. GUYMON: Is it something you're capable of  
7 doing?

8 PERSPECTIVE JUROR LOCKINGER: Yes.

9 MR. GUYMON: Okay. Now I go to penalty here, if in  
10 fact we get to the penalty, and by that point in time you  
11 realize we're talking about a human life, we're talking about  
12 Donte Johnson's life, do you feel as though you can consider  
13 all four punishments?

14 PERSPECTIVE JUROR LOCKINGER: Yes.

15 MR. GUYMON: Is that something you're certain of?

16 PERSPECTIVE JUROR LOCKINGER: Yes.

17 MR. GUYMON: Okay. You indicated that you would in  
18 fact consider the death penalty?

19 PERSPECTIVE JUROR LOCKINGER: Yes, that's correct.

20 MR. GUYMON: Do you have any particular thoughts  
21 about the death penalty?

22 PERSPECTIVE JUROR LOCKINGER: I think the death  
23 penalty is very serious, I think it's a little bit of a  
24 complicated area, basically I don't see a great deal of  
25 benefit to the death penalty, but at the same time I do

1 believe that it is a viable punishment, and if the  
2 circumstances warrant it then I think it -- that should be the  
3 penalty.

4 MR. GUYMON: Okay. Thinking it should be the  
5 penalty and actually being a person that says I would impose  
6 it may be two different things however. Let me put you in  
7 that position just for a second, if you think that the crime  
8 deserves the death penalty, and that Donte Johnson deserves  
9 that grave penalty, could you impose it?

10 PERSPECTIVE JUROR LOCKINGER: Yes, after looking at  
11 all of the various factors, if I believed that was what needed  
12 to be done, yes, I could do that.

13 MR. GUYMON: Okay. And lastly, you indicate that  
14 you think that life without might be a worse punishment?

15 PERSPECTIVE JUROR LOCKINGER: For myself personally  
16 I do believe that, yes.

17 MR. GUYMON: Okay. In fact, that's what you put,  
18 you said you would prefer the death penalty?

19 PERSPECTIVE JUROR LOCKINGER: Yes.

20 MR. GUYMON: All right. Can you see, however, in  
21 the -- in the line up of things, the death penalty is the  
22 worse penalty?

23 PERSPECTIVE JUROR LOCKINGER: Yes.

24 MR. GUYMON: And you believe it's appropriate in  
25 some cases?

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1 PERSPECTIVE JUROR LOCKINGER: In some cases, yes.

2 MR. GUYMON: All right. You also mentioned that  
3 DNA, in question number 65 is -- the science of DNA is  
4 something you know something about?

5 PERSPECTIVE JUROR LOCKINGER: Not particularly, just  
6 from watching some television shows, things of that nature.

7 MR. GUYMON: Can you share your thoughts about DNA  
8 with me.

9 PERSPECTIVE JUROR LOCKINGER: Basically from the  
10 things I've seen so far, I believe that DNA evidence is fairly  
11 strong. I don't believe that it's necessarily the be all and  
12 end all, but I do believe it is very strong evidence.

13 MR. GUYMON: If DNA evidence is presented in this  
14 courtroom would you consider it?

15 PERSPECTIVE JUROR LOCKINGER: Yes.

16 MR. GUYMON: All right. Likewise say fingerprint  
17 evidence, is that something you would consider?

18 PERSPECTIVE JUROR LOCKINGER: Yes.

19 MR. GUYMON: Do you believe in fingerprint evidence?

20 PERSPECTIVE JUROR LOCKINGER: Yes.

21 MR. GUYMON: Okay. Pass for cause, Your Honor.

22 THE COURT: Defense may inquire.

23 MR. SCISCENTO: Mr. Lockinger?

24 PERSPECTIVE JUROR LOCKINGER: Yes.

25 MR. SCISCENTO: Mr. Guymon asked you about the DNA

1 evidence, would you give more credence to an expert who got up  
2 here and talked about the DNA expert than any other witness?

3 PERSPECTIVE JUROR LOCKINGER: Would I give more  
4 credence to that particular --

5 MR. SCISCENTO: Testimony.

6 PERSPECTIVE JUROR LOCKINGER: Not so much to the  
7 testimony, but perhaps to the results of the testing.

8 MR. SCISCENTO: What information have you learned  
9 over the years about DNA testing?

10 PERSPECTIVE JUROR LOCKINGER: Basically it just that  
11 I believe that every person has a different strand of DNA, and  
12 that if any DNA were to be left at the scene of the crime that  
13 it could be tracked to at least a family of people, maybe not  
14 a particular person.

15 MR. SCISCENTO: Have you watched any shows about  
16 DNA, any testing, anything like that?

17 PERSPECTIVE JUROR LOCKINGER: I've watched on the  
18 Discovery Channel, I watch like the New Detectives and the FBI  
19 Files.

20 MR. SCISCENTO: They don't show -- no shows any  
21 false readings or anything like that do they, do they talk  
22 about that?

23 PERSPECTIVE JUROR LOCKINGER: Not that I can recall.

24 MR. SCISCENTO: They don't talk about different  
25 kinds of testings of DNA?

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1 PERSPECTIVE JUROR LOCKINGER: Yeah, they do talk  
2 about several different types.

3 MR. SCISCENTO: They talk about the human error when  
4 testing for DNA?

5 PERSPECTIVE JUROR LOCKINGER: Yes.

6 MR. SCISCENTO: And talking about the sterility of a  
7 lab, how clean it is, the interpretation of DNA?

8 PERSPECTIVE JUROR LOCKINGER: Yes.

9 MR. SCISCENTO: So you understand there's more to  
10 DNA evidence than the conclusion.

11 PERSPECTIVE JUROR LOCKINGER: Yes. Yes, I do.

12 MR. SCISCENTO: And with that understanding if DNA  
13 evidence is presented in this case you won't follow -- you  
14 will bring in that information, that common sense that you  
15 have, or common knowledge that you have about it?

16 PERSPECTIVE JUROR LOCKINGER: Mm-hmm. Yes.

17 MR. SCISCENTO: You'll be able to question that DNA  
18 testing?

19 PERSPECTIVE JUROR LOCKINGER: Yes.

20 MR. SCISCENTO: Just like the rest of the evidence,  
21 would you be able to question the rest of the evidence?

22 PERSPECTIVE JUROR LOCKINGER: Yes.

23 MR. SCISCENTO: You had answer on number 40, I don't  
24 see any benefit other than saving money in long term prison  
25 care.

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1 PERSPECTIVE JUROR LOCKINGER: Yes.

2 MR. SCISCENTO: So you think on a cost base analysis  
3 the benefits would be saving money?

4 PERSPECTIVE JUROR LOCKINGER: I believe that that is  
5 definitely a benefit of --

6 MR. SCISCENTO: To society?

7 PERSPECTIVE JUROR LOCKINGER: Yes, absolutely. But  
8 that is not a reason to impose the death penalty.

9 MR. SCISCENTO: And if it was not cost effective to  
10 impose a death penalty, would that change your mind?

11 PERSPECTIVE JUROR LOCKINGER: No, not at all,  
12 basically if the crime is worthy of the death penalty, then  
13 it's worthy of the death penalty, if it's not, it's not. The  
14 cost really doesn't factor into that.

15 MR. SCISCENTO: We have a murder, what factors do  
16 you consider in whether or not to impose the death penalty?

17 PERSPECTIVE JUROR LOCKINGER: I think that's --  
18 probably the main factor that I would look at would be my  
19 thought as to whether the defendant would be likely to commit  
20 a crime again. And obviously I'm not a psychiatrist or  
21 anything, so that's just a gut feeling. I'd take a look at  
22 things like the age at the time, the state of mind at the  
23 time. I think to a limited extent you need to take a look at  
24 the desires of the victim's family, if those are reasonable, I  
25 think that's something that must be examined as well as the

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1 defendant's family.

2 MR. SCISCENTO: So you take everything into account?

3 PERSPECTIVE JUROR LOCKINGER: Yes.

4 MR. SCISCENTO: You mentioned something about other  
5 -- well, the factors that we looked at, are you saying if he  
6 could rehabilitate themselves, did you mention that?

7 PERSPECTIVE JUROR LOCKINGER: Yes.

8 MR. SCISCENTO: And if he could cause harm to  
9 others, so you are assured that life in prison without parole  
10 prevent that, would that take you away from your argument of  
11 imposing the death penalty? I mean if you take away the cost  
12 basis analysis, and you take away life imprisonment without  
13 parole, you no longer can hurt anybody else, your two  
14 arguments are gone, would that change your mind from death  
15 penalty?

16 PERSPECTIVE JUROR LOCKINGER: Well, again, it would  
17 all depend upon the circumstances, there are some  
18 circumstances where I believe that the death penalty should  
19 almost be automatic.

20 MR. SCISCENTO: Okay. And what are those  
21 circumstances?

22 PERSPECTIVE JUROR LOCKINGER: Basically the two  
23 circumstances that I see are basically terrorist acts where  
24 people use violence to further a political gain, such as the  
25 Lockerby when they blew up the plane, I believe that that is

1 almost an automatic. The next one is serial killers like Ted  
2 Bundy or a John Wayne Gacey, people who kill over a long  
3 period of time.

4 MR. SCISCENTO: Those two instances are the only two  
5 that you can consider almost without any mitigation to impose  
6 a death penalty?

7 PERSPECTIVE JUROR LOCKINGER: Yeah, those are the  
8 only two.

9 MR. SCISCENTO: Everything else though, and we  
10 talked about the sliding scale from the 7-Eleven, all the way  
11 to the multiple murders, those all have a possibility, in your  
12 mind, with different factors coming in, age, the families, the  
13 defendants, the victims, all of that coming into mind for you  
14 to make a determination?

15 PERSPECTIVE JUROR LOCKINGER: Yes.

16 MR. SCISCENTO: On whether or not to impose the  
17 death penalty?

18 PERSPECTIVE JUROR LOCKINGER: Yes.

19 MR. SCISCENTO: If a police officer or any officer  
20 or detective or -- gets on the stand to testify, do you think  
21 that his testimony would be unbiased?

22 PERSPECTIVE JUROR LOCKINGER: Not necessarily.

23 MR. SCISCENTO: You think that they might have a  
24 position or a desire for the outcome of the case?

25 PERSPECTIVE JUROR LOCKINGER: Yes.



1 MR. SCISCENTO: And what I'm making sure is that  
2 you're just not going to pay credence to their testimony based  
3 on the fact that they're officers of law?

4 PERSPECTIVE JUROR LOCKINGER: Right. No, I wouldn't  
5 do that, I believe they're all individuals.

6 MR. SCISCENTO: We'll pass for cause, Your Honor.

7 THE COURT: Thank you. Defense's fifth to exercise  
8 or waive.

9 MR. SCISCENTO: Yes, the defense would like to thank  
10 and excuse Ms. -- number -- badge number 557, Mr. Fink.

11 THE COURT: And that would be in what position,  
12 please?

13 MR. FIGLER: Six.

14 THE COURT: Thank you. Thank you, Mr. Fink.  
15 Would counsel approach bench please.

16 (Off-record bench conference)

17 THE COURT: Okay. For seat six, Laura Morgan  
18 please.

19 So you're not sitting there wondering folks, what  
20 we're discussing at the bench is about how many challenges are  
21 left, knowing that there's eight per side, but they don't have  
22 to use them all, and what I'm trying to juggle right now is, I  
23 don't want to bring everybody back again tomorrow, but I don't  
24 really want to when I've told you we're going to get you out  
25 of here at 5:30 go substantially beyond 5:30, we'll play it by

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1 ear and see how it goes for a few more minutes.

2 The State may inquire.

3 MR. DASKAS: Thank you, Judge.

4 Mrs. Morgan, your husband is a police officer, is  
5 that correct?

6 PERSPECTIVE JUROR MORGAN: Yes.

7 MR. DASKAS: Despite the fact that you're married to  
8 a police officer with Metro, can you judge the credibility of  
9 officers who testify just like you would every other witness?

10 PERSPECTIVE JUROR MORGAN: I can, but to be honest  
11 if there was a different -- say a person of, well, I don't  
12 know if you want to say questionable, if they have experienced  
13 drugs or other little crimes, that and the officer's testimony  
14 differed, I would believe the officer.

15 MR. DASKAS: In other words, if you had to make a  
16 decision with respect to conflicting evidence, I guess what  
17 you're saying is --

18 PERSPECTIVE JUROR MORGAN: Right.

19 MR. DASKAS: -- you would tend to believe an officer  
20 more than a drug user?

21 PERSPECTIVE JUROR MORGAN: Yes, I would.

22 MR. DASKAS: All right. Can you judge each witness  
23 individually though and independently as they testified?

24 PERSPECTIVE JUROR MORGAN: Yes.

25 MR. DASKAS: You mentioned that your husband may

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1 have discussed the facts of this case with you, although I  
2 guess you're not certain about that?

3 PERSPECTIVE JUROR MORGAN: I'm not certain. After I  
4 -- I did go home and ask him at that time which station he was  
5 stationed at, and he was not in that station, so basically I  
6 just heard it through him as they talked.

7 MR. DASKAS: Can you promise both sides in this case  
8 that you'll set aside whatever information you may have  
9 learned and make a decision based solely on the evidence you  
10 hear from the witnesses?

11 PERSPECTIVE JUROR MORGAN: Yes.

12 MR. DASKAS: There's been a lot of discussion about  
13 the death penalty in this case, you're probably tired of  
14 hearing it, but let me ask you, you're aware by now that there  
15 are four possible forms of punishment in a murder -- first  
16 degree murder conviction case, can you tell me whether you are  
17 at least willing to consider all four forms of punishment?

18 PERSPECTIVE JUROR MORGAN: Okay. Let me explain  
19 this, I -- if the person, it was a felony murder say and they  
20 were the driver and they didn't actually pull the trigger, yes  
21 I could consider all of them. If they actually did the  
22 killing I would have a hard time, and I'll tell you why. Four  
23 years ago a convicted murderer was released on parole, he --  
24 in the department we were in, he came after the police. He  
25 raped one female officer, broke into another home, burnt

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1 another one's car, and so I have feelings that -- that is  
2 where my -- it'd hard for me to give parole on -- for murder.

3 MR. DASKAS: I understand. If you're selected as a  
4 juror, however, Judge Sobel will read you some instructions,  
5 and the instructions are the law in the State of Nevada, and  
6 the instructions would include the fact that there are in fact  
7 four possible forms of punishment, can you promise me that you  
8 will at least follow the law in this case?

9 PERSPECTIVE JUROR MORGAN: Yes.

10 MR. DASKAS: That if indeed that is an instruction  
11 Judge Sobel reads to you before you're selected -- or after  
12 you're selected as a juror, that you will comply with those  
13 instructions?

14 PERSPECTIVE JUROR MORGAN: Yes.

15 MR. DASKAS: We're not asking you to give your  
16 opinion about which one you think you would impose, just that  
17 you would keep an open mind and not make a decision at this  
18 point, and you're willing to do that?

19 PERSPECTIVE JUROR MORGAN: Yeah.

20 MR. DASKAS: Anything you think we should know about  
21 you, and maybe I don't want to ask this question, before  
22 you're selected as a juror?

23 PERSPECTIVE JUROR MORGAN: No, I've pretty much told  
24 you what you need to know.

25 MR. DASKAS: Thank you. I'll pass for cause, Your

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1 Honor.

2 THE COURT: Thank you. Defense may inquire.

3 MR. SCISCENTO: Ms. Morgan, in your jury  
4 questionnaire you'd mentioned, 35, are you opened to  
5 considering all four forms of punishment in a capital case  
6 depending on the evidence presented at the trial and what you  
7 learn about the defendant in the penalty phase should you find  
8 him guilty, and you said no. And you mention the reason why.  
9 So you're telling me that you will not vote for life with the  
10 possibility of parole?

11 PERSPECTIVE JUROR MORGAN: I -- personally I don't  
12 think I would if they, you know, actually --

13 MR. SCISCENTO: Okay. So if they would, as you  
14 mentioned before, the 7-Eleven one is over here, the multiple  
15 murders the trigger man is over here, this person does not get  
16 the consideration of life with the possibility of parole  
17 because of what, you know, your past ingrained, which is --

18 PERSPECTIVE JUROR MORGAN: Yeah. Yes.

19 MR. SCISCENTO: -- which is perfectly fine and I  
20 understand, and I applaud you for being truthful. So what  
21 you're telling me is because of what's ingrained and what  
22 you've seen in the last year or two, or whenever it  
23 happened --

24 PERSPECTIVE JUROR MORGAN: Right.

25 MR. SCISCENTO: -- your feelings are such --

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1           PERSPECTIVE JUROR MORGAN: Yes, I have strong  
2 feelings that way, yes.

3           MR. SCISCENTO: -- that you will not consider  
4 parole?

5           PERSPECTIVE JUROR MORGAN: Yes.

6           MR. SCISCENTO: Challenge for cause, Your Honor.

7           THE COURT: Traverse.

8           MR. DASKAS: I don't mean to be repetitive, but let  
9 me see if I understand. When I asked you a few moments ago  
10 whether you would follow the Judge's instructions, and that is  
11 that there are four possible forms of punishment which you  
12 must consider, I thought you answered yes you would  
13 consider --

14           PERSPECTIVE JUROR MORGAN: Okay. I would consider  
15 them, but in all honesty it's going to have to take a heck of  
16 a lot to sway my decision. I will listen to his instructions  
17 and I will consider it, but --

18           MR. DASKAS: I understand. We're certainly not  
19 asking you to tell us how you would vote, obviously you  
20 haven't heard any evidence in this case --

21           PERSPECTIVE JUROR MORGAN: Yes.

22           MR. DASKAS: -- and particularly any evidence  
23 concerning either mitigation or aggravation in the death  
24 penalty situation. The only question though is, can you tell  
25 me right now that if you get those instructions you will, in

1 fact, consider those four possible forms of punishment? Not  
2 what you're going to vote, not what you would exclude, whether  
3 you would consider those four.

4 PERSPECTIVE JUROR MORGAN: You guys like your  
5 wordings, yes I'll consider it.

6 THE COURT: Well, and I have to make the ultimate  
7 decision obviously, when there's a challenge for cause, Mrs.  
8 Morgan, and it's not a game obviously either to the  
9 prosecutors or the defense. You know the answer and I don't,  
10 I mean it's not a game to consider it, and what -- and what  
11 Robert is saying to is, we're not asking you now what you  
12 would decide, you haven't heard any of the case. All we want  
13 to know is honestly, would you consider it, even though it  
14 seems unlikely that that's what you'd do? Would you consider  
15 all four forms of punishment because that's the law in the  
16 State of Nevada, that the legislature, the people up in Carson  
17 City passed, would you consider all of them?

18 PERSPECTIVE JUROR MORGAN: Okay. If it's the law I  
19 will obey the law, and yes, I will consider it.

20 THE COURT: Challenge for cause overruled. Any  
21 further questions, Joe?

22 MR. SCISCENTO: -- that, Your Honor.

23 Ms. Morgan, so you're telling us now then that you  
24 already know that multiple murderers you would not consider,  
25 because when you hear this word consider, means you'd look at

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1 it, you say okay and you give her a nod and a wink and move  
2 on. When I'm saying consider, I mean does the defendant who  
3 has multiple murders, and is consider the trigger man, have  
4 the chance of possibility of parole if you make a decision?

5 PERSPECTIVE JUROR MORGAN: Yes.

6 MR. SCISCENTO: Even after what you all said before  
7 about --

8 THE COURT: I mean we're not putting words in your  
9 mouth, what I hear you saying is you think there's some good  
10 cause for usually going with one penalty than the other, but  
11 when I hear you looking in my eye and tell me you'll consider  
12 it, you will look at the whole situation, consider it because  
13 that's the law, and not do it automatically, is that right?

14 PERSPECTIVE JUROR MORGAN: That is correct.

15 THE COURT: If I'm wrong, tell me, it doesn't matter  
16 that I'm wearing this robe, if I'm not hearing you right I  
17 want to hear you. Am I hearing you right, or would you -- we  
18 don't want a wink and a nod, we want a serious consideration  
19 because that's what the law requires. Are you able, given  
20 your own ties and experiences, a tie to your husband and the  
21 experiences you hear about, to do more than wink and nod and  
22 give it a serious consideration?

23 PERSPECTIVE JUROR MORGAN: In all honestly, I  
24 probably cannot give it the consideration that you are  
25 wanting.

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1 THE COURT: Thank you very much for your honesty.  
2 Challenge for cause is sustained.

3 Okay. You're excused, thank you very much.

4 Okay. Tomorrow morning Monica Sandoval will be in  
5 that twelve seat, where are you Monica.

6 Okay. Folks, I apologize in this sense, and I don't  
7 apologize in another. I apologize in this -- we'll get to you  
8 in a sec -- the sense that I apologize is, I misjudged how  
9 long this was going to take, and whatever it takes that's what  
10 we're going to spend here. We're only about a half day behind  
11 where I thought we would be, maybe two to three actual court  
12 hours, I still think we'll finish this week fairly easily.  
13 But I don't apologize in the sense it is a very serious thing  
14 and we're going to take the time to do it right and that means  
15 bringing back the folks in the audience that we're not going  
16 to need all of you.

17 Now, sir, what were you raising your hand about?

18 PERSPECTIVE JUROR YOUNG: With all do respect, 'sir,  
19 I would rather stay another half an hour or an hour and finish  
20 tonight than have to come back tomorrow.

21 THE COURT: How many people would rather do that?  
22 Everyone? Pretty much everyone. Let's do it. Okay.

23 (Off-record colloquy)

24 THE COURT: My best guess it's going to be somewhere  
25 around another half hour.

1 All right. Then, ma'am, come on and take the seat  
2 today.

3 Is there anybody who has a real serious problem that  
4 doesn't permit them to stay another half an hour, and would  
5 rather go, come back tomorrow, a really serious problem? No.  
6 Then let's just try to finish it this afternoon, or this early  
7 evening.

8 The State may inquire.

9 MR. GUYMON: How are you?

10 PERSPECTIVE JUROR SANDOVAL: Tired, but okay.

11 MR. GUYMON: I understand. You're going to be  
12 called upon to pass judgment on the conduct of Donte Johnson,  
13 is that something you can do?

14 PERSPECTIVE JUROR SANDOVAL: Yes.

15 MR. GUYMON: What are your thoughts about holding  
16 people accountable for their conduct?

17 PERSPECTIVE JUROR SANDOVAL: I agree with that, I  
18 think for the most part, you know, if you are of sane mind  
19 that you should be held accountable for your actions.

20 MR. GUYMON: Do you have any concerns about how  
21 serious the consequences are in holding the defendant  
22 accountable for his actions?

23 PERSPECTIVE JUROR SANDOVAL: No.

24 MR. GUYMON: Can you set aside any consequences and  
25 make a fair decision in the guilt phase?

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1 PERSPECTIVE JUROR SANDOVAL: Yes.  
2 MR. GUYMON: That is to say, you'll judge him guilty  
3 or not guilty without thinking about what the next step is?  
4 PERSPECTIVE JUROR SANDOVAL: Yes.  
5 MR. GUYMON: Let's get to the next step for a  
6 minute.  
7 PERSPECTIVE JUROR SANDOVAL: Okay.  
8 MR. GUYMON: Let's pretend it's next week and you've  
9 found the defendant guilty of four murders with use of a  
10 deadly weapon.  
11 PERSPECTIVE JUROR SANDOVAL: Okay.  
12 MR. GUYMON: Will you consider -- will you keep an  
13 open mind at that point in time and begin then to hear all of  
14 the evidence that's given to you as to what the right penalty  
15 is?  
16 PERSPECTIVE JUROR SANDOVAL: Yes.  
17 MR. GUYMON: Okay. Will you consider all four  
18 penalties?  
19 PERSPECTIVE JUROR SANDOVAL: Yes.  
20 MR. GUYMON: Will you consider the death penalty?  
21 PERSPECTIVE JUROR SANDOVAL: Yes, I will.  
22 MR. GUYMON: Will you personally impose it if you  
23 feel like it's right?  
24 PERSPECTIVE JUROR SANDOVAL: Yes, I will.  
25 MR. GUYMON: You indicated that, in your

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1 questionnaire, you would in fact consider the death penalty  
2 although you thought life without was worse because there was  
3 no end in sight?

4 PERSPECTIVE JUROR SANDOVAL: Right. I agree with  
5 that.

6 MR. GUYMON: All right. Now, is that your thoughts  
7 personally or is that be for any defendant?

8 PERSPECTIVE JUROR SANDOVAL: My thoughts personally,  
9 I mean there's no end to things. I mean with the death  
10 penalty there seems to be an end in sight. Life without, you  
11 kind of just sit there and tend to contemplate the unknown,  
12 so.

13 MR. GUYMON: Now, that's assuming, however, that the  
14 person is going to sit there and contemplate the unknown?

15 PERSPECTIVE JUROR SANDOVAL: Right.

16 MR. GUYMON: Is that true?

17 PERSPECTIVE JUROR SANDOVAL: True.

18 MR. GUYMON: Would you agree that the death penalty,  
19 while life without may seem worse to you, but the death  
20 penalty is, in fact, the most severe penalty that we have  
21 under the law?

22 PERSPECTIVE JUROR SANDOVAL: Yes.

23 MR. GUYMON: You hesitate a little bit.

24 PERSPECTIVE JUROR SANDOVAL: Well, I still think  
25 life without parole is very serious and very severe also. I

1 think it depends on the person and the crime.

2 MR. GUYMON: Would you agree that perhaps the worse  
3 crimes and the worse people deserve the worst penalty?

4 PERSPECTIVE JUROR SANDOVAL: Yeah, I guess. Yes, I  
5 do.

6 MR. GUYMON: Now, if it's the worst crime and the  
7 worst person, does that person deserve the death penalty?

8 PERSPECTIVE JUROR SANDOVAL: Once all the facts are  
9 given to me, yes, I would consider that.

10 MR. GUYMON: Okay. And you could impose it if you  
11 felt like it was appropriate?

12 PERSPECTIVE JUROR SANDOVAL: Yes, I could.

13 MR. GUYMON: You're sure?

14 PERSPECTIVE JUROR SANDOVAL: Positive.

15 MR. GUYMON: All right. Lastly, you mentioned that  
16 your job requires you to read the paper?

17 PERSPECTIVE JUROR SANDOVAL: Mm-hmm. I work at the  
18 Review Journal.

19 MR. GUYMON: All right. Now, can you go without  
20 reading the paper for the next eight, nine days?

21 PERSPECTIVE JUROR SANDOVAL: Well, yeah, I wouldn't  
22 be at work, so I -- at work I am required to look at the paper  
23 every morning, it's there on my desk.

24 MR. GUYMON: Okay. With regards to having to read  
25 the paper, do you have any thoughts or preconceived ideas

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1 about this case, the facts in this case?

2 PERSPECTIVE JUROR SANDOVAL: No, pre -- no,  
3 preconceived.

4 MR. GUYMON: Okay. And, do you have any thoughts  
5 about what beyond a reasonable doubt means?

6 PERSPECTIVE JUROR SANDOVAL: Do I have any doubt?  
7 No.

8 MR. GUYMON: No, do you have any thoughts about what  
9 beyond a reasonable doubt means?

10 PERSPECTIVE JUROR SANDOVAL: No.

11 MR. GUYMON: Reading the paper every day, do you  
12 have any thoughts about DNA evidence or fingerprint evidence?

13 PERSPECTIVE JUROR SANDOVAL: I believe it's a good  
14 thing, I agree with it.

15 MR. GUYMON: Will you -- will you listen to that  
16 evidence and consider it if it's presented?

17 PERSPECTIVE JUROR SANDOVAL: Yes.

18 MR. GUYMON: Pass this juror for cause, thank you.

19 THE COURT: Thank you. Defense may inquire.

20 MR. FIGLER: Thank you. Hi, how are you this  
21 afternoon?

22 PERSPECTIVE JUROR SANDOVAL: Good.

23 MR. FIGLER: We'll try to make it quick.

24 PERSPECTIVE JUROR SANDOVAL: Okay.

25 MR. FIGLER: With regard to working at the R.J. and

1 now being in here and hearing all these names and stuff, do  
2 you remember more about this particular case than when you  
3 filled out your questionnaire?

4 PERSPECTIVE JUROR SANDOVAL: No, pretty much what  
5 was in the questionnaire is what I remember.

6 MR. FIGLER: That you read about it a few times?

7 PERSPECTIVE JUROR SANDOVAL: Right. It rang a bell  
8 when I read the summary.

9 MR. FIGLER: Okay. Now, when the prosecutor asked  
10 you about people being accountable for their actions.

11 PROSPECTIVE JUROR SANDOVAL: Mm-hmm.

12 MR. FIGLER: You understand that that's pretty much  
13 your determination of whether or not it's guilt beyond a  
14 reasonable doubt?

15 PERSPECTIVE JUROR SANDOVAL: Right.

16 MR. FIGLER: Okay. Then, and only then, do you  
17 shift away from that and move into this penalty phase, you  
18 understand that?

19 PERSPECTIVE JUROR SANDOVAL: Yes.

20 MR. FIGLER: Okay. That you leave those issues of  
21 guilt and innocence and accountability behind, now you're  
22 looking at the appropriate sentence, right?

23 PERSPECTIVE JUROR SANDOVAL: Right.

24 MR. FIGLER: Now, with regard to the penalty type of  
25 phase, do you think it's important to focus on understanding

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1 the person that you just convicted of, and this is all  
2 allegedly you understand what we're doing, do you think it's  
3 important to consider the background and life and age, and  
4 these type of things about a person in determining the  
5 appropriate sentence?

6 PERSPECTIVE JUROR SANDOVAL: No, not always, no.

7 MR. FIGLER: Now, if you were instructed by law that  
8 you have to consider all of these things in determining the  
9 appropriate punishment, would you follow that law?

10 PERSPECTIVE JUROR SANDOVAL: Oh, sure.

11 MR. FIGLER: So if you got this information about  
12 youth is a thing to consider, or even your own personal mercy  
13 in your heart --

14 PROSPECTIVE JUROR SANDOVAL: Mm-hmm.

15 MR. FIGLER: -- you would consider those type of  
16 things in imposing a sentence?

17 PERSPECTIVE JUROR SANDOVAL: If I was instructed to,  
18 yes.

19 MR. FIGLER: Okay. Do you have a problem with that  
20 concept?

21 PERSPECTIVE JUROR SANDOVAL: No. Personally do you  
22 mean?

23 MR. FIGLER: Yes.

24 PERSPECTIVE JUROR SANDOVAL: Oh, no. I'm sorry.

25 MR. FIGLER: No, again, now there's no right or



1 wrong answer, it's just honest answers.

2 PERSPECTIVE JUROR SANDOVAL: Right. I know. Right.

3 MR. FIGLER: Okay. Now, how strongly do you believe  
4 in the death penalty?

5 PERSPECTIVE JUROR SANDOVAL: Well, I'm not a strong  
6 advocate and I don't go out and, you know, push for it. I  
7 believe in -- I believe in it and I believe sometimes it is  
8 necessary.

9 MR. FIGLER: Now, when you think of the death  
10 penalty what kind of crimes do you think of?

11 PERSPECTIVE JUROR SANDOVAL: I don't -- I mean  
12 sitting out there today listening to different ones, I don't  
13 really have this thought in my mind that you have to actually  
14 do this, this and this to get the death penalty. I mean I  
15 think you're really -- it depends on the situation itself that  
16 you're looking at. I mean the, you know, the Uni-bomber is a  
17 -- I mean I don't think the death penalty there, but that's --  
18 I just think each individual case I'd have to sit and, you  
19 know, view the case and the facts before I can say this one  
20 yes. There's no, you know, set in my mind.

21 MR. FIGLER: Okay. Now, from what I understand your  
22 answers to the questions, you think that all those options,  
23 life without, even life with, that they're all serious  
24 punishments, correct?

25 PERSPECTIVE JUROR SANDOVAL: I do.

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1 MR. FIGLER: So you believe incarceration is a  
2 serious punishment no matter what form it takes, correct?

3 PERSPECTIVE JUROR SANDOVAL: Yes.

4 MR. FIGLER: Now, Ms. Patterson talked about the  
5 idea of rehabilitation, do you think that rehabilitation is  
6 important for everyone who is sent to jail?

7 PERSPECTIVE JUROR SANDOVAL: I do.

8 MR. FIGLER: Do you think that we, as a society,  
9 should try to, for lack of a better word, save or help or fix  
10 people who have even committed very heinous crimes?

11 PERSPECTIVE JUROR SANDOVAL: Sure.

12 MR. FIGLER: That's an important goal?

13 PERSPECTIVE JUROR SANDOVAL: It's not like my  
14 personal goal, but I feel that if somebody is going to be in  
15 prison, whether it's to ever get out or not, I don't see, you  
16 know, the wrong in trying to rehabilitate them or give them  
17 counseling.

18 MR. FIGLER: Even if they've committed multiple  
19 homicides in their life?

20 PERSPECTIVE JUROR SANDOVAL: Well, sure, if they're  
21 going to spend the rest of their life in prison, we might as  
22 well make the best of that person, and maybe they can become a  
23 better person within the prison system.

24 MR. FIGLER: Okay. Let me ask you one last  
25 question, there's something that I noted in your

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1 questionnaire, and I lost my place. But let me just ask you  
2 specifically, you understand that the sentence of death on  
3 another human being is final and irreversible, correct?

4 PERSPECTIVE JUROR SANDOVAL: Yes.

5 MR. FIGLER: Okay. So you understand that it really  
6 does require the most serious of considerations in accord with  
7 you having followed the law, correct?

8 PERSPECTIVE JUROR SANDOVAL: I do.

9 MR. FIGLER: Okay. Any hesitation or problem with  
10 that type of process?

11 PERSPECTIVE JUROR SANDOVAL: No.

12 MR. FIGLER: We'll pass for cause. Thank you.

13 THE COURT: Thank you. The sixth State challenge to  
14 exercise or waive.

15 MR. DASKAS: Judge, the State would waive its sixth  
16 preemptory challenge.

17 THE COURT: Thank you. Sixth defense challenge to  
18 exercise or waive.

19 MR. SCISCENTO: Your Honor, the defense would like  
20 to thank and excuse badge number 577, Mr. Paull.

21 MR. SCISCENTO: Seat number 9.

22 THE COURT: Thank you, Mr. Paull, you are excused.  
23 Mr. Ashmore.

24 The State may inquire.

25 MR. GUYMON: Thank you, Judge.

1           Mr. Ashmore, you indicate on your questionnaire that  
2 you, let me see if I can quote this, you do not want to make a  
3 decision of this magnitude, is that fair?

4           PERSPECTIVE JUROR ASHMORE: Yes.

5           MR. GUYMON: Tell me what you meant by that.

6           PERSPECTIVE JUROR ASHMORE: I don't want to have the  
7 responsibility of making that decision whether or not a person  
8 lives or dies.

9           MR. GUYMON: Given that you're uncomfortable making  
10 that decision, are you able or are you unable to consider the  
11 four different forms of punishment in this case?

12          PERSPECTIVE JUROR ASHMORE: I'm able.

13          MR. GUYMON: Despite the fact that you want to --  
14 you do not want to make the decision, despite the fact that  
15 this is a serious decision, you're telling me, as you sit here  
16 right now, that you will consider all four forms of  
17 punishment, even the death penalty?

18          PERSPECTIVE JUROR ASHMORE: Yes.

19          MR. GUYMON: Let me see if I can't forecast the  
20 future for you. And put yourself in that seat a week and a  
21 half or two weeks from now when we, the State, stand up and  
22 ask you to impose the death sentence in this case, do you feel  
23 like you have the ability to do that, to vote for a sentence  
24 of death?

25          PERSPECTIVE JUROR ASHMORE: Yes.

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1 MR. GUYMON: Despite the fact that you made the  
2 comment you made in your questionnaire?

3 PERSPECTIVE JUROR ASHMORE: Yes.

4 MR. GUYMON: Can you promise me that's something  
5 that you'll at least consider as an option if you're selected  
6 as a juror?

7 PERSPECTIVE JUROR ASHMORE: Yes.

8 MR. GUYMON: At one point in your questionnaire you  
9 indicated that society is responsible and that that might  
10 affect your judgment in this case, in a criminal case, you  
11 recall answering that question?

12 PERSPECTIVE JUROR ASHMORE: Yes.

13 THE COURT: Excuse me just one minute, Robert.

14 MR. DASKAS: Yes, Judge.

15 THE COURT: Mr. Patten, where are you seated? Okay.  
16 You're far enough back, sir, that I can tell from the  
17 challenges we're not going to need you, in all likelihood at  
18 least, and I'm satisfied that it's a good enough bet to get  
19 you to class, you are excused. Thank you.

20 (Off-record colloquy)

21 THE COURT: Go ahead, Bob.

22 MR. DASKAS: Thank you, Judge.

23 You indicated that you believe that society is  
24 responsible for the, and I think your wrote the actions of  
25 individuals, is that correct?

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1 PERSPECTIVE JUROR ASHMORE: It can have an affect.

2 MR. DASKAS: Elaborate on that, if you would for me,  
3 how do you think society is responsible for other's actions?

4 PERSPECTIVE JUROR ASHMORE: I think education,  
5 background, socioeconomic.

6 MR. DASKAS: Despite those considerations do you  
7 still feel like individuals should be held responsible,  
8 accountable for the choices they make?

9 PERSPECTIVE JUROR ASHMORE: Yes.

10 MR. DASKAS: Do you feel like you can hold this  
11 defendant accountable for the actions that he took, and the  
12 decisions he made on the night in question?

13 PERSPECTIVE JUROR ASHMORE: Yes.

14 MR. DASKAS: You've heard a lot of discussion about  
15 the burden in this case, if you are personally convinced after  
16 hearing all the evidence that the defendant is guilty beyond a  
17 reasonable doubt, can you promise me that you will return  
18 verdicts of guilt?

19 PERSPECTIVE JUROR ASHMORE: Yes.

20 MR. DASKAS: Can you promise me that you will  
21 consider all of the forms of punishment, including the death  
22 penalty if we have a sentencing hearing?

23 PERSPECTIVE JUROR ASHMORE: Yes.

24 MR. DASKAS: I'll pass for cause.

25 THE COURT: Thank you. Defense may inquire.

1 MR. SCISCENTO: It's Mr. Ashmore? Ashmore?  
2 PERSPECTIVE JUROR ASHMORE: Yes.  
3 MR. SCISCENTO: You lived out here in Vegas for six  
4 years?  
5 PERSPECTIVE JUROR ASHMORE: Yes.  
6 MR. SCISCENTO: And you were born in San Fernando?  
7 PERSPECTIVE JUROR ASHMORE: Yes.  
8 MR. SCISCENTO: In the valley or the town itself?  
9 PERSPECTIVE JUROR ASHMORE: In the valley.  
10 MR. SCISCENTO: What part of the valley?  
11 PERSPECTIVE JUROR ASHMORE: Actually I moved -- I  
12 lived the majority of my life in Utah.  
13 MR. SCISCENTO: Okay. What part of Utah were you  
14 in?  
15 PERSPECTIVE JUROR ASHMORE: Roosevelt, Utah.  
16 MR. SCISCENTO: Now, you said you would consider  
17 imposing the death penalty in certain circumstances?  
18 PERSPECTIVE JUROR ASHMORE: Yes.  
19 MR. SCISCENTO: You understand it's a heavy  
20 responsibility?  
21 PERSPECTIVE JUROR ASHMORE: Yes.  
22 MR. SCISCENTO: And you have no problem going over  
23 the facts and the -- in this case in order to come out to a  
24 determination of whether or not you impose the death penalty?  
25 PERSPECTIVE JUROR ASHMORE: No.

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1 MR. SCISCENTO: You would be able to consider  
2 everything, all the factors in this case?

3 PERSPECTIVE JUROR ASHMORE: Yes.

4 MR. SCISCENTO: And you're not -- are you  
5 predisposed to going one way or another, death penalty or not  
6 death penalty?

7 PERSPECTIVE JUROR ASHMORE: No.

8 MR. SCISCENTO: Do you think -- you understand that  
9 there are biases in this world?

10 PERSPECTIVE JUROR ASHMORE: Yes.

11 MR. SCISCENTO: Biases may exist in all forms,  
12 racial, sexual, things like that, correct?

13 PERSPECTIVE JUROR ASHMORE: Yes.

14 MR. SCISCENTO: You think a young black man in Clark  
15 County can get a fair trial?

16 PERSPECTIVE JUROR ASHMORE: Yes.

17 MR. SCISCENTO: With your understanding of that,  
18 would you be able to put aside any biases you may have, I'm  
19 not saying that you have any, would you be able to put  
20 anything aside and come up with that determination?

21 PERSPECTIVE JUROR ASHMORE: Yes.

22 MR. SCISCENTO: A person with your thoughts and  
23 beliefs would you say is a good person to have on the jury?

24 PERSPECTIVE JUROR ASHMORE: Yes.

25 MR. SCISCENTO: If you were sitting over where Mr.



1 White is sitting right now, would you want somebody with your  
2 mind and your thoughts making a decision on your guilt or  
3 innocence?

4 PERSPECTIVE JUROR ASHMORE: Yes.

5 MR. SCISCENTO: What are your basic feelings about  
6 the death penalty, this is going to be more than a yes or no  
7 answer.

8 PERSPECTIVE JUROR ASHMORE: It's a form of  
9 punishment.

10 MR. SCISCENTO: I was hoping in your answer to get a  
11 little more than three words. All right. You're not going to  
12 pay any special credence to anybody who gets up here and  
13 testifies, because they're in a uniform, they're an officer or  
14 anything like that?

15 PERSPECTIVE JUROR ASHMORE: No.

16 MR. SCISCENTO: If somebody got up here and  
17 testified saying that they're using crack cocaine almost every  
18 day, would that effect you -- would that have an effect on you  
19 on whether or not you believe them?

20 PERSPECTIVE JUROR ASHMORE: No.

21 MR. SCISCENTO: You would trust them to tell the  
22 truth?

23 PERSPECTIVE JUROR ASHMORE: I would give them the  
24 opportunity to.

25 MR. SCISCENTO: But you're not going to write them

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1 off immediately?

2 PERSPECTIVE JUROR ASHMORE: That's correct.

3 MR. SCISCENTO: Pass for cause, Your Honor.

4 THE COURT: Thank you. The State's seventh to  
5 exercise or waive.

6 MR. GUYMON: Court's indulgence.

7 THE COURT: Sure.

8 MR. DASKAS: Judge, the State would thank and excuse  
9 Mr. Ashmore who is seated in position number 9, I guess.

10 THE COURT: Thank you, Mr. Ashmore, you're excused.  
11 Mr. Grecco.

12 The State may inquire.

13 MR. GUYMON: Thank you.

14 Good evening, Mr. Grecco.

15 PERSPECTIVE JUROR GRECCO: Evening.

16 MR. GUYMON: You had a prior jury experience and you  
17 indicated it was negative?

18 PERSPECTIVE JUROR GRECCO: That's true.

19 MR. GUYMON: All right. Was it a criminal case?

20 PERSPECTIVE JUROR GRECCO: It was.

21 MR. GUYMON: All right. Do you have any thoughts  
22 about serving on this jury?

23 PERSPECTIVE JUROR GRECCO: I did.

24 MR. GUYMON: You say you do have thoughts about it  
25 or you did have thoughts about it?

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1           PERSPECTIVE JUROR GRECCO: I'm sorry, I thought you  
2 asked me if I did, I do have thoughts about it, yes.

3           MR. GUYMON: Can you share with me your thoughts  
4 about being a juror in this case?

5           PERSPECTIVE JUROR GRECCO: Initially I'm not  
6 thrilled about it.

7           MR. GUYMON: Okay. Have you got over the initial  
8 stage of not being thrilled about it?

9           PERSPECTIVE JUROR GRECCO: No.

10          MR. GUYMON: All right. You're still not thrilled  
11 about it?

12          PERSPECTIVE JUROR GRECCO: That's correct.

13          MR. GUYMON: Let me ask you, despite the fact of not  
14 being thrilled about it, I'm sure that everyone in here is not  
15 thrilled about being summoned here, do you see it as your duty  
16 though?

17          PERSPECTIVE JUROR GRECCO: I do.

18          MR. GUYMON: Is it a duty that you can carry out  
19 fairly?

20          PERSPECTIVE JUROR GRECCO: I believe so.

21          MR. GUYMON: Can the State call on you to be fair in  
22 passing judgment on the defendant's conduct in this case?

23          PERSPECTIVE JUROR GRECCO: I believe that as far as  
24 passing judgment that there's only one person in this room who  
25 has the authority to do that, and he's sitting right up there.

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1 I don't believe it's -- I don't believe I have the right to  
2 sentence someone to anything.

3 MR. GUYMON: You say you don't believe that's your  
4 right?

5 PERSPECTIVE JUROR GRECCO: Yes.

6 MR. GUYMON: Now, let me ask you this, if in fact  
7 the law says it's your right in a first degree murder case,  
8 and in fact the law imposes that obligation on you, can you  
9 carry out the law?

10 PERSPECTIVE JUROR GRECCO: I will do my best.

11 MR. GUYMON: All right. Let me -- let me come back  
12 to, I understand you're deferring to the Judge, but ultimately  
13 you become the judge of the facts in this case, the judge  
14 remains the judge of the law throughout the entire case, but  
15 you become the judge of the facts in the guilt phase, if --  
16 can you the judge the defendant's conduct, based on the facts,  
17 fairly?

18 PERSPECTIVE JUROR GRECCO: I believe I can.

19 MR. GUYMON: All right. Is there anything about  
20 your either religious beliefs or social beliefs that preclude  
21 you from being fair in passing judgment on the defendant?

22 PERSPECTIVE JUROR GRECCO: No.

23 MR. GUYMON: Okay. Let me -- let me get to the next  
24 stage, which would be requiring you to become a judge of what  
25 penalty should be imposed, again the Judge would be the judge

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1 of the law on that phase of the trial, you become the judge of  
2 what penalty he should receive, can you consider all four  
3 forms of penalty?

4 PERSPECTIVE JUROR GRECCO: As far as my legal duty  
5 to consider, yes.

6 MR. GUYMON: Let me talk about your moral duty then,  
7 if there's -- do you distinguish between say legal and moral?

8 PERSPECTIVE JUROR GRECCO: Yes.

9 MR. GUYMON: All right. Let's talk about your legal  
10 duty, you say legally you would do it, is that what you're  
11 telling me?

12 PERSPECTIVE JUROR GRECCO: Legally I would consider  
13 all four, yes.

14 MR. GUYMON: All right. Morally would you consider  
15 all four?

16 PERSPECTIVE JUROR GRECCO: No.

17 MR. GUYMON: Tell me why you won't?

18 PERSPECTIVE JUROR GRECCO: I am a minister, and  
19 should we convict the defendant of the crime, I am more  
20 concerned with his spiritual rehabilitation than his mental  
21 rehabilitation, consequently sentencing to the -- the man to  
22 death negates all possibility of his spiritual rehabilitation.

23 MR. GUYMON: Okay. And I understand, when we talk  
24 about spiritual matters, it is very, very important, perhaps  
25 the number one responsibility we each have to our maker. I

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1 understand that. Let me ask you about it, I want you to  
2 balance for me, if you will, your beliefs and honestly your  
3 responsibility to God, okay?

4 PERSPECTIVE JUROR GRECCO: Sure.

5 MR. GUYMON: Can you -- and I take it that's the  
6 number one thing of importance in your life, is your  
7 obligation to God?

8 PERSPECTIVE JUROR GRECCO: That's correct.

9 MR. GUYMON: To your Heavenly Father?

10 PERSPECTIVE JUROR GRECCO: That's correct.

11 MR. GUYMON: All right. Now, believing as you do  
12 about matters of spirit, of spirituality, and knowing what the  
13 priorities are, can you set aside that priority and that  
14 belief you have spiritually, and consider the death penalty in  
15 this case?

16 PERSPECTIVE JUROR GRECCO: Sitting here at this  
17 particular point in time, knowing nothing about the case yet,  
18 no.

19 MR. GUYMON: So that I understand that, and I'm not  
20 -- I'm just trying to make sure we understand the answers, you  
21 would automatically throw out the death penalty in your  
22 consideration and look to the other three, is that what you're  
23 telling me?

24 PERSPECTIVE JUROR GRECCO: I would consider all four  
25 of them, I would probably say if we convicted the man, all

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1 right, here's the death penalty, no. I would probably move to  
2 the next one. Here's the next one, maybe. Move to the next  
3 one, and so forth.

4 MR. GUYMON: So that --

5 THE COURT: So that we understand, when you say no  
6 to the death penalty, is that after consideration or is it  
7 something you've ruled out going in?

8 PERSPECTIVE JUROR GRECCO: I'm talking, Judge, at  
9 this particular point, not knowing anything about the case --

10 THE COURT: All right.

11 PERSPECTIVE JUROR GRECCO: -- no emotional feelings  
12 at all, okay, I'm just sitting here as a perspective juror, my  
13 feeling is I would look at the death penalty clause and say  
14 no, I would move to the life without parole, probably consider  
15 it the most, move to life with the possibility of parole, I  
16 don't know at this particular time. And --

17 THE COURT: But you can conceive of cases where you  
18 would actually vote for the death penalty, for example, a mass  
19 murderer like Hitler perhaps, where you do know something  
20 about the facts.

21 PERSPECTIVE JUROR GRECCO: I don't know that I could  
22 give an honest answer to that.

23 THE COURT: To anybody you can conceive that you've  
24 read about, Charles Manson, the Oklahoma City bombers, who, as  
25 far as you know, if you were on the jury --

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1 PROSPECTIVE JUROR GRECCO: Right.

2 THE COURT: -- you'd say I really seriously  
3 consider, I don't know if I'd actually impose the death  
4 penalty, but I'd really seriously consider because of the  
5 nature of this crime, the nature of the defendant of the death  
6 penalty.

7 PERSPECTIVE JUROR GRECCO: I'm not saying that I  
8 wouldn't believe that it might warrant it, I am saying I don't  
9 know that I could check the box.

10 MR. GUYMON: Let me ask you though, because there's  
11 a clear distinction, would you consider it? I know you say  
12 you don't think you could the box, but would you give it your  
13 sincere consideration?

14 PROSPECTIVE JUROR GRECCO: Well --

15 MR. GUYMON: Or do you automatically say I have this  
16 belief system, therefore I got to go walk right by death and  
17 go to the next choice?

18 PERSPECTIVE JUROR GRECCO: Legally I would have to  
19 consider it.

20 THE COURT: I'm -- what I'm listening is what's the  
21 difference between legally and morally, if legally you would  
22 have to consider it --

23 PERSPECTIVE JUROR GRECCO: Correct.

24 THE COURT: -- you're not really legally considering  
25 it if you're saying because of morally you'll automatically

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1 say no.

2 PERSPECTIVE JUROR GRECCO: Well, I --

3 THE COURT: It's a distinction I'm not seeing.

4 PERSPECTIVE JUROR GRECCO: Right. Well, he asked me  
5 would I consider it, I would read it and say I'm considering  
6 it, and no, my answer is no, I would have to move on.

7 THE COURT: Always -- and your answer would always  
8 be no after the consideration?

9 PERSPECTIVE JUROR GRECCO: Probably.

10 THE COURT: Well, that's what I go back and ask you,  
11 is there anybody you remember in history, whether it was a  
12 thousand years ago or recently who you've read about in a book  
13 or in the newspaper, seen on television, who did or didn't get  
14 the death penalty, who you'd say I would have given that  
15 person the death penalty?

16 PERSPECTIVE JUROR GRECCO: No.

17 THE COURT: Challenge for cause?

18 MR. GUYMON: Yes.

19 THE COURT: May traverse.

20 MR. SCISCENTO: Let me ask the question differently,  
21 if -- is there anybody in history that would found -- who had  
22 been found guilty of a crime, who you said -- who got the  
23 death penalty that you agreed with that they should have got  
24 the death penalty?

25 PERSPECTIVE JUROR GRECCO: Not right off the top of

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1 my head.

2 MR. SCISCENTO: Someone like Timothy McViegh who --  
3 the Oklahoma City bomber who killed a hundred and sixty-seven  
4 people received the death penalty, do you agree with that?

5 PERSPECTIVE JUROR GRECCO: Again, I might agree with  
6 it, okay, but would I check the box, see that's the question.

7 MR. SCISCENTO: Yes, and that is the question.

8 PERSPECTIVE JUROR GRECCO: See, and if I had to  
9 check the box it would probably be no, for the simple fact of  
10 his spirituality.

11 MR. SCISCENTO: Okay. Probably be no, I think what  
12 we need here is an absolute. If you look at it and you say,  
13 you know, there are times that we can look, would give life  
14 with the possibility, life without, and there are times when  
15 we have to give the death penalty, could you do that?

16 PERSPECTIVE JUROR GRECCO: I would say no.

17 MR. SCISCENTO: In all cases, there is not a case  
18 that you'd ever consider?

19 PERSPECTIVE JUROR GRECCO: At this particular time,  
20 no.

21 THE COURT: Then why did you, when you were  
22 answering question 45 in the questionnaire last Wednesday, say  
23 to the question B, your beliefs about the death penalty are  
24 such -- excuse me, A, your beliefs about the death penalty are  
25 such that you would always vote for the punishment of life

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1 imprisonment and never vote for the death penalty, regardless  
2 of the facts and circumstances of the case, and you checked  
3 no, that you would, in other words, sometimes check yes to the  
4 death penalty?

5 PERSPECTIVE JUROR GRECCO: Can you just repeat that  
6 question again for me. I --

7 THE COURT: Right. 45(a) said, if you were  
8 convinced beyond a reasonable doubt that the defendant was  
9 guilty of first degree murder, would you say, (A), your  
10 beliefs about the death penalty are such, that you would  
11 always vote for the punishment of life imprisonment and never  
12 vote for the death penalty, regardless of the facts and  
13 circumstances of the case, to which you checked "no".  
14 Meaning, if you understood the question, and there's a lot of  
15 them, that sometimes you would actually do it. And we're not  
16 asking whether you'd probably do it --

17 PROSPECTIVE JUROR GRECCO: Okay.

18 THE COURT: -- as Mr. Daskas has said all day, we're  
19 not getting to facts, we're saying --

20 PERSPECTIVE JUROR GRECCO: Right. I'm pretty  
21 confident I misunderstood the question.

22 THE COURT: Okay. Challenge for cause is sustained.

23 MR. SCISCENTO: Your Honor, can I --

24 THE COURT: I think we've gotten as fairly an issue  
25 -- raised it as fairly as we can.

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1 Swanson -- thank you, you're excused, Mr. Grecco.  
2 Swanson. And then we're going to get to Mr. Young  
3 whose good idea it was to try to keep it going today.  
4 The State may inquire.  
5 MR. GUYMON: Thank you.  
6 Mr. Swanson, it's late in the evening, is there  
7 anything we should know about your experiences?  
8 PERSPECTIVE JUROR SWANSON: No.  
9 MR. GUYMON: Would you -- would you be fair in  
10 holding the defendant accountable for his conduct?  
11 PERSPECTIVE JUROR SWANSON: Yes.  
12 MR. GUYMON: Would you be fair in picking a  
13 punishment?  
14 PERSPECTIVE JUROR SWANSON: Yes.  
15 MR. GUYMON: Will you fairly consider all four of  
16 the punishments before choosing one?  
17 PERSPECTIVE JUROR SWANSON: Yes.  
18 MR. GUYMON: Can you keep an open mind?  
19 PERSPECTIVE JUROR SWANSON: Yes.  
20 MR. GUYMON: Can you in fact -- let me read my note,  
21 Your Honor. Can you in fact vote for death if you believe  
22 it's appropriate?  
23 PERSPECTIVE JUROR SWANSON: Excuse me?  
24 MR. GUYMON: Can you vote for the death penalty --  
25 PERSPECTIVE JUROR SWANSON: Yes.

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1 MR. GUYMON: -- for Donte Johnson, a human being, if  
2 you feel it's appropriate?  
3 PERSPECTIVE JUROR SWANSON: If it's appropriate,  
4 yes.  
5 MR. GUYMON: Okay. Would you agree that that may be  
6 the very most difficult form of punishment to vote for out of  
7 the four?  
8 PERSPECTIVE JUROR SWANSON: Yes.  
9 MR. GUYMON: Can you set aside what's the most  
10 difficult and go with what's the most just?  
11 PERSPECTIVE JUROR SWANSON: Yes, I could go for the  
12 most just.  
13 MR. GUYMON: If the most just penalty is the death  
14 penalty, can you vote for it?  
15 PROSPECTIVE JUROR SWANSON: Yes.  
16 MR. GUYMON: And would?  
17 PROSPECTIVE JUROR SWANSON: Yes.  
18 MR. GUYMON: We'd pass this juror for cause.  
19 THE COURT: Thank you. Counsel, approach the bench,  
20 please?  
21 (Off-record bench conference)  
22 THE COURT: Go ahead, defense.  
23 MR. SCISCENTO: Thank you, Your Honor.  
24 Now, Mr. Swanson --  
25 PROSPECTIVE JUROR SWANSON: Yes, sir.

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1 MR. SCISCENTO: -- I'm going to try to make this as  
2 quick as possible. Answer to number 42, I don't believe a  
3 person convicted of murder in the first degree should be  
4 eligible for parole. That's your statement?

5 PROSPECTIVE JUROR SWANSON: Yes.

6 MR. SCISCENTO: And you stand by it?

7 PROSPECTIVE JUROR SWANSON: Yes.

8 MR. SCISCENTO: Okay. So, if you are faced with  
9 being on a jury and you convicted somebody of first degree  
10 murder and you have an opportunity to make a decision from  
11 death, life without the possibility of parole, life with the  
12 possibility of parole and a term of years. A term of years on  
13 life with the possibility of parole are mixed.

14 PROSPECTIVE JUROR SWANSON: No, I think in view of  
15 the discussion that has taken place today that the four  
16 options should be considered. I, in all honesty, would have  
17 difficulty, as I stated in the questionnaire, relating to  
18 parole.

19 MR. SCISCENTO: You said, I don't believe a person  
20 convicted of murder in the first degree should be eligible for  
21 parole. Well, if you believe that, how strong is that belief?

22 PROSPECTIVE JUROR SWANSON: As I said, in view of  
23 the discussion that's taken place, I've learned that the four  
24 options are to be considered and, in fact, deemed so by the  
25 legislature, therefore, I would follow that.

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1 MR. SCISCENTO: So you feel that you could  
2 adequately decide on the four and --  
3 PROSPECTIVE JUROR SWANSON: Yes.  
4 MR. SCISCENTO: And I don't have to worry about the  
5 fact that you may be, in the back of your mind, saying there  
6 is no way I'm ever going to give this guy parole?  
7 PROSPECTIVE JUROR SWANSON: I wouldn't say that  
8 there's no way. I -- it would be difficult, but I would  
9 consider it, as I've said.  
10 MR. SCISCENTO: And what would you consider -- what  
11 do you have to consider before you determine what -- why ---  
12 when a person's eligible for parole?  
13 PROSPECTIVE JUROR SWANSON: Probably the  
14 circumstances surrounding the crime.  
15 MR. SCISCENTO: What do you consider the  
16 circumstances surrounding the crime?  
17 PROSPECTIVE JUROR SWANSON: Conditions that may have  
18 lead to the action or mitigating circumstances and the like.  
19 MR. SCISCENTO: What --  
20 PROSPECTIVE JUROR SWANSON: The individual's  
21 history --  
22 MR. SCISCENTO: The defendant's history?  
23 PROSPECTIVE JUROR SWANSON: Yes.  
24 MR. SCISCENTO: So you would take that into account?  
25 PROSPECTIVE JUROR SWANSON: Yes.

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1 MR. SCISCENTO: So you could say that even though  
2 we're up here on the scale of heinous crimes that, oh, well,  
3 we can still look at his background and his history and his  
4 intelligence and all this other stuff that you've just  
5 mentioned, and I could still give him parole? You couldn't,  
6 could you?

7 PROSPECTIVE JUROR SWANSON: No.

8 MR. SCISCENTO: Move for cause, Your Honor.

9 THE COURT: Traverse.

10 MR. GUYMON: Let me ask you, I take it you're a law  
11 and order kind of guy?

12 PROSPECTIVE JUROR SWANSON: Absolutely.

13 MR. GUYMON: You spent a life time living the law?

14 PROSPECTIVE JUROR SWANSON: Yes, sir.

15 MR. GUYMON: Will you follow the law in this case?

16 PROSPECTIVE JUROR SWANSON: Yes.

17 MR. GUYMON: If you're told that you must consider  
18 all four options and chose the one that's fair, will you  
19 follow that?

20 PROSPECTIVE JUROR SWANSON: Yes.

21 MR. GUYMON: Can you keep an open mind if that's  
22 what the Judge and the law requires before you pick a penalty?

23 PROSPECTIVE JUROR SWANSON: Yes.

24 MR. GUYMON: All right. Can you tell this Court,  
25 the State, and the defense that you will consider all four



1 options?

2 PROSPECTIVE JUROR SWANSON: I will consider all four  
3 options.

4 MR. GUYMON: Despite the fact that you may have a  
5 preference right now as we begin, will you consider all four?

6 PROSPECTIVE JUROR SWANSON: Yes.

7 MR. GUYMON: And then apply the facts to which one  
8 you think's appropriate?

9 PROSPECTIVE JUROR SWANSON: Yes.

10 MR. GUYMON: All right.

11 THE COURT: Mr. Swanson, when Mr. Sciscento looked  
12 at you and he put those things and you said, no, you're not  
13 going to give him life with, and you smiled and you almost  
14 maybe you winked or maybe you didn't wink, but I thought you  
15 were. I -- what we're looking for, as I indicated to the  
16 lady, who used to be seated up where Ms. Sandoval is now, is  
17 this isn't a game. If you really can't consider them all,  
18 don't just say you will consider them all. Is it sort of  
19 automatic that you will ignore the mitigating factors that  
20 might come out or be introduced, which includes anything in  
21 the world you'll hear, or is it not automatic and you just  
22 favor the death penalty?

23 PROSPECTIVE JUROR SWANSON: I would consider all the  
24 evidence and the options.

25 THE COURT: The challenge is overruled. Defense may

1 inquire. Any additional questions?

2 MR. SCISCENTO: No further questions.

3 THE COURT: Thank you. Seventh to exercise or waive  
4 for the defense.

5 MR. SCISCENTO: Your Honor, the jury -- the defense  
6 would like to thank and excuse Badge Number 585, Mr. Swanson.

7 THE COURT: Thank you, Mr. Swanson.

8 And we are to you, Mr. Young. The State may inquire  
9 as a basis.

10 MR. DASKAS: Thank you, Judge. I would tell you I'm  
11 going to keep you up there all day because of your suggestion,  
12 but I won't.

13 PROSPECTIVE JUROR YOUNG: That's fine. You have a  
14 lot of other people who will be angry.

15 MR. DASKAS: That's why I'm not going to do it. You  
16 mentioned in your questionnaire that you know something about  
17 the case but you can still be impartial, is that accurate?

18 PROSPECTIVE JUROR YOUNG: That's true.

19 MR. DASKAS: You'll set aside any thing you may have  
20 heard and base your decision solely on the evidence you hear  
21 from the witness stand?

22 PROSPECTIVE JUROR YOUNG: That's right.

23 MR. DASKAS: You'll be fair to both the State and  
24 the defense?

25 PROSPECTIVE JUROR YOUNG: Yep. Yes.

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1 MR. DASKAS: You mentioned that you know Bob Zentz  
2 in Henderson, correct?

3 PROSPECTIVE JUROR YOUNG: Yes.

4 MR. DASKAS: That's not going to affect your  
5 decision making in this case, is it?

6 PROSPECTIVE JUROR YOUNG: I don't know why it would.

7 MR. DASKAS: He works for the city attorney in  
8 Henderson?

9 PROSPECTIVE JUROR YOUNG: He's the city attorney in  
10 Henderson.

11 MR. DASKAS: You were a prior juror, that's correct?

12 PROSPECTIVE JUROR YOUNG: Yes.

13 MR. DASKAS: Was that a positive or a negative  
14 experience?

15 PROSPECTIVE JUROR YOUNG: Positive.

16 MR. DASKAS: You indicated that you believe that the  
17 appeal process, the appeals in death penalty cases are more  
18 costly than other cases, is that true?

19 PROSPECTIVE JUROR YOUNG: From what I understand,  
20 yes.

21 MR. DASKAS: Despite the fact that that might be  
22 your belief, can you consider all the forms of punishment in  
23 this case and not preclude, for instance, the death penalty  
24 because it might be costly down the road with an appeal  
25 process? That was a confusing question and I apologize.

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1 PROSPECTIVE JUROR YOUNG: Yes, it was. No, I will  
2 consider all four options. I don't think the appeal process,  
3 the cost of the appeals is -- warrants precluding that as a --  
4 as a sentence and I think the appeal process is justified  
5 considering, as the defense counsel has said, that is an  
6 irrevocable sentence once it's carried out.

7 MR. DASKAS: And, in fact, you will consider each  
8 possible punishment, is that correct?

9 PROSPECTIVE JUROR YOUNG: That's correct.

10 MR. DASKAS: Anything we should know about your  
11 life's experiences or your religious or moral beliefs that  
12 might affect you as a juror on this case?

13 PROSPECTIVE JUROR YOUNG: Not that I can think of.

14 MR. DASKAS: If you're convicted beyond a reasonable  
15 doubt that the defendant is guilty, can you promise the State  
16 that you will return verdicts of guilty?

17 PROSPECTIVE JUROR YOUNG: Yes.

18 MR. DASKAS: And if you believe, after hearing all  
19 the evidence in this case, including mitigating evidence  
20 during the penalty process, if you believe that this is the  
21 appropriate case for death, can you return a verdict of death?

22 PROSPECTIVE JUROR YOUNG: With a fair amount of soul  
23 searching, yes.

24 MR. DASKAS: And I appreciate that. I made the  
25 comment earlier about checking a box and by no means do I

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1 suggest it's as simple as checking a box. But that's  
2 literally the task that you'll have to do, you understand  
3 that?

4 PROSPECTIVE JUROR YOUNG: That's right.

5 MR. DASKAS: If, after that soul searching and after  
6 discussing the case with your fellow jurors, you believe that  
7 this is that case where death is the only appropriate  
8 punishment, can you return that verdict?

9 PROSPECTIVE JUROR YOUNG: I believe I can.

10 MR. DASKAS: You know that you're able to do that?

11 PROSPECTIVE JUROR YOUNG: I believe so.

12 MR. DASKAS: I'll pass for cause, Your Honor.

13 THE COURT: Thank you. Counsel, approach the bench.

14 (Off-record bench conference)

15 THE COURT: Go ahead, Mr. Figler.

16 MR. FIGLER: Thank you. I noted, Mr. Young, and  
17 good afternoon to you, too, that you're a professor?

18 PROSPECTIVE JUROR YOUNG: Yes, sir.

19 MR. FIGLER: That's here in Las Vegas?

20 PROSPECTIVE JUROR YOUNG: Yes, sir.

21 MR. FIGLER: At the University of Nevada?

22 PROSPECTIVE JUROR YOUNG: UNLV, right.

23 MR. FIGLER: What department are you in?

24 PROSPECTIVE JUROR YOUNG: Department of Kinesiology.

25 THE COURT: It's in the questionnaire, would you ask

1 something that isn't?

2 MR. FIGLER: Sure.

3 THE COURT: Thank you.

4 MR. FIGLER: I didn't catch that. What is  
5 kinesiology?

6 PROSPECTIVE JUROR YOUNG: It's the study of exercise  
7 science, human movement.

8 MR. FIGLER: Human movement. Are you familiar with  
9 the death penalty and you've thought about it before?

10 PROSPECTIVE JUROR YOUNG: Yes.

11 MR. FIGLER: And you've discussed it with other  
12 people?

13 PROSPECTIVE JUROR YOUNG: Over the course of my  
14 life, yes.

15 MR. FIGLER: Have there been people who've talked to  
16 you about death penalty who opposed it?

17 PROSPECTIVE JUROR YOUNG: Yes.

18 MR. FIGLER: Do you think that they have compelling  
19 reasons for that?

20 PROSPECTIVE JUROR YOUNG: Yes.

21 MR. FIGLER: Now, I'm going to ask you a converse  
22 question of what was posed to you by the prosecutor. If you  
23 don't believe during the trial of whether or not John White is  
24 responsible for these particular crimes that he's been charged  
25 with, if you don't believe that the State has proven each and

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1 every material element beyond a reasonable doubt, will you  
2 have any hesitation at all in saying not guilty?

3 PROSPECTIVE JUROR YOUNG: No.

4 MR. FIGLER: Okay. So even if you had like a hunch  
5 or a feeling or something like that, you're going to hold them  
6 to the burden?

7 PROSPECTIVE JUROR YOUNG: That's what the law and  
8 the system requires.

9 MR. FIGLER: Okay. And you understand that if  
10 you're in that jury room and someone else wants to play on  
11 hunches or thoughts that you should stop them because it's not  
12 that burden, right?

13 PROSPECTIVE JUROR YOUNG: Correct.

14 MR. FIGLER: Now, what do you think is the most  
15 compelling reason to not have a death penalty?

16 PROSPECTIVE JUROR YOUNG: The fact that sometimes  
17 innocent people are executed. The fact that it is -- it tends  
18 to be more expensive, from what I understand, going through  
19 the appeals processes than simply to sentence someone. The  
20 fact that it is not necessarily a deterrent to crime. A  
21 number of reasons why it may be a justified punishment but  
22 it's not the be all and end all.

23 MR. FIGLER: Now, with regard to the -- to the death  
24 penalty you understand how it's implemented?

25 PROSPECTIVE JUROR YOUNG: There are a variety of

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1 ways, yes.

2 MR. FIGLER: Now, do you think that it's cruel or  
3 unusual to put a person to death in one of those fashions?

4 MR. DASKAS: Judge, we object.

5 MR. SCISCENTO: Why's that?

6 THE COURT: What is the basis of the objection?

7 MR. GUYMON: Judge, first of all relevance. We were  
8 talking about forms of the punishment and we only have one  
9 form in the State of Nevada.

10 THE COURT: Sustained.

11 MR. FIGLER: Do you have any ideas about the  
12 fairness of the application of the death penalty with regard  
13 to an individual's race?

14 PROSPECTIVE JUROR YOUNG: That's a question we could  
15 debate for a number of hours, I would suspect. Clearly the  
16 evidence shows that the young African American males seem to  
17 get a preponderance of death penalty sentences. The  
18 statistics also suggest they commit the preponderance of  
19 crimes.

20 MR. FIGLER: Do you believe that just based on an  
21 individual's race that he has a greater propensity to commit a  
22 crime?

23 PROSPECTIVE JUROR YOUNG: No.

24 MR. FIGLER: Okay. Now, if we get into a penalty  
25 type situation in this particular case, you'll be instructed

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1 with regard to the law of mitigation, you understand that?

2 PROSPECTIVE JUROR YOUNG: Yes.

3 MR. FIGLER: And that there are, as the Judge  
4 stated, an infinite amount of mitigating things that you can  
5 take into consideration in making your ultimate determination.  
6 Do you understand that?

7 PROSPECTIVE JUROR YOUNG: Yes.

8 MR. FIGLER: Do you think that's a good thing in our  
9 society?

10 PROSPECTIVE JUROR YOUNG: Yes.

11 MR. FIGLER: Okay. So, you're not automatically  
12 going to dispense with those type of mitigation -- mitigating  
13 factors in your ultimate determination?

14 PROSPECTIVE JUROR YOUNG: No, I don't believe so.

15 MR. FIGLER: Do you think that mercy has a place in  
16 your life?

17 PROSPECTIVE JUROR YOUNG: Yes.

18 MR. FIGLER: Do you think that forgiveness has a  
19 place in your life?

20 PROSPECTIVE JUROR YOUNG: Yes.

21 MR. FIGLER: Do you think that someone who, in your  
22 opinion, might not have shown those qualities would still  
23 deserve qualities like that?

24 PROSPECTIVE JUROR YOUNG: Yes.

25 MR. FIGLER: Pass for cause.

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1 THE COURT: Thank you. The State's eighth and last  
2 to exercise or waive.

3 MR. GUYMON: The Court's indulgence please, Judge?

4 THE COURT: Sure.

5 MR. GUYMON: Judge, the State would waive its final  
6 peremptory challenge.

7 THE COURT: Thank you. The defense's eighth and  
8 final challenge --

9 MR. FIGLER: Court's indulgence.

10 THE COURT: -- to exercise or waive.

11 MR. SCISCENTO: Your Honor, the defense would waive  
12 its last peremptory challenge.

13 THE COURT: Thank you. Swear the jury, please, then  
14 we'll select some alternates.

15 JURY IS SWORN

16 THE COURT: All right. Bruce Mayhew and Martha  
17 Pendleton, please. And Mr. Mayhew, you're in that top seat  
18 which is Alternate Number 1, and Ms. Pendleton, you're in the  
19 lower seat which is Alternate Number 2. And for the exercise  
20 of challenges know that we replace them where they are, they  
21 don't move up. If you challenge number one, two doesn't move  
22 to one, we get a new person out of the audience, so this --

23 MR. GUYMON: And Number 1 would -- I'm sorry, Number  
24 1's is Mayham [sic]?

25 THE COURT: Right. And you can just examine both of

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1 them and then pass them over to the defense.

2 MR. GUYMON: Okay. Mr. Mayham [sic], is there  
3 anything we should know about you before we start this  
4 endeavor?

5 PROSPECTIVE JUROR MAYHEW: Yeah, my name is Mayhew.

6 MR. GUYMON: Mayhew, all right. Other than that?

7 PROSPECTIVE JUROR MAYHEW: No, not -- nothing that I  
8 can think of.

9 (Off-record colloquy)

10 MR. GUYMON: Judge?

11 THE COURT: Sure, approach the bench.

12 (Off-record bench conference)

13 (Off-record colloquy)

14 THE COURT: Okay. Everybody beyond 600, thank you,  
15 you're excused from this jury cycle. Thanks for sitting with  
16 us all day.

17 Go ahead, Mr. Guymon.

18 MR. GUYMON: All right. Give me your thoughts about  
19 holding a person responsible for his or her conduct.

20 PROSPECTIVE JUROR MAYHEW: I think that everybody's  
21 accountable for what they do, that is a part of life. I mean  
22 your actions are what you speak and you're accountable for  
23 your actions.

24 MR. GUYMON: You're going to be called upon as a  
25 juror to hold Donte Johnson responsible for his conduct, can

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1 you do that?

2 PROSPECTIVE JUROR MAYHEW: Yeah. Yes, I can.

3 MR. GUYMON: Will you fairly do that?

4 PROSPECTIVE JUROR MAYHEW: I'll do that fairly.

5 MR. GUYMON: Do you have any reservations about  
6 doing it?

7 PROSPECTIVE JUROR MAYHEW: No, I don't.

8 MR. GUYMON: When we get to penalty, assuming we get  
9 past guilty and find him guilty of first degree murder with  
10 use of a deadly weapon and we get to penalty, will you  
11 consider all four of the penalties?

12 PROSPECTIVE JUROR MAYHEW: Yes, sir.

13 MR. GUYMON: You indicated that you would consider  
14 the death penalty as a possible option in your questionnaire,  
15 are you in favor of the death penalty?

16 PROSPECTIVE JUROR MAYHEW: I'm unsure of the death  
17 penalty, I've never faced it. I mean it's been -- been part  
18 of it but it'd be something that I would consider, yeah.

19 MR. GUYMON: Okay. Would it be something that you  
20 could personally impose if you thought it was just?

21 PROSPECTIVE JUROR MAYHEW: If it's warranted, yes.

22 MR. GUYMON: Okay. Likewise, could you look a  
23 murderer in the eye and say I'm going to give you a chance to  
24 get out someday if you thought that was warranted?

25 PROSPECTIVE JUROR MAYHEW: Yes, sir.

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1 MR. GUYMON: Okay. Will you keep an open mind as to  
2 the punishments?  
3 PROSPECTIVE JUROR MAYHEW: Yes, sir.  
4 MR. GUYMON: And chose the one that's most just?  
5 PROSPECTIVE JUROR MAYHEW: Yes, sir.  
6 MR. GUYMON: Will you agree that the most difficult  
7 choice might be that of imposing the death penalty?  
8 PROSPECTIVE JUROR MAYHEW: Yes, sir.  
9 MR. GUYMON: Perhaps the most difficult choice  
10 you'll have in life?  
11 PROSPECTIVE JUROR MAYHEW: Possibly, yes. I hope  
12 that's the hardest.  
13 MR. GUYMON: Can you promise me this, that in making  
14 your choices you will choose what's just and not what's  
15 easiest?  
16 PROSPECTIVE JUROR MAYHEW: Yes, sir.  
17 MR. GUYMON: Are you sure of that?  
18 PROSPECTIVE JUROR MAYHEW: I'm sure of that.  
19 MR. GUYMON: That's a promise you can keep?  
20 PROSPECTIVE JUROR MAYHEW: I can keep.  
21 MR. GUYMON: Thank you. Pass, Judge.  
22 THE COURT: Okay. And you may examine Ms.  
23 Pendleton, too, so we know who we're dealing with. You want  
24 to do that? Thanks.  
25 MR. DASKAS: Ms. Pendleton, you've indicated in our

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1 questionnaire that generally speaking you're opposed to the  
2 death penalty, is that true?

3 PROSPECTIVE JUROR PENDLETON: That's correct.

4 MR. DASKAS: Obviously, you know by now that that's  
5 one of the possible punishments that you would be called upon  
6 to select as a juror if, in fact, you serve on this jury?

7 PROSPECTIVE JUROR PENDLETON: That's correct.

8 MR. DASKAS: Despite the fact that you're opposed --  
9 generally opposed to the death penalty, can you imagine a  
10 situation where you would consider imposing the death penalty  
11 in a given situation?

12 PROSPECTIVE JUROR PENDLETON: Yes, I think in a --  
13 in a extremely heinous crime.

14 MR. DASKAS: You're saying extremely heinous crime,  
15 what do you mean when you say that?

16 PROSPECTIVE JUROR PENDLETON: Well, like some of the  
17 cases that we've discussed earlier today, like Manson, where  
18 there are multiple murders.

19 MR. DASKAS: In those instances you might consider  
20 the death penalty as a -- as an option?

21 PROSPECTIVE JUROR PENDLETON: If I'm instructed to,  
22 yes.

23 MR. DASKAS: All right. Do you feel like you have  
24 the ability or the capacity to actually vote for the death  
25 penalty?

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1 PROSPECTIVE JUROR PENDLETON: I think if I'm  
2 selected for a case like this, that's my obligation.

3 MR. DASKAS: And I've heard you -- I understand that  
4 sometimes one's moral beliefs are more powerful than one's  
5 legal duty and despite the fact that that's the law, some  
6 people would say well, my moral beliefs take precedent. You  
7 understand that?

8 PROSPECTIVE JUROR PENDLETON: Yeah.

9 MR. DASKAS: And what you're telling me is -- well,  
10 I don't want to put words in your mouth but are you telling me  
11 that you could obey the law in this case and follow the  
12 instructions, even though your moral beliefs might be somewhat  
13 different?

14 PROSPECTIVE JUROR PENDLETON: I think so.

15 MR. DASKAS: So you're making that promise. Would  
16 you consider death as a form of punishment?

17 PROSPECTIVE JUROR PENDLETON: If this -- if I serve,  
18 if we went to the penalty trial then I would be instructed to  
19 consider the four options and I would consider them.

20 MR. DASKAS: I appreciate that. You believe people  
21 should be held accountable for decisions they make?

22 PROSPECTIVE JUROR PENDLETON: Absolutely.

23 MR. DASKAS: I realize that at this point you're in  
24 the seat of an alternate but we need to assume that you're  
25 going to be on this jury in order to determine whether you

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1 should be on this jury, you realize that?

2 PROSPECTIVE JUROR PENDLETON: Right.

3 THE COURT: And believe me, that happens.

4 MR. DASKAS: And it happens. Anything we haven't  
5 discussed about your background, either religiously, morally  
6 or otherwise, that's important that might affect your ability  
7 to serve as a juror, particularly on a death penalty case?

8 PROSPECTIVE JUROR PENDLETON: Not that I can think  
9 of.

10 MR. DASKAS: We'll pass for cause, Judge

11 THE COURT: Thank you. The defense may inquire.

12 MR. SCISCENTO: Thank you. Mr. Mayhew.

13 PROSPECTIVE JUROR MAYHEW: Yes, sir.

14 MR. SCISCENTO: You've hear all the questions that  
15 we've asked, is there anything I need to know?

16 PROSPECTIVE JUROR MAYHEW: Not that I know.

17 MR. SCISCENTO: Okay. It works for me. Two things,  
18 number 37, what do you think of the saying, eye for an eye,  
19 apples for apples, oranges for oranges?

20 PROSPECTIVE JUROR MAYHEW: I just believe what I  
21 believe. I mean I pick out what is the truth. I've always  
22 been taught and do it that way. I mean it's --

23 MR. SCISCENTO: So the saying, an eye for an eye --

24 PROSPECTIVE JUROR MAYHEW: An eye for an eye and  
25 tooth for a tooth, as far as it's just my thing in life that I

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1 agree with what's the truth and go by that. I mean an eye for  
2 an eye, I would -- it's like getting caught getting doing  
3 something rather than lying. That's just the way I've been  
4 taught. I mean -- I mean I don't pound a apple for an apple,  
5 orange and orange, I just want to hear the truth, that's what  
6 I meant by that.

7 MR. SCISCENTO: Okay. Number 38, do you feel one --  
8 that one convicted of murder should be sentenced to death  
9 without consideration of the background information? Unsure,  
10 past is the past.

11 PROSPECTIVE JUROR MAYHEW: Well, as far as unsure, I  
12 don't know -- I don't live by the past, I don't dwell by the  
13 past, but I don't -- I don't really think that the past should  
14 be brought up. I mean I think you ought to bury the past  
15 because I've had a past, I think everybody here's got a past.

16 MR. SCISCENTO: So no consideration on what happened  
17 in the past?

18 PROSPECTIVE JUROR MAYHEW: Well, the past is the  
19 past. Is -- that's what I mean by that.

20 MR. SCISCENTO: And when we -- when I'm talking  
21 about the past consideration, I mean past things such as  
22 childhood.

23 PROSPECTIVE JUROR MAYHEW: Right.

24 MR. SCISCENTO: Forget that?

25 PROSPECTIVE JUROR MAYHEW: Yeah.

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1 MR. SCISCENTO: Growing up, forget that?  
2 PROSPECTIVE JUROR MAYHEW: Well, I mean I live by  
3 day-to-day thing.  
4 MR. SCISCENTO: Anything else I need to know?  
5 PROSPECTIVE JUROR MAYHEW: I don't think so.  
6 MR. SCISCENTO: I mean we've asked hundreds and  
7 hundreds of questions.  
8 PROSPECTIVE JUROR MAYHEW: I don't think so.  
9 MR. SCISCENTO: You know what I'm looking for?  
10 PROSPECTIVE JUROR MAYHEW: I don't know what you're  
11 looking for.  
12 MR. SCISCENTO: Someone who's been --  
13 PROSPECTIVE JUROR MAYHEW: -- get it out.  
14 MR. SCISCENTO: -- someone who's going to wait to  
15 the very end to make a decision. Can you do it?  
16 PROSPECTIVE JUROR MAYHEW: Can I do it?  
17 MR. SCISCENTO: Can you hold off your judgment until  
18 the very end, until the -- until the Judge says, okay, now  
19 jury it's your time to deliberate.  
20 PROSPECTIVE JUROR MAYHEW: Yes, sir.  
21 MR. SCISCENTO: Would you do that?  
22 PROSPECTIVE JUROR MAYHEW: Yes, sir.  
23 MR. SCISCENTO: With all that barrage of evidence  
24 that's going to be coming in.  
25 PROSPECTIVE JUROR MAYHEW: Yes, sir.

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1 MR. SCISCENTO: Okay. Pass for cause.  
2 THE COURT: Anything for Ms. Pendleton?  
3 MR. SCISCENTO: We'll pass for cause on this one.  
4 THE COURT: Okay. One and only challenge for cause  
5 -- peremptory challenge by the State, exercise or waive.  
6 MR. DASKAS: Judge, the State would exercise its  
7 peremptory with respect to Ms. Pendleton, Alternate Number 2.  
8 THE COURT: Thank you, Ms. Pendleton. You're  
9 excused.  
10 Mr. Lewis.  
11 PROSPECTIVE JUROR LEWIS: Yes, sir.  
12 THE COURT: If I were a betting man I'd say you got  
13 about a 50/50 chance of being Alternate Number 2.  
14 PROSPECTIVE JUROR LEWIS: I don't think so.  
15 THE COURT: You don't think so?  
16 PROSPECTIVE JUROR LEWIS: No.  
17 THE COURT: Well, you know something I don't then.  
18 Let's find out.  
19 PROSPECTIVE JUROR LEWIS: I just don't want to be  
20 here.  
21 THE COURT: What?  
22 PROSPECTIVE JUROR LEWIS: No, I just don't.  
23 THE COURT: Okay.  
24 PROSPECTIVE JUROR LEWIS: Go ahead.  
25 THE COURT: The State may inquire.

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1 MR. GUYMON: Court's indulgence, please, Judge.

2 THE COURT: I can't wait. Why do you think you're  
3 not going to be alternate? Maybe we can cut this short. Why?

4 PROSPECTIVE JUROR LEWIS: I'm just a positive  
5 person.

6 THE COURT: Oh, okay.

7 MR. GUYMON: Tell me, Mr. Lewis, you've heard a lot  
8 of questions. Any reason why you can't be fair in this case?

9 PROSPECTIVE JUROR LEWIS: No.

10 MR. GUYMON: Do you think that a person should be  
11 held responsible for his or her conduct?

12 PROSPECTIVE JUROR LEWIS: I do. I agree with the  
13 minister.

14 MR. GUYMON: Okay. Which is -- I mean he said a lot  
15 of things.

16 PROSPECTIVE JUROR LEWIS: And I agree with him as he  
17 -- as a man of God.

18 MR. GUYMON: Okay.

19 PROSPECTIVE JUROR LEWIS: As -- I don't want to put  
20 somebody to death.

21 MR. GUYMON: Okay. Well, let me ask you then, cut  
22 right to the chase and get to penalty before we even talk  
23 about guilt. Can you consider the death penalty if you think  
24 it's appropriate?

25 PROSPECTIVE JUROR LEWIS: No.

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1 MR. GUYMON: Can you think of a case, in all the  
2 cases you've heard, can you think of a case where you would  
3 consider the death penalty?

4 PROSPECTIVE JUROR LEWIS: No.

5 MR. GUYMON: You simply would not consider it?

6 PROSPECTIVE JUROR LEWIS: Right, I've reconsidered  
7 and no, I can't.

8 MR. GUYMON: No, you can't and no, you won't, is  
9 that right?

10 PROSPECTIVE JUROR LEWIS: True.

11 MR. GUYMON: Can anything change that?

12 PROSPECTIVE JUROR LEWIS: No.

13 THE COURT: That's not the way you answered your  
14 questionnaire.

15 PROSPECTIVE JUROR LEWIS: That's not the way I  
16 answered but that's the way I answer now.

17 THE COURT: It's not just that it's late in the day  
18 and you see that that second alternate seat is looming?

19 PROSPECTIVE JUROR LEWIS: No, I believe when that  
20 gentleman got up, the pastor --

21 THE COURT: Mr. Grecco.

22 PROSPECTIVE JUROR LEWIS: I really related to what  
23 he said as my beliefs and I want to stand on that.

24 THE COURT: Traverse.

25 MR. SCISCENTO: Mr. Lewis.

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1 PROSPECTIVE JUROR LEWIS: Yes, sir.

2 MR. SCISCENTO: All right. You came in and you sat  
3 down and said, there's no way I'm going to be an alternate,  
4 right?

5 PROSPECTIVE JUROR LEWIS: That was right.

6 MR. SCISCENTO: Okay. And you know that after a  
7 while, just sitting out here and watching all this, you  
8 realize that there are certain things that you can say that  
9 will either get them up or get us up, right?

10 PROSPECTIVE JUROR LEWIS: That's correct.

11 MR. SCISCENTO: Okay. And right now you realize  
12 that if you say I'm not going to vote for the death penalty  
13 they're going to get up and ask to have you removed. And we  
14 say if you said, I'm going to invoke it all the time, we would  
15 get up and ask to have you removed, right?

16 PROSPECTIVE JUROR LEWIS: Okay.

17 MR. SCISCENTO: Okay. There's a man's life in the  
18 balance. Like it or not, you've been selected as a potential  
19 juror.

20 PROSPECTIVE JUROR LEWIS: Okay.

21 MR. SCISCENTO: And as much as there must be  
22 something else out there better to do, and we all agree there  
23 is, are you telling me now that there is no way that you'll,  
24 the four considerations, if this -- Mr. White is found guilty  
25 of murder. That is life without the possibility of parole

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1 term of years, life with the possibility of parole, and the  
2 death sentence.

3 PROSPECTIVE JUROR LEWIS: I said I do not want to be  
4 the man that judges him.

5 THE COURT: Are you also saying that if Hitler were  
6 the defendant that everything you've heard or read or know  
7 about him, you would not vote to give him the death penalty if  
8 you were on the jury?

9 PROSPECTIVE JUROR LEWIS: I don't want to be the  
10 judger --

11 THE COURT: What?

12 PROSPECTIVE JUROR LEWIS: I don't want to stand in  
13 judgment of that.

14 MR. SCISCENTO: There's no way, in any way that this  
15 decision you're making now or the statements you're making now  
16 are prompting you to, so you can leave the jury?

17 PROSPECTIVE JUROR LEWIS: No, I just don't want to  
18 be a part of the -- the judgment on Donte.

19 THE COURT: Submitted?

20 MR. SCISCENTO: Submit it, Your Honor.

21 THE COURT: Thank you, Mr. Lewis. You're excused.  
22 Challenge sustained.

23 Mr. Frias. The State may inquire.

24 MR. DASKAS: Thank you, Judge.

25 You indicated that you could consider the death

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1 penalty, is that true?

2 PROSPECTIVE JUROR FRIAS: Yes, sir.

3 MR. DASKAS: You're not going to change your  
4 answers, are you?

5 PROSPECTIVE JUROR FRIAS: No, sir.

6 MR. DASKAS: I appreciate that. Can you also  
7 consider the other possible forms of punishment?

8 PROSPECTIVE JUROR FRIAS: Yes, sir.

9 MR. DASKAS: And if you're convinced after hearing  
10 the evidence that the defendant is guilty and guilty beyond a  
11 reasonable doubt, can you promise me that you will return  
12 verdicts of guilty?

13 PROSPECTIVE JUROR FRIAS: Yes, sir.

14 MR. DASKAS: And you promise me that you'll consider  
15 all four possible forms of punishment if and when we get to a  
16 penalty hearing?

17 PROSPECTIVE JUROR FRIAS: Yes, sir.

18 MR. DASKAS: Can you promise me that you haven't  
19 ruled out any of those possibilities?

20 PROSPECTIVE JUROR FRIAS: No, sir.

21 MR. DASKAS: I'll pass for cause, Judge.

22 MR. SCISCENTO: Mr. -- I'm sorry, Frias?

23 PROSPECTIVE JUROR FRIAS: Yes, sir.

24 MR. SCISCENTO: There is a statement that you made  
25 and I wrote that down, attorneys get defendants off.



1 PROSPECTIVE JUROR FRIAS: Probably the reason I said  
2 that is 'cause of a lot of the high profile cases that I've  
3 seen within, I don't know, five, six, seven years, it always  
4 just seems that the defendants are getting off on  
5 technicalities. Probably looks that way to me because I  
6 didn't know every bit of information so pretty much that way.

7 MR. SCISCENTO: You go two-fold on that. One, does  
8 that make you angry?

9 PROSPECTIVE JUROR FRIAS: In some cases, yes.

10 MR. SCISCENTO: And two, you realize that to rush to  
11 judgment is there for everybody, you're just getting bits and  
12 pieces of information either through the media or through  
13 friends, you would learn only so much about the trial, but you  
14 don't learn everything.

15 PROSPECTIVE JUROR FRIAS: Correct.

16 MR. SCISCENTO: Okay. And with that knowledge would  
17 you be able to hold back on judgment until after all the  
18 evidence comes in?

19 PROSPECTIVE JUROR FRIAS: That'd be my privilege.

20 MR. SCISCENTO: Be your privilege?

21 PROSPECTIVE JUROR FRIAS: Yes. Being on the jury is  
22 a privilege and that would give me the opportunity to collect  
23 all the information as opposed to what I just said, only  
24 getting bits and pieces here and there.

25 MR. SCISCENTO: Overall you consider the worst case

1 of punishment is death?

2 PROSPECTIVE JUROR FRIAS: Yes, sir.

3 MR. SCISCENTO: Why is that?

4 PROSPECTIVE JUROR FRIAS: In a point, like the  
5 pastor, he said that passing judgment on someone and giving  
6 them the death penalty is against his religion, and I believe  
7 that also. But, death takes the person out of the community.  
8 If he is not around to maybe rehabilitate himself and maybe  
9 even turn his life around and give something back to what he's  
10 done, well then everybody loses, especially him.

11 MR. SCISCENTO: What about life without the  
12 possibility of parole, that takes him out of the system?

13 PROSPECTIVE JUROR FRIAS: It does, but it also keeps  
14 him around for rehabilitation. They might be able to redeem  
15 themselves and then what I would really look to see if  
16 somebody did hurt somebody's family, they could take the rest  
17 of their life and try to dedicate somehow to repay that  
18 family. That at least gives them that option.

19 MR. SCISCENTO: When I say life without the  
20 possibility of parole, that puts someone away for life --

21 PROSPECTIVE JUROR FRIAS: I understand they're in  
22 prison, but they can still do something in prison.

23 MR. SCISCENTO: And you think that's a good benefit?

24 PROSPECTIVE JUROR FRIAS: If it benefits the person  
25 and they do turn their life around, yes.

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1 MR. SCISCENTO: That's something you would  
2 consider --  
3 PROSPECTIVE JUROR FRIAS: Yes.  
4 MR. SCISCENTO: -- in making a determination of life  
5 with or death?  
6 PROSPECTIVE JUROR FRIAS: Yes.  
7 MR. SCISCENTO: Okay.  
8 THE COURT: Pass for cause.  
9 MR. SCISCENTO: Do I have a choice?  
10 THE COURT: It's a question.  
11 MR. SCISCENTO: Pass for cause, Your Honor.  
12 THE COURT: Defense's first and only challenge,  
13 peremptory in nature, to waive or exercise.  
14 MR. SCISCENTO: Your Honor, we waive any peremptory  
15 challenge on this.  
16 THE COURT: Thank you. Swear the alternates,  
17 please.  
18 Folks in the audience, that's it. Thank you very  
19 much.  
20 ALTERNATE JURORS ARE SWORN  
21 THE COURT: All right, folks. Let me tell you about  
22 tomorrow's schedule and Wednesday, in case you're curious.  
23 Tomorrow morning if you would report and if you haven't been  
24 downtown very often and didn't experience traffic problems  
25 today, you might well tomorrow. So, please try and leave

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1 enough room, because almost invariably one or two jurors is  
2 missing when we're ready to start and everybody else is  
3 waiting.

4           So, I'm going to instruct you that during this  
5 recess you're admonished not to talk or converse among  
6 yourselves or with anyone else on any subject connected with  
7 this trial; read watch or listen to any report of or  
8 commentary on the trial by any person connected with it by any  
9 medium of information including, without limitation,  
10 newspapers, television or radio; or form or express any  
11 opinion on any subject connected with the trial until it's  
12 finally submitted to you.

13           I ask you to report to Stony by 9:20 with the  
14 expectation that if everybody's assembled and we get through  
15 the morning calendar, where I sentence people and take pleas  
16 and things like that, on time and we're going to start that an  
17 hour early tomorrow. It's usually 9 o'clock, we're going to  
18 start it closer to 8 o'clock to get to the trial. You get to  
19 Stony at 9:20, unless something unforeseeable happens, we're  
20 going to start this trial at 9:30 tomorrow morning. You're  
21 excused and we'll be in session outside your presence.

22           Thank you.

23           (Court recessed at 6:30 p.m. until the following day,

24                       Tuesday, June 6, 2000 at 9:30 a.m.)

25                       \* \* \* \* \*

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CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM  
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DATE

ORIGINAL

1 would be your feelings on the death penalty?  
2 PROSPECTIVE JUROR BRUCE: It depends on the case.  
3 MR. DASKAS: Judge, I --  
4 THE COURT: Sustained.  
5 PROSPECTIVE JUROR BRUCE: It depends on the facts.  
6 MR. SCISCENTO: I apologize.  
7 THE COURT: Sustained.  
8 PROSPECTIVE JUROR BRUCE: I'm sorry.  
9 MR. SCISCENTO: There are certain instances, would  
10 you agree, that the death penalty would be warranted?  
11 PROSPECTIVE JUROR BRUCE: Yes.  
12 MR. SCISCENTO: Okay. And those cases are what?  
13 PROSPECTIVE JUROR BRUCE: As I stated prior --  
14 MR. GUYMON: Judge, objection.  
15 MR. DASKAS: Same objection, Judge.  
16 THE COURT: Approach the bench.  
17 (Off-record bench conference)  
18 THE COURT: Ms. Bruce, I'm sorry.  
19 PROSPECTIVE JUROR BRUCE: That's okay.  
20 MR. SCISCENTO: The hypothetical they used in the 7-  
21 Eleven was said this person had no knowledge of that. Well, a  
22 hypothetical though, that somebody's accused of killing  
23 multiple people, what is your feeling about that in  
24 conjunction with the death penalty?  
25 PROSPECTIVE JUROR BRUCE: Again, it depends on the

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1 facts of the case. He's accused of it, it's an alleged crime  
2 at this point. If the facts and if the evidence show that  
3 beyond a reasonable doubt he is guilty, then I could go for  
4 the death penalty.

5 MR. SCISCENTO: Would you say it's a sliding scale  
6 that you would follow?

7 PROSPECTIVE JUROR BRUCE: A sliding scale?

8 MR. SCISCENTO: Most involvement, least involvement,  
9 most involvement?

10 PROSPECTIVE JUROR BRUCE: Right. If there's -- if  
11 there's an indication there of involvement, tiering structure  
12 as you -- sliding scale as you put it, then that would  
13 determine it also.

14 MR. SCISCENTO: Do you believe though that person's  
15 -- other information, a person's background should be  
16 considered first?

17 PROSPECTIVE JUROR BRUCE: I think as much of it that  
18 can be brought in should be brought in so we get to know  
19 everything about the defendant.

20 MR. SCISCENTO: You mention "an eye for an eye" is  
21 unfair and wrong. You mention that on your --

22 PROSPECTIVE JUROR BRUCE: I don't know if it's so  
23 much not fair and wrong, I don't believe "an eye for an eye"  
24 solves anything.

25 MR. SCISCENTO: In this case it would be death for a

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1 death, do you agree with that?

2 PROSPECTIVE JUROR BRUCE: Well, if the facts warrant  
3 it, yes.

4 MR. SCISCENTO: I'll pass from this one, Your Honor.

5 THE COURT: Go ahead with the next juror, whoever's  
6 going to do it.

7 MR. SCISCENTO: Mr. Warren?

8 PROSPECTIVE JUROR WARREN: Yes, sir.

9 MR. SCISCENTO: Have you been on a jury before?

10 PROSPECTIVE JUROR WARREN: No, I haven't. I've been  
11 a bailiff in a military trial.

12 MR. SCISCENTO: Because before you mentioned that  
13 there were eight people for a civil trial and twelve for a --

14 PROSPECTIVE JUROR WARREN: Yes, because I read the  
15 little booklet that they gave us.

16 MR. SCISCENTO: Oh, was it. I don't even -- I don't  
17 know how many you put on a civil trial. You'd mentioned  
18 something that kind of bothers me. You said before that  
19 twelve -- if twelve people could convict then you'd be all  
20 right with that. You feel -- something to that effect. Do  
21 you remember saying that earlier?

22 PROSPECTIVE JUROR WARREN: I remember saying  
23 something to that effect.

24 MR. SCISCENTO: And the thing that concerns me, and  
25 I want to see if you -- are you saying that the majority

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1 number is right?

2 PROSPECTIVE JUROR WARREN: No, I'm not because if  
3 there were eleven people who believed that this person was  
4 guilty, a person on trial, and I believed that they weren't, I  
5 would not go along with them. I would stand my ground. I  
6 would explain my feelings of why or why not and I would --  
7 they would explain theirs and if I still did not believe, if I  
8 was not convinced, I would not, just to go along with the  
9 crowd, no.

10 MR. SCISCENTO: So you would hold against the tide  
11 of the majority if you believed the facts?

12 PROSPECTIVE JUROR WARREN: Correct.

13 MR. SCISCENTO: Okay. But then once the facts --  
14 once twelve decided that there was guilt --

15 PROSPECTIVE JUROR WARREN: Mm-hmm.

16 MR. SCISCENTO: -- in other words, that the  
17 defendant, Mr. White, was guilty, would you then say now that  
18 twelve have said guilty, I will follow them on the punishment?

19 PROSPECTIVE JUROR WARREN: No, I would not.

20 MR. SCISCENTO: Okay. You're --

21 PROSPECTIVE JUROR WARREN: I believe the punishment  
22 should fit the crime and in a murder case it could be -- I  
23 would consider each of the four.

24 MR. SCISCENTO: Can you -- focus on that, punishment  
25 should fit the crime?

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1 PROSPECTIVE JUROR WARREN: Correct.  
2 MR. SCISCENTO: Okay. We -- the State -- the State  
3 of Nevada has imposed the death penalty for --  
4 PROSPECTIVE JUROR WARREN: Right.  
5 MR. SCISCENTO: -- for first degree murder.  
6 PROSPECTIVE JUROR WARREN: Right. They've also --  
7 have the other three.  
8 MR. SCISCENTO: And we do that because killing is  
9 wrong.  
10 PROSPECTIVE JUROR WARREN: Correct.  
11 MR. SCISCENTO: But killing is all right by the  
12 State?  
13 PROSPECTIVE JUROR WARREN: No, it's not.  
14 MR. SCISCENTO: So what is the difference --  
15 PROSPECTIVE JUROR WARREN: The punishment should fit  
16 the crime insomuch and -- and the person who committed the  
17 crime. You have to look at the evidence, brutality,  
18 background. If you believe this person can be rehabilitated.  
19 So, do you understand what I'm saying there?  
20 MR. SCISCENTO: I understand. So again, you would  
21 go on a sliding scale, too?  
22 PROSPECTIVE JUROR WARREN: You -- yes, mm-hmm.  
23 MR. SCISCENTO: Involvement, background?  
24 PROSPECTIVE JUROR WARREN: Yes. Not --  
25 MR. SCISCENTO: And more of a --

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1 PROSPECTIVE JUROR WARREN: -- not solely on  
2 involvement but I'd take into consideration background, any  
3 other things that may have happened.  
4 MR. SCISCENTO: Some redeeming quality?  
5 PROSPECTIVE JUROR WARREN: Correct.  
6 MR. SCISCENTO: I think you might have mentioned  
7 before that if -- I not sure if it's you. If there was some  
8 remorse by the defendant.  
9 PROSPECTIVE JUROR WARREN: I didn't mention that and  
10 I would have to hear the defendant.  
11 MR. SCISCENTO: Do you think there's -- if he has to  
12 show you remorse in order for you to determine whether or not  
13 to impose the death penalty?  
14 PROSPECTIVE JUROR WARREN: No, I don't think he has  
15 to show it, no. I --  
16 MR. SCISCENTO: I understand --  
17 PROSPECTIVE JUROR WARREN: Yeah.  
18 MR. SCISCENTO: -- that this is a --  
19 PROSPECTIVE JUROR WARREN: It's very difficult.  
20 MR. SCISCENTO: -- this is a very tough decision to  
21 make.  
22 PROSPECTIVE JUROR WARREN: Yes, it is. And it's not  
23 one to be taken lightly.  
24 MR. SCISCENTO: I agree with you on that one. And  
25 you'll agree and you promise to listen to all of the evidence

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1 beforehand?

2 PROSPECTIVE JUROR WARREN: Every bit.

3 MR. SCISCENTO: And I'm focusing now just on the

4 guilt phase.

5 PROSPECTIVE JUROR WARREN: Correct.

6 MR. SCISCENTO: There's going to be testimony up

7 there --

8 PROSPECTIVE JUROR WARREN: Right.

9 MR. SCISCENTO: -- and you agree to withhold your

10 judgment until after all the evidence comes in?

11 PROSPECTIVE JUROR WARREN: Until after all evidence.

12 MR. SCISCENTO: So when one person starts

13 testifying, you agree to wait to the end of the trial before

14 you determine and after you go back to the jury room.

15 PROSPECTIVE JUROR WARREN: Yes, I would have to go

16 back to the jury room and I would have to go over the evidence

17 again.

18 MR. SCISCENTO: And that's a tough thing to do,

19 isn't it?

20 PROSPECTIVE JUROR WARREN: It is a tough thing to

21 do.

22 MR. SCISCENTO: You've got to set aside your

23 feelings and emotions and beliefs for a while?

24 PROSPECTIVE JUROR WARREN: Yes, you do.

25 MR. SCISCENTO: Have you ever been asked to do that

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1 before?  
2 PROSPECTIVE JUROR WARREN: Not on a jury.  
3 MR. SCISCENTO: To hold judgment back is what I'm  
4 saying.  
5 PROSPECTIVE JUROR WARREN: I try to hold judgment  
6 back as much as possible.  
7 MR. SCISCENTO: Okay.  
8 PROSPECTIVE JUROR WARREN: You know.  
9 MR. SCISCENTO: You ever watch those shows on like  
10 60 Minutes or something where they profile a trial?  
11 PROSPECTIVE JUROR WARREN: We've all watched 60  
12 Minutes.  
13 MR. SCISCENTO: And then you call in, people call in  
14 and you give guilty, not guilty.  
15 PROSPECTIVE JUROR WARREN: Mm-hmm, I don't do that.  
16 I wouldn't -- I wouldn't call in and give guilty or not guilty  
17 because I don't know the -- all the facts.  
18 MR. SCISCENTO: Okay. What I'm -- what I'm saying  
19 though is when these cases -- on these 60 Minute shows --  
20 PROSPECTIVE JUROR WARREN: Mm-hmm.  
21 MR. SCISCENTO: -- people say guilty, not guilty  
22 throughout the whole TV show and they don't wait to the end.  
23 PROSPECTIVE JUROR WARREN: Right. I understand. I  
24 would never -- I -- personally, TV is different than real  
25 life, as you and I both know. And 60 Minutes might not give

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1 all the facts, you know. They may try to sway one way or  
2 another because TV can do that, so I personally, for TV shows,  
3 I would not do it even at the end, but I would have to wait to  
4 the end of a trial to give any opinion at all.

5 MR. SCISCENTO: And you'll promise that you'll be  
6 able to do that?

7 PROSPECTIVE JUROR WARREN: Yes, sir.

8 MR. SCISCENTO: And you won't give more credence to  
9 an officer because he's merely an officer?

10 PROSPECTIVE JUROR WARREN: No, sir.

11 MR. SCISCENTO: And persons who have been involved  
12 in drug use, you won't give them more or less credence?

13 PROSPECTIVE JUROR WARREN: No, sir.

14 MR. SCISCENTO: We'll pass, Your Honor.

15 THE COURT: Thank you.

16 We'll take our lunch break now, and so that you know  
17 how the rest of the day's going to go, folks, I'm sort of  
18 hopeful that we're going to seat a jury by somewhere around  
19 mid-afternoon. Those of you who are not ultimately chosen, if  
20 my prediction is right, will probably be able to go home  
21 somewhere between 2:00 and 3:00 or so, if my hopes come true.  
22 And anybody that's selected on the jury today and everyday  
23 we'll be sitting somewhere between oh, a little before 5:00  
24 and 5:30, if you have to notify people.

25 I'm going to give you a recess one hour in length,

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1 meaning report to Stony just before 1 o'clock, and if you're  
2 all assembled we're going to start as promptly as we can at  
3 1:00.

4           During this recess, you're admonished not to talk or  
5 converse among yourselves or anyone else on any subject  
6 connected the trial; or read watch or listen to any report of  
7 or commentary on the trial by any person connected with it by  
8 any medium of information including, without limitation,  
9 newspaper, television or radio; or to form or express any  
10 opinion on any subject connected with the trial until it's  
11 finally submitted to you.

12           Thank you.

13           Would counsel approach the bench, please.

14                   (Off-record bench conference)

15                           (Jury recessed)

16                               (Court recessed at 11:55 a.m., until 1:05 p.m.)

17                               (Prospective Jurors are present)

18           THE COURT: By the way, one thing I usually mention  
19 before the lunch hour and the first day; the lawyers come in  
20 the same way as you do, and they're not permitted to talk to  
21 you.' As a matter of fact, they can't exchange any  
22 pleasantries with you, so if they're looking straight through  
23 you, they know who you are, and they're following the canons  
24 of ethics when they don't exchange pleasantries. I know all  
25 these four young men and they're very nice gentlemen who I'm

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1 sure with -- under other circumstances, to be very friendly to  
2 you.

3 Mr. Sciscento, go ahead.

4 MR. FIGLER: Thank you.

5 THE COURT: Are you gonna do it, Dayvid?

6 MR. FIGLER: Yes, Judge.

7 Good afternoon, Mr. Riley. Because this is my first  
8 opportunity to address anyone, I'm just gonna say something to  
9 you, I'm not gonna say it to anyone else, but it's meant for  
10 everybody. And that is, again my name is Dayvid Figler.  
11 That's Joe Sciscento. Together, we have the privilege of  
12 representing John White, who's also known as Donte Johnson.  
13 Now, we're asking these questions of everyone, not because we  
14 expect right or wrong answers. There are no right or wrong  
15 answers, but only because we need to know about your opinions  
16 and beliefs, because that guarantees that everything is gonna  
17 be okay for every side. Do you understand that?

18 PROSPECTIVE JUROR RILEY: Yes.

19 MR. FIGLER: Okay. Now, it's our hope and belief  
20 that we will challenge the State's case, so that we don't even  
21 get to anything other than a determination of his innocence in  
22 this particular case, but we have to ask these questions  
23 anyway, because in the event that we do get to a second phase,  
24 we don't get to ask you these questions again, do you  
25 understand that?

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1 PROSPECTIVE JUROR RILEY: Yes, I do.

2 MR. FIGLER: Okay. So no implication should be made  
3 by the fact that we're asking these questions and you're  
4 comfortable with that?

5 PROSPECTIVE JUROR RILEY: Yes.

6 MR. FIGLER: Okay. Now, I read that you are a  
7 nurse, correct?

8 PROSPECTIVE JUROR RILEY: Yes.

9 MR. FIGLER: Have you ever worked emergency room?

10 PROSPECTIVE JUROR RILEY: No.

11 MR. FIGLER: Okay. But you know what's entailed  
12 there in emergency room, for the most part?

13 PROSPECTIVE JUROR RILEY: Basically what anybody  
14 else would know.

15 MR. FIGLER: Okay. And you would agree that part of  
16 your job as a nurse is helping people or saving people's  
17 lives, essentially? Would you agree with that?

18 PROSPECTIVE JUROR RILEY: Well, not necessarily  
19 saving their lives, but helping people and educating them,  
20 yes.

21 MR. FIGLER: Okay. Now, if a person comes to you in  
22 great trauma, then one of the things you're gonna do is  
23 attempt to save their life, right?

24 PROSPECTIVE JUROR RILEY: I would do CPR and the  
25 same thing anyone else would do, yes.

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1 MR. FIGLER: Okay. Same thing with a doctor. In  
2 fact, they take an oath to save people's lives, correct?  
3 PROSPECTIVE JUROR RILEY: Yes, they do.  
4 MR. FIGLER: Okay. Now, in that process, they don't  
5 give any consideration -- I mean, some very reprehensible  
6 people may come to them ill and in need of help, but they  
7 still get that help, right?  
8 PROSPECTIVE JUROR RILEY: Correct.  
9 MR. FIGLER: And that's part of the oath, the  
10 sanctity of life and all that, correct?  
11 PROSPECTIVE JUROR RILEY: Right.  
12 MR. FIGLER: And you agree with those concepts?  
13 PROSPECTIVE JUROR RILEY: Of course.  
14 MR. FIGLER: Now, in your questionnaire and -- and  
15 again, we have to ask these questions and I'm gonna try not to  
16 embarrass anybody. The -- there has been a situation in your  
17 life where somebody close to you ran afoul of the law,  
18 correct?  
19 PROSPECTIVE JUROR RILEY: Right.  
20 MR. FIGLER: Okay. Now, do you feel that that  
21 person was dealt fairly with?  
22 PROSPECTIVE JUROR RILEY: Yes, I believe I indicated  
23 that on the questionnaire.  
24 MR. FIGLER: Okay. Now, was it your belief that  
25 that person might have had a sickness or some ailment in their

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1 life that led 'em to that particular point?

2 PROSPECTIVE JUROR RILEY: I don't know if I'd put it  
3 that way, no.

4 MR. FIGLER: Do you believe that background  
5 information, in that scenario, would be important to determine  
6 the proper and fair adjudication of that person's problems?

7 PROSPECTIVE JUROR RILEY: I wasn't involved in that  
8 portion of what happened, but I believe that background  
9 information was very important, yes.

10 MR. FIGLER: Okay. So how a person's raised and  
11 what type of things they were exposed to, you think all that's  
12 important in ultimately determining?

13 PROSPECTIVE JUROR RILEY: Yes.

14 MR. FIGLER: With punishment as well?

15 PROSPECTIVE JUROR RILEY: I would say so, yes.

16 MR. FIGLER: I'll pass, Your Honor.

17 THE COURT: Thank you.

18 Next juror.

19 MR. SCISCENTO: Ms. Tackley?

20 PROSPECTIVE JUROR TACKLEY: Yes.

21 MR. SCISCENTO: Is it -- am I pronouncing it  
22 correctly?

23 PROSPECTIVE JUROR TACKLEY: Yes, you are.

24 MR. SCISCENTO: In your questionnaire, you've  
25 mentioned that you don't believe the punishment fits the crime

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1 sometimes?

2 PROSPECTIVE JUROR TACKLEY: Sometimes I don't  
3 believe it does.

4 MR. SCISCENTO: What do you mean by that?

5 PROSPECTIVE JUROR TACKLEY: I think sometimes crimes  
6 that appear to be particularly heinous to me, aren't dealt  
7 with harshly enough in the judicial system.

8 MR. SCISCENTO: And what do you consider a heinous  
9 crime?

10 PROSPECTIVE JUROR TACKLEY: Oh, let's say the Manson  
11 murders, for instance.

12 MR. SCISCENTO: Okay. And that involved -- the  
13 Manson murders involved multiple murders?

14 PROSPECTIVE JUROR TACKLEY: Yes.

15 MR. SCISCENTO: And so someone in that case, in that  
16 scenario -- I mean, what would you consider the punishment  
17 that would fit the crime?

18 PROSPECTIVE JUROR TACKLEY: The death penalty.

19 MR. SCISCENTO: So you would agree, then, that  
20 somebody who has multiple murders, is found guilty of multiple  
21 murders, would automatically receive the death penalty?

22 PROSPECTIVE JUROR TACKLEY: Most likely, yes.

23 MR. SCISCENTO: In your state of mind, though, how  
24 would you vote on multiple murder?

25 PROSPECTIVE JUROR TACKLEY: Death penalty.

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1 MR. SCISCENTO: You mentioned also that life in  
2 prison without the possibility of parole is okay if prisons  
3 were harsher?

4 PROSPECTIVE JUROR TACKLEY: Yeah.

5 MR. SCISCENTO: Okay. What do you mean by that?

6 PROSPECTIVE JUROR TACKLEY: Few -- less access to  
7 the outside world, more restriction of freedoms.

8 MR. SCISCENTO: You're not talking about beating  
9 them in prison or --

10 PROSPECTIVE JUROR TACKLEY: No. No, no, no, no, no.  
11 No.

12 MR. SCISCENTO: You -- your thoughts about the death  
13 penalty. You said something to the effect that it was not a  
14 deterrent because the costs?

15 PROSPECTIVE JUROR TACKLEY: No, I think it's not  
16 much of a deterrent because it's so seldom carried out, except  
17 in the southern states.

18 MR. SCISCENTO: You said it would save the taxpayers  
19 a lot of money if the death penalty was actually carried out.

20 PROSPECTIVE JUROR TACKLEY: As opposed to --

21 MR. SCISCENTO: Life in prison?

22 PROSPECTIVE JUROR TACKLEY: Mm-hmm.

23 MR. SCISCENTO: So you would do it on a cost basis  
24 analysis?

25 PROSPECTIVE JUROR TACKLEY: No.

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1 MR. SCISCENTO: If it turned out that life in prison  
2 was cheaper than the death penalty, would that change your  
3 views at all?

4 PROSPECTIVE JUROR TACKLEY: No.

5 MR. SCISCENTO: So your views are the more heinous  
6 the crime, ultimately --

7 PROSPECTIVE JUROR TACKLEY: The worse the  
8 punishment.

9 MR. SCISCENTO: And so the possibility is if you're  
10 here on the jury and you find that Mr. White is convicted of  
11 the four murders, most likely then, your vote would be death  
12 penalty?

13 PROSPECTIVE JUROR TACKLEY: Most likely.

14 MR. SCISCENTO: Okay. Would you consider anything  
15 else?

16 PROSPECTIVE JUROR TACKLEY: Yes.

17 MR. SCISCENTO: What would you consider?

18 PROSPECTIVE JUROR TACKLEY: The -- there's three  
19 other choices.

20 MR. SCISCENTO: I meant what would you consider, his  
21 background, anything like that?

22 PROSPECTIVE JUROR TACKLEY: To me, I don't think  
23 background is that important. We all make conscious choices  
24 of what we're going to do.

25 MR. SCISCENTO: You mentioned before that you'd

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1 focus on the state of mind.

2 PROSPECTIVE JUROR TACKLEY: Yeah, to a certain  
3 extent. The intent, the premeditation --

4 MR. SCISCENTO: So if you found the premeditation  
5 and intent and -- in the multiple murders, your vote --

6 PROSPECTIVE JUROR TACKLEY: And a lack of remorse.

7 MR. SCISCENTO: -- and a lack of remorse, your vote  
8 would be --

9 PROSPECTIVE JUROR TACKLEY: For the death penalty.

10 MR. SCISCENTO: Is it almost automatic?

11 PROSPECTIVE JUROR TACKLEY: Almost.

12 MR. SCISCENTO: For you?

13 PROSPECTIVE JUROR TACKLEY: Mm-hmm.

14 MR. SCISCENTO: I applaud you for being very honest.  
15 Some people may not be honest about -- about their feelings.  
16 You've heard a little about the case. Without dwelling on the  
17 facts, do you think that you could give an honest opinion as  
18 to guilt if there were more than one murders involved?

19 PROSPECTIVE JUROR TACKLEY: Yes.

20 MR. SCISCENTO: You would? You'd consider all  
21 aspects?

22 PROSPECTIVE JUROR TACKLEY: All the evidence.

23 MR. SCISCENTO: All the other aspects are life  
24 without --

25 PROSPECTIVE JUROR TACKLEY: Oh.

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1 MR. SCISCENTO: -- life with the possibility?  
2 PROSPECTIVE JUROR TACKLEY: Mm-hmm.  
3 MR. SCISCENTO: Even though you mentioned before,  
4 though, that multiple murders you consider the worst of the  
5 worst?  
6 PROSPECTIVE JUROR TACKLEY: Yeah, I do.  
7 MR. SCISCENTO: Is there anything to sway your mind  
8 from that -- from that belief?  
9 PROSPECTIVE JUROR TACKLEY: Nothing I've heard to  
10 date.  
11 MR. SCISCENTO: And what do you mean to date, from  
12 us or --  
13 PROSPECTIVE JUROR TACKLEY: In my life, yeah.  
14 MR. SCISCENTO: So these beliefs are ingrained based  
15 on what you've known up to today's date, what you've witnessed  
16 or experience in society --  
17 PROSPECTIVE JUROR TACKLEY: Right.  
18 MR. SCISCENTO: -- which you've heard from friends  
19 or parents or relatives?  
20 PROSPECTIVE JUROR TACKLEY: Sure.  
21 MR. SCISCENTO: Okay. And would you believe that  
22 this is an ingrained belief that's very strong with you?  
23 PROSPECTIVE JUROR TACKLEY: Yes.  
24 MR. SCISCENTO: Okay. Would you say that it's a  
25 bit -- how strong would you say, on a scale of one to ten?

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1 PROSPECTIVE JUROR TACKLEY: Oh, about an eight.  
2 MR. SCISCENTO: An eight? So there's very little  
3 chance of you deviating from giving the death penalty on  
4 multiple murders?  
5 PROSPECTIVE JUROR TACKLEY: Yeah, that's probably  
6 true.  
7 MR. SCISCENTO: And we have a lot of these  
8 questionnaires so I'm trying to remember some things. Have  
9 you -- have you had any contact with any police or anything  
10 like that?  
11 PROSPECTIVE JUROR TACKLEY: In my life, yeah.  
12 MR. SCISCENTO: In your life, I mean, good or bad?  
13 PROSPECTIVE JUROR TACKLEY: Yeah, sure.  
14 MR. SCISCENTO: You -- would you hold them in a  
15 higher esteem as somebody who would testified here? Would you  
16 give their testimony more credence, more credibility than an  
17 average lay person?  
18 PROSPECTIVE JUROR TACKLEY: No, they're just human  
19 too.  
20 MR. SCISCENTO: Okay. Would you agree that some may  
21 or may not lie?  
22 PROSPECTIVE JUROR TACKLEY: Yeah, I'd agree.  
23 MR. SCISCENTO: Okay. And they're not -- just  
24 because they're police officers, they're not fully --  
25 PROSPECTIVE JUROR TACKLEY: They're not perfect.

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1 MR. SCISCENTO: Okay. And they may have a  
2 motivation to lie?

3 PROSPECTIVE JUROR TACKLEY: True.

4 MR. SCISCENTO: Okay. And if we bring that out and  
5 you see that, you could accept the fact that maybe an officer  
6 is lying?

7 PROSPECTIVE JUROR TACKLEY: Yes.

8 MR. SCISCENTO: What about expert witnesses, say  
9 doctors or scientists who are examining DNA evidence. Would  
10 he be infallible?

11 PROSPECTIVE JUROR TACKLEY: I don't think they're  
12 infallible, but if they're qualified as experts, then their  
13 infallibility is pretty slight.

14 MR. SCISCENTO: Based on the fact that they are  
15 named as experts?

16 PROSPECTIVE JUROR TACKLEY: Yes.

17 MR. SCISCENTO: What about the procedure though, the  
18 procedure of the DNA testing?

19 PROSPECTIVE JUROR TACKLEY: I don't know anything  
20 about it.

21 MR. SCISCENTO: What about fingerprinting technics?

22 PROSPECTIVE JUROR TACKLEY: I think fingerprinting's  
23 pretty accurate.

24 MR. SCISCENTO: Okay. Have you had any prior  
25 experience with any kind of fingerprinting?

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1 PROSPECTIVE JUROR TACKLEY: Just for a sheriff's  
2 card years ago.

3 MR. SCISCENTO: All right. Now, I'm gonna get into  
4 an area that may be quite embarrassing but, again, you're  
5 being quite honest and I applaud that. You mentioned that you  
6 maybe tend to be frightened by young black people. Is that  
7 right?

8 PROSPECTIVE JUROR TACKLEY: In certain situations,  
9 yeah.

10 MR. SCISCENTO: I understand fully. Would that --  
11 do you believe that they're more violent, young black men?

12 PROSPECTIVE JUROR TACKLEY: Yes, I do.

13 MR. SCISCENTO: And is it something that you've  
14 witnessed personally or something that you -- based on  
15 society, TV --

16 PROSPECTIVE JUROR TACKLEY: Based on society.

17 MR. SCISCENTO: -- TV shows, other people have told  
18 you, what you've read?

19 PROSPECTIVE JUROR TACKLEY: Yeah, based on society.

20 MR. SCISCENTO: Okay. How ingrained is that belief  
21 that young black men are more -- tend to be more violent? How  
22 ingrained is that in your beliefs?

23 PROSPECTIVE JUROR TACKLEY: I don't know that it's  
24 that strong, but it's there.

25 MR. SCISCENTO: On a scale of one to ten, then --

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1 PROSPECTIVE JUROR TACKLEY: Maybe a five.  
2 MR. SCISCENTO: Would you be able to set aside some  
3 of that bias?  
4 PROSPECTIVE JUROR TACKLEY: I think so.  
5 MR. SCISCENTO: Would you be able to look beyond  
6 what you believe or what's ingrained in you as to biases and  
7 the nature of the -- nature of the violence of a black man?  
8 PROSPECTIVE JUROR TACKLEY: I would try to.  
9 MR. SCISCENTO: You'd try to?  
10 PROSPECTIVE JUROR TACKLEY: Yes.  
11 MR. SCISCENTO: But could you?  
12 PROSPECTIVE JUROR TACKLEY: Well, I don't know. I'm  
13 not in that situation yet.  
14 MR. SCISCENTO: You may be and that's what I'm  
15 trying to find out.  
16 PROSPECTIVE JUROR TACKLEY: I know.  
17 MR. SCISCENTO: And it's perfectly fine to say I  
18 couldn't?  
19 PROSPECTIVE JUROR TACKLEY: Well, I don't know.  
20 MR. SCISCENTO: Let me ask you one other -- no  
21 further questions.  
22 THE COURT: Thank you. Before you examine Tackley,  
23 could I see you briefly at the bench, please?  
24 (Off-record bench conference)  
25 THE COURT: And who is going to take Ms. Tackley?

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1 Oh, we're up to Campitelli.  
2 MR. SCISCENTO: Campitelli.  
3 THE COURT: Campitelli.  
4 MR. SCISCENTO: Campitelli. Am I correct in that?  
5 PROSPECTIVE JUROR CAMPITELLI: Yes.  
6 MR. SCISCENTO: One question I have. You had  
7 written that you believe a defendant must prove his innocence?  
8 PROSPECTIVE JUROR CAMPITELLI: Yes.  
9 MR. SCISCENTO: Why do you believe that?  
10 PROSPECTIVE JUROR CAMPITELLI: Well, either him or  
11 his counsellor should.  
12 MR. SCISCENTO: And -- I mean, do you think that --  
13 PROSPECTIVE JUROR CAMPITELLI: That's what it's all  
14 about, isn't it?  
15 MR. SCISCENTO: Do you think that we need to put up  
16 evidence, then, to show that Mr. White didn't commit these  
17 crimes?  
18 PROSPECTIVE JUROR CAMPITELLI: I don't know if it's  
19 so much of you putting up the evidence. It's more or less you  
20 proving that whatever it is was put up is correct or not  
21 correct.  
22 MR. SCISCENTO: Okay. I understand and I agree with  
23 the concept, but you heard the Judge earlier who said that we  
24 could sit there and not ask a question and if the State didn't  
25 prove it in your mind, then the defendant would have to be

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1 found not guilty.

2 PROSPECTIVE JUROR CAMPITELLI: Correct.

3 MR. SCISCENTO: And that's a tough concept?

4 PROSPECTIVE JUROR CAMPITELLI: No, that's not a  
5 tough concept.

6 MR. SCISCENTO: Do you think that if we sat there  
7 and did nothing and --

8 PROSPECTIVE JUROR CAMPITELLI: And the evidence did  
9 not prove that he was guilty, then he would not be guilty.  
10 I -- I believe that's what the Judge was trying to say.

11 MR. SCISCENTO: So then in a sense, really the  
12 defendant doesn't need to prove the innocence, but needs to  
13 attack the evidence?

14 PROSPECTIVE JUROR CAMPITELLI: Yes, of course.  
15 Don't you agree?

16 MR. SCISCENTO: I don't know. I don't know. Let me  
17 see. Another thing that bothers me. When a defendant is --  
18 this is one of the questions, when a defendant is charged with  
19 a crime, do you think -- I guess I already asked that. But  
20 you went on further, you said there must be a reason he was  
21 charged with a crime to begin with. Do you think that all  
22 defendants who are charged with crimes are guilty?

23 PROSPECTIVE JUROR CAMPITELLI: No, I don't. No, of  
24 course not. There could -- people make mistakes, of course.

25 MR. SCISCENTO: And so with that belief, you're

1 going to trial with that belief?

2 PROSPECTIVE JUROR CAMPITELLI: That -- that he could  
3 be wrongly accused? Yes, absolutely.

4 MR. SCISCENTO: And you will stand your ground and  
5 your judgment until after all the evidence is in?

6 PROSPECTIVE JUROR CAMPITELLI: Yes.

7 MR. SCISCENTO: Because the State will present the  
8 evidence and if we're gonna present any evidence, we'll  
9 present it, but the jury doesn't make up their mind -- make up  
10 their mind until the end.

11 PROSPECTIVE JUROR CAMPITELLI: Until the end, yes.

12 MR. SCISCENTO: It's a tough concept. I mean, I  
13 couldn't do it, but could you withhold your beliefs in your  
14 guilt or innocence until after all the evidence is heard?

15 PROSPECTIVE JUROR CAMPITELLI: Well, I'd have to  
16 hear the complete case, both sides, before I could make an  
17 opinion.

18 MR. SCISCENTO: You agree that there's always two  
19 sides to every story?

20 PROSPECTIVE JUROR CAMPITELLI: Absolutely.  
21 Absolutely.

22 MR. SCISCENTO: Have you ever been accused of any --  
23 even as a child of a crime or a wrongdoing?

24 PROSPECTIVE JUROR CAMPITELLI: Yes --

25 MR. SCISCENTO: Okay.

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1 PROSPECTIVE JUROR CAMPITELLI: -- I have.  
2 MR. SCISCENTO: When you were a school child, a  
3 school kid, were you ever accused of doing something wrong?  
4 PROSPECTIVE JUROR CAMPITELLI: Sure.  
5 MR. SCISCENTO: And were you brought to the  
6 principal's office to explain it?  
7 PROSPECTIVE JUROR CAMPITELLI: Yes.  
8 MR. SCISCENTO: And while you were sitting there was  
9 the accuser or whoever told, said that you did it, were they  
10 talking --  
11 PROSPECTIVE JUROR CAMPITELLI: Yes.  
12 MR. SCISCENTO: -- you ever been in that scenario?  
13 PROSPECTIVE JUROR CAMPITELLI: Mm-hmm.  
14 MR. SCISCENTO: How did you feel while they were  
15 talking and you wanted to tell your side?  
16 PROSPECTIVE JUROR CAMPITELLI: Wish I had a lawyer  
17 at that time.  
18 MR. SCISCENTO: But you were anxious to get out the  
19 information?  
20 PROSPECTIVE JUROR CAMPITELLI: Yes. I wanted to  
21 tell my side of the story.  
22 MR. SCISCENTO: Okay. And so you know the anxiety  
23 that I'm talking about, that I'm trying to explain on holding  
24 back judgment. Do you remember that kind of anxiety you had,  
25 would you listen to the jury -- to the evidence presented

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1 before you make a decision?

2 PROSPECTIVE JUROR CAMPITELLI: In other words not  
3 jump to conclusions --

4 MR. SCISCENTO: Yes.

5 PROSPECTIVE JUROR CAMPITELLI: -- is that what  
6 you're trying to say? I don't think I would.

7 MR. SCISCENTO: Okay. You said the death penalty  
8 could slow down crime. What'd you mean by that?

9 PROSPECTIVE JUROR CAMPITELLI: Well, on a -- on a  
10 first degree murder, I would assume that a lot of it is  
11 premeditated murder, is that correct, where they plan to do  
12 what they do and then do it? Is that -- is that what we're  
13 talking about?

14 MR. SCISCENTO: I don't know if I can answer that.

15 PROSPECTIVE JUROR CAMPITELLI: Isn't that a planned  
16 type of a situation?

17 THE COURT: Well, you'll hear exactly what it is  
18 later.

19 PROSPECTIVE JUROR CAMPITELLI: Where -- where if you  
20 was gonna rob somebody and you -- and you knew you might have  
21 to kill someone and -- and that happened?

22 THE COURT: Yeah. That's one of the definitions of  
23 most first degree murders, probably, that's right. We're not  
24 going to, when we're picking the jury, get into specific jury  
25 instructions. That's against the rules, but that touches on

1 it.

2 Go ahead, Mr. Sciscento.

3 MR. SCISCENTO: Thank you, Your Honor.

4 All right. Let's get back, then. You said death  
5 penalties slow down crime. Okay, what did you mean by that?

6 PROSPECTIVE JUROR CAMPITELLI: Well, if people who  
7 are planning to do something wrong and brought a gun with them  
8 and knew that they might have that conflict, where they would  
9 have to shoot somebody and kill 'em. Well, the worst that  
10 they could get would may be life with this or life with that.  
11 So they might go into it looking at it a different way. If  
12 they knew that the consequences could be greater, maybe they  
13 wouldn't bring the gun.

14 MR. SCISCENTO: Have you seen any studies in your  
15 lifetime -- have you read any studies that say that that's the  
16 effect of it?

17 PROSPECTIVE JUROR CAMPITELLI: No. I don't know.

18 MR. SCISCENTO: And you don't -- you don't know  
19 if -- if it is in fact or --

20 PROSPECTIVE JUROR CAMPITELLI: No, I don't know fact  
21 at all.

22 MR. SCISCENTO: So you agree with it, with the death  
23 penalty, because you believe that it would slow down crime?

24 PROSPECTIVE JUROR CAMPITELLI: I would hope that it  
25 would, yeah.

1 MR. SCISCENTO: But if you found out that it  
2 couldn't, would that change your mind?  
3 PROSPECTIVE JUROR CAMPITELLI: If it didn't do --  
4 yeah. I probably -- it could change my mind, yeah.  
5 MR. SCISCENTO: Did you do any -- when you found out  
6 that this was a case involving the potential death penalty,  
7 did you do any research on the death penalty at all? Did you  
8 read any articles, magazines, ask anybody any questions?  
9 PROSPECTIVE JUROR CAMPITELLI: No, I -- I'm not  
10 knowledgeable to the death penalty, no.  
11 MR. SCISCENTO: I believe you mentioned that you  
12 didn't know that Nevada had the death penalty.  
13 PROSPECTIVE JUROR CAMPITELLI: Yeah, I didn't.  
14 MR. SCISCENTO: And you were quite surprised?  
15 PROSPECTIVE JUROR CAMPITELLI: I -- I wouldn't say I  
16 was surprised. I just was -- I just wasn't aware of it.  
17 MR. SCISCENTO: In New York, where you were born --  
18 PROSPECTIVE JUROR CAMPITELLI: Yeah.  
19 MR. SCISCENTO: -- you have the death penalty?  
20 PROSPECTIVE JUROR CAMPITELLI: Uh-huh.  
21 MR. SCISCENTO: Did you -- you never sat on a jury  
22 in New York, did you?  
23 PROSPECTIVE JUROR CAMPITELLI: No.  
24 MR. SCISCENTO: Did you read any studies in New York  
25 about the -- the effect of the death penalty?

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1 PROSPECTIVE JUROR CAMPITELLI: What -- what do you  
2 mean by the effect of it?

3 MR. SCISCENTO: Well, the --

4 PROSPECTIVE JUROR CAMPITELLI: What -- what the  
5 outcome of it, in general, does for the population?

6 MR. SCISCENTO: Yes.

7 PROSPECTIVE JUROR CAMPITELLI: No. I can't say that  
8 I -- I have any knowledge to that.

9 MR. SCISCENTO: The prosecution had asked you if you  
10 were the president of a state -- if you owned a state or if  
11 you had a state, would you impose the death penalty, you said  
12 in your state you would.

13 PROSPECTIVE JUROR CAMPITELLI: Yes.

14 MR. SCISCENTO: Why would you do that?

15 PROSPECTIVE JUROR CAMPITELLI: Again, I would think  
16 that with that behind it, yeah -- you know, that -- of with a  
17 severe crime and a severe penalty might slow that -- the type  
18 of crime down.

19 MR. SCISCENTO: Okay. I don't want to belabor the  
20 point but I think you -- you've already gone over that.

21 PROSPECTIVE JUROR CAMPITELLI: You know -- you know  
22 what I'm -- where I'm coming from on that, don't you?

23 MR. SCISCENTO: Yeah.

24 PROSPECTIVE JUROR CAMPITELLI: I might -- I know  
25 it's hard to explain, but --

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1 MR. SCISCENTO: In your state of mind, with the  
2 knowledge that you have up to this point in your life, if you  
3 were on trial in a criminal matter, would you want somebody  
4 with your state of mind to judge you?

5 PROSPECTIVE JUROR CAMPITELLI: Absolutely.

6 MR. SCISCENTO: Pass, Your Honor.

7 THE COURT: Who's gonna examine Mr. Fink?

8 MR. FIGLER: Mr. Fink, having listened to your  
9 answers when the prosecutors were asking you questions, I just  
10 wanna follow up on some of that. You consider yourself to be  
11 a strong supporter of the death penalty, correct?

12 PROSPECTIVE JUROR FINK: Somewhat, yes.

13 MR. FIGLER: Okay. Would it be fair to say that  
14 your beliefs regarding the death penalty are deeply held?

15 PROSPECTIVE JUROR FINK: Yes.

16 MR. FIGLER: Okay. Now, would you agree with me  
17 that when a person has strong views on something that are  
18 deeply held, it's difficult for them to change that position  
19 in general?

20 PROSPECTIVE JUROR FINK: In general, yes.

21 MR. FIGLER: Okay. Now, let me ask you, if you  
22 found a person guilty of an intentional and premeditated  
23 multiple murder, would you feel that the death penalty is the  
24 only appropriate sentence?

25 PROSPECTIVE JUROR FINK: Not necessarily.

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1 MR. FIGLER: So there are circumstances when a  
2 person convicted of multiple, intentional, deliberate and  
3 premeditated murder should receive the punishment of life with  
4 the possibility of parole and being out again?

5 PROSPECTIVE JUROR FINK: I think the key word there  
6 "premeditated".

7 MR. FIGLER: Yes.

8 PROSPECTIVE JUROR FINK: If it's not premeditated,  
9 you know, there's some question. Premeditated, I would  
10 definitely say yes.

11 MR. FIGLER: Okay. So you would agree that you  
12 would always vote for the death penalty when you have  
13 premeditated intentional murders?

14 PROSPECTIVE JUROR FINK: Right.

15 MR. FIGLER: So in other words, if you were in a  
16 penalty phase and you had already decided, beyond a reasonable  
17 doubt, that the person whose fate you were considering had  
18 committed premeditated intentional multiple murders, you would  
19 vote for death automatically?

20 MR. GUYMON: Judge, I'm gonna object.

21 THE COURT: Sustained.

22 MR. FIGLER: You would vote for death in every  
23 instance?

24 THE COURT: Sustained.

25 MR. GUYMON: Judge, I'm gonna object again.

1 MR. FIGLER: Are you the kind of person who feels  
2 that every person convicted of intentional premeditated and  
3 deliberate murder should receive the same sentence,  
4 premeditated?

5 PROSPECTIVE JUROR FINK: If it's premeditated and  
6 preplanned, yes, I would say.

7 MR. FIGLER: And in that case you think that the  
8 only appropriate penalty should be the death penalty?

9 PROSPECTIVE JUROR FINK: If it --

10 MR. GUYMON: Judge, again, I object.

11 THE COURT: Sustained.

12 MR. FIGLER: Now, you'll be -- if we get to a  
13 penalty phase, they'll be discussion of aggravating evidence  
14 to support a finding and mitigating evidence and that's all  
15 for the consideration of each individual juror. Do you  
16 understand that?

17 PROSPECTIVE JUROR FINK: Yes.

18 MR. FIGLER: Now, when I say the words mitigating  
19 evidence, what does that mean to you?

20 PROSPECTIVE JUROR FINK: Mitigating, probably be the  
21 physical things that you found; if there's any fingerprints  
22 maybe, you know, that type of thing.

23 MR. FIGLER: Okay. We're -- we're talking in the --  
24 in the penalty phase.

25 PROSPECTIVE JUROR FINK: Oh, in the penalty. Oh,

1 okay. Okay.

2 MR. FIGLER: Having already found someone guilty of  
3 intentional, premeditated murder, multiple murders.

4 PROSPECTIVE JUROR FINK: Okay.

5 MR. FIGLER: Now we're in the penalty phase where  
6 you're to consider aggravating and mitigating evidence, and my  
7 question to you is, when I say that term, mitigating evidence,  
8 what does that mean to you?

9 PROSPECTIVE JUROR FINK: I don't really -- that --

10 THE COURT: That violates -- excuse me, sir.

11 That -- I think that violates Rule 770 sub (b). I  
12 ask you to move to another area.

13 MR. FIGLER: I -- I can ask if he would consider  
14 mitigating evidence, certainly.

15 THE COURT: You ask another question and if they  
16 don't have an objection and I don't make a ruling, you can get  
17 an answer.

18 MR. FIGLER: Well, in that scenario, where you've  
19 already convicted somebody of premeditated murder, deliberate,  
20 intentional, all that, would you take into account the --  
21 would you think it's important to take into account, for  
22 instance, the youth of an individual?

23 PROSPECTIVE JUROR FINK: Not necessarily.

24 MR. FIGLER: Okay. How about if they had like a bad  
25 childhood or something like that?

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1 PROSPECTIVE JUROR FINK: I think a lot of that today  
2 is, you know, an excuse and not a reason.

3 MR. FIGLER: So in light of those type of examples,  
4 is there any kind of mitigating evidence like that, that you  
5 would want consider, or would consider?

6 PROSPECTIVE JUROR FINK: Probably not.

7 MR. FIGLER: Now, I'm gonna go to your questionnaire  
8 and there was a question asked of you, if you think that an  
9 African American man can receive a fair trial in Clark County  
10 and your response had something to do with -- well, what you  
11 said was only when the race card is played is the problem  
12 brought out. Do you remember that response?

13 PROSPECTIVE JUROR FINK: Yes, I do.

14 MR. FIGLER: And what did you mean by that?

15 PROSPECTIVE JUROR FINK: If the prosecution or the  
16 defense is to bring out the fact, you know, that the gentleman  
17 is black or Hispanic or whatever the case may be, and plays on  
18 that and trying to take it away from the actual evidence, is  
19 to really to bring that in, to try to cloud the issue.

20 MR. FIGLER: So you think that's clouding the issue?

21 PROSPECTIVE JUROR FINK: Yes, I do.

22 MR. FIGLER: Okay. Now, you also said that you  
23 believe that there are biases against African American males  
24 in our society?

25 PROSPECTIVE JUROR FINK: Yes, I do.

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1 MR. FIGLER: And what are those?  
2 PROSPECTIVE JUROR FINK: I think they're  
3 stereotyped, and I think television has a lot to do with it.  
4 They -- they portray this young man that's, you know, bad  
5 childhood, so forth and just runs the streets and shoots and  
6 kills and I don't believe it's that way.  
7 MR. FIGLER: Okay. No further questions.  
8 THE COURT: Thank you.  
9 MR. FIGLER: Mr. Morine?  
10 PROSPECTIVE JUROR MORINE: Yes, that's right.  
11 MR. FIGLER: Good. Now, during the course of the  
12 trial, you have the right to hear all the evidence, free from  
13 any distraction. You understand that?  
14 PROSPECTIVE JUROR MORINE: Mm-hmm.  
15 MR. FIGLER: You have to say yes or no.  
16 PROSPECTIVE JUROR MORINE: Yes.  
17 MR. FIGLER: Okay. If there was anything that was  
18 distracting or if you had any personal problems or anything  
19 like that, would you have any hesitation at all, raising your  
20 hand and letting the Court know?  
21 PROSPECTIVE JUROR MORINE: I don't think so.  
22 MR. FIGLER: So there would be no embarrassment or  
23 anything like that?  
24 PROSPECTIVE JUROR MORINE: I don't think so.  
25 MR. FIGLER: Okay. Good. Now, you have the right

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1 to be convinced by the evidence that's going to be presented  
2 to you, even if it was not convincing for some other juror.  
3 Do you understand that?

4 PROSPECTIVE JUROR MORINE: Mm-hmm. Yes.

5 MR. FIGLER: So since every juror is different and  
6 picked from whatever different views that they may have in  
7 their life, would you ever feel that you have to give up some  
8 of your beliefs because others were convinced about it  
9 differently?

10 PROSPECTIVE JUROR MORINE: I don't think I would  
11 give up my beliefs, but I think I would be willing to listen  
12 to the point of view of the other jurors, 'cause perhaps  
13 they -- they heard or have a view on it that I didn't  
14 consider, so I would be certainly willing to listen to the  
15 other point of view and perhaps could change my mind, but I  
16 don't think I'd just role over due to pressure.

17 MR. FIGLER: Okay. Cause you understand  
18 fundamentally you have the individual right to be convinced  
19 beyond a reasonable doubt, right?

20 PROSPECTIVE JUROR MORINE: I do understand that.

21 MR. FIGLER: And you believe in that?

22 PROSPECTIVE JUROR MORINE: I do believe in that.

23 MR. FIGLER: Okay. Now, you also have a right to  
24 make decisions about who to believe and not to believe when  
25 various people will take the stand and testify. You

1 understand that?

2 PROSPECTIVE JUROR MORINE: Yes, I do.

3 MR. FIGLER: Okay. Now, in addition to what they  
4 say, do you think how their face is or their body language,  
5 those type of things from the stand, would be important  
6 considerations in determining their credibility?

7 PROSPECTIVE JUROR MORINE: I think there's nonverbal  
8 forms of communication, yeah.

9 MR. FIGLER: So there's something to be said for  
10 that?

11 PROSPECTIVE JUROR MORINE: I believe so.

12 MR. FIGLER: Now, we talked about listening to other  
13 people's positions, and you think that's a healthy thing, but  
14 you also agreed that you have a right to not be unduly  
15 influenced by any other person, correct?

16 PROSPECTIVE JUROR MORINE: Correct.

17 MR. FIGLER: Okay. Now, there will come a point  
18 when, if you're selected as a juror, you'll be asked to select  
19 a foreperson. That's sort of the leader, okay, someone who  
20 everyone believes has the skills necessary to give equal time  
21 to everyone to be heard, that sort of thing. Now, would you  
22 feel free to insist that jurors take the selection of their  
23 leader seriously and not just pick someone because someone  
24 volunteers or no one volunteers?

25 PROSPECTIVE JUROR MORINE: Oh, I think it would be a

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1 important decision for the jurors to make in total and would  
2 encourage that that decision be made, not on popularity, but  
3 on some assessment that we would have in a short period of  
4 time, as to who could fulfill that role.

5 MR. FIGLER: Right. And you agree that a leader can  
6 have a big influence on a group, correct, possibly?

7 PROSPECTIVE JUROR MORINE: Possibly, yes.

8 MR. FIGLER: And that's why it's important to put a  
9 lot of thought into that decision-making process, correct?

10 PROSPECTIVE JUROR MORINE: Yeah. I think it's more  
11 important that the leader give everybody fair opportunity to  
12 state their views.

13 MR. FIGLER: Okay. Now you also understand that if  
14 selected as a juror, you have a right to have your feelings  
15 and opinions respected, correct?

16 PROSPECTIVE JUROR MORINE: Yes.

17 MR. FIGLER: Okay. So to that end, you're not gonna  
18 allow other jurors to disrespect each other or you?

19 PROSPECTIVE JUROR MORINE: That's a true statement.

20 MR. FIGLER: Okay. I'll -- no further questions.

21 Thank you, sir, for your time.

22 MR. SCISCENTO: Mr. Juarez?

23 PROSPECTIVE JUROR JUAREZ: Juarez. Yes.

24 MR. SCISCENTO: Juarez. You're a Sun Devil?

25 PROSPECTIVE JUROR JUAREZ: Yes.

1           MR. SCISCENTO: How long have you lived out here in  
2 Las Vegas, in the area?  
3           PROSPECTIVE JUROR JUAREZ: Since '82.  
4           MR. SCISCENTO: Okay. You had heard something, a  
5 little about this case?  
6           PROSPECTIVE JUROR JUAREZ: Right.  
7           MR. SCISCENTO: Do you remember what you heard about  
8 that?  
9           PROSPECTIVE JUROR JUAREZ: Just from what I read in  
10 the paper, which would be probably a little less than what was  
11 given in the bio that we read.  
12           MR. SCISCENTO: So you really don't have any  
13 pretrial information about this?  
14           PROSPECTIVE JUROR JUAREZ: No, no, sir.  
15           MR. SCISCENTO: You had mentioned, in your  
16 questionnaire, that the defendant must prove innocence and  
17 that always bothers me as a defense attorney. Could you  
18 please expand on it?  
19           PROSPECTIVE JUROR JUAREZ: If given the opportunity,  
20 they should freely and willingly provide information that  
21 would benefit them.  
22           MR. SCISCENTO: When you mean provide information,  
23 you mean he, Mr. White, has to get up and testify?  
24           PROSPECTIVE JUROR JUAREZ: No, no. If they chose to  
25 or if they felt that they could add information to it, to the

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1 jury to allow them to make a better decision.

2 MR. SCISCENTO: You wouldn't hold it against  
3 Mr. White or us if we didn't present any evidence whatsoever?

4 PROSPECTIVE JUROR JUAREZ: No.

5 MR. SCISCENTO: You think we're ridiculous but  
6 not --

7 PROSPECTIVE JUROR JUAREZ: I think we have to go  
8 into this thinking that he's innocent until we're told  
9 otherwise or where it's proven otherwise to us.

10 MR. SCISCENTO: But if we didn't, the defense team  
11 didn't present any evidence, would that bother you?

12 PROSPECTIVE JUROR JUAREZ: If I felt that there was  
13 something that could be added, yes, it would bother me,  
14 because then I would think that you weren't doing what you  
15 could do to present every bit of information.

16 MR. SCISCENTO: It's a strange concept that we have  
17 that we don't have the burden, the State has the burden. It's  
18 easy to repeat, but hard to understand. Different countries  
19 have different legal systems. We need to think generally  
20 about United States legal system.

21 PROSPECTIVE JUROR JUAREZ: I would hold it in high  
22 regards, the little I do know of it.

23 MR. SCISCENTO: You'd mentioned that the cost of  
24 death penalty versus the cost of life imprisonment. You wrote  
25 that down. What do you mean by that?

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1 PROSPECTIVE JUROR JUAREZ: Well, if you look at  
2 dollars, life in prison is going to cost a lot more, but you  
3 have to look at the cost of -- the cost that you're giving to  
4 this person that's going to be behind bars for the rest of  
5 their life, you know, and that's a tremendous cost to pay  
6 also.

7 MR. SCISCENTO: So you think in imposing the death  
8 penalty, and I'm asking this as an open-ended question, do you  
9 think that imposing the death penalty, would you take into  
10 effect -- you may personally take into effect some cost  
11 analysis?

12 PROSPECTIVE JUROR JUAREZ: No. Dollar-wise, no.

13 MR. SCISCENTO: What if you learned that it was  
14 cheaper for life imprisonment without the possibility of  
15 parole than death penalty?

16 PROSPECTIVE JUROR JUAREZ: Again, I don't think I  
17 could base my decision on that fact.

18 MR. SCISCENTO: But would that change your way you  
19 would've answered number 40 if you had any different  
20 information?

21 PROSPECTIVE JUROR JUAREZ: I don't think so, because  
22 I think you have to look at the cost in dollars and the cost  
23 in human life also, you know.

24 MR. SCISCENTO: Well, I'm talking cost in dollars.

25 PROSPECTIVE JUROR JUAREZ: Right. All right.



1 MR. SCISCENTO: You had written initially overall  
2 considering the general issues of punishment, what do you  
3 think might be worse for a defendant. Initially you had put  
4 death. You scribbled that out and you put life without.

5 PROSPECTIVE JUROR JUAREZ: Right.

6 MR. SCISCENTO: Okay. What made you change your  
7 decision on it?

8 PROSPECTIVE JUROR JUAREZ: Because it can certainly  
9 be worse for someone to be -- know that they will be locked up  
10 in prison for the rest of their lives. That's a -- tolled  
11 maybe a bigger burden on someone.

12 MR. SCISCENTO: Have you had any opportunity to  
13 visit any prisons or do you know anybody who's in prison?

14 PROSPECTIVE JUROR JUAREZ: No, I do not.

15 MR. SCISCENTO: So you don't know what the inside  
16 looks like or what kind of life that is?

17 PROSPECTIVE JUROR JUAREZ: [No audible response].

18 COURT RECORDER: That's no?

19 PROSPECTIVE JUROR JUAREZ: No. I'm sorry.

20 MR. SCISCENTO: You wrote down first the death  
21 penalty, second life without possibility of parole. You  
22 wouldn't consider the death penalty first before everything  
23 else would you?

24 PROSPECTIVE JUROR JUAREZ: No.

25 MR. SCISCENTO: Okay. You'd take into account

1 everything?

2 PROSPECTIVE JUROR JUAREZ: I would take into account  
3 everything. I would think going into this type of situation,  
4 you wouldn't want to put death as your priority on what you  
5 want to convict someone as.

6 MR. SCISCENTO: When do you put death as the  
7 decision?

8 PROSPECTIVE JUROR JUAREZ: I don't know. I would  
9 have to weigh the evidence, but I wouldn't want to go into a  
10 situation saying this is my number one viable opportunity or  
11 option. That's just not the way I think.

12 MR. SCISCENTO: Now, when witnesses get up here and  
13 testify -- there'll be some police officers and I've asked  
14 this before; will you give any credence to the police  
15 officers, anymore credence?

16 PROSPECTIVE JUROR JUAREZ: No.

17 MR. SCISCENTO: What if somebody had a motivation to  
18 lie and we brought that out, would you question their  
19 truthfulness?

20 PROSPECTIVE JUROR JUAREZ: Certainly.

21 MR. SCISCENTO: Okay. All right. If they were a  
22 witness for the State and promised them to get out of prison,  
23 would that have an effect?

24 PROSPECTIVE JUROR JUAREZ: Yes.

25 MR. SCISCENTO: What do you think about that,

1 someone like that?

2 PROSPECTIVE JUROR JUAREZ: I think that's wrong.

3 MR. SCISCENTO: You think if somebody was promised  
4 leniency to testify?

5 PROSPECTIVE JUROR JUAREZ: A certain way?

6 MR. SCISCENTO: Yes, well --

7 PROSPECTIVE JUROR JUAREZ: That should not be  
8 allowed.

9 MR. SCISCENTO: Not even a certain way, but just to  
10 testify?

11 PROSPECTIVE JUROR JUAREZ: Shouldn't be allowed,  
12 because the outcome is they're gonna get something for it.

13 MR. SCISCENTO: It's almost like bought and paid for  
14 testimony.

15 PROSPECTIVE JUROR JUAREZ: You bet.

16 MR. SCISCENTO: Now, the concept is very tough of  
17 innocent until proven guilty and waiting until all the  
18 evidence comes in. And I say that, because I know I couldn't,  
19 probably couldn't do it. As many years as I've been studying  
20 law, I understand every now and then -- have reactions. There  
21 may be a lot of emotional testimony that is brought out in  
22 this trial. Could you hold back your judgment?

23 PROSPECTIVE JUROR JUAREZ: Yes. I would have to. I  
24 mean --

25 MR. SCISCENTO: That's a tough concept.

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1 PROSPECTIVE JUROR JUAREZ: Yeah.  
2 MR. SCISCENTO: If I said there was gonna be  
3 evidence of bias, would that shock you when you saw it?  
4 PROSPECTIVE JUROR JUAREZ: Sure.  
5 MR. SCISCENTO: Okay. But could you reserve your --  
6 PROSPECTIVE JUROR JUAREZ: Yes.  
7 MR. SCISCENTO: -- feelings?  
8 PROSPECTIVE JUROR JUAREZ: Yes.  
9 MR. SCISCENTO: You'd hold 'em back --  
10 PROSPECTIVE JUROR JUAREZ: Yes.  
11 MR. SCISCENTO: -- and kind of be like Mr. Spock,  
12 where there's no emotions?  
13 PROSPECTIVE JUROR JUAREZ: Yeah. Yeah.  
14 MR. SCISCENTO: Logical, that's all I need.  
15 PROSPECTIVE JUROR JUAREZ: Yeah. You'd have to wait  
16 'til the very end.  
17 MR. SCISCENTO: Okay. Thank you. No questions.  
18 THE COURT: Thank you.  
19 MR. FIGLER: Court's indulgence.  
20 THE COURT: Sure.  
21 MR. FIGLER: Mr. Baker?  
22 PROSPECTIVE JUROR BAKER: Yes.  
23 MR. FIGLER: Says here that you're retired. What  
24 did you used to do?  
25 PROSPECTIVE JUROR BAKER: I was in the sheet metal

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1 manufacturing.

2 MR. FIGLER: Okay. Here in Nevada or elsewhere?

3 PROSPECTIVE JUROR BAKER: Elsewhere.

4 MR. FIGLER: So you came here to retire?

5 PROSPECTIVE JUROR BAKER: Yes.

6 MR. FIGLER: Okay. Was Las Vegas what you expected

7 it to be?

8 PROSPECTIVE JUROR BAKER: Yes.

9 MR. FIGLER: Okay. Not -- where did you come from?

10 PROSPECTIVE JUROR BAKER: The San Jose area.

11 MR. FIGLER: San Jose?

12 PROSPECTIVE JUROR BAKER: Mm-hmm.

13 MR. FIGLER: Now, in listening to your comments when

14 the prosecutor was asking you questions, I take it that you're

15 a strong supporter of the death penalty?

16 PROSPECTIVE JUROR BAKER: I believe so.

17 MR. FIGLER: Now, would it -- again, like to ask Mr.

18 Fink, be fair to say that your feelings about that subject are

19 deeply held?

20 PROSPECTIVE JUROR BAKER: Yes.

21 MR. FIGLER: Would you also agree that if someone

22 believes in something and that that is deeply held, that it's

23 hard to change that position in general?

24 PROSPECTIVE JUROR BAKER: Yes.

25 MR. FIGLER: So now, if you found a person guilty of

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1 an intentional and premeditated murder, would you feel the  
2 death penalty is the only appropriate sentence?

3 PROSPECTIVE JUROR BAKER: Probably.

4 MR. FIGLER: So you're saying that there is -- if  
5 I'm hearing you right, there's no circumstances where someone  
6 who you already convicted of a premeditated deliberate and  
7 intentional murder should get life with the possibility of  
8 parole?

9 PROSPECTIVE JUROR BAKER: A possibility, but not  
10 probable.

11 MR. FIGLER: Okay. So what you're saying is that  
12 you wouldn't give that real consideration?

13 PROSPECTIVE JUROR BAKER: I would give it  
14 consideration, sure.

15 MR. FIGLER: Okay. How about a term of years, where  
16 they will automatically get out of jail?

17 PROSPECTIVE JUROR BAKER: That would be very  
18 unlikely.

19 MR. FIGLER: Now, you've expressed this opinion of  
20 the death penalty. Let me ask you, do you feel that's  
21 appropriate for every case in which a person has been found  
22 guilty and the aggravating circumstances are there as well, do  
23 you think that person should get the death penalty every time?

24 PROSPECTIVE JUROR BAKER: I believe so, yes.

25 MR. DASKAS: I apologize. I don't think they've

1 been instructed on aggravating circumstances here, so I don't  
2 know that they would understand the basis for the question.

3 THE COURT: Sustained, under 770(b).

4 MR. FIGLER: Would you agree with me that you're the  
5 kind of person who feels that every person convicted of a  
6 premeditated, intentional and deliberate murder should receive  
7 the same sentence?

8 PROSPECTIVE JUROR BAKER: Probably, yes.

9 MR. FIGLER: Yes?

10 PROSPECTIVE JUROR BAKER: Yes.

11 MR. FIGLER: Now, with Mr. Fink, I briefly spoke  
12 about mitigating circumstances. Would you consider mitigating  
13 circumstances if we got to a penalty phase? Now, this is all  
14 assuming that you've convicted someone of multiple homicide?

15 MR. GUYMON: Judge, it's the same objection with  
16 770(b), again anticipating the law, you haven't been  
17 instructed as to mitigating circumstances.

18 THE COURT: Sustained.

19 MR. FIGLER: Do you think factors like the youth of  
20 a defendant is important to consider in determining something  
21 other than your strongly held beliefs, the youth of a person  
22 convicted of a crime?

23 PROSPECTIVE JUROR BAKER: No. No.

24 MR. FIGLER: How about their childhood, that sort of  
25 thing?

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1 PROSPECTIVE JUROR BAKER: No.

2 MR. FIGLER: Okay. How about disadvantages that

3 they may have had growing up, that sort of thing?

4 PROSPECTIVE JUROR BAKER: That's a possibility.

5 MR. FIGLER: Okay. What kind of crimes do come to

6 mind when you think of the death penalty?

7 PROSPECTIVE JUROR BAKER: Well, the premeditated

8 brutal murder type of crimes.

9 MR. FIGLER: Now, death as a punishment is obviously

10 something that's irrevocable. You would agree with that

11 comment?

12 PROSPECTIVE JUROR BAKER: Mm-hmm. Yes.

13 MR. FIGLER: Can't bring someone back. We're not

14 Frankensteins here.

15 PROSPECTIVE JUROR BAKER: Correct.

16 MR. FIGLER: Okay. Now, occasionally someone reads

17 the newspaper of a person who was sentenced to death who was

18 later found to be innocent. Can you understand that?

19 PROSPECTIVE JUROR BAKER: Yes.

20 MR. FIGLER: Okay. What does that make you think

21 about the death penalty?

22 PROSPECTIVE JUROR BAKER: Ought to be very certain

23 before you implement the death penalty.

24 MR. FIGLER: Certain in -- that the person did the

25 offense.

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1 PROSPECTIVE JUROR BAKER: Exactly.  
2 MR. FIGLER: Okay. But once you are certain that  
3 the person did the offense, it would be hard for you to come  
4 up with a scenario where you wouldn't vote for the death  
5 penalty, is that fair to say?  
6 PROSPECTIVE JUROR BAKER: That's fair.  
7 MR. FIGLER: Pass.  
8 MR. SCISCENTO: Ms. Cole?  
9 PROSPECTIVE JUROR COLE: Yes.  
10 MR. SCISCENTO: Good morning. Have you heard any  
11 information of this about this case in the newspapers or --  
12 PROSPECTIVE JUROR COLE: No.  
13 MR. SCISCENTO: -- anything like that? You were  
14 born out in Arizona?  
15 PROSPECTIVE JUROR COLE: Mm-hmm.  
16 MR. SCISCENTO: And you're a Sun Devil too?  
17 PROSPECTIVE JUROR COLE: I grew up here.  
18 MR. SCISCENTO: I don't want to put a Sun Devil and  
19 a Wildcat together. You said in your questionnaire that  
20 there's no benefit -- you don't think there was a benefit to  
21 the death penalty or maybe it's the way it was written, the  
22 question itself. But can you expand on that and explain that  
23 to me?  
24 PROSPECTIVE JUROR COLE: What was the question?  
25 MR. SCISCENTO: In your questionnaire you had said

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1 that there was no benefit to the death penalty, and I don't  
2 know if it's the way the question was written.

3 PROSPECTIVE JUROR COLE: I think it's the way it was  
4 worded.

5 MR. SCISCENTO: Well, let me ask you this. What do  
6 you think the benefit of the death penalty is, not on the  
7 defendant, but just the benefit of the -- of the death  
8 penalty?

9 PROSPECTIVE JUROR COLE: I mean, there -- for -- if  
10 there's somebody who committed a crime, there has to be, you  
11 know, different phases of punishment for their actions.

12 MR. SCISCENTO: Different phases of punishment?

13 PROSPECTIVE JUROR COLE: Different severities.

14 MR. SCISCENTO: Okay. The worst being the death  
15 penalty?

16 PROSPECTIVE JUROR COLE: Yes.

17 MR. SCISCENTO: When would you impose the death  
18 penalty to somebody who's has been convicted of a crime?

19 PROSPECTIVE JUROR COLE: I don't -- when would I  
20 impose it? It has to be a very severe situation that, you  
21 know; somebody did a crime that --

22 MR. SCISCENTO: Is heinous?

23 PROSPECTIVE JUROR COLE: Yeah.

24 MR. SCISCENTO: What do you consider heinous?

25 PROSPECTIVE JUROR COLE: A lot -- murder and, I

1 mean, murder with, you know, foresight or anything like  
2 terrorist acts or, you know, premeditated things.

3 MR. SCISCENTO: The District Attorney has mentioned  
4 earlier about the 7-Eleven scenarios; somebody's in a car and  
5 there's a robbery going on. They're just acting as a look  
6 out. They know there's a gun, but they don't know it's  
7 loaded, but they're involved in a murder, and that person  
8 would you give the death penalty to?

9 PROSPECTIVE JUROR COLE: More than likely not.

10 MR. SCISCENTO: Okay. So you agree there's a  
11 sliding scale?

12 PROSPECTIVE JUROR COLE: Yes.

13 MR. SCISCENTO: When do we, in your mind, hit that  
14 scale of no, don't pass go, death penalty only?

15 PROSPECTIVE JUROR COLE: When, you know -- they --  
16 it's a preconceived, thought out plan -- let's go -- you know,  
17 is made pre, you know -- thought it out and was gonna go kill  
18 somebody.

19 MR. SCISCENTO: So somebody, in your mind, that has  
20 thought out the murder, has planned it, has prepared for it,  
21 went out and actually did it?

22 PROSPECTIVE JUROR COLE: Yes.

23 MR. SCISCENTO: Those scenario. Then, at that  
24 point, you're at the point of death penalty only?

25 PROSPECTIVE JUROR COLE: It's hard to say yes or no.

1 I mean, I think that, you know, if there was -- it's hard to  
2 say. I don't wanna like get into for instance or --

3 MR. SCISCENTO: If there was multiple murders, would  
4 you then put it up in the category of we don't care what else  
5 is out there, death penalty only?

6 PROSPECTIVE JUROR COLE: No.

7 MR. SCISCENTO: There's other factors that you would  
8 consider?

9 PROSPECTIVE JUROR COLE: Yes.

10 MR. SCISCENTO: And what are those factors that you  
11 would consider?

12 PROSPECTIVE JUROR COLE: Why they would've committed  
13 the crime and, you know, the -- behind that. I mean, if a  
14 father goes and, you know, kills somebody in, you know --

15 MR. SCISCENTO: In retaliation?

16 PROSPECTIVE JUROR COLE: Yeah.

17 MR. SCISCENTO: Okay. So again we're on a sliding  
18 scale.

19 PROSPECTIVE JUROR COLE: Sliding scale.

20 MR. SCISCENTO: And I'm trying to find out when we  
21 reach the point when you said -- maybe you don't.

22 PROSPECTIVE JUROR COLE: Mm-hmm.

23 MR. SCISCENTO: I mean, that's what I'm trying to  
24 find out. But maybe we reach that point when you say that's  
25 it, we don't care what your childhood is like, we don't care

1 about anything back here --

2 PROSPECTIVE JUROR COLE: I don't think that

3 they're --

4 MR. SCISCENTO: -- remorse or any --

5 PROSPECTIVE JUROR COLE: Yeah. I don't think there

6 actually, for me, is a point where, no matter what happened it

7 has to be the death penalty.

8 MR. SCISCENTO: So there are instances, even though

9 it's a heinous crime, that other things can bring it down to

10 where you can consider life without the possibility of parole?

11 PROSPECTIVE JUROR COLE: Yeah.

12 MR. SCISCENTO: How strong would that have to be?

13 Those other factors?

14 PROSPECTIVE JUROR COLE: Very strong.

15 MR. SCISCENTO: And what do you consider strong

16 factors?

17 PROSPECTIVE JUROR COLE: There's a lot of things. I

18 don't know. It's not something I'm used to thinking about.

19 MR. SCISCENTO: I understand. Again, I hate to

20 keep --

21 PROSPECTIVE JUROR COLE: Okay.

22 MR. SCISCENTO: -- focusing on it, but I need to

23 know what you would think is the worst scenario where you'd

24 say, that's it?

25 MR. GUYMON: And, Judge, on this area I'm going to

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1 object on some -- relevance of subsection (c). May we  
2 approach?

3 (Off-record bench conference)

4 THE COURT: Sustained.

5 MR. SCISCENTO: All right. Again, we're at this  
6 level where we would consider a heinous crime.

7 PROSPECTIVE JUROR COLE: Okay.

8 MR. SCISCENTO: In your mind, what do you consider  
9 factors that would bring you back down to imposing the death  
10 penalty to giving life without the possibility of parole or  
11 life with?

12 PROSPECTIVE JUROR COLE: What are some reasons?

13 MR. SCISCENTO: In your mind, yes. What are some  
14 reasons?

15 PROSPECTIVE JUROR COLE: If, you know, some --  
16 somebody -- say like the Polly Klass murders, where -- you  
17 know, she -- he went in -- somebody went into their house,  
18 that that father would go into a courtroom when it was going  
19 on with that and went in and shot the defendant, then I  
20 could -- you see the kind of -- where he's coming from, in a  
21 way.'

22 MR. SCISCENTO: So --

23 PROSPECTIVE JUROR COLE: There's emotions.

24 MR. SCISCENTO: There's rage, anger, revenge?

25 PROSPECTIVE JUROR COLE: Yes.

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1 MR. SCISCENTO: Those kind of things that you'd  
2 consider bringing him down?  
3 PROSPECTIVE JUROR COLE: Yes.  
4 MR. SCISCENTO: What if those did not exist? Could  
5 you -- would you place him back up to the death penalty?  
6 MR. GUYMON: Judge, I'm gonna back. The same  
7 objection, 727 --  
8 THE COURT: Sustained.  
9 MR. SCISCENTO: Other than that case that you talked  
10 about, what other factors would you consider?  
11 PROSPECTIVE JUROR COLE: In why I wouldn't --  
12 MR. SCISCENTO: In determining whether or not the  
13 person --  
14 PROSPECTIVE JUROR COLE: -- do the death?  
15 MR. SCISCENTO: Yeah, you would not give the death  
16 penalty?  
17 PROSPECTIVE JUROR COLE: I'm not sure.  
18 MR. SCISCENTO: And so you think that's probably the  
19 only -- the only time that you would give that, that you would  
20 not give the death penalty?  
21 PROSPECTIVE JUROR COLE: It's what I can, you know,  
22 give thought to right now.  
23 MR. SCISCENTO: So if you didn't find the revenge,  
24 the anger, the emotion involved --  
25 PROSPECTIVE JUROR COLE: Mm-hmm.

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1 MR. SCISCENTO: -- in a murder case, is it safe to  
2 say that you would then only always give the death penalty?

3 MR. GUYMON: Judge, again, same objection.

4 MR. SCISCENTO: Your Honor, I'm going right on  
5 through questions --

6 THE COURT: Frankly, I was making notes. What was  
7 the question again, Joe, I wasn't listening?

8 MR. SCISCENTO: The question was she just said  
9 earlier that other than the revenge, emotion -- there's  
10 revenge, emotions or anger that she would come down from the  
11 death penalty to life with or without on murder. So I'm  
12 saying --

13 THE COURT: It's a close area, but I'll overrule it.  
14 I think in terms of a peremptory challenge you're at least  
15 entitled to hear the answer.

16 MR. SCISCENTO: Your Honor, my next question  
17 though, that Mr. Guymon objected to was, other than those  
18 situations --

19 THE COURT: Right, and I'm saying that you can ask  
20 that.

21 MR. SCISCENTO: Other than those situations, you  
22 have no others that would reduce it to the death penalty?

23 PROSPECTIVE JUROR COLE: Right.

24 MR. SCISCENTO: Okay. So now, based on that  
25 statement that you just gave, are you saying that if you do



1 not find those three elements, one of those elements revenge  
2 or something, then you're stuck with only giving the death  
3 penalty?

4 PROSPECTIVE JUROR COLE: I would look at all four of  
5 the penalties.

6 MR. SCISCENTO: And you'd base it on other things,  
7 even if you didn't find the revenge, the anger, the emotions?

8 PROSPECTIVE JUROR COLE: I think that I would take  
9 all the, you know, all the penalties into consideration on  
10 anything.

11 MR. SCISCENTO: The testimony's gonna be heard  
12 throughout the trial and the State always has the burden of  
13 proving this and they'll put up the -- their evidence and  
14 you'll hear witnesses. Would you be able to withhold judgment  
15 until the time that the jury, if you're selected, goes back  
16 and makes a decision?

17 PROSPECTIVE JUROR COLE: Yes.

18 MR. SCISCENTO: How could you do that?

19 PROSPECTIVE JUROR COLE: I just -- I think it's part  
20 of being a jury. It's -- you know, you have to -- you would  
21 go in there -- or go into the jury system with that -- knowing  
22 that.

23 MR. SCISCENTO: Have you ever been asked to do that  
24 before?

25 PROSPECTIVE JUROR COLE: On a jury?

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1 MR. SCISCENTO: No. Have you ever been asked to  
2 withhold judgment until everything comes out?  
3 PROSPECTIVE JUROR COLE: Yes.  
4 MR. SCISCENTO: You've never sat on a -- as a jury  
5 member before?  
6 PROSPECTIVE JUROR COLE: No.  
7 MR. SCISCENTO: Are you currently in school?  
8 PROSPECTIVE JUROR COLE: No. I -- I work. I'm full  
9 time employed.  
10 MR. SCISCENTO: You took some psychology classes and  
11 things to that effect, I think you all did in college?  
12 PROSPECTIVE JUROR COLE: Yeah.  
13 MR. SCISCENTO: Did you find those very enjoyable?  
14 PROSPECTIVE JUROR COLE: Not really.  
15 MR. SCISCENTO: Did you believe in -- let me ask you  
16 this. If a professor or a doctor, not a medical doctor, but a  
17 scientist or something, took the stand, would you -- would you  
18 believe that his words were true without questioning them?  
19 Would you give him more credence than anybody else?  
20 PROSPECTIVE JUROR COLE: No.  
21 MR. SCISCENTO: Would you think just because he has  
22 a degree, that makes him infallible?  
23 PROSPECTIVE JUROR COLE: No.  
24 MR. SCISCENTO: And if there was some other evidence  
25 that shows that there's fallibility, you wouldn't discount

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1 that other evidence? I think I said that wrong. What I'm  
2 trying to say is, you won't take the doctors and the experts  
3 at their word without -- without challenging it in your mind?  
4 PROSPECTIVE JUROR COLE: I don't think that it would  
5 be my place to question any witness's testimony.  
6 MR. SCISCENTO: If this trial went on for a week or  
7 so, would you be able to sit at a juror?  
8 PROSPECTIVE JUROR COLE: Yes.  
9 MR. SCISCENTO: You'd have no problem with that?  
10 PROSPECTIVE JUROR COLE: No.  
11 MR. SCISCENTO: No further questions, Your Honor.  
12 THE COURT: Thanks. Would you approach the bench  
13 before Mr. Garceau.  
14 (Off-record bench conference)  
15 THE COURT: Go ahead with Mr. Garceau.  
16 MR. SCISCENTO: Thank you, Your Honor.  
17 Mr. Garceau?  
18 PROSPECTIVE JUROR GARCEAU: Garceau, yeah.  
19 MR. SCISCENTO: Parlez vous Francez?  
20 PROSPECTIVE JUROR GARCEAU: Not really.  
21 MR. SCISCENTO: My mother's French and she has a  
22 cousin named Garceau.  
23 THE COURT: Mr. Figler?  
24 Excuse me, one minute, Joe.  
25 I'm gonna allow you some limited additional voir

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1   dire along the lines you suggested the bench after we get  
2   through with the last gentleman.

3               MR. FIGLER:   Okay.

4               MR. SCISCENTO:  You've lived in the Las Vegas area  
5   for about six years?

6               PROSPECTIVE JUROR GARCEAU:  Six years, yeah.

7               MR. SCISCENTO:  You've heard little about this case  
8   from pretrial information.

9               PROSPECTIVE JUROR GARCEAU:  Very little.

10              MR. SCISCENTO:  Where did you hear it from?

11              PROSPECTIVE JUROR GARCEAU:  Television, Channel 8,  
12   Channel 13, one of their local news.

13              MR. SCISCENTO:  Do you remember how long ago that  
14   was?

15              PROSPECTIVE JUROR GARCEAU:  You know, until I read  
16   the questionnaire they gave us in -- at the jury room, I'd  
17   forgotten about it.  I mean, it just was in and out.  It  
18   reminded me of what I had heard several months ago or --

19              MR. SCISCENTO:  Okay.  When you heard this on the  
20   news, I guess it was the Channel 8 News, had you made up your  
21   mind about the innocence or guilt of any of the people?

22              PROSPECTIVE JUROR GARCEAU:  Not at all, no.

23              MR. SCISCENTO:  Did the news outrage you?

24              PROSPECTIVE JUROR GARCEAU:  Not really.  It was just  
25   part of the news and I probably changed channels and went

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1 somewhere else.

2 MR. SCISCENTO: Reading it again, does it inflame  
3 you at all? Reading this and then realizing that you've seen  
4 this before, did that raise any emotions in you?

5 PROSPECTIVE JUROR GARCEAU: Well, certainly. The  
6 description of the crime, et cetera.

7 MR. SCISCENTO: What kind of emotions did it raise  
8 in you?

9 PROSPECTIVE JUROR GARCEAU: Well, it's the -- my  
10 first experience with anything like that, that I realize is in  
11 real life and not something you've seen on television or a  
12 movie and I wouldn't say it -- it made me angry or anything.  
13 It just took me back, because I've never experienced it.

14 MR. SCISCENTO: You were a armed security guard?

15 PROSPECTIVE JUROR GARCEAU: I have done armed work.  
16 I'm a retired machinist, but in -- in the last six years, I've  
17 done some work off and on. I'm not working right now at all.

18 MR. SCISCENTO: You're retired now?

19 PROSPECTIVE JUROR GARCEAU: Well, I retired from the  
20 machine shop in Wisconsin where I spent 30 years and now I  
21 work basically when I feel like it or have time and I don't  
22 have much time to work anymore. I'm pretty busy.

23 MR. SCISCENTO: You had mentioned that -- well, in  
24 your time as a security guard, as an armed security guard --

25 PROSPECTIVE JUROR GARCEAU: Sure.

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1 MR. SCISCENTO: -- has there ever come a time you  
2 had to display your weapon?  
3 PROSPECTIVE JUROR GARCEAU: Never.  
4 MR. SCISCENTO: Has there ever come a time you had  
5 to shoot your weapon?  
6 PROSPECTIVE JUROR GARCEAU: Other than at the range,  
7 no.  
8 MR. SCISCENTO: Are you pretty well -- how long have  
9 you owned a gun?  
10 PROSPECTIVE JUROR GARCEAU: Well, I never owned  
11 pistols 'til I came out here and I started working unarmed and  
12 then I went armed by the request of my company, and we had  
13 shotguns and hunting rifles all my life. I don't remember  
14 ever not hunting and fishing and that sort of thing.  
15 MR. SCISCENTO: You've gone hunting before?  
16 PROSPECTIVE JUROR GARCEAU: Wisconsin's a great  
17 state for it, yeah. Haven't done it in Nevada yet.  
18 MR. SCISCENTO: What kind of hunting do you do?  
19 PROSPECTIVE JUROR GARCEAU: Well, we -- you don't  
20 have time. I just never missed anything in Wisconsin. All  
21 the ducks and pheasant and grouse and deer and bull and gun  
22 and fishing and I never missed anything.  
23 MR. SCISCENTO: So you -- you've gone deer hunting  
24 before.  
25 PROSPECTIVE JUROR GARCEAU: Oh, sure.

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1 MR. SCISCENTO: And you've shot --  
2 PROSPECTIVE JUROR GARCEAU: Absolutely.  
3 MR. SCISCENTO: -- and killed a deer?  
4 PROSPECTIVE JUROR GARCEAU: Oh, sure.  
5 MR. SCISCENTO: Thank you. How many times have you  
6 done that in the past?  
7 PROSPECTIVE JUROR GARCEAU: Well, I hunted probably  
8 for 25 years and I was probably successful 50 percent of the  
9 time, maybe less.  
10 MR. SCISCENTO: With your knowledge of -- you have  
11 some knowledge of how bullets work --  
12 PROSPECTIVE JUROR GARCEAU: Oh, absolutely.  
13 MR. SCISCENTO: -- and how the projectiles and  
14 things like that.  
15 PROSPECTIVE JUROR GARCEAU: Sure.  
16 MR. SCISCENTO: Could you use that knowledge if you  
17 were sitting as a juror, you could use that knowledge --  
18 PROSPECTIVE JUROR GARCEAU: I don't see why not.  
19 MR. SCISCENTO: And if every -- if you were sitting  
20 as a juror and everybody else, all the other 11 members said,  
21 well no, the -- ballistics say this --  
22 PROSPECTIVE JUROR GARCEAU: Mm-hmm.  
23 MR. SCISCENTO: -- would that sway you from what  
24 your beliefs are?  
25 PROSPECTIVE JUROR GARCEAU: Well, you know,

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1 that's -- that'd be prejudging what I would hear and I'm  
2 prepared to have an open mind about anything like that.

3 MR. SCISCENTO: If an expert witness got on the  
4 stand and talked about ballistics that didn't quite mesh with  
5 what you understood ballistics to be, projectories or anything  
6 to that effect, would that bother you at all?

7 PROSPECTIVE JUROR GARCEAU: If it were -- if it were  
8 in direct contrast to what I've seen over the years that I've  
9 hunted -- I know what ballistics expert I would be from  
10 pulling a trigger and killing a deer. I mean, it's pretty  
11 simple, but I guess the answer is, yeah, I would take my own  
12 experience into consideration.

13 MR. SCISCENTO: And so you'd take your common  
14 sense --

15 PROSPECTIVE JUROR GARCEAU: Oh, sure.

16 MR. SCISCENTO: -- into the court -- into the jury  
17 room though?

18 PROSPECTIVE JUROR GARCEAU: Absolutely.

19 MR. SCISCENTO: You'd mentioned that you think the  
20 police should have more power. Why is that?

21 PROSPECTIVE JUROR GARCEAU: Well, as part of my  
22 armed security, I worked out at traffic school for the -- for  
23 North Las Vegas.

24 MR. SCISCENTO: Yes.

25 PROSPECTIVE JUROR GARCEAU: I got to meet a lot of



1 the guys and I gained a lot of respect for them. I had a lot  
2 of respect for guys I work with in machine shop too, but I  
3 just had never had exposed -- and my view of what law  
4 enforcement was kind of changed when I realized these are just  
5 regular guys, some good and some bad. I mean, I liked some of  
6 them and some of them I didn't like, but -- but I --

7 MR. SCISCENTO: That being the officers?

8 PROSPECTIVE JUROR GARCEAU: I believe in law and  
9 order, if that's what you're saying.

10 MR. SCISCENTO: Okay.

11 PROSPECTIVE JUROR GARCEAU: Okay.

12 MR. SCISCENTO: Now, your friendship in the form  
13 with these police officers over the --

14 PROSPECTIVE JUROR GARCEAU: Sure.

15 MR. SCISCENTO: -- years you've had with them, would  
16 that sway you in any way?

17 PROSPECTIVE JUROR GARCEAU: I don't think -- I think  
18 I would be willing to listen to the testimony of police  
19 officers and other witnesses and weigh them the way I would --

20 MR. SCISCENTO: Have you sat and talked with these  
21 officers, though? I mean have they told you things on -- what  
22 happened on the job and things like that?

23 PROSPECTIVE JUROR GARCEAU: Well, I don't believe  
24 I've ever had a conversation with an officer about a shooting  
25 or anything like that, but -- you know, this was traffic

1 court, so we dealt with traffic violations and that sort of  
2 thing. I'm sorry, traffic school, yeah.

3 MR. SCISCENTO: Did they ever tell you about their  
4 arrests that they made and criminals that they were tracking  
5 down?

6 PROSPECTIVE JUROR GARCEAU: Not really, no. No.  
7 This is not -- like a traffic stop, traffic tickets. I mean,  
8 that's what we dealt with. This was that --

9 MR. SCISCENTO: So I'm still a little confused,  
10 then. On the question you said that police should have more  
11 power --

12 PROSPECTIVE JUROR GARCEAU: Yeah.

13 MR. SCISCENTO: -- but you're saying all you ever  
14 talked to them is about traffic tickets and where's the  
15 justification for giving a --

16 PROSPECTIVE JUROR GARCEAU: Well, I -- I tend to  
17 believe that law enforcement -- I -- I'll tell you what I came  
18 to think that the police were -- my opinion of what police did  
19 changed after I got to talk to these guys, mainly because I  
20 thought they were regular guys and they have a tough job and I  
21 don't know what the -- what the more power means. I wouldn't  
22 take any away from them. Let's put it that way. I'm not --  
23 I'm not awestruck over police either, as far as that goes.  
24 They're just regular guys. That was my take when I met 'em.

25 MR. SCISCENTO: You said overall considering general

1 issues of punishment, which do you think might be worse for a  
2 defendant, and you wrote death and it is final. Do you think  
3 the death penalty is the best thing for a defendant?

4 PROSPECTIVE JUROR GARCEAU: Based on the evidence  
5 that we're gonna be hearing, there's an appropriate place for  
6 the death penalty and there's appropriate place for life  
7 without parole and the other two choices, and I think the  
8 evidence will lead us to whatever that would be.

9 MR. SCISCENTO: Now, you had mentioned when the  
10 District Attorney was asking you questions before, you said, I  
11 agree with the 7-Eleven scenario.

12 PROSPECTIVE JUROR GARCEAU: Mm-hmm.

13 MR. SCISCENTO: That being, as I understood it, you  
14 have somebody who's just a lookout, doesn't even know that the  
15 gun is --

16 PROSPECTIVE JUROR GARCEAU: Right.

17 MR. SCISCENTO: -- loaded --

18 PROSPECTIVE JUROR GARCEAU: Right.

19 MR. SCISCENTO: -- and the guy goes in there and  
20 shoots him and the lookout now is being charged with the  
21 murder.

22 PROSPECTIVE JUROR GARCEAU: Sure.

23 MR. SCISCENTO: Okay. And you said, in that case,  
24 that that person probably shouldn't get the death penalty.

25 PROSPECTIVE JUROR GARCEAU: Well, I think there's

1 room for a different penalty for people in that scenario.  
2 Being the trigger man would be the guy who would be the most  
3 severe and --  
4 MR. SCISCENTO: Being the trigger man, if he thought  
5 out this crime ahead of time.  
6 PROSPECTIVE JUROR GARCEAU: Mm-hmm.  
7 MR. SCISCENTO: What do you think would be the  
8 punishment to fit that crime?  
9 PROSPECTIVE JUROR GARCEAU: Oh, I think the death  
10 penalty.  
11 MR. GUYMON: Objection --  
12 THE COURT: Sustained.  
13 MR. SCISCENTO: Now, with your agreeing to the 7-  
14 Eleven scenario, you said, well, that person's not as  
15 culpable, not as liable?  
16 PROSPECTIVE JUROR GARCEAU: Well, I mean, depending  
17 on all of the evidence that we'll be listening to, I can't --  
18 I may be prejudging it now. What I'm suggesting is, is that  
19 there's -- there's room for movement in a scenario like, that  
20 we -- like he talked about.  
21 MR. SCISCENTO: What about when we get to multiple  
22 murders? What is your feeling about that one?  
23 PROSPECTIVE JUROR GARCEAU: I -- you know, I think a  
24 multiple murder is terrible, but I think killing one person  
25 is -- when you've gone that far --

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1 MR. SCISCENTO: Does there come a point, that you  
2 think that after you've committed this kind of crime,  
3 regardless of any other information, you should receive the  
4 death penalty?

5 PROSPECTIVE JUROR GARCEAU: No, I don't believe  
6 that. I think the mitigating circumstances are taken into  
7 consideration for everything.

8 MR. SCISCENTO: The Court's indulgence for one  
9 moment, Your Honor. Judge, can we approach for a moment?

10 THE COURT: Sure.

11 (Off-record bench conference)

12 MR. SCISCENTO: Mr. Garceau, you had mentioned  
13 earlier -- or you just mentioned that there were mitigators  
14 that you would consider. What would those mitigators be?

15 PROSPECTIVE JUROR GARCEAU: I think that's -- once  
16 again, that would be -- I haven't -- I have no idea what kind  
17 of testimony will be coming, I've personally never done this  
18 before. It's -- it -- for me, it's -- I can't, right out of  
19 the realm of possibility that there was something that would  
20 be behind a case, an individual circumstances that would not  
21 affect the outcome of a decision on how to punish a person, so  
22 what those mitigating circumstances would be, apparently we're  
23 gonna find out here.

24 MR. SCISCENTO: So you would take everything into  
25 account?

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1 PROSPECTIVE JUROR GARCEAU: Everything, sure.  
2 MR. SCISCENTO: You wouldn't just rush the judgment?  
3 PROSPECTIVE JUROR GARCEAU: Oh, no. Absolutely not.  
4 MR. SCISCENTO: To the death penalty?  
5 PROSPECTIVE JUROR GARCEAU: Not necessarily, no.  
6 Not -- nothing's cut and dried.  
7 MR. SCISCENTO: And you could withhold your feelings  
8 of guilt or innocence, both ways it works. You know, you're  
9 talking that you've got to withhold your feeling of guilt.  
10 But also you also have to withhold your feeling of innocence  
11 until all the evidence is in.  
12 PROSPECTIVE JUROR GARCEAU: Yes.  
13 MR. SCISCENTO: I just misspoke that one. I realize  
14 it. You'd be able to withhold your feeling of guilt until  
15 after all the evidence is in?  
16 PROSPECTIVE JUROR GARCEAU: Make a decision after  
17 all the evidence is in on both sides.  
18 MR. SCISCENTO: It's a hard -- it's a hard thing to  
19 do to hear all this evidence prior and then have to wait for  
20 the defense to come up.  
21 PROSPECTIVE JUROR GARCEAU: I understand.  
22 MR. SCISCENTO: And you believe in the concept --  
23 the concept that Mr. White is innocent until proven guilty?  
24 PROSPECTIVE JUROR GARCEAU: Absolutely.  
25 MR. SCISCENTO: And so as he stands -- sits here

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1 right now, Mr. White --  
2 PROSPECTIVE JUROR GARCEAU: Yes.  
3 MR. SCISCENTO: -- is innocent.  
4 PROSPECTIVE JUROR GARCEAU: Innocent until proven  
5 guilty.  
6 MR. DASKAS: Judge, and I think that he's presumed  
7 innocent. That's -- that's the concept.  
8 THE COURT: It's also been asked and answered by me.  
9 Any other areas? We want to move on to  
10 Mr. Chastain.  
11 MR. SCISCENTO: No further questions, Your Honor.  
12 THE COURT: Who's gonna do Chastain?  
13 MR. SCISCENTO: I will.  
14 Mr. Chastain?  
15 PROSPECTIVE JUROR CHASTAIN: Yes, sir.  
16 MR. SCISCENTO: How are you?  
17 PROSPECTIVE JUROR CHASTAIN: Quite fine. Thank you.  
18 Yourself?  
19 MR. SCISCENTO: You were born in Santa Monica,  
20 California?  
21 PROSPECTIVE JUROR CHASTAIN: Yes. That is correct.  
22 MR. SCISCENTO: How long have you lived out there?  
23 PROSPECTIVE JUROR CHASTAIN: In Santa Monica?  
24 MR. SCISCENTO: Yeah.  
25 PROSPECTIVE JUROR CHASTAIN: I think I was about --

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1 about six months old. I think we've -- I've lived most of my  
2 time in Orange County.

3 MR. SCISCENTO: Okay. Whereabouts in Orange County  
4 did you live?

5 PROSPECTIVE JUROR CHASTAIN: Fullerton.

6 MR. SCISCENTO: Did you go to school out there?

7 PROSPECTIVE JUROR CHASTAIN: Uh-huh.

8 MR. SCISCENTO: You went to, I think, Cal State --

9 PROSPECTIVE JUROR CHASTAIN: Cal State Fullerton's  
10 out there and I went to --

11 MR. SCISCENTO: The Titans.

12 PROSPECTIVE JUROR CHASTAIN: -- to Fullerton  
13 Community College, other times out there.

14 MR. SCISCENTO: In your jury questionnaire, you had  
15 written if -- how would you feel if the jury sat -- the jury  
16 you sat on was unable to reach a verdict? If this is the  
17 case, then we are unable to reach a verdict, I guess it says I  
18 would be satisfied --

19 PROSPECTIVE JUROR CHASTAIN: If no one -- if no  
20 one -- if not everybody could agree, then -- then it's over.  
21 You know, you have to have -- if one person doesn't -- if one  
22 person finds a person innocent and everyone finds a person  
23 guilty, then that person is innocent, because everyone has to  
24 be thoroughly convinced that person is guilty. If that was me  
25 that found that person innocent, everyone found that person



1 guilty, I would stand my ground.

2 MR. SCISCENTO: Okay. Against the wave of everybody  
3 else, against 11 people who sit there?

4 PROSPECTIVE JUROR CHASTAIN: Regardless.  
5 Because you -- 'til all times you have to be free thinking.

6 MR. SCISCENTO: Okay. And you think --

7 PROSPECTIVE JUROR CHASTAIN: I think I'm thoroughly  
8 free thinking.

9 MR. SCISCENTO: Even coming from Orange County?

10 PROSPECTIVE JUROR CHASTAIN: Even coming from Orange  
11 County. I don't always vote republican know.

12 MR. SCISCENTO: Which is quite a conservative place.

13 PROSPECTIVE JUROR CHASTAIN: Yeah, very  
14 conservative. I don't just vote the way people tell me to  
15 vote.

16 MR. SCISCENTO: You'd mentioned -- you had stated  
17 earlier to the District Attorney that the death penalty is a  
18 deterrent.

19 PROSPECTIVE JUROR CHASTAIN: I believe so. What  
20 I -- what I understood, you know, from various classes I've  
21 taken, but I -- I don't know off-hand, but I would assume that  
22 it is. For me -- my own personal -- I -- if I knew the death  
23 penalty existed and I thought about murder myself, I would  
24 probably -- probably not inclined to do it, knowing that would  
25 be the case.

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1 MR. SCISCENTO: So it might --  
2 PROSPECTIVE JUROR CHASTAIN: So it would be  
3 deterrent for me, absolutely.  
4 MR. SCISCENTO: Life in prison without the  
5 possibility of parole would not be --  
6 PROSPECTIVE JUROR CHASTAIN: That's not -- I don't  
7 like that either, but -- but I -- I don't like either one of  
8 them, personally, you know, so -- yeah, they're all  
9 deterrents. I think that's why they were set up.  
10 MR. SCISCENTO: Okay. Well, prison is a deterrent.  
11 PROSPECTIVE JUROR CHASTAIN: Absolutely.  
12 MR. SCISCENTO: But, if some -- now, you said you  
13 took some classes that --  
14 PROSPECTIVE JUROR CHASTAIN: You know, we're taking  
15 history classes. You take psychology classes. You take  
16 environmental science classes. Everyone brings up certain  
17 scenarios and certain things and they present their ideas, but  
18 even then, doesn't make it factual. You just take those  
19 things in and then you make judgments upon it. You know? You  
20 don't -- not necessarily saying they're right or wrong. You  
21 just take 'em in. You know? I think everyone does that.  
22 MR. SCISCENTO: What kind of -- other than the  
23 classes you've mentioned, any other studies or research or --  
24 PROSPECTIVE JUROR CHASTAIN: You mean personal  
25 research I did on my own?

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1 MR. SCISCENTO: Yes.

2 PROSPECTIVE JUROR CHASTAIN: No, none.

3 MR. SCISCENTO: You mentioned in your -- in your  
4 questionnaire that you never thought about imposing the death  
5 penalty.

6 PROSPECTIVE JUROR CHASTAIN: Exactly. That never  
7 crossed my mind.

8 MR. SCISCENTO: And you've had time to think about  
9 it now.

10 PROSPECTIVE JUROR CHASTAIN: Only, because, like I  
11 said, it was new to me. I didn't know it was -- existed in  
12 the state, you know. I don't agree with something -- the news  
13 came out -- maybe it's been around for a hundred years. I  
14 have no -- I have no knowledge of that.

15 MR. SCISCENTO: So you don't know when it was --

16 PROSPECTIVE JUROR CHASTAIN: None. Maybe it's been  
17 around forever. I just -- I just never heard about the death  
18 penalty, anybody even setting it up.

19 MR. SCISCENTO: Let me ask you. You think crime is  
20 getting worse over the years?

21 PROSPECTIVE JUROR CHASTAIN: I think actually crime  
22 has gotten better, is what -- what I've seen. I've seen that  
23 the crime rate comes down and things like that.

24 MR. SCISCENTO: You think crime is getting better?

25 PROSPECTIVE JUROR CHASTAIN: Yeah.

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1 MR. SCISCENTO: Okay. Over the years?

2 PROSPECTIVE JUROR CHASTAIN: Yeah, I would say so.  
3 I mean, you have to take in compensation for the number of  
4 people versus the number of growth and versus number of  
5 crimes, yeah.

6 MR. SCISCENTO: You don't think it's getting --  
7 society is getting more violent?

8 PROSPECTIVE JUROR CHASTAIN: No, I don't think so.  
9 I think we're -- each person's becoming more and more educated  
10 and fewer are making decisions that he would -- ordinarily  
11 wouldn't have made.

12 MR. SCISCENTO: So you think education on a person's  
13 important?

14 PROSPECTIVE JUROR CHASTAIN: I think it's helpful.  
15 I mean, but you get education from a lot of different places.  
16 You can get education from class room. You can get education  
17 from the street. You can get education from a store, you  
18 know.

19 MR. SCISCENTO: If you had witnesses up here who  
20 were testifying because they were getting some kind of benefit  
21 from the State, what would that make you feel about their  
22 testimony?

23 PROSPECTIVE JUROR CHASTAIN: I'd have -- I --  
24 wouldn't make a judgment on that, because -- because again,  
25 when they're -- even though they're given some kind of

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1 compensation, they're there to speak the truth, not to give  
2 testimony to a specific individual, because of that. That's  
3 the reason why they're given that.

4 MR. SCISCENTO: So you feel that everybody, every  
5 person who takes the stand, the witness stand, is telling the  
6 truth?

7 PROSPECTIVE JUROR CHASTAIN: No. I would take into  
8 consideration what everyone has to say and at the end then, I  
9 would make my judgment.

10 MR. SCISCENTO: You think people tell partial  
11 truths?

12 PROSPECTIVE JUROR CHASTAIN: Absolutely.

13 MR. SCISCENTO: Okay. You have no prior information  
14 about this case?

15 PROSPECTIVE JUROR CHASTAIN: None whatsoever. This  
16 is the first -- when I read about it, was the first I heard  
17 about it.

18 MR. SCISCENTO: How long have you lived out here in  
19 Vegas?

20 PROSPECTIVE JUROR CHASTAIN: I think I moved out  
21 here like '88 or '87 or somewhere around there. It's been a  
22 while now.

23 MR. SCISCENTO: Okay. Now, you'd mentioned that you  
24 grew up in a mixed culture.

25 PROSPECTIVE JUROR CHASTAIN: That's true.

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ORIGINAL

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\*\*\*\*\*

FILED IN OPEN COURT  
JUN 12 2000 20  
SHIRLEY B. PARRAGUIRRE, CLERK  
BY *Carole D'Alia*  
CAROLE D'ALIA DEPUTY

STATE OF NEVADA

Plaintiff

vs.

DONTE JOHNSON,  
aka John Lee White

Defendant  
.....

CASE NO. C153154

DEPT. V  
DOCKET "H"

Transcript of  
Proceedings

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

JURY TRIAL - DAY 1  
MONDAY, JUNE 5, 2000  
VOLUME I

APPEARANCES:

FOR THE PLAINTIFF:

GARY L. GUYMON  
Chief Deputy District Attorney  
ROBERT J. DASKAS  
Deputy District Attorney

FOR THE DEFENDANT:

DAYVID J. FIGLER  
Deputy Special Public Defender  
JOSEPH S. SCISCENTO

COURT REPORTER:

SHIRLEE PRAWALSKY  
District Court

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CE

1 LAS VEGAS, NEVADA, MONDAY, JUNE 5, 2000, 9:40 A.M.

2 (Prospective jurors are present)

3 THE COURT: Okay, guys, Carol or Alona are gonna  
4 read out the excusals, but, before they do, folks, filling out  
5 these questionnaires last week has enabled us to review them  
6 with counsel and agree that some of you might be excused at  
7 this stage of the proceedings. Listen carefully. The  
8 following individuals are excused to go back to the Jury  
9 Commissioner with our thanks.

10 Mr. Servetz, Number 551, Jeffrey Servetz, you may  
11 leave. Ms. Blakely, I believe it's a Ms. Blakely, Number 569,  
12 thank you. Ms. Coleman, Number 602, and Mr. Cook, Number 631.

13 Mr. Cook? Maybe he's one of the absent ones. Okay.

14 And then we have some absences today who are who?

15 THE CLERK: 584 and 634 and 599, 605 and 623, 628,  
16 631 and I think 615.

17 Is 615 here?

18 PROSPECTIVE JUROR COLUCCI: 615, here.

19 THE CLERK: 615 is here, so they're not all on that

20 --

21 THE COURT: And that would be who? Is that Mr.  
22 Wilson?

23 MR. GUYMON: 627?

24 THE COURT: Suzanne Wilson?

25 PROSPECTIVE JUROR WILSON: Suzanne Wilson is my wife

1 and she's scheduled to go in for heart surgery.  
2 THE COURT: Where is Suzanne Wilson?  
3 PROSPECTIVE JUROR WILSON: She's at home right now.  
4 THE COURT: I see, okay. 6 what?  
5 PROSPECTIVE JUROR WILSON: 627.  
6 MR. GUYMON: 627.  
7 THE CLERK: This is the one that --  
8 THE COURT: I see, okay.  
9 When is her heart surgery, Mr. Wilson?  
10 PROSPECTIVE JUROR WILSON: The 18th, I believe.  
11 THE COURT: We'll be through long before the 18th.  
12 Thanks. We'll get back to you.  
13 PROSPECTIVE JUROR WILSON: Okay. Sir?  
14 THE COURT: Yes, Mr. Wilson?  
15 PROSPECTIVE JUROR WILSON: I have to make -- I have  
16 to make all the arrangements on the 10th, 11th or 12th, I  
17 think.  
18 THE COURT: Okay, we'll get back and talk to you  
19 about it, Mr. Wilson, in a few minutes.  
20 PROSPECTIVE JUROR WILSON: Okay.  
21 THE COURT: Thanks.  
22 This is the time set for State of Nevada versus  
23 Donte Johnson. Is the State ready?  
24 MR. GUYMON: Yes, Your Honor.  
25 THE COURT: The defense ready?



1 MR. SCISCENTO: Yes, Your Honor.

2 THE COURT: Thank you.

3 Would one of you guys for the prosecution introduce  
4 yourselves and tell the jury the nature of the crime alleged,  
5 if you wish to supplement what was in the questionnaire, and  
6 read the list of the probable witnesses?

7 MR. GUYMON: Thank you.

8 Good morning. My name is Gary Guymon. I work for  
9 the District Attorney's Office. And this is Robert Daskas.  
10 He also works for the District Attorney's Office.

11 This is a criminal case, State of Nevada versus  
12 Donte Johnson, also known as Johnnie Lee White. It involves a  
13 series of felony criminal charges; the charges of burglary  
14 while in the possession of a firearm, robbery with use of a  
15 deadly weapon, kidnapping with use of a deadly weapon and  
16 murder with use of a deadly weapon. There are four counts of  
17 murder or four charges of murder, there are four charges of  
18 robbery with use of a deadly weapon, there are four charges of  
19 kidnapping with use of a deadly weapon and there are four  
20 victims in this case. The victims names are Matthew Mowen,  
21 Tracey Gorringer, Biddle and Talamantez.

22 The incident is alleged to have occurred on August  
23 14th -- actually, the 13th, late in the hours of the 13th into  
24 the 14th of 1998. It occurred in the area of Terra Linda,  
25 which is in the southeast part of town. Terra Linda is a road

1 there and it was a -- there was a residence, a single-family  
2 unit, a three-bedroom home.

3           There are a list of witnesses that I'm gonna read to  
4 you. I want you to listen closely to the names that we  
5 mention so that you can tell the Court whether you know any of  
6 the people involved. You should know that it was the Las  
7 Vegas Metropolitan Police Department that investigated this  
8 case and I'll name a number of police officers as I do this.

9           The first witness is a Justin Perkins. He's  
10 approximately 22 years old and lives here in our community.  
11 The next is Nick De Lucia. Nick is perhaps 28 years old,  
12 maybe 30 years old, also a citizen here in our community.  
13 Sergeant Randy Sutton, you'll hear that name, he is one of the  
14 witnesses in this case. You'll also hear the name Detective  
15 David West. He is with the Las Vegas Metropolitan Police  
16 Department. He and Sergeant Sutton were some of the first  
17 responding officers to this crime scene once it was  
18 discovered.

19           There is a -- the name of Tod Armstrong, you'll hear  
20 that name, and you'll hear the name Bryan Johnson and Ace  
21 Hart. Those three individuals are young men about 21, 22  
22 years old now. They lived in the area and were residents here  
23 in Las Vegas, Clark County, Nevada about the time this  
24 happened. You'll hear the name Charla Severs. She's perhaps  
25 20 years old. She was the girlfriend of the defendant, Donte

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1 Johnson. You'll hear the name LaShawnya Wright. She is also  
2 about 20 years old.

3           You'll hear the name and hear testimony from Shawn  
4 Fletcher. Shawn Fletcher's a crime scene analyst with the Las  
5 Vegas Metropolitan Police Department. She is one of the  
6 analysts that gathered up evidence in this case and will  
7 testify in court. You'll hear the name David Horn. David  
8 Horn is the supervisor of Shawn Fletcher. David Horn is also  
9 a crime scene analyst with the Las Vegas Metropolitan Police  
10 Department. You'll hear from a David -- or, excuse me, a  
11 Bradley Grover or Grover, G-R-O-V-E-R. He is also a crime  
12 scene analyst with the Las Vegas Metropolitan Police  
13 Department. He gathered up evidence in this case and he will  
14 testify.

15           You will hear the name Sergeant Honea, H-O-N-E-A.  
16 He is a trooper with the Nevada Highway Patrol and he will  
17 testify in this case. You will hear from a Mark Washington.  
18 Mark Washington is also a crime scene analyst with the Las  
19 Vegas Metropolitan Police Department. Mark Washington  
20 gathered up evidence from a location here that became  
21 important in this case. It is a location called the Everman  
22 residence, also rather -- very near the Terra Linda residence  
23 on the southeast part of town. Mark Washington will testify  
24 to what he did in this case.

25           Ed Guenther is a fingerprint expert. He does

1 comparisons for the Las Vegas Metropolitan Police Department  
2 and he's been employed with the Las Vegas Police Department  
3 for many years. He will testify in this case. You will hear  
4 from a Dr. Robert Bucklin. Dr. Robert Bucklin has been a  
5 coroner for many, many years. He was employed with the Las  
6 Vegas -- excuse me, with the Clark County Coroner's Office for  
7 quite some time. He is now retired. His name is Dr. Robert  
8 Bucklin and he will testify in this case.

9           You will hear from a Sheree Norman. She is a crime  
10 scene analyst with the Las Vegas Metropolitan Police  
11 Department. She gathered up evidence at the autopsies and she  
12 will testify to her discoveries and her findings in the case.  
13 You will also hear from a Detective Jim Buczek and Jim Buczek  
14 is a detective with the Las Vegas Metropolitan Police  
15 Department. His partner is Tommy Thowsen. Those two are the  
16 two leading or lead investigators in this case. They are both  
17 employed with the Las Vegas Metropolitan Police Department.  
18 Their sergeant is a sergeant by the name of Sergeant Hefner.  
19 He will also testify in this case. Sergeant Hefner, I  
20 believe, has had his career here in the Las Vegas area and  
21 been with the police department many, many years.

22           Lastly, you'll hear from a DNA expert that is  
23 employed with the Las Vegas Metropolitan Police Department.  
24 His name is Tom Wall. He will testify to the DNA findings in  
25 this particular case.

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1 All of those names are individuals that are going to  
2 testify in this courtroom and I want you to be able to tell  
3 the Court whether or not you know any of those persons and if  
4 you are involved with them.

5 There are also two other names that you're going to  
6 hear throughout this case. They are the names of Terrell  
7 Young and Sikia Smith. They are charged with the very same  
8 charges, although there case is not going to be tried in this  
9 courtroom today, but you'll hear those names. Terrell Young  
10 is approximately the same age as the defendant and, Sikia  
11 Smith, also the same age of the defendant.

12 Those are the names and list of witnesses that the  
13 State will be calling in this case. Thank you.

14 THE COURT: Thank you.

15 Mr. Sciscento, would you like to introduce yourself,  
16 your client and Mr. Figler?

17 MR. SCISCENTO: Thank you, Your Honor.

18 Good morning. My name is Joseph Sciscento and I  
19 work with the Special Public Defender's Office. Assisting me  
20 is Dayvid Figler, who also works for the Special Public  
21 Defender's Office. And my client is Mr. John White, also  
22 known as Donte Johnson.

23 Along with the list of witnesses that Mr. Guymon  
24 mentioned, there may be some other witnesses that we would put  
25 up, the defendant that is, and, if you know them, then you

1 want to tell the Judge that. There's a Dr. Bannoura King  
2 [phonetic], a Dr. John Thorton, Resito Espanito [phonetic]  
3 and, along with the other list that Mr. Guymon has provided  
4 you, if you know those you need to tell the Judge.

5 Thank you.

6 THE COURT: Thank you.

7 Okay, folks, what we're gonna start the day by doing  
8 is picking a jury. And the questions that you answer are  
9 answered under oath and Carol's gonna administer that oath to  
10 you now.

11 THE CLERK: Will you please rise and raise your  
12 right hands?

13 PROSPECTIVE JURORS ARE SWORN

14 THE CLERK: Please be seated.

15 THE COURT: My name is Jeff Sobel. Obviously, I'm  
16 the Judge in this courtroom. What we're looking to do this  
17 morning is seat, as the jurors in this case, 12 impartial,  
18 intelligent people, plus a couple of alternates probably, to  
19 sit in judgment in this matter. The first thing we're gonna  
20 do is I'm gonna ask you a series of questions as you're seated  
21 as a group out there in the audience. Most of you are not  
22 going to have "yes" answers to any of these questions. Only  
23 if you have a "yes" answer, an affirmative answer, please  
24 raise your hand.

25 There's a lot of you in here. I think there's 77

1 left. Please just keep your hand up until I recognize you. I  
2 cannot read your badge numbers from here. Wait 'til I've  
3 gotten your badge number and your name and then, if there's  
4 more than one of you answering yes to a question, I'll come  
5 back to you and pick up your answers after that.

6 The first question is do any of you seated out there  
7 know either of the prosecutors or any of the witnesses that  
8 were read to you by either Mr. Guymon or Mr. Sciscento?

9 Sixth row is the only yes. And what is your name --  
10 whoops, fifth and sixth row. Ma'am, what's your name?

11 PROSPECTIVE JUROR MAY: Misty May.

12 THE COURT: You're gonna have to talk up.

13 PROSPECTIVE JUROR MAY: Misty May.

14 THE COURT: Okay. And who do you know?

15 PROSPECTIVE JUROR MAY: It kind of sounded familiar  
16 and --

17 THE COURT: I'm sorry, ma'am, I can't hear you.

18 THE CLERK: Can you just come on up and speak? We  
19 can't hear you.

20 Thanks.

21 THE COURT: You have a soft voice.

22 PROSPECTIVE JUROR MAY: It was one of our bosses,  
23 their best friend -- one of their friends, so I know -- I  
24 thought I had heard it, but I couldn't think of where and I  
25 finally thought of it, 'cause they talked about it at work and

1 SO --  
2 THE COURT: What's your badge number, ma'am?  
3 PROSPECTIVE JUROR MAY: 601.  
4 THE CLERK: 601?  
5 PROSPECTIVE JUROR MAY: Yeah.  
6 THE COURT: So you heard things about the case.  
7 What we're looking for is not people who never heard of this  
8 case or don't know about it. What we're looking for is people  
9 who can make a judgment in this case based on what they hear  
10 in the courtroom.  
11 Do you think you can do that? No?  
12 PROSPECTIVE JUROR MAY: Uh-uh.  
13 THE COURT: Why is that?  
14 PROSPECTIVE JUROR MAY: I just -- I can't handle  
15 things like this.  
16 THE COURT: And what do you mean by things like  
17 this?  
18 PROSPECTIVE JUROR MAY: Well, something happened to  
19 me last year and I just can't do it.  
20 THE COURT: Any problem with excusing this lady?  
21 MR. DASKAS: No, Judge.  
22 MR. GUYMON: No, Your Honor.  
23 MR. SCISCENTO: No problem, Your Honor.  
24 THE COURT: Okay, ma'am, thank you very much.  
25 You're excused.

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1           That's what, 601?  
2           THE CLERK: 601.  
3           THE COURT: And the gentleman in the sixth row,  
4 what's your name and number?  
5           PROSPECTIVE JUROR GILBERT: Larry Gilbert, 619.  
6           THE COURT: All right, let me find you, sir.  
7           And who do you know, sir?  
8           PROSPECTIVE JUROR GILBERT: Officer Dave West.  
9           THE COURT: And how do you know him?  
10          PROSPECTIVE JUROR GILBERT: He lives just down the  
11 block from me and we attended church together.  
12          THE COURT: Yeah, what we're looking for, again, is  
13 not people who don't know anybody, but somebody who can make  
14 their judgment based on what they hear from the witness stand.  
15          Do you think you have such a close relationship with  
16 this officer that you're gonna believe his word rather than  
17 somebody else's just because of your acquaintance with him?  
18          PROSPECTIVE JUROR GILBERT: No.  
19          THE COURT: Okay, so you think you could be fair and  
20 impartial?  
21          PROSPECTIVE JUROR GILBERT: Yes.  
22          THE COURT: Thank you.  
23          Anybody know either the defense attorneys or Mr.  
24 Donte Johnson or, sort of repetitively, any of the three  
25 witnesses who Joe read to you?

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1           No affirmative responses.

2           I'm gonna read you a series of principles of law  
3 that if you are selected, and only about a fifth of you are  
4 gonna be sitting on this jury this week, that are true in  
5 every criminal case in America, anywhere from DUI through very  
6 serious charges such as this. These principles are these;  
7 that a person is presumed to be innocent, that the Information  
8 filed is a mere accusation and it is not evidence of guilt,  
9 that the State must prove the defendant guilty beyond a  
10 reasonable doubt and that the defendant doesn't have to  
11 present any evidence in order for you to find him not guilty.

12           If you are selected as jurors, at the end of the  
13 case at least some of those principles will be put into  
14 instructions of law and you'll be committed to follow those  
15 instructions. Are there any among you who would not follow  
16 those instructions if selected as jurors?

17           No affirmative responses.

18           What these really mean, if you want to put it  
19 another way, and I don't expect this to happen, but you never  
20 know, Mr. Sciscento and Mr. Figler could sit there during the  
21 trial, not ask a single question, not call a single witness  
22 and if Mr. Daskas and Mr. Guymon, through their witnesses, do  
23 not convince you beyond a reasonable doubt of Mr. Johnson's  
24 guilt, he is entitled to a verdict of not guilty.

25           Is there anyone who would not adhere to that

1 principle?

2 No affirmative responses.

3 Now the last question, before I ask it, I'm gonna  
4 give you a little preface. I understand that jury duty is  
5 burdensome. Except for retired folks, almost everyone who  
6 comes in on jury duty has other concerns that they consider  
7 more pressing, whether they're personal or professional, and  
8 they would rather be somewhere else, that's a given, but if  
9 we're gonna have the Sixth Amendment we're gonna have people  
10 entitled to their jury trials, both the State and the  
11 defendant, and we're gonna have to have sacrifices.

12 Now we have had trials in here that have been six,  
13 seven weeks long and people changed their trip plans and  
14 people lost tip money and bosses found out that although they  
15 felt they were very valuable their underlings could get along  
16 without them and people who worked for other people learned  
17 they weren't quite as vital as they thought they were and  
18 other people would pick up work for them. So the preface to  
19 the question I'm gonna ask you, in part, is I understand there  
20 are significant burdens sitting on a jury.

21 The second element I'd like to tell you about is  
22 this. This is not, although it's a very serious charge, this  
23 is not the O.J. Simpson murder trial which lasted a year.  
24 This trial is not going to last a year. This isn't the  
25 Menendez case in California that lasted six months. This is

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1 not, in terms of length, though it's very important to  
2 everyone in this room, I hope, in terms of length this is not  
3 the Binion murder case. It's not going to go six to eight  
4 weeks.

5 I was a lawyer about 22 years and I've been a judge  
6 about ten. In discussing this matter with counsel, in  
7 discussing the amounts of witnesses, I expect that this case,  
8 in terms of Phase I, and if you read the questionnaires and  
9 understood them you realize there may be two phases to this  
10 case, if and only if you convict Mr. Johnson and if and only  
11 if you convict Mr. Johnson of first degree murder there will  
12 be a penalty phase, so there is possibly, but not necessarily,  
13 two phases to this trial.

14 The first phase is the determination of guilt or  
15 innocence. I am confident that we will pick the jury and have  
16 all the witnesses relative to guilt or innocence this week.  
17 Frankly, and we'll see how it goes, I don't think it will even  
18 take all of this week. If and only if you find Mr. Johnson  
19 guilty of first degree murder there will be a penalty phase  
20 next week, which I believe will take Monday and possibly  
21 Tuesday.

22 Now the wild card in all cases, murder allegations  
23 or less serious allegations, is always jury deliberation, but  
24 usually there's a correlation between the number of witnesses  
25 and the length of deliberations. I think, even given average

1 deliberations, Phase I of this trial will be over in one week,  
2 so that's the 5th, 6th, 7th, 8th and 9th, and, if there is a  
3 finding of first degree murder, I think the penalty hearing,  
4 including deliberations, will take no more than the 12th, 13th  
5 and 14th.

6 So with all of that preface in mind, I ask you this  
7 question. This trial is estimated to last parts of the next  
8 two weeks. Are there any jurors who would suffer an undue  
9 burden in sitting for this length of time?

10 First row, what's your name and number, sir?

11 PROSPECTIVE JUROR CAMPITELLI: Anthony Campitelli,  
12 556.

13 THE COURT: Let me get back to you, sir. There's a  
14 lot of hands up. Thank you.

15 Second row, yes, sir. Name and number?

16 PROSPECTIVE JUROR MALEN: Jon Malen, 565.

17 THE COURT: Yes, sir.

18 PROSPECTIVE JUROR PAYNE: Ronald Payne, 566.

19 THE COURT: Yes, sir.

20 PROSPECTIVE JUROR KRIZEWICZ: 563.

21 THE COURT: And what's your name, sir?

22 PROSPECTIVE JUROR KRIZEWICZ: Dave Krizewicz.

23 THE COURT: Say again?

24 PROSPECTIVE JUROR KRIZEWICZ: Dave Krizewicz.

25 THE COURT: Third row, yes, sir.

1 PROSPECTIVE JUROR ASHMORE: 582.  
2 THE COURT: What's your name, sir?  
3 PROSPECTIVE JUROR ASHMORE: Todd Ashmore.  
4 THE COURT: Anybody in the fourth row? I don't  
5 think so.  
6 PROSPECTIVE JUROR LEWIS: Yeah.  
7 THE COURT: Oh, okay.  
8 PROSPECTIVE JUROR LEWIS: 589.  
9 THE COURT: What's your name, sir?  
10 PROSPECTIVE JUROR LEWIS: Ken Lewis.  
11 THE COURT: Fifth row? Are you in the fifth row? I  
12 think you are, sir. What's your name?  
13 PROSPECTIVE JUROR HASTINGS: I'm in the sixth.  
14 THE COURT: Yes. What?  
15 PROSPECTIVE JUROR HASTINGS: I'm in the sixth row.  
16 THE COURT: One, two, three -- Stony, where's the  
17 fifth row? I can't see from here.  
18 THE BAILIFF: Judge, there's a hand right here in  
19 the fourth row.  
20 PROSPECTIVE JUROR OBIE: 600.  
21 THE COURT: What's your name, sir?  
22 PROSPECTIVE JUROR OBIE: What's that?  
23 THE COURT: What's your name?  
24 PROSPECTIVE JUROR OBIE: Obie.  
25 THE COURT: Obie?

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1 PROSPECTIVE JUROR OBIE: O-B-I-E.  
2 THE COURT: Okay. We'll get back to you.  
3 Fifth row?  
4 PROSPECTIVE JUROR RUEMMELE: Damon Ruemmele, 603.  
5 THE COURT: Who else?  
6 PROSPECTIVE JUROR HASTINGS: 607, Robert Hastings.  
7 THE COURT: Mr. Ruemmele, what was your number?  
8 PROSPECTIVE JUROR RUEMMELE: 603.  
9 THE COURT: Anybody else in the fifth row?  
10 Yes, ma'am.  
11 PROSPECTIVE JUROR KABADIAN: 608, Serena Kadian.  
12 PROSPECTIVE JUROR OWEN: 611, Edward Owen.  
13 THE COURT: Yes, ma'am?  
14 PROSPECTIVE JUROR PAUL: 626, Valarie Paul.  
15 THE COURT: Paul?  
16 PROSPECTIVE JUROR PAUL: Paul.  
17 THE COURT: Okay, seventh -- sixth row? Yes, sir?  
18 PROSPECTIVE JUROR LOTHROP: 616, Stuart Lothrop.  
19 THE COURT: Say again the name.  
20 PROSPECTIVE JUROR LOTHROP: Lothrop, Stuart.  
21 THE COURT: Yes, sir?  
22 PROSPECTIVE JUROR FLECK: 617, Ken Fleck.  
23 THE COURT: Anybody else in that row?  
24 Yes, ma'am.  
25 PROSPECTIVE JUROR HOLLIS: 618, Linda Hollis.

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1 THE COURT: Linda what?  
2 PROSPECTIVE JUROR HOLLIS: Hollis.  
3 THE COURT: Hall?  
4 PROSPECTIVE JUROR HOLLIS: H-O-L-L-I-S.  
5 THE COURT: Yes, ma'am.  
6 PROSPECTIVE JUROR FOCHT: 622, Pam Focht.  
7 THE BAILIFF: Seventh row.  
8 THE COURT: And the seventh row is Mr. Wilson.  
9 PROSPECTIVE JUROR WILSON: Yes.  
10 THE CLERK: You've got another one over there.  
11 THE COURT: What's your badge number again, Mr.  
12 Wilson?  
13 PROSPECTIVE JUROR WILSON: 627.  
14 THE COURT: And, yes, sir?  
15 PROSPECTIVE JUROR DALLATORE: 637, David Dallatore.  
16 THE COURT: Okay, folks, when I'm talking reasons  
17 with you, keep your voices up. If she can pick it up on this  
18 recording, fine. Otherwise, we'll have you come up front.  
19 Now, as I already told you, only about one out of  
20 five of you is gonna have to sit on this jury, but I'll tell  
21 you, frankly, a lot of people are disappointed when they're  
22 not excused from the jury at this point. It takes a very  
23 compelling excuse to be removed from the jury at this point  
24 for a reason, but even if you don't want to serve on the jury,  
25 or think it's gonna be burdensome, the odds are even if you

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1 pass this stage you're still not gonna be on the jury.

2 Mr. Campitelli, what's your problem?

3 PROSPECTIVE JUROR CAMPITELLI: The only problem I  
4 could foresee would be my work schedule, Judge. I work from  
5 7:00 p.m. to 5:00 a.m. I'm off though on Sunday, Monday and  
6 Tuesday, so if it were a Wednesday that would be great, but if  
7 it happens to fall on a Thursday or a Friday that would mean  
8 that I would be up beyond --

9 THE COURT: What do you do for a living, sir?

10 PROSPECTIVE JUROR CAMPITELLI: Pardon me?

11 THE COURT: What do you do for a living?

12 PROSPECTIVE JUROR CAMPITELLI: I work at the Rio.  
13 I'm a supervisor there.

14 THE COURT: They're very good at giving you time  
15 off.

16 PROSPECTIVE JUROR CAMPITELLI: Yes, they are.

17 THE COURT: You won't be able to work and do this.

18 PROSPECTIVE JUROR CAMPITELLI: Yes.

19 THE COURT: But you can do one or the other.

20 PROSPECTIVE JUROR CAMPITELLI: But they do not  
21 recognize the day before. In other words, if I were to be  
22 here on Thursday, I would still have to work Wednesday.

23 THE COURT: No -- Well, we'll write a letter, if  
24 you're selected for the jury, and they'll let you off. We've  
25 had this experience in the past.

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1 PROSPECTIVE JUROR CAMPITELLI: That would be two  
2 days that -- 'cause I had gone over this with them before when  
3 I had to show up on last Monday.

4 THE COURT: Yeah. What I'm telling you is they have  
5 been very good at working with us. You can't work those kinds  
6 of hours and be a juror, but we can get -- we can get you off  
7 those hours.

8 PROSPECTIVE JUROR CAMPITELLI: Very good. Thank  
9 you.

10 THE COURT: Thank you.

11 Second row -- So if you are selected, Mr.  
12 Campitelli, we'll get together, we'll draft a letter and we'll  
13 get it to you and you can give it to your employer.

14 PROSPECTIVE JUROR CAMPITELLI: Thank you, Judge.

15 THE COURT: You're welcome.

16 Mr. Krizewicz, where are you?

17 PROSPECTIVE JUROR KRIZEWICZ: Right here, Judge.

18 THE COURT: What's your problem, sir?

19 PROSPECTIVE JUROR KRIZEWICZ: I got asthma and I  
20 also got a nervous -- I have a hard time speaking and talking  
21 and I don't put my words straight.

22 THE COURT: Well, of course, asthmatics, we've had  
23 lots of them here, unless you have an asthma attack, which  
24 we've never seen.

25 In terms of talking, of course, you're not gonna be

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1 doing the talking. You're gonna be doing the listening.

2 Let's keep you on at this point and we'll see how things work  
3 out.

4 Mr. Malen, what's your problem?

5 PROSPECTIVE JUROR MALEN: Sir, I've been out of work  
6 for two months and I finally got a job and I'm supposed to  
7 start tomorrow, so financially I'm way behind.

8 THE COURT: Well, we're gonna get you about twenty  
9 dollars (\$20) a day if we get you on this jury.

10 PROSPECTIVE JUROR MALEN: That doesn't pay my  
11 mortgage though.

12 THE COURT: No, but we're gonna, unfortunately,  
13 we're gonna keep you here for at least a little while longer.

14 What kind of job did you just get, Mr. Malen?

15 PROSPECTIVE JUROR MALEN: In the alarm field, alarm  
16 technician.

17 THE COURT: Okay, if it will help them keep that job  
18 open for about eight more days, we'll be glad to write you a  
19 letter telling what you're doing for the community.

20 Mr. Payne, what's your problem?

21 PROSPECTIVE JUROR PAYNE: Your Honor, I have a  
22 daughter graduating on Wednesday at 8:30 a.m. and I would hate  
23 to miss that.

24 THE COURT: What's she graduating?

25 PROSPECTIVE JUROR PAYNE: I would love to serve on

1 the jury, but --  
2 THE COURT: What's she graduating?  
3 PROSPECTIVE JUROR PAYNE: She's graduating from high  
4 school with honors.  
5 THE COURT: Okay, we'll get back to you. Thanks.  
6 Mr. Ashmore, what's your problem?  
7 PROSPECTIVE JUROR ASHMORE: Yes, I work for a bank  
8 and we are currently involved in data migration from the  
9 current database to an Oracle database and it's imperative  
10 that I am part of this process.  
11 THE COURT: They can wait a few days. And, again,  
12 if you would like a letter telling them that you're doing your  
13 civic duty, we'll be glad to give it to you.  
14 Mr. Lewis, what's your problem?  
15 PROSPECTIVE JUROR LEWIS: I'm self-employed and I  
16 have four contracts that are -- deadlines that are major that  
17 has to be done.  
18 THE COURT: What kind of business you in?  
19 PROSPECTIVE JUROR LEWIS: In financial planning.  
20 THE COURT: Okay, thank you.  
21 Mr. Obie, what's your problem?  
22 PROSPECTIVE JUROR OBIE: It just puts me way behind  
23 at work, Judge, but I'll stay.  
24 THE CLERK: I can't hear you.  
25 THE COURT: Thank you. It's gonna put him -- Don't

1 worry about it. It's gonna put him way behind at work, but  
2 he'll stay. He's predicting that and he's right.

3 Mr. Rueemmele, what is your problem?

4 PROSPECTIVE JUROR RUEEMMELE: My problem --

5 THE COURT: It's Rueemmele. I'm sorry.

6 PROSPECTIVE JUROR RUEEMMELE: -- would be the ability  
7 to work overtime. As a paramedic for the County, we're given  
8 that opportunity a lot and with a child on the way it would be  
9 nice to work some of that overtime.

10 THE COURT: That's the kind of sacrifice I'm afraid  
11 that people are gonna have to make to sit on the jury. We'll  
12 try to -- And what we'll do here, folks, if you notice, we're  
13 starting earlier -- and on Wednesdays and Fridays we start  
14 even earlier. We can get this case over in a very quick  
15 fashion and still do justice, I believe, to both sides, by  
16 having short lunch hours and short recesses and starting as  
17 early as possible. So we're gonna try to move through this  
18 thing, not because it's unimportant, but because your lives  
19 are important, as quickly as possible, but it is important  
20 that some of you make some sacrifices to be here.

21 Mr. Hastings, what's your problem?

22 PROSPECTIVE JUROR HASTINGS: Yes. I'm going on  
23 vacation starting Friday and I was going out of town.

24 THE COURT: Where are you going?

25 PROSPECTIVE JUROR HASTINGS: We're going up to Cedar

1 City, Utah.

2 THE COURT: How long you had those plans?

3 PROSPECTIVE JUROR HASTINGS: I've had 'em for a  
4 couple of weeks now, sir.

5 THE COURT: Got any deposits up over there?

6 PROSPECTIVE JUROR HASTINGS: No, I don't.

7 THE COURT: And where do you work, sir?

8 PROSPECTIVE JUROR HASTINGS: Golden Nugget.

9 THE COURT: Okay, well, if you don't have deposits,  
10 we'll be glad to get you a letter and they'll probably give  
11 you another time off and you can go to Cedar City.

12 By the way, we don't like to play games in here.  
13 I'll tell you also, the further back in the room you're  
14 sitting, the less likely you'll be on the jury anyway. So if  
15 you're thinking to yourself, "Well, I wish that son of a gun  
16 would have excused me," and you're way back in the room, you  
17 probably aren't gonna be on the jury anyway, but we don't know  
18 that yet.

19 Mr. Owen, what's your problem?

20 PROSPECTIVE JUROR OWEN: I'm going on vacation.  
21 Friday and I'll be gone all next week.

22 THE COURT: Where are you going?

23 PROSPECTIVE JUROR OWEN: I'm going to Flagstaff. I  
24 have paid for my room and also for golf and everything else  
25 we're doing while we're there.

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1 THE COURT: Okay, thank you.  
2 Mr. Kabadian -- or Ms. Kabadian, what's your  
3 problem?  
4 PROSPECTIVE JUROR KABADIAN: Yes, I lost my job  
5 three months ago and I just now had an opportunity to start a  
6 new one. It's a temp to perm position and the agency does not  
7 pay jury duty. And I have house payments, car payments, et  
8 cetera.  
9 THE COURT: Okay. Well, we can get you a little  
10 money for the next week and we'll be glad to write a letter to  
11 this temp agency telling them that you very much would like to  
12 be with them, but you can't.  
13 And, finally, in the fifth row, Ms. Paul, what's  
14 your problem?  
15 PROSPECTIVE JUROR PAUL: Yes, I just started a new  
16 job and I'm in training and I don't get paid for being on a  
17 jury.  
18 THE COURT: What kind of job?  
19 PROSPECTIVE JUROR PAUL: It's a CSR at Ross-Nikos  
20 [phonetic].  
21 THE COURT: Okay, thank you.  
22 Is it Mr. Lothrop that raised his hand?  
23 PROSPECTIVE JUROR LOTHROP: Yes, sir.  
24 THE COURT: What's your problem?  
25 PROSPECTIVE JUROR LOTHROP: In March of this year I

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1 paid non-refundable tickets for my grandchildren to fly out  
2 here this coming Saturday. Their parents have coordinated  
3 their vacation so that they could come on vacation from June  
4 10th to June 17th and I brought documentation to show that.

5 THE COURT: Okay, but --

6 PROSPECTIVE JUROR LOTHROP: 'Cause it's prepaid and  
7 it's all -- it's all scheduling.

8 THE COURT: You are married, sir, and your wife's  
9 also retired?

10 PROSPECTIVE JUROR LOTHROP: Yes, she is.

11 THE COURT: Okay, so you'd have the weekend with  
12 them and part of that next week, right?

13 PROSPECTIVE JUROR LOTHROP: Yes, sir, but --

14 THE COURT: Even if you had to be here.

15 PROSPECTIVE JUROR LOTHROP: She doesn't drive, so  
16 that doesn't help me very much.

17 THE COURT: I see. Okay, thank you.

18 Ms. Fleck, what's your problem -- Mr. Fleck?

19 PROSPECTIVE JUROR FLECK: My daughter graduates from  
20 high school Thursday and my wife has back surgery the 12th.

21 THE COURT: What time is your graduation?

22 PROSPECTIVE JUROR FLECK: It's in the morning.

23 THE COURT: Do you know what time?

24 PROSPECTIVE JUROR FLECK: No, I don't.

25 THE COURT: Because we're not gonna start on



1 Thursday -- We may even be through with the witnesses by  
2 Thursday, but we're probably not gonna stop 'til -- start 'til  
3 9:30.

4 Do you know what time the graduation is? Did you  
5 say you don't?

6 PROSPECTIVE JUROR FLECK: No, I don't know what time  
7 it is in the morning.

8 THE COURT: Okay, thank you.

9 Ms. Hollis, what's your problem?

10 PROSPECTIVE JUROR HOLLIS: The same thing, my  
11 daughter graduates Thursday at 8:30.

12 THE COURT: Okie-doke.

13 I've learned for graduations that if you're not  
14 there, but you give a tremendous gift, they don't --

15 Where's Ms. Focht? What's your problem?

16 PROSPECTIVE JUROR FOCHT: I'm trying to get into the  
17 doctor as soon as I can. I have a vein in my neck that over  
18 the weekend just started popping out and I don't know whether  
19 it's dangerous or not.

20 THE COURT: Okay, thank you.

21 Now, Mr. Wilson?

22 PROSPECTIVE JUROR WILSON: Yes, sir.

23 THE COURT: When is the surgery?

24 PROSPECTIVE JUROR WILSON: I think it's on the 18th,  
25 but I have trouble remembering dates. It could be on the

1 15th, but I thought it was on the 18th.  
2 THE COURT: It's an angiogram, right?  
3 PROSPECTIVE JUROR WILSON: Yes, that's the --  
4 They're going in for the angiogram and then they might have to  
5 do the angioplasty.  
6 THE COURT: Okay, thank you.  
7 PROSPECTIVE JUROR WILSON: Okay.  
8 THE COURT: And finally, Mr. Dallatore, what's your  
9 problem?  
10 PROSPECTIVE JUROR DALLATORE: Just for the pain, if  
11 I will sit for any length of time in one position, the  
12 medication I take, my memory's shot.  
13 THE COURT: What kind of medication you on, sir?  
14 PROSPECTIVE JUROR DALLATORE: For my back pain and  
15 blood pressure.  
16 THE COURT: Okay, I take a fair amount of pain.  
17 medication and blood pressure medication.  
18 What's your name again?  
19 PROSPECTIVE JUROR DALLATORE: Dallatore.  
20 THE COURT: Okay, that's just a little joke, but I  
21 think I have a pretty good memory and we take fairly frequent  
22 breaks.  
23 How frequently do you have to get up?  
24 PROSPECTIVE JUROR DALLATORE: It depends on the  
25 chair.

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1 THE COURT: Well, these are --

2 PROSPECTIVE JUROR DALLATORE: I'm serious.

3 THE COURT: These are just beautiful. They have cup  
4 holders and they recline. Let's take that up later.

5 Okay, would counsel approach the bench with their  
6 jury lists, please?

7 (Off-record bench conference)

8 THE COURT: All right, the following individuals,  
9 and only these individuals, are excused from the further  
10 stages of this trial to report back to the Jury Commissioner  
11 with our thanks.

12 Mr. Payne, Jury Number 566, you're excused. 611,  
13 Mr. Owen, is excused. Mr. Lothrop, 616, is excused. Mr.  
14 Fleck, 617, is excused. Ms. Hollis, 618, is excused. Ms.  
15 Focht, Number 622, is excused. Mr. Wilson, 627, is excused.

16 PROSPECTIVE JUROR WILSON: Thank you.

17 THE COURT: You're welcome.

18 All right, we're gonna seat 12 of you in the box and  
19 we're gonna ask you some additional questions -- or actually  
20 counsel are going to ask you some additional questions.

21 Bruce, 552; Warren, 553; Dierdre Riley, 554; Ms.  
22 Tackley, 555; Mr. Campitelli, Leo's supervisor, 556; Mr. Fink,  
23 Mr. Morine.

24 Is it -- That ain't --

25 PROSPECTIVE JUROR MORINE: Morine.

1 THE COURT: Morine, 558; Ms. Day, 559; Mr. Baker,  
2 560; Ms. Cole, 561; Mr. Garceau, 562; and Mr. Krizewicz, 563.

3 All right, now the folks are gonna ask you some  
4 questions, both the defense and the prosecution. So that you  
5 know, it's no big mystery to you, they ask you questions,  
6 first you 12, and then some of you in the audience, and then,  
7 if they have no cause to get you off, they are each permitted  
8 to use, but don't have to use, eight peremptory challenges  
9 each. So if a few go for cause, as many as 16 more of you may  
10 be needed, so you can see why we're not gonna need all of you.  
11 And then we're gonna pick a couple of alternates to sit in the  
12 relatively cheap seats and wait for somebody to get sick.

13 Okay, the prosecution may inquire. Thank you.

14 MR. DASKAS: Thank you, Judge.

15 Mrs. Bruce, good morning.

16 PROSPECTIVE JUROR BRUCE: Good morning.

17 MR. DASKAS: You heard the Judge mention a few  
18 moments ago that the State has the burden in this case of  
19 proving the defendant's guilt beyond a reasonable doubt.

20 You recall that statement?

21 PROSPECTIVE JUROR BRUCE: Yes.

22 MR. DASKAS: And, of course, you understand it?

23 PROSPECTIVE JUROR BRUCE: Yes.

24 MR. DASKAS: If, after hearing the evidence in this  
25 case, you're indeed convinced of the defendant's guilt beyond

1 a reasonable doubt, can you promise the State that you will  
2 return verdicts of guilt?

3 PROSPECTIVE JUROR BRUCE: Yes.

4 MR. DASKAS: Does it trouble you at all that once  
5 the guilt phase is concluded and if there's a conviction you  
6 would be sitting as a juror to determine the punishment in  
7 this case?

8 PROSPECTIVE JUROR BRUCE: I wouldn't say trouble so  
9 much. It's just -- It's a concern. It's a very large  
10 decision to make.

11 MR. DASKAS: And certainly I think we'd all agree  
12 with that. And, obviously, I assume you're talking about the  
13 fact that this is a death penalty case.

14 PROSPECTIVE JUROR BRUCE: Correct.

15 MR. DASKAS: You indicated in your responses that  
16 you would consider the death penalty in certain circumstances,  
17 is that true?

18 PROSPECTIVE JUROR BRUCE: Correct.

19 MR. DASKAS: I'm sure you, like most of us, have had  
20 philosophical discussions about the death penalty, is that  
21 accurate?

22 PROSPECTIVE JUROR BRUCE: Some, yes.

23 MR. DASKAS: You understand that it's a real  
24 possibility, in a week and a half or two weeks, we, the State  
25 of Nevada, will ask you to vote to put somebody to death who's

1 seated in this courtroom?

2 PROSPECTIVE JUROR BRUCE: Yes.

3 MR. DASKAS: You understand that?

4 PROSPECTIVE JUROR BRUCE: Yes.

5 MR. DASKAS: And obviously you understand how  
6 serious that is?

7 PROSPECTIVE JUROR BRUCE: Yes.

8 MR. DASKAS: Can you promise me that at least you  
9 can consider that as an option, as a possibility, in this  
10 case, that you could vote for the death penalty if this is the  
11 appropriate case?

12 PROSPECTIVE JUROR BRUCE: Yes.

13 MR. DASKAS: You understand that sympathy is to play  
14 no part in your deliberations in this case, at least in terms  
15 of the guilt phase of this case?

16 PROSPECTIVE JUROR BRUCE: Yes.

17 MR. DASKAS: You indicated on your questionnaire,  
18 and correct me if I'm wrong, that you thought life in prison  
19 without the possibility of parole is a worse punishment than  
20 the death penalty.

21 PROSPECTIVE JUROR BRUCE: I think in some cases it  
22 could be.

23 MR. DASKAS: Can you elaborate on that for me,  
24 please?

25 PROSPECTIVE JUROR BRUCE: Well, they're to spend the

1 rest of their life without parole in prison to think about  
2 what they did, whereas if they get the death penalty, in some  
3 cases, they're put out of their misery quickly. It depends on  
4 the circumstances again.

5 MR. DASKAS: You mentioned that somebody in that  
6 situation, who received life without, would be left to dwell  
7 on what they had done. I believe those were your words.

8 PROSPECTIVE JUROR BRUCE: Correct.

9 MR. DASKAS: Would you still feel like life without  
10 parole was a worse punishment than death if the person who  
11 received life without didn't care about what he or she did?

12 PROSPECTIVE JUROR BRUCE: No.

13 MR. DASKAS: Then you think, perhaps, death could be  
14 worse?

15 PROSPECTIVE JUROR BRUCE: Yes.

16 MR. DASKAS: Okay. Do you have any difficulty  
17 sitting in judgment of a fellow human being?

18 PROSPECTIVE JUROR BRUCE: No.

19 MR. DASKAS: You feel like you could listen to the  
20 evidence, judge the conduct that is alleged to have occurred  
21 in this case and make a decision?

22 PROSPECTIVE JUROR BRUCE: Yes.

23 MR. DASKAS: Is there anything that you think we or  
24 the defense should know about you before we select you as a  
25 juror in this case?

1 PROSPECTIVE JUROR BRUCE: Nothing that I can think  
2 of.

3 MR. DASKAS: All right, thank you for your time.

4 PROSPECTIVE JUROR BRUCE: You're welcome.

5 (Pause in the proceedings)

6 MR. GUYMON: Juror Number 553, is that right?

7 PROSPECTIVE JUROR WARREN: Yes.

8 MR. GUYMON: Mr. Warren?

9 PROSPECTIVE JUROR WARREN: Yes, sir.

10 MR. GUYMON: All right. Tell me your thoughts about  
11 our criminal justice system, if you could.

12 PROSPECTIVE JUROR WARREN: My thoughts are that with  
13 a jury -- I believe, as the Judge said, that you must prove  
14 the person guilty beyond a reasonable doubt and that with a  
15 jury of 12, or eight in a civil case, that even if one  
16 believes the person is not guilty then, with that one, that  
17 person could be saved and that may be the case, that he's not  
18 guilty. So with 12, if there is an agreement between the 12,  
19 then that is the judgment and that's how it should be.

20 MR. GUYMON: And do you think that our criminal  
21 justice system holds people accountable for their criminal  
22 conduct?

23 PROSPECTIVE JUROR WARREN: For the most part, yes.

24 MR. GUYMON: Okay. And how do you feel about being  
25 called upon to hold Donte Johnson accountable for his conduct



1 on the night in question?

2 PROSPECTIVE JUROR WARREN: I feel that it's an honor  
3 to be called to be a juror.

4 MR. GUYMON: Okay. If the State proves that Donte  
5 Johnson, in fact, committed heinous felony crimes here in the  
6 State of Nevada, can you return a verdict that reflects that?

7 PROSPECTIVE JUROR WARREN: Yes, I can.

8 MR. GUYMON: And do you have any uneasiness about  
9 passing judgment on his conduct, whether it be religious  
10 reasons or philosophical reasons, about passing judgment on  
11 someone's criminal conduct in this courtroom?

12 PROSPECTIVE JUROR WARREN: No, sir.

13 MR. GUYMON: Tell me, with regard to punishment,  
14 what are your thoughts about punishing people for criminal  
15 conduct?

16 PROSPECTIVE JUROR WARREN: I believe that the  
17 punishment should fit the crime if the person is proven  
18 guilty. The background should be taken into consideration in  
19 a case such as this. I do not have any qualms about the death  
20 penalty, about life in prison without parole or with parole.  
21 It should be taken into consideration, brutality, background  
22 and the defendant himself.

23 MR. GUYMON: Okay. You mentioned a series of  
24 things, brutality and the like. Do you, in fact, believe that  
25 the worst offenses should receive the worst punishment?

1 PROSPECTIVE JUROR WARREN: Again, depending on the  
2 background, yes.

3 MR. GUYMON: Okay, background is important to you.  
4 Tell me --

5 PROSPECTIVE JUROR WARREN: It is.

6 MR. GUYMON: Tell me why.

7 PROSPECTIVE JUROR WARREN: Because if the defendant  
8 does not show a history of crime, the penalty might be life in  
9 prison without parole. If there is a history of crime and  
10 brutality, maybe the death penalty. It depends upon the  
11 person.

12 MR. GUYMON: At the time you came about a week ago  
13 to fill out the questionnaire, and, of course, I have a  
14 questionnaire for each one of you, had you given much thought  
15 to the death penalty here in our community?

16 PROSPECTIVE JUROR WARREN: I had, but when I filled  
17 out the questionnaire it really hit me.

18 MR. GUYMON: Okay.

19 PROSPECTIVE JUROR WARREN: At that time.

20 MR. GUYMON: You would agree that it's one thing to  
21 perhaps have -- talk over cookies and milk about the death  
22 penalty and it's another thing to be in that position, isn't  
23 it?

24 PROSPECTIVE JUROR WARREN: Actually be in that  
25 position. It is.

1 MR. GUYMON: And as a juror you realize you may find  
2 yourself in that position?

3 PROSPECTIVE JUROR WARREN: I do.

4 MR. GUYMON: Do you understand how real that  
5 decision is?

6 PROSPECTIVE JUROR WARREN: I think it really hit  
7 when I filled out the questionnaire.

8 MR. GUYMON: Do you believe that you have the  
9 intestinal fortitude, for lack of a better word, to impose the  
10 death penalty if you truly believe that it's fit for this  
11 crime?

12 PROSPECTIVE JUROR WARREN: If I truly believed it,  
13 yes.

14 MR. GUYMON: Okay. Lastly, when we talk about  
15 judging witnesses, obviously, as a juror, you'll be called  
16 upon to judge the credibility of witnesses.

17 PROSPECTIVE JUROR WARREN: Correct.

18 MR. GUYMON: To listen to all of the testimony and  
19 reach a just verdict.

20 PROSPECTIVE JUROR WARREN: Right.

21 MR. GUYMON: Is that something you think you can do?

22 PROSPECTIVE JUROR WARREN: I believe I can, yes.

23 MR. GUYMON: Can you give each of the witnesses a  
24 chance to be believed despite their choices, their lifestyles?

25 PROSPECTIVE JUROR WARREN: Yes, I can.

1 MR. GUYMON: Okay. You may hear talk about drug use  
2 in this case.  
3 PROSPECTIVE JUROR WARREN: Yeah.  
4 MR. GUYMON: Perhaps even witnesses that have chosen  
5 to use drugs.  
6 PROSPECTIVE JUROR WARREN: Okay.  
7 MR. GUYMON: Will those people have a chance to be  
8 believed?  
9 PROSPECTIVE JUROR WARREN: They will have a chance  
10 to be believed, yes.  
11 MR. GUYMON: Do they have a fair chance to be  
12 believed?  
13 PROSPECTIVE JUROR WARREN: Yes, they do.  
14 MR. GUYMON: Okay. And, lastly, do you have any  
15 preconceived ideas of what the term beyond a reasonable doubt  
16 means?  
17 PROSPECTIVE JUROR WARREN: Preconceived, no.  
18 MR. GUYMON: Okay, can you --  
19 PROSPECTIVE JUROR WARREN: Beyond a reasonable doubt  
20 is that you are sure that the defendant is guilty.  
21 MR. GUYMON: Okay. And I --  
22 PROSPECTIVE JUROR WARREN: Well, you don't have any  
23 doubts there.  
24 MR. GUYMON: Okay.  
25 PROSPECTIVE JUROR WARREN: I mean, unreal doubts.

1 MR. GUYMON: Very well.

2 Let me ask you this. Can you set aside whatever  
3 your beliefs are about the law, say about what maybe murder is  
4 or about what kidnapping is or about what a robbery is or a  
5 burglary, the offenses in this case, and follow the  
6 instructions that the Judge gives you as to what the law is?

7 PROSPECTIVE JUROR WARREN: Yes, sir.

8 MR. GUYMON: Do you have any preconceived ideas of  
9 what a murderer might look like or how he or she might act?

10 PROSPECTIVE JUROR WARREN: No, sir. There are  
11 different -- You've seen on TV, after somebody is convicted,  
12 each one looks different. There's no --

13 MR. GUYMON: That's good.

14 Will both the State and the defense get a fair trial  
15 if you're a juror in this case?

16 PROSPECTIVE JUROR WARREN: Definitely.

17 MR. GUYMON: Will the penalty be fair if you're  
18 called upon to chose it?

19 PROSPECTIVE JUROR WARREN: Yes, sir.

20 MR. GUYMON: Thank you.

21 MR. DASKAS: Mrs. Riley, is it?

22 PROSPECTIVE JUROR RILEY: Yes.

23 MR. DASKAS: Good morning.

24 PROSPECTIVE JUROR RILEY: Good morning.

25 MR. DASKAS: There's been some discussion this.

1 morning already about the State's burden in this case, that  
2 it's to prove the defendant's guilt beyond a reasonable doubt.  
3 I'm sure you heard that discussion.

4 Do you understand that that is the same burden in  
5 every criminal case, in every courtroom, across this country?

6 PROSPECTIVE JUROR RILEY: Yes.

7 MR. DASKAS: There's nothing magical about the  
8 burden in this case.

9 PROSPECTIVE JUROR RILEY: Right.

10 MR. DASKAS: You understand that it's the same  
11 burden if this were a traffic ticket trial?

12 PROSPECTIVE JUROR RILEY: Yes.

13 MR. DASKAS: Or a petty larceny. In other words,  
14 the seriousness of the crime doesn't change the State's  
15 burden.

16 PROSPECTIVE JUROR RILEY: Right.

17 MR. DASKAS: All right. In your questionnaire you  
18 indicated, and I don't mean to put words in your mouth, that  
19 you're not sure if you could vote for the death penalty.

20 PROSPECTIVE JUROR RILEY: It's a -- It's a huge  
21 decision affecting another human being.

22 MR. DASKAS: I understand. Is there something about  
23 your background, either religiously, philosophically or  
24 otherwise, that causes you some reluctance to either sit as a  
25 juror or vote for the death penalty in this case?

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1 PROSPECTIVE JUROR RILEY: I'm not sure I understand  
2 what you're asking me.

3 MR. DASKAS: Well, in a week and a half or two  
4 weeks, if you're selected as a juror, --

5 PROSPECTIVE JUROR RILEY: Right.

6 MR. DASKAS: -- there's a very real possibility --

7 PROSPECTIVE JUROR RILEY: Right.

8 MR. DASKAS: -- that you'll be called upon to make  
9 that decision, that you will be called upon by the State to  
10 check the box that says death penalty against somebody seated  
11 in this courtroom.

12 PROSPECTIVE JUROR RILEY: Right.

13 MR. DASKAS: Do you feel like you have the capacity  
14 to do that?

15 PROSPECTIVE JUROR RILEY: If I felt the evidence was  
16 overwhelming and that, you know, it would guide me towards  
17 that, yes. It's not something I would do lightly though.

18 MR. DASKAS: And I appreciate that. And we  
19 certainly wouldn't want you to take this lightly.

20 You say the evidence would have to be overwhelming?

21 PROSPECTIVE JUROR RILEY: Right.

22 MR. DASKAS: Tell me what you mean by that, when you  
23 say overwhelming.

24 PROSPECTIVE JUROR RILEY: I think I would have to  
25 feel that there was a very cold-hearted -- cold-hearted

1 feeling that guided someone to commit a crime like murder. I  
2 would have to feel that it was definitely not an accident. I  
3 mean, it would have to be something very intentional and very  
4 cruel.

5 MR. DASKAS: Okay. You also indicated in your  
6 questionnaire that you find it difficult to decide somebody  
7 else's fate?

8 PROSPECTIVE JUROR RILEY: Right, I find -- You know,  
9 I mean, we're not supposed to stand in judgment of other  
10 people, however, I feel like if I'm in a group of 12 and we  
11 all agree, then I would feel easier about that.

12 MR. DASKAS: Okay. I take it, then, you do have  
13 some reluctance to judge a fellow human being?

14 PROSPECTIVE JUROR RILEY: Yes, I do.

15 MR. DASKAS: Does that stem from a religious belief?

16 PROSPECTIVE JUROR RILEY: I don't know. It's just  
17 the way I am.

18 MR. DASKAS: All right. You mentioned that if  
19 everybody agreed on the jury that death was the appropriate  
20 punishment, you could vote for death, is that true?

21 PROSPECTIVE JUROR RILEY: Yes.

22 MR. DASKAS: Can you imagine a scenario where  
23 perhaps you thought death was appropriate even though 11 other  
24 people didn't or are you just inclined to go along with your  
25 fellow jurors?



1 PROSPECTIVE JUROR RILEY: Well, when I say all 12, I  
2 include myself. If I had a strong feeling opposite of what  
3 the other 11 were saying, I would certainly stand my ground.

4 MR. DASKAS: You feel like people should be held  
5 accountable for their criminal conduct?

6 PROSPECTIVE JUROR RILEY: Yes, I do.

7 MR. DASKAS: And you feel like people should be  
8 punished according to the crime that he or she committed?

9 PROSPECTIVE JUROR RILEY: Yes, I do.

10 MR. DASKAS: Do you also feel that before you decide  
11 the appropriate punishment in any case that you should have  
12 some background information about the person whose fate you're  
13 deciding?

14 PROSPECTIVE JUROR RILEY: Well, I don't -- I don't  
15 know how much of that we're entitled to. I know I want all  
16 the information about the case, you know, the crime, the  
17 alleged crime, and what happened and what evidence there was.

18 MR. DASKAS: You, at least personally, believe it  
19 would be important to have as much information about both the  
20 crime and the defendant's background before you could decide  
21 what punishment was appropriate?

22 PROSPECTIVE JUROR RILEY: I really don't know about  
23 the background portion of it. I don't -- I don't know. Do we  
24 get that? I mean, I'm not --

25 MR. DASKAS: Well, you'll get --

1 PROSPECTIVE JUROR RILEY: I'm not usually involved  
2 in this kind of stuff, so --

3 MR. DASKAS: And I'm not asking you to tell me what  
4 the law is and what you're entitled to, but whether you  
5 believe personally that you should get that information.

6 PROSPECTIVE JUROR RILEY: Yeah, it would help, sure.

7 MR. DASKAS: Number 34, which is page 9 of your  
8 questionnaire, the question is this. "Do you believe that you  
9 personally could vote to impose the death penalty if you  
10 believed that it was warranted in a particular case?" There's  
11 a yes and a no box to check and you checked neither box. In  
12 fact, you wrote the words, "Not sure."

13 PROSPECTIVE JUROR RILEY: Right.

14 MR. DASKAS: You recall doing that?

15 PROSPECTIVE JUROR RILEY: Right.

16 MR. DASKAS: At least at the time you filled out the  
17 questionnaire, you couldn't decide one way or the other  
18 whether you could or couldn't impose death in any given case?

19 PROSPECTIVE JUROR RILEY: Right.

20 MR. DASKAS: Do you feel any differently as you sit  
21 here today?

22 PROSPECTIVE JUROR RILEY: I guess it's hard to say,  
23 until you hear all the evidence, whether you could make that  
24 vote or not.

25 MR. DASKAS: Still somewhat reluctant, I guess, to

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1 make a decision about whether you could or couldn't vote that.  
2 PROSPECTIVE JUROR RILEY: I feel -- I just feel like  
3 I'd have to hear all the facts before I would be moved to vote  
4 one way or the other.  
5 MR. DASKAS: Can you make me this promise.  
6 PROSPECTIVE JUROR RILEY: Okay.  
7 MR. DASKAS: If you receive the facts, whatever they  
8 need -- whatever facts you need, in other words, --  
9 PROSPECTIVE JUROR RILEY: Right.  
10 MR. DASKAS: -- if you receive those facts in this  
11 case and you personally believe that this is the appropriate  
12 case for death, can you promise me that you could consider  
13 that and that you have the capacity to return that verdict?  
14 PROSPECTIVE JUROR RILEY: Yes.  
15 MR. DASKAS: Thank you.  
16 MR. GUYMON: I guess by now you can tell we're kind  
17 of going even and odd badge numbers.  
18 How are you today?  
19 PROSPECTIVE JUROR TACKLEY: Okay.  
20 MR. GUYMON: It's Tackley, is that right?  
21 PROSPECTIVE JUROR TACKLEY: Right.  
22 MR. GUYMON: All right. Ms. Tackley, you know Dan  
23 Baldwin?  
24 PROSPECTIVE JUROR TACKLEY: Yes.  
25 MR. GUYMON: All right. Is that a neutral in this

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1 whole equation?

2 PROSPECTIVE JUROR TACKLEY: Yeah, it doesn't matter.

3 MR. GUYMON: All right. Give me your thoughts about  
4 our criminal justice system.

5 PROSPECTIVE JUROR TACKLEY: I think, in principle,  
6 that it's the best system around. Sometimes, in practice, it  
7 leaves something to be desired.

8 MR. GUYMON: Okay. Have you had both favorable and  
9 not so favorable experiences with our criminal justice system?

10 PROSPECTIVE JUROR TACKLEY: Well, fortunately, I  
11 haven't had any experiences with the criminal justice system.

12 MR. GUYMON: And I guess what I mean by that is say  
13 following it as a citizen in the paper and the like, is there  
14 times when you read the case and you say, "Gee, that crime got  
15 the punishment it deserved"?

16 PROSPECTIVE JUROR TACKLEY: Yeah.

17 MR. GUYMON: And I'm sure the inverse.

18 PROSPECTIVE JUROR TACKLEY: Right.

19 MR. GUYMON: What are your thoughts about law  
20 enforcement?

21 PROSPECTIVE JUROR TACKLEY: I think, for the most  
22 part, that law enforcement does a really good job.

23 MR. GUYMON: Okay. Do you have any thoughts about  
24 being a juror? I note that you have not been a juror  
25 previously, is that correct?

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1 PROSPECTIVE JUROR TACKLEY: Right.  
2 MR. GUYMON: Okay, tell me your thoughts about being  
3 a juror.  
4 PROSPECTIVE JUROR TACKLEY: Well, it's something  
5 that I would have to do if I was called to do it, maybe not my  
6 favorite thing in the world, but --  
7 MR. GUYMON: And I understand that. As a juror  
8 you're gonna be called upon to pass judgment on the conduct of  
9 Donte Johnson, whether or not his conduct gives rise to  
10 criminal activity or not. Does that cause you any discomfort?  
11 PROSPECTIVE JUROR TACKLEY: No.  
12 MR. GUYMON: Religious beliefs, philosophical  
13 beliefs, I take it you could pass judgment on a person's  
14 conduct?  
15 PROSPECTIVE JUROR TACKLEY: Uh-huh.  
16 MR. GUYMON: And if the State proves beyond a  
17 reasonable doubt that the crimes that we've alleged have been  
18 committed, would your verdict reflect that?  
19 PROSPECTIVE JUROR TACKLEY: Yes.  
20 MR. GUYMON: All right. Now you indicated in your  
21 verdict [sic], and I'm gonna talk a little bit about -- Well,  
22 before I talk about penalty, let's talk about sitting in  
23 judgment and listening to facts. Is that something you feel  
24 like you'd be good at doing?  
25 PROSPECTIVE JUROR TACKLEY: Probably, yeah.

1 MR. GUYMON: All right. Do you feel like you can  
2 sort out, if there's conflicting testimony, and I don't know  
3 if there will be, but can you sort out conflicting testimony  
4 in your mind and find the truth?

5 PROSPECTIVE JUROR TACKLEY: Maybe. I mean, having  
6 no experience at it, maybe.

7 MR. GUYMON: Do you feel like you're fair in your  
8 judgments?

9 PROSPECTIVE JUROR TACKLEY: I try to be.

10 MR. GUYMON: I mentioned the witnesses that come  
11 into the courtroom. Some of them may have lifestyles or may  
12 have made choices that you may not approve of. Will those  
13 persons or people have a chance to be believed?

14 PROSPECTIVE JUROR TACKLEY: Yeah.

15 MR. GUYMON: Okay, there was some reservation and  
16 you almost rolled your eyes. Let me talk about that for a  
17 minute, because what we're trying to do is we're trying to get  
18 12 people that are gonna be fair about the evidence, no matter  
19 who delivers that evidence, that 12 people can be fair about  
20 receiving it. Tell me your reluctance on that question.

21 PROSPECTIVE JUROR TACKLEY: Oh, it wasn't really  
22 reluctance. I just try not to pass judgment on people from  
23 their appearances or lifestyles. I really try not to.  
24 Sometimes it's hard, but --

25 MR. GUYMON: Okay. It's tough to perhaps listen to

1 someone who may make choices that are completely contrary to  
2 your own?

3 PROSPECTIVE JUROR TACKLEY: Right.

4 MR. GUYMON: Can you concede that it's also possible  
5 that person too is telling the truth?

6 PROSPECTIVE JUROR TACKLEY: Sure.

7 MR. GUYMON: Okay. Give me your thoughts on  
8 punishment. I mentioned reading the paper some mornings and  
9 you might say, "Gee, that punishment just didn't fit the  
10 crime," is that true?

11 PROSPECTIVE JUROR TACKLEY: Yeah.

12 MR. GUYMON: In fact, I think you indicate that  
13 perhaps punishment isn't always what it should be in your  
14 questionnaire, is that right?

15 PROSPECTIVE JUROR TACKLEY: Yeah.

16 MR. GUYMON: You indicate you have very little  
17 tolerance for violence.

18 PROSPECTIVE JUROR TACKLEY: That's true.

19 MR. GUYMON: Crimes of violence you believe should  
20 be punished severely?

21 PROSPECTIVE JUROR TACKLEY: That's true.

22 MR. GUYMON: Okay. And prior to filling out the  
23 questionnaire had you thought much about the death penalty?

24 PROSPECTIVE JUROR TACKLEY: Not really.

25 MR. GUYMON: Okay.

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1 PROSPECTIVE JUROR TACKLEY: I've always been in  
2 favor of it, but it's just one of those things that's out  
3 there in another dimension.

4 MR. GUYMON: Okay. And sooner or later we're gonna  
5 bring it right here to this dimension, but let me ask you  
6 this. If you were in charge, in other words, you were the  
7 person in the state that said, "Either my state has the death  
8 or it doesn't have the death penalty," would the state that  
9 you organize have a death penalty?

10 PROSPECTIVE JUROR TACKLEY: Yes.

11 MR. GUYMON: And why?

12 PROSPECTIVE JUROR TACKLEY: I don't know that it's a  
13 particular deterrent to crime, but I also resent supporting  
14 convicted criminals for the rest of their natural lives.

15 MR. GUYMON: Can you -- When we talk about how  
16 having the death penalty and saying yes, can you see perhaps  
17 there may be a distinction in persons that commit first degree  
18 murder, and I understand that that's the worst crime you can  
19 commit, but would you agree that perhaps not all persons that  
20 commit the worst crime are the worst person?

21 Does that make sense?

22 PROSPECTIVE JUROR TACKLEY: No.

23 MR. GUYMON: Okay, let me see if I can't straighten  
24 that out then.

25 You've learned that there's four possible



1 punishments, that the lawmakers of our state have said, "Gee,  
2 first degree murder is the worst crime that can be committed,"  
3 but yet there's gonna be four different punishments. There's  
4 gonna be the death penalty and I think you and I will agree  
5 that that's the worst punishment you can get.

6 Is that a yes?

7 PROSPECTIVE JUROR TACKLEY: What?

8 COURT RECORDER: Answer out loud, please.

9 PROSPECTIVE JUROR TACKLEY: Yes. I'm sorry.

10 MR. GUYMON: That there's life without the  
11 possibility of parole, life with the possibility of parole and  
12 then there's a fixed term of years of -- What do we list here?  
13 I think it was 40 to 100, I think is the fixed term of years  
14 that we listed.

15 Can you see any wisdom in the laws or in the  
16 lawmakers that said, "We're gonna give jurors four choices for  
17 the worst offense"?

18 PROSPECTIVE JUROR TACKLEY: I don't believe that's  
19 more for the jurors than for the accused.

20 MR. GUYMON: And are you comfortable with those four  
21 choices?

22 PROSPECTIVE JUROR TACKLEY: Yeah.

23 MR. GUYMON: Can you consider those four choices?

24 PROSPECTIVE JUROR TACKLE: Uh-huh.

25 MR. GUYMON: And can you see how some -- And is that

1 a yes?

2 PROSPECTIVE JUROR TACKLEY: Yes. Sorry.

3 MR. GUYMON: And can you see how some offenses,  
4 while all offenses of first degree murder are truly first  
5 degree murder, and that's what the juror says in their mind  
6 and in their verdict, can you see how offenders may still be  
7 somewhat different? In other words, one person that does a  
8 first degree murder may be worse than a second person or  
9 another person.

10 PROSPECTIVE JUROR TACKLEY: Yeah, maybe.

11 MR. GUYMON: Okay. And do you believe that the  
12 worst of the worst should get the death penalty?

13 PROSPECTIVE JUROR TACKLEY: Yes.

14 MR. GUYMON: Now tell me this: You indicated that  
15 life without may be a worst punishment or a worse punishment.  
16 I'm sorry, I mispronounced that word.

17 PROSPECTIVE JUROR TACKLEY: Well, if prison were  
18 harsher to those that got that penalty, then I can see where  
19 it would be worse than the death penalty. I mean, a total  
20 loss of freedom is pretty rough.

21 MR. GUYMON: Okay.

22 PROSPECTIVE JUROR TACKLEY: But, to me, total loss  
23 of freedom doesn't include watching TV and the things that we  
24 enjoy now.

25 MR. GUYMON: Okay. And can you agree that even

1 worse than a total loss of freedom is the death penalty?  
2 PROSPECTIVE JUROR TACKLEY: In some cases.  
3 MR. GUYMON: Okay. Now let me ask you, lastly, it  
4 becomes very real if, in fact, we get to the second phase. We  
5 have a guilt phase and then we have a penalty phase. If we  
6 get to that penalty phase, and you understand how real it is  
7 when we stand before you and indicate that this crime is the  
8 worst of the worst and that perhaps the defendant too is the  
9 worst of the worst who commits that crime, if we do that and  
10 ask for the death penalty, can you give that serious  
11 consideration?  
12 PROSPECTIVE JUROR TACKLEY: Yes.  
13 MR. GUYMON: Can you tell me that, in fact, you  
14 would vote for it if you believe that it's appropriate?  
15 PROSPECTIVE JUROR TACKLEY: Yes, I would.  
16 MR. GUYMON: Is that something you're sure of?  
17 PROSPECTIVE JUROR TACKLEY: Uh-huh.  
18 MR. GUYMON: Thank you.  
19 COURT RECORDER: Is that a yes?  
20 PROSPECTIVE JUROR TACKLEY: Yes.  
21 MR. DASKAS: Mr. Campitelli, is that how it's  
22 pronounced?  
23 PROSPECTIVE JUROR CAMPITELLI: That's correct.  
24 MR. DASKAS: In your jury questionnaire regarding  
25 the question about which do you think is worse in terms of

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1 punishment, either the death penalty or life without parole,  
2 you checked actually both boxes and you wrote, "It would  
3 depend on the individual."

4           You recall doing that?

5           PROSPECTIVE JUROR CAMPITELLI: Yes, I do.

6           MR. DASKAS: Can you tell me what you meant by that?

7           PROSPECTIVE JUROR CAMPITELLI: It would depend on  
8 the individual what would be worse for them.

9           MR. DASKAS: A few moments --

10          PROSPECTIVE JUROR CAMPITELLI: I mean, I know what  
11 would be worse for me and I'm sure you know what would be the  
12 worse for you, correct?

13          MR. DASKAS: A few moments ago I spoke with Juror  
14 Number 552 and we discussed the fact that perhaps a defendant  
15 who had some remorse and would dwell on his or her crime might  
16 suffer worse by spending the rest of his or her life in prison  
17 without parole. Do you recall that?

18          PROSPECTIVE JUROR CAMPITELLI: Yes, I do.

19          MR. DASKAS: Is that what you had in mind when you  
20 answered that question?

21          PROSPECTIVE JUROR CAMPITELLI: Yes.

22          MR. DASKAS: I take it then, if a particular  
23 defendant had no remorse or didn't dwell on the crime that he  
24 or she committed, death might be a worse punishment?

25          PROSPECTIVE JUROR CAMPITELLI: Yes.

1 MR. DASKAS: Would you agree that the worst possible  
2 crime deserves the worst possible punishment?  
3 PROSPECTIVE JUROR CAMPITELLI: Yes, I do.  
4 MR. DASKAS: And would you agree that the worst  
5 possible criminal deserves the worst possible punishment?  
6 PROSPECTIVE JUROR CAMPITELLI: Yes, I do.  
7 MR. DASKAS: Do you feel like you have the capacity  
8 or the ability, if you believed that this indeed is the  
9 appropriate case for death, that you could indeed vote for a  
10 sentence of death in this case, in this courtroom, against  
11 this defendant?  
12 PROSPECTIVE JUROR CAMPITELLI: Yes, I can.  
13 MR. DASKAS: Can you make me that promise?  
14 PROSPECTIVE JUROR CAMPITELLI: Yes, I can.  
15 MR. DASKAS: We've discussed the burden that the  
16 State has in this case. Can you promise me that if you're  
17 convinced of the defendant's guilt beyond a reasonable doubt  
18 that you will indeed vote for verdicts of guilty on all the  
19 crimes?  
20 PROSPECTIVE JUROR CAMPITELLI: Yes.  
21 MR. DASKAS: If you had the opportunity to create  
22 your own society, your own state, your own government, would  
23 you have the death penalty?  
24 PROSPECTIVE JUROR CAMPITELLI: Yes, I would.  
25 MR. DASKAS: What benefits do you see in the death

1 penalty?

2 PROSPECTIVE JUROR CAMPITELLI: Just the fact that it  
3 might slow it down a little bit knowing that if that crime was  
4 -- you know, it might stop a little less -- there might be a  
5 little less murder in a state that had capital punishment.

6 MR. DASKAS: You feel like it might actually deter  
7 other criminals from committing crimes?

8 PROSPECTIVE JUROR CAMPITELLI: Hopefully.

9 MR. DASKAS: And it certainly would deter the  
10 defendant who received the capital --

11 PROSPECTIVE JUROR CAMPITELLI: Yes.

12 MR. DASKAS: Tell me your thoughts about the police  
13 in the Las Vegas community.

14 PROSPECTIVE JUROR CAMPITELLI: They're a good system  
15 and fair.

16 MR. DASKAS: If a police officer takes the stand,  
17 can you judge that police officer's credibility just like  
18 every other witness in the case?

19 PROSPECTIVE JUROR CAMPITELLI: I would have to judge  
20 him as an individual.

21 MR. DASKAS: And if a person took the stand who  
22 admitted to you drug use, choices that you and I perhaps  
23 wouldn't make, can you judge that person's credibility just  
24 like the police officer's credibility?

25 PROSPECTIVE JUROR CAMPITELLI: Just the same.

1 MR. DASKAS: Is there anything you think that we  
2 should know about you before you're selected as a juror in  
3 this case?  
4 PROSPECTIVE JUROR CAMPITELLI: No.  
5 MR. DASKAS: Will both the State of Nevada and the  
6 defense in this case get a fair trial?  
7 PROSPECTIVE JUROR CAMPITELLI: Yes.  
8 MR. DASKAS: Thank you. I appreciate that.  
9 MR. GUYMON: Good morning, Mr. Fink.  
10 PROSPECTIVE JUROR FINK: Good morning.  
11 MR. GUYMON: You indicate that you have a vacation  
12 planned June 16th to the 24th..  
13 PROSPECTIVE JUROR FINK: Correct.  
14 MR. GUYMON: Are you comfortable with the fact that  
15 this case will be over with by then?  
16 PROSPECTIVE JUROR FINK: Hopefully.  
17 MR. GUYMON: All right. Will the fact that you have  
18 a vacation in the near future trouble you as you sit as a  
19 juror in this case?  
20 PROSPECTIVE JUROR FINK: Depending how close it gets  
21 to that date.  
22 MR. GUYMON: As you sit here today, are you troubled  
23 with it?  
24 PROSPECTIVE JUROR FINK: Not right now, no.  
25 MR. GUYMON: How about tomorrow or the next day?

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1 PROSPECTIVE JUROR FINK: Let's say about next  
2 Wednesday I would be, yes.

3 MR. GUYMON: All right, that's fair.

4 Let me ask you about your thoughts. Obviously, you  
5 got a summons in the mail that told you you were gonna be  
6 summoned for jury duty.

7 PROSPECTIVE JUROR FINK: Correct.

8 MR. GUYMON: Your thoughts about being a juror.

9 PROSPECTIVE JUROR FINK: It's a privilege, really,  
10 and I enjoy it.

11 MR. GUYMON: Okay, let's talk about that privilege.  
12 You got that summons and you probably had no idea it was a  
13 criminal case, first of all.

14 PROSPECTIVE JUROR FINK: Correct.

15 MR. GUYMON: And you came to court a little early  
16 and you got a questionnaire.

17 PROSPECTIVE JUROR FINK: Right.

18 MR. GUYMON: And within the first, I'd say, page or  
19 two you realized that it was a murder case.

20 PROSPECTIVE JUROR FINK: Right.

21 MR. GUYMON: And, more importantly, that we're gonna  
22 talk about the death penalty.

23 Did the fact that all of a sudden this became a  
24 criminal case for a murder, first degree murder, times four,  
25 did that cause you concern?



1 PROSPECTIVE JUROR FINK: Not really, no.

2 MR. GUYMON: Did the fact that the death penalty was

3 going to become a choice in this case cause you concern?

4 PROSPECTIVE JUROR FINK: No.

5 MR. GUYMON: Do you have any concern about passing

6 judgment on the conduct of Donte Johnson?

7 PROSPECTIVE JUROR FINK: No.

8 MR. GUYMON: Anything religious, socially or

9 otherwise about passing judgment on the conduct of another

10 person that causes you concern?

11 PROSPECTIVE JUROR FINK: I don't think so. Yeah, I

12 don't think so.

13 MR. GUYMON: Okay, it's something you can do?

14 PROSPECTIVE JUROR FINK: Yes.

15 MR. GUYMON: You've not sat as a juror before, is

16 that correct?

17 PROSPECTIVE JUROR FINK: Yes, I have.

18 MR. GUYMON: Okay. Was it a positive or negative

19 experience?

20 PROSPECTIVE JUROR FINK: Positive.

21 MR. GUYMON: Was it for a criminal case?

22 PROSPECTIVE JUROR FINK: Yes.

23 MR. GUYMON: Was the charge murder?

24 PROSPECTIVE JUROR FINK: No.

25 MR. GUYMON: All right. Now, then, can you set

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1 aside whatever preconceived ideas you might have about what  
2 first degree murder is and follow the law as the Judge gives  
3 it to you?

4 PROSPECTIVE JUROR FINK: Yes.

5 MR. GUYMON: What are your thoughts about holding  
6 someone accountable for their criminal conduct?

7 PROSPECTIVE JUROR FINK: Well, I think they should  
8 be held 100 percent accountable for what they've done. I just  
9 -- You know, they've got to answer for it.

10 MR. GUYMON: Now let me ask you, prior to or about  
11 the same time that you read the questionnaire you learned that  
12 there was four choices for the crime of murder.

13 PROSPECTIVE JUROR FINK: Right.

14 MR. GUYMON: Okay, do you understand the wisdom for  
15 why those four choices or do you see any wisdom in the four  
16 choices?

17 PROSPECTIVE JUROR FINK: Some, yes.

18 MR. GUYMON: Okay. Can you see that perhaps some  
19 people that commit first degree murder should get some  
20 leniency? Would you agree or disagree with that thought?

21 PROSPECTIVE JUROR FINK: I would agree, yes.

22 MR. GUYMON: Okay. I guess you can think of a  
23 circumstance where a person may commit a murder that's first  
24 degree murder under the law and yet that person too should get  
25 some leniency?

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1 PROSPECTIVE JUROR FINK: Yeah, I think a lot of it's  
2 state of mind.

3 MR. GUYMON: Okay. Can you see or think of a case  
4 where a person who commits first degree murder should get no  
5 leniency?

6 PROSPECTIVE JUROR FINK: Oh, definitely.

7 MR. GUYMON: And I take it by that comment you're in  
8 favor of the death penalty.

9 PROSPECTIVE JUROR FINK: Yes.

10 MR. GUYMON: In fact, you say the same in your  
11 questionnaire.

12 PROSPECTIVE JUROR FINK: Correct.

13 MR. GUYMON: Now you indicated, however, being in  
14 favor of the death penalty, you also indicate that life  
15 without may be the worst punishment.

16 PROSPECTIVE JUROR FINK: It depends on the  
17 individual and their state of mind.

18 MR. GUYMON: Okay, explain.

19 PROSPECTIVE JUROR FINK: If you've got a person that  
20 has no regard for life, for his own life or the life of  
21 others, death is the only way for that person, but somebody  
22 who is really compassionate and cares and did something in the  
23 spur of the moment, just lashed out, I think that person with,  
24 you know, life with parole or without parole would have time  
25 to think about it and it would be harder on that person than

1 the death penalty would be.

2 MR. GUYMON: Okay. And maybe that person should --

3 If that person comes to trial before a jury, maybe that jury

4 should consider leniency then, is that -- so we begin to see

5 the four choices even.

6 PROSPECTIVE JUROR FINK: Right.

7 MR. GUYMON: Okay. In this case, if you conclude

8 that these are the appropriate facts, in other words, they're

9 just so bad and, in fact, that Donte Johnson is the

10 appropriate person to get the death penalty, can you vote for

11 that?

12 PROSPECTIVE JUROR FINK: Yes.

13 MR. GUYMON: Can you stand by that conviction?

14 PROSPECTIVE JUROR FINK: Yes, I think so.

15 MR. GUYMON: And is that something you feel strongly

16 about?

17 PROSPECTIVE JUROR FINK: I believe so.

18 MR. GUYMON: Is there any reason, other than the

19 vacation that's looming out there on June 16th, is there any

20 reason you could think of why you wouldn't be a fair juror in

21 this case?

22 PROSPECTIVE JUROR FINK: No.

23 MR. GUYMON: Thank you.

24 THE COURT: Thank you. We'll take our morning

25 recess.

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1           Now, and during this recess, you're admonished not  
2 to talk or converse among yourselves or with anyone else on  
3 any subject connected with this trial, read, watch or listen  
4 to any report of or commentary on the trial, or any person  
5 connected with it, by any medium of information, including,  
6 without limitation, newspaper, television and radio, or to  
7 form or express any opinion on any subject connected with this  
8 matter 'til it's finally submitted to you.

9           We'll be in recess 'til 11:00 o'clock.

10           (Court recessed at 10:50 a.m. until 11:00 a.m.)

11           (Prospective jurors are present)

12           THE COURT: Does your side have a problem proceeding  
13 with Mr. Morine's voir dire without waiting for this juror?

14           MR. DASKAS: I have no problem.

15           (Pause in the proceedings)

16           THE COURT: Okay, here he is anyway.

17           Okay, go ahead, Mr. Daskas.

18           MR. DASKAS: Thank you, Judge.

19           Good morning, Mr. Morine.

20           PROSPECTIVE JUROR MORINE: Good morning.

21           MR. DASKAS: You've heard some discussion,  
22 obviously, this morning about the various possible punishments  
23 associated with a first degree murder conviction.

24           PROSPECTIVE JUROR MORINE: Yes.

25           MR. DASKAS: And you understand those four possible

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1 choices?

2 PROSPECTIVE JUROR MORINE: Yes, I do.

3 MR. DASKAS: There's been some discussion about the  
4 fact that, well, despite the fact that individuals might be  
5 convicted of the same crime, that is first degree murder,  
6 perhaps there's something about either the nature of their  
7 background or the way in which they committed the crime that  
8 one of the other four punishments might be appropriate. You  
9 recall those discussions?

10 PROSPECTIVE JUROR MORINE: Yes, I do.

11 MR. DASKAS: Would you agree with that?

12 PROSPECTIVE JUROR MORINE: In general.

13 MR. DASKAS: So in any particular case, given any  
14 particular defendants, you would agree that one of those four  
15 choices might be the appropriate choice even though it's a  
16 murder conviction?

17 PROSPECTIVE JUROR MORINE: I think so, yes.

18 MR. DASKAS: On your jury questionnaire you were  
19 asked, of course, like everybody else, which is the worst  
20 punishment, death or life without, and your answer was, and  
21 I'll quote your answer, "I think that even without parole a  
22 person could have a meaning to their life in prison."

23 Tell me what you meant by that.

24 PROSPECTIVE JUROR MORINE: Well, I guess in general  
25 I don't believe that all people are 100 percent bad and so if

1 someone committed a crime that was unacceptable to society and  
2 that person should not be back out amongst society where they  
3 could possibly injure or harm someone else, that perhaps even  
4 in prison they could have some meaning to their life or  
5 perhaps help someone else write a book so that somebody didn't  
6 follow the path they did or of some benefit, perhaps, to  
7 society that you wouldn't get if you put that person to death.

8 MR. DASKAS: I understand.

9 Would you agree, however, with the notion that the  
10 worst possible crime deserves the worst possible punishment?

11 PROSPECTIVE JUROR MORINE: I think so, yes.

12 MR. DASKAS: And would you agree with the notion  
13 that the worst possible criminal deserves the worst possible  
14 punishment?

15 PROSPECTIVE JUROR MORINE: That's a valid theory,  
16 yes.

17 MR. DASKAS: And would you agree that if you combine  
18 both those things, that is the worst possible crime with the  
19 worst possible defendant, indeed that person should get the  
20 worst possible punishment?

21 PROSPECTIVE JUROR MORINE: That's a logical  
22 argument.

23 MR. DASKAS: Do you feel like you have the ability,  
24 if this case is the appropriate case for death and if this  
25 defendant is the appropriate defendant for the death penalty,

1 to impose that sentence?

2 PROSPECTIVE JUROR MORINE: I think I would find it  
3 difficult to make the judgment to put another human being to  
4 death.

5 MR. DASKAS: Given that you would find it difficult,  
6 and no one is suggesting this should be an easy task or  
7 something you should take lightly, but given the fact that you  
8 find that it would be difficult, are you suggesting that you  
9 couldn't do it, that you could not vote for death?

10 PROSPECTIVE JUROR MORINE: In absolute terms if I  
11 couldn't -- I suppose I could, but philosophically, I guess, I  
12 have a problem with deciding that another human being should  
13 cease going on living, regardless of how terrible an act that  
14 person might have done.

15 THE COURT: Excuse me one moment, Mr. Daskas.

16 Last week, when you were sitting sort of at leisure  
17 and filling out the questionnaire, Mr. Morine, you didn't  
18 indicate this much hesitation in your ability to impose the  
19 death penalty in some cases. Are you saying that it's a very  
20 difficult thing, 'cause I would expect that it should be for  
21 all people, to impose it or that you would not impose it even  
22 if you thought it was deserved? You couldn't sign, let's say,  
23 if you were the foreperson -- If you weren't the foreperson  
24 you couldn't vote for it and if you were the foreperson you  
25 couldn't sign a verdict that said death?

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1 Is that what you're telling us?

2 PROSPECTIVE JUROR MORINE: It's interesting, and I  
3 suppose it's true with all prospective jurors, that you think  
4 about this, but until you're actually put into the position,  
5 as I was when I filled out that questionnaire, since then,  
6 thinking about could I actually sit there and make that  
7 decision to put another human being to death, I've given that  
8 a great deal of thought since filling out the questionnaire.

9 THE COURT: Okay. And what is your thought as you  
10 sit there today?

11 PROSPECTIVE JUROR MORINE: I guess I can't sit here  
12 and say I absolutely would not, but I think it would take an  
13 awful lot of compelling argument for and an awful lot of soul  
14 searching before I could ever come to that conclusion.

15 THE COURT: That's all that people can ask.

16 Go ahead, Mr. Daskas.

17 MR. DASKAS: Thank you, Judge.

18 You understand why we challenged you on your answer  
19 at this point?

20 PROSPECTIVE JUROR MORINE: Sure, sure. No, that's  
21 fine.

22 MR. DASKAS: Obviously, we have to assume, that is  
23 the State has to assume, that we're gonna get there and so we  
24 need to know for certain that you have the ability to return a  
25 death verdict. Do you understand that's why we challenge your

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1 answers?

2 PROSPECTIVE JUROR MORINE: Uh-huh.

3 MR. DASKAS: Is that a yes?

4 PROSPECTIVE JUROR MORINE: Yes, that is a yes.

5 MR. DASKAS: Thank you.

6 In what I'll call the first phase of the trial, the  
7 guilt phase, if you're convinced beyond a reasonable doubt  
8 that the defendant is, in fact, guilty of all the crimes we've  
9 mentioned thus far, can you promise, if you believe beyond a  
10 reasonable doubt that he's guilty, can you promise that you'll  
11 return verdicts of guilty?

12 PROSPECTIVE JUROR MORINE: Absolutely.

13 MR. DASKAS: Does your reluctance or hesitation to  
14 impose death cause you any concern about convicting him if  
15 indeed you find that he's guilty in the guilt phase?

16 PROSPECTIVE JUROR MORINE: No.

17 MR. DASKAS: If you had the opportunity to create  
18 your own society, would you have a death penalty?

19 PROSPECTIVE JUROR MORINE: I don't believe so.

20 MR. DASKAS: I'm gonna challenge you some more. You  
21 realize that?

22 PROSPECTIVE JUROR MORINE: Sure. That's fine.

23 MR. DASKAS: And why wouldn't you have the death  
24 penalty in your society?

25 PROSPECTIVE JUROR MORINE: Again, I believe that if

1 someone commits something so heinous and unacceptable to  
2 society, if you imprison them without any possibility of  
3 parole, that person then cannot harm society any further and  
4 that there's a possibility that that person could do some good  
5 to himself or the rest of society even behind bars.

6 MR. DASKAS: You mentioned that that person couldn't  
7 harm anybody else in society. You would agree that it's  
8 possible somebody in that situation might harm somebody in  
9 prison?

10 PROSPECTIVE JUROR MORINE: That's entirely possible.

11 MR. DASKAS: You would agree that there aren't just  
12 prisoners in prison, there are prison guards, correct?

13 PROSPECTIVE JUROR MORINE: Uh-huh.

14 MR. DASKAS: Yes?

15 PROSPECTIVE JUROR MORINE: Yes.

16 MR. DASKAS: Medical staff in a prison, correct?

17 PROSPECTIVE JUROR MORINE: Yes.

18 MR. DASKAS: Maintenance workers at a prison,  
19 correct?

20 PROSPECTIVE JUROR MORINE: Yes.

21 MR. DASKAS: Certainly you would concede that it's  
22 possible for somebody who is convicted of that crime to harm  
23 those individuals within the confines of a prison?

24 MR. SCISCENTO: Your Honor, I'm gonna object to  
25 this. Can we approach for a moment?

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1 THE COURT: Sure.

2 (Off-record bench conference)

3 MR. DASKAS: Do you feel like you can sit in

4 judgment of another human being?

5 PROSPECTIVE JUROR MORINE: Yes, I do.

6 MR. DASKAS: Anything other than what we've

7 discussed thus far that you think we, that is the State or the

8 defense, should know about you before we select you as a juror

9 on this particular case?

10 PROSPECTIVE JUROR MORINE: I can't think of any.

11 MR. DASKAS: Thanks. I appreciate it.

12 PROSPECTIVE JUROR MORINE: You bet.

13 MR. GUYMON: Good morning, Ms. Day.

14 PROSPECTIVE JUROR DAY: Good morning.

15 MR. GUYMON: How are you?

16 PROSPECTIVE JUROR DAY: Okay.

17 MR. GUYMON: Can you give me your thoughts about

18 sitting as a juror in an important case like this.

19 PROSPECTIVE JUROR DAY: It's a big thing to do.

20 MR. GUYMON: Okay. Is it something you think you're

21 capable of doing?

22 PROSPECTIVE JUROR DAY: Yes.

23 MR. GUYMON: Okay. Can you do it fairly?

24 PROSPECTIVE JUROR DAY: Yes.

25 MR. GUYMON: Do you have any reservations at all

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1 about passing judgment on the conduct of Donte Johnson?  
2 PROSPECTIVE JUROR DAY: No.  
3 MR. GUYMON: And you say no even knowing that your  
4 decision may affect his life?  
5 PROSPECTIVE JUROR DAY: Right.  
6 MR. GUYMON: You can make that decision?  
7 PROSPECTIVE JUROR DAY: Yes.  
8 MR. GUYMON: Okay, that's something you're real sure  
9 about so far?  
10 PROSPECTIVE JUROR DAY: Yes.  
11 MR. GUYMON: All right. You indicated that you've  
12 previously sat as a juror?  
13 PROSPECTIVE JUROR DAY: Yes.  
14 MR. GUYMON: And it was a positive experience?  
15 PROSPECTIVE JUROR DAY: Uh-huh, yes.  
16 MR. GUYMON: Can you set aside whatever preconceived  
17 ideas you got in that case -- It was a robbery case and you  
18 obviously -- in that case the judge instructed you as to what  
19 the law of robbery was.  
20 PROSPECTIVE JUROR DAY: Right.  
21 MR. GUYMON: Can you set aside what you may have  
22 learned in that case and follow the law as it relates to what  
23 the Judge tells you here?  
24 PROSPECTIVE JUROR DAY: Yeah, 'cause that was like  
25 20 years ago, so I don't remember.

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1 MR. GUYMON: You don't remember much, okay.

2 Do you have any preconceived ideas of what beyond a  
3 reasonable doubt means?

4 PROSPECTIVE JUROR DAY: No.

5 MR. GUYMON: Okay. Do you have any preconceived  
6 ideas about what a murderer might look like or how he or she  
7 might act?

8 PROSPECTIVE JUROR DAY: No.

9 MR. GUYMON: The witnesses I've indicated may come  
10 into this courtroom and testify. Some of those witnesses may  
11 have lifestyles or choices that you don't particularly care  
12 for. Will those witnesses be given a chance to be believed?

13 PROSPECTIVE JUROR DAY: Yes.

14 MR. GUYMON: Tell me your thoughts on fingerprint  
15 evidence. Do you have any thoughts about fingerprints?

16 PROSPECTIVE JUROR DAY: No.

17 MR. GUYMON: Okay, how about DNA? You read the  
18 paper from time to time and it seems as though DNA is spoken  
19 about. Do you have any thoughts about DNA evidence?

20 PROSPECTIVE JUROR DAY: I think it's good we have it  
21 now.

22 MR. GUYMON: Okay. And do you believe in the  
23 science of DNA based on what you know?

24 PROSPECTIVE JUROR DAY: Yes.

25 COURT RECORDER: Yes?

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1 PROSPECTIVE JUROR DAY: Yes.

2 MR. GUYMON: How about the science of fingerprints,  
3 do you believe in fingerprint evidence?

4 PROSPECTIVE JUROR DAY: Yes.

5 MR. GUYMON: Okay. You indicated that you weren't  
6 real crazy about the idea of parole for murderers.

7 PROSPECTIVE JUROR DAY: Right.

8 MR. GUYMON: Is that true?

9 PROSPECTIVE JUROR DAY: True.

10 MR. GUYMON: Okay, let me ask you this. If you were  
11 in charge of a society, of a state, and you could make the  
12 decision, would your state have the death penalty?

13 PROSPECTIVE JUROR DAY: Yes.

14 MR. GUYMON: Okay. Would your state have more than  
15 just one penalty, however, for the crime of first degree  
16 murder?

17 PROSPECTIVE JUROR DAY: Probably not.

18 MR. GUYMON: Okay, so you'd say death penalty for  
19 everybody?

20 PROSPECTIVE JUROR DAY: Yes.

21 MR. GUYMON: Okay, let me ask you this. First  
22 degree murder, there's a lot of, you know, a lot of different  
23 people can commit the crime of first degree murder. Some  
24 people that are real, real bad and perhaps even some good  
25 people can make some wrong decisions. Can you agree with that

1 thought so far?

2 PROSPECTIVE JUROR DAY: No.

3 MR. GUYMON: Okay, let me ask you this. Do you know  
4 anything about felony murder, the term felony murder?

5 PROSPECTIVE JUROR DAY: Yeah, not much, a little  
6 bit.

7 MR. GUYMON: Okay.

8 PROSPECTIVE JUROR DAY: Like if you're in an  
9 accident, car accident, or drinking and driving, something  
10 different.

11 MR. GUYMON: I think you need to raise your voice.

12 COURT RECORDER: Speak up.

13 PROSPECTIVE JUROR DAY: Oh. I think it's something  
14 not intentional.

15 MR. GUYMON: Okay. Under the notion of felony  
16 murder there is such a thing in the State of Nevada as first  
17 degree felony murder and that is to say that persons that are  
18 engaged in certain felonies, if a murder occurs during that  
19 felony, that person's responsible for first degree murder.

20 PROSPECTIVE JUROR DAY: Right.

21 MR. GUYMON: Two people may choose to do a robbery  
22 at 7-Eleven and one person may be the actual driver, the  
23 getaway driver, the other person goes in and robs the 7-Eleven  
24 clerk and during that robbery he kills the clerk, do you  
25 realize that the getaway driver is responsible for first



1 degree murder?

2 PROSPECTIVE JUROR DAY: Yes.

3 MR. GUYMON: Okay. Do you agree with holding people  
4 responsible, in other words, if they form a conspiracy and  
5 they form a team that you hold people responsible for their  
6 teammates actions? Do you agree or disagree with that  
7 thought?

8 PROSPECTIVE JUROR DAY: Well, if they're intending  
9 to that, yes.

10 MR. GUYMON: Okay. And in the scenario I gave you,  
11 the person who -- all he intended to do was drive the car and  
12 yet a murder's committed, that driver's responsible for first  
13 degree murder under the state of law in Nevada.

14 PROSPECTIVE JUROR DAY: Right.

15 MR. GUYMON: Are you aware of that?

16 PROSPECTIVE JUROR DAY: Mm-hmm.

17 MR. GUYMON: Now, if it was your society and that's  
18 the law, would the get away driver, should he have to get  
19 death penalty too or can you see some need for leniency for  
20 him?

21 PROSPECTIVE JUROR DAY: Yeah, I can see some need  
22 for him.

23 MR. GUYMON: He's not the shooter.

24 PROSPECTIVE JUROR DAY: He's not the shooter, right.

25 MR. GUYMON: He didn't even go into 7-Eleven.

1 PROSPECTIVE JUROR DAY: Right.

2 MR. GUYMON: But that, under felony murder, he's

3 guilty of first degree murder. That person should get some

4 leniency?

5 PROSPECTIVE JUROR DAY: Right.

6 MR. GUYMON: Okay. So, let me come back now to

7 these choices, this idea, and I know you're not crazy about

8 parole for murderers --

9 PROSPECTIVE JUROR DAY: Right.

10 MR. GUYMON: -- but let me ask you, can you see

11 where some persons that are guilty of first degree murder,

12 perhaps felony murder, should get some leniency?

13 PROSPECTIVE JUROR DAY: Yeah.

14 MR. GUYMON: Can you see where the driver of the car

15 may even be entitled to life with the possibility of parole?

16 There might be something redeeming enough about him,

17 particularly in light of the fact that he wasn't the shooter,

18 that maybe we ought to even give him the chance to get out

19 someday?

20 PROSPECTIVE JUROR DAY: Should I that -- no.

21 MR. GUYMON: If he --

22 PROSPECTIVE JUROR DAY: He was involved in it, he

23 was there.

24 MR. GUYMON: Okay.

25 PROSPECTIVE JUROR DAY: He knew something was going

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1 to happen.

2 MR. GUYMON: So even though that person's not the  
3 shooter --

4 PROSPECTIVE JUROR DAY: Right.

5 MR. GUYMON: Let's say he didn't know a shooting was  
6 going to happen, no idea that his partner was going to shoot  
7 and kill the clerk?

8 PROSPECTIVE JUROR DAY: Well, I think he --

9 MR. GUYMON: He may even thought the gun was  
10 unloaded.

11 PROSPECTIVE JUROR DAY: But they knew he had gun.

12 MR. GUYMON: Perhaps it was unloaded though, in his  
13 mind. Can we give that person a chance to get out?

14 PROSPECTIVE JUROR DAY: I wouldn't because he should  
15 have known.

16 MR. GUYMON: Okay. Well, let me turn to this  
17 because we have to have twelve jurors that will have an open  
18 mind until they hear all the evidence --

19 PROSPECTIVE JUROR DAY: Mm-hmm.

20 MR. GUYMON: -- and be willing to consider all the  
21 options. In this case we have four options: death penalty --

22 PROSPECTIVE JUROR DAY: Mm-hmm.

23 MR. GUYMON: -- life without; life with, which is  
24 the chance to get out someday --

25 PROSPECTIVE JUROR DAY: Mm-hmm.

1 MR. GUYMON: -- not the promise but the chance; and  
2 a fixed term of years, forty to a hundred years before  
3 release.

4 PROSPECTIVE JUROR DAY: Right.

5 MR. GUYMON: Can you consider all of those options  
6 for someone that's guilty of first degree murder?  
7 Understanding that first degree murder can be a whole bunch of  
8 things. It can be the shooter who intentionally shoots and  
9 kills a person and it could even be the get away driver who  
10 has no idea that there was bullets in that gun? Can you  
11 consider all four options?

12 PROSPECTIVE JUROR DAY: Probably not, I think he's  
13 guilty.

14 THE COURT: Ma'am, I can't hear you. Could you talk  
15 up a little?

16 PROSPECTIVE JUROR DAY: No, I don't think so, he's  
17 there, he's doing a crime, he's involved in it.

18 MR. GUYMON: Okay. Let me --

19 MR. FIGLER: Your Honor, I would challenge for cause  
20 at this time. I think we've given enough time for  
21 rehabilitation.

22 THE COURT: Will you approach the bench, please.

23 (Off-record bench conference)

24 THE COURT: Okay. Ma'am, we're going to excuse you  
25 and you can report back to the jury commissioner. Thank you

1 for your honesty and let's seat Mr. Juarez.  
2           You're used to these tight seats, aren't you Ms.  
3 Cole?  
4           Go ahead, Gary. Oh, is this an odd now?  
5 MR. DASKAS: This is even, Judge.  
6 THE COURT: Okay.  
7 MR. DASKAS: Even. Nobody's calling you odd.  
8 PROSPECTIVE JUROR JUAREZ: Not today at least.  
9 MR. DASKAS: Mr. Juarez, good morning.  
10 PROSPECTIVE JUROR JUAREZ: Good morning.  
11 MR. DASKAS: I believe you mentioned in your  
12 questionnaire you had a little knowledge about this case, is  
13 that true?  
14 PROSPECTIVE JUROR JUAREZ: Yes.  
15 MR. DASKAS: Despite what you've heard about the  
16 case, can you set aside what you've heard and base your  
17 decision solely on the evidence you hear from the witness  
18 stand?  
19 PROSPECTIVE JUROR JUAREZ: Yes, I could.  
20 MR. DASKAS: You understand that both sides are  
21 seeking fair and impartial jurors?  
22 PROSPECTIVE JUROR JUAREZ: Correct.  
23 MR. DASKAS: Okay. You, too, in your questionnaire  
24 mentioned that you believed life without parole is a worse  
25 punishment than death, is that true?

1 PROSPECTIVE JUROR JUAREZ: Yes, it can be.  
2 MR. DASKAS: Tell me what you mean by that, why you  
3 think that's true?  
4 PROSPECTIVE JUROR JUAREZ: Well, I think if a person  
5 has feelings, to be locked up for life, knowing that you'll  
6 never get out, could be far worse.  
7 MR. DASKAS: I take it that if you were in that  
8 situation --  
9 PROSPECTIVE JUROR JUAREZ: Couldn't of went.  
10 MR. DASKAS: Okay. Certainly life without parole,  
11 knowing you're never going to get out, would be worse for you  
12 than a sentence of death?  
13 PROSPECTIVE JUROR JUAREZ: For me it would, yes..  
14 MR. DASKAS: But can you envision a defendant, a  
15 person, or perhaps that might not be the case?  
16 PROSPECTIVE JUROR JUAREZ: Yes.  
17 MR. DASKAS: If you were creating your own society,  
18 would you have a death penalty?  
19 PROSPECTIVE JUROR JUAREZ: Yes, I would.  
20 MR. DASKAS: You understand that it's a distinct  
21 possibility that in the next week and a half or two weeks we  
22 may stand up in front of you and the other jurors, if you're  
23 selected and ask you to return a verdict of death against  
24 somebody who's seated in this courtroom at this very moment?  
25 You understand that?

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1 PROSPECTIVE JUROR JUAREZ: I understand.  
2 MR. DASKAS: Do you feel like you have the ability  
3 to do that?  
4 PROSPECTIVE JUROR JUAREZ: Given the proper  
5 information, yes.  
6 MR. DASKAS: If you believed that this was the worse  
7 possible crime, you could impose a sentence of death?  
8 PROSPECTIVE JUROR JUAREZ: If I believed -- if I had  
9 all the information that I could make that decision, yes.  
10 MR. DASKAS: And I appreciate that. What I mean to  
11 say is if you're given the evidence in this case and if, in  
12 your mind, the evidence proves that this is the worse possible  
13 crime, and if you're given information about the defendant and  
14 if, in your mind, you believed this is the worse possible  
15 defendant, can you check the death penalty as the appropriate  
16 punishment in this case?  
17 PROSPECTIVE JUROR JUAREZ: That would be an option,  
18 yes.  
19 MR. DASKAS: Along with the other three options  
20 that --  
21 PROSPECTIVE JUROR JUAREZ: Correct.  
22 MR. DASKAS: -- that have been discussed?  
23 PROSPECTIVE JUROR JUAREZ: Correct.  
24 MR. DASKAS: You can imagine a scenario where anyone  
25 of the other options might be appropriate?

1 PROSPECTIVE JUROR JUAREZ: Yes.

2 MR. DASKAS: There's been some discussion about the  
3 burden of proof that the state has in this case like every  
4 case, and that we must prove the defendant's guilt beyond a  
5 reasonable doubt. Do you feel like you understand that  
6 notion?

7 PROSPECTIVE JUROR JUAREZ: Yes.

8 MR. DASKAS: Can you abide by it?

9 PROSPECTIVE JUROR JUAREZ: Yes.

10 MR. DASKAS: Can you promise me, the State, that if  
11 you're convinced of the defendant's guilt beyond a reasonable  
12 doubt that you will return verdicts of guilty?

13 PROSPECTIVE JUROR JUAREZ: Yes, I can.

14 MR. DASKAS: Does it cause you any concern to sit in  
15 conduct of another human being's -- to sit in judgment of the  
16 conduct of another human being?

17 PROSPECTIVE JUROR JUAREZ: No.

18 MR. DASKAS: A little hesitation there?

19 PROSPECTIVE JUROR JUAREZ: Well, I'm not judging  
20 them, you know, I'm getting information and making a decision  
21 based on that information.

22 MR. DASKAS: And I appreciate the distinction.  
23 Certainly we're not asking you to walk into the court and make  
24 a judgment with no evidence.

25 PROSPECTIVE JUROR JUAREZ: Correct.



1 MR. DASKAS: We're asking you to listen to the  
2 testimony, review the evidence in this case, and make a  
3 decision, and you're comfortable with that?

4 PROSPECTIVE JUROR JUAREZ: Yes.

5 MR. DASKAS: What are your thoughts about the police  
6 here in Las Vegas?

7 PROSPECTIVE JUROR JUAREZ: I think they do their  
8 job.

9 MR. DASKAS: Some good cops, some bad cops?

10 PROSPECTIVE JUROR JUAREZ: Most definitely.

11 MR. DASKAS: Like any other profession?

12 PROSPECTIVE JUROR JUAREZ: Correct.

13 MR. DASKAS: Can you judge the credibility of a  
14 police officer from the witness stand just like every other  
15 witness in this case?

16 PROSPECTIVE JUROR JUAREZ: I think I could, yes.

17 MR. DASKAS: Just like every other person, I guess?

18 PROSPECTIVE JUROR JUAREZ: Right.

19 MR. DASKAS: You've heard us discuss the fact that  
20 perhaps witnesses will take the stand and testify. Witnesses  
21 who make choices that perhaps you and I wouldn't make.

22 PROSPECTIVE JUROR JUAREZ: Right.

23 MR. DASKAS: Perhaps they've used drugs in their  
24 past. Can you give that person a fair shake if somebody like  
25 that takes the witness stand?

1 PROSPECTIVE JUROR JUAREZ: Yes.

2 MR. DASKAS: Anything we should know about you that  
3 we haven't discussed before you're selected to serve as a  
4 juror on this case?

5 PROSPECTIVE JUROR JUAREZ: No.

6 MR. DASKAS: Thank you. I appreciate it. And  
7 you're even as well, correct?

8 PROSPECTIVE JUROR BAKER: Yes.

9 MR. DASKAS: Mr. Baker, how are you this morning?

10 PROSPECTIVE JUROR BAKER: Fine.

11 MR. DASKAS: You, too, indicated you have some  
12 knowledge about this case?

13 PROSPECTIVE JUROR BAKER: Yes.

14 MR. DASKAS: In fact, in your questionnaire you  
15 indicated that you might have an opinion about this case?

16 PROSPECTIVE JUROR BAKER: I don't think I have an  
17 opinion at this time.

18 MR. DASKAS: Okay. Let me just ask you this then.  
19 Can you set aside whatever you know about this case and base  
20 your decision solely on the evidence you hear from a  
21 witnesses?

22 PROSPECTIVE JUROR BAKER: Yes.

23 MR. DASKAS: So that both sides, the defense and the  
24 State get a fair and impartial juror in yourself?

25 PROSPECTIVE JUROR BAKER: Yes.

1 MR. DASKAS: What are your thoughts about the death  
2 penalty?

3 PROSPECTIVE JUROR BAKER: It's a deterrent to crime,  
4 I feel. If the deed warrants it, I think it's justified.

5 MR. DASKAS: Can you imagine instances where  
6 somebody is convicted of murder yet deserves something less  
7 than first -- than the death penalty?

8 PROSPECTIVE JUROR BAKER: Yes.

9 MR. DASKAS: Imagine a situation where a defendant  
10 convicted of murder even deserves a chance at getting out of  
11 prison sometime?

12 PROSPECTIVE JUROR BAKER: Yeah, possibly.

13 MR. DASKAS: You heard Mr. Guymon mention the felony  
14 murder rule, a situation where a defendant doesn't even go  
15 into the 7-Eleven in his scenario, his hypothetical --?

16 PROSPECTIVE JUROR BAKER: Mm-hmm.

17 MR. DASKAS: Yet is still responsible for murder.  
18 Perhaps that person deserves a chance to get out of prison  
19 someday, would you agree with that?

20 PROSPECTIVE JUROR BAKER: I would agree.

21 MR. DASKAS: Would you have a death penalty if you  
22 had your own society?

23 PROSPECTIVE JUROR BAKER: Yes.

24 MR. DASKAS: Do you feel like people should be held  
25 accountable for their decisions, their choices?

1 PROSPECTIVE JUROR BAKER: Yes, I do.  
2 MR. DASKAS: And you feel like people should be  
3 punished for the decisions and choices they make?  
4 PROSPECTIVE JUROR BAKER: Yes.  
5 MR. DASKAS: What are your thoughts about the  
6 Metropolitan Police Department here in Las Vegas?  
7 PROSPECTIVE JUROR BAKER: As far as I know they do a  
8 good job.  
9 MR. DASKAS: Okay. Any reason you couldn't judge  
10 the credibility of a police officer or any other witness who  
11 takes that witness stand?  
12 PROSPECTIVE JUROR BAKER: No.  
13 MR. DASKAS: Any preconceived notions about whether  
14 cops always tell the truth or always lie or drug users always  
15 tell the truth or always lie?  
16 PROSPECTIVE JUROR BAKER: No.  
17 MR. DASKAS: Anything we should know about you?  
18 PROSPECTIVE JUROR BAKER: No.  
19 MR. DASKAS: Thank you. I appreciate it.  
20 PROSPECTIVE JUROR BAKER: Welcome.  
21 MR. GUYMON: Ms. Cole?  
22 PROSPECTIVE JUROR COLE: Yes.  
23 MR. GUYMON: Give me your thoughts about being a  
24 juror in this case? You got the summons and what was your  
25 first thought?

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1 PROSPECTIVE JUROR COLE: Well, I got it last week --  
2 or two weeks ago so I was actually going on vacation last  
3 week, so I was relieved to come and it wasn't during my  
4 vacation.

5 MR. GUYMON: Okay. You came here and you filled out  
6 a questionnaire and you quickly realized it was a criminal  
7 case?

8 PROSPECTIVE JUROR COLE: Yeah.

9 MR. GUYMON: Did that cause you concern?

10 PROSPECTIVE JUROR COLE: No.

11 MR. GUYMON: Did it cause you concern that it dealt  
12 with murder?

13 PROSPECTIVE JUROR COLE: No.

14 MR. GUYMON: Does it cause you concern that there's  
15 four murders in this particular case?

16 PROSPECTIVE JUROR COLE: No.

17 MR. GUYMON: Okay. Did you have any preconceived  
18 ideas about what beyond a reasonable doubt means?

19 PROSPECTIVE JUROR COLE: No.

20 MR. GUYMON: Have any preconceived ideas about what  
21 it would be like to be a juror?

22 PROSPECTIVE JUROR COLE: No.

23 MR. GUYMON: Okay. Do you have any reservations at  
24 all about passing judgment on Donte Johnson's conduct?

25 PROSPECTIVE JUROR COLE: No, I don't. You know,

1 it's always hard to say that you don't want to judge somebody,  
2 but no, I believe our justice system is, you know, well  
3 planned out to handle the cases.

4 MR. GUYMON: Knowing that your judgment may effect  
5 his very life, does that cause you concern?

6 PROSPECTIVE JUROR COLE: No.

7 MR. GUYMON: What are your thoughts about holding a  
8 person responsible for his or her conduct?

9 PROSPECTIVE JUROR COLE: I believe that everybody  
10 should be accountable for their actions.

11 MR. GUYMON: Okay. And are you willing to hold the  
12 person accountable for his or her actions?

13 PROSPECTIVE JUROR COLE: Yes.

14 MR. GUYMON: Okay. Do you see where a juror has  
15 that ability? That is, the ability to hold someone  
16 responsible for their conduct?

17 PROSPECTIVE JUROR COLE: Absolutely.

18 MR. GUYMON: Okay. And I take it that's a task  
19 you're willing to shoulder?

20 PROSPECTIVE JUROR COLE: Yes.

21 MR. GUYMON: Okay. You indicated or you learned  
22 that this is a death penalty case?

23 PROSPECTIVE JUROR COLE: Mm-hmm.

24 MR. GUYMON: Had you given much thought to the death  
25 penalty prior to filling out the questionnaire?

1 PROSPECTIVE JUROR COLE: No.  
2 MR. GUYMON: Okay. Have you thought about it since?  
3 PROSPECTIVE JUROR COLE: Not really. I was in Key  
4 West on a beach not really thinking about it.  
5 MR. GUYMON: Good for you. Let's think about it now  
6 though, all right?  
7 PROSPECTIVE JUROR COLE: All right.  
8 MR. GUYMON: Can we leave Key West just for a  
9 minute?  
10 PROSPECTIVE JUROR COLE: Okay.  
11 MR. GUYMON: Talk about the death penalty, what are  
12 your thoughts about the death penalty, are you in favor of it  
13 or not so?  
14 PROSPECTIVE JUROR COLE: I'm in favor of it. I  
15 think it's a necessary punishment.  
16 MR. GUYMON: Okay. Are you in favor of the thought  
17 of that -- of something less than the death penalty for people  
18 convicted of first degree murder?  
19 PROSPECTIVE JUROR COLE: Yes.  
20 MR. GUYMON: Okay. Would you agree or disagree with  
21 that -- this, and that is that not all murderers are the same?  
22 PROSPECTIVE JUROR COLE: Yes.  
23 MR. GUYMON: One murderer may be worse than another?  
24 PROSPECTIVE JUROR COLE: Yes.  
25 MR. GUYMON: Can you live with the idea of somebody

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1 convicted of first degree murder, maybe he'll get out of  
2 prison someday?

3 PROSPECTIVE JUROR COLE: Yes.

4 MR. GUYMON: They may be able to rehabilitated or  
5 they may have good qualities such that that person we'll let  
6 out?

7 PROSPECTIVE JUROR COLE: Yes.

8 MR. GUYMON: And I take it that you agree with those  
9 that are the worst should not get out?

10 PROSPECTIVE JUROR COLE: Absolutely.

11 MR. GUYMON: And you agree with putting to death  
12 those people that had truly committed the worst offense and  
13 are the worst among those offenders?

14 PROSPECTIVE JUROR COLE: Yes.

15 MR. GUYMON: Okay. You said you agree with the  
16 death penalty, let me ask you this, could you impose it?

17 PROSPECTIVE JUROR COLE: Yes.

18 MR. GUYMON: Are you sure?

19 PROSPECTIVE JUROR COLE: Yes.

20 MR. GUYMON: Do you realize how tough a decision  
21 that is?

22 PROSPECTIVE JUROR COLE: Yes.

23 MR. GUYMON: If faced with having to check a box as  
24 to what you think should happen, in the event that we get to  
25 the penalty phase, to the life of Donte Johnson, can you check



1 the box that says, you, Mrs. Cole or Ms. Cole, believe that  
2 Donte Johnson should die for what he did?

3 PROSPECTIVE JUROR COLE: Yes.

4 MR. GUYMON: Is that something you can stick with?

5 PROSPECTIVE JUROR COLE: Yes.

6 MR. GUYMON: Is there anything we should know about  
7 -- I've asked a lot of questions, a lot of them the same,  
8 anything that we should know that was asked previously that we  
9 haven't talked about here?

10 PROSPECTIVE JUROR COLE: No.

11 MR. GUYMON: Any reason why you couldn't be fair to  
12 both sides?

13 PROSPECTIVE JUROR COLE: No.

14 MR. DASKAS: I apologize, how do you pronounce your  
15 last name?

16 PROSPECTIVE JUROR GARCEAU: Garceau.

17 MR. DASKAS: Garceau. Good morning, Mr. Garceau.  
18 When you received your questionnaire a week, a week and a half  
19 ago and you realized that this was a death penalty case, do  
20 you recall the first thing that came to your mind?

21 PROSPECTIVE JUROR GARCEAU: Well, I've never  
22 experienced a jury duty to start with and I realized  
23 immediately that it was not dealing with a family court -- a  
24 divorce or something like that and I understand it's serious.

25 MR. DASKAS: Did it cause you any concern or

1 reluctance once you learned that this was, in fact, a death  
2 penalty case?

3 PROSPECTIVE JUROR GARCEAU: No.

4 MR. DASKAS: I believe you indicated that you could  
5 envision some circumstance where you would, in fact, impose  
6 the death penalty?

7 PROSPECTIVE JUROR GARCEAU: Yes.

8 MR. DASKAS: I think you, too, have some knowledge  
9 about the facts of this case?

10 PROSPECTIVE JUROR GARCEAU: I just when I read --  
11 reading the paperwork that we looked through, scanning my  
12 memory I seemed to remember a little piece on the news at the  
13 time.

14 MR. DASKAS: And I don't -- I apologize to cut you  
15 off, I don't want you to tell me what you heard on the news.

16 PROSPECTIVE JUROR GARCEAU: Okay. I just -- yeah, I  
17 just happened to -- a piece on local news.

18 MR. DASKAS: Can you set aside whatever you heard  
19 and make a decision --

20 PROSPECTIVE JUROR GARCEAU: Yes.

21 MR. DASKAS: -- based on the evidence from the  
22 witness stand?

23 PROSPECTIVE JUROR GARCEAU: Yes.

24 MR. DASKAS: I've asked a lot of people and in fact,  
25 we both asked a lot of people to understand that there's a

1 distinct possibility in a week and a half or two weeks, we're  
2 going to stand before you and ask for you, if you're a juror,  
3 to check the box on the verdict form that says death penalty.  
4 If you're convinced that this is the appropriate case for that  
5 punishment and if you're convinced that this defendant is the  
6 appropriate defendant for that punishment, do you believe you  
7 have the ability to check the box that says death?

8 PROSPECTIVE JUROR GARCEAU: Yes, I do.

9 MR. DASKAS: Can you promise me that if, in the  
10 first phase of the trial, the guilt phase, you're convinced of  
11 the defendant's guilt beyond a reasonable doubt, that you'll  
12 indeed return verdicts of guilty?

13 PROSPECTIVE JUROR GARCEAU: Yes.

14 MR. DASKAS: Have you had much interaction or  
15 contact with police officers here in Las Vegas?

16 PROSPECTIVE JUROR GARCEAU: Yes, I have.

17 MR. DASKAS: Okay. Do you have any preconceived  
18 notions or thoughts about the police here in our community?

19 PROSPECTIVE JUROR GARCEAU: My experience has been  
20 positive.

21 MR. DASKAS: A police officer who takes the witness  
22 stand gets a fair shake, just like every other witness who  
23 testifies, from you?

24 PROSPECTIVE JUROR GARCEAU: I'm prepared to listen  
25 to whatever he has to say and keep an open mind.

1 MR. DASKAS: And how about individuals who may have  
2 made choices in their life that you and I disagree, can you  
3 judge that person's credibility from the witness stand and not  
4 decide that person's lying solely because of choices he or she  
5 may have made in the past?

6 PROSPECTIVE JUROR GARCEAU: I think you have to keep  
7 an open mind about everyone sitting in the jury box -- or in  
8 the witness box.

9 MR. DASKAS: I've asked if you could imagine a  
10 situation or if you're convinced that this is the worst crime  
11 and the worst defendant, that you'd impose death. Let me ask  
12 you the inverse, I guess. Can you imagine a situation where  
13 somebody convicted of murder perhaps deserves the chance to  
14 get out of prison at some point?

15 PROSPECTIVE JUROR GARCEAU: Well, I tend to agree  
16 with the 7-Eleven scenario that you talked about.

17 MR. DASKAS: In that situation perhaps that person  
18 convicted of murder deserves at least a shot of seeing the  
19 light of day?

20 PROSPECTIVE JUROR GARCEAU: The get away driver type  
21 thing, yeah.

22 MR. DASKAS: I take it then that you could consider  
23 all the possible punishments in this case?

24 PROSPECTIVE JUROR GARCEAU: Yes, I could.

25 MR. DASKAS: Thank you for your time. I appreciate

1 it.

2 MR. SCISCENTO: May we -- may we approach?

3 (Off-record bench conference)

4 THE COURT: All right. Sir, we've reconsidered and  
5 we are going to excuse you. Thank you very much.

6 Mr. Malen.

7 MR. GUYMON: Mr. Malen, how are you?

8 PROSPECTIVE JUROR MALEN: Good, how are you?

9 MR. GUYMON: Good. Let me go right to the heart of  
10 the question that I have for you, after reading your  
11 questionnaire. You indicated in your questionnaire that you  
12 weren't crazy about the four options for somebody guilty of  
13 murder, is that right?

14 PROSPECTIVE JUROR MALEN: More or less, yeah. Well,  
15 you got to figure the nature of the crime.

16 MR. GUYMON: Okay. Let me ask you this though, can  
17 you think of a case where a person convicted of first degree  
18 murder should get something less than the death penalty?

19 PROSPECTIVE JUROR MALEN: Well, that would be up to  
20 you. I mean if they plea bargained with you or if you got the  
21 truth.

22 MR. GUYMON: Well, let's say a guy goes to trial --

23 PROSPECTIVE JUROR MALEN: Right.

24 MR. GUYMON: -- and you learn the facts and as a  
25 juror you say, those facts are guilty of first degree murder.

1 Can you think of a scenario where a person should get some  
2 leniency still when it comes to sentencing?

3 PROSPECTIVE JUROR MALEN: If he's guilty of first  
4 degree, no.

5 MR. GUYMON: And you can't think of any other time  
6 when you've give somebody leniency? In other words, first  
7 degree murder automatic death penalty in your mind?

8 PROSPECTIVE JUROR MALEN: Yeah.

9 MR. GUYMON: And you could think of -- well, let me  
10 ask you this. You can't of a scenario where someone should  
11 get something less than that?

12 PROSPECTIVE JUROR MALEN: Well, if they were in hand  
13 and the proof is there and they committed the crime, they  
14 should pay the -- pay the penalty.

15 THE COURT: Mr. Malen, excuse me a minute. You  
16 heard Gary and sometimes Robert talk about this 7-Eleven case,  
17 the get away driver. He would be guilty of first degree  
18 murder in their example. Are you saying you would necessarily  
19 give him the death penalty?

20 PROSPECTIVE JUROR MALEN: Well, if he was involved  
21 in the crime, he -- it has to be premeditated. If it was  
22 premeditated then I would have a problem. I wouldn't have a  
23 problem, you know, with the death penalty on that.

24 THE COURT: Not talking about having a problem, but  
25 could you consider all the four possible penalties or would

1 you always impose the death penalty in that situation?

2 PROSPECTIVE JUROR MALEN: I think if they were

3 involved in the crime they need to pay the penalty.

4 THE COURT: Even in that example of Mr. Guymon's --

5 PROSPECTIVE JUROR MALEN: Yes.

6 THE COURT: -- the get away driver who might even

7 have thought the gun wasn't loaded?

8 PROSPECTIVE JUROR MALEN: Well, if you're gonna go

9 pull a crime with an unloaded gun, I have a problem. You

10 know, it's -- I don't think that's a real scenario.

11 THE COURT: Challenge for cause?

12 MR. SCISCENTO: Sure, Judge.

13 THE COURT: Any traverse?

14 MR. GUYMON: No.

15 THE COURT: Thank you, sir. You're excused.

16 While Mr. Chastain is taking his seat would counsel

17 approach the bench, please?

18 (Off-record bench conference)

19 MR. GUYMON: Mr. Chastain, how are you today?

20 PROSPECTIVE JUROR CHASTAIN: I'm quite fine, thank

21 you, sir.

22 MR. GUYMON: What are your thoughts about being a

23 juror in this case?

24 PROSPECTIVE JUROR CHASTAIN: I think it's a

25 responsibility and I think it's a good learning experience,

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1 too. I can see how the judicial system works a little better,  
2 you know.

3 MR. GUYMON: Do you believe that you can fairly  
4 judge the facts in this case?

5 PROSPECTIVE JUROR CHASTAIN: Absolutely. I always  
6 try to be fair on every situation, regardless if it's judicial  
7 or it's at work or whatever. Fair is very important to me.

8 MR. GUYMON: Will each of the witnesses that are --  
9 that come into this courtroom be given a chance to be believed  
10 by yourself?

11 PROSPECTIVE JUROR CHASTAIN: Absolutely, regardless  
12 of what they look like, how they're dressed. That makes no --  
13 it's -- that has nothing to do with the bearing of this -- of  
14 the situation.

15 MR. GUYMON: Okay. And how about regardless of  
16 their choices, their life choices?

17 PROSPECTIVE JUROR CHASTAIN: That's their -- that's  
18 their choice, it has nothing to do with what they have to say.

19 MR. GUYMON: You indicate in your questionnaire that  
20 prior to filling out your questionnaire you'd never really  
21 thought about the death penalty.

22 PROSPECTIVE JUROR CHASTAIN: That's true. Like I  
23 didn't know the death penalty even existed at the state. You  
24 know, that was the first exposure to it, I go, wow, you know,  
25 I didn't know it existed. So, yeah, it never really crossed



1 my mind too much.

2 MR. GUYMON: Okay. And you thought about it now?

3 PROSPECTIVE JUROR CHASTAIN: I would have to, after  
4 reading that. I didn't -- I didn't -- I didn't investigate it  
5 'cause I don't want to do anything that would kind of  
6 compromise my way of thinking so afterwards I go -- I'll delve  
7 into it, a little deeper into it, I think.

8 MR. DASKAS: Can you share with me your thoughts  
9 about the death penalty now?

10 PROSPECTIVE JUROR CHASTAIN: Sure. My death penalty  
11 -- I think it's a great deterrent for things like that but  
12 it's a great responsibility to make that call. You just don't  
13 want to call a death penalty just because you think someone's  
14 guilty. Like you said, there's a level, you know. I think  
15 your four level is justified because depending on the  
16 situation, even some guy who kills one person whether it been  
17 -- even he might have been threatened by his own life but he  
18 acted upon it first to guy who just -- who goes out and kills  
19 a hundred people in a -- in a McDonald's, you know, there's --  
20 yeah, you know, there's a difference, you know. Do I think --  
21 I think the person can be -- I think the person can be -- feel  
22 remorse but I think the death penalty also tends to make  
23 people -- I think it's more severe because when you're faced  
24 knowing that yourself is going to die on any given day that  
25 would be -- seem to be greater than sitting in jail.

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1 MR. GUYMON: Okay.

2 PROSPECTIVE JUROR CHASTAIN: So I think it's the  
3 worst case.

4 MR. GUYMON: You're comfortable then with having  
5 four choices?

6 PROSPECTIVE JUROR CHASTAIN: I think that's -- I  
7 think it's very -- I think it's -- I think that's set up  
8 pretty well. Yeah.

9 MR. GUYMON: If it was your state and you were --  
10 you were making this decision, you'd give jurors four choices?

11 PROSPECTIVE JUROR CHASTAIN: Absolutely. That was  
12 very -- I don't -- just giving someone the death penalty or  
13 not, that's a bit extreme so.

14 MR. GUYMON: Okay. Now, let me ask you this. In  
15 this case, you'll have the responsibility, if we get to the  
16 second phase, that being the penalty phase, of making the  
17 choice.

18 PROSPECTIVE JUROR CHASTAIN: Mm-hmm.

19 MR. GUYMON: Can you check the death penalty box?

20 PROSPECTIVE JUROR CHASTAIN: If I was thoroughly  
21 convinced that that was the appropriate be -- that was the  
22 appropriate decision to make, I would have to be thoroughly  
23 convinced that would be the one -- the step to take, before I  
24 could make that step. I mean I wouldn't just take it lightly  
25 and say, well, the guy's killed somebody, give him the death

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1 penalty, no. But if I really thought that was the best  
2 situation for the given case, yes.

3 MR. GUYMON: And if you believe it's appropriate,  
4 it's something you'd do?

5 PROSPECTIVE JUROR CHASTAIN: Absolutely.

6 MR. GUYMON: And likewise you'd pick another option  
7 if you believe that was appropriate?

8 PROSPECTIVE JUROR CHASTAIN: Exactly.

9 THE COURT: Defense may inquire.

10 MR. SCISCENTO: Ms. Kathleen Bruce?

11 PROSPECTIVE JUROR BRUCE: Yes.

12 MR. SCISCENTO: In the back? Good morning.

13 PROSPECTIVE JUROR BRUCE: Morning.

14 MR. SCISCENTO: In your questionnaire you mention  
15 that you would consider all sentencings, all forms of  
16 sentencing?

17 PROSPECTIVE JUROR BRUCE: Right. Correct.

18 MR. SCISCENTO: You mentioned something though and I  
19 believe this number 40, death penalty saves money?

20 PROSPECTIVE JUROR BRUCE: I don't remember writing  
21 that; but rather than life in prison and the taxpayers paying  
22 for that.

23 MR. SCISCENTO: One of the -- you mean, question 40,  
24 one of the benefits would be that the state and taxpayers  
25 wouldn't have to pay for the imprisonment. Are you saying

1 that the death penalty is cheaper?

2 PROSPECTIVE JUROR BRUCE: I don't know cheaper so  
3 much, but in my mind sentencing somebody to life without  
4 parole, life with the possibility in twenty years, whatever  
5 the options are, the taxpayers and the state do pay for that.  
6 Death penalty also costs money that would not -- that would  
7 not make the decision in my mind which to pick depending on  
8 the facts of the case.

9 MR. SCISCENTO: So you think that it's not really a  
10 cost basis analysis --

11 PROSPECTIVE JUROR BRUCE: Correct.

12 MR. SCISCENTO: -- which costs more and which saves  
13 more?

14 PROSPECTIVE JUROR BRUCE: Correct.

15 MR. SCISCENTO: Okay. You agree that the -- what  
16 are your feelings about the death penalty?

17 PROSPECTIVE JUROR BRUCE: I've never really had  
18 feelings either way in the past but since filling this out, it  
19 would be a difficult decision to make but based on the facts  
20 of the case would determine it.

21 MR. SCISCENTO: What kind of facts would you be  
22 looking at?

23 PROSPECTIVE JUROR BRUCE: The type of crime would --  
24 the type of person that committed the crime --

25 MR. SCISCENTO: So, it is --

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1 PROSPECTIVE JUROR BRUCE: -- their feelings.  
2 MR. SCISCENTO: -- in the scenario of the 7-Eleven  
3 where he's just sitting out there, didn't know the gun was  
4 there, didn't know it was loaded, he knew the gun was there  
5 but not loaded, that one you could look the other way on the  
6 death penalty --  
7 PROSPECTIVE JUROR BRUCE: Oh, definitely.  
8 MR. SCISCENTO: -- so to speak. Yes?  
9 PROSPECTIVE JUROR BRUCE: Yes.  
10 MR. SCISCENTO: But this case does not involve that.  
11 PROSPECTIVE JUROR BRUCE: No, I know that.  
12 MR. SCISCENTO: This is about --  
13 MR. DASKAS: Objection, Judge.  
14 MR. GUYMON: Judge, I'll object. He's getting into  
15 the facts of the case.  
16 THE COURT: Well, let's hear the question.  
17 MR. SCISCENTO: This case does not involve somebody  
18 in a 7-Eleven not having knowledge. The State is alleging  
19 that four people were killed.  
20 PROSPECTIVE JUROR BRUCE: Mm-hmm.  
21 MR. SCISCENTO: And that's not the same as somebody  
22 who's sitting in a 7-Eleven or sitting outside of a 7-Eleven's  
23 that's being robbed, would you agree?  
24 PROSPECTIVE JUROR BRUCE: Yes.  
25 MR. SCISCENTO: Okay. And in that scenario, what

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IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \* \*

DONTE JOHNSON,

S.C. CASE NO. 65168

Appellant,

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Clerk of Supreme Court

vs.

THE STATE OF NEVADA,

Respondent.

APPEAL FROM DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS  
(POST-CONVICTION)  
EIGHTH JUDICIAL DISTRICT COURT  
THE HONORABLE JUDGE ELISSA CADISH, PRESIDING

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APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME XI  
~~~~~

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IN THE SUPREME COURT OF NEVADA

DONTE JOHNSON,

CASE NO. 65168

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

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10	36	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS/HEARING AND ARGUMENT: DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (FILED 07/06/2011)	7630-7667
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19	33	TRANSCRIPT OF PROCEEDINGS STATUS CHECK: BRIEFING/FURTHER PROCEEDINGS (FILED 06/22/2010)	7430-7432
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1	35	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS/HEARING AND ARGUMENT: DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (FILED 07/06/2011)	7537-7574
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9	19	VERDICT (COUNT XI) (FILED 07/26/2000)	2595-2600
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**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 9<sup>th</sup> day of January, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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