

1 that it will result in financial hardship. I had
2 appointments that I had to cancel today, not knowing
3 how long I was going to be here. I have not
4 scheduled any appointments for the remainder of this
5 week.

6 **THE COURT:** Tell me this here: If you
7 were forced to serve on this jury, would you be able
8 to keep your mind off your work and concentrate on
9 this case?

10 **PROSPECTIVE JUROR:** It would be extremely
11 difficult, to be honest with you.

12 **THE COURT:** All right. You're excused.
13 I think I need a five-minute break.

14 (Recess taken.)

15 **THE BAILIFF:** Be seated, come to order.
16 Court is again in session.

17 **THE COURT:** Who is next?

18 **MR. STANTON:** No. 14, Miss McClain, your
19 Honor.

20
21 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 14

22 **THE COURT:** Miss McClain.

23 **PROSPECTIVE JUROR 14:** Yes.

24 **THE COURT:** How long have you lived in
25 Las Vegas?

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1 **PROSPECTIVE JUROR:** About 33 years.
2 **THE COURT:** Thirty-three years.
3 Are you married?
4 **PROSPECTIVE JUROR:** Widowed.
5 **THE COURT:** How did your husband die? Did
6 he die from natural causes?
7 **PROSPECTIVE JUROR:** Yes.
8 **THE COURT:** And you have two kids?
9 **PROSPECTIVE JUROR:** Yes, I do.
10 **THE COURT:** And they're grown?
11 **PROSPECTIVE JUROR:** Grown.
12 **THE COURT:** One is a librarian?
13 **PROSPECTIVE JUROR:** Pardon me?
14 **THE COURT:** One of them is a librarian?
15 **PROSPECTIVE JUROR:** Yes.
16 **THE COURT:** Does she live here in town?
17 **PROSPECTIVE JUROR:** Yes, she does.
18 **THE COURT:** So, she's a school librarian?
19 **PROSPECTIVE JUROR:** No, no.
20 **THE COURT:** Who does she work for?
21 **PROSPECTIVE JUROR:** She works for the
22 Enterprise Library.
23 **THE COURT:** Like Enterprise Township?
24 **PROSPECTIVE JUROR:** It's the name of the
25 library.

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1 **THE COURT:** Enterprise Library?
2 **PROSPECTIVE JUROR:** It's Enterprise.
3 **THE COURT:** Who owns it?
4 **PROSPECTIVE JUROR:** It's the State.
5 **THE COURT:** The Las Vegas, Clark County
6 Library District?
7 **PROSPECTIVE JUROR:** That's right.
8 **THE COURT:** It's out in Enterprise
9 Township?
10 **PROSPECTIVE JUROR:** Right.
11 **THE COURT:** That's what I was trying to
12 find out.
13 You have another daughter who is a floor
14 person?
15 **PROSPECTIVE JUROR:** Correct.
16 **THE COURT:** Have you ever served on a jury
17 before?
18 **PROSPECTIVE JUROR:** No.
19 **THE COURT:** Have you or anyone in your
20 family ever been charged with a crime before?
21 **PROSPECTIVE JUROR:** No.
22 **THE COURT:** Have you or anyone in your
23 family ever been the victim of a crime before?
24 **PROSPECTIVE JUROR:** No.
25 **THE COURT:** You never served on a jury

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1 before?

2 **PROSPECTIVE JUROR:** No.

3 **THE COURT:** Can you be fair and impartial

4 in this case?

5 **PROSPECTIVE JUROR:** I think so.

6 **THE COURT:** Can you follow the Court's

7 instructions on the law?

8 **PROSPECTIVE JUROR:** I'm sorry?

9 **THE COURT:** Can you follow my instructions

10 on the law?

11 **PROSPECTIVE JUROR:** Yes, I think so.

12 **THE COURT:** Have you heard anything about

13 this case?

14 **PROSPECTIVE JUROR:** No, just the

15 questionnaire, that's all.

16 **THE COURT:** Just the questionnaire. Okay.

17 Now, you understand that you're a

18 prospective juror for the penalty hearing. You're

19 going to have to decide the punishment.

20 Do you understand that?

21 **PROSPECTIVE JUROR:** Yes.

22 **THE COURT:** You have to listen to the

23 evidence and the facts and make a decision based on

24 that.

25 Do you understand that?

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1 **PROSPECTIVE JUROR:** Yes.

2 **THE COURT:** Now, in a case where a person

3 has been convicted of first-degree murder, the four

4 possible punishments will be the death penalty, life

5 in prison without the possibility of parole, life in

6 prison with the possibility of parole or a definite

7 term of 50 years with the possibility of parole

8 after 20 years, and of course, if a deadly weapon is

9 used, those penalties are doubled.

10 Do you understand that?

11 **PROSPECTIVE JUROR:** Yes.

12 **THE COURT:** Could you consider all four

13 forms of punishment?

14 **PROSPECTIVE JUROR:** Yes, I believe I

15 could.

16 **THE COURT:** Okay.

17 Do you have any moral or religious

18 objections to the death penalty?

19 **PROSPECTIVE JUROR:** No.

20 **THE COURT:** Can you be fair to both sides

21 in this case?

22 **PROSPECTIVE JUROR:** I believe I could.

23 **THE COURT:** State?

24 **MR. DASKAS:** Judge, thank you.

25 /////

1 EXAMINATION BY THE STATE

2 **BY MR. DASKAS:**

3 Q The Judge just explained that the jury has
4 already convicted Donte Johnson of the four counts
5 of murder.

6 You understand that?

7 A Yes, I do.

8 Q Do you have any problem accepting that
9 another jury convicted him?

10 A No.

11 Q You appreciate your role is simply to
12 decide what his punishment should be?

13 A Yes, although I feel that the other jury
14 probably should have decided.

15 Q Setting that aside, though, if you're
16 selected, can you accept that appointment?

17 A Yes, I believe I could.

18 Q In the answers here to the questions about
19 the death penalty, one of the questions was, "Would
20 you say that you are generally" -- and it gives some
21 options about punishment, and you circled that you
22 could consider the death penalty in certain
23 circumstances.

24 A Yes, that's correct.

25 Q Is that still how you feel?

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1 A Yes, it is.

2 Q In this case if you're convinced this is
3 the appropriate punishment, the death penalty, could
4 you impose that punishment?

5 A Yes, I could.

6 Q If you're the foreperson, you have the
7 same vote as everyone else, the only additional
8 responsibility is you have to sign the verdict form.

9 If you're selected as the foreperson in
10 this case, could you sign the document that puts the
11 defendant to death?

12 A I'm not sure.

13 Q If you thought about it, putting yourself
14 in that situation now, because you could be in that
15 situation, do you think it's something you could do?

16 A Possibly.

17 **MS. JACKSON:** Counsel, I'm sorry.

18 Your Honor, just for the record, the
19 objection I have is that I don't think the law
20 requires a prospective juror to be able to sign
21 their name as a foreperson. The law says they have
22 to consider all four forms. I realize the Court has
23 previously ruled on that, but the record should
24 reflect we have a continuing objection to that
25 particular question. We don't think the law

1 requires they be able to sign as foreperson.

2 **THE COURT:** I don't think he says the law
3 required her to sign it; I think he just asked her
4 could she do it.

5 **MR. DASKAS:** That's correct, Judge.

6 **MS. JACKSON:** We think it's an improper
7 question to ask somebody could you sign off as
8 foreperson. I think you're required -- you can ask
9 them can you consider or give fair consideration.

10 **THE COURT:** I disagree with you, because I
11 think if they are the foreperson, they have to sign
12 it. I guess they're asking if they allow themselves
13 to be picked as foreperson -- I don't know how they
14 do it back there, but he can ask her if she can sign
15 it.

16 **MS. JACKSON:** Very well, your Honor.

17 **THE COURT:** It's one way of asking if you
18 can impose it.

19 **MR. DASKAS:** Thank you, Judge.

20 **BY MR. DASKAS:**

21 Q The Judge brings up a good point.

22 What I'm talking about is this: We've all
23 had probably at least philosophical discussions
24 about the death penalty, and that's one of them, but
25 what we're talking about today is you serving on a

1 jury where death is an option.

2 You appreciate that now?

3 A Yes.

4 Q Now that you've realized that if you're
5 selected and if this is the appropriate case, do you
6 feel like you can impose that sentence as the
7 punishment in this case against the defendant?

8 A I don't know. I really can't honestly
9 answer that one.

10 Q You realize now is the time that you need
11 to answer?

12 A Yes, I realize.

13 Q I apologize. I don't mean to put you on
14 the spot.

15 A I understand.

16 Q It seems like you appreciate how important
17 this is.

18 A Yes, I do.

19 Q What is your best estimate right now --
20 and we're talking about looking inside yourself now
21 and having to make this decision, it sounds like
22 maybe it's not something you're comfortable with?

23 A Right. Right.

24 Q Am I correct? Are you having second
25 thoughts that maybe you should not impose death even

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1 if you thought it were appropriate?

2 A I think I could if I thought it was
3 appropriate.

4 Q Can you assure us that if you believe it's
5 appropriate, you will impose death?

6 A I don't think so.

7 **MS. JACKSON:** Your Honor, again, I'll
8 object to the form of the question. She doesn't
9 have to assure us that she can do it, she has to
10 assure us that she can fairly consider all four
11 forms. She's done that.

12 **MR. DASKAS:** Judge, with all due respect
13 to Miss Jackson, I'm asking a slightly different
14 question, that is, having considered it and
15 concluded that it's appropriate, can she do it, and
16 what I'm hearing now is that she can't do it, and
17 that's my concern, your Honor.

18 **THE COURT:** The objection is overruled.

19 **BY MR. DASKAS:**

20 Q Again, what I hear you saying is if you're
21 put in the position of having to impose death, you
22 couldn't do it?

23 A It depends on the circumstances. I don't
24 know the circumstances of this case either.

25 Q And again, if you hear the

1 circumstances -- and we've got to assume some things
2 for the purposes of my question, but if you heard
3 the circumstances, and in your mind those
4 circumstances warrant a death sentence, they justify
5 a death sentence, could you be the one to vote for
6 that punishment, in this case, the death penalty?

7 A Oh, I probably could if I felt it was
8 appropriate, but I have to know more details than I
9 do.

10 Q All you know at this point is what's in
11 that questionnaire that he's been convicted of four
12 murders?

13 A Right.

14 Q You want to know more?

15 A Yes.

16 Q Would you also consider evidence presented
17 by the defense, his background, his childhood,
18 things of that nature?

19 A Yes.

20 Q That would be important to you?

21 A Yes, it would.

22 MR. DASKAS: We'll pass for cause, Judge.

23 THE COURT: Counsel?

24 MS. JACKSON: Thank you, your Honor.

25 /////

EXAMINATION BY THE DEFENSE

BY MS. JACKSON:

Q Good afternoon, Miss McClain.

A Hello.

Q Your children -- this case involves four young men that were murdered, and they were all about 17, 18, 19 years old.

Do you have children that age, ma'am?

A They're a little older than that -- yes.

Q They're a little older.

Now knowing that these victims were that age, would that affect your ability to consider all four forms of punishment given the fair consideration?

A I don't think so, because they're very young, and they had their whole life before them.

Q But you can still be fair?

A I will try to be very fair.

Q And because these are -- the pictures, you're going to have to look at some pictures. They're going to be kind of shocking.

Would that affect your ability to be fair and to fairly consider all four forms of punishment?

A I don't think so.

Q Fair enough. Good enough.

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1 I know you haven't been given the law yet,
2 but one of the things that -- in addition to
3 considering the four possible forms, at the
4 appropriate time the Court is going to tell you that
5 the law in Nevada requires you to consider some
6 things called "mitigation." For example, was the
7 defendant, when he was a child -- was he abused,
8 things like that. Those are things that we legally
9 call "mitigation." On your questionnaire, you
10 indicated that you could consider those things
11 somewhat.

12 When you answered the Question No. 38, did
13 you have a clear idea of what "mitigation" is,
14 ma'am?

15 A What you just told me. I don't really
16 know.

17 Q When you answered this question, you
18 really weren't sure what we were talking about. It
19 says here, "mitigating circumstances such as the
20 defendant's health, mental status, age, childhood
21 experiences, education" -- it gives you some idea of
22 the kinds of things we're talking about -- did his
23 mother drink while she was pregnant -- things like
24 that. The law says that you have to consider those
25 things. You indicate here, "Somewhat."

1 What do you mean by "Somewhat," ma'am?

2 A It would depend on what kind of a
3 childhood he did have.

4 Q Are you saying you would like to know
5 about those things before you decide what is the
6 appropriate punishment?

7 A Yes.

8 Q Would those things be important to you?

9 A Yes.

10 Q Very important?

11 A Very important -- not "very," but
12 "somewhat" important in consideration.

13 Q You say "somewhat important." Can you
14 give a little bit better idea of what you mean by
15 that?

16 A I have to hear the circumstances of the
17 childhood, and just what brought him to do what he
18 did.

19 Q Okay. All right.

20 But you are willing to listen to those
21 things?

22 A I would listen.

23 Q Have you ever heard the phrase -- in cases
24 like this, people come in and say, "I don't want to
25 hear the abuse excuse."

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1 Do you know what that means?

2 A I've heard of that.

3 Q What does that mean to you?

4 A They don't want to hear anything.

5 Whatever his life was about is not important, just

6 what he did do is important.

7 Q Do you feel that way?

8 A No, I don't feel that way, no.

9 Q No. 33 says, "To what extent should the

10 mental status of a criminal defendant be considered

11 in a sentencing decision between life and death?"

12 and you left that question blank.

13 A Again, it depends on the circumstances.

14 If it's really true that a person is mental or is it

15 something that they likely would have done.

16 Q By this question, you understand that

17 Mr. Johnson sits here convicted of four first-degree

18 murders, so legally, there's no if, ands or buts

19 about it. Legally speaking, there was no

20 self-defense, or we wouldn't be here. There was no

21 legal insanity, or we wouldn't be here; so, we're

22 not talking about those things.

23 Do you understand that, that the posture

24 of this case procedurally -- do you understand that

25 you're not going to hear anything about that, you're

1 going to have to look at four first-degree murder
2 convictions. And the question, ma'am, is in this
3 case -- we're not telling you our client is crazy.
4 If he was, he wouldn't be here.

5 Do you understand? Under those
6 circumstances, can you still fairly consider all
7 four forms of punishment that the Nevada legislature
8 has deemed appropriate? If you bear in mind --

9 **THE COURT:** Miss Jackson, you asked her a
10 question, and before you give her a chance to
11 answer, you start asking another one, talking about
12 it. So, are you going to ask a question or what?

13 **MS. JACKSON:** Well, your Honor -- what was
14 my last question, Miss Court Reporter?

15 I was just having a conversation with her,
16 Judge.

17 **THE COURT:** I know. That's the problem.
18 Read the question back.

19 (The record was read as follows:

20 "Q. By this question, you understand
21 that Mr. Johnson sits here convicted of
22 four first-degree murders, so legally,
23 there's no if, ands or buts about it?
24 Legally speaking, there was no
25 self-defense, or we wouldn't be here.

1 There was no legal insanity, or we
2 wouldn't be here; so, we're not talking
3 about those things.

4 "Do you understand that, that the
5 posture of this case procedurally -- do
6 you understand that you're not going to
7 hear anything about that, you're going to
8 have to look at four first-degree murder
9 convictions. And the question, ma'am, is
10 in this case -- we're not telling you our
11 client is crazy. If he was, he wouldn't
12 be here.

13 "Do you understand? Under those
14 circumstances, can you still fairly
15 consider all four forms of punishment that
16 the Nevada legislature has deemed
17 appropriate?")

18 **BY MS. JACKSON:**

19 Q For first-degree murder? That was a long
20 question.

21 The bottom line is, we're here for four
22 first-degree murders, four victims. Under these
23 circumstances, can you consider life, a life
24 verdict?

25 A I could.

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1 Q Okay.
2 Will you?
3 A I don't know that, but I could.
4 Q You can fairly consider it?
5 A Yes.
6 Q What are some of the benefits in a case
7 like this you would think to giving a life verdict?
8 A I don't know. I need to hear everything,
9 and then I can decide. Right now, I just couldn't
10 tell you that.
11 Q Do you see any benefits in a case of this
12 nature for giving a death verdict?
13 A Yes.
14 Q What would they be? What are the
15 benefits?
16 A The benefits are the victims' families,
17 I'm sure, would appreciate that, but I don't know if
18 I can do that.
19 Q If you can do what?
20 A If I could, say, give him the death
21 penalty, but I realize that the families would
22 appreciate that. I really do believe that.
23 Q You're going to hear from their families
24 at the appropriate time, and you are to consider all
25 of that evidence.

1 A I would have to.

2 Q Can you promise that you won't be unduly
3 swayed by that testimony?

4 A I think I wouldn't be.

5 Q Do you realize that in a case like this,
6 for example, it would not be appropriate for a
7 victim's family member to be on the jury?

8 Would you agree with me for that reason?

9 A Yes.

10 Q And because it's not appropriate to overly
11 empathize with the victims.

12 Do you understand that?

13 A Yes.

14 **MR. DASKAS:** Judge, I'm going to object.
15 We're getting into the argument. I think this is
16 improper.

17 **THE COURT:** Sustained.

18 **BY MS. JACKSON:**

19 Q What if you were selected as a juror,
20 Miss McClain, and the jury was deliberating and
21 there was a majority vote and the jury could not
22 reach a verdict because it was your sincere
23 considered opinion that your vote was different.
24 Would you be able to maintain your position after
25 due deliberation if you felt it was the right thing

1 to do and appropriate under the circumstances?

2 A Yes, I would.

3 Q You don't feel like you would be pressured
4 into voting the majority vote --

5 A No.

6 Q -- just for the sake of reaching a
7 verdict?

8 A No, I don't think so.

9 MS. JACKSON: Thank you.

10 That's all I have, your Honor.

11 THE COURT: All right.

12 Pass for cause?

13 MS. JACKSON: Yes, sir.

14 THE COURT: Miss McClain, you are to
15 report back at 10:00 o'clock Thursday morning
16 downstairs. All right? We'll let you know.

17 PROSPECTIVE JUROR 14: Okay. Thank you.

18 THE COURT: Thank you.

19

20 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 16

21 THE COURT: Miss Thurston?

22 PROSPECTIVE JUROR 16: Yes.

23 THE COURT: You're from the Philippines --

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: -- originally?

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1 You were born there?

2 **PROSPECTIVE JUROR:** Correct.

3 **THE COURT:** Where did you grow up?

4 **PROSPECTIVE JUROR:** Mainly in Maryland,

5 back East.

6 **THE COURT:** Maryland.

7 What kind of work do you do?

8 **PROSPECTIVE JUROR:** I work in retail.

9 **THE COURT:** Who do you work for?

10 **PROSPECTIVE JUROR:** Macy's.

11 **THE COURT:** Macy's?

12 **PROSPECTIVE JUROR:** Yes.

13 **THE COURT:** Are you married?

14 **PROSPECTIVE JUROR:** Yes.

15 **THE COURT:** How is your husband employed?

16 **PROSPECTIVE JUROR:** Security.

17 **THE COURT:** At one of the hotels?

18 **PROSPECTIVE JUROR:** No, just an

19 independent company.

20 **THE COURT:** Now, you have one son in the

21 tenth grade, and you have another son and daughter.

22 Are they going to school?

23 **PROSPECTIVE JUROR:** No.

24 **THE COURT:** They're out of school?

25 **PROSPECTIVE JUROR:** No. They're not in

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1 school yet.

2 **THE COURT:** They're babies?

3 **PROSPECTIVE JUROR:** Right.

4 **THE COURT:** You said on No. 20, close

5 friends of yours have a different racial background;

6 is that right?

7 **PROSPECTIVE JUROR:** Right.

8 **THE COURT:** So, you interact with all

9 different kinds of people?

10 **PROSPECTIVE JUROR:** Yes.

11 **THE COURT:** What part of Maryland did you

12 grow up in?

13 **PROSPECTIVE JUROR:** Fort Meade.

14 **THE COURT:** Fort --

15 **PROSPECTIVE JUROR:** Fort Meade.

16 **THE COURT:** How far is that from D.C.?

17 **PROSPECTIVE JUROR:** Thirty minutes.

18 **THE COURT:** Thirty minutes?

19 **PROSPECTIVE JUROR:** Yeah.

20 **THE COURT:** You stated you could consider

21 all four forms of punishment including the death

22 penalty; is that correct?

23 **PROSPECTIVE JUROR:** Yes.

24 **THE COURT:** So, you're not opposed to the

25 death penalty?

1 **PROSPECTIVE JUROR:** No.
2 **THE COURT:** Can you be fair to both sides
3 in this case?
4 **PROSPECTIVE JUROR:** Yes.
5 **THE COURT:** Have you had any relatives who
6 have been the victim of a violent crime?
7 **PROSPECTIVE JUROR:** No.
8 **THE COURT:** Do you have any relatives or
9 close friends who work in law enforcement?
10 **PROSPECTIVE JUROR:** No.
11 **THE COURT:** Is your husband Filipino also?
12 **PROSPECTIVE JUROR:** No, he's not.
13 **THE COURT:** Your parents -- do they live
14 here?
15 **PROSPECTIVE JUROR:** Yes.
16 **THE COURT:** State?
17 **MR. DASKAS:** Thank you, Judge.
18
19 EXAMINATION BY THE STATE
20 **BY MR. DASKAS:**
21 Q Hi.
22 A Hi.
23 Q No. 24, you were asked about your opinions
24 and feelings regarding the criminal justice system,
25 and you indicated, "I believe in innocence until

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1 proven guilty," which is, of course, our burden in
2 most cases.

3 You understand in this case he's already
4 been convicted?

5 A Right.

6 Q So, you realize that's not a concern in
7 this particular case?

8 A Yes, I do.

9 Q Your only role would be to determine the
10 appropriate punishment.

11 A Yes.

12 Q Do you feel comfortable taking on that
13 role if you're selected?

14 A Yes.

15 Q No one is suggesting this will be an easy
16 decision imposing the death penalty, but you did
17 indicate that you could consider it.

18 What I want to ask is a slightly different
19 question, and that is not whether you can consider
20 it, but if you think it's appropriate in this case,
21 can you impose the death penalty against the
22 defendant seated in this courtroom?

23 A I don't feel like I know enough about it
24 to be able to make that decision right now.

25 Q Once you hear all the evidence and the

1 facts of the case and the information about the
2 defendant, if at that point you believe it's
3 warranted, could you impose it?

4 A Yes.

5 Q We've asked other jurors, and I'm going to
6 ask you the same question. If you're selected as
7 foreperson, you would have to sign a verdict form
8 that essentially puts this defendant to death.

9 If you're the foreperson, could you sign
10 that document?

11 A Yes.

12 MR. DASKAS: Thank you.

13 We'll pass for cause, Judge.

14 THE COURT: Miss Jackson?

15 MS. JACKSON: Thank you, your Honor.

16

17 EXAMINATION BY THE DEFENSE

18 BY MS. JACKSON:

19 Q Good afternoon, Miss Thurston.

20 A Good afternoon.

21 Q Mr. Daskas is correct. The presumption of
22 innocence in this case is neither here nor there.
23 There's been four convictions.

24 Do you understand that, ma'am?

25 A Yes.

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1 Q They do have a burden to convince you that
2 death is warranted in the case.

3 Do you understand that?

4 A Yes.

5 Q You know that the law never requires you
6 to impose death, ever?

7 A Did I know that?

8 Q Yes.

9 A No.

10 Q Knowing that now, if you were in the jury
11 room and the other jurors determine that death is
12 appropriate, and in your sincere considered opinion
13 this was a case where you wanted to give life,
14 everyone else wanted to give death, would you be
15 able to hold to your own honest convictions?

16 A Yes.

17 Q Would you respect everyone else's right to
18 do that as well?

19 A Yes.

20 Q I noticed on No. 38, you indicate that you
21 would consider mitigation somewhat, and they give
22 you some idea in that question what mitigation is --
23 background, childhood, things of that nature.

24 What did you mean, ma'am, by you would
25 consider it somewhat?

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1 A Again, not knowing much about the case
2 except, of course, if he's been convicted of those
3 counts, not knowing about that person, I would take
4 those into consideration.

5 Q Would it be your desire to know more about
6 this person?

7 A Right.

8 Q As a matter of fact, in making a decision
9 of this magnitude, wouldn't you want to know as much
10 as you possibly can about a person?

11 A Yes.

12 Q And you would consider all of that before
13 making a decision about life or death?

14 A Yes.

15 **MS. JACKSON:** Thank you.

16 Thank you, Judge. We pass for cause.

17 **THE COURT:** All right.

18 Ma'am, we're going to have you come back
19 Thursday at 10:00 o'clock downstairs in the jury
20 lounge, and we will probably be in a better position
21 to let you know. Okay?

22 **PROSPECTIVE JUROR 16:** Okay.

23

24 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 17

25 **THE COURT:** Miss Ray, Alisha Ray, how long

1 have you lived in Las Vegas, ma'am?

2 **PROSPECTIVE JUROR 17:** Almost nine years.

3 **THE COURT:** Nine years.

4 Did you move here from California?

5 **PROSPECTIVE JUROR:** Yes, sir.

6 **THE COURT:** Were you raised in Glendale or
7 just born there?

8 **PROSPECTIVE JUROR:** The area.

9 **THE COURT:** The area.

10 Now, you stated that you personally
11 witnessed a murder as a teenager?

12 **PROSPECTIVE JUROR:** Yes, sir.

13 **THE COURT:** Tell us about that.

14 **PROSPECTIVE JUROR:** A girlfriend of mine
15 and I -- she was staying the night at my house, and
16 we went to a local little liquor store.

17 **THE COURT:** A liquor store?

18 **PROSPECTIVE JUROR:** Yes, sir. And across
19 the main road, there was a small bar, and there were
20 two gentlemen out front that were arguing what
21 looked to be the start of a fist fight, and we
22 stayed to watch. As the fight continued, a
23 gentleman appeared off to the side, and we assumed
24 that he would be the person to go over and
25 eventually break the fight up, and instead, he

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1 walked over and shot one of the men point-blank four
2 times in the chest.

3 **THE COURT:** Four times.

4 Were you a witness? Did you have to go to
5 court to testify?

6 **PROSPECTIVE JUROR:** Yes, sir.

7 **THE COURT:** Did the person get convicted?

8 **PROSPECTIVE JUROR:** Yes, sir.

9 **THE COURT:** How old were you guys?

10 **PROSPECTIVE JUROR:** I'm sorry?

11 **THE COURT:** How old were you at that time?

12 **PROSPECTIVE JUROR:** I was almost 17 by the
13 time he was convicted.

14 **THE COURT:** No, how old were you when you
15 went to the liquor store?

16 **PROSPECTIVE JUROR:** About 15.

17 **THE COURT:** So, you guys were going to buy
18 liquor?

19 **PROSPECTIVE JUROR:** No. She was spending
20 the night, and we were going to buy chips and
21 Twinkies and sodas.

22 **THE COURT:** You made it sound like you
23 guys were going to the liquor store.

24 **PROSPECTIVE JUROR:** We were going to get
25 some Strawberry Hill, tie one on.

1 **THE COURT:** Now, your family and boss work
2 in the legal system?
3 **PROSPECTIVE JUROR:** Yes, sir.
4 **THE COURT:** What do they do?
5 **PROSPECTIVE JUROR:** I have family that is
6 an attorney here in town.
7 **THE COURT:** Who?
8 **PROSPECTIVE JUROR:** Charles Miles.
9 **THE COURT:** Charles Miles?
10 **PROSPECTIVE JUROR:** Yes, sir.
11 **THE COURT:** How is he related to you?
12 **PROSPECTIVE JUROR:** He is an in-law.
13 **THE COURT:** What kind of law does he
14 practice?
15 **PROSPECTIVE JUROR:** I don't know for sure.
16 **THE COURT:** You don't know?
17 All right. Who else?
18 **PROSPECTIVE JUROR:** My boss and two
19 associates. We're in the gaming industry. He is
20 previously from family court. He worked with the
21 District Attorney.
22 **THE COURT:** What's his name?
23 **PROSPECTIVE JUROR:** Mike Dreitzer.
24 **THE COURT:** Dreitzer?
25 **PROSPECTIVE JUROR:** Yes, sir, and my other

1 co-worker is Eric Abbott and Robert Zeams.
2 **THE COURT:** Robert --
3 **PROSPECTIVE JUROR:** Zeams.
4 **THE COURT:** Where do you work?
5 **PROSPECTIVE JUROR:** Mycon Gaming.
6 **THE COURT:** What do you do for them?
7 **PROSPECTIVE JUROR:** I'm the director of
8 product compliance. I submit gaming equipment for
9 approval worldwide.
10 **THE COURT:** Have you spoken with your
11 co-workers since finding out you were going to be on
12 this jury?
13 **PROSPECTIVE JUROR:** Just that I had jury
14 duty, and I made arrangements to reschedule
15 meetings.
16 **THE COURT:** All right.
17 Now, you're working with a couple of guys
18 who had worked with the D.A.'s office?
19 **PROSPECTIVE JUROR:** Yes, sir.
20 **THE COURT:** Is that going to cause you any
21 problems?
22 **PROSPECTIVE JUROR:** No, sir.
23 **THE COURT:** Do you think that you would
24 have to explain or justify your verdict to them?
25 **PROSPECTIVE JUROR:** No, sir.

1 **THE COURT:** And you understand that if
2 you're on this jury, you can't talk to them or
3 solicit their advice?

4 Do you understand that?

5 **PROSPECTIVE JUROR:** Yes, sir.

6 **THE COURT:** You would be able to refrain
7 from doing that?

8 **PROSPECTIVE JUROR:** Yes, sir.

9 **THE COURT:** Tell me this here now: Under
10 our laws, if a person is convicted of first-degree
11 murder, the jury has four possible punishments to
12 impose. One is the death penalty, life in prison
13 without parole, life in prison with parole or a
14 definite term of 50 years with the possibility of
15 parole after 20 years, and those terms are doubled
16 if a deadly weapon was used.

17 Now, my question to you is can you
18 consider all four forms of punishment? Tell me
19 truthfully how you feel about that.

20 **PROSPECTIVE JUROR:** No.

21 **THE COURT:** If you don't think you can,
22 say you can't.

23 **PROSPECTIVE JUROR:** No.

24 **THE COURT:** That is because --

25 **PROSPECTIVE JUROR:** It's not my beliefs,

1 the way I was raised up. We just believe in an eye
2 for an eye.

3 **THE COURT:** So, you think if someone
4 should kill someone, they should be killed?

5 **PROSPECTIVE JUROR:** Absolutely.

6 **THE COURT:** And you don't think -- could
7 you consider say, for instance, given the background
8 circumstances or the people, could you consider that
9 in looking at whether or not they should get a life
10 sentence?

11 **PROSPECTIVE JUROR:** I believe that going
12 into a decision such as killing, you would have to
13 understand the circumstances on your end would also
14 possibly be the same. I believe that you, for any
15 vindication or any state of mind -- I mean, you
16 would have to understand that the rules would be
17 reversed and that you would be up for the same.

18 **THE COURT:** I understand that.

19 I guess the bottom line is we have four
20 murders here.

21 You think that if you commit one murder,
22 you should also sacrifice your life; is that right?

23 **PROSPECTIVE JUROR:** Absolutely.

24 **THE COURT:** And if you kill four people,
25 that's even more true; is that right?

1 **PROSPECTIVE JUROR:** Yes, sir.
2 **THE COURT:** State?
3 **MR. WHIPPLE:** Your Honor, I challenge for
4 cause at this point. I think we've heard enough
5 testimony.
6 **THE COURT:** I was going to let him -- he
7 has the right to --
8 **MR. STANTON:** I'll submit the matter to
9 the Court, your Honor.
10 **THE COURT:** You don't want to --
11 **MR. STANTON:** Traverse?
12 **THE COURT:** Yes.
13 **MR. STANTON:** No, your Honor. I submit
14 it.
15 **THE COURT:** All right.
16 You're excused, ma'am. Thank you.
17 **THE COURT:** That would probably save you
18 some time, Mr. Stanton. She seemed pretty sure.
19 **MR. STANTON:** I think so, your Honor.
20
21 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 18
22 **THE COURT:** You said you have a legal
23 secretary degree?
24 **PROSPECTIVE JUROR 18:** Yes.
25 **THE COURT:** Where did you go to school for

1 that?

2 **PROSPECTIVE JUROR:** Canby, Minnesota to a
3 vocational school.

4 **THE COURT:** What is it called?

5 **PROSPECTIVE JUROR:** Canby, Minnesota.

6 **THE COURT:** Did you ever work as a legal
7 secretary?

8 **PROSPECTIVE JUROR:** No, I did not.

9 **THE COURT:** What did you work as?

10 **PROSPECTIVE JUROR:** As a word processor.

11 **THE COURT:** You said you had an aunt who
12 worked in the --

13 **PROSPECTIVE JUROR:** In Henderson. She was
14 in the Assistant District Attorney's office in
15 Henderson.

16 **THE COURT:** Who did she work for?

17 **PROSPECTIVE JUROR:** I don't know who the
18 D.A. is over there.

19 **THE COURT:** You said you heard about this
20 case, right?

21 **PROSPECTIVE JUROR:** When it first started,
22 yes, but not recently.

23 **THE COURT:** You said you had someone in
24 your family who had been arrested or charged with a
25 crime?

1 **PROSPECTIVE JUROR:** My niece's husband. I
2 don't know what he was charged for, but I know he
3 was convicted.
4 **THE COURT:** Do you know how long ago this
5 was?
6 **PROSPECTIVE JUROR:** When?
7 **THE COURT:** Yes.
8 **PROSPECTIVE JUROR:** I don't know what he
9 was charged for. It was before they were married.
10 **THE COURT:** Who was the victim of a crime
11 in your family?
12 **PROSPECTIVE JUROR:** Victim of a crime?
13 **THE COURT:** Um-hmm.
14 **PROSPECTIVE JUROR:** My niece was killed
15 last summer in a head-on collision by a drunk
16 driver.
17 **THE COURT:** Your niece was hit by a drunk
18 driver?
19 **PROSPECTIVE JUROR:** Yes.
20 **THE COURT:** Did she live here in
21 Las Vegas?
22 **PROSPECTIVE JUROR:** No; she was from
23 Kansas.
24 **THE COURT:** In Kansas?
25 **PROSPECTIVE JUROR:** Yes.

1 **THE COURT:** This is where the accident
2 happened?

3 **PROSPECTIVE JUROR:** The accident happened
4 in South Dakota.

5 **THE COURT:** South Dakota. All right.

6 Now, I believe you stated in this
7 questionnaire that you -- let me ask you -- you
8 understand that this is a case where the defendant
9 has been charged with four first-degree -- convicted
10 of four charges of first-degree murder.

11 **PROSPECTIVE JUROR:** Correct.

12 **THE COURT:** And you understand that for
13 each of those charges, he could receive the
14 following penalties -- the death penalty, life in
15 prison without the possibility of parole, life in
16 prison with the possibility of parole or a definite
17 term of 50 years with the possibility of parole
18 after 20 years, and those punishments are doubled if
19 a deadly weapon was used.

20 Do you understand that?

21 **PROSPECTIVE JUROR:** Yes.

22 **THE COURT:** So, could you consider all
23 four forms of punishment?

24 **PROSPECTIVE JUROR:** Could I consider them?

25 **THE COURT:** Yes.

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1 **PROSPECTIVE JUROR:** Yes.

2 **THE COURT:** Now, here you said, "I believe
3 in the death penalty in cases where there are
4 multiple murders"; is that correct?

5 **PROSPECTIVE JUROR:** Yes, it is.

6 **THE COURT:** Now, do you believe that the
7 death penalty should be automatically imposed in
8 that situation, or do you believe that you should
9 hear the circumstances and look at the facts and all
10 the other pros and cons before you make a decision?

11 **PROSPECTIVE JUROR:** You should see the
12 circumstances and pros and cons.

13 **THE COURT:** So, you just wouldn't
14 automatically do it just because?

15 **PROSPECTIVE JUROR:** No.

16 **THE COURT:** Can you be fair to both sides
17 in this case?

18 **PROSPECTIVE JUROR:** Probably not.

19 **THE COURT:** Why is that?

20 **PROSPECTIVE JUROR:** I honestly don't know.
21 I just don't know if I could or not, to tell you the
22 truth.

23 **THE COURT:** What makes you think -- do you
24 know what I mean by "could you be fair"?

25 **PROSPECTIVE JUROR:** I do know what you

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1 mean by "could you be fair." I guess I would have
2 to hear the circumstances first. I'm sorry. I'm a
3 little nervous.

4 **THE COURT:** You're what now?

5 **PROSPECTIVE JUROR:** Sorry.

6 **THE COURT:** You're nervous?

7 **PROSPECTIVE JUROR:** Yeah.

8 **THE COURT:** You know what I mean by -- as
9 you sit there now, are you biased against either
10 side? Are you prejudiced or biased against either
11 side as you sit there now?

12 **PROSPECTIVE JUROR:** No, I guess not. No.

13 **THE COURT:** Are you biased towards the
14 defendant because he's African-American?

15 **PROSPECTIVE JUROR:** No.

16 **THE COURT:** Can you wait, listen to all
17 the evidence and make a decision solely on the facts
18 and the evidence that's heard here?

19 **PROSPECTIVE JUROR:** Yeah.

20 **THE COURT:** So, what makes you think that
21 you couldn't be fair then?

22 **PROSPECTIVE JUROR:** I don't know. I guess
23 I was just nervous. I'm sorry.

24 **THE COURT:** That's okay. I can understand
25 you being nervous. You're in front of these people

1 that you don't know.

2 I'm going to ask you again, can you be
3 fair and impartial?

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** Can you follow the Court's
6 instructions on the law?

7 **PROSPECTIVE JUROR:** Yes.

8 **THE COURT:** Now, is there anything you
9 feel we should know about you that we haven't asked
10 that might cause some problems?

11 **PROSPECTIVE JUROR:** I don't know if it
12 matters where I work. I work for the court system.

13 **THE COURT:** Who do you work for?

14 **PROSPECTIVE JUROR:** I work for Family
15 Court.

16 **THE COURT:** What do you do for Family
17 Court?

18 **PROSPECTIVE JUROR:** I'm a calendar clerk
19 down there.

20 **THE COURT:** You work for the clerk's
21 office?

22 **PROSPECTIVE JUROR:** I work for the clerk's
23 office.

24 **THE COURT:** We don't care, as long as you
25 can be fair and impartial.

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1 **PROSPECTIVE JUROR:** Okay.

2 **THE COURT:** Have you heard anything about

3 this case?

4 **PROSPECTIVE JUROR:** Only that he had been

5 convicted of the murders. I don't remember anything

6 from that.

7 **THE COURT:** And do you remember any of the

8 facts and circumstances about the case, the murders

9 or the people involved?

10 **PROSPECTIVE JUROR:** No, I do not.

11 **THE COURT:** You work out of the Pecos

12 building --

13 **PROSPECTIVE JUROR:** Yes, I do.

14 **THE COURT:** -- is that right? Okay.

15 Do you know any of these lawyers here?

16 **PROSPECTIVE JUROR:** No, I do not.

17 **THE COURT:** Do you know Miss Jackson or

18 Mr. Whipple?

19 **PROSPECTIVE JUROR:** No, I do not.

20 **THE COURT:** You're not upset or angry with

21 them, are you?

22 **PROSPECTIVE JUROR:** No.

23 **THE COURT:** They haven't been down in

24 Family Court there?

25 **MS. JACKSON:** Not yet anyway.

1 **THE COURT:** Have you ever worked up at
2 this court?

3 **PROSPECTIVE JUROR:** Yes. I started at the
4 Marriage Bureau.

5 **THE COURT:** State?

6 **MR. DASKAS:** Thank you, Judge.

7

8 EXAMINATION BY THE STATE

9 **BY MR. DASKAS:**

10 Q Miss Ford, one of the questions asked your
11 beliefs about the death penalty are such that you
12 would automatically impose death regardless of the
13 facts and circumstances, and you checked, "No," you
14 wouldn't automatically vote for death.

15 A Correct.

16 Q You still feel that way?

17 A Yes, I do.

18 Q In fact, what I think I heard, you told
19 the Judge you want to know as much about this case
20 and the defendant before you decide what punishment
21 is appropriate?

22 A Yes.

23 Q Is that accurate?

24 A Yes.

25 Q The Judge mentioned the four forms of

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1 punishment in this case.

2 A Um-hmm.

3 Q "Yes" out loud, please.

4 A Yes.

5 Q You should know that.

6 Understand that those punishments we
7 talked about, you would need to select a punishment
8 for each victim in this case.

9 You realize that?

10 A Yes.

11 Q And you understand you can pick different
12 punishments for each victim?

13 A That I did not know.

14 Q Now that I told you, will you accept that?

15 A Yes.

16 Q Can you do that?

17 A Yes.

18 Q There is obviously a distinction between
19 considering the death penalty on the one hand and
20 having to impose it on the other.

21 A Correct.

22 Q You realize that what we're talking about
23 now in this courtroom is having to do with?

24 A Correct.

25 Q If you believe, after hearing all the

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1 facts and circumstances about the case itself and
2 everything about this man -- if after hearing all
3 that you believe that is the appropriate punishment,
4 can you impose it?

5 A Yes.

6 MR. DASKAS: Thank you.

7 We'll pass for cause, Judge.

8
9 EXAMINATION BY THE DEFENSE

10 BY MS. JACKSON:

11 Q Good afternoon, Miss Ford.

12 A Hi.

13 Q How are you today?

14 A Fine.

15 Q You indicated in your questionnaire this
16 is a multiple murder, and we know that. You wrote
17 in multiple murders, you felt that -- "I believe in
18 death penalty in cases where there is multiple
19 murders"?

20 A I did write that.

21 Q When you wrote that, what did you mean?

22 A I believe if somebody -- I guess if
23 somebody is going to take more than one life, then
24 their life should be taken too.

25 Q Automatically?

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1 A Hearing the circumstances, also, to see
2 what happened and why. I guess I wouldn't say
3 "automatically." I might have wrote that. I don't
4 remember.

5 Q I just want to be sure, because you're
6 going to see pictures of four very young men, very
7 graphic pictures, shocking even to me, and I do this
8 every day.

9 You're going to be able to maintain your
10 composure and be fair and decide what is the
11 appropriate punishment of the four forms authorized
12 by law?

13 A I don't know. I have never been in that
14 situation --

15 Q And I understand.

16 A I would hope so, but I can't say honestly
17 I could.

18 Q That's fair. We can appreciate that.
19 However, this is the only chance we get to ask.

20 A Right.

21 Q Just take a second, search your heart or
22 your soul or whatever, your mind, and give us the
23 best answer that you can, because this is what's
24 going to happen. There's a conviction for four
25 people. You're going to see pictures. We're still

1 going to ask you to maintain your composure as a
2 juror and it's a huge request. Only you can tell us
3 if you could do it.

4 A I probably could not.

5 **MR. DASKAS:** Judge, I do apologize. The
6 question is can she consider not whether she can
7 maintain her composure and then consider, so we're
8 getting a little far afield. I think the question
9 should be limited to can she consider the options
10 which she's indicated she has, not whether she can
11 maintain her composure after seeing the photographs.

12 **MS. JACKSON:** Your Honor, I think when
13 we're asking an individual, "Can you be fair; can
14 you impose a verdict," it's very difficult if they
15 don't know what they are going to see and what they
16 are going to hear. I think that --

17 **THE COURT:** I think that's a fair question
18 to see whether or not they're going to be so upset
19 that they can't carry out their duties.

20 What was the question again?

21 (The record was read as follows:

22 "Q. Just take a second, search your
23 heart or your soul or whatever, your mind,
24 and give us the best answer that you can,
25 because this is what's going to happen.

1 There's a conviction for four people.
2 You're going to see pictures. We're still
3 going to ask you to maintain your
4 composure as a juror and it's a huge
5 request. Only you can tell us if you
6 could do it.
7 "A. I probably could not.")
8 **THE COURT:** Are you asking her if she can
9 maintain her composure?
10 **MS. JACKSON:** The question was the
11 question before that, the graphic nature of the
12 photographs.
13 **THE COURT:** Re-ask the question, because,
14 Miss Jackson, your questions are too long. We
15 forget them by the time you get to the end.
16 Re-ask the question.
17 **BY MS. JACKSON:**
18 Q Can you see graphic photographs of four
19 dead people and still be fair and impartial?
20 A Probably not, no.
21 Q Why?
22 A Because it would probably make me sick to
23 my stomach and would upset me. That's what it would
24 take to make me do that.
25 **THE COURT:** See pictures and you what?

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1 **PROSPECTIVE JUROR:** I get sick. It would
2 upset me that somebody would willingly take somebody
3 else's life like that for no reason, but I'm sure
4 there was but....

5 **BY MS. JACKSON:**

6 Q I'm not asking you if you will be upset --
7 it's a very upsetting situation -- the issue is can
8 you sit on this jury and fairly weigh the evidence,
9 and part of the evidence will be very graphic
10 photographs, to be honest with you.

11 A No.

12 **MS. JACKSON:** Your Honor, she says she
13 can't sit as a juror. I would challenge for cause.

14 **MR. DASKAS:** May I ask a couple of
15 follow-ups, Judge?

16 **THE COURT:** Yes.

17

18 EXAMINATION BY THE STATE

19 **BY MR. DASKAS:**

20 Q Let me phrase it a slightly different way.
21 Let's assume that you hear again information about
22 this man's background and circumstances of the
23 murder, and you decide in your mind that this case
24 does not warrant the death penalty. Okay?

25 A Okay.

1 Q Is looking at a photograph going to make
2 you say, "You know what, never mind. I'm voting for
3 death now that I saw that photo. That made me
4 sick"?

5 A I don't know. I would hope not, but I
6 couldn't say no. I don't know on that to tell you
7 the truth.

8 Q Can you assure us that what you'll base
9 your verdict, your decision on is the facts and
10 circumstances of the murder itself, the murders
11 themselves and the defendant's background and
12 upbringing and things of that nature?

13 A I couldn't say yes on that either. Sorry.

14 Q When I spoke to you moments ago --

15 A I know.

16 Q Understand, there are no right or wrong
17 answers here. What we want is your honesty, and I
18 appreciate that.

19 Really, the question is, do you
20 automatically vote for death because he's been
21 convicted of murder?

22 A No, you don't.

23 Q Do you automatically exclude those other
24 possible forms of punishment because he's already
25 been convicted? As a juror, would you do that or

1 would you consider all of them?

2 A I would hope I would consider them all.

3 Q And as I asked you initially, wouldn't you
4 want to know everything you could?

5 A I would.

6 Q Might there be something in all that
7 information that causes you to choose life over
8 death?

9 A Possibly, yes.

10 Q Regardless of the fact that there might be
11 graphic photos in this case?

12 A I honestly don't know. I can't say.

13 Q Is your concern that the photos will make
14 you sick to your stomach or that the photos will
15 make you sentence someone to death who shouldn't be
16 sentenced to death?

17 A Probably that they would make me want to
18 take somebody's life because they've already taken
19 somebody's children.

20 Q Would you set aside everything else that
21 you already knew about the defendant, all the good
22 things that you might hear and sentence him to death
23 just based on what you see in the photographs?

24 A I would hope not.

25 Q So, again, let me ask the million dollar

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1 question.

2 A Right.

3 Q Can you consider all forms of punishment
4 once you hear all the facts and circumstances of the
5 case?

6 A I couldn't say yes on that anymore after
7 knowing what will be shown and stuff.

8 Q You have a legitimate concern that you
9 automatically will vote for death?

10 A Yes, I do.

11 **MR. DASKAS:** I'll submit it, Judge.

12 **THE COURT:** You're excused, ma'am.

13 **PROSPECTIVE JUROR 18:** Sorry.

14 **THE BAILIFF:** Aaron Fisher didn't answer.

15 **MS. JACKSON:** I think his notation
16 indicates he was leaving town. "I would not be able
17 to attend on April 19th, 2005 for this reason: I
18 will be leaving for high school during this week and
19 will not be returning to this state."

20 **THE COURT:** He's in high school?

21 **MS. JACKSON:** That's what he wrote.

22 **MR. DASKAS:** He's 21.

23 **MS. JACKSON:** Anyway, it says he's not
24 coming back.

25 **MR. DASKAS:** That's what he says.

1 **THE COURT:** Something sounds strange. It
2 says he was in eleventh grade, the highest he
3 completed. So, he left the state.

4
5 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 21

6 **THE COURT:** How do you pronounce your
7 name, ma'am?

8 **PROSPECTIVE JUROR 21:** Linda Sook-ko
9 (phonetic).

10 **THE COURT:** Sook-ko (phonetic)?

11 **PROSPECTIVE JUROR:** Yes, sir.

12 **THE COURT:** What kind of work do you do,
13 ma'am?

14 **PROSPECTIVE JUROR:** I'm an executive
15 assistant to a telecommunications vice president.

16 **THE COURT:** Are you married?

17 **PROSPECTIVE JUROR:** Yes, sir, I am.

18 **THE COURT:** How is your husband employed?

19 **PROSPECTIVE JUROR:** He's a teacher for the
20 Clark County School District.

21 **THE COURT:** What does he teach?

22 **PROSPECTIVE JUROR:** Computers.

23 **THE COURT:** Computers.

24 So, you've never been on a jury before?

25 **PROSPECTIVE JUROR:** No, sir.

1 **THE COURT:** How long have you lived in
2 Las Vegas?
3 **PROSPECTIVE JUROR:** This time about 22
4 years.
5 **THE COURT:** So, you were here before?
6 **PROSPECTIVE JUROR:** Yes, sir. I was born
7 here.
8 **THE COURT:** You were in the military?
9 **PROSPECTIVE JUROR:** My husband was and I
10 was as well.
11 **THE COURT:** So, you were a staff sergeant?
12 **PROSPECTIVE JUROR:** Yes, sir.
13 **THE COURT:** You were in medical?
14 **PROSPECTIVE JUROR:** Yes, sir.
15 **THE COURT:** Tell me this here: Now, you
16 said some juveniles vandalized your home?
17 **PROSPECTIVE JUROR:** Yes, sir.
18 **THE COURT:** How long ago was this?
19 **PROSPECTIVE JUROR:** About eight years ago.
20 **THE COURT:** Eight years ago?
21 **PROSPECTIVE JUROR:** Yes, sir.
22 **THE COURT:** That's the only time that
23 someone in your family has been the victim of a
24 crime?
25 **PROSPECTIVE JUROR:** Yes.

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1 **THE COURT:** Has anyone in your family ever
2 been charged with a crime?

3 **PROSPECTIVE JUROR:** No.

4 **THE COURT:** So, now, you read this in the
5 questionnaire about the four possible punishments
6 that the jury can impose in a first-degree murder
7 case; is that right?

8 **PROSPECTIVE JUROR:** Yes, I did.

9 **THE COURT:** Could you consider all four
10 forms of punishment -- the death penalty, life in
11 prison with parole, life in prison without parole or
12 for a definite term of 50 years, and you understand
13 that these sentences or punishments are doubled if a
14 deadly weapon is used?

15 Do you understand that?

16 **PROSPECTIVE JUROR:** Yes, sir, I do.

17 **THE COURT:** Could you consider the death
18 penalty?

19 **PROSPECTIVE JUROR:** Yes, I could.

20 **THE COURT:** Do you have any moral or
21 religious objection to the death penalty?

22 **PROSPECTIVE JUROR:** No, I do not.

23 **THE COURT:** Could you also consider the
24 other forms of punishment?

25 **PROSPECTIVE JUROR:** Yes.

1 **THE COURT:** Can you be fair and impartial
2 in this case?

3 **PROSPECTIVE JUROR:** Yes, I could.

4 **THE COURT:** Can you follow the Court's
5 instructions on the law?

6 **PROSPECTIVE JUROR:** Yes.

7 **THE COURT:** State?

8 **MR. STANTON:** Thank you.

9
10 EXAMINATION BY THE STATE

11 **BY MR. STANTON:**

12 Q Good afternoon, Miss Suckow. In your
13 questionnaire -- I think it was filled out
14 approximately a week ago, if I understand correctly?

15 A That's correct.

16 Q You indicated -- there was in a question
17 about the death penalty whether or not you could
18 consider all four forms of punishment that the Judge
19 just talked about. You said, "Yes. Sometimes the
20 death penalty is not the answer." Could you give me
21 a little bit more on your thoughts in that regard?

22 A A lot of the news that you follow, later
23 on they find reasons why the person shouldn't have
24 been found guilty and put to death or whatever
25 because of the fact that -- whether DNA evidence or

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1 what comes to the forefront, but if it's already
2 been decided that the individual is guilty, then
3 from there it's the jury's point of view to decide
4 what to do from there.

5 Q This being somewhat of a unique
6 circumstance about jury service, that is, it's not
7 the initial phase of guilt here, that's already
8 again decided, but just the penalty phase, is that
9 something you're comfortable with accepting as
10 responsibility if you're selected as a juror?

11 A Can I ask a question first?

12 Q Certainly.

13 A Are we, as a jury, given the background so
14 that we can make that decision?

15 Q I believe what will happen in this case is
16 that you will be advised of the previous verdicts
17 this case, and then you will be provided evidence
18 relative to the murders themselves?

19 A Then yes, I feel I could, yes.

20 Q Do you understand in this case there are
21 four separate victims, and that you will have to
22 determine the punishment as it relates to each of
23 those victims?

24 A Yes.

25 Q And that your verdict as far as the

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1 punishment, could be different as it relates to each
2 one of those victims?

3 A Okay.

4 Q You're comfortable with that concept?

5 A Yes.

6 Q Now, there is a process that is given very
7 little instruction, as far as instructions of law
8 go, regarding who is selected as the foreperson in a
9 case. They vote just like every other juror, but
10 they have one separate and distinct function, and
11 that is they are the ones that ultimately sign the
12 verdict forms. If after a complete consideration of
13 the facts and the instructions of law are given to
14 you and you deliberate with your fellow jurors in
15 this case and it is your ultimate collective
16 decision that death is the appropriate verdict and
17 you are selected as a foreperson, could you sign the
18 verdict form that puts that man, Donte Johnson, to
19 death?

20 **PROSPECTIVE JUROR:** Yes.

21 **MR. STANTON:** Pass the witness.

22 **MR. WHIPPLE:** Thank you, your Honor.

23 /////

24 /////

25 /////

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1 EXAMINATION BY THE DEFENSE

2 **BY MR. WHIPPLE:**

3 Q Hi, Miss Suckow. My name is Bret Whipple.
4 You mentioned you're an executive
5 assistant for whom?

6 A A telecommunications company.

7 Q That wouldn't be Thomas Patcher by chance,
8 would it?

9 A You're talking about Sprint. I work for
10 Sprint PCS, totally different. The gentleman I work
11 for is out of Irvine, California.

12 Q Okay. I notice that you said you had some
13 children.

14 What are your children's ages?

15 A Thirty-one and 26.

16 Q Mr. Stanton pointed out to you that this
17 is a very unusual circumstance. Mr. Johnson stands
18 convicted of first-degree, premeditated, deliberate
19 murder of four different individuals. Why we're all
20 here is because we need to select the jurors that
21 can determine what the appropriate punishment for
22 those actions would be, and Judge Gates mentioned
23 earlier, there's no right answers, there's no wrong
24 answers, we simply want to have the chance to visit
25 with you a little bit, because there are some people

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1 that just don't want to be here and shouldn't be
2 here, and that's what we need to do is get some
3 people who can be fair.

4 A Right.

5 Q A concern for myself is people's opinion
6 with regard to the death penalty. I note that you
7 were asked that question, and you circled "would
8 consider it in certain circumstances."

9 What is your opinion with regard to the
10 death penalty?

11 A If it's warranted, I believe it's
12 necessary. Today there are so many people in jail
13 for whatever reason, and if they're -- in my
14 opinion, if it's a career choice that they've done
15 this or if they've done something so deplorable,
16 part of me wants to know why do I want him to sit
17 there forever and watch TV and read books when
18 they've taken that right away from somebody else.

19 Q And I think that's a natural instinct.
20 That's why we were asking these questions.

21 A Right.

22 Q But we do need individuals who we think
23 could be fair and impartial and objective as much as
24 possible.

25 When you said, "I think it's necessary,"

1 why is it necessary? I just need to get a little
2 more understanding of what you mean when you say
3 "necessary."

4 A Not "necessary." I would hate to be
5 sitting on a jury where I'm responsible for choosing
6 whether or not an individual is guilty and then
7 saying, "Yes, you're guilty," and "Yes, you should
8 be put to death," and then to find out later on,
9 oops, I made a mistake. That would bother me.

10 Q I understand.

11 A But by the same token, for an individual
12 to come in and to take somebody's life and to
13 take -- to stop and think that not only that life
14 but the lives of the people they affected --

15 Q Sure.

16 A -- it would be something I would consider.
17 Can I sit here and say "Yes, I believe in the death
18 penalty" and "Yes, it should be for everybody" --
19 no, I can't say that. Do I consider it? Yes, I do,
20 but I consider it -- to me, every life is important.
21 Every life serves a purpose, and I think it's on a
22 case-by-case basis. That's my personal opinion.

23 Q I do understand that.

24 There's that old adage, an eye for an eye.
25 Have you heard of that?

1 A Yes, I have.

2 Q Where do you stand with regard to that old
3 adage?

4 A It would depend on the circumstance. If
5 somebody stole from me, would I turn around and
6 steal from them? No, but I would want to know why
7 they stole from me. A perfect example of the
8 children that vandalized our home. When I finally
9 got the chance to ask them why, it was like they
10 were trying to get my daughter's attention -- a nice
11 way to do it, but -- I mean, you know, I didn't
12 retaliate against them. I mean, I -- we took them
13 to court, and that was the end of it, but it's --

14 Q Did you feel satisfied with the end result
15 of taking them to court?

16 A If you look at my paper, I basically say
17 the juvenile division needs some work. No, I don't.
18 They basically got their hand slapped, and for about
19 six months, my family was terrorized.

20 Q I don't want to put words in your mouth,
21 but by saying they got their hand slapped, they
22 didn't get the punishment they deserved?

23 A I don't believe they got to the extent
24 that they deserved.

25 Q I appreciate your honesty and you

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1 discussing this with me.

2 Moving to this situation, we have
3 Mr. Johnson who has been convicted of first-degree,
4 premeditated murder.

5 Can you consider life just knowing that an
6 individual has been convicted of first-degree,
7 premeditated, deliberate murder? Can you consider
8 life for that situation?

9 A Yes, if I understood all the
10 circumstances, but I would have -- I'd have to
11 understand the circumstances for me to say, you
12 know, "yes" for this. I can't answer that for you
13 yet. I don't have enough information.

14 Q That's an answer in itself. That's an
15 appropriate answer.

16 How about with an individual who is
17 convicted of four first-degree, premeditated,
18 deliberate murders, four separate human beings,
19 young adults, can you consider life if an individual
20 has killed four people in cold blood, deliberate,
21 premeditated?

22 A Again, without enough information, I can't
23 say "yes" or "no."

24 Q I understand.

25 A It really -- not without enough

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1 information. There's not enough there for me to say
2 one way or the other.

3 Q What type of information would you be
4 looking for? What would you want to know in order
5 to make that type of decision?

6 A Well, from what I heard here this morning,
7 there was more than one person involved in this.
8 What was their involvement? What was their
9 circumstances that led up to this? I understand how
10 important this is, and for me to make that decision,
11 I can't make it without all the answers. It's like
12 anything else. Unless I have all the answers in
13 front of me, I can't give you a positive answer or a
14 negative answer. I can give you "I think I can."

15 Q That's all we're asking, because you will
16 be given the information, and we're trying to seat
17 jurors who are fair and objective.

18 I want to ask one more along the same line
19 that I just asked you, and that is, you'll learn
20 that essentially these four young adults were killed
21 in an execution style. They were bound with tape
22 behind their backs and their feet were bound with
23 tape and they were in a completely helpless
24 situation, and they were executed with a single shot
25 to the back of their head, and you'll see pictures

1 of it, and they are horrible pictures.

2 Knowing none of these facts and
3 circumstances that you will receive but knowing what
4 I just told you, could you still in that situation
5 where four young adults were summarily executed,
6 could you still consider the possibility of a life
7 sentence.

8 A Yes, I think I can.

9 Q Now, I'm going to move on to those types
10 of things, that other information.

11 Now, at some point you'll hear from this
12 Court that the death penalty is never required and
13 that there will be information given to you from our
14 side that we call "mitigation," and "mitigation" is
15 essentially any reason that you may choose life over
16 death. I just want to -- I think this particular
17 question was asked in your jury questionnaire about
18 mitigation. It was Question 38. "In reaching a
19 verdict, you must consider the defendant's
20 background," et cetera, et cetera. And then it
21 says, "Do you feel you would consider these types of
22 factors?" and you wrote "Somewhat." I'm putting it
23 in black and white terms.

24 When you say "somewhat," could you expand
25 on that? Is that a problem for you? Is that

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1 something you can do?

2 A No; it's something I can do. I think a
3 lot of it is I take people at face value, so I watch
4 what goes on, I listen to what goes on. I watch
5 people and see how they react to certain things.
6 Whether or not they -- if there's any kind of
7 feeling at all there. I have to do that with my
8 job. I have to watch people and see how they react
9 to certain things, so I watch people, and I think it
10 would depend on what I saw from my vantage point.

11 Q In some ways it's just your gut feeling on
12 what the appropriate punishment would be?

13 A Yes.

14 Q There's no way of telling what that would
15 be until you get to that juncture?

16 A Yes.

17 Q Would you agree with me, it would be fair
18 to say that we have a number of jurors, 12 jurors,
19 we have different opinions as to what the potential
20 proper punishment should be --

21 A Oh, definitely.

22 Q -- just to give us -- venturing down the
23 road without all the facts and circumstances, but if
24 you got a situation where you had an opinion and
25 disagreed with other individuals with regard to this

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1 gut feeling, something you wouldn't necessarily be
2 able to describe, how would you handle that if you
3 had a disagreement, if people disagreed with the
4 opinion?

5 A I always talk things out. I always lay
6 everything out on the table. This is what I see;
7 this is what I hear; this is what I saw; this is how
8 I feel, and this is what I think should be done.
9 Now, we don't agree, fine. Tell me why you don't
10 agree with me. Convince me -- turn me around to
11 your way of thinking. Tell me why I should think
12 the way you think, and then I'm going to tell you
13 why you should think the way I think.

14 Q In this type of situation, sometimes it's
15 simply a gut feeling, and there is no explanation,
16 there is no rational explanation. It's a moral
17 compass that individuals may have.

18 Would you respect individuals if they have
19 a different opinion than yourself?

20 A Oh, definitely.

21 Q Why?

22 A Everybody is entitled to their opinion.
23 They're entitled to their own opinion. They hear
24 what they hear and follow their feelings just like I
25 hear what I hear and I follow my feelings.

1 There's -- just because A doesn't agree with B
2 doesn't mean that A is always right. It doesn't
3 mean that B is always right, so between the two, if
4 you can find a common ground.

5 Q Do you feel that you will be able to -- we
6 anticipate up to two weeks of this type of testimony
7 and this type of hearing. Is there any hardship or
8 anything that you think we should be aware of with
9 regard to your ability to pay attention and to be
10 fair and objective?

11 A I don't believe so. I work from home. My
12 boss is in another state. My children are grown, so
13 I don't see any problems. I don't foresee any at
14 this moment.

15 MR. WHIPPLE: Miss Suckow, I thank you for
16 your time.

17 And I pass for cause, your Honor.

18 THE COURT: Miss Suckow, we're going to
19 have you report back -- as you can see, we've been
20 going very slowly, so we'll have you come back
21 Thursday at 10:00 downstairs in the jury lounge.

22 PROSPECTIVE JUROR 21: Thank you.

23 THE COURT: Thank you, ma'am.

24 MR. STANTON: Your Honor, may counsel
25 approach?

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1 **THE COURT:** Yes.

2 (Sidebar conference outside the presence
3 of the court reporter.)
4

5 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 23

6 **THE COURT:** Miss Roussos, how do you
7 pronounce your name?

8 **PROSPECTIVE JUROR 23:** Rous-sos
9 (phonetic).

10 **THE COURT:** Miss Roussos, where do you
11 work.

12 **PROSPECTIVE JUROR:** I'm a sales rep for
13 Hallmark, a greeting card company.

14 **THE COURT:** Exactly what does that entail?

15 **PROSPECTIVE JUROR:** I travel -- I'm
16 considered a territory rep. I travel through four
17 different states, and any programs that the company
18 sells to grocery store chains or Wal-Marts, I
19 implement that and make sure it happens at the
20 stores.

21 **THE COURT:** Tell me this here: I notice
22 in the back here you said, "I am on vacation
23 beginning Wednesday, April 20th."

24 **PROSPECTIVE JUROR:** Yes. The sales
25 division I'm in, we were top sales for the year

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1 ending 2004, and we won a trip. Wednesday through
2 Sunday we're going to Washington D.C., and then I'm
3 adding my vacation to that at that time, and my
4 husband and I are going on to Florida for five days,
5 returning on the 30th.

6 **THE COURT:** You already have your tickets?

7 **PROSPECTIVE JUROR:** Tickets, hotel, car.

8 **THE COURT:** All right. You're excused.

9 Let's take a short recess.

10

11 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 25

12 **THE COURT:** Miss Robinson?

13 **PROSPECTIVE JUROR 25:** Yes, sir.

14 **THE COURT:** How long have you lived in

15 Las Vegas, ma'am?

16 **PROSPECTIVE JUROR:** Twenty-four years.

17 **THE COURT:** Where are you from originally?

18 **PROSPECTIVE JUROR:** I was born in Indiana.

19 **THE COURT:** You grew up there?

20 **PROSPECTIVE JUROR:** Until I was 18, then I

21 lived in Arizona for a while, and then I've been

22 here.

23 **THE COURT:** What kind of work do you do?

24 **PROSPECTIVE JUROR:** Controller for a

25 corporation.

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1 **THE COURT:** Which corporation?
2 **PROSPECTIVE JUROR:** Los Cal Corporation,
3 dba Taco Bell.
4 **THE COURT:** Are you married?
5 **PROSPECTIVE JUROR:** No.
6 **THE COURT:** Have you ever been married?
7 **PROSPECTIVE JUROR:** No.
8 **THE COURT:** When were you on a jury?
9 **PROSPECTIVE JUROR:** It's been four or five
10 years ago.
11 **THE COURT:** It was a civil case?
12 **PROSPECTIVE JUROR:** Yes.
13 **THE COURT:** Was it in this courthouse?
14 **PROSPECTIVE JUROR:** Yes.
15 **THE COURT:** Were you the foreman?
16 **PROSPECTIVE JUROR:** No.
17 **THE COURT:** Do you remember what the case
18 was about?
19 **PROSPECTIVE JUROR:** It had to do with the
20 Horseshoe and the parking garage.
21 **THE COURT:** Did a car drive off the
22 parking garage?
23 **PROSPECTIVE JUROR:** Yes.
24 **THE COURT:** Have you or anyone in your
25 family ever been the victim of a crime?

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1 **PROSPECTIVE JUROR:** Not that I'm aware of.
2 **THE COURT:** Do you have any relatives who
3 work in law enforcement?
4 **PROSPECTIVE JUROR:** No.
5 **THE COURT:** Have you heard anything about
6 this case?
7 **PROSPECTIVE JUROR:** I've read a couple of
8 articles in the RJ, but I don't really remember too
9 much about it.
10 **THE COURT:** How long ago did you read
11 these articles?
12 **PROSPECTIVE JUROR:** Quite a while ago,
13 because I don't remember it.
14 **THE COURT:** Now, you understand that
15 you've been summoned for possible duty as a juror in
16 the sentencing portion of this case.
17 Do you understand that?
18 **PROSPECTIVE JUROR:** Yes, sir.
19 **THE COURT:** And of course, you understand
20 that you will have to decide the punishment for the
21 defendant?
22 Do you understand that?
23 **PROSPECTIVE JUROR:** Yes.
24 **THE COURT:** You will have four choices --
25 the death penalty, life in prison without the

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1 possibility of parole, life in prison with the
2 possibility of parole or for a definite term of 50
3 years with the possibility of parole after 20 years,
4 and those terms are doubled if a deadly weapon is
5 used.

6 Can you consider all four forms of
7 punishment?

8 **PROSPECTIVE JUROR:** Yes.

9 **THE COURT:** Do you have any moral,
10 religious or conscience objections to the death
11 penalty?

12 **PROSPECTIVE JUROR:** No.

13 **THE COURT:** Now, in this case, would you
14 automatically impose the death penalty?

15 **PROSPECTIVE JUROR:** I don't know.

16 **THE COURT:** What do you mean you don't
17 know? You don't know at this point whether --
18 either you -- do you want to listen -- hold on just
19 a minute.

20 (Brief interruption.)

21 **THE COURT:** Will you listen to all the
22 evidence, all the facts and circumstances in the
23 case before you decide on the punishment?

24 **PROSPECTIVE JUROR:** Yes.

25 **THE COURT:** Could you consider life in

1 prison?

2 **PROSPECTIVE JUROR:** Yes.

3 **THE COURT:** How old is your mother?

4 **PROSPECTIVE JUROR:** Ninety.

5 **THE COURT:** What kind of surgery is she
6 having?

7 **PROSPECTIVE JUROR:** Bypass on a blood
8 vessel in the leg.

9 **THE COURT:** Do you have tickets up there?

10 **PROSPECTIVE JUROR:** No, because they
11 haven't scheduled the surgery date yet. The doctor
12 has ordered a test, and that test will be done this
13 week or next week, and the surgery will be scheduled
14 right after that.

15 **THE COURT:** This week or next week.

16 As you sit there now, are you concerned
17 about your mother?

18 **PROSPECTIVE JUROR:** I want to be there
19 when she has surgery, yes. She's 90 years old.

20 **THE COURT:** This case can take a couple of
21 weeks, ma'am. You don't know when they're going to
22 do the test?

23 **PROSPECTIVE JUROR:** No. I talked to her
24 on Friday, and she said they haven't scheduled the
25 stress test yet, and once they do that, the doctor

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1 will get the results and read it, and he will
2 schedule the surgery. She's assuming that it's
3 sometime after the 25th, but she doesn't know for
4 sure.

5 (Sidebar conference outside the presence
6 of the court reporter.)

7 **THE COURT:** Ma'am, we're trying to look at
8 this in terms of scheduling. How soon after the
9 tests come back will they schedule the surgery?

10 **PROSPECTIVE JUROR:** She didn't know. She
11 wasn't sure. This is a doctor that's in
12 Indianapolis, so it's not anything that I can just
13 call him up and ask him, because he won't tell me,
14 but the test had not been scheduled for this week.

15 **THE COURT:** It will probably be a few days
16 afterwards --

17 **PROSPECTIVE JUROR:** Yes.

18 **THE COURT:** -- before they would schedule
19 the surgery?

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** If you have to leave any time,
22 then we can make arrangements. All right?

23 **PROSPECTIVE JUROR:** Okay.

24 **THE COURT:** Now, you state -- at your
25 company, do you work with any African-Americans?

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1 **PROSPECTIVE JUROR:** Yes.

2 **THE COURT:** Now, will you be biased or
3 prejudiced towards the defendant because of his
4 race?

5 **PROSPECTIVE JUROR:** No.

6 **THE COURT:** Do you go to church, ma'am?

7 **PROSPECTIVE JUROR:** No.

8 **THE COURT:** State?

9 **MR. WHIPPLE:** Thank you, your Honor.

10

11 EXAMINATION BY THE STATE

12 **BY MR. STANTON:**

13 Q Good afternoon, Miss Robinson.

14 A Hi.

15 Q I'd like to ask you a couple of questions
16 regarding the questionnaire that you filled out
17 approximately a week ago.

18 You indicate in there that you recognize
19 this is somewhat a unique circumstance about jury
20 service, that it's not a guilt or innocence finding
21 that normally juries embrace and conduct themselves,
22 but this is one that's strictly for the penalty
23 phase?

24 A Correct.

25 Q Are you comfortable with taking that kind

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1 of responsibility on?

2 A Yes.

3 Q As part of that, the Judge had already
4 mentioned to you by law in the State of Nevada, in
5 order to sit as a juror, you must be fair and
6 impartial in considering all four sentencing
7 options.

8 You've indicated that you can do that?

9 A Yes.

10 Q In your questionnaire, there was a
11 question about your beliefs and whether or not you
12 would automatically vote against the death penalty
13 or automatically vote for the death penalty. In the
14 question that asked about would you automatically
15 vote for the death penalty, you answered "yes." Is
16 that because you didn't understand the concept of
17 what we're talking about here about your role as a
18 juror?

19 A Yes.

20 Q So, today, hearing a little bit more about
21 what the process is like and what your role to be,
22 you think you would be able to consider all of the
23 sentencing options?

24 A Yes.

25 Q Is there anything about the nature of your

1 mother's situation that you would think about that
2 situation and not pay attention to the facts and
3 circumstances as you sit here in the jury box?

4 A No.

5 Q You would focus completely on that?

6 A Yes.

7 Q If you were selected as a juror in this
8 case, the facts and circumstances presented to you,
9 the instructions of law that Judge Gates would give
10 you regarding the penalty phase, if you and the
11 entire deliberative body of the jury were of the
12 minds that the death penalty was the appropriate
13 punishment in this case and you were selected the
14 foreperson, could you sign your name to the verdict
15 form that puts the defendant Donte Johnson to death?

16 A Yes.

17 MR. STANTON: Pass the prospective juror.

18 MR. WHIPPLE: Thank you, your Honor.

19

20 EXAMINATION BY THE DEFENSE

21 BY MR. WHIPPLE:

22 Q Hi, Miss Robinson. Thank you for being
23 here today.

24 The first is with regard to your mother.
25 You mentioned she's 90 years of age?

1 A Yes.

2 Q And going through a bypass surgery?

3 A Yes, on the leg. There's a blockage in
4 the leg.

5 Q So, originally, you had said that you
6 couldn't be here, I believe, and I'm paraphrasing --
7 if it would be on the 22nd?

8 A I put that down because of the time. I
9 thought I would find out the date from her on
10 Friday, this past Friday, and I filled that out on
11 Wednesday, and I thought they had already scheduled
12 a lot of stuff and they hadn't.

13 Q So, it's still kind of up in the air at
14 this point?

15 A Yes.

16 Q What would happen if your mother went into
17 surgery next week? How are you going to be able to
18 handle that if we think we need you as a juror?

19 A I would probably try to call the doctor
20 and ask him how serious the surgery was and what the
21 risks were.

22 Q Knowing that it is a serious matter and
23 that there are risks, are you going to be able to
24 pay attention knowing that your mother is going
25 through that type of operation?

1 A Yes.

2 Q Would you be able to recognize and
3 prioritize different things and put your attention
4 here?

5 A Yes.

6 Q I want to ask a follow-up on a number of
7 questions, if we can.

8 First of all, you mentioned you were on a
9 jury about four or five years ago?

10 A Yes.

11 Q Describe the experience for me: Positive,
12 negative, what things you enjoyed, didn't enjoy.
13 How would you describe it?

14 A Well, it was interesting, because I had
15 never been on a civil case, you know. I guess it
16 was positive. You know, it was an interesting
17 situation.

18 Q And you haven't been on a criminal case
19 before?

20 A No, never.

21 Q Did it seem like the system worked? Did
22 the process work, from what you could see?

23 A Yes.

24 Q Now, I note that you were asked kind of
25 about the system on Question 24. It said, "Feelings

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1 about the criminal justice system."

2 Do you remember what you wrote?

3 A I said it's the only system we have but it
4 works too slow.

5 Q Can you expand on that and tell me why you
6 think it works too slow? Where do you get that
7 information?

8 A Because it does work too slow. The courts
9 are overloaded and a lot of cases probably should
10 have been tried or solved a year ago and they still
11 haven't been done, and they're still coming up.

12 Q Where did you get that information, just
13 curious?

14 A Just read the paper.

15 Q So, you think what we're doing right now,
16 do you think it's too slow? Do you think this is
17 appropriate what we're doing now about asking these
18 questions?

19 A Oh, no, I don't think that's too slow. I
20 was talking in general about the cases.

21 Q Okay.

22 Now, at one point you were asked by
23 Mr. Stanton about your filling out the Question
24 No. 36, the issue of your beliefs about the death
25 penalty are such that you would automatically vote

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1 against or for the death penalty.

2 Do you remember what you were thinking
3 when you filled that out?

4 A I was kind of under the impression they
5 really wanted to know if I believed in the death
6 penalty and if I would vote for it.

7 Q You tell me, do you believe in the death
8 penalty and would you vote for it?

9 A I believe in it, and when circumstances
10 warrant, yes, I would vote for it.

11 Q What is your opinion on the death penalty?
12 Is it something that you have an opinion with regard
13 to the death penalty -- used not enough, too often?
14 What is your opinion on the death penalty?

15 A Probably it's not used enough.

16 Q So, you think it should be used more
17 often?

18 A Yes.

19 Q Is that information that you gathered from
20 the papers as well or where do you get that
21 information to form that opinion?

22 **MR. STANTON:** Your Honor, I would object
23 to the form of the question. Counsel asked for an
24 opinion about how a person feels about the death
25 penalty and then wants to know how they come about

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1 getting it. She's answered the question.

2 **THE COURT:** What's objectionable about
3 that? He can explore that.

4 **MR. STANTON:** He can explore it to what
5 end? Whether she got it from the newspaper or
6 whatever, that's her opinion.

7 **THE COURT:** Counsel, this is voir dire.

8 **MR. STANTON:** Okay.

9 **THE COURT:** Overruled.

10 **MR. WHIPPLE:** Thank you, your Honor.

11 **BY MR. WHIPPLE:**

12 Q Sorry about that. I think we were talking
13 about -- do you remember what we were talking about?

14 **MR. DASKAS:** Where she got her opinion.

15 **PROSPECTIVE JUROR 23:** Where I got my
16 opinion.

17 **BY MR. WHIPPLE:**

18 Q Yeah.

19 A Reading the papers, different cases that
20 have been in the paper, basically.

21 Q How much more often do you think the death
22 penalty should be used? It's something that should
23 be used a lot more, a little more? I'm curious
24 where you're at with regard to that issue.

25 A A little more.

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1 Q I was noticing here that there was a
2 question as to if you entertain people from
3 different backgrounds.

4 A I don't entertain anyone.

5 Q So, it's a "none" across the board?

6 A That's right, regardless.

7 Q I understand.

8 The issue of an eye for an eye, you know
9 that old adage, an eye for an eye, how do you feel
10 about that?

11 A In some respects, yes, I think it's true,
12 it should be.

13 Q In some respects, and in some respects
14 it's not or is it always true?

15 A I don't think it could always be true
16 because there's extenuating circumstances in every
17 case.

18 Q I want to talk about this case for a
19 minute.

20 You're aware that my client, Mr. Johnson,
21 has been convicted of first-degree, premeditated,
22 deliberate murder?

23 A Correct.

24 Q If an individual has been convicted of
25 first-degree, premeditated, deliberate, cold-blooded

1 murder, could you consider life as a potential
2 sentence?

3 A Without the possibility of parole, yes.

4 Q What about life with the possibility of
5 parole?

6 A No.

7 Q Why not?

8 A Because I think that would be something
9 that he shouldn't have.

10 Q Even with different facts and
11 circumstances?

12 A If the facts warranted it.

13 Q That's the question I asked you. You just
14 told me that -- I don't want to put words in your
15 mouth; I'm just trying to get information to try to
16 understand where you're coming from.

17 It's my understanding you just said if
18 you're guilty of first-degree, premeditated,
19 deliberate, cold-blooded murder, that you would
20 consider life?

21 A Yes.

22 Q But you wouldn't consider life with the
23 possibility of parole?

24 A Yes.

25 Q Okay.

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1 Is that in every case?

2 A No.

3 Q So, there are cases where you would
4 consider life with the possibility of parole?

5 A Correct.

6 Q Now, in this particular case, we have four
7 individuals who are victims -- Mr. Johnson is
8 already convicted of first-degree, premeditated,
9 deliberate, cold-blooded murder.

10 Could you consider life -- a life sentence
11 in that case?

12 MR. STANTON: I would object, your Honor.
13 It's been asked and answered.

14 MR. WHIPPLE: No, it hasn't. I asked the
15 first time with one individual, now I'm asking with
16 regard to four.

17 MR. STANTON: I believe the record
18 reflects he asked as to four, and he used the same
19 exact language about premeditated murder. In
20 addition, your Honor, counsel's question is not an
21 accurate statement of the process. Several
22 jurors -- they've asked questions about
23 premeditated, deliberate murder, and that he's been
24 found guilty but they failed to mention the
25 mitigation aspect of the case when they asked the

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1 person whether or not they consider something other
2 than the death penalty or life without is obviously
3 the procedure that's utilized, so I would object in
4 addition to that to the form of the question.

5 **MR. WHIPPLE:** Judge, I'm going to
6 disagree. The question stands as it was asked. I
7 have every right to ask any of these potential
8 jurors if they can consider life after a person has
9 been convicted of premeditated, deliberate murder
10 and if it occurs four times.

11 **MR. STANTON:** I'm not objecting to that,
12 your Honor; I'm objecting to the fact that you're
13 asking that question in a vacuum. That's
14 inaccurate, because they're not addressing that
15 there is an additional mitigation portion of the
16 evidence and then with the combination of those
17 factors.

18 **THE COURT:** Well, Counsel, you know what,
19 you can't put everything into the case, but --
20 overruled.

21 Go on. You are beginning to dwell on
22 this.

23 **MR. WHIPPLE:** Okay, your Honor.

24 **BY MR. WHIPPLE:**

25 Q Bear with me.

1 Can you consider life -- a life sentence
2 if a person has been convicted of first-degree
3 murder of four young adults?

4 A Yes.

5 Q Can you consider a life sentence with the
6 possibility of parole if a person has been convicted
7 of killing four young, innocent adults?

8 A No.

9 Q Why not?

10 A Because he took four people's lives.

11 Q Are there some facts and circumstances
12 that you would think of that you could consider life
13 with the possibility of parole?

14 A If they were extenuating circumstances and
15 they were presented, I would probably consider it,
16 but I can't think of any offhand.

17 Q I appreciate it.

18 You are also going to hear information
19 that four individuals that were killed were killed
20 in an execution style. They were bound, their hands
21 were bound behind them with masking tape, their feet
22 were bound, they were face down and they were
23 executed one by one with a single bullet to the back
24 of the head, and you'll see pictures of those.

25 Knowing that, could you still consider the

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1 possibility of a life sentence?

2 **MR. STANTON:** Your Honor, once again, my
3 same objection. Counsel is phrasing the question in
4 a unilateral fashion, that is, only discussing.

5 **THE COURT:** I know, Counsel, but so do
6 you. When he finishes, you can go and ask them the
7 same way.

8 **BY MR. WHIPPLE:**

9 Q Do you want me to re-ask it?

10 A Yes.

11 Q Do you want me to re-ask it?

12 A No.

13 Yes, I could consider life.

14 Q You could consider a life sentence?

15 A Yes.

16 Q Now, there were other questions that were
17 in your jury questionnaire about mitigation.

18 Have you heard that term before?

19 A I don't really understand it. Yes, I've
20 heard it, but I'm not sure what it means.

21 Q I'll just give you some information. At
22 some point you'll get a jury instruction from this
23 Court that, among other things, will tell you that
24 the death penalty is never required and that
25 mitigation is, in a better word -- the way I'll

1 describe it is a reason to give a sentence of life.
2 Okay -- a reason. It could be any number of
3 reasons. But you were asked at one point would you
4 be willing to look at different reasons to give life
5 instead of death, and I'm not sure if you understood
6 it, so I want to make sure we're on the same
7 wavelength. That was Question 38. Under Nevada
8 law, you're required to be able to consider
9 mitigating circumstances, and 38 asked that, and it
10 says, "In reaching a verdict in this penalty phase,
11 you must consider the defendant's background, that
12 is, mitigating circumstances such as the defendant's
13 health, mental status, age, childhood experience,
14 education," et cetera.

15 Do you feel you would consider those types
16 of factors? Do you recall what you put?

17 A I'm not sure.

18 Q You did.

19 Would that change today?

20 A I don't know. I'm still not sure
21 because -- I'm just not sure.

22 Q That's a fair answer to a question.

23 We need to get a little more specific,
24 because you will hear information about my client's
25 background, his mental status, his age, his

1 education, childhood experience, and under Nevada
2 law, you have to be willing or able to consider that
3 as a mitigating experience or mitigating
4 circumstances.

5 Would you be willing, as you sit here
6 today, to evaluate his mental status and age,
7 childhood experience as a reason to give a sentence
8 of life over death?

9 A Yes.

10 Q Why?

11 A Because you just said that that's the law,
12 that there are going to be mitigating circumstances.

13 Q It is the law, and if it wasn't the law,
14 would you still be willing to do something like
15 that?

16 **MR. STANTON:** I would object to that as
17 relevance, your Honor.

18 **MR. WHIPPLE:** It is not, your Honor.

19 **MR. STANTON:** If it's not the law, would
20 you still consider it? She just answered that she
21 would abide by the Court's instructions and follow
22 the law which is what her oath would require her to
23 do.

24 **MR. WHIPPLE:** If I can be heard, your
25 Honor.

1 **THE COURT:** Go on.

2 **MR. WHIPPLE:** It's our job to get fair,
3 impartial jurors. It's the same questions that
4 they're asking. The shoe is on the other foot.
5 It's not an improper question at all.

6 **THE COURT:** Overruled.

7 Go on.

8 **MR. WHIPPLE:** Thank you.

9 **BY MR. WHIPPLE:**

10 Q We were talking about mitigation, a reason
11 to give a sentence of life instead of death, and I
12 explained to you that under Nevada law, it's
13 required that you can evaluate potential mitigating
14 factors like childhood, like age. I explained that
15 to you, and I asked you would you be able to follow
16 the law, and you said you would because it is a law,
17 but I need to know what's in here (indicating).
18 It's easy to say, "I'll follow the law," but I want
19 to know if you really would be willing to consider a
20 reason to give a sentence of life over death if you
21 had an opportunity?

22 A Yes.

23 Q Why?

24 A It would depend on the reason, it would
25 depend on the circumstances, it would depend on --

1 you know.

2 Q Enumerable factors?

3 A Right.

4 Q That's a fair answer and I appreciate it.

5 **MR. WHIPPLE:** Court's indulgence.

6 I thank you, and I pass for cause, your
7 Honor.

8 Thank you.

9 **THE COURT:** Ma'am, we're going to have you
10 come back Thursday at 10:00 o'clock downstairs.
11 Okay?

12 **PROSPECTIVE JUROR 25:** In the jury room?

13 **THE COURT:** Yes. Thursday at 10:00.

14 Guys, I'm ready to call it an evening.

15 **MR. STANTON:** Your Honor, just as a
16 procedural matter, I noticed at the beginning of the
17 day you, said you had half the panel come in today
18 and you were going to have half the panel come in
19 tomorrow morning.

20 Was that correct?

21 **THE COURT:** They're not coming in
22 tomorrow, are they?

23 **MR. STANTON:** I think that's what you
24 said.

25 **THE BAILIFF:** They're coming at 1:30

1 tomorrow, the other half.

2 **MR. STANTON:** By my count, your Honor,
3 with your calendar tomorrow, I understand it's a
4 criminal calendar, relatively lengthy; we're
5 probably going to have less or approximately the
6 same amount of time in the saddle to go through
7 these jurors. We probably have enough in this panel
8 alone today without another 60 coming in tomorrow.

9 **THE COURT:** The times that we have them
10 coming in -- how many do we have coming in tomorrow?

11 **THE BAILIFF:** Tomorrow at 1:30?

12 **THE COURT:** Yes.

13 **THE BAILIFF:** The other half. We had 70
14 today -- 72 today; we'll have the rest of them come
15 in tomorrow.

16 **THE COURT:** It's not permanent.

17 **THE BAILIFF:** One hundred forty-five.

18 **THE COURT:** We have to see what's going
19 on. Maybe another court can use some of them -- I
20 guess they can't, but we'll just send them back to
21 come back Friday if we have to. The only reason we
22 did that was to keep them from waiting outside --

23 **MR. STANTON:** Right. I understand that.

24 **MS. JACKSON:** Right.

25 **THE COURT:** -- eight or nine hours without

1 doing anything.

2 **MR. STANTON:** I just didn't want the same
3 thing with the second half.

4 **THE COURT:** We're going to send them away
5 and let them go except for the ones we probably will
6 get through.

7 **MR. DASKAS:** Judge, what time would you
8 like us here tomorrow?

9 **THE BAILIFF:** The rest of them are out
10 there in the hall.

11 **THE COURT:** This is what we could do. We
12 can probably do a couple of them at 11:00 and take
13 our lunch break at 12:00 and come back at 1:30; so,
14 Roy, have the next three come in at 11:00 tomorrow.

15 **THE BAILIFF:** How many?

16 **THE COURT:** The next three in order, have
17 them come in at 11:00, and then the other ones can
18 come in at 1:30. We'll start up at and go from
19 11:00 to 12:00, take our lunch and come back at
20 1:30.

21 **COURT SERVICES OFFICER:** Judge, you want
22 the defendant here at what time tomorrow?

23 **THE COURT:** Eleven.

24 (Proceedings adjourned at 5:15 p.m.)

25 * * * * *

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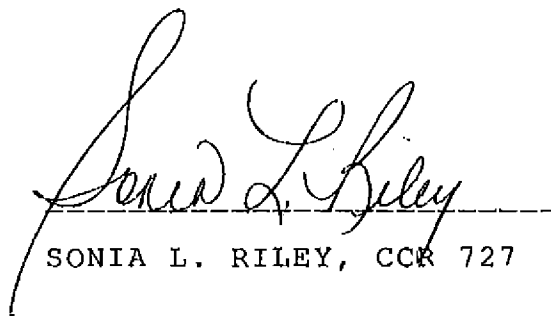
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REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

I, SONIA L. RILEY, CERTIFIED COURT
REPORTER, DO HEREBY CERTIFY THAT I TOOK DOWN IN
STENOTYPE ALL OF THE PROCEEDINGS HAD IN THE
BEFORE-ENTITLED MATTER AT THE TIME AND PLACE
INDICATED, AND THAT THEREAFTER SAID STENOTYPE NOTES
WERE TRANSCRIBED INTO TYPEWRITING AT AND UNDER MY
DIRECTION AND SUPERVISION AND THE FOREGOING
TRANSCRIPT CONSTITUTES A FULL, TRUE AND ACCURATE
RECORD TO THE BEST OF MY ABILITY OF THE PROCEEDINGS
HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO
SUBSCRIBED MY NAME IN MY OFFICE IN THE COUNTY OF
CLARK, STATE OF NEVADA.


SONIA L. RILEY, CCR 727

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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TRAN
CASE NO. C153154
DEPT. NO. XV

FILED IN OPEN COURT
APR 20 2005
SHIRLEY B. PARRAGUIRRE, CLERK
BY Sharon Coffey
SHARON COFFEY DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON,
Defendant.

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

VOLUME I - AM

BEFORE THE HONORABLE
LEE GATES, DISTRICT COURT JUDGE
TUESDAY, APRIL 19, 2005
10:30 a.m.

APPEARANCES:

For the Plaintiff: ROBERT DASKAS, ESQ.
DAVID STANTON, ESQ.

For the Defendant: ALZORA JACKSON, ESQ.
BRET O. WHIPPLE, ESQ.

Reported by: LISA MAKOWSKI, CCR No. 345

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Lisa Makowski, CCR 345 431-6610

TRAN
CASE NO. C153154
DEPT. NO. XV

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON,
Defendant.

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

VOLUME I - AM

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10:30 a.m.

APPEARANCES:

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DAVID STANTON, ESQ.

For the Defendant: ALZORA JACKSON, ESQ.
BRET O. WHIPPLE, ESQ.

Reported by: LISA MAKOWSKI, CCR No. 345

LAS VEGAS, CLARK COUNTY, NEVADA
TUESDAY, APRIL 19, 2005
10:30 a.m.

* * *
P R O C E E D I N G S

THE BAILIFF: Be seated, come to order.

Court is in session.

THE COURT: We have to wait for the clerk. All right. Let the record reflect this case is entitled State of Nevada versus Donte Johnson. Record reflect the presence of the defendant, his attorneys and Mr. Whipple and Ms. Jackson and representatives of the State, Mr. Stanton and Mr. Daskas.

I understand you have some matters you want to take up outside of the presence of the jury.

MR. DASKAS: Yes, Judge, thank you. We are on the verge of jury selection and defense attorneys had pulled some exhibits in evidence from behind the clerk station, and I believe it is their intention to show actual evidence to the prospective jurors during jury selection.

THE COURT: What now?

MR. DASKAS: I believe the defense

attorneys want to show photographs and evidence to the prospective jury during jury selection.

THE COURT: Is that correct?

MS. JACKSON: Yes.

THE COURT: No, you are not going to do

it.

MR. DASKAS: And, Judge, the second issue --

THE COURT: Get the evidence and put it back over there. You are not going to turn this into a circus.

MS. JACKSON: May I make a record?

THE COURT: Go on make a record.

MS. JACKSON: In this case, we have multiple homicides. We think that in terms of picking a jury that can be fair that can consider all four forms of punishment, I'm a capital defense attorney, I have never seen crime a scene with four bodies, and I dare say this jury has not. I think it is crucial to Mr. Johnson's ability to receive a fair trial be allowed to at least show the panel one of these photographs and see if they can see this and still consider all four forms of punishment pursuant to the state of the law here in Nevada and in the United States pursuant to the

U.S. constitution. Just one.

THE COURT: Denied. Put the evidence back. We have not even started trial, picking a jury, you want to show evidence, that's no.

MR. DASKAS: Your Honor, the second issue and I just raised this, I'm not taking a position on this. I will defer to, your Honor, and that is that obviously the defendant has been convicted. The presumption of innocence is gone and at least in every capital case I have been involved with, Judge, during the penalty hearing the defendants now appear in restraints and usually in jail clothing.

Mr. Johnson has been dressed out. I have no objection to that. He is in restraints, and I don't want to speak for Ms. Jackson, but I know she wanted the restraints removed. I simply didn't want that done without, your Honor's, permission. I have some concerns. I know Judge that during the course of this penalty hearing the defense is going to bring in some very high risk inmates from Ely. I think it creates perhaps a safety issue for the corrections officer and bailiffs and the staff, if Mr. Johnson, a quadruple convicted murderer, is in the courtroom with no restraints, and we have other

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1 defendant.

2 THE COURT: You know what, that's true.
3 Though, I don't think he should be in chains on his
4 legs.

5 MR. DASKAS: What counsel didn't tell you
6 is that he has a slun mechanism on his leg.

7 THE COURT: I know.

8 MS. JACKSON: They have put that on him.
9 We have no objection to that.

10 THE COURT: The chains will have to come
11 off.

12 MR. DASKAS: As I said, I'm not taking a
13 position. I'm bringing it to your attention.

14 THE COURT: I think that is prejudicial
15 to be in front of the jury in chains. They can
16 come off. They have guns, don't they?

17 MS. JACKSON: They also have restraints
18 on his leg. What is thing on his leg called? They
19 have a react belt.

20 THE COURT: You know as long as the jury
21 can't see it.

22 MS. JACKSON: Right. That's what I'm
23 suggesting to the Court, so we could have --

24 THE COURT: The react belt can stay, just
25 the other thing.

1 MS. JACKSON: That's fine, your Honor, we
2 have no objection to that.

3 Your Honor, we do have one housekeeping
4 matter, if I may use that term, Mr. Whipple has a
5 jury out in another murder case, and it appears
6 that next Monday from --

7 MR. WHIPPLE: Your Honor, I'm the chair
8 of the chancellor search committee. We are in the
9 process of -- the Nevada System of Higher
10 Education -- electing or hiring a new chancellor.
11 We have a meeting next Monday to meet and review
12 the applications. It is crucial I'm there from
13 8:00 a.m. to noon on Monday.

14 THE COURT: We are not starting until
15 one o'clock Monday anyway. I have a criminal
16 calendar.

17 MR. WHIPPLE: I wanted to also mention to
18 the Court I don't know what's going to happen at
19 that time. I know there has been a number of
20 individuals that just want to hire him as our
21 interim chancellor at that time. However, if there
22 is a number of people that want to do it, bring in
23 some candidates Thursday and Friday, I may be at
24 times unavailable as well, just address that issue
25 when we get there. That's a week, two weeks later.

1 THE COURT: Mr. Whipple, maybe you ought
2 to let somebody else take over, you know. I'm not
3 going to be -- I can try. I don't like you putting
4 this trial on hold while you go out there and take
5 care of your political affairs. They have how many
6 members out there, 20 members out there?

7 MR. DASKAS: Judge, may I add a couple of
8 other matters. Just for the record, your clerk
9 informed us yesterday, I want to make sure we have
10 a record of this, that this hearing will be
11 bifurcated. I believe that is your ruling.

12 THE COURT: Yes.

13 MR. DASKAS: Second, you are excluding
14 evidence of the Darnell Johnson homicide.

15 THE COURT: Yes.

16 MR. DASKAS: One other matter, I know
17 generally before we start trials, the Court wants
18 us to give an instruction and mention witness
19 statements and the facts. This is sort of a unique
20 situation I'm assuming. Judge, we would want to
21 read the witness names that may want to testify?

22 THE COURT: What now?

23 MR. DASKAS: I'm assuming that when the
24 jury panel comes in you will want us to give an
25 introduction and read the witness' names that may

1 be mentioned in the underlying homicide as well as
2 potential witnesses during the penalty hearing.

3 THE COURT: Anybody's name who might come
4 up.

5 This is how we are going to do it, we are
6 going to bring in the jury. We have quite a few of
7 them, so I sent a bunch of them home and told them
8 to come back tomorrow because I doubt we can get
9 through 60 of them today. I'm going to bring them
10 all in. I will go through the preliminaries, then
11 I'll probably bring them in one at a time and then,
12 of course, we had the questionnaire, and we will
13 just go ahead and handle it that way.

14 MS. JACKSON: Thank you.

15 THE COURT: After we pick a sufficient
16 number of them, we will probably pick about, I
17 figure about 22, that will give us 12 plus two
18 alternates, and give you guys each eight peremptory
19 challenges. All right?

20 MR. DASKAS: Yes, Judge.

21 MS. JACKSON: Yes, your Honor. With the
22 Court's permission, we have Mirabelle Rossales from
23 our office. She is a mitigation specialist that
24 will be helping us with jury selection. I asked
25 your bailiff if she can sit behind us. He

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1 instructed her to sit over in the corner with the
 2 Court's permission.
 3 THE COURT: Fine.
 4 MS. JACKSON: And a final matter we have,
 5 your Honor, is we filed a third supplemental
 6 witness list yesterday, and the clerk indicated
 7 that she could not accept it. We were in reviewing
 8 the evidence yesterday.
 9 THE COURT: I'm sorry. I didn't catch
 10 that. What was that again?
 11 MS. JACKSON: I will start over, your
 12 Honor. Yesterday when we were in here reviewing
 13 the evidence I had a third supplemental notice of
 14 witnesses which I gave to your clerk. However, the
 15 court was not in session, so she said she could not
 16 lodge that with the court.
 17 THE COURT: All right.
 18 MS. JACKSON: Thank you, your Honor.
 19 That's all we have.
 20 THE COURT: All right. Now one other
 21 thing. I want you guys to start getting your
 22 instructions ready.
 23 MS. JACKSON: We have ours.
 24 THE COURT: Okay.
 25 MR. DASKAS: We will. We have to get

1 together to decide how to split the instructions.
 2 We will do that, Judge.
 3 THE COURT: Exactly. I want -- so let me
 4 know if there is a problem before the final day.
 5 MS. JACKSON: Yes, your Honor.
 6 THE COURT: Are we ready?
 7 MS. JACKSON: Yes, sir.
 8 MR. DASKAS: Yes, Judge.
 9 THE COURT: Who is that there?
 10 MS. JACKSON: That is our investigator,
 11 James Alleman, with our office, your Honor, part of
 12 our team. Thank you.
 13 (The jury venire entered the courtroom.)
 14 THE COURT: Good morning, ladies and
 15 gentlemen. I want to take this opportunity to
 16 welcome you to Department VIII of the Eighth
 17 Judicial District Court. My name is Judge Lee
 18 Gates. I'm the presiding Judge in this department.
 19 All of you have been summoned here as
 20 prospective jurors in a criminal case. This
 21 process which we are about to engage in we refer to
 22 as voir dire. Loosely translated, it means to
 23 speak the truth.
 24 We are desirous of picking approximately
 25 14 people who can be fair and impartial to hear

1 this case. Since we don't know you, it will be
 2 necessary for us to ask you some questions to try
 3 to ascertain as to whether or not you can be fair
 4 and impartial. All of the questioning is done
 5 under oath.
 6 There are no right answers. There are no
 7 wrong answers. We simply want to know your
 8 attitudes and feelings about certain subjects. If
 9 you can't hear a question, raise your hand and let
 10 us know. If you don't understand or need
 11 clarification, don't hesitate to let us know. If
 12 you think something might apply to you but you are
 13 not sure, let us know. Nothing is too stupid to
 14 say, and you don't have to be embarrassed about
 15 anything because we have heard it all before so
 16 don't let that stop you.
 17 Now whenever you get ready to answer a
 18 question, the first thing we need to know is your
 19 badge number. That's how we identify you. We have
 20 the official court recorder. Everything that is
 21 said in this courtroom by everybody is recorded,
 22 and that's the law. It is necessary. So we need
 23 you to identify yourself by your badge number.
 24 Also, it is very important that you be
 25 completely open and honest in your answers, and the

1 reason for that is if we find out that you withheld
 2 information from us or made misrepresentations then
 3 the verdict will have to be thrown out, and we will
 4 have to have a new trial. That's very time
 5 consuming and costly and for that reason we ask
 6 that you be completely open and honest.
 7 At this time, I will have the clerk to
 8 swear you all in.
 9 (Clerk issued the juror oath.)
 10 THE COURT: All right. At this time, I'm
 11 going to have the lawyers introduce themselves to
 12 you, give you a little synopsis of the case, what
 13 we are doing here and to list the names of the
 14 witnesses they anticipate calling. I want you to
 15 listen carefully to the names of the witnesses
 16 because I'm going to ask you later on if you know
 17 these people or have had any dealings with any of
 18 them.
 19 State.
 20 MR. DASKAS: Thank you, Judge.
 21 Good morning. This is David Stanton and
 22 my name is Robert Daskas. We both work for the
 23 Clark County District Attorney's office as Deputy
 24 District Attorneys, and we have been assigned the
 25 prosecution of this case against the defendant

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1 Donte Johnson. This is a little unique in that
2 this is not a trial, it is just a penalty hearing
3 and your job, if selected, will be to decide the
4 appropriate punishment for the defendant, Donte
5 Johnson.

6 The crime, and it is mentioned a little
7 bit in the questionnaire you filled out, was
8 committed back on August 14th of 1988 on a street
9 called Terra Linda, and there were four young men
10 that were murdered, and I will list their names;
11 Jeff Biddle, Matthew Mowen, Tracey Gorrings and
12 Peter Talamentez. They are the four victims. You
13 will hear the names repeatedly.

14 There were two codefendants in this case
15 you will hear those names Terrell Young and Sikla
16 Smith, and I will list a number of witnesses whose
17 names will be mentioned during this hearing.

18 We are not going to call all of these
19 witness. You will hear from a detective who will
20 summarize the testimony from the previous trial and
21 you will hear him mention several of these names,
22 and I will read also some names of witnesses who
23 will actually take the stand and testify during
24 this hearing.

25 Nick DeLuca, Justin Perkins, Sharla

1 Severs, Sergeant Randy Sutton from the Las Vegas
2 Metropolitan Police Department, Tod Armstrong,
3 Bryan Johnson, Ace Hart, LaShawyna Wright, Sean
4 Fletcher, a crime scene analyst for Metro; Sergeant
5 Robert Honea from NHP; Detective Tom Thowsen from
6 the Las Vegas police department; Tom Wahl, a DNA
7 expert with Metro; Dr. Gary Telgenhoff, a forensic
8 pathologist that did the autopsies in the case.

9 You will also hear the name Dr. Bucklin
10 who was previously a coroner/pathologist with the
11 medical examiner's office. Ed Guenther, Richard
12 Good, a firearms examiner with Metro. A couple of
13 people from the Los Angeles Police Department,
14 Grace Garcia and Steve Burdaga; Ian Ritchie, who
15 is employed with the Clark County Detention Center;
16 Alex Gonzalez, also employed with the Clark County
17 Detention Center. Two individuals from Los Angeles
18 Parole and Probation by the name of Craig Clark and
19 Robert Hoffman. You may hear and see them testify.
20 Stacey Trammell who is from Los Angeles and
21 Lieutenant Grayson from the Los Angeles Police
22 Department. As the judge said, if you know these
23 people or recognize the names, he will have some
24 additional questions. Thank you so much.

25 THE COURT: Ms. Jackson.

1 MS. JACKSON: Good morning, ladies and
2 gentlemen. My name is Alzora Jackson, and I work
3 with the Clark County Special Public Defender's
4 office. My co-counsel is attorney Brel Whipple.

5 MR. WHIPPLE: Good morning.

6 MS. JACKSON: And together we defend
7 Mr. Donte Johnson, also known as John White who is
8 from Los Angeles, California. We, too, will call
9 witnesses in this penalty phase, and as Counsel
10 stated, it is very unique because my client stands
11 convicted of four counts of murder, and that was in
12 your jury synopsis, and we are going to read you a
13 list of individuals that we anticipate calling. If
14 they are from out of state, I will so indicate so
15 that you will know the area that they are from.

16 Officer E. Johnson with the Metropolitan
17 Police Department; Nancy Hunterton, who works at
18 the Clark County Detention Center here in town.
19 Keonna Atkins, Kennita Bryant, Craig Clark, George
20 Cotton. And Keonna Atkins, Kennita Bryant and
21 Craig Clark hail from Los Angeles, California.

22 Jane Edwards, also in California;
23 Reginald Johnson, Termaine Lyle, Floyd McGowan,
24 from the L.A. area; Donna Revoner from the
25 California area; Sikla Smith, Jose Manuel Vigoa;

1 Allen White and Anjah White, these are minor
2 children from the L.A. area. Johnisha and Moises
3 Zamora, also from the L.A. area. Ms. Wanda Fay
4 Johnson from California; Gloria Navarro, a local
5 attorney here in town previously with our office
6 and now employed with the District Attorney's
7 office in their civil division.

8 Thank you so very much for your
9 attention.

10 THE COURT: I am going to ask you a
11 couple of questions here. Are any of you
12 acquainted with the defendant or his attorneys? If
13 so, raise your hand. If you know the defendant or
14 Ms. Jackson, had any dealings with them, raise your
15 hand.

16 What is your badge number?

17 PROSPECTIVE JUROR: 11-0132.

18 THE COURT: Who do you know?

19 PROSPECTIVE JUROR: Ms. Jackson.

20 THE COURT: All right. Anyone else? Are
21 any of you acquainted with either of the deputy
22 district attorneys, Mr. Daskas or Mr. Stanton? If
23 so, raise your hands. Seeing no hands, I assume
24 the answer is no. I forgot to ask you. Any of you
25 know Mr. Whipple, the other attorney for the

1 defendant? If so, raise your hands. Had you had
2 any dealings with him or any interaction? I see no
3 hands, so I assume that the answer to the question
4 is no for each of you.

5 Did any of you recognize the names of any
6 of the witnesses that the deputy district attorney
7 or defense counsel said they are calling? If you
8 know any of those people or had any interaction
9 with them or dealings with them, please let me know
10 at this time.

11 Yes, sir, what is your badge number?

12 PROSPECTIVE JUROR: 11-0184.

13 THE COURT: Just let me know the last
14 three digits. That will make it easier. Who do
15 you know, sir?

16 PROSPECTIVE JUROR: Well, I'm with law
17 enforcement. I'm with the security department of
18 Coast Properties. My chief was one of the homicide
19 detectives on this, in this particular case.

20 THE COURT: Who is that?

21 PROSPECTIVE JUROR: Chief Bryant, Mike
22 Bryant.

23 THE COURT: Yes, sir. The other
24 gentleman, yeah, right, can't see you back there.
25 What is your badge number?

1 That's better.

2 PROSPECTIVE JUROR: 055.

3 THE COURT: Who do you know?

4 PROSPECTIVE JUROR: Tom Thowson. I
5 believe he is a homicide detective.

6 THE COURT: Okay. All right. Thanks.

7 Anyone else recognize the names of any of
8 the witnesses that the parties have stated?

9 Also, Counsel, how long do you think this
10 trial is going to take?

11 MR. DASKAS: Judge, I would anticipate
12 all told maybe a week and a half.

13 MS. JACKSON: We would concur.

14 THE COURT: All right, so on the safe
15 side this might be two weeks, this week and next
16 week.

17 MS. JACKSON: Yes, your Honor.

18 THE COURT: The rest of this week and
19 next week, so I want you to know that. What we
20 will do is have the rest of you remain outside. We
21 will call you in one by one. Some can go back
22 downstairs. Let's keep the first ten up here.

23 Juror No. 1 is Ms. Clemens, Carol A.
24 Clemens, 001.

25 EXAMINATION OF PROSPECTIVE JUROR 001

1 BY THE COURT:

2 Q. All right, Ms. Clemens?

3 A. Yes.

4 Q. Have you ever been on a jury before?

5 A. No, well, I was called to duty, but they
6 eliminated me.

7 Q. All right. And you have lived in Las
8 Vegas for how long?

9 A. Since 1981

10 Q. You have been here a long time.

11 A. Uh-huh.

12 Q. You said you had heard of some murders.

13 You don't know if it this murder or some other
14 murder?

15 A. That's correct.

16 Q. You don't have any recollection of this
17 case; is that correct?

18 A. No, I don't.

19 Q. I guess what I want to get right down to
20 is he is under the death penalty. You know in our
21 state if the person is convicted of first degree
22 murder, you know there is the four possible
23 punishments: The death penalty, sentenced to
24 death; life in prison without the possibility of
25 parole; life in prison with the possibility of

1 parole; or for a definite term of 50 years. And if
2 a deadly weapon was used, all of those penalties
3 are doubled. You understand that?

4 A. Yes.

5 Q. Now, you, here in your questionnaire, you
6 state that you are generally opposed to the death
7 penalty?

8 A. Yes.

9 Q. All right, so does that mean under no
10 circumstances could you envision yourself?

11 A. That's correct.

12 THE COURT: Any questions?

13 MR. WHIPPLE: I do, your Honor.

14 THE COURT: Go on.

15 EXAMINATION OF PROSPECTIVE JUROR 001

16 BY MR. WHIPPLE:

17 Q. Good morning, Ms. Clemens. My name is
18 Mr. Bret Whipple. I want to follow-up on your
19 comments with regard to your view of the death
20 penalty. How long have you held this view with
21 regard to the death penalty?

22 A. You know I can't say I have given it a
23 lot of thought over the years until, you know, you
24 straight out asked, so you know, so recently you
25 know very strongly.

1 Q. And why may I ask?

2 A. Well, when I read you know what this case
3 was and I gave it a lot of thought this week, I
4 expressed my views when I answered the
5 questionnaire, and as I think about it, I think I
6 had trouble at the vet's office when we had to put
7 my dog down.

8 Q. I understand. You said in here there was
9 several choices. One of them said you are opposed
10 to it under any circumstances and then one was
11 generally opposed to it. I wanted to ask you. The
12 law requires each juror who would sit through a
13 penalty phase to be able to consider the four forms
14 of punishment that Judge Gates had mentioned to you
15 and that's it, just that you could consider it
16 fairly.

17 I wanted to ask you if the situation like
18 we had with Osama Bin Laden a person that had
19 killed thousands of individuals --

20 MR. DASKAS: Judge, I apologize. This is
21 improper. It is based on hypothetical facts. It
22 is a violation of Rule 7.7.

23 THE COURT: Sustained.

24 BY MR. WHIPPLE:

25 Q. If we had an individual that --

1 MR. STANTON: I object once again.

2 Counsel can't qualify --

3 THE COURT: Both of guys can't be lag
4 team objecting.

5 MR. STANTON: It was my fault. I should
6 have objected to the earlier one.

7 THE COURT: I am just telling you. So
8 both of you guys -- one of you has to object. You
9 can't jump up one after other objecting.

10 MR. STANTON: I apologize, your Honor.

11 THE COURT: All right. So, if Mr. Daskas
12 has an objection, again, you can make it.

13 BY MR. WHIPPLE:

14 Q. Ms. Clemens, if there was a situation of
15 where thousands of individuals --

16 MR. DASKAS: Judge, again, I apologize.
17 This is the same violation. It is based on
18 hypothetical facts. We object.

19 THE COURT: Well, he can go on with that
20 one, not mentioning any names.

21 BY MR. WHIPPLE:

22 Q. In a situation where there is an
23 individual convicted of killing thousands of
24 innocent individuals and the law requires you only
25 be able to consider the death penalty and that

1 person was convicted of killing thousands of
2 individuals, could you follow the law and consider
3 those four forms of punishment?

4 A. I suppose.

5 Q. And that's all we ask. You need to be
6 honest to yourself and be honest with the court,
7 and you just have to tell us what you feel, and if
8 you don't know, you can tell us you don't know as
9 well.

10 A. Well, I don't know.

11 Q. All we ask is you can consider it. Sit
12 and listen to evidence and potentially consider it.

13 THE COURT: State, you want to go ask her
14 some questions?

15 MR. STANTON: Yes. Thank you.

16 EXAMINATION OF PROSPECTIVE JUROR 001

17 BY MR. STANTON:

18 Q. Good morning, Ms. Clemens. You stated in
19 your questionnaire that you have strong moral views
20 against the death penalty, that it would
21 emotionally upset you; is that correct?

22 A. Yes.

23 Q. You know that the defendant here stands
24 found guilty of four counts of first degree murder?

25 A. I know.

1 Q. Is the death penalty a punishment you can
2 consider in this case if you were selected as a
3 juror?

4 A. I don't believe so.

5 Q. And that is your best feeling as you can
6 assess it here today; correct?

7 A. Yes.

8 Q. So Counsel talked about some
9 hypotheticals involving the death of thousands,
10 obviously that's not the case in this case. Once
11 again I refer to your questionnaire, I don't know
12 how long ago you filled it out there. Question No.
13 36 that you referenced whether or not your beliefs
14 regarding the death penalty would automatically
15 vote against it regardless of the facts and
16 circumstances of the case and you checked yes. Is
17 that how you feel here today?

18 A. Yes.

19 Q. Also in your final comments, you said I
20 would not -- you would not feel comfortable
21 recommending the death penalty; is that correct?

22 A. That's correct.

23 Q. True statement?

24 A. Yes.

25 Q. There is also a process that is involved

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1 In a capital case where other than just a
2 generalized jury instruction that is given by the
3 court, there is no other instructions about who is
4 selected as a foreperson of the jury. You have no
5 additional duties as far as votes go, but they have
6 one duty that's very important and that is they are
7 actually the person that signs the verdict form in
8 this case.

9 If you were selected the foreperson of
10 this case and you believed under the laws and facts
11 that the death penalty was appropriate, could you
12 sign your name as foreperson?

13 A. No.

14 MR. WHIPPLE: Judge, I am going to object
15 at this point. The law only requires she consider
16 the four forms not she can sign the verdict form
17 that Mr. Stanton is asking. Again, it is clear she
18 only has to consider the four different forms of
19 punishment.

20 MR. STANTON: The form of my question
21 wasn't put in whether or not she could consider it.
22 The question presupposes in the form of the
23 question that based upon the law and facts she
24 thought the death penalty was appropriate could she
25 carry out her function.

1 THE COURT: Overruled. Go on.

2 MR. STANTON: Let me back up again.

3 BY MR. STANTON:

4 Q. If you are selected as the foreperson of
5 this jury and under the laws and the facts, you
6 believe that the death penalty was appropriate,
7 could you sign your name as the foreperson of this
8 jury to the verdict of death that would put Donte
9 Johnson to death?

10 A. I don't believe so.

11 Q. Thank you.

12 One further question. On No. 25 you
13 mentioned whether or not any close friend had ever
14 been arrested or charged with a crime and you
15 answered yes and also that they had been treated
16 fairly.

17 A. Uh-huh.

18 Q. You remember that?

19 A. Yes.

20 Q. Can you tell me when that offense or
21 situation was and where it occurred, whether it was
22 in Las Vegas or another city?

23 A. It was a theft.

24 Q. It was a theft offense?

25 A. Yes.

1 Q. And was it a family member?

2 A. Yes.

3 Q. What city did it --

4 A. In Washington state.

5 Q. State of Washington?

6 A. (No audible response.)

7 Q. How long ago?

8 A. Gosh, 20 years.

9 Q. Ultimately, you felt they were treated
10 fairly?

11 A. Yes.

12 MR. STANTON: Nothing further.

13 THE COURT: Ma'am, now you have told each
14 side one different thing. One side you said you
15 can consider it. The other side you told you
16 couldn't consider it. Which one is it? Now,
17 seriously, could you consider it, all four forms of
18 punishment?

19 PROSPECTIVE JUROR: You know I think
20 before I thought I could until, you know, I
21 actually have to put it down and what it made me
22 feel, then, no, I could not.

23 THE COURT: So you could not?

24 PROSPECTIVE JUROR: I've never been
25 directly asked.

1 THE COURT: So you could not consider the
2 death penalty?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Under no circumstances?

5 PROSPECTIVE JUROR: No.

6 THE COURT: All right.

7 MR. STANTON: State would move to
8 challenge, then, Ms. Clemens for cause.

9 THE COURT: You are excused, ma'am.

10 EXAMINATION OF PROSPECTIVE JUROR 002.

11 BY THE COURT:

12 Q. Ms. Oliver from Fairville, North
13 Carolina.

14 A. That's where I was born.

15 Q. Where did you grow up?

16 A. I'm a military bral.

17 Q. So all over?

18 A. Alaska is where I grew up most.

19 Q. So how long have you been in Las Vegas?
20 Eight and a half years?

21 A. Yeah.

22 Q. All right. And you have a master's
23 degree?

24 A. Yeah.

25 Q. What is it in?

1 A. Education, elementary ed.
 2 Q. So you are a teacher?
 3 A. Yes.
 4 Q. What grade?
 5 A. Second.
 6 Q. You went to California State University?
 7 A. Uh-huh.
 8 Q. At Sacramento?
 9 A. Yes.
 10 Q. And got your master's at Nova
 11 Southeastern?
 12 A. Yes.
 13 Q. Okay. How is your husband employed?
 14 A. He is a correctional officer at Indian
 15 Springs.
 16 Q. How long has he had that job?
 17 A. Probably been about three years.
 18 Q. Three years?
 19 A. (No audible response.)
 20 Q. And what did he do before that?
 21 A. He was a technician at Sear's.
 22 Q. So you said your husband works as a
 23 correction officer, and you and he discussed. What
 24 kind of things? Typically discuss a lot of things
 25 is that what you said?

1 are. Is that what you are trying to say?
 2 A. Sorry about my handwriting. I was just
 3 saying that sometimes it seems like the rules don't
 4 always apply if there is someone with a lot of
 5 money. That is just my opinion.
 6 Q. That's what we want to know, your
 7 opinion.
 8 A. It is not always as just as I think it
 9 should be.
 10 Q. If people have a lot of money, they are
 11 treated differently than poor people?
 12 A. Yes.
 13 Q. Now you said you have family members,
 14 friends who have been arrested, is that right,
 15 charged with a crime?
 16 A. Well, actually my husband just had an
 17 incident when he was younger like in 19 -- an
 18 assault kind of thing that was completely dropped
 19 off, but he had a huge fine and all the other stuff
 20 that went along with it.
 21 Q. Who did?
 22 A. My husband.
 23 Q. Where did this happen?
 24 A. In California.
 25 Q. All right. Now you stated -- have you or

1 A. Yeah, I was just saying that things are
 2 brought up, but it is not really in detail or
 3 anything, so I don't -- I just thought it was
 4 relevant to let you know he was a correctional
 5 officer.
 6 Q. Yeah, okay. I'm having a hard time
 7 reading your writing.
 8 All right, and now you have never been on
 9 a jury before; is that right?
 10 A. No, I haven't.
 11 Q. Here No. 24 it says in general what are
 12 your opinions, feeling about how the criminal
 13 justice system works? And you stated I'm a little
 14 discouraged, things don't move. I can't make out
 15 that word. Very time efficient. I also believe
 16 the rules are different. Many -- I can't read this
 17 here. Different.
 18 What were you trying to say? Do you
 19 remember?
 20 A. I was just saying that I don't always
 21 agree with sometimes how things go, sometimes it
 22 takes too long, the process, that part of it is a
 23 little bit discouraging.
 24 Q. What about this other thing, I believe
 25 the rules are different many times based on who you

1 family members ever been the victim of a crime?
 2 Who was that? Your husband or someone else?
 3 A. No, I meant like nothing major, like car
 4 stolen, that kind of thing.
 5 Q. Have you heard anything about this case,
 6 ma'am?
 7 A. Vaguely, but I don't --
 8 Q. What do you mean vaguely?
 9 A. I remember hearing his name maybe, but I
 10 don't remember any details or anything like that.
 11 Q. How long -- you said you think you might
 12 have heard his name?
 13 A. Yeah, just casually on the news or
 14 something like that, but --
 15 Q. How long ago was this?
 16 A. While ago. I couldn't tell you anything
 17 about it.
 18 Q. If you heard anything, could you put that
 19 aside and base your decision solely on the evidence
 20 that's adduced here in court?
 21 A. Yes.
 22 Q. Can you follow the Court's instructions
 23 on the law even though your personal views may
 24 differ as to what the law ought to be?
 25 A. Yes.

1 Q. Can you be fair and impartial in this
2 case?
3 A. Yes, I believe so.
4 Q. Can you wait until you have heard all the
5 evidence until you make up your mind?
6 A. Yes.
7 Q. Now, I notice in the narrative you stated
8 you can consider all four forms of punishment
9 available in the case with the death penalty, life
10 in prison without the possibility of parole, life
11 in prison with the possibility of parole or
12 definite term of 60 years with the possibility of
13 parole after 20 years plus a consecutive term of 60
14 years and parole after 20 years if a deadly weapon
15 was used. You understand that all these prison
16 sentences are doubled if a deadly weapon was used.
17 Understand that?
18 A. Yes.
19 Q. So you can consider all four forms of
20 punishment?
21 A. Yes.
22 THE COURT: State?
23 MR. STANTON: Thank you, your Honor.
24 ///
25 ///

EXAMINATION OF PROSPECTIVE JUROR 002

BY MR. STANTON:

1 Q. Good morning, Ms. Oliver.
2 A. Good morning.
3 Q. I want to follow up on a couple of
4 questions from your questionnaire. About how long
5 ago did you fill this out? Do you recall?
6 A. It was last week.
7 Q. You mentioned in the question that Judge
8 Gates asked you about close family members, you
9 mentioned something involving your husband. I'm
10 assuming -- he is a correctional officer. He was
11 involved in some sort of assault charge some years
12 ago?
13 A. Yeah, long time ago.
14 Q. Was there any other family members or
15 friends that had been charged with a crime besides
16 that?
17 A. No.
18 Q. In your response, the question then
19 follows up, do you feel the person was treated
20 fairly and accurately by the judicial system and
21 you answered no, and it said something. If I can
22 read your handwriting, it is something very young
23 people get into and it seems he was made an example
24 of?
25

1 of.
2 Are you referring to your husband in that
3 then?
4 A. Yeah.
5 Q. As a result of that experience, do you
6 hold any hard feelings about the system or think
7 that it is unfair as you sit here today?
8 A. No, I mean I -- just my personal opinion
9 that sometimes, you know, depending on how much
10 money you have, who you know, that type of stuff,
11 sometimes people are able to pull off other things.
12 Q. And that is just a general impression?
13 A. That is my general impression.
14 Q. Is that general impression something that
15 you would carry with you in this case as part of
16 your deliberations that as you see the facts and
17 evidence in this case that you think those thoughts
18 might creep into you and affect your deliberation
19 in this case?
20 A. No, I don't think so.
21 Q. You mentioned that there, on the portion
22 of the questionnaire related specifically with the
23 questions about the death penalty, do you remember
24 those?
25 A. Uh-huh.

1 Q. You mentioned a question that was posed
2 about the mental status of the criminal defendant
3 to be considered between the decision between the
4 death penalty and the other life options that exist
5 in this case, and your response was if he has no
6 ability of awareness of right and wrong then you
7 wouldn't think the death penalty was appropriate.
8 Do you remember that?
9 A. Yeah, I do remember that.
10 Q. Is there any other type of situations
11 that you think the death penalty would not be
12 appropriate besides what you mentioned right there?
13 A. No, I mean it depends on everything else
14 that goes along with the case and that individual
15 situation, but, no.
16 Q. If the person was presented to you as
17 having evidence that he did know the difference
18 between right and wrong, then the death penalty
19 would be something you can consider?
20 A. Yeah.
21 Q. And you said under your questions about
22 the death penalty that you would consider it in
23 certain circumstances. That was your overall
24 opinion and in the explanation you say each
25 situation is different and that there was something

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1 about remorse. Do you remember that?

2 A. Well, I think that I would probably be
3 more for the death penalty if the circumstances
4 were all right, if the person could have cared less
5 and still didn't care less that they did it and
6 they would go out and do it again.

7 Q. Okay.

8 MR. STANTON: Thank you, your Honor. No
9 further questions.

10 THE COURT: Mr. Whipple.

11 MR. WHIPPLE: Thank you, your Honor.

12 EXAMINATION OF PROSPECTIVE JUROR 002

13 BY MR. WHIPPLE:

14 Q. Good morning, Ma. Oliver. How are you?

15 A. Okay.

16 Q. I want to follow up on some comments that
17 Judge Gates made earlier. He said there is no
18 right answers or wrong answers. We want to be able
19 to visit with you about some of these different
20 issues that are going to be explored over the next
21 few days.

22 The first thing that comes to my mind is
23 the issue that you have a husband who is a
24 correctional officer. You are aware that
25 Mr. Johnson was convicted of killing four

1 individuals. Is the fact that your husband works
2 in that environment -- or how do you think that
3 would affect your ability to look at the evidence?

4 A. I don't think it will, but --

5 Q. I understand.

6 A. I'm not sure. I don't think it will
7 though.

8 Q. There is nothing wrong with saying I
9 don't know as well. That's perfectly acceptable.

10 Have you ever discussed the death penalty
11 with your husband?

12 A. Not in-depth like, no.

13 Q. And do you know what type of job he has
14 as a correctional officer? Did you say Indian
15 Springs?

16 A. Uh-huh.

17 Q. Do you know what his position is out
18 there at Indian springs?

19 A. He is a senior officer, and he is on the
20 SERT team. He goes in and gets --

21 Q. Do you talk much with him about his work
22 and the people he works with?

23 A. Yeah, sometimes.

24 Q. What types of things, what is your
25 general feeling about his occupation?

1 A. I know he likes it, fits him, his
2 personality. Somebody has to do it.

3 Q. That's fair enough. I wanted to ask you
4 some questions about the death penalty. What is
5 your opinion about the death penalty?

6 A. I think if everything is weighed and
7 looked at carefully. There are certain situations
8 that it fits.

9 Q. And you know, if you know, that's fine.
10 If you don't know, that's okay, what kind of
11 situations it fits in?

12 A. I think someone who kills over and over
13 again and shows no remorse and would in a heart
14 beat go out and do it again.

15 Q. That makes sense. That kind of leads me
16 up to the next question. Here, Mr. Johnson has
17 been convicted of first degree, premeditated,
18 deliberate murder. Can you consider life knowing
19 that Mr. Johnson has been convicted of first
20 degree, premeditated, deliberate murder?

21 A. I could, yeah. I don't know much of the
22 situation on the case. That's why.

23 Q. It is unfair for me. I'm asking you kind
24 of in this vacuum these general types of questions,
25 and you have an opportunity to learn a lot more

1 presuming you made it to the jury. Knowing what
2 you know right now and what you thought about it
3 what about the fact that Mr. Johnson has been
4 convicted of killing four, not one, but four
5 individuals first degree, premeditated, deliberate
6 murder?

7 What do you think is the appropriate
8 verdict for somebody who kills first degree,
9 cold-blooded, premeditated murder four individuals?

10 A. Actually, I don't know, it just --

11 Q. That's fine.

12 A. I don't think right away he should have
13 the death penalty.

14 Q. Why is that?

15 A. Because there is other circumstances.

16 Q. How about if you learned that the four
17 individuals were killed in an execution type style,
18 premeditated, first degree, deliberate execution
19 type style. Does that affect the way you view it
20 one way or another?

21 A. I don't know.

22 Q. If you don't know, that's okay?

23 A. I don't know.

24 Q. I want to be able to ask. If you don't
25 know, that's fine, and you talked about the

1 circumstances. Are there circumstances that you
2 believe you could chose life over death, reasons to
3 give life over death?

4 A. Yeah, I believe, but just in this
5 situation you mean?

6 Q. In general, just in general, reasons that
7 a person who is convicted of first degree,
8 premeditated, deliberate murder, are there reasons
9 you can think of giving a person a life sentence
10 over a death sentence?

11 A. I think so, yeah, because I think that
12 the opportunity to live, people sometimes do
13 change.

14 Q. So it is fair to say if the person looked
15 like they wanted to make something of their life,
16 that is something you would take into
17 consideration?

18 A. Possibly.

19 Q. What about their background, if they had
20 a background that is maybe different from yourself
21 or mine? Is that something you would take into
22 consideration in choosing a reason to give life
23 over death?

24 A. I think I would consider it, but I think
25 we make our own choices.

1 Q. You know, I noticed, I was looking
2 through your jury questionnaire. There was not --
3 one question, 38, that says, in reaching a verdict
4 in this penalty phase, you must consider the
5 defendant's background, that is, mitigating
6 circumstances, and then the question continues, do
7 you feel you would consider those types of factors
8 and you struck somewhat. There was four options it
9 said very much, not at all, somewhat or not sure.

10 I want to ask you, first question, has
11 this been something you thought of before or
12 discussed before?

13 A. Yeah, I mean just casual like, I think
14 that background does play a part, but you have your
15 own choice. I mean it really does. I think it is
16 like half and half kind of thing.

17 Q. I understand that. You did put somewhat
18 instead of not sure. It is something you have
19 thought about in the past?

20 A. Yeah.

21 Q. And it is fair to say that the person's
22 background would be something that you would be
23 willing to listen to and hear a little bit about
24 before you determined what the proper punishment
25 would be?

1 A. I don't like when people use that as a
2 complete excuse. That's why I say that.

3 Q. In this situation there is no excuse or
4 justification being offered. I mean Mr. Johnson
5 has already been convicted of killing four
6 individuals.

7 MR. STANTON: Your Honor, I object to
8 Counsel's question. It is more in the form of
9 argument of fact in summation to the jury at the
10 end, not a proper question on voir dire.

11 MR. WHIPPLE: Your Honor, I'm stating
12 what is already in the jury questionnaire.

13 THE COURT: Well, I don't know, but,
14 Counsel, you are giving her these hypotheticals
15 about this case and asking her how she would vote
16 on it. I think that's improper.

17 MR. WHIPPLE: Okay.

18 BY MR. WHIPPLE:

19 Q. Ms. Oliver, what I want to get across is
20 you recognize there are reasons you have a right to
21 chose life over death?

22 A. Yeah.

23 Q. And you have the right to put whatever
24 weight on those particular reasons that you want.

25 Now, I have another question for you.

1 THE COURT: Was that a question or what?
2 That sounded a little bit like argument to me.

3 That was no question, Counsel. Ask questions.

4 MR. WHIPPLE: Okay.

5 THE COURT: Ask questions.

6 MR. WHIPPLE: Okay.

7 BY MR. WHIPPLE:

8 Q. What is your thought with regard to if
9 you were one individual that felt that Mr. Johnson
10 should receive life but the majority of the other
11 people wanted the death penalty. How would you
12 handle that?

13 A. I guess I will make sure that they
14 understand where I was coming from so that maybe I
15 can convince them if I felt that strongly about it,
16 I guess.

17 Q. How about if they try to convince you?
18 How would you handle that situation?

19 MR. STANTON: I object, that gets into
20 the deliberative process. Simply whether or not
21 the prospective witness can determine and follow
22 the law as the court instructs them in the penalty
23 phase is an appropriate question, not to get into
24 the deliberative process of the jury.

25 THE COURT: Read back the question.

1 (Thereupon, the requested portion of the
2 record was read back by the court
3 reporter.)

4 MR. STANTON: The previous question was,
5 as he posed it, that if you were the sole juror
6 that was arguing for life and the rest of the jury
7 was arguing for death.

8 MR. WHIPPLE: Judge, I need to understand
9 what the objection is first. I don't understand
10 what he is objecting to. If I understand what he
11 is objecting to, what the basis is, I would be able
12 to respond.

13 MR. STANTON: My objection to it is the
14 basis of the form of the question gets into the
15 deliberative process of the jury.

16 THE COURT: You know what, Counsel, those
17 kind of questions are asked all the time. Just
18 asking a person whether or not they are a follower.
19 What behaviorally -- what he's trying to ask is
20 whether or not they are a follower or are they
21 going to stand up for, you know, themselves and
22 beliefs or cave into the other people. That's
23 proper.

24 MR. STANTON: I think in that form as the
25 Court phrased it that is proper. That is not what

1 counsel did. Counsel put it in the hypothetical
2 and put it in a somewhat unique hypothetical, and
3 that's improper.

4 THE COURT: What do you mean unique?

5 MR. STANTON: In the sense of putting in
6 the situation as the sole holdout in the jury
7 deliberative process.

8 MR. WHIPPLE: First of all, where is the
9 law that says --

10 THE COURT: Overruled. Go on. Go on.

11 MR. WHIPPLE: Thank you, your Honor.

12 BY MR. WHIPPLE:

13 Q. I want to get to the issue of whether you
14 consider yourself a leader or follower. Have you
15 ever thought about that?

16 A. Yeah.

17 Q. Where do you consider yourself?

18 A. I think I can go either way. If it is
19 something that I'm okay, I can go along with it.
20 If it is something I feel strongly about, then I
21 lead.

22 MR. WHIPPLE: No further questions. Pass
23 for cause, your Honor.

24 THE COURT: Ms. Jackson.

25 MS. JACKSON: May I approach?

1 (Thereupon, a brief discussion was
2 held at the bench.)

3 MR. DASKAS: Are we all approaching?

4 THE COURT: We will be in short recess.

5 MS. JACKSON: Thank you, Judge.

6 (A brief recess was taken.)

7 THE COURT: Pass for cause?

8 MR. DASKAS: Yes.

9 THE COURT: You know what, approach the
10 bench.

11 (Thereupon, a brief discussion was
12 held at the bench.)

13 THE COURT: Ms. Oliver, we are going to
14 excuse you for now. You need to report back

15 Thursday morning at ten o'clock, okay.

16 PROSPECTIVE JUROR: Okay.

17 THE COURT: Report down to the jury

18 lounge Thursday morning ten o'clock. All right.

19 Who is next?

20 THE BAILIFF: Robert Parsons.

21 EXAMINATION OF PROSPECTIVE JUROR 003

22 BY THE COURT:

23 Q. All right, Mr. Parsons.

24 A. Yes, sir.

25 Q. How long have you lived in Las Vegas?

1 A. June of 1978.

2 Q. You live out in Henderson?

3 A. Yes, I do.

4 Q. You said you know this lawyer from child
5 custody or church. Who is that?

6 A. Delwin Potter.

7 Q. You know Potter? You know him from
8 church or what?

9 A. The wife knows him more from church, and
10 I have known him. He has come over to the house a
11 couple of times.

12 Q. His son is a lawyer now also?

13 A. That's the one I'm dealing with.

14 Q. The son?

15 A. Yes, Billy.

16 Q. Not the father?

17 A. Delwin is not the lawyer.

18 Q. The father, he knows probably more than
19 most lawyers, if I remember correctly.

20 You put that you or someone in your
21 family had been charged with a crime. Who was
22 that?

23 A. My stepson has been in Indian Springs for
24 five years. I'm not sure what for. It was prior
25 to me getting with his mother.

1 Q. What kind of work does his father do,
2 your stepson, his natural father?
3 A. Deceased in '88 or '90.
4 Q. All right. Have you or any other member
5 of your family ever been the victim of a crime, and
6 I think you said yes?
7 A. Yes, house been broke into.
8 Q. All right. Now going to the death
9 penalty. They ask you -- you state your beliefs
10 about the death penalty are such that you would
11 automatically vote for the death penalty regardless
12 of the facts and circumstances of the case, and you
13 put yes. Is that true?
14 A. Would you please repeat that?
15 Q. In the questionnaire the question was,
16 your beliefs about the death penalty or your
17 beliefs about the death penalty are such that you
18 would automatically vote for the death penalty
19 regardless of the facts and circumstances of the
20 case and you wrote yes?
21 A. I don't believe I understood that
22 question because I think that one or two after that
23 it states what about the circumstances.
24 Q. Okay. Well, I guess my question is, you
25 know when a person has been convicted of first

1 degree murder, the jury has four possible sentences
2 which you saw in the questionnaire. One is the
3 death penalty. One is life imprisonment without
4 the possibility of parole. One is life
5 imprisonment with the possibility of parole or for
6 a definite term of 50 years with the possibility of
7 parole after 20 years, and if a deadly weapon is
8 used, those punishments are doubled.
9 Now, if someone is guilty of first degree
10 murder, would you -- do you automatically think
11 they should received the death penalty?
12 A. No.
13 Q. Could you consider all four forms of
14 punishment?
15 A. Yes.
16 Q. And pick the one that is the most
17 appropriate based upon the facts and circumstances
18 of the case?
19 A. Yes.
20 Q. Can you follow the Court's instructions
21 on the law?
22 A. Yes.
23 Q. Now you said you heard something about
24 this case in this questionnaire, but the only thing
25 you remember was that they were was African

1 American males?
2 A. I believe that the only thing that when I
3 wrote that down only thing I know about the case I
4 have seen it year or two ago African American and
5 that's as much I know about. I don't watch the
6 news or read the paper.
7 Q. All right. Now what church do you belong
8 to?
9 A. LDS.
10 Q. Now, what are your feelings about African
11 Americans?
12 A. I cut my finger, they cut their finger,
13 they are both red.
14 Q. So you are not biased or prejudiced
15 against them?
16 A. No, I'm not.
17 Q. So that would not be a consideration of
18 you basing the case on the facts?
19 A. Nope.
20 Q. You know that you wouldn't base it on the
21 facts or would base it on the facts?
22 A. I would not base it on the facts. He is
23 just person.
24 Q. You would not consider his race?
25 A. No.

1 Q. We are on the same page. All right. Can
2 you follow the Court's instructions on the law?
3 A. Yes, I can.
4 Q. Can you be fair to both sides in this
5 case?
6 A. Yes.
7 THE COURT: State.
8 MR. DASKAS: Thank you, Judge.
9 EXAMINATION OF PROSPECTIVE JUROR 003
10 BY MR. DASKAS:
11 Q. Mr. Parsons, you indicated on one of your
12 answers, there was a question about considering
13 other evidence and you wrote yes, did the deceased
14 confront the defendant. Do you recall writing that
15 answer?
16 A. Yes, I do.
17 Q. I don't want to put words in your mouth.
18 The way I interpret that is you want to know the
19 facts of the case before you decide what punishment
20 is appropriate?
21 A. Why I wrote that down is did you provoke
22 me into killing you.
23 Q. Okay.
24 A. That's what I was writing down. Did you
25 provoke me and then I did the crime. That's what I

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1 meant.

2 Q. Those types of thing would be important

3 to you as a juror?

4 A. Yes.

5 Q. You would want to consider those things

6 in deciding what the appropriate punishment is for

7 a defendant to kill someone?

8 A. Yes.

9 Q. There are four victims in this case, as

10 the judge said. If you are selected as a juror,

11 you will select a punishment for each one of the

12 four victims, understand that?

13 A. Okay.

14 Q. And the punishment can be different for

15 each of those victims, understand that at least now

16 I have mentioned it?

17 A. Yes.

18 Q. And for each victim, can you consider all

19 the possible punishments? You will not

20 automatically vote for death, for example?

21 A. No.

22 MR. DASKAS: Thank you, Judge. We will

23 pass for cause.

24 THE COURT: Defense Counsel.

25 MS. JACKSON: Thank you, your Honor.

1 EXAMINATION OF PROSPECTIVE JUROR 003

2 BY MS. JACKSON:

3 Q. Good morning, Mr. Parsons, I'm Alzora

4 Jackson. How are you this morning, sir?

5 A. Afternoon.

6 Q. Thank you for pointing that out. You are

7 absolutely right. You are absolutely right.

8 This is kind of a unique case and

9 Mr. Daskas mentioned it in his introduction. You

10 don't get to decide if my client is guilty or not

11 guilty. He's already been convicted of four

12 homicides, first degree murder. You are going to

13 see pictures of four individuals who are deceased

14 and there will be blood. Does that fact alone

15 interfere with your ability to consider all four

16 forms of punishment?

17 A. No.

18 Q. The judge touched on this, when you

19 remembered something from the media, you

20 remembered -- you wrote down that you remembered

21 individuals, African American male, and I certainly

22 believe you when you say that is of no moment to

23 you, that doesn't affect your ability to be fair.

24 How come you think it is that you recall that fact

25 and nothing else about the case?

1 A. Because when you first start to see the

2 news, you have everybody in front of the judge when

3 they are arraigned, and that's all I know about

4 him.

5 Q. So you don't -- you can't say that when

6 you saw that particular sound bite you didn't form

7 any type of opinion in terms of whether or not this

8 person needs to be, how the person needs to be

9 punished?

10 A. No.

11 Q. The attorney, Mr. Polter that you were

12 acquainted with, is this person a criminal

13 attorney?

14 A. No, I believe -- I don't know what type

15 of attorney. I used him to get custody of my two

16 grandchildren.

17 Q. And you indicate that you have someone

18 who used to clerk for a judge in Henderson just to

19 say hi?

20 A. My neighbor, I believe, is a clerk for a

21 judge in Henderson.

22 Q. The situation involving where your home

23 was burglarized, was that resolved to your

24 satisfaction?

25 A. No.

1 Q. What happened?

2 A. Christmastime. I went up to the

3 mountain. My house was broke into.

4 Q. So nobody was home?

5 A. Nobody was home.

6 Q. Okay.

7 A. And some of the stuff was gone, you have

8 to be part of the family to know where it was at.

9 Q. Oh, okay. So there was never a suspect

10 that was found and prosecuted?

11 A. Nope.

12 Q. So there is nothing about that experience

13 though that would leave you feeling one way or

14 another about how the system works because it

15 sounds like it was kind of a family inside job?

16 A. Yes, I believe it was.

17 Q. Okay. Okay. We are obviously here

18 because this is a situation where the \$64 question

19 involves how you feel about the death penalty. A

20 person has been convicted already of killing four

21 people, and you talk about provocation.

22 I will tell you right now you will find

23 that there was no provocation. Duct tape, shot in

24 the back of the head, cold-blooded kind of killing.

25 Can you still be open minded and consider all four

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1 forms of punishment?

2 A. In my opinion, you tell me one sentence.
3 What happened for this six months before that? Did
4 they know each other? That's what I'm talking
5 about is what it was? Was it, if I can answer the
6 question with a statement, did they just meet and
7 it happened or have they been acquaintances for six
8 months, six years.

9 Q. Why would that be important to you, sir?

10 A. Because in my opinion you have bullies
11 and that, and sometimes, in my opinion, you can be
12 pushed over the line, and that's why I stated that.
13 If I keep picking on you, when are you going to
14 retaliate against me?

15 Q. Basically what you are saying is you want
16 to know the circumstances?

17 A. Yes, I do.

18 Q. It involved drugs. It involved drugs.
19 Does that affect your ability to be fair and
20 consider all four forms of punishment?

21 A. I believe I can do that.

22 Q. No. 34, what you say is you are generally
23 in favor of the death penalty?

24 A. Yes.

25 Q. And why is that, sir?

1 A. When someone is on death row for 15
2 years, and it seems like I have heard that at times
3 where the person is on death row said they want to
4 go ahead and be put to sleep, you always have some
5 organization that comes in there and stops it for a
6 couple three more years.

7 Q. You understand that is not the issue
8 here. There is a question in here that says that
9 if you as a juror after a fair consideration of all
10 the evidence and if you find in your considered
11 judgment that death is the appropriate penalty, you
12 are instructed that you have to assume he's going
13 to be killed. You are instructed. That's one of
14 the questions in here. You recall that?

15 A. Yes.

16 Q. Okay. Now with that in mind, you said,
17 sir, you are in favor of the death penalty. Why?

18 A. People like myself is working class and
19 we are paying for some people that has been on
20 death row for 15 years, and it cost a lot of money
21 in taxes. That's why I'm in favor of that.

22 Q. You wrote here that major criminals
23 should not use the system. What do you mean by
24 that?

25 A. You are incarcerated. You go through the

1 library. You become a lawyer and use one system
2 after the other to, I'll use the word, maybe it's
3 the wrong one, to exploit the general public to
4 profit for yourself.

5 Q. And you believe that somehow the death
6 penalty cures that situation?

7 A. No.

8 Q. Would that be a factor in how you voted?
9 The economics?

10 A. If everything come down, in my opinion
11 where it shows that it should be done, I would vote
12 that way. Where if there was, it goes back to the
13 circumstances, what was -- what could have provoked
14 it before that, prior to that happening.

15 Q. I can tell you there was no provocation,
16 just cold-blooded execution of four individuals, no
17 real good reason, no reason period.

18 A. So you are telling me he didn't know the
19 people two months before that?

20 Q. No, did not.

21 MR. DASKAS: Judge, Ms. Jackson, I do
22 apologize. We are getting into kind of a question
23 and answer and conversation, and I think this is
24 improper, and she is also asking him to pre-judge
25 the evidence, so I lodge an objection.

1 THE COURT: Sustained.

2 MS. JACKSON: I can move on, your Honor.

3 MR. DASKAS: Thanks.

4 BY MS. JACKSON:

5 Q. Just basically asking you can you be fair
6 regardless of what the facts are?

7 A. I believe that I can.

8 Q. And one of the things that also concerns
9 me in No. 36 you indicated that you would consider
10 mitigation somewhat. When the time comes, the
11 Court will instruct you that under the law in
12 Nevada and in the United States that you are
13 required, if you will, to consider what we call
14 mitigation. It is just a fancy word for background
15 of the individual.

16 If you were -- before you make a decision
17 like this, would you like to know everything you
18 can about the person?

19 A. I would like to, yes.

20 Q. Do you feel you can consider that
21 information and weigh that as the judge will
22 instruct you in terms of mitigation?

23 A. Yes.

24 Q. If someone didn't have enough to eat
25 growing up or has other factors that affect their

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1 growth and development, would those things be
2 important to you as a juror?
3 A. Yes.
4 Q. Why?
5 A. How was your upbringing? It is -- what
6 life did you have before crime? Is this normal for
7 the way your family has been? Is your father like
8 that, your brothers, something like that.
9 Q. As a juror, Mr. Parsons, if you were
10 selected, do you feel that life without the
11 possibility of parole is a severe punishment?
12 A. Yes, it is.
13 Q. You see any benefits to that form of
14 punishment?
15 A. Yes, I do.
16 Q. What are they?
17 A. What they bring to society to teach other
18 upcoming people.
19 Q. Okay. And what if you are in the jury
20 room and you are deliberating as the Court will
21 instruct you, do you feel that if the majority of
22 the residing individuals were going a certain way,
23 would you go along with their vote just to reach a
24 verdict?
25 A. I'm myself.

1 Q. Would you respect the person sitting next
2 to you if they were the one that didn't feel the
3 way that you did?
4 A. That is their opinion. I have mine.
5 Q. Can you respect their opinion?
6 A. Yes, I can.
7 Q. Of course, you will deliberate. You
8 don't -- you are not the kind of person to brow
9 beat somebody else into your way of thinking, are
10 you?
11 A. No.
12 Q. Would you feel you had somehow failed if
13 after a fair and serious amount of deliberation the
14 jury could not reach a verdict? How would you
15 feel?
16 A. Did the best that we could.
17 Q. When I asked you about the death penalty,
18 in your favoring it, you talked about the
19 economics. Aside from those comments, do you feel
20 there are any other general benefits to imposing a
21 death sentence?
22 A. No.
23 Q. Do you understand that under the law here
24 in Nevada and in this country that no matter what
25 the facts and circumstances are that the law never

1 requires a death verdict. Do you know what I mean
2 by that?
3 A. You just said it does not require. I'm
4 not a lawyer so I don't know.
5 Q. How do you feel about that?
6 A. I don't have any feelings on it.
7 Q. The law -- the judge will also instruct
8 you that under the law mitigation can be any reason
9 that you personally feel is a reason not to give
10 death. For example, you could hear from the
11 defendant's grandmother and decide that her being
12 able to talk to him is a reason for you not to
13 kill. Do you realize that is mitigation?
14 A. Okay.
15 Q. Are you willing to respect that and
16 recognize that and follow the law?
17 A. Yes.
18 Q. One of the things that you are going to
19 be told is that you bring your common sense into
20 this process, and the thing about common sense, you
21 think anyone, any two people, have the same type of
22 common sense, the exact same common sense?
23 A. I don't believe so.
24 Q. And that's why you understand why we have
25 12 people decide?

1 A. Yes.
2 MS. JACKSON: Thank you.
3 Your Honor, we will pass for cause.
4 THE COURT: All right. Sir, you will
5 have to report back Thursday morning at ten o'clock
6 downstairs in the jury lounge.
7 All right. We will let you know from
8 there, all right.
9 PROSPECTIVE JUROR: Thank you.
10 THE COURT: All right. Let's take an
11 hour out for lunch.
12 MS. JACKSON: Yes, your Honor.
13 THE COURT: See you guys in about an hour
14 for lunch, make it 1:30.
15 MR. DASKAS: Judge, may we leave our
16 stuff here?
17 THE COURT: Yes.
18
19 ATTEST: Full, true and accurate
20 transcript.
21 *Lisa Makowski*
22
23 LISA MAKOWSKI, CCR #345
24
25

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a.m. [3] 1/18 2/2 6/13	Anybody's [1] 8/3	base [4] 32/19 51/20 51/21 51/22
ability [6] 3/20 36/8 38/3 54/15 54/23	anyone [3] 16/20 18/7 63/21	based [6] 21/21 22/17 25/23 30/25
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
 PLAINTIFF,)
)
 VS.) CASE NO.: C153154
)
 DONTE JOHNSON,)
)
 DEFENDANT.)
-----)

REPORTER'S TRANSCRIPT
OF
TRIAL BY JURY
(VOLUME I - P.M.)

BEFORE THE HONORABLE JUDGE LEE A. GATES
DISTRICT COURT JUDGE
DEPARTMENT VIII

DATED TUESDAY, APRIL 19, 2005

FOR THE PLAINTIFF: ROBERT J. DASKAS, ESQ.
DAVID STANTON, ESQ.

FOR THE DEFENDANT: ALZORA B. JACKSON, ESQ.
BRET WHIPPLE, ESQ.

REPORTED BY: SONIA L. RILEY, CCR NO. 727

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I N D E X

PAGE

VOIR DIRE (RESUMED)

4

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

3

1 VOIR DIRE EXAMINATION (RESUMED)

2 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 5

3
4 **THE COURT:** So, you were born in 1980,
5 Miss Acosta?

6 **PROSPECTIVE JUROR 5:** Yes.

7 **THE COURT:** Gee.
8 You went to UNLV Nursing School; is that
9 right?

10 **PROSPECTIVE JUROR:** Yes.

11 **THE COURT:** Where does your husband work?

12 **PROSPECTIVE JUROR:** My fiance works at the
13 Flamingo Hotel. He's a food and beverage server.

14 **THE COURT:** Okay.

15 He went to UNLV also?

16 **PROSPECTIVE JUROR:** Yes.

17 **THE COURT:** Where are you working?

18 **PROSPECTIVE JUROR:** I'm working at Roy's
19 Restaurant in Summerlin. I'm the sales and
20 marketing manager there.

21 **THE COURT:** You're not in nursing?

22 **PROSPECTIVE JUROR:** Yeah, I took a
23 different route. I graduated with my bachelors in
24 nursing, and I worked at Mountain View Hospital for
25 six months, and I didn't like it, so I went back to

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

4

1 school.

2 **THE COURT:** So, when you went back to
3 school, what did you take?

4 **PROSPECTIVE JUROR:** Well, I went back to
5 school to go -- went into food and beverage, and
6 then I got promoted to sales and marketing, so I
7 stopped going to school, and then now I'm going back
8 for my master's.

9 **THE COURT:** In business?

10 **PROSPECTIVE JUROR:** Yes, business and
11 hotel.

12 **THE COURT:** All right.

13 Now, your parents -- where do they live?

14 **PROSPECTIVE JUROR:** They live in Hawaii.

15 **THE COURT:** What kind of work were they
16 involved in?

17 **PROSPECTIVE JUROR:** My dad is an
18 electrical engineer, and my mother works -- I don't
19 even know her title. She deals with, like,
20 workmen's comp or something like that.

21 **THE COURT:** Did you live in Oahu?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** Now, you stated on the
24 questionnaire that someone in your family had been
25 arrested before or charged with a crime.

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5

1 **PROSPECTIVE JUROR:** Yes; for attempted
2 murder.
3 **THE COURT:** Who is that?
4 **PROSPECTIVE JUROR:** His name is Jacob
5 Donough.
6 **THE COURT:** What relationship is he to
7 you?
8 **PROSPECTIVE JUROR:** He was my first
9 cousin.
10 **THE COURT:** That was in Hawaii?
11 **PROSPECTIVE JUROR:** Yes.
12 **THE COURT:** What happened to him? Did he
13 go to trial?
14 **PROSPECTIVE JUROR:** He went to trial. He
15 got convicted. He was actually in the correctional
16 facility there, and then he got off of parole -- not
17 parole, probation I guess.
18 **THE COURT:** Parole.
19 **PROSPECTIVE JUROR:** Parole -- and he
20 actually broke it, and now he's in Arizona; so, he's
21 back in prison.
22 **THE COURT:** It sounds like he committed a
23 new crime if he's in Arizona.
24 **PROSPECTIVE JUROR:** Right. Actually, he
25 went to different facilities. He went to, like, a

1 higher --

2 **THE COURT:** Facility.

3 **PROSPECTIVE JUROR:** -- facility there, and
4 supposedly -- I don't know what he was doing in
5 there, so they shipped him out --

6 **THE COURT:** Okay.

7 **PROSPECTIVE JUROR:** -- to Arizona.

8 **THE COURT:** They transferred him from
9 Hawaii to Arizona?

10 **PROSPECTIVE JUROR:** Right, right, right,
11 right, right.

12 **THE COURT:** Now, your cousin -- were you
13 guys close?

14 **PROSPECTIVE JUROR:** Um-hmm. I was close
15 to him probably until I moved here, which was seven
16 years ago.

17 **THE COURT:** What was he into that got him
18 involved in this crime?

19 **PROSPECTIVE JUROR:** He was in gangs.

20 **THE COURT:** Gangs?

21 **PROSPECTIVE JUROR:** Um-hmm. He was head
22 of a gang there.

23 **THE COURT:** Okay.

24 Now, going to the death penalty
25 questionnaire, you understand that a person who has

1 been convicted of first-degree murder, the possible
2 punishments are the death penalty, life in prison
3 without the possibility of parole, life imprisonment
4 with the possibility of parole or for a definite
5 term of 50 years with the possibility of parole
6 after 20 years, and of course, those crimes are
7 doubled if a deadly weapon was used.

8 Do you understand that?

9 **PROSPECTIVE JUROR:** Right.

10 **THE COURT:** Now, could you consider all
11 four forms of punishment?

12 **PROSPECTIVE JUROR:** I would consider it
13 depending on the case and the evidence that was
14 shown to me.

15 **THE COURT:** You would look at the facts
16 and circumstances is what you're saying?

17 **PROSPECTIVE JUROR:** Right. Yes.

18 **THE COURT:** Do you have any religious or
19 moral conviction that would cause you not to be able
20 to impose the death penalty?

21 **PROSPECTIVE JUROR:** No.

22 **THE COURT:** All right.

23 You could consider life in prison with or
24 without parole?

25 **PROSPECTIVE JUROR:** Yeah -- yes.

1 **THE COURT:** You're just not predisposed to
2 one or the other, are you?

3 **PROSPECTIVE JUROR:** Right.

4 **THE COURT:** Now, of course on No. 35, "Do
5 you hold any strong moral or religious views toward
6 the death penalty?" and you said, "I feel that if
7 you murder someone, then you have no life to live.
8 If you took someone's life, then you should not be
9 able to live."

10 That sounds like the Old Testament there,
11 an eye for an eye, a tooth for a tooth.

12 **PROSPECTIVE JUROR:** That's true.

13 **THE COURT:** I'm sorry. Go on.

14 **PROSPECTIVE JUROR:** I guess it depends on,
15 like, what I see. I can't judge somebody or a
16 person just based on that synopsis given, so just
17 from what I felt at that moment I guess I said that.

18 **THE COURT:** Okay.

19 So, you wouldn't automatically vote for
20 death because someone had killed someone?

21 **PROSPECTIVE JUROR:** That was my thoughts,
22 yeah.

23 **THE COURT:** Would you or would you not?
24 That's what I'm trying to find out.

25 **PROSPECTIVE JUROR:** Yeah, I would.

1 **THE COURT:** If someone killed someone --
2 **PROSPECTIVE JUROR:** Um-hmm.
3 **THE COURT:** -- it's your belief that they
4 automatically should get the death penalty?
5 **PROSPECTIVE JUROR:** Yes.
6 **THE COURT:** Well, if that's the case, how
7 can you say you can consider all four forms of
8 punishment? You wouldn't be able to consider four
9 forms of punishment?
10 **PROSPECTIVE JUROR:** You mean, like, I
11 would consider it also on top of that or --
12 **THE COURT:** No, no, no. What I mean is
13 that there are four possible punishments, right?
14 **PROSPECTIVE JUROR:** Um-hmm.
15 **THE COURT:** Death penalty is one of them.
16 **PROSPECTIVE JUROR:** Right.
17 **THE COURT:** But you stated that if someone
18 killed someone, they should automatically get the
19 death penalty.
20 **PROSPECTIVE JUROR:** Right.
21 **THE COURT:** So, that means if someone
22 kills someone, then you would not be able to
23 consider --
24 **PROSPECTIVE JUROR:** Be able to consider --
25 yeah.

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1 **THE COURT:** -- life with parole or life
2 without parole?
3 **PROSPECTIVE JUROR:** Um-hmm.
4 **THE COURT:** Is that how you truly feel?
5 **PROSPECTIVE JUROR:** Yeah.
6 **THE COURT:** So, you don't think -- in this
7 case here, a person is convicted of killing four
8 people.
9 **PROSPECTIVE JUROR:** Um-hmm.
10 **THE COURT:** So, you think that you would
11 be able to consider life in prison --
12 **PROSPECTIVE JUROR:** No.
13 **THE COURT:** -- or just the death penalty?
14 **PROSPECTIVE JUROR:** Yeah.
15 **THE COURT:** All right.
16 Any questions?
17 **MR. STANTON:** I have some, your Honor.
18 **THE COURT:** Go on.

19
20 EXAMINATION BY THE STATE
21 **BY MR. STANTON:**

22 Q If you were instructed by Judge Gates that
23 the law -- just like the oath that you took at the
24 beginning here together, that you would take a
25 separate oath when you were actually sworn in as a

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1 juror in this case, and that is that you would
2 follow the instructions of law that were given.

3 A Correct.

4 Q What I want to do, Miss Acosta, is address
5 what Judge Gates has been asking you about your
6 feelings on the death penalty, and put it in the
7 context that you're now a sworn member of the jury
8 and the Judge gives you instructions of law where he
9 tells you that the law requires you to consider all
10 forms of punishment in this case and describes the
11 process of how that takes place, that you have to
12 find from -- the State has to prove certain
13 aggravators beyond a reasonable doubt, the defense
14 can present mitigating evidence, and there's a whole
15 procedure that the law requires jurors to go
16 through.

17 A Right.

18 Q Part of that procedure is that you
19 consider all potential punishments that exist in the
20 case.

21 A Um-hmm.

22 Q If the Judge instructed you that it's a
23 matter of law, and you took an oath to follow that
24 law, could you then do that, putting aside your
25 feelings for the death penalty?

1 A If he told me I had to, yes.

2 Q If that man up there told you that's what
3 you had to do as a matter of law, would you follow
4 his instructions?

5 A Um-hmm.

6 Q Would you consider all the evidence in
7 this case?

8 A Yes.

9 Q For example, we talked about mitigation;
10 that's evidence that the defense would present about
11 who Donte Johnson is, where he came from, his
12 family, his background.

13 Would you consider that?

14 A Yes.

15 Q Is that important to you if you were to
16 make a decision about punishment?

17 A Um-hmm.

18 Q So, while you have -- if I can summarize
19 it, you have some strong feelings about the death
20 penalty and from a general philosophical perspective
21 that if somebody takes somebody else's life, they
22 should forfeit their life.

23 As a matter of law from a jury, you can
24 follow the instructions?

25 A Correct.

1 Q Your brother was convicted --
2 A My cousin.
3 Q Cousin, I'm sorry.
4 Attempted murder?
5 A Yes.
6 Q You mentioned later on in the
7 questionnaire that you felt that the jury -- the
8 justice system made the right decision, and he was
9 treated fairly?
10 A Um-hmm.
11 Q You still believe that?
12 A Yeah, I believe that.
13 Q And you indicated in the questionnaire
14 about the mental status of the defendant was an
15 important part.
16 Would you explain that to me where the
17 mental status or mental part of that would play --
18 you say, "a huge part in your decision"?
19 A I guess for me it just depends on, like,
20 what the person was thinking, you know, at that
21 moment, because I know sometimes things happen, and
22 when you start to talk to people, you see a
23 different side of them, and just -- I mean, it's
24 kind of hard to say what mental status he was in at
25 that moment versus how he really is as a person.

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1 Q So, that would be important to you? You
2 would want to know that before you made that
3 decision?

4 A Um-hmm.

5 Q And if you were elected the foreperson in
6 this case -- there's no procedure or law about how
7 that's done, but the foreperson is the one that
8 actually signs the verdict forms.

9 A Um-hmm.

10 Q If you felt that the law and the facts
11 supported a death verdict in this case, could you
12 sign your name as the foreperson to put Donte
13 Johnson to death?

14 A Yeah.

15 **MR. STANTON:** Thank you.

16 I have no further questions, your Honor.

17 **MR. WHIPPLE:** Your Honor, I think we
18 challenge for cause. Mr. Stanton is putting the
19 cart before the horse. She's already answered right
20 up front that she automatically would give the death
21 penalty, and he starts forcing upon her, well, if
22 the Judge told you something different, could you
23 follow what he said. She's already spoke her free
24 will. All we're asking is her to be truthful and
25 honest, and she's given her truthful and honest

1 opinion which preempts her from this particular type
2 of case.

3 **THE COURT:** After he talked to her,
4 Counsel, she said she could consider all four forms
5 of punishment. You can explore it.

6 **MR. WHIPPLE:** Sure.

7

8 EXAMINATION BY THE DEFENSE

9 **BY MR. WHIPPLE:**

10 Q Miss Acosta, you got the hot seat right at
11 the moment.

12 How are you doing?

13 A Good.

14 Q First of all, thank you for coming. We
15 appreciate your time.

16 Miss Acosta, when Judge Gates was asking
17 you some questions, he was asking you
18 specifically -- he was basically following up on
19 some questions that you had written in here in your
20 hand, and you told him that if a person is convicted
21 of first-degree murder, then you felt he deserved
22 the death penalty.

23 A Um-hmm.

24 Q You need to answer "yes" or "no."

25 A Oh, yes.

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1 Q Because when you say "uh-huh" and
2 "huh-uh," it's hard to say whether or not that's
3 "yes" or "no."

4 A All right. Yes.

5 Q And then Mr. Stanton said, well, if you
6 were put on this jury and the Judge told you that
7 you had to consider all four potential punishments,
8 could you do that, so he's assuming that you're
9 already on the jury and that you're doing something
10 that somebody else tells you to do.

11 Do you see the differences?

12 A Yeah, like he was saying if he told me
13 that.

14 Q Exactly.

15 A That I had to consider four, would I
16 consider four, and I said yes.

17 Q Okay.

18 What I want to do is not put the cart in
19 front of the horse, I just want to be -- it's
20 important -- this is a very unique type of case that
21 we're involved with. Okay? Some people just
22 shouldn't be on this type of case. Some people
23 should be on a jury in other types of cases but not
24 this type of case, and one of those type of people
25 are the people that automatically believe that if

1 you kill somebody you should get the death penalty,
2 and that's all we want. We just want to be fair. I
3 just want to make sure that what you said is true.

4 If you believe that if somebody gets
5 convicted of first-degree murder, they should get
6 the death penalty?

7 A Yes.

8 **MR. WHIPPLE:** Challenge for cause, your
9 Honor.

10 **MR. STANTON:** I think that matter is
11 diverse in this case, your Honor. There's a fine
12 distinction that, apparently, Counsel is ignoring in
13 his motion, and that is the distinction between her
14 personal beliefs about the death penalty and her
15 obligation as a juror. It's not putting the cart
16 before the horse. That's where the rubber hits the
17 road in this case, whether she can follow the
18 instructions of law as the Court gives it.

19 **THE COURT:** You know what, Counsel, the
20 problem is that if people have these deeply-held
21 beliefs, they're not going to, you know, really
22 follow the Court's instructions on the law when they
23 might say they will. Now, I think Miss Acosta is
24 pretty clear that she thinks that if you kill
25 someone, the appropriate punishment is -- the only

1 one is the death penalty, and I think she's made
2 that clear; so, I'm going to grant the challenge.

3 **MR. WHIPPLE:** Thank you, your Honor.

4 **THE COURT:** Thank you, ma'am. You can go.

5 **MR. WHIPPLE:** Miss Acosta, thank you for
6 your time.

7 **PROSPECTIVE JUROR 5:** Thank you.

8

9 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 6

10 **THE COURT:** Miss Hrovatin?

11 **PROSPECTIVE JUROR 6:** Yes.

12 **THE COURT:** How long have you lived in
13 Las Vegas?

14 **PROSPECTIVE JUROR:** Since 1994.

15 **THE COURT:** What kind of work do you do?

16 **PROSPECTIVE JUROR:** I work for an
17 architectural firm. I process paperwork.

18 **THE COURT:** Now, I understand that you
19 went to Western Illinois University?

20 **PROSPECTIVE JUROR:** Yes, I did.

21 **THE COURT:** You have a BS in education?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** Did you ever teach?

24 **PROSPECTIVE JUROR:** I did when I first got
25 out of school. Jobs were very hard back then. That

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1 was in -- longer than I care to say -- mid-'70s, and
2 I ended up doing some substitute teaching.

3 **THE COURT:** Oh, okay.

4 Where were you teaching?

5 **PROSPECTIVE JUROR:** In Waukegan, Illinois,
6 which is about 40 miles north of Chicago.

7 **THE COURT:** You grew up in Chicago?

8 **PROSPECTIVE JUROR:** Yes.

9 **THE COURT:** What part of Chicago did you
10 grow up in?

11 **PROSPECTIVE JUROR:** Actually, in Waukegan.

12 **THE COURT:** You weren't living on, like,
13 the north side or south side?

14 **PROSPECTIVE JUROR:** Yes, Northsiders.

15 **THE COURT:** That's what Waukegan is
16 called, "Northsiders"?

17 **PROSPECTIVE JUROR:** Um-hmm.

18 **THE COURT:** What's the ethnic group that
19 lives on the north side?

20 **PROSPECTIVE JUROR:** Waukegan is probably
21 30 -- split very evenly between blacks, whites and
22 Hispanics.

23 **THE COURT:** Okay. All right.

24 Now, going to Question No. 15. They asked
25 if you remember anything about this case, and you

1 state that you remember that the defendant was
2 convicted in the murder of four young men execution
3 style.

4 **PROSPECTIVE JUROR:** If my memory is
5 correct, which I think I also put on there, because
6 I'm not a hundred percent sure.

7 **THE COURT:** Right. You said that you
8 already formed an opinion about the case. You said
9 "yes," and you stated, "I was happy he was convicted
10 and I agreed at the time he was guilty."

11 What about the punishment? Have you made
12 up your mind about the punishment?

13 **PROSPECTIVE JUROR:** I lean very firmly
14 towards death penalty in murder cases.

15 **THE COURT:** I understand that. What
16 exactly does that mean? Here, this is what I want
17 to know: The law requires that in murder cases in
18 the State of Nevada, a first-degree murder case, the
19 possible punishment is the death penalty, life in
20 prison without the possibility of parole, life in
21 prison with the possibility of parole or 50 years,
22 and of course, those sentences are doubled if a
23 deadly weapon is used.

24 Now, if a person is convicted of
25 first-degree murder, what do you think the

1 punishment should be?

2 **PROSPECTIVE JUROR:** Death penalty.

3 **THE COURT:** Would you be able to consider
4 life in prison without parole or life in prison with
5 parole?

6 **PROSPECTIVE JUROR:** I would like to think
7 that I would be able to consider that. I think I'm
8 fairly intelligent and I can make deductions, but
9 with my heart, I can't honestly answer you. I would
10 like to say yes, Judge.

11 **THE COURT:** I just want the truth, how you
12 really feel.

13 **PROSPECTIVE JUROR:** Yes. I'm not sure;
14 I'm really not.

15 **THE COURT:** You were a juror in a case
16 about 20 years ago; is that right?

17 **PROSPECTIVE JUROR:** Yes, in Lake County,
18 Illinois.

19 **THE COURT:** Also, you stated that you felt
20 the burden of proof gives the defendant an unfair
21 advantage.

22 What do you mean by that?

23 A I think the prosecution has a very
24 difficult job, and unfortunately, I think that I
25 lean towards what I hear in media, both newspapers

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1 and television news, and tend to listen to
2 statements they make as fact. Also, I have a
3 tendency to kind of make my mind up first.

4 **THE COURT:** Now, you know under our
5 government, that's the way it was designed, that the
6 prosecution should have the burden, the heavier
7 burden, and that's the way it's been since the
8 country has been a country.

9 So, if you feel that the prosecution has
10 an unfair advantage, does that mean that you're
11 going to not require them to meet their burden or
12 you think that you're going to be easier on them
13 because you feel that they have an unfair burden?

14 **PROSPECTIVE JUROR:** In this case, I don't
15 understand if that applies since he's already
16 convicted. I don't know if that would be that big a
17 factor in this case. I may be wrong, but it doesn't
18 seem like it would be.

19 **THE COURT:** Okay.

20 There are going to be certain burdens that
21 people have in terms of the evidence that's coming
22 in --

23 **PROSPECTIVE JUROR:** Okay.

24 **THE COURT:** -- the case here in this part
25 of the case. What I want to know is if you're going

1 to be unfair, I mean, you're going to be unbiased
2 towards the prosecutors?

3 **PROSPECTIVE JUROR:** Again, I'd like to
4 think not, but I honestly can't answer that.

5 **THE COURT:** You know, we kind of need some
6 answers here, because it's too late once you get in
7 the -- he's on trial here. It's a life or death
8 issue, and the results literally can be life or
9 death.

10 **PROSPECTIVE JUROR:** I understand that.

11 **THE COURT:** We don't want you back there
12 and then you say -- once you're picked as a juror
13 and you're back there and you say, "Gee, you know, I
14 really can't be fair to this guy" or "I'm really
15 biased in favor of the State, and I can't even
16 consider these other punishments. I can only go
17 with death. I can't even consider life in prison
18 with the possibility of parole or life in prison
19 without the probability of parole," so it's too late
20 when you get back there then.

21 **PROSPECTIVE JUROR:** Right. If I am chosen
22 for this jury, Judge, I will do the best I can to
23 listen to everything, I honestly would. Again, as
24 I've mentioned though, right now not hearing a lot
25 about the case, I am leaning towards the death

1 penalty coming into the jury, just so that you
2 understand, and I want to be honest.

3 **THE COURT:** So, you're already leaning
4 towards the death penalty?

5 **PROSPECTIVE JUROR:** Yes, sir.

6 **THE COURT:** Also, you stated that you
7 didn't believe that parole should be an option?

8 **PROSPECTIVE JUROR:** I believe that in all
9 murder cases, first-degree murder cases.

10 **THE COURT:** So, you could not consider --

11 **PROSPECTIVE JUROR:** I would have a very
12 difficult time considering parole, sir.

13 **THE COURT:** State, any questions?

14 **MR. DASKAS:** Very briefly, Judge. I
15 appreciate it.

16

17 EXAMINATION BY THE STATE

18 **BY MR. DASKAS:**

19 Q One of the things you mentioned was you
20 thought the State had an unfair burden in criminal
21 cases. As you said, Mr. Johnson has already been
22 convicted. You appreciate that?

23 A Yes, I understand that.

24 Q We're talking now about the appropriate
25 punishment.

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1 A Right.

2 Q As the Judge alluded to, we will have to
3 prove what's called an "aggravator," what makes this
4 case worse than some other murders.

5 A Yes.

6 Q We have to prove that beyond a reasonable
7 doubt.

8 Will you hold us to that burden, if the
9 Judge instructs you you have to hold us to that
10 burden?

11 A I can do that, yes.

12 Q You said you're leaning towards the death
13 penalty?

14 A Yes.

15 Q The Judge would instruct you, if you're
16 chosen, that you must consider all forms of
17 punishment, and there are four.

18 A Okay.

19 Q Can you follow those instructions?

20 A It would be difficult, but I'd like to
21 think that, yes.

22 Q Although you may be leaning toward one
23 penalty or have some thoughts in your mind about
24 picking one, you understand you cannot, at this
25 point, eliminate the other three?

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1 A Right.

2 Q Can you assure us that you will not
3 eliminate the other three, that you will consider
4 those if you're chosen?

5 A I can assure you that I can consider
6 those.

7 Q That's all we're asking.

8 A Yes.

9 Q No. 36, the second part of that question
10 states that "Your beliefs about the death penalty
11 are such that you would automatically vote for the
12 death penalty regardless of the facts and
13 circumstances in the case." You checked "No." What
14 I read into that --

15 A That I could consider, yes.

16 Q You want to know more about the facts of
17 this case, is that true?

18 A Yes.

19 Q You want to know more about the defendant,
20 I take it, his background, childhood?

21 A Yes.

22 Q You would consider all of those in
23 deciding what punishment to impose?

24 A Yes. I would try my best. Yes.

25 **MR. DASKAS:** Thank you, Judge. We'll pass

1 for cause.

2 **THE COURT:** Defense counsel?

3 EXAMINATION BY THE DEFENSE

4
5 **BY MS. JACKSON:**

6 Q Is it Miss Hrovatin, good afternoon. I
7 know this is kind of intrusive and somewhat
8 difficult, but I echo the Court's sentiments. It's
9 okay that you feel how you feel, but isn't it true
10 that when you watched the TV, and you have here that
11 you saw the verdict and you were happy that he was
12 guilty -- and based upon the beliefs that you have
13 about the death penalty, how long have you had
14 those?

15 A Probably most of my adult life, to be
16 honest with you.

17 Q There you go.

18 So, when you saw that he was convicted and
19 you agreed that you were happy, didn't you pretty
20 much decide there were four people dead, this is the
21 case for the death penalty?

22 A Right, and as I explained to the Judge,
23 that's how I mean it. I do want to be honest. I do
24 not want to be unfair to anyone in here.

25 Q You made up your mind back when you saw

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1 that on TV?

2 A Probably, yes.

3 **MS. JACKSON:** Your Honor, I challenge for
4 cause.

5 **THE COURT:** I'm going to grant it.

6 Also in No. 37, I think you were pretty
7 definite when you said I believe parole should not
8 be an option and you couldn't consider it. It's
9 hard when you have these long-held beliefs, and I
10 appreciate your honesty. All right. Thank you.

11 **PROSPECTIVE JUROR 6:** Okay. Thank you.

12 **THE COURT:** Miss Austin.

13

14 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 7

15 **THE COURT:** Miss Austin, how long have you
16 resided in Las Vegas?

17 **PROSPECTIVE JUROR 7:** About eight or nine
18 years.

19 **THE COURT:** Where are you from?

20 **PROSPECTIVE JUROR:** Idaho.

21 **THE COURT:** What part?

22 **PROSPECTIVE JUROR:** Shoshone, Idaho. It's
23 about 80 miles from Sun Valley.

24 **THE COURT:** Sun Valley.

25 Are you married?

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1 **PROSPECTIVE JUROR:** Yeah.

2 **THE COURT:** You have three or four kids?

3 **PROSPECTIVE JUROR:** I have three children

4 that I raised. My husband had children, and I

5 raised them.

6 **THE COURT:** What kind of work does your

7 husband do?

8 **PROSPECTIVE JUROR:** He's been a carpenter

9 all of his life, now he works for Walgreen's. He

10 handles their maintenance in the Las Vegas area for

11 the Walgreen's stores.

12 **THE COURT:** Do you work outside the home?

13 **PROSPECTIVE JUROR:** Um-hmm.

14 **THE COURT:** Where do you work?

15 **PROSPECTIVE JUROR:** I'm self-employed. I

16 contract with publishers, book publishers and sell

17 their books to elementary schools and high schools.

18 **THE COURT:** So, your sister-in-law's

19 husband is a police officer?

20 **PROSPECTIVE JUROR:** No. He's a lawyer in

21 Idaho.

22 **THE COURT:** In Idaho.

23 **PROSPECTIVE JUROR:** I see him about twice

24 a year.

25 **THE COURT:** Have you or anyone in your

1 family ever been charged with a crime?
2 **PROSPECTIVE JUROR:** I haven't, no.
3 **THE COURT:** I mean anyone in your family.
4 **PROSPECTIVE JUROR:** I have a stepbrother
5 that's in prison for selling drugs.
6 **THE COURT:** In Nevada or Idaho?
7 **PROSPECTIVE JUROR:** Idaho.
8 **THE COURT:** Have you or anyone in your
9 family ever been the victim of a crime? Did
10 anything ever happen to anyone in your family?
11 **PROSPECTIVE JUROR:** Not really -- well, a
12 burglary or robbery or something like that in the
13 home. My father-in-law got robbed one time.
14 **THE COURT:** Was he at home in the house or
15 did somebody pull a gun on him or they just broke
16 into his house?
17 **PROSPECTIVE JUROR:** They broke into his
18 home.
19 I had a car stolen once. I'm trying to go
20 back. Yeah, I had a car stolen once.
21 **THE COURT:** No. 27, "How has this
22 experience affected your feelings about the criminal
23 justice system?" and you said, "I am unhappy about
24 the letter I received."
25 **PROSPECTIVE JUROR:** Yeah.

1 **THE COURT:** It makes you feel like a
2 criminal, and then makes you worry you not knowing
3 how anything was going.

4 What are you talking about there?

5 **PROSPECTIVE JUROR:** What I'm talking about
6 is the letter you send is like we wouldn't fulfill
7 our obligation. It's threatening. If you don't
8 show up, there could be a bench warrant out.

9 **THE COURT:** For jury service?

10 **PROSPECTIVE JUROR:** Yeah.

11 **THE COURT:** You know why we sent that
12 letter, don't you?

13 **PROSPECTIVE JUROR:** No.

14 **THE COURT:** Because a lot of people don't
15 show up --

16 **PROSPECTIVE JUROR:** Maybe that's --

17 **THE COURT:** -- and we have to issue a
18 bench warrant and fine for them. That's true.

19 **PROSPECTIVE JUROR:** And then you don't
20 know what's going to happen when you do get here.

21 **THE COURT:** I see.

22 So, how do you feel about the death
23 penalty, ma'am?

24 **PROSPECTIVE JUROR:** You know, the
25 questionnaire in the death penalty -- it's hard to

1 really make a decision about that without not
2 knowing what happened in the case.

3 **THE COURT:** Right. We want just your
4 general view.

5 **PROSPECTIVE JUROR:** In general, I think
6 it's more punishment to be left in prison.

7 **THE COURT:** Are you opposed to the death
8 penalty?

9 **PROSPECTIVE JUROR:** I don't want to be the
10 one that says I had somebody put to death, really.
11 I will if -- I think if you kill somebody, you
12 should never be let out.

13 **THE COURT:** Tell me this here: This is
14 what I want to know. There are four forms of
15 punishment.

16 **PROSPECTIVE JUROR:** I read the four.

17 **THE COURT:** Death penalty is one of them.
18 The law requires that you consider all four forms of
19 punishment.

20 **PROSPECTIVE JUROR:** Um-hmm.

21 **THE COURT:** Are there circumstances in
22 which you could impose the death penalty?

23 **PROSPECTIVE JUROR:** Me, yes.

24 **THE COURT:** And you could consider --
25 could you look at all the facts, the circumstances

1 and consider life in prison with parole, life in
2 prison without parole, the death penalty or for a
3 definite term and pick the one appropriate depending
4 upon the facts and circumstances of the case?

5 **PROSPECTIVE JUROR:** You're asking if I
6 would let him out on parole?

7 **THE COURT:** I'm not asking if you would
8 let him out on parole -- would you consider it.
9 Could you consider that?

10 **PROSPECTIVE JUROR:** No.

11 **THE COURT:** The 50 years -- the only thing
12 that you could consider would be the death penalty
13 and life without parole?

14 **PROSPECTIVE JUROR:** That's right.

15 **THE COURT:** There are no other
16 circumstances that you could envision where you
17 would?

18 **PROSPECTIVE JUROR:** If they were mentally
19 retarded or something happened to them in their
20 childhood that made them go crazy or --

21 **THE COURT:** So, you could consider it
22 based upon the facts?

23 **PROSPECTIVE JUROR:** If there's a reason,
24 but if you just killed four people just out of the
25 blue, no, I would never let you out.

1 **THE COURT:** But you -- if there were
2 certain facts and circumstances that might cause
3 you --

4 **PROSPECTIVE JUROR:** Maybe. I don't
5 believe in killing. I think if you killed somebody,
6 there's just no excuse for that.

7 **THE COURT:** Do you have any bias or
8 prejudice against either side?

9 **PROSPECTIVE JUROR:** Do I have what?

10 **THE COURT:** Do you have any bias or
11 prejudice against either side? Are you prejudiced
12 against either side here?

13 **PROSPECTIVE JUROR:** No. That's just my
14 opinion of killing.

15 **THE COURT:** I thought you said there were
16 some circumstances in which you could impose the
17 death penalty.

18 **PROSPECTIVE JUROR:** I could.

19 **THE COURT:** So, you have more difficulty
20 with the parole part?

21 **PROSPECTIVE JUROR:** Yes, I do. I don't
22 want him out around everybody.

23 **THE COURT:** However, if you felt that
24 there were certain factors, like retardation,
25 childhood problems or mental --

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1 **PROSPECTIVE JUROR:** Somebody may have
2 baited the person and made them violent.

3 **THE COURT:** So, you would consider all of
4 that?

5 **PROSPECTIVE JUROR:** I wouldn't sleep over
6 something like this.

7 **THE COURT:** State?

8 **MR. STANTON:** Thank you, your Honor.
9

10 EXAMINATION BY THE STATE

11 **BY MR. STANTON:**

12 Q Ma'am -- Miss Austin, you indicated in
13 your questionnaire that there was a financial
14 situation, and you believe it was related to your
15 employment.

16 **PROSPECTIVE JUROR:** Yes. I'm
17 self-employed. I work on commission, so while I'm
18 here -- and I commute into Las Vegas. I would any
19 way to work, but --

20 Q I understand, because you live in
21 Logandale.

22 A Yeah.

23 Q I don't know if the Judge informed you,
24 but this is approximately two weeks in length, what
25 this proceeding would take place.

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1 Is that something that would cause you a
2 financial hardship if you were selected as a juror
3 to be here for two weeks?

4 A The financial is not that bad, but it
5 would cause me a lot of problems, because I'm
6 moving. I'm moving into Las Vegas. I closed on our
7 house that we're selling on the 25th, and we have,
8 like, seven days that we're just waiting to get into
9 our house, but we're in the middle of moving, but I
10 can do it. I'll be able to arrange it.

11 Q When the Judge asked you questions
12 regarding the death penalty and whether or not -- I
13 guess if I can summarize your feelings is you think
14 quite often that life without the possibility of
15 parole is a harsher punishment than the death
16 penalty?

17 A Um-hmm, I do. I think being in prison
18 would be worse.

19 Q If you were selected as a juror in this
20 case, and based upon the facts and the law and you
21 were selected the foreperson of this jury, that you
22 thought the death penalty was appropriate in this
23 particular case and you were the foreperson, could
24 you sign the verdict forms that put the defendant
25 Donte Johnson to death?

1 A Could I?

2 Q Yes.

3 A Well, I'll put it to you this way: I
4 would believe that if I was asked to do that and I
5 believe the death penalty -- with that said, that
6 the death penalty -- that that's what should happen,
7 I believe I would make the right choice. In life,
8 you're given choices, and I would make a choice on
9 it.

10 Q You think you could do that and fulfill
11 your obligations as a juror?

12 A Yes, I could do that.

13 MR. STANTON: Nothing further.

14 MR. WHIPPLE: Thank you, your Honor.

15

16 EXAMINATION BY THE DEFENSE

17 BY MR. WHIPPLE:

18 Q Hi, Miss Austin. How are you?

19 A I'm fine.

20 Q This is not an easy situation by any
21 means, this is very unique, just this whole process
22 that we're going through.

23 I wanted to comment on one issue. You
24 said -- we were talking about a parole and murder.
25 You said there's no excuse, there's no justification

1 for murder, and you're going to see that all of us
2 agree with you.

3 A Oh, I know.

4 Q There's no excuse, no justification. What
5 this is all about is what is the proper punishment
6 for somebody.

7 A Oh, I understand.

8 Q So, we're not ever trying to justify or
9 excuse. That's not why we're here, it's just to try
10 to determine what the proper result is in this point
11 going forward.

12 A I do have a question. He was already
13 convicted. Why aren't those people deciding what
14 the punishment would be? Why are they picking
15 another set of jurors to pick what the punishment
16 would be?

17 Q There's a whole history here, but the fact
18 remains is that's history behind us, and we just got
19 to go forward with what we have here today; so, I
20 really can't get into history.

21 A I would be concerned about knowing enough
22 about it to make a life or death decision, I'll put
23 it to you that way.

24 Q I understand.

25 I want to ask just a couple of questions.

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1 A Okay.

2 Q The issue remains is Mr. Johnson is an
3 African-American male, and you'll learn that the
4 victims in this case are three Caucasians and one
5 Hispanic person, and there was one place in the jury
6 questionnaire that was asked if you had much
7 interaction with people of different ethnic
8 backgrounds, and you said four years ago when you
9 hosted somebody in your house who was of a different
10 background. Could you expand on that?

11 A Logandale -- I live out in Logandale and I
12 commute into Las Vegas, so I work with all different
13 types of ethnic groups of people for short periods
14 of time, but it's a very Mormon community, and I'm
15 not Mormon and they are not -- no black or Chinese
16 or anybody out there --

17 Q Sure.

18 A -- and that's why I've lived out there.

19 Q You don't look at anybody differently just
20 because they come from different backgrounds?

21 A No.

22 Q In fact, you have friends that are of
23 different backgrounds from yourself?

24 A Yes; yes, I do. Not at the present, but
25 I've lived in Denver for a few years, and I had a

1 really close friend, a black person who is a very
2 close friend to me. No, I don't have anything.

3 Q What is your opinion with regard to the
4 death penalty?

5 A My opinion is like I said before. I think
6 it's more punishment to stay in prison. If you want
7 to punish someone for killing someone else, I think
8 it's more punishment to stay in prison. I think the
9 death penalty -- they take a long time before they
10 do kill them, and that way I think that they have
11 time to make any kind of amends with God or whatever
12 in that period. So, if you're going to put them to
13 death and you want to punish him and you give him
14 enough time to repent and make peace with God, then
15 if there is a heaven and hell, he would probably go
16 to a better place.

17 Q I understand.

18 This opinion -- how long have you had this
19 opinion?

20 A Probably all my life.

21 Q Is this something you've had an
22 opportunity to discuss with other individuals?

23 A Yeah, people talk about it. Some people
24 believe the death penalty -- if you kill one, that
25 you get paid back like that. I do think there is

1 room to consider other things, like if they're
2 mentally retarded.

3 Q Sure.

4 A But if you just pulled a gun on people on
5 the street and killed them --

6 Q Let me ask you, if a person has committed
7 first-degree, premeditated, deliberate murder, can
8 you consider life -- a life sentence?

9 A Yes. I would probably do that before I
10 could go with the death penalty, because I think
11 it's more punishment.

12 Q I'm kind of being a little redundant, and
13 I apologize, but what if there were four individuals
14 that were murdered -- that the person took the life
15 of four individuals in a premeditated, deliberate
16 murder -- four of them, not just one but four --
17 what do you feel is the appropriate penalty for
18 something like that just knowing nothing other
19 than --

20 MR. STANTON: Your Honor, I would object.

21 THE COURT: Sustained.

22 BY MR. WHIPPLE:

23 Q Could you consider life in that situation?
24 Could you consider a life sentence?

25 A A life sentence, um-hmm, because I think

1 it's more punishment than death.

2 Q You said that you have discussed this
3 matter with other individuals?

4 A Um-hmm.

5 Q And there are some people that you said
6 they have like an eye-for-an-eye type of attitude?

7 A Yeah.

8 Q What do you think about other people's
9 opinions with regard to this issue? How strong are
10 you in this opinion when you talk about other people
11 who have a different opinion than your own?

12 A I'm very strong in my own opinion. I'm
13 not influenced a lot just because you have an
14 opposite opinion. I'm open to listen to what people
15 have to say and consider it, you know, but I'm
16 not -- 20 of you can think one way and I could
17 disagree.

18 Q In this world, and sometimes it's made up
19 of -- you have followers and you have leaders.

20 Where would you see yourself in that
21 scale.

22 A I'm a leader, and I'm not afraid to be at
23 the opposite of everyone on this issue.

24 Q If somebody had a different opinion from
25 yourself with regard to this issue we're discussing,

1 would you accept it?

2 A I could accept they have a different
3 opinion.

4 Q You respect other people's opinions?

5 A Yes, and I don't feel like I have to agree
6 with them.

7 **MR. WHIPPLE:** Nothing further.

8 Pass for cause, your Honor.

9 **THE COURT:** Miss Austin, we're going to
10 have you come back Thursday morning at
11 10:00 o'clock.

12 **PROSPECTIVE JUROR 7:** Oh, you're going to
13 pick me?

14 **THE COURT:** Huh?

15 **PROSPECTIVE JUROR:** Am I picked for the
16 jury?

17 **THE COURT:** We don't know yet. We're
18 going to try to make a decision by Thursday.

19 **PROSPECTIVE JUROR:** Thursday at
20 10:00 o'clock?

21 **THE COURT:** We have a lot more people to
22 interview.

23 **PROSPECTIVE JUROR:** Yeah, I think you'll
24 know by Thursday.

25 **THE COURT:** Hopefully we will. We'll let

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1 you know Thursday. All right?

2 **PROSPECTIVE JUROR:** Okay.

3 **THE COURT:** You can get some moving done
4 in between.

5 **PROSPECTIVE JUROR:** Yeah.

6 **THE BAILIFF:** Mr. Charles Bolin is not
7 here.

8 **THE COURT:** Issue an order to show cause.

9 **MR. DASKAS:** Judge, did you see on the
10 last page it mentioned he was on temporary duty with
11 the military until the 28th of April? It's on the
12 narrative on the second to the last page.

13 **THE COURT:** All right.

14 Strike that order to show cause.

15 **MR. DASKAS:** Thank you, Judge.

16 **THE COURT:** Thank you, Mr. Daskas.

17 **MR. DASKAS:** You're welcome, Judge.

18

19 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 9

20 **THE COURT:** Miss Phu?

21 **PROSPECTIVE JUROR 9:** Phu.

22 **THE COURT:** P is silent?

23 **PROSPECTIVE JUROR:** Foo (phonetic) with an
24 F.

25 **THE COURT:** So, you're from Blair,

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1 Nebraska?

2 **PROSPECTIVE JUROR:** That's where I was
3 born, yes.

4 **THE COURT:** Is that a military base?

5 **PROSPECTIVE JUROR:** No.

6 **THE COURT:** That's a little town?

7 **PROSPECTIVE JUROR:** Farming town.

8 **THE COURT:** Farming town.

9 How long did you live there?

10 **PROSPECTIVE JUROR:** I moved here to
11 Las Vegas when I was in fourth grade, so quite a
12 while.

13 **THE COURT:** You went to UNLV, and you got
14 a degree in finance; is that right?

15 **PROSPECTIVE JUROR:** That's right.

16 **THE COURT:** You're working on an MBA?

17 **PROSPECTIVE JUROR:** Yes.

18 **THE COURT:** Is that in finance also?

19 **PROSPECTIVE JUROR:** Yes.

20 **THE COURT:** Are you working or are you
21 going to school full-time?

22 **PROSPECTIVE JUROR:** I'm working full-time
23 and going to school part-time.

24 **THE COURT:** Where do you work?

25 **PROSPECTIVE JUROR:** Scott Trade, discount

1 brokerage firm.

2 **THE COURT:** Seven dollar trades?

3 **PROSPECTIVE JUROR:** That's right.

4 **THE COURT:** So, you sell stocks?

5 **PROSPECTIVE JUROR:** I'm a stockbroker.

6 **THE COURT:** The only crime that you or
7 your family have been the victim of is car
8 vandalism?

9 **PROSPECTIVE JUROR:** Yes.

10 **THE COURT:** Do you have any siblings?

11 **PROSPECTIVE JUROR:** No.

12 **THE COURT:** You're an only child?

13 So, On No. 30, you said, "I believe
14 African-Americans are more prone to violence and
15 unacceptable social behavior." It seems like you're
16 pretty anti-African-American, because the next one
17 said, "As an Asian-American, I have witnessed the
18 racial violence that African-Americans show toward
19 other races."

20 Is that true?

21 **PROSPECTIVE JUROR:** That's correct.

22 **THE COURT:** Okay. You're excused.

23

24 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 10

25 **THE COURT:** How do you pronounce your last

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1 name, ma'am?

2 **PROSPECTIVE JUROR 10:** SA-VAR-RE

3 (phonetic.)

4 **THE COURT:** Svare.

5 **PROSPECTIVE JUROR:** That's close.

6 **THE COURT:** What is it?

7 **PROSPECTIVE JUROR:** Svare.

8 **THE COURT:** Is the S silent?

9 **PROSPECTIVE JUROR:** It's S-V-A-R-E. It's
10 Norwegian.

11 **THE COURT:** You pronounce the S and the V?

12 **PROSPECTIVE JUROR:** Yes.

13 **THE COURT:** How long have you lived in
14 Las Vegas, ma'am?

15 **PROSPECTIVE JUROR:** About 28 years.

16 **THE COURT:** Are you working now?

17 **PROSPECTIVE JUROR:** Yes, I am.

18 **THE COURT:** What kind of work do you do?

19 **PROSPECTIVE JUROR:** I'm a registered
20 dietician.

21 **THE COURT:** Who do you work for?

22 **PROSPECTIVE JUROR:** I work for Vegas
23 Valley Rehab Hospital, Progressive Hospital, and I
24 do some side consulting jobs.

25 **THE COURT:** Are you married, ma'am?

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1 **PROSPECTIVE JUROR:** No.
2 **THE COURT:** Have you ever been married?
3 **PROSPECTIVE JUROR:** Yes.
4 **THE COURT:** Is your husband --
5 **PROSPECTIVE JUROR:** He's long gone.
6 **THE COURT:** I know. Is he just long gone
7 or is he deceased or what?
8 **PROSPECTIVE JUROR:** No.
9 **THE COURT:** You just don't -- you have an
10 adult son?
11 **PROSPECTIVE JUROR:** Yes, I do.
12 **THE COURT:** Does he live here in
13 Las Vegas?
14 **PROSPECTIVE JUROR:** No, he doesn't.
15 **THE COURT:** Where does he live?
16 **PROSPECTIVE JUROR:** Right now, he's living
17 in Lees Summit, Missouri.
18 **THE COURT:** Okay.
19 Have you or anyone in your family ever
20 been charged with a crime?
21 **PROSPECTIVE JUROR:** No.
22 **THE COURT:** Have you or anyone in your
23 family ever been the victim of a crime?
24 **PROSPECTIVE JUROR:** Yes.
25 **THE COURT:** Who was that?

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1 **PROSPECTIVE JUROR:** My son.
2 **THE COURT:** What was he convicted of?
3 **PROSPECTIVE JUROR:** He was a victim of
4 child molestation.
5 **THE COURT:** The one that's in Missouri?
6 **PROSPECTIVE JUROR:** Yes.
7 **THE COURT:** So, did this happen in
8 Missouri?
9 **PROSPECTIVE JUROR:** It happened here in
10 Las Vegas.
11 **THE COURT:** How long ago?
12 **PROSPECTIVE JUROR:** Approximately 20 years
13 ago.
14 **THE COURT:** What kind of punishment did he
15 receive?
16 **PROSPECTIVE JUROR:** Ten years probation,
17 two five-year terms probation served consecutively,
18 \$20,000 fine. There was a few other things.
19 **THE COURT:** Did he successfully complete
20 probation?
21 **PROSPECTIVE JUROR:** I have no idea. The
22 man was not apprehended until seven years after it
23 happened, and at the time, we did go ahead and
24 prosecute. He asked to be allowed to return to
25 Texas where he was living at that time to serve his

1 probation, and that's the last I've heard of him.

2 **THE COURT:** That's your son?

3 **PROSPECTIVE JUROR:** Oh, no -- my son
4 didn't do it; my son was the victim.

5 **THE COURT:** Oh, okay.

6 So, your son was the victim?

7 **PROSPECTIVE JUROR:** Yes, my son was the
8 victim.

9 **THE COURT:** And then the guy -- but it
10 wasn't reported until seven years after?

11 **PROSPECTIVE JUROR:** It was reported, but
12 they did not get him.

13 **THE COURT:** Apprehend him until seven
14 years later?

15 **PROSPECTIVE JUROR:** Yes.

16 **THE COURT:** And then he was convicted and
17 they gave him probation, and he went to Texas and
18 that's the last you heard of him?

19 **PROSPECTIVE JUROR:** That's where they
20 found him was in Texas. My son has never been in
21 any trouble.

22 **THE COURT:** Oh, okay.

23 Do you remember the name of the prosecutor
24 who prosecuted this guy?

25 **PROSPECTIVE JUROR:** It was through the

1 D.A.'s office, and there were several different --

2 **THE COURT:** D.A.s?

3 **PROSPECTIVE JUROR:** -- D.A.s that were
4 involved in it because the case took a year.

5 **THE COURT:** It wasn't John Lukens, was it?

6 **PROSPECTIVE JUROR:** No.

7 **THE COURT:** How do you feel about the
8 D.A.'s office as a result of that case?

9 **PROSPECTIVE JUROR:** I have no problem with
10 them.

11 **THE COURT:** Now, you said that you were a
12 consultant to the Federal Prison Camp?

13 **PROSPECTIVE JUROR:** Yes. I have been
14 consultants to the state prisons at Indian Springs
15 and at Jean about 15 years ago, and I have been
16 doing the Federal Prison Camp at Nellis.

17 **THE COURT:** Now, you stated that you had
18 heard something about this case; is that right?

19 **PROSPECTIVE JUROR:** I read it in the
20 paper.

21 **THE COURT:** And you said that you had
22 formed some opinions?

23 **PROSPECTIVE JUROR:** Yes.

24 **THE COURT:** What are your opinions?

25 **PROSPECTIVE JUROR:** That he was guilty.

1 **THE COURT:** What about -- have you formed
2 any opinions or already decided what you think the
3 penalty should be?

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** So, what's that?

6 **PROSPECTIVE JUROR:** Life in prison without
7 chance of parole.

8 **THE COURT:** You already made up your mind?
9 Tell me this here: This is what this
10 trial is about, to see what the appropriate
11 punishment is, and you have four choices. Now, the
12 law requires that you consider all four choices.

13 Could you do that?

14 **PROSPECTIVE JUROR:** I have very strong
15 feelings against the death penalty, and I could
16 never, ever agree to the death penalty.

17 **THE COURT:** Under no circumstances?

18 **PROSPECTIVE JUROR:** Pardon me?

19 **THE COURT:** Under no circumstances?

20 **PROSPECTIVE JUROR:** Under no
21 circumstances.

22 **MR. DASKAS:** We challenge for cause, your
23 Honor.

24 **THE COURT:** Anything you want to say?

25 **MS. JACKSON:** We submit it, Judge.

1 **THE COURT:** You're excused, ma'am. Thank
2 you.

3
4 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 11

5 **THE COURT:** Miss White, Jessica Rose
6 White?

7 **PROSPECTIVE JUROR 11:** Um-hmm.

8 **THE COURT:** Miss White, how long have you
9 lived in Las Vegas?

10 **PROSPECTIVE JUROR:** About four-and-a-half
11 years.

12 **THE COURT:** How many?

13 **PROSPECTIVE JUROR:** About four,
14 four-and-a-half years.

15 **THE COURT:** Four-and-a-half years.

16 What kind of work do you do, ma'am?

17 **PROSPECTIVE JUROR:** I'm a manager at
18 Office Depot.

19 **THE COURT:** Are you married?

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** What kind of work does your
22 husband do?

23 **PROSPECTIVE JUROR:** He's a delivery driver
24 for a local company, Cintas.

25 **THE COURT:** Cintas?

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1 **PROSPECTIVE JUROR:** Um-hmm.
2 **THE COURT:** You said you have law
3 enforcement officers who are in-laws?
4 **PROSPECTIVE JUROR:** Yes.
5 **THE COURT:** Which are your husband's
6 brothers or --
7 **PROSPECTIVE JUROR:** No, they're cousins.
8 **THE COURT:** Cousins?
9 **PROSPECTIVE JUROR:** His cousins.
10 **THE COURT:** Who do they work for, Metro?
11 **PROSPECTIVE JUROR:** Um-hmm.
12 **THE COURT:** How often do you see them or
13 talk to them?
14 **PROSPECTIVE JUROR:** Maybe once or twice a
15 year, if that.
16 **THE COURT:** Now, you said that there was
17 someone in your family that was arrested or charged
18 with a crime; is that right?
19 **PROSPECTIVE JUROR:** Yes.
20 **THE COURT:** Who was that?
21 **PROSPECTIVE JUROR:** My husband.
22 **THE COURT:** Okay.
23 What was he charged with?
24 **PROSPECTIVE JUROR:** Vehicular assault.
25 **THE COURT:** How long ago did this happen?

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1 **PROSPECTIVE JUROR:** Twelve years ago.

2 **THE COURT:** You put down that you felt the
3 situation was unfair, and you don't think that
4 justice was served. The punishment was unjust.
5 What happened to him? What kind of
6 punishment did he receive?

7 **PROSPECTIVE JUROR:** I believe that he had
8 jail time that I think was fair, but I think there
9 was some things about what he owed was not
10 clarified. I mean, all these things are cleared up
11 now.

12 **THE COURT:** Are you talking about
13 restitution?

14 **PROSPECTIVE JUROR:** Yeah. That really put
15 a damper on things.

16 **THE COURT:** Was he in a fight with someone
17 or something?

18 **PROSPECTIVE JUROR:** No; he was driving and
19 fell asleep --

20 **THE COURT:** And fell asleep.

21 **PROSPECTIVE JUROR:** -- and had been
22 drinking and he hurt someone.

23 **THE COURT:** Who was it that was a victim
24 of a crime?

25 **PROSPECTIVE JUROR:** Just the person that

1 he hurt.

2 **THE COURT:** Now, you understand that if
3 you're chosen or picked as a juror, you will have to
4 decide on the punishment.

5 Do you understand that?

6 **PROSPECTIVE JUROR:** Um-hmm. Yes.

7 **THE COURT:** Now, there's four possible
8 punishments -- the death penalty, life in prison
9 without the possibility of parole, life in prison
10 with the possibility of parole or for a definite
11 term of 50 years with the possibility of parole
12 after 20 years, and of course, if a deadly weapon
13 was used, I believe the punishment is doubled.

14 Do you understand that?

15 **PROSPECTIVE JUROR:** I do now.

16 **THE COURT:** Could you consider all four
17 forms of punishment?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** Do you have any moral or
20 religious objections to the death penalty?

21 **PROSPECTIVE JUROR:** No.

22 **THE COURT:** Can you be fair and impartial
23 in this case?

24 **PROSPECTIVE JUROR:** I believe so; I just
25 feel that it makes me uncomfortable. I think if

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1 evidence was there, you know, I think it could be --
2 I feel like I could be fair, but it's an
3 uncomfortable situation.

4 **THE COURT:** There's nothing wrong with
5 that. It is uncomfortable to have to decide on a
6 person's fate, so I think most people would feel
7 that way.

8 What about your daycare situation? Your
9 child is two years old; is that right?

10 **PROSPECTIVE JUROR:** Yes, and I stay home
11 during the day, and then when my husband comes home,
12 then I go to work, so we don't have child care.

13 **THE COURT:** You don't have anyone who can
14 keep --

15 **PROSPECTIVE JUROR:** Everyone that lives
16 here has jobs. My father-in-law helps us. He took
17 the day off today to watch her, and last week.

18 **THE COURT:** So, it's going to be an
19 extreme hardship?

20 **PROSPECTIVE JUROR:** Yeah. We would
21 probably have to call somebody to come in from out
22 of town.

23 **MR. STANTON:** We wouldn't object to your
24 Honor for releasing this perspective juror based on
25 that.

1 **THE COURT:** Approach the bench.
2 (Sidebar conference outside the presence
3 of the court reporter.)
4 **THE COURT:** All right. Miss White, the
5 lawyers have stipulated and agreed that you can go
6 because of hardship. We would like to have had you
7 on the jury though. We think you would have made a
8 good juror.

9 **PROSPECTIVE JUROR:** Thanks.

10 **THE COURT:** You can go.

11
12 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 12

13 **THE COURT:** Mr. Rajinder Karwan.
14 Dr. Karwan?

15 **PROSPECTIVE JUROR 12:** Yes, sir.

16 **THE COURT:** I see here that you said
17 you're opposed to the death penalty under any
18 circumstance.

19 **PROSPECTIVE JUROR:** Yes, because of my
20 experience in the prison system. I have retired
21 from the prison sometime in '99, and subsequently, I
22 did local time here and see the prisoners, and I
23 attended the Ely too -- that place, and I feel
24 philosophically the religious belief system, and
25 because I'm a Hindu by religion, and also, I've

1 worked with the prison system and I've attended and
2 seen all the prisons, and most of them probably know
3 me. I've been working the State system since 1973.

4 **THE COURT:** He said he believes in
5 nonviolence.

6 So, the Hindu don't believe in the death
7 penalty; is that correct?

8 **PROSPECTIVE JUROR:** Most Hindu are
9 tichiathian (phonetic), and also philosophically,
10 most of them don't.

11 **MR. DASKAS:** Your Honor, based on the
12 answers in the questionnaire, I would submit a
13 challenge for cause.

14 **MS. JACKSON:** I would submit it, your
15 Honor, based upon his religious beliefs.

16 **THE COURT:** You're excused for cause.
17 Thank you.

18
19 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 13

20 **THE COURT:** Mr. Clase -- is it Clase
21 (phonetic) or Class (phonetic)?

22 **PROSPECTIVE JUROR 13:** Clase.

23 **THE COURT:** Mr. Clase, a couple of
24 questions I have for you.

25 **PROSPECTIVE JUROR:** Yes, sir.

1 **THE COURT:** Now, you stated that you're in
2 favor of the death penalty; is that right?

3 **PROSPECTIVE JUROR:** Yes, sir.

4 **THE COURT:** And you said that -- could you
5 really consider all four forms of punishment in this
6 case?

7 **PROSPECTIVE JUROR:** It depends on the
8 nature of the case, what I learn about it as I go
9 through here. From what I read in the
10 questionnaire, it looks as though, you know, he's
11 been accused of multiple murders.

12 **THE COURT:** He's been convicted of
13 multiple murders.

14 **PROSPECTIVE JUROR:** I'm sorry, convicted
15 of multiple murders, and my opinion is that in this
16 particular case, the death penalty would be
17 warranted.

18 **THE COURT:** And you've already made up
19 your mind?

20 **PROSPECTIVE JUROR:** Based on what little I
21 have read in there, yes.

22 **THE COURT:** All right. I thought you said
23 you had read something in the newspapers too about
24 this.

25 **PROSPECTIVE JUROR:** I vaguely have heard

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1 the name someplace along the line, but I don't
2 remember any of the details. I believe that's what
3 I put in my questionnaire there.

4 **THE COURT:** Now, you said you believe in
5 an eye for an eye.

6 That's what you said; is that right?

7 **PROSPECTIVE JUROR:** Yes, sir.

8 **THE COURT:** So, if you believe an eye for
9 an eye, that would mean death for death?

10 **PROSPECTIVE JUROR:** Yes, sir.

11 **THE COURT:** So, you wouldn't be able to
12 consider life in prison without parole or life in
13 prison with parole or 50 years?

14 **PROSPECTIVE JUROR:** It would have to be
15 some extraneous circumstances that I'm totally
16 unaware of --

17 **THE COURT:** Such as what?

18 **PROSPECTIVE JUROR:** -- to make me feel
19 that way.

20 **THE COURT:** Such as what would you
21 consider to be mitigating circumstances?

22 **PROSPECTIVE JUROR:** If it comes out that
23 there was some type of self defense, something like
24 this, but the fact that there is, you know, a
25 conviction for murder, I'm not really sure what that

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1 would be, your Honor.

2 **THE COURT:** Tell me this here: You said
3 that you had a hardship.

4 **PROSPECTIVE JUROR:** I'm self-employed.
5 Right now I sell the outdoor barbecue systems. This
6 time of the year is my busiest time of the year, and
7 being self-employed in commission sales, all the
8 time I'm sitting here, it's costing me money. We
9 have -- you indicated earlier today that this may go
10 on for a week or a week and a half. We've got a
11 trade show coming up here at Cashman Field the
12 latter part of next week. I need to be prepared for
13 that showing at the trade show. That's our biggest
14 trade show we have, and from the standpoint, you
15 know, this is the only income I have, straight
16 commission sales, if I don't work for the next
17 couple of weeks, especially during this time of
18 year, it could be a financial hardship on me, sir.

19 **THE COURT:** Here you said taking time off
20 now will result in great financial hardship. Will
21 it result in great financial hardship or could it
22 result, because on this questionnaire you were
23 definite. Here you're saying it may result, so
24 which one is it?

25 **PROSPECTIVE JUROR:** Well, I have to assume

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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

~~~~~  
APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME XX  
~~~~~

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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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	3	STIPULATION AND ORDER (FILED 10/14/1999)	695-698

1	6	STIPULATION AND ORDER (FILED 12/22/1999)	1454-1456
2	7	STIPULATION AND ORDER (FILED 04/10/2000)	1712-1714
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4	2	SUPERSEDING INDICTMENT (FILED 09/16/1998)	278-291
5	32	SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 10/12/2009)	7308-7372
6	39	SUPPLEMENTAL EXHIBITS (FILED 04/05/2013)	7880-7971
7	3	SUPPLEMENTAL MOTION TO VIDEOTAPE DEPOSITION OF CHARLA SEVERS (FILED 10/18/1999)	705-707
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12	7	SUPPLEMENTAL POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO SUPPRESS (FILED 03/16/2000)	1657-1667
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1	38	TRANSCRIPT OF PROCEEDINGS ARGUMENT: PETITION FOR WRIT OF HABEAS CORPUS ALL ISSUES RAISED IN THE PETITION AND SUPPLEMENT (FILED 12/07/2011)	7808-7879
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3	35	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE A REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 04/12/2011)	7614-7615
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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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4	35	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE A REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 06/07/2011)	7575-7578
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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 9th 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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