

1 myself as either, really. I do both, actually, in
2 my job.

3 Q So, if there are individuals who had a
4 feeling that was different than yourself and, yet,
5 maybe you had just a gut feeling that you wanted to
6 choose life over death, how would you handle that if
7 you had pressure to try to formulate that decision,
8 yet, you felt contrary; how would you handle that?

9 A It would have to be with discussion.

10 Q Could you stand your own ground if you
11 felt confident in a particular decision?

12 A If I honestly felt confident in it, yes.

13 **MR. WHIPPLE:** Mr. Taylor, I thank you for
14 your time.

15 Pass for cause, your Honor.

16 **THE COURT:** All right.

17 Sir, have a seat outside there.

18 **PROSPECTIVE JUROR 242:** Okay.

19 **THE COURT:** The defense may exercise their
20 eighth and final peremptory challenge.

21 **MS. JACKSON:** That would be 0113, Janet
22 Miller who is in the No. 4 spot, your Honor.

23 **THE COURT:** What's her number again?

24 **MS. JACKSON:** Her number is 0113, Judge.

25 **THE COURT:** All right.

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1 Bring the next one in.

2

3 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 249

4 **THE COURT:** Miss Summers, what kind of
5 work do you do, ma'am?

6 **PROSPECTIVE JUROR 249:** I'm an office
7 manager for CBS. It's a trucking company. We haul
8 dirt.

9 **THE COURT:** And your husband -- what does
10 he do?

11 **PROSPECTIVE JUROR:** He is a slot
12 operations manager at Four Queens.

13 **THE COURT:** You never served on a jury
14 before?

15 **PROSPECTIVE JUROR:** No.

16 **THE COURT:** Now, here in Question No. 24,
17 you state, "At times I feel the system was a big
18 letdown and are too lenient."

19 What times are those? Any examples or
20 something that bring something to mind that causes
21 you to say that?

22 **PROSPECTIVE JUROR:** Well, the first time
23 that -- well, it was the last time that I was here,
24 we just sat downstairs. I never made it to jury or
25 nothing, but we just sat downstairs, and it's like

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1 they don't let you anything. It's just like
2 nothing. They don't tell you anything except after
3 5:00 o'clock, go home.

4 **THE COURT:** Like they don't tell you
5 what's happening?

6 **PROSPECTIVE JUROR:** No.

7 **THE COURT:** Now, here it says, "Do you
8 have any relatives or close friends of a different
9 racial background?" and you say, "My best friend's
10 husband. My husband and I were maid of honor and
11 best man."

12 **PROSPECTIVE JUROR:** Yes.

13 **THE COURT:** What's the racial background?

14 **PROSPECTIVE JUROR:** She's white, he's
15 black.

16 **THE COURT:** Okay.

17 Now, you understand what kind of case this
18 is and what we're picking a jury for; is that
19 correct?

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** The defendant has already been
22 convicted of four counts of first-degree murder,
23 therefore, this jury will have to decide on the
24 punishment, and according to the laws of the State
25 of Nevada, the jury will have four choices -- the

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1 death penalty, life in prison without the
2 possibility of parole, life in prison with the
3 possibility of parole or for a definite term of 50
4 years with the possibility of parole after 20 years,
5 and those punishments are doubled because a deadly
6 weapon was used, so it would be -- the definite term
7 would be a hundred years with parole eligibility or
8 possibility of parole after 40 years, and this would
9 be for each of the counts.

10 Do you understand that?

11 **PROSPECTIVE JUROR:** Okay.

12 **THE COURT:** Could you consider all four
13 forms of punishments and look at them -- first of
14 all, could you consider all four forms of
15 punishment?

16 **PROSPECTIVE JUROR:** Yes.

17 **THE COURT:** And you could listen to the
18 evidence, the witnesses, the instructions on the
19 law, the arguments of counsel and then pick the one
20 that you feel is most appropriate?

21 **PROSPECTIVE JUROR:** Yes.

22 **THE COURT:** Do you have any moral or
23 religious opposition to the death penalty?

24 **PROSPECTIVE JUROR:** No.

25 **THE COURT:** Would you be able to return a

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1 verdict of life in prison if you thought it was
2 appropriate given the facts and circumstances?

3 **PROSPECTIVE JUROR:** I'm sorry. I was --

4 **THE COURT:** Would you be able to return a
5 verdict of life in prison if you thought the facts
6 in evidence warranted?

7 **PROSPECTIVE JUROR:** That's tough. It's
8 like you said, I would have to know more detail to
9 even go into that direction. That would be --
10 you're talking about putting him in prison for the
11 rest of his life?

12 **THE COURT:** That's one choice you have.
13 You can put him in prison for the rest of his life
14 and he would remain there until he dies or life in
15 prison with the possibility of parole and that would
16 be after 40 years or for a definite term of a
17 hundred years and the parole possibility after 40
18 years.

19 So, the question is could you consider all
20 of them? Are you opposed -- I'm trying to find out,
21 are you opposed to sentencing someone to life in
22 prison with the possibility of parole?

23 **PROSPECTIVE JUROR:** No, I'm not opposed to
24 it.

25 **THE COURT:** Are you opposed to sentencing

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1 someone to prison for a term of life without the
2 possibility of parole?

3 **PROSPECTIVE JUROR:** No.

4 **THE COURT:** You can look at all of them?

5 **PROSPECTIVE JUROR:** Right.

6 **THE COURT:** And you can pick the one --
7 after hearing the evidence, you would pick the one
8 that's most appropriate?

9 **PROSPECTIVE JUROR:** Right.

10 **THE COURT:** That's what I want to know.

11 **PROSPECTIVE JUROR:** Okay. Sorry. I've
12 been up since 3:30. I'm tired.

13 **THE COURT:** We all are, but we're trying
14 to get the jury picked so we don't have to have
15 folks waiting around all day tomorrow; that's why
16 we're staying late.

17 **PROSPECTIVE JUROR:** Can I say something?
18 I want to be honest too. Okay?

19 **THE COURT:** That's what we want.

20 **PROSPECTIVE JUROR:** My nephew was 203.

21 **THE COURT:** Was 203?

22 **PROSPECTIVE JUROR:** Jeremy Summers.

23 **THE COURT:** He's still on here.

24 That's your nephew?

25 **PROSPECTIVE JUROR:** That's my nephew.

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1 **THE COURT:** How did that happen?
2 **PROSPECTIVE JUROR:** I was surprised, but I
3 was glad he was here. He was good company.
4 **THE COURT:** How do you think that's going
5 to affect you guys on this jury?
6 **PROSPECTIVE JUROR:** Me and my nephew?
7 **THE COURT:** Yeah.
8 **PROSPECTIVE JUROR:** Us together?
9 **THE COURT:** Right.
10 **PROSPECTIVE JUROR:** I didn't think it was
11 legal; that's why I'm telling you. I never heard of
12 it before.
13 **THE COURT:** I've never had it happen since
14 I've been here, of course; I did have a husband and
15 wife on a jury.
16 **PROSPECTIVE JUROR:** Okay. I was just
17 being honest.
18 **THE COURT:** If you're allowed to serve on
19 this jury -- how old is Jeremy?
20 **PROSPECTIVE JUROR:** He's 20.
21 **THE COURT:** So, do you think you would be
22 telling him what to do?
23 **PROSPECTIVE JUROR:** Oh, no. No, you can't
24 tell him what to do. He's 20.
25 **THE COURT:** Approach the bench, guys.

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

3 **THE COURT:** So, you can be fair and
4 impartial?

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** And you're not going to go
7 along with Jeremy just because he's your nephew, are
8 you?

9 **PROSPECTIVE JUROR:** No.

10 **THE COURT:** You're going to make your own
11 independent assessment of the facts and the
12 evidence?

13 **PROSPECTIVE JUROR:** Oh, yeah.

14 **THE COURT:** And make your own decision?

15 **PROSPECTIVE JUROR:** Oh, yeah.

16 **THE COURT:** You don't have any bias or
17 prejudice towards either side for any reason?

18 **PROSPECTIVE JUROR:** No.

19 **THE COURT:** Can you follow my instructions
20 on the law?

21 **PROSPECTIVE JUROR:** Yes.

22 **THE COURT:** State.

23 **MR. STANTON:** Thank you, your Honor.

24 /////

25 EXAMINATION BY THE STATE

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1 BY MR. STANTON:

2 Q Good evening.

3 A Hi.

4 Q Thank you very much for your patience for
5 the last couple of days.

6 Miss Summers, I want to ask you a couple
7 of questions. If you're selected on this jury and
8 you're back in the deliberation process and you and
9 Jeremy come down on your decision on some facts in
10 the ultimate decision in this case, do you think,
11 based upon your relationship with him, that you can
12 have a healthy and legal interaction in the jury
13 confines?

14 A Oh, God yes.

15 Q There's nothing about your relationship
16 that would -- if you disagreed with one another,
17 that you would -- one of you would say, "I'm going
18 to vote with the other person just so we don't have
19 a problem within our family"?

20 A No. We're family. You go through that.
21 Everyone goes through that, but you still love each
22 other.

23 Q I understand.

24 In this case, there is going to be
25 evidence presented in the State's presentation about

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1 the underlying quadruple murders. That evidence is
2 going to involve rather dramatic and very violent
3 photographs that show the actual murder scene where
4 these four young men were killed.

5 Is there anything about seeing that kind
6 of evidence that causes you a problem to sit as a
7 juror in this case?

8 A No.

9 Q So, you're able to look at that, put aside
10 the emotional aspect of it and look for it for its
11 evidentiary value?

12 A Yes.

13 Q Is there anything about the fact that a
14 prior jury has returned the verdicts of guilt in
15 this case that causes you concern about your role in
16 the penalty phase?

17 A No. You have to be open.

18 Q The Judge would instruct you that you have
19 to accept that verdict of guilt and that this entire
20 proceeding is not to determine innocence or guilt.
21 And you're comfortable with that?

22 A Yeah.

23 Q You indicated your feelings about the
24 death penalty, that you would consider it under
25 certain circumstances.

1 You would weigh all the circumstances and
2 facts that's presented both by the State and the
3 defense?

4 A Definitely.

5 Q You wouldn't make up your mind until all
6 that evidence is in, the Judge instructed you by
7 law, and then it was formally submitted to you; is
8 that fair?

9 A Definitely, yes.

10 Q Even though there are four murders and
11 four separate victims in this case, you would keep
12 an open mind to all sentencing options?

13 A Yeah. It would be tough, I'm not going to
14 lie. It's going to be tough. It's going to be
15 hard, but yeah, you have to keep it open.

16 Q I understand that's entirely proper that
17 more than one person is killed and that's an
18 aggravator recognized by Nevada law. What we're
19 looking for is a group of jurors that will wait
20 until all the evidence is in until they're
21 instructed by law to consider all four sentencing
22 options and make a decision from that as opposed to
23 someone that says, "I can't consider one of these
24 based upon what I know about the case today," that
25 will keep an open mind --

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1 A Open mind.

2 Q -- about everything.

3 Do you feel that's the type of person you
4 are and how you feel about it today?

5 A Yes, definitely.

6 Q There's a process of which the jury
7 controls, and that is the selection of a foreperson.
8 They have the same vote as every other person on the
9 jury. They have one different function than any
10 other juror, and that is they have to sign the
11 verdict forms.

12 If, after your careful deliberation in
13 listening to the facts and the evidence of this
14 case, you along with the rest of the jury believes
15 that the death penalty is appropriate, ma'am, could
16 you affix your signature to the verdict form that
17 puts Donte Johnson to death?

18 A Well, that's a tough question. That's
19 tough.

20 Q I appreciate that, and I understand the
21 severity of the question as it's posed.

22 A I don't know how to answer that. That's
23 so tough, I don't know. I can't put myself in that
24 situation until you're there, and I'm going to be
25 honest, I can't answer that. I don't know. That's

1 tough.

2 Q I understand it's tough.

3 A That's tough. If everyone is doing --

4 Q It would certainly be -- any verdict by
5 the jury in this case would have to be unanimous, so
6 it would not be your decision alone when you signed
7 your name, it would be a unanimous verdict of you
8 and the rest of your jurors, but if you were
9 selected as the foreperson, you would have to affix
10 your signature to that document.

11 **MR. WHIPPLE:** Mr. Stanton -- and I
12 apologize for interrupting, but I believe she's
13 answered the question. She does not have to say
14 "yes" or "no," and she said it's difficult and it's
15 tough, and I think that's an appropriate answer.

16 **THE COURT:** Overruled.

17 **PROSPECTIVE JUROR:** I'm sorry.

18 **THE COURT:** If she can answer it -- I
19 don't know. That's not saying anything.

20 **PROSPECTIVE JUROR:** Could I sign it --
21 yeah.

22 **THE COURT:** You know what, you might not
23 even want to be the foreman.

24 **PROSPECTIVE JUROR:** Yeah.

25 **THE COURT:** I guess the question is could

1 you vote -- if you thought the death penalty was the
2 appropriate one, would you be able to vote for it?

3 **PROSPECTIVE JUROR:** Yes.

4 **THE COURT:** But you just don't know if you
5 could sign the paper?

6 **PROSPECTIVE JUROR:** I could -- I could
7 sign a paper. I think just something -- you know,
8 you're really looking at a person that you're
9 really -- you're putting their life in your hands,
10 and that's a tough situation. I mean, I've never
11 gone through this before, and that would be tough,
12 but yes, you would have to have an open mind. Would
13 I sign it -- yes, if I felt that it was
14 appropriate -- yes.

15 **THE COURT:** That's what we wanted to know.
16 Okay.

17 **MR. STANTON:** Thank you.

18 I would pass the prospective juror.

19 **MS. JACKSON:** May I, your Honor?

20 **THE COURT:** Go on.

21

22 EXAMINATION BY THE DEFENSE

23 **BY MS. JACKSON:**

24 Q Hi, Miss Summers.

25 A Hi.

1 Q Did you ever get called Donna Sommers back
2 in the 80s?

3 A Yes.

4 Q Just going to go really quickly, I know
5 it's late, and I thank you for being so candid with
6 us about your nephew and being so patient with us.

7 Other than the fact that there's too much
8 sitting around, is there anything else to cause
9 you -- you said -- in 24, you said, "At times, the
10 system was a big letdown" because you said "too
11 lenient."

12 A This happens, and I think everyone knows
13 about it -- you take so many cases out there, and
14 look how many years it goes until it gets resolved.
15 I'm not trying to be mean, but it's, like, what are
16 you doing to that family, to the person? It drags
17 on is what I'm saying, and I just feel like it's
18 very -- it's like you don't care.

19 Q It's an imperfect system?

20 A Very much. They need some improvement on
21 it, I guess is the right way to say it.

22 Q Even so, you're not going to hold that
23 against either the State or the defense in this
24 case?

25 A No.

1 Q Actually, just to let you know, you're
2 going to hear that this crime occurred in August of
3 19 --

4 A -Eight.

5 Q -- ninety-eight and here we are in 2005,
6 and this is a prime example of what you're talking
7 about, but be that as it may, can we move past that
8 and listen to the evidence?

9 A I'm talking about so many other cases.
10 Look at Murphy. I'm just saying, look how long --
11 you take a case, and it just --

12 Q I know.

13 A Okay.

14 Q Moving on.

15 A Shoot me.

16 Q It's okay.

17 You're actually a breath of fresh air this
18 time of evening. We appreciate your candor and your
19 attitude. I know when I sit in the doctor's office,
20 the longer I sit, the madder I get, and you come in
21 here and you have such a lovely attitude, and we
22 appreciate that.

23 A I've been up since 3:30, and I'm dead.

24 Q We're going to talk a little bit about the
25 death penalty and reasons to give life. We all know

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1 Mr. Donte Johnson sits here convicted of four
2 first-degree murders. You know nothing about him;
3 you know very little about the case. However, we
4 will tell you a little bit more about the case to
5 help you in your determination.

6 One other thing that we're going to tell
7 you about is quite a bit about my client. That's
8 what we do. We're going to present what we call
9 "mitigation" -- "mitigating circumstances." That's
10 any reason that you find to give life.

11 Now, toward that end, on Question 33, you
12 indicate, "If the defendant is totally incompetent
13 and doesn't realize his or her actions towards the
14 crime that they committed" -- okay. Now, that
15 situation, if that were the case, we wouldn't be
16 here with four convictions, so just put that out of
17 your mind right now.

18 Can you do that?

19 A Yeah.

20 Q You're with me? He's competent, he's been
21 found guilty, and that's not an issue.

22 A Right.

23 Q Now, knowing that, let's move to the next
24 one where it talks about that you must consider some
25 mitigation the defendant's background -- let me read

1 the question as it's written.

2 "In reaching a verdict in this penalty
3 phase, you must consider the defendant's background
4 and that's the law in Nevada, and that is mitigating
5 circumstances such as the defendant's age, health,
6 mental status, childhood experience" and things of
7 that nature.

8 For example -- you put down that you could
9 think of those things somewhat.

10 Now, what did you mean by "Somewhat,"
11 Miss Summers?

12 A Yeah, you do consider it, but I also look
13 at a lot of people who I know that have gone through
14 some hardships from their upbringing and where their
15 mind is at. They don't use it as an excuse and keep
16 being bad, they better themselves; so, that's why I
17 put "Somewhat" on that.

18 Q Sure. We all know people who pull
19 themselves up by their bootstraps.

20 A Exactly.

21 Q And unfortunately, for our society, not
22 many people, period, are convicted of quadruple
23 homicide, so that's kind of a unique category in
24 itself.

25 A Oh, yeah.

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1 Q Knowing about the number of people in this
2 case that are killed and knowing that we're not
3 going to try to justify anything or tell you that
4 Mr. Johnson is insane or incompetent -- we're not
5 going to tell you that.

6 Can you still listen to mitigation with an
7 open mind and consider that along with everything
8 else that you're going to hear?

9 A Yeah.

10 Q If this defendant, for example, wasn't
11 fed, he didn't have enough to eat as a child,
12 wouldn't you want to know that about someone that
13 you're going to decide whether they're going to live
14 or die?

15 A You get more of a background. It's like
16 he said, you have to have an open mind.

17 Q Sure.

18 Do you think that life imprisonment is a
19 serious punishment, is a severe punishment?

20 A Yes.

21 Q What if you were back in the jury room and
22 you were back there -- say, for example, you were on
23 the jury, and in addition to your nephew, you've got
24 ten other people, and they decide that they see it a
25 particular way, whatever way that may be and that's

1 not the way that you see it. You deliberated to the
2 best of your ability, you discussed it and you've
3 really looked in your heart and you've done the best
4 job your -- in good conscious you feel that you do,
5 what if you're the only one who feels the way that
6 you do; would you be able to hold to the courage of
7 your own convictions?

8 A No. I'm going to be honest, no.

9 Q You're not going --

10 A Not to a breaking point where I'm the only
11 one and no one agrees with me, forget it. I'm going
12 with them. I'm sorry. Just to get it over. I'm
13 going to be honest. Okay?

14 Q So, you wouldn't vote a certain way just
15 to reach a unanimous verdict?

16 A Yes, if it got to where it was being drug
17 out, yes, and I'm holding them up, yes. I'm going
18 to be honest, yeah.

19 **MS. JACKSON:** Well, your Honor, I would
20 challenge for cause on that basis that the verdict
21 would not be the considered opinion of 12 jurors.
22 She's indicated she would go with the majority just
23 for the sake of reaching a verdict, and that, I
24 think, the law forbids. He's entitled to the
25 considered opinion of 12 jurors.

1 **THE COURT:** State?

2 **MR. STANTON:** I submit the matter, your
3 Honor.

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

5 **MR. STANTON:** Your Honor, this would be
6 for Seat No. 4, correct?

7 **THE COURT:** The one that replaced juror
8 113.

9
10 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR 253

11 **THE COURT:** Mr. Tobiason, do you believe
12 that you can be fair and impartial in this case?

13 **PROSPECTIVE JUROR 253:** I think so.

14 **THE COURT:** Now, of course, I'm looking
15 here -- you know this is a case where we have to
16 decide the punishment for a person who has been
17 found guilty of four counts of first-degree murder?

18 **PROSPECTIVE JUROR:** Correct.

19 **THE COURT:** I'm looking at some of your
20 answers here. Number 34 specifically, what would
21 you say your general -- you said you're in favor of
22 the death penalty, and then you said, "Murder
23 convictions should be punished by death, no appeal,
24 no sitting on death row for years wasting tax
25 dollars."

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1 You don't even think a person should get
2 an appeal?

3 **PROSPECTIVE JUROR:** No.

4 **THE COURT:** The State of Nevada law
5 requires that a person who is convicted of
6 first-degree murder, that the jury be in a position
7 and the mind-set where they can consider the four
8 forms of punishment that's authorized by statute,
9 that is, not only the death penalty but life in
10 prison with the possibility of parole, life in
11 prison without the possibility of parole or for a
12 definite term of 50 years with parole eligibility of
13 20 years.

14 The way I'm reading your questionnaire
15 here, I'm of the opinion that you believe that a
16 person who has been convicted of first-degree murder
17 would -- you would not be in a position to sentence
18 him to life or even consider life in prison with the
19 possibility of parole or life in prison without the
20 possibility of parole; is that correct?

21 **PROSPECTIVE JUROR:** Correct.

22 **THE COURT:** And you don't think anything
23 could change that?

24 **PROSPECTIVE JUROR:** It shouldn't -- no, I
25 don't think so.

1 **MR. WHIPPLE:** Challenge.
2 **MS. JACKSON:** Challenge for cause.
3 **THE COURT:** State?
4 **MR. STANTON:** Submit it, your Honor.
5 **THE COURT:** All right. You're excused,
6 sir.

7
8 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 255

9 **THE COURT:** Is this Mr. Robison?
10 **PROSPECTIVE JUROR 255:** Yeah.
11 **THE COURT:** Now, you said someone in your
12 family had been arrested or charged with a crime.
13 Who was that, sir?

14 **PROSPECTIVE JUROR:** What's that?

15 **THE COURT:** I think in your questionnaire
16 you stated that someone in your family had been
17 charged with a crime.

18 Has someone in your family ever been
19 charged with a crime?

20 **PROSPECTIVE JUROR:** No.

21 **THE COURT:** You don't remember that?
22 Okay.

23 Has anyone in your family or have you or
24 anyone in your family ever been a victim of a crime?

25 **PROSPECTIVE JUROR:** Yeah.

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1 **THE COURT:** Who was that?
2 **PROSPECTIVE JUROR:** My house has been
3 burglarized.
4 **THE COURT:** Have you ever been on a jury
5 before?
6 **PROSPECTIVE JUROR:** No.
7 **THE COURT:** What kind of work do you do
8 again?
9 **PROSPECTIVE JUROR:** I'm retired.
10 **THE COURT:** From what?
11 **PROSPECTIVE JUROR:** I worked for the City.
12 **THE COURT:** What did you do for the City?
13 **PROSPECTIVE JUROR:** I was a construction
14 inspector.
15 **THE COURT:** Was this for Boulder City or
16 Las Vegas?
17 **PROSPECTIVE JUROR:** Las Vegas.
18 **THE COURT:** You live up in Boulder City
19 now?
20 **PROSPECTIVE JUROR:** No; I live in Vegas.
21 **THE COURT:** Pardon me?
22 **PROSPECTIVE JUROR:** I live in Las Vegas.
23 **THE COURT:** Oh, okay. I thought it was
24 Boulder City.
25 Have you ever been on a jury before?

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1 **PROSPECTIVE JUROR:** No, I haven't.

2 **THE COURT:** Have you heard anything about
3 this case?

4 **PROSPECTIVE JUROR:** Yeah, over the years.

5 **THE COURT:** What now?

6 **PROSPECTIVE JUROR:** Over the years, yeah.

7 **THE COURT:** What exactly have you heard?

8 **PROSPECTIVE JUROR:** I don't know. It's
9 been so long ago, I don't really remember -- bits
10 and pieces here and there.

11 **THE COURT:** Was what you heard, would that
12 affect your ability to be fair and impartial in this
13 case?

14 **PROSPECTIVE JUROR:** Probably not.

15 **THE COURT:** Now, you understand that we're
16 picking a jury to decide the punishment for the
17 defendant.

18 Do you understand that?

19 **PROSPECTIVE JUROR:** Yes.

20 **THE COURT:** And you understand he's
21 already been convicted of four counts of
22 first-degree murder with a deadly weapon.

23 What I want to know is according to the
24 laws of the State of Nevada, the jury is required to
25 consider four possible punishments and to pick the

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1 one that's most appropriate depending on the facts
2 and the law and the evidence.

3 Do you understand that?

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** Now, the four possible
6 punishments are the death penalty, life in prison
7 without parole, life in prison with the possibility
8 of parole or for a definite term of 50 years with
9 the possibility of parole after the 20 years, and
10 those sentences are doubled because a deadly weapon
11 was used.

12 Do you understand that?

13 **PROSPECTIVE JUROR:** Yes.

14 **THE COURT:** So, it would be the death
15 penalty, life in prison without the possibility of
16 parole plus a consecutive life without the
17 possibility of parole, life imprisonment with the
18 possibility of parole with a consecutive one for the
19 use of a deadly weapon and a definite term of 50
20 years with the possibility of parole after 20 years
21 plus a consecutive 50 years with the possibility of
22 parole after 20 years for a total of a hundred
23 years, and he would be eligible for parole after 40
24 years, and this would apply to each count.

25 Do you understand that?

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1 **PROSPECTIVE JUROR:** Yes.

2 **THE COURT:** Would you be able to consider
3 those four forms of punishment?

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** Are you opposed to the death
6 penalty?

7 **PROSPECTIVE JUROR:** No.

8 **THE COURT:** Are you opposed to life in
9 prison without the possibility of parole?

10 **PROSPECTIVE JUROR:** No.

11 **THE COURT:** Are you opposed to life in
12 prison with the possibility of parole?

13 **PROSPECTIVE JUROR:** No.

14 **THE COURT:** Are you opposed to, say, a
15 hundred years in prison with the possibility of
16 parole after 40 years?

17 **PROSPECTIVE JUROR:** No.

18 **THE COURT:** And you would make your
19 decision after listening to the evidence from the
20 defense and from the State and after hearing the
21 arguments of counsel and listening to the Court's
22 instructions on the law?

23 **PROSPECTIVE JUROR:** Yeah.

24 **THE COURT:** You don't have your mind made
25 up now, do you?

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1 **PROSPECTIVE JUROR:** It seems a pretty open
2 and shut case.

3 **THE COURT:** He was already guilty, but
4 have you made up your mind on the sentence yet?

5 **PROSPECTIVE JUROR:** Pretty much so.

6 **THE COURT:** What have you decided his
7 punishment should be?

8 **PROSPECTIVE JUROR:** Death penalty.

9 **THE COURT:** And you made this up without
10 hearing any evidence or even hearing what the law
11 is?

12 **PROSPECTIVE JUROR:** Four counts, I figure
13 that's --

14 **THE COURT:** You don't care what the law is
15 or what the evidence is after four counts; is that
16 right?

17 **PROSPECTIVE JUROR:** I'd listen to it.

18 **THE COURT:** Huh?

19 **PROSPECTIVE JUROR:** I'd listen to it.

20 **THE COURT:** Is it going to make a
21 difference?

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

23 **THE COURT:** We need to know now, because
24 we want people who have open minds and want to
25 listen to the evidence. We don't want somebody --

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1 if you already have your mind made up before we even
2 start the trial, then you're denying him a right to
3 a fair hearing. It's not right or wrong, that's the
4 way some people are. Some people just have certain
5 beliefs, but if that's the case, sometimes there's
6 different juries you should sit on.

7 This is what I want to know: Would you
8 really be able to consider life in prison with the
9 possibility of parole?

10 **PROSPECTIVE JUROR:** Probably not.

11 **MS. JACKSON:** Your Honor, we challenge for
12 cause.

13 **THE COURT:** State?

14 **MR. STANTON:** I'll submit it, your Honor.

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

16 Is Mr. Summers still out there?

17 **THE BAILIFF:** Yes.

18 **THE COURT:** Tell him to come back tomorrow
19 at 10:00, Jeremy Summers, No. 203.

20
21 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 251

22 **THE COURT:** Miss Butcher, you're
23 originally from Cameron, Missouri, right?

24 **PROSPECTIVE JUROR 251:** Uh-huh.

25 **THE COURT:** How long have you been in

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1 Las Vegas?

2 **PROSPECTIVE JUROR:** Five years.

3 **THE COURT:** You have two kids, and they're
4 adults?

5 **PROSPECTIVE JUROR:** One is adult, one is
6 15.

7 **THE COURT:** Okay.

8 In school?

9 **PROSPECTIVE JUROR:** Uh-huh.

10 **THE COURT:** Both girls?

11 **PROSPECTIVE JUROR:** Uh-huh.

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

14 **PROSPECTIVE JUROR:** Excuse me?

15 **THE COURT:** What kind of work do you do,
16 ma'am?

17 **PROSPECTIVE JUROR:** I work for an armored
18 transport.

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 an immigration
24 inspector.

25 **THE COURT:** He works for -- does he work

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1 for the INS?

2 **PROSPECTIVE JUROR:** He was INS; now it's
3 Department of Homeland Security.

4 **THE COURT:** You said your brother was
5 killed by a drunk driver?

6 **PROSPECTIVE JUROR:** Yes.

7 **THE COURT:** The guy who did it only got
8 six months?

9 **PROSPECTIVE JUROR:** Six months.

10 **THE COURT:** Where did this happen?

11 **PROSPECTIVE JUROR:** In El Paso. That's
12 where we lived at the time.

13 **THE COURT:** In El Paso, Texas?

14 **PROSPECTIVE JUROR:** Um-hmm.

15 **THE COURT:** How long ago was this?

16 **PROSPECTIVE JUROR:** It was in '89.

17 **THE COURT:** In Texas the jury sentences
18 you; is that right?

19 **PROSPECTIVE JUROR:** Uh-huh.

20 **THE COURT:** They only gave him six months.
21 What was that reason, do you know?

22 **PROSPECTIVE JUROR:** I have no idea. I
23 know the judge then called him up and took his
24 driver's license, because they didn't take his
25 driver's license either.

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1 **THE COURT:** Was he working for the INS?

2 **PROSPECTIVE JUROR:** No. He was a
3 supervisor for El Paso Ambulance. There had been
4 three DUIs and one wreck, and he had gone out for
5 that.

6 **THE COURT:** I guess there's a lot of
7 drinking going on.

8 **PROSPECTIVE JUROR:** They had been over in
9 Mexico.

10 **THE COURT:** Have you ever served on a
11 jury?

12 **PROSPECTIVE JUROR:** No.

13 **THE COURT:** Now, this case, as you know
14 the defendant has been to a trial before and already
15 convicted of first-degree murder, four counts.

16 Now, this jury that we're picking now
17 would decide the punishment.

18 Do you understand that?

19 **PROSPECTIVE JUROR:** Yes.

20 **THE COURT:** And you will have four
21 choices -- the death penalty, life in prison without
22 parole, life imprisonment with the possibility of
23 parole or for a definite term of 50 years with the
24 possibility of parole after 20 years plus an
25 additional consecutive 50 years with parole after 20

1 years for the use of a deadly weapon, and this will
2 apply to each count.

3 Now, have you thought about these
4 sentences?

5 **PROSPECTIVE JUROR:** Uh-huh, yes.

6 **THE COURT:** Now, do you have any religious
7 or moral opposition to the death penalty?

8 **PROSPECTIVE JUROR:** No, I don't.

9 **THE COURT:** Now, the question is can you
10 also consider life in prison with or without parole
11 or say a definite term of a hundred years with
12 parole after 40 years as viable? Can you consider
13 those?

14 **PROSPECTIVE JUROR:** I could consider
15 those.

16 **THE COURT:** Do you already have your mind
17 made up, ma'am?

18 **PROSPECTIVE JUROR:** I don't think so.

19 **THE COURT:** What do you mean? So, you
20 haven't decided that --

21 **PROSPECTIVE JUROR:** No.

22 **THE COURT:** -- you were going to impose
23 death already?

24 **PROSPECTIVE JUROR:** No.

25 **THE COURT:** Okay.

1 Some people have. They just hear the
2 charges and they already make up their mind without
3 hearing any of the evidence or the facts or the
4 circumstances.

5 **PROSPECTIVE JUROR:** It's hard to hear
6 "killed four people" without thinking they shouldn't
7 be put to death.

8 **THE COURT:** If you're a juror, you're
9 supposed to have an open mind and wait until you
10 hear the evidence.

11 Don't you agree?

12 **PROSPECTIVE JUROR:** I agree with that.

13 **THE COURT:** Now, would you be willing to
14 listen to all the evidence before you make up your
15 mind? They're going to put on -- the State and the
16 defense will put on what we call "aggravators" and
17 "mitigators," but what we want to know is will you
18 listen to the mitigators, and that is, things that
19 might lessen the punishment, and there's all
20 different kinds -- will you be able to listen to
21 that and make a decision after hearing the
22 mitigators?

23 **PROSPECTIVE JUROR:** Yes.

24 **THE COURT:** Now, I notice on one of these
25 questions, you said, "I think a person is crazy when

1 they commit murder, so their mental status should
2 not be the only thing."

3 You will look at it, but it wouldn't be
4 the controlling thing, is that what you're saying?

5 **PROSPECTIVE JUROR:** I don't think an
6 insanity plea is a reason to say "I killed someone."

7 **THE COURT:** It is if the jury finds them
8 insane, but that's not the issue here. There is no
9 insanity plea, what you're hearing, because he's
10 already been convicted. If he had been insane and
11 the jury found him insane, he would have been found
12 not guilty and we wouldn't be here, but they can
13 present evidence of emotional and other mental
14 problems in mitigation. It's not a defense, but it
15 helps you understand the people involved and how
16 this matter happened and lessen the severity of the
17 punishment.

18 Do you understand that?

19 **PROSPECTIVE JUROR:** Uh-huh, yes.

20 **THE COURT:** You'll listen to that?

21 **PROSPECTIVE JUROR:** Yes.

22 **THE COURT:** Now, you know when I was in
23 Texas -- how long did you live in Texas?

24 **PROSPECTIVE JUROR:** How long did I live in
25 Texas?

1 **THE COURT:** Yes.

2 **PROSPECTIVE JUROR:** Actually, I went back
3 and forth. My dad was in the Air Force.

4 **THE COURT:** How long.

5 **PROSPECTIVE JUROR:** He was a lifer. He
6 was in for approximately 22 years.

7 **THE COURT:** How long.

8 **PROSPECTIVE JUROR:** We were in El Paso for
9 maybe four or five years and we moved away, and I
10 went back after I got married; so, we went back
11 after I got married. He was actually born in
12 Missouri and we met in El Paso.

13 **THE COURT:** Have you lived anywhere else
14 in Texas?

15 **PROSPECTIVE JUROR:** Springtown.

16 **THE COURT:** Where is that?

17 **PROSPECTIVE JUROR:** It's a little bitty
18 town outside of Aledo, which is another little bitty
19 town.

20 **THE COURT:** Where is Aledo, South Texas,
21 North Texas, more central?

22 **PROSPECTIVE JUROR:** More central.

23 **THE COURT:** What big city is it close to?

24 **PROSPECTIVE JUROR:** I was, like, nine.

25 **THE COURT:** You were a child then. Okay.

1 I thought it was more recent.

2 **PROSPECTIVE JUROR:** No.

3 **THE COURT:** Now --

4 **PROSPECTIVE JUROR:** We actually moved up
5 here from New Mexico is where I moved from to Vegas.

6 **THE COURT:** Did you live in Texas while
7 you were an adult?

8 **PROSPECTIVE JUROR:** Uh-huh.

9 **THE COURT:** The reason I bring that up is
10 I practiced law in Texas for a while and lived down
11 there, and when it comes to crime, the people down
12 there -- everybody is automatic death penalty.

13 **PROSPECTIVE JUROR:** Um-hmm.

14 **THE COURT:** Especially if you were
15 Hispanic or black or even poor, if you were a poor
16 white, you almost always got the death penalty.
17 Now, if you were, like, a guy like that guy in
18 Fort -- what's his name, Davis, Cullen Davis --
19 there was eye witnesses when he shot his wife and
20 daughter, they found him not guilty.

21 My point is -- why I'm talking about all
22 of that is do you have those kind of attitudes?

23 **PROSPECTIVE JUROR:** The little mentality,
24 hang him quick?

25 **THE COURT:** Yeah, that kind.

1 **PROSPECTIVE JUROR:** You bet.

2 **THE COURT:** So, you're saying "you bet."
3 Is he going to get a fair trial? They have a lot of
4 people in Texas on death row who are not even guilty
5 because they're charged, they find them guilty.

6 **PROSPECTIVE JUROR:** I don't know if
7 they're guilty or not.

8 **THE COURT:** That's not my point. My point
9 is, is he going to be able to get a fair trial, or
10 do you already have your mind made up? That's what
11 I'm trying to find out.

12 **PROSPECTIVE JUROR:** Umm --

13 **THE COURT:** The only people that know this
14 is you.

15 **PROSPECTIVE JUROR:** Maybe a little bit.
16 Maybe my mind is made up a little bit.

17 **THE COURT:** What do you mean it's made up
18 a little bit? Which way?

19 **PROSPECTIVE JUROR:** Mine would be more
20 toward the death penalty.

21 **THE COURT:** Now, tell me this here: If
22 they presented evidence of mitigation, would it
23 really affect or change of mind or would you
24 really --

25 **PROSPECTIVE JUROR:** Probably not that

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1 much.

2 **THE COURT:** You wouldn't give it -- really
3 actually consider it?

4 **PROSPECTIVE JUROR:** Well, I would listen
5 to it, but that does not mean that it would sway me.

6 **THE COURT:** I understand that. Some
7 people say, "Yeah, yeah, yeah, I can listen to it,"
8 but they have no intention of really listening to
9 it. "I think this person deserves death and I'll go
10 through the motions, but I'm not really going to
11 listen to this."

12 Is that the way you really feel, ma'am?

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

14 **THE COURT:** All right.

15 **MS. JACKSON:** Challenge for cause.

16 **THE COURT:** State?

17

18 EXAMINATION BY THE STATE

19 **BY MR. STANTON:**

20 Q Ms. Butcher, the obligation of a juror --
21 and I'm sure you appreciate it in a case like
22 this -- the death penalty is a very serious thing.

23 You would agree with me on that?

24 A Yes, I would.

25 Q You would also agree with me the law in

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1 the State of Nevada as Judge Gates just mentioned to
2 you is that you're required as an oath and as a
3 juror to consider all the evidence and not to come
4 in with a preconceived notion.

5 Do you understand that?

6 A I understand that.

7 Q With that being said, do you think you
8 could abide by your oath and keep an open mind, not
9 that it would change your mind or whatever, but you
10 would just listen to it and keep an open mind?

11 A I don't know. I would listen to it, but I
12 mean -- I don't know.

13 Q The question we're not asking you now is
14 would it change your mind in committing to a
15 particular vote but merely whether or not you would
16 keep an open mind until the case was finally
17 submitted to you?

18 A I would try to keep an open mind.

19 **MS. JACKSON:** Your Honor, the answer was
20 "I don't know," and then he's just going to keep
21 asking it until he gets the answer that he wants.

22 **THE COURT:** I'm going to grant the motion.
23 You're excused, ma'am.

24 **MS. JACKSON:** Your Honor, this is the lady
25 who allegedly heard the information.

1
2 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 262

3 **THE COURT:** Miss Carpenter, where do you
4 work?

5 **PROSPECTIVE JUROR 262:** Basic High School.

6 **THE COURT:** Are you a teacher?

7 **PROSPECTIVE JUROR:** I'm a counselor.

8 **THE COURT:** A counselor. I heard that --
9 are you married?

10 **PROSPECTIVE JUROR:** Yes.

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

12 **PROSPECTIVE JUROR:** He's a school district
13 administrator.

14 **THE COURT:** I understand, ma'am, that you
15 had quite a recall here about all the facts
16 surrounding this case.

17 **PROSPECTIVE JUROR:** Absolutely not.

18 **THE COURT:** I heard you were out there
19 telling the other jurors about how this case had
20 been tried, the defendant had been convicted of four
21 counts, he went up to the Supreme Court, it was
22 reversed because of a three-judge panel and it was
23 supposed to have been done by a jury, and that's why
24 he's here. He already had gotten the death penalty
25 before.

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1 Are those the statements you made, ma'am?

2 **PROSPECTIVE JUROR:** The statements about
3 being convicted was already in the papers that we
4 read, and someone had said that they were wondering
5 why there was another jury -- why it wasn't heard by
6 the other jury, and I said that I had heard that --
7 yes, that it had been heard by a three-panel judge,
8 but I don't have any other information.

9 **THE COURT:** Did you say also that he had
10 been sentenced to death?

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

12 **THE COURT:** And that it had been reversed?

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

14 **THE COURT:** So, you didn't know that
15 information?

16 **PROSPECTIVE JUROR:** I knew that there had
17 been a jury -- a judge -- a three-panel judge. I
18 happened to hear that on the news when I was waiting
19 for the weather.

20 **THE COURT:** But you did not know what the
21 sentence was?

22 **PROSPECTIVE JUROR:** No, I did not. I had
23 to go to work. I didn't hear the end.

24 What high school do you work at?

25 **PROSPECTIVE JUROR:** Basic High School out

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1 in Henderson.

2 **THE COURT:** How long have you been out
3 there?

4 **PROSPECTIVE JUROR:** This is my third year,
5 but I was there also for two years in the '90s, and
6 then I left to do another job and came back.

7 **THE COURT:** Now, you state here that
8 you're not necessarily in favor of the death
9 penalty; is that right -- but you said you would
10 consider it?

11 **PROSPECTIVE JUROR:** Yeah.

12 **THE COURT:** Is that right?

13 **PROSPECTIVE JUROR:** Yes.

14 **THE COURT:** Now, tell me this here: All
15 the stuff that you heard about this case, could you
16 put that out of your mind and put it aside and make
17 your decision on the law as I give it to you?

18 **PROSPECTIVE JUROR:** Absolutely.

19 **THE COURT:** And the facts and the evidence
20 that's adduced in court?

21 **PROSPECTIVE JUROR:** Absolutely.

22 **THE COURT:** Now, you understand that --
23 another question I have for you:

24 As you sit there now, have you made up
25 your mind as to what the punishment should be?

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1 **PROSPECTIVE JUROR:** No, I have not.

2 **THE COURT:** Now, the law in the State of
3 Nevada states that when a person is found guilty of
4 first-degree murder, that the jury will have to
5 decide the punishment, and they'll have four choices
6 to choose from, and they must consider the four
7 choices and select the one that's most appropriate
8 based on the evidence and the facts of the case.

9 Do you understand that?

10 **PROSPECTIVE JUROR:** Yes. In fact, I
11 recall the four choices were listed in that.

12 **THE COURT:** Exactly. One of them is the
13 death penalty, life imprisonment without the
14 possibility of parole, life imprisonment with the
15 possibility of parole or for a definite term of 50
16 years with the possibility of parole after 20 years,
17 and those sentences are doubled because a deadly
18 weapon was used. So, for a definite term, you would
19 be looking at a hundred years and parole after 40
20 years, and the same with the life imprisonment with
21 the possibility of parole.

22 Would you be able to consider all four of
23 those punishments?

24 **PROSPECTIVE JUROR:** Absolutely based on
25 whatever evidence is before me.

1 **THE COURT:** And if you thought the
2 evidence warranted it and the facts of the case, you
3 could give life imprisonment with the possibility of
4 parole?

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

6 **THE COURT:** If you thought life
7 imprisonment without the possibility of parole
8 warranted it, you could do that also?

9 **PROSPECTIVE JUROR:** Absolutely.

10 **THE COURT:** Also, after hearing all the
11 evidence and the witnesses and the law, if you
12 thought the death penalty was applicable and
13 appropriate for this case, could you render that?

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

15 **THE COURT:** The bottom line is you could
16 look at all of them and pick the one that's most
17 appropriate according to the facts and the law
18 that's given to you?

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

20 **THE COURT:** You don't have any
21 predisposition or you haven't made up your mind as
22 to any one?

23 **PROSPECTIVE JUROR:** I have not.

24 **THE COURT:** You can be fair to both sides?

25 **PROSPECTIVE JUROR:** I think with my

1 experience and training, yes, I could.

2 **THE COURT:** State.

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

4

5 EXAMINATION BY THE STATE

6 **BY MR. DASKAS:**

7 Q Thank you for your patience at this late
8 hour. If I don't make any sense, it's because I'm
9 tired.

10 You mentioned in your answers that you
11 work at Basic High School. It's very ethnically
12 diverse. I actually went there years ago.

13 You didn't work there back in the late
14 '80s, correct?

15 A No.

16 Q You now know that this man is already a
17 four-time convicted killer -- yes?

18 A Yes.

19 Q Do you have any problem accepting the fact
20 that another jury convicted him?

21 A Do I have a problem?

22 Q That's a terrible question. What I'm
23 asking is can you accept the fact that another jury
24 convicted him? You wouldn't question their verdict,
25 in other words?

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1 A No.

2 Q In fact, the Judge would instruct you and
3 require you to accept that verdict.

4 A Yes.

5 Q The decision you're called upon to make
6 has to do with punishment --

7 A Absolutely.

8 Q -- and it is a huge decision.

9 A Yes.

10 Q I'm sure you appreciate that. Understand,
11 we don't take this decision lightly.

12 Although we're advocating for the death
13 penalty, you don't think we take it lightly?

14 A No, I don't think so.

15 Q Let's assume now that you're on this jury,
16 that you've heard evidence from both sides and that
17 you've deliberated and you have concluded in your
18 mind this is the appropriate case for the ultimate
19 punishment for the death penalty.

20 Can you impose that punishment?

21 A Yes.

22 Q Slight variation on that same question.
23 Let's assume you're selected foreperson, 11 jurors
24 decide they want you to be the foreperson, you all
25 have the same vote, you all agree collectively he

1 should get the death penalty. As the foreperson,
2 the additional responsibility you would have would
3 be to sign the verdict form that sentences this man
4 to death. If the jurors decide they want you as the
5 foreperson and if you collectively agree death is
6 warranted, could you sign that verdict form?

7 A If it was unanimous and we all agreed,
8 yes.

9 MR. DASKAS: Thank you.

10 Judge, we pass this juror for cause.

11

12 EXAMINATION BY THE DEFENSE

13 BY MS. JACKSON:

14 Q Miss Carpenter, good evening.

15 When you were catching the tail end of the
16 news report, was it this morning?

17 A No.

18 Q When did you catch that?

19 A It was -- I've been here so many days -- I
20 know it was not this morning.

21 Q It was one day this week?

22 A It was this week.

23 Q And you recognize this was the very case
24 that you had been summoned to jury duty on?

25 A Yes.

1 Q Would you just think for a minute -- and
2 we know it's late and we know it's hard, and no one
3 is accusing you of anything, because there are no
4 right or wrong answers --

5 A Right.

6 Q -- but it is a really important process.

7 A Absolutely.

8 Q When you heard that, did you think in your
9 mind, "Oh, well, if he had judges" -- did that
10 influence you one way or the other in terms of what
11 might be the appropriate penalty?

12 A I'm not understanding the question. The
13 fact that judges had given the penalty that I should
14 give it more weight?

15 Q Um-hmm, yes, and that obviously it was
16 tossed out for whatever reason because we're all
17 here?

18 A Right.

19 Q And you're obviously a very bright person
20 and you could figure that out.

21 A Right.

22 Q But it was stayed for whatever reason.

23 A Right.

24 Q Can you think of any reason?

25 A As to why it would be tossed out?

1 Q To lead you to not do further research?

2 A I did not do further research because I
3 was very careful. I would have liked to, because I
4 like to do research. I did not go to the Internet,
5 I did not read the paper; I took it for a fact and I
6 figured whenever I got here, I would find out or
7 would not find out -- whatever I was allowed to be
8 told.

9 Q Today or whenever it was that you or
10 someone asked a question outside and you just felt
11 it was appropriate to share the information that you
12 had?

13 A I shared the information that we already
14 had had on our paper.

15 Q Although you'll agree with me, though,
16 ma'am, there's nothing on the paper about a
17 three-judge panel. You got to agree with me on
18 that.

19 A Right, and you're right. It was about the
20 conviction, and there was another gentleman there,
21 and I -- I don't recall if I said it or if he said
22 it, and I concurred that I had also heard it on the
23 news, but I did not hear the reasons for it, and
24 I -- obviously, as you said, I know that there is --
25 that we are here, so I knew that obviously something

1 had to be done, but I did not take it one way or the
2 other as questioning.

3 Q Then you indicated when Mr. Daskas was
4 questioning you that you felt that with your
5 experience and your training that you really felt
6 that you were probably better equipped, more
7 equipped than the average juror, you would say, to
8 perform this task?

9 A I can't say more equipped. I would say I
10 would be equipped.

11 Q Do you want to be on this jury?

12 A That's a question I've been asking myself,
13 and I'll be honest -- I'm sure you want me to be
14 honest anyway -- I thought that I would do a good
15 job and I would be fair and I would be -- in my
16 training, I'm supposed to be ethical and I'm
17 supposed to be moral and I'm supposed to do all
18 those things, and I thought -- really and truly I
19 thought, "Well, what if for some reason someone I
20 knew was in a situation, I would want someone like
21 me on the jury?" That's what I thought.

22 Q Okay. By that answer, that actually is a
23 very thorough, complete answer.

24 My next question I probably don't need to
25 ask it but I'm going to just to be on the safe side.

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1 This is a very serious matter for my client, life
2 and death.

3 If you find yourself, after due
4 deliberation, after everything the State has to
5 present, you've listened very carefully to what we
6 present on behalf of Mr. Johnson in mitigation and
7 you've weighed all of that and you find yourself a
8 vote of one, the other 11 jurors have come down
9 firmly on the side of death, you deliberated with
10 them, you reasoned with them, you followed your duty
11 and you still find that based upon everything you've
12 heard in this courtroom that your decision is the
13 right one, what are you going to do at that point?

14 A Well, I guess if I stick with my decision,
15 then that makes me think that I'm smarter or better
16 than everybody else, and that's a tough one. I
17 would say if I really believed that I was right and
18 I had weighed all the evidence, I would just work as
19 hard as I could to make the other 11 see what I saw
20 and believe what I saw.

21 Q You mention something that by sticking to
22 your guns that you may deliver a message that you're
23 smarter or brighter than everybody else.

24 A I don't want to deliver that message, but
25 I'm saying --

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1 Q That's not what this process is about.
2 The law says that Mr. Johnson is entitled to the
3 considered opinion of 12 people.

4 Do you believe that your opinion is less
5 valid than the doctor, lawyer, Indian chief sitting
6 next to you?

7 A Less valid, no.

8 Q Is it more valid?

9 A No.

10 Q Okay.

11 One of the things that you're going to be
12 told at some point is that you are to bring common
13 sense.

14 A Right.

15 Q And your common sense is just as valuable
16 as anyone else's, right?

17 A Right.

18 Q Your sum total of your experiences?

19 A Right.

20 Q We're just trying to find out if you're
21 going to feel constrained to go with the flow simply
22 to reach a verdict?

23 A I believe that if I -- I truly believe
24 that if I have weighed all the evidence and I have
25 what I believe is the right decision, unfortunately

1 if there were 11 other people who felt differently,
2 I wouldn't change it, if I really felt that way.

3 **MS. JACKSON:** Fair enough.

4 Your Honor, we would pass Miss Carpenter
5 for cause.

6 **THE COURT:** I have a couple of questions
7 for you.

8 You said your brother-in-law and
9 sister-in-law are of different ethnic backgrounds.
10 What are they?

11 **PROSPECTIVE JUROR:** My brother-in-law is
12 African-American, and my sister-in-law is Thai.

13 **THE COURT:** Anything else?

14 **MR. DASKAS:** Can we approach before she's
15 excused?

16 **THE COURT:** Yes.

17 (Sidebar conference outside the presence
18 of the court reporter.)

19 **THE COURT:** Ma'am, we don't want you
20 discussing the case with anybody else. Okay?

21 **PROSPECTIVE JUROR:** Okay.

22 **THE COURT:** In fact, I am going to
23 instruct the whole jury of that tomorrow that
24 they're not to discuss the case with anyone else or
25 make any comments with anything that has to do with

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1 the case until you go back to the jury room to
2 decide the case. All right?

3 **PROSPECTIVE JUROR:** All right.

4 **THE COURT:** Do you think you can do that?

5 **PROSPECTIVE JUROR:** Yes, I can.

6 **THE COURT:** We'll see you tomorrow at
7 10:00 o'clock.

8 Okay?

9 **PROSPECTIVE JUROR 262:** Okay.

10 **THE COURT:** Bring both of them in. You
11 guys exhausted your peremptories. Each side will
12 get one peremptory challenge.

13 Who is first, Burwell? Who is Burwell?
14 Sit right there (indicating).

15

16 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR 268

17 **THE COURT:** Miss Burwell, how long have
18 you been in Las Vegas -- born here?

19 **PROSPECTIVE JUROR:** Born here.

20 **THE COURT:** What do you do?

21 **PROSPECTIVE JUROR:** I'm a college student.

22 **THE COURT:** What are you studying?

23 **PROSPECTIVE JUROR:** Web design.

24 **THE COURT:** Web design.

25 At Community College?

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1 **PROSPECTIVE JUROR:** Yes.
2 **THE COURT:** Are you working too?
3 **PROSPECTIVE JUROR:** No.
4 **THE COURT:** Are you married?
5 **PROSPECTIVE JUROR:** No.
6 **THE COURT:** Now, you said -- have you
7 heard anything about this case?
8 **PROSPECTIVE JUROR:** Just the name, just
9 his name.
10 **THE COURT:** Just his name.
11 Do you know anything about the facts?
12 **PROSPECTIVE JUROR:** No, sir.
13 **THE COURT:** Now, you said you belong to
14 the Rape Crisis Center?
15 **PROSPECTIVE JUROR:** Yes.
16 **THE COURT:** You go out and counsel people?
17 **PROSPECTIVE JUROR:** I've been counseled
18 there one time.
19 **THE COURT:** Why? Have you ever been the
20 victim of a sexual assault?
21 **PROSPECTIVE JUROR:** Yes.
22 **THE COURT:** How long ago was this?
23 **PROSPECTIVE JUROR:** Three years ago.
24 **THE COURT:** Did they catch the person who
25 did it?

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1 **PROSPECTIVE JUROR:** No.
2 **THE COURT:** Did you know the person?
3 **PROSPECTIVE JUROR:** Yes.
4 **THE COURT:** Was it someone that you had
5 been dating or just somebody that you knew?
6 **PROSPECTIVE JUROR:** Just someone I knew.
7 **THE COURT:** Why wasn't he prosecuted?
8 **PROSPECTIVE JUROR:** I think because I
9 reported the crime too late, maybe a month late.
10 **THE COURT:** A month later?
11 **PROSPECTIVE JUROR:** Um-hmm.
12 **THE COURT:** Now, you're not going to hold
13 it against the defendant here because of what
14 happened to you, are you?
15 **PROSPECTIVE JUROR:** No, sir.
16 **THE COURT:** Now, you understand that
17 Mr. Johnson has been convicted of four counts of
18 first-degree murder?
19 **PROSPECTIVE JUROR:** Yes, sir.
20 **THE COURT:** We're now picking a jury to
21 hear the punishment and decide the punishment.
22 Do you understand that?
23 **PROSPECTIVE JUROR:** Yes, sir.
24 **THE COURT:** According to our law, the
25 punishment is -- you will have four choices

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1 according to the law of the State of Nevada -- the
2 death penalty, life in prison without parole, life
3 in prison with the possibility of parole or 50 years
4 with parole eligibility -- 50 years in the state
5 prison and parole eligibility after 20 years, and of
6 course, these are doubled because a deadly weapon
7 was used, so it would be a definite term would be a
8 hundred years with parole after 40 years.

9 Could you consider all four forms of
10 punishment?

11 **PROSPECTIVE JUROR:** Yes.

12 **THE COURT:** Are you opposed to the death
13 penalty?

14 **PROSPECTIVE JUROR:** No.

15 **THE COURT:** Now, here on Question No. 21,
16 you said you have friends and relatives -- your
17 mother works for Metro?

18 **PROSPECTIVE JUROR:** Right.

19 **THE COURT:** What does she do for Metro?

20 **PROSPECTIVE JUROR:** Records.

21 **THE COURT:** She works in the records
22 department?

23 **PROSPECTIVE JUROR:** Yes.

24 **THE COURT:** And your aunt works at City
25 Hall?

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1 **PROSPECTIVE JUROR:** Yes, sir.
2 **THE COURT:** What does she do?
3 **PROSPECTIVE JUROR:** I'm not sure.
4 **THE COURT:** What's her name?
5 **PROSPECTIVE JUROR:** Gloria Evans.
6 **THE COURT:** Gloria is your aunt?
7 **PROSPECTIVE JUROR:** Um-hmm.
8 **THE COURT:** So, what's your mom's name?
9 **PROSPECTIVE JUROR:** Pearl Burwell.
10 **THE COURT:** And your father?
11 **PROSPECTIVE JUROR:** Jessie Burwell.
12 **THE COURT:** Can you listen to all the
13 evidence before you make up your mind?
14 **PROSPECTIVE JUROR:** Yes, sir.
15 **THE COURT:** Do you have any preconceived
16 notion of what the penalty should be?
17 **PROSPECTIVE JUROR:** No, sir.
18 **THE COURT:** Now, in this Question No. 24,
19 you said if someone general asked you about the
20 death penalty or whatever -- you didn't circle one,
21 but you said, "If a life was taken intentionally,
22 that person should either rot in prison or die."
23 Would you want to listen to the evidence
24 before you decided on the sentence?
25 **PROSPECTIVE JUROR:** Yes, sir.

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1 **THE COURT:** So, right now, do you have
2 your mind made up as to what sentence the defendant
3 should receive?

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

5 **THE COURT:** You will listen to all the
6 evidence and the facts in the case before you make
7 up your mind?

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

9 **THE COURT:** State.

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

11

12 EXAMINATION BY THE STATE

13 **BY MR. DASKAS:**

14 Q Miss Burwell, thank you for your patience.
15 We appreciate it.

16 **THE COURT:** I have one other question.
17 What day do you go to school and what
18 time?

19 **PROSPECTIVE JUROR:** Tuesday and Thursday
20 4:30 to 5:30, and I have two online classes.

21 **THE COURT:** You can do the online classes
22 any time.

23 **PROSPECTIVE JUROR:** And I'm a single
24 mother.

25 **THE COURT:** And so, you just have to be in

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1 school on Tuesdays and Thursdays?

2 **PROSPECTIVE JUROR:** Tuesday and Thursday.

3 **THE COURT:** Could you get there from here
4 at 4:00 o'clock?

5 **PROSPECTIVE JUROR:** Probably not. I'm not
6 sure, because my dad, he's a minister, and, like,
7 that's my only way of transportation.

8 **THE COURT:** Oh, is that right? So, you
9 would rather not serve because of school? I don't
10 want you to miss school.

11 **PROSPECTIVE JUROR:** Yeah, probably,
12 because I'm already doing bad enough.

13 **THE COURT:** Huh?

14 **PROSPECTIVE JUROR:** I'm already doing bad
15 enough right now.

16 **THE COURT:** Counsel, approach the bench.
17 (Sidebar conference outside the presence
18 of the court reporter.)

19 **THE COURT:** We're going to excuse you,
20 ma'am, so you can go to school.

21 **PROSPECTIVE JUROR:** Thank you.

22 **THE COURT:** We don't want you to miss a
23 couple of weeks out of class and flunk.

24 Tell Gloria I said hi.

25 **PROSPECTIVE JUROR:** Okay.

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1
2 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR 278

3 **THE COURT:** And you are?

4 **PROSPECTIVE JUROR 278:** Brenda Fladger.

5 **THE COURT:** Miss Fladger. You were born
6 in San Diego?

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

8 **THE COURT:** Your folks were in the
9 military?

10 **PROSPECTIVE JUROR:** No, your Honor, they
11 lived there, and that's where I was born.

12 **THE COURT:** So, when did you leave
13 California?

14 **PROSPECTIVE JUROR:** I came to Vegas in
15 1995.

16 **THE COURT:** You were living in San Diego?

17 **PROSPECTIVE JUROR:** No. We moved after I
18 graduated from high school, we moved to Banning,
19 California, and I got married and had children
20 there, and then we moved.

21 **THE COURT:** What county is that?

22 **PROSPECTIVE JUROR:** That's in Riverside
23 County.

24 **THE COURT:** What kind of work do you do,
25 ma'am?

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1 **PROSPECTIVE JUROR:** I work at Sunrise
2 Hospital in the Radiology Department.
3 **THE COURT:** What do you do there?
4 **PROSPECTIVE JUROR:** I'm a tech aid.
5 **THE COURT:** Are you married?
6 **PROSPECTIVE JUROR:** No, sir.
7 **THE COURT:** And have you ever been
8 married?
9 **PROSPECTIVE JUROR:** Yes.
10 **THE COURT:** You're divorced now?
11 **PROSPECTIVE JUROR:** Yes.
12 **THE COURT:** What kind of work did your
13 ex-husband do?
14 **PROSPECTIVE JUROR:** He was a steel worker,
15 did copper.
16 **THE COURT:** You have two kids?
17 **PROSPECTIVE JUROR:** Yes. They're adult
18 children.
19 **THE COURT:** One is in college?
20 **PROSPECTIVE JUROR:** Yes.
21 **THE COURT:** Where?
22 **PROSPECTIVE JUROR:** At UNLV.
23 **THE COURT:** Have you or anyone in your
24 family ever been charged with a crime?
25 **PROSPECTIVE JUROR:** No, your Honor.

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1 **THE COURT:** Have you or anyone in your
2 family ever been the victim of a crime?
3 **PROSPECTIVE JUROR:** No, your Honor. Oh,
4 I'm sorry, I take that back. Yes.
5 **THE COURT:** Who was that?
6 **PROSPECTIVE JUROR:** My daughter.
7 **THE COURT:** What was she convicted of?
8 **PROSPECTIVE JUROR:** Convicted -- not
9 convicted; she was a victim of a crime.
10 **THE COURT:** Oh, a victim. It's late. I'm
11 sorry.
12 What happened to her?
13 **PROSPECTIVE JUROR:** She was molested.
14 **THE COURT:** As an adult or child?
15 **PROSPECTIVE JUROR:** A child.
16 **THE COURT:** Was the person prosecuted that
17 did that?
18 **PROSPECTIVE JUROR:** No.
19 **THE COURT:** This was in California?
20 **PROSPECTIVE JUROR:** Yes.
21 **THE COURT:** So, you have two
22 sister-in-laws that's of different race? What are
23 they?
24 **PROSPECTIVE JUROR:** They're Caucasian.
25 **THE COURT:** Now, you understand that

1 you're going to be deciding the punishment in this
2 trial?

3 **PROSPECTIVE JUROR:** Yes, your Honor.

4 **THE COURT:** And there are four possible
5 punishments -- the death penalty, life in prison
6 without parole, life in prison with the possibility
7 of parole or 50 years with the possibility of parole
8 after 20 years, and those sentences are doubled
9 because a deadly weapon was used --

10 Do you understand that?

11 **PROSPECTIVE JUROR:** Yes, your Honor.

12 **THE COURT:** Could you consider all four
13 forms of punishment?

14 **PROSPECTIVE JUROR:** Yes, your Honor.

15 **THE COURT:** Do you have any opposition to
16 the death penalty?

17 **PROSPECTIVE JUROR:** No, your Honor.

18 **THE COURT:** Would you be able to consider
19 life in prison --

20 **PROSPECTIVE JUROR:** Yes, your Honor.

21 **THE COURT:** -- if appropriate?

22 You want to listen to all the facts and
23 evidence before you make up your mind?

24 **PROSPECTIVE JUROR:** Yes, your Honor.

25 **THE COURT:** State.

1 **MR. STANTON:** Thank you, your Honor.

2

3 EXAMINATION BY THE STATE

4 **BY MR. STANTON:**

5 Q Good evening, Miss Fladger.

6 A Good evening.

7 Q Am I pronouncing your name correctly?

8 A Flad-jer (phonetic).

9 Q Miss Fladger, you made some comments in
10 your jury questionnaire that you filled out about a
11 week or so ago. The first one was that -- the
12 situation involving your family member that justice
13 was not served.

14 A Yes.

15 Q Can you give me an explanation of why you
16 think justice wasn't served in that case?

17 A Well, he -- nothing happened to him. He
18 was held at the jail, but they only held him for 24
19 hours and they let him go.

20 Q And they never pursued the charges?

21 A No.

22 Q As a result of that situation and the
23 failure of justice in your daughter's case, do you
24 hold any resentment about the judicial system
25 because of that?

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1 A No, not at all.

2 Q Nothing that would affect your ability to
3 sit as a fair and impartial juror in this case?

4 A No.

5 Q You made a statement about your feelings
6 about the justice system, and you said that as long
7 as the facts and information is clear on both
8 sides -- do you remember that statement?

9 A Yes, sir.

10 Q In this case as you undoubtedly know at
11 this juncture, a prior jury has found the issue of
12 guilt and innocence of this man, Donte Johnson, and
13 that is, he's been found guilty by that jury of four
14 counts of first-degree murder.

15 Do you understand that?

16 A Yes, sir.

17 Q Now, would someone else making that
18 crucial decision other than you potentially sitting
19 on this jury, does that cause you a problem, maybe
20 "Hey, I may not have decided the same way, and
21 therefore, it's going to affect my decision here"?

22 A Well, I think if I have all the facts that
23 I need to be able to make a clear-minded decision, I
24 can make a clear-minded decision with the facts.

25 Q Okay.

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1 Understanding that your decision here
2 cannot be his guilt or innocence?

3 A Right.

4 Q It's only as far as the punishment goes?

5 A Correct.

6 Q And the facts and evidence that would be
7 presented addressed that portion, strictly the
8 punishment, not guilt or innocence?

9 A Okay.

10 Q Are you comfortable with that?

11 A Yes, sir.

12 Q In fact, the Judge would give you an
13 instruction of law that you're required to accept
14 the other jury's verdicts, and I'm sure you would
15 abide by that?

16 A Yes, sir.

17 Q You indicated about the death penalty that
18 you've never thought about it.

19 A Right.

20 Q It's never come up, never saw something on
21 television about another case or the Oklahoma City
22 Bombing anniversary that just occurred a couple days
23 ago -- nothing has ever occurred in your mind as far
24 as potential juror for seeing yourself in that
25 situation where you might have to make such a

1 decision?

2 A Well, no, not really, no.

3 Q How do you feel about the death penalty?

4 A Well, I think that -- in my mind, I think
5 it depends on the crime and what was committed and
6 the person who committed the crime.

7 Q Okay.

8 A So, it could be a lot of factors that go
9 into that. I can't just say yes you get the death
10 penalty, because that's what we're going to give
11 him, but I think a lot of factors go into that
12 before you can decide someone deserves to get the
13 death penalty.

14 Q Okay.

15 Would you agree with me that there are
16 some circumstances, some cases, totality of the
17 circumstances that justify the death penalty?

18 A Yes, I agree with that.

19 Q In this case, if you were selected as the
20 foreperson and you, as a collective jury, were to,
21 after listening to the entirety of the evidence and
22 arguments and the instruction of law were to
23 conclude that the death penalty was appropriate in
24 this case, could you sign your name to a verdict
25 form that puts that man, Donte Johnson, to death?

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1 A If I felt it was appropriate?

2 Q Absolutely. Could you do that?

3 A If I felt it was appropriate, yes.

4 MR. STANTON: Thank you. I would pass the
5 prospective juror for cause.

6 THE COURT: Defense Counsel.

7 MS. JACKSON: Thank you, your Honor.

8

9 EXAMINATION BY THE DEFENSE

10 BY MS. JACKSON:

11 Q Miss Fladger, excuse me, ma'am. I'm going
12 to keep my seat.

13 A No problem.

14 Q Are you okay with that?

15 A Yeah, I'm okay with that, as long as you
16 can hear me.

17 Q When you were a juror before, you said
18 that you had former jury service?

19 A Yes.

20 Q Was that before or after -- I'm sorry.
21 I'm sure you said and I probably just didn't hear
22 it, I'm so tired. I don't want to get into this too
23 much, because it's probably not something you like
24 talking about, but you have indicated here there was
25 a situation involving your daughter?

1 A Yes.

2 Q And it appears that she was somehow

3 molested?

4 A Yes.

5 Q And justice was not served even though the

6 person was identified and held in jail for a 24-hour

7 period?

8 A Correct.

9 Q Was it a relative?

10 A Yes.

11 Q I see.

12 Now, did that situation occur before or

13 after you were on jury duty before?

14 A Before.

15 Q So, you were able to get through your

16 prior jury service?

17 A Yes, ma'am.

18 Q And that situation didn't interfere with

19 your ability to be fair and impartial?

20 A No, not at all.

21 Q It didn't cause you any problems in terms

22 of your own well-being?

23 A No.

24 Q This case, of course, is a lot more

25 serious. This is the most serious case that our

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1 society has, a capital murder, of course. The last
2 case was a criminal case, so you have some idea how
3 it works, except that in this case you're going to
4 be imposing a sentence?

5 A Yes.

6 Q I imagine the last time you didn't have to
7 do that.

8 A No, we did not.

9 Q Are you comfortable with that?

10 A Yes, I am.

11 Q Because this is a case where a death
12 penalty is involved, the legislature has mandated
13 that before you can make that decision to decide
14 which four punishments are appropriate, that you
15 have to consider mitigation, background information,
16 the defendant's age, mental status, education,
17 background -- things of that nature.

18 Are those things or any of those things
19 items that you would want to know about before you
20 decide if someone had to live or die?

21 A Yes.

22 Q Would you like to know more or less?

23 A Well, I think as much as necessary for me
24 to make my decision.

25 Q For a decision of that magnitude, it

1 probably would be a good idea to get as much as you
2 can?

3 A Correct.

4 Q From both sides, of course?

5 A Um-hmm.

6 Q And, of course -- now, you did not think
7 about -- your answer was last week, "I never thought
8 about it."

9 I'm sure since you filled this out you
10 probably gave it some thought, the death penalty?

11 A A little, yes.

12 Q Okay.

13 Do you agree with me that life in prison,
14 that, itself, is a severe punishment?

15 A Yes, it's a severe punishment.

16 Q Do you agree that it protects society --
17 yes?

18 A Yes, um-hmm.

19 Q How good are you about sticking to your
20 guns? I don't know if you found yourself after you
21 deliberated with your fellow jurors, you considered
22 everything you heard in this courtroom and you found
23 that everyone else was voting for death and you,
24 after considered deliberation, felt that you wanted
25 to give life for whatever reason, would you go with

1 the majority just for the sake of reaching a
2 verdict, ma'am?

3 A No, I wouldn't. I wouldn't. I wouldn't.

4 MS. JACKSON: That's good enough for me.
5 Thank you, Miss Fladger.

6 Your Honor, we would pass Miss Fladger for
7 cause.

8 THE COURT: Miss Fladger, we're going to
9 have you come back tomorrow morning at
10 10:00 o'clock.

11 PROSPECTIVE JUROR 278: Okay.

12 THE COURT: We'll see you tomorrow morning
13 downstairs.

14 PROSPECTIVE JUROR 278: Okay. Thank you.

15 MR. DASKAS: Judge, is she now considered
16 Alternate No. 1?

17 THE COURT: Right. We'll pick another one
18 tomorrow, and then you guys -- each side will have
19 one peremptory challenge. All right?

20 They all come back tomorrow morning at
21 10:00.

22 THE BAILIFF: Yeah, they all come back
23 tomorrow morning at 10:00.

24 THE COURT: How many do we have left, 15?

25 THE BAILIFF: Yes.

1 You mean left to choose from?

2 **THE COURT:** Yes.

3 **THE BAILIFF:** We probably have more than
4 that.

5 **MR. DASKAS:** I know we're all tired, but
6 in terms of tomorrow and scheduling, there are a
7 couple of, I think, fairly big issues in terms of
8 the parameter of the initial case that might affect
9 the defense opening and my opening which need to be
10 addressed before we give opening statements.

11 **THE COURT:** We haven't picked the jury
12 yet, Mr. Daskas.

13 **MR. DASKAS:** That's my point. What time
14 are we going to give opening statements?

15 **THE COURT:** I don't know. It depends on
16 how long it takes for you guys to pick a jury. I'll
17 give you some time. I'll work with you.

18 **MR. DASKAS:** That's all I need to know.

19 **THE COURT:** I'm not going to be rushing
20 you through if you haven't had a chance to get ready
21 and set up and do what you need to do. I just want
22 to get a jury picked.

23 **MR. DASKAS:** We got one.

24 **MS. JACKSON:** For the record, I'm with
25 Robert on this one, Judge. Give us a wee bit of

1 time.

2 (Proceedings were adjourned at 8:12 p.m.)

3

4 (WHEREUPON, THE PROCEEDINGS WERE
5 CONCLUDED.)

6 * * * * *

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THE STATE OF NEVADA v. JOHNSON

DISTRICT COURT
CLARK COUNTY, NEVADA

APR 22 2005
ORIGINAL

THE STATE OF NEVADA,)

Plaintiff,)

-vs-)

DONTE JOHNSON,)

Defendant.)

Case No. C153154

Dept No. VIII

Docket H

VOLUME III-A

PENALTY PHASE

BEFORE THE HONORABLE LEE A. GATES

THURSDAY, APRIL 21, 10:23 A.M.

APPEARANCES:

For the State:

ROBERT J. DASKAS, ESQ.

DAVID STANTON, ESQ.

Deputies District Attorney

For the Defendant:

ALZORA JACKSON, ESQ.

BRETT WHIPPLE, ESQ.

Deputies Public Defender

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COUNTY CLERK

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THE STATE OF NEVADA v. JOHNSON

I N D E X

* * * * *

VOIR DIRE EXAMINATION

NO.	PROSPECTIVE JUROR	COURT	STATE	DEFENSE
0042	LAWRENCE EPTER	3	/	/
0043	MATTIE HOOVER	5	/	/
0046	BARBARA FINN	6	11	14
0050	ANDREW MILBERG	21	/	23
0051	ARTHUR RILEY	24	/	/
0055	KRISTEE WATSON	26	/	/
0057	ELIZABETH CORWIN	28	33	/
0059	BARBARA GRANT	34	38	39
0077	DORIS MCLAUGHLIN	49	/	/
0084	CHRISTOPHER BLONK	52	57	60

* * * * *

CHALLENGES FOR CAUSE

NO.	PROSPECTIVE JUROR	PARTY	PAGE
0050	ANDREW MILBERG	STATE	24
0049	GLENN PRATT	STATE	49

* * * * *

PEREMPTORY CHALLENGES

PARTY	NO.	BADGE NO.	NAME	SEAT	PAGE
DEFENSE	1	0026	CAROL SALCIDO	8	21
STATE	2	0014	FRANCES MCCLAIN	4	47
DEFENSE	2	0025	JANET ROBINSON	7	66

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1 LAS VEGAS, NEVADA, THURSDAY, APRIL 21, 10:23 A.M.

2 * * * * *

3 THE COURT: Good morning, Counsel.

4 THE CLERK: Lawrence Epter, seat number 11.

5

6 VOIR DIRE EXAMINATION (Resumed)

7

8 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 42

9 THE COURT: Where are you working now?

10 PROSPECTIVE JUROR NO. 42: I have my own
11 business.

12 THE COURT: What kind?

13 PROSPECTIVE JUROR NO. 42: I have an
14 internet business selling nutritional products. I have
15 no employees. I am the only one operating the business.
16 That's what I referred to in the questionnaire.

17 THE COURT: You do it during the day, at
18 night, any time?

19 PROSPECTIVE JUROR NO. 42: During all day.
20 I handle customer service issues, shipping issues coming
21 up. I have 50 to 75 e-mails a day to be returned.

22 THE COURT: We will excuse you.

23 PROSPECTIVE JUROR NO. 42: Thank you.

24 THE COURT: We will excuse you.

25 PROSPECTIVE JUROR NO. 42: I was warring

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1 about this, but I feel it's the right thing to do. There
2 are several jurors I know that have knowledge about the
3 case.

4 THE COURT: Who are they?

5 PROSPECTIVE JUROR NO. 42: 262, 205, 207
6 and Aaron Stamm. Aaron was the fellow that raised his
7 hand when you all asked if he knew anybody. Do you want
8 me to tell you what happened? If I could, it will just
9 take a minute.

10 THE COURT: Go on.

11 PROSPECTIVE JUROR NO. 42: 262 is a female,
12 blond, about 50, was sitting in the hallway. Next to her
13 was 205, 207, an Asian woman and across from them was
14 205, 207, gentleman about 60, Aaron was across from them.
15 I was next to him.

16 262 said she had seen the news that
17 morning and seen that the Defendant had already been
18 given the death sentence by a three judge appellate
19 panel, and this was to impanel a jury because there was a
20 Constitutional issue as to whether the Judge could give
21 the death penalty, as opposed to jurors. That was all
22 she said.

23 I don't think she did it to be
24 malicious or anything like that. Quite frankly, had she
25 continued to speak, I would have stopped her, but that

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1 was it. It was clear that, that group of people heard
2 that. I felt you should know because my concern would be
3 to go through the whole thing, and if it came out later,
4 that would be prejudicial, I assume, and you would have
5 to do it again.

6 THE COURT: We appreciate that. You did
7 the right thing.

8 MS. JACKSON: Thank you very much, sir.

9 Your Honor, may I inquire, what
10 number is Aaron Stamm?

11 MR. STANTON: 164.

12 MS. JACKSON: Thank you, Counsel.

13 THE COURT: Who is next?

14 THE CLERK: Mattie Hoover, 43.

15 THE COURT: That's the reason we are doing
16 it this way, to keep them from talking about the case.
17 Gee.

18
19 VOIR DIRE EXAMINATION (Resumed)

20
21 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 43

22 THE COURT: Good morning, Ms. Hoover, where
23 did you grow up?

24 PROSPECTIVE JUROR NO. 43: San Louis
25 Opisbo, California.

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1 THE COURT: You grew up there?
 2 PROSPECTIVE JUROR NO. 43: Yes.
 3 THE COURT: Are you in college?
 4 PROSPECTIVE JUROR NO. 43: Yes, I am a full
 5 time student at UNLV.
 6 THE COURT: What days do you go?
 7 PROSPECTIVE JUROR NO. 43: Tuesday and
 8 Thursday.
 9 THE COURT: Would that cause a problem,
 10 serving on this jury?
 11 PROSPECTIVE JUROR NO. 43: Finals are in a
 12 week and a half, to two weeks.
 13 THE COURT: You are excused.
 14 PROSPECTIVE JUROR NO. 43: Thank you very
 15 much.
 16 THE COURT: What are you studying?
 17 PROSPECTIVE JUROR NO. 43: Nursing.
 18 THE COURT: That's a good area.
 19 PROSPECTIVE JUROR NO. 43: Very good, very
 20 respected.
 21 THE COURT: Who is next?
 22 THE CLERK: Barbara Finn, 46.
 23
 24 VOIR DIRE EXAMINATION (Resumed)
 25

THE STATE OF NEVADA v. JOHNSON

1 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 46

2 THE COURT: Okay. Ms. Finn, how are you

3 this morning?

4 PROSPECTIVE JUROR NO. 46: Fine.

5 THE COURT: Pretty good this morning.

6 Okay. How long have you lived in Nevada, ma'am?

7 PROSPECTIVE JUROR NO. 46: For 19 years.

8 THE COURT: Where are you from originally?

9 PROSPECTIVE JUROR NO. 46: LA County.

10 THE COURT: Are you married?

11 PROSPECTIVE JUROR NO. 46: Yes, sir.

12 THE COURT: Now, is your husband still in

13 prison?

14 PROSPECTIVE JUROR NO. 46: Yes, sir.

15 THE COURT: You went to Cal State Poly

16 Tech?

17 PROSPECTIVE JUROR NO. 46: Yes, sir.

18 THE COURT: Which one?

19 PROSPECTIVE JUROR NO. 46: Pomona.

20 THE COURT: What was your degree in?

21 PROSPECTIVE JUROR NO. 46: Social sciences.

22 THE COURT: Not psychology, sociology?

23 PROSPECTIVE JUROR NO. 46: No. It was an

24 option in social science.

25 THE COURT: What kind of work do you do?

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1 PROSPECTIVE JUROR NO. 46: I am in
2 accounting.
3 THE COURT: I you think you said you
4 remembered a name about the case; is that right?
5 PROSPECTIVE JUROR NO. 46: The name was
6 familiar, but I didn't remember anything about it.
7 THE COURT: You don't remember any details?
8 PROSPECTIVE JUROR NO. 46: No.
9 THE COURT: Now, where is your husband
10 serving time, what State?
11 PROSPECTIVE JUROR NO. 46: Arizona. They
12 just transferred him to Texas.
13 THE COURT: Where was he convicted?
14 PROSPECTIVE JUROR NO. 46: Arizona.
15 THE COURT: What was he convicted of?
16 PROSPECTIVE JUROR NO. 46: Aggravated
17 assault, attempted sexual assault.
18 THE COURT: How long ago did this happen?
19 PROSPECTIVE JUROR NO. 46: Oh, 25 years
20 ago.
21 THE COURT: He is still in prison?
22 PROSPECTIVE JUROR NO. 46: He took off and
23 was gone for 20 years.
24 THE COURT: Let's explore this a little
25 bit. Twenty-five years ago he was charged with

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1 aggravated assault and sexual assault?

2 PROSPECTIVE JUROR NO. 46: Yes, sir.

3 THE COURT: He went to trial and got
4 convicted?

5 PROSPECTIVE JUROR NO. 46: Yes, sir.

6 THE COURT: After he was convicted, he
7 absconded, jumped bail, and was gone for 20 years?

8 PROSPECTIVE JUROR NO. 46: Right, sir.

9 THE COURT: Then they caught him and put
10 him in prison?

11 PROSPECTIVE JUROR NO. 46: Yes, sir.

12 THE COURT: How long was his sentence?

13 PROSPECTIVE JUROR NO. 46: It's
14 complicated, like, 7 to 21 years, and it's consecutive.

15 THE COURT: To what?

16 PROSPECTIVE JUROR NO. 46: Well, he had a
17 couple of Counts against him.

18 THE COURT: They ran them all consecutive?

19 PROSPECTIVE JUROR NO. 46: Right.

20 THE COURT: Does he know when he will be,
21 getting out?

22 PROSPECTIVE JUROR NO. 46: No, sir.

23 THE COURT: How do you feel about that?

24 PROSPECTIVE JUROR NO. 46: I am upset about
25 it. I just take it day by day and --

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1 THE COURT: No. What I mean is, do you
2 feel he was unjustly convicted? Did you watch the trial?

3 PROSPECTIVE JUROR NO. 46: I feel he was
4 unjustly convicted. His attorney was incompetent, and he
5 has an appeals attorney now that's filed several motions
6 and is working on it.

7 THE COURT: Okay. Would that affect your
8 ability to be fair in this case?

9 PROSPECTIVE JUROR NO. 46: No, sir.

10 THE COURT: Can you follow the Court's
11 instructions on the law?

12 PROSPECTIVE JUROR NO. 46: Yes, sir.

13 THE COURT: You understand if you are
14 picked to serve on the jury, you will have to decide on a
15 penalty. You read the questionnaire. You understand the
16 jury will have four options: The death penalty; life in
17 prison, without the possibility of parole; life in
18 prison, with the possibility of parole; or a definite
19 term of 50 years, with the possibility of parole, after
20 20. Those penalties would be doubled if a weapon was
21 used.

22 Could you consider all of those
23 options?

24 PROSPECTIVE JUROR NO. 46: Yes, sir.

25 THE COURT: Do you have any objections,

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1 religious or moral, to the death penalty?

2 PROSPECTIVE JUROR NO. 46: No, sir.

3 THE COURT: You can listen to all the
4 evidence, the Court's instructions on the law, and make a
5 decision to what punishment you think is appropriate?

6 Can you do that?

7 PROSPECTIVE JUROR NO. 46: Yes, your Honor.

8 THE COURT: You don't have your mind made
9 up already, do you?

10 PROSPECTIVE JUROR NO. 46: No.

11 THE COURT: Have you or anyone in your
12 family ever been the victim of a crime?

13 PROSPECTIVE JUROR NO. 46: No, sir.

14 THE COURT: State.

15
16 EXAMINATION BY THE STATE

17 BY MR. DASKAS:

18 Q Good morning. There is a question 27. You
19 wrote, "The criminal justice system can be manipulated by
20 police, DA, lawyers, depends on their integrity." I am
21 not here to challenge that opinion. Tell me why you hold
22 that opinion.

23 A Relation to my husband.

24 Q You feel like the police and DA in that
25 circumstance railroaded him, for lack of a better word?

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1 A In a way, yes.

2 Q You can appreciate what our concern is --

3 A Right.

4 Q -- that you might somehow consciously or
5 subconsciously hold that against us, as the DA's in this
6 case?

7 A Right.

8 Q Should that be a concern of mine?

9 A No.

10 Q Obviously, this is a completely different
11 proceeding?

12 A Right.

13 Q Here's the other concern I have. As you
14 now know, based on the questionnaire, the Defendant is
15 already convicted of four Counts of First Degree Murder.
16 You realize that?

17 A Yes.

18 Q In other words, you have to accept someone
19 else's verdict in this case?

20 A Yes.

21 Q What I read into this, is you might be a
22 little cynical about the system. Should we be concerned
23 you would not accept the verdict already reached in the
24 case?

25 A No.

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1 Q Will you accept that verdict?

2 A Yes.

3 Q You understand it's four Counts of First

4 Degree Murder with a deadly weapon?

5 A Yes.

6 Q Obviously, you know about the presumption

7 of innocence in criminal cases. We have to prove someone

8 is guilty beyond a reasonable doubt.

9 A Yes.

10 Q You understand in this case that

11 presumption is gone?

12 A Right.

13 Q This is obviously a very big decision we

14 are asking you to make, and we appreciate that. Can you

15 envision a situation where, if you believe death is the

16 appropriate punishment, you are convinced of that, can

17 you actually meet out that punishment?

18 A Yes.

19 Q Let me ask you to -- let's assume you are

20 on the jury, selected as the foreperson, you have the

21 same vote as everyone else -- it takes 12 of you to

22 decide the punishment -- as foreperson, you have to sign

23 the verdict form that essentially puts this Defendant to

24 death.

25 Do you think you could sign that, if

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1 you were the foreperson?

2 A Assuming so.

3 Q Understanding it's a big responsibility, if
4 you are convinced he is guilty, can you sign the verdict
5 form?

6 A No.

7 Q We shouldn't have concerns about you, based
8 on your experience with your husband's case?

9 A No.

10 MR. DASKAS: Judge, we pass for cause.

11

12 EXAMINATION BY THE DEFENSE

13 BY MS. JACKSON:

14 Q You indicated you had children. What are
15 their ages?

16 A Thirteen and nineteen.

17 Q This case, the young men that were killed
18 were all around 19. You have a child that age and one
19 younger, will that affect your ability to listen to the
20 evidence as it comes in, and evaluate the testimony, or
21 will you think too much about your own children?

22 A I wouldn't think so, but to be perfectly
23 honest, I wouldn't know until it happened.

24 Q I want you to process that wee bit, while I
25 continue with the question, we indicated they were young,

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1 but they are exactly the same age as your child.

2 You are also going to have to look at
3 some pictures. That's what will have to happen in this
4 case, and look at the place where they were executed.
5 Think about that. I will come back to that. Okay?

6 A Okay.

7 Q I share Mr. Daskas's concern. I know in
8 our society a lot of people are not crazy about the
9 profession I work in. Lots of people don't like lawyers.
10 You indicate here that it depends upon their integrity.
11 You may find yourself liking or disliking -- there is
12 four attorneys involved in this case.

13 Do you think you can focus on the
14 issue at hand, regardless of the attorneys, and that
15 would be the fate of Donte Johnson?

16 A I don't know any of you. I would have to
17 go on the evidence.

18 Q Do you have any particular bias about
19 female attorneys?

20 A No.

21 Q How do you feel about that?

22 A I give them all the credit they deserve
23 for going through what used to be a man's occupation.

24 Q Do you have any strong feelings or strong
25 bias against Public Defenders? I work for the Public

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1 **Defender's office?**

2 A I think you do a lot of work for little
3 pay, compared to the others.

4 Q Nothing that would affect your ability or
5 interfere with your ability to look at Donte Johnson and
6 listen to what we have to say about him?

7 A No.

8 Q Okay. Do you feel that life
9 imprisonment -- the Judge instructed you there is four
10 possible punishments for this heinous crime, four.

11 Of the four, do you think life in
12 prison, do you think of that as a serious or severe
13 punishment?

14 A Yes. Yes.

15 Q You hesitated.

16 A I have to think. It depends on the age of
17 the person. If the person is 75 years old, they have
18 less life expectancy.

19 Q The fact you mentioned, it depends upon
20 that, that's exactly what we want you to do.

21 On question 34 of the questionnaire,
22 you said, first, you circled A. Then crossed that out.
23 You were in favor and circled C, you would consider it in
24 certain circumstances.

25 You wrote in, "Depending on

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1 circumstances. I don't think everyone who has killed
2 someone deserves the death penalty." That's exactly what
3 the Judge is asking you to do.

4 Can you consider all four
5 possibilities?

6 A Yes.

7 Q You said, someone that killed someone,
8 however, knowing now my client stands convicted of four
9 homicides, not just one. You will hear mitigating
10 information about his childhood, things of that nature.

11 Just the fact there are four victims
12 in this case, would that fact alone preclude you from
13 keeping the same open mind you indicated on your
14 questionnaire here you had.

15 A I was thinking --

16 Q We appreciate that. We really do.

17 A -- I would look at it a lot closer than if
18 it was just one person.

19 Q Of course, and that's appropriate.

20 A You know, knowing nothing about it, I can't
21 say, yes or no.

22 Q You are not saying that, automatically,
23 because we are talking about four people, that
24 automatically you can only consider death?

25 A Not automatically.

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1 Q That's all we are asking. That's all. We
2 always try to be open-minded, and we can certainly see
3 that from your efforts here this morning. We appreciate
4 that.

5 You may find yourself, if you are on
6 the jury in the jury room, and you are going to
7 deliberate, the Judge will instruct you, that's what you
8 are going to do --

9 What would you do, if you found at
10 the deliberation, everybody else wanted to vote for
11 death, and you felt that was not the appropriate vote,
12 what would you do?

13 A I would listen to their reasons --

14 Q Of course.

15 A -- and I would make up my mind.

16 Q If after listening to their reasons and
17 comparing them with yours, you still were not convinced,
18 you still felt what you believed was the correct verdict,
19 could you hold to that?

20 A I would try.

21 Q Could you?

22 A I would try.

23 Q One of the -- when they ask you to explain
24 your position, and you explain it to the best of your
25 ability, if someone said, it doesn't make any sense, for

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1 example, could you respect their views?

2 A Yes, ma'am.

3 Q Would you demand they respect yours?

4 A Yes.

5 Q Whether it made sense to them or not?

6 A I would ask them, what parts didn't make
7 sense.

8 Q You understand, you don't have to
9 necessarily justify that, a true verdict, to anyone? You
10 have the right to hold to the courage of your own
11 conviction?

12 A Yes, I do.

13 Q The law indicates in a case like this, that
14 you must consider what the law defines as mitigation:
15 Background; education; status; things of that nature.
16 You indicated you would consider those things very much.

17 In other words, would you like to
18 know as much as humanly possible about Donte Johnson,
19 before making a decision of this magnitude?

20 A I would like to know both sides.

21 Q You understand the law says you must
22 consider mitigation?

23 A Right.

24 Q And that's, where he grew up, whether or
25 not he had enough to eat, whether or not his mother used

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1 drugs, things of that nature. Are those factors you
2 would like to know about before making that decision?

3 Among other things, are those some
4 of the things you would like to hear about?

5 A I suppose so.

6 Q What does that mean?

7 A Depends on how much detail it got into.

8 Q I don't understand that. How much in
9 detail they got?

10 A Right.

11 Q Well, the examples you gave me --

12 A Examples you gave me, yes.

13 Q What was that?

14 A I was going to say, I don't think it's
15 necessary to go every single year of the person's life,
16 but the main factors of the person's life, yes.

17 Q Would you consider getting enough food to
18 eat as a child an important factor?

19 A Right.

20 Q Would you consider, having a parent or
21 caregiver there, versus being abandoned, would you
22 consider that an important factor?

23 A Yes.

24 MS. JACKSON: Thank you. We will pass for
25 cause.

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1 MR. DASKAS: Judge, I apologize. May I ask
2 a follow-up question, just about her husband's situation,
3 Judge?

4 THE COURT: No.

5 Ma'am, we will have you come back
6 tomorrow at 10:00 o'clock. Okay. Be there in the jury
7 lounge downstairs.

8 Okay. What's next? Defendant's
9 first peremptory challenge.

10 MS. JACKSON: Thank you, your Honor. We
11 would preempt 0026, Carol Salcido.

12 THE COURT: Seat 8?

13 MS. JACKSON: Yes, sir.

14 THE COURT: Who is next?

15 THE CLERK: Andrew Milberg, 50.

16
17 VOIR DIRE EXAMINATION (Resumed)

18
19 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 50

20 THE COURT: Mr. Milberg, you have a B.A.
21 from Tulane?

22 PROSPECTIVE JUROR NO. 50: Tulane
23 University.

24 THE COURT: New Orleans?

25 PROSPECTIVE JUROR NO. 50: Yes.

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1 THE COURT: Did you grow up in New York,
2 and you went to college in New Orleans?

3 PROSPECTIVE JUROR NO. 50: I grew up in
4 Puerto Rico, eight years in New York, and ten years in
5 Puerto Rico.

6 THE COURT: Where did you go to law school
7 for that year?

8 PROSPECTIVE JUROR NO. 50: University of
9 Miami.

10 THE COURT: What work do you do now?

11 PROSPECTIVE JUROR NO. 50: I teach
12 transformational change.

13 THE COURT: What kind?

14 PROSPECTIVE JUROR NO. 50: I teach seminars
15 to help people change.

16 THE COURT: Okay. You have a friend that's
17 a lawyer in Miami; is that right?

18 PROSPECTIVE JUROR NO. 50: My best friend.

19 THE COURT: What kind of lawyer is he?

20 PROSPECTIVE JUROR NO. 50: Personal injury.

21 THE COURT: Now, you stated you or a member
22 of your family had been a victim of a crime. Who was
23 that?

24 PROSPECTIVE JUROR NO. 50: My house was
25 robbed in New Orleans.

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1 THE COURT: They didn't catch the people
2 who did it.

3 PROSPECTIVE JUROR NO. 50: No. My car was
4 also broken into in New York.

5 THE COURT: Also, you said you are opposed
6 to the death penalty under any circumstances?

7 PROSPECTIVE JUROR NO. 50: Yes, I am.

8 THE COURT: Is that absolute?

9 PROSPECTIVE JUROR NO. 50: It is absolute.

10 MR. DASKAS: Challenge for cause, your
11 Honor.

12 THE COURT: You want to traverse?

13 MS. JACKSON: Briefly, your Honor.

14

15 EXAMINATION BY THE DEFENSE

16 BY MS. JACKSON:

17 Q Good morning, sir. You, from Florida?

18 A No.

19 Q Did you go to school at the University of
20 Florida?

21 A For a semester.

22 Q That's where I received my undergraduate
23 work.

24 A Good old, Gainesville.

25 Q How long have you held the belief that the

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1 death penalty is just not appropriate for any one?

2 A Since I started doing my work.

3 Q How long is that?

4 A Fifteen years now.

5 Q Can you envision any situation, for

6 example, if you were convinced in your own mind that

7 someone was responsible for blowing up the Twin Towers,

8 could you consider it for something like that?

9 A No.

10 Q Thank you for your candor.

11 MS. JACKSON: We submit it.

12 THE COURT: Mr. Milberg, the law requires

13 you have to be open to imposing the death penalty on a

14 case like this. Since you are not, we will excuse you,

15 sir. Thank you very much. We appreciate it.

16 Who is next?

17 THE CLERK: Arthur Riley, badge 51.

18

19 VOIR DIRE EXAMINATION (Resumed)

20

21 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 51

22 THE COURT: What kind of work do you do?

23 PROSPECTIVE JUROR NO. 51: Floor person at

24 the Westward Hoe Casino.

25 THE COURT: Is that the one on Fremont

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1 Street?

2 PROSPECTIVE JUROR NO. 51: On Las Vegas
3 Boulevard. Lots of people get those mixed up.

4 THE COURT: In the narrative it said you
5 have to work. Doesn't the hotel pay you?

6 PROSPECTIVE JUROR NO. 51: No, most don't.

7 THE COURT: You said you feel bitter; you
8 were charged with a crime?

9 PROSPECTIVE JUROR NO. 51: Yeah, on a
10 garage door.

11 THE COURT: City or --

12 PROSPECTIVE JUROR NO. 51: County. It was
13 the DA's.

14 THE COURT: DA's Office did it?

15 PROSPECTIVE JUROR NO. 51: Yes.

16 THE COURT: What happened to the case?

17 PROSPECTIVE JUROR NO. 51: It's still
18 pending. They had a court date in January. We had six
19 months to bring the doors down or bring them to code in
20 our complex. We all got nailed for the same thing.

21 THE COURT: You don't feel you could be
22 fair?

23 PROSPECTIVE JUROR NO. 51: Not right now,
24 no.

25 THE COURT: You are excused.

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1 Who is next?

2 (OFF THE RECORD.)

3 THE CLERK: Stephanie Bowman, 53.

4 THE BAILIFF: Stephanie Bowman was excused.

5 This is Kristee Watson.

6 MR. WHIPPLE: What was the basis of her

7 excusal?

8 THE BAILIFF: Her child is sick.

9 THE COURT: Is that the one in the

10 hospital?

11 THE BAILIFF: Child is in the hospital.

12 THE COURT: Yes.

13 MR. WHIPPLE: Thank you.

14 THE CLERK: Kristee Watson, badge 55.

15

16 VOIR DIRE EXAMINATION (Resumed)

17

18 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 55

19 THE COURT: What are you doing these days

20 Ms. Watson?

21 PROSPECTIVE JUROR NO. 55: I have been here

22 lately.

23 THE COURT: That's not what I was talking

24 about. What kind of work do you do?

25 PROSPECTIVE JUROR NO. 55: Administrative

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1 assistant, as well as a waitress.

2 THE COURT: How who do you work for.

3 PROSPECTIVE JUROR NO. 55: Magic Magazine,
4 and waitress at The Old Spaghetti Factory.

5 THE COURT: You said you already bought
6 tickets to Boston.

7 PROSPECTIVE JUROR NO. 55: Yes.

8 THE COURT: 27th, when is that?

9 PROSPECTIVE JUROR NO. 55: Next Wednesday.

10 THE COURT: What are you going to Boston
11 for?

12 PROSPECTIVE JUROR NO. 55: Celebrate my one
13 year anniversary.

14 THE COURT: Of what?

15 PROSPECTIVE JUROR NO. 55: Marriage.

16 THE COURT: You already paid for the
17 tickets?

18 PROSPECTIVE JUROR NO. 55: And my hotel.

19 THE COURT: All right. You have a
20 Bachelors in associate church ministry.

21 PROSPECTIVE JUROR NO. 55: My husband does.

22 THE COURT: He is a preacher?

23 PROSPECTIVE JUROR NO. 55: Yes.

24 THE COURT: What's the name of the church?

25 PROSPECTIVE JUROR NO. 55: Central

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1 Christian Church.

2 THE COURT: On Rancho?

3 PROSPECTIVE JUROR NO. 55: On Russell, off
4 the 95 in Henderson.

5 THE COURT: Since you have prepaid tickets,
6 hotel, all that stuff, we will excuse you.

7 PROSPECTIVE JUROR NO. 55: Thank you.

8 THE COURT: You can go.

9 PROSPECTIVE JUROR NO. 55: Okay.

10 THE COURT: Next.

11 THE CLERK: Elizabeth Corwin, badge 57.

12

13 VOIR DIRE EXAMINATION (Resumed)

14

15 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 57

16 THE COURT: Okay. Ms. Corwin; is that
17 correct?

18 PROSPECTIVE JUROR NO. 57: Yes.

19 THE COURT: Where is Mesa Community
20 College?

21 PROSPECTIVE JUROR NO. 57: Arizona.

22 THE COURT: How long did you live in
23 Arizona?

24 PROSPECTIVE JUROR NO. 57: Four years.

25 THE COURT: Did you grow up in the Chicago

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1 area?

2 PROSPECTIVE JUROR NO. 57: Yes.

3 THE COURT: What kind of work does your
4 husband do?

5 PROSPECTIVE JUROR NO. 57: He works for
6 Federal Express.

7 THE COURT: Do you work outside the home?

8 PROSPECTIVE JUROR NO. 57: Secretary for
9 the medical department of the Labor Union.

10 THE COURT: I think you said you remember
11 talking about the case; is that right?

12 PROSPECTIVE JUROR NO. 57: Vaguely. It's
13 been a while.

14 THE COURT: What do you remember?

15 PROSPECTIVE JUROR NO. 57: It's vague, very
16 vague. I just remember hearing and reading about bits
17 and pieces of it in the media. I remember it was a
18 single family home, if it was the same one I am thinking
19 of. That's, basically, all I remember.

20 THE COURT: Now, in this question here, 30,
21 it says, "Donte Johnson is an African American male. Is
22 there anything about that fact that would affect your
23 ability to be fair in this case?"

24 You said, "Unsure."

25 PROSPECTIVE JUROR NO. 57: Unsure how to

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1 answer it.

2 THE COURT: How do you feel, though?
3 Basically, we want to know from the question, because he
4 is a young Black man here, we want to know if you are
5 going to be prejudiced or biased against him because of
6 his race. He is convicted of killing four white males.

7 Are you going to be bias or
8 prejudiced against him? That's what we want to find out.

9 PROSPECTIVE JUROR NO. 57: I think so.

10 THE COURT: We want somebody who is going
11 to judge him solely on the facts, not based on race or
12 religion.

13 PROSPECTIVE JUROR NO. 57: Only issue I
14 would have with it is my stepfather was shot and killed
15 in Florida.

16 THE COURT: When was that?

17 PROSPECTIVE JUROR NO. 57: It was seven or
18 eight years ago.

19 THE COURT: Some cases people shouldn't be
20 sitting on because of their past experience. This is
21 similar to something that happened to someone in your
22 family. Can you listen to the evidence in this case and
23 not be biased or affected by what happened to your
24 father?

25 PROSPECTIVE JUROR NO. 57: I am not sure.

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1 I can't say yes.

2 THE COURT: Seems like you are emotional
3 just thinking about it.

4 PROSPECTIVE JUROR NO. 57: I am.

5 THE COURT: This is the same situation,
6 except we have four dead people. You will be looking at
7 pictures of them and hearing about the crime.

8 PROSPECTIVE JUROR NO. 57: It would be
9 hard. It would definitely be hard.

10 THE COURT: Tell me this here, what do you
11 think about the death penalty?

12 PROSPECTIVE JUROR NO. 57: I am against
13 it -- I am not against it.

14 THE COURT: You are for the death penalty;
15 you are not opposed to it?

16 PROSPECTIVE JUROR NO. 57: No.

17 THE COURT: And what about the question is
18 going to be -- specifically, the Defendant has been
19 convicted of First Degree Murder, four Counts, four
20 victims. You are going to have to decide the punishment.

21 The four punishments are: The death
22 penalty; life imprisonment, without the possibility of
23 parole; life in prison, with the possibility of parole,
24 or a definite term of 50 years with the possibility of
25 parole after 20 years, and those are doubled because a

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1 firearm or deadly weapon was used.

2 Can you consider all four
3 punishments?

4 PROSPECTIVE JUROR NO. 57: I would have to
5 listen to everything first.

6 THE COURT: We know that. We are assuming,
7 after you hear the evidence. Some people think if you
8 kill someone, the only punishment you can impose is the
9 death penalty. Nothing else.

10 Some people think they could never
11 impose life imprisonment for the rest of their life, and
12 the taxpayers have to take care of them and support them.
13 Some people think some people should receive prison term,
14 have a possibility of parole after so many years.

15 The law in Nevada requires you
16 consider all four of them and apply one that's
17 appropriate, given the facts and circumstances of the
18 case.

19 My question to you is: Can you
20 consider all four, or are there some punishments you
21 wouldn't consider under any circumstances?

22 PROSPECTIVE JUROR NO. 57: I wouldn't be
23 able to consider parole at all.

24 THE COURT: Traverse.
25

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EXAMINATION BY THE STATE

BY MR. STANTON:

Q Let's say there was extenuating circumstances presented by the Defense or Prosecution, giving you a frame of reference what the person was like, and where they came from?

In this case the Defendant has already been convicted by another jury of killing four separate people. In and of itself that sounds serious, and it is, but there is still evidence that could be presented to you, telling you who he was, Donte Johnson, and the circumstances surrounding that.

The question is: Could you keep an open mind about all the potential punishments under all the evidence and instructions of law given you, or would you sit and say, look, if he is convicted of four First Degree Murders, parole is out of the question?

A The latter.

THE COURT: You are excused, ma'am.

THE BAILIFF: Eugene VanderHoof never answered. I will try it with the next group.

THE COURT: We will see.

THE CLERK: Barbara Grant, badge 59.

VOIR DIRE EXAMINATION (Resumed)

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1 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 59

2 THE COURT: Good morning. According to the
3 questionnaire you filled out, Ms. Grant -- we were going
4 through it, you attend church -- your home is near a
5 church?

6 PROSPECTIVE JUROR NO. 59: Yes.

7 THE COURT: What church is that?

8 PROSPECTIVE JUROR NO. 59: It's a
9 non-denominational church.

10 THE COURT: Never been on a jury before?

11 PROSPECTIVE JUROR NO. 59: No, sir.

12 THE COURT: Have you or anyone in your
13 family ever been charged with a crime?

14 PROSPECTIVE JUROR NO. 59: No, sir.

15 THE COURT: Have you or anyone in your
16 family been a victim of a crime?

17 PROSPECTIVE JUROR NO. 59: No, sir.

18 THE COURT: You don't recall hearing
19 anything about the case; is that correct?

20 PROSPECTIVE JUROR NO. 59: No, sir.

21 THE COURT: You believe you can be fair and
22 impartial in this case?

23 PROSPECTIVE JUROR NO. 59: Yes.

24 THE COURT: Can you follow the Court's
25 instructions on the law?

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1 PROSPECTIVE JUROR NO. 59: Yes, I can.

2 THE COURT: How long have you lived in Las

3 Vegas?

4 PROSPECTIVE JUROR NO. 59: Now, 27 years.

5 THE COURT: Where before that?

6 PROSPECTIVE JUROR NO. 59: Southern

7 California.

8 THE COURT: Did you spend any time in

9 Southern Minnesota?

10 PROSPECTIVE JUROR NO. 59: I was born

11 there.

12 THE COURT: How did you do that?

13 PROSPECTIVE JUROR NO. 59: I was 15 months

14 old when my parents moved.

15 THE COURT: Now, you understand this trial

16 will be about the penalty; the jury will have to decide

17 on the penalty to impose in this case? Do you understand

18 that?

19 PROSPECTIVE JUROR NO. 59: Yes.

20 THE COURT: You understand the Defendant

21 has been convicted of four Counts of First Degree Murder?

22 PROSPECTIVE JUROR NO. 59: Yes.

23 THE COURT: Our legislature states the

24 possible punishment you can impose is any of the

25 following: Death penalty; life imprisonment, without the

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1 possibility of parole; life, with the possibility of
2 parole; or for a definite term of 50 years, with parole
3 after 20 years, and these terms are doubled because a
4 deadly weapon was used.

5 Do you understand that?

6 PROSPECTIVE JUROR NO. 59: I do.

7 THE COURT: Could you consider all four
8 forms of punishment?

9 PROSPECTIVE JUROR NO. 59: Yes.

10 THE COURT: You can listen to the evidence,
11 listen to the law, as the Court gives it to you, and pick
12 the appropriate punishment based on the facts and the law
13 in this case?

14 PROSPECTIVE JUROR NO. 59: I believe I can.

15 THE COURT: Here you say you are in favor
16 of the death penalty. I take it, you are not opposed to
17 it.

18 PROSPECTIVE JUROR NO. 59: Yes.

19 THE COURT: Here in question 36, they ask
20 your beliefs about the death penalty. If they are such
21 you would automatically vote for the death penalty,
22 regardless of the facts and circumstances of the case.
23 You said, yes.

24 Did you understand that question?

25 PROSPECTIVE JUROR NO. 59: Probably not.

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1 THE COURT: You are saying if someone is
2 convicted of First Degree Murder, you would --

3 PROSPECTIVE JUROR NO. 59: Automatically
4 impose the death penalty.

5 THE COURT: Without listening to any
6 mitigation or what happened, what background about the
7 case.

8 PROSPECTIVE JUROR NO. 59: No, I would
9 listen.

10 THE COURT: You would consider everything?

11 PROSPECTIVE JUROR NO. 59: Yes.

12 THE COURT: State.

13
14 EXAMINATION BY THE STATE

15 BY MR. STANTON:

16 Q In this case, as you have found out from
17 the questionnaire, another jury has returned verdicts of
18 First Degree Murder, four Counts of them, against the
19 Defendant, Donte Johnson. Towards that end, jury service
20 in this case does not involve finding guilt or innocence,
21 but you will be starting from that point, going forward.

22 Now, knowing that is what your role
23 would be, strictly determining appropriate, just
24 punishment in this case, do you think you can do that
25 under these circumstances?

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1 A I believe I could.

2 Q Abiding by the other jurors's verdict?

3 A Yes.

4 Q The fair and impartial juror in this case
5 is someone who can listen to all the facts presented by
6 both sides in this case to determine the four punishments
7 Judge Gates just mentioned to you.

8 Are those types of facts that involve
9 knowing more about the murder, each of the victims, and
10 the Defendant, important to you in making that
11 determination?

12 A Yes.

13 Q Everyone in the rooms understands it's a
14 very important decision, a decision not to be taken
15 lightly. Do you understand and agree with that?

16 A I agree.

17 Q In this case, if you were to determine
18 that, based upon the facts you heard in the courtroom
19 from both the State and from the Defense, and after the
20 instructions of law that Judge Gates would give you, you
21 are of the mind that the appropriate punishment was the
22 death penalty, and you were selected as foreperson in
23 this case, could you sign the verdict forms that would
24 put the Defendant, Donte Johnson, to death?

25 A I believe I could.

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1 MR. STANTON: Pass the juror, your Honor.

2 THE COURT: Defense.

3 MR. WHIPPLE: Thank you, your Honor.

4

5 EXAMINATION BY THE DEFENSE

6 BY MR. WHIPPLE:

7 Q I am curious. While waiting in the halls,
8 have you had a chance to talk about the case at all, or
9 overhear anyone speaking about the case?

10 A One thing they are talking about is how
11 long it seems it takes before somebody is called in here.

12 Q I understand. It is a time-consuming
13 process. We appreciate your pains.

14 Can I ask your occupation?

15 A Blackjack dealer.

16 Q How long have you been doing that?

17 A I have been in the business for 21, 22
18 years now.

19 Q Okay. I think, as we mentioned a couple
20 times, there is no right or wrong answer. We are trying
21 to find people that -- if you are opposed to the death
22 penalty, if you are for the death penalty -- we want
23 people in the middle.

24 We want you to speak freely, from the
25 heart. I want to ask you questions about the death

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1 penalty, in general. What is your opinion with regard to
2 the death penalty?

3 A I believe in the death penalty.

4 Q Do you think it's used too much, not
5 enough?

6 A I don't think it's used enough. You never
7 really hear about anybody being executed.

8 Q What do you think about that?

9 A That's with the court system, appeals, and
10 those things.

11 Q When you say you believe or acknowledge the
12 death penalty, is that something you have thought about
13 or considered in the past? Do you know how long you had
14 that opinion?

15 A No.

16 Q Do you know where you got that opinion
17 from? Did your parents influence you or other people
18 influence you?

19 A No. I don't know. I really can't answer.

20 Q Is it something you have discussed with
21 other people, whether it should be used more or less?

22 A No. No. Most of the people I hang around
23 with seem to want to talk about sports, other things.

24 Q That's a lot more enjoyable than the death
25 penalty. I will give you that.

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1 Have you heard the adage, an eye for
2 an eye?

3 A Yes.

4 Q What do you think of that?

5 A Sometimes I believe the punishment should
6 fit whatever the crime was.

7 Q What times would you consider it
8 appropriate, and what times would you consider it not
9 appropriate?

10 A I am the kind of person that I would like
11 to listen to everything. I like to weigh everything in
12 before I finally make a decision. I am a Libra, the
13 scales; I like to balance everything out.

14 Q I notice that you elaborated on that. You
15 want to hear as much as possible?

16 A I do.

17 Q And I want to hear about that. In this
18 situation, it's a little unusual you have not been a
19 juror before.

20 A Before I was a single parent. Back in the
21 old days, you called in, single parent, tip earner, you
22 got excused. This is my first time going through the
23 process.

24 Q Those days are over?

25 A I am single. My son is 27.

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1 Q Do you have other children?

2 A No, he is my only one.

3 Q In this case, it's not truth, or innocence,
4 or guilt. Mr. Donte Johnson, my client, has been and is
5 convicted. He killed four individuals. He premeditated
6 and deliberately put a bullet to the back of the
7 victims's heads.

8 I want to ask you some questions. If
9 a person committed First Degree Murder, cold blooded
10 murder, could you consider a potential life sentence?

11 A Yes.

12 Q If an individual killed four separate young
13 adults, premeditated, deliberate or cold blooded murder,
14 bullet in the back of the head, could you consider a life
15 sentence?

16 A Yes.

17 Q You hesitate a little bit. I realize there
18 is a difference between one and four. What's going
19 through your mind?

20 A It's the reason why. What caused him to
21 want to do something like that?

22 Q He has been convicted of First Degree
23 Murder. We are not here to justify or excuse it. We are
24 not offering excuses or solutions. You are here to
25 determine the future of Mr. Johnson.

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1 There is no justification. There is
2 no excuse for doing these things. It's First Degree,
3 premeditated, deliberate taking the life of another
4 person. Would you consider life in that situation?

5 A Probably not.

6 Q Why is that?

7 A Probably, if what you said is true, it's
8 premeditated, I would have to strongly favor the death
9 penalty.

10 Q In this situation, all you have to do is be
11 able to consider it.

12 A Uh-huh.

13 Q You will hear a lot of information. You
14 are going to hear what we call, mitigators. Mitigators
15 are reasons to give somebody a life sentence, is how I
16 explain it. You will hear reasons I think you should
17 give a life sentence.

18 I need to know, you have already told
19 me, if a person committed first degree, premeditated,
20 deliberate homicide of four innocent young adults, you
21 could not consider a life sentence.

22 Do you still feel that way, or can
23 you think and wait and look at the mitigators? I don't
24 want to put words in your mouth. Be up front and honest.

25 A I could consider life in prison with no

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1 possibility of parole.

2 Q The law says that one needs to not only
3 consider life in prison, but life with the possibility of
4 parole. That's when the Court mentioned, can you
5 consider them all equally; that's what he mentioned.

6 Not only the fact -- our legislature,
7 says a person can commit First Degree Murder, cold
8 blooded, premeditated murder, and have the right to have
9 the possibility of parole considered.

10 I am not forcing you or putting words
11 in your mouth. That's something you have to say, that
12 you can do that; you would consider it.

13 A How many years would he serve?

14 Q In this situation it's with the use of a
15 deadly weapon, 40 years would be minimum?

16 A I could consider that.

17 Q Why could you consider it at 40 years?

18 A At least 40 years, he has put time in,
19 served time for the crimes committed and not get out in
20 ten years.

21 Q I understand that. You are a good person.
22 When it comes to all the other factors, why is that
23 important to you? Several times you pointed out, I want
24 to hear everything. Why?

25 A Just my nature. I try to be an honest,

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1 fair person. I listen to people and try not to make snap
2 judgments.

3 Q Nothing happens in a vacuum. You want to
4 see the facts and circumstances surrounding the
5 situation?

6 A Yes.

7 Q At some point, if you are selected to be a
8 juror, you will receive instructions from the Court that
9 the law never requires in a death penalty, that sometimes
10 it's a gut feeling, or simply mercy is, basically, reason
11 enough to choose life over death.

12 What do you think of that?

13 A Well, being a woman, sometimes, yes.
14 Sometimes us women go by gut reactions.

15 Q Because that's a little different from
16 facts and circumstances. Sometimes it's hard to decide a
17 reason why you are choosing a certain way.

18 If you heard all the facts and
19 circumstances, you know my client killed four
20 individuals, First Degree Murder, premeditated, cold
21 blooded, murder. You listened to the facts and
22 circumstances and felt he deserved it, could you return a
23 life sentence?

24 A Yes, if that's what my conscience said.

25 Q If you are the person elected to be in

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1 charge of the jury, could you sign off, saying, even
2 though he took the lives of four other individuals, I
3 believe he could still get life?

4 A Yes.

5 Q Or life with the possibility of parole?

6 A Yes.

7 Q If a number of individuals differed from
8 you, and you perhaps felt life in prison was the
9 appropriate decision and the other people wanted the
10 death penalty, how would you handle that?

11 A You have to speak your mind amongst the
12 other jurors. Hopefully, we can all agree on one fair
13 judgement.

14 Q Fair to say, sometimes people just don't
15 agree on everything?

16 A Sure.

17 Q Do you consider yourself a leader or a
18 follower? Where do you put yourself from one to ten?
19 Follower is a one; person never listens to anybody else
20 is a ten?

21 A I guess at times I am a follower, unless I
22 really feel strongly about something. Being a redhead,
23 once my mind is made up -- I am a follower, but I pretty
24 much have set ideas. I have a tendency to follow.

25 Q If people had an opinion different from

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1 you, could you respect that opinion, and not make them
2 believe what you believe?

3 A I can respect it, but I want my two cents
4 in.

5 Q Vice versa. Would you be able, willing, to
6 stand up and say, this is what I believe?

7 A Yes.

8 Q Court asked you one question where it said
9 you automatically would choose the death penalty. Do you
10 remember what you were thinking when you wrote down, yes?

11 A No.

12 Q I am just curious.

13 A I have no clue.

14 MR. WHIPPLE: Thank you for your time.

15 I pass for cause.

16 THE COURT: All right. Ma'am, we will have
17 you come back tomorrow ten o'clock. We will let you
18 know. Okay. It's the State's opportunity to exercise
19 their second peremptory challenge. I'll give you a few
20 minutes.

21 (BREAK IN PROCEEDINGS

22 11:29 TO 11:40 A.M.)

23 THE COURT: State may exercise its second
24 peremptory challenge.

25 MR. DASKAS: We would excuse 0014, Ms.

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1 McClain, position 4.

2 THE COURT: All right.

3 Who came back today?

4 I was thinking of letting them go
5 until tomorrow.

6 THE BAILIFF: I was letting them go. If
7 they challenge them, after they get challenged, we will
8 call them on the phone, let them know.

9 MS. JACKSON: That works.

10 THE COURT: You know what, tell them to
11 come back tomorrow at 10:00. If we don't need them,
12 we will call them.

13 We have Glenn Pratt.

14 THE BAILIFF: No answer. He didn't show
15 up.

16 THE COURT: What do you want to do with
17 him?

18 MR. DASKAS: Obviously, we submit a
19 challenge for cause. Whether his answer changes, remains
20 to be seen. I think it's sufficient to let him go.

21 THE COURT: He seems to have a hardship
22 with his wife and kids.

23 MS. JACKSON: I will submit it, Judge.

24 THE COURT: What about Eugene VanderHoof
25 that wasn't here?

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1 THE BAILIFF: We are waiting to see if he
2 shows up.

3 THE CLERK: Doris McLaughlin, badge 77.

4
5 VOIR DIRE EXAMINATION (Resumed)

6
7 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 77

8 THE COURT: Good morning, ma'am. How long
9 have you lived in Las Vegas, 17 years?

10 PROSPECTIVE JUROR NO. 77: Since '88.

11 THE COURT: What kind of work do you do?

12 PROSPECTIVE JUROR NO. 77: I am a waitress.
13 I work on tips.

14 THE COURT: Who do you work for?

15 PROSPECTIVE JUROR NO. 77: Palace Station.

16 THE COURT: Are you married?

17 PROSPECTIVE JUROR NO. 77: Yes.

18 THE COURT: What does your husband do?

19 PROSPECTIVE JUROR NO. 77: He works for
20 Weststar Credit Union.

21 THE COURT: You said your daughter was
22 arrested for writing a forged check?

23 PROSPECTIVE JUROR NO. 77: Yes. She was on
24 drugs.

25 THE COURT: What happened to her case?

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1 PROSPECTIVE JUROR NO. 77: It was
2 dismissed.
3 THE COURT: How long ago was that?
4 PROSPECTIVE JUROR NO. 77: Couple years
5 ago.
6 THE COURT: Is she still having a substance
7 abuse problem?
8 PROSPECTIVE JUROR NO. 77: No. She's
9 clean. She got her children back.
10 THE COURT: How many kids does she have?
11 PROSPECTIVE JUROR NO. 77: She has four.
12 THE COURT: You said, Black folks put your
13 daughter on drugs?
14 PROSPECTIVE JUROR NO. 77: She was going
15 with Black guys, and we never been raised around where I
16 am from -- I wasn't raised around Black people, Spanish,
17 nothing but whites.
18 We come to Vegas, that's when she
19 ended up getting put on drugs, kids taken away. We
20 supported one child for a year.
21 THE COURT: So how old was your daughter
22 when she came here, hanging out with Black guys?
23 PROSPECTIVE JUROR NO. 77: She is 33 now.
24 THE COURT: How old was she?
25 PROSPECTIVE JUROR NO. 77: She was 20 some

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1 years old.

2 THE COURT: She never went out with white
3 guys?

4 PROSPECTIVE JUROR NO. 77: No.

5 THE COURT: Her kids, are they mixed race?

6 PROSPECTIVE JUROR NO. 77: They are all
7 white. She went out with white guys. All the kids are
8 white. There are no mixtures in them.

9 THE COURT: So?

10 PROSPECTIVE JUROR NO. 77: After her fourth
11 one, I made her tie her tubes.

12 THE COURT: You blame her problems on Black
13 folks. Seems she already had problems with four kids, no
14 husband.

15 PROSPECTIVE JUROR NO. 77: Yeah.

16 THE COURT: You blame it still on Black
17 people? I don't think you can be fair. You don't trust
18 Black people.

19 PROSPECTIVE JUROR NO. 77: I don't trust
20 anybody that hurts my family.

21 THE COURT: Okay. You are excused, ma'am.

22 MR. STANTON: You weren't going to let me
23 traverse, your Honor?

24 THE COURT: I don't think there is anything
25 you can say to that one. I think that kid already had a

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1 few problems.

2 MR. DASKAS: You think?

3 MS. JACKSON: I think.

4 THE CLERK: Christopher Blonk, badge 84.

5

6 VOIR DIRE EXAMINATION (Resumed)

7

8 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 84

9 THE COURT: Mr. Blonk, you were in the
10 Marine Corps. for two years?

11 PROSPECTIVE JUROR NO. 84: Yes, sir.

12 THE COURT: Roommates, you have two of
13 them?

14 PROSPECTIVE JUROR NO. 84: Yes.

15 THE COURT: One is a Las Vegas Metropolitan
16 Police Department officer?

17 PROSPECTIVE JUROR NO. 84: Yes.

18 THE COURT: He or she?

19 PROSPECTIVE JUROR NO. 84: He, sir.

20 THE COURT: The other one works there.

21 What kind of work do you do, sir?

22 PROSPECTIVE JUROR NO. 84: I was an
23 insurance adjustor until Tuesday. I got laid off.

24 THE COURT: You were an insurance rep?

25 PROSPECTIVE JUROR NO. 84: Yes, sir, I was.

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1 THE COURT: You were a security officer at
2 a hotel for two and a half years?

3 PROSPECTIVE JUROR NO. 84: Yes, sir, the
4 Luxor.

5 THE COURT: This says you might recall
6 having discussed this case with some police officers?

7 PROSPECTIVE JUROR NO. 84: I thought so
8 when I filled it out. When I heard the brief on Tuesday,
9 I recognize the Defendant's name, one of the victim's
10 names, and Sutton's case. I don't know if I read about
11 it in the past or heard it on the news.

12 THE COURT: Detective Sutton?

13 PROSPECTIVE JUROR NO. 84: I remember his
14 name.

15 THE COURT: Is he a witness in this case?

16 MR. DASKAS: His name will be mentioned.
17 He will not hit the witness stand. It's Randy Sutton, if
18 that's the right person.

19 THE COURT: You know him, personally?

20 PROSPECTIVE JUROR NO. 84: No, just
21 recognize the name.

22 THE COURT: You recognize the victim's
23 names?

24 PROSPECTIVE JUROR NO. 84: Mowen.

25 THE COURT: Where from?

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1 PROSPECTIVE JUROR NO. 84: I remember the
2 case when it first came out. I recognize the last name
3 for that one, as soon as I saw Defendant's name. I
4 recognized that a long time ago.

5 THE COURT: Will that have any effect on
6 your ability to be fair and impartial in this case?

7 PROSPECTIVE JUROR NO. 84: No, sir.

8 THE COURT: Can you follow the Court's
9 instructions on the law?

10 PROSPECTIVE JUROR NO. 84: Yes.

11 THE COURT: Can you be fair and impartial?

12 PROSPECTIVE JUROR NO. 84: I believe I can.

13 THE COURT: You are considered for jury
14 duty in the penalty phase of the case. We are having a
15 trial on the penalty. We will have evidence, and you
16 will find from the State and Defense, and you will decide
17 on the appropriate punishment to impose, based upon the
18 facts and the law.

19 You have four possible punishments.
20 One, is the death penalty. One, is life imprisonment,
21 without parole. One is life imprisonment, with the
22 possibility of parole, or a definite period of time of 50
23 years, with the possibility of parole after 20 years.
24 This applies to each Count.

25 Each of the penalties are doubled

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1 because of the deadly weapon being used. Fifty is really
2 one hundred, and parole eligibility starts at forty
3 years.

4 Would you be able to consider all
5 four forms of punishment?

6 PROSPECTIVE JUROR NO. 84: I prefer not to.

7 THE COURT: What now?

8 PROSPECTIVE JUROR NO. 84: The capital
9 part, I don't know. The death penalty part, that would
10 be kind of a touchy subject in a way.

11 THE COURT: Why?

12 PROSPECTIVE JUROR NO. 84: I feel
13 uncomfortable making that decision.

14 THE COURT: I understand that. Nobody
15 feels comfortable, and most people don't want to, but
16 it's the law. You have to consider it. You never have
17 to impose it. The law never requires you to impose the
18 death penalty, but you can't be opposed to it to the
19 point you can't consider it.

20 The law envisions you will receive
21 all the information about the case, facts of the case,
22 the Defendant's background, and after you listen to the
23 facts of the case, listen to the State and Defense and
24 listen to the law, as I give it to you, to arrive at the
25 appropriate verdict, what you feel is appropriate,

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1 whether that be the death penalty, life in prison with or
2 without parole, or a set term of 50 years, eligibility
3 for parole after 20 years, plus doubling it because of
4 the deadly weapon.

5 The question is, are you morally,
6 religiously opposed to the death penalty, so you could
7 not under any circumstances impose it?

8 PROSPECTIVE JUROR NO. 84: In that case,
9 no.

10 THE COURT: Could you under some
11 circumstances impose a definite term of 50 years with
12 parole after 20, and/or life with or without the
13 possibility of parole?

14 PROSPECTIVE JUROR NO. 84: Yes, sir.

15 THE COURT: You may examine.

16
17 EXAMINATION BY THE STATE

18 BY MR. DASKAS:

19 Q Mr. Blonk, in your questionnaire, number 34
20 question asks your feelings about the death penalty. You
21 circled, a week or so ago, that you are generally in
22 favor of the deadly weapon.

23 Do you recall circling that?

24 A Yes.

25 Q What I hear you saying is something is a

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1 little different. Would you explain it?

2 A I think when it was, I didn't know it was
3 for the penalty phase. I figured once I was given all
4 the exact facts, I could make that decision. If I would
5 be given every exact fact to make that decision, as the
6 Judge clarified, if I were given those, then yes, I
7 could.

8 Q As the Judge also said, a jury already
9 found this man guilty of four Counts of First Degree
10 Murder. Do you appreciate that?

11 A (No audible response).

12 Q We have heard about the presumption of
13 innocence, how the State has to prove the case beyond a
14 reasonable doubt. You understand in this case, that is
15 gone?

16 A Yes.

17 Q Are you comfortable under the facts that a
18 different jury convicted the Defendant? Can you accept
19 that?

20 A To a point. I don't know if I could do it
21 to make it as the death penalty, itself. I would have to
22 know the facts myself and make my own decision and with
23 my own mind find beyond a reasonable doubt in my own mind
24 to proceed on the case.

25 Q Let me put it this way. We will present

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1 some of the facts of the quadruple homicide itself to the
2 jury. You would be instructed you would have to accept
3 the other jury's verdict. Are you more comfortable with
4 that?

5 A If I have been instructed to do so, yes.

6 Q I will stand over here. Let me ask you a
7 few more questions about the death penalty. You
8 understand there are no right or wrong answers here.

9 What we need are people who can
10 consider all the possible punishments. It wouldn't be
11 fair to the Defendant, if someone walked in,
12 automatically voted yes; it wouldn't be fair to us or the
13 victims of the family, if someone walked in, and
14 automatically voted for parole. Do you understand that?

15 A Yes.

16 Q Let's assume you are on the jury, provided
17 with all the facts of the case, bunch of the information
18 about the Defendant from State and Defense, in your mind
19 you feel it warrants the death penalty, can you -- do you
20 feel in your mind you can do that?

21 A If my mind warrants it, yes.

22 Q You are the foreperson of the jury, you
23 have the same vote. The difference is, as foreperson,
24 you have to sign the verdict form that puts this man to
25 death.

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1 If you are the foreperson, and if you
2 believe the State proved this case, could you sign the
3 verdict form?

4 A Yes, I could, if the rest of the jury
5 agreed.

6 Q One final item, as the Judge mentioned,
7 there are four First Degree Murder victims and
8 convictions in this case. You will impose punishment for
9 each murder case. You can impose a different penalty for
10 each murder.

11 Do you understand that?

12 A Will you repeat it?

13 Q Absolutely. Judge mentioned four possible
14 forms of punishment in this case. We have four victims
15 in this case. You don't have to impose the same
16 punishment for each victim. Do you understand that?

17 A Yes.

18 Q If the facts warrant, could you consider
19 different punishments for the different murder victims
20 and conditions?

21 A Yes.

22 MS. JACKSON: I, too, will stand over here.
23 I can sympathize with the Court Reporter.

24 ///

25 //

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EXAMINATION BY THE DEFENSE

BY MS. JACKSON:

Q You indicate you attended UNLV and have some training in criminal justice. How much training do you have?

A Two years, two and a half years.

Q Is that an undergraduate or graduate degree?

A That's undergraduate.

Q This criminal justice degree you have --

A Don't have. I don't have it yet.

Q You are working on it?

A Working on it.

Q How many years of college have you had?
Let me back up a little bit.

A Five years. Okay.

Q The criminal justice study you have engaged in gives you a better understanding about how the process works.

Have you studied courses involving the United States Constitution?

A I believe the last class I took was May '99. So it's possible I did study something on the Constitution.

Q Do you recall any of the information?

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1 A I do not.

2 Q Is there anything about your training, do
3 you remember anything, as you were going through the
4 courses, that made you biased or prejudiced one way or
5 another, for either side?

6 For example, if you were studying
7 criminal justice and you thought, I think defendants in
8 this country have too many rights, anything like that
9 ever formulate as an opinion of yours?

10 A I believe you are not guilty, until you
11 are -- innocent until proven guilty, may be you have
12 rights after being proven guilty -- maybe they have too
13 many rights then.

14 Q That's where we are in this case. You read
15 the synopsis?

16 A Yes.

17 Q We are telling you, even at this juncture,
18 you have to consider four possible forms of punishment.
19 He still has certain rights, thank God, and we will ask
20 you to respect those.

21 Are you saying you can do that?

22 A Yes, I can.

23 Q What rights -- you said a minute ago after
24 they are convicted, they have too many rights. Give me
25 an example what you mean by that.

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1 A Maybe some of the freedoms they have while
2 they are in jail, being able to study, being able to earn
3 an education in there, certain things like that.

4 I might be looking at it totally
5 wrong. Way I see things, taxpayers's money going toward
6 that could be used toward the -- could be used toward the
7 outside world.

8 Q We appreciate your speaking freely, and we
9 respect your opinions. They are yours. You have every
10 right to them. We appreciate your willingness to come in
11 and express them. You will not be criticized for that.

12 "Why should tax dollars be used to
13 keep someone alive, who has been found guilty of a
14 capital crime?" Do you remember writing that?

15 A Yes.

16 Q Right before you write that, you circle you
17 are in favor of the death penalty.

18 Your answer suggests that you feel
19 anyone convicted of murder should be convicted of death.
20 Doesn't that -- isn't that what your answer tends to
21 suggest?

22 A I guess it sounds like that. It was a
23 quick answer. I have had more time to think about it
24 since then. Maybe that's why I am thinking differently.

25 Q Fair enough. You live with a police

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1 officer, and you have a roommate studying criminal
2 justice. Roommate one has a B.A. in criminal justice.
3 Is that the person who is a police
4 officer?

5 A Yes.

6 Q How long has he been a police officer?

7 A Five years, sir.

8 Q Has he been your roommate the entire time?

9 A Four years.

10 Q Are you friends with your roommate?

11 A Friends for nearly six years now.

12 Q He is someone you like?

13 A Very good friend of mine.

14 Q This person puts his life on the line for
15 our safety?

16 A Correct.

17 Q What if you found, Mr. Blonk, after due
18 consideration of all the evidence that comes in,
19 in the case, in your heart, your firm opinion was, this
20 is not a case where death was warranted?

21 What would you say to your roommate
22 when you got home that evening?

23 A I wouldn't have to say anything to him. If
24 he didn't like my decision, that's too bad. I am the one
25 who had to make it, not him.

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1 Q Your roommate, the officer, do you talk
2 about his work with him?

3 A Yes, I do.

4 Q Is he involved on patrol? Do you know what
5 type of area?

6 A I know exactly where he is at.

7 Q He is street level?

8 A He is a field training officer now, back in
9 the Williams area, around F and Jackson, towards the
10 Downtown area.

11 Q Over towards the area of West Las Vegas?

12 A Correct. Just west of the I-15 and the 95,
13 MLK.

14 Q Do you discuss the types of cases he is
15 involved in, arresting suspects?

16 A All the time.

17 Q Does that include a high number of the
18 people involved in the drug trade or world?

19 A Anything he comes upon he thinks I will
20 find interesting, helpful in the future, because I want
21 to be on the police department, he tells me. I have done
22 plenty of ride-alongs with him.

23 Q You aspire to be an officer?

24 A Correct.

25 Q Don't you think that makes you a little

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1 prone to lean towards law enforcement?

2 A I knew that was coming. I am trying very
3 hard to maintain center balance and not lean to either
4 side that way.

5 I know what I am striving for in my
6 life, but I want to know if I get on the jury, I have
7 made the right decision.

8 Q You have put on the questionnaire you were
9 a combat engineer in the Marines.

10 A Heavy equipment operator.

11 Q How long were you in the Marine Corps.?

12 A On active duty, just over two years, and
13 put on the injury retirement list for another three,
14 until I was discharged.

15 Q I have never been in the military. Most
16 people I have met who are Marines are very disciplined
17 and intolerant of people who are unable to control their
18 emotions, things like that.

19 Are you like that.

20 A Yeah, I have to say that.

21 Q Will that interfere with your ability to
22 listen to the evidence in this case?

23 A I don't think so.

24 Q Do you think that will affect your ability
25 to listen to mitigating childhood experiences?

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1 Mitigation, legally, briefly, is
2 anything that would be a reason to give life, in this
3 case, a child who was abused, didn't have enough to eat,
4 was abandoned, anything of have nature.

5 I understand Marines are very
6 straight laced and tough, upright individuals. You think
7 you would be able to give those factors consideration
8 that the law requires you to?

9 A I believe. I am not in the Marine Corps.
10 anymore, and I have become much more civil.

11 MS. JACKSON: Mr. Blonk, thank you, sir.
12 It's a pleasure speaking with you.

13 THE COURT: Pass for cause.

14 MS. JACKSON: Yes, your Honor. Thank you.

15 THE COURT: Report back tomorrow at 10:00.
16 Thank you. We will let you know.

17 It is the Defense's turn for
18 peremptory challenge.

19 MS. JACKSON: We have determined to excuse
20 Juror 0025, Janet Robinson. She is in position 7, I
21 believe, your Honor.

22 THE COURT: You want to take a lunch break
23 now?

24 ///

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MR. DASKAS: I think so.

THE COURT: Come back at 1:15.

* * * * *

(END OF MORNING

PROCEEDINGS, 12:11 A.M.)

ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF
PROCEEDINGS.



KRISTINE MOORE, CCR 273

1 **PROSPECTIVE JUROR:** No.
2 **THE COURT:** You could not?
3 **PROSPECTIVE JUROR:** No.
4 **THE COURT:** Under any circumstances?
5 **PROSPECTIVE JUROR:** No.
6 **THE COURT:** Counsel, you want to talk?
7 **MS. JACKSON:** Just a wee bit, if I may,
8 Judge.

9 **THE COURT:** Go on.

10

11 EXAMINATION BY THE DEFENSE

12 **BY MS. JACKSON:**

13 Q Hi, Miss Jimerson.

14 A Hello.

15 Q I know you're here, we're all looking at
16 you, you don't work here; we do. Just try to relax,
17 and there are no right or wrong answers, this really
18 is about how you feel, and all we need to know is
19 what you did on your questionnaire. You said that
20 if your beliefs are such that no matter what, that
21 you would always vote against the death penalty
22 which means that you cannot imagine no situation
23 that you could ever, ever, ever consider the death
24 penalty, but think about it, think about it.
25 Timothy McVeigh, he blew up all of those people in

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1 Oklahoma, all of those babies, all of those innocent
2 people.

3 If you had been on that jury, wouldn't you
4 have voted along with those people to kill him?

5 A I don't know.

6 **MS. JACKSON:** I think that's my best shot,
7 your Honor.

8 **BY MS. JACKSON:**

9 Q You couldn't consider it?

10 **THE COURT:** You're excused. You can go.

11 **MS. JACKSON:** If she couldn't consider it
12 with Timmy, that's my best shot.

13 Thank you for coming in, ma'am.

14 **MR. STANTON:** Your Honor, for the record,
15 I believe it was the State's motion to excuse that
16 one.

17 **THE COURT:** Yes, it was.

18 Bring in the next one, Ana Lopez.

19 Issue an order to show cause.

20 **MR. WHIPPLE:** Judge, the next one, one of
21 the individuals -- Mr. Stam is one of those
22 individuals who was talking out in the hall about
23 the case. I don't know if there should be some
24 separate precautions or how this Court wants to
25 address it, but I was bringing it to your attention

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1 that the one juror that spoke of people talking --
2 this was one of the individuals that was talking
3 about the case.

4 **THE COURT:** I thought he was one of the
5 ones that was doing the leading of the talking. He
6 said he was one of the ones who had heard about the
7 case.

8 **MR. WHIPPLE:** That's correct.

9 **THE COURT:** We'll bring him in and see.

10

11 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 164

12 **THE COURT:** Mr. Stam?

13 **PROSPECTIVE JUROR 164:** Yes.

14 **THE COURT:** A couple of things. Now, you
15 said that -- I understand that you had heard
16 something about this case?

17 **PROSPECTIVE JUROR:** That I had heard
18 something about it?

19 **THE COURT:** Yes.

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** What did you hear about this
22 case?

23 **PROSPECTIVE JUROR:** Well, my chief was one
24 of the homicide detectives on this case when he was
25 on the Metro Police Department, and I can't remember

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1 an exact date, but I had saw something on the news
2 about it, and I had asked him because I knew he was
3 on homicide -- asked him about it, and he kind of
4 summarized a little bit about it.

5 **THE COURT:** Okay.

6 I understand there were some people out
7 there who were talking about this case?

8 **PROSPECTIVE JUROR:** Yeah. One of -- I was
9 sitting with Larry Parry, I guess is his last
10 name -- one of the ladies across -- I don't know her
11 name -- I know her badge number -- she was talking
12 about what she saw on the news the night before or
13 something like that or the day of when we were
14 sitting there, and she kind of summarized what she
15 saw on the news, and I turned to Larry, and I told
16 him that she need to keep her fat mouth shut or
17 something to that effect, because we don't have this
18 kind of time to just sit here for nothing,
19 especially if we all get dismissed because of this.
20 Somebody else is going to have to do this all over
21 again. So, I think we got up and moved or something
22 like that.

23 **THE COURT:** Okay.

24 Now, I'm going to go down here to question
25 No. 30, and it states, "Donte Johnson is an

1 African-American male. Is there anything about that
2 fact that would affect your ability to be fair and
3 impartial in this case?" and you said, "Yes.
4 Statistically, more African-American males commit
5 hate crimes than any other race."

6 Where did you get that from?

7 **PROSPECTIVE JUROR:** Well, where I'm from,
8 more -- the amount of African-American males in the
9 town where I'm from, statistically in that area were
10 more hate crimes.

11 **THE COURT:** Where are you from?

12 **PROSPECTIVE JUROR:** Marcola, Oregon, just
13 outside of Eugene/Springfield area.

14 **THE COURT:** They don't have very many
15 blacks in Oregon, one of the smallest numbers in the
16 country. I guess all of the ones that are there --

17 **PROSPECTIVE JUROR:** From all the --

18 **THE COURT:** I guess all of the ones that
19 are there --

20 **PROSPECTIVE JUROR:** -- statistics that
21 I've read up on, that's what it came to.

22 **THE COURT:** Would you be interested to
23 know that African-Americans are the number one group
24 who are the victims of hate crimes in this country?

25 **PROSPECTIVE JUROR:** Yes.

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1 **THE COURT:** It dwarfs everybody else --
2 Jews, Asians, Hispanics, so your suggestion is kind
3 of wrong there. They are the victims. Not only
4 that -- hold on a minute.

5 On Question No. 30 -- also, do you know
6 what the African-American population is in Oregon?

7 **PROSPECTIVE JUROR:** No, I don't know.

8 **THE COURT:** One point nine percent, not
9 even as many as Arizona. That's just an aside.

10 The other question to follow up on that
11 says, "If the evidence shows that the victims in
12 this case are of a different racial background than
13 Donte Johnson, would that affect your ability to be
14 fair and impartial?" You go, "Yes. Race plays a
15 very big part in most hate crimes."

16 How do you know this is a hate crime?

17 **PROSPECTIVE JUROR:** Well, from the
18 information that my chief gave me, it was, more or
19 less -- I kind of gathered that it was a hate crime.

20 **THE COURT:** Of course, I don't know that.
21 I haven't heard the facts of the case myself, so I
22 don't know.

23 Approach the bench, Counsel.

24 (Sidebar conference outside the presence
25 of the court reporter.)

1 **THE COURT:** Mr. Stam, since you have
2 information that you talked to the police officer
3 and you have information a lot of other people don't
4 have, we're going to excuse you, sir.

5 **PROSPECTIVE JUROR:** Okay.

6 **THE COURT:** Thank you very much.

7 **THE CLERK:** Carlos Villareal is not here.

8 **THE COURT:** I'm going to issue an order to
9 show cause.

10

11 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 166

12 **THE COURT:** Miyoshi.

13 **PROSPECTIVE JUROR:** Me-yosh-shi.

14 **THE COURT:** Honolulu, Hawaii.

15 How long have you been in Las Vegas?

16 **PROSPECTIVE JUROR:** About a year and a
17 half.

18 **THE COURT:** So, you have a master's degree
19 from the University of Hawaii?

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** And a bachelor's from Hawaii
22 too?

23 **PROSPECTIVE JUROR:** Yes.

24 **THE COURT:** They're both in speech?

25 **PROSPECTIVE JUROR:** Yes.

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1 **THE COURT:** What kind of work do you do?
2 **PROSPECTIVE JUROR:** I work for a church.
3 **THE COURT:** Church.
4 You give speech lessens at the church?
5 What do you do at the church?
6 **PROSPECTIVE JUROR:** I'm a secretary.
7 **THE COURT:** Secretary.
8 Have you ever worked in the schools as a
9 speech pathologist or anything?
10 **PROSPECTIVE JUROR:** No.
11 **THE COURT:** Why didn't you go into that
12 field? What were you planning on doing?
13 **PROSPECTIVE JUROR:** Speech communications.
14 **THE COURT:** What were you going to do with
15 it?
16 **PROSPECTIVE JUROR:** Eventually, I wanted
17 to be a lecturer in the university teaching speech
18 eventually as a lecturer.
19 **THE COURT:** Are you planning on getting
20 your Ph.D.?
21 **PROSPECTIVE JUROR:** No, not at this time.
22 **THE COURT:** Not at this time.
23 Your husband -- what kind of work does he
24 do?
25 **PROSPECTIVE JUROR:** He's a minister.

1 **THE COURT:** Is that the church that you're
2 the secretary in?

3 **PROSPECTIVE JUROR:** Yes.

4 **THE COURT:** What's the name of the church?

5 **PROSPECTIVE JUROR:** New Hope, Las Vegas.

6 **THE COURT:** What kind of church is it?

7 **PROSPECTIVE JUROR:** It's a Four Square
8 gospel church, Christian.

9 **THE COURT:** I've heard that name, "Four
10 Square."

11 What does that mean?

12 **PROSPECTIVE JUROR:** It's a denomination.

13 **THE COURT:** That's the denomination, Four
14 Square?

15 Where is it headquartered?

16 **PROSPECTIVE JUROR:** I think it's in
17 California.

18 **THE COURT:** Very good.

19 Your mother-in-law is a court clerk in the
20 courts there in Hawaii?

21 **PROSPECTIVE JUROR:** Yes. She just
22 retired.

23 **THE COURT:** Tell me this here, ma'am: You
24 made some interesting statements here on your
25 questionnaire.

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1 How do you feel about lawyers? I know you
2 said you were discouraged that some people with
3 expensive lawyers and high status folks don't seem
4 to get their just desserts in the criminal justice
5 system; is that right?

6 **PROSPECTIVE JUROR:** Yeah, just by watching
7 certain cases.

8 **THE COURT:** Watching TV like O.J. Simpson?

9 **PROSPECTIVE JUROR:** Yeah, like that that
10 comes to mind.

11 **THE COURT:** And some of these other cases.
12 Did you watch that Robert Blake case?

13 **PROSPECTIVE JUROR:** Very little.

14 **THE COURT:** What do you think of lawyers?

15 **PROSPECTIVE JUROR:** I don't know anyone
16 personally who is a lawyer, but --

17 **THE COURT:** Your general opinion.

18 **PROSPECTIVE JUROR:** General opinion --
19 let's see.

20 **THE COURT:** These lawyers want to know
21 what you think about lawyers.

22 **PROSPECTIVE JUROR:** Well, just being part
23 of this case, I just see that they're hard working.
24 I think they have to do a lot of research on the
25 case and put a lot of time and energy, but I respect

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1 them.

2 **THE COURT:** You're not going to be --
3 dislike lawyers so much until you don't want to hear
4 or listen to anything they have to say, are you?

5 **PROSPECTIVE JUROR:** No.

6 **THE COURT:** Now, here, No. 30 in reference
7 to Mr. Johnson being an African-American male, you
8 said, "There seems to be a lot of African-American
9 males getting involved in criminal activity. It
10 would be difficult for me to be fair and impartial.
11 I tend to group these people as oppressed,
12 uneducated, and turn to crime as their only way to
13 live." And of course, then you say -- it talks
14 about in 31 when they talk about the victims being
15 white, you said, "But as a woman," I am -- "I feel
16 compassion for the families of these four victims."

17 **PROSPECTIVE JUROR:** Um-hmm.

18 **THE COURT:** While you're listening to this
19 case, are you going to be thinking about the race of
20 these people and all of that stuff and make your
21 decision based on that?

22 **PROSPECTIVE JUROR:** That was my initial
23 response about race as the question came up, but I
24 guess I would be open, you know, to hearing about
25 the case.

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1 **THE COURT:** Can you listen to the facts
2 and the law and make a decision solely on the facts
3 and the law?

4 **PROSPECTIVE JUROR:** I'll try to.

5 **THE COURT:** Well, what do you think
6 about -- you work at a church, your husband is a
7 pastor of a church.

8 **PROSPECTIVE JUROR:** Um-hmm.

9 **THE COURT:** What do you think about the
10 death penalty?

11 **PROSPECTIVE JUROR:** I've been thinking
12 about that a lot. I think it depends on a
13 case-by-case situation.

14 **THE COURT:** So, your religion is not
15 opposed to the imposition of the death penalty?

16 **PROSPECTIVE JUROR:** No.

17 **THE COURT:** Back on the narrative portion,
18 you say, "I would like to be excused from this case
19 because of three factors: One, I would not be a
20 fair and impartial juror because of my stance on the
21 death penalty."

22 What does that mean?

23 **PROSPECTIVE JUROR:** I feel strongly for
24 the death penalty, especially in light of -- if
25 someone has been already tried for murder, so I feel

1 like that's what I'll come in with that -- with that
2 opinion.

3 **THE COURT:** You say, "I have a
4 two-year-old child at home that I have to take care
5 of, and that I have no other means of child care
6 available."

7 **PROSPECTIVE JUROR:** I don't have any
8 family here, so it's pretty much myself and my
9 husband.

10 **THE COURT:** Counsel?

11 **MR. DASKAS:** May I ask some questions,
12 Judge?

13 **THE COURT:** Yes.

14

15 EXAMINATION BY THE STATE

16 **BY MR. DASKAS:**

17 Q Let me address, first, your child care
18 issue.

19 You obviously work during the day
20 normally?

21 A And he's with me.

22 Q You take him to work?

23 A Yeah. He's at the office with me.

24 Q Your husband works, as you said, at the
25 same church. He's a pastor there?

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1 A Yes.

2 Q Is it possible for your husband to take
3 your son to work if you're selected as a juror in
4 this case just for the next week or so?

5 A It's difficult, because he meets with
6 people outside of the office. He has counseling
7 sessions, and it's hard to bring a two-year-old with
8 him.

9 Q I understand. Believe me, I understand.

10 A Yes.

11 Q Is it impossible or is it just difficult
12 for you to come up with some child care solutions?

13 A Very difficult. Right now, we're just --
14 he's not working, really, just kind of watching him.
15 It's hard on him.

16 Q Let me just move on for a moment to
17 another issue, and that is the issue of punishment
18 in this case.

19 Without putting words in your mouth, what
20 I hear you saying is now knowing that this man has
21 been convicted of four murders, you would lean
22 toward imposition of the death penalty?

23 A Yes.

24 Q Wouldn't you want to know everything about
25 the case first?

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1 A I weighed that in my mind, and I
2 thought -- I guess in the questionnaire there are
3 other options, and one of them said life with the
4 possibility of parole.

5 **THE COURT:** Mr. Daskas, I'm just going to
6 stop here. I'm looking at this questionnaire, and
7 it appears -- not to mention the kid that she has
8 that's only two years old, but in Question No. 37,
9 it says, "Are you open to considering all four forms
10 of punishment in a capital case depending on the
11 evidence presented at the trial?" and she said, "No.
12 I would not consider any possibility of parole if
13 someone is guilty of first-degree murder. The death
14 penalty should be imposed." And then it says, "In
15 reaching a verdict in the penalty phase, you must
16 consider the defendant's background, that is
17 mitigating circumstances," and she goes, "Not at
18 all."

19 It appears to me she has her mind made up
20 and that she can't follow the law, so the Court is
21 going to excuse her.

22 You're excused, ma'am.

23 **MR. STANTON:** Your Honor, we had a juror
24 0165, a Carlos Villareal --

25 **THE COURT:** We issued an order to show

1 cause for him.

2 **MR. STANTON:** He's just absent with no
3 explanations?

4 **THE COURT:** Right. I thought you heard
5 me. I'm sorry.

6 **THE CLERK:** He had faxed in a note from
7 the doctor's office that just said he's off work.

8 **THE COURT:** He didn't say anything else.
9 Who is next, Miss Kirk?

10

11 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 199

12 **THE COURT:** Miss Kirk, have you heard
13 anything about this case?

14 **PROSPECTIVE JUROR 199:** No. I didn't move
15 here until 1998, so I'm not very familiar with it.

16 **THE COURT:** Where did you move from?

17 **PROSPECTIVE JUROR:** Des Moines, Iowa.

18 **THE COURT:** And you have -- what about --
19 you have a four-month-old?

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** And a four-year-old?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** And a seven-year-old and a
24 12-year-old?

25 **PROSPECTIVE JUROR:** Yes.

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1 **THE COURT:** You don't work, do you?
2 **PROSPECTIVE JUROR:** Yes, I do.
3 **THE COURT:** Who keeps these kids?
4 **PROSPECTIVE JUROR:** The schools and the
5 preschool and then a daycare center out of the home.
6 **THE COURT:** So, a daycare center where?
7 **PROSPECTIVE JUROR:** I have a licensed lady
8 that does it out of her home that lives close to
9 where I live.
10 **THE COURT:** All right.
11 Do you go to church?
12 **PROSPECTIVE JUROR:** Yes.
13 **THE COURT:** What church do you go to?
14 **PROSPECTIVE JUROR:** Mormon, Latter Day
15 Saint.
16 **THE COURT:** You're from Des Moines, Iowa?
17 **PROSPECTIVE JUROR:** Yes.
18 **THE COURT:** What kind of work does your
19 husband do?
20 **PROSPECTIVE JUROR:** He works for the City.
21 **THE COURT:** Do you know what he does for
22 the City?
23 **PROSPECTIVE JUROR:** Yeah. He's in the
24 Public Works department, inspector.
25 **THE COURT:** You served on a jury before;

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1 is that right?

2 **PROSPECTIVE JUROR:** Yes.

3 **THE COURT:** When was that?

4 **PROSPECTIVE JUROR:** I believe it was 2003.

5 **THE COURT:** That was here in Las Vegas?

6 **PROSPECTIVE JUROR:** Yes.

7 **THE COURT:** And was it an illegal alien
8 case where the person came into the country after
9 having been deported?

10 **PROSPECTIVE JUROR:** Yes.

11 **THE COURT:** Were you the foreman of that
12 jury?

13 **PROSPECTIVE JUROR:** No.

14 **THE COURT:** Now, back to No. 30 here --
15 I'm trying to skip over stuff. You said, "I was
16 brought up in an all white town in the Midwest." It
17 seems like we had three people from Iowa, and they
18 all said that -- "and I have formed many opinions
19 about blacks, especially males. These opinions tend
20 to be negative."

21 What are these opinions?

22 **PROSPECTIVE JUROR:** Well, growing up in
23 the Midwest, there was none in my town, and it
24 seemed like what I saw was either on the television
25 or on the news at night. It seemed in Des Moines

1 that it seemed they were the ones that were
2 committing the violent crimes and the rapes and the
3 murders, and I formed a stereotype which, being out
4 here, I've, of course, had to adapt, and I know a
5 lot of nice people that are colored, obviously, but
6 it seems like what I was brought up around there, it
7 was a negative.

8 **THE COURT:** And you think that would
9 affect your ability to be fair in this case? I
10 guess it does, because in 31, you said, "If the
11 victims were white, I would be pushing for the death
12 penalty."

13 **PROSPECTIVE JUROR:** Honestly, though, I
14 would be pushing for it any color.

15 **THE COURT:** I know, but I'm sure these
16 lawyers are not going to want you on that jury with
17 that kind of attitude. They're going to think you
18 can't put it out of your mind.

19 Also, you said, "I believe in an eye for
20 an eye. If you kill someone, you deserve to die."
21 Of course, that's not our law.

22 I'm going to excuse you, ma'am.

23 **PROSPECTIVE JUROR:** Okay.

24 **THE COURT:** Thank you.

25 Gee, I thought Iowa was a nice state. I'm

1 not going there.

2

3 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 203

4 **THE COURT:** Mr. Summers, you're 20 years
5 old?

6 **PROSPECTIVE JUROR 203:** Yes, sir.

7 **THE COURT:** What do you do?

8 **PROSPECTIVE JUROR:** I'm a truck driver.

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

10 **PROSPECTIVE JUROR:** RJB equipment.

11 **THE COURT:** Do you have a roommate?

12 **PROSPECTIVE JUROR:** Yeah.

13 **THE COURT:** Is that a roommate or is it
14 more than just a roommate?

15 **PROSPECTIVE JUROR:** It's my
16 brother-in-law. It's a former brother-in-law or
17 former roommate.

18 **THE COURT:** And he's in college?

19 **PROSPECTIVE JUROR:** No.

20 **THE COURT:** I thought you said he was
21 going to school to be a teacher.

22 **PROSPECTIVE JUROR:** What's that? No,
23 that's another roommate. That's my girlfriend.

24 **THE COURT:** How many roommates do you
25 have?

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1 **PROSPECTIVE JUROR:** Right now, I have two.

2 **THE COURT:** You have your girlfriend and
3 then another friend?

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** Your girlfriend, is she going
6 to UNLV?

7 **PROSPECTIVE JUROR:** Yes.

8 **THE COURT:** And you've never been on a
9 jury before.

10 Have you or anyone in your family ever
11 been charged with a crime?

12 **PROSPECTIVE JUROR:** My brother-in-law,
13 that's it.

14 **THE COURT:** What was he charged with?

15 **PROSPECTIVE JUROR:** I'm not quite sure. I
16 think, like, stealing cars, grand theft auto or
17 something like that.

18 **THE COURT:** Now, you've been in your own
19 place for about a year?

20 **PROSPECTIVE JUROR:** A year and a half.

21 **THE COURT:** What kind of work does your
22 mom do?

23 **PROSPECTIVE JUROR:** She does slot audit.
24 She works for a casino.

25 **THE COURT:** What about your dad?

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1 **PROSPECTIVE JUROR:** Truck driver.
2 **THE COURT:** Okay.
3 He got you into the business?
4 **PROSPECTIVE JUROR:** No.
5 **THE COURT:** You just decided to do it?
6 **PROSPECTIVE JUROR:** I got into it by bad
7 luck or something.
8 **THE COURT:** Okay.
9 Now, you understand that if you're picked
10 to serve on this jury, you will have to decide the
11 punishment for the defendant.
12 Do you understand that?
13 **PROSPECTIVE JUROR:** Yes, sir.
14 **THE COURT:** He's already been convicted of
15 four counts of first-degree murder, so your job,
16 along with your fellow jurors, would be to decide
17 the punishment.
18 Now, you will have four possible
19 punishments to choose from. One is the death
20 penalty, one is life in prison without the
21 possibility of parole, one is life in prison with
22 the possibility of parole and one is a definite term
23 of 50 years with the possibility of parole after 20
24 years, and that's doubled to a hundred years because
25 a deadly weapon was used.

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1 Do you understand that?

2 **PROSPECTIVE JUROR:** I understand that.

3 **THE COURT:** Would you be able to consider
4 all four forms of punishment?

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** And what that means is you
7 would be able to look at them, look at the facts of
8 the case, the background of the people involved,
9 listen to the law and pick the appropriate one to
10 impose.

11 Do you think you can do that?

12 **PROSPECTIVE JUROR:** Yes.

13 **THE COURT:** You're not opposed to the
14 death penalty, are you?

15 **PROSPECTIVE JUROR:** No.

16 **THE COURT:** You could give someone a
17 hundred years in prison or life in prison with the
18 possibility of parole or life in prison without the
19 possibility of parole if the facts and circumstances
20 warranted?

21 **PROSPECTIVE JUROR:** Definitely.

22 **THE COURT:** Is there one of these that you
23 can't give?

24 **PROSPECTIVE JUROR:** What's that?

25 **THE COURT:** Is there one of these

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1 sentences that you would not be in a position to
2 give or don't feel that you can impose?

3 **PROSPECTIVE JUROR:** No.

4 **THE COURT:** So, you're open to all of
5 them?

6 **PROSPECTIVE JUROR:** I'm open to all of
7 them.

8 **THE COURT:** What high school did you go
9 to?

10 **PROSPECTIVE JUROR:** Western High School.

11 **THE COURT:** Western.

12 You graduated when?

13 **PROSPECTIVE JUROR:** '02.

14 **THE COURT:** Now, that high school --
15 that's the high school I went to -- Warriors.

16 Now, that high school now is like
17 75 percent minorities?

18 **PROSPECTIVE JUROR:** I believe so.

19 **THE COURT:** Do you have any problems with
20 the Hispanics or the black students over there?

21 **PROSPECTIVE JUROR:** No.

22 **THE COURT:** State.

23 **MR. STANTON:** Thank you, your Honor.

24 /////

25 /////

1 EXAMINATION BY THE STATE

2 **BY MR. STANTON:**

3 Q Good afternoon, Mr. Summers.

4 A Good morning or afternoon.

5 Q I appreciate your patience today. I have
6 a couple of questions regarding the questionnaire
7 that you filled out approximately a week ago.

8 As you understand here, this jury service
9 involves selecting the punishment, not guilt or
10 innocence; that a prior jury has already found the
11 defendant, as the Judge said, guilty of four counts
12 of first-degree murder.

13 Knowing that you would have to come in
14 here selected as a juror in this case and decide the
15 punishment and not guilt or innocence, is that
16 something that you're comfortable with, that you
17 think you can do?

18 A I believe so.

19 Q You understand, obviously, that the death
20 penalty is an appropriate punishment in the
21 first-degree murder under certain circumstances.

22 You're 20 years of age.

23 Is that something that you think you can
24 do based upon your life experiences?

25 A I believe so, yes.

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1 Q In this case, there will be evidence that
2 is presented or rather graphic, very violent images
3 dealing with the underlying quadruple homicide.

4 Is that something about your character
5 that you think you can look at and not react
6 necessarily emotionally but understand its
7 evidentiary value for purposes of your deliberation
8 in this case?

9 Do you think you can do that?

10 A I watch Forensic Files.

11 Q Do you think you're comfortable with that?

12 A Yes.

13 Q The family member that was -- I think it
14 was grand theft auto is what you said they were
15 charged with, was that here in Las Vegas?

16 A I'm actually not quite sure. I don't know
17 much about it.

18 Q Would it be fair to say, then, that you're
19 not close to that relative?

20 A It's my brother-in-law -- I guess as close
21 as brother-in-law's be.

22 Q Do you believe that the person was treated
23 fairly?

24 A He told me that he doesn't want to go
25 back, but he thinks that he deserved what he got and

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1 he learned his lesson.

2 Q There is nothing that the State or the
3 defense would have to worry about your perspective
4 based upon that incident in this case, is there?

5 A No.

6 Q You indicated relative to the death
7 penalty that you would consider it under certain
8 circumstances.

9 Is that a fair statement?

10 A Yes.

11 Q And the facts that you would want to hear
12 deal with the underlying murder and some things
13 about the defendant. Would that be fair too?

14 A Yes.

15 Q Do you always feel that the death penalty
16 is appropriate if someone committed first-degree
17 murder?

18 A No.

19 Q How about if they committed more than one
20 first-degree murder?

21 A It completely depends on the person, how
22 they were raised, if they were under the influence
23 of drugs. There's lots of things -- if they're
24 crazy, you know.

25 Q In this case, four people approximately

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1 your age were killed, and your job as a juror in
2 this case is to determine the just punishment as it
3 relates to each one of those victims. Now, that
4 verdict about what's just may differ as it relates
5 to each different victim in this case.

6 Do you understand that concept and are you
7 comfortable?

8 A Yes.

9 MR. STANTON: No further questions, your
10 Honor.

11 Pass the prospective juror for cause.

12 THE COURT: Defense.

13 MR. WHIPPLE: Thank you, your Honor.

14

15 EXAMINATION BY THE DEFENSE

16 BY MR. WHIPPLE:

17 Q Mr. Summers, for the time of the evening,
18 thank you for being here. I want to ask you some
19 questions about high school. It wasn't long ago you
20 were in high school.

21 Was there a certain group that you hung
22 out with in your high school?

23 A Motor heads, just the auto shop kids,
24 mainly.

25 Q If you were to grab -- how many of those

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1 motor heads would you consider being close friends,
2 two, three, four?

3 A Yeah, something around there -- ten --
4 something around there.

5 Q Can you think of, like, a handful of your
6 closest friends?

7 A Yeah.

8 Q Can you kind of envision them?

9 Were any of those individuals, say, four
10 or five -- were any of them African-American by
11 chance?

12 A No, they were not.

13 Q Were any of them other mixed race?

14 A I had lots of friends that were Mexicans
15 or -- I didn't have many black friends. I have
16 nothing against them. I was acquaintances with
17 them, but outside of school, we did not hang out or
18 anything.

19 Q I understand.

20 It's been a while since I've been in high
21 school, but there's kind of little cliques in high
22 school, so you're kind of the group that you hung
23 out with were the people that were kind of
24 interested in motor cars and trucks and things like
25 that?

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1 A Yeah.

2 Q Were there any African-Americans in that
3 group?

4 A There's not many that take auto class, you
5 know. It's mainly a bunch of white kids, mainly,
6 you know. Every once in a while Hispanics, but I
7 went to Western High School, and that's mainly
8 Mexicans and blacks, so, you know -- but that's not
9 a class that they normally took.

10 Q Okay. I understand that.

11 Did you have any friends or individuals
12 that are African-American that you considered
13 friends?

14 A Yes. Not in high school but elementary,
15 junior high. I work with some now.

16 Q It's a non-issue?

17 A Yes.

18 Q Those are not easy questions, but I
19 appreciate your honesty. They're questions that I
20 need to ask.

21 When you got this jury questionnaire, what
22 kind of thoughts did you have? What kind of came to
23 mind as you read through this and realized, oh, my
24 gosh, I may be in a position where I have to
25 determine the life and death and the future of

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1 another human being? What are the thoughts that
2 came to your mind?

3 A Really the day that I filled this out, I
4 was just, like, "I just want to go home. I'll fill
5 it out, get it over with." To think that you would
6 pick me -- I just - I don't know, I guess not much
7 going through my mind.

8 Q What about now? Here we all are talking
9 about this, you could literally be asked whether a
10 person is going to live or die.

11 A That's something pretty major, but I don't
12 know; I guess it just depends on the case itself,
13 you know, and I don't have anything against either
14 of them. It's part of our jury system.

15 Q You're absolutely right.

16 Do you have any nervousness or
17 trepidation?

18 A I think if someone wasn't nervous on that
19 question, I think they shouldn't be locked up
20 anyway, you know. You should definitely be nervous
21 about that. That's someone's life.

22 Q You're nervous about that?

23 A Oh, yes, definitely. I think anyone
24 should be.

25 Q But why do you think anybody should be?

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1 A Because you're playing God or -- I guess
2 not that, that's not the word, but you're deciding
3 someone's fate.

4 Q Serious stuff?

5 A Yes, definitely. It's not something that
6 should go lightly. There's got to be a lot of
7 thought in that.

8 Q Do you think you're a person that can do
9 that?

10 A Yes.

11 Q Why?

12 A I'm not sure why. I guess I analyze a
13 lot.

14 Q Why not? If everybody can do it, do you
15 feel like you can do it?

16 A I guess not everyone can do it, but you
17 know, I believe that I can.

18 Q Okay. I appreciate that.

19 I want to ask you your views on the death
20 penalty.

21 Do you have an opinion with regard to the
22 death penalty?

23 A Once again, I got to say it goes with the
24 case. I know the jail systems are overcrowded with
25 a lot of them that should have had the death

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1 penalty, but sitting here, it's kind of hard to say,

2 "Hey, you should have had the death penalty."

3 Q Do you think in general, then, the death
4 penalty should have been used more often?

5 A You know what, I thought that before, but
6 now sitting here and, you know, judging this man's
7 fate, it just really depends on the case itself.

8 Q Do you think, "Hey, we should clean out
9 the jails and get rid of some people"?

10 A That was my thought before last Wednesday.
11 Definitely like -- my views changed a lot since I've
12 been here seeing, you know, because there was a
13 jury, and if the jury says, you know, they should
14 die, they obviously -- they didn't come in and say,
15 "Hey, he should live or die," you know; they put
16 thought into it just as anyone else would.

17 Q I want to go back. There's two questions
18 that I want to ask about your statement there.

19 You said you changed from a week ago. Did
20 you just change since you've come in here and
21 recognize the seriousness of it or did you just
22 change over the last few days when you thought about
23 it?

24 A Wednesday, you know, writing the
25 questionnaire I thought and was thinking this is in

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1 my hands. It's a big deal. When you're sitting at
2 home watching TV and you say, "Hey, that guy should
3 die, they're going to throw them in the jail and
4 it's going to be overcrowded," but now you're
5 sitting here and you got to look at the case, and
6 it's easier when you're sitting at home saying,
7 "Hey" --

8 Q Monday morning quarterback is always a lot
9 easier, isn't it?

10 A Definitely.

11 Q The other thing you commented on is hey
12 this jury they have to make this decision. This is
13 a unique situation. You're not going to see any
14 movies that are similar to this. This is not CSI;
15 this is not -- in my era, it's L.A. Law. It's not
16 about a trial.

17 A Yeah.

18 Q Mr. Johnson is about your age, and when he
19 was younger than you, he committed -- he's a
20 cold-blooded killer. He killed four people,
21 premeditated -- go ahead and turn it off. He killed
22 four people about your age, premeditated,
23 deliberate, bound them by hands and feet, face down
24 on the carpet, and one by one shot them in the back
25 of the head. Four people died.

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1 Can you consider a life sentence knowing
2 that information?

3 A I could.

4 Q Why?

5 A Like I said before, you have to --
6 depending on what had happened before -- was he on
7 drugs? Like I said, it really does depend on the
8 trial itself.

9 Q I appreciate it.

10 Do you think your youth would be an
11 advantage or disadvantage or a non-issue in a
12 situation like this?

13 A I think for my age, I'm very mature, but I
14 don't think there's any disadvantage or advantage;
15 it's just depending pretty much on the person
16 itself.

17 Q How about the fact that all of the victims
18 and Mr. Johnson himself, they're all about your age?

19 A In my opinion, that doesn't matter. It's
20 still a person. It's a human being no matter what
21 age. If they're 65 or five years old, that's still
22 a person, you know. It don't matter what age.

23 Q What if you learned that drugs are
24 involved, would that change your opinion as to
25 evaluate things?

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1 A It's all depending on the trial, but in
2 some circumstances, yes.

3 Q In what way?

4 A Let's say someone went and smoked some
5 crack, they were completely out of it, no control
6 over their body, and they went and killed someone
7 there. They weren't mentally stable.

8 Q Do you think that's a reason to choose
9 life or is that a reason to choose death?

10 A In something like that, I would probably
11 do life, you know, but it depends with the rest of
12 everything else also.

13 Q In high school, I'm sure there's groups of
14 individuals that were known to be drug users; would
15 that be fair to say?

16 A Yes.

17 Q I would say that your group is probably
18 not in that category.

19 A Actually, a lot of the mechanics and stuff
20 are pot heads or tweakers.

21 Q So, it does exist in your group?

22 A It does exist. I think it exists in every
23 group.

24 **THE COURT:** What's a "tweaker"?

25 **PROSPECTIVE JUROR:** Just someone who does

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1 speed.

2 **THE COURT:** Oh, okay.

3 **BY MR. WHIPPLE:**

4 Q You didn't have any prejudgments towards
5 those individuals?

6 A No. I hung out with them. I stayed -- a
7 lot of my friends were pot heads, but tweakers I
8 tried to stay clear of. It's a bad thing.

9 Q You'll hear at some point if you're chosen
10 to be on this jury that the death penalty is never
11 required, and in fact, there are reasons to choose
12 life over death, and those are what you'll hear
13 us -- myself, Miss Jackson talk a lot about
14 mitigation or mitigators, and those are any reason
15 why one would choose life over death.

16 You were asked specific questions about
17 that, and one of them was -- this is Nevada law.
18 Nevada law insist that individuals who are chosen to
19 do this type of work can consider what we refer to
20 as to "mitigation." In this question, it says, "You
21 must consider the defendant's background, such as
22 his health, mental status, age, childhood,
23 education," and then it asks, "Do you feel you would
24 consider those types of factors?" and you struck
25 "Somewhat." There was four different choices.

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1 There was "Very much," "Not at all," "Somewhat,"
2 "Not sure."

3 Has that change over the last week as
4 well?

5 A No. You've got to consider everything.
6 It's, like I said, someone's life.

7 Q Why didn't you strike "Very much"?

8 A Why did I not put "Very much"?

9 Q Yes.

10 A Because -- I don't know, it's -- you still
11 did it. If you were out there, you still did it,
12 you know.

13 Q I do. I appreciate it. That's well
14 answered, actually.

15 Miss Jackson and I will be offering
16 information that we consider to be mitigating type
17 information. There's out there what's known as an
18 "abuse excuse."

19 Have you ever heard that, the "abuse
20 excuse," where you try to blame your problems --

21 A Your problems on what you did?

22 Q -- on your bad parents or something like
23 that?

24 A Yeah.

25 Q Have you ever heard that?

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1 A I've heard it many times.

2 Q What do you think about that?

3 A Once again, it depends on the trial, but a
4 lot of times you're just, like, how can you blame
5 that? I came from not the greatest upbringing,
6 single parent, you know, and I turned out all right,
7 you know. I'm probably not the greatest person in
8 the world, but I did turn out good.

9 Q Now, Miss Jackson and I, we are not
10 here -- there's no excuse, there's no justification.
11 It was a heinous, terrible act. We would never say
12 anything other than that, but we believe that there
13 is some of this information that you could use in
14 order to make a determination as to the future of
15 Mr. Johnson.

16 Would you be willing to listen to that
17 type of information?

18 A Yes, definitely.

19 Q Why?

20 A I think that sitting on a jury would be
21 very interesting and a good experience.

22 Q There will be 12 individuals on a jury.
23 If you had a lot of them that disagreed with you if
24 you tended to be in the minority or maybe in the
25 majority with regard to your beliefs as to what's a

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1 mitigator or what's not, how would you handle that?

2 A I guess it depends on what it was, but I'm
3 pretty strong at putting people on my side, I guess.
4 I'm kind of a leader of my group.

5 Q I can see.

6 A I just push my side a lot of the time.

7 Q You'll hear information at some point that
8 the death penalty is never required, and in fact,
9 some of those things that Miss Jackson and I refer
10 to as mitigating circumstances or mitigating
11 information sometimes can't be verbalized, sometimes
12 it's just mercy, sometimes it's just a gut feeling.

13 Could you respect other people if they had
14 a different opinion?

15 A They would have to definitely put me to
16 their side, explain it, you know -- yeah. Either
17 way, you're working with 12 other people, that's why
18 they don't just say one person, because one person
19 might have a completely different opinion. When you
20 hear their opinion, then your opinion might change.

21 Q Can you accept people's opinion that's
22 different than your own?

23 A Yes.

24 Q Why?

25 A Because there's 12 of us, you know. I'm

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1 sure you guys pick the best of the best, whatever,
2 and trust other people's judgment, not just go on
3 yourself. You're kind of like a team.

4 **MR. WHIPPLE:** Mr. Summers, thank you for
5 your time.

6 I pass for cause, your Honor.

7 **THE COURT:** All right.

8 Mr. Summers, we'll have you come back
9 tomorrow at 10:00 o'clock. Okay?

10 **PROSPECTIVE JUROR 203:** Okay.

11 **THE COURT:** We'll let you know tomorrow.

12 **PROSPECTIVE JUROR 203:** Thank you.

13 **THE COURT:** It's the State's seventh
14 peremptory challenge.

15 **MR. DASKAS:** One moment, please, Judge.

16 **THE COURT:** All right.

17 **MR. DASKAS:** Your Honor, the State would
18 exercise, I believe it's our seventh peremptory
19 challenge on Prospective Juror No. 0132, Mr. Gray.

20 **THE COURT:** All right.

21 Bring in the next one.

22
23 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 205

24 **THE COURT:** How do you pronounce your last
25 name, sir?

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1 **PROSPECTIVE JUROR 205:** Shir-brin
2 (phonetic.)
3 **THE COURT:** You're originally born in --
4 not Grand Rapids -- what's the name of that town you
5 were born in?
6 **PROSPECTIVE JUROR:** Coon Rapids.
7 **THE COURT:** Coon Rapids, Iowa.
8 What kind of work do you do, sir?
9 **PROSPECTIVE JUROR:** I'm an engineer at the
10 Ritz Carlton Hotel.
11 **MR. WHIPPLE:** Can we approach, your Honor?
12 **THE COURT:** Yes.
13 (Sidebar conference outside the presence
14 of the court reporter.)
15 **THE COURT:** So, Mr. Shirbroun, you're a
16 member of the NRA, that's the National Rifle
17 Association?
18 **PROSPECTIVE JUROR:** Correct.
19 **THE COURT:** What do you think about
20 serving on this jury here?
21 **PROSPECTIVE JUROR:** I'm afraid of where I
22 got my mind made up.
23 **THE COURT:** You already have it made up.
24 I heard you were out there talking about the case
25 earlier; is that true?

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1 **PROSPECTIVE JUROR:** Pardon me?

2 **THE COURT:** Were you outside talking about
3 the case with some more jurors?

4 **PROSPECTIVE JUROR:** I didn't recall saying
5 much about it other than what we already knew.

6 **THE COURT:** What is it that you already
7 knew?

8 **PROSPECTIVE JUROR:** That he had been tried
9 and convicted.

10 **THE COURT:** Okay.

11 What else?

12 **PROSPECTIVE JUROR:** That there was four
13 possibilities, I believe, and we were to do a
14 judgment.

15 **THE COURT:** So, you already have your mind
16 made up?

17 What would you sentence him to?

18 **PROSPECTIVE JUROR:** Death.

19 **THE COURT:** Is there anything that would,
20 could change your mind on that?

21 **PROSPECTIVE JUROR:** Very little, unless it
22 was self-defense.

23 **MR. WHIPPLE:** Judge, may we approach
24 again?

25 **THE COURT:** Yes.

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

3 **THE COURT:** So, you don't think that you
4 can be fair in this case and listen to the evidence
5 and consider life in prison? Could you consider
6 life in prison with the possibility of parole?

7 **PROSPECTIVE JUROR:** No.

8 **THE COURT:** Tell me this here: Who else
9 were you talking to? You were talking to juror
10 No. 262, 207 and Mr. Stam?

11 **PROSPECTIVE JUROR:** Mr. Stam?

12 **THE COURT:** Stam, Aaron Stam, No. 164.

13 **PROSPECTIVE JUROR:** I couldn't tell you.

14 **THE COURT:** You don't remember the people
15 who you were talking to?

16 **PROSPECTIVE JUROR:** No.

17 **THE COURT:** All right.

18 Motion?

19 **MS. JACKSON:** Your Honor, we would
20 challenge him for cause.

21 **THE COURT:** Counsel?

22 **MR. STANTON:** Submitted.

23 **THE COURT:** The Court will grant the
24 motion.

25 You're excused, sir.

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1 **PROSPECTIVE JUROR:** Thank you.
2 **MR. WHIPPLE:** Your Honor, before juror
3 No. 207 arrives --
4 **THE COURT:** What about 206?
5 **THE BAILIFF:** We excused him.
6 **MS. JACKSON:** He was excused for heart
7 problems.
8 **MR. WHIPPLE:** 207 is the other individual
9 that spoke, your Honor.
10 **THE COURT:** Bring in 207.
11
12 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 207
13 **THE COURT:** Miss Vu?
14 **PROSPECTIVE JUROR:** Vu.
15 **THE COURT:** Miss Vu, where are you from,
16 originally?
17 **PROSPECTIVE JUROR:** Vietnam.
18 **THE COURT:** Vietnam. Okay.
19 How long have you been in the United
20 States? How long have you been in the states?
21 **PROSPECTIVE JUROR:** Thirty years.
22 **THE COURT:** And you have a bachelor's of
23 business administration from UT Austin?
24 **PROSPECTIVE JUROR:** That's correct.
25 **THE COURT:** Did you grow up in Texas?

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1 **PROSPECTIVE JUROR:** I would say so.
2 **THE COURT:** You went to high school in
3 Texas?
4 **PROSPECTIVE JUROR:** High school in Texas.
5 **THE COURT:** And you have -- what part of
6 Texas?
7 **PROSPECTIVE JUROR:** Austin.
8 **THE COURT:** So, you lived in Austin before
9 you went to UT?
10 **PROSPECTIVE JUROR:** I lived in Austin and
11 went to UT Austin.
12 **THE COURT:** Okay.
13 And you lived in California also?
14 **PROSPECTIVE JUROR:** Correct.
15 **THE COURT:** And you were on a civil jury
16 in California?
17 **PROSPECTIVE JUROR:** That's correct.
18 **THE COURT:** And it was an automobile --
19 were you the foreman of the jury?
20 **PROSPECTIVE JUROR:** Was I?
21 **THE COURT:** The foreman.
22 **PROSPECTIVE JUROR:** No.
23 **THE COURT:** But you did reach a verdict;
24 is that right?
25 **PROSPECTIVE JUROR:** That's correct.

1 **THE COURT:** What do you think about black
2 people?

3 **PROSPECTIVE JUROR:** Same as any kind of
4 people.

5 **THE COURT:** Now, were you discussing this
6 case with some other people, some other jurors?

7 **PROSPECTIVE JUROR:** No.

8 **THE COURT:** You didn't hear anything about
9 this case?

10 **PROSPECTIVE JUROR:** No.

11 **THE COURT:** So, you didn't hear one of the
12 other ladies out there talking about what she had
13 read in the newspaper or heard on the radio or
14 anything?

15 **PROSPECTIVE JUROR:** No. There was no
16 discussion like that.

17 **THE COURT:** We got a report that you and
18 Juror No. 262 and 205 were talking about what had
19 happened in the previous case.

20 **PROSPECTIVE JUROR:** In the previous
21 sentencing?

22 **THE COURT:** Right, right.

23 **PROSPECTIVE JUROR:** Okay.

24 **THE COURT:** Did you discuss that?

25 **PROSPECTIVE JUROR:** Yes.

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1 **THE COURT:** All right.

2 What was said?

3 **PROSPECTIVE JUROR:** It was said that the
4 verdict was reached.

5 **THE COURT:** What verdict was that?

6 **PROSPECTIVE JUROR:** That the defendant was
7 found guilty.

8 **THE COURT:** All right.

9 We know he was found guilty, but what was
10 the punishment?

11 **PROSPECTIVE JUROR:** The punishment was
12 death penalty.

13 **THE COURT:** And what happened?

14 **PROSPECTIVE JUROR:** It was decided by the
15 Supreme Court Judges in Nevada, however, it should
16 have been decided by a jury.

17 **THE COURT:** All right.

18 So, that was discussed out there.

19 Who else was in this conversation with
20 you? How many people were talking about this?

21 **PROSPECTIVE JUROR:** I believe two or
22 three, including myself.

23 **THE COURT:** Two or three. Okay.

24 Did you go and tell anybody else about it?

25 **PROSPECTIVE JUROR:** No.

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1 **THE COURT:** So, how does that make you
2 feel?

3 **PROSPECTIVE JUROR:** Regarding --

4 **THE COURT:** Well, that he had already been
5 sentenced to death, what effect is that going to
6 have on you? You already know he's been sentenced
7 to death.

8 You can't get that out of your mind, can
9 you?

10 **PROSPECTIVE JUROR:** Maybe I don't
11 understand why. We don't make the decision in
12 regards to finding him guilty or not. That's my
13 understanding.

14 **THE COURT:** Right, right. You decide on
15 the punishment.

16 **PROSPECTIVE JUROR:** That's correct.
17 That's my understanding.

18 **THE COURT:** So, my point is -- we know
19 this. My point is that you heard that he had
20 already been sentenced to death by judges, and that
21 it had been reversed, so now you have to sentence
22 him, right?

23 **PROSPECTIVE JUROR:** Um-hmm.

24 **THE COURT:** What do you think is the
25 appropriate sentence? He killed four people, been

1 convicted of four counts of first-degree murder.

2 What do you think the penalty should be?

3 **PROSPECTIVE JUROR:** I really don't know
4 what would be in the trial.

5 **THE COURT:** We're not talking about a
6 trial. We're not going to have a trial. The trial
7 is already over with. He's been convicted.

8 Do you understand that?

9 **PROSPECTIVE JUROR:** Right.

10 **THE COURT:** First-degree murder just like
11 was said outside, he's been convicted of
12 first-degree murder. What you have to do is
13 sentence him.

14 **PROSPECTIVE JUROR:** Right.

15 **THE COURT:** You can sentence him to death,
16 to life in prison without parole, life in prison
17 with the possibility of parole or to a term of 50
18 years and parole after 20 years, and that's doubled
19 because a deadly weapon was used.

20 As you sit there now, what sentence would
21 you sentence him to?

22 **PROSPECTIVE JUROR:** I haven't given it any
23 thought.

24 **THE COURT:** You haven't given it any
25 thought. All right.

1 Do you feel like you would have to
2 sentence him to death? You already heard this
3 happened before, didn't you?

4 What do you think of the death penalty?

5 **PROSPECTIVE JUROR:** I think the death
6 penalty, if it is something that is decided should
7 be immediately delivered and not prolong someone by
8 making this person sit in jail until the system is
9 good and ready.

10 **THE COURT:** So, what do you think of life
11 in prison without parole? Do you agree with that?
12 Do you think that's a good sentence or we should
13 have it or we should not have it?

14 **PROSPECTIVE JUROR:** I don't think that's a
15 good sentence.

16 **THE COURT:** Because you don't think -- why
17 not?

18 **PROSPECTIVE JUROR:** That's always a -- I
19 don't know what they call that -- a hearing of some
20 kind, a presidential pardon, something will happen.

21 **THE COURT:** So, they won't stay in prison.

22 So, you don't believe even though the law
23 says they can get prison without parole, you believe
24 they will get paroled by a pardon or something else?

25 **PROSPECTIVE JUROR:** It's not to me in my

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1 own opinion, it's not a sealed sentence, no.

2 **THE COURT:** So, you think people can
3 change it later on. All right.

4 Even if I told you that that's not the
5 law, that it couldn't be changed, you still think it
6 could be changed?

7 **PROSPECTIVE JUROR:** Yes.

8 **THE COURT:** In a case like this where a
9 person has killed four people, first-degree,
10 premeditated, deliberate and without provocation,
11 could you consider sentencing him to 50 years in
12 prison and a consecutive 50 years with parole after
13 40 years?

14 **PROSPECTIVE JUROR:** No.

15 **THE COURT:** Counsel?

16 **MR. WHIPPLE:** Challenge for cause, your
17 Honor.

18 **MR. STANTON:** No objection, your Honor.

19 **THE COURT:** All right. You're excused,
20 ma'am.

21

22 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 230

23 **THE COURT:** Mr. Heichel.

24 **PROSPECTIVE JUROR 230:** Yeah, that's
25 right.

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1 **THE COURT:** Mr. Heichel, you're from
2 California, originally?
3 **PROSPECTIVE JUROR:** Yes.
4 **THE COURT:** And you've been in Las Vegas
5 how long?
6 **PROSPECTIVE JUROR:** Let's see, we bought
7 our house in Las Vegas in June.
8 **THE COURT:** Of what year?
9 **PROSPECTIVE JUROR:** Two years ago.
10 **THE COURT:** So, you've been here for two
11 years.
12 What kind of work do you do?
13 **PROSPECTIVE JUROR:** Actually, I didn't
14 retire until November, so it was -- we held the
15 house here for a while.
16 **THE COURT:** Where did you retire from?
17 **PROSPECTIVE JUROR:** I retired as an
18 engineer -- electrical engineer.
19 **THE COURT:** Who did you work for?
20 **PROSPECTIVE JUROR:** I worked for a company
21 called "Remmick" who had bought a company called
22 "Magnum Microwave" that I worked for originally.
23 Remmick is in San Diego.
24 **THE COURT:** Now, you have a son who is an
25 ophthalmologist?

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1 **PROSPECTIVE JUROR:** I do.

2 **THE COURT:** And you have two children that
3 are students; is that correct?

4 **PROSPECTIVE JUROR:** I have two daughters
5 that are in college, right.

6 **THE COURT:** They're going to college in
7 California?

8 **PROSPECTIVE JUROR:** Yeah.

9 **THE COURT:** And you have a son who is a
10 manager -- is that right, at a hotel?

11 **PROSPECTIVE JUROR:** He's in a training
12 program now and will probably be in management.

13 **THE COURT:** He's a management trainee?

14 **PROSPECTIVE JUROR:** Either restaurant or
15 resort.

16 **THE COURT:** You haven't heard anything
17 about this case; is that correct?

18 **PROSPECTIVE JUROR:** I haven't heard
19 anything about it, no, other than what was presented
20 in the questionnaire and at the jury meeting.

21 **THE COURT:** Now, you haven't heard anybody
22 talk about this case outside among the jurors, have
23 you?

24 **PROSPECTIVE JUROR:** No.

25 **THE COURT:** Now, you said your son was

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1 assaulted once but no prosecution or trial?

2 **PROSPECTIVE JUROR:** Yeah.

3 **THE COURT:** He didn't call the police or
4 file a complaint with the police?

5 **PROSPECTIVE JUROR:** No; he just got
6 punched in the nose, kind of blind-sided by some kid
7 at a party.

8 **THE COURT:** How long ago was this?

9 **PROSPECTIVE JUROR:** Oh, it was back
10 when -- that's the guy who is a doctor now, so it
11 was like ten years ago when he was an undergraduate.

12 **THE COURT:** It was a party in college?

13 **PROSPECTIVE JUROR:** Yeah, it was a college
14 party, young people.

15 **THE COURT:** What was the race of the
16 person that punched him?

17 **PROSPECTIVE JUROR:** It was a white guy,
18 just a hot head, I guess.

19 **THE COURT:** Okay.

20 Tell me this here: Now, you understand
21 that this jury will decide the punishment for the
22 defendant who has been convicted of four counts of
23 first-degree murder.

24 Do you understand that?

25 **PROSPECTIVE JUROR:** I understand that from

1 the questionnaire, right.

2 **THE COURT:** Right.

3 Now, under our law in the State of Nevada,
4 the jury has to be able to consider all four forms
5 of punishment that the law provides for.

6 Do you understand that? The law states --

7 **PROSPECTIVE JUROR:** I could sort of pick
8 that up.

9 **THE COURT:** So, the law states that the
10 jury, after hearing the evidence, listening to the
11 witnesses and being instructed on the law, will have
12 to decide the appropriate punishment, and it has to
13 be either the death penalty, life imprisonment
14 without the possibility of parole, life imprisonment
15 with the possibility of parole or a definite term of
16 50 years with the possibility of parole after 20
17 years, and that's doubled because a deadly weapon
18 was used.

19 Do you understand that?

20 **PROSPECTIVE JUROR:** Yeah.

21 **THE COURT:** You don't understand it?

22 **PROSPECTIVE JUROR:** Yeah, I understand
23 there's four choices.

24 **THE COURT:** And you have to pick the one.
25 It's your choice based upon the evidence and the

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1 law. You have to pick the one that you think is
2 most appropriate.

3 **PROSPECTIVE JUROR:** And that would be
4 expanded upon, I suppose, by the counsels in the
5 trial.

6 **THE COURT:** What do you mean "expanded
7 upon"?

8 **PROSPECTIVE JUROR:** Well, I mean, they
9 would say, you know -- I guess the law just says
10 that you have to pick one of the four but doesn't
11 give any guidelines.

12 **THE COURT:** The Court will give you the
13 guidelines, so to speak, which is the law and the
14 instructions. That's what the legal instructions
15 will be -- will instruct you on how to judge the
16 evidence and look at the evidence and how you have
17 to analyze it. We'll give you all of that later,
18 and the lawyers will present evidence and facts
19 about the case, about the parties, their background,
20 all kinds of things to give you this information so
21 you can make your decision with it. What I need to
22 know is with your mindset, are you religiously --
23 strike that.

24 Do you have any religious or moral
25 opposition to the death penalty?

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1 **PROSPECTIVE JUROR:** No, I don't. I don't
2 like it in general. I don't think anybody wants to
3 send somebody to death, but I presume that -- you
4 know, that the law has it as one of the alternatives
5 for a reason, because they may want -- that isn't
6 the case.

7 **THE COURT:** That is one of the punishments
8 for this type of crime, and what we're required to
9 do is to see if, in fact, you could follow the law
10 which is considered the death penalty. See, some
11 people are absolutely opposed to the death penalty
12 and could, under no circumstances, impose it. If
13 that's the case, then they wouldn't be able to
14 follow the law. So, what I'm asking you is are you
15 unalterably opposed to the death penalty?

16 **PROSPECTIVE JUROR:** I'm not unalterably
17 opposed to it.

18 **THE COURT:** You just find it difficult and
19 it's something serious?

20 **PROSPECTIVE JUROR:** Yes. It's certainly a
21 drastic -- yeah.

22 **THE COURT:** The ultimate punishment, so to
23 speak?

24 **PROSPECTIVE JUROR:** Yeah.

25 **THE COURT:** But tell me this here: Under

1 the right circumstances and facts, could you impose
2 the death penalty?

3 **PROSPECTIVE JUROR:** Yeah.

4 **THE COURT:** In a case like this, there's
5 three other possibilities also, like life in prison
6 with the possibility of parole or for a definite
7 term of 50 years with the possibility of parole
8 after 20 years, and of course, that's doubled
9 because a deadly weapon was used, so you're really
10 looking at a hundred years with the possibility of
11 parole after 40 years.

12 Would you be able to consider all those
13 forms of punishment?

14 **PROSPECTIVE JUROR:** Sure.

15 **THE COURT:** And you could consider life in
16 prison without the possibility of parole if it was
17 appropriate?

18 **PROSPECTIVE JUROR:** Yeah.

19 **THE COURT:** State.

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

21

22 EXAMINATION BY THE STATE

23 **BY MR. DASKAS:**

24 Q Mr. Hi-kel (phonetic) it's pronounced?

25 A Right.

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1 Q Thank you for your patience this evening.
2 Let me ask you a few questions, if you don't mind.

3 Your role in this case, if you were a
4 juror, is to impose punishment. Part of that is
5 you're required to accept what another jury has
6 already done, because another jury has already
7 convicted the defendant of four counts of murder.

8 My question is, are you comfortable
9 accepting that other jury's verdict?

10 A I think so, because they have to have a
11 unanimous decision on that.

12 Q Absolutely.

13 A The case was apparently fairly clear-cut,
14 but I don't know.

15 Q Let me ask you this --

16 A Not knowing anything about the case, you
17 know, you would have to assume that was the fact.

18 Q Let me ask you this in a slightly
19 different way. If the Judge was to instruct you
20 that you were required to accept that other verdict,
21 could you follow that instruction?

22 A Yes.

23 Q And understand, as I mentioned a couple
24 days ago, we will provide you with some of the
25 highlights, if you will, of the homicide themselves.

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1 Would that make you feel more comfortable in relying
2 on that other jury's verdict, that is --

3 A Yes.

4 Q What I heard you say a moment ago was that
5 the death penalty is, I guess, a drastic -- did I
6 say that right? What word did you use?

7 A It's distasteful to have to send anybody
8 to death. Obviously, four other people apparently
9 met death here somewhere too.

10 Q Understand that none of us take this
11 lightly.

12 You appreciate that?

13 A I appreciate that.

14 Q Even those of us who stand up and ask for
15 someone to impose the ultimate punishment, we don't
16 take that lightly. You appreciate that?

17 A I presume it's your job.

18 Q But as you said, the legislature has
19 determined that that is the appropriate punishment
20 in a first-degree murder case.

21 You realize that?

22 A Right.

23 Q If you're selected as a juror and you hear
24 all the evidence of the underlying homicide
25 themselves and you hear all the information about

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1 the defendant and you deliberate and you take that
2 into consideration, if at that point you believe the
3 ultimate punishment is warranted, the death penalty
4 is warranted, do you actually feel like you can
5 impose that punishment?

6 A Yes.

7 Q You see the distinction I'm making? We're
8 talking about just considering it but then having to
9 oppose it on the other hand.

10 A Right.

11 Q And you may be faced with that decision.

12 A Yeah; it's not something I would want to
13 do. I would prefer to be let off the jury myself.

14 Q I understand.

15 A It's not something I want in my lifetime
16 to have to sit in judgment on.

17 Q Are your beliefs such that you couldn't do
18 it or you just prefer not to do it?

19 A I would prefer to avoid the whole thing,
20 but I could do it.

21 Q You understand how important that is for
22 us and for --

23 A I understand, yeah.

24 Q -- the victims and their family members?

25 A Right.

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1 Q You asked a question of the Judge. What I
2 heard you say was something about whether any of the
3 options, four possible punishments were required.

4 You understand that none of those are
5 required; it would be your decision to select the
6 appropriate punishment?

7 A Yeah. I wasn't sure whether in the law
8 there was a guideline in there saying general, for
9 this kind of offense, this would be the punishment
10 or not; so, I'm totally unknowledgeable about the
11 law and how it's written.

12 Q You're not alone in that belief.

13 The other thing I'd like you to
14 understand, and perhaps you already do, is that
15 because there are four convictions in this case,
16 four first-degree murder convictions, you will
17 assign punishment for each of those four
18 convictions.

19 Do you understand that?

20 A I see. It's sort of redundant, isn't it?
21 The most egregious one is probably going to outweigh
22 the other three.

23 Q What I want you to understand is this:
24 Probably you as a juror can actually impose
25 different punishments for those four murder victims.

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1 In other words, maybe you and the other members of
2 the jury agree, "Let's impose life in prison for one
3 of the murders," but perhaps you might decide when
4 you get to murder number four that the death penalty
5 is appropriate.

6 Do you understand that that is an option?

7 A I see.

8 Q Does that make sense to you?

9 A I understand.

10 Q Let me ask you one final question, and I'm
11 going to really put you on the spot here. As a
12 juror, you will be required to select a foreperson,
13 and that foreperson has the same role as every other
14 juror, with one exception. The foreperson signs the
15 verdict form. Let's imagine that the other jurors
16 select you, Mr. Heichel, as the foreperson, and
17 you're the one who has to sign that verdict form
18 that sentences this defendant to death. I'm putting
19 the cart before the horse, but I want to make sure
20 we appreciate the magnitude of this.

21 Let's assume that you believe in your
22 heart of hearts, based on this case and based on his
23 background and everything else, that he deserves the
24 death penalty, could you be the one to sign that
25 verdict form?

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1 A I would rather somebody else be the
2 foreman.

3 Q And you may not be the foreperson. We'll
4 leave it at that. I appreciate it.

5 MR. DASKAS: Judge, we'll pass for cause.

6 THE COURT: Counsel.
7

8 EXAMINATION BY THE DEFENSE

9 BY MR. WHIPPLE:

10 Q Good afternoon, Mr. Heichel. My name is
11 Bret Whipple, and I represent Mr. Donte Johnson.
12 I'm going to follow up on some of the comments that
13 have been made. This is an unusual situation.
14 We're not here to ask for -- to say there was any
15 justifications or excuses. I represent an
16 individual who has killed, murdered four innocent,
17 young adults. I make no bones about it. I
18 appreciate your honesty. There's no right answers,
19 there's no wrong answers, but I want you to be aware
20 that you had said that you would like to learn all
21 the facts and circumstances surrounding this matter,
22 and at some point you'll get information that death
23 penalty is never required. In fact, you'll receive
24 information that you'll be asked to consider all of
25 this information, that you'll be asked and required

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1 to listen to this information, and Miss Jackson and
2 I will refer to this as "mitigation," "mitigators."
3 That's a reason to give a life sentence over a death
4 sentence.

5 So, I want to ask you, first of all, can
6 you consider a life sentence with a first-degree,
7 premeditated, deliberate murder?

8 A A life sentence -- oh, sure, I can
9 consider that, yeah.

10 Q Now, in this case you're also going to
11 hear that four young adults were bound, hands behind
12 them with duct tape, their legs were bound, they
13 were laid in a room face down on the floor and
14 summarily shot in the back of the head one after
15 another, essentially.

16 Knowing nothing more, could you consider a
17 life sentence in a situation like this?

18 A I don't know any reason why the four were
19 there. Were they involved in conflict -- you know,
20 I have no idea of what the trial said, why they were
21 bound. Were they threatening the defendant
22 originally? I'm not sure. So, "yes" is the answer
23 to your question.

24 Q Now, that mitigation that I mentioned
25 earlier -- we'll be providing you information about

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1 that. In fact, there was a question in this jury
2 questionnaire. It says, "In reaching a verdict in a
3 penalty phase, you must consider the defendant's
4 background, that is, mitigating circumstances such
5 as the defendant's health, mental status, age,
6 childhood, education," et cetera, and then it asks,
7 "Do you feel you would consider those types of
8 factors?" You struck the response, "Somewhat."

9 Nevada law requires any juror that can sit
10 on this type of hearing, that they can consider
11 those factors. When you struck the question
12 "Somewhat," what were you thinking?

13 A Would you read the question?

14 Q I will. It says, "In reaching a verdict
15 in this penalty phase, you must consider the
16 defendant's background, that is, mitigating
17 circumstances such as the defendant's health, mental
18 status, age, childhood experiences, education, et
19 cetera. Do you feel you would consider those types
20 of factors?" And there are four responses -- "Very
21 much," "Not at all," "Somewhat" and "Not sure," and
22 you put "Somewhat."

23 A Well, the two extremes, "Not at all" and
24 totally -- what was the extreme?

25 Q "Very much" and "Not at all."

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1 A "Somewhat" just means yeah, I would
2 consider them. I think defense people can be very
3 clever and say, "Oh, my aunt struck me when I was
4 three." You would consider some things that would
5 be raised by the defense, and you would throw out
6 other things raised by the defense just depending on
7 how they seemed.

8 Q Absolutely. And that's your prerogative.

9 A That's why I said "Somewhat."

10 Q But you would be willing to, at least,
11 consider this information that we provided to you?

12 A Yeah.

13 Q Now, Miss Jackson and I -- this
14 information that we're providing to you is by no
15 means an excuse or justification or to suggest
16 anything this is anything other than a heinous act,
17 but it's what we feel might be appropriate to
18 determine the future of Mr. Johnson. Some of the
19 instructions or information that you will get is
20 some of the mitigation might not be necessarily
21 articulated. Sometimes mercy or even a gut feeling
22 is a valid choice for giving life over death.

23 If other individuals disagreed with your
24 position -- if you had a gut feeling to choose life
25 over death, how would you handle it if other

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1 individuals differed from you?

2 A You mean if other people were adamant
3 about death?

4 Q Yes.

5 A I would want to hear their reasons, you
6 know, and make them -- hear that argument, and I
7 would want to hear countervailing arguments, and I
8 presume we're going to hear that in a trial --
9 penalty trial. I guess you're going to have 12
10 people who are going to come out of that with their
11 own reactions and concepts. I think it's probably
12 tough for the prosecution to get, you know -- it's
13 got to be a unanimous decision, so I would think
14 that the probability of 12 people coming back in and
15 saying, you know, "Death is small" -- I think the
16 prosecution probably has a huge barrier to overcome
17 to get 12 people to be of one mind and do that. You
18 know, it's just going to be, I would presume, a lot
19 of back and forth in the jury room talking about it.

20 Q Would you be able to accept the people if
21 they had a different opinion from your own?

22 A Well, sure. I'm not infallible.

23 Q There was one question I noticed on here
24 that I have to follow up on. It's asking about the
25 legal system in general, and you said, "It's messy

1 and inefficient."

2 I'm just curious, what causes you to have
3 that opinion?

4 A That the legal system and messy and
5 inefficient --

6 Q Yeah, but --

7 A -- but it's the best system we have.
8 There's a famous quotation or something like that.
9 It is. I've been through a divorce once. That
10 never went to trial but, you know, being deposed and
11 all of that going on, you know, is just really
12 messy, something to be avoided if you want a nice
13 life.

14 A company I worked for was sued by a
15 previous company I worked for, and I had to go be
16 deposed on that, and then I had an issue with State
17 Farm Insurance once where my home was damaged by an
18 earthquake and there were depositions and all that.
19 I started to get a lawyer to represent me and, you
20 know, the lawyers just love charging by the hour, so
21 it seem like, man, this is going to be dragged on
22 forever, so I went out and got a negotiator type
23 instead of a lawyer. You know what I mean, messy
24 and inefficient is what it is.

25 **MR. WHIPPLE:** We make a living on it

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1 sometimes, so I appreciate your time.

2 Pass for cause, your Honor.

3 **THE COURT:** You want to have a seat
4 outside, sir?

5 We'll take a recess.

6 (Recess taken.)

7 **THE COURT:** I think it's the defense's
8 seventh peremptory challenge.

9 **MS. JACKSON:** Your Honor, that's going to
10 be Barbara Grant, 0059.

11 **THE COURT:** 059?

12 **MS. JACKSON:** Um-hmm.

13 **THE CLERK:** Seat eight.

14 **THE BAILIFF:** Kyle Dormanen didn't answer.

15 **THE COURT:** Order to show cause.

16

17 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 234

18 **THE COURT:** Mr. Clarke, how long have you
19 been on the mainland?

20 **PROSPECTIVE JUROR 234:** Fourteen years.

21 **THE COURT:** Fourteen years.

22 And you went to high school in St. Croix?

23 **PROSPECTIVE JUROR:** One year.

24 **THE COURT:** Where did you go the rest of
25 the time?

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1 **PROSPECTIVE JUROR:** Two years in Florida
2 and my senior year here in Vegas.
3 **THE COURT:** Are you working now?
4 **PROSPECTIVE JUROR:** Yes.
5 **THE COURT:** What kind of work are you
6 doing?
7 **PROSPECTIVE JUROR:** I'm a press operator
8 for the RJ.
9 **THE COURT:** Review Journal?
10 **PROSPECTIVE JUROR:** Yes.
11 **THE COURT:** How long have you been doing
12 that?
13 **PROSPECTIVE JUROR:** At the RJ or just
14 printing in general?
15 **THE COURT:** RJ.
16 **PROSPECTIVE JUROR:** Three months.
17 **THE COURT:** Three months?
18 **PROSPECTIVE JUROR:** Um-hmm.
19 **THE COURT:** Have you heard anything about
20 this case?
21 **PROSPECTIVE JUROR:** No, I haven't.
22 **THE COURT:** And you've never been on a
23 jury before?
24 **PROSPECTIVE JUROR:** No, I haven't.
25 **THE COURT:** Have you or anyone in your

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1 family ever been charged with a crime?

2 **PROSPECTIVE JUROR:** No.

3 **THE COURT:** Have you or anyone in your
4 family ever been the victim of a crime?

5 **PROSPECTIVE JUROR:** No.

6 **THE COURT:** Now, you understand that the
7 defendant has been convicted of four counts of
8 first-degree murder. The trial we're having now is
9 to determine the punishment.

10 Do you understand that?

11 **PROSPECTIVE JUROR:** Yes.

12 **THE COURT:** And you'll have four
13 punishments to choose from. One of them is the
14 death penalty, and I want to know, do you have any
15 religious or moral opposition to the death penalty?

16 **PROSPECTIVE JUROR:** No.

17 **THE COURT:** You can consider that?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** The other ones are life
20 imprisonment without the possibility of parole --
21 could you consider that?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** And the final two are life
24 imprisonment with the possibility of parole or for a
25 definite term of 50 years with the possibility of

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1 parole after 20 years, and those are doubled because
2 a deadly weapon was used, so you're looking at a
3 hundred years and parole after 40 years.

4 Do you understand that?

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** That's the definite term for
7 the one that calls for a definite term.

8 Could you consider all four forms of
9 punishment?

10 **PROSPECTIVE JUROR:** Yeah.

11 **THE COURT:** Now, have you already made up
12 your mind about what the punishment should be?

13 **PROSPECTIVE JUROR:** No.

14 **THE COURT:** You will listen to all the
15 evidence, the facts, the history, the people
16 involved, the facts of the case and you can listen
17 to the Court's instructions on the law?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** And after listening to all of
20 that, do you think you can pick the appropriate
21 verdict?

22 **PROSPECTIVE JUROR:** I think so, yes.

23 **THE COURT:** Do you have any bias or
24 prejudice against either side for any reason?

25 **PROSPECTIVE JUROR:** No.

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1 **THE COURT:** Can you be fair and impartial?

2 **PROSPECTIVE JUROR:** Yes.

3 **THE COURT:** State.

4 **MR. DASKAS:** Thanks, Judge.

5

6 EXAMINATION BY THE STATE

7 **BY MR. DASKAS:**

8 Q Good evening, and thank you for your
9 patience waiting for the past couple of days. We
10 appreciate it.

11 One of the questions asked about whether
12 you're open to consider all four forms of
13 punishment, and you wrote an answer, "Yes, depending
14 on the crime and the brutality of the crime."

15 A Yes.

16 Q I take it based on that, it would be
17 important for you to learn about the underlying
18 facts of the quadruple homicide itself.

19 A Yes.

20 Q The more brutal the crime, perhaps the
21 more severe punishment is warranted?

22 A It should be.

23 Q Generally speaking?

24 A Yes.

25 Q You would also want to hear some things

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1 about the defendant himself?

2 A Yeah, I want to hear both sides.

3 Q Any problem, as the Judge alluded to,
4 accepting the fact that another jury has already
5 heard the evidence in this case, listened to the
6 questions and the cross-examination and convicted
7 the defendant of all four crimes -- all four
8 murders?

9 A Yes.

10 Q You have no problem accepting that that
11 occurred?

12 A No.

13 Q And if the Judge instructs you that you
14 have to accept that verdict as being the proper
15 verdict, you're okay with that?

16 A Yes.

17 Q You know it's one thing to read that
18 questionnaire and think in general terms about the
19 death penalty, but I think it's something all
20 together different to be in the position of having
21 to impose the death penalty which is the position
22 you could find yourself in in the very near future,
23 and we don't expect you to take that lightly.
24 That's a huge decision, and even as representatives
25 of the State and the victims in this case, we know

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1 it's a big decision.

2 If you're a juror and if you believe,
3 after hearing everything, that death is the
4 appropriate punishment, can you impose that
5 sentence?

6 A Yes.

7 **MR. DASKAS:** Thank you, sir.

8 Judge, we'll pass the juror for cause.

9

10 EXAMINATION BY THE DEFENSE

11 **BY MS. JACKSON:**

12 Q Good evening, sir. How are you this
13 evening?

14 A Tired.

15 Q Tired of sitting around here. We're
16 almost there, and we appreciate you hanging in there
17 with us.

18 These questions are a wee bit confusing.
19 Number 33 asked you "To what extent should the
20 mental status of the defendant be considered?" and
21 you put, "I don't know," which is actually a good
22 answer. We asked again in 38, "In reaching a
23 verdict in this penalty phase, you must consider the
24 defendant's background, that is, mitigating
25 circumstances such as the defendant's health, mental

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1 status, age, childhood experience, education, et
2 cetera," and we asked, "Do you feel you would
3 consider those types of things?"

4 Well, we didn't tell you that under Nevada
5 law, the law states that you must consider those
6 types of factors along with everything else that
7 you'll be presented with. For example, if the
8 defendant, as an infant -- as a child was not given
9 enough food to eat or suffered other types of abuse,
10 are those types of things that you would like to
11 know?

12 A Perhaps.

13 Q You said "perhaps."

14 A If it was childhood, depending on how
15 young he was or how old he was at that time.

16 Q Okay.

17 What are some types of things --
18 "mitigation" is any reason that you, as a juror, can
19 find to give life. As a matter of fact, you will
20 find -- when the appropriate time comes, the Court
21 will instruct you in mitigation. We're going to
22 give you a list of things, but it can be anything
23 you say it is. For example, you can hear from the
24 defendant's mother, and you may decide that her
25 testimony is compelling and you will decide that you

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1 want to spare his life for her sake. That's
2 considered mitigation.

3 Give me some idea of what types of items
4 you would find to be mitigators?

5 A Like you said, his mom or grandparents or
6 maybe childhood friends.

7 Q So, you are open to listening and fairly
8 considering that type of information?

9 A Yes.

10 Q With life or death being such a very
11 serious position, and of course, everything that I
12 say you have to bear in mind that the State will get
13 a chance to present their side, but you understand,
14 Mr. Johnson is my client, so if I leave that part
15 out, please forgive me. It's a wee bit late in the
16 day, but the fact of the matter is we've got four
17 homicides here that my client stands convicted of.
18 Okay? You indicated in your questionnaire that
19 depending upon the crime and the brutality, there
20 isn't -- I'm going to just be frank with you. Four
21 people were duct taped, bound at the feet, hands,
22 shot in the back of the head for basically no real
23 reason, no justifiable reason and no excuse, and
24 we're going to talk to you about a number of things
25 that went into making Donte Johnson who he is.

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1 Are you open to listening to those things?

2 A I guess, yeah.

3 Q There was a long, hesitant pause. What

4 was running through your mind?

5 A Yeah, because --

6 Q Four people were killed.

7 A Like you said, it was the type of crime

8 and the brutality and the type of crime, it would

9 have no -- what do you call those -- what's the word

10 I'm looking for -- just like militant-type

11 executions. That's what that was, so....

12 Q It was very extreme, no argument there.

13 And knowing that, and knowing that we're

14 going to give you some things on Mr. Donte Johnson's

15 behalf, we're going to tell you some things that are

16 mitigating. You'll hear from both sides. What I'm

17 trying to find out is just the mere fact that there

18 are four victims here, will that fact alone cause

19 you to automatically think that, "Well, this has got

20 to be -- "If this is not a death penalty case, then

21 my God, what is?" you know what I'm saying?

22 Where are you in regards to that type of

23 thinking?

24 A Death penalty?

25 Q The example I just gave you -- trying to

1 find out if you can keep an open mind, listen to
2 what they have to say about the case, about the
3 victims, about the crime and then weigh that against
4 what we have to put on -- Mr. Donte Johnson's
5 family, some other things about his background and
6 things of that nature, that we consider to be
7 mitigation. All we're trying to find out -- is it
8 Mr. Clarke --

9 A Yes.

10 Q -- if you could fairly consider those
11 things. I'm not asking you to tell me how you're
12 going to vote.

13 A You can consider it, but I mean, like I
14 said, that's execution style. I mean, there's no
15 real explanation for it. That's straight up
16 execution.

17 Q Right.

18 Are you saying that because we've got four
19 people execution style, in your mind that
20 automatically has to equal death, a death penalty
21 vote?

22 A I would hear both sides, but that's just
23 where I'm leaning toward right now.

24 Q You know, that's okay. I think that would
25 be a normal human reaction to hear that.

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1 A Yeah.

2 Q What type of -- is there anything, in your
3 mind, that could mitigate this type of crime to
4 where you can't consider a life verdict?

5 A Maybe.

6 Q Can you consider -- go ahead, sir.

7 A Maybe it was some kind of -- the four
8 people maybe did something to his family, maybe.

9 Q Okay.

10 That's something you would want to know
11 about?

12 A Not the word "revenge," but --

13 Q I understand.

14 Do you think that life in prison is a
15 severe punishment?

16 A Yeah, depending on the crime.

17 Q The crime is first-degree murder times
18 four.

19 A Yeah.

20 Q Do you think that's a severe punishment?

21 A Just life -- not really.

22 Q I'm not trying to trick you. I just want
23 to know are you telling me that you cannot consider
24 life in prison, period?

25 A Again, from just what you explained as the

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1 type of murder it was, four times, it's kind of hard
2 to lean anywhere else.

3 Q I'm not asking you to lean one way or
4 another, Mr. Clarke.

5 A Just how you described the crimes of
6 murder, to me, it's just --

7 Q To you it equals death, sir?

8 MR. DASKAS: Judge, I apologize to
9 Miss Jackson, and I apologize to Mr. Clarke. That's
10 been asked and answered five times now, and I'm
11 going to object based on Rule 7.7, asked and
12 answered.

13 THE COURT: You have asked it a number of
14 times, Miss Jackson.

15 MS. JACKSON: Your Honor, I can't get a
16 straight answer, Judge, with all due respect.

17 THE COURT: He said he would consider it.
18 He said he wouldn't automatically --

19 MS. JACKSON: No.

20 THE COURT: Ask it one more time. That is
21 the last time.

22 BY MS. JACKSON:

23 Q Four people -- can you consider life
24 imprisonment, sir?

25 A I can consider it, yes.

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1 Q With four dead people?

2 A Yes.

3 Q But you will also give fair consideration
4 to mitigation?

5 A Yes.

6 MS. JACKSON: I would pass Mr. Clarke for
7 cause, your Honor.

8 THE COURT: All right.

9 Mr. Clarke, have a seat outside, sir.

10 The State may exercise their eighth and
11 final peremptory challenge.

12 MR. DASKAS: One moment, Judge.

13 THE COURT: Go on.

14 MR. DASKAS: Judge, the State would
15 exercise its eighth peremptory challenge on Badge
16 No. 0230, Mr. Heichel seated in seat No. 11, Judge.

17 THE COURT: Tell Mr. Heichel he can go and
18 bring in the next juror. I believe that's Bray.

19

20 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 238

21 THE COURT: Mr. Bray, you've been in
22 Las Vegas for 35 years?

23 PROSPECTIVE JUROR 238: Yes, sir.

24 THE COURT: Originally from Washington?

25 PROSPECTIVE JUROR: Yes, sir.

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

2 **PROSPECTIVE JUROR:** I'm retired truck
3 driver. My wife and I own a small business.

4 **THE COURT:** What kind of business?

5 **PROSPECTIVE JUROR:** She does balloon
6 decorating for parties and conventions and things.

7 **THE COURT:** I see.

8 **PROSPECTIVE JUROR:** Right now, it's pretty
9 tough on us.

10 **THE COURT:** Now, you state that you listen
11 to talk shows and radio, and they talk about the
12 outcome of cases that seem to be unfair.

13 Who do you listen to on the radio?

14 **PROSPECTIVE JUROR:** Well, you know, your
15 typical Judge Judy and that kind of thing. Some of
16 the radio stations kind of carry it out to an
17 extent. They talk about cases where people have
18 gotten their thumbs caught in a door and sued
19 somebody for large amounts of money.

20 **THE COURT:** Okay. I see. That sort of
21 thing.

22 **PROSPECTIVE JUROR:** Yeah.

23 **THE COURT:** What about a criminal case?
24 Have you ever listened to Rush Limbaugh and those
25 guys?

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1 **PROSPECTIVE JUROR:** No, I don't.

2 **THE COURT:** You said that one of your
3 daughters is dating a black man?

4 **PROSPECTIVE JUROR:** That's correct.

5 **THE COURT:** Is that causing you any kind
6 of problems, or are you going to hold that against
7 the defendant?

8 **PROSPECTIVE JUROR:** Well, I don't know
9 about that, but right now, they are in a nasty
10 argument, so it's not real pleasant around the
11 house.

12 **THE COURT:** Your daughter lives with you?

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

14 **THE COURT:** Which daughter is it?

15 **PROSPECTIVE JUROR:** It's my youngest one,
16 Laura.

17 **THE COURT:** She's the accountant?

18 **PROSPECTIVE JUROR:** Yes. She works for
19 Integrity Chrysler.

20 **THE COURT:** How long have they been
21 together?

22 **PROSPECTIVE JUROR:** They've been on and
23 off for a year and a half or so.

24 **THE COURT:** Now, have you ever served on a
25 jury before?

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

2 **THE COURT:** Now, you understand that this
3 trial is going to be about whether or not -- what
4 the sentence -- let me rephrase that.

5 In this trial, the jury will have to
6 decide on the punishment for the defendant.

7 Do you understand that?

8 **PROSPECTIVE JUROR:** Correct.

9 **THE COURT:** You understand that he's been
10 convicted of four counts of first-degree murder?

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

12 **THE COURT:** And going over there to the
13 questionnaire, especially No. 34, to Question
14 No. 34, you said in favor of the death penalty, so
15 you're pretty pro death penalty?

16 **PROSPECTIVE JUROR:** I believe that a
17 person committed those crimes and was convicted,
18 yes, sir.

19 **THE COURT:** You couldn't consider life in
20 prison with parole or life without the probability
21 of parole?

22 **PROSPECTIVE JUROR:** I don't believe the
23 people that died had a chance of parole.

24 **THE COURT:** I don't disagree with you
25 there, but the law states that you have to be able

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1 to consider life in prison with parole or a definite
2 term of 50 years. You have to answer out loud, sir.

3 You don't think you can do that?

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

5 **THE COURT:** State?

6

7 EXAMINATION BY THE STATE

8 **BY MR. STANTON:**

9 Q If the law instructed you you have to
10 consider all sentencing options, would you keep your
11 mind open until you hear all the facts of the case
12 before you make your decision?

13 A Yes.

14 Q And you're a law abiding citizen?

15 A I try. Sometimes I'm not great, but I
16 try.

17 Q The defendant and his two attorneys over
18 there will be presenting arguments on his behalf.
19 Understanding that four murders -- that's a severe
20 conduct that somebody performed and that he's
21 convicted of that. One might feel just by the
22 numbers alone a more severe punishment is in order,
23 and that's not necessarily wrong or improper, but
24 the question is, can you keep an open mind until
25 you've heard all the facts in evidence and then you

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1 actually begin to deliberate?

2 Do you think you can do that?

3 A I will try, yes, sir.

4 Q You know yourself better than anybody
5 else. Trying -- does that mean that you can do that
6 and that you would do that or is it your mind-set,
7 look, if he killed four people --

8 A That's what I have a hard time with, yes.

9 Q That's not necessarily out of human nature
10 that you would have a hard time with it or it would
11 be difficult to appreciate that punishment might be
12 more harsher than just killing one person, but
13 really, the question that we're looking for of each
14 juror in this case is whether or not they can be
15 fair and impartial and not make up their mind, to
16 keep their minds open until the case is formally
17 submitted to them for their pronouncement of
18 sentence at deliberation.

19 Could you do that?

20 A Yeah, I think I can do that.

21 **MR. STANTON:** Thank you, your Honor.

22 **THE COURT:** Defense.

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

24 /////

25 /////

EXAMINATION BY THE DEFENSE

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1 BY MR. WHIPPLE:

2 Q Mr. Bray, my name is Bret Whipple. I
3 represent Mr. Johnson. He's the person that will be
4 sentenced in this matter by this group of
5 individuals we choose.

6 There's no right and there's no wrong
7 answers; we're just trying to get -- we're trying to
8 find as fair a group of people as possible.

9 The Court will ask -- we want to put
10 people in there who can consider those four options.
11 You've already said that when you have an
12 individual -- I won't go into the details of this
13 crime -- you already said that you pretty much
14 believe that a person killed four individuals,
15 premeditated, deliberate, cold-blooded murder, that
16 the appropriate punishment would be the death
17 penalty.

18 A Yes, sir.

19 Q So, if you have that conviction, if you
20 have that belief, I appreciate you telling us,
21 because we need individuals who don't have that
22 conviction. We need individuals who are ready --
23 who don't believe that or who are not that set on a
24 sentence. We just need to be fair on both sides.

25 A Right.

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1 Q I understand if you're chosen, you'll
2 follow the law, but we're not going to choose people
3 that already have preconceived notions, and that's
4 why we're asking you this. Okay?

5 A Okay.

6 Q In this case, my client bound four
7 innocent, young adults by the wrists and by the
8 feet. They were laid out in a room, face on the
9 carpet, and each one of them was summarily executed
10 with a bullet to the back of the head.

11 Is there anything in that that would
12 change your mind?

13 A I really have a hard time with that. You
14 know, there's too much of that going on. I can't --

15 Q Let me ask you this: Could you be fair to
16 us?

17 A I don't think I could.

18 **MR. WHIPPLE:** And I appreciate your
19 honesty. Thank you.

20 Challenge for cause, your Honor.

21 **MR. STANTON:** Your Honor, I believe that
22 the questions that Counsel is asking are loaded
23 questions, and they're not an appropriate statement
24 of what the process is.

25 **THE COURT:** Counsel, so were you, but the

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1 problem is that he's already stated, you know, he
2 doesn't believe in life in prison without parole or
3 life with parole. He thinks that a person should
4 receive the death penalty, especially after they
5 killed four people, and I don't think he can really
6 consider it. He's made up his mind, which is fine,
7 which is what a lot of people think, and I think
8 he's stated clearly. I know you did a good job on
9 traversing, but it's clear to the Court that I don't
10 think he can consider life in prison with or without
11 parole or even 50 years or a hundred years.

12 Am I correct, sir?

13 **PROSPECTIVE JUROR 238:** Yes, sir.

14 **THE COURT:** All right. You're excused,
15 sir.

16

17 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 240

18 **THE COURT:** Sir -- I don't know, sir. A
19 lot of these questions you didn't answer, but I note
20 No. 31 they asked, "If the victims in the case are
21 of a different race or background than Donte
22 Johnson, would that affect your ability to be fair
23 and impartial," and you said, "I don't like people."

24 **PROSPECTIVE JUROR 240:** I don't.

25 **THE COURT:** "I try and stay out of

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1 people's business."

2 What does that mean? What did it have to
3 do with the question?

4 **PROSPECTIVE JUROR:** I don't judge people.
5 I ain't got nothing to do with it.

6 **THE COURT:** Have you ever been arrested
7 before?

8 **PROSPECTIVE JUROR:** No.

9 **THE COURT:** Never?

10 **PROSPECTIVE JUROR:** That's why I don't do
11 nothing.

12 **THE COURT:** Can you be fair and impartial
13 in this case?

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

15 **THE COURT:** How come you don't know?

16 **PROSPECTIVE JUROR:** I just don't know. I
17 don't deal in situations like this. I mean, I have
18 no patience. It don't interest me.

19 **THE COURT:** All right. Tell me this here,
20 then: If you're picked as a juror in this case, you
21 have to decide the punishment for the defendant
22 there.

23 What do you think about the death penalty?

24 **PROSPECTIVE JUROR:** I can't decide nobody
25 else's life or nothing if they live or if they die.

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1 **THE COURT:** So, you just don't want to
2 participate at all?
3 **PROSPECTIVE JUROR:** I mean, I'm telling
4 you the truth about myself.
5 **THE COURT:** I know; I'm just asking you.
6 I have to have it on the record here, sir. That's
7 what we're trying to find out.
8 **PROSPECTIVE JUROR:** I'm participating. I
9 mean, this guy, he's on trial for four counts of
10 murder. I don't want to have nothing to do with
11 that.
12 **THE COURT:** He's already been convicted of
13 four counts of murder. We were trying to pick a
14 jury to decide the punishment.
15 **PROSPECTIVE JUROR:** Well, I think that's
16 for you guys to decide instead of me.
17 **THE COURT:** That's not the law. The law
18 is --
19 **PROSPECTIVE JUROR:** I know.
20 **THE COURT:** -- for the citizens to decide.
21 **PROSPECTIVE JUROR:** I'm giving you my
22 opinion on this.
23 **THE COURT:** All right. You're excused,
24 sir.
25 **PROSPECTIVE JUROR 240:** Thank you.

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1
2 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 242

3 **THE COURT:** Mr. Taylor?

4 **PROSPECTIVE JUROR 242:** Yes.

5 **THE COURT:** How long have you been in
6 Las Vegas?

7 **PROSPECTIVE JUROR:** Eight years.

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

9 **PROSPECTIVE JUROR:** I work in a casino.

10 **THE COURT:** What do you do in the casino?

11 **PROSPECTIVE JUROR:** I'm a table game
12 supervisor.

13 **THE COURT:** Your wife is in physical
14 therapy?

15 **PROSPECTIVE JUROR:** Yes.

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?

24 **PROSPECTIVE JUROR:** No.

25 **THE COURT:** Do you believe that you can be

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1 fair and impartial in this case?

2 **PROSPECTIVE JUROR:** Yes.

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

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** All right.

7 Now, you understand we're picking a jury
8 to decide the penalty for the defendant in this
9 case?

10 **PROSPECTIVE JUROR:** Yes.

11 **THE COURT:** And you understand he's been
12 convicted of four counts of first-degree murder?

13 **PROSPECTIVE JUROR:** Yes.

14 **THE COURT:** What we want to know is if you
15 can follow the law as written in Nevada, and one of
16 them is that for first-degree murder, the jury will
17 have to decide the punishment, and the four choices
18 they will have is the death penalty -- the four
19 choices are the death penalty, life imprisonment
20 without the possibility of parole, life imprisonment
21 with the possibility of parole or for a definite
22 term of 50 years, parole -- possibility of parole
23 after 20 years, and those sentences are doubled
24 because a deadly weapon is used.

25 Do you understand that?

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1 **PROSPECTIVE JUROR:** Yes.

2 **THE COURT:** Now, can you consider all four
3 forms of punishment?

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** And what that means is that
6 after listening to the facts of the case, the
7 evidence from the State and from the defendant and
8 looking at the background of the people involved and
9 listening to the instructions on the law that the
10 Court gives, do you feel that you can pick out the
11 appropriate punishment?

12 **PROSPECTIVE JUROR:** Yes.

13 **THE COURT:** Do you have any religious or
14 moral opposition to the death penalty?

15 **PROSPECTIVE JUROR:** No.

16 **THE COURT:** Do you have any problems or do
17 you have any opposition or is there anything in your
18 background where you could not consider life in
19 prison with or without parole or for a definite term
20 if the facts and the law warranted?

21 **PROSPECTIVE JUROR:** No.

22 **THE COURT:** Do you have any bias or
23 prejudice towards the State?

24 **PROSPECTIVE JUROR:** No.

25 **THE COURT:** Do you have any bias or

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1 prejudice towards the defendant?

2 **PROSPECTIVE JUROR:** No.

3 **THE COURT:** Have you heard anything about
4 this case?

5 **PROSPECTIVE JUROR:** If I did read it in
6 the paper years ago, I'd forgotten about it.

7 **THE COURT:** Did you hear any of the other
8 jurors discussing this case while you've been here?

9 **PROSPECTIVE JUROR:** No.

10 **THE COURT:** State.

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

12

13 EXAMINATION BY THE STATE

14 **BY MR. DASKAS:**

15 Q Mr. Taylor, thank you for your patience,
16 and we appreciate you waiting out there for the last
17 couple of days.

18 Real briefly, you understand the defendant
19 has already been convicted of four counts of
20 first-degree murder?

21 A Yes.

22 Q I'm sure you've heard in our criminal
23 justice system about the presumption of innocence
24 and how it's our burden to prove someone's guilt
25 beyond a reasonable doubt.

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1 You're familiar with that?

2 A Yes.

3 Q In this case, that presumption is gone.

4 Do you understand that?

5 A Yes.

6 Q Your role as a juror would simply be to
7 decide the appropriate penalty. Now, I say it's a
8 simple role, but it's obviously a very important one
9 and a very serious one because we're seeking the
10 death penalty.

11 Do you understand that?

12 A Yes.

13 Q You realize we don't take that lightly?

14 A Yes.

15 Q Let's assume you're selected as a juror in
16 this case and we present you with the underlying
17 facts of the homicides. We and the defense will
18 present information about the defendant's
19 background. Let's assume you heard all that
20 information, absorbed it and considered it, and you
21 believe that this is one of those unique cases where
22 death is warranted.

23 Can you actually impose that punishment?

24 A I could.

25 Q Understanding again that it's not an easy

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1 responsibility -- I'm not suggesting that it is --
2 let me ask you one slightly different question, and
3 that is this: You and the other 11 jurors will have
4 to select a foreperson, and you will -- if you're
5 the foreperson, will have the same vote as everyone
6 else, the only additional responsibility would be
7 that you would have to sign the verdict form. In
8 this case, that means you would have to sign the
9 verdict form that sentences this defendant to the
10 death penalty. If you and the other jurors agree
11 that's the appropriate punishment and if you were
12 selected as the foreperson, would you sign that
13 document?

14 **PROSPECTIVE JUROR:** Yes.

15 **MR. DASKAS:** Thank you, sir.

16 Judge, we'll pass this juror for cause.

17 **THE COURT:** Defense Counsel.

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

19

20 EXAMINATION BY THE DEFENSE

21 **BY MR. WHIPPLE:**

22 Q Good evening, Mr. Taylor. My name is Bret
23 Whipple, and Mr. Taylor, I represent Donte Johnson.
24 He is the convicted killer in this case, and I just
25 wanted to ask you a few questions to follow up.

1 I know you mentioned you're a table game
2 supervisor.

3 What was your original training when you
4 came out of college?

5 A I never graduated from college.

6 Q I notice you took some classes or some
7 advanced classes.

8 A I took architecture classes for a year.
9 That was it.

10 Q Where did you work prior to coming to
11 Vegas?

12 A In Atlantic City in casinos.

13 Q So, you've been involved in entertainment
14 or gaming most of your life?

15 A Eight years in a chemical plant before
16 that. That was it.

17 Q What do you do as a table game supervisor?

18 A I watch the dealers, interact with the
19 customers, make sure the games are run fairly.

20 Q Now, this is an unusual situation.

21 I guess you've never been on a jury
22 before?

23 A No, I haven't.

24 Q In a jury, my client is presumed innocent,
25 protected by a cloak of innocence. The State has

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1 the burden to prove the defendant guilty beyond a
2 reasonable doubt. Here is a lot simpler -- you're
3 just going to get a lot of information, and then you
4 have to make a decision as to Mr. Johnson's future.
5 Now, I might have been a bit presumptuous when I
6 said it's simply there's not going to be a lot of
7 challenging information, but the decision you're
8 going to have to make is extraordinarily
9 challenging.

10 When you received this jury questionnaire,
11 what were some of the things that ran through your
12 head?

13 A Such as -- I don't know what you're trying
14 to get at.

15 Q Are you concerned about potential sitting
16 in judgment of another person?

17 A Yes, but I understand somebody has to do
18 it.

19 Q And your thoughts are basically "I can do
20 it. If it has to be done, I can do it as well as
21 anybody else?"

22 A Pretty much so, yes.

23 Q The death penalty -- what's your opinion
24 with regard to the death penalty?

25 A I've never had any direct contact with it.

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1 I haven't formed really a strong opinion about it.

2 Q It's not something you really discuss with
3 other individuals?

4 A No. Nobody I've ever known has ever been
5 in that situation.

6 Q Sure.

7 Miss Jackson and I represent Mr. Johnson.
8 We're here not to, by any means, give any suggestion
9 as to any type of excuse or justification; there is
10 not. It was a terrible, heinous crime, but we will
11 be providing lots of information to you that we
12 believe is a reason to give a life sentence to
13 Mr. Johnson.

14 Would you be willing to listen to that
15 type of information?

16 A Yes, certainly.

17 Q Why?

18 A There's got to be circumstances
19 surrounding it, whether good or bad.

20 Q Now, in this particular case, as you know,
21 there were four young adults who had their lives
22 taken from them. They were bound with duct tape
23 around their feet and their arms, they were laid on
24 a floor and eventually, after a period of time, they
25 were shot in the back of the head?

1 A I did not know that before this minute.
2 Q Knowing that, could you still consider a
3 life sentence?
4 A It would be more difficult.
5 Q Why is that?
6 A The nature of the crime.
7 Q I understand.
8 At some point, this Court will give you
9 instructions, and some of those instructions include
10 the fact that the death penalty is never required,
11 and, in fact, we're going to tell you that there are
12 a lot of reasons to give life, and those are what
13 Miss Jackson and I will refer to as "mitigation."
14 There was a question that touched on that
15 in the jury questionnaire, and I note that you're
16 one of the individuals who said you were very much
17 interested in that type of information.
18 A Yes.
19 Q Do you recall signing that or marking
20 that?
21 A Well, I would think that I would need as
22 much information as possible --
23 Q Why is that?
24 A -- to make a just decision.
25 Q Now, you will also hear information or

1 I'll even suggest to you at some point that some of
2 those mitigating circumstances could be an issue as
3 simple as mercy or maybe a gut feeling that you
4 prefer to give life over death, that you prefer to
5 find life. That's not so easy to verbalize, those
6 gut feelings.

7 If other people had different opinions and
8 you had a gut feeling that you wanted to give life,
9 how would you handle that situation?

10 A I would voice my opinion, whatever it was.

11 Q Sometimes people in my business, we hear
12 this issue of abuse excuse. Have you ever heard
13 that term, "abuse excuse"?

14 A No, I don't recall.

15 Q "Abuse excuse" is -- sometimes used in the
16 fact that people suggest we're trying to justify or
17 explain our client's action because of his prior
18 history or because of family problems or something.
19 We're not ever going to try to justify or explain,
20 but we are going to give you information.

21 Do you think a person's background and
22 family and the way they were brought up is the
23 information that you would like to hear about?

24 A Yes.

25 Q I'm going to ask you why. Why is that

1 important to you?

2 A Well, what a person is going through
3 before this act is obviously important.

4 Q Relative -- it will dictate what happens
5 to a person such as yourself that makes a decision
6 on the rest of his life?

7 A Yes.

8 Q Life in prison -- do you believe that's a
9 severe punishment?

10 A Yes.

11 Q Why?

12 A If it's without parole, there's no
13 opportunity to ever rejoin society.

14 Q You enjoy your freedom?

15 A Yes.

16 Q And to take one's freedom away is a severe
17 punishment?

18 A Yes.

19 Q Do you consider yourself -- I note that
20 you're kind of in a leadership position, obviously
21 as a supervisor.

22 Do you consider yourself as a follower or
23 a leader?

24 A That's not really that much of a
25 leadership position. I haven't really thought of

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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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Jan 09 2015 02:25 p.m.
Tracie K. Lindeman
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 XXII  
~~~~~

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IN THE SUPREME COURT OF NEVADA

DONTE JOHNSON,

CASE NO. 65168

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

OPENING BRIEF APPENDIX

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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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