

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONTE JOHNSON,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

Electronically Filed
May 07 2015 10:14 a.m.
Tracie K. Lindeman
Clerk of Supreme Court
Case No. 65168

**RESPONDENT'S APPENDIX
VOL. I**

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Counsel for Appellant

Counsel for Respondent

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on May 7th, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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Nevada Attorney General

CHRISTOPHER R. ORAM, ESQ.
Counsel for Appellant

STEVEN S. OWENS
Chief Deputy District Attorney

BY /s/ E.Davis
Employee, District Attorney's Office

SSO/Genevieve Craggs/ed

FILED

2004 APR 27 P 3:12

Shirley B. Pungjones
CLERK

0001
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ALZORA B. JACKSON
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(702) 455-6265
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

DONTE JOHNSON, aka
JOHN LEE WHITE

Defendant.

CASE NO. C153154

DEPT. NO. VIII

DATE OF HEARING:
TIME OF HEARING:

MOTION TO BIFURCATE PENALTY PHASE

COMES NOW, the Defendant, DONTE JOHNSON, aka JOHN LEE WHITE by and through his attorneys DAREN B. RICHARDS, Acting Special Public Defender, ALZORA B. JACKSON, Deputy Special Public Defender, and BRET O. WHIPPLE, Deputy Special Public Defender and respectfully moves this Court for an Order bifurcating the penalty phase set to commence on May 18, 2004.

RECEIVED

APR 27 2004

COUNTY CLERK




SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

RA 000001

1 This Motion is based upon the attached Points and Authorities, on all papers and
2 pleadings on file herein, and on any oral argument allowed at the time of the hearing on
3 this Motion.

4 DATED this 27th day of April, 2004.

5
6 
ALZORA B. JACKSON
Deputy Special Public Defender
Nevada Bar No. 2255
333 South Third Street, 2nd Floor
Las Vegas, NV 89155-2316
(702) 455-6265
Attorneys for Defendant


11 **NOTICE OF MOTION**

12 TO: STATE OF NEVADA, Plaintiff; and

13 TO: DAVID ROGER District Attorney, Attorney for Plaintiff

14 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and
15 foregoing **MOTION TO BIFURCATE PENALTY PHASE** on the 10 day of May
16 , 2004, at the hour of 9:00 a.m., in Department No. VII of the above-entitled Court, or
17 as soon thereafter as counsel may be heard.

18 DATED this 27th day of April, 2004.

19
20 
ALZORA B. JACKSON
Deputy Special Public Defender
Nevada Bar No. 2255
333 South Third Street, 2nd Floor
Las Vegas, NV 89155-2316
(702) 455-6265
Attorneys for Defendant

1 **POINTS AND AUTHORITIES**

2 Under the Nevada death penalty scheme, like the death penalty schemes of other
3 states, the jury may impose a sentence of death only if it finds at least one aggravating
4 circumstance and further finds that there are no mitigating circumstances sufficient to
5 outweigh the aggravating circumstance or circumstances found. NRS 175.554(3)

6 Although Defendant believes that it is unconstitutional and a violation of Nevada
7 statute to introduce "character", "bad act" or other evidence suggesting that he is a bad
8 person that is not relevant to the statutory aggravating circumstances, and although he
9 has opposed such evidence in his opposition to Notice of State's evidence in support of
10 aggravating circumstances, he is aware that such evidence is often admitted during the
11 penalty phase of a capital trial. See, Allen v. State, 99 Nev. 485, 488, 665 P.2d 238,
12 240 (1983) (citing NRS 175.552(3)). In the event that such evidence is permitted to be
13 introduced by the prosecution in this case, it must not be heard by the jurors prior to the
14 time that they determine whether Mr. Johnson is eligible for the death penalty.

15 The "aggravating circumstances/mitigating factors" scheme for determining death
16 eligibility is essential to the process of narrowing the class of defendants who are death
17 eligible. Arave v. Creech, 507 U.S. 463, 470-74, 113 S.Ct. 1534, 123 L.ED.2d 188
18 (1993); Middleton v. State, 114 Nev. Adv. Op. 120, 968 P.2d 296, 314 (1998).
19 Character evidence must not be used to determine whether a defendant is death eligible.
20 The Nevada Supreme Court "did not hold in Allen that evidence outside the purview of
21 NRS 200.033 could serve to render a defendant death eligible. Only enumerated
22 aggravating circumstances pursuant to NRS 200.033 can do this." Id.

23 Only after the jury has determined that a defendant is death eligible – after
24 considering the statutory aggravating circumstances and mitigating factors – may the jury
25 consider character evidence against the defendant. Middleton, 968 P.2d at 314. "At
26 this final stage, evidence presented pursuant to NRS 175.552(3) can influence the
27 decision to impose death, but this comes after the narrowing to death eligibility has
28 occurred." Id.

1 Support for a bifurcated penalty phase is also found in a decision by the United
2 States Supreme Court. In Buchanan v. Angelone, 522 U.S. 269, 118 S.Ct. 757, 760,
3 139 L.Ed.2d 702 (1998), the Court explained as follows:

4 Petitioner initially recognizes, as he must, that our cases have distinguished
5 between two different aspects of the capital sentencing process, the
6 eligibility phase and the selection phase. Tuilaepa v. California, 512 U.S.
7 967, 971, 114 S.Ct. 2630, 2634, 129 L.Ed.2d 750 (1994). In the
8 eligibility phase the jury narrows the class of defendants eligible for the
9 death penalty, often through consideration of aggravating circumstances.
10 Id. at 971, 114 S.Ct., at 2634. In the selection phase, the jury determines
11 whether to impose a death sentence upon an eligible defendant. Id. at 972,
12 114 S.Ct. at 2634-2635.

13 The law in this area has become even more clear since Mr. Johnson's two (2) prior
14 penalty hearings. In a somewhat recent case our Nevada Supreme Court addressed this
15 issue. In Evans v. State, 28 P.3d 498, 117 Nev. Adv. Op. 50 (2001), the Nevada
16 Supreme Court explained as follows:

17 To determine that a death sentence is warranted, a jury considers three
18 types of evidence: evidence relating to aggravating circumstances,
19 mitigating circumstances, and any other matter which the court deems
20 relevant to sentencing. The evidence at issue here was the third type, other
21 matter evidence. In deciding whether to return a death sentence, the jury
22 can consider such evidence only after finding the defendant death eligible,
23 i.e., after it has found unanimously at least one enumerated aggravator and
24 each juror has found that any mitigators do not outweigh the aggravators.
25 Of course, if the jury decides that death is not appropriate, it can consider
26 other matter evidence in deciding on another sentence. Id. at pg. 515

27 **CONCLUSION**

28 Mr. Johnson respectfully requests that if this Court permits the State to introduce

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...

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...

1 character evidence that is not relevant to the statutory aggravating circumstances, that
2 the penalty phase be bifurcated into an "eligibility" phase and a "selection" phase.

3 DATED this 27 day of April, 2004.

4 RESPECTFULLY SUBMITTED,

5 

6 ALZORA B. JACKSON
7 Deputy Special Public Defender
8 Nevada Bar No. 2255
9 333 South Third Street, 2nd Floor
10 Las Vegas, NV 89155-2316
11 (702) 455-6265
12 Attorneys for Defendant
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ORIGINAL

0001

DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER
Nevada Bar No. 824
ALZORA B. JACKSON
Deputy Special Public Defender
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(702) 257-9500
Attorneys for Defendant

FILED IN OPEN COURT
APR 12 2005

SHIRLEY B. PARRAGUIRRE, CLERK
BY Sharon Coffman
DEPUTY
SHARON COFFMAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONTE JOHNSON, aka
JOHN LEE WHITE

Defendant.

CASE NO. C153154

DEPT. NO. VIII

DATE OF HEARING:
TIME OF HEARING:

MOTION TO RECONSIDER REQUEST TO BIFURCATE PENALTY PHASE

COMES NOW, the Defendant, DONTE JOHNSON, aka JOHN LEE WHITE by and through his attorneys DAVID M. SCHIECK, Special Public Defender, ALZORA B. JACKSON, Deputy Special Public Defender, and BRET O. WHIPPLE and respectfully moves this Court for an Order bifurcating the penalty phase set to commence on April 19, 2005.

...

...

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

RA 000006 **IS15**

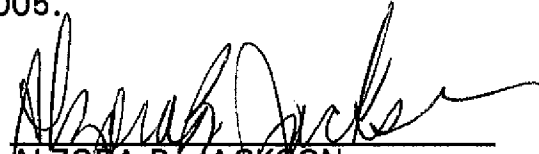
CLERK

APR 12 2005

RECEIVED

1 This Motion is based upon the attached Points and Authorities, on all papers and
2 pleadings on file herein, and on any oral argument allowed at the time of the hearing on
3 this Motion.

4 DATED this 11th day of April, 2005.



ALZORA B. JACKSON
Deputy Special Public Defender
Nevada Bar No. 2255
333 South Third Street, 2nd Floor
Las Vegas, NV 89155-2316
(702) 455-6265
Attorneys for Defendant

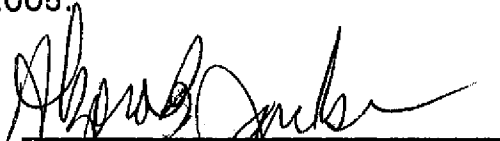
11 **NOTICE OF MOTION**

12 TO: STATE OF NEVADA, Plaintiff; and

13 TO: DAVID ROGER District Attorney, Attorney for Plaintiff

14 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and
15 foregoing **MOTION RECONSIDER REQUEST TO BIFURCATE PENALTY PHASE** on the _
16 ___ day of April, 2005 at the hour of 9:30 a.m., in Department No. VII of the above-
17 entitled Court, or as soon thereafter as counsel may be heard.

18 DATED this ___ day of April, 2005.



ALZORA B. JACKSON
Deputy Special Public Defender
Nevada Bar No. 2255
333 South Third Street, 2nd Floor
Las Vegas, NV 89155-2316
(702) 455-6265
Attorneys for Defendant

1 **POINTS AND AUTHORITIES**

2 Under the Nevada death penalty scheme, like the death penalty schemes of other
3 states, the jury may impose a sentence of death only if it finds at least one aggravating
4 circumstance and further finds that there are no mitigating circumstances sufficient to
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17 To determine that a death sentence is warranted, a jury considers three
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20 relevant to sentencing. The evidence at issue here was the third type, other
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23 i.e., after it has found unanimously at least one enumerated aggravator and
24 each juror has found that any mitigators do not outweigh the aggravators.
25 Of course, if the jury decides that death is not appropriate, it can consider
26 other matter evidence in deciding on another sentence. Id. at pg. 515

27 **CONCLUSION**

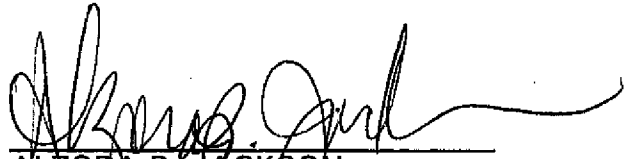
28 Mr. Johnson respectfully requests that if this Court permits the State to introduce

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2 the penalty phase be bifurcated into an "eligibility" phase and a "selection" phase.

3 DATED this 11 day of April, 2005.

4 RESPECTFULLY SUBMITTED,

5 
6

7 ALZORA B. JACKSON
8 Deputy Special Public Defender
9 Nevada Bar No. 2255
10 333 South Third Street, 2nd Floor
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12 (702) 455-6265
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1 **ROC**

2 DAVID M. SCHIECK
3 SPECIAL PUBLIC DEFENDER
4 Nevada Bar No. 824
5 ALZORA B. JACKSON
6 Deputy Special Public Defender

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11 BRET O. WHIPPLE
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14 Las Vegas, NV 89101
15 (702) 257-9500
16 Attorneys for Defendant

17
18 DISTRICT COURT
19 CLARK COUNTY, NEVADA
20

21 THE STATE OF NEVADA,
22
23 Plaintiff,

24 vs.

25 DONTE JOHNSON, aka
26 JOHN LEE WHITE
27
28 Defendant.

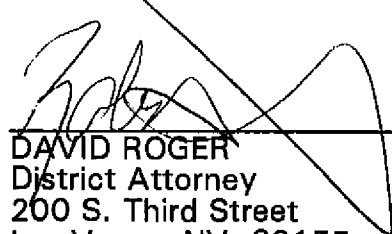
CASE NO. C153154

DEPT. NO. VIII

DATE OF HEARING:
TIME OF HEARING:

29
30 **RECEIPT OF COPY**

31 RECEIPT OF COPY of the foregoing **MOTION RECONSIDER REQUEST TO**
32 **BIFURCATE PENALTY PHASE** is hereby acknowledged this 12 day of April, 2005.
33

34
35 
36 DAVID ROGER
37 District Attorney
38 200 S. Third Street
39 Las Vegas, NV 89155
40 Attorney for Plaintiff

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New District Criminal/Civil Search](#) [Refine Search](#) [Close](#)

Location : District Courts [Images](#) [Help](#)

REGISTER OF ACTIONS

[CASE No. 98C153154](#)

The State of Nevada vs Donte Johnson

§
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§

Case Type: **Felony/Gross Misdemeanor**
Date Filed: **09/02/1998**
Location: **Department 6**
Cross-Reference Case Number: **C153154**
Defendant's Scope ID #: **1586283**
Lower Court Case Number: **97GJ00184**
Supreme Court No.: **65168**
67492

PARTY INFORMATION

Defendant Johnson, Donte

Lead Attorneys
Christopher R. Oram
Retained
7023845563(W)

Plaintiff State of Nevada

Steven B Wolfson
702-671-2700(W)

CHARGE INFORMATION

Charges: Johnson, Donte	Statute	Level	Date
1. BURGLARY. WITH A DEADLY WEAPON	205.060*165	Felony	01/01/1900
2. CONSPIRE TO AID AND ABET A ROBBERY	C200.380	Felony	01/01/1900
2. CONSPIRACY TO COMMIT KIDNAPPING IN FIRST DEGREE	C200.320	Felony	01/01/1900
2. CONSPIRACY TO COMMIT MURDER.	C200.010	Felony	01/01/1900
3. ROBBERY WITH A DEADLY WEAPON	200.380*165	Felony	01/01/1900
4. ROBBERY WITH A DEADLY WEAPON	200.380*165	Felony	01/01/1900
5. ROBBERY WITH A DEADLY WEAPON	200.380*165	Felony	01/01/1900
6. ROBBERY WITH A DEADLY WEAPON	200.380*165	Felony	01/01/1900
7. KIDNAPPING IN FIRST DEGREE WITH A DEADLY WEAPON	200.320*165	Felony	01/01/1900
8. KIDNAPPING IN FIRST DEGREE WITH A DEADLY WEAPON	200.320*165	Felony	01/01/1900
9. KIDNAPPING IN FIRST DEGREE WITH A DEADLY WEAPON	200.320*165	Felony	01/01/1900
10.KIDNAPPING IN FIRST DEGREE WITH A DEADLY WEAPON	200.320*165	Felony	01/01/1900
11.MURDER WITH A DEADLY WEAPON	200.010*165	Felony	01/01/1900
12.MURDER WITH A DEADLY WEAPON	200.010*165	Felony	01/01/1900
13.MURDER WITH A DEADLY WEAPON	200.010*165	Felony	01/01/1900
14.MURDER WITH A DEADLY WEAPON	200.010*165	Felony	01/01/1900

EVENTS & ORDERS OF THE COURT

04/18/2005 **Decision** (9:00 AM) ()
DECISION: MOTION TO BIFURCATE PENALTY PHASE...MOTION TO SUPPRESS EVIDENCE RE Court Clerk: Sharon Coffman Heard By: Lee Gates
Minutes

RA 000012

04/18/2005 9:00 AM

- COURT HEREBY ORDERS, Defendant's Motion to Bifurcate Penalty Phase of trial is GRANTED; FURTHER ORDERS, Defendant's Motion to Suppress Evidence re Darnell Johnson is GRANTED.

[Return to Register of Actions](#)

RA 000013

290

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

FILED IN OPEN COURT

JUN 12 2000

20

SHIRLEY B. PARRAGUIRRE, CLERK

BY *Carole D'Aloia*

CAROLE D'ALOIA

DEPUTY

STATE OF NEVADA

Plaintiff

vs.

DONTE JOHNSON,
aka John Lee White

Defendant

CASE NO. C153154

DEPT. V
DOCKET "H"

Transcript of
Proceedings

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

JURY TRIAL - DAY 1
MONDAY, JUNE 5, 2000
VOLUME I

APPEARANCES:

FOR THE PLAINTIFF:

GARY L. GUYMON
Chief Deputy District Attorney
ROBERT J. DASKAS
Deputy District Attorney

FOR THE DEFENDANT:

DAYVID J. FIGLER
Deputy Special Public Defender
JOSEPH S. SCISCENTO

COURT REPORTER:

SHIRLEE PRAWALSKY
District Court

TRANSCRIPTION BY:

NORTHWEST TRANSCRIPTS, INC.
Las Vegas Division
P.O. Box 35257
Las Vegas, Nevada 89133-5257
(702) 658-9626

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

CE

RA 000014

1 LAS VEGAS, NEVADA, MONDAY, JUNE 5, 2000, 9:40 A.M.

2 (Prospective jurors are present)

3 THE COURT: Okay, guys, Carol or Alona are gonna
4 read out the excusals, but, before they do, folks, filling out
5 these questionnaires last week has enabled us to review them
6 with counsel and agree that some of you might be excused at
7 this stage of the proceedings. Listen carefully. The
8 following individuals are excused to go back to the Jury
9 Commissioner with our thanks.

10 Mr. Servetz, Number 551, Jeffrey Servetz, you may
11 leave. Ms. Blakely, I believe it's a Ms. Blakely, Number 569,
12 thank you. Ms. Coleman, Number 602, and Mr. Cook, Number 631.

13 Mr. Cook? Maybe he's one of the absent ones. Okay.
14 And then we have some absences today who are who?

15 THE CLERK: 584 and 634 and 599, 605 and 623, 628,
16 631 and I think 615.

17 Is 615 here?

18 PROSPECTIVE JUROR COLUCCI: 615, here.

19 THE CLERK: 615 is here, so they're not all on that

20 --

21 THE COURT: And that would be who? Is that Mr.
22 Wilson?

23 MR. GUYMON: 627?

24 THE COURT: Suzanne Wilson?

25 PROSPECTIVE JUROR WILSON: Suzanne Wilson is my wife

1 and she's scheduled to go in for heart surgery.

2 THE COURT: Where is Suzanne Wilson?

3 PROSPECTIVE JUROR WILSON: She's at home right now.

4 THE COURT: I see, okay. 6 what?

5 PROSPECTIVE JUROR WILSON: 627.

6 MR. GUYMON: 627.

7 THE CLERK: This is the one that --

8 THE COURT: I see, okay.

9 When is her heart surgery, Mr. Wilson?

10 PROSPECTIVE JUROR WILSON: The 18th, I believe.

11 THE COURT: We'll be through long before the 18th.

12 Thanks. We'll get back to you.

13 PROSPECTIVE JUROR WILSON: Okay. Sir?

14 THE COURT: Yes, Mr. Wilson?

15 PROSPECTIVE JUROR WILSON: I have to make -- I have

16 to make all the arrangements on the 10th, 11th or 12th, I

17 think.

18 THE COURT: Okay, we'll get back and talk to you

19 about it, Mr. Wilson, in a few minutes.

20 PROSPECTIVE JUROR WILSON: Okay.

21 THE COURT: Thanks.

22 This is the time set for State of Nevada versus

23 Donte Johnson. Is the State ready?

24 MR. GUYMON: Yes, Your Honor.

25 THE COURT: The defense ready?

1 MR. SCISCENTO: Yes, Your Honor.

2 THE COURT: Thank you.

3 Would one of you guys for the prosecution introduce
4 yourselves and tell the jury the nature of the crime alleged,
5 if you wish to supplement what was in the questionnaire, and
6 read the list of the probable witnesses?

7 MR. GUYMON: Thank you.

8 Good morning. My name is Gary Guymon. I work for
9 the District Attorney's Office. And this is Robert Daskas.
10 He also works for the District Attorney's Office.

11 This is a criminal case, State of Nevada versus
12 Donte Johnson, also known as Johnnie Lee White. It involves a
13 series of felony criminal charges; the charges of burglary
14 while in the possession of a firearm, robbery with use of a
15 deadly weapon, kidnapping with use of a deadly weapon and
16 murder with use of a deadly weapon. There are four counts of
17 murder or four charges of murder, there are four charges of
18 robbery with use of a deadly weapon, there are four charges of
19 kidnapping with use of a deadly weapon and there are four
20 victims in this case. The victims names are Matthew Mowen,
21 Tracey Gorringe, Biddle and Talamantez.

22 The incident is alleged to have occurred on August
23 14th -- actually, the 13th, late in the hours of the 13th into
24 the 14th of 1998. It occurred in the area of Terra Linda,
25 which is in the southeast part of town. Terra Linda is a road

1 there and it was a -- there was a residence, a single-family
2 unit, a three-bedroom home.

3 There are a list of witnesses that I'm gonna read to
4 you. I want you to listen closely to the names that we
5 mention so that you can tell the Court whether you know any of
6 the people involved. You should know that it was the Las
7 Vegas Metropolitan Police Department that investigated this
8 case and I'll name a number of police officers as I do this.

9 The first witness is a Justin Perkins. He's
10 approximately 22 years old and lives here in our community.
11 The next is Nick De Lucia. Nick is perhaps 28 years old,
12 maybe 30 years old, also a citizen here in our community.
13 Sergeant Randy Sutton, you'll hear that name, he is one of the
14 witnesses in this case. You'll also hear the name Detective
15 David West. He is with the Las Vegas Metropolitan Police
16 Department. He and Sergeant Sutton were some of the first
17 responding officers to this crime scene once it was
18 discovered.

19 There is a -- the name of Tod Armstrong, you'll hear
20 that name, and you'll hear the name Bryan Johnson and Ace
21 Hart. Those three individuals are young men about 21, 22
22 years old now. They lived in the area and were residents here
23 in Las Vegas, Clark County, Nevada about the time this
24 happened. You'll hear the name Charla Severs. She's perhaps
25 20 years old. She was the girlfriend of the defendant, Donte

1 Johnson. You'll hear the name LaShawnya Wright. She is also
2 about 20 years old.

3 You'll hear the name and hear testimony from Shawn
4 Fletcher. Shawn Fletcher's a crime scene analyst with the Las
5 Vegas Metropolitan Police Department. She is one of the
6 analysts that gathered up evidence in this case and will
7 testify in court. You'll hear the name David Horn. David
8 Horn is the supervisor of Shawn Fletcher. David Horn is also
9 a crime scene analyst with the Las Vegas Metropolitan Police
10 Department. You'll hear from a David -- or, excuse me, a
11 Bradley Grover or Grover, G-R-O-V-E-R. He is also a crime
12 scene analyst with the Las Vegas Metropolitan Police
13 Department. He gathered up evidence in this case and he will
14 testify.

15 You will hear the name Sergeant Honea, H-O-N-E-A.
16 He is a trooper with the Nevada Highway Patrol and he will
17 testify in this case. You will hear from a Mark Washington.
18 Mark Washington is also a crime scene analyst with the Las
19 Vegas Metropolitan Police Department. Mark Washington
20 gathered up evidence from a location here that became
21 important in this case. It is a location called the Everman
22 residence, also rather -- very near the Terra Linda residence
23 on the southeast part of town. Mark Washington will testify
24 to what he did in this case.

25 Ed Guenther is a fingerprint expert. He does

1 comparisons for the Las Vegas Metropolitan Police Department
2 and he's been employed with the Las Vegas Police Department
3 for many years. He will testify in this case. You will hear
4 from a Dr. Robert Bucklin. Dr. Robert Bucklin has been a
5 coroner for many, many years. He was employed with the Las
6 Vegas -- excuse me, with the Clark County Coroner's Office for
7 quite some time. He is now retired. His name is Dr. Robert
8 Bucklin and he will testify in this case.

9 You will hear from a Sheree Norman. She is a crime
10 scene analyst with the Las Vegas Metropolitan Police
11 Department. She gathered up evidence at the autopsies and she
12 will testify to her discoveries and her findings in the case.
13 You will also hear from a Detective Jim Buczek and Jim Buczek
14 is a detective with the Las Vegas Metropolitan Police
15 Department. His partner is Tommy Thowsen. Those two are the
16 two leading or lead investigators in this case. They are both
17 employed with the Las Vegas Metropolitan Police Department.
18 Their sergeant is a sergeant by the name of Sergeant Hefner.
19 He will also testify in this case. Sergeant Hefner, I
20 believe, has had his career here in the Las Vegas area and
21 been with the police department many, many years.

22 Lastly, you'll hear from a DNA expert that is
23 employed with the Las Vegas Metropolitan Police Department.
24 His name is Tom Wall. He will testify to the DNA findings in
25 this particular case.

1 All of those names are individuals that are going to
2 testify in this courtroom and I want you to be able to tell
3 the Court whether or not you know any of those persons and if
4 you are involved with them.

5 There are also two other names that you're going to
6 hear throughout this case. They are the names of Terrell
7 Young and Sikia Smith. They are charged with the very same
8 charges, although there case is not going to be tried in this
9 courtroom today, but you'll hear those names. Terrell Young
10 is approximately the same age as the defendant and, Sikia
11 Smith, also the same age of the defendant.

12 Those are the names and list of witnesses that the
13 State will be calling in this case. Thank you.

14 THE COURT: Thank you.

15 Mr. Sciscento, would you like to introduce yourself,
16 your client and Mr. Figler?

17 MR. SCISCENTO: Thank you, Your Honor.

18 Good morning. My name is Joseph Sciscento and I
19 work with the Special Public Defender's Office. Assisting me
20 is Dayvid Figler, who also works for the Special Public
21 Defender's Office. And my client is Mr. John White, also
22 known as Donte Johnson.

23 Along with the list of witnesses that Mr. Guymon
24 mentioned, there may be some other witnesses that we would put
25 up, the defendant that is, and, if you know them, then you

1 want to tell the Judge that. There's a Dr. Bannoura King
2 [phonetic], a Dr. John Thorton, Resito Espanito [phonetic]
3 and, along with the other list that Mr. Guymon has provided
4 you, if you know those you need to tell the Judge.

5 Thank you.

6 THE COURT: Thank you.

7 Okay, folks, what we're gonna start the day by doing
8 is picking a jury. And the questions that you answer are
9 answered under oath and Carol's gonna administer that oath to
10 you now.

11 THE CLERK: Will you please rise and raise your
12 right hands?

13 PROSPECTIVE JURORS ARE SWORN

14 THE CLERK: Please be seated.

15 THE COURT: My name is Jeff Sobel. Obviously, I'm
16 the Judge in this courtroom. What we're looking to do this
17 morning is seat, as the jurors in this case, 12 impartial,
18 intelligent people, plus a couple of alternates probably, to
19 sit in judgment in this matter. The first thing we're gonna
20 do is I'm gonna ask you a series of questions as you're seated
21 as a group out there in the audience. Most of you are not
22 going to have "yes" answers to any of these questions. Only
23 if you have a "yes" answer, an affirmative answer, please
24 raise your hand.

25 There's a lot of you in here. I think there's 77

1 left. Please just keep your hand up until I recognize you. I
2 cannot read your badge numbers from here. Wait 'til I've
3 gotten your badge number and your name and then, if there's
4 more than one of you answering yes to a question, I'll come
5 back to you and pick up your answers after that.

6 The first question is do any of you seated out there
7 know either of the prosecutors or any of the witnesses that
8 were read to you by either Mr. Guymon or Mr. Sciscento?

9 Sixth row is the only yes. And what is your name --
10 whoops, fifth and sixth row. Ma'am, what's your name?

11 PROSPECTIVE JUROR MAY: Misty May.

12 THE COURT: You're gonna have to talk up.

13 PROSPECTIVE JUROR MAY: Misty May.

14 THE COURT: Okay. And who do you know?

15 PROSPECTIVE JUROR MAY: It kind of sounded familiar
16 and --

17 THE COURT: I'm sorry, ma'am, I can't hear you.

18 THE CLERK: Can you just come on up and speak? We
19 can't hear you.

20 Thanks.

21 THE COURT: You have a soft voice.

22 PROSPECTIVE JUROR MAY: It was one of our bosses,
23 their best friend -- one of their friends, so I know -- I
24 thought I had heard it, but I couldn't think of where and I
25 finally thought of it, 'cause they talked about it at work and

1 so --

2 THE COURT: What's your badge number, ma'am?

3 PROSPECTIVE JUROR MAY: 601.

4 THE CLERK: 601?

5 PROSPECTIVE JUROR MAY: Yeah.

6 THE COURT: So you heard things about the case.

7 What we're looking for is not people who never heard of this

8 case or don't know about it. What we're looking for is people

9 who can make a judgment in this case based on what they hear

10 in the courtroom.

11 Do you think you can do that? No?

12 PROSPECTIVE JUROR MAY: Uh-uh.

13 THE COURT: Why is that?

14 PROSPECTIVE JUROR MAY: I just -- I can't handle

15 things like this.

16 THE COURT: And what do you mean by things like

17 this?

18 PROSPECTIVE JUROR MAY: Well, something happened to

19 me last year and I just can't do it.

20 THE COURT: Any problem with excusing this lady?

21 MR. DASKAS: No, Judge.

22 MR. GUYMON: No, Your Honor.

23 MR. SCISCENTO: No problem, Your Honor.

24 THE COURT: Okay, ma'am, thank you very much.

25 You're excused.

1 That's what, 601?

2 THE CLERK: 601.

3 THE COURT: And the gentleman in the sixth row,
4 what's your name and number?

5 PROSPECTIVE JUROR GILBERT: Larry Gilbert, 619.

6 THE COURT: All right, let me find you, sir.

7 And who do you know, sir?

8 PROSPECTIVE JUROR GILBERT: Officer Dave West.

9 THE COURT: And how do you know him?

10 PROSPECTIVE JUROR GILBERT: He lives just down the
11 block from me and we attended church together.

12 THE COURT: Yeah, what we're looking for, again, is
13 not people who don't know anybody, but somebody who can make
14 their judgment based on what they hear from the witness stand.

15 Do you think you have such a close relationship with
16 this officer that you're gonna believe his word rather than
17 somebody else's just because of your acquaintance with him?

18 PROSPECTIVE JUROR GILBERT: No.

19 THE COURT: Okay, so you think you could be fair and
20 impartial?

21 PROSPECTIVE JUROR GILBERT: Yes.

22 THE COURT: Thank you.

23 Anybody know either the defense attorneys or Mr.
24 Donte Johnson or, sort of repetitively, any of the three
25 witnesses who Joe read to you?

1 No affirmative responses.

2 I'm gonna read you a series of principles of law
3 that if you are selected, and only about a fifth of you are
4 gonna be sitting on this jury this week, that are true in
5 every criminal case in America, anywhere from DUI through very
6 serious charges such as this. These principles are these;
7 that a person is presumed to be innocent, that the Information
8 filed is a mere accusation and it is not evidence of guilt,
9 that the State must prove the defendant guilty beyond a
10 reasonable doubt and that the defendant doesn't have to
11 present any evidence in order for you to find him not guilty.

12 If you are selected as jurors, at the end of the
13 case at least some of those principles will be put into
14 instructions of law and you'll be committed to follow those
15 instructions. Are there any among you who would not follow
16 those instructions if selected as jurors?

17 No affirmative responses.

18 What these really mean, if you want to put it
19 another way, and I don't expect this to happen, but you never
20 know, Mr. Sciscento and Mr. Figler could sit there during the
21 trial, not ask a single question, not call a single witness
22 and if Mr. Daskas and Mr. Guymon, through their witnesses, do
23 not convince you beyond a reasonable doubt of Mr. Johnson's
24 guilt, he is entitled to a verdict of not guilty.

25 Is there anyone who would not adhere to that

1 principle?

2 No affirmative responses.

3 Now the last question, before I ask it, I'm gonna
4 give you a little preface. I understand that jury duty is
5 burdensome. Except for retired folks, almost everyone who
6 comes in on jury duty has other concerns that they consider
7 more pressing, whether they're personal or professional, and
8 they would rather be somewhere else, that's a given, but if
9 we're gonna have the Sixth Amendment we're gonna have people
10 entitled to their jury trials, both the State and the
11 defendant, and we're gonna have to have sacrifices.

12 Now we have had trials in here that have been six,
13 seven weeks long and people changed their trip plans and
14 people lost tip money and bosses found out that although they
15 felt they were very valuable their underlings could get along
16 without them and people who worked for other people learned
17 they weren't quite as vital as they thought they were and
18 other people would pick up work for them. So the preface to
19 the question I'm gonna ask you, in part, is I understand there
20 are significant burdens sitting on a jury.

21 The second element I'd like to tell you about is
22 this. This is not, although it's a very serious charge, this
23 is not the O.J. Simpson murder trial which lasted a year.
24 This trial is not going to last a year. This isn't the
25 Menendez case in California that lasted six months. This is

1 not, in terms of length, though it's very important to
2 everyone in this room, I hope, in terms of length this is not
3 the Binion murder case. It's not going to go six to eight
4 weeks.

5 I was a lawyer about 22 years and I've been a judge
6 about ten. In discussing this matter with counsel, in
7 discussing the amounts of witnesses, I expect that this case,
8 in terms of Phase I, and if you read the questionnaires and
9 understood them you realize there may be two phases to this
10 case, if and only if you convict Mr. Johnson and if and only
11 if you convict Mr. Johnson of first degree murder there will
12 be a penalty phase, so there is possibly, but not necessarily,
13 two phases to this trial.

14 The first phase is the determination of guilt or
15 innocence. I am confident that we will pick the jury and have
16 all the witnesses relative to guilt or innocence this week.
17 Frankly, and we'll see how it goes, I don't think it will even
18 take all of this week. If and only if you find Mr. Johnson
19 guilty of first degree murder there will be a penalty phase
20 next week, which I believe will take Monday and possibly
21 Tuesday.

22 Now the wild card in all cases, murder allegations
23 or less serious allegations, is always jury deliberation, but
24 usually there's a correlation between the number of witnesses
25 and the length of deliberations. I think, even given average

1 deliberations, Phase I of this trial will be over in one week,
2 so that's the 5th, 6th, 7th, 8th and 9th, and, if there is a
3 finding of first degree murder, I think the penalty hearing,
4 including deliberations, will take no more than the 12th, 13th
5 and 14th.

6 So with all of that preface in mind, I ask you this
7 question. This trial is estimated to last parts of the next
8 two weeks. Are there any jurors who would suffer an undue
9 burden in sitting for this length of time?

10 First row, what's your name and number, sir?

11 PROSPECTIVE JUROR CAMPITELLI: Anthony Campitelli,
12 556.

13 THE COURT: Let me get back to you, sir. There's a
14 lot of hands up. Thank you.

15 Second row, yes, sir. Name and number?

16 PROSPECTIVE JUROR MALEN: Jon Malen, 565.

17 THE COURT: Yes, sir.

18 PROSPECTIVE JUROR PAYNE: Ronald Payne, 566.

19 THE COURT: Yes, sir.

20 PROSPECTIVE JUROR KRIZEWICZ: 563.

21 THE COURT: And what's your name, sir?

22 PROSPECTIVE JUROR KRIZEWICZ: Dave Krizewicz.

23 THE COURT: Say again?

24 PROSPECTIVE JUROR KRIZEWICZ: Dave Krizewicz.

25 THE COURT: Third row, yes, sir.

1 PROSPECTIVE JUROR ASHMORE: 582.
2 THE COURT: What's your name, sir?
3 PROSPECTIVE JUROR ASHMORE: Todd Ashmore.
4 THE COURT: Anybody in the fourth row? I don't
5 think so.
6 PROSPECTIVE JUROR LEWIS: Yeah.
7 THE COURT: Oh, okay.
8 PROSPECTIVE JUROR LEWIS: 589.
9 THE COURT: What's your name, sir?
10 PROSPECTIVE JUROR LEWIS: Ken Lewis.
11 THE COURT: Fifth row? Are you in the fifth row? I
12 think you are, sir. What's your name?
13 PROSPECTIVE JUROR HASTINGS: I'm in the sixth.
14 THE COURT: Yes. What?
15 PROSPECTIVE JUROR HASTINGS: I'm in the sixth row.
16 THE COURT: One, two, three -- Stony, where's the
17 fifth row? I can't see from here.
18 THE BAILIFF: Judge, there's a hand right here in
19 the fourth row.
20 PROSPECTIVE JUROR OBIE: 600.
21 THE COURT: What's your name, sir?
22 PROSPECTIVE JUROR OBIE: What's that?
23 THE COURT: What's your name?
24 PROSPECTIVE JUROR OBIE: Obie.
25 THE COURT: Obie?

1 PROSPECTIVE JUROR OBIE: O-B-I-E.
2 THE COURT: Okay. We'll get back to you.
3 Fifth row?
4 PROSPECTIVE JUROR RUEMMELE: Damon Ruummele, 603.
5 THE COURT: Who else?
6 PROSPECTIVE JUROR HASTINGS: 607, Robert Hastings.
7 THE COURT: Mr. Ruummele, what was your number?
8 PROSPECTIVE JUROR RUEMMELE: 603.
9 THE COURT: Anybody else in the fifth row?
10 Yes, ma'am.
11 PROSPECTIVE JUROR KABADIAN: 608, Serena Kabadian.
12 PROSPECTIVE JUROR OWEN: 611, Edward Owen.
13 THE COURT: Yes, ma'am?
14 PROSPECTIVE JUROR PAUL: 626, Valarie Paul.
15 THE COURT: Paul?
16 PROSPECTIVE JUROR PAUL: Paul.
17 THE COURT: Okay, seventh -- sixth row? Yes, sir?
18 PROSPECTIVE JUROR LOTHROP: 616, Stuart Lothrop.
19 THE COURT: Say again the name.
20 PROSPECTIVE JUROR LOTHROP: Lothrop, Stuart.
21 THE COURT: Yes, sir?
22 PROSPECTIVE JUROR FLECK: 617, Ken Fleck.
23 THE COURT: Anybody else in that row?
24 Yes, ma'am.
25 PROSPECTIVE JUROR HOLLIS: 618, Linda Hollis.

1 THE COURT: Linda what?
2 PROSPECTIVE JUROR HOLLIS: Hollis.
3 THE COURT: Hall?
4 PROSPECTIVE JUROR HOLLIS: H-O-L-L-I-S.
5 THE COURT: Yes, ma'am.
6 PROSPECTIVE JUROR FOCHT: 622, Pam Focht.
7 THE BAILIFF: Seventh row.
8 THE COURT: And the seventh row is Mr. Wilson.
9 PROSPECTIVE JUROR WILSON: Yes.
10 THE CLERK: You've got another one over there.
11 THE COURT: What's your badge number again, Mr.
12 Wilson?
13 PROSPECTIVE JUROR WILSON: 627.
14 THE COURT: And, yes, sir?
15 PROSPECTIVE JUROR DALLATORE: 637, David Dallatore.
16 THE COURT: Okay, folks, when I'm talking reasons
17 with you, keep your voices up. If she can pick it up on this
18 recording, fine. Otherwise, we'll have you come up front.
19 Now, as I already told you, only about one out of
20 five of you is gonna have to sit on this jury, but I'll tell
21 you, frankly, a lot of people are disappointed when they're
22 not excused from the jury at this point. It takes a very
23 compelling excuse to be removed from the jury at this point
24 for a reason, but even if you don't want to serve on the jury,
25 or think it's gonna be burdensome, the odds are even if you

1 pass this stage you're still not gonna be on the jury.

2 Mr. Campitelli, what's your problem?

3 PROSPECTIVE JUROR CAMPITELLI: The only problem I
4 could foresee would be my work schedule, Judge. I work from
5 7:00 p.m. to 5:00 a.m. I'm off though on Sunday, Monday and
6 Tuesday, so if it were a Wednesday that would be great, but if
7 it happens to fall on a Thursday or a Friday that would mean
8 that I would be up beyond --

9 THE COURT: What do you do for a living, sir?

10 PROSPECTIVE JUROR CAMPITELLI: Pardon me?

11 THE COURT: What do you do for a living?

12 PROSPECTIVE JUROR CAMPITELLI: I work at the Rio.
13 I'm a supervisor there.

14 THE COURT: They're very good at giving you time
15 off.

16 PROSPECTIVE JUROR CAMPITELLI: Yes, they are.

17 THE COURT: You won't be able to work and do this.

18 PROSPECTIVE JUROR CAMPITELLI: Yes.

19 THE COURT: But you can do one or the other.

20 PROSPECTIVE JUROR CAMPITELLI: But they do not
21 recognize the day before. In other words, if I were to be
22 here on Thursday, I would still have to work Wednesday.

23 THE COURT: No -- Well, we'll write a letter, if
24 you're selected for the jury, and they'll let you off. We've
25 had this experience in the past.

1 PROSPECTIVE JUROR CAMPITELLI: That would be two
2 days that -- 'cause I had gone over this with them before when
3 I had to show up on last Monday.

4 THE COURT: Yeah. What I'm telling you is they have
5 been very good at working with us. You can't work those kinds
6 of hours and be a juror, but we can get -- we can get you off
7 those hours.

8 PROSPECTIVE JUROR CAMPITELLI: Very good. Thank
9 you.

10 THE COURT: Thank you.

11 Second row -- So if you are selected, Mr.
12 Campitelli, we'll get together, we'll draft a letter and we'll
13 get it to you and you can give it to your employer.

14 PROSPECTIVE JUROR CAMPITELLI: Thank you, Judge.

15 THE COURT: You're welcome.

16 Mr. Krizewicz, where are you?

17 PROSPECTIVE JUROR KRIZEWICZ: Right here, Judge.

18 THE COURT: What's your problem, sir?

19 PROSPECTIVE JUROR KRIZEWICZ: I got asthma and I
20 also got a nervous -- I have a hard time speaking and talking
21 and I don't put my words straight.

22 THE COURT: Well, of course, asthmatics, we've had
23 lots of them here, unless you have an asthma attack, which
24 we've never seen.

25 In terms of talking, of course, you're not gonna be

1 doing the talking. You're gonna be doing the listening.
2 Let's keep you on at this point and we'll see how things work
3 out.

4 Mr. Malen, what's your problem?

5 PROSPECTIVE JUROR MALEN: Sir, I've been out of work
6 for two months and I finally got a job and I'm supposed to
7 start tomorrow, so financially I'm way behind.

8 THE COURT: Well, we're gonna get you about twenty
9 dollars (\$20) a day if we get you on this jury.

10 PROSPECTIVE JUROR MALEN: That doesn't pay my
11 mortgage though.

12 THE COURT: No, but we're gonna, unfortunately,
13 we're gonna keep you here for at least a little while longer.

14 What kind of job did you just get, Mr. Malen?

15 PROSPECTIVE JUROR MALEN: In the alarm field, alarm
16 technician.

17 THE COURT: Okay, if it will help them keep that job
18 open for about eight more days, we'll be glad to write you a
19 letter telling what you're doing for the community.

20 Mr. Payne, what's your problem?

21 PROSPECTIVE JUROR PAYNE: Your Honor, I have a
22 daughter graduating on Wednesday at 8:30 a.m. and I would hate
23 to miss that.

24 THE COURT: What's she graduating?

25 PROSPECTIVE JUROR PAYNE: I would love to serve on

1 the jury, but --

2 THE COURT: What's she graduating?

3 PROSPECTIVE JUROR PAYNE: She's graduating from high
4 school with honors.

5 THE COURT: Okay, we'll get back to you. Thanks.

6 Mr. Ashmore, what's your problem?

7 PROSPECTIVE JUROR ASHMORE: Yes, I work for a bank
8 and we are currently involved in data migration from the
9 current database to an Oracle database and it's imperative
10 that I am part of this process.

11 THE COURT: They can wait a few days. And, again,
12 if you would like a letter telling them that you're doing your
13 civic duty, we'll be glad to give it to you.

14 Mr. Lewis, what's your problem?

15 PROSPECTIVE JUROR LEWIS: I'm self-employed and I
16 have four contracts that are -- deadlines that are major that
17 has to be done.

18 THE COURT: What kind of business you in?

19 PROSPECTIVE JUROR LEWIS: In financial planning.

20 THE COURT: Okay, thank you.

21 Mr. Obie, what's your problem?

22 PROSPECTIVE JUROR OBIE: It just puts me way behind
23 at work, Judge, but I'll stay.

24 THE CLERK: I can't hear you.

25 THE COURT: Thank you. It's gonna put him -- Don't

1 worry about it. It's gonna put him way behind at work, but
2 he'll stay. He's predicting that and he's right.

3 Mr. Rueemmele, what is your problem?

4 PROSPECTIVE JUROR RUEEMMELE: My problem --

5 THE COURT: It's Rueemmele. I'm sorry.

6 PROSPECTIVE JUROR RUEEMMELE: -- would be the ability
7 to work overtime. As a paramedic for the County, we're given
8 that opportunity a lot and with a child on the way it would be
9 nice to work some of that overtime.

10 THE COURT: That's the kind of sacrifice I'm afraid
11 that people are gonna have to make to sit on the jury. We'll
12 try to -- And what we'll do here, folks, if you notice, we're
13 starting earlier -- and on Wednesdays and Fridays we start
14 even earlier. We can get this case over in a very quick
15 fashion and still do justice, I believe, to both sides, by
16 having short lunch hours and short recesses and starting as
17 early as possible. So we're gonna try to move through this
18 thing, not because it's unimportant, but because your lives
19 are important, as quickly as possible, but it is important
20 that some of you make some sacrifices to be here.

21 Mr. Hastings, what's your problem?

22 PROSPECTIVE JUROR HASTINGS: Yes. I'm going on
23 vacation starting Friday and I was going out of town.

24 THE COURT: Where are you going?

25 PROSPECTIVE JUROR HASTINGS: We're going up to Cedar

1 City, Utah.

2 THE COURT: How long you had those plans?

3 PROSPECTIVE JUROR HASTINGS: I've had 'em for a
4 couple of weeks now, sir.

5 THE COURT: Got any deposits up over there?

6 PROSPECTIVE JUROR HASTINGS: No, I don't.

7 THE COURT: And where do you work, sir?

8 PROSPECTIVE JUROR HASTINGS: Golden Nugget.

9 THE COURT: Okay, well, if you don't have deposits,
10 we'll be glad to get you a letter and they'll probably give
11 you another time off and you can go to Cedar City.

12 By the way, we don't like to play games in here.
13 I'll tell you also, the further back in the room you're
14 sitting, the less likely you'll be on the jury anyway. So if
15 you're thinking to yourself, "Well, I wish that son of a gun
16 would have excused me," and you're way back in the room, you
17 probably aren't gonna be on the jury anyway, but we don't know
18 that yet.

19 Mr. Owen, what's your problem?

20 PROSPECTIVE JUROR OWEN: I'm going on vacation.
21 Friday and I'll be gone all next week.

22 THE COURT: Where are you going?

23 PROSPECTIVE JUROR OWEN: I'm going to Flagstaff. I
24 have paid for my room and also for golf and everything else
25 we're doing while we're there.

1 THE COURT: Okay, thank you.

2 Mr. Kabadian -- or Ms. Kabadian, what's your
3 problem?

4 PROSPECTIVE JUROR KABADIAN: Yes, I lost my job
5 three months ago and I just now had an opportunity to start a
6 new one. It's a temp to perm position and the agency does not
7 pay jury duty. And I have house payments, car payments, et
8 cetera.

9 THE COURT: Okay. Well, we can get you a little
10 money for the next week and we'll be glad to write a letter to
11 this temp agency telling them that you very much would like to
12 be with them, but you can't.

13 And, finally, in the fifth row, Ms. Paul, what's
14 your problem?

15 PROSPECTIVE JUROR PAUL: Yes, I just started a new
16 job and I'm in training and I don't get paid for being on a
17 jury.

18 THE COURT: What kind of job?

19 PROSPECTIVE JUROR PAUL: It's a CSR at Ross-Nikos
20 [phonetic].

21 THE COURT: Okay, thank you.

22 Is it Mr. Lothrop that raised his hand?

23 PROSPECTIVE JUROR LOTHROP: Yes, sir.

24 THE COURT: What's your problem?

25 PROSPECTIVE JUROR LOTHROP: In March of this year I

1 paid non-refundable tickets for my grandchildren to fly out
2 here this coming Saturday. Their parents have coordinated
3 their vacation so that they could come on vacation from June
4 10th to June 17th and I brought documentation to show that.

5 THE COURT: Okay, but --

6 PROSPECTIVE JUROR LOTHROP: 'Cause it's prepaid and
7 it's all -- it's all scheduling.

8 THE COURT: You are married, sir, and your wife's
9 also retired?

10 PROSPECTIVE JUROR LOTHROP: Yes, she is.

11 THE COURT: Okay, so you'd have the weekend with
12 them and part of that next week, right?

13 PROSPECTIVE JUROR LOTHROP: Yes, sir, but --

14 THE COURT: Even if you had to be here.

15 PROSPECTIVE JUROR LOTHROP: She doesn't drive, so
16 that doesn't help me very much.

17 THE COURT: I see. Okay, thank you.

18 Ms. Fleck, what's your problem -- Mr. Fleck?

19 PROSPECTIVE JUROR FLECK: My daughter graduates from
20 high school Thursday and my wife has back surgery the 12th.

21 THE COURT: What time is your graduation?

22 PROSPECTIVE JUROR FLECK: It's in the morning.

23 THE COURT: Do you know what time?

24 PROSPECTIVE JUROR FLECK: No, I don't.

25 THE COURT: Because we're not gonna start on

1 Thursday -- We may even be through with the witnesses by
2 Thursday, but we're probably not gonna stop 'til -- start 'til
3 9:30.

4 Do you know what time the graduation is? Did you
5 say you don't?

6 PROSPECTIVE JUROR FLECK: No, I don't know what time
7 it is in the morning.

8 THE COURT: Okay, thank you.

9 Ms. Hollis, what's your problem?

10 PROSPECTIVE JUROR HOLLIS: The same thing, my
11 daughter graduates Thursday at 8:30.

12 THE COURT: Okie-doke.

13 I've learned for graduations that if you're not
14 there, but you give a tremendous gift, they don't --

15 Where's Ms. Focht? What's your problem?

16 PROSPECTIVE JUROR FOCHT: I'm trying to get into the
17 doctor as soon as I can. I have a vein in my neck that over
18 the weekend just started popping out and I don't know whether
19 it's dangerous or not.

20 THE COURT: Okay, thank you.

21 Now, Mr. Wilson?

22 PROSPECTIVE JUROR WILSON: Yes, sir.

23 THE COURT: When is the surgery?

24 PROSPECTIVE JUROR WILSON: I think it's on the 18th,
25 but I have trouble remembering dates. It could be on the

1 15th, but I thought it was on the 18th.

2 THE COURT: It's an angiogram, right?

3 PROSPECTIVE JUROR WILSON: Yes, that's the --

4 They're going in for the angiogram and then they might have to
5 do the angioplasty.

6 THE COURT: Okay, thank you.

7 PROSPECTIVE JUROR WILSON: Okay.

8 THE COURT: And finally, Mr. Dallatore, what's your
9 problem?

10 PROSPECTIVE JUROR DALLATORE: Just for the pain, if
11 I will sit for any length of time in one position, the
12 medication I take, my memory's shot.

13 THE COURT: What kind of medication you on, sir?

14 PROSPECTIVE JUROR DALLATORE: For my back pain and
15 blood pressure.

16 THE COURT: Okay, I take a fair amount of pain.
17 medication and blood pressure medication.

18 What's your name again?

19 PROSPECTIVE JUROR DALLATORE: Dallatore.

20 THE COURT: Okay, that's just a little joke, but I
21 think I have a pretty good memory and we take fairly frequent
22 breaks.

23 How frequently do you have to get up?

24 PROSPECTIVE JUROR DALLATORE: It depends on the
25 chair.

1 THE COURT: Well, these are --

2 PROSPECTIVE JUROR DALLATORE: I'm serious.

3 THE COURT: These are just beautiful. They have cup
4 holders and they recline. Let's take that up later.

5 Okay, would counsel approach the bench with their
6 jury lists, please?

7 (Off-record bench conference)

8 THE COURT: All right, the following individuals,
9 and only these individuals, are excused from the further
10 stages of this trial to report back to the Jury Commissioner
11 with our thanks.

12 Mr. Payne, Jury Number 566, you're excused. 611,
13 Mr. Owen, is excused. Mr. Lothrop, 616, is excused. Mr.
14 Fleck, 617, is excused. Ms. Hollis, 618, is excused. Ms.
15 Focht, Number 622, is excused. Mr. Wilson, 627, is excused.

16 PROSPECTIVE JUROR WILSON: Thank you.

17 THE COURT: You're welcome.

18 All right, we're gonna seat 12 of you in the box and
19 we're gonna ask you some additional questions -- or actually
20 counsel are going to ask you some additional questions.

21 Bruce, 552; Warren, 553; Dierdre Riley, 554; Ms.
22 Tackley, 555; Mr. Campitelli, Leo's supervisor, 556; Mr. Fink,
23 Mr. Morine.

24 Is it -- That ain't --

25 PROSPECTIVE JUROR MORINE: Morine.

1 THE COURT: Morine, 558; Ms. Day, 559; Mr. Baker,
2 560; Ms. Cole, 561; Mr. Garceau, 562; and Mr. Krizewicz, 563.

3 All right, now the folks are gonna ask you some
4 questions, both the defense and the prosecution. So that you
5 know, it's no big mystery to you, they ask you questions,
6 first you 12, and then some of you in the audience, and then,
7 if they have no cause to get you off, they are each permitted
8 to use, but don't have to use, eight peremptory challenges
9 each. So if a few go for cause, as many as 16 more of you may
10 be needed, so you can see why we're not gonna need all of you.
11 And then we're gonna pick a couple of alternates to sit in the
12 relatively cheap seats and wait for somebody to get sick.

13 Okay, the prosecution may inquire. Thank you.

14 MR. DASKAS: Thank you, Judge.

15 Mrs. Bruce, good morning.

16 PROSPECTIVE JUROR BRUCE: Good morning.

17 MR. DASKAS: You heard the Judge mention a few
18 moments ago that the State has the burden in this case of
19 proving the defendant's guilt beyond a reasonable doubt.

20 You recall that statement?

21 PROSPECTIVE JUROR BRUCE: Yes.

22 MR. DASKAS: And, of course, you understand it?

23 PROSPECTIVE JUROR BRUCE: Yes.

24 MR. DASKAS: If, after hearing the evidence in this
25 case, you're indeed convinced of the defendant's guilt beyond

1 a reasonable doubt, can you promise the State that you will
2 return verdicts of guilt?

3 PROSPECTIVE JUROR BRUCE: Yes.

4 MR. DASKAS: Does it trouble you at all that once
5 the guilt phase is concluded and if there's a conviction you
6 would be sitting as a juror to determine the punishment in
7 this case?

8 PROSPECTIVE JUROR BRUCE: I wouldn't say trouble so
9 much. It's just -- It's a concern. It's a very large
10 decision to make.

11 MR. DASKAS: And certainly I think we'd all agree
12 with that. And, obviously, I assume you're talking about the
13 fact that this is a death penalty case.

14 PROSPECTIVE JUROR BRUCE: Correct.

15 MR. DASKAS: You indicated in your responses that
16 you would consider the death penalty in certain circumstances,
17 is that true?

18 PROSPECTIVE JUROR BRUCE: Correct.

19 MR. DASKAS: I'm sure you, like most of us, have had
20 philosophical discussions about the death penalty, is that
21 accurate?

22 PROSPECTIVE JUROR BRUCE: Some, yes.

23 MR. DASKAS: You understand that it's a real
24 possibility, in a week and a half or two weeks, we, the State
25 of Nevada, will ask you to vote to put somebody to death who's

1 seated in this courtroom?

2 PROSPECTIVE JUROR BRUCE: Yes.

3 MR. DASKAS: You understand that?

4 PROSPECTIVE JUROR BRUCE: Yes.

5 MR. DASKAS: And obviously you understand how
6 serious that is?

7 PROSPECTIVE JUROR BRUCE: Yes.

8 MR. DASKAS: Can you promise me that at least you
9 can consider that as an option, as a possibility, in this
10 case, that you could vote for the death penalty if this is the
11 appropriate case?

12 PROSPECTIVE JUROR BRUCE: Yes.

13 MR. DASKAS: You understand that sympathy is to play
14 no part in your deliberations in this case, at least in terms
15 of the guilt phase of this case?

16 PROSPECTIVE JUROR BRUCE: Yes.

17 MR. DASKAS: You indicated on your questionnaire,
18 and correct me if I'm wrong, that you thought life in prison
19 without the possibility of parole is a worse punishment than
20 the death penalty.

21 PROSPECTIVE JUROR BRUCE: I think in some cases it
22 could be.

23 MR. DASKAS: Can you elaborate on that for me,
24 please?

25 PROSPECTIVE JUROR BRUCE: Well, they're to spend the

1 rest of their life without parole in prison to think about
2 what they did, whereas if they get the death penalty, in some
3 cases, they're put out of their misery quickly. It depends on
4 the circumstances again.

5 MR. DASKAS: You mentioned that somebody in that
6 situation, who received life without, would be left to dwell
7 on what they had done. I believe those were your words.

8 PROSPECTIVE JUROR BRUCE: Correct.

9 MR. DASKAS: Would you still feel like life without
10 parole was a worse punishment than death if the person who
11 received life without didn't care about what he or she did?

12 PROSPECTIVE JUROR BRUCE: No.

13 MR. DASKAS: Then you think, perhaps, death could be
14 worse?

15 PROSPECTIVE JUROR BRUCE: Yes.

16 MR. DASKAS: Okay. Do you have any difficulty
17 sitting in judgment of a fellow human being?

18 PROSPECTIVE JUROR BRUCE: No.

19 MR. DASKAS: You feel like you could listen to the
20 evidence, judge the conduct that is alleged to have occurred
21 in this case and make a decision?

22 PROSPECTIVE JUROR BRUCE: Yes.

23 MR. DASKAS: Is there anything that you think we or
24 the defense should know about you before we select you as a
25 juror in this case?

1 PROSPECTIVE JUROR BRUCE: Nothing that I can think
2 of.

3 MR. DASKAS: All right, thank you for your time.

4 PROSPECTIVE JUROR BRUCE: You're welcome.

5 (Pause in the proceedings)

6 MR. GUYMON: Juror Number 553, is that right?

7 PROSPECTIVE JUROR WARREN: Yes.

8 MR. GUYMON: Mr. Warren?

9 PROSPECTIVE JUROR WARREN: Yes, sir.

10 MR. GUYMON: All right. Tell me your thoughts about
11 our criminal justice system, if you could.

12 PROSPECTIVE JUROR WARREN: My thoughts are that with
13 a jury -- I believe, as the Judge said, that you must prove
14 the person guilty beyond a reasonable doubt and that with a
15 jury of 12, or eight in a civil case, that even if one
16 believes the person is not guilty then, with that one, that
17 person could be saved and that may be the case, that he's not
18 guilty. So with 12, if there is an agreement between the 12,
19 then that is the judgment and that's how it should be.

20 MR. GUYMON: And do you think that our criminal
21 justice system holds people accountable for their criminal
22 conduct?

23 PROSPECTIVE JUROR WARREN: For the most part, yes.

24 MR. GUYMON: Okay. And how do you feel about being
25 called upon to hold Donte Johnson accountable for his conduct

1 on the night in question?

2 PROSPECTIVE JUROR WARREN: I feel that it's an honor
3 to be called to be a juror.

4 MR. GUYMON: Okay. If the State proves that Donte
5 Johnson, in fact, committed heinous felony crimes here in the
6 State of Nevada, can you return a verdict that reflects that?

7 PROSPECTIVE JUROR WARREN: Yes, I can.

8 MR. GUYMON: And do you have any uneasiness about
9 passing judgment on his conduct, whether it be religious
10 reasons or philosophical reasons, about passing judgment on
11 someone's criminal conduct in this courtroom?

12 PROSPECTIVE JUROR WARREN: No, sir.

13 MR. GUYMON: Tell me, with regard to punishment,
14 what are your thoughts about punishing people for criminal
15 conduct?

16 PROSPECTIVE JUROR WARREN: I believe that the
17 punishment should fit the crime if the person is proven
18 guilty. The background should be taken into consideration in
19 a case such as this. I do not have any qualms about the death
20 penalty, about life in prison without parole or with parole.
21 It should be taken into consideration, brutality, background
22 and the defendant himself.

23 MR. GUYMON: Okay. You mentioned a series of
24 things, brutality and the like. Do you, in fact, believe that
25 the worst offenses should receive the worst punishment?

1 PROSPECTIVE JUROR WARREN: Again, depending on the
2 background, yes.

3 MR. GUYMON: Okay, background is important to you.
4 Tell me --

5 PROSPECTIVE JUROR WARREN: It is.

6 MR. GUYMON: Tell me why.

7 PROSPECTIVE JUROR WARREN: Because if the defendant
8 does not show a history of crime, the penalty might be life in
9 prison without parole. If there is a history of crime and
10 brutality, maybe the death penalty. It depends upon the
11 person.

12 MR. GUYMON: At the time you came about a week ago
13 to fill out the questionnaire, and, of course, I have a
14 questionnaire for each one of you, had you given much thought
15 to the death penalty here in our community?

16 PROSPECTIVE JUROR WARREN: I had, but when I filled
17 out the questionnaire it really hit me.

18 MR. GUYMON: Okay.

19 PROSPECTIVE JUROR WARREN: At that time.

20 MR. GUYMON: You would agree that it's one thing to
21 perhaps have -- talk over cookies and milk about the death
22 penalty and it's another thing to be in that position, isn't
23 it?

24 PROSPECTIVE JUROR WARREN: Actually be in that
25 position. It is.

1 MR. GUYMON: And as a juror you realize you may find
2 yourself in that position?

3 PROSPECTIVE JUROR WARREN: I do.

4 MR. GUYMON: Do you understand how real that
5 decision is?

6 PROSPECTIVE JUROR WARREN: I think it really hit
7 when I filled out the questionnaire.

8 MR. GUYMON: Do you believe that you have the
9 intestinal fortitude, for lack of a better word, to impose the
10 death penalty if you truly believe that it's fit for this
11 crime?

12 PROSPECTIVE JUROR WARREN: If I truly believed it,
13 yes.

14 MR. GUYMON: Okay. Lastly, when we talk about
15 judging witnesses, obviously, as a juror, you'll be called
16 upon to judge the credibility of witnesses.

17 PROSPECTIVE JUROR WARREN: Correct.

18 MR. GUYMON: To listen to all of the testimony and
19 reach a just verdict.

20 PROSPECTIVE JUROR WARREN: Right.

21 MR. GUYMON: Is that something you think you can do?

22 PROSPECTIVE JUROR WARREN: I believe I can, yes.

23 MR. GUYMON: Can you give each of the witnesses a
24 chance to be believed despite their choices, their lifestyles?

25 PROSPECTIVE JUROR WARREN: Yes, I can.

1 MR. GUYMON: Okay. You may hear talk about drug use
2 in this case.

3 PROSPECTIVE JUROR WARREN: Yeah.

4 MR. GUYMON: Perhaps even witnesses that have chosen
5 to use drugs.

6 PROSPECTIVE JUROR WARREN: Okay.

7 MR. GUYMON: Will those people have a chance to be
8 believed?

9 PROSPECTIVE JUROR WARREN: They will have a chance
10 to be believed, yes.

11 MR. GUYMON: Do they have a fair chance to be
12 believed?

13 PROSPECTIVE JUROR WARREN: Yes, they do.

14 MR. GUYMON: Okay. And, lastly, do you have any
15 preconceived ideas of what the term beyond a reasonable doubt
16 means?

17 PROSPECTIVE JUROR WARREN: Preconceived, no.

18 MR. GUYMON: Okay, can you --

19 PROSPECTIVE JUROR WARREN: Beyond a reasonable doubt
20 is that you are sure that the defendant is guilty.

21 MR. GUYMON: Okay. And I --

22 PROSPECTIVE JUROR WARREN: Well, you don't have any
23 doubts there.

24 MR. GUYMON: Okay.

25 PROSPECTIVE JUROR WARREN: I mean, unreal doubts.

1 MR. GUYMON: Very well.

2 Let me ask you this. Can you set aside whatever
3 your beliefs are about the law, say about what maybe murder is
4 or about what kidnapping is or about what a robbery is or a
5 burglary, the offenses in this case, and follow the
6 instructions that the Judge gives you as to what the law is?

7 PROSPECTIVE JUROR WARREN: Yes, sir.

8 MR. GUYMON: Do you have any preconceived ideas of
9 what a murderer might look like or how he or she might act?

10 PROSPECTIVE JUROR WARREN: No, sir. There are
11 different -- You've seen on TV, after somebody is convicted,
12 each one looks different. There's no --

13 MR. GUYMON: That's good.

14 Will both the State and the defense get a fair trial
15 if you're a juror in this case?

16 PROSPECTIVE JUROR WARREN: Definitely.

17 MR. GUYMON: Will the penalty be fair if you're
18 called upon to chose it?

19 PROSPECTIVE JUROR WARREN: Yes, sir.

20 MR. GUYMON: Thank you.

21 MR. DASKAS: Mrs. Riley, is it?

22 PROSPECTIVE JUROR RILEY: Yes.

23 MR. DASKAS: Good morning.

24 PROSPECTIVE JUROR RILEY: Good morning.

25 MR. DASKAS: There's been some discussion this

1 morning already about the State's burden in this case, that
2 it's to prove the defendant's guilt beyond a reasonable doubt.
3 I'm sure you heard that discussion.

4 Do you understand that that is the same burden in
5 every criminal case, in every courtroom, across this country?

6 PROSPECTIVE JUROR RILEY: Yes.

7 MR. DASKAS: There's nothing magical about the
8 burden in this case.

9 PROSPECTIVE JUROR RILEY: Right.

10 MR. DASKAS: You understand that it's the same
11 burden if this were a traffic ticket trial?

12 PROSPECTIVE JUROR RILEY: Yes.

13 MR. DASKAS: Or a petty larceny. In other words,
14 the seriousness of the crime doesn't change the State's
15 burden.

16 PROSPECTIVE JUROR RILEY: Right.

17 MR. DASKAS: All right. In your questionnaire you
18 indicated, and I don't mean to put words in your mouth, that
19 you're not sure if you could vote for the death penalty.

20 PROSPECTIVE JUROR RILEY: It's a -- It's a huge
21 decision affecting another human being.

22 MR. DASKAS: I understand. Is there something about
23 your background, either religiously, philosophically or
24 otherwise, that causes you some reluctance to either sit as a
25 juror or vote for the death penalty in this case?

1 PROSPECTIVE JUROR RILEY: I'm not sure I understand
2 what you're asking me.

3 MR. DASKAS: Well, in a week and a half or two
4 weeks, if you're selected as a juror, --

5 PROSPECTIVE JUROR RILEY: Right.

6 MR. DASKAS: -- there's a very real possibility --

7 PROSPECTIVE JUROR RILEY: Right.

8 MR. DASKAS: -- that you'll be called upon to make
9 that decision, that you will be called upon by the State to
10 check the box that says death penalty against somebody seated
11 in this courtroom.

12 PROSPECTIVE JUROR RILEY: Right.

13 MR. DASKAS: Do you feel like you have the capacity
14 to do that?

15 PROSPECTIVE JUROR RILEY: If I felt the evidence was
16 overwhelming and that, you know, it would guide me towards
17 that, yes. It's not something I would do lightly though.

18 MR. DASKAS: And I appreciate that. And we
19 certainly wouldn't want you to take this lightly.

20 You say the evidence would have to be overwhelming?

21 PROSPECTIVE JUROR RILEY: Right.

22 MR. DASKAS: Tell me what you mean by that, when you
23 say overwhelming.

24 PROSPECTIVE JUROR RILEY: I think I would have to
25 feel that there was a very cold-hearted -- cold-hearted

1 feeling that guided someone to commit a crime like murder. I
2 would have to feel that it was definitely not an accident. I
3 mean, it would have to be something very intentional and very
4 cruel.

5 MR. DASKAS: Okay. You also indicated in your
6 questionnaire that you find it difficult to decide somebody
7 else's fate?

8 PROSPECTIVE JUROR RILEY: Right, I find -- You know,
9 I mean, we're not supposed to stand in judgment of other
10 people, however, I feel like if I'm in a group of 12 and we
11 all agree, then I would feel easier about that.

12 MR. DASKAS: Okay. I take it, then, you do have
13 some reluctance to judge a fellow human being?

14 PROSPECTIVE JUROR RILEY: Yes, I do.

15 MR. DASKAS: Does that stem from a religious belief?

16 PROSPECTIVE JUROR RILEY: I don't know. It's just
17 the way I am.

18 MR. DASKAS: All right. You mentioned that if
19 everybody agreed on the jury that death was the appropriate
20 punishment, you could vote for death, is that true?

21 PROSPECTIVE JUROR RILEY: Yes.

22 MR. DASKAS: Can you imagine a scenario where
23 perhaps you thought death was appropriate even though 11 other
24 people didn't or are you just inclined to go along with your
25 fellow jurors?

1 PROSPECTIVE JUROR RILEY: Well, when I say all 12, I
2 include myself. If I had a strong feeling opposite of what
3 the other 11 were saying, I would certainly stand my ground.

4 MR. DASKAS: You feel like people should be held
5 accountable for their criminal conduct?

6 PROSPECTIVE JUROR RILEY: Yes, I do.

7 MR. DASKAS: And you feel like people should be
8 punished according to the crime that he or she committed?

9 PROSPECTIVE JUROR RILEY: Yes, I do.

10 MR. DASKAS: Do you also feel that before you decide
11 the appropriate punishment in any case that you should have
12 some background information about the person whose fate you're
13 deciding?

14 PROSPECTIVE JUROR RILEY: Well, I don't -- I don't
15 know how much of that we're entitled to. I know I want all
16 the information about the case, you know, the crime, the
17 alleged crime, and what happened and what evidence there was.

18 MR. DASKAS: You, at least personally, believe it
19 would be important to have as much information about both the
20 crime and the defendant's background before you could decide
21 what punishment was appropriate?

22 PROSPECTIVE JUROR RILEY: I really don't know about
23 the background portion of it. I don't -- I don't know. Do we
24 get that? I mean, I'm not --

25 MR. DASKAS: Well, you'll get --

1 PROSPECTIVE JUROR RILEY: I'm not usually involved
2 in this kind of stuff, so --

3 MR. DASKAS: And I'm not asking you to tell me what
4 the law is and what you're entitled to, but whether you
5 believe personally that you should get that information.

6 PROSPECTIVE JUROR RILEY: Yeah, it would help, sure.

7 MR. DASKAS: Number 34, which is page 9 of your
8 questionnaire, the question is this. "Do you believe that you
9 personally could vote to impose the death penalty if you
10 believed that it was warranted in a particular case?" There's
11 a yes and a no box to check and you checked neither box. In
12 fact, you wrote the words, "Not sure."

13 PROSPECTIVE JUROR RILEY: Right.

14 MR. DASKAS: You recall doing that?

15 PROSPECTIVE JUROR RILEY: Right.

16 MR. DASKAS: At least at the time you filled out the
17 questionnaire, you couldn't decide one way or the other
18 whether you could or couldn't impose death in any given case?

19 PROSPECTIVE JUROR RILEY: Right.

20 MR. DASKAS: Do you feel any differently as you sit
21 here today?

22 PROSPECTIVE JUROR RILEY: I guess it's hard to say,
23 until you hear all the evidence, whether you could make that
24 vote or not.

25 MR. DASKAS: Still somewhat reluctant, I guess, to

1 make a decision about whether you could or couldn't vote that.
2 PROSPECTIVE JUROR RILEY: I feel -- I just feel like
3 I'd have to hear all the facts before I would be moved to vote
4 one way or the other.
5 MR. DASKAS: Can you make me this promise.
6 PROSPECTIVE JUROR RILEY: Okay.
7 MR. DASKAS: If you receive the facts, whatever they
8 need -- whatever facts you need, in other words, --
9 PROSPECTIVE JUROR RILEY: Right.
10 MR. DASKAS: -- if you receive those facts in this
11 case and you personally believe that this is the appropriate
12 case for death, can you promise me that you could consider
13 that and that you have the capacity to return that verdict?
14 PROSPECTIVE JUROR RILEY: Yes.
15 MR. DASKAS: Thank you.
16 MR. GUYMON: I guess by now you can tell we're kind
17 of going even and odd badge numbers.
18 How are you today?
19 PROSPECTIVE JUROR TACKLEY: Okay.
20 MR. GUYMON: It's Tackley, is that right?
21 PROSPECTIVE JUROR TACKLEY: Right.
22 MR. GUYMON: All right. Ms. Tackley, you know Dan
23 Baldwin?
24 PROSPECTIVE JUROR TACKLEY: Yes.
25 MR. GUYMON: All right. Is that a neutral in this

1 whole equation?

2 PROSPECTIVE JUROR TACKLEY: Yeah, it doesn't matter.

3 MR. GUYMON: All right. Give me your thoughts about
4 our criminal justice system.

5 PROSPECTIVE JUROR TACKLEY: I think, in principle,
6 that it's the best system around. Sometimes, in practice, it
7 leaves something to be desired.

8 MR. GUYMON: Okay. Have you had both favorable and
9 not so favorable experiences with our criminal justice system?

10 PROSPECTIVE JUROR TACKLEY: Well, fortunately, I
11 haven't had any experiences with the criminal justice system.

12 MR. GUYMON: And I guess what I mean by that is say
13 following it as a citizen in the paper and the like, is there
14 times when you read the case and you say, "Gee, that crime got
15 the punishment it deserved"?

16 PROSPECTIVE JUROR TACKLEY: Yeah.

17 MR. GUYMON: And I'm sure the inverse.

18 PROSPECTIVE JUROR TACKLEY: Right.

19 MR. GUYMON: What are your thoughts about law
20 enforcement?

21 PROSPECTIVE JUROR TACKLEY: I think, for the most
22 part, that law enforcement does a really good job.

23 MR. GUYMON: Okay. Do you have any thoughts about
24 being a juror? I note that you have not been a juror
25 previously, is that correct?

1 PROSPECTIVE JUROR TACKLEY: Right.

2 MR. GUYMON: Okay, tell me your thoughts about being
3 a juror.

4 PROSPECTIVE JUROR TACKLEY: Well, it's something
5 that I would have to do if I was called to do it, maybe not my
6 favorite thing in the world, but --

7 MR. GUYMON: And I understand that. As a juror
8 you're gonna be called upon to pass judgment on the conduct of
9 Donte Johnson, whether or not his conduct gives rise to
10 criminal activity or not. Does that cause you any discomfort?

11 PROSPECTIVE JUROR TACKLEY: No.

12 MR. GUYMON: Religious beliefs, philosophical
13 beliefs, I take it you could pass judgment on a person's
14 conduct?

15 PROSPECTIVE JUROR TACKLEY: Uh-huh.

16 MR. GUYMON: And if the State proves beyond a
17 reasonable doubt that the crimes that we've alleged have been
18 committed, would your verdict reflect that?

19 PROSPECTIVE JUROR TACKLEY: Yes.

20 MR. GUYMON: All right. Now you indicated in your
21 verdict [sic], and I'm gonna talk a little bit about -- Well,
22 before I talk about penalty, let's talk about sitting in
23 judgment and listening to facts. Is that something you feel
24 like you'd be good at doing?

25 PROSPECTIVE JUROR TACKLEY: Probably, yeah.

1 MR. GUYMON: All right. Do you feel like you can
2 sort out, if there's conflicting testimony, and I don't know
3 if there will be, but can you sort out conflicting testimony
4 in your mind and find the truth?

5 PROSPECTIVE JUROR TACKLEY: Maybe. I mean, having
6 no experience at it, maybe.

7 MR. GUYMON: Do you feel like you're fair in your
8 judgments?

9 PROSPECTIVE JUROR TACKLEY: I try to be.

10 MR. GUYMON: I mentioned the witnesses that come
11 into the courtroom. Some of them may have lifestyles or may
12 have made choices that you may not approve of. Will those
13 persons or people have a chance to be believed?

14 PROSPECTIVE JUROR TACKLEY: Yeah.

15 MR. GUYMON: Okay, there was some reservation and
16 you almost rolled your eyes. Let me talk about that for a
17 minute, because what we're trying to do is we're trying to get
18 12 people that are gonna be fair about the evidence, no matter
19 who delivers that evidence, that 12 people can be fair about
20 receiving it. Tell me your reluctance on that question.

21 PROSPECTIVE JUROR TACKLEY: Oh, it wasn't really
22 reluctance. I just try not to pass judgment on people from
23 their appearances or lifestyles. I really try not to.
24 Sometimes it's hard, but --

25 MR. GUYMON: Okay. It's tough to perhaps listen to

1 someone who may make choices that are completely contrary to
2 your own?

3 PROSPECTIVE JUROR TACKLEY: Right.

4 MR. GUYMON: Can you concede that it's also possible
5 that person too is telling the truth?

6 PROSPECTIVE JUROR TACKLEY: Sure.

7 MR. GUYMON: Okay. Give me your thoughts on
8 punishment. I mentioned reading the paper some mornings and
9 you might say, "Gee, that punishment just didn't fit the
10 crime," is that true?

11 PROSPECTIVE JUROR TACKLEY: Yeah.

12 MR. GUYMON: In fact, I think you indicate that
13 perhaps punishment isn't always what it should be in your
14 questionnaire, is that right?

15 PROSPECTIVE JUROR TACKLEY: Yeah.

16 MR. GUYMON: You indicate you have very little
17 tolerance for violence.

18 PROSPECTIVE JUROR TACKLEY: That's true.

19 MR. GUYMON: Crimes of violence you believe should
20 be punished severely?

21 PROSPECTIVE JUROR TACKLEY: That's true.

22 MR. GUYMON: Okay. And prior to filling out the
23 questionnaire had you thought much about the death penalty?

24 PROSPECTIVE JUROR TACKLEY: Not really.

25 MR. GUYMON: Okay.

1 PROSPECTIVE JUROR TACKLEY: I've always been in
2 favor of it, but it's just one of those things that's out
3 there in another dimension.

4 MR. GUYMON: Okay. And sooner or later we're gonna
5 bring it right here to this dimension, but let me ask you
6 this. If you were in charge, in other words, you were the
7 person in the state that said, "Either my state has the death
8 or it doesn't have the death penalty," would the state that
9 you organize have a death penalty?

10 PROSPECTIVE JUROR TACKLEY: Yes.

11 MR. GUYMON: And why?

12 PROSPECTIVE JUROR TACKLEY: I don't know that it's a
13 particular deterrent to crime, but I also resent supporting
14 convicted criminals for the rest of their natural lives.

15 MR. GUYMON: Can you -- When we talk about how
16 having the death penalty and saying yes, can you see perhaps
17 there may be a distinction in persons that commit first degree
18 murder, and I understand that that's the worst crime you can
19 commit, but would you agree that perhaps not all persons that
20 commit the worst crime are the worst person?

21 Does that make sense?

22 PROSPECTIVE JUROR TACKLEY: No.

23 MR. GUYMON: Okay, let me see if I can't straighten
24 that out then.

25 You've learned that there's four possible

1 punishments, that the lawmakers of our state have said, "Gee,
2 first degree murder is the worst crime that can be committed,"
3 but yet there's gonna be four different punishments. There's
4 gonna be the death penalty and I think you and I will agree
5 that that's the worst punishment you can get.

6 Is that a yes?

7 PROSPECTIVE JUROR TACKLEY: What?

8 COURT RECORDER: Answer out loud, please.

9 PROSPECTIVE JUROR TACKLEY: Yes. I'm sorry.

10 MR. GUYMON: That there's life without the
11 possibility of parole, life with the possibility of parole and
12 then there's a fixed term of years of -- What do we list here?
13 I think it was 40 to 100, I think is the fixed term of years
14 that we listed.

15 Can you see any wisdom in the laws or in the
16 lawmakers that said, "We're gonna give jurors four choices for
17 the worst offense"?

18 PROSPECTIVE JUROR TACKLEY: I don't believe that's
19 more for the jurors than for the accused.

20 MR. GUYMON: And are you comfortable with those four
21 choices?

22 PROSPECTIVE JUROR TACKLEY: Yeah.

23 MR. GUYMON: Can you consider those four choices?

24 PROSPECTIVE JUROR TACKLE: Uh-huh.

25 MR. GUYMON: And can you see how some -- And is that

1 a yes?

2 PROSPECTIVE JUROR TACKLEY: Yes. Sorry.

3 MR. GUYMON: And can you see how some offenses,
4 while all offenses of first degree murder are truly first
5 degree murder, and that's what the juror says in their mind
6 and in their verdict, can you see how offenders may still be
7 somewhat different? In other words, one person that does a
8 first degree murder may be worse than a second person or
9 another person.

10 PROSPECTIVE JUROR TACKLEY: Yeah, maybe.

11 MR. GUYMON: Okay. And do you believe that the
12 worst of the worst should get the death penalty?

13 PROSPECTIVE JUROR TACKLEY: Yes.

14 MR. GUYMON: Now tell me this. You indicated that
15 life without may be a worst punishment or a worse punishment.
16 I'm sorry, I mispronounced that word.

17 PROSPECTIVE JUROR TACKLEY: Well, if prison were
18 harsher to those that got that penalty, then I can see where
19 it would be worse than the death penalty. I mean, a total
20 loss of freedom is pretty rough.

21 MR. GUYMON: Okay.

22 PROSPECTIVE JUROR TACKLEY: But, to me, total loss
23 of freedom doesn't include watching TV and the things that we
24 enjoy now.

25 MR. GUYMON: Okay. And can you agree that even

1 worse than a total loss of freedom is the death penalty?

2 PROSPECTIVE JUROR TACKLEY: In some cases.

3 MR. GUYMON: Okay. Now let me ask you, lastly, it
4 becomes very real if, in fact, we get to the second phase. We
5 have a guilt phase and then we have a penalty phase. If we
6 get to that penalty phase, and you understand how real it is
7 when we stand before you and indicate that this crime is the
8 worst of the worst and that perhaps the defendant too is the
9 worst of the worst who commits that crime, if we do that and
10 ask for the death penalty, can you give that serious
11 consideration?

12 PROSPECTIVE JUROR TACKLEY: Yes.

13 MR. GUYMON: Can you tell me that, in fact, you
14 would vote for it if you believe that it's appropriate?

15 PROSPECTIVE JUROR TACKLEY: Yes, I would.

16 MR. GUYMON: Is that something you're sure of?

17 PROSPECTIVE JUROR TACKLEY: Uh-huh.

18 MR. GUYMON: Thank you.

19 COURT RECORDER: Is that a yes?

20 PROSPECTIVE JUROR TACKLEY: Yes.

21 MR. DASKAS: Mr. Campitelli, is that how it's
22 pronounced?

23 PROSPECTIVE JUROR CAMPITELLI: That's correct.

24 MR. DASKAS: In your jury questionnaire regarding
25 the question about which do you think is worse in terms of

1 punishment, either the death penalty or life without parole,
2 you checked actually both boxes and you wrote, "It would
3 depend on the individual."
4 You recall doing that?
5 PROSPECTIVE JUROR CAMPITELLI: Yes, I do.
6 MR. DASKAS: Can you tell me what you meant by that?
7 PROSPECTIVE JUROR CAMPITELLI: It would depend on
8 the individual what would be worse for them.
9 MR. DASKAS: A few moments --
10 PROSPECTIVE JUROR CAMPITELLI: I mean, I know what
11 would be worse for me and I'm sure you know what would be the
12 worse for you, correct?
13 MR. DASKAS: A few moments ago I spoke with Juror
14 Number 552 and we discussed the fact that perhaps a defendant
15 who had some remorse and would dwell on his or her crime might
16 suffer worse by spending the rest of his or her life in prison
17 without parole. Do you recall that?
18 PROSPECTIVE JUROR CAMPITELLI: Yes, I do.
19 MR. DASKAS: Is that what you had in mind when you
20 answered that question?
21 PROSPECTIVE JUROR CAMPITELLI: Yes.
22 MR. DASKAS: I take it then, if a particular
23 defendant had no remorse or didn't dwell on the crime that he
24 or she committed, death might be a worse punishment?
25 PROSPECTIVE JUROR CAMPITELLI: Yes.

1 MR. DASKAS: Would you agree that the worst possible
2 crime deserves the worst possible punishment?

3 PROSPECTIVE JUROR CAMPITELLI: Yes, I do.

4 MR. DASKAS: And would you agree that the worst
5 possible criminal deserves the worst possible punishment?

6 PROSPECTIVE JUROR CAMPITELLI: Yes, I do.

7 MR. DASKAS: Do you feel like you have the capacity
8 or the ability, if you believed that this indeed is the
9 appropriate case for death, that you could indeed vote for a
10 sentence of death in this case, in this courtroom, against
11 this defendant?

12 PROSPECTIVE JUROR CAMPITELLI: Yes, I can.

13 MR. DASKAS: Can you make me that promise?

14 PROSPECTIVE JUROR CAMPITELLI: Yes, I can.

15 MR. DASKAS: We've discussed the burden that the
16 State has in this case. Can you promise me that if you're
17 convinced of the defendant's guilt beyond a reasonable doubt
18 that you will indeed vote for verdicts of guilty on all the
19 crimes?

20 PROSPECTIVE JUROR CAMPITELLI: Yes.

21 MR. DASKAS: If you had the opportunity to create
22 your own society, your own state, your own government, would
23 you have the death penalty?

24 PROSPECTIVE JUROR CAMPITELLI: Yes, I would.

25 MR. DASKAS: What benefits do you see in the death

1 penalty?

2 PROSPECTIVE JUROR CAMPITELLI: Just the fact that it
3 might slow it down a little bit knowing that if that crime was
4 -- you know, it might stop a little less -- there might be a
5 little less murder in a state that had capital punishment.

6 MR. DASKAS: You feel like it might actually deter
7 other criminals from committing crimes?

8 PROSPECTIVE JUROR CAMPITELLI: Hopefully.

9 MR. DASKAS: And it certainly would deter the
10 defendant who received the capital --

11 PROSPECTIVE JUROR CAMPITELLI: Yes.

12 MR. DASKAS: Tell me your thoughts about the police
13 in the Las Vegas community.

14 PROSPECTIVE JUROR CAMPITELLI: They're a good system
15 and fair.

16 MR. DASKAS: If a police officer takes the stand,
17 can you judge that police officer's credibility just like
18 every other witness in the case?

19 PROSPECTIVE JUROR CAMPITELLI: I would have to judge
20 him as an individual.

21 MR. DASKAS: And if a person took the stand who
22 admitted to you drug use, choices that you and I perhaps
23 wouldn't make, can you judge that person's credibility just
24 like the police officer's credibility?

25 PROSPECTIVE JUROR CAMPITELLI: Just the same.

1 MR. DASKAS: Is there anything you think that we
2 should know about you before you're selected as a juror in
3 this case?
4 PROSPECTIVE JUROR CAMPITELLI: No.
5 MR. DASKAS: Will both the State of Nevada and the
6 defense in this case get a fair trial?
7 PROSPECTIVE JUROR CAMPITELLI: Yes.
8 MR. DASKAS: Thank you. I appreciate that.
9 MR. GUYMON: Good morning, Mr. Fink.
10 PROSPECTIVE JUROR FINK: Good morning.
11 MR. GUYMON: You indicate that you have a vacation
12 planned June 16th to the 24th.
13 PROSPECTIVE JUROR FINK: Correct.
14 MR. GUYMON: Are you comfortable with the fact that
15 this case will be over with by then?
16 PROSPECTIVE JUROR FINK: Hopefully.
17 MR. GUYMON: All right. Will the fact that you have
18 a vacation in the near future trouble you as you sit as a
19 juror in this case?
20 PROSPECTIVE JUROR FINK: Depending how close it gets
21 to that date.
22 MR. GUYMON: As you sit here today, are you troubled
23 with it?
24 PROSPECTIVE JUROR FINK: Not right now, no.
25 MR. GUYMON: How about tomorrow or the next day?

1 PROSPECTIVE JUROR FINK: Let's say about next
2 Wednesday I would be, yes.

3 MR. GUYMON: All right, that's fair.

4 Let me ask you about your thoughts. Obviously, you
5 got a summons in the mail that told you you were gonna be
6 summoned for jury duty.

7 PROSPECTIVE JUROR FINK: Correct.

8 MR. GUYMON: Your thoughts about being a juror.

9 PROSPECTIVE JUROR FINK: It's a privilege, really,
10 and I enjoy it.

11 MR. GUYMON: Okay, let's talk about that privilege.
12 You got that summons and you probably had no idea it was a
13 criminal case, first of all.

14 PROSPECTIVE JUROR FINK: Correct.

15 MR. GUYMON: And you came to court a little early
16 and you got a questionnaire.

17 PROSPECTIVE JUROR FINK: Right.

18 MR. GUYMON: And within the first, I'd say, page or
19 two you realized that it was a murder case.

20 PROSPECTIVE JUROR FINK: Right.

21 MR. GUYMON: And, more importantly, that we're gonna
22 talk about the death penalty.

23 Did the fact that all of a sudden this became a
24 criminal case for a murder, first degree murder, times four,
25 did that cause you concern?

1 PROSPECTIVE JUROR FINK: Not really, no.

2 MR. GUYMON: Did the fact that the death penalty was
3 going to become a choice in this case cause you concern?

4 PROSPECTIVE JUROR FINK: No.

5 MR. GUYMON: Do you have any concern about passing
6 judgment on the conduct of Donte Johnson?

7 PROSPECTIVE JUROR FINK: No.

8 MR. GUYMON: Anything religious, socially or
9 otherwise about passing judgment on the conduct of another
10 person that causes you concern?

11 PROSPECTIVE JUROR FINK: I don't think so. Yeah, I
12 don't think so.

13 MR. GUYMON: Okay, it's something you can do?

14 PROSPECTIVE JUROR FINK: Yes.

15 MR. GUYMON: You've not sat as a juror before, is
16 that correct?

17 PROSPECTIVE JUROR FINK: Yes, I have.

18 MR. GUYMON: Okay. Was it a positive or negative
19 experience?

20 PROSPECTIVE JUROR FINK: Positive.

21 MR. GUYMON: Was it for a criminal case?

22 PROSPECTIVE JUROR FINK: Yes.

23 MR. GUYMON: Was the charge murder?

24 PROSPECTIVE JUROR FINK: No.

25 MR. GUYMON: All right. Now, then, can you set

1 aside whatever preconceived ideas you might have about what
2 first degree murder is and follow the law as the Judge gives
3 it to you?

4 PROSPECTIVE JUROR FINK: Yes.

5 MR. GUYMON: What are your thoughts about holding
6 someone accountable for their criminal conduct?

7 PROSPECTIVE JUROR FINK: Well, I think they should
8 be held 100 percent accountable for what they've done. I just
9 -- You know, they've got to answer for it.

10 MR. GUYMON: Now let me ask you, prior to or about
11 the same time that you read the questionnaire you learned that
12 there was four choices for the crime of murder.

13 PROSPECTIVE JUROR FINK: Right.

14 MR. GUYMON: Okay, do you understand the wisdom for
15 why those four choices or do you see any wisdom in the four
16 choices?

17 PROSPECTIVE JUROR FINK: Some, yes.

18 MR. GUYMON: Okay. Can you see that perhaps some
19 people that commit first degree murder should get some
20 leniency? Would you agree or disagree with that thought?

21 PROSPECTIVE JUROR FINK: I would agree, yes.

22 MR. GUYMON: Okay. I guess you can think of a
23 circumstance where a person may commit a murder that's first
24 degree murder under the law and yet that person too should get
25 some leniency?

1 PROSPECTIVE JUROR FINK: Yeah, I think a lot of it's
2 state of mind.

3 MR. GUYMON: Okay. Can you see or think of a case
4 where a person who commits first degree murder should get no
5 leniency?

6 PROSPECTIVE JUROR FINK: Oh, definitely.

7 MR. GUYMON: And I take it by that comment you're in
8 favor of the death penalty.

9 PROSPECTIVE JUROR FINK: Yes.

10 MR. GUYMON: In fact, you say the same in your
11 questionnaire.

12 PROSPECTIVE JUROR FINK: Correct.

13 MR. GUYMON: Now you indicated, however, being in
14 favor of the death penalty, you also indicate that life
15 without may be the worst punishment.

16 PROSPECTIVE JUROR FINK: It depends on the
17 individual and their state of mind.

18 MR. GUYMON: Okay, explain.

19 PROSPECTIVE JUROR FINK: If you've got a person that
20 has no regard for life, for his own life or the life of
21 others, death is the only way for that person, but somebody
22 who is really compassionate and cares and did something in the
23 spur of the moment, just lashed out, I think that person with,
24 you know, life with parole or without parole would have time
25 to think about it and it would be harder on that person than

1 the death penalty would be.

2 MR. GUYMON: Okay. And maybe that person should --
3 If that person comes to trial before a jury, maybe that jury
4 should consider leniency then, is that -- so we begin to see
5 the four choices even.

6 PROSPECTIVE JUROR FINK: Right.

7 MR. GUYMON: Okay. In this case, if you conclude
8 that these are the appropriate facts, in other words, they're
9 just so bad and, in fact, that Donte Johnson is the
10 appropriate person to get the death penalty, can you vote for
11 that?

12 PROSPECTIVE JUROR FINK: Yes.

13 MR. GUYMON: Can you stand by that conviction?

14 PROSPECTIVE JUROR FINK: Yes, I think so.

15 MR. GUYMON: And is that something you feel strongly
16 about?

17 PROSPECTIVE JUROR FINK: I believe so.

18 MR. GUYMON: Is there any reason, other than the
19 vacation that's looming out there on June 16th, is there any
20 reason you could think of why you wouldn't be a fair juror in
21 this case?

22 PROSPECTIVE JUROR FINK: No.

23 MR. GUYMON: Thank you.

24 THE COURT: Thank you. We'll take our morning
25 recess.

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

9 We'll be in recess 'til 11:00 o'clock.

10 (Court recessed at 10:50 a.m. until 11:00 a.m.)

11 (Prospective jurors are present)

12 THE COURT: Does your side have a problem proceeding
13 with Mr. Morine's voir dire without waiting for this juror?

14 MR. DASKAS: I have no problem.

15 (Pause in the proceedings)

16 THE COURT: Okay, here he is anyway.

17 Okay, go ahead, Mr. Daskas.

18 MR. DASKAS: Thank you, Judge.

19 Good morning, Mr. Morine.

20 PROSPECTIVE JUROR MORINE: Good morning.

21 MR. DASKAS: You've heard some discussion,
22 obviously, this morning about the various possible punishments
23 associated with a first degree murder conviction.

24 PROSPECTIVE JUROR MORINE: Yes.

25 MR. DASKAS: And you understand those four possible

1 choices?

2 PROSPECTIVE JUROR MORINE: Yes, I do.

3 MR. DASKAS: There's been some discussion about the
4 fact that, well, despite the fact that individuals might be
5 convicted of the same crime, that is first degree murder,
6 perhaps there's something about either the nature of their
7 background or the way in which they committed the crime that
8 one of the other four punishments might be appropriate. You
9 recall those discussions?

10 PROSPECTIVE JUROR MORINE: Yes, I do.

11 MR. DASKAS: Would you agree with that?

12 PROSPECTIVE JUROR MORINE: In general.

13 MR. DASKAS: So in any particular case, given any
14 particular defendants, you would agree that one of those four
15 choices might be the appropriate choice even though it's a
16 murder conviction?

17 PROSPECTIVE JUROR MORINE: I think so, yes.

18 MR. DASKAS: On your jury questionnaire you were
19 asked, of course, like everybody else, which is the worst
20 punishment, death or life without, and your answer was, and
21 I'll quote your answer, "I think that even without parole a
22 person could have a meaning to their life in prison."

23 Tell me what you meant by that.

24 PROSPECTIVE JUROR MORINE: Well, I guess in general
25 I don't believe that all people are 100 percent bad and so if

1 someone committed a crime that was unacceptable to society and
2 that person should not be back out amongst society where they
3 could possibly injure or harm someone else, that perhaps even
4 in prison they could have some meaning to their life or
5 perhaps help someone else write a book so that somebody didn't
6 follow the path they did or of some benefit, perhaps, to
7 society that you wouldn't get if you put that person to death.

8 MR. DASKAS: I understand.

9 Would you agree, however, with the notion that the
10 worst possible crime deserves the worst possible punishment?

11 PROSPECTIVE JUROR MORINE: I think so, yes.

12 MR. DASKAS: And would you agree with the notion
13 that the worst possible criminal deserves the worst possible
14 punishment?

15 PROSPECTIVE JUROR MORINE: That's a valid theory,
16 yes.

17 MR. DASKAS: And would you agree that if you combine
18 both those things, that is the worst possible crime with the
19 worst possible defendant, indeed that person should get the
20 worst possible punishment?

21 PROSPECTIVE JUROR MORINE: That's a logical
22 argument.

23 MR. DASKAS: Do you feel like you have the ability,
24 if this case is the appropriate case for death and if this
25 defendant is the appropriate defendant for the death penalty,

1 to impose that sentence?

2 PROSPECTIVE JUROR MORINE: I think I would find it
3 difficult to make the judgment to put another human being to
4 death.

5 MR. DASKAS: Given that you would find it difficult,
6 and no one is suggesting this should be an easy task or
7 something you should take lightly, but given the fact that you
8 find that it would be difficult, are you suggesting that you
9 couldn't do it, that you could not vote for death?

10 PROSPECTIVE JUROR MORINE: In absolute terms if I
11 couldn't -- I suppose I could, but philosophically, I guess, I
12 have a problem with deciding that another human being should
13 cease going on living, regardless of how terrible an act that
14 person might have done.

15 THE COURT: Excuse me one moment, Mr. Daskas.

16 Last week, when you were sitting sort of at leisure
17 and filling out the questionnaire, Mr. Morine, you didn't
18 indicate this much hesitation in your ability to impose the
19 death penalty in some cases. Are you saying that it's a very
20 difficult thing, 'cause I would expect that it should be for
21 all people, to impose it or that you would not impose it even
22 if you thought it was deserved? You couldn't sign, let's say,
23 if you were the foreperson -- If you weren't the foreperson
24 you couldn't vote for it and if you were the foreperson you
25 couldn't sign a verdict that said death?

1 Is that what you're telling us?

2 PROSPECTIVE JUROR MORINE: It's interesting, and I
3 suppose it's true with all prospective jurors, that you think
4 about this, but until you're actually put into the position,
5 as I was when I filled out that questionnaire, since then,
6 thinking about could I actually sit there and make that
7 decision to put another human being to death, I've given that
8 a great deal of thought since filling out the questionnaire.

9 THE COURT: Okay. And what is your thought as you
10 sit there today?

11 PROSPECTIVE JUROR MORINE: I guess I can't sit here
12 and say I absolutely would not, but I think it would take an
13 awful lot of compelling argument for and an awful lot of soul
14 searching before I could ever come to that conclusion.

15 THE COURT: That's all that people can ask.

16 Go ahead, Mr. Daskas.

17 MR. DASKAS: Thank you, Judge.

18 You understand why we challenged you on your answer
19 at this point?

20 PROSPECTIVE JUROR MORINE: Sure, sure. No, that's
21 fine.

22 MR. DASKAS: Obviously, we have to assume, that is
23 the State has to assume, that we're gonna get there and so we
24 need to know for certain that you have the ability to return a
25 death verdict. Do you understand that's why we challenge your

1 answers?

2 PROSPECTIVE JUROR MORINE: Uh-huh.

3 MR. DASKAS: Is that a yes?

4 PROSPECTIVE JUROR MORINE: Yes, that is a yes.

5 MR. DASKAS: Thank you.

6 In what I'll call the first phase of the trial, the
7 guilt phase, if you're convinced beyond a reasonable doubt
8 that the defendant is, in fact, guilty of all the crimes we've
9 mentioned thus far, can you promise, if you believe beyond a
10 reasonable doubt that he's guilty, can you promise that you'll
11 return verdicts of guilty?

12 PROSPECTIVE JUROR MORINE: Absolutely.

13 MR. DASKAS: Does your reluctance or hesitation to
14 impose death cause you any concern about convicting him if
15 indeed you find that he's guilty in the guilt phase?

16 PROSPECTIVE JUROR MORINE: No.

17 MR. DASKAS: If you had the opportunity to create
18 your own society, would you have a death penalty?

19 PROSPECTIVE JUROR MORINE: I don't believe so.

20 MR. DASKAS: I'm gonna challenge you some more. You
21 realize that?

22 PROSPECTIVE JUROR MORINE: Sure. That's fine.

23 MR. DASKAS: And why wouldn't you have the death
24 penalty in your society?

25 PROSPECTIVE JUROR MORINE: Again, I believe that if

1 someone commits something so heinous and unacceptable to
2 society, if you imprison them without any possibility of
3 parole, that person then cannot harm society any further and
4 that there's a possibility that that person could do some good
5 to himself or the rest of society even behind bars.

6 MR. DASKAS: You mentioned that that person couldn't
7 harm anybody else in society. You would agree that it's
8 possible somebody in that situation might harm somebody in
9 prison?

10 PROSPECTIVE JUROR MORINE: That's entirely possible.

11 MR. DASKAS: You would agree that there aren't just
12 prisoners in prison, there are prison guards, correct?

13 PROSPECTIVE JUROR MORINE: Uh-huh.

14 MR. DASKAS: Yes?

15 PROSPECTIVE JUROR MORINE: Yes.

16 MR. DASKAS: Medical staff in a prison, correct?

17 PROSPECTIVE JUROR MORINE: Yes.

18 MR. DASKAS: Maintenance workers at a prison,
19 correct?

20 PROSPECTIVE JUROR MORINE: Yes.

21 MR. DASKAS: Certainly you would concede that it's
22 possible for somebody who is convicted of that crime to harm
23 those individuals within the confines of a prison?

24 MR. SCISCENTO: Your Honor, I'm gonna object to
25 this. Can we approach for a moment?

1 THE COURT: Sure.

2 (Off-record bench conference)

3 MR. DASKAS: Do you feel like you can sit in
4 judgment of another human being?

5 PROSPECTIVE JUROR MORINE: Yes, I do.

6 MR. DASKAS: Anything other than what we've
7 discussed thus far that you think we, that is the State or the
8 defense, should know about you before we select you as a juror
9 on this particular case?

10 PROSPECTIVE JUROR MORINE: I can't think of any.

11 MR. DASKAS: Thanks. I appreciate it.

12 PROSPECTIVE JUROR MORINE: You bet.

13 MR. GUYMON: Good morning, Ms. Day.

14 PROSPECTIVE JUROR DAY: Good morning.

15 MR. GUYMON: How are you?

16 PROSPECTIVE JUROR DAY: Okay.

17 MR. GUYMON: Can you give me your thoughts about
18 sitting as a juror in an important case like this.

19 PROSPECTIVE JUROR DAY: It's a big thing to do.

20 MR. GUYMON: Okay. Is it something you think you're
21 capable of doing?

22 PROSPECTIVE JUROR DAY: Yes.

23 MR. GUYMON: Okay. Can you do it fairly?

24 PROSPECTIVE JUROR DAY: Yes.

25 MR. GUYMON: Do you have any reservations at all

1 about passing judgment on the conduct of Donte Johnson?

2 PROSPECTIVE JUROR DAY: No.

3 MR. GUYMON: And you say no even knowing that your
4 decision may affect his life?

5 PROSPECTIVE JUROR DAY: Right.

6 MR. GUYMON: You can make that decision?

7 PROSPECTIVE JUROR DAY: Yes.

8 MR. GUYMON: Okay, that's something you're real sure
9 about so far?

10 PROSPECTIVE JUROR DAY: Yes.

11 MR. GUYMON: All right. You indicated that you've
12 previously sat as a juror?

13 PROSPECTIVE JUROR DAY: Yes.

14 MR. GUYMON: And it was a positive experience?

15 PROSPECTIVE JUROR DAY: Uh-huh, yes.

16 MR. GUYMON: Can you set aside whatever preconceived
17 ideas you got in that case -- It was a robbery case and you
18 obviously -- in that case the judge instructed you as to what
19 the law of robbery was.

20 PROSPECTIVE JUROR DAY: Right.

21 MR. GUYMON: Can you set aside what you may have
22 learned in that case and follow the law as it relates to what
23 the Judge tells you here?

24 PROSPECTIVE JUROR DAY: Yeah, 'cause that was like
25 20 years ago, so I don't remember.

1 MR. GUYMON: You don't remember much, okay.
2 Do you have any preconceived ideas of what beyond a
3 reasonable doubt means?
4 PROSPECTIVE JUROR DAY: No.
5 MR. GUYMON: Okay. Do you have any preconceived
6 ideas about what a murderer might look like or how he or she
7 might act?
8 PROSPECTIVE JUROR DAY: No.
9 MR. GUYMON: The witnesses I've indicated may come
10 into this courtroom and testify. Some of those witnesses may
11 have lifestyles or choices that you don't particularly care
12 for. Will those witnesses be given a chance to be believed?
13 PROSPECTIVE JUROR DAY: Yes.
14 MR. GUYMON: Tell me your thoughts on fingerprint
15 evidence. Do you have any thoughts about fingerprints?
16 PROSPECTIVE JUROR DAY: No.
17 MR. GUYMON: Okay, how about DNA? You read the
18 paper from time to time and it seems as though DNA is spoken
19 about. Do you have any thoughts about DNA evidence?
20 PROSPECTIVE JUROR DAY: I think it's good we have it
21 now.
22 MR. GUYMON: Okay. And do you believe in the
23 science of DNA based on what you know?
24 PROSPECTIVE JUROR DAY: Yes.
25 COURT RECORDER: Yes?

1 PROSPECTIVE JUROR DAY: Yes.

2 MR. GUYMON: How about the science of fingerprints,
3 do you believe in fingerprint evidence?

4 PROSPECTIVE JUROR DAY: Yes.

5 MR. GUYMON: Okay. You indicated that you weren't
6 real crazy about the idea of parole for murderers.

7 PROSPECTIVE JUROR DAY: Right.

8 MR. GUYMON: Is that true?

9 PROSPECTIVE JUROR DAY: True.

10 MR. GUYMON: Okay, let me ask you this. If you were
11 in charge of a society, of a state, and you could make the
12 decision, would your state have the death penalty?

13 PROSPECTIVE JUROR DAY: Yes.

14 MR. GUYMON: Okay. Would your state have more than
15 just one penalty, however, for the crime of first degree
16 murder?

17 PROSPECTIVE JUROR DAY: Probably not.

18 MR. GUYMON: Okay, so you'd say death penalty for
19 everybody?

20 PROSPECTIVE JUROR DAY: Yes.

21 MR. GUYMON: Okay, let me ask you this. First
22 degree murder, there's a lot of, you know, a lot of different
23 people can commit the crime of first degree murder. Some
24 people that are real, real bad and perhaps even some good
25 people can make some wrong decisions. Can you agree with that

1 thought so far?

2 PROSPECTIVE JUROR DAY: No.

3 MR. GUYMON: Okay, let me ask you this. Do you know
4 anything about felony murder, the term felony murder?

5 PROSPECTIVE JUROR DAY: Yeah, not much, a little
6 bit.

7 MR. GUYMON: Okay.

8 PROSPECTIVE JUROR DAY: Like if you're in an
9 accident, car accident, or drinking and driving, something
10 different.

11 MR. GUYMON: I think you need to raise your voice.

12 COURT RECORDER: Speak up.

13 PROSPECTIVE JUROR DAY: Oh. I think it's something
14 not intentional.

15 MR. GUYMON: Okay. Under the notion of felony
16 murder there is such a thing in the State of Nevada as first
17 degree felony murder and that is to say that persons that are
18 engaged in certain felonies, if a murder occurs during that
19 felony, that person's responsible for first degree murder.

20 PROSPECTIVE JUROR DAY: Right.

21 MR. GUYMON: Two people may choose to do a robbery
22 at 7-Eleven and one person may be the actual driver, the
23 getaway driver, the other person goes in and robs the 7-Eleven
24 clerk and during that robbery he kills the clerk, do you
25 realize that the getaway driver is responsible for first

1 degree murder?

2 PROSPECTIVE JUROR DAY: Yes.

3 MR. GUYMON: Okay. Do you agree with holding people
4 responsible, in other words, if they form a conspiracy and
5 they form a team that you hold people responsible for their
6 teammates actions? Do you agree or disagree with that
7 thought?

8 PROSPECTIVE JUROR DAY: Well, if they're intending
9 to that, yes.

10 MR. GUYMON: Okay. And in the scenario I gave you,
11 the person who -- all he intended to do was drive the car and
12 yet a murder's committed, that driver's responsible for first
13 degree murder under the state of law in Nevada.

14 PROSPECTIVE JUROR DAY: Right.

15 MR. GUYMON: Are you aware of that?

16 PROSPECTIVE JUROR DAY: Mm-hmm.

17 MR. GUYMON: Now, if it was your society and that's
18 the law, would the get away driver, should he have to get
19 death penalty too or can you see some need for leniency for
20 him?

21 PROSPECTIVE JUROR DAY: Yeah, I can see some need
22 for him.

23 MR. GUYMON: He's not the shooter.

24 PROSPECTIVE JUROR DAY: He's not the shooter, right.

25 MR. GUYMON: He didn't even go into 7-Eleven.

1 PROSPECTIVE JUROR DAY: Right.

2 MR. GUYMON: But that, under felony murder, he's
3 guilty of first degree murder. That person should get some
4 leniency?

5 PROSPECTIVE JUROR DAY: Right.

6 MR. GUYMON: Okay. So, let me come back now to
7 these choices, this idea, and I know you're not crazy about
8 parole for murderers --

9 PROSPECTIVE JUROR DAY: Right.

10 MR. GUYMON: -- but let me ask you, can you see
11 where some persons that are guilty of first degree murder,
12 perhaps felony murder, should get some leniency?

13 PROSPECTIVE JUROR DAY: Yeah.

14 MR. GUYMON: Can you see where the driver of the car
15 may even be entitled to life with the possibility of parole?
16 There might be something redeeming enough about him,
17 particularly in light of the fact that he wasn't the shooter,
18 that maybe we ought to even give him the chance to get out
19 someday?

20 PROSPECTIVE JUROR DAY: Should I that -- no.

21 MR. GUYMON: If he --

22 PROSPECTIVE JUROR DAY: He was involved in it, he
23 was there.

24 MR. GUYMON: Okay.

25 PROSPECTIVE JUROR DAY: He knew something was going

1 to happen.

2 MR. GUYMON: So even though that person's not the
3 shooter --

4 PROSPECTIVE JUROR DAY: Right.

5 MR. GUYMON: Let's say he didn't know a shooting was
6 going to happen, no idea that his partner was going to shoot
7 and kill the clerk?

8 PROSPECTIVE JUROR DAY: Well, I think he --

9 MR. GUYMON: He may even thought the gun was
10 unloaded.

11 PROSPECTIVE JUROR DAY: But they knew he had gun.

12 MR. GUYMON: Perhaps it was unloaded though, in his
13 mind. Can we give that person a chance to get out?

14 PROSPECTIVE JUROR DAY: I wouldn't because he should
15 have known.

16 MR. GUYMON: Okay. Well, let me turn to this
17 because we have to have twelve jurors that will have an open
18 mind until they hear all the evidence --

19 PROSPECTIVE JUROR DAY: Mm-hmm.

20 MR. GUYMON: -- and be willing to consider all the
21 options. In this case we have four options: death penalty --

22 PROSPECTIVE JUROR DAY: Mm-hmm.

23 MR. GUYMON: -- life without; life with, which is
24 the chance to get out someday --

25 PROSPECTIVE JUROR DAY: Mm-hmm.

1 MR. GUYMON: -- not the promise but the chance; and
2 a fixed term of years, forty to a hundred years before
3 release.

4 PROSPECTIVE JUROR DAY: Right.

5 MR. GUYMON: Can you consider all of those options
6 for someone that's guilty of first degree murder?
7 Understanding that first degree murder can be a whole bunch of
8 things. It can be the shooter who intentionally shoots and
9 kills a person and it could even be the get away driver who
10 has no idea that there was bullets in that gun? Can you
11 consider all four options?

12 PROSPECTIVE JUROR DAY: Probably not, I think he's
13 guilty.

14 THE COURT: Ma'am, I can't hear you. Could you talk
15 up a little?

16 PROSPECTIVE JUROR DAY: No, I don't think so, he's
17 there, he's doing a crime, he's involved in it.

18 MR. GUYMON: Okay. Let me --

19 MR. FIGLER: Your Honor, I would challenge for cause
20 at this time. I think we've given enough time for
21 rehabilitation.

22 THE COURT: Will you approach the bench, please.

23 (Off-record bench conference)

24 THE COURT: Okay. Ma'am, we're going to excuse you
25 and you can report back to the jury commissioner. Thank you

1 for your honesty and let's seat Mr. Juarez.

2 You're used to these tight seats, aren't you Ms.
3 Cole?

4 Go ahead, Gary. Oh, is this an odd now?

5 MR. DASKAS: This is even, Judge.

6 THE COURT: Okay.

7 MR. DASKAS: Even. Nobody's calling you odd.

8 PROSPECTIVE JUROR JUAREZ: Not today at least.

9 MR. DASKAS: Mr. Juarez, good morning.

10 PROSPECTIVE JUROR JUAREZ: Good morning.

11 MR. DASKAS: I believe you mentioned in your
12 questionnaire you had a little knowledge about this case, is
13 that true?

14 PROSPECTIVE JUROR JUAREZ: Yes.

15 MR. DASKAS: Despite what you've heard about the
16 case, can you set aside what you've heard and base your
17 decision solely on the evidence you hear from the witness
18 stand?

19 PROSPECTIVE JUROR JUAREZ: Yes, I could.

20 MR. DASKAS: You understand that both sides are
21 seeking fair and impartial jurors?

22 PROSPECTIVE JUROR JUAREZ: Correct.

23 MR. DASKAS: Okay. You, too, in your questionnaire
24 mentioned that you believed life without parole is a worse
25 punishment than death, is that true?

1 PROSPECTIVE JUROR JUAREZ: Yes, it can be.

2 MR. DASKAS: Tell me what you mean by that, why you
3 think that's true?

4 PROSPECTIVE JUROR JUAREZ: Well, I think if a person
5 has feelings, to be locked up for life, knowing that you'll
6 never get out, could be far worse.

7 MR. DASKAS: I take it that if you were in that
8 situation --

9 PROSPECTIVE JUROR JUAREZ: Couldn't of went.

10 MR. DASKAS: Okay. Certainly life without parole,
11 knowing you're never going to get out, would be worse for you
12 than a sentence of death?

13 PROSPECTIVE JUROR JUAREZ: For me it would, yes.

14 MR. DASKAS: But can you envision a defendant, a
15 person, or perhaps that might not be the case?

16 PROSPECTIVE JUROR JUAREZ: Yes.

17 MR. DASKAS: If you were creating your own society,
18 would you have a death penalty?

19 PROSPECTIVE JUROR JUAREZ: Yes, I would.

20 MR. DASKAS: You understand that it's a distinct
21 possibility that in the next week and a half or two weeks we
22 may stand up in front of you and the other jurors, if you're
23 selected and ask you to return a verdict of death against
24 somebody who's seated in this courtroom at this very moment?
25 You understand that?

1 PROSPECTIVE JUROR JUAREZ: I understand.

2 MR. DASKAS: Do you feel like you have the ability
3 to do that?

4 PROSPECTIVE JUROR JUAREZ: Given the proper
5 information, yes.

6 MR. DASKAS: If you believed that this was the worse
7 possible crime, you could impose a sentence of death?

8 PROSPECTIVE JUROR JUAREZ: If I believed -- if I had
9 all the information that I could make that decision, yes.

10 MR. DASKAS: And I appreciate that. What I mean to
11 say is if you're given the evidence in this case and if, in
12 your mind, the evidence proves that this is the worse possible
13 crime, and if you're given information about the defendant and
14 if, in your mind, you believed this is the worse possible
15 defendant, can you check the death penalty as the appropriate
16 punishment in this case?

17 PROSPECTIVE JUROR JUAREZ: That would be an option,
18 yes.

19 MR. DASKAS: Along with the other three options
20 that --

21 PROSPECTIVE JUROR JUAREZ: Correct.

22 MR. DASKAS: -- that have been discussed?

23 PROSPECTIVE JUROR JUAREZ: Correct.

24 MR. DASKAS: You can imagine a scenario where anyone
25 of the other options might be appropriate?

1 PROSPECTIVE JUROR JUAREZ: Yes.

2 MR. DASKAS: There's been some discussion about the
3 burden of proof that the state has in this case like every
4 case, and that we must prove the defendant's guilt beyond a
5 reasonable doubt. Do you feel like you understand that
6 notion?

7 PROSPECTIVE JUROR JUAREZ: Yes.

8 MR. DASKAS: Can you abide by it?

9 PROSPECTIVE JUROR JUAREZ: Yes.

10 MR. DASKAS: Can you promise me, the State, that if
11 you're convinced of the defendant's guilt beyond a reasonable
12 doubt that you will return verdicts of guilty?

13 PROSPECTIVE JUROR JUAREZ: Yes, I can.

14 MR. DASKAS: Does it cause you any concern to sit in
15 conduct of another human being's -- to sit in judgment of the
16 conduct of another human being?

17 PROSPECTIVE JUROR JUAREZ: No.

18 MR. DASKAS: A little hesitation there?

19 PROSPECTIVE JUROR JUAREZ: Well, I'm not judging
20 them, you know, I'm getting information and making a decision
21 based on that information.

22 MR. DASKAS: And I appreciate the distinction.
23 Certainly we're not asking you to walk into the court and make
24 a judgment with no evidence.

25 PROSPECTIVE JUROR JUAREZ: Correct.

1 MR. DASKAS: We're asking you to listen to the
2 testimony, review the evidence in this case, and make a
3 decision, and you're comfortable with that?

4 PROSPECTIVE JUROR JUAREZ: Yes.

5 MR. DASKAS: What are your thoughts about the police
6 here in Las Vegas?

7 PROSPECTIVE JUROR JUAREZ: I think they do their
8 job.

9 MR. DASKAS: Some good cops, some bad cops?

10 PROSPECTIVE JUROR JUAREZ: Most definitely.

11 MR. DASKAS: Like any other profession?

12 PROSPECTIVE JUROR JUAREZ: Correct.

13 MR. DASKAS: Can you judge the credibility of a
14 police officer from the witness stand just like every other
15 witness in this case?

16 PROSPECTIVE JUROR JUAREZ: I think I could, yes.

17 MR. DASKAS: Just like every other person, I guess?

18 PROSPECTIVE JUROR JUAREZ: Right.

19 MR. DASKAS: You've heard us discuss the fact that
20 perhaps witnesses will take the stand and testify. Witnesses
21 who make choices that perhaps you and I wouldn't make.

22 PROSPECTIVE JUROR JUAREZ: Right.

23 MR. DASKAS: Perhaps they've used drugs in their
24 past. Can you give that person a fair shake if somebody like
25 that takes the witness stand?

1 PROSPECTIVE JUROR JUAREZ: Yes.

2 MR. DASKAS: Anything we should know about you that
3 we haven't discussed before you're selected to serve as a
4 juror on this case?

5 PROSPECTIVE JUROR JUAREZ: No.

6 MR. DASKAS: Thank you. I appreciate it. And
7 you're even as well, correct?

8 PROSPECTIVE JUROR BAKER: Yes.

9 MR. DASKAS: Mr. Baker, how are you this morning?

10 PROSPECTIVE JUROR BAKER: Fine.

11 MR. DASKAS: You, too, indicated you have some
12 knowledge about this case?

13 PROSPECTIVE JUROR BAKER: Yes.

14 MR. DASKAS: In fact, in your questionnaire you
15 indicated that you might have an opinion about this case?

16 PROSPECTIVE JUROR BAKER: I don't think I have an
17 opinion at this time.

18 MR. DASKAS: Okay. Let me just ask you this then.
19 Can you set aside whatever you know about this case and base
20 your decision solely on the evidence you hear from a
21 witnesses?

22 PROSPECTIVE JUROR BAKER: Yes.

23 MR. DASKAS: So that both sides, the defense and the
24 State get a fair and impartial juror in yourself?

25 PROSPECTIVE JUROR BAKER: Yes.

1 MR. DASKAS: What are your thoughts about the death
2 penalty?

3 PROSPECTIVE JUROR BAKER: It's a deterrent to crime,
4 I feel. If the deed warrants it, I think it's justified.

5 MR. DASKAS: Can you imagine instances where
6 somebody is convicted of murder yet deserves something less
7 than first -- than the death penalty?

8 PROSPECTIVE JUROR BAKER: Yes.

9 MR. DASKAS: Imagine a situation where a defendant
10 convicted of murder even deserves a chance at getting out of
11 prison sometime?

12 PROSPECTIVE JUROR BAKER: Yeah, possibly.

13 MR. DASKAS: You heard Mr. Guymon mention the felony
14 murder rule, a situation where a defendant doesn't even go
15 into the 7-Eleven in his scenario, his hypothetical --?

16 PROSPECTIVE JUROR BAKER: Mm-hmm.

17 MR. DASKAS: Yet is still responsible for murder.
18 Perhaps that person deserves a chance to get out of prison
19 someday, would you agree with that?

20 PROSPECTIVE JUROR BAKER: I would agree.

21 MR. DASKAS: Would you have a death penalty if you
22 had your own society?

23 PROSPECTIVE JUROR BAKER: Yes.

24 MR. DASKAS: Do you feel like people should be held
25 accountable for their decisions, their choices?

1 PROSPECTIVE JUROR BAKER: Yes, I do.
2 MR. DASKAS: And you feel like people should be
3 punished for the decisions and choices they make?
4 PROSPECTIVE JUROR BAKER: Yes.
5 MR. DASKAS: What are your thoughts about the
6 Metropolitan Police Department here in Las Vegas?
7 PROSPECTIVE JUROR BAKER: As far as I know they do a
8 good job.
9 MR. DASKAS: Okay. Any reason you couldn't judge
10 the credibility of a police officer or any other witness who
11 takes that witness stand?
12 PROSPECTIVE JUROR BAKER: No.
13 MR. DASKAS: Any preconceived notions about whether
14 cops always tell the truth or always lie or drug users always
15 tell the truth or always lie?
16 PROSPECTIVE JUROR BAKER: No.
17 MR. DASKAS: Anything we should know about you?
18 PROSPECTIVE JUROR BAKER: No.
19 MR. DASKAS: Thank you. I appreciate it.
20 PROSPECTIVE JUROR BAKER: Welcome.
21 MR. GUYMON: Ms. Cole?
22 PROSPECTIVE JUROR COLE: Yes.
23 MR. GUYMON: Give me your thoughts about being a
24 juror in this case? You got the summons and what was your
25 first thought?

1 PROSPECTIVE JUROR COLE: Well, I got it last week --
2 or two weeks ago so I was actually going on vacation last
3 week, so I was relieved to come and it wasn't during my
4 vacation.

5 MR. GUYMON: Okay. You came here and you filled out
6 a questionnaire and you quickly realized it was a criminal
7 case?

8 PROSPECTIVE JUROR COLE: Yeah.

9 MR. GUYMON: Did that cause you concern?

10 PROSPECTIVE JUROR COLE: No.

11 MR. GUYMON: Did it cause you concern that it dealt
12 with murder?

13 PROSPECTIVE JUROR COLE: No.

14 MR. GUYMON: Does it cause you concern that there's
15 four murders in this particular case?

16 PROSPECTIVE JUROR COLE: No.

17 MR. GUYMON: Okay. Did you have any preconceived
18 ideas about what beyond a reasonable doubt means?

19 PROSPECTIVE JUROR COLE: No.

20 MR. GUYMON: Have any preconceived ideas about what
21 it would be like to be a juror?

22 PROSPECTIVE JUROR COLE: No.

23 MR. GUYMON: Okay. Do you have any reservations at
24 all about passing judgment on Donte Johnson's conduct?

25 PROSPECTIVE JUROR COLE: No, I don't. You know,

1 it's always hard to say that you don't want to judge somebody,
2 but no, I believe our justice system is, you know, well
3 planned out to handle the cases.

4 MR. GUYMON: Knowing that your judgment may effect
5 his very life, does that cause you concern?

6 PROSPECTIVE JUROR COLE: No.

7 MR. GUYMON: What are your thoughts about holding a
8 person responsible for his or her conduct?

9 PROSPECTIVE JUROR COLE: I believe that everybody
10 should be accountable for their actions.

11 MR. GUYMON: Okay. And are you willing to hold the
12 person accountable for his or her actions?

13 PROSPECTIVE JUROR COLE: Yes.

14 MR. GUYMON: Okay. Do you see where a juror has
15 that ability? That is, the ability to hold someone
16 responsible for their conduct?

17 PROSPECTIVE JUROR COLE: Absolutely.

18 MR. GUYMON: Okay. And I take it that's a task
19 you're willing to shoulder?

20 PROSPECTIVE JUROR COLE: Yes.

21 MR. GUYMON: Okay. You indicated or you learned
22 that this is a death penalty case?

23 PROSPECTIVE JUROR COLE: Mm-hmm.

24 MR. GUYMON: Had you given much thought to the death
25 penalty prior to filling out the questionnaire?

1 PROSPECTIVE JUROR COLE: No.

2 MR. GUYMON: Okay. Have you thought about it since?

3 PROSPECTIVE JUROR COLE: Not really. I was in Key

4 West on a beach not really thinking about it.

5 MR. GUYMON: Good for you. Let's think about it now

6 though, all right?

7 PROSPECTIVE JUROR COLE: All right.

8 MR. GUYMON: Can we leave Key West just for a

9 minute?

10 PROSPECTIVE JUROR COLE: Okay.

11 MR. GUYMON: Talk about the death penalty, what are

12 your thoughts about the death penalty, are you in favor of it

13 or not so?

14 PROSPECTIVE JUROR COLE: I'm in favor of it. I

15 think it's a necessary punishment.

16 MR. GUYMON: Okay. Are you in favor of the thought

17 of that -- of something less than the death penalty for people

18 convicted of first degree murder?

19 PROSPECTIVE JUROR COLE: Yes.

20 MR. GUYMON: Okay. Would you agree or disagree with

21 that -- this, and that is that not all murderers are the same?

22 PROSPECTIVE JUROR COLE: Yes.

23 MR. GUYMON: One murderer may be worse than another?

24 PROSPECTIVE JUROR COLE: Yes.

25 MR. GUYMON: Can you live with the idea of somebody

1 convicted of first degree murder, maybe he'll get out of
2 prison someday?

3 PROSPECTIVE JUROR COLE: Yes.

4 MR. GUYMON: They may be able to rehabilitated or
5 they may have good qualities such that that person we'll let
6 out?

7 PROSPECTIVE JUROR COLE: Yes.

8 MR. GUYMON: And I take it that you agree with those
9 that are the worst should not get out?

10 PROSPECTIVE JUROR COLE: Absolutely.

11 MR. GUYMON: And you agree with putting to death
12 those people that had truly committed the worst offense and
13 are the worst among those offenders?

14 PROSPECTIVE JUROR COLE: Yes.

15 MR. GUYMON: Okay. You said you agree with the
16 death penalty, let me ask you this, could you impose it?

17 PROSPECTIVE JUROR COLE: Yes.

18 MR. GUYMON: Are you sure?

19 PROSPECTIVE JUROR COLE: Yes.

20 MR. GUYMON: Do you realize how tough a decision
21 that is?

22 PROSPECTIVE JUROR COLE: Yes.

23 MR. GUYMON: If faced with having to check a box as
24 to what you think should happen, in the event that we get to
25 the penalty phase, to the life of Donte Johnson, can you check

1 the box that says, you, Mrs. Cole or Ms. Cole, believe that
2 Donte Johnson should die for what he did?

3 PROSPECTIVE JUROR COLE: Yes.

4 MR. GUYMON: Is that something you can stick with?

5 PROSPECTIVE JUROR COLE: Yes.

6 MR. GUYMON: Is there anything we should know about
7 -- I've asked a lot of questions, a lot of them the same,
8 anything that we should know that was asked previously that we
9 haven't talked about here?

10 PROSPECTIVE JUROR COLE: No.

11 MR. GUYMON: Any reason why you couldn't be fair to
12 both sides?

13 PROSPECTIVE JUROR COLE: No.

14 MR. DASKAS: I apologize, how do you pronounce your
15 last name?

16 PROSPECTIVE JUROR GARCEAU: Garceau.

17 MR. DASKAS: Garceau. Good morning, Mr. Garceau.
18 When you received your questionnaire a week, a week and a half
19 ago and you realized that this was a death penalty case, do
20 you recall the first thing that came to your mind?

21 PROSPECTIVE JUROR GARCEAU: Well, I've never
22 experienced a jury duty to start with and I realized
23 immediately that it was not dealing with a family court -- a
24 divorce or something like that and I understand it's serious.

25 MR. DASKAS: Did it cause you any concern or

1 reluctance once you learned that this was, in fact, a death
2 penalty case?

3 PROSPECTIVE JUROR GARCEAU: No.

4 MR. DASKAS: I believe you indicated that you could
5 envision some circumstance where you would, in fact, impose
6 the death penalty?

7 PROSPECTIVE JUROR GARCEAU: Yes.

8 MR. DASKAS: I think you, too, have some knowledge
9 about the facts of this case?

10 PROSPECTIVE JUROR GARCEAU: I just when I read --
11 reading the paperwork that we looked through, scanning my
12 memory I seemed to remember a little piece on the news at the
13 time.

14 MR. DASKAS: And I don't -- I apologize to cut you
15 off, I don't want you to tell me what you heard on the news.

16 PROSPECTIVE JUROR GARCEAU: Okay. I just -- yeah, I
17 just happened to -- a piece on local news.

18 MR. DASKAS: Can you set aside whatever you heard
19 and make a decision --

20 PROSPECTIVE JUROR GARCEAU: Yes.

21 MR. DASKAS: -- based on the evidence from the
22 witness stand?

23 PROSPECTIVE JUROR GARCEAU: Yes.

24 MR. DASKAS: I've asked a lot of people and in fact,
25 we both asked a lot of people to understand that there's a

1 distinct possibility in a week and a half or two weeks, we're
2 going to stand before you and ask for you, if you're a juror,
3 to check the box on the verdict form that says death penalty.
4 If you're convinced that this is the appropriate case for that
5 punishment and if you're convinced that this defendant is the
6 appropriate defendant for that punishment, do you believe you
7 have the ability to check the box that says death?

8 PROSPECTIVE JUROR GARCEAU: Yes, I do.

9 MR. DASKAS: Can you promise me that if, in the
10 first phase of the trial, the guilt phase, you're convinced of
11 the defendant's guilt beyond a reasonable doubt, that you'll
12 indeed return verdicts of guilty?

13 PROSPECTIVE JUROR GARCEAU: Yes.

14 MR. DASKAS: Have you had much interaction or
15 contact with police officers here in Las Vegas?

16 PROSPECTIVE JUROR GARCEAU: Yes, I have.

17 MR. DASKAS: Okay. Do you have any preconceived
18 notions or thoughts about the police here in our community?

19 PROSPECTIVE JUROR GARCEAU: My experience has been
20 positive.

21 MR. DASKAS: A police officer who takes the witness
22 stand gets a fair shake, just like every other witness who
23 testifies, from you?

24 PROSPECTIVE JUROR GARCEAU: I'm prepared to listen
25 to whatever he has to say and keep an open mind.

1 MR. DASKAS: And how about individuals who may have
2 made choices in their life that you and I disagree, can you
3 judge that person's credibility from the witness stand and not
4 decide that person's lying solely because of choices he or she
5 may have made in the past?

6 PROSPECTIVE JUROR GARCEAU: I think you have to keep
7 an open mind about everyone sitting in the jury box -- or in
8 the witness box.

9 MR. DASKAS: I've asked if you could imagine a
10 situation or if you're convinced that this is the worst crime
11 and the worst defendant, that you'd impose death. Let me ask
12 you the inverse, I guess. Can you imagine a situation where
13 somebody convicted of murder perhaps deserves the chance to
14 get out of prison at some point?

15 PROSPECTIVE JUROR GARCEAU: Well, I tend to agree
16 with the 7-Eleven scenario that you talked about.

17 MR. DASKAS: In that situation perhaps that person
18 convicted of murder deserves at least a shot of seeing the
19 light of day?

20 PROSPECTIVE JUROR GARCEAU: The get away driver type
21 thing, yeah.

22 MR. DASKAS: I take it then that you could consider
23 all the possible punishments in this case?

24 PROSPECTIVE JUROR GARCEAU: Yes, I could.

25 MR. DASKAS: Thank you for your time. I appreciate

1 it.

2 MR. SCISCENTO: May we -- may we approach?

3 (Off-record bench conference)

4 THE COURT: All right. Sir, we've reconsidered and
5 we are going to excuse you. Thank you very much.

6 Mr. Malen.

7 MR. GUYMON: Mr. Malen, how are you?

8 PROSPECTIVE JUROR MALEN: Good, how are you?

9 MR. GUYMON: Good. Let me go right to the heart of
10 the question that I have for you, after reading your
11 questionnaire. You indicated in your questionnaire that you
12 weren't crazy about the four options for somebody guilty of
13 murder, is that right?

14 PROSPECTIVE JUROR MALEN: More or less, yeah. Well,
15 you got to figure the nature of the crime.

16 MR. GUYMON: Okay. Let me ask you this though, can
17 you think of a case where a person convicted of first degree
18 murder should get something less than the death penalty?

19 PROSPECTIVE JUROR MALEN: Well, that would be up to
20 you. I mean if they plea bargained with you or if you got the
21 truth.

22 MR. GUYMON: Well, let's say a guy goes to trial --

23 PROSPECTIVE JUROR MALEN: Right.

24 MR. GUYMON: -- and you learn the facts and as a
25 juror you say, those facts are guilty of first degree murder.

1 Can you think of a scenario where a person should get some
2 leniency still when it comes to sentencing?

3 PROSPECTIVE JUROR MALEN: If he's guilty of first
4 degree, no.

5 MR. GUYMON: And you can't think of any other time
6 when you've give somebody leniency? In other words, first
7 degree murder automatic death penalty in your mind?

8 PROSPECTIVE JUROR MALEN: Yeah.

9 MR. GUYMON: And you could think of -- well, let me
10 ask you this. You can't of a scenario where someone should
11 get something less than that?

12 PROSPECTIVE JUROR MALEN: Well, if they were in hand
13 and the proof is there and they committed the crime, they
14 should pay the -- pay the penalty.

15 THE COURT: Mr. Malen, excuse me a minute. You
16 heard Gary and sometimes Robert talk about this 7-Eleven case,
17 the get away driver. He would be guilty of first degree
18 murder in their example. Are you saying you would necessarily
19 give him the death penalty?

20 PROSPECTIVE JUROR MALEN: Well, if he was involved
21 in the crime, he -- it has to be premeditated. If it was
22 premeditated then I would have a problem. I wouldn't have a
23 problem, you know, with the death penalty on that.

24 THE COURT: Not talking about having a problem, but
25 could you consider all the four possible penalties or would

1 you always impose the death penalty in that situation?

2 PROSPECTIVE JUROR MALEN: I think if they were

3 involved in the crime they need to pay the penalty.

4 THE COURT: Even in that example of Mr. Guymon's --

5 PROSPECTIVE JUROR MALEN: Yes.

6 THE COURT: -- the get away driver who might even

7 have thought the gun wasn't loaded?

8 PROSPECTIVE JUROR MALEN: Well, if you're gonna go

9 pull a crime with an unloaded gun, I have a problem. You

10 know, it's -- I don't think that's a real scenario.

11 THE COURT: Challenge for cause?

12 MR. SCISCENTO: Sure, Judge.

13 THE COURT: Any traverse?

14 MR. GUYMON: No.

15 THE COURT: Thank you, sir. You're excused.

16 While Mr. Chastain is taking his seat would counsel

17 approach the bench, please?

18 (Off-record bench conference)

19 MR. GUYMON: Mr. Chastain, how are you today?

20 PROSPECTIVE JUROR CHASTAIN: I'm quite fine, thank

21 you, sir.

22 MR. GUYMON: What are your thoughts about being a

23 juror in this case?

24 PROSPECTIVE JUROR CHASTAIN: I think it's a

25 responsibility and I think it's a good learning experience,

1 too. I can see how the judicial system works a little better,
2 you know.

3 MR. GUYMON: Do you believe that you can fairly
4 judge the facts in this case?

5 PROSPECTIVE JUROR CHASTAIN: Absolutely. I always
6 try to be fair on every situation, regardless if it's judicial
7 or it's at work or whatever. Fair is very important to me.

8 MR. GUYMON: Will each of the witnesses that are --
9 that come into this courtroom be given a chance to be believed
10 by yourself?

11 PROSPECTIVE JUROR CHASTAIN: Absolutely, regardless
12 of what they look like, how they're dressed. That makes no --
13 it's -- that has nothing to do with the bearing of this -- of
14 the situation.

15 MR. GUYMON: Okay. And how about regardless of
16 their choices, their life choices?

17 PROSPECTIVE JUROR CHASTAIN: That's their -- that's
18 their choice, it has nothing to do with what they have to say.

19 MR. GUYMON: You indicate in your questionnaire that
20 prior to filling out your questionnaire you'd never really
21 thought about the death penalty.

22 PROSPECTIVE JUROR CHASTAIN: That's true. Like I
23 didn't know the death penalty even existed at the state. You
24 know, that was the first exposure to it, I go, wow, you know,
25 I didn't know it existed. So, yeah, it never really crossed

1 my mind too much.

2 MR. GUYMON: Okay. And you thought about it now?

3 PROSPECTIVE JUROR CHASTAIN: I would have to, after
4 reading that. I didn't -- I didn't -- I didn't investigate it
5 'cause I don't want to do anything that would kind of
6 compromise my way of thinking so afterwards I go -- I'll delve
7 into it, a little deeper into it, I think.

8 MR. DASKAS: Can you share with me your thoughts
9 about the death penalty now?

10 PROSPECTIVE JUROR CHASTAIN: Sure. My death penalty
11 -- I think it's a great deterrent for things like that but
12 it's a great responsibility to make that call. You just don't
13 want to call a death penalty just because you think someone's
14 guilty. Like you said, there's a level, you know. I think
15 your four level is justified because depending on the
16 situation, even some guy who kills one person whether it been
17 -- even he might have been threatened by his own life but he
18 acted upon it first to guy who just -- who goes out and kills
19 a hundred people in a -- in a McDonald's, you know, there's --
20 yeah, you know, there's a difference, you know. Do I think --
21 I think the person can be -- I think the person can be -- feel
22 remorse but I think the death penalty also tends to make
23 people -- I think it's more severe because when you're faced
24 knowing that yourself is going to die on any given day that
25 would be -- seem to be greater than sitting in jail.

1 MR. GUYMON: Okay.

2 PROSPECTIVE JUROR CHASTAIN: So I think it's the
3 worst case.

4 MR. GUYMON: You're comfortable then with having
5 four choices?

6 PROSPECTIVE JUROR CHASTAIN: I think that's -- I
7 think it's very -- I think it's -- I think that's set up
8 pretty well. Yeah.

9 MR. GUYMON: If it was your state and you were --
10 you were making this decision, you'd give jurors four choices?

11 PROSPECTIVE JUROR CHASTAIN: Absolutely. That was
12 very -- I don't -- just giving someone the death penalty or
13 not, that's a bit extreme so.

14 MR. GUYMON: Okay. Now, let me ask you this. In
15 this case, you'll have the responsibility, if we get to the
16 second phase, that being the penalty phase, of making the
17 choice.

18 PROSPECTIVE JUROR CHASTAIN: Mm-hmm.

19 MR. GUYMON: Can you check the death penalty box?

20 PROSPECTIVE JUROR CHASTAIN: If I was thoroughly
21 convinced that that was the appropriate be -- that was the
22 appropriate decision to make, I would have to be thoroughly
23 convinced that would be the one -- the step to take, before I
24 could make that step. I mean I wouldn't just take it lightly
25 and say, well, the guy's killed somebody, give him the death

1 penalty, no. But if I really thought that was the best
2 situation for the given case, yes.

3 MR. GUYMON: And if you believe it's appropriate,
4 it's something you'd do?

5 PROSPECTIVE JUROR CHASTAIN: Absolutely.

6 MR. GUYMON: And likewise you'd pick another option
7 if you believe that was appropriate?

8 PROSPECTIVE JUROR CHASTAIN: Exactly.

9 THE COURT: Defense may inquire.

10 MR. SCISCENTO: Ms. Kathleen Bruce?

11 PROSPECTIVE JUROR BRUCE: Yes.

12 MR. SCISCENTO: In the back? Good morning.

13 PROSPECTIVE JUROR BRUCE: Morning.

14 MR. SCISCENTO: In your questionnaire you mention
15 that you would consider all sentencings, all forms of
16 sentencing?

17 PROSPECTIVE JUROR BRUCE: Right. Correct.

18 MR. SCISCENTO: You mentioned something though and I
19 believe this number 40, death penalty saves money?

20 PROSPECTIVE JUROR BRUCE: I don't remember writing
21 that, but rather than life in prison and the taxpayers paying
22 for that.

23 MR. SCISCENTO: One of the -- you mean, question 40,
24 one of the benefits would be that the state and taxpayers
25 wouldn't have to pay for the imprisonment. Are you saying

1 that the death penalty is cheaper?

2 PROSPECTIVE JUROR BRUCE: I don't know cheaper so
3 much, but in my mind sentencing somebody to life without
4 parole, life with the possibility in twenty years, whatever
5 the options are, the taxpayers and the state do pay for that.
6 Death penalty also costs money that would not -- that would
7 not make the decision in my mind which to pick depending on
8 the facts of the case.

9 MR. SCISCENTO: So you think that it's not really a
10 cost basis analysis --

11 PROSPECTIVE JUROR BRUCE: Correct.

12 MR. SCISCENTO: -- which costs more and which saves
13 more?

14 PROSPECTIVE JUROR BRUCE: Correct.

15 MR. SCISCENTO: Okay. You agree that the -- what
16 are your feelings about the death penalty?

17 PROSPECTIVE JUROR BRUCE: I've never really had
18 feelings either way in the past but since filling this out, it
19 would be a difficult decision to make but based on the facts
20 of the case would determine it.

21 MR. SCISCENTO: What kind of facts would you be
22 looking at?

23 PROSPECTIVE JUROR BRUCE: The type of crime would --
24 the type of person that committed the crime --

25 MR. SCISCENTO: So, it is --

1 PROSPECTIVE JUROR BRUCE: -- their feelings.

2 MR. SCISCENTO: -- in the scenario of the 7-Eleven
3 where he's just sitting out there, didn't know the gun was
4 there, didn't know it was loaded, he knew the gun was there
5 but not loaded, that one you could look the other way on the
6 death penalty --

7 PROSPECTIVE JUROR BRUCE: Oh, definitely.

8 MR. SCISCENTO: -- so to speak. Yes?

9 PROSPECTIVE JUROR BRUCE: Yes.

10 MR. SCISCENTO: But this case does not involve that.

11 PROSPECTIVE JUROR BRUCE: No, I know that.

12 MR. SCISCENTO: This is about --

13 MR. DASKAS: Objection, Judge.

14 MR. GUYMON: Judge, I'll object. He's getting into
15 the facts of the case.

16 THE COURT: Well, let's hear the question.

17 MR. SCISCENTO: This case does not involve somebody
18 in a 7-Eleven not having knowledge. The State is alleging
19 that four people were killed.

20 PROSPECTIVE JUROR BRUCE: Mm-hmm.

21 MR. SCISCENTO: And that's not the same as somebody
22 who's sitting in a 7-Eleven or sitting outside of a 7-Eleven's
23 that's being robbed, would you agree?

24 PROSPECTIVE JUROR BRUCE: Yes.

25 MR. SCISCENTO: Okay. And in that scenario, what

1 would be your feelings on the death penalty?

2 PROSPECTIVE JUROR BRUCE: It depends on the case.

3 MR. DASKAS: Judge, I --

4 THE COURT: Sustained.

5 PROSPECTIVE JUROR BRUCE: It depends on the facts.

6 MR. SCISCENTO: I apologize.

7 THE COURT: Sustained.

8 PROSPECTIVE JUROR BRUCE: I'm sorry.

9 MR. SCISCENTO: There are certain instances, would

10 you agree, that the death penalty would be warranted?

11 PROSPECTIVE JUROR BRUCE: Yes.

12 MR. SCISCENTO: Okay. And those cases are what?

13 PROSPECTIVE JUROR BRUCE: As I stated prior --

14 MR. GUYMON: Judge, objection.

15 MR. DASKAS: Same objection, Judge.

16 THE COURT: Approach the bench.

17 (Off-record bench conference)

18 THE COURT: Ms. Bruce, I'm sorry.

19 PROSPECTIVE JUROR BRUCE: That's okay.

20 MR. SCISCENTO: The hypothetical they used in the 7-

21 Eleven was said this person had no knowledge of that. Well, a

22 hypothetical though, that somebody's accused of killing

23 multiple people, what is your feeling about that in

24 conjunction with the death penalty?

25 PROSPECTIVE JUROR BRUCE: Again, it depends on the

1 facts of the case. He's accused of it, it's an alleged crime
2 at this point. If the facts and if the evidence show that
3 beyond a reasonable doubt he is guilty, then I could go for
4 the death penalty.

5 MR. SCISCENTO: Would you say it's a sliding scale
6 that you would follow?

7 PROSPECTIVE JUROR BRUCE: A sliding scale?

8 MR. SCISCENTO: Most involvement, least involvement,
9 most involvement?

10 PROSPECTIVE JUROR BRUCE: Right. If there's -- if
11 there's an indication there of involvement, tiering structure
12 as you -- sliding scale as you put it, then that would
13 determine it also.

14 MR. SCISCENTO: Do you believe though that person's
15 -- other information, a person's background should be
16 considered first?

17 PROSPECTIVE JUROR BRUCE: I think as much of it that
18 can be brought in should be brought in so we get to know
19 everything about the defendant.

20 MR. SCISCENTO: You mention "an eye for an eye" is
21 unfair and wrong. You mention that on your --

22 PROSPECTIVE JUROR BRUCE: I don't know if it's so
23 much not fair and wrong, I don't believe "an eye for an eye"
24 solves anything.

25 MR. SCISCENTO: In this case it would be death for a

1 death, do you agree with that?

2 PROSPECTIVE JUROR BRUCE: Well, if the facts warrant
3 it, yes.

4 MR. SCISCENTO: I'll pass from this one, Your Honor.

5 THE COURT: Go ahead with the next juror, whoever's
6 going to do it.

7 MR. SCISCENTO: Mr. Warren?

8 PROSPECTIVE JUROR WARREN: Yes, sir.

9 MR. SCISCENTO: Have you been on a jury before?

10 PROSPECTIVE JUROR WARREN: No, I haven't. I've been
11 a bailiff in a military trial.

12 MR. SCISCENTO: Because before you mentioned that
13 there were eight people for a civil trial and twelve for a --

14 PROSPECTIVE JUROR WARREN: Yes, because I read the
15 little booklet that they gave us.

16 MR. SCISCENTO: Oh, was it. I don't even -- I don't
17 know how many you put on a civil trial. You'd mentioned
18 something that kind of bothers me. You said before that
19 twelve -- if twelve people could convict then you'd be all
20 right with that. You feel -- something to that effect. Do
21 you remember saying that earlier?

22 PROSPECTIVE JUROR WARREN: I remember saying
23 something to that effect.

24 MR. SCISCENTO: And the thing that concerns me, and
25 I want to see if you -- are you saying that the majority

1 number is right?

2 PROSPECTIVE JUROR WARREN: No, I'm not because if
3 there were eleven people who believed that this person was
4 guilty, a person on trial, and I believed that they weren't, I
5 would not go along with them. I would stand my ground. I
6 would explain my feelings of why or why not and I would --
7 they would explain theirs and if I still did not believe, if I
8 was not convinced, I would not, just to go along with the
9 crowd, no.

10 MR. SCISCENTO: So you would hold against the tide
11 of the majority if you believed the facts?

12 PROSPECTIVE JUROR WARREN: Correct.

13 MR. SCISCENTO: Okay. But then once the facts --
14 once twelve decided that there was guilt --

15 PROSPECTIVE JUROR WARREN: Mm-hmm.

16 MR. SCISCENTO: -- in other words, that the
17 defendant, Mr. White, was guilty, would you then say now that
18 twelve have said guilty, I will follow them on the punishment?

19 PROSPECTIVE JUROR WARREN: No, I would not.

20 MR. SCISCENTO: Okay. You're --

21 PROSPECTIVE JUROR WARREN: I believe the punishment
22 should fit the crime and in a murder case it could be -- I
23 would consider each of the four.

24 MR. SCISCENTO: Can you -- focus on that, punishment
25 should fit the crime?

1 PROSPECTIVE JUROR WARREN: Correct.

2 MR. SCISCENTO: Okay. We -- the State -- the State

3 of Nevada has imposed the death penalty for --

4 PROSPECTIVE JUROR WARREN: Right.

5 MR. SCISCENTO: -- for first degree murder.

6 PROSPECTIVE JUROR WARREN: Right. They've also --

7 have the other three.

8 MR. SCISCENTO: And we do that because killing is

9 wrong.

10 PROSPECTIVE JUROR WARREN: Correct.

11 MR. SCISCENTO: But killing is all right by the

12 State?

13 PROSPECTIVE JUROR WARREN: No, it's not.

14 MR. SCISCENTO: So what is the difference --

15 PROSPECTIVE JUROR WARREN: The punishment should fit

16 the crime insomuch and -- and the person who committed the

17 crime. You have to look at the evidence, brutality,

18 background. If you believe this person can be rehabilitated.

19 So, do you understand what I'm saying there?

20 MR. SCISCENTO: I understand. So again, you would

21 go on a sliding scale, too?

22 PROSPECTIVE JUROR WARREN: You -- yes, mm-hmm.

23 MR. SCISCENTO: Involvement, background?

24 PROSPECTIVE JUROR WARREN: Yes. Not --

25 MR. SCISCENTO: And more of a --

1 PROSPECTIVE JUROR WARREN: -- not solely on
2 involvement but I'd take into consideration background, any
3 other things that may have happened.

4 MR. SCISCENTO: Some redeeming quality?

5 PROSPECTIVE JUROR WARREN: Correct.

6 MR. SCISCENTO: I think you might have mentioned
7 before that if -- I not sure if it's you. If there was some
8 remorse by the defendant.

9 PROSPECTIVE JUROR WARREN: I didn't mention that and
10 I would have to hear the defendant.

11 MR. SCISCENTO: Do you think there's -- if he has to
12 show you remorse in order for you to determine whether or not
13 to impose the death penalty?

14 PROSPECTIVE JUROR WARREN: No, I don't think he has
15 to show it, no. I --

16 MR. SCISCENTO: I understand --

17 PROSPECTIVE JUROR WARREN: Yeah.

18 MR. SCISCENTO: -- that this is a --

19 PROSPECTIVE JUROR WARREN: It's very difficult.

20 MR. SCISCENTO: -- this is a very tough decision to
21 make.

22 PROSPECTIVE JUROR WARREN: Yes, it is. And it's not
23 one to be taken lightly.

24 MR. SCISCENTO: I agree with you on that one. And
25 you'll agree and you promise to listen to all of the evidence

1 beforehand?

2 PROSPECTIVE JUROR WARREN: Every bit.

3 MR. SCISCENTO: And I'm focusing now just on the

4 guilt phase.

5 PROSPECTIVE JUROR WARREN: Correct.

6 MR. SCISCENTO: There's going to be testimony up

7 there --

8 PROSPECTIVE JUROR WARREN: Right.

9 MR. SCISCENTO: -- and you agree to withhold your

10 judgment until after all the evidence comes in?

11 PROSPECTIVE JUROR WARREN: Until after all evidence.

12 MR. SCISCENTO: So when one person starts

13 testifying, you agree to wait to the end of the trial before

14 you determine and after you go back to the jury room.

15 PROSPECTIVE JUROR WARREN: Yes, I would have to go

16 back to the jury room and I would have to go over the evidence

17 again.

18 MR. SCISCENTO: And that's a tough thing to do,

19 isn't it?

20 PROSPECTIVE JUROR WARREN: It is a tough thing to

21 do.

22 MR. SCISCENTO: You've got to set aside your

23 feelings and emotions and beliefs for a while?

24 PROSPECTIVE JUROR WARREN: Yes, you do.

25 MR. SCISCENTO: Have you ever been asked to do that

1 before?

2 PROSPECTIVE JUROR WARREN: Not on a jury.

3 MR. SCISCENTO: To hold judgment back is what I'm

4 saying.

5 PROSPECTIVE JUROR WARREN: I try to hold judgment

6 back as much as possible.

7 MR. SCISCENTO: Okay.

8 PROSPECTIVE JUROR WARREN: You know.

9 MR. SCISCENTO: You ever watch those shows on like

10 60 Minutes or something where they profile a trial?

11 PROSPECTIVE JUROR WARREN: We've all watched 60

12 Minutes.

13 MR. SCISCENTO: And then you call in, people call in

14 and you give guilty, not guilty.

15 PROSPECTIVE JUROR WARREN: Mm-hmm, I don't do that.

16 I wouldn't -- I wouldn't call in and give guilty or not guilty

17 because I don't know the -- all the facts.

18 MR. SCISCENTO: Okay. What I'm -- what I'm saying

19 though is when these cases -- on these 60 Minute shows --

20 PROSPECTIVE JUROR WARREN: Mm-hmm.

21 MR. SCISCENTO: -- people say guilty, not guilty

22 throughout the whole TV show and they don't wait to the end.

23 PROSPECTIVE JUROR WARREN: Right. I understand. I

24 would never -- I -- personally, TV is different than real

25 life, as you and I both know. And 60 Minutes might not give

1 all the facts, you know. They may try to sway one way or
2 another because TV can do that, so I personally, for TV shows,
3 I would not do it even at the end, but I would have to wait to
4 the end of a trial to give any opinion at all.

5 MR. SCISCENTO: And you'll promise that you'll be
6 able to do that?

7 PROSPECTIVE JUROR WARREN: Yes, sir.

8 MR. SCISCENTO: And you won't give more credence to
9 an officer because he's merely an officer?

10 PROSPECTIVE JUROR WARREN: No, sir.

11 MR. SCISCENTO: And persons who have been involved
12 in drug use, you won't give them more or less credence?

13 PROSPECTIVE JUROR WARREN: No, sir.

14 MR. SCISCENTO: We'll pass, Your Honor.

15 THE COURT: Thank you.

16 We'll take our lunch break now, and so that you know
17 how the rest of the day's going to go, folks, I'm sort of
18 hopeful that we're going to seat a jury by somewhere around
19 mid-afternoon. Those of you who are not ultimately chosen, if
20 my prediction is right, will probably be able to go home
21 somewhere between 2:00 and 3:00 or so, if my hopes come true.
22 And anybody that's selected on the jury today and everyday
23 we'll be sitting somewhere between oh, a little before 5:00
24 and 5:30, if you have to notify people.

25 I'm going to give you a recess one hour in length,

1 meaning report to Stony just before 1 o'clock, and if you're
2 all assembled we're going to start as promptly as we can at
3 1:00.

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

12 Thank you.

13 Would counsel approach the bench, please.

14 (Off-record bench conference)

15 (Jury recessed)

16 (Court recessed at 11:55 a.m., until 1:05 p.m.)

17 (Prospective Jurors are present)

18 THE COURT: By the way, one thing I usually mention
19 before the lunch hour and the first day; the lawyers come in
20 the same way as you do, and they're not permitted to talk to
21 you. As a matter of fact, they can't exchange any
22 pleasantries with you, so if they're looking straight through
23 you, they know who you are, and they're following the canons
24 of ethics when they don't exchange pleasantries. I know all
25 these four young men and they're very nice gentlemen who I'm

1 sure with -- under other circumstances, to be very friendly to
2 you.

3 Mr. Sciscento, go ahead.

4 MR. FIGLER: Thank you.

5 THE COURT: Are you gonna do it, Dayvid?

6 MR. FIGLER: Yes, Judge.

7 Good afternoon, Mr. Riley. Because this is my first
8 opportunity to address anyone, I'm just gonna say something to
9 you, I'm not gonna say it to anyone else, but it's meant for
10 everybody. And that is, again my name is Dayvid Figler.
11 That's Joe Sciscento. Together, we have the privilege of
12 representing John White, who's also known as Donte Johnson.
13 Now, we're asking these questions of everyone, not because we
14 expect right or wrong answers. There are no right or wrong
15 answers, but only because we need to know about your opinions
16 and beliefs, because that guarantees that everything is gonna
17 be okay for every side. Do you understand that?

18 PROSPECTIVE JUROR RILEY: Yes.

19 MR. FIGLER: Okay. Now, it's our hope and belief
20 that we will challenge the State's case, so that we don't even
21 get to anything other than a determination of his innocence in
22 this particular case, but we have to ask these questions
23 anyway, because in the event that we do get to a second phase,
24 we don't get to ask you these questions again, do you
25 understand that?

1 PROSPECTIVE JUROR RILEY: Yes, I do.

2 MR. FIGLER: Okay. So no implication should be made
3 by the fact that we're asking these questions and you're
4 comfortable with that?

5 PROSPECTIVE JUROR RILEY: Yes.

6 MR. FIGLER: Okay. Now, I read that you are a
7 nurse, correct?

8 PROSPECTIVE JUROR RILEY: Yes.

9 MR. FIGLER: Have you ever worked emergency room?

10 PROSPECTIVE JUROR RILEY: No.

11 MR. FIGLER: Okay. But you know what's entailed
12 there in emergency room, for the most part?

13 PROSPECTIVE JUROR RILEY: Basically what anybody
14 else would know.

15 MR. FIGLER: Okay. And you would agree that part of
16 your job as a nurse is helping people or saving people's
17 lives, essentially? Would you agree with that?

18 PROSPECTIVE JUROR RILEY: Well, not necessarily
19 saving their lives, but helping people and educating them,
20 yes.

21 MR. FIGLER: Okay. Now, if a person comes to you in
22 great trauma, then one of the things you're gonna do is
23 attempt to save their life, right?

24 PROSPECTIVE JUROR RILEY: I would do CPR and the
25 same thing anyone else would do, yes.

1 MR. FIGLER: Okay. Same thing with a doctor. In
2 fact, they take an oath to save people's lives, correct?

3 PROSPECTIVE JUROR RILEY: Yes, they do.

4 MR. FIGLER: Okay. Now, in that process, they don't
5 give any consideration -- I mean, some very reprehensible
6 people may come to them ill and in need of help, but they
7 still get that help, right?

8 PROSPECTIVE JUROR RILEY: Correct.

9 MR. FIGLER: And that's part of the oath, the
10 sanctity of life and all that, correct?

11 PROSPECTIVE JUROR RILEY: Right.

12 MR. FIGLER: And you agree with those concepts?

13 PROSPECTIVE JUROR RILEY: Of course.

14 MR. FIGLER: Now, in your questionnaire and -- and
15 again, we have to ask these questions and I'm gonna try not to
16 embarrass anybody. The -- there has been a situation in your
17 life where somebody close to you ran afoul of the law,
18 correct?

19 PROSPECTIVE JUROR RILEY: Right.

20 MR. FIGLER: Okay. Now, do you feel that that
21 person was dealt fairly with?

22 PROSPECTIVE JUROR RILEY: Yes, I believe I indicated
23 that on the questionnaire.

24 MR. FIGLER: Okay. Now, was it your belief that
25 that person might have had a sickness or some ailment in their

1 life that led 'em to that particular point?

2 PROSPECTIVE JUROR RILEY: I don't know if I'd put it
3 that way, no.

4 MR. FIGLER: Do you believe that background
5 information, in that scenario, would be important to determine
6 the proper and fair adjudication of that person's problems?

7 PROSPECTIVE JUROR RILEY: I wasn't involved in that
8 portion of what happened, but I believe that background
9 information was very important, yes.

10 MR. FIGLER: Okay. So how a person's raised and
11 what type of things they were exposed to, you think all that's
12 important in ultimately determining?

13 PROSPECTIVE JUROR RILEY: Yes.

14 MR. FIGLER: With punishment as well?

15 PROSPECTIVE JUROR RILEY: I would say so, yes.

16 MR. FIGLER: I'll pass, Your Honor.

17 THE COURT: Thank you.

18 Next juror.

19 MR. SCISCENTO: Ms. Tackley?

20 PROSPECTIVE JUROR TACKLEY: Yes.

21 MR. SCISCENTO: Is it -- am I pronouncing it
22 correctly?

23 PROSPECTIVE JUROR TACKLEY: Yes, you are.

24 MR. SCISCENTO: In your questionnaire, you've
25 mentioned that you don't believe the punishment fits the crime

1 sometimes?

2 PROSPECTIVE JUROR TACKLEY: Sometimes I don't
3 believe it does.

4 MR. SCISCENTO: What do you mean by that?

5 PROSPECTIVE JUROR TACKLEY: I think sometimes crimes
6 that appear to be particularly heinous to me, aren't dealt
7 with harshly enough in the judicial system.

8 MR. SCISCENTO: And what do you consider a heinous
9 crime?

10 PROSPECTIVE JUROR TACKLEY: Oh, let's say the Manson
11 murders, for instance.

12 MR. SCISCENTO: Okay. And that involved -- the
13 Manson murders involved multiple murders?

14 PROSPECTIVE JUROR TACKLEY: Yes.

15 MR. SCISCENTO: And so someone in that case, in that
16 scenario -- I mean, what would you consider the punishment
17 that would fit the crime?

18 PROSPECTIVE JUROR TACKLEY: The death penalty.

19 MR. SCISCENTO: So you would agree, then, that
20 somebody who has multiple murders, is found guilty of multiple
21 murders, would automatically receive the death penalty?

22 PROSPECTIVE JUROR TACKLEY: Most likely, yes.

23 MR. SCISCENTO: In your state of mind, though, how
24 would you vote on multiple murder?

25 PROSPECTIVE JUROR TACKLEY: Death penalty.

1 MR. SCISCENTO: You mentioned also that life in
2 prison without the possibility of parole is okay if prisons
3 were harsher?

4 PROSPECTIVE JUROR TACKLEY: Yeah.

5 MR. SCISCENTO: Okay. What do you mean by that?

6 PROSPECTIVE JUROR TACKLEY: Few -- less access to
7 the outside world, more restriction of freedoms.

8 MR. SCISCENTO: You're not talking about beating
9 them in prison or --

10 PROSPECTIVE JUROR TACKLEY: No. No, no, no, no, no.
11 No.

12 MR. SCISCENTO: You -- your thoughts about the death
13 penalty. You said something to the effect that it was not a
14 deterrent because the costs?

15 PROSPECTIVE JUROR TACKLEY: No, I think it's not
16 much of a deterrent because it's so seldom carried out, except
17 in the southern states.

18 MR. SCISCENTO: You said it would save the taxpayers
19 a lot of money if the death penalty was actually carried out.

20 PROSPECTIVE JUROR TACKLEY: As opposed to --

21 MR. SCISCENTO: Life in prison?

22 PROSPECTIVE JUROR TACKLEY: Mm-hmm.

23 MR. SCISCENTO: So you would do it on a cost basis
24 analysis?

25 PROSPECTIVE JUROR TACKLEY: No.

1 MR. SCISCENTO: If it turned out that life in prison
2 was cheaper than the death penalty, would that change your
3 views at all?

4 PROSPECTIVE JUROR TACKLEY: No.

5 MR. SCISCENTO: So your views are the more heinous
6 the crime, ultimately --

7 PROSPECTIVE JUROR TACKLEY: The worse the
8 punishment.

9 MR. SCISCENTO: And so the possibility is if you're
10 here on the jury and you find that Mr. White is convicted of
11 the four murders, most likely then, your vote would be death
12 penalty?

13 PROSPECTIVE JUROR TACKLEY: Most likely.

14 MR. SCISCENTO: Okay. Would you consider anything
15 else?

16 PROSPECTIVE JUROR TACKLEY: Yes.

17 MR. SCISCENTO: What would you consider?

18 PROSPECTIVE JUROR TACKLEY: The -- there's three
19 other choices.

20 MR. SCISCENTO: I meant what would you consider, his
21 background, anything like that?

22 PROSPECTIVE JUROR TACKLEY: To me, I don't think
23 background is that important. We all make conscious choices
24 of what we're going to do.

25 MR. SCISCENTO: You mentioned before that you'd

1 focus on the state of mind.

2 PROSPECTIVE JUROR TACKLEY: Yeah, to a certain
3 extent. The intent, the premeditation --

4 MR. SCISCENTO: So if you found the premeditation
5 and intent and -- in the multiple murders, your vote --

6 PROSPECTIVE JUROR TACKLEY: And a lack of remorse.

7 MR. SCISCENTO: -- and a lack of remorse, your vote
8 would be --

9 PROSPECTIVE JUROR TACKLEY: For the death penalty.

10 MR. SCISCENTO: Is it almost automatic?

11 PROSPECTIVE JUROR TACKLEY: Almost.

12 MR. SCISCENTO: For you?

13 PROSPECTIVE JUROR TACKLEY: Mm-hmm.

14 MR. SCISCENTO: I applaud you for being very honest.
15 Some people may not be honest about -- about their feelings.
16 You've heard a little about the case. Without dwelling on the
17 facts, do you think that you could give an honest opinion as
18 to guilt if there were more than one murders involved?

19 PROSPECTIVE JUROR TACKLEY: Yes.

20 MR. SCISCENTO: You would? You'd consider all
21 aspects?

22 PROSPECTIVE JUROR TACKLEY: All the evidence.

23 MR. SCISCENTO: All the other aspects are life
24 without --

25 PROSPECTIVE JUROR TACKLEY: Oh.

1 MR. SCISCENTO: -- life with the possibility?
2 PROSPECTIVE JUROR TACKLEY: Mm-hmm.
3 MR. SCISCENTO: Even though you mentioned before,
4 though, that multiple murders you consider the worst of the
5 worst?
6 PROSPECTIVE JUROR TACKLEY: Yeah, I do.
7 MR. SCISCENTO: Is there anything to sway your mind
8 from that -- from that belief?
9 PROSPECTIVE JUROR TACKLEY: Nothing I've heard to
10 date.
11 MR. SCISCENTO: And what do you mean to date, from
12 us or --
13 PROSPECTIVE JUROR TACKLEY: In my life, yeah.
14 MR. SCISCENTO: So these beliefs are ingrained based
15 on what you've known up to today's date, what you've witnessed
16 or experience in society --
17 PROSPECTIVE JUROR TACKLEY: Right.
18 MR. SCISCENTO: -- which you've heard from friends
19 or parents or relatives?
20 PROSPECTIVE JUROR TACKLEY: Sure.
21 MR. SCISCENTO: Okay. And would you believe that
22 this is an ingrained belief that's very strong with you?
23 PROSPECTIVE JUROR TACKLEY: Yes.
24 MR. SCISCENTO: Okay. Would you say that it's a
25 bit -- how strong would you say, on a scale of one to ten?

1 PROSPECTIVE JUROR TACKLEY: Oh, about an eight.
2 MR. SCISCENTO: An eight? So there's very little
3 chance of you deviating from giving the death penalty on
4 multiple murders?
5 PROSPECTIVE JUROR TACKLEY: Yeah, that's probably
6 true.
7 MR. SCISCENTO: And we have a lot of these
8 questionnaires so I'm trying to remember some things. Have
9 you -- have you had any contact with any police or anything
10 like that?
11 PROSPECTIVE JUROR TACKLEY: In my life, yeah.
12 MR. SCISCENTO: In your life, I mean, good or bad?
13 PROSPECTIVE JUROR TACKLEY: Yeah, sure.
14 MR. SCISCENTO: You -- would you hold them in a
15 higher esteem as somebody who would testified here? Would you
16 give their testimony more credence, more credibility than an
17 average lay person?
18 PROSPECTIVE JUROR TACKLEY: No, they're just human
19 too.
20 MR. SCISCENTO: Okay. Would you agree that some may
21 or may not lie?
22 PROSPECTIVE JUROR TACKLEY: Yeah, I'd agree.
23 MR. SCISCENTO: Okay. And they're not -- just
24 because they're police officers, they're not fully --
25 PROSPECTIVE JUROR TACKLEY: They're not perfect.

1 MR. SCISCENTO: Okay. And they may have a
2 motivation to lie?

3 PROSPECTIVE JUROR TACKLEY: True.

4 MR. SCISCENTO: Okay. And if we bring that out and
5 you see that, you could accept the fact that maybe an officer
6 is lying?

7 PROSPECTIVE JUROR TACKLEY: Yes.

8 MR. SCISCENTO: What about expert witnesses, say
9 doctors or scientists who are examining DNA evidence. Would
10 he be infallible?

11 PROSPECTIVE JUROR TACKLEY: I don't think they're
12 infallible, but if they're qualified as experts, then their
13 infallibility is pretty slight.

14 MR. SCISCENTO: Based on the fact that they are
15 named as experts?

16 PROSPECTIVE JUROR TACKLEY: Yes.

17 MR. SCISCENTO: What about the procedure though, the
18 procedure of the DNA testing?

19 PROSPECTIVE JUROR TACKLEY: I don't know anything
20 about it.

21 MR. SCISCENTO: What about fingerprinting technics?

22 PROSPECTIVE JUROR TACKLEY: I think fingerprinting's
23 pretty accurate.

24 MR. SCISCENTO: Okay. Have you had any prior
25 experience with any kind of fingerprinting?

1 PROSPECTIVE JUROR TACKLEY: Just for a sheriff's
2 card years ago.

3 MR. SCISCENTO: All right. Now, I'm gonna get into
4 an area that may be quite embarrassing but, again, you're
5 being quite honest and I applaud that. You mentioned that you
6 maybe tend to be frightened by young black people. Is that
7 right?

8 PROSPECTIVE JUROR TACKLEY: In certain situations,
9 yeah.

10 MR. SCISCENTO: I understand fully. Would that --
11 do you believe that they're more violent, young black men?

12 PROSPECTIVE JUROR TACKLEY: Yes, I do.

13 MR. SCISCENTO: And is it something that you've
14 witnessed personally or something that you -- based on
15 society, TV --

16 PROSPECTIVE JUROR TACKLEY: Based on society.

17 MR. SCISCENTO: -- TV shows, other people have told
18 you, what you've read?

19 PROSPECTIVE JUROR TACKLEY: Yeah, based on society.

20 MR. SCISCENTO: Okay. How ingrained is that belief
21 that young black men are more -- tend to be more violent? How
22 ingrained is that in your beliefs?

23 PROSPECTIVE JUROR TACKLEY: I don't know that it's
24 that strong, but it's there.

25 MR. SCISCENTO: On a scale of one to ten, then --

1 PROSPECTIVE JUROR TACKLEY: Maybe a five.
2 MR. SCISCENTO: Would you be able to set aside some
3 of that bias?
4 PROSPECTIVE JUROR TACKLEY: I think so.
5 MR. SCISCENTO: Would you be able to look beyond
6 what you believe or what's ingrained in you as to biases and
7 the nature of the -- nature of the violence of a black man?
8 PROSPECTIVE JUROR TACKLEY: I would try to.
9 MR. SCISCENTO: You'd try to?
10 PROSPECTIVE JUROR TACKLEY: Yes.
11 MR. SCISCENTO: But could you?
12 PROSPECTIVE JUROR TACKLEY: Well, I don't know. I'm
13 not in that situation yet.
14 MR. SCISCENTO: You may be and that's what I'm
15 trying to find out.
16 PROSPECTIVE JUROR TACKLEY: I know.
17 MR. SCISCENTO: And it's perfectly fine to say I
18 couldn't?
19 PROSPECTIVE JUROR TACKLEY: Well, I don't know.
20 MR. SCISCENTO: Let me ask you one other -- no
21 further questions.
22 THE COURT: Thank you. Before you examine Tackley,
23 could I see you briefly at the bench, please?
24 (Off-record bench conference)
25 THE COURT: And who is going to take Ms. Tackley?

1 Oh, we're up to Campitelli.
2 MR. SCISCENTO: Campitelli.
3 THE COURT: Campitelli.
4 MR. SCISCENTO: Campitelli. Am I correct in that?
5 PROSPECTIVE JUROR CAMPITELLI: Yes.
6 MR. SCISCENTO: One question I have. You had
7 written that you believe a defendant must prove his innocence?
8 PROSPECTIVE JUROR CAMPITELLI: Yes.
9 MR. SCISCENTO: Why do you believe that?
10 PROSPECTIVE JUROR CAMPITELLI: Well, either him or
11 his counsellor should.
12 MR. SCISCENTO: And -- I mean, do you think that --
13 PROSPECTIVE JUROR CAMPITELLI: That's what it's all
14 about, isn't it?
15 MR. SCISCENTO: Do you think that we need to put up
16 evidence, then, to show that Mr. White didn't commit these
17 crimes?
18 PROSPECTIVE JUROR CAMPITELLI: I don't know if it's
19 so much of you putting up the evidence. It's more or less you
20 proving that whatever it is was put up is correct or not
21 correct.
22 MR. SCISCENTO: Okay. I understand and I agree with
23 the concept, but you heard the Judge earlier who said that we
24 could sit there and not ask a question and if the State didn't
25 prove it in your mind, then the defendant would have to be

1 found not guilty.

2 PROSPECTIVE JUROR CAMPITELLI: Correct.

3 MR. SCISCENTO: And that's a tough concept?

4 PROSPECTIVE JUROR CAMPITELLI: No, that's not a
5 tough concept.

6 MR. SCISCENTO: Do you think that if we sat there
7 and did nothing and --

8 PROSPECTIVE JUROR CAMPITELLI: And the evidence did
9 not prove that he was guilty, then he would not be guilty.
10 I -- I believe that's what the Judge was trying to say.

11 MR. SCISCENTO: So then in a sense, really the
12 defendant doesn't need to prove the innocence, but needs to
13 attack the evidence?

14 PROSPECTIVE JUROR CAMPITELLI: Yes, of course.
15 Don't you agree?

16 MR. SCISCENTO: I don't know. I don't know. Let me
17 see. Another thing that bothers me. When a defendant is --
18 this is one of the questions, when a defendant is charged with
19 a crime, do you think -- I guess I already asked that. But
20 you went on further, you said there must be a reason he was
21 charged with a crime to begin with. Do you think that all
22 defendants who are charged with crimes are guilty?

23 PROSPECTIVE JUROR CAMPITELLI: No, I don't. No, of
24 course not. There could -- people make mistakes, of course.

25 MR. SCISCENTO: And so with that belief, you're

1 going to trial with that belief?

2 PROSPECTIVE JUROR CAMPITELLI: That -- that he could
3 be wrongly accused? Yes, absolutely.

4 MR. SCISCENTO: And you will stand your ground and
5 your judgment until after all the evidence is in?

6 PROSPECTIVE JUROR CAMPITELLI: Yes.

7 MR. SCISCENTO: Because the State will present the
8 evidence and if we're gonna present any evidence, we'll
9 present it, but the jury doesn't make up their mind -- make up
10 their mind until the end.

11 PROSPECTIVE JUROR CAMPITELLI: Until the end, yes.

12 MR. SCISCENTO: It's a tough concept. I mean, I
13 couldn't do it, but could you withhold your beliefs in your
14 guilt or innocence until after all the evidence is heard?

15 PROSPECTIVE JUROR CAMPITELLI: Well, I'd have to
16 hear the complete case, both sides, before I could make an
17 opinion.

18 MR. SCISCENTO: You agree that there's always two
19 sides to every story?

20 PROSPECTIVE JUROR CAMPITELLI: Absolutely.
21 Absolutely.

22 MR. SCISCENTO: Have you ever been accused of any --
23 even as a child of a crime or a wrongdoing?

24 PROSPECTIVE JUROR CAMPITELLI: Yes --

25 MR. SCISCENTO: Okay.

1 PROSPECTIVE JUROR CAMPITELLI: -- I have.
2 MR. SCISCENTO: When you were a school child, a
3 school kid, were you ever accused of doing something wrong?
4 PROSPECTIVE JUROR CAMPITELLI: Sure.
5 MR. SCISCENTO: And were you brought to the
6 principal's office to explain it?
7 PROSPECTIVE JUROR CAMPITELLI: Yes.
8 MR. SCISCENTO: And while you were sitting there was
9 the accuser or whoever told, said that you did it, were they
10 talking --
11 PROSPECTIVE JUROR CAMPITELLI: Yes.
12 MR. SCISCENTO: -- you ever been in that scenario?
13 PROSPECTIVE JUROR CAMPITELLI: Mm-hmm.
14 MR. SCISCENTO: How did you feel while they were
15 talking and you wanted to tell your side?
16 PROSPECTIVE JUROR CAMPITELLI: Wish I had a lawyer
17 at that time.
18 MR. SCISCENTO: But you were anxious to get out the
19 information?
20 PROSPECTIVE JUROR CAMPITELLI: Yes. I wanted to
21 tell my side of the story.
22 MR. SCISCENTO: Okay. And so you know the anxiety
23 that I'm talking about, that I'm trying to explain on holding
24 back judgment. Do you remember that kind of anxiety you had,
25 would you listen to the jury -- to the evidence presented

1 before you make a decision?

2 PROSPECTIVE JUROR CAMPITELLI: In other words not
3 jump to conclusions --

4 MR. SCISCENTO: Yes.

5 PROSPECTIVE JUROR CAMPITELLI: -- is that what
6 you're trying to say? I don't think I would.

7 MR. SCISCENTO: Okay. You said the death penalty
8 could slow down crime. What'd you mean by that?

9 PROSPECTIVE JUROR CAMPITELLI: Well, on a -- on a
10 first degree murder, I would assume that a lot of it is
11 premeditated murder, is that correct, where they plan to do
12 what they do and then do it? Is that -- is that what we're
13 talking about?

14 MR. SCISCENTO: I don't know if I can answer that.

15 PROSPECTIVE JUROR CAMPITELLI: Isn't that a planned
16 type of a situation?

17 THE COURT: Well, you'll hear exactly what it is
18 later.

19 PROSPECTIVE JUROR CAMPITELLI: Where -- where if you
20 was gonna rob somebody and you -- and you knew you might have
21 to kill someone and -- and that happened?

22 THE COURT: Yeah. That's one of the definitions of
23 most first degree murders, probably, that's right. We're not
24 going to, when we're picking the jury, get into specific jury
25 instructions. That's against the rules, but that touches on

1 it.

2 Go ahead, Mr. Sciscento.

3 MR. SCISCENTO: Thank you, Your Honor.

4 All right. Let's get back, then. You said death
5 penalties slow down crime. Okay, what did you mean by that?

6 PROSPECTIVE JUROR CAMPITELLI: Well, if people who
7 are planning to do something wrong and brought a gun with them
8 and knew that they might have that conflict, where they would
9 have to shoot somebody and kill 'em. Well, the worst that
10 they could get would may be life with this or life with that.
11 So they might go into it looking at it a different way. If
12 they knew that the consequences could be greater, maybe they
13 wouldn't bring the gun.

14 MR. SCISCENTO: Have you seen any studies in your
15 lifetime -- have you read any studies that say that that's the
16 effect of it?

17 PROSPECTIVE JUROR CAMPITELLI: No. I don't know.

18 MR. SCISCENTO: And you don't -- you don't know
19 if -- if it is in fact or --

20 PROSPECTIVE JUROR CAMPITELLI: No, I don't know fact
21 at all.

22 MR. SCISCENTO: So you agree with it, with the death
23 penalty, because you believe that it would slow down crime?

24 PROSPECTIVE JUROR CAMPITELLI: I would hope that it
25 would, yeah.

1 MR. SCISCENTO: But if you found out that it
2 couldn't, would that change your mind?

3 PROSPECTIVE JUROR CAMPITELLI: If it didn't do --
4 yeah. I probably -- it could change my mind, yeah.

5 MR. SCISCENTO: Did you do any -- when you found out
6 that this was a case involving the potential death penalty,
7 did you do any research on the death penalty at all? Did you
8 read any articles, magazines, ask anybody any questions?

9 PROSPECTIVE JUROR CAMPITELLI: No, I -- I'm not
10 knowledgeable to the death penalty, no.

11 MR. SCISCENTO: I believe you mentioned that you
12 didn't know that Nevada had the death penalty.

13 PROSPECTIVE JUROR CAMPITELLI: Yeah, I didn't.

14 MR. SCISCENTO: And you were quite surprised?

15 PROSPECTIVE JUROR CAMPITELLI: I -- I wouldn't say I
16 was surprised. I just was -- I just wasn't aware of it.

17 MR. SCISCENTO: In New York, where you were born --

18 PROSPECTIVE JUROR CAMPITELLI: Yeah.

19 MR. SCISCENTO: -- you have the death penalty?

20 PROSPECTIVE JUROR CAMPITELLI: Uh-huh.

21 MR. SCISCENTO: Did you -- you never sat on a jury
22 in New York, did you?

23 PROSPECTIVE JUROR CAMPITELLI: No.

24 MR. SCISCENTO: Did you read any studies in New York
25 about the -- the effect of the death penalty?

1 PROSPECTIVE JUROR CAMPITELLI: What -- what do you
2 mean by the effect of it?

3 MR. SCISCENTO: Well, the --

4 PROSPECTIVE JUROR CAMPITELLI: What -- what the
5 outcome of it, in general, does for the population?

6 MR. SCISCENTO: Yes.

7 PROSPECTIVE JUROR CAMPITELLI: No. I can't say that
8 I -- I have any knowledge to that.

9 MR. SCISCENTO: The prosecution had asked you if you
10 were the president of a state -- if you owned a state or if
11 you had a state, would you impose the death penalty, you said
12 in your state you would.

13 PROSPECTIVE JUROR CAMPITELLI: Yes.

14 MR. SCISCENTO: Why would you do that?

15 PROSPECTIVE JUROR CAMPITELLI: Again, I would think
16 that with that behind it, yeah -- you know, that -- of with a
17 severe crime and a severe penalty might slow that -- the type
18 of crime down.

19 MR. SCISCENTO: Okay. I don't want to belabor the
20 point but I think you -- you've already gone over that.

21 PROSPECTIVE JUROR CAMPITELLI: You know -- you know
22 what I'm -- where I'm coming from on that, don't you?

23 MR. SCISCENTO: Yeah.

24 PROSPECTIVE JUROR CAMPITELLI: I might -- I know
25 it's hard to explain, but --

1 MR. SCISCENTO: In your state of mind, with the
2 knowledge that you have up to this point in your life, if you
3 were on trial in a criminal matter, would you want somebody
4 with your state of mind to judge you?
5 PROSPECTIVE JUROR CAMPITELLI: Absolutely.
6 MR. SCISCENTO: Pass, Your Honor.
7 THE COURT: Who's gonna examine Mr. Fink?
8 MR. FIGLER: Mr. Fink, having listened to your
9 answers when the prosecutors were asking you questions, I just
10 wanna follow up on some of that. You consider yourself to be
11 a strong supporter of the death penalty, correct?
12 PROSPECTIVE JUROR FINK: Somewhat, yes.
13 MR. FIGLER: Okay. Would it be fair to say that
14 your beliefs regarding the death penalty are deeply held?
15 PROSPECTIVE JUROR FINK: Yes.
16 MR. FIGLER: Okay. Now, would you agree with me
17 that when a person has strong views on something that are
18 deeply held, it's difficult for them to change that position
19 in general?
20 PROSPECTIVE JUROR FINK: In general, yes.
21 MR. FIGLER: Okay. Now, let me ask you, if you
22 found a person guilty of an intentional and premeditated
23 multiple murder, would you feel that the death penalty is the
24 only appropriate sentence?
25 PROSPECTIVE JUROR FINK: Not necessarily.

1 MR. FIGLER: So there are circumstances when a
2 person convicted of multiple, intentional, deliberate and
3 premeditated murder should receive the punishment of life with
4 the possibility of parole and being out again?

5 PROSPECTIVE JUROR FINK: I think the key word there
6 "premeditated".

7 MR. FIGLER: Yes.

8 PROSPECTIVE JUROR FINK: If it's not premeditated,
9 you know, there's some question. Premeditated, I would
10 definitely say yes.

11 MR. FIGLER: Okay. So you would agree that you
12 would always vote for the death penalty when you have
13 premeditated intentional murders?

14 PROSPECTIVE JUROR FINK: Right.

15 MR. FIGLER: So in other words, if you were in a
16 penalty phase and you had already decided, beyond a reasonable
17 doubt, that the person whose fate you were considering had
18 committed premeditated intentional multiple murders, you would
19 vote for death automatically?

20 MR. GUYMON: Judge, I'm gonna object.

21 THE COURT: Sustained.

22 MR. FIGLER: You would vote for death in every
23 instance?

24 THE COURT: Sustained.

25 MR. GUYMON: Judge, I'm gonna object again.

1 MR. FIGLER: Are you the kind of person who feels
2 that every person convicted of intentional premeditated and
3 deliberate murder should receive the same sentence,
4 premeditated?

5 PROSPECTIVE JUROR FINK: If it's premeditated and
6 preplanned, yes, I would say.

7 MR. FIGLER: And in that case you think that the
8 only appropriate penalty should be the death penalty?

9 PROSPECTIVE JUROR FINK: If it --

10 MR. GUYMON: Judge, again, I object.

11 THE COURT: Sustained.

12 MR. FIGLER: Now, you'll be -- if we get to a
13 penalty phase, they'll be discussion of aggravating evidence
14 to support a finding and mitigating evidence and that's all
15 for the consideration of each individual juror. Do you
16 understand that?

17 PROSPECTIVE JUROR FINK: Yes.

18 MR. FIGLER: Now, when I say the words mitigating
19 evidence, what does that mean to you?

20 PROSPECTIVE JUROR FINK: Mitigating, probably be the
21 physical things that you found; if there's any fingerprints
22 maybe, you know, that type of thing.

23 MR. FIGLER: Okay. We're -- we're talking in the --
24 in the penalty phase.

25 PROSPECTIVE JUROR FINK: Oh, in the penalty. Oh,

1 okay. Okay.

2 MR. FIGLER: Having already found someone guilty of
3 intentional, premeditated murder, multiple murders.

4 PROSPECTIVE JUROR FINK: Okay.

5 MR. FIGLER: Now we're in the penalty phase where
6 you're to consider aggravating and mitigating evidence, and my
7 question to you is, when I say that term, mitigating evidence,
8 what does that mean to you?

9 PROSPECTIVE JUROR FINK: I don't really -- that --

10 THE COURT: That violates -- excuse me, sir.

11 That -- I think that violates Rule 770 sub (b). I
12 ask you to move to another area.

13 MR. FIGLER: I -- I can ask if he would consider
14 mitigating evidence, certainly.

15 THE COURT: You ask another question and if they
16 don't have an objection and I don't make a ruling, you can get
17 an answer.

18 MR. FIGLER: Well, in that scenario, where you've
19 already convicted somebody of premeditated murder, deliberate,
20 intentional, all that, would you take into account the --
21 would you think it's important to take into account, for
22 instance, the youth of an individual?

23 PROSPECTIVE JUROR FINK: Not necessarily.

24 MR. FIGLER: Okay. How about if they had like a bad
25 childhood or something like that?

1 PROSPECTIVE JUROR FINK: I think a lot of that today
2 is, you know, an excuse and not a reason.

3 MR. FIGLER: So in light of those type of examples,
4 is there any kind of mitigating evidence like that, that you
5 would want consider, or would consider?

6 PROSPECTIVE JUROR FINK: Probably not.

7 MR. FIGLER: Now, I'm gonna go to your questionnaire
8 and there was a question asked of you, if you think that an
9 African American man can receive a fair trial in Clark County
10 and your response had something to do with -- well, what you
11 said was only when the race card is played is the problem
12 brought out. Do you remember that response?

13 PROSPECTIVE JUROR FINK: Yes, I do.

14 MR. FIGLER: And what did you mean by that?

15 PROSPECTIVE JUROR FINK: If the prosecution or the
16 defense is to bring out the fact, you know, that the gentleman
17 is black or Hispanic or whatever the case may be, and plays on
18 that and trying to take it away from the actual evidence, is
19 to really to bring that in, to try to cloud the issue.

20 MR. FIGLER: So you think that's clouding the issue?

21 PROSPECTIVE JUROR FINK: Yes, I do.

22 MR. FIGLER: Okay. Now, you also said that you
23 believe that there are biases against African American males
24 in our society?

25 PROSPECTIVE JUROR FINK: Yes, I do.

1 MR. FIGLER: And what are those?
2 PROSPECTIVE JUROR FINK: I think they're
3 stereotyped, and I think television has a lot to do with it.
4 They -- they portray this young man that's, you know, bad
5 childhood, so forth and just runs the streets and shoots and
6 kills and I don't believe it's that way.
7 MR. FIGLER: Okay. No further questions.
8 THE COURT: Thank you.
9 MR. FIGLER: Mr. Morine?
10 PROSPECTIVE JUROR MORINE: Yes, that's right.
11 MR. FIGLER: Good. Now, during the course of the
12 trial, you have the right to hear all the evidence, free from
13 any distraction. You understand that?
14 PROSPECTIVE JUROR MORINE: Mm-hmm.
15 MR. FIGLER: You have to say yes or no.
16 PROSPECTIVE JUROR MORINE: Yes.
17 MR. FIGLER: Okay. If there was anything that was
18 distracting or if you had any personal problems or anything
19 like that, would you have any hesitation at all, raising your
20 hand and letting the Court know?
21 PROSPECTIVE JUROR MORINE: I don't think so.
22 MR. FIGLER: So there would be no embarrassment or
23 anything like that?
24 PROSPECTIVE JUROR MORINE: I don't think so.
25 MR. FIGLER: Okay. Good. Now, you have the right

1 to be convinced by the evidence that's going to be presented
2 to you, even if it was not convincing for some other juror.
3 Do you understand that?

4 PROSPECTIVE JUROR MORINE: Mm-hmm. Yes.

5 MR. FIGLER: So since every juror is different and
6 picked from whatever different views that they may have in
7 their life, would you ever feel that you have to give up some
8 of your beliefs because others were convinced about it
9 differently?

10 PROSPECTIVE JUROR MORINE: I don't think I would
11 give up my beliefs, but I think I would be willing to listen
12 to the point of view of the other jurors, 'cause perhaps
13 they -- they heard or have a view on it that I didn't
14 consider, so I would be certainly willing to listen to the
15 other point of view and perhaps could change my mind, but I
16 don't think I'd just role over due to pressure.

17 MR. FIGLER: Okay. Cause you understand
18 fundamentally you have the individual right to be convinced
19 beyond a reasonable doubt, right?

20 PROSPECTIVE JUROR MORINE: I do understand that.

21 MR. FIGLER: And you believe in that?

22 PROSPECTIVE JUROR MORINE: I do believe in that.

23 MR. FIGLER: Okay. Now, you also have a right to
24 make decisions about who to believe and not to believe when
25 various people will take the stand and testify. You

1 understand that?

2 PROSPECTIVE JUROR MORINE: Yes, I do.

3 MR. FIGLER: Okay. Now, in addition to what they
4 say, do you think how their face is or their body language,
5 those type of things from the stand, would be important
6 considerations in determining their credibility?

7 PROSPECTIVE JUROR MORINE: I think there's nonverbal
8 forms of communication, yeah.

9 MR. FIGLER: So there's something to be said for
10 that?

11 PROSPECTIVE JUROR MORINE: I believe so.

12 MR. FIGLER: Now, we talked about listening to other
13 people's positions, and you think that's a healthy thing, but
14 you also agreed that you have a right to not be unduly
15 influenced by any other person, correct?

16 PROSPECTIVE JUROR MORINE: Correct.

17 MR. FIGLER: Okay. Now, there will come a point
18 when, if you're selected as a juror, you'll be asked to select
19 a foreperson. That's sort of the leader, okay, someone who
20 everyone believes has the skills necessary to give equal time
21 to everyone to be heard, that sort of thing. Now, would you
22 feel free to insist that jurors take the selection of their
23 leader seriously and not just pick someone because someone
24 volunteers or no one volunteers?

25 PROSPECTIVE JUROR MORINE: Oh, I think it would be a

1 important decision for the jurors to make in total and would
2 encourage that that decision be made, not on popularity, but
3 on some assessment that we would have in a short period of
4 time, as to who could fulfill that role.

5 MR. FIGLER: Right. And you agree that a leader can
6 have a big influence on a group, correct, possibly?

7 PROSPECTIVE JUROR MORINE: Possibly, yes.

8 MR. FIGLER: And that's why it's important to put a
9 lot of thought into that decision-making process, correct?

10 PROSPECTIVE JUROR MORINE: Yeah. I think it's more
11 important that the leader give everybody fair opportunity to
12 state their views.

13 MR. FIGLER: Okay. Now you also understand that if
14 selected as a juror, you have a right to have your feelings
15 and opinions respected, correct?

16 PROSPECTIVE JUROR MORINE: Yes.

17 MR. FIGLER: Okay. So to that end, you're not gonna
18 allow other jurors to disrespect each other or you?

19 PROSPECTIVE JUROR MORINE: That's a true statement.

20 MR. FIGLER: Okay. I'll -- no further questions.

21 Thank you, sir, for your time.

22 MR. SCISCENTO: Mr. Juarez?

23 PROSPECTIVE JUROR JUAREZ: Juarez. Yes.

24 MR. SCISCENTO: Juarez. You're a Sun Devil?

25 PROSPECTIVE JUROR JUAREZ: Yes.

1 MR. SCISCENTO: How long have you lived out here in
2 Las Vegas, in the area?

3 PROSPECTIVE JUROR JUAREZ: Since '82.

4 MR. SCISCENTO: Okay. You had heard something, a
5 little about this case?

6 PROSPECTIVE JUROR JUAREZ: Right.

7 MR. SCISCENTO: Do you remember what you heard about
8 that?

9 PROSPECTIVE JUROR JUAREZ: Just from what I read in
10 the paper, which would be probably a little less than what was
11 given in the bio that we read.

12 MR. SCISCENTO: So you really don't have any
13 pretrial information about this?

14 PROSPECTIVE JUROR JUAREZ: No, no, sir.

15 MR. SCISCENTO: You had mentioned, in your
16 questionnaire, that the defendant must prove innocence and
17 that always bothers me as a defense attorney. Could you
18 please expand on it?

19 PROSPECTIVE JUROR JUAREZ: If given the opportunity,
20 they should freely and willingly provide information that
21 would benefit them.

22 MR. SCISCENTO: When you mean provide information,
23 you mean he, Mr. White, has to get up and testify?

24 PROSPECTIVE JUROR JUAREZ: No, no. If they chose to
25 or if they felt that they could add information to it, to the

1 jury to allow them to make a better decision.

2 MR. SCISCENTO: You wouldn't hold it against
3 Mr. White or us if we didn't present any evidence whatsoever?

4 PROSPECTIVE JUROR JUAREZ: No.

5 MR. SCISCENTO: You think we're ridiculous but
6 not --

7 PROSPECTIVE JUROR JUAREZ: I think we have to go
8 into this thinking that he's innocent until we're told
9 otherwise or where it's proven otherwise to us.

10 MR. SCISCENTO: But if we didn't, the defense team
11 didn't present any evidence, would that bother you?

12 PROSPECTIVE JUROR JUAREZ: If I felt that there was
13 something that could be added, yes, it would bother me,
14 because then I would think that you weren't doing what you
15 could do to present every bit of information.

16 MR. SCISCENTO: It's a strange concept that we have
17 that we don't have the burden, the State has the burden. It's
18 easy to repeat, but hard to understand. Different countries
19 have different legal systems. We need to think generally
20 about United States legal system.

21 PROSPECTIVE JUROR JUAREZ: I would hold it in high
22 regards, the little I do know of it.

23 MR. SCISCENTO: You'd mentioned that the cost of
24 death penalty versus the cost of life imprisonment. You wrote
25 that down. What do you mean by that?

1 PROSPECTIVE JUROR JUAREZ: Well, if you look at
2 dollars, life in prison is going to cost a lot more, but you
3 have to look at the cost of -- the cost that you're giving to
4 this person that's going to be behind bars for the rest of
5 their life, you know, and that's a tremendous cost to pay
6 also.

7 MR. SCISCENTO: So you think in imposing the death
8 penalty, and I'm asking this as an open-ended question, do you
9 think that imposing the death penalty, would you take into
10 effect -- you may personally take into effect some cost
11 analysis?

12 PROSPECTIVE JUROR JUAREZ: No. Dollar-wise, no.

13 MR. SCISCENTO: What if you learned that it was
14 cheaper for life imprisonment without the possibility of
15 parole than death penalty?

16 PROSPECTIVE JUROR JUAREZ: Again, I don't think I
17 could base my decision on that fact.

18 MR. SCISCENTO: But would that change your way you
19 would've answered number 40 if you had any different
20 information?

21 PROSPECTIVE JUROR JUAREZ: I don't think so, because
22 I think you have to look at the cost in dollars and the cost
23 in human life also, you know.

24 MR. SCISCENTO: Well, I'm talking cost in dollars.

25 PROSPECTIVE JUROR JUAREZ: Right. All right.

1 MR. SCISCENTO: You had written initially overall
2 considering the general issues of punishment, what do you
3 think might be worse for a defendant. Initially you had put
4 death. You scribbled that out and you put life without.

5 PROSPECTIVE JUROR JUAREZ: Right.

6 MR. SCISCENTO: Okay. What made you change your
7 decision on it?

8 PROSPECTIVE JUROR JUAREZ: Because it can certainly
9 be worse for someone to be -- know that they will be locked up
10 in prison for the rest of their lives. That's a -- tolled
11 maybe a bigger burden on someone.

12 MR. SCISCENTO: Have you had any opportunity to
13 visit any prisons or do you know anybody who's in prison?

14 PROSPECTIVE JUROR JUAREZ: No, I do not.

15 MR. SCISCENTO: So you don't know what the inside
16 looks like or what kind of life that is?

17 PROSPECTIVE JUROR JUAREZ: [No audible response].

18 COURT RECORDER: That's no?

19 PROSPECTIVE JUROR JUAREZ: No. I'm sorry.

20 MR. SCISCENTO: You wrote down first the death
21 penalty, second life without possibility of parole. You
22 wouldn't consider the death penalty first before everything
23 else would you?

24 PROSPECTIVE JUROR JUAREZ: No.

25 MR. SCISCENTO: Okay. You'd take into account

1 everything?

2 PROSPECTIVE JUROR JUAREZ: I would take into account
3 everything. I would think going into this type of situation,
4 you wouldn't want to put death as your priority on what you
5 want to convict someone as.

6 MR. SCISCENTO: When do you put death as the
7 decision?

8 PROSPECTIVE JUROR JUAREZ: I don't know. I would
9 have to weigh the evidence, but I wouldn't want to go into a
10 situation saying this is my number one viable opportunity or
11 option. That's just not the way I think.

12 MR. SCISCENTO: Now, when witnesses get up here and
13 testify -- there'll be some police officers and I've asked
14 this before; will you give any credence to the police
15 officers, anymore credence?

16 PROSPECTIVE JUROR JUAREZ: No.

17 MR. SCISCENTO: What if somebody had a motivation to
18 lie and we brought that out, would you question their
19 truthfulness?

20 PROSPECTIVE JUROR JUAREZ: Certainly.

21 MR. SCISCENTO: Okay. All right. If they were a
22 witness for the State and promised them to get out of prison,
23 would that have an effect?

24 PROSPECTIVE JUROR JUAREZ: Yes.

25 MR. SCISCENTO: What do you think about that,

1 someone like that?

2 PROSPECTIVE JUROR JUAREZ: I think that's wrong.

3 MR. SCISCENTO: You think if somebody was promised
4 leniency to testify?

5 PROSPECTIVE JUROR JUAREZ: A certain way?

6 MR. SCISCENTO: Yes, well --

7 PROSPECTIVE JUROR JUAREZ: That should not be
8 allowed.

9 MR. SCISCENTO: Not even a certain way, but just to
10 testify?

11 PROSPECTIVE JUROR JUAREZ: Shouldn't be allowed,
12 because the outcome is they're gonna get something for it.

13 MR. SCISCENTO: It's almost like bought and paid for
14 testimony.

15 PROSPECTIVE JUROR JUAREZ: You bet.

16 MR. SCISCENTO: Now, the concept is very tough of
17 innocent until proven guilty and waiting until all the
18 evidence comes in. And I say that, because I know I couldn't,
19 probably couldn't do it. As many years as I've been studying
20 law, I understand every now and then -- have reactions. There
21 may be a lot of emotional testimony that is brought out in
22 this trial. Could you hold back your judgment?

23 PROSPECTIVE JUROR JUAREZ: Yes. I would have to. I
24 mean --

25 MR. SCISCENTO: That's a tough concept.

1 PROSPECTIVE JUROR JUAREZ: Yeah.
2 MR. SCISCENTO: If I said there was gonna be
3 evidence of bias, would that shock you when you saw it?
4 PROSPECTIVE JUROR JUAREZ: Sure.
5 MR. SCISCENTO: Okay. But could you reserve your --
6 PROSPECTIVE JUROR JUAREZ: Yes.
7 MR. SCISCENTO: -- feelings?
8 PROSPECTIVE JUROR JUAREZ: Yes.
9 MR. SCISCENTO: You'd hold 'em back --
10 PROSPECTIVE JUROR JUAREZ: Yes.
11 MR. SCISCENTO: -- and kind of be like Mr. Spock,
12 where there's no emotions?
13 PROSPECTIVE JUROR JUAREZ: Yeah. Yeah.
14 MR. SCISCENTO: Logical, that's all I need.
15 PROSPECTIVE JUROR JUAREZ: Yeah. You'd have to wait
16 'til the very end.
17 MR. SCISCENTO: Okay. Thank you. No questions.
18 THE COURT: Thank you.
19 MR. FIGLER: Court's indulgence.
20 THE COURT: Sure.
21 MR. FIGLER: Mr. Baker?
22 PROSPECTIVE JUROR BAKER: Yes.
23 MR. FIGLER: Says here that you're retired. What
24 did you used to do?
25 PROSPECTIVE JUROR BAKER: I was in the sheet metal

1 manufacturing.

2 MR. FIGLER: Okay. Here in Nevada or elsewhere?

3 PROSPECTIVE JUROR BAKER: Elsewhere.

4 MR. FIGLER: So you came here to retire?

5 PROSPECTIVE JUROR BAKER: Yes.

6 MR. FIGLER: Okay. Was Las Vegas what you expected

7 it to be?

8 PROSPECTIVE JUROR BAKER: Yes.

9 MR. FIGLER: Okay. Not -- where did you come from?

10 PROSPECTIVE JUROR BAKER: The San Jose area.

11 MR. FIGLER: San Jose?

12 PROSPECTIVE JUROR BAKER: Mm-hmm.

13 MR. FIGLER: Now, in listening to your comments when

14 the prosecutor was asking you questions, I take it that you're

15 a strong supporter of the death penalty?

16 PROSPECTIVE JUROR BAKER: I believe so.

17 MR. FIGLER: Now, would it -- again, like to ask Mr.

18 Fink, be fair to say that your feelings about that subject are

19 deeply held?

20 PROSPECTIVE JUROR BAKER: Yes.

21 MR. FIGLER: Would you also agree that if someone

22 believes in something and that that is deeply held, that it's

23 hard to change that position in general?

24 PROSPECTIVE JUROR BAKER: Yes.

25 MR. FIGLER: So now, if you found a person guilty of

1 an intentional and premeditated murder, would you feel the
2 death penalty is the only appropriate sentence?

3 PROSPECTIVE JUROR BAKER: Probably.

4 MR. FIGLER: So you're saying that there is -- if
5 I'm hearing you right, there's no circumstances where someone
6 who you already convicted of a premeditated deliberate and
7 intentional murder should get life with the possibility of
8 parole?

9 PROSPECTIVE JUROR BAKER: A possibility, but not
10 probable.

11 MR. FIGLER: Okay. So what you're saying is that
12 you wouldn't give that real consideration?

13 PROSPECTIVE JUROR BAKER: I would give it
14 consideration, sure.

15 MR. FIGLER: Okay. How about a term of years, where
16 they will automatically get out of jail?

17 PROSPECTIVE JUROR BAKER: That would be very
18 unlikely.

19 MR. FIGLER: Now, you've expressed this opinion of
20 the death penalty. Let me ask you, do you feel that's
21 appropriate for every case in which a person has been found
22 guilty and the aggravating circumstances are there as well, do
23 you think that person should get the death penalty every time?

24 PROSPECTIVE JUROR BAKER: I believe so, yes.

25 MR. DASKAS: I apologize. I don't think they've

1 been instructed on aggravating circumstances here, so I don't
2 know that they would understand the basis for the question.

3 THE COURT: Sustained, under 770(b).

4 MR. FIGLER: Would you agree with me that you're the
5 kind of person who feels that every person convicted of a
6 premeditated, intentional and deliberate murder should receive
7 the same sentence?

8 PROSPECTIVE JUROR BAKER: Probably, yes.

9 MR. FIGLER: Yes?

10 PROSPECTIVE JUROR BAKER: Yes.

11 MR. FIGLER: Now, with Mr. Fink, I briefly spoke
12 about mitigating circumstances. Would you consider mitigating
13 circumstances if we got to a penalty phase? Now, this is all
14 assuming that you've convicted someone of multiple homicide?

15 MR. GUYMON: Judge, it's the same objection with
16 770(b), again anticipating the law, you haven't been
17 instructed as to mitigating circumstances.

18 THE COURT: Sustained.

19 MR. FIGLER: Do you think factors like the youth of
20 a defendant is important to consider in determining something
21 other than your strongly held beliefs, the youth of a person
22 convicted of a crime?

23 PROSPECTIVE JUROR BAKER: No. No.

24 MR. FIGLER: How about their childhood, that sort of
25 thing?

1 PROSPECTIVE JUROR BAKER: No.

2 MR. FIGLER: Okay. How about disadvantages that
3 they may have had growing up, that sort of thing?

4 PROSPECTIVE JUROR BAKER: That's a possibility.

5 MR. FIGLER: Okay. What kind of crimes do come to
6 mind when you think of the death penalty?

7 PROSPECTIVE JUROR BAKER: Well, the premeditated
8 brutal murder type of crimes.

9 MR. FIGLER: Now, death as a punishment is obviously
10 something that's irrevocable. You would agree with that
11 comment?

12 PROSPECTIVE JUROR BAKER: Mm-hmm. Yes.

13 MR. FIGLER: Can't bring someone back. We're not
14 Frankensteins here.

15 PROSPECTIVE JUROR BAKER: Correct.

16 MR. FIGLER: Okay. Now, occasionally someone reads
17 the newspaper of a person who was sentenced to death who was
18 later found to be innocent. Can you understand that?

19 PROSPECTIVE JUROR BAKER: Yes.

20 MR. FIGLER: Okay. What does that make you think
21 about the death penalty?

22 PROSPECTIVE JUROR BAKER: Ought to be very certain
23 before you implement the death penalty.

24 MR. FIGLER: Certain in -- that the person did the
25 offense.

1 PROSPECTIVE JUROR BAKER: Exactly.

2 MR. FIGLER: Okay. But once you are certain that

3 the person did the offense, it would be hard for you to come

4 up with a scenario where you wouldn't vote for the death

5 penalty, is that fair to say?

6 PROSPECTIVE JUROR BAKER: That's fair.

7 MR. FIGLER: Pass.

8 MR. SCISCENTO: Ms. Cole?

9 PROSPECTIVE JUROR COLE: Yes.

10 MR. SCISCENTO: Good morning. Have you heard any

11 information of this about this case in the newspapers or --

12 PROSPECTIVE JUROR COLE: No.

13 MR. SCISCENTO: -- anything like that? You were

14 born out in Arizona?

15 PROSPECTIVE JUROR COLE: Mm-hmm.

16 MR. SCISCENTO: And you're a Sun Devil too?

17 PROSPECTIVE JUROR COLE: I grew up here.

18 MR. SCISCENTO: I don't want to put a Sun Devil and

19 a Wildcat together. You said in your questionnaire that

20 there's no benefit -- you don't think there was a benefit to

21 the death penalty or maybe it's the way it was written, the

22 question itself. But can you expand on that and explain that

23 to me?

24 PROSPECTIVE JUROR COLE: What was the question?

25 MR. SCISCENTO: In your questionnaire you had said

1 that there was no benefit to the death penalty, and I don't
2 know if it's the way the question was written.

3 PROSPECTIVE JUROR COLE: I think it's the way it was
4 worded.

5 MR. SCISCENTO: Well, let me ask you this. What do
6 you think the benefit of the death penalty is, not on the
7 defendant, but just the benefit of the -- of the death
8 penalty?

9 PROSPECTIVE JUROR COLE: I mean, there -- for -- if
10 there's somebody who committed a crime, there has to be, you
11 know, different phases of punishment for their actions.

12 MR. SCISCENTO: Different phases of punishment?

13 PROSPECTIVE JUROR COLE: Different severities.

14 MR. SCISCENTO: Okay. The worst being the death
15 penalty?

16 PROSPECTIVE JUROR COLE: Yes.

17 MR. SCISCENTO: When would you impose the death
18 penalty to somebody who's has been convicted of a crime?

19 PROSPECTIVE JUROR COLE: I don't -- when would I
20 impose it? It has to be a very severe situation that, you
21 know, somebody did a crime that --

22 MR. SCISCENTO: Is heinous?

23 PROSPECTIVE JUROR COLE: Yeah.

24 MR. SCISCENTO: What do you consider heinous?

25 PROSPECTIVE JUROR COLE: A lot -- murder and, I

1 mean, murder with, you know, foresight or anything like
2 terrorist acts or, you know, premeditated things.

3 MR. SCISCENTO: The District Attorney has mentioned
4 earlier about the 7-Eleven scenarios; somebody's in a car and
5 there's a robbery going on. They're just acting as a look
6 out. They know there's a gun, but they don't know it's
7 loaded, but they're involved in a murder, and that person
8 would you give the death penalty to?

9 PROSPECTIVE JUROR COLE: More than likely not.

10 MR. SCISCENTO: Okay. So you agree there's a
11 sliding scale?

12 PROSPECTIVE JUROR COLE: Yes.

13 MR. SCISCENTO: When do we, in your mind, hit that
14 scale of no, don't pass go, death penalty only?

15 PROSPECTIVE JUROR COLE: When, you know -- they --
16 it's a preconceived, thought out plan -- let's go -- you know,
17 is made pre, you know -- thought it out and was gonna go kill
18 somebody.

19 MR. SCISCENTO: So somebody, in your mind, that has
20 thought out the murder, has planned it, has prepared for it,
21 went out and actually did it?

22 PROSPECTIVE JUROR COLE: Yes.

23 MR. SCISCENTO: Those scenario. Then, at that
24 point, you're at the point of death penalty only?

25 PROSPECTIVE JUROR COLE: It's hard to say yes or no.

1 I mean, I think that, you know, if there was -- it's hard to
2 say. I don't wanna like get into for instance or --

3 MR. SCISCENTO: If there was multiple murders, would
4 you then put it up in the category of we don't care what else
5 is out there, death penalty only?

6 PROSPECTIVE JUROR COLE: No.

7 MR. SCISCENTO: There's other factors that you would
8 consider?

9 PROSPECTIVE JUROR COLE: Yes.

10 MR. SCISCENTO: And what are those factors that you
11 would consider?

12 PROSPECTIVE JUROR COLE: Why they would've committed
13 the crime and, you know, the -- behind that. I mean, if a
14 father goes and, you know, kills somebody in, you know --

15 MR. SCISCENTO: In retaliation?

16 PROSPECTIVE JUROR COLE: Yeah.

17 MR. SCISCENTO: Okay. So again we're on a sliding
18 scale.

19 PROSPECTIVE JUROR COLE: Sliding scale.

20 MR. SCISCENTO: And I'm trying to find out when we
21 reach the point when you said -- maybe you don't.

22 PROSPECTIVE JUROR COLE: Mm-hmm.

23 MR. SCISCENTO: I mean, that's what I'm trying to
24 find out. But maybe we reach that point when you say that's
25 it, we don't care what your childhood is like, we don't care

1 about anything back here --

2 PROSPECTIVE JUROR COLE: I don't think that

3 they're --

4 MR. SCISCENTO: -- remorse or any --

5 PROSPECTIVE JUROR COLE: Yeah. I don't think there

6 actually, for me, is a point where, no matter what happened it

7 has to be the death penalty.

8 MR. SCISCENTO: So there are instances, even though

9 it's a heinous crime, that other things can bring it down to

10 where you can consider life without the possibility of parole?

11 PROSPECTIVE JUROR COLE: Yeah.

12 MR. SCISCENTO: How strong would that have to be?

13 Those other factors?

14 PROSPECTIVE JUROR COLE: Very strong.

15 MR. SCISCENTO: And what do you consider strong

16 factors?

17 PROSPECTIVE JUROR COLE: There's a lot of things. I

18 don't know. It's not something I'm used to thinking about.

19 MR. SCISCENTO: I understand. Again, I hate to

20 keep --

21 PROSPECTIVE JUROR COLE: Okay.

22 MR. SCISCENTO: -- focusing on it, but I need to

23 know what you would think is the worst scenario where you'd

24 say, that's it?

25 MR. GUYMON: And, Judge, on this area I'm going to

1 object on some -- relevance of subsection (c). May we
2 approach?

3 (Off-record bench conference)

4 THE COURT: Sustained.

5 MR. SCISCENTO: All right. Again, we're at this
6 level where we would consider a heinous crime.

7 PROSPECTIVE JUROR COLE: Okay.

8 MR. SCISCENTO: In your mind, what do you consider
9 factors that would bring you back down to imposing the death
10 penalty to giving life without the possibility of parole or
11 life with?

12 PROSPECTIVE JUROR COLE: What are some reasons?

13 MR. SCISCENTO: In your mind, yes. What are some
14 reasons?

15 PROSPECTIVE JUROR COLE: If, you know, some --
16 somebody -- say like the Polly Klass murders, where -- you
17 know, she -- he went in -- somebody went into their house,
18 that that father would go into a courtroom when it was going
19 on with that and went in and shot the defendant, then I
20 could -- you see the kind of -- where he's coming from, in a
21 way.

22 MR. SCISCENTO: So --

23 PROSPECTIVE JUROR COLE: There's emotions.

24 MR. SCISCENTO: There's rage, anger, revenge?

25 PROSPECTIVE JUROR COLE: Yes.

1 MR. SCISCENTO: Those kind of things that you'd
2 consider bringing him down?
3 PROSPECTIVE JUROR COLE: Yes.
4 MR. SCISCENTO: What if those did not exist? Could
5 you -- would you place him back up to the death penalty?
6 MR. GUYMON: Judge, I'm gonna back. The same
7 objection, 727 --
8 THE COURT: Sustained.
9 MR. SCISCENTO: Other than that case that you talked
10 about, what other factors would you consider?
11 PROSPECTIVE JUROR COLE: In why I wouldn't --
12 MR. SCISCENTO: In determining whether or not the
13 person --
14 PROSPECTIVE JUROR COLE: -- do the death?
15 MR. SCISCENTO: Yeah, you would not give the death
16 penalty?
17 PROSPECTIVE JUROR COLE: I'm not sure.
18 MR. SCISCENTO: And so you think that's probably the
19 only -- the only time that you would give that, that you would
20 not give the death penalty?
21 PROSPECTIVE JUROR COLE: It's what I can, you know,
22 give thought to right now.
23 MR. SCISCENTO: So if you didn't find the revenge,
24 the anger, the emotion involved --
25 PROSPECTIVE JUROR COLE: Mm-hmm.

1 MR. SCISCENTO: -- in a murder case, is it safe to
2 say that you would then only always give the death penalty?

3 MR. GUYMON: Judge, again, same objection.

4 MR. SCISCENTO: Your Honor, I'm going right on
5 through questions --

6 THE COURT: Frankly, I was making notes. What was
7 the question again, Joe, I wasn't listening?

8 MR. SCISCENTO: The question was she just said
9 earlier that other than the revenge, emotion -- there's
10 revenge, emotions or anger that she would come down from the
11 death penalty to life with or without on murder. So I'm
12 saying --

13 THE COURT: It's a close area, but I'll overrule it.
14 I think in terms of a peremptory challenge you're at least
15 entitled to hear the answer.

16 MR. SCISCENTO: Your Honor, my next question
17 though, that Mr. Guymon objected to was, other than those
18 situations --

19 THE COURT: Right, and I'm saying that you can ask
20 that.

21 MR. SCISCENTO: Other than those situations, you
22 have no others that would reduce it to the death penalty?

23 PROSPECTIVE JUROR COLE: Right.

24 MR. SCISCENTO: Okay. So now, based on that
25 statement that you just gave, are you saying that if you do

1 not find those three elements, one of those elements revenge
2 or something, then you're stuck with only giving the death
3 penalty?

4 PROSPECTIVE JUROR COLE: I would look at all four of
5 the penalties.

6 MR. SCISCENTO: And you'd base it on other things,
7 even if you didn't find the revenge, the anger, the emotions?

8 PROSPECTIVE JUROR COLE: I think that I would take
9 all the, you know, all the penalties into consideration on
10 anything.

11 MR. SCISCENTO: The testimony's gonna be heard
12 throughout the trial and the State always has the burden of
13 proving this and they'll put up the -- their evidence and
14 you'll hear witnesses. Would you be able to withhold judgment
15 until the time that the jury, if you're selected, goes back
16 and makes a decision?

17 PROSPECTIVE JUROR COLE: Yes.

18 MR. SCISCENTO: How could you do that?

19 PROSPECTIVE JUROR COLE: I just -- I think it's part
20 of being a jury. It's -- you know, you have to -- you would
21 go in there -- or go into the jury system with that -- knowing
22 that.

23 MR. SCISCENTO: Have you ever been asked to do that
24 before?

25 PROSPECTIVE JUROR COLE: On a jury?

1 MR. SCISCENTO: No. Have you ever been asked to
2 withhold judgment until everything comes out?
3 PROSPECTIVE JUROR COLE: Yes.
4 MR. SCISCENTO: You've never sat on a -- as a jury
5 member before?
6 PROSPECTIVE JUROR COLE: No.
7 MR. SCISCENTO: Are you currently in school?
8 PROSPECTIVE JUROR COLE: No. I -- I work. I'm full
9 time employed.
10 MR. SCISCENTO: You took some psychology classes and
11 things to that effect, I think you all did in college?
12 PROSPECTIVE JUROR COLE: Yeah.
13 MR. SCISCENTO: Did you find those very enjoyable?
14 PROSPECTIVE JUROR COLE: Not really.
15 MR. SCISCENTO: Did you believe in -- let me ask you
16 this. If a professor or a doctor, not a medical doctor, but a
17 scientist or something, took the stand, would you -- would you
18 believe that his words were true without questioning them?
19 Would you give him more credence than anybody else?
20 PROSPECTIVE JUROR COLE: No.
21 MR. SCISCENTO: Would you think just because he has
22 a degree, that makes him infallible?
23 PROSPECTIVE JUROR COLE: No.
24 MR. SCISCENTO: And if there was some other evidence
25 that shows that there's fallibility, you wouldn't discount

1 that other evidence? I think I said that wrong. What I'm
2 trying to say is, you won't take the doctors and the experts
3 at their word without -- without challenging it in your mind?
4 PROSPECTIVE JUROR COLE: I don't think that it would
5 be my place to question any witness's testimony.
6 MR. SCISCENTO: If this trial went on for a week or
7 so, would you be able to sit at a juror?
8 PROSPECTIVE JUROR COLE: Yes.
9 MR. SCISCENTO: You'd have no problem with that?
10 PROSPECTIVE JUROR COLE: No.
11 MR. SCISCENTO: No further questions, Your Honor.
12 THE COURT: Thanks. Would you approach the bench
13 before Mr. Garceau.
14 (Off-record bench conference)
15 THE COURT: Go ahead with Mr. Garceau.
16 MR. SCISCENTO: Thank you, Your Honor.
17 Mr. Garceau?
18 PROSPECTIVE JUROR GARCEAU: Garceau, yeah.
19 MR. SCISCENTO: Parlez vous Francez?
20 PROSPECTIVE JUROR GARCEAU: Not really.
21 MR. SCISCENTO: My mother's French and she has a
22 cousin named Garceau.
23 THE COURT: Mr. Figler?
24 Excuse me, one minute, Joe.
25 I'm gonna allow you some limited additional voir

1 dire along the lines you suggested the bench after we get
2 through with the last gentleman.

3 MR. FIGLER: Okay.

4 MR. SCISCENTO: You've lived in the Las Vegas area
5 for about six years?

6 PROSPECTIVE JUROR GARCEAU: Six years, yeah.

7 MR. SCISCENTO: You've heard little about this case
8 from pretrial information.

9 PROSPECTIVE JUROR GARCEAU: Very little.

10 MR. SCISCENTO: Where did you hear it from?

11 PROSPECTIVE JUROR GARCEAU: Television, Channel 8,
12 Channel 13, one of their local news.

13 MR. SCISCENTO: Do you remember how long ago that
14 was?

15 PROSPECTIVE JUROR GARCEAU: You know, until I read
16 the questionnaire they gave us in -- at the jury room, I'd
17 forgotten about it. I mean, it just was in and out. It
18 reminded me of what I had heard several months ago or --

19 MR. SCISCENTO: Okay. When you heard this on the
20 news, I guess it was the Channel 8 News, had you made up your
21 mind about the innocence or guilt of any of the people?

22 PROSPECTIVE JUROR GARCEAU: Not at all, no.

23 MR. SCISCENTO: Did the news outrage you?

24 PROSPECTIVE JUROR GARCEAU: Not really. It was just
25 part of the news and I probably changed channels and went

1 somewhere else.

2 MR. SCISCENTO: Reading it again, does it inflame
3 you at all? Reading this and then realizing that you've seen
4 this before, did that raise any emotions in you?

5 PROSPECTIVE JUROR GARCEAU: Well, certainly. The
6 description of the crime, et cetera.

7 MR. SCISCENTO: What kind of emotions did it raise
8 in you?

9 PROSPECTIVE JUROR GARCEAU: Well, it's the -- my
10 first experience with anything like that, that I realize is in
11 real life and not something you've seen on television or a
12 movie and I wouldn't say it -- it made me angry or anything.
13 It just took me back, because I've never experienced it..

14 MR. SCISCENTO: You were a armed security guard?

15 PROSPECTIVE JUROR GARCEAU: I have done armed work.
16 I'm a retired machinist, but in -- in the last six years, I've
17 done some work off and on. I'm not working right now at all.

18 MR. SCISCENTO: You're retired now?

19 PROSPECTIVE JUROR GARCEAU: Well, I retired from the
20 machine shop in Wisconsin where I spent 30 years and now I
21 work basically when I feel like it or have time and I don't
22 have much time to work anymore. I'm pretty busy.

23 MR. SCISCENTO: You had mentioned that -- well, in
24 your time as a security guard, as an armed security guard --

25 PROSPECTIVE JUROR GARCEAU: Sure.

1 MR. SCISCENTO: -- has there ever come a time you
2 had to display your weapon?

3 PROSPECTIVE JUROR GARCEAU: Never.

4 MR. SCISCENTO: Has there ever come a time you had
5 to shoot your weapon?

6 PROSPECTIVE JUROR GARCEAU: Other than at the range,
7 no.

8 MR. SCISCENTO: Are you pretty well -- how long have
9 you owned a gun?

10 PROSPECTIVE JUROR GARCEAU: Well, I never owned
11 pistols 'til I came out here and I started working unarmed and
12 then I went armed by the request of my company, and we had
13 shotguns and hunting rifles all my life. I don't remember
14 ever not hunting and fishing and that sort of thing.

15 MR. SCISCENTO: You've gone hunting before?

16 PROSPECTIVE JUROR GARCEAU: Wisconsin's a great
17 state for it, yeah. Haven't done it in Nevada yet.

18 MR. SCISCENTO: What kind of hunting do you do?

19 PROSPECTIVE JUROR GARCEAU: Well, we -- you don't
20 have time. I just never missed anything in Wisconsin. All
21 the ducks and pheasant and grouse and deer and bull and gun
22 and fishing and I never missed anything.

23 MR. SCISCENTO: So you -- you've gone deer hunting
24 before.

25 PROSPECTIVE JUROR GARCEAU: Oh, sure.

1 MR. SCISCENTO: And you've shot --
2 PROSPECTIVE JUROR GARCEAU: Absolutely.
3 MR. SCISCENTO: -- and killed a deer?
4 PROSPECTIVE JUROR GARCEAU: Oh, sure.
5 MR. SCISCENTO: Thank you. How many times have you
6 done that in the past?
7 PROSPECTIVE JUROR GARCEAU: Well, I hunted probably
8 for 25 years and I was probably successful 50 percent of the
9 time, maybe less.
10 MR. SCISCENTO: With your knowledge of -- you have
11 some knowledge of how bullets work --
12 PROSPECTIVE JUROR GARCEAU: Oh, absolutely.
13 MR. SCISCENTO: -- and how the projectiles and
14 things like that.
15 PROSPECTIVE JUROR GARCEAU: Sure.
16 MR. SCISCENTO: Could you use that knowledge if you
17 were sitting as a juror, you could use that knowledge --
18 PROSPECTIVE JUROR GARCEAU: I don't see why not.
19 MR. SCISCENTO: And if every -- if you were sitting
20 as a juror and everybody else, all the other 11 members said,
21 well no, the -- ballistics say this --
22 PROSPECTIVE JUROR GARCEAU: Mm-hmm.
23 MR. SCISCENTO: -- would that sway you from what
24 your beliefs are?
25 PROSPECTIVE JUROR GARCEAU: Well, you know,

1 that's -- that'd be prejudging what I would hear and I'm
2 prepared to have an open mind about anything like that.

3 MR. SCISCENTO: If an expert witness got on the
4 stand and talked about ballistics that didn't quite mesh with
5 what you understood ballistics to be, projectories or anything
6 to that effect, would that bother you at all?

7 PROSPECTIVE JUROR GARCEAU: If it were -- if it were
8 in direct contrast to what I've seen over the years that I've
9 hunted -- I know what ballistics expert I would be from
10 pulling a trigger and killing a deer. I mean, it's pretty
11 simple, but I guess the answer is, yeah, I would take my own
12 experience into consideration.

13 MR. SCISCENTO: And so you'd take your common
14 sense --

15 PROSPECTIVE JUROR GARCEAU: Oh, sure.

16 MR. SCISCENTO: -- into the court -- into the jury
17 room though?

18 PROSPECTIVE JUROR GARCEAU: Absolutely.

19 MR. SCISCENTO: You'd mentioned that you think the
20 police should have more power. Why is that?

21 PROSPECTIVE JUROR GARCEAU: Well, as part of my
22 armed security, I worked out at traffic school for the -- for
23 North Las Vegas.

24 MR. SCISCENTO: Yes.

25 PROSPECTIVE JUROR GARCEAU: I got to meet a lot of

1 the guys and I gained a lot of respect for them. I had a lot
2 of respect for guys I work with in machine shop too, but I
3 just had never had exposed -- and my view of what law
4 enforcement was kind of changed when I realized these are just
5 regular guys, some good and some bad. I mean, I liked some of
6 them and some of them I didn't like, but -- but I --

7 MR. SCISCENTO: That being the officers?

8 PROSPECTIVE JUROR GARCEAU: I believe in law and
9 order, if that's what you're saying.

10 MR. SCISCENTO: Okay.

11 PROSPECTIVE JUROR GARCEAU: Okay.

12 MR. SCISCENTO: Now, your friendship in the form
13 with these police officers over the --

14 PROSPECTIVE JUROR GARCEAU: Sure.

15 MR. SCISCENTO: -- years you've had with them, would
16 that sway you in any way?

17 PROSPECTIVE JUROR GARCEAU: I don't think -- I think
18 I would be willing to listen to the testimony of police
19 officers and other witnesses and weigh them the way I would --

20 MR. SCISCENTO: Have you sat and talked with these
21 officers, though? I mean have they told you things on -- what
22 happened on the job and things like that?

23 PROSPECTIVE JUROR GARCEAU: Well, I don't believe
24 I've ever had a conversation with an officer about a shooting
25 or anything like that, but -- you know, this was traffic

1 court, so we dealt with traffic violations and that sort of
2 thing. I'm sorry, traffic school, yeah.

3 MR. SCISCENTO: Did they ever tell you about their
4 arrests that they made and criminals that they were tracking
5 down?

6 PROSPECTIVE JUROR GARCEAU: Not really, no. No.
7 This is not -- like a traffic stop, traffic tickets. I mean,
8 that's what we dealt with. This was that --

9 MR. SCISCENTO: So I'm still a little confused,
10 then. On the question you said that police should have more
11 power --

12 PROSPECTIVE JUROR GARCEAU: Yeah.

13 MR. SCISCENTO: -- but you're saying all you ever
14 talked to them is about traffic tickets and where's the
15 justification for giving a --

16 PROSPECTIVE JUROR GARCEAU: Well, I -- I tend to
17 believe that law enforcement -- I -- I'll tell you what I came
18 to think that the police were -- my opinion of what police did
19 changed after I got to talk to these guys, mainly because I
20 thought they were regular guys and they have a tough job and I
21 don't know what the -- what the more power means. I wouldn't
22 take any away from them. Let's put it that way. I'm not --
23 I'm not awestruck over police either, as far as that goes.
24 They're just regular guys. That was my take when I met 'em.

25 MR. SCISCENTO: You said overall considering general

1 issues of punishment, which do you think might be worse for a
2 defendant, and you wrote death and it is final. Do you think
3 the death penalty is the best thing for a defendant?

4 PROSPECTIVE JUROR GARCEAU: Based on the evidence
5 that we're gonna be hearing, there's an appropriate place for
6 the death penalty and there's appropriate place for life
7 without parole and the other two choices, and I think the
8 evidence will lead us to whatever that would be.

9 MR. SCISCENTO: Now, you had mentioned when the
10 District Attorney was asking you questions before, you said, I
11 agree with the 7-Eleven scenario.

12 PROSPECTIVE JUROR GARCEAU: Mm-hmm.

13 MR. SCISCENTO: That being, as I understood it, you
14 have somebody who's just a lookout, doesn't even know that the
15 gun is --

16 PROSPECTIVE JUROR GARCEAU: Right.

17 MR. SCISCENTO: -- loaded --

18 PROSPECTIVE JUROR GARCEAU: Right.

19 MR. SCISCENTO: -- and the guy goes in there and
20 shoots him and the lookout now is being charged with the
21 murder.

22 PROSPECTIVE JUROR GARCEAU: Sure.

23 MR. SCISCENTO: Okay. And you said, in that case,
24 that that person probably shouldn't get the death penalty.

25 PROSPECTIVE JUROR GARCEAU: Well, I think there's

1 room for a different penalty for people in that scenario.

2 Being the trigger man would be the guy who would be the most
3 severe and --

4 MR. SCISCENTO: Being the trigger man, if he thought
5 out this crime ahead of time.

6 PROSPECTIVE JUROR GARCEAU: Mm-hmm.

7 MR. SCISCENTO: What do you think would be the
8 punishment to fit that crime?

9 PROSPECTIVE JUROR GARCEAU: Oh, I think the death
10 penalty.

11 MR. GUYMON: Objection --

12 THE COURT: Sustained.

13 MR. SCISCENTO: Now, with your agreeing to the '7-
14 Eleven scenario, you said, well, that person's not as
15 culpable, not as liable?

16 PROSPECTIVE JUROR GARCEAU: Well, I mean, depending
17 on all of the evidence that we'll be listening to, I can't --
18 I may be prejudging it now. What I'm suggesting is, is that
19 there's -- there's room for movement in a scenario like, that
20 we -- like he talked about.

21 MR. SCISCENTO: What about when we get to multiple
22 murders? What is your feeling about that one?

23 PROSPECTIVE JUROR GARCEAU: I -- you know, I think a
24 multiple murder is terrible, but I think killing one person
25 is -- when you've gone that far --

1 MR. SCISCENTO: Does there come a point, that you
2 think that after you've committed this kind of crime,
3 regardless of any other information, you should receive the
4 death penalty?

5 PROSPECTIVE JUROR GARCEAU: No, I don't believe
6 that. I think the mitigating circumstances are taken into
7 consideration for everything.

8 MR. SCISCENTO: The Court's indulgence for one
9 moment, Your Honor. Judge, can we approach for a moment?

10 THE COURT: Sure.

11 (Off-record bench conference)

12 MR. SCISCENTO: Mr. Garceau, you had mentioned
13 earlier -- or you just mentioned that there were mitigators
14 that you would consider. What would those mitigators be?

15 PROSPECTIVE JUROR GARCEAU: I think that's -- once
16 again, that would be -- I haven't -- I have no idea what kind
17 of testimony will be coming, I've personally never done this
18 before. It's -- it -- for me, it's -- I can't, right out of
19 the realm of possibility that there was something that would
20 be behind a case, an individual circumstances that would not
21 affect the outcome of a decision on how to punish a person, so
22 what those mitigating circumstances would be, apparently we're
23 gonna find out here.

24 MR. SCISCENTO: So you would take everything into
25 account?

1 PROSPECTIVE JUROR GARCEAU: Everything, sure.
2 MR. SCISCENTO: You wouldn't just rush the judgment?
3 PROSPECTIVE JUROR GARCEAU: Oh, no. Absolutely not.
4 MR. SCISCENTO: To the death penalty?
5 PROSPECTIVE JUROR GARCEAU: Not necessarily, no.
6 Not -- nothing's cut and dried.
7 MR. SCISCENTO: And you could withhold your feelings
8 of guilt or innocence, both ways it works. You know, you're
9 talking that you've got to withhold your feeling of guilt.
10 But also you also have to withhold your feeling of innocence
11 until all the evidence is in.
12 PROSPECTIVE JUROR GARCEAU: Yes.
13 MR. SCISCENTO: I just misspoke that one. I realize
14 it. You'd be able to withhold your feeling of guilt until
15 after all the evidence is in?
16 PROSPECTIVE JUROR GARCEAU: Make a decision after
17 all the evidence is in on both sides.
18 MR. SCISCENTO: It's a hard -- it's a hard thing to
19 do to hear all this evidence prior and then have to wait for
20 the defense to come up.
21 PROSPECTIVE JUROR GARCEAU: I understand.
22 MR. SCISCENTO: And you believe in the concept --
23 the concept that Mr. White is innocent until proven guilty?
24 PROSPECTIVE JUROR GARCEAU: Absolutely.
25 MR. SCISCENTO: And so as he stands -- sits here

1 right now, Mr. White --
2 PROSPECTIVE JUROR GARCEAU: Yes.
3 MR. SCISCENTO: -- is innocent.
4 PROSPECTIVE JUROR GARCEAU: Innocent until proven
5 guilty.
6 MR. DASKAS: Judge, and I think that he's presumed
7 innocent. That's -- that's the concept.
8 THE COURT: It's also been asked and answered by me.
9 Any other areas? We want to move on to
10 Mr. Chastain.
11 MR. SCISCENTO: No further questions, Your Honor.
12 THE COURT: Who's gonna do Chastain?
13 MR. SCISCENTO: I will.
14 Mr. Chastain?
15 PROSPECTIVE JUROR CHASTAIN: Yes, sir.
16 MR. SCISCENTO: How are you?
17 PROSPECTIVE JUROR CHASTAIN: Quite fine. Thank you.
18 Yourself?
19 MR. SCISCENTO: You were born in Santa Monica,
20 California?
21 PROSPECTIVE JUROR CHASTAIN: Yes. That is correct.
22 MR. SCISCENTO: How long have you lived out there?
23 PROSPECTIVE JUROR CHASTAIN: In Santa Monica?
24 MR. SCISCENTO: Yeah.
25 PROSPECTIVE JUROR CHASTAIN: I think I was about --

1 about six months old. I think we've -- I've lived most of my
2 time in Orange County.

3 MR. SCISCENTO: Okay. Whereabouts in Orange County
4 did you live?

5 PROSPECTIVE JUROR CHASTAIN: Fullerton.

6 MR. SCISCENTO: Did you go to school out there?

7 PROSPECTIVE JUROR CHASTAIN: Uh-huh.

8 MR. SCISCENTO: You went to, I think, Cal State --

9 PROSPECTIVE JUROR CHASTAIN: Cal State Fullerton's
10 out there and I went to --

11 MR. SCISCENTO: The Titans.

12 PROSPECTIVE JUROR CHASTAIN: -- to Fullerton
13 Community College, other times out there.

14 MR. SCISCENTO: In your jury questionnaire, you had
15 written if -- how would you feel if the jury sat -- the jury
16 you sat on was unable to reach a verdict? If this is the
17 case, then we are unable to reach a verdict, I guess it says I
18 would be satisfied --

19 PROSPECTIVE JUROR CHASTAIN: If no one -- if no
20 one -- if not everybody could agree, then -- then it's over.
21 You know, you have to have -- if one person doesn't -- if one
22 person finds a person innocent and everyone finds a person
23 guilty, then that person is innocent, because everyone has to
24 be thoroughly convinced that person is guilty. If that was me
25 that found that person innocent, everyone found that person

1 guilty, I would stand my ground.

2 MR. SCISCENTO: Okay. Against the wave of everybody
3 else, against 11 people who sit there?

4 PROSPECTIVE JUROR CHASTAIN: Regardless.
5 Because you -- 'til all times you have to be free thinking.

6 MR. SCISCENTO: Okay. And you think --

7 PROSPECTIVE JUROR CHASTAIN: I think I'm thoroughly
8 free thinking.

9 MR. SCISCENTO: Even coming from Orange County?

10 PROSPECTIVE JUROR CHASTAIN: Even coming from Orange
11 County. I don't always vote republican know.

12 MR. SCISCENTO: Which is quite a conservative place.

13 PROSPECTIVE JUROR CHASTAIN: Yeah, very
14 conservative. I don't just vote the way people tell me to
15 vote.

16 MR. SCISCENTO: You'd mentioned -- you had stated
17 earlier to the District Attorney that the death penalty is a
18 deterrent.

19 PROSPECTIVE JUROR CHASTAIN: I believe so. What
20 I -- what I understood, you know, from various classes I've
21 taken, but I -- I don't know off-hand, but I would assume that
22 it is. For me -- my own personal -- I -- if I knew the death
23 penalty existed and I thought about murder myself, I would
24 probably -- probably not inclined to do it, knowing that would
25 be the case.

1 MR. SCISCENTO: So it might --

2 PROSPECTIVE JUROR CHASTAIN: So it would be
3 deterrent for me, absolutely.

4 MR. SCISCENTO: Life in prison without the
5 possibility of parole would not be --

6 PROSPECTIVE JUROR CHASTAIN: That's not -- I don't
7 like that either, but -- but I -- I don't like either one of
8 them, personally, you know, so -- yeah, they're all
9 deterrents. I think that's why they were set up.

10 MR. SCISCENTO: Okay. Well, prison is a deterrent.

11 PROSPECTIVE JUROR CHASTAIN: Absolutely.

12 MR. SCISCENTO: But, if some -- now, you said you
13 took some classes that --

14 PROSPECTIVE JUROR CHASTAIN: You know, we're taking
15 history classes. You take psychology classes. You take
16 environmental science classes. Everyone brings up certain
17 scenarios and certain things and they present their ideas, but
18 even then, doesn't make it factual. You just take those
19 things in and then you make judgments upon it. You know? You
20 don't -- not necessarily saying they're right or wrong. You
21 just take 'em in. You know? I think everyone does that.

22 MR. SCISCENTO: What kind of -- other than the
23 classes you've mentioned, any other studies or research or --

24 PROSPECTIVE JUROR CHASTAIN: You mean personal
25 research I did on my own?

1 MR. SCISCENTO: Yes.

2 PROSPECTIVE JUROR CHASTAIN: No, none.

3 MR. SCISCENTO: You mentioned in your -- in your
4 questionnaire that you never thought about imposing the death
5 penalty.

6 PROSPECTIVE JUROR CHASTAIN: Exactly. That never
7 crossed my mind.

8 MR. SCISCENTO: And you've had time to think about
9 it now.

10 PROSPECTIVE JUROR CHASTAIN: Only, because, like I
11 said, it was new to me. I didn't know it was -- existed in
12 the state, you know. I don't agree with something -- the news
13 came out -- maybe it's been around for a hundred years. I
14 have no -- I have no knowledge of that.

15 MR. SCISCENTO: So you don't know when it was --

16 PROSPECTIVE JUROR CHASTAIN: None. Maybe it's been
17 around forever. I just -- I just never heard about the death
18 penalty, anybody even setting it up.

19 MR. SCISCENTO: Let me ask you. You think crime is
20 getting worse over the years?

21 PROSPECTIVE JUROR CHASTAIN: I think actually crime
22 has gotten better, is what -- what I've seen. I've seen that
23 the crime rate comes down and things like that.

24 MR. SCISCENTO: You think crime is getting better?

25 PROSPECTIVE JUROR CHASTAIN: Yeah.

1 MR. SCISCENTO: Okay. Over the years?

2 PROSPECTIVE JUROR CHASTAIN: Yeah, I would say so.
3 I mean, you have to take in compensation for the number of
4 people versus the number of growth and versus number of
5 crimes, yeah.

6 MR. SCISCENTO: You don't think it's getting --
7 society is getting more violent?

8 PROSPECTIVE JUROR CHASTAIN: No, I don't think so.
9 I think we're -- each person's becoming more and more educated
10 and fewer are making decisions that he would -- ordinarily
11 wouldn't have made.

12 MR. SCISCENTO: So you think education on a person's
13 important?

14 PROSPECTIVE JUROR CHASTAIN: I think it's helpful.
15 I mean, but you get education from a lot of different places.
16 You can get education from class room. You can get education
17 from the street. You can get education from a store, you
18 know.

19 MR. SCISCENTO: If you had witnesses up here who
20 were testifying because they were getting some kind of benefit
21 from the State, what would that make you feel about their
22 testimony?

23 PROSPECTIVE JUROR CHASTAIN: I'd have -- I --
24 wouldn't make a judgment on that, because -- because again,
25 when they're -- even though they're given some kind of

1 compensation, they're there to speak the truth, not to give
2 testimony to a specific individual, because of that. That's
3 the reason why they're given that.

4 MR. SCISCENTO: So you feel that everybody, every
5 person who takes the stand, the witness stand, is telling the
6 truth?

7 PROSPECTIVE JUROR CHASTAIN: No. I would take into
8 consideration what everyone has to say and at the end then, I
9 would make my judgment.

10 MR. SCISCENTO: You think people tell partial
11 truths?

12 PROSPECTIVE JUROR CHASTAIN: Absolutely.

13 MR. SCISCENTO: Okay. You have no prior information
14 about this case?

15 PROSPECTIVE JUROR CHASTAIN: None whatsoever. This
16 is the first -- when I read about it, was the first I heard
17 about it.

18 MR. SCISCENTO: How long have you lived out here in
19 Vegas?

20 PROSPECTIVE JUROR CHASTAIN: I think I moved out
21 here like '88 or '87 or somewhere around there. It's been a
22 while now.

23 MR. SCISCENTO: Okay. Now, you'd mentioned that you
24 grew up in a mixed culture.

25 PROSPECTIVE JUROR CHASTAIN: That's true.

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

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

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

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

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

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

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

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

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

22 THE COURT: Okay.

23 (Off-record bench conference)

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

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

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

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

9 PROSPECTIVE JUROR SHINK: Yeah.

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

12 PROSPECTIVE JUROR SHINK: Yes.

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

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

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

24 PROSPECTIVE JUROR SHINK: Yeah.

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

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

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

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

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

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

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

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

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

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

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

3 PROSPECTIVE JUROR SHINK: Yeah.

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

5 PROSPECTIVE JUROR SHINK: Yeah.

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

11 PROSPECTIVE JUROR SHINK: Yes.

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

17 PROSPECTIVE JUROR SHINK: Yes.

18 MR. DASKAS: Thank you.

19 THE COURT: Pass for cause?

20 MR. DASKAS: Yes, Judge.

21 Joe.

22 MR. SCISCENTO: Mr. Shink?

23 PROSPECTIVE JUROR SHINK: Shink.

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

1 out there as a lookout. What about the scenario when there's
2 somebody who's involved in multiple murders? What do you do
3 with that?

4 PROSPECTIVE JUROR SHINK: But he's still the driver?

5 MR. SCISCENTO: No, he's not the driver. He's the
6 one involved in doing the shooting?

7 PROSPECTIVE JUROR SHINK: Involved?

8 MR. SCISCENTO: Is that the case where you'd give
9 the death penalty regardless?

10 PROSPECTIVE JUROR SHINK: No, long as he didn't pull
11 the trigger, but --

12 MR. SCISCENTO: Okay.

13 PROSPECTIVE JUROR SHINK: -- but he could've
14 probably stopped the guy from doing it.

15 MR. SCISCENTO: And if he could've and he didn't
16 would you give him -- automatically give him the death
17 penalty?

18 PROSPECTIVE JUROR SHINK: No.

19 MR. SCISCENTO: When would you automatically give
20 somebody the death penalty?

21 PROSPECTIVE JUROR SHINK: If the evidence was
22 overwhelming.

23 MR. SCISCENTO: Overwhelming to guilt?

24 PROSPECTIVE JUROR SHINK: Guilt, yeah, that he was
25 the individual that did it.

1 MR. SCISCENTO: Okay. So if he's the individual
2 that did the killing and pulled the trigger, that's when you
3 would say that person deserves the death penalty?

4 PROSPECTIVE JUROR SHINK: Yes.

5 MR. SCISCENTO: Okay. With that in mind, would
6 there be anything else that would then take you away from that
7 thought? Anything else that would make you change your mind,
8 the person's background? Would you take that into effect, the
9 way he grew up?

10 PROSPECTIVE JUROR SHINK: Yeah, I would, yeah.
11 Yeah.

12 MR. SCISCENTO: Okay. The way he -- his age?

13 PROSPECTIVE JUROR SHINK: I don't think his age is
14 -- his background, how he was raised, you know, and what
15 judgment he made.

16 MR. SCISCENTO: Okay. So there's some cases when
17 you say there's multiple murders and the person did it, but
18 you wouldn't automatically give the death penalty?

19 PROSPECTIVE JUROR SHINK: No.

20 MR. SCISCENTO: Okay. But you mentioned earlier,
21 probably the best thing to do is just get a random drawing and
22 go into the prisons and run around and pull out the numbers?

23 PROSPECTIVE JUROR SHINK: Yeah.

24 MR. SCISCENTO: Yes. So killing is okay in certain
25 circumstances?

1 MR. GUYMON: Judge, objection. It's an argument of
2 the case.

3 THE COURT: Sustained.

4 MR. SCISCENTO: Your belief, then, that the way to
5 get rid of crime is to kill people?

6 PROSPECTIVE JUROR SHINK: Yeah. It seems like
7 that -- seem like the prisons are always full and at some
8 point they got to let 'em out.

9 MR. SCISCENTO: Okay. So you let 'em out or don't
10 let 'em out and kill 'em?

11 PROSPECTIVE JUROR SHINK: Yeah. I know -- if the
12 death penalty isn't working, maybe you need to take a
13 different route. Maybe -- okay, do I really wanna do -- rob
14 this place and I know I'm gonna get into prison. At some
15 point, my number's gonna come up, so I say, well, I think I'll
16 forget about it.

17 MR. SCISCENTO: Okay. So you're saying that people
18 who are in prison for anywhere from car theft to murder,
19 they're eligible for Logan's Run's numbers?

20 PROSPECTIVE JUROR SHINK: Yes, unless they got less
21 than a year, they'd be exempt.

22 MR. SCISCENTO: Okay. How long have you had this
23 view of kill 'em all, let God sort 'em out?

24 PROSPECTIVE JUROR SHINK: I don't know, a long time.

25 MR. SCISCENTO: Okay. Is it ingrained belief that

1 you've had, that your parents teach you this?

2 PROSPECTIVE JUROR SHINK: No.

3 MR. SCISCENTO: Friends? Something that you
4 acquired over the years?

5 PROSPECTIVE JUROR SHINK: Over the years.

6 MR. SCISCENTO: Okay. And how is it that you
7 acquired it? Did you work in any prison facilities? Did
8 you --

9 PROSPECTIVE JUROR SHINK: No.

10 MR. SCISCENTO: How ingrained is it in your beliefs
11 that it's easier to kill or it's best to put 'em in a drum,
12 pull out the numbers and get rid of 'em?

13 PROSPECTIVE JUROR SHINK: Because they had a choice.
14 There was nobody twisting their arms to do what they did.
15 They made a decision. Nobody else did.

16 MR. SCISCENTO: I don't understand one thing. You
17 said that you favored the death penalty, would consider the
18 background to impose life without -- without the possibility
19 of parole, and then you say that life without the possibility
20 of parole is too long?

21 PROSPECTIVE JUROR SHINK: Yeah, it is. I think
22 fifty years is long enough, but usually on the average people
23 are over twenty years old, by the time, fifty years, they'll
24 be seventy, eighty years old.

25 MR. SCISCENTO: And they'll probably just die in

1 prison?

2 PROSPECTIVE JUROR SHINK: Yeah, they end up dying

3 there anyway.

4 MR. SCISCENTO: Without going through the drum --

5 PROSPECTIVE JUROR SHINK: Yeah.

6 MR. SCISCENTO: -- system?

7 PROSPECTIVE JUROR SHINK: Plus, we -- I think we

8 could spend that money better in other places, you know, on

9 battered women and kids, stuff like that; I think that money

10 could be better used someplace else.

11 MR. SCISCENTO: How do you think the money could be

12 better used for society?

13 PROSPECTIVE JUROR SHINK: Try and -- especially try

14 to teach the young kids earlier in age, use that money, you

15 know, they got too much time on their hands, try and --

16 MR. SCISCENTO: So maybe some more after-school

17 care?

18 PROSPECTIVE JUROR SHINK: Yeah.

19 MR. SCISCENTO: Boys Clubs, Girl Clubs?

20 PROSPECTIVE JUROR SHINK: Yeah.

21 MR. SCISCENTO: The money's better spent there?

22 PROSPECTIVE JUROR SHINK: Yeah.

23 MR. SCISCENTO: Do you think that that would have an

24 effect, a deterrent effect on crime, if you took the

25 youngsters?

1 PROSPECTIVE JUROR SHINK: Yeah, I think it would.
2 MR. SCISCENTO: And help them out in the beginning?
3 PROSPECTIVE JUROR SHINK: Yes.
4 MR. SCISCENTO: And then maybe that would stop them
5 from killing later on in life?
6 PROSPECTIVE JUROR SHINK: Yes.
7 MR. SCISCENTO: Would you --
8 PROSPECTIVE JUROR SHINK: Hopefully, yes.
9 MR. SCISCENTO: -- you agree with that scenario?
10 PROSPECTIVE JUROR SHINK: Yes.
11 MR. SCISCENTO: You were from Seattle --
12 PROSPECTIVE JUROR SHINK: Yes.
13 MR. SCISCENTO: -- is that correct? Have you been
14 exposed to any of those kind of programs, the after school,
15 the Boy Clubs, the YMCA, the police organizations --
16 PROSPECTIVE JUROR SHINK: No.
17 MR. SCISCENTO: -- anything like that?
18 PROSPECTIVE JUROR SHINK: I coach. I coached
19 basketball and baseball in Seattle.
20 MR. SCISCENTO: Okay. And do you think that helps
21 the young boys?
22 PROSPECTIVE JUROR SHINK: Yeah, I hope -- yeah, I
23 hope it did. Yeah.
24 MR. SCISCENTO: Did you personally see any direct
25 result where it helped somebody?

1 PROSPECTIVE JUROR SHINK: Yeah.

2 MR. SCISCENTO: Okay. You think if it's prevalent
3 here, or today, is to have more organizations helping younger
4 kids, it may stop the violence; would you agree?

5 PROSPECTIVE JUROR SHINK: Yes.

6 MR. SCISCENTO: And would you also agree that
7 there's not a lot to help the kids today?

8 PROSPECTIVE JUROR SHINK: No, it seems like the
9 money goes for other things, and it probably should be going
10 to the kids.

11 MR. SCISCENTO: No further questions, Your Honor.

12 THE COURT: Thank you.

13 Before we take our afternoon recess we're gonna have
14 one more challenge exercised, if the defense chooses to
15 exercise one.

16 MR. SCISCENTO: Your Honor, may we approach on this
17 one?

18 THE COURT: In a second.

19 Then we'll come back in a few minutes after the
20 break. Normally I don't do this in a case, but I think
21 there's been some puzzling things, or some things that are
22 sort of left up in the air here that are a little unusual.

23 When you filled out these questionnaires, of course
24 you were told on page 7 the following:

25 "The defendant in this case has been charged with

1 first degree murder. The Nevada State Legislature
2 has determined that if a person is convicted of
3 first degree murder, then a jury must further decide
4 which of four possible punishments provided by law
5 should be imposed. For each count of first degree
6 murder, a defendant can be sentenced to four
7 possible punishments, which are:

8 "(a) the death penalty;

9 "(b) life imprisonment without the possibility of
10 parole;

11 "(c) life imprisonment with the possibility of
12 parole;

13 "(d) definite terms of fifty years with the
14 possibility of parole after twenty years."

15 Now there's a few things that I think some of you
16 may have been a little confused about. Is there anybody among
17 you who if they were sitting on this jury and find the
18 defendant guilty of first degree murder, are there any of you
19 who would ignore the instruction that there is no automatic
20 death penalty?

21 No affirmative answers.

22 Now you've heard mitigating, the word "mitigating."
23 If you are selected for this jury, and if you find the
24 defendant guilty of first degree murder, we're gonna read you
25 some mitigating factors that the Legislature has set forth,

1 and the last of those is, "any other mitigating circumstance."
2 Now what weight you give to anything you hear is up to you,
3 but are there any of you who would automatically vote the
4 death penalty in a multiple murder and not listen to
5 mitigating evidence?

6 No affirmative responses.

7 You may approach the bench.

8 (Off-record bench conference)

9 THE COURT: Okay. So that that one person doesn't
10 have to come back, does the defense choose to exercise or
11 waive their first peremptory?

12 Mr. Figler or Mr. Sciscento, do you choose --

13 MR. FIGLER: Yeah, we will be exercising a
14 peremptory, Judge.

15 MR. SCISCENTO: Yes, Your Honor. Based on the
16 discussion at the bench though, Your Honor, we have to make a
17 decision.

18 THE COURT: And who would you like to have excused
19 peremptorily?

20 MR. SCISCENTO: Your Honor, the jury would like to
21 -- or the defense would like to thank and excuse Juror Number
22 562.

23 THE COURT: And I'm going by seat number. That
24 would be?

25 MR. GUYMON: 11, Your Honor.

1 MR. FIGLER: Seat 3, I think. Oh, seat 11.

2 THE COURT: Mr. Garceau? Thank you, Mr. Garceau.

3 Okay, everyone else please return here at five
4 minutes of 11:00. The reason, by the way, and I'll explain
5 that if you get seated on the jury in more detail, that I read
6 that admonition to you so quickly that you can barely
7 understand it, is you're gonna hear it this week about twenty
8 times, as I must read it to you, by law, each and every time
9 you leave the courtroom. Basically what it says is, don't
10 discuss the case with each other, don't make a judgment, and
11 don't look at things in the media.

12 During this recess you're admonished not to talk or
13 converse among yourselves or with anyone else on any subject
14 connected with this trial, read, watch or listen to any report
15 of or commentary on the trial, or any person connected with it
16 by any medium of information, including, without limitation,
17 newspapers, television and radio; or to form or express any
18 opinion on any subject connected with the trial 'til it's
19 finally submitted to you.

20 We'll be in session outside your presence, but
21 please report back to Stony in time for us to start again at
22 five minutes of 3:00.

23 (Prospective jurors recessed at 2:40 p.m.)

24 THE COURT: Okay, outside the presence of the jury.
25 Before the exercise of any peremptories, Mr.

1 Sciscento and Mr. Figler indicated at the bench that they did
2 have a challenge for cause which I indicated I was gonna
3 overrule. Was it Juror Number 6, Fink, Juror Number 4,
4 Tackley, and Juror --

5 MR. SCISCENTO: Tackley, Your Honor.

6 THE COURT: What?

7 MR. SCISCENTO: Tackley.

8 THE COURT: Tackley, Juror Number 4. And was it
9 Juror Number 9, Baker?

10 MR. FIGLER: I'm double checking, Your Honor.

11 Yes, and also Juror Number 8.

12 THE COURT: Juarez?

13 MR. FIGLER: No, not Juror Number 8. Juror Number
14 3? Yes, Judge, Juror Number 3.

15 THE COURT: Mr. Shink?

16 MR. FIGLER: That is correct.

17 THE COURT: Okay. And what was the basis for those
18 challenges for cause, for the record, that I've overruled, Mr.
19 Figler?

20 MR. FIGLER: Well, Your Honor, basically it is our
21 concern that there are individuals on this particular jury
22 who, once having convicted Mr. Johnson of four homicides in
23 this case would automatically vote for the death penalty
24 without any consideration of mitigating evidence and without
25 consideration of life with the possibility or a term of years

1 in contravention of Morgan versus Illinois. And as the State
2 has an absolute right to exclude those people who would never
3 vote for the death penalty, in other words, to "death qualify"
4 is the nomenclature used, we have an absolute right to "life
5 qualify" a particular jury.

6 Now when I asked the questions, I went through it
7 very specifically, and those individuals who I questioned and
8 Mr. Sciscento questioned, who we would like to challenge for
9 cause, stated that once they found a person guilty of
10 premeditated murder that they would always vote for the death
11 penalty. When asked further if they would consider certain
12 mitigators, I was first objected to, and then when listed
13 those mitigators, when I was allowed to get those out, they
14 said, no, no, no, no.

15 So, Your Honor, that is a contravention of Morgan v.
16 Illinois. To go into a penalty phase with individuals who
17 would not vote for anything but death when there have been
18 multiple homicides in a first degree murder is in complete
19 contravention of his right to have a cross-section of
20 individuals with views with regard to the death penalty on
21 that particular jury. The automatic voting for the death
22 penalty is wrong. And I had an absolute right -- if Your
23 Honor thought that I hadn't proven that yet, that at least I
24 have made a prima facie case with the questions that have been
25 asked, and had an absolute right to follow up on them before I

1 had to exercise any of my peremptories. Because as you well
2 know, we have an absolute right to get rid of every juror for
3 cause who would vote in such a fashion.

4 THE COURT: Okay. Number one, I believe that in
5 terms of Morgan, the questionnaire, which was answered under
6 oath, is sufficient. And those people who are seated on the
7 jury did not, in either Witherspoon or the Morgan sense,
8 qualify for challenges for cause.

9 I think secondly that the hypothetical questions
10 involving things such as premeditation, multiple murders,
11 mitigators, are violative both of the 770 provisions, touching
12 on anticipated instructions and questions that pose
13 hypothetical fact situations.

14 I think in addition, we cleared up your concern by
15 asking the supplemental questions to the jury which
16 specifically have instructed them, (a), that it's not
17 automatic, and solicited the opinion as to whether any of them
18 would fail to follow that opinion -- that instruction, if it
19 was read to them, and also dealing with the statutory
20 mitigators, including the catchall phrase.

21 We're in recess.

22 MR. FIGLER: Your Honor, if I can continue. We have
23 an absolute right --

24 THE COURT: You've made your record.

25 MR. FIGLER: -- to an intelligent answer --

1 THE COURT: You've made your record, Mr. Figler.
2 MR. FIGLER: Thank you, Your Honor.
3 THE COURT: Thank you.
4 MR. FIGLER: We have an absolute right to an
5 intelligent answer --
6 THE COURT: You've made your record, Mr. Figler.
7 MR. FIGLER: -- from every juror.
8 THE COURT: We're in recess. Thank you.
9 MR. FIGLER: And we are denied that right, Your
10 Honor. We have been denied that right. Because we don't have
11 the right to say, then what situation would you not vote for
12 guilt. And they can't come up with one, Judge, and that's not
13 a fair death penalty jury.
14 THE COURT: Well, you have these concerns, Mr.
15 Figler, you got about twelve more jurors, if you want to
16 restructure how you do voir dire to allay some of your
17 concerns, you can do that.
18 We're in recess 'til five minutes of 3:00.
19 (Court recessed until 2:55 p.m.)
20 (Prospective jurors not present)
21 MR. SCISCENTO: -- mental reason for cause on one of
22 the jurors.
23 THE COURT: Hold on one second.
24 THE CLERK: Are we on the record, Judge?
25 THE COURT: Yes. What's the supplemental reason,

1 Mr. --

2 THE CLERK: Quiet over there, please.

3 THE COURT: -- Dayvid.

4 What's the supplemental reason that you wanted to
5 bring to the Court's attention --

6 MR. SCISCENTO: Your Honor, I'm --

7 THE COURT: -- on a challenge for cause?

8 MR. SCISCENTO: I'm challenging for cause for Sally
9 Tackley.

10 THE COURT: Uh-huh.

11 MR. SCISCENTO: I specifically asked her questions
12 regarding her racial bias, and she indicated to me that she's
13 frightful of black men, she thinks that they are more violent.
14 I think she has a racial bias that she's gonna carry in,
15 regardless if this is a death case or not. I think she could
16 be removed based on the fact that she does have a preconceived
17 determination of racial biases against a black man, that she
18 could not be a good juror for a black man.

19 THE COURT: I don't know that she could be a good
20 juror either, sufficiently, that I wouldn't exercise a
21 peremptory on her, but I don't think it's sufficient to rise
22 to the level of cause.

23 Get the jury back in, please.

24 THE CLERK: How late --

25 THE COURT: Not after 5:30.

1 If you want to start calling witnesses off who are
2 -- do you have any on call for today?
3 MR. DASKAS: Yeah, we have four or five, Judge, that
4 are here.
5 THE COURT: Because between choosing the jury and
6 giving openings, I don't think we're gonna have time today.
7 Do you?
8 MR. DASKAS: No.
9 THE COURT: So anybody can start calling 'em off.
10 MR. DASKAS: Thank you, Judge.
11 (Prospective jurors are present)
12 THE COURT: You up to Connie Patterson? Thank you.
13 You leaving already?
14 PROSPECTIVE JUROR COLE: No.
15 THE COURT: Are you serving a meal?
16 PROSPECTIVE JUROR COLE: I'm done.
17 THE COURT: These are a series of stewardess jokes,
18 for those of you who don't know that --
19 PROSPECTIVE JUROR COLE: Flight attendants.
20 THE COURT: Oh, I am sorry. That's right. I am
21 fifty-six years old. Okay.
22 [Laughter]
23 THE COURT: Mr. -- is it Ruemmele [RUM-lee]?
24 PROSPECTIVE JUROR RUEMMELE: Ruemmele [REM-lee],
25 yeah.

1 THE COURT: Ruemmele? Mr. Ruemmele, who's Badge
2 Number 603, I got a note from you saying essentially that you
3 didn't realize we'd be in court all day, "I have a high school
4 graduation to attend."

5 PROSPECTIVE JUROR RUEMMELE: Right.

6 THE COURT: It's a friend from Cheyenne High School,
7 it's not a relative, huh?

8 PROSPECTIVE JUROR RUEMMELE: No.

9 THE COURT: Okay. Well, I'm afraid that's the kind
10 of burden we're going to have to ask you to stay here with us.
11 Okay, thank you.

12 PROSPECTIVE JUROR RUEMMELE: Thank you.

13 THE COURT: The State may inquire.

14 PROSPECTIVE JUROR RUEMMELE: I appreciate it.

15 MR. DASKAS: Thank you, Judge.

16 Mrs. Patterson.

17 PROSPECTIVE JUROR PATTERSON: Yes.

18 MR. DASKAS: Your turn in the hot seat.

19 PROSPECTIVE JUROR PATTERSON: Oh, no.

20 MR. DASKAS: In your questionnaire you indicate that
21 you believe death is indeed the worst possible punishment. Is
22 that accurate?

23 PROSPECTIVE JUROR PATTERSON: Yes.

24 MR. DASKAS: In fact, what you said was, "life in
25 prison" -- and I assume when you said "life in prison" you

1 meant either with or without parole.

2 PROSPECTIVE JUROR PATTERSON: Correct.

3 MR. DASKAS: "Allows the person to see their family
4 and have some pleasures in life. If you're dead, that's it."

5 PROSPECTIVE JUROR PATTERSON: Correct.

6 MR. DASKAS: I'm assuming what you meant was, even a
7 life sentence without parole gives the person convicted some
8 luxuries, some things to look forward to, where a death
9 sentence would certainly be different than that?

10 PROSPECTIVE JUROR PATTERSON: That is correct.

11 MR. DASKAS: In spite of the fact that you feel that
12 death is the worst possible punishment, do you believe that
13 you have the ability, the capacity to vote for a sentence of
14 death --

15 PROSPECTIVE JUROR PATTERSON: Oh, yeah.

16 MR. DASKAS: -- in the appropriate case?

17 PROSPECTIVE JUROR PATTERSON: Yes.

18 MR. DASKAS: I assume in your society there would be
19 a death penalty?

20 PROSPECTIVE JUROR PATTERSON: Yes.

21 MR. DASKAS: There's been a lot of discussion about
22 the four possible punishments in this case, can you at least
23 promise us that you'll consider all four possibilities?

24 PROSPECTIVE JUROR PATTERSON: Absolutely. Of
25 course.

1 MR. DASKAS: And depending on the information you
2 hear, you'll select the appropriate punishment?

3 PROSPECTIVE JUROR PATTERSON: Absolutely. I have to
4 live with myself, so.

5 MR. DASKAS: Absolutely. And I guess what we're
6 talking about is, among murderers there'd be what we would
7 consider a level of culpability --

8 PROSPECTIVE JUROR PATTERSON: Yes.

9 MR. DASKAS: -- and depending on their culpability,
10 we would select one of those four forms of punishment?

11 MR. FIGLER: Object, Your Honor, that's not the law.

12 THE COURT: In terms of culpability, is the way
13 you're phrasing it?

14 MR. DASKAS: That's correct, Judge.

15 THE COURT: Sustained. If you'd rephrase it, maybe
16 it'd be clearer.

17 MR. DASKAS: Thank you.

18 You could, in any given case, consider all forms of
19 punishment?

20 PROSPECTIVE JUROR PATTERSON: Absolutely.

21 MR. DASKAS: Any thoughts about the police here in
22 Las Vegas?

23 PROSPECTIVE JUROR PATTERSON: No. They're just
24 people.

25 THE COURT: People who need people?

1 PROSPECTIVE JUROR PATTERSON: There you go.

2 THE COURT: They're the luckiest people in the
3 world.

4 [Laughter]

5 MR. FIGLER: Those are the luckiest people, Judge.

6 MR. DASKAS: If you're convinced after hearing all
7 the evidence that the defendant is guilty beyond a reasonable
8 doubt, can you promise the State of Nevada that you'll return
9 verdicts of guilty?

10 PROSPECTIVE JUROR PATTERSON: Yes.

11 MR. DASKAS: And you understand that burden is the
12 same in every courtroom across the country?

13 PROSPECTIVE JUROR PATTERSON: Yes.

14 MR. DASKAS: You understand that sympathy is to play
15 no part in your deliberation during the first phase, the guilt
16 phase of this trial?

17 PROSPECTIVE JUROR PATTERSON: Yes.

18 MR. DASKAS: That, although you may have some
19 sympathy for the defendant as he sits in court today, you're
20 to set that aside and judge the evidence in this case and make
21 your decision?

22 PROSPECTIVE JUROR PATTERSON: Yes.

23 MR. DASKAS: Anything we haven't discussed that you
24 think we should know before you're selected as a juror in this
25 case?

1 PROSPECTIVE JUROR PATTERSON: No.
2 MR. DASKAS: Thank you.
3 THE COURT: Pass for cause?
4 MR. DASKAS: Yes, Judge.
5 THE COURT: Thank you.
6 Defense may inquire.
7 MR. FIGLER: Thank you, Your Honor.
8 Good afternoon, Ms. Patterson.
9 PROSPECTIVE JUROR PATTERSON: Hi.
10 MR. FIGLER: We have your questionnaire, and it asks
11 a lot of questions about the death penalty. I just want to
12 follow up on some of that. In your own words, I mean, a lot
13 of these questions kind of guide you one way or another, can
14 you describe your views on the death penalty?
15 PROSPECTIVE JUROR PATTERSON: I believe in capital
16 punishment, I think it's necessary dependent upon what the
17 crime is, how the person who committed the crime -- what the
18 type of person they are. I think a lot of things come into
19 play before you would select that type of punishment, and I
20 think you'd have to view all those things before making a
21 sound decision.
22 MR. FIGLER: Now, have you ever had a different
23 view, or held a different view on the death penalty?
24 PROSPECTIVE JUROR PATTERSON: I've never really
25 thought about it until I filled out this questionnaire, so,

1 no.

2 MR. FIGLER: If you had to tell me how strongly you
3 believed in the death penalty, what would your answer be?

4 PROSPECTIVE JUROR PATTERSON: I haven't been given
5 enough information to make me change my mind. At this point I
6 feel pretty confident that it -- that I believe in it, so
7 until I have other information to make me think otherwise, I
8 feel about a seven probably, seven or eight.

9 MR. FIGLER: Okay. Do you think that it's a
10 deterrent to future crime?

11 PROSPECTIVE JUROR PATTERSON: Yes.

12 MR. FIGLER: Why is that?

13 PROSPECTIVE JUROR PATTERSON: I think if someone
14 commits a crime knowing that this is a possible punishment, I
15 would certainly hope it would deter them.

16 MR. FIGLER: You know we have a lot of crime in our
17 society, right?

18 PROSPECTIVE JUROR PATTERSON: Yes.

19 MR. FIGLER: It's hard to read the paper without
20 hearing about a murder or something like that --

21 PROSPECTIVE JUROR PATTERSON: Sure.

22 MR. FIGLER: -- correct?

23 PROSPECTIVE JUROR PATTERSON: Yes.

24 MR. FIGLER: Now you know we've had the death
25 penalty that whole time, correct?

1 PROSPECTIVE JUROR PATTERSON: Yes.

2 MR. FIGLER: Still think it's a deterrent?

3 PROSPECTIVE JUROR PATTERSON: I would hope it is.
4 There might be more, I don't know. But I would hope it would
5 be.

6 MR. FIGLER: Okay. Now what kind of a crime comes
7 to mind when you think about the death penalty?

8 PROSPECTIVE JUROR PATTERSON: I think of cold-
9 hearted, calculated murder, someone who has no regard for
10 human life.

11 MR. FIGLER: Can you think of an example of one of
12 those type of crimes that you've heard about recently in the
13 media or somewhere else?

14 PROSPECTIVE JUROR PATTERSON: That person that
15 walked into a daycare and just started shooting, I think that
16 was cold-hearted, calculated. Terrible.

17 MR. FIGLER: So what were your feelings when you
18 heard about the guy who went in and killed all these purely
19 innocent little children?

20 PROSPECTIVE JUROR PATTERSON: I thought, what a
21 tragedy.

22 MR. FIGLER: Okay. So that would be sort of the
23 heinous of the heinous that we're talking about, correct?

24 PROSPECTIVE JUROR PATTERSON: I couldn't think of
25 anything better, but that, to me, that's very bad.

1 MR. FIGLER: Now, what kind of intentional
2 deliberate premeditated murders do you think deserve the death
3 penalty?

4 PROSPECTIVE JUROR PATTERSON: Wow. I think someone
5 just sitting down and planning out exactly what they're gonna
6 do, no matter what or who gets in their way, and then just
7 carrying it out.

8 MR. FIGLER: Why do you think you have the feelings
9 that you do about the death penalty?

10 PROSPECTIVE JUROR PATTERSON: Probably because I've
11 never been personally involved with anyone or anything that
12 involves the death penalty, so it's easy to sit here and say
13 yes or no. But when you have to actually sit in judgment, I
14 think it'd be -- it's gonna be a lot tougher.

15 MR. FIGLER: Okay. How do you feel about somebody
16 who has already been convicted of a first degree murder
17 getting life with the possibility of parole, being out in the
18 streets again?

19 PROSPECTIVE JUROR PATTERSON: It depends on all the
20 information that you have. If you feel that that's the
21 appropriate judgment, then that's the appropriate judgment.

22 MR. FIGLER: And what type of information is
23 important to you?

24 PROSPECTIVE JUROR PATTERSON: I want to know
25 everything that there is that I can know. I want to be able

1 to make the best decision that I can make, so to do that I
2 want everything you can give me.

3 MR. FIGLER: Everything about the background of the
4 individual?

5 PROSPECTIVE JUROR PATTERSON: About the background,
6 about what happened, you know, why it happened. Yeah, sure,
7 everything.

8 THE COURT: Folks, excuse me one minute while Dayvid
9 is thinking. If you're in that middle section and you're not
10 a juror, there's also all these seats over here. Later in the
11 trial there's gonna be lots of seats, but over here is fine,
12 too. If you're crowded over there or anything, please feel
13 free to sit over here.

14 Go ahead, Dayvid.

15 MR. FIGLER: Now I asked another juror this
16 question. We've all read about times when a person who is
17 convicted to death is later found to be innocent --

18 PROSPECTIVE JUROR PATTERSON: Yes.

19 MR. FIGLER: -- and released. How does that make
20 you feel about the death penalty as a concept?

21 PROSPECTIVE JUROR PATTERSON: I think those people
22 had a reason for choosing the verdict that they chose, and the
23 penalty that they chose. And, you know, I'm sure they're
24 probably going, oh, my gosh. But they made that decision, and
25 they probably made the best one they could, and they have to

1 live with their decision.

2 MR. FIGLER: So what do you think we as a society
3 can do about that when the death penalty is imposed on the
4 wrong type of person, or the wrong people?

5 PROSPECTIVE JUROR PATTERSON: All I can say is, as a
6 juror you should make the best possible decision you can make,
7 take every piece of information you can and do the very best
8 with it that you can.

9 MR. FIGLER: You understand that you will never be
10 required to return the death penalty no matter what you hear;
11 do you understand that?

12 PROSPECTIVE JUROR PATTERSON: Yes.

13 MR. FIGLER: Are you comfortable with that concept?

14 PROSPECTIVE JUROR PATTERSON: Yes.

15 MR. FIGLER: What do you think that the best
16 argument against the death penalty is?

17 PROSPECTIVE JUROR PATTERSON: That maybe a person
18 could be rehabilitated if, for whatever reasons, whatever
19 factors play into the reason they are the person they are;
20 things could be changed, possibly.

21 MR. FIGLER: Do you believe that rehabilitation is
22 an important attribute for our society for every criminal
23 defendant?

24 PROSPECTIVE JUROR PATTERSON: Yes.

25 MR. FIGLER: And what do you think is the best

1 argument in favor of life without the possibility of parole?

2 PROSPECTIVE JUROR PATTERSON: You're still
3 restricted as far as, you know, you can't do what you want
4 when you want, so you are still in a not so pleasant
5 environment forever, but. That's it.

6 MR. FIGLER: Now, prior to getting the jury
7 questionnaire, had you ever discussed the death penalty with
8 friends or family?

9 PROSPECTIVE JUROR PATTERSON: Yes.

10 MR. FIGLER: And what kind of things did you say,
11 and who were the kind of people you were talking to?

12 PROSPECTIVE JUROR PATTERSON: It was my husband and
13 we were watching "Dead Man Walking," I believe it was.

14 MR. FIGLER: Okay.

15 PROSPECTIVE JUROR PATTERSON: And we were saying
16 that, you know, certain parts of it you think, oh, definitely,
17 he should, you know, he should, "fry" -- I'm sorry. And then
18 at the end, you know, you're crying and you're thinking, oh,
19 my gosh, look at who all it affects. So there's two sides to
20 every story, and it's just -- it's a very, very big decision.

21 MR. FIGLER: You understand that a decision to do
22 death is an irrevocable --

23 PROSPECTIVE JUROR PATTERSON: Yes.

24 MR. FIGLER: -- one?

25 PROSPECTIVE JUROR PATTERSON: Yes.

1 MR. FIGLER: I'll pass for --
2 THE COURT: Pass for cause? Yes, Dayvid?
3 MR. FIGLER: I have no further questions at this
4 time.
5 THE COURT: Do you pass for cause?
6 MR. FIGLER: The Court's indulgence.
7 THE COURT: Sure.
8 MR. FIGLER: I'll pass for cause at this time, Your
9 Honor.
10 THE COURT: Thank you.
11 The State's second, exercise or waive?
12 MR. DASKAS: Judge, the State would thank and excuse
13 Badge Number 558, Mr. Morine.
14 MR. FIGLER: Your Honor, can we approach?
15 THE COURT: Sure.
16 (Off-record bench conference)
17 THE COURT: Thank you, Mr. Morine, you're excused.
18 And the next lucky potential juror is Ms. Fuller.
19 The State may inquire.
20 MR. GUYMON: Thank you.
21 Good afternoon, Ms. Fuller.
22 PROSPECTIVE JUROR FULLER: Hi.
23 MR. GUYMON: How are you?
24 PROSPECTIVE JUROR FULLER: Fine, thank you.
25 MR. GUYMON: You got summonsed here, and you learned

1 that this was gonna be a criminal case and you were gonna sit
2 on it. What were your thoughts?

3 PROSPECTIVE JUROR FULLER: Well, I didn't think too
4 much about it at first, then I thought about time at work,
5 time off, that kind of thing.

6 MR. GUYMON: Okay. You filled out the jury
7 questionnaire and you right away realized that it was a
8 criminal case and that it had to do with murder --

9 PROSPECTIVE JUROR FULLER: Mm-hmm.

10 MR. GUYMON: -- times four. Did that cause you any
11 concerns?

12 PROSPECTIVE JUROR FULLER: Very serious.

13 THE COURT: Excuse me one minute, Gary.

14 Some of the folks in the back say they're having a
15 hard time hearing. We do have space in that second row up
16 here, so if you're one of those people who would like to hear
17 a little better, you don't necessarily have to be in the same
18 order sitting out there at this time of the day, we'll find
19 you if we need you.

20 Go ahead, Mr. Guymon.

21 MR. GUYMON: You said you realized right away how
22 serious the charge was.

23 PROSPECTIVE JUROR FULLER: Yes.

24 MR. GUYMON: Does the seriousness of these charges
25 cause you concern?

1 PROSPECTIVE JUROR FULLER: Yes.

2 MR. GUYMON: Okay. Do the seriousness of these
3 charges impair your ability to be fair?

4 PROSPECTIVE JUROR FULLER: No.

5 MR. GUYMON: Okay. The idea of sitting in judgment
6 of Donte Johnson's conduct, does that cause you concern?

7 PROSPECTIVE JUROR FULLER: No.

8 MR. GUYMON: Is there anything about your social or
9 religious creeds that would say, gee, you just can't pass
10 judgment on another person's conduct; is that something you're
11 comfortable doing?

12 PROSPECTIVE JUROR FULLER: I wouldn't say
13 comfortable, but I don't think it would cause me a problem.

14 MR. GUYMON: Okay. It is something, perhaps you're
15 not comfortable, and I understand that, I appreciate that. Is
16 it something you can do fairly?

17 PROSPECTIVE JUROR FULLER: Yes.

18 MR. GUYMON: You and I can agree it'll be difficult,
19 however?

20 PROSPECTIVE JUROR FULLER: Yes.

21 MR. GUYMON: All right. Now then, if the State
22 proves beyond a reasonable doubt that Donte Johnson is
23 responsible, he's guilty for the crimes of murder with use of
24 a deadly weapon and the other crimes he's been charged with,
25 can you come back in this courtroom and return a verdict that

1 reflects a guilty verdict?

2 PROSPECTIVE JUROR FULLER: Yes.

3 MR. GUYMON: Do you have any thoughts about holding
4 people responsible for their criminal activity, for their
5 criminal conduct?

6 PROSPECTIVE JUROR FULLER: No.

7 MR. GUYMON: Do you feel as though the criminal
8 justice system attempts to hold people responsible?

9 PROSPECTIVE JUROR FULLER: I feel they attempt to do
10 that, yes.

11 MR. GUYMON: Okay. Do you think it's working, or
12 not so?

13 PROSPECTIVE JUROR FULLER: Overall, yes.

14 MR. GUYMON: Okay. Are you familiar with specific
15 cases where the criminal justice system failed here in the
16 community?

17 PROSPECTIVE JUROR FULLER: No.

18 MR. GUYMON: Let me talk a little bit about the
19 forms of penalty. Prior to filling out the jury
20 questionnaire, had you thought much about the death penalty?

21 PROSPECTIVE JUROR FULLER: No.

22 MR. GUYMON: Is it something you've thought about
23 since?

24 PROSPECTIVE JUROR FULLER: Yes.

25 MR. GUYMON: Okay. Can you share with me your

1 thoughts about having the responsibility of picking one of the
2 four penalties?

3 PROSPECTIVE JUROR FULLER: As a juror, I would have
4 to weigh all the evidence that's presented to me, and if those
5 are the areas that I have to choose from with my other jurors,
6 I feel that I could do that.

7 MR. GUYMON: Okay. Can you give consideration to
8 each of the four options?

9 PROSPECTIVE JUROR FULLER: Yes.

10 MR. GUYMON: There is an area there that -- question
11 number 33, that you didn't answer, perhaps an oversight. The
12 question is, "Would you say that you are generally (a) in
13 favor of the death penalty, (b) generally opposed to it, (c)
14 would consider it in certain circumstances, and (d) never
15 thought of it?" How would you answer that question?

16 PROSPECTIVE JUROR FULLER: I think it would be (c)
17 and (d), I've never thought of it, and yes, I could consider
18 it.

19 MR. GUYMON: All right. You said you can consider
20 the death penalty. Is that the same consideration, for
21 instance, that you could give to each one of the other
22 options?

23 PROSPECTIVE JUROR FULLER: Yes.

24 MR. GUYMON: Could you see yourself imposing, say,
25 life with the possibility of parole for a murderer?

1 PROSPECTIVE JUROR FULLER: Yes.

2 MR. GUYMON: Life without the possibility of parole
3 for a murderer?

4 PROSPECTIVE JUROR FULLER: Yes.

5 MR. GUYMON: And the death penalty, could you, in
6 fact, check the block on the form if you truly believed it was
7 the appropriate punishment for the crime?

8 PROSPECTIVE JUROR FULLER: Yes.

9 MR. GUYMON: Is that something you feel strongly
10 about?

11 PROSPECTIVE JUROR FULLER: Yes, I do.

12 MR. GUYMON: Okay. And for just a minute, can you
13 envision how difficult that decision will be?

14 PROSPECTIVE JUROR FULLER: Definitely.

15 MR. GUYMON: And in the face of that difficulty, or
16 how difficult that really is, is it something you can do?

17 PROSPECTIVE JUROR FULLER: Yes, definitely.

18 MR. GUYMON: Would you agree with me that it might
19 be easier to pick a penalty less than death?

20 PROSPECTIVE JUROR FULLER: Yes, I would agree with
21 you.

22 MR. GUYMON: Can you promise me this: and that is,
23 that you won't take the easy way out?

24 MR. FIGLER: Objection, Your Honor.

25 THE COURT: Sustained to that form.

1 MR. GUYMON: All right, let me finish.
2 Can you promise me this: that the verdict you pick
3 will be a just and fair verdict, no matter how difficult the
4 choice?
5 PROSPECTIVE JUROR FULLER: Definitely fair, yes.
6 MR. GUYMON: Thank you.
7 THE COURT: Pass for cause, Gary?
8 MR. GUYMON: Yes, Your Honor.
9 MR. SCISCENTO: Ms. Fuller, how long have you lived
10 out here in Las Vegas?
11 PROSPECTIVE JUROR FULLER: Going on four years.
12 MR. SCISCENTO: And where did you come from?
13 PROSPECTIVE JUROR FULLER: Originally Phoenix, but
14 the last ten years out of California.
15 MR. SCISCENTO: What part of California?
16 PROSPECTIVE JUROR FULLER: Northern California,
17 right outside of Richmond.
18 MR. SCISCENTO: Have you ever lived in L.A. County?
19 PROSPECTIVE JUROR FULLER: No.
20 MR. SCISCENTO: You ever been down to L.A. County?
21 PROSPECTIVE JUROR FULLER: Yes.
22 MR. SCISCENTO: Do you have any relatives that live
23 down there?
24 PROSPECTIVE JUROR FULLER: Yes.
25 MR. SCISCENTO: Okay. Where do they live in --

1 PROSPECTIVE JUROR FULLER: In-laws.

2 MR. SCISCENTO: -- in the area?

3 PROSPECTIVE JUROR FULLER: Los Angeles? I -- yeah,
4 Los Angeles.

5 MR. SCISCENTO: You don't know exactly what part of
6 Los Angeles, do you?

7 PROSPECTIVE JUROR FULLER: No.

8 MR. SCISCENTO: You've mentioned that the defendant
9 should prove his innocence, you've written that on the jury
10 questionnaire. Do you agree with that, that he should prove
11 his innocence?

12 PROSPECTIVE JUROR FULLER: I think I answered that
13 if there was something that could help, I would think that
14 they should do that; I believe that's the way I answered it.

15 MR. SCISCENTO: Well, you have in question 44(b) "A
16 defendant in a criminal trial should be required to prove his
17 or her innocence," and you mark strongly agree. And you agree
18 with that statement?

19 PROSPECTIVE JUROR FULLER: Yes, I agree with just
20 the way I just answered, in that if there's something that
21 will help, yes.

22 MR. SCISCENTO: Well, there was an agree and then a
23 strongly agree, so you really strongly agree that he's got to
24 prove his innocence?

25 PROSPECTIVE JUROR FULLER: No, I think the emphasis

1 that I want is on help, if there is something that will help
2 that person, yes. But I -- the person is being accused, so I
3 think the people who are bringing the accusation should more
4 strongly prove that.

5 MR. SCISCENTO: Okay, so the State should prove his
6 guilt?

7 PROSPECTIVE JUROR FULLER: Yes.

8 MR. SCISCENTO: And if the defendant doesn't do
9 anything and the State hasn't met their burden, what should
10 happen?

11 PROSPECTIVE JUROR FULLER: Then that person should
12 walk out.

13 MR. SCISCENTO: Must be -- and if in your mind he's
14 not guilty.

15 PROSPECTIVE JUROR FULLER: Then he's not guilty and
16 he should be let go.

17 MR. SCISCENTO: Mr. Guymon asked you, could you
18 equally give life without the possibility of parole, life with
19 the possibility of parole, and the death penalty for a murder.

20 PROSPECTIVE JUROR FULLER: Yes.

21 MR. SCISCENTO: And you answered it, for all of 'em
22 you could give -- or for a murderer you could give -- could
23 equally consider all forms of punishment?

24 PROSPECTIVE JUROR FULLER: Yes.

25 MR. SCISCENTO: And there's been some hypotheticals

1 on here about the 7-Eleven, somebody sitting out there at a 7-
2 Eleven who doesn't even know there's a robbery going on, or he
3 knows a robbery's going on, he knows a gun's being used, but
4 he knows -- doesn't know there's live ammunition in the gun,
5 and during the robbery a person gets killed. Now the lookout,
6 and the question is, that's a different form of murder, would
7 you give the death penalty to him. And your answer to that
8 would be?

9 PROSPECTIVE JUROR FULLER: No.

10 MR. SCISCENTO: Okay. Moving up the scale, multiple
11 murders, a person who's involved with multiple murders who you
12 have found guilty of actually committing the multiple murders,
13 could you give parole, life with the possibility of parole to
14 that person?

15 PROSPECTIVE JUROR FULLER: Possibly.

16 MR. SCISCENTO: Okay. What would you have to take
17 into account in order to give him that possibility of parole?

18 PROSPECTIVE JUROR FULLER: You talked earlier about
19 the mitigating circumstances, anything else that would be
20 provided to me that I could weigh, and bring a judgment on
21 that.

22 MR. SCISCENTO: Do you think it's a cheap way out
23 for a persons to rely on his background?

24 PROSPECTIVE JUROR FULLER: In this case, no.

25 MR. SCISCENTO: You'd mentioned that you think that

1 some biases exist in our society against African-American
2 males, possibly because of news programs and movies.

3 PROSPECTIVE JUROR FULLER: Yes.

4 MR. SCISCENTO: Can you expand on that a little?

5 PROSPECTIVE JUROR FULLER: Well, just the regular
6 movies that are out that always possibly portray young black
7 males as maybe drug addicts or murderers, just the way they
8 portray them in movies these days or on TV.

9 MR. SCISCENTO: And do you find that to be an
10 accurate depiction of young black males?

11 PROSPECTIVE JUROR FULLER: No, I don't.

12 MR. SCISCENTO: Do you think a black, young black
13 male in Clark County, Nevada, can get an adequate jury of his
14 peers?

15 PROSPECTIVE JUROR FULLER: Yes, 'cause I'm thinking
16 of myself, yes.

17 MR. SCISCENTO: You're thinking of yourself?

18 PROSPECTIVE JUROR FULLER: And as a citizen, I'm
19 sure there are other citizens who are just as I am.

20 MR. SCISCENTO: And as we're looking around, do
21 these make up the peers of a black -- a young black male?

22 PROSPECTIVE JUROR FULLER: Possibly.

23 MR. SCISCENTO: How many times previously have you
24 been down to L.A. visiting your relatives?

25 PROSPECTIVE JUROR FULLER: Since I've been in Nevada

1 we haven't been, so I would say maybe in the last five years,
2 or longer.

3 MR. SCISCENTO: Do you stay overnight down there?

4 PROSPECTIVE JUROR FULLER: Yes.

5 MR. SCISCENTO: Would you agree that that's a
6 violent place, L.A.?

7 PROSPECTIVE JUROR FULLER: Not necessarily. When
8 you say I stayed overnight, I've stayed with relatives.

9 MR. SCISCENTO: There's different areas though,
10 south-central, Compton. Would you -- have you ever been down
11 to those areas?

12 PROSPECTIVE JUROR FULLER: I've been to Compton to a
13 wedding, but I'm not sure if I've been in south-central, or
14 what is -- where is south-central?

15 MR. SCISCENTO: Are you asking me?

16 PROSPECTIVE JUROR FULLER: I don't know where south-
17 central is.

18 MR. SCISCENTO: You have no problem in giving the
19 different forms of punishment that we've talked about?

20 PROSPECTIVE JUROR FULLER: No.

21 MR. SCISCENTO: And no matter how heinous the crime
22 is --

23 PROSPECTIVE JUROR FULLER: No.

24 MR. SCISCENTO: -- you can put aside any emotions
25 that you have?

1 PROSPECTIVE JUROR FULLER: Yes.

2 MR. SCISCENTO: Because during the trial there's
3 probably gonna be some evidence brought out that's going to
4 show some gory details, some photographs. Would that offend
5 you in any way?

6 PROSPECTIVE JUROR FULLER: No.

7 MR. SCISCENTO: If you say a picture, a photograph
8 of a dead person, would that shock you into closing your mind
9 out to the innocence of the defendant?

10 PROSPECTIVE JUROR FULLER: Not to closing my mind
11 out, no. It would shock me.

12 MR. SCISCENTO: That would shock you?

13 PROSPECTIVE JUROR FULLER: Yes.

14 MR. SCISCENTO: Could you put aside that emotion?

15 PROSPECTIVE JUROR FULLER: Yes.

16 MR. SCISCENTO: We're gonna have testimony by a few
17 witnesses who are going to stand up -- sit up here and give
18 testimony and swear to tell the truth. If an officer is
19 testifying, are you gonna give any more credence to his
20 testimony?

21 PROSPECTIVE JUROR FULLER: No.

22 MR. SCISCENTO: Okay. What about a person who's
23 been granted some kind of immunity from the State to testify?

24 PROSPECTIVE JUROR FULLER: No.

25 MR. SCISCENTO: You're not gonna give them any more

1 credence, or any less credence?

2 PROSPECTIVE JUROR FULLER: Any less, no.

3 MR. SCISCENTO: What about an expert witness who is
4 a doctor of some sort and gets up here and testifies, are you
5 gonna give him more credence or less?

6 PROSPECTIVE JUROR FULLER: Possibly more.

7 MR. SCISCENTO: And why is that?

8 PROSPECTIVE JUROR FULLER: Usually when they're
9 expert witnesses they usually have some type of background
10 that can substantiate that, that's been proven, and so
11 possibly, yes.

12 MR. SCISCENTO: I want to make sure then. If a
13 doctor or scientist or expert witness gets up here and
14 testifies one way, would you just automatically say, well, it
15 must be truthful, what he says?

16 PROSPECTIVE JUROR FULLER: No, not necessarily.

17 MR. SCISCENTO: What about when there's conflicting
18 expert testimony, what are you gonna do in that case?

19 PROSPECTIVE JUROR FULLER: I'd have to determine the
20 factual part, what would convince me, and in weighing that out
21 with the jurors who are involved.

22 MR. SCISCENTO: Does it seem odd to you that two
23 people, two experts who are probably just as qualified, just
24 as educated, come up with two separate theories, would that
25 bother you?

1 PROSPECTIVE JUROR FULLER: No.

2 MR. SCISCENTO: And why not?

3 PROSPECTIVE JUROR FULLER: Because there's always
4 difference of opinions and different ways to come up with
5 different decisions.

6 MR. SCISCENTO: If chosen to sit on this jury and
7 make the determination of guilt or innocence, if you were to
8 stand alone against eleven other people, could you hold up
9 against the other eleven people?

10 PROSPECTIVE JUROR FULLER: Yes, I would.

11 MR. SCISCENTO: Even if they tell you, we're not
12 gonna leave this room until we come up with a decision?

13 PROSPECTIVE JUROR FULLER: Yes.

14 MR. SCISCENTO: Even if that means there's a -- even
15 if it means there's a possibility you'll spend weeks here?

16 PROSPECTIVE JUROR FULLER: Yes, I feel strongly
17 about that.

18 MR. SCISCENTO: Stick by your convictions?

19 PROSPECTIVE JUROR FULLER: Yes, sir.

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

21 THE COURT: Thank you. Defense's second, exercise
22 or waive?

23 MR. SCISCENTO: Your Honor, the defense would like
24 to thank and excuse Juror Number -- or Badge Number 555, Sally
25 Tackley.

1 THE COURT: Thank you, Ms. Tackley, you're excused.
2 And that seat will now go to Ms. Eaton.

3 The State may inquire.

4 MR. DASKAS: Thank you, Judge.

5 Ms. Eaton, you indicate on your questionnaire that
6 you wouldn't want to determine somebody's fate, and I think
7 the words you used were "unless they were guilty." Tell me
8 what you meant by that statement.

9 PROSPECTIVE JUROR EATON: Well, when thinking about
10 the death penalty, I wouldn't want to -- I don't know, I don't
11 know if I could live with, you know, if that was the decision
12 that I made; I'm not sure, I mean, I -- I don't know. It's
13 kinda -- it's a tough thing when you're filling out the
14 questionnaire.

15 MR. DASKAS: I understand. You understand, and I'm
16 sure you've heard us say this already, that a week and a half
17 from now, two weeks from now, there's a very real possibility
18 that if you're selected as a juror you'll be called upon to
19 make that decision.

20 PROSPECTIVE JUROR EATON: Mm-hmm.

21 MR. DASKAS: That the State of Nevada will ask for
22 you to return from the deliberation with a verdict form where
23 you check the box marked, I vote for death, against somebody
24 who's seated in this courtroom right now with us. Do you
25 believe you have the ability to do that?

1 PROSPECTIVE JUROR EATON: I don't know.

2 MR. DASKAS: And I appreciate your honesty. One of

3 the defense lawyers mentioned earlier today that we have to

4 ask now because if you tell us that ten days from now --

5 PROSPECTIVE JUROR EATON: Yeah.

6 MR. DASKAS: -- it's too late.

7 PROSPECTIVE JUROR EATON: Yes.

8 MR. DASKAS: You say you're not sure?

9 PROSPECTIVE JUROR EATON: Yes. I mean --

10 MR. DASKAS: That's a yes?

11 PROSPECTIVE JUROR EATON: Yes. Yeah, sorry.

12 MR. DASKAS: If you could create your own society,

13 would you have the death penalty, if you were making the

14 rules, making the laws?

15 PROSPECTIVE JUROR EATON: Yes, probably, I mean,

16 it's -- in a real world you would have to have it, I mean.

17 MR. DASKAS: Tell me what you think some of the

18 benefits might be for having a death penalty?

19 PROSPECTIVE JUROR EATON: That it'll make other

20 people think not to do that crime.

21 MR. DASKAS: Again if it's your society, if you're

22 making the rules, you say that you would have the death

23 penalty, but I take it that you're not sure you could be the

24 one to impose the death penalty, to vote for it.

25 PROSPECTIVE JUROR EATON: Yeah.

1 MR. DASKAS: That's true?

2 PROSPECTIVE JUROR EATON: Yes. I mean, it's easy
3 to, when you're not here, you know.

4 MR. DASKAS: I made the comment earlier to one of
5 the prospective jurors that I'm certain we've all had
6 discussions, philosophical discussions, perhaps discussions in
7 the classroom about the death penalty. And it's one thing to
8 have that discussion in an academic setting, but it's
9 something entirely different to be faced with the situation
10 you are now. Would you agree with that?

11 PROSPECTIVE JUROR EATON: Yes.

12 MR. DASKAS: And I guess what you're telling me is
13 you're not certain that you could do that?

14 PROSPECTIVE JUROR EATON: Yes.

15 MR. DASKAS: Is that accurate?

16 PROSPECTIVE JUROR EATON: Yes.

17 MR. DASKAS: Judge, I'd challenge for cause.

18 THE COURT: Overruled.

19 MR. DASKAS: I have no further questions.

20 THE COURT: Thank you.

21 MR. SCISCENTO: Ms. Eaton --

22 PROSPECTIVE JUROR EATON: Mm-hmm.

23 MR. SCISCENTO: -- there are certain circumstances
24 when you could consider giving the death penalty, is that
25 correct?

1 PROSPECTIVE JUROR EATON: Possibly.

2 MR. SCISCENTO: And I think it's starting to set in,
3 the reality of it.

4 PROSPECTIVE JUROR EATON: Yes. [Crying]. Sorry.

5 MR. SCISCENTO: What circumstances would you
6 consider it?

7 PROSPECTIVE JUROR EATON: I don't know. I -- maybe
8 crimes against children.

9 MR. SCISCENTO: You had mentioned that the
10 defendants must prove the innocence --

11 PROSPECTIVE JUROR EATON: Well --

12 MR. SCISCENTO: -- what do you mean by that?

13 PROSPECTIVE JUROR EATON: Well --

14 MR. SCISCENTO: Do you want to take a minute?

15 PROSPECTIVE JUROR EATON: Yeah -- well, I'm fine. I
16 don't -- when I was filling it out, I mean, I didn't
17 understand.

18 MR. SCISCENTO: Okay. You understand now the --

19 PROSPECTIVE JUROR EATON: Yeah, that everybody is --
20 yeah. I understand.

21 MR. SCISCENTO: Can we approach for a moment?

22 THE COURT: Sure.

23 (Off-record bench conference)

24 THE COURT: Do you pass for cause, Mr. Sciscento?

25 MR. SCISCENTO: We pass for cause, Your Honor.

1 THE COURT: Thank you.
2 The State's third, exercise or waive?
3 MR. GUYMON: The -- the State would thank and excuse
4 Juror seated number 4, Juror Number 572.
5 THE COURT: Thank you, Ms. Eaton, you are excused.
6 And, Ms. Calvert, you're up.
7 MR. GUYMON: Good afternoon.
8 PROSPECTIVE JUROR CALVERT: Hi.
9 MR. GUYMON: How are you?
10 PROSPECTIVE JUROR CALVERT: Fine.
11 MR. GUYMON: Let me start kind of -- I usually go
12 with accountability and then go to penalty, let me go straight
13 to penalty because you said something interesting in your
14 questionnaire. And you know what I'm getting at, right? You
15 indicated you were opposed to the death penalty?
16 PROSPECTIVE JUROR CALVERT: Yes.
17 MR. GUYMON: Is that still true today?
18 PROSPECTIVE JUROR CALVERT: Probably not as much as
19 I was last week when I filled out the questionnaire, but I
20 still feel I am opposed to it.
21 MR. GUYMON: Okay. You also wrote that you would
22 never vote for the death penalty. Is that true?
23 PROSPECTIVE JUROR CALVERT: Yes.
24 MR. GUYMON: Is that still true today?
25 PROSPECTIVE JUROR CALVERT: Yeah.

1 MR. GUYMON: As you sit here, your opposition to the
2 death penalty is such that you won't consider it?

3 PROSPECTIVE JUROR CALVERT: I would probably
4 consider it, for me to be that strong and say, no, I
5 shouldn't. But there are probably a slight chance that I
6 could consider it.

7 MR. GUYMON: Okay. You say there's a slight chance?

8 PROSPECTIVE JUROR CALVERT: Yeah. I mean, it would
9 really be a situation where I just felt that person was just
10 so cold-hearted, and that would be definitely the only answer
11 to the problem, you know, I could consider it.

12 MR. GUYMON: Okay. Could you actually do it, could
13 you vote for it?

14 PROSPECTIVE JUROR CALVERT: No. No, I couldn't. I
15 know the --

16 MR. GUYMON: You understand that we need persons
17 that will ultimately consider fairly all four, and to consider
18 them means you could envision yourself choosing one. In this
19 case you could not choose the death penalty, is that true?

20 PROSPECTIVE JUROR CALVERT: Right.

21 MR. GUYMON: Your opposition is such that it
22 wouldn't permit you to choose it, if you felt it was
23 appropriate?

24 PROSPECTIVE JUROR CALVERT: No. No, I couldn't.

25 MR. GUYMON: Judge, we challenge for cause.