

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONTE JOHNSON,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

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**RESPONDENT'S APPENDIX
VOL. II**

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1 THE COURT: Any traverse?

2 MR. FIGLER: We'll oppose, Your Honor, I'd like to
3 rehabilitate.

4 THE COURT: Of course.

5 MR. FIGLER: Thank you.

6 Hi, Ms. Calvert.

7 PROSPECTIVE JUROR CALVERT: Hi, how are you?

8 MR. FIGLER: Good, thank you. I think we all can
9 understand your feelings about the death penalty, and
10 certainly there are some people who can only impose the death
11 penalty in very rare and exceptional circumstances. You
12 understand that, correct?

13 PROSPECTIVE JUROR CALVERT: Mm-hmm.

14 MR. FIGLER: Okay.

15 PROSPECTIVE JUROR CALVERT: Yes.

16 MR. FIGLER: Now, some people really can't think of
17 a case where the death penalty is appropriate, but they can
18 imagine situations where they could conceive of possibly
19 imposing the death penalty, for example, like the World Trade
20 Center or what Ms. Patterson said about the daycare center
21 with all the innocent little kiddies and all that. And you
22 understand that, right?

23 PROSPECTIVE JUROR CALVERT: Yes.

24 MR. FIGLER: Okay. Now I want to assure you that no
25 one is asking you whether you are gonna vote for or against

1 the death penalty in this particular case, in fact, you're not
2 required to tell us how you're going to vote in this
3 particular case. We're just basically asking for you to be
4 honest, right?

5 PROSPECTIVE JUROR CALVERT: Right.

6 MR. FIGLER: Okay.

7 PROSPECTIVE JUROR CALVERT: Yes.

8 MR. FIGLER: Now, I hope, and I believe that the
9 death penalty is not even gonna be an issue in this case, but
10 I want to ask you some questions to kind of get to the heart
11 of your views about it. Because the law requires that you be
12 able to consider it as a punishment, not necessarily impose
13 it. Do you understand that?

14 PROSPECTIVE JUROR CALVERT: Yes, I do.

15 MR. FIGLER: Okay. So now let me ask you this. Can
16 you think of a time in your life when you considered doing
17 something but didn't actually do it?

18 PROSPECTIVE JUROR CALVERT: Yes.

19 MR. FIGLER: What would be the example that comes to
20 your mind?

21 PROSPECTIVE JUROR CALVERT: I don't know if I can
22 think of one. Geez, I don't know.

23 MR. FIGLER: Well, how 'bout like buying a house or
24 a car or something like that?

25 PROSPECTIVE JUROR CALVERT: Yeah, something like

1 that, yeah.

2 MR. FIGLER: Okay.

3 PROSPECTIVE JUROR CALVERT: Changing jobs, doing
4 things like that, yeah.

5 MR. FIGLER: Sure. Okay, all good examples. Now,
6 in that situation you considered changing jobs or buying a
7 car, but that doesn't necessarily mean that you have to do it.

8 PROSPECTIVE JUROR CALVERT: Right.

9 MR. FIGLER: Okay. Now, if there is a punishment
10 phase in this particular case, and -- and I wrote down some
11 notes so I'm going to keep referring to those -- you'll have a
12 choice between these four various forms of punishment. Now,
13 as I stated, you'll never be put in the position where you
14 have to vote for the death penalty if you don't believe it's
15 proper, and no one will.

16 PROSPECTIVE JUROR CALVERT: Yes.

17 MR. FIGLER: However, to be a juror in this
18 particular case then you have to only be able to consider all
19 the evidence and follow the law with regard to the death
20 penalty. Now do you think you can do those things, follow the
21 law and consider it?

22 PROSPECTIVE JUROR CALVERT: Yes, I could.

23 MR. FIGLER: Okay. Now, do you feel that a person
24 who is facing the death penalty deserves a fair cross-section
25 of the community?

1 PROSPECTIVE JUROR CALVERT: Oh, yes.

2 MR. FIGLER: Okay. Why do you think that's
3 important?

4 PROSPECTIVE JUROR CALVERT: I just think everything
5 should be fair, and, you know, just --

6 MR. FIGLER: Okay. So you think that it's important
7 for the jury to be composed of people who have perhaps
8 different views regarding the death penalty to represent the
9 cross-section of society?

10 PROSPECTIVE JUROR CALVERT: I think so, yes.

11 MR. FIGLER: Now do you think that it would be fair
12 to have a jury comprised solely of people who strongly believe
13 in the death penalty, do you think that's fair?

14 PROSPECTIVE JUROR CALVERT: No, I don't.

15 MR. FIGLER: So what do you think that we can do to
16 make sure that the jury is comprised of people who have
17 different kind of views?

18 PROSPECTIVE JUROR CALVERT: To have people on the
19 jury that have different kind of views.

20 MR. FIGLER: Okay. To ask these type of questions,
21 perhaps?

22 PROSPECTIVE JUROR CALVERT: Yes, exactly. Right.

23 MR. FIGLER: Okay. Now, you have your particular
24 views about the death penalty, and you've given answers to the
25 questions. Now why do you think it's important to society and

1 to John White over there, to have someone with your kind of
2 views on the jury?

3 PROSPECTIVE JUROR CALVERT: I just feel that way he
4 can get a fair trial, he can get a fair -- if he's convicted,
5 that, you know, whether he is given life in prison, whether
6 he's given -- I mean, it has to have different views,
7 everybody has to feel differently. Get together, talk about
8 it, see what you feel is the best punishment for that crime.

9 MR. FIGLER: Okay. Now the Judge has explained to
10 you, and the prosecutor and I think Mr. Sciscento and myself
11 have as well, that there is a possibility of two phases in any
12 case like this; right?

13 PROSPECTIVE JUROR CALVERT: Mm-hmm. Yes.

14 MR. FIGLER: Now the first phase is what they -- the
15 trial, to see, you know, if you believe beyond a reasonable
16 doubt whether he is -- he's guilty or not guilty, you
17 understand that?

18 PROSPECTIVE JUROR CALVERT: Right. Yes.

19 MR. FIGLER: And the Judge will give you
20 instructions to determine the guilt or innocence of the
21 individual. Do you understand that?

22 PROSPECTIVE JUROR CALVERT: Yes.

23 MR. FIGLER: Now are you gonna be able to follow the
24 law to determine whether or not he's guilty or innocent?

25 PROSPECTIVE JUROR CALVERT: Yes.

1 MR. FIGLER: Okay, good. Now, if there comes a time
2 when we have to go into the penalty phase, and the jury at
3 that point will have these four choices that we've all been
4 talking about, before the jury deliberates about it, the
5 defense, the prosecution, they're each gonna present what
6 we've been referring to as mitigating and aggravating
7 circumstances. Now the Judge will give you the law on that,
8 on what is mitigating and aggravating circumstances, and at
9 that point the jury will discuss the evidence and consider
10 their verdicts.

11 PROSPECTIVE JUROR CALVERT: Mm-hmm.

12 MR. FIGLER: Okay? Now do you understand that this
13 is the two-stage process of the trial?

14 PROSPECTIVE JUROR CALVERT: Yes.

15 MR. FIGLER: Okay. Now you understand also that you
16 may never ever have to consider sentencing in this particular
17 case?

18 PROSPECTIVE JUROR CALVERT: Yes, I do.

19 MR. FIGLER: Okay. Now, do you think that in the
20 second part, if we get to a second part, you'll be able to
21 follow the Judge's instructions and the law in this particular
22 case as far as what to consider?

23 PROSPECTIVE JUROR CALVERT: Yes, I do.

24 MR. FIGLER: And again, no one's ever gonna put you
25 in a position of having to vote for the death penalty no

1 matter what, you understand that?

2 PROSPECTIVE JUROR CALVERT: Yes, I do.

3 MR. FIGLER: And that belongs to every individual
4 juror, you understand that?

5 PROSPECTIVE JUROR CALVERT: Yes.

6 MR. FIGLER: Now, as a juror --

7 THE COURT: Mr. Figler, some of this is traverse and
8 some of this is going way beyond it. I ask you to limit it to
9 traverse.

10 MR. FIGLER: So ultimately, you agree that if you
11 were given the Judge's instructions you would be able to
12 follow those with regard to sentencing, correct?

13 PROSPECTIVE JUROR CALVERT: Yes.

14 MR. FIGLER: Okay. Now, you would agree that if
15 someone were threatening to kill you, or kill your children,
16 you could consider taking the person's life in that type of
17 situation, right?

18 MR. GUYMON: Judge, I'm gonna object. First of all,
19 it's clouds the rule and second of all, it's not the
20 discretion of, the self-defense is a completely different case

21 MR. FIGLER: Okay. It's just consideration of the
22 options, and that's what I'm getting to.

23 THE COURT: Well, let's get to that then.

24 MR. FIGLER: Okay. So you could consider it in that
25 type of situation?

1 PROSPECTIVE JUROR CALVERT: Yes.

2 MR. FIGLER: Okay. And you would also agree with me
3 that there are some people in the world who have committed
4 crimes so heinous, Manson, Hitler, Timothy McViegh, World
5 Trade Center, the daycare center, those type of things, that
6 they could be deserving of the death penalty, don't you think?

7 PROSPECTIVE JUROR CALVERT: I do. Yes, I do.

8 MR. FIGLER: Thank you, Judge.

9 THE COURT: Ma'am, but what we never got around to
10 is what Mr. Daskas asked you, which is, you take those people,
11 World Trade Center, Manson, people you just said you might
12 think deserve the death penalty, could you sign the verdict
13 saying they should get the death penalty?

14 PROSPECTIVE JUROR CALVERT: As I talk here I
15 realize, yes, I could.

16 THE COURT: Okay. For cause overruled.

17 Do you have any supplemental voir dire?

18 MR. GUYMON: Not at this time, Your Honor. We'll
19 pass for cause.

20 THE COURT: Thank you.

21 It's defense's third to exercise and waive --
22 exercise or waive.

23 MR. SCISCENTO: Thank you, Your Honor. The Defense
24 would like to thank and relieve Juror Number -- Badge Number
25 568, Henry Shink.

1 THE COURT: Mr. Shink, who is in seat -- which is
2 what I'm going by, 3. Mr. Shink, thank you very much, you're
3 excused.

4 And, Ms. Jenkins, it's your turn.

5 MR. DASKAS: May I proceed, Judge?

6 THE COURT: Sure.

7 MR. DASKAS: Thank you. Good afternoon.

8 PROSPECTIVE JUROR JENKINS: Good afternoon.

9 MR. DASKAS: There's been a lot of discussion about
10 the State's burden in this case, that it's our burden to prove
11 the defendant's guilt beyond a reasonable doubt. You've heard
12 those discussions, I take it?

13 PROSPECTIVE JUROR JENKINS: Yes.

14 MR. DASKAS: If you're selected as a juror, and if
15 after hearing the evidence you are personally convinced beyond
16 a reasonable doubt that the defendant is guilty, can you
17 promise the State that you will return verdicts of guilty?

18 PROSPECTIVE JUROR JENKINS: Yes.

19 MR. DASKAS: Tell me your thoughts in general about
20 police here in Las Vegas.

21 PROSPECTIVE JUROR JENKINS: I believe they try their
22 hardest to keep the peace. Sometimes -- not everyone's
23 perfect, they do make mistakes, and so -- but in general they
24 try their best.

25 MR. DASKAS: There's been some discussion about the

1 fact that there may be witnesses who take the stand who have
2 made choices in their life that perhaps you and I wouldn't
3 make, perhaps a choice to use drugs. Can you listen to the
4 testimony of those witnesses and at least give those persons a
5 fair shake when it comes to determining their credibility?

6 PROSPECTIVE JUROR JENKINS: Yes.

7 MR. DASKAS: You wouldn't disregard everything
8 they say simply because of choices they may have made in their
9 back --

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

11 MR. DASKAS: There's been a lot of discussion so far
12 about the death penalty.

13 PROSPECTIVE JUROR JENKINS: Right.

14 MR. DASKAS: Tell me your thoughts generally about
15 the death penalty.

16 PROSPECTIVE JUROR JENKINS: I believe the death
17 penalty should be imposed on some severe cases, like the ones
18 mentioned earlier. I do believe crimes on children should be,
19 you know, death penalty, 'cause they're the future and they
20 should be protected. But I do believe that all penalties
21 should be considered in crimes.

22 MR. DASKAS: You realized, after reading your
23 questionnaire, that there are four possible punishments in a
24 murder -- a first degree murder conviction, correct?

25 PROSPECTIVE JUROR JENKINS: Yes, I do.

1 MR. DASKAS: Can you consider all four of those?
2 PROSPECTIVE JUROR JENKINS: Yes, I could.
3 MR. DASKAS: Obviously it's one thing to consider
4 the four possibilities.
5 PROSPECTIVE JUROR JENKINS: Right.
6 MR. DASKAS: It's certainly quite different to
7 return from the deliberation room and say, I vote to put
8 somebody to death. You would agree that's quite a bit
9 different?
10 PROSPECTIVE JUROR JENKINS: Yes.
11 MR. DASKAS: It's certainly a possibility in this
12 case that we'll call upon you to do that. You understand
13 that?
14 PROSPECTIVE JUROR JENKINS: Yes, I do.
15 MR. DASKAS: Do you feel like you have the ability
16 -- if this is the appropriate case for death, do you feel like
17 you have the ability to vote for death in this case?
18 PROSPECTIVE JUROR JENKINS: I believe that I do,
19 yes.
20 MR. DASKAS: You say you believe?
21 PROSPECTIVE JUROR JENKINS: Yes.
22 MR. DASKAS: Are you certain of it?
23 PROSPECTIVE JUROR JENKINS: I'd be certain, yes, if
24 I -- if I felt that the evidence was put in front of me that
25 it was a guilty verdict, and that -- the certain

1 circumstances, like no regard for human life, just like no
2 remorse, then, yes, I believe I could vote for death penalty.

3 MR. DASKAS: Would you agree with the notion that
4 the worst possible crime deserves the worst possible
5 punishment?

6 PROSPECTIVE JUROR JENKINS: It depends a lot on the
7 person.

8 MR. DASKAS: All right. Let me ask it another way.

9 PROSPECTIVE JUROR JENKINS: Okay.

10 MR. DASKAS: Which was my next question. Would you
11 believe that the worst possible defendant deserves the worst
12 possible punishment?

13 PROSPECTIVE JUROR JENKINS: Yes, I do.

14 MR. DASKAS: And if you combine the two, that is you
15 have the worst possible crime committed by the worst possible
16 defendant, would you believe in that situation death would be
17 appropriate?

18 PROSPECTIVE JUROR JENKINS: Yes, I do.

19 MR. DASKAS: You understand that during the first
20 phase of this trial, what we call the guilt, that although you
21 may have some sympathy for the defendant as he sits in court,
22 you have to set that aside and base your verdicts, your
23 decision, solely on the evidence from that witness stand?

24 PROSPECTIVE JUROR JENKINS: Correct.

25 MR. DASKAS: Do you feel like both sides would get a

1 fair trial if you sat as a juror?

2 PROSPECTIVE JUROR JENKINS: Yes, I do.

3 MR. DASKAS: Anything that you've heard, as you sat
4 in the audience today or that we've discussed so far, that you
5 think is important that we haven't heard about you as a
6 potential juror in this case?

7 PROSPECTIVE JUROR JENKINS: No.

8 MR. DASKAS: Thank you.

9 THE COURT: Thank you. Defense may inquire.

10 MR. SCISCENTO: Ms. Jenkins?

11 PROSPECTIVE JUROR JENKINS: Yes.

12 MR. SCISCENTO: A very insightful statement, you
13 feel that everyone is -- in the legal system is innocent until
14 proven guilty, it's the media who causes people to make
15 judgments on the persons accused of crimes. Have you heard
16 any pretrial publicity on this? Have you heard anything about
17 this case?

18 PROSPECTIVE JUROR JENKINS: No, I haven't, not on
19 this case.

20 MR. SCISCENTO: You don't know any -- any other --
21 anything other than the facts that we -- have been presented
22 so far?

23 PROSPECTIVE JUROR JENKINS: Correct.

24 MR. SCISCENTO: You also make another statement
25 which I find very insightful, I however feel that a criminal

1 is a criminal no matter what color.

2 PROSPECTIVE JUROR JENKINS: Correct.

3 MR. SCISCENTO: So regardless of the color of his
4 skin, it's the makeup of the personality and the mind.

5 PROSPECTIVE JUROR JENKINS: Right.

6 MR. SCISCENTO: So just because Mr. White is Black,
7 doesn't make him a criminal?

8 PROSPECTIVE JUROR JENKINS: Absolutely not, no.

9 MR. SCISCENTO: Just because a witness is white
10 doesn't make him a truth teller?

11 PROSPECTIVE JUROR JENKINS: Right.

12 MR. SCISCENTO: You would agree that you've got to
13 listen to both sides of the story first?

14 PROSPECTIVE JUROR JENKINS: Yes, I agree with that.

15 MR. SCISCENTO: You stated children are the future,
16 you made that kind of statement --

17 PROSPECTIVE JUROR JENKINS: Right.

18 MR. SCISCENTO: -- earlier. Would you agree that
19 it's probably more beneficial, very important to provide
20 guidance to children at an early age?

21 PROSPECTIVE JUROR JENKINS: Yes, I do.

22 MR. SCISCENTO: You think -- what effect do you
23 think that would have?

24 PROSPECTIVE JUROR JENKINS: I think that maybe if
25 the children were helped at a younger age then it would guide

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

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

6 PROSPECTIVE JUROR JENKINS: I believe it would.

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

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

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

14 PROSPECTIVE JUROR JENKINS: Yes, I do.

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

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

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

21 PROSPECTIVE JUROR JENKINS: Yes.

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

24 PROSPECTIVE JUROR JENKINS: Engineering.

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

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

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

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

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

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

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

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

21 PROSPECTIVE JUROR JENKINS: Right.

22 MR. SCISCENTO: How many people were there?

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

25 MR. SCISCENTO: And you could stand by your

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

3 PROSPECTIVE JUROR JENKINS: Right.

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

6 PROSPECTIVE JUROR JENKINS: Correct.

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

9 PROSPECTIVE JUROR JENKINS: Yes.

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

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

17 MR. SCISCENTO: I'm sorry.

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

20 MR. SCISCENTO: Which part of Boston?

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

23 MR. SCISCENTO: In the Back Bay?

24 PROSPECTIVE JUROR JENKINS: Yes.

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

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

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

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

6 PROSPECTIVE JUROR JENKINS: Right.

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

9 PROSPECTIVE JUROR JENKINS: Yes, I agree.

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

13 PROSPECTIVE JUROR JENKINS: I'd agree.

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

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

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

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

23 MR. SCISCENTO: How can we overcome that?

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

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

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

7 PROSPECTIVE JUROR JENKINS: Yes, I could.

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

10 PROSPECTIVE JUROR JENKINS: Right.

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

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

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

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

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

21 PROSPECTIVE JUROR JENKINS: Right, severity.

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

25 PROSPECTIVE JUROR JENKINS: Right.

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

3 PROSPECTIVE JUROR JENKINS: Correct.

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

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

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

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

12 MR. SCISCENTO: Okay. You --

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

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

19 PROSPECTIVE JUROR JENKINS: Right.

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

24 PROSPECTIVE JUROR JENKINS: Right.

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

1 just rush to judgment on this?

2 PROSPECTIVE JUROR JENKINS: Yes, I do.

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

5 PROSPECTIVE JUROR JENKINS: Yes, I could.

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

7 PROSPECTIVE JUROR JENKINS: Right.

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

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

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

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

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

17 THE COURT: Sure.

18 MR. FIGLER: Thanks, Judge.

19 THE COURT: State versus Patrick McMillin.

20 (Colloquy between the Court and Clerk)

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

23 Would counsel approach the bench, please?

24 (Off-record bench conference)

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

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

2 (Off-record bench conference)

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

6 Hans Weding.

7 The State may inquire.

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

9 PROSPECTIVE JUROR WEDING: Hello.

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

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

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

20 PROSPECTIVE JUROR WEDING: Yes.

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

24 PROSPECTIVE JUROR WEDING: Sure.

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

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

5 PROSPECTIVE JUROR WEDING: I understand.

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

8 PROSPECTIVE JUROR WEDING: Yes.

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

14 PROSPECTIVE JUROR WEDING: Yes.

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

17 PROSPECTIVE JUROR WEDING: No.

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

21 PROSPECTIVE JUROR WEDING: Yes.

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

24 PROSPECTIVE JUROR WEDING: If needed, yes.

25 MR. DASKAS: What are your thoughts about the

1 Metropolitan Police Department here in Las Vegas?

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

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

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

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

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

16 MR. DASKAS: Yes.

17 PROSPECTIVE JUROR WEDING: Yes, I was.

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

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

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

24 PROSPECTIVE JUROR WEDING: It was probably DA.

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

1 Mr. Guymon and I work for?

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

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

6 PROSPECTIVE JUROR WEDING: Mm-hmm.

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

9 PROSPECTIVE JUROR WEDING: Yeah, I probably could.

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

12 PROSPECTIVE JUROR WEDING: Yes.

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

16 PROSPECTIVE JUROR WEDING: Yes.

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

18 PROSPECTIVE JUROR WEDING: Yeah.

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

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

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

7 PROSPECTIVE JUROR WEDING: Would I be fair?

8 MR. DASKAS: Yes.

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

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

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

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

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

25 THE COURT: Go ahead, Mr. Daskas.

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

4 PROSPECTIVE JUROR WEDING: To a point they did.

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

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

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

12 PROSPECTIVE JUROR WEDING: I little bit, yeah.

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

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

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

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

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

25 PROSPECTIVE JUROR WEDING: Yeah.

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

3 PROSPECTIVE JUROR WEDING: Yeah, I did.

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

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

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

10 PROSPECTIVE JUROR WEDING: Yes, I do.

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

14 PROSPECTIVE JUROR WEDING: Yes, I do.

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

18 PROSPECTIVE JUROR WEDING: Yes, I do.

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

22 PROSPECTIVE JUROR WEDING: Yes.

23 MR. DASKAS: Thank you.

24 THE COURT: Pass for cause.

25 MR. DASKAS: Yes, Judge.

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

1 MR. SCISCENTO: Yeah.

2 PROSPECTIVE JUROR WEDING: I don't know.

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

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

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

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

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

12 PROSPECTIVE JUROR WEDING: Most of it, yeah.

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

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

19 MR. SCISCENTO: All right.

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

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

1 PROSPECTIVE JUROR WEDING: Right.

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

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

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

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

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

11 PROSPECTIVE JUROR WEDING: Taking someone's life.

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

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

17 THE COURT: Go ahead, Joe.

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

21 PROSPECTIVE JUROR WEDING: Blatantly, yeah. Yeah.

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

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

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

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

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

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

15 PROSPECTIVE JUROR WEDING: No.

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

17 THE COURT: Traverse?

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

1 PROSPECTIVE JUROR WEDING: Yes.

2 MR. DASKAS: And --

3 THE COURT: Those instructions mean, Mr. Weding,
4 that it's never automatic that you must oppose the death
5 penalty even for first degree murder. Do you understand that?

6 PROSPECTIVE JUROR WEDING: Yes.

7 THE COURT: Well, it seems like when Mr. Sciscento
8 was asking you the question you had indicated that you would
9 automatically vote for --

10 PROSPECTIVE JUROR WEDING: Oh, for the death
11 penalty.

12 THE COURT: Right.

13 PROSPECTIVE JUROR WEDING: Okay.

14 THE COURT: Is that a misunderstanding?

15 PROSPECTIVE JUROR WEDING: Yeah, it was.

16 THE COURT: Okay.

17 MR. DASKAS: As you -- I apologize, Judge, were you
18 done?

19 THE COURT: Well, cause challenge is overruled.

20 MR. DASKAS: Thank you, Judge.

21 MR. SCISCENTO: Your Honor --

22 THE COURT: You may ask any further questions that
23 you'd like, Joe.

24 MR. SCISCENTO: Your Honor, it wasn't that he would
25 automatically vote for the death penalty is that he would not

1 consider life without.

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

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

13 PROSPECTIVE JUROR WEDING: Right.

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

15 PROSPECTIVE JUROR WEDING: Yes.

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

19 PROSPECTIVE JUROR WEDING: Consider.

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

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

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

1 MR. SCISCENTO: I --

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

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

9 MR. SCISCENTO: Which --

10 THE COURT: Move on to another area.

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

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

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

20 PROSPECTIVE JUROR WEDING: No.

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

25 PROSPECTIVE JUROR WEDING: Give them anymore

1 credence?

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

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

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

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

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

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

16 MR. SCISCENTO: Yes.

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

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

21 PERSPECTIVE JUROR WEDING: Hopefully.

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

24 PERSPECTIVE JUROR WEDING: Yeah.

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

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

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

7 PERSPECTIVE JUROR WEDING: I do.

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

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

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

15 PERSPECTIVE JUROR WEDING: Right.

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

19 PERSPECTIVE JUROR WEDING: Right.

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

22 PERSPECTIVE JUROR WEDING: Right.

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

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

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

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

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

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

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

11 (Prospective jurors are present)

12 THE COURT: The State may inquire.

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

14 PERSPECTIVE JUROR PAULL: Hello.

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

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

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

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

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

23 PERSPECTIVE JUROR PAULL: Nope.

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

1 PERSPECTIVE JUROR PAULL: I believe it does.

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

4 PERSPECTIVE JUROR PAULL: Absolutely.

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

6 PERSPECTIVE JUROR PAULL: Yes.

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

11 PERSPECTIVE JUROR PAULL: I believe so.

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

16 PERSPECTIVE JUROR PAULL: Not really.

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

19 PERSPECTIVE JUROR PAULL: Certainly.

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

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

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

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

6 PERSPECTIVE JUROR PAULL: Yes.

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

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

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

13 PERSPECTIVE JUROR PAULL: Yes.

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

17 PERSPECTIVE JUROR PAULL: Yes.

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

20 PERSPECTIVE JUROR PAULL: Yes.

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

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

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

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

1 MR. GUYMON: Despite the consequences?

2 PERSPECTIVE JUROR PAULL: Yes.

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

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

11 MR. GUYMON: Okay.

12 PERSPECTIVE JUROR PAULL: Yeah.

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

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

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

19 THE COURT: Thank you. Defense may inquire.

20 MR. FIGLER: Thank you, Judge.

21 Good afternoon, Mr. Paull.

22 PERSPECTIVE JUROR PAULL: Hello.

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

1 PERSPECTIVE JUROR PAULL: Yes.

2 MR. FIGLER: Okay. Do you think that everybody in

3 the world should be accountable for their own choices?

4 PERSPECTIVE JUROR PAULL: Yes, they should.

5 MR. FIGLER: Okay. So if people engage in a risky

6 lifestyle they have to be accountable for their choices too,

7 right?

8 PERSPECTIVE JUROR PAULL: Yes. If they know the

9 risks involved, yes.

10 MR. FIGLER: Okay. Now, your wife is a -- or your

11 spouse is a nurse?

12 PERSPECTIVE JUROR PAULL: Yes.

13 MR. FIGLER: Okay. Now, have you ever had

14 discussion about that job -- that job function being a nurse?

15 PERSPECTIVE JUROR PAULL: Of course.

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

17 lives?

18 PERSPECTIVE JUROR PAULL: Mm-hmm.

19 MR. FIGLER: Yes?

20 PERSPECTIVE JUROR PAULL: Yes.

21 MR. FIGLER: Sorry, it's just for the recording.

22 Now, would you agree that a life is valuable even if that

23 person is reprehensible in that situation?

24 MR. GUYMON: Judge, I'm going to object under Rule

25 7.70, subsection (b), that's argument of the case.

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

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

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

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

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

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

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

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

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

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

4 PERSPECTIVE JUROR PAULL: Great.

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

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

10 MR. FIGLER: Can you explain that?

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

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

24 PERSPECTIVE JUROR PAULL: Yes. Absolutely.

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

1 citizens, is that what you're saying?

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

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

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

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

12 PERSPECTIVE JUROR PATTERSON: I took care of it.

13 THE COURT: Oh, you did?

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

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

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

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

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

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

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

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

10 PERSPECTIVE JUROR PAULL: Correct.

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

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

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

21 PERSPECTIVE JUROR PAULL: That's true.

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

24 PERSPECTIVE JUROR PAULL: Yes.

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

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

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

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

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

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

20 PERSPECTIVE JUROR PAULL: I wouldn't.

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

25 PERSPECTIVE JUROR PAULL: That's correct.

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

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

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

11 THE COURT: Traverse?

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

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

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

24 PERSPECTIVE JUROR PAULL: Right.

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

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

3 PERSPECTIVE JUROR PAULL: Yes, I can.

4 MR. GUYMON: Will you do that?

5 PERSPECTIVE JUROR PAULL: Yes, I will.

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

8 PERSPECTIVE JUROR PAULL: I believe so.

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

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

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

14 PERSPECTIVE JUROR PAULL: I will do that.

15 MR. GUYMON: Thank you.

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

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

19 THE COURT: Go ahead.

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

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

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

24 PERSPECTIVE JUROR PAULL: Yes, I did.

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

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

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

6 MR. FIGLER: Yes.

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

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

12 PERSPECTIVE JUROR PAULL: I agree.

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

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

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

18 PERSPECTIVE JUROR PAULL: No.

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

21 PERSPECTIVE JUROR PAULL: Yes.

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

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

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

7 PERSPECTIVE JUROR PAULL: No.

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

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

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

13 PERSPECTIVE JUROR PAULL: Yes.

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

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

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

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

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

25 PERSPECTIVE JUROR PAULL: Well, I think actually the

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

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

10 PERSPECTIVE JUROR PAULL: Yes.

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

14 PERSPECTIVE JUROR PAULL: Certainly.

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

16 PERSPECTIVE JUROR PAULL: Yes.

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

18 PERSPECTIVE JUROR PAULL: O.J.

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

21 PERSPECTIVE JUROR PAULL: Yeah.

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

24 PERSPECTIVE JUROR PAULL: That's correct.

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

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

3 PERSPECTIVE JUROR PAULL: No.

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

7 PERSPECTIVE JUROR PAULL: Well, I --

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

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

16 Would you folks approach the bench.

17 (Off-record bench conference)

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

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

5 The State's fifth to exercise or waive.

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

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

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

12 THE COURT: Okay.

13 THE CLERK: Next will be Robert --

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

16 MR. DASKAS: Sure, Judge.

17 (Off-record bench conference)

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

20 Mr. Davis.

21 The State may inquire.

22 MR. DASKAS: Thank you, Judge.

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

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

3 PERSPECTIVE JUROR DAVIS: That's true.

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

7 PERSPECTIVE JUROR DAVIS: That's right.

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

11 PERSPECTIVE JUROR DAVIS: That's right.

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

17 PERSPECTIVE JUROR DAVIS: That's right.

18 MR. DASKAS: Challenge for cause, Judge.

19 THE COURT: Traverse.

20 MR. FIGLER: Good afternoon.

21 PERSPECTIVE JUROR DAVIS: Hey.

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

25 PERSPECTIVE JUROR DAVIS: Right.

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

5 PERSPECTIVE JUROR DAVIS: Yes, I do.

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

10 PERSPECTIVE JUROR DAVIS: Mm-hmm.

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

19 MR. DASKAS: This is improper traverse.

20 THE COURT: Yes, it is.

21 MR. FIGLER: Okay.

22 THE COURT: Sustained.

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

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

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

6 MR. FIGLER: Okay.

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

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

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

16 PERSPECTIVE JUROR DAVIS: That's right.

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

19 MR. FIGLER: Yes, Your Honor.

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

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

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

1 remember doing it?

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

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

6 PERSPECTIVE JUROR DAVIS: Yes.

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

9 PERSPECTIVE JUROR DAVIS: Yes.

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

14 PERSPECTIVE JUROR DAVIS: Yes.

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

17 PERSPECTIVE JUROR DAVIS: Right.

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

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

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

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

3 PERSPECTIVE JUROR DAVIS: Yes.

4 MR. FIGLER: Without any hesitation?

5 PERSPECTIVE JUROR DAVIS: Right.

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

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

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

18 PERSPECTIVE JUROR DAVIS: That's right.

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

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

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

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

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

7 PERSPECTIVE JUROR DAVIS: Right.

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

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

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

16 PERSPECTIVE JUROR DAVIS: That's right.

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

19 PERSPECTIVE JUROR DAVIS: No, sir.

20 THE COURT: Invariably not.

21 PERSPECTIVE JUROR DAVIS: No, Your Honor.

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

24 THE COURT: Make them quick.

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

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

2 PERSPECTIVE JUROR DAVIS: That's right.

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

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

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

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

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

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

18 PERSPECTIVE JUROR DAVIS: Thank you, sir.

19 THE COURT: Mr. Lockinger.

20 The State may inquire.

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

22 PERSPECTIVE JUROR LOCKINGER: Good afternoon.

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

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

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

6 PERSPECTIVE JUROR LOCKINGER: I believe so, yes.

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

9 PERSPECTIVE JUROR LOCKINGER: Yes.

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

12 PERSPECTIVE JUROR LOCKINGER: Yes.

13 MR. GUYMON: Others the same chance?

14 PERSPECTIVE JUROR LOCKINGER: Mm-hmm. Yes.

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

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

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

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

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

25 PERSPECTIVE JUROR LOCKINGER: Yes.

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

5 PERSPECTIVE JUROR LOCKINGER: No.

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

8 PERSPECTIVE JUROR LOCKINGER: Yes.

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

14 PERSPECTIVE JUROR LOCKINGER: Yes.

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

16 PERSPECTIVE JUROR LOCKINGER: Yes.

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

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

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

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

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

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

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

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

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

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

19 PERSPECTIVE JUROR LOCKINGER: Yes.

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

23 PERSPECTIVE JUROR LOCKINGER: Yes.

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

1 PERSPECTIVE JUROR LOCKINGER: In some cases, yes.
2 MR. GUYMON: All right. You also mentioned that
3 DNA, in question number 65 is -- the science of DNA is
4 something you know something about?
5 PERSPECTIVE JUROR LOCKINGER: Not particularly, just
6 from watching some television shows, things of that nature.
7 MR. GUYMON: Can you share your thoughts about DNA
8 with me.
9 PERSPECTIVE JUROR LOCKINGER: Basically from the
10 things I've seen so far, I believe that DNA evidence is fairly
11 strong. I don't believe that it's necessarily the be all and
12 end all, but I do believe it is very strong evidence.
13 MR. GUYMON: If DNA evidence is presented in this
14 courtroom would you consider it?
15 PERSPECTIVE JUROR LOCKINGER: Yes.
16 MR. GUYMON: All right. Likewise say fingerprint
17 evidence, is that something you would consider?
18 PERSPECTIVE JUROR LOCKINGER: Yes.
19 MR. GUYMON: Do you believe in fingerprint evidence?
20 PERSPECTIVE JUROR LOCKINGER: Yes.
21 MR. GUYMON: Okay. Pass for cause, Your Honor.
22 THE COURT: Defense may inquire.
23 MR. SCISCENTO: Mr. Lockinger?
24 PERSPECTIVE JUROR LOCKINGER: Yes.
25 MR. SCISCENTO: Mr. Guymon asked you about the DNA

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

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

5 MR. SCISCENTO: Testimony.

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

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

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

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

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

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

23 PERSPECTIVE JUROR LOCKINGER: Not that I can recall.

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

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

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

5 PERSPECTIVE JUROR LOCKINGER: Yes.

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

8 PERSPECTIVE JUROR LOCKINGER: Yes.

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

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

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

16 PERSPECTIVE JUROR LOCKINGER: Mm-hmm. Yes.

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

19 PERSPECTIVE JUROR LOCKINGER: Yes.

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

22 PERSPECTIVE JUROR LOCKINGER: Yes.

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

1 PERSPECTIVE JUROR LOCKINGER: Yes.

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

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

6 MR. SCISCENTO: To society?

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

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

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

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

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

1 defendant's family.

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

3 PERSPECTIVE JUROR LOCKINGER: Yes.

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

7 PERSPECTIVE JUROR LOCKINGER: Yes.

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

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

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

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

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

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

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

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

15 PERSPECTIVE JUROR LOCKINGER: Yes.

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

18 PERSPECTIVE JUROR LOCKINGER: Yes.

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

22 PERSPECTIVE JUROR LOCKINGER: Not necessarily.

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

25 PERSPECTIVE JUROR LOCKINGER: Yes.

1 MR. SCISCENTO: And what I'm making sure is that
2 you're just not going to pay credence to their testimony based
3 on the fact that they're officers of law?
4 PERSPECTIVE JUROR LOCKINGER: Right. No, I wouldn't
5 do that, I believe they're all individuals.
6 MR. SCISCENTO: We'll pass for cause, Your Honor.
7 THE COURT: Thank you. Defense's fifth to exercise
8 or waive.
9 MR. SCISCENTO: Yes, the defense would like to thank
10 and excuse Ms. -- number -- badge number 557, Mr. Fink.
11 THE COURT: And that would be in what position,
12 please?
13 MR. FIGLER: Six.
14 THE COURT: Thank you. Thank you, Mr. Fink.
15 Would counsel approach bench please.
16 (Off-record bench conference)
17 THE COURT: Okay. For seat six, Laura Morgan
18 please.
19 So you're not sitting there wondering folks, what
20 we're discussing at the bench is about how many challenges are
21 left, knowing that there's eight per side, but they don't have
22 to use them all, and what I'm trying to juggle right now is, I
23 don't want to bring everybody back again tomorrow, but I don't
24 really want to when I've told you we're going to get you out
25 of here at 5:30 go substantially beyond 5:30, we'll play it by

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

2 The State may inquire.

3 MR. DASKAS: Thank you, Judge.

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

6 PERSPECTIVE JUROR MORGAN: Yes.

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

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

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

18 PERSPECTIVE JUROR MORGAN: Right.

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

21 PERSPECTIVE JUROR MORGAN: Yes, I would.

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

24 PERSPECTIVE JUROR MORGAN: Yes.

25 MR. DASKAS: You mentioned that your husband may

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

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

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

11 PERSPECTIVE JUROR MORGAN: Yes.

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

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

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

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

9 PERSPECTIVE JUROR MORGAN: Yes.

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

14 PERSPECTIVE JUROR MORGAN: Yes.

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

19 PERSPECTIVE JUROR MORGAN: Yeah.

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

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

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

1 Honor.

2 THE COURT: Thank you. Defense may inquire.

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

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

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

18 PERSPECTIVE JUROR MORGAN: Yeah. Yes.

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

24 PERSPECTIVE JUROR MORGAN: Right.

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

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

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

5 PERSPECTIVE JUROR MORGAN: Yes.

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

7 THE COURT: Traverse.

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

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

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

21 PERSPECTIVE JUROR MORGAN: Yes.

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

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

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

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

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

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

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

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

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

5 PERSPECTIVE JUROR MORGAN: Yes.

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

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

14 PERSPECTIVE JUROR MORGAN: That is correct.

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

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

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

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

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

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

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

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

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

23 (Off-record colloquy)

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

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

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

8 The State may inquire.

9 MR. GUYMON: How are you?

10 PERSPECTIVE JUROR SANDOVAL: Tired, but okay.

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

14 PERSPECTIVE JUROR SANDOVAL: Yes.

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

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

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

23 PERSPECTIVE JUROR SANDOVAL: No.

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

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

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

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

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

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

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

15 PERSPECTIVE JUROR SANDOVAL: Right.

16 MR. GUYMON: Is that true?

17 PERSPECTIVE JUROR SANDOVAL: True.

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

22 PERSPECTIVE JUROR SANDOVAL: Yes.

23 MR. GUYMON: You hesitate a little bit.

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

1 think it depends on the person and the crime.

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

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

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

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

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

12 PERSPECTIVE JUROR SANDOVAL: Yes, I could.

13 MR. GUYMON: You're sure?

14 PERSPECTIVE JUROR SANDOVAL: Positive.

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

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

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

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

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

1 about this case, the facts in this case?

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

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

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

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

10 PERSPECTIVE JUROR SANDOVAL: No.

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

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

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

17 PERSPECTIVE JUROR SANDOVAL: Yes.

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

19 THE COURT: Thank you. Defense may inquire.

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

22 PERSPECTIVE JUROR SANDOVAL: Good.

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

24 PERSPECTIVE JUROR SANDOVAL: Okay.

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

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

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

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

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

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

11 PROSPECTIVE JUROR SANDOVAL: Mm-hmm.

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

15 PERSPECTIVE JUROR SANDOVAL: Right.

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

19 PERSPECTIVE JUROR SANDOVAL: Yes.

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

23 PERSPECTIVE JUROR SANDOVAL: Right.

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

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

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

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

10 PERSPECTIVE JUROR SANDOVAL: Oh, sure.

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

14 PROSPECTIVE JUROR SANDOVAL: Mm-hmm.

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

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

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

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

23 MR. FIGLER: Yes.

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

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

1 wrong answer, it's just honest answers.

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

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

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

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

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

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

25 PERSPECTIVE JUROR SANDOVAL: I do.

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

3 PERSPECTIVE JUROR SANDOVAL: Yes.

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

7 PERSPECTIVE JUROR SANDOVAL: I do.

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

11 PERSPECTIVE JUROR SANDOVAL: Sure.

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

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

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

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

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

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

4 PERSPECTIVE JUROR SANDOVAL: Yes.

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

8 PERSPECTIVE JUROR SANDOVAL: I do.

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

11 PERSPECTIVE JUROR SANDOVAL: No.

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

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

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

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

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

21 MR. SCISCENTO: Seat number 9.

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

24 The State may inquire.

25 MR. GUYMON: Thank you, Judge.

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

4 PERSPECTIVE JUROR ASHMORE: Yes.

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

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

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

12 PERSPECTIVE JUROR ASHMORE: I'm able.

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

18 PERSPECTIVE JUROR ASHMORE: Yes.

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

25 PERSPECTIVE JUROR ASHMORE: Yes.

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

3 PERSPECTIVE JUROR ASHMORE: Yes.

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

7 PERSPECTIVE JUROR ASHMORE: Yes.

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

12 PERSPECTIVE JUROR ASHMORE: Yes.

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

14 MR. DASKAS: Yes, Judge.

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

20 (Off-record colloquy)

21 THE COURT: Go ahead, Bob.

22 MR. DASKAS: Thank you, Judge.

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

1 PERSPECTIVE JUROR ASHMORE: It can have an affect.
2 MR. DASKAS: Elaborate on that, if you would for me,
3 how do you think society is responsible for other's actions?
4 PERSPECTIVE JUROR ASHMORE: I think education,
5 background, socioeconomic.
6 MR. DASKAS: Despite those considerations do you
7 still feel like individuals should be held responsible,
8 accountable for the choices they make?
9 PERSPECTIVE JUROR ASHMORE: Yes.
10 MR. DASKAS: Do you feel like you can hold this
11 defendant accountable for the actions that he took, and the
12 decisions he made on the night in question?
13 PERSPECTIVE JUROR ASHMORE: Yes.
14 MR. DASKAS: You've heard a lot of discussion about
15 the burden in this case, if you are personally convinced after
16 hearing all the evidence that the defendant is guilty beyond a
17 reasonable doubt, can you promise me that you will return
18 verdicts of guilt?
19 PERSPECTIVE JUROR ASHMORE: Yes.
20 MR. DASKAS: Can you promise me that you will
21 consider all of the forms of punishment, including the death
22 penalty if we have a sentencing hearing?
23 PERSPECTIVE JUROR ASHMORE: Yes.
24 MR. DASKAS: I'll pass for cause.
25 THE COURT: Thank you. Defense may inquire.

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

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

3 PERSPECTIVE JUROR ASHMORE: Yes.

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

7 PERSPECTIVE JUROR ASHMORE: No.

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

10 PERSPECTIVE JUROR ASHMORE: Yes.

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

13 PERSPECTIVE JUROR ASHMORE: Yes.

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

16 PERSPECTIVE JUROR ASHMORE: Yes.

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

21 PERSPECTIVE JUROR ASHMORE: Yes.

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

24 PERSPECTIVE JUROR ASHMORE: Yes.

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

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

4 PERSPECTIVE JUROR ASHMORE: Yes.

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

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

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

15 PERSPECTIVE JUROR ASHMORE: No.

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

20 PERSPECTIVE JUROR ASHMORE: No.

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

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

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

1 off immediately?

2 PERSPECTIVE JUROR ASHMORE: That's correct.

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

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

6 MR. GUYMON: Court's indulgence.

7 THE COURT: Sure.

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

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

12 The State may inquire.

13 MR. GUYMON: Thank you.

14 Good evening, Mr. Grecco.

15 PERSPECTIVE JUROR GRECCO: Evening.

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

18 PERSPECTIVE JUROR GRECCO: That's true.

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

20 PERSPECTIVE JUROR GRECCO: It was.

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

23 PERSPECTIVE JUROR GRECCO: I did.

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

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

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

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

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

9 PERSPECTIVE JUROR GRECCO: No.

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

12 PERSPECTIVE JUROR GRECCO: That's correct.

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

17 PERSPECTIVE JUROR GRECCO: I do.

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

20 PERSPECTIVE JUROR GRECCO: I believe so.

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

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

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

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

5 PERSPECTIVE JUROR GRECCO: Yes.

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

10 PERSPECTIVE JUROR GRECCO: I will do my best.

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

18 PERSPECTIVE JUROR GRECCO: I believe I can.

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

22 PERSPECTIVE JUROR GRECCO: No.

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

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

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

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

8 PERSPECTIVE JUROR GRECCO: Yes.

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

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

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

16 PERSPECTIVE JUROR GRECCO: No.

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

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

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

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

4 PERSPECTIVE JUROR GRECCO: Sure.

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

8 PERSPECTIVE JUROR GRECCO: That's correct.

9 MR. GUYMON: To your Heavenly Father?

10 PERSPECTIVE JUROR GRECCO: That's correct.

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

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

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

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

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

4 MR. GUYMON: So that --

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

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

10 THE COURT: All right.

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

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

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

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

1 PROSPECTIVE JUROR GRECCO: Right.

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

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

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

14 PROSPECTIVE JUROR GRECCO: Well --

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

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

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

23 PERSPECTIVE JUROR GRECCO: Correct.

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

1 say no.

2 PERSPECTIVE JUROR GRECCO: Well, I --

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

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

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

9 PERSPECTIVE JUROR GRECCO: Probably.

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

16 PERSPECTIVE JUROR GRECCO: No.

17 THE COURT: Challenge for cause?

18 MR. GUYMON: Yes.

19 THE COURT: May traverse.

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

25 PERSPECTIVE JUROR GRECCO: Not right off the top of

1 my head.

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

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

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

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

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

16 PERSPECTIVE JUROR GRECCO: I would say no.

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

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

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

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

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

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

17 PROSPECTIVE JUROR GRECCO: Okay.

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

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

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

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

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

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

1 MR. GUYMON: -- for Donte Johnson, a human being, if
2 you feel it's appropriate?

3 PERSPECTIVE JUROR SWANSON: If it's appropriate,
4 yes.

5 MR. GUYMON: Okay. Would you agree that that may be
6 the very most difficult form of punishment to vote for out of
7 the four?

8 PERSPECTIVE JUROR SWANSON: Yes.

9 MR. GUYMON: Can you set aside what's the most
10 difficult and go with what's the most just?

11 PERSPECTIVE JUROR SWANSON: Yes, I could go for the
12 most just.

13 MR. GUYMON: If the most just penalty is the death
14 penalty, can you vote for it?

15 PROSPECTIVE JUROR SWANSON: Yes.

16 MR. GUYMON: And would?

17 PROSPECTIVE JUROR SWANSON: Yes.

18 MR. GUYMON: We'd pass this juror for cause.

19 THE COURT: Thank you. Counsel, approach the bench,
20 please?

21 (Off-record bench conference)

22 THE COURT: Go ahead, defense.

23 MR. SCISCENTO: Thank you, Your Honor.

24 Now, Mr. Swanson --

25 PROSPECTIVE JUROR SWANSON: Yes, sir.

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

5 PROSPECTIVE JUROR SWANSON: Yes.

6 MR. SCISCENTO: And you stand by it?

7 PROSPECTIVE JUROR SWANSON: Yes.

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

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

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

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

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

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

7 PROSPECTIVE JUROR SWANSON: No.

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

9 THE COURT: Traverse.

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

12 PROSPECTIVE JUROR SWANSON: Absolutely.

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

14 PROSPECTIVE JUROR SWANSON: Yes, sir.

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

16 PROSPECTIVE JUROR SWANSON: Yes.

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

20 PROSPECTIVE JUROR SWANSON: Yes.

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

23 PROSPECTIVE JUROR SWANSON: Yes.

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

1 options?

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

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

6 PROSPECTIVE JUROR SWANSON: Yes.

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

9 PROSPECTIVE JUROR SWANSON: Yes.

10 MR. GUYMON: All right.

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

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

25 THE COURT: The challenge is overruled. Defense may

1 inquire. Any additional questions?

2 MR. SCISCENTO: No further questions.

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

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

7 THE COURT: Thank you, Mr. Swanson.

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

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

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

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

18 PROSPECTIVE JUROR YOUNG: That's true.

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

22 PROSPECTIVE JUROR YOUNG: That's right.

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

25 PROSPECTIVE JUROR YOUNG: Yep. Yes.

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

3 PROSPECTIVE JUROR YOUNG: Yes.

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

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

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

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

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

12 PROSPECTIVE JUROR YOUNG: Yes.

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

15 PROSPECTIVE JUROR YOUNG: Positive.

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

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

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

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

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

9 PROSPECTIVE JUROR YOUNG: That's correct.

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

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

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

17 PROSPECTIVE JUROR YOUNG: Yes.

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

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

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

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

4 PROSPECTIVE JUROR YOUNG: That's right.

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

9 PROSPECTIVE JUROR YOUNG: I believe I can.

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

11 PROSPECTIVE JUROR YOUNG: I believe so.

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

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

14 (Off-record bench conference)

15 THE COURT: Go ahead, Mr. Figler.

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

18 PROSPECTIVE JUROR YOUNG: Yes, sir.

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

20 PROSPECTIVE JUROR YOUNG: Yes, sir.

21 MR. FIGLER: At the University of Nevada?

22 PROSPECTIVE JUROR YOUNG: UNLV, right.

23 MR. FIGLER: What department are you in?

24 PROSPECTIVE JUROR YOUNG: Department of Kinesiology.

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

1 something that isn't?

2 MR. FIGLER: Sure.

3 THE COURT: Thank you.

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

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

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

10 PROSPECTIVE JUROR YOUNG: Yes.

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

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

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

17 PROSPECTIVE JUROR YOUNG: Yes.

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

20 PROSPECTIVE JUROR YOUNG: Yes.

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

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

3 PROSPECTIVE JUROR YOUNG: No.

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

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

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

13 PROSPECTIVE JUROR YOUNG: Correct.

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

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

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

25 PROSPECTIVE JUROR YOUNG: There are a variety of

1 ways, yes.

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

4 MR. DASKAS: Judge, we object.

5 MR. SCISCENTO: Why's that?

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

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

10 THE COURT: Sustained.

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

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

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

23 PROSPECTIVE JUROR YOUNG: No.

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

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

2 PROSPECTIVE JUROR YOUNG: Yes.

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

7 PROSPECTIVE JUROR YOUNG: Yes.

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

10 PROSPECTIVE JUROR YOUNG: Yes.

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

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

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

17 PROSPECTIVE JUROR YOUNG: Yes.

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

20 PROSPECTIVE JUROR YOUNG: Yes.

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

24 PROSPECTIVE JUROR YOUNG: Yes.

25 MR. FIGLER: Pass for cause.

1 THE COURT: Thank you. The State's eighth and last
2 to exercise or waive.

3 MR. GUYMON: The Court's indulgence please, Judge?

4 THE COURT: Sure.

5 MR. GUYMON: Judge, the State would waive its final
6 peremptory challenge.

7 THE COURT: Thank you. The defense's eighth and
8 final challenge --

9 MR. FIGLER: Court's indulgence.

10 THE COURT: -- to exercise or waive.

11 MR. SCISCENTO: Your Honor, the defense would waive
12 its last peremptory challenge.

13 THE COURT: Thank you. Swear the jury, please, then
14 we'll select some alternates.

15 JURY IS SWORN

16 THE COURT: All right. Bruce Mayhew and Martha
17 Pendleton, please. And Mr. Mayhew, you're in that top seat
18 which is Alternate Number 1, and Ms. Pendleton, you're in the
19 lower seat which is Alternate Number 2. And for the exercise
20 of challenges know that we replace them where they are, they
21 don't move up. If you challenge number one, two doesn't move
22 to one, we get a new person out of the audience, so this --

23 MR. GUYMON: And Number 1 would -- I'm sorry, Number
24 1's is Mayham [sic]?

25 THE COURT: Right. And you can just examine both of

1 them and then pass them over to the defense.

2 MR. GUYMON: Okay. Mr. Mayham [sic], is there
3 anything we should know about you before we start this
4 endeavor?

5 PROSPECTIVE JUROR MAYHEW: Yeah, my name is Mayhew.

6 MR. GUYMON: Mayhew, all right. Other than that?

7 PROSPECTIVE JUROR MAYHEW: No, not -- nothing that I
8 can think of.

9 (Off-record colloquy)

10 MR. GUYMON: Judge?

11 THE COURT: Sure, approach the bench.

12 (Off-record bench conference)

13 (Off-record colloquy)

14 THE COURT: Okay. Everybody beyond 600, thank you,
15 you're excused from this jury cycle. Thanks for sitting with
16 us all day.

17 Go ahead, Mr. Guymon.

18 MR. GUYMON: All right. Give me your thoughts about
19 holding a person responsible for his or her conduct.

20 PROSPECTIVE JUROR MAYHEW: I think that everybody's
21 accountable for what they do, that is a part of life. I mean
22 your actions are what you speak and you're accountable for
23 your actions.

24 MR. GUYMON: You're going to be called upon as a
25 juror to hold Donte Johnson responsible for his conduct, can

1 you do that?

2 PROSPECTIVE JUROR MAYHEW: Yeah. Yes, I can.

3 MR. GUYMON: Will you fairly do that?

4 PROSPECTIVE JUROR MAYHEW: I'll do that fairly.

5 MR. GUYMON: Do you have any reservations about
6 doing it?

7 PROSPECTIVE JUROR MAYHEW: No, I don't.

8 MR. GUYMON: When we get to penalty, assuming we get
9 past guilty and find him guilty of first degree murder with
10 use of a deadly weapon and we get to penalty, will you
11 consider all four of the penalties?

12 PROSPECTIVE JUROR MAYHEW: Yes, sir.

13 MR. GUYMON: You indicated that you would consider
14 the death penalty as a possible option in your questionnaire,
15 are you in favor of the death penalty?

16 PROSPECTIVE JUROR MAYHEW: I'm unsure of the death
17 penalty, I've never faced it. I mean it's been -- been part
18 of it but it'd be something that I would consider, yeah.

19 MR. GUYMON: Okay. Would it be something that you
20 could personally impose if you thought it was just?

21 PROSPECTIVE JUROR MAYHEW: If it's warranted, yes.

22 MR. GUYMON: Okay. Likewise, could you look a
23 murderer in the eye and say I'm going to give you a chance to
24 get out someday if you thought that was warranted?

25 PROSPECTIVE JUROR MAYHEW: Yes, sir.

1 MR. GUYMON: Okay. Will you keep an open mind as to
2 the punishments?

3 PROSPECTIVE JUROR MAYHEW: Yes, sir.

4 MR. GUYMON: And chose the one that's most just?

5 PROSPECTIVE JUROR MAYHEW: Yes, sir.

6 MR. GUYMON: Will you agree that the most difficult
7 choice might be that of imposing the death penalty?

8 PROSPECTIVE JUROR MAYHEW: Yes, sir.

9 MR. GUYMON: Perhaps the most difficult choice
10 you'll have in life?

11 PROSPECTIVE JUROR MAYHEW: Possibly, yes. I hope
12 that's the hardest.

13 MR. GUYMON: Can you promise me this, that in making
14 your choices you will choose what's just and not what's
15 easiest?

16 PROSPECTIVE JUROR MAYHEW: Yes, sir.

17 MR. GUYMON: Are you sure of that?

18 PROSPECTIVE JUROR MAYHEW: I'm sure of that.

19 MR. GUYMON: That's a promise you can keep?

20 PROSPECTIVE JUROR MAYHEW: I can keep.

21 MR. GUYMON: Thank you. Pass, Judge.

22 THE COURT: Okay. And you may examine Ms.
23 Pendleton, too, so we know who we're dealing with. You want
24 to do that? Thanks.

25 MR. DASKAS: Ms. Pendleton, you've indicated in our

1 questionnaire that generally speaking you're opposed to the
2 death penalty, is that true?

3 PROSPECTIVE JUROR PENDLETON: That's correct.

4 MR. DASKAS: Obviously, you know by now that that's
5 one of the possible punishments that you would be called upon
6 to select as a juror if, in fact, you serve on this jury?

7 PROSPECTIVE JUROR PENDLETON: That's correct.

8 MR. DASKAS: Despite the fact that you're opposed --
9 generally opposed to the death penalty, can you imagine a
10 situation where you would consider imposing the death penalty
11 in a given situation?

12 PROSPECTIVE JUROR PENDLETON: Yes, I think in a --
13 in a extremely heinous crime.

14 MR. DASKAS: You're saying extremely heinous crime,
15 what do you mean when you say that?

16 PROSPECTIVE JUROR PENDLETON: Well, like some of the
17 cases that we've discussed earlier today, like Manson, where
18 there are multiple murders.

19 MR. DASKAS: In those instances you might consider
20 the death penalty as a -- as an option?

21 PROSPECTIVE JUROR PENDLETON: If I'm instructed to,
22 yes.

23 MR. DASKAS: All right. Do you feel like you have
24 the ability or the capacity to actually vote for the death
25 penalty?

1 PROSPECTIVE JUROR PENDLETON: I think if I'm
2 selected for a case like this, that's my obligation.

3 MR. DASKAS: And I've heard you -- I understand that
4 sometimes one's moral beliefs are more powerful than one's
5 legal duty and despite the fact that that's the law, some
6 people would say well, my moral beliefs take precedent. You
7 understand that?

8 PROSPECTIVE JUROR PENDLETON: Yeah.

9 MR. DASKAS: And what you're telling me is -- well,
10 I don't want to put words in your mouth but are you telling me
11 that you could obey the law in this case and follow the
12 instructions, even though your moral beliefs might be somewhat
13 different?

14 PROSPECTIVE JUROR PENDLETON: I think so.

15 MR. DASKAS: So you're making that promise. Would
16 you consider death as a form of punishment?

17 PROSPECTIVE JUROR PENDLETON: If this -- if I serve,
18 if we went to the penalty trial then I would be instructed to
19 consider the four options and I would consider them.

20 MR. DASKAS: I appreciate that. You believe people
21 should be held accountable for decisions they make?

22 PROSPECTIVE JUROR PENDLETON: Absolutely.

23 MR. DASKAS: I realize that at this point you're in
24 the seat of an alternate but we need to assume that you're
25 going to be on this jury in order to determine whether you

1 should be on this jury, you realize that?

2 PROSPECTIVE JUROR PENDLETON: Right.

3 THE COURT: And believe me, that happens.

4 MR. DASKAS: And it happens. Anything we haven't
5 discussed about your background, either religiously, morally
6 or otherwise, that's important that might affect your ability
7 to serve as a juror, particularly on a death penalty case?

8 PROSPECTIVE JUROR PENDLETON: Not that I can think
9 of.

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

11 THE COURT: Thank you. The defense may inquire.

12 MR. SCISCENTO: Thank you. Mr. Mayhew.

13 PROSPECTIVE JUROR MAYHEW: Yes, sir.

14 MR. SCISCENTO: You've hear all the questions that
15 we've asked, is there anything I need to know?

16 PROSPECTIVE JUROR MAYHEW: Not that I know.

17 MR. SCISCENTO: Okay. It works for me. Two things,
18 number 37, what do you think of the saying, eye for an eye,
19 apples for apples, oranges for oranges?

20 PROSPECTIVE JUROR MAYHEW: I just believe what I
21 believe. I mean I pick out what is the truth. I've always
22 been taught and do it that way. I mean it's --

23 MR. SCISCENTO: So the saying, an eye for an eye --

24 PROSPECTIVE JUROR MAYHEW: An eye for an eye and
25 tooth for a tooth, as far as it's just my thing in life that I

1 agree with what's the truth and go by that. I mean an eye for
2 an eye, I would -- it's like getting caught getting doing
3 something rather than lying. That's just the way I've been
4 taught. I mean -- I mean I don't pound a apple for an apple,
5 orange and orange, I just want to hear the truth, that's what
6 I meant by that.

7 MR. SCISCENTO: Okay. Number 38, do you feel one --
8 that one convicted of murder should be sentenced to death
9 without consideration of the background information? Unsure,
10 past is the past.

11 PROSPECTIVE JUROR MAYHEW: Well, as far as unsure, I
12 don't know -- I don't live by the past, I don't dwell by the
13 past, but I don't -- I don't really think that the past should
14 be brought up. I mean I think you ought to bury the past
15 because I've had a past, I think everybody here's got a past.

16 MR. SCISCENTO: So no consideration on what happened
17 in the past?

18 PROSPECTIVE JUROR MAYHEW: Well, the past is the
19 past. Is -- that's what I mean by that.

20 MR. SCISCENTO: And when we -- when I'm talking
21 about the past consideration, I mean past things such as
22 childhood.

23 PROSPECTIVE JUROR MAYHEW: Right.

24 MR. SCISCENTO: Forget that?

25 PROSPECTIVE JUROR MAYHEW: Yeah.

1 MR. SCISCENTO: Growing up, forget that?
2 PROSPECTIVE JUROR MAYHEW: Well, I mean I live by
3 day-to-day thing.
4 MR. SCISCENTO: Anything else I need to know?
5 PROSPECTIVE JUROR MAYHEW: I don't think so.
6 MR. SCISCENTO: I mean we've asked hundreds and
7 hundreds of questions.
8 PROSPECTIVE JUROR MAYHEW: I don't think so.
9 MR. SCISCENTO: You know what I'm looking for?
10 PROSPECTIVE JUROR MAYHEW: I don't know what you're
11 looking for.
12 MR. SCISCENTO: Someone who's been --
13 PROSPECTIVE JUROR MAYHEW: -- get it out.
14 MR. SCISCENTO: -- someone who's going to wait to
15 the very end to make a decision. Can you do it?
16 PROSPECTIVE JUROR MAYHEW: Can I do it?
17 MR. SCISCENTO: Can you hold off your judgment until
18 the very end, until the -- until the Judge says, okay, now
19 jury it's your time to deliberate.
20 PROSPECTIVE JUROR MAYHEW: Yes, sir.
21 MR. SCISCENTO: Would you do that?
22 PROSPECTIVE JUROR MAYHEW: Yes, sir.
23 MR. SCISCENTO: With all that barrage of evidence
24 that's going to be coming in.
25 PROSPECTIVE JUROR MAYHEW: Yes, sir.

1 MR. SCISCENTO: Okay. Pass for cause.
2 THE COURT: Anything for Ms. Pendleton?
3 MR. SCISCENTO: We'll pass for cause on this one.
4 THE COURT: Okay. One and only challenge for cause
5 -- peremptory challenge by the State, exercise or waive.
6 MR. DASKAS: Judge, the State would exercise its
7 peremptory with respect to Ms. Pendleton, Alternate Number 2.
8 THE COURT: Thank you, Ms. Pendleton. You're
9 excused.
10 Mr. Lewis.
11 PROSPECTIVE JUROR LEWIS: Yes, sir.
12 THE COURT: If I were a betting man I'd say you got
13 about a 50/50 chance of being Alternate Number 2.
14 PROSPECTIVE JUROR LEWIS: I don't think so.
15 THE COURT: You don't think so?
16 PROSPECTIVE JUROR LEWIS: No.
17 THE COURT: Well, you know something I don't then.
18 Let's find out.
19 PROSPECTIVE JUROR LEWIS: I just don't want to be
20 here.
21 THE COURT: What?
22 PROSPECTIVE JUROR LEWIS: No, I just don't.
23 THE COURT: Okay.
24 PROSPECTIVE JUROR LEWIS: Go ahead.
25 THE COURT: The State may inquire.

1 MR. GUYMON: Court's indulgence, please, Judge.
2 THE COURT: I can't wait. Why do you think you're
3 not going to be alternate? Maybe we can cut this short. Why?
4 PROSPECTIVE JUROR LEWIS: I'm just a positive
5 person.
6 THE COURT: Oh, okay.
7 MR. GUYMON: Tell me, Mr. Lewis, you've heard a lot
8 of questions. Any reason why you can't be fair in this case?
9 PROSPECTIVE JUROR LEWIS: No.
10 MR. GUYMON: Do you think that a person should be
11 held responsible for his or her conduct?
12 PROSPECTIVE JUROR LEWIS: I do. I agree with the
13 minister.
14 MR. GUYMON: Okay. Which is -- I mean he said a lot
15 of things.
16 PROSPECTIVE JUROR LEWIS: And I agree with him as he
17 -- as a man of God.
18 MR. GUYMON: Okay.
19 PROSPECTIVE JUROR LEWIS: As -- I don't want to put
20 somebody to death.
21 MR. GUYMON: Okay. Well, let me ask you then, cut
22 right to the chase and get to penalty before we even talk
23 about guilt. Can you consider the death penalty if you think
24 it's appropriate?
25 PROSPECTIVE JUROR LEWIS: No.

1 MR. GUYMON: Can you think of a case, in all the
2 cases you've heard, can you think of a case where you would
3 consider the death penalty?
4 PROSPECTIVE JUROR LEWIS: No.
5 MR. GUYMON: You simply would not consider it?
6 PROSPECTIVE JUROR LEWIS: Right, I've reconsidered
7 and no, I can't.
8 MR. GUYMON: No, you can't and no, you won't, is
9 that right?
10 PROSPECTIVE JUROR LEWIS: True.
11 MR. GUYMON: Can anything change that?
12 PROSPECTIVE JUROR LEWIS: No.
13 THE COURT: That's not the way you answered your
14 questionnaire.
15 PROSPECTIVE JUROR LEWIS: That's not the way I
16 answered but that's the way I answer now.
17 THE COURT: It's not just that it's late in the day
18 and you see that that second alternate seat is looming?
19 PROSPECTIVE JUROR LEWIS: No, I believe when that
20 gentleman got up, the pastor --
21 THE COURT: Mr. Grecco.
22 PROSPECTIVE JUROR LEWIS: I really related to what
23 he said as my beliefs and I want to stand on that.
24 THE COURT: Traverse.
25 MR. SCISCENTO: Mr. Lewis.

1 PROSPECTIVE JUROR LEWIS: Yes, sir.

2 MR. SCISCENTO: All right. You came in and you sat
3 down and said, there's no way I'm going to be an alternate,
4 right?

5 PROSPECTIVE JUROR LEWIS: That was right.

6 MR. SCISCENTO: Okay. And you know that after a
7 while, just sitting out here and watching all this, you
8 realize that there are certain things that you can say that
9 will either get them up or get us up, right?

10 PROSPECTIVE JUROR LEWIS: That's correct.

11 MR. SCISCENTO: Okay. And right now you realize
12 that if you say I'm not going to vote for the death penalty
13 they're going to get up and ask to have you removed. And we
14 say if you said, I'm going to invoke it all the time, we would
15 get up and ask to have you removed, right?

16 PROSPECTIVE JUROR LEWIS: Okay.

17 MR. SCISCENTO: Okay. There's a man's life in the
18 balance. Like it or not, you've been selected as a potential
19 juror.

20 PROSPECTIVE JUROR LEWIS: Okay.

21 MR. SCISCENTO: And as much as there must be
22 something else out there better to do, and we all agree there
23 is, are you telling me now that there is no way that you'll,
24 the four considerations, if this -- Mr. White is found guilty
25 of murder. That is life without the possibility of parole

1 term of years, life with the possibility of parole, and the
2 death sentence.

3 PROSPECTIVE JUROR LEWIS: I said I do not want to be
4 the man that judges him.

5 THE COURT: Are you also saying that if Hitler were
6 the defendant that everything you've heard or read or know
7 about him, you would not vote to give him the death penalty if
8 you were on the jury?

9 PROSPECTIVE JUROR LEWIS: I don't want to be the
10 judger --

11 THE COURT: What?

12 PROSPECTIVE JUROR LEWIS: I don't want to stand in
13 judgment of that.

14 MR. SCISCENTO: There's no way, in any way that this
15 decision you're making now or the statements you're making now
16 are prompting you to, so you can leave the jury?

17 PROSPECTIVE JUROR LEWIS: No, I just don't want to
18 be a part of the -- the judgment on Donte.

19 THE COURT: Submitted?

20 MR. SCISCENTO: Submit it, Your Honor.

21 THE COURT: Thank you, Mr. Lewis. You're excused.
22 Challenge sustained.

23 Mr. Frias. The State may inquire.

24 MR. DASKAS: Thank you, Judge.

25 You indicated that you could consider the death

1 penalty, is that true?

2 PROSPECTIVE JUROR FRIAS: Yes, sir.

3 MR. DASKAS: You're not going to change your

4 answers, are you?

5 PROSPECTIVE JUROR FRIAS: No, sir.

6 MR. DASKAS: I appreciate that. Can you also

7 consider the other possible forms of punishment?

8 PROSPECTIVE JUROR FRIAS: Yes, sir.

9 MR. DASKAS: And if you're convinced after hearing

10 the evidence that the defendant is guilty and guilty beyond a

11 reasonable doubt, can you promise me that you will return

12 verdicts of guilty?

13 PROSPECTIVE JUROR FRIAS: Yes, sir.

14 MR. DASKAS: And you promise me that you'll consider

15 all four possible forms of punishment if and when we get to a

16 penalty hearing?

17 PROSPECTIVE JUROR FRIAS: Yes, sir.

18 MR. DASKAS: Can you promise me that you haven't

19 ruled out any of those possibilities?

20 PROSPECTIVE JUROR FRIAS: No, sir.

21 MR. DASKAS: I'll pass for cause, Judge.

22 MR. SCISCENTO: Mr. -- I'm sorry, Frias?

23 PROSPECTIVE JUROR FRIAS: Yes, sir.

24 MR. SCISCENTO: There is a statement that you made

25 and I wrote that down, attorneys get defendants off.

1 PROSPECTIVE JUROR FRIAS: Probably the reason I said
2 that is 'cause of a lot of the high profile cases that I've
3 seen within, I don't know, five, six, seven years, it always
4 just seems that the defendants are getting off on
5 technicalities. Probably looks that way to me because I
6 didn't know every bit of information so pretty much that way.

7 MR. SCISCENTO: You go two-fold on that. One, does
8 that make you angry?

9 PROSPECTIVE JUROR FRIAS: In some cases, yes.

10 MR. SCISCENTO: And two, you realize that to rush to
11 judgment is there for everybody, you're just getting bits and
12 pieces of information either through the media or through
13 friends, you would learn only so much about the trial, but you
14 don't learn everything.

15 PROSPECTIVE JUROR FRIAS: Correct.

16 MR. SCISCENTO: Okay. And with that knowledge would
17 you be able to hold back on judgment until after all the
18 evidence comes in?

19 PROSPECTIVE JUROR FRIAS: That'd be my privilege.

20 MR. SCISCENTO: Be your privilege?

21 PROSPECTIVE JUROR FRIAS: Yes. Being on the jury is
22 a privilege and that would give me the opportunity to collect
23 all the information as opposed to what I just said, only
24 getting bits and pieces here and there.

25 MR. SCISCENTO: Overall you consider the worst case

1 of punishment is death?

2 PROSPECTIVE JUROR FRIAS: Yes, sir.

3 MR. SCISCENTO: Why is that?

4 PROSPECTIVE JUROR FRIAS: In a point, like the
5 pastor, he said that passing judgment on someone and giving
6 them the death penalty is against his religion, and I believe
7 that also. But, death takes the person out of the community.
8 If he is not around to maybe rehabilitate himself and maybe
9 even turn his life around and give something back to what he's
10 done, well then everybody loses, especially him.

11 MR. SCISCENTO: What about life without the
12 possibility of parole, that takes him out of the system?

13 PROSPECTIVE JUROR FRIAS: It does, but it also keeps
14 him around for rehabilitation. They might be able to redeem
15 themselves and then what I would really look to see if
16 somebody did hurt somebody's family, they could take the rest
17 of their life and try to dedicate somehow to repay that
18 family. That at least gives them that option.

19 MR. SCISCENTO: When I say life without the
20 possibility of parole, that puts someone away for life --

21 PROSPECTIVE JUROR FRIAS: I understand they're in
22 prison, but they can still do something in prison.

23 MR. SCISCENTO: And you think that's a good benefit?

24 PROSPECTIVE JUROR FRIAS: If it benefits the person
25 and they do turn their life around, yes.

1 MR. SCISCENTO: That's something you would
2 consider --

3 PROSPECTIVE JUROR FRIAS: Yes.

4 MR. SCISCENTO: -- in making a determination of life
5 with or death?

6 PROSPECTIVE JUROR FRIAS: Yes.

7 MR. SCISCENTO: Okay.

8 THE COURT: Pass for cause.

9 MR. SCISCENTO: Do I have a choice?

10 THE COURT: It's a question.

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

12 THE COURT: Defense's first and only challenge,
13 peremptory in nature, to waive or exercise.

14 MR. SCISCENTO: Your Honor, we waive any peremptory
15 challenge on this.

16 THE COURT: Thank you. Swear the alternates,
17 please.

18 Folks in the audience, that's it. Thank you very
19 much.

20 ALTERNATE JURORS ARE SWORN

21 THE COURT: All right, folks. Let me tell you about
22 tomorrow's schedule and Wednesday, in case you're curious.
23 Tomorrow morning if you would report and if you haven't been
24 downtown very often and didn't experience traffic problems
25 today, you might well tomorrow. So, please try and leave

1 enough room, because almost invariably one or two jurors is
2 missing when we're ready to start and everybody else is
3 waiting.

4 So, I'm going to instruct you that during this
5 recess you're admonished not to talk or converse among
6 yourselves or with anyone else on any subject connected with
7 this trial; read watch or listen to any report of or
8 commentary on the trial by any person connected with it by any
9 medium of information including, without limitation,
10 newspapers, television or radio; or form or express any
11 opinion on any subject connected with the trial until it's
12 finally submitted to you.

13 I ask you to report to Stony by 9:20 with the
14 expectation that if everybody's assembled and we get through
15 the morning calendar, where I sentence people and take pleas
16 and things like that, on time and we're going to start that an
17 hour early tomorrow. It's usually 9 o'clock, we're going to
18 start it closer to 8 o'clock to get to the trial. You get to
19 Stony at 9:20, unless something unforeseeable happens, we're
20 going to start this trial at 9:30 tomorrow morning. You're
21 excused and we'll be in session outside your presence.

22 Thank you.

23 (Court recessed at 6:30 p.m. until the following day,
24 Tuesday, June 6, 2000 at 9:30 a.m.)

25 * * * * *

CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
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