

1 A. It means that he survived some length of  
2 time after the attack and was taken to an  
3 emergency facility where surgery was performed.

4 Q. Let me show you Exhibit 52 and ask if  
5 you're able to identify that exhibit, sir.

6 A. Exhibit 52 is a photograph of the face  
7 and head of the decedent, Matthew Gianakis, upon  
8 whom I performed an autopsy with our assession  
9 No. 961626.

10 Q. Showing you Exhibit 54, are you able to  
11 identify that exhibit?

12 A. This appears to be the chest of the  
13 decedent showing, one, a surgically incised wound  
14 here and what appears to be a stab wound to the  
15 left chest.

16 Q. Could you run your finger along the area  
17 where you see surgical intervention? And how  
18 about going up the other side of the exhibit.

19 So that surgical intervention would have  
20 taken place at some medical facility?

21 A. Yes, sir.

22 Q. Showing you 55, are you able to identify  
23 Exhibit 55?

24 A. Yes. Exhibit 55 is a photograph of the  
25 back of the decedent showing a stab wound on the

1 the stab wound to the chest represented entry of a  
2 weapon into the heart. The one in the back  
3 penetrated the left lung.

4 Q. And based upon the autopsy performed on  
5 Matt Gianakis, do you ever an opinion regarding  
6 the cause of his death?

7 A. Yes.

8 Q. What is that opinion, sir?

9 A. Matthew Gianakis died of two stab wounds  
10 to the chest and back.

11 Q. Was a comprehensive blood screen done on  
12 Mr. Gianakis?

13 A. Yes.

14 Q. What were the findings?

15 A. There was no alcohol and no drugs.

16 Q. With regard to the wounds that you  
17 described on both these young men, do you have an  
18 opinion what type of instrument could have caused  
19 these wounds?

20 A. Probably a knife.

21 Q. Do you have any opinion on the length of  
22 the blade?

23 A. It could be quite variable. Perhaps  
24 three to six inches.

25 MR. SCHWARTZ: I have no further

1 upper left back. Again, we have some surgical  
2 artifact here on the side of the chest.

3 Q. Doctor, let me show you Exhibit 51 and  
4 ask if this chart was prepared in connection with  
5 the autopsy performed on Matt Gianakis?

6 A. That represents a drawing which I made  
7 at the time of autopsy showing the stab wounds and  
8 the surgically incised wounds on Matthew Gianakis.

9 MR. SCHWARTZ: May I show this to the  
10 jury, your Honor?

11 THE COURT: You may.

12 MR. SCHWARTZ: Thank you.

13 THE COURT: 51 is admitted.

14 (Thereupon, State's Exhibit 51  
15 was admitted into evidence.)

16 BY MR. SCHWARTZ:

17 Q. Dr. Jordan, in connection with the  
18 autopsy on Matthew Gianakis, did you perform an  
19 internal examination on his body?

20 A. Yes.

21 Q. What were the significant findings from  
22 your internal examination?

23 A. The chest contained a fairly large  
24 quantity of fluid blood which resulted from both  
25 the stab wounds and the surgical procedure. And

1 questions, your Honor. Thank you, Dr. Jordan.

2 THE COURT: Cross-examination, Counsel.

3 MR. ALBREGTS: No questions.

4 THE COURT: Ladies and gentlemen, of the  
5 jury, do you have any questions for Dr. Jordan?

6 All right. Jonathan will pick them up.

7 Dr. Jordan, if you would take a look,  
8 please, at the report for Carl Dixon. Can you  
9 tell us his height and weight?

10 THE WITNESS: Carl Dixon was 5 feet,  
11 10 inches in height, weighed 210 pounds.

12 THE COURT: And if you would take a look  
13 at the report for Matt Gianakis, can you tell us  
14 how high he was and how much he weighed?

15 THE WITNESS: He was 5 feet, 11 inches  
16 in height and weighed 192 pounds.

17 THE COURT: Doctor, I'm not sure which  
18 of these -- whether this applies to Mr. Dixon or  
19 to Mr. Gianakis, but were the wounds more of a  
20 frontal entry or as a result of a right to left  
21 motion if you can tell.

22 THE WITNESS: Most of the wounds on  
23 Mr. Dixon were frontal on the torso. As far as  
24 direction of force, it's usually impossible to  
25 tell when there is this much trauma. I couldn't

1 tell whether it was right to left or what. It's  
2 very difficult to do that unless you have the  
3 weapon available and know the handedness of the  
4 perpetrator. Almost impossible.

5 THE COURT: Was the fact that CPR was  
6 performed on Matt Gianakis did this speed up his  
7 bleeding.

8 THE WITNESS: Of course, the surgery was  
9 performed in an attempt to stop the bleeding from  
10 the heart and lung and would, of course, add to  
11 the hemorrhage, but I would say it didn't  
12 contribute considerably or significantly to his  
13 ultimate death.

14 THE COURT: All right, thank you. Based  
15 on the questions of the jury, does either party  
16 have additional questions for Dr. Jordan?

17 MR. SCHWARTZ: No, your Honor.

18 MR. ALBREGTS: No, your Honor.

19 THE COURT: Dr. Jordan, thank you for  
20 your testimony here this morning. You may be  
21 excused. Please don't discuss your testimony with  
22 anyone other than the attorneys.

23 Counsel, you may call your next witness.

24 MR. SCHWARTZ: For the record all those  
25 exhibits I showed Dr. Jordan they're admitted, but

1 exactly who's here. If we could have.

2 MR. ALBREGTS: Five or ten minutes.

3 THE COURT: We could go to lunch now and  
4 come back at one.

5 MR. SCHIECK: That may be better, your  
6 Honor. We need to talk to a certain witness also.

7 THE COURT: Then why don't we be in  
8 recess now until 1:00. During the noon recess you  
9 are admonished not to converse amongst yourselves  
10 or with anyone else on any subject related to or  
11 read, watch or listen to any report of or  
12 commentary on the trial or any person connected  
13 with the trial by any medium of information  
14 including, but not limited to, television, radio,  
15 or newspapers, or form or express any opinion on  
16 any subject connected with the trial until the  
17 case is finally submitted to you.

18 We'll be in recess until one.

19 Counsel, if you'd remain, please.

20 (Whereupon, the jury retired  
21 from the courtroom.)

22 THE COURT: The record will reflect that  
23 the jury has retired from the courtroom. Where in  
24 this proceeding would Mr. Thomas allocute? Would  
25 he allocute now or after the jury makes its

1 I don't know that I need to make a record that  
2 we're readmitting them?

3 THE COURT: I think you need to readmit  
4 them and tell us what the numbers are.

5 MR. SCHWARTZ: The State would move to  
6 admit exhibits 39 through 55 with the exception of  
7 40, 50 and 53. 26, 38, 51 and 84.

8 THE COURT: 39 through 55 with the  
9 exception of 40, 50 and 53. And the others are?

10 MR. SCHWARTZ: 26, 38, 51, 84.

11 THE COURT: Those photographs will be  
12 admitted.

13 (Thereupon, State's Exhibits 26, 38, 39,  
14 41-49, 51, 52, 54, 55, 84  
15 were admitted into evidence.)

16 MR. OWENS: Can we approach, your Honor?

17 THE COURT: You may.

18 (Off-the-record bench conference.)

19 MR. OWENS: Subject to our discussion at  
20 the benefit, the State is going to rest at this  
21 point.

22 THE COURT: Counsel for the defense, do  
23 you have witnesses available now?

24 MR. SCHIECK: I believe we do, Your  
25 Honor, but we need to check the hallway to see

1 decision on mitigating or aggravating, or would he  
2 allocate twice? This is an issue I didn't think  
3 of when I said we were having a bifurcated  
4 proceeding.

5 MR. SCHIECK: My most honest answer is  
6 that allocation is not evidence and therefore  
7 couldn't be proven as mitigation, although it  
8 could go to show remorsefulness which could be  
9 mitigation. I don't know the answer to that  
10 question. Probably we would prefer that he  
11 allocute if we get to a second phase as opposed to  
12 the first phase.

13 THE COURT: I think most of our  
14 instruction for allocation comes from Hornick which  
15 is 1992 where our court said, "More recently  
16 allocation has been viewed as the right of the  
17 defendant to stand before the sentencing authority  
18 and present an unsworn statement in mitigation of  
19 sentence, including statements of remorse,  
20 apology, chagrin, or plans and hopes for the  
21 future."

22 Because the court has called it --  
23 because the Supreme Court in 1992 has called it an  
24 unsworn statement in mitigation of sentencing  
25 including statements of remorse, apology, chagrin,

1 or plans and hopes for the future, and because  
 2 there's no limit to what a jury may find to be  
 3 mitigation, I think that if he's going to make an  
 4 unsworn statement in mitigation or allocution, I  
 5 think he should do it at this stage of the  
 6 proceeding. I think it would be error not to  
 7 allow him to allocute now so that the jury  
 8 couldn't consider his remorse or his apology, or  
 9 plans or hopes for the future as being mitigating.

10 MR. SCHIECK: On the other hand, your  
 11 Honor, if they do the weighing process and find  
 12 that the aggravators outweigh the mitigators, they  
 13 still have to make the second decision whether or  
 14 not they want to give death, it would be just as  
 15 relevant at the second stage as the first stage.  
 16 At least that's my thought.

17 THE COURT: Reading on what the Supreme  
 18 Court has said in Homick, "Although the United  
 19 States Supreme Court has declared that the right  
 20 of allocution is not of constitutional derivation  
 21 or dimension, it has been aptly stated that 'It  
 22 bespeaks our common humanity that a defendant not  
 23 be sentenced to death by a jury which never heard  
 24 the sound of his voice.'"

25 So if you look at the United States

1 whether he shall live or die, citing Zola at  
 2 page 1045. The Zola court indicated the  
 3 defendant, quote, would not be permitted to rebut  
 4 any facts in evidence, to deny his guilt, or  
 5 indeed to voice an expression of remorse that  
 6 contradicts evidentiary facts, end quote. In  
 7 1986, the Supreme Court of Washington also  
 8 contemplated this issue and ruled that allocution  
 9 does not contemplate, that's quotation, does not  
 10 contemplate defendant presenting evidence on the  
 11 issue before the jury that would be unsworn  
 12 un rebuttable, uncross-examined and unanswerable by  
 13 argument, end quote, citing State v Mak, 718 P 2nd  
 14 407 Washington, cert denied, 479 US 995, 1986.

15 Our court has adopted the Zola and the  
 16 Mak reasoning. In Homick the Supreme Court of  
 17 Nevada has concluded that capital defendants, and  
 18 obviously this would also apply to those facing a  
 19 penalty hearing, whether it be for life with or  
 20 without the possibility of parole. In a footnote  
 21 in the Homick case, the Supreme Court has  
 22 indicated it is the obligation of defense counsel  
 23 to advise the defendant of his right of allocution  
 24 rather than the obligation of the trial court.  
 25 Despite this footnote, the Court goes on in the

1 Supreme Court which is citing McGautha versus  
 2 California and State versus Zola which are '71 and  
 3 '88 decisions, then --

4 MR. SCHIECK: That's my point. They're  
 5 not doing the sentencing during the first stage.  
 6 It's the second stage.

7 THE COURT: Yeah, we don't know if he's  
 8 eligible for death until we get to the second  
 9 stage. So it's your preference, and as far as I'm  
 10 concerned he can allocute twice if you think  
 11 that -- if you think his first allocation is for  
 12 purpose of mitigation, he would be required to  
 13 keep it to anything that you all consider to be  
 14 mitigation, and if he wants to allocute again if  
 15 he's still death eligible, he may do that.

16 Now, let me just read to you all the  
 17 things that I wrote here years ago from all this  
 18 research so we'll all be mindful of what the  
 19 limits are on allocution. Our Supreme Court has  
 20 gone on to state additionally that the right of  
 21 allocution is not unbridled and it cited a  
 22 New Jersey Supreme Court decision which indicates  
 23 that, quote, a defendant should not be permitted  
 24 to lie with impunity to a jury which is attempting  
 25 to reach a rational fact-based conclusion on

1 main body of the decision and indicates it  
 2 endorses and adopts the following ruling of the  
 3 New Jersey Supreme Court in Zola. Quotation, We  
 4 shall permit the narrowly defined right of a  
 5 capital defendant to make a brief unsworn  
 6 statement in mitigation to the jury at the close  
 7 of the presentation of the evidence in the penalty  
 8 phase. Before a defendant speaks, he shall be  
 9 instructed by the Court outside the presence of  
 10 the jury of the limited scope of the right; that  
 11 his statement is subject to the Court's  
 12 supervision and that should the statement go  
 13 beyond the boundaries permitted, he will be  
 14 subject to corrective action by the Court,  
 15 including either comment by the Court or the  
 16 prosecutor, or in some cases possible reopening of  
 17 the case for cross-examination.

18 Now, Mr. Thomas, do you understand the  
 19 right that you have to address the jury in  
 20 mitigation of sentence?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: You've discussed that with  
 23 your attorney?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And you and your attorneys

1 will discuss before they rest their mitigation  
2 case whether you will testify at all, whether you  
3 will testify -- you will not testify. Whether  
4 you'll give an unsworn statement of allocution at  
5 this phase of the proceeding or whether you will  
6 reserve your right to make an unsworn statement  
7 until the jury reaches a decision on mitigating  
8 and aggravating circumstances. That's your option  
9 and your choice, but I would allow -- if he wants  
10 to, I would allow him to make two unsworn  
11 statements, one for the purpose of mitigation and  
12 the other for.

13 MR. SCHIECK: All the other things that  
14 are in there.

15 THE COURT: Whatever. All right. Any  
16 questions? Then we're in recess until 1:

17 MR. SCHIECK: Before we go off the  
18 record, Mr. Thomas informed us this morning that  
19 due to situation out at the prison and him being  
20 moved down here, he hasn't had a shower since  
21 Sunday. They wouldn't let him have a shower last  
22 night. They say he can't shower for 48 hours.

23 THE COURT: I don't run the jail.  
24 Officer, is that correct?

25 MR. SCHIECK: He was booked in yesterday

88

1 like 6:00 he was booked.

2 THE COURT: What's the shower time over  
3 there?

4 MR. SCHIECK: He's in 2C.

5 COURT SERVICES: It's very regulated as  
6 to when they can have showers and things.

7 THE COURT: If I need to, I will sign a  
8 court order that he showers tonight. Do they  
9 shower at night or in the morning?

10 COURT SERVICES: All day long. They're  
11 brought out all day long. They each have a turn.


12 THE COURT: He shall shower tonight.

13 MR. SCHIECK: Can he shower over the  
14 lunch hour?

15 THE COURT: No, they're not taking him  
16 back to his unit. He's got to have lunch. You  
17 can't shower and have a lunch and get all that  
18 accomplished in the time it takes to get to the  
19 jail and back to court. So tonight. We're in  
20 recess until one.

21 -o-o-

22 ATTEST: Full, true and accurate transcript.

23   
24 \_\_\_\_\_  
25 MARY BETH COOK, CCR #268, RPR

RA 000695



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CASE NO. C-136862  
DEPT. NO. 15

**ORIGINAL**  
FILED IN OPEN COURT  
NOV - 4 2005 20

SHIRLEY B. PARRAGUIRRE, CLERK  
BY: Theresa Lee  
DISTRICT COURT  
**THERESA LEE** DEPUTY

CLARK COUNTY, NEVADA

\* \* \* \* \*

STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
 )  
vs. )  
 )  
MARLOW THOMAS, )  
 )  
Defendant. )  
\_\_\_\_\_ )

REPORTER'S DAILY COPY  
TRANSCRIPT  
OF  
PENALTY HEARING

BEFORE THE HONORABLE SALLY LOEHRER  
DISTRICT COURT JUDGE

AFTERNOON SESSION

DATED: WEDNESDAY, NOVEMBER 2, 2005

REPORTED BY: Sharon Howard, C.C.R. #745

88

1 APPEARANCES:

2 For the State: DAVID SCHWARTZ, ESQ.  
3 CHRIS OWENS, ESQ.

4 For the Defendant: DAVID SCHIECK, ESQ.  
5 DANIEL ALBREGT, ESQ.

6  
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1 LAS VEGAS, NEVADA; WEDNESDAY, NOVEMBER 2, 2005

2 1:30 P.M.

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

4 \* \* \* \* \*

5  
6 THE COURT: We're back in the penalty  
7 hearing of the State of Nevada vs. Marlow Thomas. The  
8 record will reflect the presence of the parties and  
9 counsel, all officers of the court, and full jury and  
10 alternate jurors.

11 The State, before the lunch recess, had,  
12 with the exception of making sure some exhibits were  
13 admitted had rested its case in this part of the penalty  
14 hearing.

15 Counsel for the defense, do you wish to  
16 call witnesses?

17 MR. ALBREGT: We do.

18 THE COURT: You may start.

19 MR. ALBREGT: We call David Hudson.

20 THE CLERK: You do solemnly swear the  
21 testimony you are about to give in this action shall be  
22 the truth, the whole truth, and nothing but the truth, so  
23 help you God.

24 THE WITNESS: I do.

25 THE CLERK: State and spell you name for

1 the record.

2 THE WITNESS: David Dwyane Hudson,  
3 D-A-V-I-D, H-U-D-S-O-N.

4 THE COURT: Have a seat, counsel.

5 DIRECT EXAMINATION

6 BY MR. ALBREGT:

7 Q. Mr. Hudson, where do you live?

8 A. I live at 5979, East Las Vegas.

9 Q. City and state?

10 A. East Las Vegas.

11 Q. Do you work?

12 A. Yes.

13 Q. Where do you work?

14 A. Clark County School District.

15 Q. How long have you worked there?

16 A. 21 years.

17 Q. Do you know Marlow Thomas?

18 A. Yes.

19 Q. You do know him?

20 A. He's my cousin.

21 Q. Do you see Marlow in the courtroom today?

22 A. Yes.

23 Q. Can you identify him for the court and the  
24 record, please?

25 A. Right here.

1 Q. What color shirt is he wearing?

2 A. A white shirt.

3 MR. ALBREGT: Will the record reflect that  
4 he has identified him for the record.

5 THE COURT: The record will reflect the  
6 identification of the defendant.

7 BY MR. ALBREGT:

8 Q. How do you know Mr. Thomas again.

9 A. He's my younger cousin.

10 Q. When you say younger cousin, how much  
11 younger?

12 A. 7 years.

13 Q. Who is your mother?

14 A. Emma Nash.

15 Q. Is Emma alive?

16 A. No, she's deceased.

17 Q. Did you have a sister?

18 A. Barbara Smith.

19 Q. Is Barbara Smith deceased?

20 A. Yes.

21 Q. Could you describe for the jury your  
22 relationship with Marlow growing up?

23 A. Well, actually it was like a relationship  
24 because he was my younger cousin. We didn't hang out, but  
25 he's my cousin. I'd see him every once in while at family



1 outings, things like that.

2 Q. What -- tell me about the cousin  
3 relationship, was it your mother and who of Marlow's was  
4 related?

5 A. Marlow's mother and my mother were  
6 sisters.

7 Q. Who was the older of the two sisters?

8 A. My mother.

9 Q. So you were an older child of an older  
10 sister in the family?

11 A. Right.

12 Q. Tell us about your interaction with  
13 Marlow growing up, what kind of kid was he -- well, first  
14 of all, how much time spend did you spend with him  
15 generally?

16 A. Not too much because of the difference of  
17 our ages, you know. I didn't really want to hang with my  
18 little cousin. I wasn't going to let my cousin hang with  
19 me. We seen each other at family outings and every once  
20 in awhile I'd go to his mother house just to get something  
21 to eat, something like that.

22 Q. Describe what kind of child he was that you  
23 show as Marlow was growing up?

24 A. Growing up Marlow was a normal child. I  
25 mean, he did what normal, you know, kids did growing up.

1 When he became a teenager, same thing.

2 Q. Did you have the opportunity to see  
3 Marlow's relationship with his siblings and his parents?

4 A. Yes. Well, with his brothers. You know how  
5 big brothers are. They would pick on the smaller brother,  
6 and every once in awhile he'd call me and say they were  
7 messing with him and I would talk to Larry -- which is his  
8 older brother's name, Larry. His other brother is called  
9 Darrell, and I would call and tell them to leave him  
10 alone, something like that.

11 Q. How many boys were in the family?

12 A. Four.

13 Q. Where did Marlow fall within the four  
14 boys?

15 A. He was the second to the youngest.

16 Q. So he was third out of four?

17 A. Right.

18 Q. Did you have an opportunity to see the  
19 interaction between Marlow and his mother and how he was  
20 raised? Well, let me ask you this, do you know was  
21 Marlow's father involved in his life?

22 A. No.

23 Q. Why not?

24 A. He just wasn't. I mean, as far as I know  
25 coming up, he was just not involved with Marlow. Well, I

1 didn't see it if he was, let me put it that way.

2 Q. Do you know if he was around or where he  
3 was?

4 A. He wasn't around.

5 Q. Do you know where he was?

6 A. I don't know where he was.

7 Q. But he certainly wasn't around in Marlow's  
8 life?

9 A. No.

10 Q. Can you describe the type of up bringing  
11 that you witnessed?

12 A. Georgia was probably one of the meanest  
13 aunties I had.

14 Q. Why do you say that?

15 A. She was very strict. She was very strict on  
16 all four of her sons. She didn't allow them -- they had a  
17 curfew. They had to keep the house clean. They had to  
18 cook. I mean she was very strict on them.

19 Q. Did she ever, or were you aware of any times  
20 where she was physical with Marlow or her children?

21 A. Physical, you mean in spanking -- she  
22 spanked all three of them, yes.

23 Q. Was there any other physical contact that  
24 you saw besides spanking and discipline with Marlow and  
25 his mother?

1           A.       She'd grab him by the collar every once in a  
2 while when they got out -- what she considered out of  
3 line.

4           Q.       Did you spend much time at their house or  
5 socializing over at their house?

6           A.       No.

7           Q.       Do you know why that was -- was there any  
8 specific reason?

9           A.       No, I just didn't.

10          Q.       Can you describe Marlow's interaction with  
11 his mother that you saw?

12          A.       Most of the time they had a good  
13 relationship. Every once in awhile, you know, he'd step  
14 out of line, step out of the box, but she'd get him back  
15 there or Larry would get him back there.

16          Q.       Did you become aware that at some stage as  
17 he was growing up that Marlow started having some  
18 troubles?

19          A.       Not -- what I heard was he started to get in  
20 some fights, but that's normal to me. Whenever boys come  
21 to be a man -- manhood, words exchanged, just fights,  
22 that's all I heard.

23          Q.       Do you know if he ever fell into the wrong  
24 crowd, or fell away from his family and got into dealing  
25 with other folks that you might think were the wrong

1 kind?

2 A. Yeah. He did follow what I consider the  
3 wrong crowd. What you considered roughnecks or people  
4 that were disrespectful, yes.

5 Q. About when did that happen?

6 A. Actually that started happening maybe two  
7 years before this incident happened.

8 Q. So you weren't aware of anything before  
9 that?

10 A. No. As I said I pretty much stayed with my  
11 age of my cousins, so when I hear things through the  
12 family grapevine, if it was serious enough I'd check it  
13 out or, you know, inquire about it.

14 Q. But again you were a little older cousin,  
15 working at the school district and didn't have much  
16 interaction with Marlow?

17 A. No, no.

18 Q. When did you hear about this crime?

19 A. I think it was the -- that morning my mother  
20 called me and asked me to come over.

21 Q. Tell me about that?

22 A. She asked me to come over, said something  
23 happened with Marlow. When I got there she said Marlow  
24 came to her -- came over to my sister's house -- my mother  
25 was staying at my sister house.

1 Q. This is Emma?

2 A. This is Emma.

3 Q. Go ahead.

4 A. I came over to Barbara Smith's house, and  
5 when I got there I said, what happened, and they said  
6 Marlow did something bad. I said, what did he do. She  
7 said he had confided in her and told her he went to where  
8 he used to work at and he robbed the place. And that is  
9 all I knew at that time. When she told me I said, okay,  
10 and I said, well, what are we going from now, we need to  
11 call the police, and that's what we did.

12 Q. And the police came over to her house?

13 A. They came over to my sister's house.

14 Q. I presume you were there at this time?

15 A. Yes.

16 Q. And Emma and your sister cooperated with the  
17 police and provided that information?

18 A. Yes.

19 Q. Can you describe your mother and sister's  
20 state of mind that morning when you went over there?

21 A. Shocked. They were shocked, nervous, and  
22 they didn't understand what was going on. So, yeah, they  
23 were pretty shocked.

24 Q. Did they describe to you what they witnessed  
25 as to Marlow's state of mind or how he was acting at that

1 time?

2 A. Erratic. He was very erratic when he came  
3 and started talking to them.

4 Q. Did he seem upset?

5 A. He was very upset, yeah.

6 Q. Anything else that they said about what  
7 happened that morning?

8 A. To my memory, no, that is what -- they  
9 explained to me what he told them, and that was about  
10 it.

11 Q. At some stage did you learn that two young  
12 men were killed?

13 A. Later on that day I found that two young men  
14 were killed, yes.

15 Q. What did you think when you heard all of  
16 this?

17 A. I didn't believe it.

18 Q. Why not?

19 A. That didn't seem like Marlow, how he was  
20 raised. We are all raised in the church so I couldn't see  
21 nobody in my family doing something like that.

22 Q. Did you ever see Marlow again after that,  
23 prior to his arrest?

24 A. No.

25 Q. Did you ever talk to Marlow after that?

1           A.       Yes, I talked to Marlow about a year and a  
2 half ago. He call me three-way and he told me that he  
3 started reading the Bible. And he started getting --  
4 seriously giving his life over to God, and I told him that  
5 was a good thing, he should have done that a long time  
6 ago. And I told him to stay with it.

7           Q.       And that three-way telephone call, did that  
8 come form the prison where Marlow has been living?

9           A.       Well, yeah. He called one of my cousins and  
10 one of my cousins called me.

11          Q.       Do you know why he called you or wanted to  
12 speak to you?

13          A.       No -- well, most of my younger cousins  
14 looked up to me. They always come talk to me if they were  
15 having problem with things like that. He was just letting  
16 me know that he got serious with the Lord, which is as I  
17 told him was a good thing.

18          Q.       Have you talked to him for -- have you  
19 talked to him at any other occasion or any other time  
20 since then?

21          A.       No.

22          Q.       Did you perceive a change in Marlow during  
23 this telephone conversation?

24          A.       Yes.

25          Q.       What?



1           A.       Yeah, I did because he was more mellow. He  
2 was talking, you know, with conviction that when he said  
3 he gave his life to the Lord. So any time you give your  
4 life to the Lord there has to be a change -- if you're  
5 serious about it.

6           Q.       What was your response in discussing these  
7 issues was Marlow during this telephone conversation?

8           A.       I told him it was a good thing.

9           Q.       Do you think he can have a product life in  
10 prison?

11          A.       Of course.

12          Q.       Why?

13          A.       Because if he gave his life to the Lord, the  
14 Lord can use him in prison.

15          Q.       How so?

16          A.       As a mister or pastor in prison.

17          Q.       At some point before the crime were you made  
18 aware that Marlow had a new girlfriend or was seeing  
19 someone new?

20          A.       That's one of the ones I said was, you know,  
21 bad -- one of the bad actors. She and a couple other guys  
22 he hung around with.

23          Q.       Do you know what her name was?

24          A.       I don't remember what her name was.

25          Q.       Did you have much interaction with her?

1 A. No.

2 MR. ALBREGT: I don't have anything  
3 further.

4 THE COURT: Cross-examination, counsel.

5 CROSS-EXAMINATION

6 BY MR. OWENS

7 Q. You said you didn't know a lot about  
8 Marlow's activities right before this happened?

9 A. As he was growing up, only thing I know is  
10 what I heard through the familiar grapevine. I really  
11 didn't hang with Marlow or even my brothers that was his  
12 age. I didn't hang with him either.

13 Q. You were asked a question about him get with  
14 the wrong crowd, and you said that happened two years  
15 before the incident?

16 A. Right.

17 Q. And did you know during that two year  
18 period -- did you know about him getting in trouble?

19 A. Like I said, I heard a couple of things just  
20 from one of the family members that said Marlow got into a  
21 fight, Marlow got in a fight there, you know, Marlow was  
22 chasing someone. Other than that, no.

23 Q. Did you know that he had gone to prison?

24 A. No.

25 Q. Did you know that he had been in prison for

1 a violent crime?

2 A. No. Only thing I know about was this crime  
3 here.

4 Q. So when you said that you were surprised  
5 because when you heard about this it didn't sound like the  
6 Marlow you knew?

7 A. Right.

8 Q. So it is possible that the Marlow you knew  
9 wasn't the real Marlow.

10 A. I wouldn't say that. We were close enough  
11 that we knew each other -- we knew each other's character  
12 that we wouldn't think a family member would do something  
13 like that. That's why I say the whole family was shocked  
14 when they heard that Marlow did something like that.

15 Q. But you didn't know about his attempt  
16 robbery conviction in 1990?

17 A. No.

18 Q. Or his prison time?

19 A. No.

20 Q. Did you know about a battery with  
21 substantially bodily harm that had occurred in 1996?

22 A. No.

23 Q. Before this?

24 A. No, nobody in the family told me that, no.

25 Q. Now were you the person that got the gun?

1 A. Yes. My mother gave me the gun.

2 Q. Your mother gave you the gun?

3 A. Yes.

4 Q. And you turned it over to the police?

5 A. Yes.

6 Q. And your position was they needed to get  
7 ahold of the police and be cooperative?

8 A. Of course.

9 Q. It's your feeling that Marlow can have a  
10 productive life in prison?

11 A. Yes.

12 MR. OWENS: Court's indulgence a moment.

13 THE COURT: Certainly.

14 MR. OWENS: May we approach, your Honor.

15 THE COURT: You may.

16 (Discussion held at the bench.)

17 BY MR. OWENS:

18 Q. You said in his religious conviction he  
19 could be a positive individual in custody?

20 A. Yes.

21 Q. Do you know how he has in fact functioned in  
22 custody?

23 A. Where?

24 Q. In custody.

25 A. No.

1           Q.       You know if he's been a disciplinary  
2 problem?

3           THE COURT: He said, no, he don't know.  
4 That's the answer to the question.

5           MR. OWENS: Thank you. That's all I  
6 have.

7           THE COURT: Redirect.

8           MR. ALBREGT: No, ma'am.

9           THE COURT: Mr. Hudson, thank you, sir,  
10 for your testimony here this afternoon. You may be  
11 excused. Please don't discuss your testimony with anyone  
12 other than the attorneys.

13           You may call your next witness.

14           MR. ALBREGT: Eliza Bosley.

15           THE CLERK: You do solemnly swear the  
16 testimony you are about to give in this action shall be  
17 the truth, the whole truth, and nothing but the truth, so  
18 help you God.

19           THE WITNESS: I do.

20           THE CLERK: State and spell you first and  
21 last name for the record.

22           THE WITNESS: Eliza Bosley, E-L-I-Z-A,  
23 B-O-S-L-E-Y.

24           THE CLERK: Thank you.

25           DIRECT EXAMINATION

1 BY MR. ALBREGT:

2 Q. Ms. Bosley what city and state do you live  
3 in?

4 A. Las Vegas, Nevada.

5 Q. Do you work?

6 A. No, I'm a homemaker.

7 Q. Do you know Marlow Thomas?

8 A. Yes, I do.

9 Q. How do you know Marlow?

10 A. He's my nephew.

11 Q. See him here today?

12 A. Yes.

13 Q. Can you describe an article of clothing?

14 A. A white shirt.

15 MR. ALBREGT: Record reflect  
16 identification.

17 THE COURT: The record will so reflect.

18 BY MR. ALBREGT:

19 Q. He is your nephew?

20 A. Yes.

21 Q. So your sister was Emma Nash?

22 A. Yes.

23 Q. How many sisters were there?

24 A. Eight of us.

25 Q. And Marlow's mother is your sister?

1 A. Yes.

2 Q. Where do you fall in the age?

3 A. I'm the youngest.

4 Q. You're the baby?

5 A. Yes.

6 Q. Did you spend a lot of time with Marlow in  
7 his young childhood?

8 A. Not far as when he was like from the toddler  
9 up until like he was 12 or maybe 10 or 11, no, after that,  
10 yes.

11 Q. Why did you not spend lot of time with him  
12 as a baby through up to about 10, 11, 12?

13 A. I way living in another state.

14 Q. Did you move to Las Vegas then when he was  
15 about 10, 11, 12?

16 A. Right, yes.

17 Q. Where did you live when you moved here?

18 A. I lived in various places.

19 Q. Did you ever live with Marlow?

20 A. On Heart Street, yes. Him and his mom.

21 Q. Who else lived there with him and his mom?

22 A. His three brothers.

23 Q. Did Marlow have any other siblings besides  
24 the three brothers?

25 A. No. Not that I know of anyway.

1 Q. Where did Marlow fit within the 4 boys?

2 A. In the middle. He was the second baby.

3 Q. Second?

4 A. Right.

5 Q. He had a younger brother?

6 A. Yes.

7 Q. What was his younger brother's name?

8 A. Paul.

9 Q. When you moved to Las Vegas when he was  
10 about 10, 11, 12, how old was Paul?

11 A. When I moved in with them?

12 Q. Yes.

13 A. Probably about -- I think about 4 -- 3 or 4  
14 somewhere in there.

15 Q. That was Paul?

16 A. Maybe a little younger. I don't quite  
17 remember how old he was.

18 Q. But he was a young toddler?

19 A. Yes.

20 Q. While you lived there did you have the  
21 opportunity to look at the family interaction and the  
22 family relationship between Marlow, his mother, and his  
23 brothers?

24 A. Yes.

25 Q. Can you describe what you saw during this



1 time of that family relationship?

2 A. It's -- with his older brother and baby  
3 brother his mom kind of like -- it was like a favoritism  
4 thing as far as the two middle children. The younger  
5 child and the older child, his brother Larry, got more  
6 attention than his brother, Pastor Thomas, Darrell, and  
7 Marlow.

8 Q. Why did you think that? What did you see  
9 that made you think that?

10 A. What did I see?

11 Q. Is there anything specific you can describe  
12 that made you think that or was it something you came to  
13 believe?

14 A. It was what I believed and saw because  
15 Marlow and Darrell, the other middle one, was more  
16 restricted to the house and doing chores and wasn't  
17 allowed to do anything, or when they needed anything it  
18 was like they got it, but they had to wait until a period  
19 -- long period of time before they got anything.

20 Q. Did Marlow's mother work during this time?

21 A. When I was staying with her, yeah.

22 Q. Where did she work, do you recall?

23 A. I don't know whether it was the airport or  
24 the school district. I'm leaning toward the school  
25 district.

1 Q. Where was Marlow's father?

2 A. He was in prison.

3 Q. Do you know when he went to prison?

4 A. No. I think I was in Missouri then.

5 Q. But when you got there when Marlow was 11,  
6 12 year old his father was in prison and not around?

7 A. His father was never around, as far as I  
8 knew.

9 Q. Do you know if there was any father figures  
10 in Marlow's life?

11 A. No. Actually, maybe before I came he was  
12 always leaning toward my sister, Aunt Shirley and her  
13 husband, because they spent a lot of time at her house.

14 Q. But certainly Marlow didn't have a step  
15 father?

16 A. No.

17 Q. Can you describe the type of discipline that  
18 happened that you saw while Marlow was growing up?

19 A. When I was staying with them or --

20 Q. Both when you were staying with them and  
21 just what you saw when you interacted with them?

22 A. When I was saying with them, like I stated  
23 earlier, Marlow really didn't get, per se, a lot of love  
24 and attention that you would actually give a child. I  
25 mean, that's what basically I seen. When I was there I

1       paid more attention to Marlow and his other brother then  
2       his mom did. I would make sure that they was eating and  
3       they didn't do -- I picked up the chores and everything,  
4       what they was forced to do, so like normal little kids  
5       they could go out and play and everything like that. They  
6       didn't get that opportunity to do none of that. He never  
7       got a chance to be a kid, kid. It was like, you know, a  
8       child is supposed to be taking the steps of a older child,  
9       like, a child that is watching another child. They were  
10      forced to baby sit a lot.

11           Q.       Did you know after you got here and Marlow  
12      become a teenager, did you know of any problems he was  
13      having during his teenage years?

14           A.       Again, I would have to reflect on the  
15      attention from the streets rather then from the people  
16      that he was supposed to get the attention from, the love  
17      and everything. Not receiving attention and he took it  
18      from the streets as running rugged in the streets.

19           Q.       As he became a teenager Marlow began to  
20      spend time with people on the streets?

21           A.       Yes, he did that.

22           Q.       Did he ever rebel during this time against  
23      his mother and family?

24           A.       Rebel against -- not his family, no. His  
25      family showed him more attention then his mom did, so not

1       against his family. He was the one that always looked up  
2       and want to protect his family, especially his smaller  
3       cousins. But as far as his mom, rebelling against his  
4       mom, in some ways, yeah.

5               Q.       What do you mean by that?

6               A.       Well, his mom, like he wasn't supposed to be  
7       outside, he would sneak outside and go outside and play or  
8       stuff like that.

9               Q.       Why do you think he did that sort of  
10       stuff?

11              A.       Because he wasn't allowed to do it. While  
12       his mom was around he wasn't allow to basically do  
13       anything -- well, those two boys, anyway.

14              Q.       Do you think there were efforts doing that  
15       in seeking attention from his mother to get her  
16       attention?

17              A.       Yeah -- yes.

18              Q.       Now, you are aware of the crime for which  
19       Marlow has been convicted which leads us here this week?

20              A.       Yes.

21              Q.       Did you see Marlow at all around the time?

22              A.       I saw him that night before.

23              Q.       The night before?

24              A.       The incident happened.

25              Q.       Where did you see him?

1           A.       He was at my house.

2           Q.       How long was he there?

3           A.       He was there for about, I think, like, two  
4 and a half hours.

5           Q.       Then he left and went elsewhere?

6           A.       I don't know where he went.

7           Q.       Who was he with?

8           A.       I don't know whether she was his wife at  
9 that time, Angela.

10          Q.       Either his wife or significant other,  
11 girlfriend?

12          A.       Yeah, and her brother.

13          Q.       Do you remember her brother's name?

14          A.       I don't know how to pronounce it.

15          Q.       Kenya?

16          A.       Yeah.

17          Q.       Describe what you saw when they were  
18 there?

19          A.       I really didn't pay no attention to the  
20 brother. I didn't like the -- Angela, because of the vibe  
21 that she put off and everything. But as far as Marlow, he  
22 sat there like he was really like in a daze or something  
23 like he wasn't in his right mind.

24          Q.       Did it look like he was under the influence  
25 of drugs or alcohol?

1 A. Yes.

2 Q. Why do you say that?

3 A. Because his pupils are all glazed and  
4 everything. I talked to Marlow that night. I was trying  
5 to find out exactly what was going on with him and  
6 everything, because he just sat there and stared like in a  
7 daze type thing, like --

8 Q. And he wouldn't confide or talk to you that  
9 night?

10 A. Yeah, he talked to me, but he didn't talk to  
11 me about what he was getting off into or anything, no.

12 Q. Why did you not like Angela? You said she  
13 was sending off a vibe, can you describe what you mean by  
14 that for the jury?

15 A. She was sending off this vibe, like, as far  
16 as, like, I really can't describe it with -- a vibe like a  
17 character I wouldn't want to associate with or anything, a  
18 person that was off into things that she wanted to drag  
19 other people off into, like drugs and all of that kind of  
20 stuff like that. I didn't agree with her at all.

21 Q. Drugs weren't a part of your family?

22 A. No -- my family?

23 Q. Right. And drunks certainly weren't a part  
24 of Marlow's family?

25 A. No, no.

1 Q. After they left that night, did you ever see  
2 Marlow again?

3 A. No.

4 Q. Did you hear -- how did you hear about the  
5 crime?

6 A. His mom called me.

7 Q. Tell me about that?

8 A. She called me and told me that my sister  
9 Emma got in contact with her and told her that Marlow was  
10 up there, came to the house, and that she said supposedly  
11 had did this crime and everything like that. And I was,  
12 like, in shock because that wasn't the type of person that  
13 he was in my eyes. I can't say for anybody else, but in  
14 my eyes it wasn't him.

15 Q. Did you know that Marlow had been previously  
16 convicted of a felon or two felonies?

17 A. No.

18 Q. Did you know that Marlow had been in prison  
19 before this -- before this incident?

20 A. I knew he had been to -- I didn't know he  
21 was in prison, I knew he had been to jail. That's as far  
22 as I knew.

23 Q. But you didn't think it was prison or  
24 anything else?

25 A. No.

1 Q. Have you spoken to Marlow since -- you said  
2 you hadn't seen Marlow since the crime. Have you spoken  
3 to Marlow since the crime?

4 A. I have talked to him like on a three-way  
5 call. He would call my niece, his cousin.

6 Q. What's her name?

7 A. Antoinette. And she would three-way me with  
8 him. I would talk to Marlow about scriptures from the  
9 Bible and everything. That's basically my whole  
10 conversation, my whole thing with Marlow was Christian.

11 Q. Did you notice any changes in -- well, let  
12 me ask you this, how many times have you spoken to him on  
13 the phone?

14 A. Probably like five times.

15 Q. Five times over the course of the last  
16 couple -- few years?

17 A. Yes.

18 Q. Have you noticed any change during these  
19 telephone conversations?

20 A. In his --

21 Q. Just in Marlow.

22 A. In his voice tone and the anger in his  
23 voice, yes.

24 Q. Tell us about that?

25 A. He didn't seem more of -- he seemed less



1       angry. He didn't -- like when Marlow gets in an incident  
2       Marlow just lash out with anger, you know, he didn't --  
3       wasn't like that. It was more mellow.

4               Q.       So if something -- before this crime and  
5       before going to prison for this crime, if something  
6       bothered or angered Marlow, you say you would say him lash  
7       out in anger?

8               A.       Verbally, yes.

9               Q.       And you don't see that anymore?

10              A.       No.

11              Q.       Is there anything else you notice about his  
12       attitude or anything else that you've detected during your  
13       telephone conversations?

14              A.       No more then he was more mellow then he used  
15       to be. He wasn't angry. He was more like he was at peace  
16       within himself, that's basically it.

17                      MR. ALBREGT: Nothing further, Judge.

18                      THE COURT: Cross-examination.

19                      MR. OWENS: No questions, your Honor.

20                      THE COURT: Thank you for your testimony  
21       here this afternoon. Please don't discuss your testimony  
22       with anyone other than -- you know, I forgot.

23                      Any questions?

24                      See you let one of them go by, you didn't  
25       remind me. Thank you.

1 Counsel, you may call your next witness.

2 MR. ALBREGT: Shirley Nash.

3 THE CLERK: You do solemnly swear the  
4 testimony you are about to give in this action shall be  
5 the truth, the whole truth, and nothing but the truth, so  
6 help you God.

7 THE WITNESS: I do.

8 THE CLERK: State and spell your name for  
9 the record.

10 THE WITNESS: Shirley Nash, S-H-I-R-L-E-Y  
11 N-A-S-H.

12 THE CLERK: Thank you.

13 DIRECT EXAMINATION

14 BY MR. ALBREGT:

15 Q. Ms. Nash, what city and state do you live  
16 in?

17 A. Las Vegas, Nevada.

18 Q. Do you know Marlow Thomas?

19 A. Yes.

20 Q. How do you know Marlow?

21 A. He's my nephew.

22 Q. Do you see him in the courtroom today?

23 A. Yes.

24 Q. Could you tell the jury what he's wearing?

25 A. A white shirt.

1 MR. ALBREGT: Let the record reflect  
2 identification.

3 THE COURT: The record will so reflect.

4 BY MR. ALBREGT:

5 Q. Who is Emma Nash?

6 A. My sister.

7 Q. Is he older or younger.

8 A. Older.

9 Q. Who is the young lady that just left?

10 A. Eliza.

11 Q. Who is she?

12 A. My sister.

13 Q. Older or younger?

14 A. Younger.

15 Q. Who is Georgia?

16 A. My sister.

17 Q. Is that Marlow's mom?

18 A. Yes.

19 Q. Is she older or younger?

20 A. Older.

21 Q. Have you lived in Las Vegas all your life?

22 A. No.

23 Q. How long have you been here?

24 A. 40 some years.

25 Q. You were here at the time that Marlow was

1 growing up?

2 A. Yes.

3 Q. Tell us about Marlow's family, brothers  
4 sisters?

5 A. He had no sisters.

6 Q. How many brothers?

7 A. Three.

8 Q. Four boys in the family?

9 A. Yes.

10 Q. Where does Marlow fall?

11 A. Next to the baby boy.

12 Q. Third?

13 A. Yes.

14 Q. Were you close with Marlow and his mother  
15 growing up?

16 A. Yes.

17 Q. Describe that -- what do you mean by  
18 close?

19 A. Well, when he was growing I lived with them  
20 when he was born, and when he got about 3 me and my  
21 husband moved out and he moved with us and his mother.

22 Q. Where was Marlow's father?

23 A. He was in his life until about 6 or 7, then  
24 he went to prison.

25 Q. Marlow's father went to prison?

1 A. Yes.

2 Q. And Marlow never saw him again?

3 A. No.

4 Q. Describe if you would what you saw about  
5 Marlow growing up. What type of kid was he when he was a  
6 young kid?

7 A. Typical young kid. He got like mine, got in  
8 a little trouble.

9 Q. What sort of trouble are you describing?

10 A. My daughter used to, you know, fight at  
11 school and Marlow used to help her, like that. Other than  
12 that, he was a typical kid.

13 Q. If he got into a fight you knew on those  
14 occasions he was protecting his cousin, or got into a  
15 fight because of his cousin?

16 A. Yes.

17 Q. Did Marlow change when his father went to  
18 prison?

19 A. His behavior did, yes.

20 Q. Describe that?

21 A. He started acting out, like, he was looking  
22 for attention.

23 Q. Acting out how?

24 A. How do you describe it. Just doing little  
25 things, just --

1 Q. Did -- you were married at that time?

2 A. Yes.

3 Q. Did your husband try to step in at all or  
4 become a father figure at all?

5 A. He tried, very much. Like for instance my  
6 husband would take them on weekends to the park,  
7 (inaudible) Springs, Red Rock Canyon, places like that.

8 Q. Was Marlow receptive to that?

9 A. Sometimes he was, sometimes he pulled  
10 away.

11 Q. In your estimation did it seem like your  
12 husband was able to fill the shoes of a father?

13 A. No, he didn't.

14 Q. Can you say why that was?

15 A. He wasn't Marlow's father for one, and  
16 Marlow didn't -- said he wasn't his father. He couldn't  
17 do it.

18 Q. Did there come a time in Marlow's up  
19 bringing that you were aware that he was starting to get  
20 into more trouble, not just little things kids get into,  
21 but serious things with the police?

22 A. Yes.

23 Q. When about did that happen if you  
24 remember?

25 A. I think about 14, 15, 16, up in that area, I

1 think.

2 Q. Do you remember specifically what sort of  
3 trouble he was getting into?

4 A. Not really, no.

5 Q. Do you have an opinion as to why he was  
6 getting into -- let me back up and ask you this, was  
7 Marlow raised strictly -- was there discipline and things  
8 in the house?

9 A. There was discipline in the house.

10 Q. Tell me about that?

11 A. If he did something wrong his mother used to  
12 use the belt.

13 Q. Was he raised in a religious atmosphere?

14 A. Yes.

15 Q. Describe that, please.

16 A. My sister kept Marlow in the church. They  
17 would go Sunday, Bible study. We had Sunday school, back  
18 again at night service.

19 Q. Why do you think Marlow, given that type of  
20 upbringing in his teenage years started going astray with  
21 the law?

22 A. He -- I don't know. I can't answer that.

23 Q. I'm sorry.

24 A. Maybe because of some of the people he was  
25 hanging out with.

1 Q. Like who? Can you describe some folks --  
2 not names, but descriptions of the types of folks?

3 A. Bad people, bad kids in the neighborhood.

4 Q. Kids that weren't working?

5 A. Maybe some was and some wasn't.

6 Q. Getting into trouble too?

7 A. Yes.

8 Q. Why do you think Marlow starting hanging out  
9 with kids like that?

10 A. Because --

11 MR. SCHWARTZ: That calls for  
12 speculation.

13 THE COURT: If she knows. You may answer  
14 the question.

15 BY MR. ALBREGT:

16 Do you have -- your opinion, if you have  
17 any opinion as to why he started hanging out with kids  
18 like that.

19 A. They show him more attention then he was  
20 getting at home.

21 Q. How did Marlow act toward you as he was  
22 growing up?

23 A. He gave me most respect.

24 Q. Did he ever interact with your children?

25 A. Like how?



1 Q. Did he have a relationship with your  
2 children at all?

3 A. Yes. My daughter Ann, my son Sherman,  
4 mostly.

5 Q. Did he ever baby sit your kids?

6 A. Yes, the younger one, Crystal.

7 Q. When was that?

8 A. Like me and my husband go out. He'd watch  
9 them while I went to the store, or went to my sister  
10 house.

11 Q. What about your grand kids, did he ever baby  
12 sit them?

13 A. Yes.

14 Q. Were you aware as a young adult that Marlow  
15 was arrested for felony crimes and sent to prison?

16 A. Yes.

17 Q. When did you -- how did you become aware of  
18 that?

19 A. Because my son was with him and they did a  
20 robbery somewhere.

21 Q. And you know Marlow went to prison?

22 A. Yes.

23 Q. Did you have any interaction after he got  
24 out of prison with Marlow?

25 A. Yes, when he came home, yes.

1 Q. Describe that interaction?

2 A. He had -- he had mellowed down a little when  
3 he first came out of prison the second time -- the first  
4 time, yeah, the first time. He had mellowed out real good  
5 for a couple of months, real good.

6 Q. Then what happened?

7 A. Everything went haywire.

8 Q. Do you know why?

9 A. No.

10 Q. Do you know if Marlow was seeing anybody  
11 after he got out of prison?

12 A. He started seeing some girl named Angela.

13 Q. Did you know her very well?

14 A. Not very well.

15 Q. How often did you come in contact with  
16 her?

17 A. Maybe once a week. He used to come over  
18 there with her.

19 Q. What was your opinion of her?

20 A. Get rid of her.

21 Q. I'm sorry?

22 A. Get rid of her.

23 Q. Why?

24 A. She had a bad attitude.

25 Q. Any specific things that stick in your

1 mind?

2 A. That she wasn't no good, I'll be honest.

3 Q. Did you see Marlow at all just before the  
4 incident which led to the crime for which he's now  
5 convicted?

6 A. Yes.

7 Q. When did you see him?

8 A. The night before.

9 Q. Where did you see him?

10 A. My house.

11 Q. How long was he there?

12 A. About maybe two hours or more.

13 Q. Describe what you saw -- was there anybody  
14 else there with you?

15 A. Yes.

16 Q. Who else?

17 A. My son Charles, my son Sherman, his wife, my  
18 husband, my daughter Crystal, and my son's new baby.

19 Q. Let me ask you, at this time where was  
20 Charles working?

21 A. Lone Star.

22 Q. Same Lone Star where the crime took place?

23 A. Yes.

24 Q. Tell me about what occurred the night  
25 before, what you all did, if there was any discussions

1 about anything?

2 A. He sat there talking to my son. I was  
3 inside. I went out there and he was talking and playing  
4 with the baby.

5 Q. Anything unusual that sticks out in your  
6 mind about that night?

7 A. Not really, no.

8 Q. When did you first hear about the crime?

9 A. I think on TV.

10 Q. Is that the next day?

11 A. Yes.

12 Q. What did you think?

13 A. I was heartbroken. I was sad because I  
14 didn't believe it was Marlow.

15 Q. Why not?

16 A. Because like I said he wouldn't do something  
17 like that.

18 Q. You mean kill two people?

19 A. Yes.

20 Q. Did you speak to anybody, any of your  
21 sisters that day?

22 A. I talk to his mother, yes.

23 Q. Tell us about that.

24 A. She was very upset, crying. She said that's  
25 not my son.

1 Q. Did you see Marlow after?

2 A. No.

3 Q. Have you seen Marlow since that time?

4 A. No.

5 Q. Is today the first day you have seen Marlow  
6 since that time?

7 A. Yes.

8 Q. Had you talked to Marlow since that time?

9 A. Yes.

10 Q. Since he has been in prison for this  
11 crime?

12 A. Yes.

13 Q. How often do you talk to Marlow?

14 A. Before me daughter got her phone number  
15 changed, about twice a month.

16 Q. He would call your daughter and speak to you  
17 as well?

18 A. Yes.

19 Q. What sort of things did you talk about?

20 A. How he's doing.

21 Q. What is your impression of how he was  
22 doing?

23 A. Well, he said he doing good, but not well.

24 Q. Did you sense any changes in Marlow as a  
25 result of his being in prison?

1 A. Yes.

2 Q. Tell us about those?

3 A. He seems like a different person from the  
4 day I talked to him after the crime had happened. He  
5 seemed like he regret what he did.

6 Q. Why do you say that?

7 A. Because he looks different.

8 Q. The one young man that was killed, did you  
9 know if Marlow knew him or not?

10 A. Yeah, he knew him.

11 Q. Would you know the name of the young man he  
12 knew?

13 A. Carl and Matt. He knew both of them.

14 Q. Do you know if they interacted or  
15 socialized?

16 A. They socialized very well.

17 Q. Did your son Charles know the two young  
18 man?

19 A. Yes.

20 Q. How well?

21 A. Very well. They used to come to my house.

22 Q. How the Charles do when he heard this  
23 happened?

24 A. Oh, my Lord, he was very hurt.

25 Q. Why?

1           A.       Because he couldn't believe that Marlow did  
2 something like that, hurt them like that.

3           Q.       Any other changes or anything else?

4           A.       In Charles?

5           Q.       In Marlow during these telephone calls?

6           A.       No.

7                   MR. ALBREGT: No further questions.

8                   THE COURT: Cross-examination, counsel.

9                   MR. SCHWARTZ: Thank you, your Honor.

10                   CROSS-EXAMINATION

11           BY MR. SCHWARTZ:

12           Q.       Ms. Nash, you stated you saw the defendant  
13 the night before these murders occurred?

14           A.       Yes.

15           Q.       And your son Charles was home?

16           A.       Yeah, Charles was there when he came over.

17           Q.       And he was working at the Lone Star on  
18 Cheyenne and Rainbow?

19           A.       Yes. He had just quit right before this  
20 happened. Something like that.

21           Q.       Do you recall the day he quit?

22           A.       No.

23           Q.       Would it have been a day or two before the  
24 actual murders?

25           A.       I think a week before.

1 Q. And did you know whether Marlow worked at  
2 the Lone Star at some point?

3 A. He used to work there.

4 Q. Do you know how long he worked there?

5 A. Three months, or maybe two. I'm not for  
6 sure.

7 Q. Do you know why he stopped working there?

8 A. No.

9 Q. Did you state that -- I believe Mr. Albregt  
10 asked you about -- if you were familiar with a robbery  
11 that had occurred, I think, back in 1990, and you said,  
12 yes, your son was involved is that?

13 A. Yes. It could have been '90 or '91, I don't  
14 know.

15 Q. Is that the robbery for which the defendant  
16 went to prison?

17 A. Yes.

18 Q. Do you know whether or not a weapon was used  
19 in that robbery?

20 A. I don't think so. My son didn't say they  
21 had a weapon. I don't know.

22 Q. Did you know of a conviction in 1996 for  
23 battery with substantial bodily harm?

24 A. No.

25 Q. Did you know a Pam Davis?



1 A. No.

2 Q. Did you know Allisa Jackson?

3 A. No.

4 MR. SCHWARTZ: I have nothing further.

5 THE COURT: Counsel.

6 REDIRECT EXAMINATION

7 BY MR. ALBREGT:

8 Q. Your son was with Marlow during this other  
9 robbery, which son was that?

10 A. Sherman.

11 Q. Not Charles, the son that worked at the Lone  
12 Star?

13 A. No.

14 MR. ALBREGT: Nothing further.

15 THE COURT: Ladies and gentlemen, do you  
16 have any questions for Ms. Nash?

17 Thank you for your testimony this  
18 afternoon. You may be excused Please don't discuss your  
19 testimony with anyone other than the attorneys.

20 Counsel, you may call your next witness.

21 MR. ALBREGT: Charles Nash.

22 THE CLERK: You do solemnly swear the  
23 testimony you are about to give in this action shall be  
24 the truth, the whole truth, and nothing but the truth, so  
25 help you God.

1 THE WITNESS: Yes.

2 THE CLERK: State and spell your name for  
3 the record.

4 THE WITNESS: Charles Nash, C-H-A-R-L-E-S,  
5 N-A-S-H.

6 DIRECT EXAMINATION

7 BY MR. ALBREGT:

8 Q. Mr. Nash, what city and state do you  
9 reside?

10 A. Las Vegas, Nevada.

11 Q. Are you working now?

12 A. Not at the moment.

13 Q. What sort of work have you done in the  
14 past?

15 A. Like I quit three weeks ago. I was doing  
16 air-condition install and repair.

17 Q. So you are in between jobs?

18 A. Yeah. I can get that job back, just got to  
19 go back to him.

20 Q. Do you know Marlow Thomas?

21 A. Yes, indeed.

22 Q. How do you know him?

23 A. That is my big cousin.

24 Q. Can you point something out that he's  
25 wearing?

1 A. Excuse me?

2 Q. Point something out that he's wearing so we  
3 make sure who we're talking about?

4 A. White dress shirt.

5 MR. ALBREGT: Record the reflect  
6 identification.

7 THE COURT: The record will so reflect.

8 BY MR. ALBREGT:

9 Q. When was the last time you've seen him?

10 A. I cannot remember that, sir. It's been  
11 years.

12 Q. What -- who is your mother?

13 A. Shirley Nash.

14 Q. The lady that just left?

15 A. Yes, sir.

16 Q. How old were you in relation to Marlow? Is  
17 he younger, older, about the same age?

18 A. He a good year older than me.

19 Q. So fairly close?

20 A. Yes.

21 Q: Were you guys close cousins growing up?

22 A. Yes.

23 Q. What are some of your first memories of  
24 Marlow?

25 A. We used to just go play sports together.

1 Q. As little boys?

2 A. Yeah.

3 Q. How much time did you spend with him growing  
4 up, just in general?

5 A. Mean years, or what you mean.

6 Q. Yeah, on a week-to-week, month-to-month  
7 basis. Did you see him once every couple of months?

8 A. Like once every couple of days.

9 Q. So you were close?

10 A. Yes.

11 Q. Did you go to the same schools?

12 A. No.

13 Q. Did you see him interact with his family?

14 A. Yes.

15 Q. Can you describe his family for the jury?

16 A. Auntie, she's my auntie.

17 Q. Your mother's sister?

18 A. Yes, my mom's sister.

19 Q. What about brothers or sisters?

20 A. He got a couple brothers, no sisters.

21 Q. Where does Marlow fall in the line of  
22 brothers, oldest, youngest?

23 A. He has one younger brother.

24 Q. So he's third out of four?

25 A. Yes.

1 Q. Tell me about what you saw with Marlow  
2 growing up and what his family life was like. What his  
3 family life was like.

4 A. Growing up he had his problems. And I kind  
5 of seen things that I didn't kind of understanding what  
6 was he doing and I kind of seen it was people he was  
7 hanging with.

8 Q. Let's -- before we get to the people that he  
9 was hanging with and having problems, let's talk about a  
10 couple of other things. You remember Marlow's dad?

11 A. Sort of kind of.

12 Q. You remember when he left?

13 A. No.

14 Q. Were you young?

15 A. Yes.

16 Q. Is that why you say sort of kind of?

17 A. Yes.

18 Q. Is that a, yes?

19 A. Yes.

20 Q. Do you know where he went, his father when  
21 he left?

22 A. No.

23 Q. Just never saw him again?

24 A. No.

25 Q. Have you seen him since?

1           A.       I actually didn't see his dad too much  
2            anyway.

3           Q.       And you certainly haven't seen him since  
4            you were a little boy?

5           A.       Not to my remembering.

6           Q.       Since Marlow was a little boy?

7           A.       No. I might have seen him I just didn't pay  
8            no attention to him.

9           Q.       Is it fair to say that he never was in  
10          Marlow's life as far as you saw?

11          A.       Most definitely not. He wasn't.

12          Q.       All right. You talked just a minute ago  
13          about seeing Marlow starting to act out, hang with other  
14          people, tell us about that. When did that occur?

15          A.       As we were young, you know, it was, you  
16          know, just growing up, it was like when you hang around  
17          certain people, like gang members for instance, it's like  
18          you end up doing like bad things, but when he was around  
19          people who wasn't, he was good as can be.

20          Q.       Do you have an opinion as to why Marlow  
21          might start hanging around with people like that, as  
22          opposed to not hanging around with people like that. Do  
23          you have an opinion?

24          A.       I have no opinion.

25          Q.       You don't know why he started hanging out

1 with folks like that?

2 A. Everyone asked me, I'd say, getting  
3 neglected at home and feeling like -- that don't nobody  
4 care, and just the next best thing was the people you be  
5 with, so --

6 Q. Why do you think -- why do you have the  
7 impression that he was neglected at home, not getting  
8 attention at home?

9 A. I seen it.

10 Q. What did you see?

11 A. I seen how he was getting treated.

12 Q. Describe that?

13 A. Get in trouble for things that he didn't  
14 basically do, and just things like that. Always getting  
15 blamed for things.

16 Q. Blame from his mother?

17 A. And whoever else too. Something happened,  
18 point the finger at him.

19 Q. Was it your impression that his mother was  
20 harder on Marlow then the other kids?

21 A. Oh, yeah -- yes.

22 Q. Were you aware that Marlow got into some  
23 trouble with your brother in the 90s?

24 A. No.

25 Q. You don't recall a robbery that Marlow was

1 convicted of in the 90s?

2 A. No.

3 Q. Were aware that Marlow went to prison for a  
4 time?

5 A. Yes.

6 Q. But you don't know the specifics as to why  
7 he went?

8 A. No.

9 Q. He was gone for awhile in prison?

10 A. Yes.

11 Q. Then you saw him again when he got back  
12 out?

13 A. Yes.

14 Q. When he got back out, did you ever do  
15 anything to help Marlow find a job?

16 A. Yes, I did.

17 Q. Tell the jury what you did?

18 A. I seen the way he was going, the direction  
19 he was going, so I was working and I talked to the boss  
20 and I got him a job there.

21 Q. Got him a job where?

22 A. Lone Star Steak House.

23 Q. What did you do there?

24 A. Me, part-time cook and when they were busy I  
25 was a dishwasher.



1 Q. What did Marlow do when he worked there?

2 A. He was cleaning up, basically everything,  
3 and dishwasher also.

4 Q. Did you know a Matt Gianakis?

5 A. Yes.

6 Q. Who was Matt?

7 A. Matt was a good friend.

8 Q. Did you know Carl Dixon?

9 A. I was always taking Carl home from work.  
10 Carl was always at my house.

11 Q. You guys were good friends?

12 A. Yes.

13 Q. How long did Marlow work there?

14 A. I can't remember.

15 Q. How did it go at first with Marlow working  
16 there?

17 A. It was fine. I didn't see anything wrong.  
18 He was doing his work. Everything -- wasn't missing no  
19 days.

20 Q. Did you see Marlow ever interact with Carl  
21 and Matt?

22 A. Only -- at work he'd say hi, bye, here and  
23 there, but at my house, yeah, playing dominos, cards.

24 Q. Playing dominos and cards?

25 A. Yes.

1 Q. That would be with Carl?

2 A. Matt only came over a couple of times, not  
3 too many.

4 Q. You were closer to Carl than Matt?

5 A. Yes.

6 Q. Did there ever seem to be any problems that  
7 you saw between Carl and Matt?

8 A. Never.

9 Q. And Marlow.

10 A. No.

11 Q. Did there come a time when Marlow's work  
12 performance or how he handled the job changed from what  
13 you described as he was doing well?

14 A. Yes.

15 Q. When did that occur?

16 A. When -- I don't remember this guys name we  
17 worked with, but he was doing bad drugs and I kind of  
18 started seeing my cousin hanging around this fellow and  
19 told him don't do that.

20 Q. What was Marlow's response?

21 A. I guess he just kept on hanging with the  
22 fellow.

23 Q. Did you know Angela?

24 A. Yes, so, so.

25 Q. Who was Angela?

1 A. A female that he was messing with.

2 Q. Girlfriend or significant other?

3 A. Yes.

4 Q. Do you know if they were married or not?

5 A. I don't know.

6 Q. Did you see Marlow change around the time  
7 that he was starting to hang out with Angela as well?

8 A. Yes. I had met her before they even kind of  
9 got together, and she was on this stuff very, very tough  
10 also.

11 Q. She was on --

12 A. She was using crack and other drugs.

13 Q. Do you know whether Marlow started using  
14 that when he started having a relationship with her?

15 A. When you ask me, I'll say, yes.

16 Q. But you never actually saw it?

17 A. Not with her.

18 Q. With others?

19 A. Yes.

20 Q. Who else?

21 A. The one I'm talking about that was working  
22 with us.

23 Q. But that --

24 A. It was a female and three males we were  
25 working with.

1 Q. So we're clear, that wasn't Matt or Carl?

2 A. No. They did nothing of the sort.

3 Q. At some stage did Marlow stop working at the  
4 Lone Star?

5 A. Yes.

6 Q. Do you know when that was in relation to the  
7 crimes at issue here. Is it months before, weeks before,  
8 do you know?

9 A. If I had to say I would say probably a good  
10 month or two.

11 Q. Month or two -- is that a, yes?

12 A. Yes.

13 Q. Do you know why Marlow -- was he fired, did  
14 he quit, was he let got, do you know?

15 A. They told me that he quit.

16 Q. Do you know what problems were with  
17 Marlow?

18 A. I don't know why he quit.

19 Q. Was he showing up for work or what?

20 A. He was showing up to work, but for me the  
21 more I seen him hanging with certain individuals, then I  
22 seen him -- and I could tell the way he looked and  
23 everything that he wasn't there, that that's when the  
24 stuff kind of all of a sudden, damn, like, dang -- excuse  
25 me, your Honor, like, that's when the stuff started going

1 very, very bad for that guy.

2 Q. Did you see Marlow on the days before the  
3 crime at the Lone Star?

4 A. No. Could have been a week or two maybe.  
5 But not days.

6 Q. So you weren't living with your mother the  
7 night before the crime?

8 A. No.

9 Q. And you weren't there at her house?

10 A. My girl came through my mom's house, he  
11 wasn't there.

12 Q. But you weren't there all night, I take  
13 it?

14 A. No.

15 Q. Came through, you mean stopped by?

16 A. Stopped by say hello.

17 Q. Check on mom?

18 A. Yeah.

19 Q. When did you first hear about this?

20 A. I dropped my girl off at work and went to my  
21 mom's house, and they told me that my mom was up to my  
22 aunt's house, and what do you mean, what's going on, and  
23 that's when my little sister told me I needed to go up  
24 there. And I went up there, and she told me -- asked me  
25 if I hear anything, I told her, no. I was trying to work

1 and see what was going on, and I drove up there. That's  
2 when I found out.

3 Q. That was the day that it occurred?

4 A. Yes, yes.

5 Q. Did you hear immediately that Matt and Carl  
6 had been killed?

7 A. Yes. I was right there when they was  
8 bringing Carl out.

9 Q. At the Lone Star?

10 A. Yes.

11 Q. Did you know at that time that Marlow was  
12 the person accused of having done that?

13 A. I did not believe it.

14 Q. Why not?

15 A. Because that is not him. You got the wrong  
16 person. Until one of the managers looked and told me that  
17 some -- very rudely, and, okay, I turned around and  
18 left.

19 Q. How did it make you feel?

20 A. Terrible, terrible, unexplainable.

21 Q. Those two guys were co-workers and good  
22 friends of yours?

23 A. Yes.

24 Q. What did you think of Marlow when you heard  
25 it?

1 A. I was upset, very, very upset.

2 Q. At Marlow?

3 A. Yes.

4 Q. Did you ever want to talk to him after that  
5 as a result -- after the time and all of this going  
6 through your head?

7 A. Right when I found out, no. Then I got to  
8 thinking, like, too many stories going around, so I wanted  
9 to talk to him.

10 Q. You wanted to hear the truth from him?

11 A. Yes. I can tell by the way he was saying  
12 it.

13 Q. You never talked to him or had that chance,  
14 did you?

15 A. Just for 20, 30 seconds.

16 Q. When was that?

17 A. I don't know when it was. He had just got  
18 locked up, and I was over to my mom's house and he called  
19 and I asked for the phone.

20 Q. Tell was about that conversation?

21 A. He just said he was sorry, and that they  
22 attacked him.

23 Q. Were you angry at him when you were talking  
24 to him?

25 A. Yes.

1 Q. Did you tell him that?

2 A. Yes.

3 Q. How did he respond to that?

4 A. He kept on saying that I know him, that --  
5 that's it's not him. And that's true, I do know him and  
6 that's not him.

7 Q. How long after that did you stop working a  
8 the Lone Star?

9 A. Right after that. They didn't want no part  
10 of me.

11 Q. The Lone Start didn't want any part of  
12 you?

13 A. Yes.

14 Q. You understood that, didn't you?

15 A. No.

16 Q. Why not?

17 A. Because here I was busting my butt, and you  
18 just going to act totally different towards me. I  
19 understand that's my cousin, but, hey -- they was wrong.

20 Q. You didn't intend for it to happen, of  
21 course?

22 A. Never.

23 Q. You had no idea that would happen?

24 A. Never.

25 Q. And you felt that just because of what your



1       cousin had done they were taking it out on you?

2               A.       I went up there the day after everything and  
3       jumped off and talked to people and they threatened to  
4       call the police and everything, telling me I had something  
5       to do with it.

6               Q.       So you left and never came back?

7               A.       Yes.

8               Q.       Other than the thirty second phone call with  
9       Marlow, have you ever talked to him since then?

10              A.       No.

11              Q.       You hadn't seen him until today?

12              A.       Haven't seen him at all until today.

13                      MR. ALBREGT:  Nothing further.

14                      THE COURT:  Cross-examination.

15                      MR. SCHWARTZ:  Thank you, your Honor.

16                      CROSS-EXAMINATION

17       BY MR. SCHWARTZ:

18              Q.       Mr. Nash, you testified there came a time  
19       when Marlow left the Lone Star; is that correct?

20              A.       Yes.

21              Q.       And you saw him after he left work -- I  
22       mean, left his job at the Lone Star, said he was no longer  
23       working there, you were aware of that?

24              A.       Yes.

25              Q.       Did you ever ask him why he was no longer

1 work at the Lone Star?

2 A. I asked why he quit and I don't remember the  
3 answer he gave me.

4 Q. But when you talked to him on the phone  
5 about what had happened inside the Lone Star with regard  
6 to Carl and Matt, the defendant told you that they had  
7 attacked him?

8 A. Yes.

9 Q. Did he tell you that he had been committing  
10 a robbery prior to them attacking him?

11 A. No.

12 Q. Did he tell that you he asked Kenyon Hall to  
13 kill Vince Oddo?

14 A. Say again.

15 Q. Did he tell you that he had asked Kenyon  
16 Hall to kill or shoot Vince Oddo?

17 A. No. He -- talking about the little guy?

18 Q. Yes.

19 A. No.

20 Q. Did you know who Vince Oddo was?

21 A. I knew that was their little brother.

22 Q. No, Vince Oddo?

23 A. No, I don't then.

24 Q. You don't know a manager at the Lone Star by  
25 that name?

1           A.       Oh, the manager, yes, yes. Did you just ask  
2 me did he tell me that he was going to kill --

3           Q.       You told me -- you told the jury that the  
4 defendant said the reason he did what he did was that Matt  
5 and Carl attacked him.

6           A.       Okay.

7           Q.       I'm asking you, during that conversation did  
8 he, the defendant, tell you he was committing a robbery in  
9 there when this occurred?

10          A.       No.

11          Q.       Did he tell you while this was occurring he  
12 had ordered Kenyon Hall, the little guy, to shoot the  
13 manager in the back of the head after he got the money?

14          A.       No.

15          Q.       Thank you?

16                   MR. SCHWARTZ: No further questions.

17                   THE COURT: Anything else?

18                   MR. ALBREGT: No.

19                   THE COURT: Questions for Mr. Nash? Thank  
20 you, sir, for your testimony here today. You may be  
21 excused. Please don't discuss your testimony with anyone  
22 other than the attorneys.

23                   Counsel, you may call you next witness.

24                   MR. ALBREGT: Darrell Thomas.

25                   THE CLERK: You do solemnly wear that the

1 testimony you are about to give in this action shall be  
2 the truth, the whole truth, and nothing but the truth so  
3 help you God.

4 THE WITNESS: Yes.

5 THE CLERK: Spell your name for the  
6 record.

7 THE WITNESS: Darrell Thomas,  
8 D-A-R-R-E-L-L, T-H-O-M-A-S.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MR. SCHIECK:

12 Q. Where do you live, city and state?

13 A. Las Vegas, Nevada.

14 Q. And are you employed?

15 A. Yes.

16 Q. What do you do?

17 A. Republic Service.

18 Q. And how long have you worked there?

19 A. Four and a half years now.

20 Q. Are you a pastor also?

21 A. Yes.

22 Q. And what church?

23 A. Philadelphia Church.

24 Q. How long have you been doing that?

25 A. Since '93.

- 1 Q. And you know Marlow Thomas?
- 2 A. Yes.
- 3 Q. How do you know him?
- 4 A. That's my brother.
- 5 Q. Younger, older?
- 6 A. Younger.
- 7 Q. Do you know his birthday by any chance?
- 8 A. Birthday, I believe it's November 6th, I
- 9 think.
- 10 Q. What year -- how much younger is he then
- 11 yourself?
- 12 A. Four years younger than I am.
- 13 Q. How old are you?
- 14 A. I'm 37.
- 15 Q. So he'd be 33 now?
- 16 A. Yes.
- 17 Q. Were you raised in the same household with
- 18 Marlow?
- 19 A. Yes.
- 20 Q. Did there come a time when you moved out of
- 21 that household?
- 22 A. Yes, when I got 18.
- 23 Q. So Marlow would have been 14 at that time?
- 24 A. Let me see, yeah.
- 25 Q. Do you have the same father as Marlow?

1 A. Yes.

2 Q. And did there come a point in time when your  
3 father was no longer in the household?

4 A. Yeah. When I was about 14 years old my  
5 father and mom split up.

6 Q. Did your father go to prison?

7 A. Well, yes. Let me retract that, they split  
8 up before, and they tried to come back together when I was  
9 14. But, yeah, he did go to prison, yes.

10 Q. So Marlow would have been about 10?

11 A. I can't really recall his age.

12 Q. Was he ever involved with the family or  
13 raising the boys after that?

14 A. No.

15 Q. And his name is?

16 A. Bobby.

17 Q. Bobby Thomas?

18 A. Bobby Lewis.

19 THE COURT: Bobby what?

20 THE WITNESS: Bobby Lewis.

21 THE COURT: Bobby Lewis, is that a middle  
22 name.

23 THE WITNESS: No, that's his last name.

24 THE COURT: Okay.

25 BY MR. SCHIECK:

1           Q.       What was it like growing up in a household  
2 as early as you can remember Marlow being around?

3           A.       I mean, we had -- it was, I mean, a typical  
4 household, you know. Mother was working. We always in  
5 school. I was one of the babysitters.

6           Q.       Where was your mother working?

7           A.       I think at the time probably the school  
8 district, I believe.

9           Q.       And what shift was she working?

10          A.       Swing shift, second shift.

11          Q.       So she would be --

12          A.       3:00 to 11:00.

13          Q.       She was gone 3:00 to 11:00?

14          A.       3:00 to 11:00.

15          Q.       Would you guys do the chores while she was  
16 at work?

17          A.       Yes.

18          Q.       You had to cook for yourselves?

19          A.       I was the cook.

20          Q.       What about cleaning up and things like  
21 that?

22          A.       Yes. We had to do that.

23          Q.       Did there come a time when Marlow started to  
24 get into trouble?

25          A.       Yeah.

1 Q. Do recall how old he was then, or what grade  
2 he was in school?

3 A. Let me see, well, I can't remember. I can  
4 remember some incidents probably around that 5th, 6th  
5 grade, somewhere in that area, school fights.

6 Q. He was getting in fights?

7 A. Yeah, he was.

8 Q. How -- would you have to go deal with it  
9 with the school?

10 A. No, no, my mother dealt with it. I kind of  
11 dealt with some issues later on when she worked swing  
12 shift, and I was in between 9th and 10th grade, around in  
13 that area.

14 Q. Had you moved out yet?

15 A. I was still there.

16 Q. So would you get called down to the school  
17 when something happened?

18 A. I wouldn't go to the school, just, you know,  
19 if it was in the neighbor somewhere somebody always come  
20 and let you know, you know, your brother is in a fight  
21 somewhere, something going on, I'd go down and get him.

22 Q. Was he getting much attention at home other  
23 than from you as his older brother?

24 A. Yeah, my mom.

25 Q. And you have a younger brother, correct?



1 A. Yes.

2 Q. And that's Paul?

3 A. Yes.

4 Q. And he has a different father; is that  
5 correct?

6 A. Yes, he does. I have a different father.

7 Q. How much younger is he then Marlow, do you  
8 know?

9 A. I think 8 years -- 8 years.

10 Q. After you moved out, would there be  
11 occasions where you were called back to the house to  
12 straighten things out?

13 A. When I moved out?

14 Q. After you moved out, yeah.

15 A. Yeah. A few of the things, a few incidents,  
16 yes.

17 Q. Did you ever tell your mother that Marlow  
18 had mental problems and needed help?

19 A. I'm sorry?

20 Q. Did you ever tell your mother that you  
21 thought Marlow had mental problems?

22 A. I used to say that, but that was my opinion,  
23 that wasn't their opinion. But that was when I got older  
24 I would just tell her that I thought he had some problems.  
25 Whether it was mental, I just said he was crazy, but that

1 was just a family kind of thing there.

2 Q. To your knowledge did he get any kind of  
3 specialized treatment or schooling?

4 A. If he did, I can't remember.

5 Q. Did you have know Marlow to fall into -- run  
6 with the wrong crowd?

7 A. Yes.

8 Q. When did he start doing that?

9 A. Part of his grade school years and going  
10 into that junior high -- junior high era.

11 Q. Do you have an opinion why he started  
12 hanging out with a bad crowd?

13 A. Not really, no.

14 Q. Did Marlow ever come live with you, stay  
15 with you for any period of time?

16 A. No.

17 Q. He was always at your mom's house, to your  
18 recollection?

19 A. Yes.

20 Q. Did you ever meet Marlow's girlfriend,  
21 Angela?

22 A. I think I met her once or twice.

23 Q. Under what circumstances did you meet with  
24 her?

25 A. I think I met her at my mom's house.

1 Q. Did she for a period of time live at your  
2 mom's house?

3 A. Yes.

4 Q. And you were aware that Marlow went to  
5 prison for robbery back in 1990?

6 A. Yes, I was.

7 Q. And when Angela moved into your mom's house  
8 was it after Marlow got out of prison?

9 A. I believe so, yeah.

10 Q. Since this incident happened have you had  
11 any communication with Marlow?

12 A. Some years back, some year back.

13 Q. What kind of communications did you have?

14 A. I believe I spoke to him by phone. I spoke  
15 to him by phone prior -- right after the incident, then  
16 thereafter once or twice. Right directly after the  
17 incident happened I spoke to him.

18 Q. But it's been three or four years since you  
19 talked with him?

20 A. Oh, yeah. I haven't talked to him in  
21 years.

22 Q. What about letters or correspondence?

23 A. Yeah, he's wrote letters.

24 Q. Has he written to you about finding religion  
25 or about religion?

1           A.       I can't remember.

2                   MR. SCHIECK: Thank you. That's all the  
3 questions I have.

4                   THE COURT: Cross-examination, counsel.

5                   MR. SCHWARTZ: No, thank you.

6                   THE COURT: Mr. Thomas, thank you for your  
7 testimony today. Do the jurors have any questions for  
8 Brother Darrell?

9                   You are excused, sir. Please don't  
10 discuss your testimony with anyone except the attorneys.

11                   Counsel, you may call your next witness.

12                   MR. SCHIECK: Paul Hardwick.

13                   THE CLERK: You do solemnly swear the  
14 testimony you are about to give in this action shall be  
15 the truth, the whole truth, and nothing but the truth, so  
16 help you God.

17                   THE WITNESS: I do.

18                   THE CLERK: Spell your name for the  
19 record.

20                   THE WITNESS: Paul Hardwick, P-A-U-L,  
21 first name, H-A-R-D-W-I-C-K.

22                   THE CLERK: Thank you.

23                   DIRECT EXAMINATION

24                   BY MR. SCHIECK:

25                   Q.       You live in what city and what state?

1 A. Las Vegas, Nevada.

2 Q. Who do you live with?

3 A. My mother.

4 Q. How old are you?

5 A. 25.

6 Q. Are you employed?

7 A. Yes, I am.

8 Q. Where do you work?

9 A. H2O Environmental.

10 Q. What is H2O?

11 A. It's an environmental company. It deals  
12 with chemicals, suicides, accidents on the freeway.

13 Q. So you do clean up?

14 A. We do clean-ups, basically anything and  
15 everything.

16 Q. Do you know Marlow?

17 A. Yeah, I know Marlow.

18 Q. He's your older brother?

19 A. He's not my oldest, but one of my older  
20 brothers.

21 Q. How much older is he then you?

22 A. 8 years older.

23 Q. What is your first memory of Marlow? You  
24 were 8 years younger, so what is the first thing you  
25 remember as you were getting older?

1           A.       First thing I remember of Marlow is when I  
2 was in kindergarten, that first school, first time being  
3 away from home, something serious like that. And I got  
4 homesick and we lived 3.2 miles from where I was going to  
5 school. And my mother was at work, and my other brother  
6 was at work, the only person home was Marlow. I thought  
7 my older brother was supposed to be off that day, and I  
8 called home, I thought I was going to reach him, tell him,  
9 you know I was crying, upset, nervous, typical  
10 six-year-old kid.

11               I called home and I asked to speak to my brother,  
12 Marlow answered the phone, and I told him I want to come  
13 home. He said I don't have any way to come get you, man,  
14 if I did I would, but my older brother Larry at the time  
15 he wasn't there he was gone.

16               So I'm like, man, I really want to come home. He  
17 said, all right, well, I'll get here. So I'm thinking  
18 that my older brother Larry was coming to get me, but it  
19 was Marlow who came to get me on the bike. And you would  
20 think that 3.2 miles is far, and I always have been a big  
21 kid. And he pumped me from Mack Kelly -- at that time it  
22 was an elementary school -- he pumped me from Mack Kelly,  
23 which is on J Street and Dolittle, from all the way to  
24 there to all the way to Cartier, and I believe M L K on  
25 the handle bars, not because he was instructed to, but

1 because he wanted to.

2 Q. Were you living with someone else at that  
3 time on Cartier?

4 A. I was actually living with my mother then.

5 Q. So she was living at Cartier at that time?

6 A. Yes.

7 Q. And she was at work?

8 A. Yes, she was at work.

9 Q. And where does she work at?

10 A. At the time I believe she worked at McCarren  
11 Airport, I think.

12 Q. What shift was she working?

13 A. The night shift.

14 Q. Did your older brother come over often to  
15 your house, Darrell?

16 A. Actually at the time he lived with us.

17 Q. Darrell still lived with you?

18 A. At that time.

19 Q. Do you know Angela?

20 A. Yes.

21 Q. Angelo Thomas, or Angela Love?

22 A. Yes.

23 Q. When did you meet her?

24 A. I think I met her -- I believe '96, I  
25 believe.

1 Q. Under what circumstances did you meet her?

2 A. Actually I knew her -- I knew her, but I  
3 really didn't know her because she was -- she was around  
4 the neighbor, but I really didn't know her. And, you  
5 know, if someone lives in your neighborhood you pretty  
6 much have an idea who they are.

7 Q. Did she ever move into the house you were  
8 living in with your mother?

9 A. Yes, she did.

10 Q. With Marlow?

11 A. Yes, she did.

12 Q. Will you describe the relationship you saw  
13 between the two of them?

14 A. I mean, it was -- it was a relationship in  
15 the first stage beginning, I guess. I wasn't really there  
16 for that relationship because I was playing football in  
17 school a lot, but they was in a first stage of a  
18 relationship I guess.

19 Q. Did they argue a lot?

20 A. That I know of, I mean, they had a couple of  
21 arguments, but it wasn't nothing so serious, I guess.

22 Q. Now, when is the last contact you had with  
23 Marlow?

24 A. I believe he wrote me -- he wrote me a  
25 letter I think like a year ago, I believe. I can't



1 remember. It was a year ago.

2 Q. What about prior to that, did you have  
3 correspondence or phone calls with him?

4 A. Yeah, at the time yeah.

5 Q. Would he give you any advise?

6 A. Yeah, he would he always tell me, man, don't  
7 be like him, be better then him, you know, learn from his  
8 mistakes that he's done, and he's always just giving me  
9 something positive, positive feedback.

10 Q. Would he tell other people that to your  
11 knowledge?

12 A. All the time.

13 Q. Like who?

14 A. I got a cousin he used to live with us at  
15 that time. We went to school together and he used to  
16 always make sure we did our homework, make sure -- just  
17 make sure that we didn't -- do our homework, make sure we  
18 was, you know -- it's weird because he used to wake up and  
19 make sure we was up, then go back to sleep, but then at  
20 night he used to make sure we were there, just -- I don't  
21 know, it was weird, but, yeah he used to.

22 Q. You knew he went to prison?

23 A. Yeah, I knew that.

24 Q. And you corresponded with him while he was  
25 in prison?

1 A. Yes.

2 Q. That's when he gave you this type of  
3 advice?

4 A. All the time.

5 Q. Do you recognize what is marked as B and  
6 C?

7 A. Yes.

8 Q. What are those?

9 A. That's my brother.

10 Q. Which one?

11 A. Both.

12 Q. They are both Marlow?

13 A. Both of them are Marlow.

14 MR. SCHIECK: I move to admit them, your  
15 Honor.

16 MR. SCHWARTZ: No objection.

17 THE COURT: It's admitted.

18 BY MR. SCHIECK:

19 Q. Can you see is it in front of you?

20 A. Yes.

21 Q. When was that picture taken?

22 A. Actually, I think that may have been before  
23 I was born, maybe.

24 Q. So before Marlow was 8?

25 A. Maybe.

1 Q. What about this one?

2 A. Yeah, that is when he was in high school.

3 Q. High school?

4 A. I believe so.

5 Q. Thank you.

6 MR. SCHIECK: No further questions.

7 THE COURT: Cross-examination.

8 MR. SCHWARTZ: No cross, your Honor.

9 Thank you.

10 THE COURT: Any questions for Brother  
11 Paul?

12 Paul, thank you for testimony this  
13 afternoon. You may be excused. Please don't discuss your  
14 testimony with anyone other than the attorneys.

15 Counsel, you may call your next witness.

16 MR. ALBREGT: Georgia Thomas.

17 THE CLERK: You do solemnly swear to tell  
18 the truth, the whole truth, and nothing but the truth, so  
19 help you God.

20 THE WITNESS: I do.

21 THE CLERK: Spell your name for the  
22 record.

23 THE WITNESS: Georgia Thomas,  
24 G-E-O-R-G-I-A, T-H-O-M-A-S.

25 THE CLERK: Thank you.

## DIRECT EXAMINATION

BY MR. ALBREGT:

Q. Ms. Thomas, what city and state do you live in?

A. Las Vegas, Nevada.

Q. Do you work?

A. Yes.

Q. Where do you work?

A. Clark High School.

Q. How long have you worked a Clark High School?

A. 26 years.

Q. What do you do there?

A. Custodian.

Q. Is that what you have done there?

A. Yes.

Q. Did you work before Clark High School?

A. Yes.

Q. Where did you work before Clark High School?

A. McCarren International Airport.

Q. What did you do there?

A. What did they call it, maintenance.

Q. How long did you work there?

A. 4 years.

- 1 Q. How long have you been in Las Vegas?
- 2 A. About thirty-some years.
- 3 Q. You have children?
- 4 A. Yes.
- 5 Q. How many?
- 6 A. Four.
- 7 Q. Boys or girls?
- 8 A. All boys.
- 9 Q. What are their names?
- 10 A. Larry Thomas, Darrell Thomas, Marlow Thomas,
- 11 and Paul Hardwick.
- 12 Q. See Marlow Thomas in the courtroom?
- 13 A. Yes, I do.
- 14 Q. What's he wearing?
- 15 A. A white shirt.
- 16 Q. Do all your boys have the same father?
- 17 A. No. Marlow and Darrell do, Larry and PJ
- 18 have different.
- 19 Q. Darrell and Marlow's father, what was his
- 20 name?
- 21 A. Bobby Lewis.
- 22 Q. Were you married to Mr. Lewis?
- 23 A. No.
- 24 Q. How long were you with Mr. Lewis?
- 25 A. About maybe 9 or 10 years.

1 Q. How old is Larry?  
2 A. 38.  
3 Q. And Darrell?  
4 A. Soon 37.  
5 Q. Marlow?  
6 A. 32 or 33.  
7 Q. And Paul?  
8 A. 24.  
9 Q. So when you met Bobby Lewis, Darrell and  
10 Marlow's father, you already had Larry?  
11 A. No, I didn't have him. I was pregnant with  
12 him.  
13 Q. And you and Bobby started a relationship?  
14 A. Yes, we did.  
15 Q. Could you describe that relationship?  
16 A. Well, when I first met him he was nice, but  
17 later on I found him to be very abusive.  
18 Q. Verbally abusive?  
19 A. More then verbal.  
20 Q. Physical?  
21 A. Yes.  
22 Q. How so?  
23 A. Often.  
24 Q. He hit you?  
25 A. Yes.

1 Q. Fair to say he beat you?

2 A. Yes, he did.

3 Q. How soon after you met Bobby did that  
4 start?

5 A. After I had the baby we --

6 Q. After you had Larry?

7 A. Yes.

8 Q. Go ahead.

9 A. He was very nice before I had Larry. He was  
10 the type of person that my mother told me that I can be  
11 with, so that's what I did. It was --

12 Q. Shortly therefore you became pregnant with  
13 Darrell?

14 A. Yes.

15 Q. And that was by Bobby?

16 A. Yes, it was.

17 Q. Did Bobby work?

18 A. Yes, he did.

19 Q. How long after Darrell was Marlow born?

20 A. Four years later.

21 Q. And you'd been with Bobby that whole time?

22 A. Yeah, we were together.

23 Q. How was Marlow's early childhood?

24 A. How was Marlow?

25 Q. Early childhood as a baby and little boy?

1           A.       When he was born Marlow was my baby for 8  
2 years before I had Paul. He had a good childhood then.

3           Q.       Did it change?

4           A.       Yes.

5           Q.       When did it change?

6           A.       It changed after Paul was born, as he got a  
7 little older.

8           Q.       As Marlow got older?

9           A.       As Paul got older. Paul was the baby and as  
10 Paul got a little older, Marlow changed.

11          Q.       Why was that?

12          A.       Because I changed toward Marlow.

13          Q.       How so?

14          A.       I didn't treat Marlow the way that I treated  
15 him before Paul was born.

16          Q.       Why do you think that is?

17          A.       Paul was my baby then, and I shifted more of  
18 my attention toward him and I didn't pay that much  
19 attention to Marlow anymore.

20          Q.       Were you having problems with Bobby during  
21 this time?

22          A.       Sometimes and sometimes not. At the time I  
23 had put him out, I put him out.

24          Q.       Let's get to that in a minute. Let me show  
25 you -- we'll put it on the screen here, what's been



1 admitted as Defendant's B. Who is that?

2 A. Marlow.

3 Q. Do you know when that was taken?

4 A. He was in the -- he was in grade school.

5 Q. Is it a school picture?

6 A. Yes, it is.

7 Q. Where were you working at that time?

8 A. The airport.

9 Q. Can you describe Bobby's interaction with  
10 Marlow when he was a young boy?

11 A. Mr. Schieck, he denied him. He really  
12 didn't --

13 Q. I'm Mr. Albregt. That's okay. Are you  
14 nervous?

15 A. A little.

16 Q. What do you mean he denied him?

17 A. He said that Marlow wasn't his.

18 Q. Is that true?

19 A. No, sir, that was not true.

20 Q. Bobby believed that?

21 A. He did.

22 Q. Tell us about how that affected his  
23 interaction with Marlow?

24 A. He would buy Darrell stuff, he wouldn't buy  
25 Marlow nothing.

1 Q. Did he ever take Marlow to ball games?  
2 A. No, sir, he did not.  
3 Q. Ever take Marlow to the park?  
4 A. No, he did not.  
5 Q. Did he ever do anything with him?  
6 A. No, sir, he did not.  
7 Q. Was he violent with Marlow?  
8 A. Sometimes.  
9 Q. Describe that?  
10 A. He would say things while Marlow would hear  
11 him. He would say -- like he would buy Darrell stuff and  
12 when I got on him about Marlow, he's say he's not going to  
13 buy him anything because he wasn't his, wasn't going to  
14 buy another man's son nothing.  
15 Q. And he would say that to you?  
16 A. Yes, he would.  
17 Q. And Marlow would be there to hear that?  
18 A. Yes, he would.  
19 Q. Did you two, you and Bobby, ever fight in  
20 front of Marlow?  
21 A. Yes.  
22 Q. Marlow would see it?  
23 A. Yes, he did.  
24 Q. How bad were those fights?  
25 A. They were bad.

1 Q. Tell the jury about those?

2 A. Well, he would beat me and Marlow would see  
3 it.

4 Q. Did Marlow ever react to that?

5 A. He tried to help a few times.

6 Q. How so?

7 A. He would try to push him away, pull him off  
8 of me.

9 Q. What would Bobby do when that happened?

10 A. Push him out the way.

11 Q. How old was Marlow when this stuff would  
12 happen?

13 A. He wasn't in his teens.

14 Q. You said at the time that you put Bobby  
15 out?

16 A. Yes, I did.

17 Q. About when was that?

18 A. I don't know what year it was.

19 Q. How old was Marlow, do you remember?

20 A. About a little younger than this.

21 Q. Did Bobby go willingly?

22 A. No, he didn't.

23 Q. Describe that?

24 A. Well, we had a fight and he broke out all of  
25 the windows in the house I had to call Metro.

1 Q. Did Metro come out?

2 A. Yes.

3 Q. What happened?

4 A. They put him out of the house and told him  
5 don't come back.

6 Q. Did he ever try to come back?

7 A. Yes.

8 Q. Describe that?

9 A. He came back, and he tried to kick the door  
10 in.

11 Q. Was Marlow there?

12 A. Yes.

13 Q. What happened then?

14 A. Well, Marlow didn't say anything. It was  
15 just me and him in the fight that time.

16 Q. Did you fear for your life because of  
17 Bobby?

18 A. I was scared of him.

19 Q. What happened to Bobby?

20 A. What do you mean?

21 Q. Where is he now?

22 A. He is in prison.

23 Q. When did he go to prison?

24 A. I think about over 20 years ago.

25 Q. How old was Marlow when he went to prison?

1 A. Marlow was in junior high school.

2 Q. But Bobby was gone long before that, out of  
3 Marlow's life?

4 A. He had moved out the house. He wasn't gone  
5 out of his life. He had moved out the house.

6 Q. Did he ever come back and have interaction  
7 with Marlow?

8 A. He came back and tried to interact in the  
9 life that I had with Paul's dad.

10 Q. But that wasn't about interacting with  
11 Marlow, just about getting between you and your new love  
12 of your life?

13 A. He said he didn't want -- that Paul's daddy  
14 have anything to do with his family, with his children.

15 Q. Paul's dad ever act like a father figure to  
16 Marlow at all?

17 A. A little, yes, he did.

18 Q. What you would characterize it as just a  
19 little, not anything extensive?

20 A. Like what?

21 Q. How old was Marlow when Paul's dad came  
22 around?

23 A. He was in -- going -- he was in junior high  
24 school.

25 Q. So he had already gone through childhood

1 essentially without a father?

2 A. Yes.

3 Q. Do you know why Bobby went to prison?

4 A. When did he go?

5 Q. No, do you know why Bobby went to prison?

6 A. He shot somebody.

7 Q. How did you feel when he went to prison?

8 A. You want the truth?

9 Q. I want nothing but the truth.

10 A. I was glad.

11 Q. Why?

12 A. Because he was out of my life. He couldn't  
13 come back and do anything. I was glad.

14 Q. You were safe?

15 A. Yes, I was.

16 Q. He couldn't hurt you anymore?

17 A. No, he couldn't.

18 Q. Was there a time in Marlow's childhood,  
19 around this age, that you started noticing what you  
20 thought maybe were problems with Marlow?

21 A. Yes.

22 Q. Tell the jury about that?

23 A. He -- when he was in grade school, when  
24 Marlow was in grade school, he began to act out some, just  
25 act out some things. He was like, angry. He was fighting

1 and when they would call me and tell me about it, I just  
2 push it away. I didn't want to believe it and I just  
3 pushed it away. And when they told me that he needed  
4 help, I didn't accept it. I argued with them, and I just  
5 didn't accept that.

6 Q. Who told you he needed help?

7 A. Walter Braken School.

8 Q. What kind of help did they tell you he  
9 needed?

10 A. Actually they told me he needed mental  
11 help.

12 Q. Did you discipline Marlow during this  
13 time?

14 A. Yes.

15 Q. How?

16 A. By beating him.

17 Q. How often?

18 A. I beat him -- I beat him up all the time.

19 Q. Why?

20 A. I don't know, I just did.

21 Q. You've thought about it since then?

22 A. Yes.

23 Q. What do you think about that since then?

24 A. If I had of listened and paid attention  
25 maybe things would have been different.

1 Q. Listened and paid attention to what?

2 A. To what people were saying that he needed  
3 help. If I stop got him the help.

4 Q. What was your reaction instead of getting  
5 help -- what was your reaction?

6 A. I would whip Marlow.

7 Q. With what?

8 A. Whatever I could whip him with.

9 Q. What would Marlow do?

10 A. Cry.

11 Q. Do you think that had any affect on him?

12 A. Yes.

13 Q. What do you think that did to him?

14 A. He thought that -- he really thought I did  
15 didn't love him.

16 Q. Was Paul born at this time?

17 A. Yes.

18 Q. Did you spend most of your time and  
19 attention with Paul?

20 A. Yes.

21 Q. What attention did you give Marlow,  
22 whippings?

23 A. Whippings and hollering at him.

24 Q. Where were you working at this time?

25 A. At Clark County School District.



1 Q. What were you hours?

2 A. I was working in the afternoons.

3 Q. Swing shift?

4 A. 2:00 to 10:00.

5 Q. Who would watch Marlow?

6 A. His older brothers.

7 Q. Did there ever come a time during this  
8 acting out period that Marlow was put into a special  
9 school?

10 A. Yes.

11 Q. Tell the jury about that?

12 A. They put him in -- they used to call it  
13 Molly Achievement. It was a mental school.

14 Q. How old was Marlow when he went there?

15 A. He was a teenager.

16 Q. How did you feel about that?

17 A. I didn't care.

18 Q. You didn't care?

19 A. No, I didn't.

20 Q. Why not, he's your son?

21 A. I know that. At the time my main concern  
22 was Paul, and I went -- I didn't care.

23 Q. You think Marlow sensed that?

24 A. Yes, he did.

25 Q. Why do you think that?

1           A.       He told me one time that I only loved Larry,  
2           and Paul.

3           Q.       What was your response?

4           A.       I hit him.

5           Q.       What did he do?

6           A.       Cry.

7           Q.       Did he ever hit you back?

8           A.       No, he never did that.

9           Q.       Did you see a response from Marlow to this  
10          treatment?

11          A.       No. He acted out there too.

12          Q.       What happened as he got into his early  
13          teenage years?

14          A.       He began to really get in trouble.

15          Q.       Let me ask you -- I forgot, I'm sorry. When  
16          you sent Marlow to that special school, what was Marlow's  
17          response?

18          A.       Get him out of there.

19          Q.       Did you?

20          A.       No.

21          Q.       Why not?

22          A.       Because they told me that that was the best  
23          place for him.

24          Q.       And you -- so you told Marlow you weren't  
25          going to get him out of there?

1 A. Yes.

2 Q. What was his responsible?

3 A. Told me, mama, don't leave me in here.

4 Q. And you said you were going to?

5 A. Yes.

6 Q. What was his response to that?

7 A. There was nothing he could do.

8 Q. So the teenage years -- well, let me --  
9 before we get to the teenage years, tell me about the  
10 interaction between Marlow and his brothers -- his two  
11 older brothers?

12 A. Well, he fought with Darrell.

13 Q. Do you know why?

14 A. I never did know why.

15 Q. Describe those fights. Were they just two  
16 kids yelling at each other?

17 A. They were physical.

18 Q. Slapping each other, punches?

19 A. They punched each other.

20 Q. Did they ever escalate beyond that?

21 A. What do you mean?

22 Q. Did any of the fights escalate beyond  
23 punching each other?

24 THE COURT: Get worse, then just  
25 fighting.

1 THE WITNESS: Yeah, they would.

2 BY MR. ALBREGT:

3 Q. Remember telling us about that?

4 A. Yes. Darrell hit Marlow with a fire  
5 extinguisher.

6 Q. During a fight?

7 A. Yes.

8 Q. Did you see that happen?

9 A. Yes.

10 Q. Tell us about that?

11 A. They were fighting and the fire extinguisher  
12 was on the wall and Darrell took it off and hit him on the  
13 head with it.

14 Q. What did Marlow do?

15 A. Fell out in the floor.

16 Q. What happened after that?

17 A. He shook.

18 Q. Then what happened -- did you stop  
19 Darrell?

20 A. Yeah, he stopped.

21 Q. Who got the better of those fights  
22 usually?

23 A. Darrell.

24 Q. How much older was he?

25 A. Four years apart.

1 Q. So Marlow gets to high school and starts  
2 acting out some more?

3 A. Yes.

4 Q. He's getting in trouble and it's escalating  
5 to trouble with the law?

6 A. Yes.

7 Q. What was your response to that?

8 A. I tried to beat him.

9 Q. Did it work?

10 A. No.

11 Q. Did Marlow then at some stage later in his  
12 teens and early 20s get in further trouble?

13 A. Yes.

14 Q. Do you remember Marlow going to prison for a  
15 conviction that he sustained?

16 A. Yes.

17 Q. Did you have contact with Marlow while he  
18 was in prison?

19 A. Yes.

20 Q. How was he when he got out, did you notice  
21 any changes or differences in Marlow?

22 A. When he went to prison for six years.

23 Q. Yes.

24 A. Yes, he was doing real good.

25 Q. When he first got out?

1 A. Doing real good.

2 Q. Did he get a job?

3 A. Yes.

4 Q. Where did he get a job?

5 A. I think the first job was McDonald's.

6 Q. And then did he get other jobs?

7 A. I think he got one at Lone Star.

8 Q. Lone Star Steak House?

9 A. Yes.

10 Q. Did he have any girlfriends?

11 A. Yes.

12 Q. Who was his girlfriend when he got out of

13 prison?

14 A. Angela.

15 Q. Did you know Angela?

16 A. I didn't know her until Marlow brought her

17 there and I met her.

18 Q. What did you think of Angela?

19 A. I didn't like her.

20 Q. Why not?

21 A. Because she -- I didn't like her.

22 Q. Is there anything you can express to the

23 jury why that was?

24 A. I didn't like her because when he got out of

25 prison he was doing really good, and when he met her he

1 got off into them drugs again. And I didn't like her.

2 Q. Marlow changed when he got into the drugs  
3 again?

4 A. When he got back into them?

5 Q. Yes.

6 A. Yes, he did.

7 Q. How did he change?

8 A. For the worse.

9 Q. In what way, describe that for the jury?

10 A. He was violent.

11 Q. Did it affect his ability to work?

12 A. No, he didn't work. He wouldn't go to  
13 work.

14 Q. Did you see Marlow in the day or two before  
15 the crime at Lone Star Steak House?

16 A. I saw him that night.

17 Q. Where?

18 A. In my home.

19 Q. Did he stop by there?

20 A. Yes.

21 Q. Who did he have with him?

22 A. Kenyon.

23 Q. Anybody else?

24 A. I didn't see Angela.

25 Q. How long was he there?

1 A. He was there for quite awhile.

2 Q. Not the whole night?

3 A. No, sir.

4 Q. Can you describe what you saw when you saw  
5 Marlow?

6 A. He -- we talked. He was -- Marlow was like  
7 he was high.

8 Q. How did you know?

9 A. By his eyes.

10 Q. You knew by looking in you son's eyes he was  
11 using drugs?

12 A. Yes.

13 Q. When he left that night, did you have any  
14 idea that anything was going to happen the next day?

15 A. No.

16 Q. To your knowledge at that time was he still  
17 working at the Lone Star or had he stopped working  
18 there?

19 A. I think that he had got fired.

20 Q. When did you first hear that something had  
21 happened?

22 A. I seen it -- his picture flash across the  
23 TV.

24 Q. What did you hear?

25 A. It was like a bulletin.



1 Q. And they were looking for him?

2 A. They said that it had been a killing at the  
3 Lone Star Steak House, and this they showed his picture  
4 and said this is the man that did it.

5 Q. What did you think when you saw that?

6 A. I said, oh, my God.

7 Q. What did you do?

8 A. I cried.

9 Q. Did you go anywhere, call anybody, do  
10 anything?

11 A. I called Darrell.

12 Q. What did you do after you called Darrell?  
13 Did you go anywhere?

14 A. Yes.

15 Q. Where did you go?

16 A. I went to my sister's house.

17 Q. Who was there?

18 A. At my sister's house?

19 Q. Yes.

20 A. Her and her daughter.

21 Q. Which sister was that?

22 A. Emma Nash.

23 Q. She's now deceased?

24 A. Yes, she is.

25 Q. As is her daughter?

1 A. Yes.

2 Q. Did they tell you whether or not they had  
3 seen Marlow?

4 A. Yes, she did.

5 Q. What did she say about that?

6 A. She told me that she had seen Marlow and  
7 that he had did something bad.

8 Q. Did she say anything about what he said to  
9 her or how he acted with her?

10 A. Emma said that Marlow was acting funny, but  
11 that's all.

12 Q. Did she say what she meant by funny?

13 A. No, she didn't tell me. She just told me  
14 that he wasn't acting right.

15 Q. When you were there did anybody ever give  
16 you money?

17 A. No, sir, they did not.

18 Q. Did you ever get any money around the time  
19 of this incident?

20 A. No, sir, I did not.

21 Q. So you didn't get a thousand dollars from  
22 anybody?

23 A. No, sir, I did not.

24 Q. Did you ever see Marlow again?

25 A. Yes, I did.

1 Q. When did you see him again?

2 A. I saw Marlow on my way up to Emma's house.

3 Q. That morning?

4 A. Yes.

5 Q. Where did you see him?

6 A. He was coming from there.

7 Q. Did you talk to him?

8 A. Yes.

9 Q. What did you talk about?

10 A. He was crying and I asked why, and Angela  
11 told me to let him go, that they had to go, to let him  
12 go.

13 Q. This is after you saw the bulletin?

14 A. No. That was before the bulletin.

15 Q. So you saw him at Emma's house?

16 A. No, I saw him coming from Emma's house.

17 Q. That morning?

18 A. Yes.

19 Q. Then you went back to your house?

20 A. Yes.

21 Q. That's when you went back to your house and  
22 saw the news?

23 A. That's when I found out what he did. I saw  
24 it on the news.

25 Q. Have you seen him since his arrest?

1           A.     Marlow?

2           Q.     Yes.

3           A.     No, sir, I haven't.

4           Q.     Have you interact with him?

5           A.     Yes, we talk on the phone and letters.

6           Q.     Tell me about the letters?

7           A.     First when they started, we were writing

8           each other, he was the same Marlow.

9           Q.     What do you mean the same Marlow?

10          A.     Still a little angry, angry Marlow. And

11          later on, as the years went by, he was different.

12          Q.     How so?

13          A.     Before you couldn't talk to Marlow about the

14          Lord or anything, but later on you could.

15          Q.     Later on, after he had been in prison

16          awhile?

17          A.     Yes, yes.

18          Q.     What by the phone calls?

19          A.     He would talk and we would talk about the

20          Lord, at first and he would say don't talk to me about

21          that dude.

22          Q.     But he's accepted some religion since

23          then?

24          A.     Yes.

25          Q.     Has he talked to Paul or other relatives

1 other younger relatives?

2 A. He would say to me on the phone and wrote  
3 the letters to say to tell PJ to raise his family and stay  
4 out of trouble. And to tell Sherman Nash and Charles Nash  
5 to stay out of trouble and get their lives together.

6 Q. Don't end up like him?

7 A. Yes.

8 Q. PJ is Paul?

9 A. Yes.

10 MR. ALBREGT: I have no further  
11 questions.

12 THE COURT: Cross-examination?

13 MR. OWENS: You don't know what happened  
14 to the thousand dollars.

15 MR. ALBREGT: I object to that. Assumes a  
16 fact not in evidence.

17 THE COURT: Objection sustained.

18 CROSS EXAMINATION

19 BY MR. OWENS:

20 Q. The night that this thing occurred at the  
21 Lone Star, you didn't see a thousand dollars?

22 A. No, sir.

23 Q. You didn't hear about a thousand dollars?

24 A. They asked me ten years ago, the detective  
25 did, and you told him the same thing I'm telling you.

1 Q. You don't know anything about that?

2 A. No, I did not receive any money.

3 Q. Did you back around 1990 refer to your son  
4 Marlow as being spoiled rotten?

5 A. I don't understand.

6 Q. Did you tell somebody in the court system in  
7 1990 that your son was spoiled rotten?

8 A. Your Honor, can I speak the way I'm going to  
9 speak?

10 THE COURT: You may answer the question.

11 THE WITNESS: That is what I mean.

12 THE COURT: Answer the question.

13 THE WITNESS: If I did, I don't  
14 remember.

15 BY MR. OWENS:

16 Q. But you might have said that?

17 A. I'm not going to say "yes" or "no."

18 Q. You remember they came and talked to you so  
19 they could prepare a report when he was convicted of the  
20 attempt robbery in 1990?

21 A. Attempt robbery?

22 Q. Yes, in 1990. You remember talking to a  
23 court person about that?

24 A. No. I'm not saying I didn't do it, I don't  
25 remember.

1           Q.       You don't have any memory of telling him  
2       that he was spoiled rotten?

3                   MR. ALBREGT: I think it's asked and  
4       answered by this time.

5                   THE COURT: Sustained.

6       BY MR. OWENS:

7           Q.       That he was somewhat independent?

8           A.       I don't understand what you want me to  
9       say.

10          Q.       Just if you remember saying that?

11          A.       No, I don't remember saying that.

12          Q.       You remember telling them that your parental  
13       control of him has been fair?

14          A.       Pardon me?

15          Q.       You remember telling them that your parental  
16       control of your son has been fair?

17          A.       Has been fair?

18          Q.       Yes.

19          A.       Fair?

20          Q.       Correct. Remember telling them that?

21          A.       No.

22          Q.       You remember telling them that you did not  
23       believe that your son Marlow was involved in drugs?

24          A.       In 1990?

25          Q.       Yes.

1           A.       Can I have a little time to think.

2                   THE COURT:   Sure.   What year was Marlow  
3   born.

4                   THE WITNESS:   '72.

5                   THE COURT:   So in '90, he'd be 18, right?

6                   THE WITNESS:   Yes.

7                   THE COURT:   So maybe it's easier instead  
8   of thinking about 1990, it's easier to think of when  
9   Marlow was 18 --

10          BY MR. OWENS:

11                Q.       You remember saying that you did not think  
12   he was in to drugs?

13                A.       In 1990?

14                Q.       Yes.

15                A.       I don't know, sir.

16                Q.       You remember telling them that he would get  
17   into drugs if it provided him with quick money?

18                A.       No, I don't remember that.

19                Q.       You remember telling him that you felt he  
20   was becoming more dangerous?

21                A.       In 1990?

22                Q.       Yes.

23                A.       Can I ask you a question?   What was he  
24   supposed to be -- did in 1990?

25                Q.       That was the attempt robbery.



1 THE COURT: Well, he and Sherman held up  
2 the guy with a knife and stoled his paycheck money, Mr.  
3 Beltran.

4 THE WITNESS: The man from the motel.

5 MR. OWENS: This is the one at the  
6 convenience store.

7 THE WITNESS: No.

8 BY MR. OWENS:

9 Q. You don't remember saying that.

10 A. No.

11 Q. Would those statements be true back in  
12 1990?

13 A. Was he on drugs in 1990?

14 Q. No, would he get into drugs if it provided  
15 him with quick money -- would that have been a true  
16 statement back then?

17 MR. ALBREGT: I would object. It assumes  
18 that the statement was made.

19 THE COURT: Your objection is noted, but  
20 overruled. If you know, thinking back, he was 18. Answer  
21 his questions.

22 THE WITNESS: Your Honor, way back in  
23 19 -- when Marlow was 18, Marlow was acting out a lot. I  
24 don't remember. I'm not saying --

25 BY MR. OWENS:

1           Q.       I know you can't remember saying that, but  
2       thinking back to 1990 and the way that Marlow was, would  
3       it be fair to say that he was spoiled rotten back then?

4           A.       I'm not going to say that now because I  
5       don't remember.

6           Q.       And do you remember him back then begin a  
7       person that would get into drugs or do things for quick  
8       money?

9                   MR. SCHIECK:   Could we approach.

10                  THE COURT:   No, she can answer the  
11       questions.

12       BY MR. OWENS:

13           Q.       Is that the kind of person Marlow was back  
14       then?

15           A.       No.

16                  MR. OWENS:   That's all I have.

17                  THE COURT:   Redirect.

18                  MR. ALBREGT:   No.

19                  THE COURT:   Do you have any questions for  
20       Mrs. Thomas.   One question?

21                               (Discussion held at the bench.)

22                  THE COURT:   Mrs. Thomas, why did you let  
23       Angela stay in the house if you didn't like her and didn't  
24       trust her?

25                  THE WITNESS:   Want me to answer that.

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

MARLO THOMAS,  
Appellant,

v.

THE STATE OF NEVADA,  
Respondent.

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**RESPONDENT'S APPENDIX  
VOL. IV**

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3 DEPT. NO. XV

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CLARK COUNTY, NEVADA

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**ORIGINAL**

8 THE STATE OF NEVADA, )  
9 Plaintiff, )  
10 vs. )  
11 )  
12 MARLO THOMAS AKA MARLOW )  
13 DEMITRIUS THOMAS, )  
14 Defendant. )

REPORTER'S TRANSCRIPT  
OF  
PENALTY HEARING

16 BEFORE THE HONORABLE SALLY LOEHRER  
17 DISTRICT COURT JUDGE

18 MONDAY, OCTOBER 31, 2005  
19 11:30 A.M.

20 APPEARANCES:

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25 Reported by: Mary Beth Cook, CCR #268, RPR

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LAS VEGAS, CLARK COUNTY, NEVADA  
MONDAY, OCTOBER 31, 2005  
11:30 A.M.

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P R O C E E D I N G S  
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THE COURT: This is the State of Nevada versus Marlo Thomas. The record will reflect the presence of the attorneys. Mr. Thomas is in the holding cell immediately adjacent to the courtroom.

And we got a call this morning from Department of Prisons saying that there isn't any order in place to keep Mr. Thomas here for the trial, and if there's no order in place, then Mr. Thomas would have to be transported on a daily basis from here to Indian Springs? Now, Officer, what's your name?

SERGEANT JACOBI: Sergeant Jacobi.

THE COURT: Sergeant Jacobi's here. Mr. Schieck was indicated that Mr. Tabish was transported from Indian Springs on a daily basis.

SERGEANT JACOBI: Yes, he was transported on a daily basis. However, prior to the trial starting, about four weeks prior to that, we had a meeting with the judge, and it was

specify that it would last more than -- or how long it would last because we really didn't know, and, in fact, the date got changed from the 24th to the 31st. It would make it easier for us if he was kept at High Desert, and it would make him more easy to deal with, but if the Court does not want to order that he be transported every day because of concerns of the Department of Prisons on their staffing requirements, I guess we'll have to deal with that. It would be our preference that he be transported every day back and forth from High Desert, and it's where all his property is at, and if you book him in today all of his property is still out there at High Desert including his legal work; is that correct?

SERGEANT JACOBI: Yes, it is.

MR. SCHIECK: So he wouldn't have anything with him other than whatever he's wearing. If we could do it maybe just one day, give him notice that he's going to be booked in tomorrow so he can bring his property with him, that might alleviate some of the concerns.

THE COURT: Well, one of the biggest reasons that we order people in here to the county jail from whatever prison facility they're being

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agreed at that point in time to transport Tabish back and forth. We had previous knowledge to get us time to prepare for it. I heard at 8:30 he's supposed to go back and forth every day, and it would be kind of difficult right now.

THE COURT: Why can't he stay here? It's almost 99.9 percent of the time people who are in the prison system for whatever the reason are housed at the county detention center which is just across the street from the courthouse for trial.

MR. SCHIECK: Mr. Thomas would certainly prefer not to be housed at the detention center. That's not the overriding thing.

THE COURT: I'd probably prefer to be at the Four Seasons Hotel as compared to the Best Western. You may proceed, Mr. Schieck.

MR. SCHIECK: The jail is not overly thrilled with the possibility of him being housed there.

THE COURT: They don't have anything to say about it either.

MR. SCHIECK: Correct. I think our order specified that he be transported for his penalty hearing starting this week and did not

held at is so that counsel can meet with them on a daily basis outside of the actual trial time to prepare for the next day's testimony and the next day's testimony, et cetera, et cetera, and certainly that would be defeated by sending him back to Indian Springs on a daily basis.

What all does he have at Indian Springs, if you know, Sergeant?

SERGEANT JACOBI: I really have no idea what he has as far as personal property, but I'm sure if he had legal work he would have brought it with him. He came down with nothing.

THE COURT: Why don't you ask him, Mr. Schieck, if he brought all the stuff with him.

MR. SCHIECK: I can ask. If he --

THE COURT: If he brought it all down with him then he can stay.

SERGEANT JACOBI: He didn't bring anything. I don't know what he's got back at the prison there.

THE COURT: He's not housed ordinarily at Indian Springs, is he?

MR. SCHIECK: He has been at High Desert for several months, and when he came down I had a discussion with Paul Martin about housing him at

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1 the jail, and they had some concerns because of  
2 his custody status with housing him there. They  
3 weren't thrilled that Mr. Thomas would be housed  
4 there for a while. I'm sure Sergeant Jacobi will  
5 confirm that there are concerns with Mr. Thomas's  
6 housing.

7 SERGEANT JACOBI: Their concern is with  
8 all the inmates on death row and even with inmates  
9 who are not on death row.

10 THE COURT: So how much stuff does he  
11 have back there?

12 SERGEANT JACOBI: He has no legal work  
13 with him whatsoever.

14 MR. SCHIECK: Can I go talk to him, take  
15 a short break and see what's going on with him?

16 THE COURT: Certainly.

17 (Pause in proceedings.)

18 THE COURT: The State of Nevada versus  
19 Marlo Thomas. The prosecution is represented by  
20 Dave Schwartz, the defense is represented by  
21 Mr. Schieck and Mr. Albregts, and the defendant is  
22 still in the anteroom preparing himself for trial.

23 MR. SCHIECK: Correct. There's a  
24 serious constitutional issue concerning having the  
25 defendant in visible chains in front of the jury,

1 and while I recognize this is the penalty hearing  
2 and not the guilt phase portion of the trial, we  
3 would ask that unless the Court makes a specific  
4 finding that he is a danger or has acted out that  
5 he not be restrained in front of the jury. They  
6 have a set of -- and when they come out you can  
7 talk to the guards about that, but he has chains  
8 on his hand, plus a belly chain, plus leg chains.

9 THE COURT: There's a screen of some  
10 sort in front of your table, and go sit in the box  
11 and see if you can see anybody's feet. Now sit  
12 down.

13 MR. SCHIECK: I can certainly see his  
14 expensive shoes.

15 THE COURT: How high up are the ankle  
16 chains?

17 SERGEANT JACOBI: Above the ankles.

18 THE COURT: If you were in the jury box,  
19 would you be able to see the ankle chains on the  
20 defendant?

21 SERGEANT JACOBI: I doubt it.

22 THE COURT: How about from where you  
23 are, Mr. Schieck?

24 MR. SCHIECK: When I stand up I may be  
25 able to see them.

1 MR. SCHWARTZ: You'll be blocking.

2 THE COURT: There will be another person  
3 sitting in front of him.

4 MR. SCHIECK: Obviously the arm  
5 restraints would be visible.

6 THE COURT: You can take the arm  
7 restraints off. He can't fly, but he might be  
8 able to run. And certainly a person who's already  
9 been convicted of two first degree murders with  
10 use of a deadly weapon has more reason to flee  
11 than someone who is either not yet convicted or  
12 someone who doesn't know what penalty they  
13 received the first time around. So leave the leg  
14 chains on. He can drop his pants down over them.  
15 Keep him tucked in under the table when the jury  
16 comes in and goes out, and I don't think that the  
17 jury will be able to see the leg chains. Arm  
18 chains have to come off and the belly chain so he  
19 can assist counsel so he can write notes, so he  
20 can talk to people.

21 MR. SCHIECK: Can we have permission of  
22 the Court then when the Court leaves or when the  
23 jury comes in that we don't have to stand up?

24 THE COURT: No, don't stand up. We'll  
25 just come to order, and the prosecutor will sit

1 also. Anything else?

2 MR. SCHIECK: Nothing that I can think  
3 of right now.

4 THE COURT: Well, let me know as they  
5 come up.

6 (Pause in proceedings.)

7 THE COURT: Good morning, Mr. Thomas.  
8 This is the time set for retrial of the penalty  
9 hearing in the State of Nevada versus Thomas,  
10 C136862. The record will now reflect the presence  
11 of the state through Dave Schwartz. The defendant  
12 is present in custody with Mr. Schieck and  
13 Mr. Albregts. Jonathan has --

14 MR. SCHIECK: The problem is the chain  
15 between his legs, but if you weren't really,  
16 really trying to see it.

17 THE COURT: I can't even see it. And  
18 you will stay seated while the jury panel comes  
19 in.

20 Jonathan, how many jurors do we have?

21 THE BAILIFF: Sixty.

22 (Discussion off the record.)

23 THE COURT: Are we ready to bring in the  
24 jury panel, Counsel?

25 MR. ALBREGTS: Yes, Your Honor.



1 THE COURT: Okay.  
2 (Whereupon, the jury entered  
3 the courtroom.)  
4 THE COURT: Good morning, ladies and  
5 gentlemen. Welcome to Department XV of the Eighth  
6 Judicial District Court. You have previously come  
7 in and filled out a jury questionnaire that gave  
8 you a synopsis of this case and so you know that  
9 our defendant today, Marlo Thomas who's sitting at  
10 the middle table on the left has been convicted of  
11 two counts of first degree murder with use of a  
12 deadly weapon with respect to the stabbing deaths  
13 of Matthew Gianakis and Carl Dixon at the Lone  
14 Star Restaurant located at Cheyenne and Rainbow  
15 here in Clark County in April of 1996.  
16 The purpose of the penalty hearing is  
17 for you to decide the appropriate punishment for  
18 Mr. Thomas. Now, you might wonder if this event  
19 occurred in 1996 why are we doing a penalty  
20 hearing in 2005, and the reason for that is there  
21 was an irregularity in the sentencing hearing  
22 which occurred closer to the event at the time  
23 that he was convicted of these murders, and the  
24 Supreme Court has determined that it is  
25 appropriate to redo the sentencing, and for that

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1 reason this is a sentencing hearing and penalty  
2 hearing rather than the trial on the merits.  
3 The selection of the jury is done under  
4 oath, and at this time our clerk is going to issue  
5 that oath to you.  
6 (Juror oath administered.)  
7 THE COURT: The attorneys have indicated  
8 to me the number of witness that they have and how  
9 long they think this proceeding might take, and to  
10 qualify to serve on this jury you need to be  
11 available for this week. Once we send an issue to  
12 the jury to make a decision on, we don't have any  
13 way of accurately predicting how long the jury may  
14 take to make that decision, but in this case the  
15 jury will be asked to make two decisions, so the  
16 jury -- you're going to hear some evidence, you're  
17 going to hear some testimony, you're going to get  
18 some information given to you, and then you're  
19 going to be asked to make a decision. Then after  
20 you make that decision, you're going to come back  
21 and hear some more information and then you'll go  
22 out to make another decision. So once -- we know  
23 how long approximately it's going to take for the  
24 evidence to come in and the witnesses to testify,  
25 but once it goes to the 12 jurors who are

1 ultimately going to be picked to be our jurors who  
2 decide this case, once it goes to them we don't  
3 really have any way of accurately predicting how  
4 long the case might take them to decide. However,  
5 we believe our best prognosis at the moment is is  
6 that you should be completed with both of those  
7 decisions by Friday. If you haven't, then we will  
8 just stay and deliberate on Thursday night or  
9 Friday night or whatever, and it may be necessary  
10 if you're still not finished on Friday night to  
11 come in on Saturday to complete deliberations. I  
12 don't think that's going to take that long. I  
13 don't think that's going to be necessary, but I  
14 can't promise that because I don't know how long  
15 it's going to take the jury to make any decisions  
16 that the jury has to make in this case.  
17 I'm going to have the attorneys  
18 introduce themselves, and I'm going to have  
19 them -- the defense attorneys introduce  
20 Mr. Thomas. I will ask the State to give us a  
21 list of possible witnesses or names that you may  
22 hear of during the trial because we will all want  
23 to know if you know any of the people who worked  
24 at the Lone Star back in 1996, if you know any of  
25 the people who may be mentioned as witnesses in

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1 this case or who may testify in the case. And so,  
2 Mr. Schwartz, would you please start first.  
3 MR. SCHWARTZ: Thank you, your Honor.  
4 Good morning, ladies and gentlemen. My name is  
5 David Schwartz, and I'm a Chief Deputy District  
6 Attorney here in Clark County. I'll be  
7 representing the State of Nevada at this penalty  
8 hearing. Another gentleman who will also be at  
9 this hearing is Chris Owens. He's also a chief  
10 deputy district attorney, but he's giving a  
11 summation or closing argument right now in another  
12 trial so he'll join us in all probability first  
13 thing tomorrow morning.  
14 As Judge Loehrer has told you, this is a  
15 penalty hearing. The defendant has been convicted  
16 of two counts of first degree murder with use of a  
17 deadly weapon, and you are going to be selected to  
18 determine the appropriate punishment for those two  
19 crimes. Now, some of the witnesses the State  
20 might be calling at this penalty hearing include  
21 Steve Hemmes, Vince Oddo, Sidney Sontag, Dave  
22 Mesinar who's a detective with the Las Vegas  
23 Metropolitan Police Department, David Bailey who's  
24 with the Nevada Highway Patrol, Dr. Jordan who was  
25 a coroner back in 1996 but has since retired. You

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1 might hear from Hanifa Alkarem, Loletha Jackson,  
2 Mike Compton who's from the Department of Parole  
3 and Probation, Wendy Cecil, several individuals  
4 who are currently employed in the Nevada State  
5 Prison system, perhaps Officer Schrader, Paul  
6 Whelock, Dave Williams, Kathy Barfus, Gina Morris.  
7 They're all employed in that system. Juvenile  
8 probation officer by the name of Hill, Charles  
9 Hanks and possibly a Jeff Carlson. Also you'll  
10 hear from the families of the deceased, Mr. Fred  
11 Dixon and Alexander Gianakis.

12 THE COURT: Mr. Schieck.

13 MR. SCHIECK: Thank you, your Honor.  
14 Good morning. I guess it's still morning. I'm  
15 David Schieck. I'm the Special Public Defender  
16 for Clark County. I represent Marlo Thomas. This  
17 is Marlo sitting here in the center. Assisting me  
18 as co-counsel during the trial is Dan Albregts  
19 who's in private practice here in Clark County,  
20 has been for a number of years.

21 The witnesses that we may be calling,  
22 and this is not all inclusive but would include  
23 Sherman Nash, Shirley Nash, Charles Nash, Georgia  
24 Thomas, Paul Thomas, Darryl Thomas and Liza  
25 Bosley. And as in any case the witnesses we call

1 THE JUROR: No.  
2 THE COURT: Social friends?  
3 THE JUROR: Social.  
4 THE COURT: The fact that he is counsel  
5 for the defendant in this case, will that  
6 automatically prejudice you for or against any  
7 party to this action?

8 THE JUROR: No.

9 THE COURT: All right. Thank you.

10 Anybody else know any of the attorneys or  
11 Mr. Thomas?

12 Does anybody know the families of  
13 Matthew Gianakis or Carl Dixon who are employees  
14 at the Lone Star Restaurant at Cheyenne and  
15 Rainbow in 1996? Anybody know anybody who worked  
16 at the Lone Star on Cheyenne and Rainbow in  
17 April 1996? I see no hands up.

18 Did anybody recognize the names of any  
19 of the potential witnesses given to you either by  
20 Mr. Schwartz or Mr. Schieck? Yes, there's a hand.  
21 Your badge number, ma'am, last three digits,  
22 please?

23 THE JUROR: 808.

24 THE COURT: Ms. Connery. Which name o  
25 names did you recognize?

1 depends on what -- whether we need to rebut  
2 something they call. There may be additional  
3 witnesses that we call, but that's pretty much the  
4 inclusive list of who we anticipate. Thank you.

5 THE COURT: Thank you, Counsel. The  
6 first thing I need to know is does anybody here  
7 know the attorneys or Mr. Thomas? I see there are  
8 no hands up. Does anybody know --

9 MR. ALBREGTS: Judge, there is a hand.

10 THE COURT: What is your badge number,  
11 sir?

12 THE JUROR: 030832.

13 THE COURT: We're going to call you 832.  
14 We don't need all those big numbers. Edward  
15 Harris?

16 THE JUROR: Yes.

17 THE COURT: Sir, which of the attorneys  
18 or the defendant do you know?

19 THE JUROR: This gentleman here in the  
20 dark coat.

21 THE COURT: Mr. Albregts?

22 THE JUROR: Yes. I don't know him  
23 personally, but kind of an acquaintance.

24 THE COURT: Has he ever represented you  
25 or?

1 THE JUROR: I recognized the name Dave  
2 Mesinar as somebody who used to work with me at  
3 the post office, but I don't know if it's the same  
4 gentleman.

5 THE COURT: And how long ago did you  
6 work with a Dave Mesinar at the post office?

7 THE JUROR: It was 12 to 15 years ago,  
8 and I didn't work closely with him.

9 THE COURT: So if it turns out to be the  
10 same person that you worked with at the post  
11 office some time ago, would that automatically  
12 prejudice you for or against any party to this  
13 lawsuit?

14 THE JUROR: No, I don't think so.

15 THE COURT: Anybody else recognize any  
16 of the names of the people who may be involved in  
17 this trial? All right. Thank you.

18 Now what I'm going to do is ask if there  
19 is any reason any of you could not serve your  
20 community as jurors this week in determining the  
21 appropriate penalty for Mr. Thomas for his -- two  
22 first degree murder with use of a deadly weapon  
23 convictions. We're going to do over here first.  
24 Your badge number, sir?

25 THE JUROR: 490.

1 THE COURT: Mr. Kieffer, what would be  
2 your conflict which would preclude you from  
3 serving your community this week as a juror?  
4 THE JUROR: Your Honor, I have business  
5 clients to visit. I have appointments set up for  
6 meeting tomorrow afternoon and all day Wednesday  
7 in Los Angeles.  
8 THE COURT: And there's no one else at  
9 your business who could do those for you?  
10 THE JUROR: There's only two of us.  
11 One's on the East Coast, and I'm on the West  
12 Coast.  
13 THE COURT: Counsel, do you wish to  
14 inquire of Mr. Kieffer?  
15 MR. SCHWARTZ: No, your Honor.  
16 THE COURT: Mr. Schieck, No. 490.  
17 MR. SCHIECK: No, your Honor.  
18 THE COURT: Mr. Kieffer, you may be  
19 excused due to your out-of-state travel. Please  
20 go back to the jury commission office, tell them  
21 you've been excused all week.  
22 THE JUROR: Thank you, your Honor.  
23 THE COURT: Anybody else up here could  
24 not serve your community?  
25 THE JUROR: 544.

1 call you back?  
2 THE JUROR: They didn't answer the  
3 phone.  
4 THE CLERK: They're on staff development  
5 today.  
6 THE COURT: So if you called them on  
7 Wednesday, who did you leave the message with on  
8 Wednesday?  
9 THE JUROR: I actually spoke to a young  
10 lady there, and I told her my predicament. I told  
11 her that I have been called to serve and --  
12 THE COURT: So did she say when they  
13 were going to call you back?  
14 THE JUROR: The young lady indicated  
15 because I gave her two numbers, my work number and  
16 my home number, you can call me before seven here  
17 or after 8:00 here. Okay, well, they'll call you  
18 tomorrow meaning Thursday, and I did not receive a  
19 call. I got an automated phone call later in the  
20 evening at seven indicating my son was absent from  
21 school.  
22 THE COURT: Counsel, do you wish to  
23 inquire of Ms. Kaczmarek?  
24 MR. SCHWARTZ: No, your Honor.  
25 MR. SCHIECK: What is our schedule like

1 THE COURT: Ms. Kaczmarek, what is your  
2 conflict?  
3 THE JUROR: My conflict is my son got  
4 suspended from school. In order for me to be able  
5 to get him back into school, I have to be able to  
6 meet with them, and they don't obviously get back  
7 to school until tomorrow, and if I don't then  
8 he'll be out of school even longer.  
9 THE COURT: How old is your boy?  
10 THE JUROR: He's 16.  
11 THE COURT: And what time of day are you  
12 supposed to meet with school officials?  
13 THE JUROR: As soon as I can get the  
14 appointment. He was suspended last week, and I  
15 called them on Wednesday. They were supposed to  
16 return my phone call on Thursday so this could  
17 have been resolved prior to and they haven't done  
18 so.  
19 THE COURT: You're still waiting for  
20 them to call you?  
21 THE JUROR: Yes, ma'am.  
22 THE COURT: Did you call them again this  
23 morning?  
24 THE JUROR: Yes, ma'am, I did.  
25 THE COURT: Did they say when they might

1 tomorrow, do we know? She may be able to schedule  
2 around.  
3 THE COURT: With the school district  
4 that won't even return her phone calls? What's  
5 the chance of that happening?  
6 THE JUROR: I could show up at their  
7 door tomorrow morning. They open at six, but I  
8 don't know if I could see anyone.  
9 THE COURT: Do you know what the  
10 procedure is for getting your son back in school?  
11 THE JUROR: They said that he couldn't  
12 be out more than three days but that he needed to  
13 be present during the course of my counseling with  
14 him.  
15 THE COURT: What is the ordinary time  
16 that he goes to school?  
17 THE JUROR: School usually starts at  
18 7:05.  
19 THE COURT: Then what time is he off in  
20 the afternoon?  
21 THE JUROR: At 2:30 -- 1:30.  
22 THE COURT: We would not start tomorrow  
23 until 10:00 in the morning. Do you think there's  
24 a possibility that you could --  
25 THE JUROR: I'm working on it.

1 THE COURT: -- get it done at seven in  
 2 the morning because if you don't go in tomorrow  
 3 then he's kicked out for the whole year, right?  
 4 THE JUROR: I'm sorry?  
 5 THE COURT: If you don't see them  
 6 tomorrow and get him back in, then he's missed  
 7 three days, correct?  
 8 THE JUROR: At least.  
 9 THE COURT: Because they kicked him out  
 10 Wednesday.  
 11 THE JUROR: Tuesday.  
 12 THE COURT: He's already missed  
 13 Wednesday and Thursday and tomorrow is the third  
 14 day.  
 15 THE JUROR: Yes, ma'am.  
 16 THE COURT: So tomorrow if you're not in  
 17 there and if they don't take him back tomorrow,  
 18 then he's gone for the whole semester right?  
 19 THE JUROR: I don't know what their  
 20 normal procedure would be.  
 21 THE COURT: I'm going to leave you here  
 22 because it is very important that you get it taken  
 23 care of, but I think you best be there at 6:30 in  
 24 the morning with him and sit on the front steps  
 25 until somebody sees you.

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1 Anybody else up here? Blue shirt.  
 2 THE JUROR: 494.  
 3 THE COURT: Mr. Quenzer, what is your  
 4 conflict, sir?  
 5 THE JUROR: I'm able to serve this week,  
 6 but my concern is I am an employee of Lone Star  
 7 restaurants and have been for five-and-a-half  
 8 years.  
 9 THE COURT: And which one do you work  
 10 at?  
 11 THE JUROR: I actually work in the  
 12 Delfrisco Steak House which is owned by Lone Star.  
 13 THE COURT: Delfrisco is a little higher  
 14 class than Lone Star, isn't it?  
 15 THE JUROR: Absolutely. Same company.  
 16 THE COURT: Do you know any of the  
 17 people that ever worked at that location?  
 18 THE JUROR: I haven't recognized any of  
 19 the names.  
 20 THE COURT: But Lone Star is the parent  
 21 company, correct?  
 22 THE JUROR: Yes.  
 23 THE COURT: Anybody else over here? In  
 24 the red, badge number?  
 25 THE JUROR: 501.

1 THE COURT: Ms. Gonzales?  
 2 THE JUROR: I'm an executive assistant  
 3 at Harrah's Entertainment, and my boss is a vice  
 4 president of IT and he has various meetings this  
 5 week which I have to prepare for and luncheons for  
 6 the vice presidents coming into town.  
 7 THE COURT: I know it's going to be a  
 8 real inconvenience for your boss if you get picked  
 9 for the jury, but I cannot excuse you for that  
 10 reason. I simply can't excuse you for that.  
 11 Anybody else over here?  
 12 THE JUROR: 502.  
 13 THE COURT: Mr. Crooks, what is your  
 14 conflict?  
 15 THE JUROR: I had to take my  
 16 two-year-old son to the emergency room last night  
 17 with 105 fever.  
 18 THE COURT: Where is he now?  
 19 THE JUROR: At home. He cannot return  
 20 to day care.  
 21 THE COURT: Who's taking care of him  
 22 today?  
 23 THE JUROR: My wife. We have today off  
 24 together.  
 25 THE COURT: And you both work?

25

1 THE JUROR: We both work.  
 2 THE COURT: So is the baby -- what's his  
 3 temperature down to now?  
 4 THE JUROR: It's 102 today.  
 5 THE COURT: And is he on medication?  
 6 THE JUROR: He's just taking Tylenol.  
 7 They said it was a viral infection, just have to  
 8 wait it out.  
 9 THE COURT: Who would stay home tomorrow  
 10 if he's still sick tomorrow?  
 11 THE JUROR: I would.  
 12 THE COURT: And his mother would go to  
 13 work?  
 14 THE JUROR: His mother if she calls into  
 15 work one more time she's probably going to lose  
 16 her job. It's a point system. She works at  
 17 Harrah's Las Vegas.  
 18 THE COURT: And the day care won't take  
 19 him until he's down to 98?  
 20 THE JUROR: He has to have no fever so  
 21 98, 99.  
 22 THE COURT: Well, I am going to excuse  
 23 you. We can't predict when he will recover normal  
 24 temperature, and I don't want you being serving  
 25 here as a juror and your wife being fired and the

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1 family being on the street.  
 2 THE JUROR: That would be bad, yeah.  
 3 THE COURT: You may be excused. Please  
 4 go to the jury commission office, tell them you've  
 5 been excused for the entire week.  
 6 MR. ALBREGTS: That was Mr. Crooks,  
 7 right?  
 8 THE COURT: Yes. Your badge number,  
 9 ma'am?  
 10 THE JUROR: 491.  
 11 THE COURT: Mrs. Guffey, what is your  
 12 conflict?  
 13 THE JUROR: It's just very hard for me  
 14 to get up here because I have to walk so far just  
 15 to get here. It took me 45 minutes just to walk  
 16 down the street.  
 17 THE COURT: Where do they have you  
 18 jurors park?  
 19 THE JUROR: To tell you the truth, they  
 20 told us to park over on Fremont, but I couldn't do  
 21 that so I parked over there in that metro parking  
 22 in the handicap and put as many quarters in and  
 23 decided just to get a ticket.  
 24 THE COURT: Well, if you do get a ticket  
 25 and you bring your ticket back to the court

1 MR. SCHIECK: No further questions.  
 2 THE COURT: Ms. Guffey, thank you for  
 3 being here today. You may be excused. Please go  
 4 to the third floor jury commission office, tell  
 5 them you've been excused for the entire week.  
 6 Anybody else up here? Your badge  
 7 number, ma'am?  
 8 THE JUROR: 504.  
 9 THE COURT: Ms. Martinez, what is your  
 10 conflict?  
 11 THE JUROR: I'm a single mother with two  
 12 children, and I really can't afford to miss any  
 13 more work. I've already missed two days, today  
 14 and I was here October 5th also.  
 15 THE COURT: How old are the children?  
 16 THE JUROR: Eight and six.  
 17 THE COURT: Who takes care of them when  
 18 you work?  
 19 THE JUROR: Actually right now my mother  
 20 is. She's had to miss work also so that I could  
 21 be here.  
 22 THE COURT: Where do you work?  
 23 THE JUROR: I work at Mandalay Bay.  
 24 THE COURT: What shift do you work?  
 25 THE JUROR: I work in the mornings.

1 administration it will be taken care of because  
 2 there's an agreement between the court system and  
 3 the city that handles that.  
 4 Counsel for the State, do you wish to  
 5 inquire of Ms. Guffey?  
 6 MR. SCHWARTZ: No, your Honor.  
 7 THE COURT: Mr. Schieck.  
 8 BY MR. SCHIECK:  
 9 Q. Does walking that distance does that  
 10 cause you any physical problems?  
 11 A. Yes. I have a very bad hip and a bad  
 12 ankle, and it literally takes me forever to walk  
 13 from there just to get into the courthouse.  
 14 Q. Would that inhibit your ability to  
 15 listen to the testimony from witnesses because you  
 16 were in pain from having to walk that far?  
 17 A. No. Besides I'd be in pain, no.  
 18 Q. Do you take something for the pain?  
 19 A. Yes, I do.  
 20 Q. Would that inhibit your ability to  
 21 listen to witnesses?  
 22 A. I don't know.  
 23 Q. It doesn't make you drowsy or anything  
 24 like that?  
 25 A. No, sir.

1 THE COURT: What time to what time?  
 2 THE JUROR: Six in the morning until two  
 3 in the afternoon.  
 4 THE COURT: Who gets the kids off to  
 5 school?  
 6 THE JUROR: My mom does.  
 7 THE COURT: Now, you said she has to --  
 8 she had to take two days off. What is her  
 9 schedule?  
 10 THE JUROR: She works in the mornings  
 11 also.  
 12 THE COURT: Well, when the both of you  
 13 work, who gets the kids off to school?  
 14 THE JUROR: One day of the week my  
 15 ex-husband does because the kids are with him and  
 16 then the other two days I either have a friend  
 17 that does it or my mom will do it. I really can't  
 18 miss work.  
 19 THE COURT: What time does your mother  
 20 go to work?  
 21 THE JUROR: She works from seven to  
 22 three.  
 23 THE COURT: Do the kids walk to school,  
 24 do they take the bus?  
 25 THE JUROR: They take the bus.

1 THE COURT: And what do you do at  
 2 Mandalay Bay.  
 3 THE JUROR: I'm a fountain worker.  
 4 THE COURT: And did you check with Human  
 5 Resources to see if they pay your wages while  
 6 you're on jury service?  
 7 THE JUROR: They said they would, but  
 8 they only pay a percentage. They don't pay the  
 9 full amount.  
 10 THE COURT: How much do they pay?  
 11 THE JUROR: Like \$40 a day.  
 12 THE COURT: That's what you get paid as  
 13 a juror.  
 14 THE JUROR: I make over a hundred a day  
 15 if I was at work between my wages and tips.  
 16 THE COURT: Mandalay Bay pays you 40 and  
 17 we pay you 40, that's 80. You probably ought to  
 18 be able to slide by on that.  
 19 THE JUROR: Well, yeah.  
 20 THE COURT: Thank you for sharing this  
 21 information with us. I can't excuse you for that  
 22 purpose.  
 23 Anybody else over here? Now, let us go  
 24 over here. Front row first. Striped shirt, your  
 25 badge number?

1 you got out of here by five or ten after five,  
 2 could you make it to class on time?  
 3 THE JUROR: I can, but my day job I work  
 4 as an agent during the day to service my clients.  
 5 THE COURT: We don't start until ten or  
 6 10:30 in the morning. We always take an hour,  
 7 hour and a half for lunch, and if you could make  
 8 phone calls during all that time period, would  
 9 that be satisfactory?  
 10 THE JUROR: It's going to be tough  
 11 because I'm the only one in the office, your  
 12 Honor.  
 13 THE COURT: Can you put a sign on the  
 14 door that says you've got to call me on my cell  
 15 phone?  
 16 THE JUROR: I could lose clients if I  
 17 don't return calls if I'm not there.  
 18 THE COURT: What kind of insurance do  
 19 you sell?  
 20 THE JUROR: Auto, home, life.  
 21 THE COURT: Are you an independent  
 22 agent?  
 23 THE JUROR: Independent.  
 24 THE COURT: Where's your office located?  
 25 THE JUROR: Sahara and Rainbow.

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1 THE JUROR: 773, your Honor.  
 2 THE COURT: Mr. Elpidio, what is your  
 3 conflict, sir?  
 4 THE JUROR: I'm sole business owner and  
 5 I work day job and a night job.  
 6 THE COURT: What type of business are  
 7 you in?  
 8 THE JUROR: I'm insurance during the day  
 9 and I teach at night.  
 10 THE COURT: Where do you teach at night?  
 11 THE JUROR: At the University of  
 12 Phoenix. I teach this week three nights a week  
 13 and next week four nights a week.  
 14 THE COURT: What time are those classes?  
 15 THE JUROR: Six to ten.  
 16 THE COURT: Where is the campus for the  
 17 University of Phoenix?  
 18 THE JUROR: They're all over. Rancho.  
 19 THE COURT: Where's the one you have to  
 20 teach at this week?  
 21 THE JUROR: This week the three sites,  
 22 Henderson, Rancho and southwest.  
 23 THE COURT: Generally we stop the trial  
 24 around 5:00 in the evening. Sometimes it's a  
 25 little before, sometimes a little after, and if

33

1 THE COURT: What are your regular  
 2 business hours?  
 3 THE JUROR: Eight to six.  
 4 THE COURT: It can't be eight to six  
 5 because you've got to beat the campuses at 6:00 at  
 6 night.  
 7 THE JUROR: Normally if I'm not teaching  
 8 it would be eight to six, but I leave at five,  
 9 5:30, so eight to five.  
 10 THE COURT: Do you have anybody that  
 11 answers the phone, sir?  
 12 THE JUROR: Not right now. Just me.  
 13 THE COURT: So you're the only one  
 14 that's in the office? Is there a recording on the  
 15 phone today that says you're not available, call  
 16 tomorrow? What's your recording say?  
 17 THE JUROR: I can change the recording  
 18 but right now.  
 19 THE COURT: What's your number?  
 20 Jonathan, take Mr. Elpidio, call his office and  
 21 see what the recording says. Go with the bailiff.  
 22 Anybody else in the first row? Yes,  
 23 ma'am, your badge number?  
 24 THE JUROR: 751.  
 25 THE COURT: Ms. Kelemen, what is your

RA 000576

1 conflict?

2 THE JUROR: I'm a stay-at-home mom, and  
3 I don't have anyone to take care of my children.  
4 They're in preschool. They get out at noon. I  
5 made arrangements to take extended care. They're  
6 in school Monday, Wednesday and Friday.

7 THE COURT: Preschool is morning only?

8 THE JUROR: Yeah, eight to noon.

9 THE COURT: Counsel, do you wish to  
10 inquire of Ms. Kelemen?

11 MR. SCHWARTZ: No, your Honor.

12 THE COURT: Mr. Albregts, Mr. Schieck?

13 MR. SCHIECK: Court's indulgence. No  
14 questions, your Honor.

15 THE COURT: Ms. Kelemen, thank you for  
16 being here. You may be excused. Please go back  
17 to the jury commission office and tell them you've  
18 been excused all week.

19 Second row. Lady in the white, what's  
20 your badge number?

21 THE JUROR: 808.

22 THE COURT: Ms. Connery, what is your  
23 conflict?

24 THE JUROR: I have a medical excuse.

25 THE COURT: Hold on for a second and the

1 early in the morning. Work isn't a problem. I

2 can take the bus down here. It's not a problem.

3 I just can't promise to be on time.

4 THE COURT: All right. We are very  
5 close to the bus center and that will be  
6 satisfactory.

7 Now let's go back to Mr. Elpidio. You  
8 must have a miracle in your office today because a  
9 real live person answered your phone.

10 THE JUROR: I asked one of the ladies in  
11 there.

12 THE COURT: And it's a Farmers Insurance  
13 Company, and there's all kinds of people in there  
14 so you are not excused, and the Court is not  
15 appreciative of you telling me that you are the  
16 only one who works there and that nobody is there  
17 to answer the telephone.

18 THE JUROR: I'm an independent, your  
19 Honor.

20 THE COURT: You're not excused.

21 Ms. Connery, you are excused. Counsel,  
22 she has a medical excuse. You may go to the third  
23 floor of the jury office, tell them you've been  
24 excused all week, Ms. Connery, so you may be  
25 excused.

35

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1 bailiff will bring that forward.

2 Anybody else in the second row? In the  
3 green, your badge number?

4 THE JUROR: 780.

5 THE COURT: Ms. Shaverdian, what is your  
6 conflict?

7 THE JUROR: I don't have a car right  
8 now. I got a ride today, but I don't know if I  
9 can get one this whole week. I might have to take  
10 the bus, and I don't know if I can make it on time  
11 or if anything happens, your Honor.

12 THE COURT: If your husband rides the  
13 bust to work, you must be close to a bus line?

14 THE JUROR: I'm not married.

15 THE COURT: Who took the bus today?

16 THE JUROR: My boyfriend gave me a ride  
17 over here because I don't have a car right now,  
18 and I might have to take the bus this week because  
19 I don't have anybody to take me all week long.

20 THE COURT: So do you have a job?

21 THE JUROR: Yeah.

22 THE COURT: How do you get to work.

23 THE JUROR: They have me on a schedule  
24 because my mom goes to work six to two so I work  
25 the same shift. She drops me off a little bit

1 Anybody else in the second row? How  
2 about the back row? Your badge number?

3 THE JUROR: 810.

4 THE COURT: Ms. Forsyth, what is your  
5 conflict?

6 THE JUROR: I don't really understand  
7 English that well.

8 THE COURT: How long have you lived in  
9 the US?

10 THE JUROR: About 20-some years.

11 THE COURT: And have you worked outside  
12 of the home?

13 THE JUROR: Yes, ma'am.

14 THE COURT: Where have you worked?

15 THE JUROR: At the Venetian.

16 THE COURT: What do you do for the  
17 Venetian?

18 THE JUROR: Dealer.

19 THE COURT: Of 21 or craps?

20 THE JUROR: Blackjack.

21 THE COURT: I appreciate the fact that  
22 English isn't your first language, but I think you  
23 have a significant grasp of the language which  
24 will enable you to serve as a juror.

25 Anybody else in the last row? In the

RA 000577

1 blue shirt, your badge number?  
 2 THE JUROR: 811.  
 3 THE COURT: Mr. Connelly, what is your  
 4 conflict?  
 5 THE JUROR: I have a medical appointment  
 6 scheduled on Thursday.  
 7 THE COURT: What time?  
 8 THE JUROR: 11:00 a.m.  
 9 THE COURT: And can that be rescheduled?  
 10 THE JUROR: Probably.  
 11 THE COURT: You don't have any medical  
 12 condition at the moment that would preclude you  
 13 from serving?  
 14 THE JUROR: No. It's more of an  
 15 examination, but it would require anesthesia.  
 16 THE COURT: Well, if you get picked on  
 17 the jury you're probably going to have to  
 18 reschedule that procedure.  
 19 THE JUROR: Okay.  
 20 THE COURT: Anybody else in the back  
 21 row?  
 22 THE JUROR: 830.  
 23 THE COURT: Ms. Storck, what is your  
 24 conflict?  
 25 THE JUROR: I have -- I work a kiosk

1 not, so she is working the sixth day for me until  
 2 my second guy gets in there at one.  
 3 THE COURT: Counsel, do you wish to  
 4 inquire of Ms. Storck?  
 5 MR. SCHWARTZ: No, your Honor.  
 6 MR. SCHIECK: No, your Honor.  
 7 THE COURT: Ms. Storck, thank you for  
 8 being here today, for coming in the other day.  
 9 You may be excused all week. Please go to the  
 10 jury commission office and tell them you've been  
 11 excused all week.  
 12 Anybody else in the back row? Your  
 13 badge number, sir. 832, Edward Harris, what is  
 14 your conflict?  
 15 THE JUROR: I'm self-employed, and I  
 16 have probably 30, 40, 50 clients on my books. I'd  
 17 have to get on the phone, reschedule them. A lot  
 18 of financial debt.  
 19 THE COURT: What do you do for a living,  
 20 sir?  
 21 THE JUROR: I'm a hairdresser.  
 22 THE COURT: Do you have your own shop?  
 23 you work some place?  
 24 THE JUROR: I'm an independent  
 25 contractor.

1 inside of Sam's Club, and we have a mandatory  
 2 meeting on Wednesday starting at two, plus we're  
 3 only -- three-person crew for a seven days work  
 4 week, so if I'm not there they would have to work  
 5 from, like, 9:30 in the morning until 8:30 at  
 6 night.  
 7 THE COURT: And you know the people that  
 8 you work with so you could go and you could be a  
 9 juror here from ten in the morning until five or  
 10 so and you could pick up the 5:30 to 8:30 shift so  
 11 you could spell the people there all day?  
 12 THE JUROR: I guess I could do that.  
 13 THE COURT: Now, the mandatory meeting  
 14 at Sam's --  
 15 THE JUROR: It's a district meeting for  
 16 the store managers. I'm a store kiosk manager and  
 17 my boss is flying in on Wednesday and we have a  
 18 meeting from two until nine at night.  
 19 THE COURT: Who's going to run those  
 20 kiosks from 2:00 p.m. until 8:30 if everybody has  
 21 to meet with the store manager?  
 22 THE JUROR: That is my day off. My  
 23 scheduled day off is Wednesday -- Tuesday and  
 24 Wednesday, and I had my girl come in because I  
 25 didn't know if it was going to be continued or

1 THE COURT: What shop do you work at?  
 2 THE JUROR: Euphoria Salon on Green  
 3 Valley Parkway.  
 4 THE COURT: What hours do you ordinarily  
 5 work?  
 6 THE JUROR: Nine to six.  
 7 THE COURT: What day are you off?  
 8 THE JUROR: I'm off Sunday, Monday.  
 9 THE COURT: And you've got -- if you  
 10 were chosen as a juror, you'd have to  
 11 reschedule --  
 12 THE JUROR: I'd have to get on the  
 13 phone.  
 14 THE COURT: -- heads for the entire  
 15 week. Now, if you missed working at the salon all  
 16 week and got \$40 a day being a juror, would you be  
 17 able to pay your car payment and your house  
 18 payment and your child support and all that stuff?  
 19 THE JUROR: No. That wouldn't even pay  
 20 my lease space at the salon.  
 21 THE COURT: All right. You may be  
 22 excused. Please report downstairs to the jury  
 23 commission office on the third floor. Tell them  
 24 you've been excused all week.  
 25 All right, over here this group first



1 row, yes, ma'am.  
 2 THE JUROR: I'm just concerned --  
 3 THE COURT: I have to have your number,  
 4 please.  
 5 THE JUROR: 570.  
 6 THE COURT: Rosa Belch?  
 7 THE JUROR: Yes, ma'am.  
 8 THE COURT: What is your conflict?  
 9 THE JUROR: My only conflict is if this  
 10 runs past this week. I'm scheduled to go to  
 11 Europe on the 9th.  
 12 THE COURT: It won't. Your badge  
 13 number, ma'am?  
 14 THE JUROR: 578.  
 15 THE COURT: Ms. Cookson?  
 16 THE JUROR: I have stressed out since I  
 17 filled out the questionnaire. I cannot be a fair  
 18 and impartial juror because I don't believe in an  
 19 eye for an eye so I would not be able to come to a  
 20 sentence on this case.  
 21 THE COURT: Well, we're going to get  
 22 into that, what the four possible punishments are,  
 23 and I'll tell you what they are now. Maybe your  
 24 jury questionnaire already told you. Did it?  
 25 MR. ALBREGTS: Yes, ma'am.

1 belief.  
 2 THE COURT: Counsel, you may inquire of  
 3 Ms. Cookson.  
 4 BY MR. SCHWARTZ:  
 5 Q. So, ma'am, if you were selected as a  
 6 juror in this particular case and it got to the  
 7 point where the death penalty was a possible  
 8 option, one of four, would you be able to consider  
 9 the death penalty?  
 10 A. No.  
 11 Q. So you automatically push it aside and  
 12 just consider the other three the remaining  
 13 possible punishments?  
 14 A. Right.  
 15 Q. Under no circumstances could you  
 16 consider the death penalty?  
 17 A. No.  
 18 MR. SCHWARTZ: Your Honor, I would  
 19 challenge for cause.  
 20 THE COURT: Mr. Schieck and  
 21 Mr. Albregts, do you wish to inquire of  
 22 Ms. Cookson?  
 23 MR. SCHIECK: No, your Honor.  
 24 THE COURT: Ms. Cookson, thank you for  
 25 being with us. You may be excused. Please go

1 THE COURT: Then you know because you  
 2 filled out the questionnaire, but you probably  
 3 filled it out some time ago. There's four  
 4 possible punishments for first degree murder:  
 5 Life in the Department of Prisons with the  
 6 possibility of parole beginning at the end of 20  
 7 years plus an equal and consecutive life with  
 8 parole beginning at the end of 20 years for the  
 9 deadly weapon enhancement; life without the  
 10 possibility of parole which simply means that the  
 11 defendant would remain for the rest of his natural  
 12 life in the prison system; a term of 50 years with  
 13 parole eligibility beginning at the end of 20  
 14 years plus an equal and consecutive 20 years for  
 15 the deadly weapon enhancement, and the death  
 16 penalty. Those are the four choices. You say  
 17 you're stressed out. Tell me what you mean by  
 18 you're stressed out.  
 19 THE JUROR: Basically I've thought about  
 20 it since I had to call back because I believe --  
 21 I'm sure that everybody believes that some cases  
 22 do deserve that, but it's not something that I can  
 23 personally make a decision on because I have to  
 24 live with that in my heart for the rest of my  
 25 life, and I won't do it, and that's just my

1 down to the third floor, tell them you can be sent  
 2 out on another panel. So if they need you on  
 3 another case, they'll send you out today on  
 4 another case.  
 5 Anybody else in the first row? Your  
 6 badge number, sir?  
 7 THE JUROR: 585.  
 8 THE COURT: And Mr. Adona, what is your  
 9 conflict?  
 10 THE JUROR: I attend classes on Monday  
 11 and Tuesday.  
 12 THE COURT: Where do you go to school?  
 13 THE JUROR: Community College of  
 14 Southern Nevada.  
 15 THE COURT: What hours are your classes?  
 16 THE JUROR: Six to nine at night.  
 17 THE COURT: You go Monday and Tuesday  
 18 and it's six to 9 o'clock?  
 19 THE DEFENDANT: Yes.  
 20 THE COURT: You'll be fine. You'll be  
 21 absolutely fine.  
 22 Anybody else in the first row? Your  
 23 badge number?  
 24 THE JUROR: My badge number is 586.  
 25 Actually, your Honor, I just need to use the rest

1 room.

2 THE COURT: All right. Jonathan,  
3 Mr. Kimberlin is going to go to the rest room. Go  
4 out the door, turn left where the walkway goes  
5 like two buildings and when you get to the next  
6 building it's on the left-hand side and come back  
7 when you're finished.

8 Yes, your badge number, ma'am?

9 THE JUROR: 592.

10 THE COURT: Ms. Larry, what is your  
11 conflict?

12 THE JUROR: I'm an ex-felon.

13 THE COURT: Well, you know that no  
14 longer necessarily precludes you from serving as a  
15 juror. Depending on when you got paroled or  
16 probation or were released from Parole and  
17 Probation if you had your civil rights restored to  
18 you, you now qualify to be a juror. Did you look  
19 at the paperwork you got when you either were  
20 released from parole or probation?

21 THE JUROR: No.

22 THE COURT: How long ago has it been  
23 that you were released?

24 THE JUROR: About a year.

25 THE COURT: Jonathan, would you take

1 the dead. There's a famous person with your name  
2 or infamous. And, Mr. Schieck.

3 MR. SCHIECK: No questions, your Honor.

4 THE COURT: Mr. Cusimano, thank you,  
5 sir, for being here. You may be excused. Please  
6 report downstairs to the third floor, tell them  
7 you've been excused all week.

8 Another hand in the second row. Your  
9 badge number, ma'am?

10 THE JUROR: 640.

11 THE COURT: Ms. Williams, what is your  
12 conflict?

13 THE JUROR: It's I teach high school  
14 English. There's state proficiency exams on  
15 Wednesday that I am proctoring for.

16 THE COURT: Does that mean that on  
17 Wednesday everybody that's a certain age is going  
18 to be taking a standardized test in every school  
19 in the county?

20 THE JUROR: No. High school it's either  
21 juniors -- mainly juniors they're doing the  
22 writing proficiency exam. That's what I'm  
23 proctoring.

24 THE COURT: Who would teach your regular  
25 English class if you're going to be proctoring?

1 Ms. Larry back to the office, have her -- were you  
2 convicted here or some place?

3 THE JUROR: Yes, here.

4 THE COURT: Explain to Diane that she's  
5 an ex-felon and we need to know if she was  
6 released with all of her civil rights restored  
7 because if you were you qualify to be a juror and  
8 we don't want to exclude you and not have you in  
9 here as a potential juror if, in fact, you  
10 qualify. So please go with the bailiff and he  
11 will find out. Thank you.

12 Anybody else in the first row? Second  
13 row, yellow shirt, badge number, sir?

14 THE JUROR: 635.

15 THE COURT: Mr. Cusimano, what is your  
16 conflict, sir?

17 THE JUROR: For health reasons. I have  
18 spinal stenosis and I have difficulty walking from  
19 the parking lot to here, and I'm scheduled for the  
20 surgeon to review it on Tuesday, the 7th, to see  
21 if I need back surgery.

22 THE COURT: Counsel, do you wish to  
23 inquire of Mr. Joseph Cusimano?

24 MR. SCHWARTZ: No, your Honor.

25 THE COURT: Who has returned to us from

1 THE JUROR: They reschedule us all  
2 around.

3 THE COURT: Somebody is taking your  
4 class?

5 THE JUROR: I haven't seen the schedule.  
6 She wants me proctoring for the exams so I assume  
7 it's during my prep time.

8 THE COURT: When are your report cards  
9 due for this quarter?

10 THE JUROR: I've already entered grades  
11 last Thursday. Tomorrow we have to verify with  
12 all the kids and make sure they're in accurately.

13 THE COURT: All right. You may be  
14 excused. I don't find that a substitute teacher  
15 would be sufficient or could do what's necessary  
16 for you to do in the next couple of days. Please  
17 go downstairs, tell them in the jury commission  
18 office you've been excused all week.

19 Last row, one hand. Your badge number?

20 THE JUROR: 706.

21 THE COURT: Ms. Houghton, what is your  
22 conflict?

23 THE JUROR: I do payroll for food and  
24 beverage for 300 employees, and I have to turn  
25 payroll in tomorrow.

1 THE COURT: What hotel or restaurant do  
2 you work for?  
3 THE JUROR: Tuscany Casino.  
4 THE COURT: And if you were in a car  
5 accident and you were in the hospital today and  
6 tomorrow, who would do payroll?  
7 THE JUROR: I have no idea. Everybody  
8 has their own department, and I do food and  
9 beverage so I'm the only one who does food and  
10 beverage.  
11 THE COURT: So somebody who does payroll  
12 for a different department would have to work a  
13 second shift and get your people paid, correct?  
14 THE JUROR: Probably.  
15 THE COURT: I know it's going to put --  
16 if you're chosen it's going to put your casino and  
17 especially the F and B people at a disadvantage,  
18 but I can't excuse you for that purpose.  
19 THE JUROR: Also I have a sitter for my  
20 daughter. My sister usually watches her, but  
21 she's in Arizona.  
22 THE COURT: What's your work hours?  
23 THE DEFENDANT: Nine to five, eight to  
24 four.  
25 THE COURT: What days do you work?

1 every day this week?  
2 THE JUROR: I will.  
3 THE COURT: You're going to take her to  
4 work with you?  
5 THE JUROR: No, I'll have to go in  
6 early.  
7 THE COURT: Do they have Safekey at the  
8 school that your child attends?  
9 THE JUROR: They do.  
10 THE COURT: So your child could stay at  
11 Safekey for this week until six?  
12 THE JUROR: I really can't afford it.  
13 THE COURT: How much does it cost for  
14 Safekey, \$15 a week?  
15 THE JUROR: Seven dollars a day, so 35  
16 bucks a week.  
17 THE COURT: Counsel, do you wish to  
18 inquire of Ms. Houghton?  
19 MR. SCHWARTZ: No, your Honor.  
20 THE COURT: Mr. Schieck.  
21 MR. SCHIECK: No, your Honor.  
22 THE COURT: Ms. Houghton, you may be  
23 excused. Please report downstairs to the third  
24 floor, tell them you've been excused all week due  
25 to your day care situation.

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1 THE JUROR: Monday through Friday.  
2 THE COURT: You've got to do payroll,  
3 but you can't do payroll because of your child has  
4 to be taken care of?  
5 THE JUROR: Not only do I do payroll,  
6 but the other thing is I don't have a baby-sitter  
7 for my daughter. Today my mother watched her but  
8 she's --  
9 THE COURT: So usually you take your  
10 child to work with you?  
11 THE JUROR: No, she goes to school.  
12 THE COURT: And how old is your  
13 daughter?  
14 THE JUROR: She's five.  
15 THE COURT: So what are her school  
16 hours?  
17 THE JUROR: She goes from 9:00 until  
18 3:00.  
19 THE COURT: So who usually picks her up  
20 at 3:20?  
21 THE JUROR: My sister.  
22 THE COURT: And your sister's in Arizona  
23 this week?  
24 THE JUROR: Yes.  
25 THE COURT: Who's going to pick her up

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1 What I would like to do is fill the box  
2 in here and make sure we've got you in more or  
3 less order. So Rashad Keenan, are you back there?  
4 THE JUROR: No.  
5 THE COURT: Is 482, Rashad Keenan here  
6 There was too many people who didn't show up so we  
7 don't know until I call them by know whether they  
8 showed up or didn't show up. So is juror 482,  
9 Rashad Keenan, are you here? I guess that would  
10 be a big no.  
11 MR. SCHIECK: Can we cross that off on  
12 the list permanently?  
13 THE COURT: Yes, he'll be crossed off  
14 permanently. Are you Keith Nicholson?  
15 THE JUROR: Yes, Your Honor.  
16 THE COURT: You're exactly where you're  
17 supposed to be. And Keith Nicholson would be  
18 No. 1. Now, Nancy Norander, if you slide over I'd  
19 appreciate it. You'll be No. 2. Steven Quenzer,  
20 you slide over, you're No. 3. Jack Greenberg.  
21 Obviously you're not Jack Greenberg. Is Jack  
22 Greenberg here, 495, any place?  
23 MR. ALBREGTS: That's one that was on  
24 the list that you previously.  
25 THE COURT: So cross Greenberg off.

RA 000581

1 496, Janet Cunningham?  
 2 THE JUROR: Yes.  
 3 THE COURT: Please slide over and you're  
 4 No. 4. 500, Linda Amadio. That's No. 5. 501,  
 5 Maria Gonzales, you're No. 6. 504, Shannon  
 6 Martinez, if you'd please go to the top row,  
 7 you're No. 7. 510, Robert Hoving. Is 510 here?  
 8 So cross off 510. 512, Janet Jones, please go to  
 9 the top row. 530, Lourdes Oliva; 532, Don  
 10 McIntosh; 544, Connie Kaczmarek; 545, Elena  
 11 Villanueva; 555, Leroy Thompson. Now, 559, Jimmy  
 12 Ross, are you here? Cross him off. 570, Rosa we  
 13 know you're here. You get the next seat. 573,  
 14 Desiree Payne. 573, Desiree Payne cross her off.  
 15 575, Maria Arzate, cross her off. 580, Laurie  
 16 Rocchio, if you'd please come forward and take the  
 17 next empty seat up there. That would be No. 15.  
 18 No. 584, Carol Fisk; Philip Adona, you are next.  
 19 You get to go up and take the next empty seat.  
 20 Ms. Larry, here's the story because  
 21 you've got to know this. This is really involved.  
 22 You were honorably discharged and you are restored  
 23 your civil rights to vote, so you can vote and you  
 24 can serve in a civil action as a juror, but you've  
 25 got to wait until April of 2010, six years, to

1 persons to be with us as our jurors and alternate  
 2 jurors, to comply with our rules of choosing a  
 3 jury we have to qualify 32 people. So I've got 16  
 4 up here, and we'll pick another 16 after we ask  
 5 these 16 questions. You're back at a quarter to  
 6 two. The rest of you are back at 3:00.  
 7 THE JUROR: Your Honor, we report to the  
 8 courtroom?  
 9 THE COURT: Yes, right here.  
 10 (Whereupon, the jury retired  
 11 from the courtroom.)  
 12 THE COURT: The record will reflect that  
 13 the jury venire has left the courtroom.  
 14 MR. SCHIECK: I am sure your Honor read  
 15 the newspaper over the weekend.  
 16 THE COURT: I was gone. I didn't.  
 17 MR. SCHIECK: Underrepresentation of  
 18 minorities on our jury panels. By my count there  
 19 were two African-American persons in the entire  
 20 panel, one of which turned out to be an ex-felon  
 21 and is not eligible and one gentleman that  
 22 remains.  
 23 THE COURT: By my count there was three,  
 24 and if you want to know who they are I'll tell you  
 25 who they are. Philip Adona who's No. 16 just came

1 serve as a juror in a criminal action. So in 2010  
 2 you're clear for criminal trials and you're okay  
 3 as a civil juror, so you need to go to the jury  
 4 commission office on the third floor, tell them  
 5 that you have to be out on a civil panel only not  
 6 a criminal panel and they'll tell you if they have  
 7 a civil trial or not. You can take them this.  
 8 Give this to the lady or gentleman down in the  
 9 jury office and if they have a civil panel they  
 10 can send you out on.  
 11 MR. ALBREGTS: She's No. 592; is that  
 12 right?  
 13 THE COURT: Yes. Okay. Now, it's past  
 14 lunch and we've got kind of a late start so what  
 15 we're going to do now is those of you who we do  
 16 not have seated here we're going to let you be at  
 17 lunch until -- we're going to be back at those of  
 18 you who are up here you need to remember where  
 19 you're sitting. It's 20 minutes to one. We're  
 20 going to be back at quarter to two, so you're  
 21 excused until a quarter to two, and those of you  
 22 who are out here why don't you come back at three.  
 23 All of you out here at three. The reason I have  
 24 to have you come back is we have to qualify 32  
 25 jurors. Even though we're only going to choose 14

1 up here.  
 2 MR. SCHIECK: I thought he was Hispanic.  
 3 MR. ALBREGTS: He's Hispanic, Judge.  
 4 THE COURT: Well, you know, when you  
 5 guys can tell me by eyeball without some kind of  
 6 genetic test what the genetic makeup of our jury  
 7 panel is, then I think you should give up your day  
 8 jobs and take that job to make those  
 9 determinations.  
 10 MR. ALBREGTS: Can we inquire him what  
 11 we think his race is?  
 12 THE COURT: You certainly may. There's  
 13 another one here who sits over here, and I can't  
 14 remember what his name is, but I thought I marked  
 15 him. We didn't get to him yet. Plus this is only  
 16 half the panel. There's another 60 of them --  
 17 there's another 40 of them in jury commission  
 18 office. We can only seat so many in here so.  
 19 MR. SCHIECK: As I indicated, your  
 20 Honor, I'm making a record for future purposes  
 21 that if at some point some court, usually the  
 22 Ninth Circuit, decides that the selection process  
 23 in Clark County is discriminatory and is not a  
 24 cross-section of society, that I preserved this  
 25 for Mr. Thomas. I didn't expect you to rule in my

1 favor on this, but I want to make a record.  
 2 THE COURT: I would like the record to  
 3 be accurate. Sixty people came in here. By my  
 4 count, three of them are either obviously or  
 5 potentially black. Our community is, what,  
 6 9 percent black, which 9 percent of six would be  
 7 five people. However, that is not a random  
 8 selection. Random means that you have all of your  
 9 9 percent of black people in the community that  
 10 are in the jury base. A random jury could pick  
 11 100 percent black people, or a random jury could  
 12 pick 100 percent white people. Randomness has  
 13 nothing to do with -- random is not equal and it's  
 14 my understanding that the law requires that jurors  
 15 be chosen randomly from the community, not equally  
 16 from the community. Now, if the statute changes  
 17 and says that we will have equal representation of  
 18 all ethnic groups in the community, then the jury  
 19 selection process will have to be changed. But I  
 20 also questioned -- yes, I did read that article.  
 21 I also questioned that the 24 percent of our  
 22 community who are Hispanic qualify to be jurors.  
 23 I would suggest that a large percentage of our  
 24 Hispanic population does not qualify to be a juror  
 25 because they are not citizens.

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1 MR. SCHIECK: That very well could be,  
 2 your Honor.  
 3 THE COURT: So when we have newspapers  
 4 that write dangerous articles using dangerous  
 5 figures, we could end up with dangerous decisions  
 6 made by appellate courts who do not have the  
 7 information that is necessary to make an  
 8 appropriate decision.  
 9 Thank you. We are in recess until  
 10 quarter to two.  
 11 (Whereupon, a recess was taken.)  
 12 THE COURT: Welcome back to continuation  
 13 of trial in the State of Nevada versus Marlo  
 14 Thomas. The record will reflect the presence of  
 15 the attorneys and counsel, all officers of the  
 16 court and the 16 members of the jury venire.  
 17 Counsel for the State, you may begin  
 18 your questioning.  
 19 BY MR. SCHWARTZ:  
 20 Q. Good afternoon, ladies and gentlemen.  
 21 I'll go by my questionnaire, and I'll question you  
 22 individually if that's okay with the Court.  
 23 THE COURT: If you have a question  
 24 written on your questionnaire for one of those  
 25 jurors you can. If there's no questions written

1 on the front of your questionnaire, I expect you  
 2 not to ask them any questions.  
 3 MR. SCHWARTZ: Thank you, your Honor.  
 4 BY MR. SCHWARTZ:  
 5 Q. Mr. Nicholson, how are you?  
 6 A. Pretty good.  
 7 Q. Sir, if you are selected as a juror at  
 8 this penalty phase and you deliberated during the  
 9 first phase and at that time you're going to be  
 10 asked whether or not the death penalty is even  
 11 applicable, whether you can consider it. And  
 12 let's say the jury says you can consider it, and  
 13 we come back and there's a second phase, fairly  
 14 short. Maybe some witnesses will testify.  
 15 Perhaps you'd be instructed on the law and counsel  
 16 can make arguments, closing arguments to you. So  
 17 if you're at that second phase and all four  
 18 punishments are available to you, term of years,  
 19 life in prison with the possibility of parole,  
 20 life in prison without the possibility of parole  
 21 and the imposition of the death penalty, if you  
 22 felt in this particular case the death penalty was  
 23 appropriate, could you vote for the death penalty  
 24 realizing you'll be sentencing this gentleman to  
 25 death?

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1 A. Yes, sir.  
 2 Q. Have you ever thought about the death  
 3 penalty prior to filling out the questionnaire?  
 4 A. In certain cases like, for instance, the  
 5 Oklahoma City bombing.  
 6 Q. And if you were a legislator, do you  
 7 feel -- in the state of Nevada do you feel that  
 8 you would vote to at least have the death penalty  
 9 as a possible option?  
 10 A. Yes, sir.  
 11 Q. Thank you very much. Ms. Cunningham,  
 12 hi, how are you. Trying to see if I have  
 13 everybody down here in the right order.  
 14 On the questionnaire -- and I apologize  
 15 if any of these questions appear to be personal.  
 16 It's certainly not my intention, but we can't  
 17 question you once you're selected. It's over. We  
 18 can't ask you any questions, so we have to ask  
 19 whatever questions we have right now.  
 20 You indicated that in one of the areas  
 21 on the questionnaire it talks about whether you or  
 22 any members of your family had any negative  
 23 contacts with law enforcement, perhaps an arrest  
 24 or citation; do you recall that?  
 25 A. Yeah, I remember the question.

RA 000583

1 Q. Do you remember saying to the effect  
2 that a stepson having been convicted of something?  
3 A. I've got a stepson who is serving time  
4 in Lovelock, and I've got his brother who's a cop.  
5 Q. With regard to the stepson who's serving  
6 time, were you familiar with the facts and  
7 circumstances of that particular case?  
8 A. Yes, I was.  
9 Q. Do you feel he was treated fairly by the  
10 system as we call it?  
11 A. He is serving time for what he did, yes.  
12 Q. Was he prosecuted by the Clark County  
13 District Attorney's office, if you know?  
14 A. Yes.  
15 Q. Is there anything about that situation  
16 that would make it difficult for you to be  
17 anything but fair and impartial to both sides?  
18 A. No.  
19 Q. Thank you.  
20 Ms. Amadio, on your questionnaire you  
21 indicate is it you who worked for a law firm or  
22 someone you know?  
23 A. No, I do.  
24 Q. What law firm is that?  
25 A. Greenburg Taurig.

1 indicate yes but you didn't elaborate.  
2 A. There was a situation where it was an  
3 emergency situation. My husband was rushing an  
4 animal to the hospital and a police officer who  
5 was in an unmarked car and not in uniform tried to  
6 force him over because he was going fast. He was  
7 trying to get the pet to the hospital to live and  
8 that ended up going to court. He was exonerated  
9 totally, but just the whole process of that was  
10 abhorrent.  
11 Q. Were you with him at the time this  
12 happened?  
13 A. No, I was not.  
14 Q. Based upon that experience, do you have  
15 any negative feelings toward law enforcement?  
16 A. Oh, not at all. That situation was.  
17 Q. That incident wouldn't affect your  
18 judgment in this particular case?  
19 A. No.  
20 Q. And if you were selected as a juror and  
21 you reach that second stage where four possible  
22 punishments were available to you, one being the  
23 death penalty, and you felt in this particular  
24 case the imposition of the death penalty was  
25 warranted, could you vote for the death penalty?

1 Q. Do they do any criminal law?  
2 A. No.  
3 Q. Do you ever discuss criminal matters  
4 with them?  
5 A. No.  
6 Q. So is there anything about your  
7 connection with that particular law firm that  
8 would make it difficult for you to be anything but  
9 fair and impartial to both sides?  
10 A. No.  
11 Q. You indicated that the criminal justice  
12 system needs some tweaking; is that correct?  
13 A. Yes.  
14 Q. What do you mean by tweaking?  
15 A. I feel that laws could be legislated to  
16 be a little more fair in judgments and also to  
17 expedite the system. I don't see why people need  
18 to sit in jail for years and years and years.  
19 Q. If you're on the Nevada legislature,  
20 would you vote in favor of having the death  
21 penalty as a possible punishment?  
22 A. Yes.  
23 Q. You indicated on question No. 25 which  
24 talks about any negative contacts friends or  
25 family may have had with law enforcement, you

1 A. Yes.  
2 Q. Thank you. Ms. Martinez, hi. What are  
3 your feelings toward the death penalty?  
4 A. I feel that it's necessary in some  
5 circumstances and some others no.  
6 Q. On Question 25 which deals with negative  
7 contacts with law enforcement, a family -- friends  
8 or a close friend or family member or close  
9 friends of having been charged with a crime, you  
10 say yes but you didn't elaborate. Who was  
11 charged?  
12 A. My brother.  
13 Q. And what crime was that?  
14 A. It was a sexual offense.  
15 Q. Was that here in Clark County?  
16 A. Yes.  
17 Q. Did your brother go to trial?  
18 A. No, he didn't go to trial. He served in  
19 Lovelock.  
20 Q. So he ultimately entered a plea?  
21 A. Mm-hmm.  
22 Q. Anything about that experience that  
23 would make it difficult for you to participate in  
24 this particular sentencing phase?  
25 A. No.

1 Q. So the fact that he was prosecuted  
 2 perhaps by my office you wouldn't hold that  
 3 against me?  
 4 A. No.  
 5 Q. If you were selected as a juror and you  
 6 were given four options, one being the death  
 7 penalty, if you felt it appropriate, could you  
 8 sentence the defendant to death?  
 9 A. Yes.  
 10 Q. Could you also consider the other three  
 11 possible forms of sentence?  
 12 A. Yes.  
 13 Q. Would you consider all four forms before  
 14 making at least in your own mind a decision?  
 15 A. Yes.  
 16 Q. Do you feel it would be important if you  
 17 were selected as a juror to discuss with other  
 18 members of the jury what took place during this  
 19 penalty phase?  
 20 A. Yes.  
 21 Q. So you'd have an open mind?  
 22 A. Yes.  
 23 Q. Thank you. Ms. Jones, hi.  
 24 A. Hi.  
 25 Q. Regarding the question on the death

1 County?  
 2 A. Yes, sir.  
 3 Q. Is there anything about those two  
 4 incidents that would make it difficult for you to  
 5 participate as a juror?  
 6 A. No.  
 7 Q. If you're selected as a juror in this  
 8 particular case, would you be fair and impartial  
 9 to both the State and the defense?  
 10 A. Yes.  
 11 Q. Do you believe people should be held  
 12 accountable for their actions?  
 13 A. Absolutely.  
 14 Q. Ms. Oliva.  
 15 A. Good evening.  
 16 Q. How are you. Is there anything about  
 17 the facts and circumstances of this particular  
 18 case that would make it difficult for you to serve  
 19 as a fair and impartial juror?  
 20 A. It's very difficult for me to give my  
 21 opinion.  
 22 Q. Why is that?  
 23 A. Because it's my conscience and this  
 24 people is a convict person and if I decide for him  
 25 to kill it's -- I don't want to be involved.

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1 penalty, I believe -- and correct me if I'm  
 2 wrong -- but I believe you indicated that you felt  
 3 it was appropriate for serial killers or child  
 4 killers?  
 5 A. Yes, that's what came to mind. I would  
 6 have to feel this person was not someone who  
 7 would -- someone that committed a murder  
 8 intentionally and that there was not sufficient  
 9 remorse or chance of rehabilitation.  
 10 Q. So in other words, you're kind of  
 11 open-minded as to who could ultimately be  
 12 sentenced or who deserves to be sentenced to the  
 13 death penalty? You're not limiting to just these  
 14 two categories?  
 15 A. No, but those are examples of people.  
 16 Q. On Question No. 25 which deals with  
 17 negative contacts that you or members of your  
 18 family or friends may have had with law  
 19 enforcement, you indicate also yes, but there's no  
 20 explanation. Could I ask who was involved?  
 21 A. Both my brother and my stepson. My  
 22 brother was convicted in 1979 for multiple counts  
 23 of sexual assault, and my stepson was put on  
 24 probation for sexual offense as well.  
 25 Q. Were both of those occur here in Clark

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1 Q. I don't understand. Can you repeat  
 2 that? You don't want?  
 3 A. I'm not --  
 4 THE COURT: Mr. Schwartz, we have to  
 5 hear, and the court reporter has got to make a  
 6 record, and if you stand in front of her we can't  
 7 see.  
 8 MR. SCHWARTZ: I can't hear.  
 9 THE COURT: I know. So, Ms. Oliva,  
 10 please tell us your last couple of answers because  
 11 we didn't catch them.  
 12 BY MR. SCHWARTZ:  
 13 Q. Speak out loud so the court reporter can  
 14 hear you.  
 15 A. Can you repeat the question?  
 16 Q. Sure. You have said that you were  
 17 uncomfortable about sitting here?  
 18 A. Mm-hmm.  
 19 Q. Why?  
 20 A. Well, because I feel like nervous and I  
 21 want to say something, but it's hard for me to  
 22 say, but I don't believe in killing person. It's  
 23 my belief.  
 24 Q. So your religious beliefs tell you that  
 25 you do not believe in the death penalty?

RA 000585

1 A. Yeah.  
 2 Q. Is that correct?  
 3 A. Yes.  
 4 Q. If you were selected as a juror in this  
 5 case, could you consider sentencing this defendant  
 6 to death? Would you at least consider it along  
 7 with the other possible punishments?  
 8 A. I would not consider the death, but I  
 9 will give -- the other option.  
 10 Q. You'll give the -- one of the other  
 11 three options but not the death penalty?  
 12 A. Yes.  
 13 MR. SCHWARTZ: Your Honor, I would  
 14 challenge for cause.  
 15 THE COURT: Counsel, do you wish to  
 16 inquire of Ms. Oliva?  
 17 MR. ALBREGTS: Yeah. Can we do it  
 18 during the course of voir dire or do you want it  
 19 done now?  
 20 THE COURT: Do it now. There's been a  
 21 challenge for cause and I need to rule on that and  
 22 I won't do that until after you've questioned her.  
 23 MR. ALBREGTS: Okay. We just don't have  
 24 anybody else to bring up is the other issue.  
 25 THE COURT: That doesn't make any

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1 difference.  
 2 BY MR. ALBREGTS:  
 3 Q. Ms. Oliva, at the end of the case and at  
 4 the end of both sections, because we've heard  
 5 about two different sections, but the judge is  
 6 going to give you the law of the state of Nevada,  
 7 and as a juror you're going to be sworn to uphold  
 8 the law of the state of Nevada, and the State that  
 9 we live in allows for a jury to consider the death  
 10 penalty in a case like this, and so the judge will  
 11 tell you that that's the law. Are you willing to  
 12 follow the law if you're selected as a juror or  
 13 are your religious convictions just so strong?  
 14 A. I don't believe in the death penalty  
 15 so -- I cannot be part of it. I don't want to be  
 16 part of it.  
 17 MR. ALBREGTS: I don't see any need to  
 18 inquire further. We'll leave it to the Court.  
 19 THE COURT: Thank you, Ms. Oliva. You  
 20 may be excused. Please report down to the third  
 21 floor and tell them that you've been excused in  
 22 Department XV. If they need you in another case,  
 23 they'll send you out in another case.  
 24 You may continue, Mr. Schwartz.  
 25 MR. SCHWARTZ: Thank you.

1 BY MR. SCHWARTZ:  
 2 Q. Mr. McIntosh, sir, if you're selected as  
 3 a juror in this particular case and you reach that  
 4 second stage where you and your fellow jurors  
 5 agreed or determined that the death penalty was  
 6 appropriate, if you felt in this particular case  
 7 that it was warranted, could you yourself sentence  
 8 this defendant to death?  
 9 A. Yes.  
 10 Q. You feel people should be accountable  
 11 for their actions, sir?  
 12 A. Yes, I do.  
 13 Q. Is there anything about the questions  
 14 that I've asked, what the judge asked earlier this  
 15 morning, that you feel we need to know about you  
 16 regarding your ability to be a fair and impartial  
 17 juror?  
 18 A. No. I think I can be a fair juror.  
 19 Q. Thank you.  
 20 Ms. Kaczmarek, regarding the  
 21 questionnaire that you filled out, I made notes on  
 22 the top so if I'm misstating anything, please  
 23 correct me, but I got the feeling from reading the  
 24 questionnaire that you kind of think there's a  
 25 need for the death penalty, but you don't like the

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1 death penalty; is that fair?  
 2 A. Yeah, that's fair.  
 3 Q. It's one thing for us to intellectually  
 4 talk about the death penalty and capital  
 5 punishment and how some people deserve it, some  
 6 people don't, but it's quite another thing when  
 7 you're actually sitting in the position where  
 8 you're going to make that determination.  
 9 A. Right.  
 10 Q. Do you feel if you were selected as a  
 11 juror and you felt that in this particular case  
 12 the death penalty was appropriate, could you as a  
 13 member of that jury sentence this defendant to  
 14 death?  
 15 A. I don't know.  
 16 Q. That's fair.  
 17 A. I don't know.  
 18 Q. You understand that there could be  
 19 either three or four different possible forms of  
 20 punishment depending on what the jury does in  
 21 their first deliberations. Would you consider all  
 22 four possible punishments, or are you going to  
 23 automatically throw out the death penalty because  
 24 it's too hard to deal with?  
 25 A. No. You have to get the bigger picture.

RA 000586



1 Q. Do you believe people should be  
2 accountable for their actions?  
3 A. Most definitely.  
4 Q. Is there anything about this particular  
5 situation that would make it difficult for you to  
6 be anything but fair and impartial to both sides?  
7 A. Having to choose whether or not this  
8 person is put to death would be very difficult.  
9 Q. It should never be easy. It should be  
10 difficult for everybody.  
11 A. Mm-hmm.  
12 Q. But do you feel that you have the  
13 ability to do that should you think it's  
14 warranted, or do you know sitting here right now  
15 that there's no way in the world that I can do it?  
16 A. It's making me uncomfortable to  
17 contemplate it, but I think possibly yes.  
18 Q. Thank you.  
19 A. You're welcome.  
20 Q. Ms. Belch, you indicated on Question 25  
21 having -- knowing somebody, either family member  
22 or friends, who has either been arrested or  
23 charged with a crime; is that correct?  
24 A. Yes.  
25 Q. What are the facts or circumstances of

1 Q. Could you say that you won't do it no  
2 matter what?  
3 A. Probably I wouldn't do it, probably  
4 wouldn't.  
5 Q. Is that based on your own just personal  
6 feelings or religious background?  
7 A. A little bit of that. Also just knowing  
8 that I was part of his sentence.  
9 Q. Being sentenced to death?  
10 A. Yes.  
11 Q. So if you're selected as a juror and at  
12 the end of the penalty phase the Court instructed  
13 you that there are four possible forms of  
14 punishment, life in prison with parole, life in  
15 prison without parole, a term of years with parole  
16 eligibility somewhere down the road or the death  
17 penalty, you would not at all consider the death  
18 penalty?  
19 A. No, I would have a problem.  
20 Q. We'd all have problems.  
21 A. I know, but I can honestly say that I  
22 would not consider it.  
23 MR. SCHWARTZ: I challenge for cause,  
24 your Honor.  
25 THE COURT: Counsel, do you wish to

1 that particular situation?  
2 A. My son. I have a son that has problems  
3 most of his life. He was in the juvenile system  
4 and he spent a year in Indian Springs when he was  
5 18, and he's 29 now and he's in Clark County  
6 Detention waiting for sentencing on drug charge.  
7 Q. Being in the Clark County Detention  
8 Center in all probability he's being prosecuted by  
9 my office?  
10 A. Yes, he is.  
11 Q. Is there anything about that situation  
12 that would make it difficult for you to be  
13 anything but fair to both parties?  
14 A. No.  
15 Q. Do you feel in the appropriate case if  
16 you felt the evidence justified it you could  
17 return with a sentence of death?  
18 A. If it was appropriate, yes.  
19 Q. Ms. Rocchio, is there anything about  
20 this particular situation being a prospective  
21 juror on a penalty phase of a trial that makes it  
22 difficult for you to serve?  
23 A. Well, having come this far, I can't say  
24 I could actually sentence this person to death. I  
25 can't honestly say I could do it.

1 inquire of Ms. Rocchio?  
2 MR. ALBREGTS: Yeah, just real briefly.  
3 THE COURT: You may.  
4 BY MR. ALBREGTS:  
5 Q. Ms. Rocchio, do you remember vaguely at  
6 least the questionnaire that you filled out?  
7 A. Yes.  
8 Q. And on it I think you put in there when  
9 we asked about your opinion on the death penalty  
10 that you would consider it in certain  
11 circumstances?  
12 A. Mm-hmm.  
13 Q. We need a yes for the lady in purple  
14 writing all this down.  
15 A. Yes.  
16 Q. What has changed since then?  
17 A. It's just like anything else. It's easy  
18 to put something down and then when you're  
19 actually called on it, you feel a little different  
20 when you see the person. You just kind of change  
21 the way. I guess it's easy to say yes, but then  
22 when you're called on it then.  
23 Q. And you're sitting in the box?  
24 A. Yeah.  
25 Q. And you see a man?

1 A. That's just me. That's just my  
 2 personality. I have two children. I'm a  
 3 compassionate person. I guess I can say that I  
 4 wouldn't want to be one of the people that  
 5 sentences him if it came to that.  
 6 Q. Is there anything you think here that  
 7 would happen or we could talk about that might  
 8 change that opinion so that we can get a  
 9 cross-section of the community to sit here and  
 10 consider this?  
 11 A. No.  
 12 Q. Thanks.  
 13 MR. ALBREGTS: Leave it to the Court,  
 14 Judge.  
 15 THE COURT: All right. Ms. Rocchio, if  
 16 you are convinced that there's no way that you  
 17 would consider the death penalty, then, of course,  
 18 I will excuse you. And I do appreciate the fact  
 19 that when you're talking in the abstract it's much  
 20 easier to say yes, I believe in capital  
 21 punishment, yes, I think it's appropriate, but  
 22 when it gets right down to the nitty gritty you're  
 23 looking at somebody and you're having to decide,  
 24 then sometimes the abstract goes out the window  
 25 because it's now personal. So the real question

1 degree murder, two separate individuals have been  
 2 killed. On page -- Question 24 the question asked  
 3 what are your opinions or feelings about the  
 4 criminal justice system and how it works and you  
 5 wrote no comment. I don't have any quarrel with  
 6 that. I'm just curious is there a reason you  
 7 didn't feel you needed to say anything or afraid  
 8 we'd be offended by what you had to say?  
 9 A. Yes. This whole thing sentencing  
 10 sometimes I feel that I shouldn't put the  
 11 person -- I mean sentence that person -- it just  
 12 depends on the evidence but.  
 13 Q. Go ahead.  
 14 A. I'm just nervous right now.  
 15 Q. That's fine. Everybody is nervous.  
 16 That's good. You'll get over it and you'll be  
 17 fine. If you were selected and you felt in this  
 18 particular case a sentence of death was the right  
 19 thing or the appropriate thing to do, could you do  
 20 that?  
 21 A. I'd consider it, with the evidence.  
 22 Q. Certainly the State of Nevada is not  
 23 going to be asking you to do anything without  
 24 supplying you with evidence. Remember that.  
 25 You're going to have several days of testimony.

1 is is could you consider it? The law never ever  
 2 requires any jury to sentence anybody to death,  
 3 but to serve on a panel like this one you have to  
 4 be able to consider it, and in the appropriate  
 5 case you felt it was the appropriate case you do  
 6 have to be able to go ahead and vote that way.  
 7 THE DEFENDANT: Right.  
 8 THE COURT: So can you or can't you?  
 9 THE DEFENDANT: No.  
 10 THE COURT: Then you may be excused.  
 11 Please go down to the jury commission office on  
 12 the third floor. Tell them you've been excused up  
 13 here in XV and you're available to go out on any  
 14 other type of case.  
 15 THE JUROR: Thank you.  
 16 BY MR. SCHWARTZ:  
 17 Q. Ms. Villanueva, you've sat on a prior  
 18 criminal jury; is that correct?  
 19 A. Yes.  
 20 Q. As the judge mentioned earlier, this is  
 21 a little bit different. Your responsibility as  
 22 jurors is not to determine the guilt or innocence  
 23 of an individual. That's been determined by  
 24 another jury, okay? So you have to determine the  
 25 appropriate punishment for two counts of first

1 You're going to have to make a decision based  
 2 solely upon the evidence, not what I say or what  
 3 other counsel say. If you were on the legislature  
 4 in the state of Nevada, do you feel that you would  
 5 want to have the death penalty?  
 6 A. I'd consider it.  
 7 Q. You feel that people should be held  
 8 accountable for their actions?  
 9 A. Yes.  
 10 Q. Ms. Norander, is there anything about  
 11 the facts and circumstances of this particular  
 12 case what you've heard so far, the questionnaire,  
 13 what the judge has said, what any of us have said  
 14 in court, your fellow jurors, that would make it  
 15 difficult for you to participate as a juror in  
 16 this particular case?  
 17 A. No, sir.  
 18 Q. Do you feel that people should be held  
 19 accountable for their actions?  
 20 A. Absolutely.  
 21 Q. And do I have your assurance that you  
 22 won't make a decision with regard to the  
 23 appropriate punishment until you've heard all the  
 24 evidence?  
 25 A. Absolutely.

1 Q. Ms. Gonzales, is there anything about  
2 the facts, circumstances as you know them right  
3 now of this particular case that would make it  
4 difficult for you to serve? I understand you have  
5 your work situation, but other than that is there  
6 anything that would keep you from being fair and  
7 impartial to both sides?

8 A. Well, our peers have already convicted  
9 him of two counts so I've already formed an  
10 opinion as to where I'm going to go with this.

11 Q. You're going to -- it's kind of unusual  
12 but it happens where the jury sentencing is not  
13 the jury that actually convicts, but as the judge  
14 told you, several years went by and then our  
15 Supreme Court found some type of irregularity in  
16 the sentencing so they asked that a new sentencing  
17 be done. We can't try and find the jurors who  
18 convicted the defendant six, seven, eight years  
19 ago, so under our statutes we impanel a new jury  
20 and that's what we're doing today. You'll get  
21 some evidence about the guilt phase even though  
22 that's been established so you have something to  
23 work with and then you'll get other evidence based  
24 upon certain rulings that the Court makes and both  
25 sides hope that you get a complete picture of what

1 a first degree murder, doesn't even necessarily  
2 mean they're eligible for the death penalty.  
3 That's a separate finding that the jury is going  
4 to have to make. So all murderers are not  
5 eligible for the death penalty in our state. My  
6 read on what you're saying is -- are you saying  
7 you'd just consider death or just life without and  
8 nothing else? You wouldn't even consider life  
9 with the possibility of parole?

10 A. I couldn't consider that.

11 Q. Mr. Thompson, how are you, sir?

12 A. I'm fine.

13 Q. Is there anything about the facts and  
14 circumstances of this case that would make it  
15 difficult for you to participate as a juror at the  
16 sentencing phase?

17 A. No.

18 Q. Do you feel that people should be held  
19 accountable for their actions?

20 A. Yes.

21 Q. Mr. Adona, how are you, sir?

22 A. All right. How are you?

23 Q. Good. Kind of hard keeping all these  
24 things together. If you were a legislator up in  
25 Carson City and you were asked for your input on

1 happened on that particular date and about this  
2 particular defendant, be it good or bad, and make  
3 an informed decision. Is there any problem with  
4 what I've told you so far? Do you have a quarrel  
5 with it?

6 A. No, just that again unless I hear some  
7 evidence I've already formed an opinion of how I'm  
8 going to go.

9 Q. Well, let's go to that. I'm not sure I  
10 understand where you're going with that. But  
11 let's say that you are on this jury and you're  
12 given four forms of verdicts for punishment.  
13 Could you consider each four before reaching a  
14 verdict, just carry on a dialogue with your fellow  
15 jurors, some may think this, some may think that.  
16 Have a dialogue and make an informed decision  
17 after considering all forms of punishment?

18 A. Probably not.

19 Q. You say you've made up your mind, but  
20 you don't know anything about the case really  
21 other than the defendant has been convicted of  
22 two --

23 A. Two counts of first degree murder.

24 Q. And do you understand that in the state  
25 of Nevada, the fact that someone commits a murder,

1 whether or not the state of Nevada should have a  
2 death penalty as an option, how do you think you'd  
3 vote or react to that?

4 A. I'd probably vote for it. Depends on  
5 the crime.

6 Q. Under certain circumstances you think  
7 the death penalty is appropriate?

8 A. Yeah.

9 Q. If you were selected as a juror in this  
10 case, would you follow all the instructions given  
11 to you by Judge Loehrer even though you might  
12 disagree with the instruction? In other words,  
13 the judge is the judge of the law, and we ask the  
14 jury to follow the instructions given to them by  
15 the judge. Would you have any problem doing that?

16 A. No.

17 Q. If you felt in this particular case that  
18 the death penalty was the only appropriate  
19 punishment, could you sentence this defendant to  
20 death?

21 A. Yeah, I could.

22 Q. Do you think people should be held  
23 accountable for their crime, sir?

24 A. Yes.

25 MR. SCHWARTZ: Your Honor, that

1 concludes my examination.

2 THE COURT: Do you pass this panel for  
3 cause?

4 MR. SCHWARTZ: Yes, Your Honor. Thank  
5 you.

6 THE COURT: Counsel for the defense, you  
7 may inquire of the panel.

8 BY MR. ALBREGTS:

9 Q. Good afternoon everyone. My name is Dan  
10 Albregts. I represent Marlo along with Dave  
11 Schieck. Dave will be doing some of this later  
12 with some other folks.

13 A couple of things before we get  
14 started. I'm nervous. I've done this 18 years.  
15 Never goes away. Some of you may be nervous, some  
16 of you may have gotten a little comfort zone and  
17 that's good too. There's no wrong answers, and I  
18 know we've already touched on some folks on some  
19 personal things, and we may do that again as I  
20 talk to you all. If it's really personal and you  
21 really feel uncomfortable, we can go outside the  
22 presence of other people, but it's not something I  
23 prefer to do. I don't know about the Court, and  
24 so I hope that we can try to get through it  
25 understanding that that's part of what we're doing

1 Mr. Schwartz here that nothing here, like the lady  
2 here earlier had changed a bit on her opinion,  
3 nothing has occurred today sitting here through  
4 the process to change that opinion; is that fair?

5 A. I've had these opinions before, you  
6 know, the questionnaire.

7 Q. How long have you had them?

8 A. Well, you know, when you watch the news  
9 people take people's lives and people have to be  
10 accountable and here it's two lives, first degree  
11 murder, and I don't know what I could consider.

12 Q. So life in prison without the  
13 possibility for parole in your mind -- and, again,  
14 there's no right or wrong opinions, that's why  
15 they're opinions, that wouldn't be sufficient  
16 punishment or sufficient responsibility for the  
17 crime?

18 A. Two lives are gone.

19 Q. Is it fair to say that nothing we tell  
20 you about Marlo during the course of this about  
21 his upbringing, about his family life, about any  
22 of that is going to change? And, again,  
23 your opinion's fair. Nothing we tell you is going  
24 to change the fact that two lives are gone and  
25 he's been convicted of taking those two lives; is

1 here is we're trying to get a little bit personal  
2 with each of you to decide what I think you might  
3 agree is about the most important thing you can  
4 ever decide in a criminal case, and important to  
5 everybody involved. And so with those words if  
6 you think that maybe I'm out of line with the  
7 question or you don't feel comfortable answering,  
8 just let me know, but I'm simply going to try to  
9 get at some of the issues that I think cause us  
10 concern about folks' ability to be the right juror  
11 for this case. Doesn't mean you're not the right  
12 juror for other cases, but there may be something  
13 about this case that is such that it might be  
14 better off for folks to go down and serve on  
15 another jury. That's what we're going to try to  
16 do. Let's see if I have any success whatsoever.

17 Ms. Gonzales, probably surprised I'm  
18 going to ask you some questions. Your  
19 questionnaire seemed pretty consistent with what  
20 you've voiced a little bit here today about your  
21 opinion, and I think -- at least I took it that  
22 you felt if somebody took somebody else's life  
23 then the punishment should be that person's life.

24 A. Yes.

25 Q. I presume by your brief comments to

1 that fair to say that nothing will change your  
2 opinion?

3 A. It's possible.

4 Q. Well, that's what we call a chink in the  
5 iron. You need to tell us. Your opinion is just  
6 as valid as this lady's or this lady's who said I  
7 don't care what he did, I'm not going to be the  
8 one to make that decision.

9 A. Well, yeah, when I was filling out the  
10 questionnaire I was already angry at filling it  
11 out. Two lives gone and not even knowing the  
12 circumstances I've already formed an opinion.

13 Q. And, again, I will not take offense at  
14 the fact that my lawyering abilities can't change  
15 that opinion, but is it fair to say that there's  
16 really nothing we can do to change that during the  
17 course of the trial? And if so maybe this isn't  
18 the right case for you.

19 A. Yeah, I think so because there might be  
20 this brick wall that's just.

21 Q. That's all we're worried about, and I'm  
22 sure you can understand that's my job to worry  
23 about that. And so I guess the last question  
24 again is do you think that those feelings are so  
25 strong that no matter what happens in the course

1 of the next few days you're still going to have  
 2 that opinion that two lives are gone, he should  
 3 pay with his life?  
 4 A. Absolutely.  
 5 MR. ALBREGTS: Your Honor, I challenge  
 6 for cause.  
 7 THE COURT: Ms. Gonzales, thank you for  
 8 being willing to serve your community. You may be  
 9 excused. Please go down to the third floor and  
 10 tell them that you ever been excused in Department  
 11 XV. You can go on anything other than a death  
 12 case.  
 13 BY MR. ALBREGTS:  
 14 Q. Let me continue this way and I think  
 15 it's probably time maybe get this stuff out as  
 16 well. Let me tell you a little bit about what  
 17 you're going to hear and then use that --  
 18 THE COURT: You're here to ask  
 19 questions, Mr. Albregts, not give a summary of the  
 20 case.  
 21 MR. ALBREGTS: I understand, Judge.  
 22 THE COURT: In any way, shape, or form.  
 23 The jurors have been given a synopsis of the case  
 24 which was approved by both parties, so please  
 25 don't get too much in the case here.

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1 MR. ALBREGTS: Don't intend to. What  
 2 I'm going to tell you is a little bit what you  
 3 already know is that Mr. Thomas has been convicted  
 4 of two murders. You're going to hear that the two  
 5 murders were committed and he was convicted during  
 6 the course of a robbery. You're going to hear  
 7 that he has two prior convictions and that he  
 8 spent time in prison for those convictions. It's  
 9 not going to change. It's the case that we have.  
 10 And my question to you is can anybody think of any  
 11 reason given those facts that are unchangeable as  
 12 to why Mr. Thomas should receive anything but the  
 13 death penalty?  
 14 Mr. Adona, studying criminal justice in  
 15 college I read.  
 16 A. Yes, sir.  
 17 Q. What about that? That's not a very  
 18 request set of facts I would assume you'd agree?  
 19 A. Well, I just started so I'm not sure  
 20 which way I'm going to go.  
 21 Q. I'm not picking on you because you're a  
 22 criminal justice major. Can you think of any  
 23 reasons why Mr. Thomas shouldn't get the death  
 24 penalty given the set of facts? Why should we  
 25 consider those other three choices? Can you think

1 of anything?  
 2 A. I don't know.  
 3 Q. What about his background and  
 4 upbringing? You heard me talk briefly to this  
 5 other woman about that. Anything about that you  
 6 might consider? Anything about Mr. Thomas that  
 7 would make you think, you know what, there is a  
 8 reason that the State shouldn't execute him?  
 9 A. Yeah, there probably would be a reason,  
 10 maybe how he was brought up and stuff like that.  
 11 I might consider it.  
 12 Q. Ms. Jones, how about you?  
 13 A. Same question?  
 14 Q. Yeah.  
 15 A. I don't think that a person's background  
 16 or upbringing is an excuse for committing crimes,  
 17 but I don't necessarily think -- I at this point  
 18 have not decided that Mr. Thomas has earned the  
 19 death penalty. I would need to know the  
 20 circumstances surrounding.  
 21 Q. What sort of things -- when you say need  
 22 to know the circumstances, what sort of things are  
 23 you going to consider if you're chosen for this  
 24 jury?  
 25 A. His personal state of mind at the time

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1 would be a consideration. Exactly what happened,  
 2 what took place. You said it happened during a  
 3 robbery, but I would expect that we'll have more  
 4 details.  
 5 Q. About the circumstances?  
 6 A. About the circumstances. Did he go into  
 7 this intending to kill someone. Just what  
 8 happened, what was the intent, I guess.  
 9 Q. Ms. Belch, same question, what do you  
 10 think of this discussion we have going on here?  
 11 A. I don't know any of the details of what  
 12 happened because I don't remember when this  
 13 happened so I would hate to sit here and form an  
 14 opinion without being told.  
 15 Q. Or at least told from the witness stand?  
 16 A. Right.  
 17 Q. Are there things you can think of that  
 18 you would like to consider?  
 19 A. I would like to consider what's happened  
 20 to this gentleman since that time to now.  
 21 Q. Okay. Excellent. That's something else  
 22 nobody else brought up. What sort of things?  
 23 A. Well, what's his behavior been, what has  
 24 he done his time in prison.  
 25 Q. Ms. Amadio.

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1 A. The evidence would have to be somewhat  
 2 debatable I guess you could say.  
 3 Q. What evidence?  
 4 A. Whatever evidence you're going to share  
 5 with us. In other words, was he yes, in fact, the  
 6 person that did that. If that is the evidence and  
 7 it was just circumstantial, or was it actually  
 8 proven by DNA, that kind of thing.  
 9 Q. I tell you and I think you'll be  
 10 instructed that a jury has found him guilty of two  
 11 counts, so there isn't any what-ifs or DNA.  
 12 A. Well, I wasn't there. I don't know  
 13 that. I don't know what the evidence was in that  
 14 particular case. I really don't, and if I'm going  
 15 to accept somebody else's judgment of a person, I  
 16 want to make sure that, yeah, that was, in fact, a  
 17 valid reason.  
 18 Q. What about some of the other suggestions  
 19 that were made by fellow jurors?  
 20 A. Frankly I don't believe anybody's  
 21 upbringing should make a difference.  
 22 Q. Why not?  
 23 A. Because I know very good people that  
 24 came from horrible, horrible circumstances. It's  
 25 a decision a person makes. I believe in a person

1 basically the overview I gave you is what it is,  
 2 you wouldn't then consider the other three  
 3 punishments?  
 4 A. Of course I would. Again, if there was  
 5 any kind of possibility that this crime happened  
 6 for anything other than for what was determined or  
 7 if he's going to serve some form of a purpose in  
 8 serving out or serving out a lifetime sentence at  
 9 least in some productive way whether he's helping  
 10 others or whatever.  
 11 Q. Because you're at least willing to  
 12 consider while in prison he might be able to help  
 13 others. You may or may not hear evidence of that.  
 14 A. Exactly.  
 15 Q. Mr. Thompson.  
 16 A. I don't believe anybody's upbringing is  
 17 an excuse to take two lives, and going to prison,  
 18 I mean, these people have lost their lives. They  
 19 don't get that chance, so it's hard to say. Just  
 20 have to wait and see.  
 21 Q. I don't think Mr. Schieck nor I are  
 22 saying excuse his actions because of his  
 23 upbringing. We're simply trying to determine what  
 24 sort of factors folks will consider in what's  
 25 called mitigation, meaning that might otherwise

1 being responsible for their actions. Whether you  
 2 choose to take drugs and flip out and kill  
 3 somebody, you're still responsible for that.  
 4 Q. Do you think that by if you serve the  
 5 rest of your life in prison do you think that's  
 6 taking responsibility and paying for your crime?  
 7 A. That could be a good argument, but  
 8 unless they are going to be productive members of  
 9 society, no. If they can be productive in prison,  
 10 maybe you have an argument there, but I don't see  
 11 that.  
 12 Q. So do you feel then that if rather than  
 13 just going to spend the rest of their life in  
 14 prison we may as well have the State kill them?  
 15 A. Yes.  
 16 Q. Why?  
 17 A. If they did that kind of a crime and  
 18 they're going to serve no good to anybody and  
 19 they're just -- I hate to put it this way but  
 20 taking up air and space for no good reason, I  
 21 don't understand. Who would want to even do that?  
 22 Q. So if you're instructed or you're told  
 23 the jury convicted him and those basically --  
 24 again, I'm not going to get into the facts  
 25 extensively, that's not appropriate for now. But

1 lead you to believe that he shouldn't be executed.  
 2 There should be some other sort of sentence. Are  
 3 you willing to consider some of those?  
 4 A. Sure.  
 5 Q. What sort of things would you consider?  
 6 A. Life without probably for both counts of  
 7 murder. That's about it.  
 8 Q. So the other two sentencing  
 9 possibilities, a definite term or life with the  
 10 possibility, are not on your plate?  
 11 A. No.  
 12 Q. Mr. Quenzer, I think you were one of  
 13 many on the questionnaires who talk about an eye  
 14 for an eye. We had this conversation going on now  
 15 a few minutes. What's your thought on that? Are  
 16 you of the belief that he's been convicted of two  
 17 murders, end of story?  
 18 A. Well, I think everyone, especially being  
 19 on this panel, we've seen that he has been  
 20 convicted and we're very quick to judge on your  
 21 initial impression. He's been convicted. Okay,  
 22 he deserves to die. Is that the case every time?  
 23 No. I think you have to look at everything, and  
 24 my personal opinion is you take somebody's life,  
 25 there's no reason that your life shouldn't be

1 taken as well, but there are circumstances that  
2 have developed in the situation of what was going  
3 on at the time, things that we've already talked  
4 about, his upbringing, any number of things could  
5 have affected that situation that happened that  
6 day that lead to the loss of these two lives.

7 Q. And so are you saying then that maybe  
8 not always an eye for an eye?

9 A. Not always an eye for an eye.

10 Q. And I guess logically it would seem to  
11 follow that you're willing, given that, to  
12 consider other forms of punishment besides the  
13 execution of Mr. Thomas?

14 A. I would consider all forms.

15 Q. Is there anything else that you could  
16 think of that you would consider that we haven't  
17 talked about here?

18 A. I mean, me personally the only thing  
19 that brings up to me and I have no idea of this, I  
20 actually work for Lone Star Corporation. Now, I  
21 knew none of the defendants. I knew nothing --  
22 none of these people or any of their personal  
23 lives, but you think about people that you work  
24 with every day and people that sometimes you see  
25 people that you work with more than you see your

1 things. I actually -- I mean, about ten years ago  
2 I worked for another restaurant and actually had  
3 an old manager that was killed in a robbery, and  
4 it's something that you think about every now and  
5 then. You can't put everything behind you.  
6 There's going to be that a little bit of human  
7 nature element, the past, I think, is going to  
8 affect somewhat of what your judgment. Now,  
9 obviously we're held to be making decisions within  
10 the law, and I think that comes first obviously.  
11 You have to consider yourself as impartial as you  
12 can and look at the facts that are presented in  
13 the case and then go from there, but there's  
14 always going to be that little bit that maybe is  
15 going to sway your opinion.

16 Q. You're well-educated, you're  
17 well-spoken. What do you think? Mr. Thomas is  
18 sitting here. Do you feel comfortable enough with  
19 what you know about yourself and all the other  
20 partly the human frailties, partly your  
21 understanding of having to follow the law and  
22 knowing that, what do you think? Do you think you  
23 can put that aside and make a decision based upon  
24 the law and the facts that you hear without  
25 considering the things -- it's odd but

1 own family and you think about, you know, a  
2 company being a family and that two lives were  
3 lost in this kind of family, and it's something I  
4 haven't thought about at all.

5 Q. What are you thinking now that you're  
6 thinking about it?

7 A. Honestly I don't know what to think  
8 because I couldn't even imagine that it would come  
9 to something like this, that it would have been  
10 somewhat close to home. Is it personal to me? I  
11 wouldn't call it personal, but it's something that  
12 I've never thought about.

13 Q. Let me ask you this, and I'm going to  
14 try to make you think about it if I can. If  
15 you're picked for the jury, when you go back there  
16 with 11 other folks and start talking about these  
17 issues, do you think at some stage you're talking  
18 about it you're going to have those folks in the  
19 back of your mind. I work in the restaurant.  
20 This happened in a restaurant. Not only did it  
21 happen in a restaurant, it happened in a  
22 restaurant that's an affiliate of my restaurant.  
23 Sometimes things are just a little too close to  
24 home.

25 A. Certainly going to think about those

1 occasionally we have fact pattern in a case that  
2 really strikes close to home.

3 A. I would have to say a small percentage I  
4 would have to consider that.

5 Q. Do you think it's going to impair your  
6 ability to be fair and impartial, follow the law  
7 in this case such that maybe you ought to go to  
8 another case?

9 A. That I don't know. I don't know. It's  
10 something I haven't thought about.

11 Q. Give you a few minutes to think about  
12 and we'll come back.

13 Ms. Belch, did I notice in your  
14 questionnaire that your mother was a victim of a  
15 murder?

16 A. Yes, she was.

17 Q. That gets back to the close to home  
18 stuff. Obviously I have a concern about that as  
19 it relates to this case outside of other concerns  
20 obviously. What do you think? Do you think  
21 that's something that's too close to home in this  
22 case?

23 A. My mother was killed a long time ago.  
24 Her murderer was never caught and if he had have  
25 been caught I would have hoped that all would have

1 been dealt with appropriately, but I've dealt with  
2 it within myself.  
3 Q. Let me ask you this and again I don't  
4 mean to pry or be insensitive or anything. At  
5 some stage the officer here isn't going to be  
6 there and witnesses are going to be there and I  
7 suspect at some stage you're going to hear from  
8 the two young men who were killed in this case  
9 from their family. My obvious concern obviously  
10 is that when they get there that might be too  
11 close to home as well. Do I have a concern or not  
12 or have you even thought about it?  
13 A. I hadn't really thought about it. It's  
14 going to be hard on all of us I would think to  
15 hear from families of the victim.  
16 Q. Absolutely.  
17 A. Whether it's going to be particularly  
18 hard on me I don't know. My mother was killed  
19 over 40 years ago. I've dealt with it.  
20 Q. Mr. McIntosh, no one escapes the  
21 questions.  
22 A. I didn't think so.  
23 Q. Or at least if I'm doing my job right  
24 they don't. What do you think of these  
25 discussions?

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1 A. Well, I think good points have been  
2 brought up. I think that I could consider all  
3 forms of punishment. I would for the  
4 considerations I think the upbringing doesn't have  
5 anything to do with what you do in your adult  
6 life. However I would be interested in how he  
7 served his other prison term. I could bring that  
8 into -- I could consider that.  
9 Q. Why don't you think the upbringing  
10 shapes at all who you become later in life?  
11 A. Because there are good people that come  
12 from bad background and there are bad people that  
13 come from good background.  
14 Q. Absolutely. Everybody is shaking their  
15 head. Probably that's the only thing all of us  
16 will agree on, including the prosecution and  
17 defense. You don't think it's a consideration at  
18 all, the environment, what you see, what you go  
19 through doesn't affect what we become later on?  
20 A. Everyone has to make choices in their  
21 lives. Everyone has made bad choices and good  
22 choices. I think that you can see people doing  
23 things wrong in your background and you can choose  
24 to go with those people or you can choose to stay  
25 away from those people, and that is a private

1 choice by the individual and input from parents or  
2 friends or clergy, sometimes that doesn't make any  
3 difference at all.  
4 Q. Mr. Nicholson.  
5 A. Yes, sir.  
6 Q. What do you think of those discussions  
7 about upbringing and family and those things?  
8 A. I agree with some of them. I was  
9 talking to my family that our parents who we live  
10 with or who we are around bring us up and bring us  
11 like in a little pool in our house, and they bring  
12 us up into what we are made of today. Yes, we all  
13 have choices. Yes, we all have certain things  
14 that we can say, oh, he made a bad choice, I don't  
15 want to follow in those footsteps. But when you  
16 see like your brother doing it, when you see your  
17 mom doing it, when you see you're going to think  
18 it's right. I personally think my brother, for  
19 instance, he was raised like it's only him. He's  
20 like a baby. He's a brat, and he was brought up  
21 that way, and we didn't put it out in the world,  
22 but he can't change that. He can't change the way  
23 he's brought up with my mom and my dad that he was  
24 a spoiled brat. He can't change that in later  
25 life. So, yes, you do weigh their backgrounds,

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1 you do weigh how they were brought up, how they  
2 served in prison or how they changed their life  
3 around and want to become better. We all make  
4 mistakes, we all do. I'm not saying that he  
5 killed two people -- he was convicted of killing  
6 two people and that he shouldn't be put to death.  
7 I'm not saying that. I'll weigh all four  
8 possibilities because -- what I'm saying we all  
9 make mistakes, and like I'm saying any one of  
10 these people right here if say -- he's not family,  
11 he's not nothing, he's a person. We all make  
12 mistakes, so that's what I'm trying to say.  
13 Q. Ms. Norander?  
14 A. That's one mighty big mistake.  
15 Q. It's two mighty big mistakes.  
16 A. Yes, two. I think I feel right along  
17 the lines of this gentleman over here.  
18 Q. Mr. Adona?  
19 A. You should have no possibility for  
20 parole, so right now in my mind I have two  
21 choices, life without the possibility or the death  
22 penalty. I've never been in a situation like this  
23 before just like everyone else sitting here with  
24 me so I can't give you a decision or let you know  
25 which way I'm swaying right now because it's an

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1 awful lot to consider. Plus like you said, we're  
 2 all really nervous to begin with. The way you're  
 3 brought up and he could have been brought up in a  
 4 convent for all I know. He's a grown man. He  
 5 made decisions of his own. Whether it was drug  
 6 induced or not, he made that decision, he followed  
 7 through on it not once, but twice. I think you  
 8 should be accountable for what he has done, but I  
 9 can't turn around like that other woman and saying  
 10 he's on death row and that's it. But I could  
 11 never see the possibility of parole.

12 Q. And you've bought up a point. I want to  
 13 make it clear again. I'm not looking for  
 14 decisions what you're going to do one way or the  
 15 other. We're simply doing -- I'm trying to do  
 16 what we're doing and that's getting your opinions  
 17 on it, and so if I've made it sound like I want  
 18 you to sort of prejury verdict decision from you  
 19 all, that's not it at all. But, again, this is  
 20 what we're doing is getting these opinions.

21 Ms. Kaczmarek.

22 A. Yes.

23 Q. You've been nodding. I know you've been  
 24 listening.

25 A. Yes.

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1 Q. What do you think? Tell me.

2 A. I think it's a sad day.

3 Q. It is truly a difficult day.

4 A. Like the woman behind me here, none of  
 5 us have ever experienced anything like this ever.  
 6 I have a 16-year-old son. I would kick his behind  
 7 if I felt that the direction he was going in was  
 8 wrong. I don't know if this gentleman had that  
 9 same. Maybe he had too much. Maybe he had way  
 10 too much. I don't know. I don't know him.

11 Q. But is it fair to say those are all  
 12 things that you're willing to consider in the  
 13 context of this case?

14 A. I would take it as a piece of, but I  
 15 wouldn't necessarily put a lot of emphasis on it  
 16 only because when you become 18 regardless of what  
 17 happened to you you become an adult at that time  
 18 and you can't here change your circumstance. If  
 19 you choose not to do that, if you want to blame  
 20 and continue to do so for the rest of your life, I  
 21 consider that would cause a problem.

22 Q. Let me ask everybody this because we've  
 23 kind of touched on this now. I fully expect  
 24 Mr. Schieck and I on behalf of Mr. Thomas to bring  
 25 in family members to tell you about his

1 upbringing, to give you some insight to Marlo  
 2 Thomas, the man. Not just Marlo Thomas the  
 3 two-time convicted murderer.

4 Does anybody think that you're going to  
 5 sense that Mr. Schieck and I are going to try to  
 6 excuse actions or be so offended by that that  
 7 we're trying to give you an excuse for what he  
 8 did? Or will everybody be able to understand that  
 9 we're just trying to present, I think as you said,  
 10 the whole picture for you to whether this man  
 11 ought to be executed? Does anybody as you sit  
 12 there think, you know what, these are two defense  
 13 attorneys trying to get -- I don't know if it's  
 14 you folks but some of the questionnaires talks  
 15 about defense attorneys and attorneys, and that's  
 16 fair. You're not the first folks that have talked  
 17 to me about that, but does anybody think that in  
 18 doing that it might be offensive to you that we're  
 19 trying to somehow cover up for his actions or give  
 20 an excuse for something that's inexcusable?

21 A. No, you pretty much put it out there  
 22 already. You haven't covered up anything that he  
 23 has done. I think what the attempt is at this  
 24 point is to fully with some compassion minimize  
 25 the outcome for this gentleman ones and for all if

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1 you can. Whether you are successful or not is yet  
 2 to be seen, but if you can.

3 Q. Ms. Villanueva, did I butcher the name?

4 A. It's close.

5 Q. Close enough for a defendant's attorney.  
 6 Well, what do you think of all this? I know you  
 7 talked about considering the evidence and some of  
 8 these things.

9 A. I consider all the sentences. It's  
 10 either -- I would choose life without parole or  
 11 death penalty because of the actions he's done,  
 12 but if I do choose those things, especially the  
 13 death penalty, it's more of a personal thing to me  
 14 that I would be thinking of that person -- I put  
 15 him in that position. You see what I'm saying?

16 Q. No.

17 A. I would feel bad.

18 Q. Right.

19 A. I would be thinking of him dying.

20 Q. But I assume as you've indicated that's  
 21 not enough to overcome if you're picked as a juror  
 22 your duty as a juror to make the decision based  
 23 upon -- let me ask you this. What if you're  
 24 picked for the jury and 12 of you go back there.  
 25 I don't know how you do this. You all do it

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1 yourself, but for the purposes of this example  
 2 let's say you all take a vote initially and  
 3 everybody wants death, but you want life. After  
 4 everything you've heard, all the evidence that's  
 5 put on and all the arguments, in your heart of  
 6 hearts you say to yourself, you know what, I can  
 7 consider death -- I would have considered death,  
 8 but I want life, but all other 11 want the death  
 9 penalty. How are you going to feel? What are you  
 10 going to do?

11 A. It's a hard decision, but listening to  
 12 what you've said and what he's done I would  
 13 consider death.

14 Q. Do you think that you'd be swayed enough  
 15 by the other 11?

16 A. Yeah, because I'm sometimes gullible.  
 17 It's just the actions he's done.

18 Q. Mr. Adona, same question to you. Twelve  
 19 of you go back there. Your heart of hearts when  
 20 you go back there you think to yourself, you know  
 21 what, I can't give this man the death penalty.  
 22 How are you going to handle it if the other 11?

23 A. I don't know, to tell you the truth. I  
 24 don't know how I'd feel.

25 Q. Is it something you think you'd say you

1 work to do. Let me touch on another issue. I  
 2 appreciate everybody's willingness to be open and  
 3 discuss these. The judge, I suspect, is going to  
 4 instruct you that the whole idea of the trial  
 5 being quite a bit earlier and us being here later  
 6 and just the penalty phase maybe is issues that  
 7 shouldn't be considered. Those are issues that  
 8 didn't concern you all. Really the issue is the  
 9 four potential penalties and your decision on the  
 10 facts. Is everybody going to be able to put that  
 11 out of their minds and not worry themselves with  
 12 what went on before us and only with what happened  
 13 here?

14 Another issue, Marlo is black. There's  
 15 something that I told you that you already knew.  
 16 You all are not black although there's certainly  
 17 other races here and out in the audience. The two  
 18 individuals who were killed were white. Let's get  
 19 it out on the table. Does anybody think that  
 20 that's going to cause them a concern? That  
 21 there's something in their background that might  
 22 make it more difficult for them to make a decision  
 23 because of the race issue?

24 Mr. Quenzer, have you thought some more?

25 A. I have and the more I think of it the

1 know what, it's Thursday afternoon. The other 11  
 2 think it's death, that's good enough for me?

3 A. No.

4 Q. Why not?

5 A. It's not that easy just say okay. It's  
 6 not that easy. I don't know how I'd feel.

7 Q. Ms. Jones.

8 A. I wouldn't in my heart go along with the  
 9 others. That's a monumental decision whether a  
 10 person lives or dies. You can't just decide it's  
 11 4:00 in the afternoon and I want to go home. He  
 12 did kill somebody.

13 Q. Ms. Martinez, how do you think you'd  
 14 handle that sort of situation? Do you think  
 15 you'd?

16 A. It's hard to say. I'd consider both the  
 17 death or possibility without parole because of  
 18 like you said the actions that he did, but I'd  
 19 want to also know his prior convictions and what  
 20 they were for and what he's done since that day.

21 Q. So the mere fact that 11 other people  
 22 disagree with you isn't going to be the swaying  
 23 factor for you? It isn't going to be your own  
 24 judgment.

25 It's getting late and we have a lot more

1 more it eats me up inside.

2 Q. I don't mean to do that to you.

3 A. I think about what I do every day and  
 4 working in a restaurant, working around handle a  
 5 lot of money and I close the restaurant at night  
 6 and things like that, and this situation is going  
 7 to bring up a lot of personal experiences just  
 8 from friends that I've known. Like I told you I  
 9 had a friend that was a manager that was murdered  
 10 ten years ago in a robbery attempt and --

11 Q. I suspect you're going to hear about  
 12 what these young men were doing before he came in  
 13 and about how the restaurant operated, some of  
 14 that stuff. My concern and my concern is because  
 15 of your honesty. I appreciate that. But my  
 16 concern is you're going -- you're a thoughtful  
 17 guy. You're going to continue to think about that  
 18 and tomorrow or Wednesday or at the time to figure  
 19 that out and so you tell me.

20 A. I'm just concerned because I don't think  
 21 that in the end if I'm chosen as a juror and it  
 22 comes down to the panel, I'm going to have too  
 23 many things, personal things, that are going to  
 24 sway me to one side versus somebody else who has  
 25 not worked in the restaurant business or had some

1 experiences around what this case is about.

2 Q. Fair to say you think maybe another jury  
3 might be better off?

4 A. I think someone other than I would be  
5 more impartial than myself.

6 Q. I appreciate your honesty.

7 MR. ALBREGTS: I would pass everyone for  
8 cause but Mr. Quenzer.

9 THE COURT: Mr. Quenzer, you are the  
10 only one who can answer those questions. You  
11 didn't work for Lone Star at the time this  
12 occurred. You've only been with them for five  
13 years; is that correct?

14 THE JUROR: Yes, five years.

15 THE COURT: You work for Delfrisco who  
16 is earned by the parent company of Lone Star. I  
17 guess in today's business world if you work for  
18 the Olive Garden you're owned by General Foods or  
19 something like that that makes Pillsbury and  
20 Duncan Hines and Betty Crocker and, and, and, in  
21 the big corporate world of things, but you are the  
22 only one who can tell us if the fact that you work  
23 in a restaurant and you do close up and you do  
24 recall an incident in your personal life within  
25 the last ten years of your restaurant manager

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1 being robbed, whether that would unduly prejudice  
2 you in favor of or against one of the parties to  
3 this lawsuit. And that's the real question is  
4 whether you would be prejudiced for or against  
5 either party based on your own background.

6 THE JUROR: I think I would.

7 THE COURT: All right. We appreciate  
8 that because we do like the jury panel to be fair  
9 and impartial.

10 MR. ALBREGTS: I'm sorry. I also  
11 neglected co-counsel reminded me there's one other  
12 individual I need to speak to briefly about a  
13 cause issue that I missed. I am sorry.

14 THE COURT: Mr. Quenzer, thank you, sir,  
15 you may be excused. Please report down to the  
16 jury commission office on the third floor and they  
17 can send you out on any other jury other than this  
18 one.

19 THE JUROR: Thank you.

20 MR. ALBREGTS: May I ask Mr. Thompson  
21 just a couple important questions?

22 THE COURT: You may.

23 BY MR. ALBREGTS:

24 Q. Mr. Thompson, did you indicate that you  
25 wouldn't be willing to consider any other

1 punishments but the death penalty?

2 A. No, I did not say that. I said life for  
3 both counts without parole.

4 Q. I apologize. I don't want to put you on  
5 the spot. You wouldn't consider the initial two,  
6 life with the possibility or the definitive term,  
7 but you would consider the other two, life without  
8 possibility or the death penalty, depending on the  
9 facts?

10 A. That's true.

11 MR. ALBREGTS: Thank you, Judge.

12 THE COURT: The 12 of you who are left  
13 qualify to be jurors in this case. We're going to  
14 pick another 16 plus four -- we'll pick another 20  
15 people and ask them the same questions. Why don't  
16 you come back at 4:00. So you're good to go on  
17 this case. You're all qualified to be jurors on  
18 this case. Come back at four.

19 I'm going to call our next jurors  
20 forward, and when I call your name and read your  
21 number, please come forward and be seated as the  
22 bailiff indicates. No. 586, Benjamin Kimberlin.  
23 Counsel, he'll go in as 17.

24 MR. SCHIECK: On the sheet we're just  
25 going to be in order and not fill these positions?

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1 THE COURT: Yeah.

2 MR. SCHIECK: This will be that 12 and  
3 that will be 13.

4 THE COURT: Yes, you're right. He'll be  
5 13. They'll all move up a spot.

6 MR. SCHIECK: We're not filling the  
7 empty spots.

8 THE COURT: No. 615, Donald Erickson;  
9 624, Nancy Demelas; 638, Nipapon Angsumalee.

10 MR. SCHIECK: I think he was excused  
11 also.

12 THE COURT: All right. 642, Cynthia  
13 Dacks. Ms. Dacks is present. 647, Lilibeth  
14 Rafanan. She doesn't appear to be here. 660  
15 Adele Basye. Ms. Basye is present. 665, Johanna  
16 Salvador; 675, Jill McGrath; 676, Nicole  
17 Hostettler.

18 MR. SCHIECK: I think she was excused,  
19 your Honor.

20 THE COURT: 677, Marisa NMuniz; 681,  
21 Alice Chorlton. Alice is not here. Loretta  
22 Gillis, No. 686. She's here. 688, Jennifer Mowen  
23 is also here. 690, Tanya Brown-Merafuentes, not  
24 here. 692, Patricia Brown. Patricia Brown is  
25 present. Let's put Ms. Brown in the front row,

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1 Jonathan. No. 701, Paul Schutts, not present.  
 2 704, Mary Heacock, she's here; 705, Xiera Desamero  
 3 row, not present. 712, Jacqueline Wohlt; 713,  
 4 Lauren Kratz, not present.  
 5 MR. SCHIECK: She was excused.  
 6 THE COURT: 735, Patricia Freitas, not  
 7 present. 737, Frank Krasn. He's here. 740,  
 8 Edmund Redfield, present; 744, Chi W Wan, present;  
 9 750, Brian Mason. Mr. Mason is present. 752,  
 10 Raul Chavez, present; 758, Herbert Rice. Mr. rice  
 11 is here. 767, Debbie Atienza, she is here.  
 12 Counsel for the state, you may inquire  
 13 of this panel.  
 14 MR. SCHWARTZ: Thank you, your Honor.  
 15 BY MR. SCHWARTZ:  
 16 Q. Mr. Kimberlin, how are you, sir?  
 17 A. I'm fine, thank you.  
 18 Q. Is there anything about the nature of  
 19 this particular proceeding that would make it  
 20 difficult for you to participate as a juror at the  
 21 penalty phase?  
 22 A. I don't think so.  
 23 Q. If you're selected as a juror and you  
 24 made a determination, you and your fellow jurors,  
 25 that the death penalty is an option in this

1 without parole and the imposition of the death  
 2 penalty. Can you consider each of those four  
 3 forms of punishment and then make a decision  
 4 regarding the one you feel most appropriate, or do  
 5 you have a view that you automatically are going  
 6 to get rid of one or two of those? Can you weigh  
 7 all four of them and then make a decision?  
 8 A. I was just thinking back to the question  
 9 here. I believe there was the bottom two, 50  
 10 years with the possibility of parole and the other  
 11 one was possibility of parole. With the amount of  
 12 information that I have right now, I would say  
 13 that those two are probably not something I would  
 14 consider.  
 15 Q. I'm not asking you to vote today.  
 16 A. I understand.  
 17 Q. I'm just asking -- you're going to hear  
 18 a lot of evidence, okay, and hopefully at the  
 19 conclusion you'll be more informed. All I want to  
 20 know is right at the start can you consider all  
 21 four and then based upon what you hear pick the  
 22 one you feel is most appropriate?  
 23 A. Sure.  
 24 Q. Do you believe that people should be  
 25 held accountable for their actions, Mr. Erickson?

1 particular case, do you feel if you felt it  
 2 appropriate you could return with a verdict  
 3 sentencing this defendant to death?  
 4 A. I can't say that I'm entirely  
 5 comfortable with that, but I do feel that in some  
 6 cases the death penalty is necessary and I feel  
 7 that if I find and my fellow jurors find it would  
 8 be necessary in this case then I think I could  
 9 return with a verdict.  
 10 Q. Donald Erickson, what are your views  
 11 regarding the death penalty sir?  
 12 A. I think in some cases it is necessary to  
 13 use the death penalty. However, I do not  
 14 100 percent in favor for it. Really it depends on  
 15 the circumstances.  
 16 Q. And I realize these questions are kind  
 17 of unfair because you have some idea of what  
 18 occurred, but you didn't sit on the trial. You'll  
 19 hear evidence concerning what happened that caused  
 20 us all to be here today, but be that as it may,  
 21 for our purposes now as best you can I'm going to  
 22 ask you a couple more questions. You heard I  
 23 believe earlier from the judge that you might be  
 24 considering four forms of punishment, a term of  
 25 years, life in prison with parole, life in prison

1 A. Yes, I do.  
 2 Q. Ms. Demelas, on Question 25 you were  
 3 asked have any family members or close friends  
 4 been arrested or charged with a crime, and you  
 5 indicated you weren't sure, sometimes we don't get  
 6 all the details. Do you know if anybody, a friend  
 7 or member of your family, has been arrested or  
 8 charged with a crime?  
 9 A. Yes, they have.  
 10 Q. Who would that have been?  
 11 A. Who would that have been?  
 12 Q. Who do you know who's been arrested and  
 13 charged with a crime?  
 14 A. I guess I'm not understanding that.  
 15 Q. This is a question on your questionnaire  
 16 that you filled out. Have you or any member or  
 17 family member or close friend ever been arrested  
 18 and charged with a crime, and you answered yes.  
 19 So my question now is who was --  
 20 A. I can't think of anybody right now.  
 21 Q. Is there anything about that situation  
 22 that would make it difficult for you to be fair  
 23 and impartial to both sides?  
 24 A. No.  
 25 Q. Do you feel you could return with a

1 verdict of death if you felt it was appropriate?  
 2 A. I'd have to, you know, think it all  
 3 through.  
 4 Q. Well, assuming you have all the  
 5 evidence, you thought it all through and you feel  
 6 that death is appropriate, could you come in and  
 7 vote death?  
 8 A. I'm not sure about that.  
 9 Q. Do you believe that people should be  
 10 held accountable for their actions?  
 11 A. Yes.  
 12 Q. Are there things you might consider  
 13 that -- strike that. What would you consider in  
 14 determining what the appropriate punishment should  
 15 be? What kind of factors would be important to  
 16 you?  
 17 A. What kind of factors? Maybe the way he  
 18 was raised. I don't know.  
 19 Q. Thank you. Ms. Dacks, if you are a  
 20 member of our legislature, do you feel that you  
 21 would vote in support of having a death penalty in  
 22 the state of Nevada?  
 23 A. Yes.  
 24 Q. Do you think it's appropriate for  
 25 certain cases?

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1 A. Mm-hmm.  
 2 Q. And if you were selected as a juror in  
 3 this particular proceeding, could you consider all  
 4 four possible punishments and then return with the  
 5 one you feel most appropriate based upon what you  
 6 hear later on?  
 7 A. Yes.  
 8 Q. What do you think would be important for  
 9 you to consider in determining the appropriate  
 10 punishment?  
 11 A. I think probably the most important  
 12 thing would maybe be how the whole situation  
 13 happened.  
 14 Q. The circumstances surrounding the two  
 15 killings?  
 16 A. Mm-hmm.  
 17 Q. Do you believe people should be held  
 18 accountable for their actions?  
 19 A. Yes.  
 20 Q. And if you were selected as a juror,  
 21 would you participate with other jurors in  
 22 discussing the case before making an informed  
 23 decision?  
 24 A. I would make sure that I was very  
 25 comfortable with my decision, yes.

1 Q. But you'd have an open mind going into  
 2 your deliberation?  
 3 A. I think so.  
 4 Q. And you'd be willing to express your  
 5 opinions to your fellow jurors?  
 6 A. Mm-hmm.  
 7 Q. Is that a yes?  
 8 A. Yes.  
 9 Q. Thank you.  
 10 Ms. Basye, do you believe that people  
 11 should be held accountable for their actions?  
 12 A. Yes, sir, I do.  
 13 Q. And what would be important to you, what  
 14 factors would be important to you that you would  
 15 consider before you made a decision on the  
 16 appropriate punishment for a man convicted of two  
 17 murders?  
 18 A. Testimony from the witnesses, evidence,  
 19 possibly history, life history.  
 20 Q. Who's history?  
 21 A. His history.  
 22 Q. The defendant's history?  
 23 A. Yes.  
 24 Q. Would his childhood be important to you,  
 25 how he was raised?

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1 A. I believe so.  
 2 Q. Ms. Salvador, is there anything about  
 3 what you've heard so far today that you feel ought  
 4 to be brought to our attention before we consider  
 5 whether or not you should participate as a juror  
 6 in proceeding?  
 7 A. Not at this moment.  
 8 Q. Do you feel comfortable as you sit here?  
 9 I know it's a little nerve-racking. It might be  
 10 nervous.  
 11 A. Yeah, just a little.  
 12 Q. You're going to be asked to make a very  
 13 important decision if you're selected as a juror.  
 14 You understand that of course. If you felt it  
 15 appropriate, could you come into this courtroom  
 16 and sentence this defendant to death?  
 17 A. It all depends.  
 18 Q. What does it depend upon?  
 19 A. Everything, the trial, everything.  
 20 Q. Ms. McGrath, you feel people should be  
 21 held accountable for their actions?  
 22 A. Yes, I do.  
 23 Q. If you're selected as a juror, what  
 24 would be important to you before you made a  
 25 decision at least in your own mind what you felt

1 the appropriate punishment should be?  
 2 A. I think the circumstances that  
 3 everything involved, the evidence, the motives,  
 4 the witnesses.  
 5 Q. What are your feelings toward the death  
 6 penalty?  
 7 A. Kind of in the middle. It all depends  
 8 on the circumstance. I'm not against it, but I'm  
 9 not all for it. It just really depends on the  
 10 circumstance.  
 11 Q. If you are selected as a juror at this  
 12 particular proceeding and you had four forms of  
 13 punishment to consider, could you consider the  
 14 death penalty?  
 15 A. Depending on after.  
 16 Q. If you felt it appropriate?  
 17 A. Yes.  
 18 Q. And then the next step could you come  
 19 into this courtroom and actually vote for the  
 20 death penalty?  
 21 A. If I felt I needed to, yes.  
 22 Q. Ms. Muniz.  
 23 A. Yes.  
 24 Q. What are your feelings toward the death  
 25 penalty?

1 A. No. I don't feel that I am qualified to  
 2 judge a person.  
 3 Q. That's fine. As counsel said, there's  
 4 no right or wrong answers. We just need to get as  
 5 much information as we can before we make our  
 6 informed decisions as who we want on this  
 7 particular jury?  
 8 MR. SCHWARTZ: I would respectfully  
 9 challenge for cause, your Honor.  
 10 THE COURT: Do you wish to inquire of  
 11 Juror 667, Marisa Muniz?  
 12 MR. SCHIECK: Yes, Your Honor, just  
 13 briefly.  
 14 BY MR. SCHIECK:  
 15 Q. Ms. Muniz, perhaps I'm just confused.  
 16 You said you can consider it, but you couldn't  
 17 vote for it. What's the difference between  
 18 considering it?  
 19 A. Well, it's easy to consider anything but  
 20 to actually vote for it, no, I couldn't.  
 21 Q. Under no circumstances?  
 22 A. No.  
 23 Q. You can't think of any set of  
 24 circumstances where you would even consider voting  
 25 for the death penalty even though you believe that

1 A. I'm really not for it. It's usually  
 2 just in an extreme case if necessary.  
 3 Q. So if you were selected as a juror at  
 4 this particular proceeding, could you consider all  
 5 forms of punishment including the death penalty?  
 6 A. I could consider it, but I couldn't  
 7 guarantee that I could vote for it if needed to  
 8 be.  
 9 Q. Well, I'm not asking you -- it would be  
 10 nice to get guarantees, but we very seldom do, but  
 11 you wouldn't automatically rule it out?  
 12 A. No.  
 13 Q. So if you felt it the appropriate case,  
 14 could you return a verdict of death?  
 15 A. I don't believe I could. That's a big  
 16 responsibility that I don't think I could handle.  
 17 Q. You said you weren't going to rule it  
 18 out, but now you're saying you couldn't do it.  
 19 A. I wouldn't necessarily rule it out, but  
 20 for me to actually put a vote in for it, no, I  
 21 couldn't do it.  
 22 Q. So no matter what I say or my co-counsel  
 23 says to you, there's no way that you would ever  
 24 return a death verdict in this particular case  
 25 against the defendant?

1 it's appropriate in some cases?  
 2 A. My belief is who am I to judge, and  
 3 that's a big responsibility, and I don't think I  
 4 could live with that kind of responsibility.  
 5 Q. We all understand it's a very hard  
 6 decision to make in any case, but some decisions  
 7 have to be made and they have to be made by juries  
 8 and we need cross-section of the community to make  
 9 those decisions. And your point of view is just  
 10 as important as everybody else's; do you  
 11 understand that?  
 12 A. (Witness nods head affirmatively.)  
 13 Q. And so the fact that it's very difficult  
 14 for you to talk about it or to consider imposing  
 15 it is okay. But the question is could you under  
 16 any circumstance go ahead and vote?  
 17 A. I honestly -- I don't know.  
 18 Q. So we're back now that you could  
 19 consider it but you don't know if you could vote  
 20 for it.  
 21 A. I don't think I could vote for it. I  
 22 honestly don't.  
 23 Q. You probably never been asked?  
 24 A. This is my first time for jury duty.  
 25 This is kind of wow.

1 MR. SCHIECK: Thank you. We'd submit  
2 it, your Honor.

3 THE COURT: Ms. Muniz, thank you for  
4 your answers to the attorney's questions. And it  
5 is a very challenging task, and I don't suppose  
6 any of us unless we've served on a capital murder  
7 panel before, jury panel, have ever had to make  
8 that decision. The challenge for cause is  
9 granted. You are excused. Please go back down to  
10 the jury commission office and tell them you can  
11 go out on any other panel other than a murder  
12 case. Let us call now Ceasar Elpidio to take a  
13 spot vacated by Ms. Muniz. Now, since we have a  
14 panel here he will go in as 24. I know I'm  
15 confusing you.

16 You may continue with voir dire,  
17 Counsel.

18 MR. SCHWARTZ: Thank you, your Honor.  
19 BY MR. SCHWARTZ:

20 Q. Ms. Gillis, how are you, ma'am?

21 A. Fine, thank you.

22 Q. What are your views regarding the death  
23 penalty, ma'am?

24 A. I think I could consider it.

25 Q. So if you were instructed on four

1 depend on what was laid out before me.

2 Q. Assuming everything is laid out in front  
3 of you and you felt it appropriate, its' one thing  
4 to feel you could do it. Do you think?

5 A. If I felt it appropriate, yes.

6 Q. Do you feel people should be held  
7 accountable for their actions?

8 A. Yes.

9 Q. What would you want to know before you  
10 made a decision regarding the appropriate  
11 sentence?

12 A. The circumstances surrounding what  
13 happened.

14 Q. And would you want to know anything  
15 else?

16 A. Not really.

17 Q. Do you feel the defendant's background,  
18 his upbringing, would be important to you?

19 A. I don't think so.

20 Q. Ms. Heacock, what are your feelings  
21 towards capital punishment, ma'am, or the death  
22 penalty?

23 A. I believe in it.

24 Q. So you feel in the appropriate situation  
25 it could be appropriate? The appropriate case the

1 possible forms of punishment, you could consider  
2 all four forms of punishment?

3 A. Yes, sir.

4 Q. And then choose or select one you feel  
5 is most appropriate for this particular case?

6 A. Yes, sir.

7 Q. Do you feel that people should be held  
8 accountable for their actions?

9 A. Yes, sir.

10 Q. Before you were to make a decision  
11 regarding a possible sentence, what things would  
12 be important to you? What would you want to know?

13 A. Circumstances, the evidence.

14 Q. What about the background of the  
15 defendant? Would that be important?

16 A. Probably.

17 Q. Ms. Brown, how are you, ma'am?

18 A. I'm fine, thank you.

19 Q. What are your feelings toward the death  
20 penalty, ma'am?

21 A. In some cases I think it's the proper  
22 and necessary.

23 Q. So in the particular case you feel you  
24 could vote for the death penalty?

25 A. I imagine it would be hard, but it would

1 death penalty could be appropriate?

2 A. Absolutely.

3 Q. Could you vote for it if you're selected  
4 as a juror?

5 A. Yes.

6 Q. Question 25 indicates that you know  
7 somebody who's been arrested or had contacts with  
8 law enforcement?

9 A. Yes.

10 Q. Who was that?

11 A. My nephew.

12 Q. Was it more than one contact?

13 A. Yes. Nephews.

14 Q. Was that here in Las Vegas?

15 A. No.

16 Q. Is there anything about their situations  
17 that would make it difficult for you to be a fair  
18 and impartial juror to both sides?

19 A. I don't think -- well, one of them was  
20 for murder.

21 Q. Do you think the system treated him  
22 fairly?

23 A. Oh, more than fairly. Absolutely.

24 Q. Ms. Wohlt, do you have a criminal  
25 justice degree?

1 A. I do. I had my undergrad in criminal  
2 justice.  
3 Q. Where did you obtain that?  
4 A. University of Wisconsin Oshkosh.  
5 Q. Is there anything about these  
6 proceedings that would make it difficult for you  
7 to participate?  
8 A. I think I might be a little biased  
9 towards the State because I do have my background  
10 from criminal justice and also my dad was a police  
11 officer.  
12 Q. Now, was he a police officer in the  
13 state of Wisconsin?  
14 A. Yes, sir.  
15 Q. Now, both sides are looking for fair and  
16 impartial jurors, fair to the State and fair to  
17 the defense. Is there anything about the fact  
18 that your dad was a police officer that would make  
19 you prejudiced in this particular case, slanted  
20 you towards the State versus the defendant?  
21 A. I don't think so.  
22 Q. You can be fair and impartial to both  
23 sides and return just a fair honest verdict?  
24 A. Honestly I don't know because I do have  
25 the criminal justice background. I think I would

1 the judge threw it out because you don't go to  
2 court without an attorney.  
3 Q. Was that here in Las Vegas?  
4 A. No, that was in the state of California.  
5 Q. If you were selected as a juror in this  
6 particular case, could you be fair and impartial  
7 to both sides regardless of your view about the  
8 criminal justice system?  
9 A. Absolutely.  
10 Q. What are your feelings towards the death  
11 penalty?  
12 A. I really have no problems of voting for  
13 it if it was appropriate for that matter or any of  
14 the other ones. I would have to look at evidence.  
15 I would like to know for the defendant his psycho  
16 profile which expert witness I would hope would be  
17 present to give, and based upon that I know I  
18 would come to a decision that would fit most  
19 correctly towards such a crime.  
20 Q. If that decision was the death penalty,  
21 you could come into this courtroom and announce  
22 that decision?  
23 A. Yes, I could.  
24 Q. Thank you, sir. Mr. Redfield, how are  
25 you, sir?

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1 be a little more biased towards the State.  
2 Q. What are your feelings toward the death  
3 penalty?  
4 A. In favor of it.  
5 Q. Do you feel that if you're selected as a  
6 juror in this case and you felt the death penalty  
7 was appropriate you could return it? Actually  
8 come into that courtroom and announce that verdict  
9 in front of the defendant?  
10 A. Yes, sir.  
11 Q. The fact that you have a criminal  
12 justice degree, did you hear anything about this  
13 case prior to filling out the questionnaire?  
14 A. No. Maybe just a little bit but not  
15 that I can remember.  
16 Q. Mr. Krasn, how are you, sir?  
17 A. Good.  
18 Q. You don't care too much for the criminal  
19 justice system?  
20 A. No.  
21 Q. Is that personal? Has it been bad to  
22 you?  
23 A. For me it has been. I've never been  
24 arrested. I filed a lawsuit with a lawyer, and of  
25 course my lawyer didn't show up and luckily for me

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1 A. I'm good.  
2 Q. What are your feelings toward capital  
3 punishment?  
4 A. I'm not opposed to capital punishment,  
5 but I'm not a big fan of it. I think it should be  
6 used as an exception.  
7 Q. Do you feel in the appropriate case you  
8 yourself could vote for the imposition of a death  
9 penalty against an individual?  
10 A. In an appropriate case.  
11 Q. Has there ever been an appropriate case  
12 as far as you're concerned?  
13 A. I think Jeffrey Dahmer would be a good  
14 candidate.  
15 Q. As you sit here today a little bit about  
16 the case that involves the murder of two  
17 individuals, does that already tell you something  
18 that you're going to exclude the possibility of  
19 death penalty or you're willing to consider it?  
20 A. I'm willing to consider it, but I find  
21 it unlikely that I would find that to be an  
22 exception to the case.  
23 Q. But you can't say that you will not come  
24 back with --  
25 A. I don't know about the case now so.

RA 000602



1 Q. Thank you, sir. Mr. Wan how are you,  
 2 sir?  
 3 A. Very good.  
 4 Q. Do you remember filling out this  
 5 questionnaire, sir?  
 6 A. I filled out a couple. I don't  
 7 understand the law.  
 8 Q. You filled out a couple of questions?  
 9 A. That's right.  
 10 Q. What was the difficulty? Understanding  
 11 what the questions were?  
 12 A. Because I don't read English good.  
 13 MR. SCHWARTZ: Can counsel approach,  
 14 your Honor?  
 15 THE COURT: You may.  
 16 (Off-the-record bench conference.)  
 17 THE COURT: Mr. Wan, you have every  
 18 right to be on this jury panel as a citizen of  
 19 this country. However, if you don't want to be on  
 20 the panel because of your language difficulty, we  
 21 will excuse you, so which would you prefer? You  
 22 would prefer to go or stay?  
 23 THE JUROR: I prefer to go.  
 24 THE COURT: Then you may be excused.  
 25 Please go down to the jury commission office on

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1 the third floor, tell them you've been excused all  
 2 week.  
 3 THE JUROR: Thank you very much.  
 4 THE COURT: You're welcome. Our next  
 5 juror is 780, Christina Shaverdian. Christina,  
 6 please come up and take the empty seat in the jury  
 7 box. Counsel, she'll go in as Juror 32.  
 8 BY MR. SCHWARTZ:  
 9 Q. Ms. Shaverdian, good afternoon. Is  
 10 there anything about these proceedings that would  
 11 make it difficult for you?  
 12 A. I'm a little biased toward the victim's  
 13 family only because I had a friend that was  
 14 murdered recently and you have no idea how it  
 15 hurts the family's perspective on life when you  
 16 lose somebody very close to you. That's the only  
 17 thing that makes me a little biased.  
 18 Q. Do you think you'd be able to put that  
 19 bias aside and be fair and impartial to both sides  
 20 and not make any decision until you heard all of  
 21 the evidence?  
 22 A. That would depend on the defendant's  
 23 witnesses. Possibly.  
 24 Q. What are your feelings toward on the  
 25 death penalty, ma'am.

1 A. It's a 50/50. It depends on the  
 2 defendant either for it or against it.  
 3 Q. So the appropriate case you feel you  
 4 could come into this courtroom and announce a  
 5 verdict sentencing someone to death?  
 6 A. Yes.  
 7 Q. Ms. Chiangi, what are your feelings  
 8 toward capital punishment?  
 9 A. I don't believe in it.  
 10 Q. So if you're selected on this case for  
 11 this penalty phase and the Court instructed you  
 12 that there were four forms of punishment, one  
 13 being the death penalty, could you consider the  
 14 death penalty?  
 15 A. No.  
 16 MR. SCHWARTZ: I challenge for cause,  
 17 your Honor.  
 18 THE COURT: Counsel, do you wish to  
 19 inquire of Juror 767, Debbie Atienza?  
 20 MR. SCHIECK: Just briefly, your Honor.  
 21 BY MR. SCHIECK:  
 22 Q. Under no circumstances would you even  
 23 consider the death penalty as a punishment?  
 24 A. No.  
 25 Q. Is that a religious belief?

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1 A. Yes, it is.  
 2 Q. Moral belief?  
 3 A. No, it's a religious belief.  
 4 MR. SCHIECK: No further questions.  
 5 THE COURT: Thank you for being here and  
 6 willing to serve your community this week. You  
 7 may be excused. Please go downstairs, tell them  
 8 you can go out on any other panel other than a  
 9 murder case.  
 10 Our next juror in line is No. 782,  
 11 Tamara Chiangi. She will go in as Juror No. 36.  
 12 BY MR. SCHWARTZ:  
 13 Q. Good afternoon. You indicated on your  
 14 questionnaire that you could consider the death  
 15 penalty in certain circumstances; is that correct?  
 16 A. Yes.  
 17 Q. Has that changed since you filled that  
 18 out coming here now?  
 19 A. No.  
 20 Q. So in other words, if you were selected  
 21 as a juror in this particular case, if you felt it  
 22 appropriate you could return with a verdict of  
 23 death?  
 24 A. Yes.  
 25 Q. Thank you. What would you want to know

RA 000603

1 before you made up your mind concerning the  
 2 appropriate punishment?  
 3 A. The circumstances, hearing the evidence,  
 4 what brought him to that point.  
 5 Q. Would you be interested in learning  
 6 about the defendant, his background, how he was  
 7 raised?  
 8 A. Everything would be considered.  
 9 Q. Thank you.  
 10 MR. SCHWARTZ: I have no further  
 11 questions, your Honor. I'll pass for cause.  
 12 THE COURT: Thank you. Counsel.  
 13 MR. SCHIECK: Thank you, your Honor.  
 14 BY MR. SCHIECK:  
 15 Q. I know we've all been here for a long  
 16 time today and I'll try not to be too long on  
 17 this, but I'm sure you understand we have to ask  
 18 these questions of the panel in order to get an  
 19 understanding of the proper cross-section of the  
 20 community. We are not here to argue that Marlo is  
 21 not guilty of two counts of first degree murder.  
 22 That's already been determined so you have to  
 23 accept that as a fact in this case. The only  
 24 reason we are here is to decide what is a fair and  
 25 appropriate punishment, and you have to focus on

1 crime. While you're not entirely comfortable with  
 2 execution, you do believe it's something that's  
 3 necessary. Can you expound on that a little bit  
 4 for me?  
 5 A. Absolutely. I don't like the idea of  
 6 death because it is so final. It is, you know,  
 7 with a prison sentence someone can quite possibly  
 8 be reformed, can quite possibly become a  
 9 productive member of society once again. But then  
 10 there are certain circumstances, there are certain  
 11 people who cannot be rehabilitated or who have  
 12 done such horrendous things that death is the  
 13 necessary punishment; that to remove them from  
 14 society is the only way.  
 15 Q. Do you think that life in prison with no  
 16 chance to ever get out is a severe punishment?  
 17 A. I think that's a very severe punishment.  
 18 In some ways I think that's much worse than death.  
 19 I think that life in imprisonment aside from  
 20 being -- putting aside that it is just a severe  
 21 punishment, there is always the chance that he  
 22 could escape, slim it may be. You can't escape  
 23 the death, but I also know that in today's  
 24 bureaucratic world that someone who is sentenced  
 25 for death sits on death row for years and years

1 that. We're not going to try to soft sell the  
 2 case to you or the circumstances. You'll hear  
 3 some testimony concerning the homicides but not a  
 4 real lot. It will be summarized for you. And  
 5 then you'll hear evidence what's known as  
 6 aggravators and mitigators and things of that  
 7 nature that our legislature says is appropriate in  
 8 death penalty decision making by a jury, and so  
 9 you're going to hear that Marlo had been in prison  
 10 before. He'd been convicted of two crimes before  
 11 and gone to prison, and so we're not trying to  
 12 hide any of that information from you. Up front  
 13 we're telling you this information to make sure  
 14 that it's not going to so infect your thinking  
 15 that you can't consider the forms of punishment  
 16 that are available in this type of a case. And so  
 17 if you have any questions about that, they'll be  
 18 answered during the course of the penalty hearing,  
 19 but we want you to know everything going in in  
 20 order to make an informed decision. And that's  
 21 the bad thing about getting old is that you lose  
 22 your reading glasses.  
 23 Mr. Kimberlin, I see that in looking at  
 24 your questionnaire you talk about your religious  
 25 background and the punishment should fit the

1 and years and has a lot more motivation to escape.  
 2 Q. You're not going to hear any evidence on  
 3 escapes and things like that. I know it factors  
 4 into everybody's thinking this possibility, that  
 5 possibility, but it's really not a factor in this  
 6 case. You indicated in your questionnaire that  
 7 you would consider mitigating circumstances?  
 8 A. Absolutely.  
 9 Q. You'd want to hear about that?  
 10 A. Absolutely. I want to -- I would like  
 11 to hear the circumstances surrounding the case,  
 12 what happened. Because I myself I have a temper.  
 13 I fly off the handle, and so I understand that  
 14 that happens and I understand that you do stupid  
 15 things when that happens. I also understand that  
 16 a person's background has a lot to do with how  
 17 they react in various situations. Example is that  
 18 I had a stepfather who was a complete tyrant in my  
 19 household, and for that any step parent I'm  
 20 suspicious of, and so I understand that  
 21 experiences in life have a huge effect on how we  
 22 react to any given situation in life.  
 23 Q. Mr. Erickson, in looking at your  
 24 questionnaire I notice that in one question,  
 25 No. 24, in some cases one must be firmer in

1 sentencing; the crime should fit the punishment.  
2 Do you have cases in mind where you're  
3 thinking that someone didn't get a firm enough  
4 sentence or harsh enough sentence?  
5 A. No.  
6 Q. It's just a general view of the criminal  
7 justice system that you have?  
8 A. Yes.  
9 Q. How do you feel about the death penalty?  
10 A. It is something that needs to stay  
11 around, and if the crime is severe enough it  
12 should be implemented.  
13 Q. On your questionnaire you say an eye for  
14 an eye is never a good solution. You believe  
15 that?  
16 A. You have to hear all of the facts. I  
17 would never want somebody to -- just because they  
18 did something they should get the same benefit,  
19 but on top of that the crime should fit.  
20 Q. You also say that you wouldn't be open  
21 to considering all forms of punishment. You  
22 indicated no. Two counts of first degree murder  
23 tells me he's not learned his lesson; therefore 50  
24 years is not a proper punishment.  
25 A. I agree.

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1 Q. You wouldn't consider anything other  
2 than the death penalty or life without parole --  
3 A. Correct.  
4 Q. -- if you sit on the jury? You can't  
5 consider all forms of punishment in the case?  
6 A. I wouldn't be able to do that.  
7 Q. Even if the judge were to instruct you  
8 that this is the law in Nevada and you must  
9 consider all four forms of punishment?  
10 A. I tend to do what I'm told, so if I was  
11 instructed to I guess -- it would be very  
12 difficult for me to do that.  
13 Q. None of the choices are easy choices in  
14 this case. We just want to be sure that if the  
15 judge tells you there's four forms you have to  
16 consider which one is appropriate doesn't mean  
17 she's telling you which one you have to pick. We  
18 can't change your mind-set. We have to be aware  
19 and know that you're going to consider all forms  
20 of punishment.  
21 A. I know that they're there. I'm aware  
22 that they're there.  
23 Q. Under the right circumstances you could  
24 envision yourself saying, you know what, maybe I'm  
25 going to go and give him life with parole because

1 you don't know anything about the case except what  
2 we've told you.  
3 A. Correct.  
4 Q. You might actually vote for it. It's  
5 not likely as you sit there.  
6 A. It's not impossible; you are correct.  
7 Q. That's all we want is to know that you  
8 can consider the forms of punishment. We're not  
9 trying to get anybody on the jury to prejudge the  
10 case and tell us how you're going to vote. We  
11 just want to make sure you're going to consider  
12 how you're going to vote and take everything into  
13 consideration before you make your decision.  
14 Now, I'm going to mispronounce your  
15 name. Nancy Demelas, how do you feel about having  
16 to sit on a case and consider whether or not to  
17 vote to execute someone?  
18 A. It's uncomfortable.  
19 Q. Is it something you can do? You can  
20 make that decision?  
21 A. I guess if I have to.  
22 Q. And before you made that decision, you'd  
23 want to know as much as possible about not only  
24 the facts of the case but about Mr. Thomas?  
25 A. Yep.

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1 Q. You would consider all of that in making  
2 your decision?  
3 A. Yes, I would.  
4 Q. I've got a note on the front,  
5 Mrs. Dacks, of your questionnaire that you're  
6 pretty much in favor the death penalty?  
7 A. Yes.  
8 Q. Is it something you feel is deserved in  
9 every murder case?  
10 A. No, not in every murder case.  
11 Q. And then question about the mitigation  
12 evidence, you put you would somewhat consider  
13 those factors and then put not sure and crossed  
14 that off.  
15 A. It just seems like there's a lot -- it  
16 just seems like they let a lot of excuses get in  
17 anymore going back on somebody on how they were  
18 raised and everything. It seems like that's used  
19 more than ever before.  
20 Q. You need to understand, as everyone on  
21 the jury needs to understand, mitigation is not an  
22 excuse, it's not justification. It's not a  
23 defense. It's just factors in deciding on what  
24 the appropriate punishment is in the case. We're  
25 not going to stand here and try to make excuses.

RA 000605

1 We're not going to stand here and try to justify  
2 what he's been convicted of. We're here to give  
3 you as much information as you can so you can  
4 consider whether or not to go for the death  
5 penalty. So no excuses, okay? Just information  
6 for you to make an informed decision. Do you have  
7 any problem with that?

8 A. No.

9 Q. And you would consider that?

10 A. Mm-hmm.

11 Q. You say somewhat. We like it a lot more  
12 when you would very much consider it as to  
13 somewhat consider, but you're going to consider  
14 it?

15 A. Right, I will.

16 Q. If you were the only juror -- let's say  
17 you went back and you were voting, and 11 other  
18 jurors said we vote for the death penalty and you  
19 said, you know, I don't think I can o that, I  
20 don't think that's the appropriate punishment.  
21 How would you handle that situation?

22 A. If I came back and said I didn't think?  
23 I would have to be pretty darn sure of myself, the  
24 evidence that I would have a very good argument  
25 against their all voting against me.

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1 Q. The laws in Nevada do not require the  
2 death penalty in any case. When you get right  
3 down to it, the jury can do whatever the jury  
4 wants to do, and there's not a Category A, a  
5 Category B, a Category C, therefore we go to D and  
6 give them the death penalty. You can get to A, B,  
7 C and just think I don't think he deserves to die  
8 or he can spend the rest of his life in prison.  
9 It's a hard decision for any jury to make. You  
10 think you'd be able to stand up to 11 other  
11 jurors?

12 A. If I felt that strongly that I perceived  
13 something, that I got something out of the trial  
14 that they did.

15 Q. Or you just saw something different than  
16 they saw, interpreted it different?

17 A. Mm-hmm.

18 Q. You'd stick to your guns?

19 A. Mm-hmm.

20 Q. And likewise you would expect all the  
21 other jurors to have the same attitude as you  
22 would have even if you were on the side of the 11  
23 and there was one holding out, you would  
24 understand that?

25 A. Right.

1 Q. Ms. Basye, tell me about the classes  
2 that you took for medical law and ethics.

3 A. It all had to do with medical.

4 Q. Nothing to do with criminal?

5 A. No.

6 Q. But you've had courses in psychology and  
7 sociology?

8 A. That ran also.

9 Q. It had nothing to do with criminal  
10 psychology, criminal sociology, nothing like that?

11 A. No.

12 Q. When you talk about the death penalty,  
13 you indicate I believe it to be fair to the  
14 defendant but also fairness to the victims' family  
15 and the victims even if they die. We're going to  
16 hear testimony from members of the family of the  
17 two young men that were killed. Are you going to  
18 be able to fairly judge that?

19 A. Yes, sir.

20 Q. It's not going to be so emotional for  
21 you that -- you would still listen to all the  
22 evidence that both sides presented?

23 A. I would listen to all of it, yes, sir.

24 Q. We're trying to get through this as  
25 quickly as we can. I'm sure you all know that we

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1 have to ask these questions.

2 Ms. Salvador, I've already told you that  
3 Marlo is convicted of two murders, he's guilty of  
4 the crime. In your questionnaire you make it  
5 sound like the question of guilt or innocence is  
6 what's going to make you decide whether or not to  
7 impose the death penalty, and that's not a  
8 question. He's guilty. We have to accept that  
9 for purposes of these proceedings. Do you still  
10 want to hear other evidence in the case before you  
11 make up your mind?

12 A. Probably not, if he's convicted.

13 Q. You pretty much decided if you're guilty  
14 of committing two murders you're going to get the  
15 death penalty, and there's not much we can do to  
16 change that frame of mind?

17 A. No.

18 Q. That's not to say that -- nobody is  
19 criticizing your opinion, but if that's your  
20 opinion we need to know it.

21 A. That is my opinion.

22 Q. You're really not going to consider any  
23 of the other forms of punishment, are you?

24 A. No.

25 MR. SCHIECK: We'd challenge for cause,

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1 your Honor.  
2 THE COURT: Counsel, do you wish to  
3 inquire of Ms. Salvador.  
4 MR. SCHWARTZ: No, your Honor.  
5 THE COURT: Ms. Salvador, I'm somewhat  
6 confused by the question that Mr. Schieck asked  
7 you. Surely all of you would want to know what  
8 the facts of the case are because every murder is  
9 distinctly different from any other murder, and if  
10 that's what you meant in your questionnaire, that  
11 you'd want to know what the facts of the case are  
12 and that in and of itself would give you  
13 information as to what might be the appropriate  
14 penalty because otherwise I don't know what other  
15 information you get to decide which is the  
16 appropriate case for life with parole, which is  
17 the appropriate case for life without the  
18 possibility of parole, which is the appropriate  
19 case for a term of years and which is the  
20 appropriate case for the death penalty. So I'm  
21 confused in what information that you wanted to  
22 help you make up your mind what the penalty should  
23 be.  
24 THE JUROR: Well, I see it as he took  
25 two people's lives.

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1 THE COURT: So in your mind it doesn't  
2 make any difference what the facts are or the  
3 circumstances. If you're guilty of killing two  
4 people, then the only appropriate penalty is the  
5 death penalty?  
6 THE JUROR: Well, no, not necessarily,  
7 not the death penalty.  
8 THE COURT: Well, that's where we're at  
9 right now because. That's the impression that  
10 you've left Mr. Schieck is is that once you're  
11 convinced that Mr. Thomas killed two people  
12 there's only one appropriate penalty and that's  
13 the death penalty. That's kind of where we're at,  
14 so I think we've misunderstood you a little bit.  
15 So after you learn about all the facts in the case  
16 and what happened and how it was that these two  
17 people got killed, you are not going to be asked  
18 to decide whether he did it or not because another  
19 jury has already determined that. You're going to  
20 be asked to determine what the appropriate  
21 punishment is, and when you're asked what the  
22 appropriate punishment is would you be able to  
23 consider all of the available punishments which  
24 are those four?  
25 THE JUROR: I guess I would.

1 THE COURT: You guess you would? Well,  
2 you can't guess because we've got to be sure  
3 that -- we don't want you to tell us which one  
4 because we would hope for heaven's sake you  
5 haven't made up your mind which one because you  
6 haven't heard anything about the case yet, so the  
7 only question is is whether you could consider --  
8 if you had an appropriate case, could you consider  
9 giving a person life imprisonment with the  
10 possibility of parole which in this instance would  
11 be after 40 years. In the appropriate instance  
12 could you consider giving somebody life without  
13 the possibility of parole which means they're  
14 simply going to stay in jail until the day they  
15 die. Could you consider giving somebody a term of  
16 50 years plus an equal and consecutive 50 years  
17 which makes it a hundred years with the  
18 possibility of parole beginning after 40 years if  
19 you felt that that was the appropriate punishment?  
20 Could you consider it and could you consider the  
21 death penalty?  
22 THE JUROR: Yes, I could, all of the  
23 above.  
24 THE COURT: So you could consider all of  
25 them in an appropriate case?

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1 THE JUROR: Correct.  
2 THE COURT: And you've not made up your  
3 mind about what the punishment in this case should  
4 be?  
5 THE JUROR: No, I guess I'm being  
6 close-minded. I'm confused.  
7 THE COURT: Mr. Schieck, you may inquire  
8 because right now.  
9 MR. SCHIECK: I'm confused too.  
10 THE COURT: I was confused about her  
11 answer.  
12 MR. SCHIECK: Just so we're clear, your  
13 Honor, there's two counts of murder, and so the  
14 Court would decide whatever the sentence was,  
15 whether it was consecutive or concurrent.  
16 THE COURT: I'm talking about deadly  
17 weapon enhancement.  
18 MR. SCHIECK: There's two homicides.  
19 There could be four life sentences imposed  
20 potentially.  
21 THE COURT: I understand.  
22 BY MR. SCHIECK:  
23 Q. Do you have any questions for me? I  
24 didn't mean to confuse you.  
25 A. That's okay. No questions.

RA 000607

1 Q. You probably prefer not to be here.  
 2 A. Yeah.  
 3 Q. Well, you had your chance.  
 4 THE COURT: Your challenge for cause is  
 5 overruled, Mr. Schieck, unless she clarifies where  
 6 she's at.  
 7 BY MR. SCHIECK:  
 8 Q. Ms. McGrath, how are you this afternoon?  
 9 A. I'm all right.  
 10 Q. When Mr. Schwartz was talking to you, I  
 11 made a little note to myself that -- about the  
 12 death penalty. You're kind of on the fence?  
 13 A. I really think that it depends on the  
 14 circumstance. I would definitely want to hear  
 15 everything. I'm not for or against it. I will  
 16 want to know more than -- before I can make a  
 17 judgment and say I'm always for it or I'm always  
 18 against it.  
 19 Q. But it's a decision that you definitely  
 20 feel that you could make if you went back to  
 21 deliberate?  
 22 A. Yeah.  
 23 Q. Just so we're clear, you're not going to  
 24 get back there and say, you know what, I've been  
 25 thinking about this and there's no way I'm going

1 A. Religious grounds I'm not supposed to,  
 2 but if as part of our legal system I'm willing to  
 3 consider it.  
 4 Q. Because this question you said yes, you  
 5 would automatically vote for it. I'm getting the  
 6 feeling that's not the way you really feel about  
 7 the death penalty. You want to hear all the  
 8 evidence in the case and make up your own mind?  
 9 A. Sure.  
 10 Q. And the fact that there's two homicides  
 11 is not going to make you just automatically say  
 12 let's give him the death penalty?  
 13 A. Right.  
 14 Q. And when we ask about mitigating  
 15 circumstances, the question is would you consider  
 16 these mitigating circumstances and we listed a  
 17 couple of them out, and you said not sure. Would  
 18 it be fair to say that you would consider those  
 19 factors?  
 20 A. I think I would consider.  
 21 Q. You'd consider everything in the case?  
 22 A. Yes.  
 23 Q. Ms. Gillis, you have a lot of police  
 24 officers in your family?  
 25 A. Yes, sir.

1 to vote for the death penalty under any  
 2 circumstance.  
 3 A. If I felt it was deserved.  
 4 Q. But you'd want to hear all the evidence  
 5 that you could, and that includes mitigating  
 6 evidence?  
 7 A. Everything that I could hear, yeah.  
 8 Q. You think you could be fair and  
 9 impartial to both sides in the case?  
 10 A. Yes.  
 11 Q. Is it Elpidio. You were a late-minute  
 12 substitution here, so on the death penalty you  
 13 sort of circled I was in favor of it and then you  
 14 circled you would consider it. Are you kind of  
 15 leaning both ways on it also?  
 16 A. I think after I hear enough information.  
 17 Q. And to be fair to everybody that filled  
 18 out these questionnaires, lawyers wrote these  
 19 things up and sometimes they're confusing. One of  
 20 the questions was, Are your beliefs about the  
 21 death penalty such that you would automatically  
 22 vote for the death penalty regardless of the facts  
 23 or circumstances of the case, and you checked yes.  
 24 Did we confuse you on that? You're not  
 25 automatically voting for the death penalty?

1 Q. I'm just looking down the list. Your  
 2 children you've got one's a SWAT police officer?  
 3 A. Yes.  
 4 Q. Where's that at?  
 5 A. Henderson.  
 6 Q. He's here locally?  
 7 A. Yes.  
 8 Q. And you've got another son that's a  
 9 police detective?  
 10 A. Yes, sir.  
 11 Q. Is that here?  
 12 A. Yes, sir.  
 13 Q. And what kind of detective is he?  
 14 A. Robbery homicide.  
 15 Q. Do you ever talk to him about cases --  
 16 A. Occasionally.  
 17 Q. -- that he investigates? There are  
 18 going to be police officers that come in and  
 19 testify in this case. Are you going to give more  
 20 weight to the testimony of police officers because  
 21 you've got kids that are police officers?  
 22 A. I believe I can be fair.  
 23 Q. Do you think that police officer always  
 24 is correct in his testimony or that he's like  
 25 everyone else and can make a mistake?

1 A. I believe he's just like everybody else.  
 2 Q. The facts of the case really aren't at  
 3 issue here so that's not a big issue in this case,  
 4 but we expect a homicide detective to come in here  
 5 and testify concerning the facts of the case. Are  
 6 you going to view his testimony the same as every  
 7 other?  
 8 A. Yes, sir.  
 9 Q. His name is Dave Mesinar? Did your son  
 10 work with Dave Mesinar?  
 11 A. I don't know.  
 12 Q. He was the homicide detective on this  
 13 case back in 1996, so he'll be coming in to  
 14 testify. Are you going to feel that you have to  
 15 accept everything that he says as the gospel or  
 16 are you willing to take it for what it is?  
 17 A. I believe I can take it for what it is.  
 18 Q. Did you have someone else in law  
 19 enforcement? You have a brother-in-law that's a  
 20 judge.  
 21 A. Yes, sir.  
 22 Q. Is that here too?  
 23 A. It's in Riverside.  
 24 Q. Does he do criminal law at all, do you  
 25 know? Does he hear homicide cases?

1 forms of punishment?  
 2 A. No.  
 3 Q. Is it Ms. or Mrs. Mowen?  
 4 A. Ms.  
 5 Q. I notice the prosecutor didn't ask you  
 6 any questions, but from reading your questionnaire  
 7 it sounds like you believe the guy is guilty of  
 8 murder the death penalty is deserved?  
 9 A. No.  
 10 Q. You're willing to consider all forms of  
 11 punishment?  
 12 A. Yes.  
 13 Q. However, you indicate that you're not  
 14 going to consider anything in mitigation on your  
 15 questionnaire?  
 16 A. I would consider it. It wouldn't weigh  
 17 very much on my decision though.  
 18 Q. Why is that?  
 19 A. I don't believe that the way that you  
 20 were raised and how you were raised, where you  
 21 were raised had as much to do with your actions  
 22 that night.  
 23 Q. But it's something that you would want  
 24 to hear before you took a man away to execute  
 25 someone?

1 A. I believe he does.  
 2 Q. Do you talk to him much about that?  
 3 A. Occasionally. I have not spoken to him  
 4 about this case.  
 5 Q. He probably wouldn't have heard about  
 6 this case. And your son-in-law is in law  
 7 enforcement also?  
 8 A. Yes.  
 9 Q. Is that here in Metro also?  
 10 A. It's in Henderson.  
 11 Q. The detective's son, is that Metro?  
 12 A. Yes, sir.  
 13 Q. So you've got two in Henderson and one  
 14 in Metro?  
 15 A. Yes, sir.  
 16 Q. Anyone else in your family?  
 17 A. A nephew, but he's in California,  
 18 Riverside, California.  
 19 Q. Have you ever been in law enforcement?  
 20 A. No, sir.  
 21 Q. How do you feel about the death penalty?  
 22 A. I can consider it as one of the options.  
 23 Q. The fact that we tell you that Marlo is  
 24 guilty of two homicides is not going to change the  
 25 fact that you're going to consider all of the

1 A. Yes.  
 2 Q. And it's something you could consider?  
 3 A. Yes.  
 4 Q. It's something you're not going to give  
 5 a whole lot of weight to?  
 6 A. Exactly.  
 7 Q. So when you said not at all, you  
 8 probably should have said "somewhat" as opposed to  
 9 "not at all"?  
 10 A. Yes.  
 11 Q. It's always good to answer somewhat  
 12 because you've got wiggle room around. Has  
 13 anyone -- Question No. 24 you say that defendants  
 14 have too much leniency at their side rather than  
 15 the victims. What causes you to say that? Do you  
 16 have a case in mind or circumstance has happened  
 17 in your life, someone you knew?  
 18 A. Yes.  
 19 Q. What is that?  
 20 A. I am a victim of -- my brother was  
 21 murdered.  
 22 Q. Here in Las Vegas?  
 23 A. Yes.  
 24 Q. And was that a case involving more than  
 25 one death?

1 A. Yes.  
 2 Q. And was the defendant Dante Johnson?  
 3 A. Yes.  
 4 Q. Do you know that my office defended  
 5 Dante Johnson in the case?  
 6 A. Yes.  
 7 Q. Given that fact -- did you attend the  
 8 trial?  
 9 A. I've been to every single day of  
 10 Dante's.  
 11 Q. So you were here at his criminal hearing  
 12 not too long ago? You attended that?  
 13 A. Yes.  
 14 Q. The attorneys from my office were there?  
 15 A. Mm-hmm.  
 16 Q. Is there anything about that that causes  
 17 you some angst toward me or toward the office or  
 18 toward the system?  
 19 A. No, not at all.  
 20 Q. Given the fact that your brother was  
 21 killed, was murdered, do you think you can be fair  
 22 and sit on a case of this nature?  
 23 A. I've sat up all night thinking about it,  
 24 and I think that I can be fair. I would consider  
 25 everything.

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1 Q. You know that the victims' family is  
 2 going to come in and testify.  
 3 A. Yes.  
 4 Q. Did you testify or --  
 5 A. Yes, I did.  
 6 Q. You testified with victim impact  
 7 information?  
 8 A. I did.  
 9 Q. So you learned a lot of information  
 10 about Mr. Johnson?  
 11 A. Yes.  
 12 Q. The entire criminal justice system?  
 13 A. Yes.  
 14 Q. About prison, about Ely State Prison?  
 15 A. Yes.  
 16 Q. Mr. Johnson was on death row?  
 17 A. Yes.  
 18 Q. Given all of that. You can understand  
 19 my concern?  
 20 A. Oh, yeah. I'm surprised I'm still here.  
 21 THE COURT: That doesn't disqualify you  
 22 from being a juror.  
 23 THE JUROR: I know. I'm just surprised  
 24 that I've not been kicked off sooner.  
 25 / / /

1 BY MR. SCHIECK:  
 2 Q. There's two different things. There's  
 3 challenges for cause which means you can't be fair  
 4 and impartial or because of your unfortunate  
 5 situation with your brother is going to affect  
 6 your ability to fairly judge the defendant's  
 7 witnesses as opposed to the victim's witnesses  
 8 which obviously you're going to empathize with  
 9 victims' family when they come in here and testify  
 10 because you've been through it, and you know what  
 11 it's like and you're probably not going to be too  
 12 sympathetic for Mr. Thomas's case; is that fair?  
 13 A. No, that's not true. In a sense they  
 14 still lost part of their family too. I'm still  
 15 going to listen to their impact, listen to what  
 16 they have to say. In all honesty what happened to  
 17 me has nothing to do with this trial, and as a  
 18 potential juror I have to put that aside, and I  
 19 have to take my emotions and put them aside.  
 20 Q. And you think you can do that?  
 21 A. Yeah.  
 22 Q. You indicated in your questionnaire that  
 23 you wouldn't consider anything in mitigation.  
 24 A. I would what?  
 25 Q. That you would not consider mitigation

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1 of any type in this case.  
 2 A. Yes.  
 3 Q. So you wouldn't even consider mitigation  
 4 on behalf of Mr. Thomas?  
 5 A. At that time when I was reading it I  
 6 don't believe that I would. I've thought about  
 7 it, and I would consider it. And like I said  
 8 earlier, it's not going to weigh too much on me.  
 9 Q. You said you stayed up all night  
 10 thinking about this. It weighed on your mind that  
 11 heavily?  
 12 A. (Witness nods head affirmatively.)  
 13 Q. You read the questionnaire sometime ago  
 14 and filled it out. Had you thought about it  
 15 during that intervening period also?  
 16 A. Somewhat.  
 17 Q. What had you thought?  
 18 A. It's a tough decision, but I've seen --  
 19 I've gone through three different murder trials  
 20 with three different cases, and one was death  
 21 which I completely feel was necessary.  
 22 Q. We don't need to talk about specific  
 23 verdicts in different cases.  
 24 A. Some people deserve death. Some people  
 25 deserve life. I'm not going to go for one certain

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1 thing just because of.

2 Q. You're willing to consider all the forms  
3 of punishment?

4 A. Yes.

5 Q. Thank you very much. I'm sorry to have  
6 to bring that up.

7 Mrs. Brown, you pretty much indicate in  
8 your questionnaire that someone is found guilty of  
9 two first degree murders that the death penalty is  
10 probably the way you're going to vote?

11 A. No. I put down it seems like C and D  
12 would be what would be appropriate.

13 Q. C would consider it.

14 A. That's life I think.

15 Q. Why don't you tell me what you meant by  
16 that?

17 A. I believe -- I don't remember the  
18 numbers, but I know the question you're referring  
19 to. I believe I said I thought that since they'd  
20 already been convicted of two that it would  
21 probably be my opinion to say life imprisonment  
22 without parole or the death.

23 Q. And you're open to considering both of  
24 those options? You haven't made up your mind in  
25 this case?

1 Q. What have you thought? Have you gone  
2 over it in your mind could I or can't I, should I,  
3 would I?

4 A. Yeah, I certainly have.

5 Q. And you decided that?

6 A. Because just like other people have  
7 said, the weight of judging someone, well, it's  
8 not judging. He's already been judged, but any of  
9 it is like on your shoulders, you know, and that's  
10 pretty weighty.

11 Q. I understand.

12 Mrs. Heacock, you also pretty much  
13 indicated that you weren't going to consider  
14 mitigation. You said somewhat. Having heard me  
15 talk with everyone about mitigation, the  
16 difference between somewhat and not at all, you're  
17 going to want to hear that evidence and consider  
18 it before you make the decision?

19 A. Yes.

20 Q. And you say if you kill someone I  
21 believe you have to answer to, number one, God  
22 and, number two, laws of the land and that you  
23 favor the death penalty. But you're not saying  
24 death penalty in every case?

25 A. Oh, no.

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1 A. No, because all I have is just a little  
2 thing given, a brief summary of what it was. It  
3 wasn't like what actually happened or any  
4 background.

5 Q. You indicated that you wouldn't consider  
6 mitigation. You checked not at all.

7 A. I'm not really sure what mitigation  
8 means, to be honest with you.

9 Q. The question was you will be asked to  
10 consider mitigating circumstances such as the  
11 defendant's background, health, mental status,  
12 age, childhood experiences, education, et cetera.

13 A. Not particularly. I don't think that  
14 weighs that heavy because I've raised three  
15 children. Every one of them is different. Every  
16 one of them with a different personality. So a  
17 lot of that background stuff is the person  
18 themselves, not the way they were raised.

19 Q. But you'd want to know as much as you  
20 could know before you made a decision as hard as  
21 this one is going to be?

22 A. It's going to be very hard.

23 Q. Have you thought about this since you  
24 filled out the questionnaire?

25 A. Yes, I have.

1 Q. Is it Mrs. Wohlt? Your dad's a police  
2 officer?

3 A. Yes.

4 Q. Where?

5 A. Wisconsin.

6 Q. That's right. And is he a homicide  
7 police officer?

8 A. No, just patrol.

9 Q. You said in No. 37, Question 37 on the  
10 questionnaire, whether or not you were open to  
11 considering all forms of punishment depending on  
12 the evidence and you said not for two counts of  
13 murder. So you're not -- tell me what you think.  
14 I don't want to confuse any more people.

15 A. He's already been convicted. I think  
16 the mitigating circumstances don't really do much  
17 for me. I think death penalty is the only option.

18 Q. Is the only option?

19 A. Mm-hmm.

20 Q. And nothing I say is going to sway you  
21 from that?

22 A. No.

23 Q. Again, I'm not saying -- I'm not  
24 criticizing your opinion because there's a lot of  
25 people with different opinions.

RA 000611

1 MR. SCHIECK: We would challenge for  
2 cause, your Honor.  
3 THE COURT: Mr. Schwartz, do you wish to  
4 inquire of Ms. Wohlt again?  
5 BY MR. SCHWARTZ:  
6 Q. Under no circumstances would you  
7 consider life with the possibility of parole or a  
8 term of years not knowing anything about the case  
9 other than?  
10 A. Other than conviction, no, I don't think  
11 I could.  
12 Q. It doesn't matter to you what his  
13 background was or what other people might come  
14 here and testify?  
15 A. I could probably consider it, but I  
16 would already be more leaning towards death.  
17 Q. The question is can you consider all  
18 four forms. We're not locking you into one  
19 punishment. Would you consider all four?  
20 A. I don't think fairly I can.  
21 THE COURT: Thank you, Ms. Wohlt, for  
22 being willing to serve your community. You may be  
23 excused. Please report down to the jury  
24 commission office on the third floor tell them you  
25 can go out on anything other than a murder case.

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1 Our next juror in line is No. 784,  
2 Joseph Delia. Sir, would you come forward and  
3 take the seat vacated by Ms. Wohlt and, Counsel,  
4 Mr. Delia will go in as Juror No. 29.  
5 BY MR. SCHIECK:  
6 Q. Good afternoon. You've been sitting  
7 here listening to us talk for a while. Any  
8 questions you have or anything you think you could  
9 tell us based on the questions I've asked the  
10 other jurors?  
11 A. Not that I can think of.  
12 Q. And you would consider mitigation as  
13 we've explained?  
14 A. I would consider it, yeah.  
15 Q. You haven't made up your mind in this  
16 case based on anything that's been said?  
17 A. No. I don't know anything about it. I  
18 haven't made up my mind about anything.  
19 Q. Are you generally in favor of the death  
20 penalty?  
21 A. Under certain circumstances, yeah. It's  
22 not that I'm for or against either way.  
23 Q. You were in the military in law  
24 enforcement?  
25 A. There was a lot of law enforcement

1 involved, yes.  
2 Q. What type of stuff did you do?  
3 A. Well, I was in the Coast Guard, Smokeys  
4 of the sea. Everything from drunks to people  
5 stealing boats, drug running, all that sort of  
6 stuff.  
7 Q. Did you ever get involved with anybody  
8 that had committed a homicide that you  
9 investigated?  
10 A. No.  
11 Q. I assume that occasionally you had to go  
12 to court to testify?  
13 A. Yes.  
14 Q. And your next-door neighbor works for  
15 the North Las Vegas Police Department?  
16 A. Right.  
17 Q. Do you ever talk to him about his work  
18 or what's going on?  
19 A. Not specifics but a lot of general a  
20 little, yes.  
21 Q. Thank you very much. Is it Krasn?  
22 A. Yes.  
23 Q. And Mr. Schwartz had touched on this.  
24 You said you don't like the criminal justice  
25 system, and I just wondered if you could change

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1 the criminal justice system how would you change  
2 it?  
3 A. I would hold legal counsel when they  
4 walk out on a client I would like to see someone  
5 where a judge would hold them more accountable  
6 rather than throw out a case all together like  
7 they did to me.  
8 Q. Was that a civil case?  
9 A. Yes, it was a civil case. It was a  
10 derivative lawsuit which I brought against a  
11 corporation to dissolve.  
12 Q. There's a lot of people that don't like  
13 attorneys. We all know that. Are you going to  
14 hold anything against Mr. Albregts or I do  
15 something are you going to say that's not very  
16 tactful?  
17 A. Not at all.  
18 Q. You certainly wouldn't hold it against  
19 Mr. Thomas?  
20 A. Absolutely not.  
21 Q. In fact, you probably would feel sorry  
22 that he's got such lousy attorneys representing  
23 him.  
24 A. I wouldn't go that far. I just look at  
25 my own personal experience, you know, which is

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1 very bad. It really is. And I say in my case  
 2 justice was not served. Justice was ill that day.  
 3 Q. You're not talking about anything of a  
 4 criminal nature?  
 5 A. Absolutely not.  
 6 Q. Thank you very much.  
 7 THE COURT: Mr. Schieck and  
 8 Mr. Schwartz, would you approach for just a  
 9 minute.  
 10 (off-the-record bench conference.)  
 11 BY MR. SCHIECK:  
 12 Q. Mr. Redfield, the note I made is you're  
 13 not a big fan. I don't know what that means. Did  
 14 you say you weren't a big fan of the criminal  
 15 justice system?  
 16 A. No.  
 17 Q. You're not a big fan of the death  
 18 penalty?  
 19 A. I'm not a big fan of the death penalty.  
 20 Q. But in the right case you could consider  
 21 it?  
 22 A. Yes.  
 23 Q. You say, over all the death penalty lets  
 24 people off too easily without offering much  
 25 deterrent to us and to me and society at large.

1 sentenced.  
 2 Q. Did you attend the trial?  
 3 A. No, I didn't because I was too emotional  
 4 at the time.  
 5 Q. I don't want to get into too much detail  
 6 with you because I know it's an emotional thing.  
 7 Was she murdered by someone she knew, or was it a  
 8 drive-by?  
 9 A. It was a drunk driver. She got picked  
 10 up because her car broke down and then the drunk  
 11 driver killed her as she was crossing the street.  
 12 Q. So it was a automobile collision?  
 13 A. Yeah, but she was walking.  
 14 Q. Anything about that?  
 15 A. Just makes me biased more towards the  
 16 families that have to go through after the victims  
 17 die or suffer. It just makes me more biased  
 18 towards the families have gone through the loss.  
 19 Q. We're going to have some members of the  
 20 victims' family who will testify here. Do you  
 21 feel that you can judge their testimony fairly  
 22 with whatever testimony we put on?  
 23 A. I can do that. I can consider both  
 24 sides.  
 25 Q. Mr. Mason, looks to me like you're

1 Do you base that on any readings you're done or  
 2 studies that you've looked at?  
 3 A. You mean about the deterrent value of  
 4 it?  
 5 Q. Yes.  
 6 A. I wouldn't say I have any data for it.  
 7 It's more of an impression. My feeling about  
 8 letting people off easy it just seems to me, they  
 9 execute, then they're dead, that's it. But having  
 10 to live with being locked up for a long time.  
 11 Q. So you actually agree with one of the  
 12 other jurors who thought that perhaps life in  
 13 prison without parole is a worst punishment than  
 14 the death penalty?  
 15 A. Oh, I would think so.  
 16 Q. Thank you very much. Christina  
 17 Shaverdian, you had a friend that was murdered  
 18 recently?  
 19 A. Two years ago. We just celebrated her  
 20 anniversary a couple weeks ago, her death.  
 21 Q. Was that here in Clark County?  
 22 A. No, it was California.  
 23 Q. You said no one was ever caught for  
 24 that.  
 25 A. They were caught and they were

1 pretty much in favor of the death penalty?  
 2 A. Yes.  
 3 Q. I can't read exactly what you wrote, but  
 4 on the explanation you said I believe it is the  
 5 vigilant thing to do?  
 6 A. I couldn't tell you.  
 7 MR. SCHIECK: Can I show him his  
 8 questionnaire so he can read it?  
 9 THE COURT: Sure.  
 10 THE JUROR: It is the right thing to do.  
 11 BY MR. SCHIECK:  
 12 Q. I thought that was a V.  
 13 A. It's an R.  
 14 Q. Can you consider all the forms of  
 15 punishment or are you pretty much of the mind-set  
 16 that if someone commits two murders they deserve  
 17 the death penalty and nothing we say is going to  
 18 sway you?  
 19 A. It depends on the circumstances.  
 20 Q. What type of circumstances?  
 21 Circumstances of the crime?  
 22 A. The circumstances of the crime.  
 23 Q. What about the mitigation on behalf of  
 24 the defendant? Is that something you would  
 25 consider?

1 A. I don't think it would have a lot of  
2 weight with me.  
3 Q. But it's something that you would at  
4 least consider?  
5 A. I'll listen to it.  
6 Q. There's a difference between listening  
7 to it and considering.  
8 A. I don't feel it would have a lot of  
9 impact on me but, you know, I'm not ruling it out.  
10 Q. Mr. Chavez, we're wrapping it up real  
11 quick here. You indicate that you wouldn't  
12 consider mitigation at all. You said not at all  
13 would I consider mitigation in a penalty hearing.  
14 After hearing me talk for an hour-and-a-half or  
15 two hours it seems like that I've been up here, is  
16 mitigation something that you would consider or  
17 that you wouldn't consider?  
18 A. I believe in the death penalty. I would  
19 have to have more information based on if I hear  
20 more facts about the case just to apply the death  
21 penalty even more.  
22 Q. You indicated if someone takes a life or  
23 hurts a child they deserve the death penalty if  
24 they get convicted beyond a reasonable doubt.  
25 We've already told you that he's convicted of two

1 it's a deliberate murder is the way I put it as  
2 opposed to self-defense or circumstances where a  
3 person was defending himself or their family or  
4 whatever, that's a different circumstance to me.  
5 MR. SCHIECK: That's all the questions I  
6 have, your Honor.  
7 THE COURT: Mr. Schwartz, would you like  
8 to question those who have come up given  
9 challenges that you've not questioned?  
10 MR. SCHWARTZ: Just one question for  
11 Mr. Delia.  
12 BY MR. SCHWARTZ:  
13 Q. Mr. Schieck, I think, talked to you  
14 about briefly, but I didn't quite understand your  
15 response. What is your position with regard to  
16 the death penalty?  
17 A. I'm neither for nor against.  
18 Q. But if you were selected as a juror on  
19 this particular case and you were given four  
20 options and you felt the only appropriate sentence  
21 in this particular case was the imposition of the  
22 death penalty, could you come into this courtroom  
23 and sentence that defendant to death?  
24 A. If I felt it was appropriate?  
25 Q. Yes.

1 counts of murder. You don't even have to worry  
2 about making that decision. Given that fact, can  
3 you consider anything other than the death penalty  
4 in this case?  
5 A. Probably the only one I would consider  
6 is the life in prison without parole, but I'm  
7 leaning more towards the death penalty.  
8 Q. Without having heard anything other than  
9 there was two homicides?  
10 A. Like I said, I would like to be given  
11 more confirmation for my basis of what I believe.  
12 Q. You do want to hear all that  
13 information?  
14 A. Well, if it's going to be a lot of more  
15 confirmation of what I believe, then if I hear  
16 that then I'm going to rest my case on how I  
17 believe the death penalty would be applied.  
18 Q. Thank you. Mr. Rice, you indicate that  
19 you're in favor of the death penalty for  
20 premeditated and deliberate murders?  
21 A. Yes.  
22 Q. Are you of such a mind-set that you  
23 couldn't consider other possibilities?  
24 A. Depending on circumstances,  
25 circumstances of how he got to that point. It

1 A. Yes.  
2 MR. SCHWARTZ: Thank you very much.  
3 Thank you, Counsel.  
4 THE COURT: Counsel, you pass the juror  
5 panel for cause?  
6 MR. SCHIECK: Yes, Your Honor.  
7 THE COURT: And you pass the panel for  
8 cause?  
9 MR. SCHWARTZ: Yes, Your Honor.  
10 THE COURT: The 12 of you qualify and  
11 the 20 of you qualify to be jurors. Those who  
12 we've not talked to, thank you for being here all  
13 day. We're not going to need you in this panel.  
14 The other 32 of you all of whom are qualified if  
15 you will -- how long is it going to take you,  
16 Counsel, ten minutes?  
17 MR. SCHWARTZ: I'm alone.  
18 THE COURT: The attorneys have -- each  
19 side has the right to peremptorily challenge nine  
20 people, so if you start with 32 of you all of whom  
21 qualify to be jurors in this case and 32 minus  
22 nine and nine is 18 that leaves 14. That's what  
23 they're going to do now. We call it jury  
24 selection, but it's actually jury deselection  
25 because they can't say I want this one and the

1 other one says I want this one. It's not like  
 2 pick the ball team when we were kids and the  
 3 captains would each choose people to be on the  
 4 ball team. It's the opposite of that. It's  
 5 here's 32 people and then they each get to  
 6 peremptorily challenge nine, and those who are  
 7 left are on the ball team, and the ball team being  
 8 the jury panel. So you don't necessarily have to  
 9 sit through this because they just go back and  
 10 forth, so why don't you be back at five minutes to  
 11 five and we'll be able to tell you which of you  
 12 will go forward with us as our jurors and  
 13 alternate jurors in this case.

14 (Pause in proceedings.)

15 THE COURT: We're back in session on  
 16 jury selection on the State of Nevada versus Marlo  
 17 Thomas. The record will reflect the absence of  
 18 the jury. The attorneys have now exercised their  
 19 peremptory challenges, and before the Court brings  
 20 the panel back in and announces who will be with  
 21 us as our jury panel, does either party wish to  
 22 exercise Batson or JEB versus Alabama challenge by  
 23 the other party.

24 THE JUROR: For the record, there was no  
 25 African-Americans who made it in the panel. Other

1 number, please come forward and take a seat in the  
 2 14 seats in the jury box.  
 3 Ladies and gentlemen, you are the chosen  
 4 14. Please don't feel slighted or hurt back there  
 5 that you didn't get chosen. You all qualified to  
 6 be jurors on this case. You're not going to be  
 7 needed for the trial. Thank you for being with us  
 8 and filling out the questionnaire some weeks ago  
 9 and being here all day for jury selection. You  
 10 are now excused and you may leave. Those of you  
 11 out there are excused with the Court's thanks, and  
 12 the clerk is going to issue the juror oath to the  
 13 14 of you.

14 (Juror oath administered.)

15 THE COURT: Ladies and gentlemen, we're  
 16 going to be in recess now for the evening recess.  
 17 We'll be back in session at 10:00 tomorrow  
 18 morning. The only thing you have to do downstairs  
 19 on the third floor in the jury room is sometime  
 20 during the day validate your parking ticket. And  
 21 I'm not familiar with the new procedures here  
 22 because we just moved in. This is our third week  
 23 in this building, but I think some place there  
 24 there's a ticket validator. That's the only thing  
 25 you have to do there. You will come directly to

1 than the previous objections stated, no objection.

2 THE COURT: Mr. Schwartz.

3 MR. SCHWARTZ: Just for the record, your  
 4 Honor, one African-American I believe was on her  
 5 way until she discovered she was an ex-felon.

6 THE COURT: And the other one was the  
 7 very next one to come into the box if there had  
 8 been another challenge for cause. He was next in  
 9 line, the fellow that sat right behind you.

10 Jonathan, would you bring the panel in,  
 11 please.

12 Good evening, ladies and gentlemen. You  
 13 are the 32 who have been chosen, and at this time  
 14 I'm going to tell you which 14 of you will be  
 15 going forward as our jury and alternate juror.  
 16 Our alternate jurors will not know that they're  
 17 the alternates until the end of the trial when  
 18 only 12 go in and deliberate to reach a decision.  
 19 No. 496, Janet Cunningham; 512, Janet Jones; 532,  
 20 Don McIntosh; 544, Connie Kaczmarek; 570, Rosa  
 21 Belch; 585, Philip Adona; 660, Adele Bayse; 675,  
 22 Jill McGrath; 773, Ceasar Elpidio; 684, Loretta  
 23 Gillis; 784, Joseph Delia; 780, Christina  
 24 Shaverdian; 758, Herbert Rice; and 782, Tamara  
 25 Chiangi. If we called your name and read your

1 Department XV. We are in 12C. It's the  
 2 12th floor, Courtroom C. Be here at  
 3 10:00 tomorrow morning.

4 You are admonished not to converse  
 5 amongst yourselves or with anyone else on any  
 6 subject related to or read, watch or listen to any  
 7 report of or commentary on the trial or any person  
 8 connected with the trial by any medium of  
 9 information including, but not limited to,  
 10 television, radio, or newspapers, or form or  
 11 express any opinion on any subject connected with  
 12 the trial until the case is finally submitted to  
 13 you.

14 Those of you who are employed you need  
 15 to call the boss. You need to tell them you're  
 16 chosen as a juror in the Marlo Thomas case. You  
 17 can't tell them anything else about the case until  
 18 you are finished. You can't tell your family,  
 19 your friends anything else about the case other  
 20 than that you've been chosen as a criminal juror  
 21 and that your service will probably last this  
 22 week. You're excused. We'll see you back at  
 23 10:00 tomorrow morning. Thank you.

24 THE JUROR: Will we be here from 10 to  
 25 five each day?

1 THE COURT: Starting times differ, but  
2 generally it's ten to five daily. And the bailiff  
3 can answer any other questions that you might  
4 have.

5

-ooo-

6 ATTEST: Full, true and accurate transcript.

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MARY BETH COOK, CCR #268, RPR

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302

1 CASE NO. C136862

2 DEPT. NO. XV

3

4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6

7 THE STATE OF NEVADA,  
Plaintiff,

8 ) Reporter's Transcript  
9 vs. ) of  
10 ) Penalty Hearing

11 MARLO THOMAS,  
Defendant.

12

13

14 BEFORE THE HON. SALLY LOEHRER, DISTRICT COURT JUDGE

15 TUESDAY, NOVEMBER 1, 2005

16 3:05 P.M.

17

18 APPEARANCES:

19 For the State: Chris Owens, Esq.  
Dave Schwartz, Esq.  
Deputy District Attorneys

21 For the Defendant: Dave Schieck, Esq.  
Daniel Albregts, Esq.

22

23

24

25 Reported by: JoAnn Orduna, CCR No. 370

ORIGINAL

107

1 LAS VEGAS CLARK COUNTY, NV, TUES, NOV, 1, 2005

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10:00 A.M.

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PROCEEDINGS

SHIRLEY B. PARRAGUIRRE, CLERK  
BY *Shirley B. Parraguirre* DEPUTY

THE COURT: Good afternoon, ladies and

gentlemen. Welcome back to the continuation of the  
penalty hearing in the State of Nevada versus Marlo  
Thomas. The record will reflect the presence of the  
defendant, defendant's counsel and -- well, no, your  
attorneys aren't here. They were just here. What  
happened to them?

Jonathan, would you find Mr. Schieck  
and Mr. Albregts? The record will reflect the  
presence of the parties and counsel and all officers  
of the court and the full jury and alternate jurors.

When we recessed, the State had  
called four of its witnesses and the State may now  
call its next witness.

MR. OWENS: Your Honor, the witness we're  
gonna call next is a gentleman who's going to be  
reading the testimony from a prior proceeding from  
Kenya Hall. And that's Mr. Bret Keeler for the  
record.

THE COURT: All right. The person's name

110

1 is Bret what?

MR. OWENS: Keeler who's right here.

THE COURT: All right. Mr. Keeler, would  
you please take the stand and be sworn to read the  
testimony of Kenya Hall truly and accurately as  
reflected in the preliminary hearing transcript  
which occurred on -- what's the date on that thing?

THE WITNESS: Actually I don't have the  
front page here.

THE COURT: What's the date of the  
preliminary hearing?

MR. OWENS: The preliminary hearing?

MR. SCHIECK: June 27th.

MR. SCHWARTZ: June 27th, 19 --

THE COURT: '96?

MR. SCHWARTZ: '96.

THE COURT: All right. Please swear Mr.  
Keeler.

THE CLERK: Do you solemnly swear that  
you will truthfully and accurately transcribe from  
the deposition to the best of your abilities so help  
you God?

THE COURT: No, read.

THE CLERK: Oh.

THE COURT: Read, read. He's going to

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3 WITNESSES FOR THE STATE:

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1 read Kenya's testimony. Transcribe means --  
 2 THE CLERK: I don't have a card, judge.  
 3 THE COURT: Transcribe means you take  
 4 something off of something and type it up.  
 5 THE CLERK: You do solemnly swear that  
 6 you will truthfully and accurately read from the  
 7 transcript to the best your ability so help you God?  
 8 THE WITNESS: I do.  
 9 THE CLERK: Thank you.  
 10 THE COURT: All right. Ladies and  
 11 gentlemen, he is going to read Kenya Hall's  
 12 testimony which occurred at a preliminary hearing on  
 13 June 27th, 1996.  
 14 Mr. Owens, you will be asking the  
 15 questions.  
 16 MR. OWENS: Yes.  
 17 THE COURT: And Mr. Keeler, you will be  
 18 reading Mr. Hall's answers. You may proceed.  
 19 MR. OWENS: May we approach, Your Honor?  
 20 THE COURT: You may.  
 21 (Whereupon, an off-the-record  
 22 discussion at the bench was had.)  
 23 THE COURT: Some transcripts are in the  
 24 files and some transcripts aren't. All right.  
 25 Thank you.

1 MR. OWENS: For the record, Your Honor,  
 2 I'm going to be reading the part of the prosecutor  
 3 and Mr. Schieck's going to be reading the part of  
 4 the defense attorney.  
 5 THE COURT: All right. Thank you.  
 6 MR. OWENS: And we would --  
 7 THE COURT: You may proceed, gentlemen.  
 8 MR. OWENS: And we'd ask you to read the  
 9 judicial part of it.  
 10 (Whereupon, the preliminary  
 11 transcript of Kenya Hall was read  
 12 into the record as follows:)  
 13 BY MR. OWENS:  
 14 Q. And we're going to start, if you turn to  
 15 page 86, Mr. Keeler.  
 16 A. Okay.  
 17 Q. Where it says direct examination.  
 18 A. Yes.  
 19 Q. Okay. We'll go ahead and start there.  
 20 State your name, please.  
 21 A. Kenyon Hall.  
 22 Q. Perhaps, Your Honor, we could have the  
 23 microphone turned just a bit.  
 24 Can you spell your first name for  
 25 the record?

1 A. K-e-e-a. H-a-l-l.  
 2 Q. Mr. Hall, how old are you?  
 3 A. 15.  
 4 Q. What is your date of birth?  
 5 A. 2/19/81.  
 6 Q. Other than the temporary residence in the  
 7 Clark County Detention Center, where do you live,  
 8 sir?  
 9 A. Hawthorne, Nevada.  
 10 Q. How long have you lived in Hawthorne,  
 11 Nevada?  
 12 A. Eight years.  
 13 Q. Do you know the defendant in this action,  
 14 Marlo Thomas?  
 15 A. Yes.  
 16 Q. Do you see him in the courtroom?  
 17 A. Yes.  
 18 Q. Will you point to him and describe  
 19 something that he's wearing in court?  
 20 THE COURT: Just describe it if you will.  
 21 THE WITNESS: Blue shirt, blue pants.  
 22 THE COURT: Is he the person sitting next  
 23 to the lawyer with the tie right there in front of  
 24 you?  
 25 THE WITNESS: Yes.

1 THE COURT: The record will reflect that  
 2 he identified the defendant.  
 3 MR. OWENS: Thank you, Your Honor.  
 4 BY MR. OWENS:  
 5 Q. How is it that you know Marlo Thomas?  
 6 A. He's my sister's husband.  
 7 Q. What's your sister's name?  
 8 A. Angela Thomas.  
 9 Q. Mr. Hall, I want to direct your attention  
 10 to April the 14th of 1996, a Sunday. On that day,  
 11 did you travel from Hawthorne, Nevada to Las Vegas,  
 12 Nevada with your sister Angela Thomas?  
 13 A. Yes.  
 14 Q. And with the defendant Marlo Thomas?  
 15 A. Yes.  
 16 Q. Did you use an automobile?  
 17 A. Yes.  
 18 Q. Describe the car, please.  
 19 A. 1991 Mitsubishi Mirage.  
 20 Q. Whose car was it?  
 21 A. My mother's.  
 22 Q. What is your mother's name?  
 23 A. Denise Hall.  
 24 Q. You said Denise Hall?  
 25 A. Yes.



1 Q. Will you spell your mother's first name?  
 2 A. D-e-n-i-s-e.  
 3 Q. Who drove the car from Tonopah -- excuse  
 4 me. From Hawthorne to Las Vegas?  
 5 A. Angela Thomas.  
 6 Q. Angela Thomas your sister?  
 7 A. Yes.  
 8 Q. Was anyone else in the car? Did anyone  
 9 else make the trip with you besides the defendant  
 10 Mr. Thomas and your sister?  
 11 A. No.  
 12 Q. Did you get to Las Vegas that evening?  
 13 A. Yes.  
 14 Q. Sunday, April the 14th?  
 15 A. Yes.  
 16 Q. Where did you stay that night?  
 17 A. At his aunt's.  
 18 Q. You say at his aunt's. Who's?  
 19 A. Marlo.  
 20 Q. At Marlo's aunt's place?  
 21 A. Yes.  
 22 Q. Did you know his aunt prior to that  
 23 evening?  
 24 A. No.  
 25 Q. Do you remember about what time you got

1 up the next morning?  
 2 A. About 6 o'clock.  
 3 Q. After you had been up for a while, did  
 4 you go somewhere?  
 5 A. Yes.  
 6 Q. Who did you leave with?  
 7 A. Angela Thomas and Marlo Thomas.  
 8 Q. Did you ride in a car?  
 9 A. Yes.  
 10 Q. Which car?  
 11 A. A 1991 Mitsubishi Mirage.  
 12 Q. Your mother Denise Hall's car?  
 13 A. Yes.  
 14 Q. The same car that you had traveled from  
 15 Hawthorne to Las Vegas?  
 16 A. Yes.  
 17 Q. Who drove the car that Monday morning,  
 18 April the 15th, 1996?  
 19 A. Angela Thomas.  
 20 Q. Where did you go, Mr. Hall?  
 21 A. Huh?  
 22 Q. Where did you go?  
 23 A. To a gas station.  
 24 Q. Was gas put into the car?  
 25 A. Yes.

1 Q. After the gas station, did you go to the  
 2 location of the Lonestar Steak House?  
 3 A. Yes.  
 4 Q. Would you estimate about what time you  
 5 arrived there?  
 6 A. 7:30. I don't know.  
 7 Q. Perhaps 7:30 in the morning?  
 8 A. Yes.  
 9 Q. Is that simply an estimate by you?  
 10 A. Yes.  
 11 THE COURT: Gentlemen, excuse me. Will  
 12 you please approach? Excuse me.  
 13 (Whereupon, an off-the-record  
 14 discussion was had at the bench.)  
 15 THE COURT: We're gonna switch readers.  
 16 Instead of Mr. Owens asking questions that were  
 17 asked by the prosecution, Mr. Schwartz is gonna ask  
 18 questions by the prosecution because Mr. Owens has  
 19 to go to another department. And we are on line 25,  
 20 page 90, Mr. Schwartz.  
 21 (Whereupon, the preliminary  
 22 transcript of Kenya Hall was read  
 23 into the record as follows:)  
 24 BY MR. SCHWARTZ:  
 25 Q. Did you know why you had gone to the

1 Lonestar Steak House?  
 2 A. Sort of.  
 3 Q. What does "sort of" mean?  
 4 A. The reason I was told we were going there  
 5 wasn't the reason that we were there.  
 6 MR. SCHIECK: Your Honor, I'm sorry, but  
 7 I'm having trouble understanding a lot of what he  
 8 says. Can we ask him to move closer to the mic?  
 9 THE COURT: Speak up a little bit.  
 10 THE WITNESS: Because the reason we went  
 11 there wasn't the reason that I was told we was  
 12 there.  
 13 BY MR. SCHWARTZ:  
 14 Q. Let's start with what you were told.  
 15 Were you given a reason for going to the steak  
 16 house?  
 17 A. Yes.  
 18 Q. Who gave you a reason for going there  
 19 originally?  
 20 A. Marlo Thomas.  
 21 Q. The defendant Marlo Thomas?  
 22 A. Yes.  
 23 Q. What did he tell you at first was the  
 24 reason for going there?  
 25 A. To get his job back.

1 Q. To 'get his job back?

2 A. Yes.

3 Q. When you got to the location of the

4 Lonestar Steak House, is that still what you were

5 thinking?

6 A. Yeah.

7 Q. What was the answer?

8 A. Yes.

9 Q. What happened after you got to the area

10 where the restaurant was located?

11 A. What do you mean what happened?

12 Q. Was your sister Angela Thomas still

13 driving?

14 A. Yes.

15 Q. Did she pull into a shopping area?

16 A. Yes.

17 Q. Did she at some point stop the car?

18 A. Yes.

19 Q. Tell us what happened there.

20 A. After that?

21 Q. Yes.

22 A. Sat there for a while and we was just

23 watching.

24 Q. You were just watching you said?

25 A. Looking at the Lonestar and then my

1 sister was told to drive over to the store.

2 Q. Who told you to driver over to the store?

3 A. Marlo Thomas.

4 Q. Had there been any conversation while the

5 three of you sat in the car just watching the

6 restaurant?

7 A. Yes.

8 Q. What was the conversation that you

9 remember?

10 A. It was a conversation about the white van

11 that was driving around the parking lot and went to

12 the Lonestar and about money and stuff, about the

13 white van make a pick up.

14 Q. What did Mr. Thomas say about the white

15 van and money?

16 A. They do a pick up every day of the week

17 and they do a pick up every Monday morning for the

18 weekend and stuff.

19 Q. Are you saying that there actually was a

20 white van in the area of the restaurant?

21 A. Yes.

22 Q. Were you able to see where the white van

23 stopped if it stopped at all?

24 A. Yes.

25 Q. Where did it stop?

1 A. At Lonestar parking lot.

2 Q. Did you see people getting out?

3 A. Yes.

4 Q. Where did they go?

5 A. Into the Lonestar.

6 Q. Was there any comment at that time by

7 Marlo Thomas?

8 A. Not that I remember.

9 Q. Was there any further conversation?

10 A. No.

11 Q. Did you see people come out of the

12 restaurant?

13 A. Yes.

14 Q. The same people who had gone in from the

15 white van?

16 A. I believe so.

17 Q. You said that at some point Marlo Thomas

18 told your sister to go over to the store?

19 A. Yes.

20 Q. Did they drive the car to the store or do

21 they simply get out and walk to the store?

22 A. She drove the car over to the store.

23 Q. What happened when you got to the store?

24 A. She got on the phone.

25 Q. She got on the telephone?

1 A. Yes.

2 Q. Where was the telephone located in

3 relation to the store?

4 A. On the side of the store.

5 Q. Was she using the pay phone?

6 A. Yes.

7 Q. What happened while your sister was on

8 the telephone?

9 A. Me and Marlo got out.

10 Q. Why did you get out?

11 A. Huh?

12 Q. Why did you get out of the car?

13 A. Go into -- g into Lonestar.

14 Q. Whose idea was to go into the Lonestar?

15 A. Marlo's.

16 Q. Did you have any interest in going to the

17 Lonestar restaurant that morning?

18 A. Not for a reason.

19 Q. Was it your idea to go along with the

20 defendant and your sister to the Lonestar

21 restaurant?

22 A. Yes.

23 Q. You wanted to go with them?

24 A. Yes.

25 Q. Did you want to go into the restaurant?

1 A. Yes.  
 2 Q. Why?  
 3 A. I didn't want to sit in the car. There  
 4 was nothing else to do.  
 5 Q. So did you and Mr. Thomas proceed to go  
 6 inside of the restaurant?  
 7 A. I didn't hear you. I didn't understand.  
 8 Q. Well, you said that the two of you got  
 9 out of the -- got out and that was for the purpose  
 10 of going inside the Lonestar?  
 11 A. Yes.  
 12 Q. Did you go inside?  
 13 A. Yes.  
 14 Q. Was a weapon of any kind taken into the  
 15 restaurant?  
 16 A. Not when we first got out. Well, into  
 17 it, yes.  
 18 Q. You say not when you first got out?  
 19 A. Yes.  
 20 Q. What happened after you got out and  
 21 before you had actually entered the restaurant?  
 22 A. Yes, before. We got out of the car and  
 23 we started walking around the front of the Lonestar  
 24 and there was a delivery truck. And Marlo said  
 25 something, turn around, and we went back into -- we

1 went back to the car and he got in the car and he  
 2 started loading the gun and --  
 3 Q. You saw him get into the car and start to  
 4 load a gun?  
 5 A. Yes.  
 6 Q. Did you know that he had a gun that  
 7 morning?  
 8 A. I knew it was in the car.  
 9 Q. Where in the car was it?  
 10 A. The glove compartment.  
 11 Q. Whose gun was it?  
 12 A. Marlo's.  
 13 Q. Who?  
 14 A. Marlo's.  
 15 Q. Marlo the defendant?  
 16 A. Yes.  
 17 Q. What kind of gun was it?  
 18 A. A 32.  
 19 Q. Did you have a gun?  
 20 A. No.  
 21 Q. You say that you actually saw Marlo  
 22 Thomas loading the 32 gun?  
 23 A. Yes.  
 24 Q. Where was he when he was loading it?  
 25 A. In the car.

1 Q. Did [REDACTED] get completely back into the car?  
 2 A. No.  
 3 Q. Was he sitting on his seat?  
 4 A. He was sitting on the seat but his leg,  
 5 his leg was outside the door.  
 6 Q. Was the door opened?  
 7 A. Yes.  
 8 Q. You mentioned that a delivery truck had  
 9 pulled up and Marlo said something?  
 10 A. Yes.  
 11 Q. That was as the two of you were walking  
 12 toward the Lonestar?  
 13 A. Yes.  
 14 Q. What did he say to you when the delivery  
 15 truck pulled up?  
 16 A. He didn't say it to me.  
 17 Q. Excuse me?  
 18 A. He didn't say nothing to me. He said it  
 19 to himself.  
 20 Q. He said what?  
 21 A. He said it to himself.  
 22 Q. Did you -- could you tell what he said to  
 23 himself?  
 24 A. Yes.  
 25 Q. What did he say to himself?

1 A. Shit.  
 2 Q. Did you see what the delivery truck did  
 3 when it pulled up?  
 4 A. No. I just seen it there.  
 5 Q. But it was after it pulled up that he  
 6 went back to get -- he went back and you got, you  
 7 say got the gun out of the glove box?  
 8 A. Yes.  
 9 Q. Loaded the gun?  
 10 A. Huh?  
 11 Q. Loaded the gun?  
 12 A. Yes.  
 13 Q. With bullets?  
 14 A. Yes.  
 15 Q. What happened then?  
 16 A. He said come on, he went back to the  
 17 Lonestar. We went back to the Lonestar.  
 18 Q. Did you then go up to a door of the  
 19 Lonestar restaurant?  
 20 A. Yes.  
 21 Q. Do you remember what door you went to?  
 22 A. Yes.  
 23 Q. Which door?  
 24 A. The back door.  
 25 Q. Did Mr. Thomas still have the gun?

1 A. Yes.  
 2 Q. The 32 caliber gun that he had loaded?  
 3 A. Yes.  
 4 Q. Did you have a weapon of any kind?  
 5 A. No.  
 6 Q. Did you have a knife?  
 7 A. No.  
 8 Q. Did Mr. Thomas have a knife as far as you  
 9 knew?  
 10 A. No.  
 11 Q. At the point that you arrived at a back  
 12 door, did anyone knock or ring a door bell or say  
 13 anything?  
 14 A. No. We just sat there for a while.  
 15 Q. You just sat there for a while?  
 16 A. Yes.  
 17 Q. Up to that point had Mr. Thomas said  
 18 anything about his purpose for going to the Lonestar  
 19 that was different than trying to get his job back?  
 20 A. Not that day.  
 21 Q. Did you know at the time you waited  
 22 outside the door that there was going to be a  
 23 robbery?  
 24 A. Pretty much.  
 25 Q. Why did you pretty much know that there

1 was going to be a robbery?  
 2 A. Because he had the gun.  
 3 Q. Is that the only reason that you  
 4 concluded that?  
 5 A. Not really, no.  
 6 Q. Had Mr. Thomas said anything to you that  
 7 made you pretty sure there was going to be a  
 8 robbery?  
 9 A. No.  
 10 Q. So you say that you waited at the back  
 11 door?  
 12 A. Yes.  
 13 Q. Did someone come out?  
 14 A. Yes.  
 15 Q. Tell us what happened.  
 16 A. While we was sitting there, a guy walked  
 17 out and Marlo and him started talking.  
 18 Q. Do you know how long they talked?  
 19 A. No.  
 20 Q. Did you learn why this person had come  
 21 out of the restaurant?  
 22 A. Yes.  
 23 Q. Why?  
 24 A. He had slippers on. He didn't have work  
 25 shoes on.

1 Q. So he had to go change shoes?  
 2 A. Yes.  
 3 Q. Did the man say that he was coming back?  
 4 A. Yes.  
 5 Q. Did he say how long he was going to be?  
 6 A. About 20 minutes.  
 7 Q. Did this man then leave?  
 8 A. Yes.  
 9 Q. What did you and Marlo Thomas?  
 10 A. Just waited there and I think the guy  
 11 left. We went inside the Lonestar.  
 12 Q. How did you get inside?  
 13 A. Marlo knocked on the door and a guy  
 14 opened it for us.  
 15 Q. Someone opened it who was inside of the  
 16 Lonestar?  
 17 A. Yes.  
 18 Q. Did that guy let you and Marlo come  
 19 inside?  
 20 A. Yes.  
 21 Q. What happened after you got inside?  
 22 A. We walked past two guys cutting up meat  
 23 and we went back to the manager's office.  
 24 Q. What happened when you got back to the  
 25 manager's office?

1 A. Marlo looked around the dining area and  
 2 then came back, knocked on the manager's office  
 3 door -- the manager's office door and the manager  
 4 let us in.  
 5 Q. Did you know the manager?  
 6 A. No.  
 7 Q. Had you ever seen him before?  
 8 A. No.  
 9 Q. What happened after the manager let you  
 10 and Marlo come into the office?  
 11 A. Marlo took the phone from him, hung it up  
 12 and pulled out the gun.  
 13 Q. He pulled out which gun?  
 14 A. The 32.  
 15 Q. What did he do with the gun when he  
 16 pulled it out?  
 17 A. He just kept it in his hand.  
 18 Q. Did he point the barrel of the gun in any  
 19 particular direction?  
 20 A. He just pulled it out just like he was  
 21 careless with it, I mean.  
 22 Q. Did Marlo Thomas say anything to the  
 23 manager?  
 24 A. He told him to open the safe.  
 25 Q. Did he have the gun out when he said

1 that?

2 A. Yes.

3 Q. What did the manager do?

4 A. Opened the safe.

5 Q. You saw him do that?

6 A. Yes.

7 Q. After the manager began to open the safe,

8 what happened?

9 A. Marlo gave me the gun, said I'll be back.

10 Q. Did you take the gun?

11 A. Yes.

12 Q. Is this still the 38 caliber hand gun?

13 A. Yes.

14 Q. Did Marlo Thomas tell you what to do with

15 the gun?

16 A. No, not that I remember.

17 Q. He didn't give you any instructions?

18 A. He told me to get the money.

19 Q. Did you get the money?

20 A. Yes.

21 Q. Who did you get the money from?

22 A. The manager.

23 Q. Were you holding the gun at the time that

24 you got the money?

25 A. Yes.

1 Q. Was the gun placed into any type of

2 con -- was the gun placed into any type of

3 containers? What was the money -- I'm sorry.

4 A. What was the money in?

5 Q. Was the money placed by the manager into

6 any type of containers?

7 A. Bank of America bags.

8 Q. How many bags?

9 A. Three.

10 Q. Did you know how much money it was?

11 A. No.

12 Q. Are we talking about coins or bills or

13 both?

14 A. Bills.

15 Q. Did you see the bills that were being

16 taken by the manager from the safe and placed into

17 the bags?

18 A. Yes.

19 Q. What happened after he had put all the

20 money into the three bank bags?

21 A. Told him to sit in the chair.

22 Q. You told him to sit in the chair?

23 A. Yes.

24 Q. What was the color of the bank bags?

25 A. The bank bags?

1 Q. Yes.

2 A. Three. I mean blue.

3 Q. Blue?

4 A. Yes.

5 Q. When you told the manager to sit in the

6 chair, did he?

7 A. I don't know.

8 Q. Why don't you know?

9 A. Because I left.

10 Q. When you left, you mean you left the

11 office?

12 A. Yes.

13 Q. Did you have the three bank bags and the

14 money with you at that time?

15 A. Yes.

16 Q. Did you still have the gun?

17 A. Yes.

18 Q. Did you pay attention to what the manager

19 did after you left?

20 A. No.

21 Q. Did you try to harm the manager in any

22 way?

23 A. No.

24 Q. You knew the gun was loaded; is that

25 correct?

1 A. Yes.

2 Q. You had seen Marlo Thomas load the gun

3 out of the car?

4 A. Yes.

5 Q. Did you try to use the gun?

6 A. No.

7 Q. Besides holding it, did you attempt to

8 pull the trigger and shoot anyone inside the

9 Lonestar?

10 A. No.

11 Q. So when you left the office, where did

12 you go?

13 A. I walked out the door and I went towards

14 the back door.

15 Q. Toward the same door that you had come

16 in?

17 A. Yes.

18 Q. As you walked in the direct -- in that

19 direction, did you see or hear anyone?

20 A. Seen Marlo.

21 Q. Where was Marlo?

22 A. He was fighting with a guy.

23 Q. You said fighting with a guy?

24 A. Yes.

25 Q. Describe what you saw Marlo doing.

1 A. He was punching him.

2 Q. He what?

3 A. He was punching him.

4 Q. Where was the guy who was being punched

5 by Marlo?

6 A. On the floor.

7 Q. On his stomach or on his back?

8 A. On his back.

9 Q. And did you say punching him? Will you

10 demonstrate what you saw Marlo doing?

11 A. Swinging at him.

12 Q. Demonstrate to the court what you saw him

13 do.

14 THE COURT: I think that his hands are

15 handcuffed.

16 MR. SCHWARTZ: That's a good point, Your

17 Honor. I am sorry.

18 BY MR. SCHWARTZ:

19 Q. That was an unreasonable request. I

20 won't ask you to demonstrate. Did he raise his arms

21 in the air?

22 A. No, he was just swinging at him.

23 That's --

24 Q. Was he lying on top of this person or

25 just over him?

1 A. They was fighting I mean.

2 Q. Could you see the other person who's on

3 his back on the floor struggling, too?

4 A. Yes.

5 Q. Could you tell if Marlo Thomas had

6 anything in his hand?

7 A. No.

8 Q. How close were you?

9 A. I don't know.

10 Q. What did you do when you saw this

11 happening?

12 A. Called Marlo.

13 Q. What do you mean you called Marlo?

14 A. Called him, said his name.

15 Q. You called out his name?

16 A. Yes.

17 Q. When you did that, did he seem to hear

18 you?

19 A. Huh?

20 Q. When you called out his name, did he seem

21 to hear you?

22 A. Yes.

23 Q. What did he do?

24 A. He got up, the guy let him go, he got up.

25 Q. He got off the guy?

1 A. He wasn't really on him.

2 Q. What do you mean that he got up? Where

3 was he?

4 A. On the ground with the guy.

5 Q. So he got up. Did he come to where you

6 were?

7 A. Yes.

8 Q. Did you notice what the guy who was on

9 the floor did?

10 A. He kicked him and got up.

11 Q. Who kicked who?

12 A. The guy kicked Marlo.

13 Q. And then he got up?

14 A. Yes.

15 Q. Where did the guy go?

16 A. He ran through a hall.

17 Q. After he ran through the hall, did you

18 see where he went?

19 A. No.

20 Q. Could you tell if he was injured?

21 A. No.

22 Q. Did Marlo then walk over to where you

23 were?

24 A. Yes.

25 Q. Did you have a conversation with him?

1 A. Sort of.

2 Q. What was this sort of conversation that

3 you had?

4 A. It was he asked me where was the manager

5 at.

6 Q. And what did you say?

7 A. I don't know.

8 Q. Was that the truth?

9 A. Yes.

10 Q. Did you still have three bank bags and

11 the gun?

12 A. Yes.

13 Q. What did you do with the money and the

14 gun?

15 A. I took the money out -- I took the money

16 out to the car and I handed the gun to Marlo.

17 Q. Did Marlo asked you where the manager was

18 and you said I don't know, what did he say or?

19 A. He stuttered. I mean like he didn't know

20 which way to go.

21 Q. So what way did he go?

22 A. Towards the front.

23 Q. He walked towards the front?

24 A. Yes.

25 Q. Did you go on out?

1 A. Yes.

2 Q. Did you know at that point that any

3 persons had been seriously hurt?

4 A. No.

5 Q. Had you heard anyone while you were

6 inside the Lonestar restaurant?

7 A. No.

8 Q. You say that you still had the three bank

9 bags?

10 A. Yes.

11 Q. You carried them out to the car?

12 A. Yes.

13 Q. Did you leave by the same or a different

14 door than you came in?

15 A. Excuse me?

16 Q. Did you leave by the same door or a

17 different door than when you came in?

18 A. Same door that I came in.

19 Q. Did you go to the car?

20 A. Yes.

21 Q. Was your sister still over at the

22 telephone or was she in the car?

23 A. She was in the car.

24 Q. What happened when you got to the car?

25 A. Marlo came out, he had come out and --

1 sorry. Marlo came out, had come out already and he

2 was -- he was kind of mad. He was mad at himself.

3 And my sister was yelling what happened and

4 everything and Marlo told her.

5 Q. Your sister had wanted to know what had

6 happened?

7 A. Yes.

8 Q. What did Marlo tell her?

9 A. He said -- he said he had killed a guy.

10 Q. He said that he killed a guy?

11 A. Yes. And I let, I let the manager get

12 away.

13 Q. Who said that you let the manager get

14 away?

15 A. Marlo.

16 Q. Can you explain what he meant by that?

17 A. That I don't really know. He just said I

18 let him get away.

19 Q. Was Marlo Thomas angry at that time?

20 A. Not at me.

21 Q. Had he ever told you what he expected you

22 to do with -- to the manager?

23 A. He just, he thought -- he thought I was

24 going to do something.

25 Q. You said that he thought that you were

1 going to do what?

2 A. Shoot the manager.

3 Q. Did you have a chance to see the clothing

4 of Marlo Thomas when he came out to the car?

5 A. Excuse me?

6 Q. Did you see the clothing of Marlo Thomas

7 when he came out to the car?

8 A. I wasn't paying attention.

9 Q. You didn't notice any blood?

10 A. When we got back to his aunt's.

11 Q. Did you notice blood then?

12 A. Yes.

13 Q. What did you notice?

14 A. There was blood on his clothes.

15 Q. Where on his clothes?

16 A. On his shorts.

17 Q. You said that he told your sister he

18 killed a guy?

19 A. Yes.

20 Q. Did he say that he got in a fight with a

21 second guy?

22 A. Yes.

23 Q. Did he tell you what he used to kill the

24 guy and in the fight with the other guy?

25 A. Yes.

1 Q. What did he say that he used?

2 A. A knife.

3 Q. Did he tell you, you and your sister

4 where he got the knife?

5 A. No.

6 Q. Did he describe the knife?

7 A. No.

8 Q. Did you ever see the knife?

9 A. Yes.

10 Q. Where were you when you saw the knife?

11 A. In the car.

12 Q. In the car going back to his aunt's

13 place?

14 A. Yes.

15 Q. Who had the knife when you saw it?

16 A. Marlo.

17 Q. Was there blood on the knife?

18 A. Yes.

19 Q. On what part of the knife?

20 A. The blade.

21 Q. Describe the knife.

22 A. I only seen the blade.

23 Q. How long was the blade?

24 A. I can't remember.

25 Q. Were you ever given a knife?

1 A. Yes.  
 2 Q. When?  
 3 A. At his aunt's.  
 4 Q. After you got back there?  
 5 A. Yes.  
 6 Q. Were you told what to do with the knife?  
 7 A. Yes.  
 8 Q. By whom?  
 9 A. Marlo.  
 10 Q. What did Marlo tell you to do with the  
 11 knife?  
 12 A. To throw it as far as I can out in the  
 13 desert.  
 14 Q. Did you do that?  
 15 A. Yes.  
 16 Q. Do you know what happened to Marlo's  
 17 clothes, the shorts that had blood on them?  
 18 A. I didn't then.  
 19 Q. You say that you didn't then?  
 20 A. Yes.  
 21 Q. Did he ever tell you what happened to  
 22 them?  
 23 A. Yes.  
 24 Q. What did he tell you?  
 25 A. They were thrown out in the desert.

1 Q. You testified that while you were still  
 2 inside the Lonestar you gave the gun back to Marlo?  
 3 A. Yes.  
 4 Q. Do you know what happened to the gun?  
 5 A. Yes.  
 6 Q. What did happen to the gun?  
 7 A. It was thrown out in the desert with the  
 8 rest of the stuff.  
 9 Q. You said that you carried --  
 10 A. Wait. It was given to his aunt.  
 11 Q. Do you know what she did with it?  
 12 A. No.  
 13 Q. You said that you carried the three bank  
 14 bags out to the car?  
 15 A. Yes.  
 16 Q. What happened to the bags and the money?  
 17 A. I don't know what happened to the bags.  
 18 The money was put in a pillow case.  
 19 Q. Who put the money in the pillow case?  
 20 A. I don't know.  
 21 Q. How do you know that the money was placed  
 22 in the pillow case?  
 23 A. Because I seen it in the pillow case in  
 24 the living room.  
 25 Q. In whose living room?

1 A. His aunt's. Marlo's aunt's.  
 2 Q. Did there come a time when you and your  
 3 sister and Marlo left Las Vegas?  
 4 A. Yes.  
 5 Q. About when was that?  
 6 A. I don't know.  
 7 Q. How long after you had been to the  
 8 Lonestar was it?  
 9 A. I don't know. Probably about 9 o'clock.  
 10 Q. Probably about 9:00 you say?  
 11 A. Yes.  
 12 Q. Was there any conversation as you left  
 13 Las Vegas about the police or being spotted by  
 14 someone?  
 15 A. Excuse me?  
 16 Q. Was there any conversation about the  
 17 police as you left Las Vegas?  
 18 A. Said if -- not about the police. We  
 19 would probably be caught like within a week or  
 20 something.  
 21 Q. Did anyone attempt to drop down out of  
 22 sight as the car was leaving town?  
 23 A. Yes.  
 24 Q. Who?  
 25 A. Me.

1 Q. Who was driving the car?  
 2 A. Angela Thomas.  
 3 Q. Do you know where the money was at that  
 4 time?  
 5 A. Yes.  
 6 Q. Where?  
 7 A. In the trunk.  
 8 Q. Still in the pillow cases?  
 9 A. I believe so.  
 10 Q. I'm sorry. Still in the pillow case.  
 11 Who put the money in the trunk?  
 12 A. Angela.  
 13 Q. Did Marlo ever explain why he killed  
 14 someone?  
 15 A. Excuse me?  
 16 Q. You told us earlier that Marlo said that  
 17 he killed a guy and he got in a fight with a second  
 18 guy.  
 19 Did he explain why that happened?  
 20 A. Why it happened?  
 21 Q. Yes.  
 22 A. I don't know why it happened.  
 23 Q. Did he explain to you why it happened?  
 24 A. Why he killed the two guys?  
 25 Q. Yes.



1 A. No, he didn't.

2 Q. Did he ever say anything about being

3 concerned that there would -- wouldn't be any

4 witnesses?

5 A. Yes.

6 Q. When did he say that?

7 A. In the car he said if you commit a crime

8 you're not supposed to leave no witnesses.

9 Q. Thank you. I'll pass the witness.

10 THE COURT: Cross?

11 MR. SCHIECK: Thank you, Your Honor.

12 BY MR. SCHIECK:

13 Q. Kenya, when you were with Marlo from the

14 time that you drove from Hawthorne to the next

15 morning just outside the Lonestar, is that not

16 correct were you with him the whole time pretty

17 much?

18 A. Yes.

19 Q. During that time there was no discussion

20 about robbing any place or anyone, was there?

21 A. No.

22 Q. Let me take you to the moments when you

23 were just outside the Lonestar that morning. There

24 was no conversation about robbing the place or

25 anyone inside, was there?

1 A. No.

2 Q. As you were just about to walk into the

3 Lonestar, there was no conversation that you were

4 going to go in and rob the place or anyone in there,

5 was there?

6 A. No.

7 Q. After you had approach the manager's

8 office, who knocked on the door?

9 A. Marlo.

10 Q. The manager opens the door?

11 A. Yes.

12 Q. You characterized the weapon, the

13 production of the weapon as you used the words, I

14 believe I'm quoting you correct, it fell out?

15 A. What fell out?

16 Q. The gun. That's what I heard you say.

17 Am I right or wrong?

18 A. The gun fell out?

19 Q. The gun sort of fell out.

20 A. I didn't see him. I didn't see the gun

21 come out at all. I just seen it when -- I just seen

22 it when it was inside.

23 THE COURT: Outside.

24 THE WITNESS: Outside. Sorry.

25 BY MR. SCHIECK:

1 Q. So you didn't see who had the gun?

2 A. Marlo.

3 Q. And you never saw him pull the gun out?

4 A. No.

5 Q. You just -- at some point it was in his

6 hand?

7 A. Yes.

8 Q. How long were you in there before he

9 handed you the weapon?

10 A. I don't know.

11 Q. Can you estimate? Was it a few seconds,

12 five minutes?

13 A. Two, three minutes.

14 Q. He did tell you though that, if I heard

15 you correctly, that he wanted to go there that

16 morning to get his job back; is that not right?

17 A. Yes.

18 Q. As far as you knew, that's why he went

19 there?

20 A. Yes.

21 Q. You know, I noticed this morning that you

22 signed a plea agreement; is that not correct?

23 A. Yes.

24 Q. And you also signed a second document; is

25 that not correct?

1 A. Yes.

2 Q. And that document was an agreement to

3 testify; is that not correct?

4 A. Yes.

5 Q. You talked to your attorney about that?

6 A. Yes.

7 Q. Did you talk to anyone else?

8 A. About signing the agreement?

9 Q. Uh-huh.

10 A. No.

11 Q. Did you talk to your mother?

12 A. She gave me advice.

13 Q. This morning?

14 A. No.

15 Q. Your mother didn't meet with you just a

16 little while ago this afternoon?

17 A. Yes. That had nothing to do with me

18 signing.

19 Q. Did you meet with the detectives who

20 investigated this case regarding your testimony here

21 today?

22 A. About two-and-a-half months ago.

23 Q. Did you talk to them after that?

24 A. No. Yes. When they was -- when they was

25 taking my blood, but it had nothing to do with this.

1 Q. Did you talk to anybody from the district  
2 attorney's office about this agreement in your  
3 testimony today?

4 A. No.

5 Q. Have you ever talked to Mr. Harmon?

6 A. Yes.

7 Q. Who's the prosecutor in quotations. How  
8 many times have you talked to Mr. Harmon?

9 A. Once.

10 Q. And when was that time?

11 A. A couple of weeks ago.

12 Q. Can you tell us where it took place?

13 A. In his office.

14 Q. And what did you talk about?

15 A. The case.

16 Q. Who else was there with you other than  
17 Mr. Harmon?

18 A. My attorney.

19 Q. Was there anybody else there?

20 A. No.

21 Q. Watching you, personally watching you  
22 this morning, your attorney, and prior to this  
23 afternoon session, it appeared to me that you were  
24 having some difficulties this morning and this  
25 afternoon.

1 Do you feel that your arm has been  
2 twisted to give this testimony today. I want an  
3 honest answer.

4 A. Not really. Didn't no one make me do it.  
5 Not really. I mean, I had advice but didn't -- no  
6 one's forced me to.

7 Q. Outside of this plea bargain that you  
8 entered into where the State agreed to dismiss all  
9 charges, including the murder charges with the  
10 exception of the robbery, were there any other  
11 promises?

12 A. No.

13 Q. The police make you any promises?

14 A. No.

15 Q. The district attorney's office make you  
16 any promises?

17 A. No.

18 Q. You testified that you saw Marlo fighting  
19 with one of the two victims on the floor. Do you  
20 remember what that victim looked like?

21 A. No.

22 Q. Is it not your testimony also that while  
23 you were fighting you didn't see any weapons,  
24 specifically a knife?

25 A. No.

1 Q. That victim when Marlo pulled away got  
2 up?

3 A. Yes.

4 Q. And what did he do?

5 A. He ran through a hall.

6 Q. He disappeared from your sight?

7 A. Yes.

8 Q. Did you ever see him again?

9 A. No.

10 Q. About how much time between when Marlo  
11 left the manager's office and gave you the money  
12 until you next saw Marlo?

13 A. A couple of seconds, 30 seconds.

14 Q. About 30 seconds?

15 A. Yes.

16 Q. So it's your testimony that about 30  
17 seconds went by from the time Marlo handed you the  
18 gun, told you to get the money and when you next saw  
19 him which was when was fighting on the floor?

20 A. Yes.

21 Q. That's correct, that's correct?

22 A. Yes.

23 Q. Excuse me?

24 A. Excuse me. I didn't mean that was 30  
25 seconds. I didn't know how long that was.

1 Q. You don't know how long that was?

2 A. Between when he left the office and I  
3 came out of the office, I don't know how long that  
4 was.

5 Q. Well, could you -- was it a minute, was  
6 it five minutes?

7 A. I don't remember at all.

8 Q. Well, let's talk about what happened  
9 during the time you had the gun.

10 A. Yes.

11 Q. You held the gun on the manager, you  
12 pointed the gun at the manager, correct?

13 A. I don't remember.

14 Q. You had the gun, correct?

15 A. Yes, I had the gun.

16 Q. What was the manager doing while you had  
17 the gun on you?

18 A. Getting the money.

19 Q. Was the safe already opened when Marlo  
20 left?

21 A. No.

22 Q. Had the manager started to open the safe  
23 before Marlo left?

24 A. Yes.

25 Q. What kind of safe was it? Was it a key,

1 a combination?

2 A. Combination.

3 Q. When Marlo left, what was the manager  
4 doing right at that moment, do you recall?

5 A. Getting the money right when he left.  
6 Right when he left.

7 Q. Right when he left?

8 A. He was still twisting the thing.

9 Q. Okay. Now, it took him about how long  
10 after Marlo left to take the top off the safe?

11 A. The top?

12 Q. The lid to open the safe.

13 A. I don't know.

14 Q. A few seconds?

15 A. Yes.

16 Q. A couple of minutes?

17 A. A few seconds.

18 Q. A few seconds. And once the manager  
19 opened it up, what did he?

20 A. Started putting the money in the bank  
21 bags.

22 Q. And how long did it take him to put all  
23 the money in the bank bags?

24 A. About a minute, two minutes.

25 Q. The money was all -- the money was

1 located in the safe?

2 A. Yes.

3 Q. Did he have anywhere else? Did he go  
4 anywhere else? Did he go searching anywhere else  
5 for any money?

6 A. No.

7 Q. So his concentration was on the money in  
8 the safe?

9 A. Yes.

10 Q. He never opened any drawers to any desk  
11 or look anywhere else for money?

12 A. No.

13 Q. So now he's put all the money in the safe  
14 in the bank bag; is that correct?

15 A. Yes.

16 Q. Does he hand it to you?

17 A. Yes.

18 Q. And after he hands it to you, what  
19 happens?

20 A. Well, I told him to sit in the chair.

21 Q. What did you do?

22 A. Leave.

23 Q. So it doesn't sound like there was a  
24 whole lot of wasted effort here, a whole lot of time  
25 searching for things. He pretty much got into the

1 safe, got the money out, put it in the bank bags,  
2 handed it to you and out the door he went?

3 A. Yes.

4 Q. Did he have to search inside the safe for  
5 the money or was it right there?

6 A. It was right there.

7 Q. How much time do you think it took?

8 THE COURT: You continue on line 19.

9 MR. SCHIECK: Thank you, Your Honor.

10 BY MR. SCHIECK:

11 Q. You went outside through the door that  
12 you originally entered through; is that not correct?

13 A. That's correct.

14 Q. Was Marlo outside waiting for you when  
15 you walked out there?

16 A. No.

17 Q. When did you first see Marlo after you  
18 exited that door?

19 A. When I turned around.

20 Q. Turned around?

21 A. Yes.

22 Q. After exiting the door?

23 A. Yes.

24 Q. How many feet? Approximately how far did  
25 you go from that door to outside before you turned

1 around?

2 A. 20, 30 feet maybe.

3 Q. And you turned around?

4 A. Yes.

5 Q. And where was Marlo when you turned  
6 around?

7 A. Walking out the door.

8 Q. Did Marlo go straight to the car after  
9 you saw him walking out the back door?

10 A. Yes.

11 Q. Did you go straight to the car?

12 A. Yes.

13 Q. Did you get into the car?

14 A. Yes.

15 Q. Front or back?

16 A. Back.

17 Q. Where did Marlo go? Did he get in the  
18 car?

19 A. Front.

20 Q. Who was driving the car again?

21 A. Angela Thomas.

22 Q. The individual that you saw fighting on  
23 that floor with Marlo, have you ever seen him  
24 before?

25 A. No.

1 MR. SCHIECK: No further questions, Your  
2 Honor.  
3 THE COURT: Any redirect, counsel?  
4 MR. SCHWARTZ: Thank you, Your Honor.  
5 BY MR. SCHWARTZ:  
6 Q. Mr. Hall, when you were inside the  
7 restaurant, were you ever told by Marlo Thomas to  
8 shoot the manager of the restaurant?  
9 A. Not that I remember.  
10 Q. Do you remember what it was that you told  
11 the police when you talked to them?  
12 A. Yes.  
13 Q. Did you give a recorded statement to the  
14 police?  
15 A. Yes.  
16 MR. SCHWARTZ: May I approach the  
17 witness, Your Honor?  
18 THE COURT: Yes.  
19 BY MR. SCHWARTZ:  
20 Q. I'm showing you quite a lengthy  
21 statement, Mr. Hall. Have you had a chance to read  
22 this before?  
23 A. Not all of it.  
24 Q. Does it appear to be a copy of the  
25 statement you gave to a highway patrolman named

1 David Bailey?  
2 A. Yes.  
3 Q. Were you interviewed by Trooper Bailey in  
4 Hawthorne, Nevada?  
5 A. Yes.  
6 Q. Was this after your arrest?  
7 A. Yes.  
8 Q. I want to direct your attention to an  
9 answer at the bottom of the page.  
10 THE COURT: What page are you on,  
11 counsel?  
12 MR. SCHWARTZ: Unfortunately they are not  
13 numbered. It looks like, counsel and Your Honor,  
14 the fifth page.  
15 BY MR. SCHWARTZ:  
16 Q. Would you read that, Mr. Hall, to  
17 yourself over to the top of what is probably the  
18 sixth page.  
19 A. Start right here?  
20 Q. To yourself.  
21 A. To myself?  
22 Q. Yes. Just as quickly as you can. Is  
23 that an answer that you gave Trooper Bailey?  
24 A. Yes.  
25 Q. When he interviewed you?

1 A. Yes.  
2 Q. Was it a truthful answer?  
3 A. Truthful, yes. Could be.  
4 Q. You say yes, it could be?  
5 A. Yes. I don't remember right now.  
6 Q. Was this the answer -- and let's go right  
7 up to the previous answer. We walked over to the  
8 restaurant I guess.  
9 Is that what you said?  
10 A. Yes.  
11 Q. Question by Trooper Bailey. And did  
12 what? And did you answer, We went -- at first he  
13 knocked on the back door, well, and then this guy  
14 came out, right. And he was all talking to him and  
15 stuff. And he told the guy that he's supposed to be  
16 talking to some guy about his job. And then the guy  
17 left and he said he was coming back. And while I  
18 went in there, because the guy said let him in, he  
19 went in there and he asked where some guy was at, he  
20 went back there into an office and he knocked on the  
21 door and the guy let him in. And Marlo started  
22 shoving him up against the desk and I thought he was  
23 like choking him with the phone, but I think that  
24 the guy was on the phone and he was hanging it up.  
25 And then he told the guy to open the safe. He put

1 the gun in my hand and he told me to get the money  
2 and shoot the guy in the back of the head when I  
3 leave right there.  
4 A. Yes.  
5 Q. Is that what you said?  
6 A. It might have been, but I meant for him.  
7 I meant for him. When I said that, that's what he  
8 was telling me what I was supposed to do in the car.  
9 He didn't -- he didn't tell me to do that when I was  
10 in the office.  
11 Q. So you're saying that when Marlo Thomas  
12 told you that you were supposed to shoot the guy in  
13 the back of the head, that that wasn't inside the  
14 restaurant?  
15 A. It was in the car.  
16 Q. That happened out in the car after it  
17 happened?  
18 A. Yes.  
19 Q. And that's what you told -- that's what  
20 he told you then that you were supposed to have shot  
21 the guy in the back of the head?  
22 A. Yes.  
23 Q. Now previously you were asked if there  
24 was any conversation on the way to Hawthorne from  
25 Las Vegas. Did Mr. Thomas ever tell you what you

1 were to say or how you were to if you were  
2 arrested?

3 A. No. He just said the cops were going to  
4 interrogate me.

5 Q. Did he ever suggest in any way that you  
6 are to take the blame for what had happened?

7 A. No. He just said if I did, if I did then  
8 I would probably get out in 20 years.

9 Q. Because why? Because you were younger?

10 A. Yes. I'm a juvenile.

11 Q. Did Mr. Thomas in the car after this  
12 happened ever say how it occurred that one of the  
13 victims was in the rest room?

14 A. In the rest room?

15 Q. Yes.

16 A. He said, he told him he had to talk to  
17 him.

18 Q. When did he tell you that?

19 A. In the car.

20 Q. And so after it happened, he explained  
21 how one of the persons got back into the men's rest  
22 room?

23 A. Excuse me?

24 Q. After this happened in the car, was that  
25 when Mr. Thomas explained to you and your sister how

1 one of the victims got back into the men's rest  
2 room?

3 A. Yes.

4 Q. What did he say that he did to get the  
5 person to come back to the rest room?

6 A. He told him that he had to talk to him.

7 Q. Is that what you told Trooper Bailey?

8 A. I believe so.

9 Q. Do you see the answer? And I'm really  
10 sorry, counselor. The pages aren't numbered.

11 MR. SCHIECK: Well, Your Honor, just for  
12 some housekeeping purposes, I have many things from  
13 Mineral County and law enforcement agencies in that  
14 area, but I do not have a copy of this. If I could  
15 review this for a moment before I recross and then  
16 if the DA's office will provide me with a copy.

17 MR. SCHWARTZ: We certainly will, Your  
18 Honor. I thought that he had it.

19 MR. SCHIECK: I have gone through  
20 everything and I have everything else but I just  
21 don't have this.

22 THE COURT: That's fine.

23 BY MR. SCHWARTZ:

24 Q. Do you see the answer right here, Mr.  
25 Hall, near the bottom of this page which has been

1 paper clipped Does that appear to be the answer  
2 that you gave the highway patrolman?

3 A. Yes.

4 Q. Now, you mentioned up above that about  
5 how long Marlo was gone when he gave you the gun and  
6 you left?

7 A. Yes.

8 Q. Do you see this answer -- question, how  
9 long was Marlo gone, and did you answer for about --  
10 for about two to five minutes. I don't know. I  
11 don't know for exact. I don't know.

12 A. Yes.

13 Q. Now, do you see that after you got in the  
14 car there was a conversation?

15 A. Sort of. Not between me and Marlo.

16 Q. Was there this question by patrolman  
17 Bailey, where did he say that he had went and did  
18 you give this answer, He said he went in the back  
19 and he told -- he told one of the guys to come in  
20 the bathroom, he got to talk to him. He said he  
21 started stabbing him and then he started stabbing  
22 that guy and he said the guy dropped. Then he tried  
23 to call the other guy back there and the guy said  
24 that the guy didn't come back there. The guy came  
25 around the corner and Marlo started -- said he

1 stabbed him in his heart and that was it. And when  
2 I walked out, he was hitting him.

3 Is that what you said?

4 A. Yes.

5 Q. Is that the truth?

6 A. Yes. I believe so, yes.

7 Q. Is everything that you have told us this  
8 afternoon in court the truth to the best of your  
9 recollection?

10 A. Yes.

11 Q. You understand the importance of this  
12 hearing?

13 A. Yes.

14 Q. You understand it's important to you, to  
15 family members, to the State and to the defendant  
16 Mr. Thomas?

17 A. Yes.

18 MR. SCHWARTZ: Thank you. That's all,  
19 Your Honor. Do you want --

20 THE COURT: Recross?

21 BY MR. SCHIECK:

22 Q. Kenya, you made that statement to a  
23 Trooper Bailey from Nevada Highway Patrol; is that  
24 not correct?

25 A. Which statement?

1 Q. The statement that Mr. Harmon just went  
2 through with you.  
3 A. Yes.  
4 Q. Okay. Do you remember who was there at  
5 the time?  
6 A. No.  
7 Q. Was there just Trooper Bailey?  
8 A. No, there was -- I remember some of the  
9 people, but I don't remember all of them.  
10 Q. Okay. Well, about how many people were  
11 there?  
12 A. 10.  
13 Q. About 10 people?  
14 A. Yes.  
15 Q. A little scary, wasn't it?  
16 A. At first.  
17 Q. All 10 of them have uniforms on?  
18 A. One of them was a probation officer.  
19 Couple of them had uniforms. The other ones were  
20 wearing street clothes, badges.  
21 Q. Did they have badges?  
22 A. Yes.  
23 Q. Guns?  
24 A. I can't remember.  
25 Q. During this interview, Kenya, didn't

1 anybody suggest to you that any of these answers  
2 that you gave, in particular about shooting the  
3 manager in the back of the head?  
4 A. Did anyone suggest that I -- that I give  
5 them to them? No. They said --  
6 Q. Anybody force you to give these answers?  
7 A. No. Just back in Hawthorne if I said  
8 that and if I had said different the guys would  
9 think that I would be lying so.  
10 Q. Why do you say that?  
11 A. Huh?  
12 Q. Why did you say --  
13 A. Back in Hawthorne, because I was trying  
14 to tell them what was said in Hawthorne. I was  
15 getting mixed up.  
16 Q. Was this the truth?  
17 A. That's what was said in the car. It  
18 wasn't said in the office.  
19 Q. You didn't get mixed up?  
20 A. What?  
21 Q. You didn't get mixed up while they were  
22 asking you all these questions?  
23 A. Maybe.  
24 Q. Do you feel like they confused you a  
25 little bit?

1 A. Sometimes.  
2 Q. Did you feel like there were certain  
3 answers that they wanted you to give, so you gave  
4 those answers to them?  
5 A. I don't know. Never thought of it.  
6 Q. Well, I'm asking you now. In your mind  
7 do you think at the time that they were looking for  
8 certain answers and pushing you to give them and you  
9 just gave them to them at that time.  
10 MR. SCHWARTZ: I object to the form of  
11 that question. Now it's irrelevant.  
12 THE COURT: Sustained.  
13 MR. SCHIECK: No further questions, Your  
14 Honor.  
15 BY MR. SCHWARTZ:  
16 Q. He said that he never thought of it up  
17 until now.  
18 THE COURT: Sustained.  
19 MR. SCHIECK: No further questions.  
20 MR. SCHWARTZ: Nothing further.  
21 THE COURT: That concludes the testimony  
22 of Kenya Hall from the preliminary hearing. Since  
23 Kenya Hall is not here, you can't ask him any  
24 questions.  
25 Thank you, sir, for reading the

1 transcript. And the transcript will be lodged as  
2 exhibit -- what was it lodged as? Was it marked?  
3 Does anybody have the clerk's copy?  
4 MR. OWENS: No, I don't think it's been  
5 marked.  
6 THE CLERK: Then it would be 110.  
7 THE COURT: Well, if it was read to the  
8 jury, which this was at the trial, then it needs to  
9 have been marked as something.  
10 THE CLERK: No, Your Honor.  
11 THE COURT: All right. It needs to be  
12 marked for identification purposes. Mr. Schieck,  
13 this is your copy. The State needs to lodge one  
14 copy with the clerk and it will be marked next in  
15 order for identification purposes.  
16 THE CLERK: It will be 110, Your Honor.  
17 THE COURT: It will be admitted. Counsel  
18 for the State, you may call your next witness.  
19 MR. OWENS: The State calls Dave Mesinar.  
20 THE COURT: Thank you.  
21 THE CLERK: Come forward, please, sir,  
22 and take the witness stand. Remain standing and  
23 raise your right hand.  
24 (Whereupon, Dave Mesinar was duly  
25 sworn to tell the truth, the whole

1 truth and nothing but the truth.)  
 2 THE CLERK: Thank you. You may be  
 3 seated. Please state your name and spell your first  
 4 and last name for the record.

5 THE WITNESS: David, D-a-v-i-d. Mesinar.  
 6 M-e-s-i-n-a-r.

8 DIRECT EXAMINATION

9 BY MR. OWENS:

10 Q. You're recently retired from the Las  
 11 Vegas Metropolitan Police Department?

12 A. Yes. Approximately two years.

13 Q. How long did you work for Metro?

14 A. 31 years.

15 Q. And the last part of your tenure there  
 16 was in the homicide division?

17 A. Yes. The last 11 years was homicide.

18 Q. And what did you do in the homicide  
 19 division?

20 A. Investigated murders. We also  
 21 investigated officer involved shootings, any  
 22 suspicious deaths.

23 Q. You were one of the investigators on the  
 24 double murder investigation of the Lonestar Steak  
 25 House on April 15th of 1996?

1 A. Yes, I was.

2 Q. Were you the primarily investigator?

3 A. No, my partner Detective Michael Bryant  
 4 was.

5 Q. And you worked the case together?

6 A. Yes.

7 Q. And as a consequence of that involvement,  
 8 you were summoned out to that location in the early  
 9 morning hours of that date, the 15th of April?

10 A. Yes.

11 Q. On your way there you stopped by the  
 12 University Medical Center?

13 A. I did, yes.

14 Q. What was your purpose in going there?

15 A. I was told that one of the victims had  
 16 been transported there for medical treatment. I was  
 17 to go there to try and obtain a condition and a  
 18 statement from him.

19 Q. Did you go there and see one of the  
 20 victims?

21 A. Yes.

22 Q. Who was that?

23 A. That was Matthew Gianakis.

24 Q. And what was the situation with Mr.  
 25 Gianakis when you got there?

1 A. The trauma unit was working on Mr.  
 2 Gianakis. They had his chest cavity opened and were  
 3 working on his heart.

4 Q. What did you do?

5 A. I stayed out of the way and then  
 6 eventually I was told that he was pronounced dead.

7 Q. What did you do at the hospital at that  
 8 point when you learned that he was deceased?

9 A. I notified my fellow investigators at the  
 10 crime scene and I waited for the coroner to come  
 11 take custody of the body and I then went out to the  
 12 Lonestar Steak House.

13 Q. And that was over at 3131 Rainbow?

14 A. North Rainbow, yes.

15 Q. North Rainbow. That's in Clark County,  
 16 Nevada?

17 A. Yes.

18 Q. What did you find when you got to the  
 19 scene?

20 A. When I got to the scene, I had discovered  
 21 talking to my partner and my sergeant that there was  
 22 an additional victim located in one of the rest  
 23 rooms and that it was also the scene of an armed  
 24 robbery.

25 Q. And there was a processing of the scene

1 that occurred there?

2 A. Yes, there was.

3 Q. And when you say "processing of the  
 4 scene", what does that mean?

5 A. It's testing for fingerprints, collecting  
 6 evidence, blood samples and photographing the crime  
 7 scenes.

8 Q. And that's done by the crime scene  
 9 analyst?

10 A. Yes, it is.

11 Q. And is that supervised to some extent by  
 12 the homicide detectives such as yourself?

13 A. We work in conjunction with them. There  
 14 is a -- there was a crime scene supervisor on scene  
 15 and we work hand-in-hand with them.

16 Q. And since you were working hand-in-hand  
 17 with them, you became familiar with the evidence  
 18 that was located there?

19 A. Yes.

20 Q. And with the situation concerning that  
 21 crime scene?

22 A. Yes.

23 Q. Court's indulgence for just a moment.

24 Okay. I want to show you a series of photographs  
 25 that are in evidence in this case being I believe

1 for the record Exhibits 1 and 2 the aerials, and  
2 Exhibits 7 through 27, 28 through 31, 61 through 65,  
3 67 through 72, have you take a look at those.

4 And if you can just kind of flip  
5 through those and tell me if you're familiar with  
6 what's shown in those particular photographs?

7 A. Yes, sir. These are the photos taken --

8 THE COURT: I think that we didn't give  
9 you all the ones that Mr. Owens announced he was  
10 gonna show you. So the clerk's still reading  
11 through the stack for some more.

12 THE WITNESS: Okay. These are crime  
13 scene photographs taken not only at the Lonestar and  
14 the Rebel Gas Station located at Rainbow and  
15 Cheyenne, they're also photographs of a vehicle that  
16 we processed in Hawthorne, Nevada as well as some  
17 photographs of items in the desert behind an address  
18 at 2505 Cartier.

19 BY MR. OWENS:

20 Q. So you had three different scenes that  
21 you were involved in?

22 A. Yes.

23 Q. Besides the UMC that you went to first?

24 A. Yes.

25 Q. You had the Lonestar, you had an address

1 on Cartier?

2 A. Yes.

3 Q. And the third scene would have been a  
4 vehicle?

5 A. In Hawthorne, Nevada, yes.

6 Q. In Hawthorne, Nevada. Okay. Do all  
7 those photographs truly show the scenes that you  
8 were concerned with in your investigation of this  
9 case?

10 A. Yes, sir.

11 Q. Now, in addition in preparation for your  
12 testimony today, you brought some additional  
13 photographs from those areas; is that correct?

14 A. Yes.

15 Q. I want to hand you a series of  
16 photographs, the eight photographs that are stapled  
17 together as one proposed exhibit, No. 109 for  
18 identification, have you take a look at those as a  
19 stack and tell me if those are the photographs that  
20 you brought with you to court today?

21 A. Yes, these are the photos that I prepared  
22 today.

23 Q. And do those fairly and accurately show  
24 the scenes that you were involved in during your  
25 investigation?

1 A. Yes, they do.

2 MR. OWENS: Your Honor, I'd move for the  
3 admission of proposed Exhibit No. 109 being that  
4 series of photographs.

5 THE COURT: Counsel, do you have copies  
6 of 109, the eight photos that are stapled together?

7 MR. SCHIECK: We've seen them, Your  
8 Honor, yes.

9 THE COURT: And you have no objection?

10 MR. SCHIECK: No, Your Honor. Can I ask  
11 him a question though?

12 THE COURT: You may.

13 BY MR. SCHIECK:

14 Q. Are those photographs covered by the  
15 other ones that were already admitted or --

16 A. I do see one, one duplicate, but there  
17 are none of these in with this.

18 MR. SCHIECK: We have no objection, Your  
19 Honor.

20 THE COURT: All right. 109 will be  
21 admitted with the caveat that perhaps one of the  
22 photos in 109 has also been given a separate photo  
23 number.

24 MR. OWENS: All right. Thank you.

25 BY MR. OWENS:

1 Q. Now, in preparation for your testimony  
2 today, you prepared a power point presentation?

3 A. I did, yes.

4 Q. And you did that using the photographs  
5 that you've just identified?

6 A. Yes. And then other photographs that  
7 were already in evidence, yes.

8 Q. Okay. So all the photographs that are in  
9 evidence now at this point in time?

10 A. Yes.

11 Q. And would it assist you in going through  
12 the investigation to utilize this power point that  
13 you prepared?

14 A. Yes.

15 MR. OWENS: Your Honor, if we can push  
16 the button for right law, we'll see if this comes  
17 up.

18 THE COURT: All right. First I have to  
19 push this one and then I have to push this one and  
20 then I have to push this --

21 MR. OWENS: Woe, it's working. Let's not  
22 push anything else. Okay. Thank you. Very good.

23 BY MR. OWENS:

24 Q. All right. Well, what I'm gonna do is I  
25 have a controller that I'm gonna go ahead and hand



1 that 'to you.'

2 THE COURT: Ladies and gentlemen, can you  
3 see that or does it need to be turned a little?

4 MR. OWENS: Pull it out a little. Okay.

5 BY MR. OWENS:

6 Q. All right. And if it helps you, I still  
7 want to call you detective, but Mr. Mesinar -- and  
8 you're still working part-time for the police  
9 department?

10 A. Yes, I am. I work 19 hours a week in the  
11 homicide section. I work on cold cases.

12 Q. All right. If it would assist you to get  
13 down closer to the power point there, feel free to  
14 do so as we go through this.

15 A. Okay.

16 Q. Why don't you go ahead. We've got one  
17 slide up here, this is an identifying slide --

18 A. I'm assuming that what's on there is what  
19 I'm seeing there?

20 Q. Yes.

21 THE COURT: How come mine doesn't show  
22 it? Does yours show it?

23 MR. ALBREGTS: Yes, judge.

24 THE COURT: And hers doesn't either.

25 Okay. It's up here now. It's good.

1 MR. OWENS: Have you got it there?

2 THE COURT: No. But I can see it up  
3 there.

4 MR. OWENS: I think it's under your  
5 permissions.

6 THE COURT: It's under what?

7 MR. OWENS: It's under your permissions.

8 You have to give yourself permission to see it.

9 BY MR. OWENS:

10 Q. All right.

11 A. If I might step down?

12 Q. Yeah, sure.

13 A. Myself, Sergeant Manning who was our  
14 scene supervisor, Detective Bryant and myself were  
15 the primary investigators on this incident, and  
16 these were our designated responsibilities.

17 Sergeant Manning was the scene  
18 supervisor. Detective Mike Bryant was the crime  
19 scene investigation who he was in charge of that,  
20 and I was in charge of witness and suspect  
21 interviews.

22 To detail the calls as they came  
23 out, at 8:19 in the morning on the 15th of April  
24 1996, there's a call from the Rebel Station  
25 indicating that a man had walked in to the store and

1 he was stabbed and he was holding his chest.

2 Two minutes later the first officer  
3 arrives at the scene and the stabbing victim who was  
4 later I think turns out to be Matthew Gianakis is  
5 transported to the University Medical Center Trauma  
6 Unit.

7 7 minutes later we have confirmed  
8 that there was a robbery from a phone call from Mr.  
9 Vince Oddo who is the manager, and the name of Marlo  
10 Thomas as a possible suspect was given out.

11 At 9:50, Matthew Gianakis was  
12 pronounced dead by Dr. Tate at UMC Trauma. This is  
13 when our murder investigation duck tails into with a  
14 homicide inves -- or a robbery investigation.

15 This is a photograph of Matthew  
16 Gianakis. As he's walking into the Rebel Station,  
17 you can see he's holding his hand as bent at the  
18 elbow, his right arm. And on his back we have what  
19 turns out to be the location of the stab wound.  
20 This is actually him bleeding on his shirt.

21 Q. Now, how did we obtain this photo of the  
22 investigation?

23 A. This photo is surveillance photo obtained  
24 from the Rebel Gas Station shortly after the crime  
25 scene investigation started.

1 And this is an aerial view, I think  
2 you've already seen it of, this is Rainbow Boulevard  
3 and Cheyenne is over here and we have the Rebel Gas  
4 Station here and the Lonestar Steak House there.

5 During the crime scene  
6 investigation, shortly after the scene's secured, we  
7 find a second victim that turns out to be Carl  
8 Dixon. He's deceased in the men's rest room.

9 Store manager, Mr. Oddo, and it's  
10 stated that the former employee, Mr. Marlo Thomas,  
11 and a young black male had used a firearm to commit  
12 a robbery at the Lonestar, and they had taken over  
13 \$5,000 in U.S. currency during the robbery.

14 Here we have our victims in life.  
15 Here's Matthew Gianakis who is 21 at the time and  
16 Carl Dixon who is 23. And their status on the 15th  
17 of April was deceased and this -- and these are  
18 photos from the coroners office of both young  
19 gentlemen.

20 Our suspect was developed as Marlo  
21 Thomas. He was a former employee of the Lonestar  
22 Steak House. His associate at the time was 15 year  
23 old Kenya Hall. He's a friend of Marlo Thomas and a  
24 relative of Marlo's girlfriend.

25 Q. Let me ask you this: You said Marlo's

1 girlfriend. Who are you referring to?

2 A. Her name is Angela Love.

3 Q. L-o-v-e?

4 A. Yes.

5 Q. And was she his girlfriend, his wife or  
6 did you ever determine that relationship?

7 A. I'm saying at the time that she was a  
8 girlfriend. She purported to be a wife but we were  
9 never able to confirm that.

10 Q. Okay. And her brother then was Kenya  
11 Hall?

12 A. Kenya Hall, yes.

13 Q. All right.

14 A. So we have a -- during the investigation  
15 we were able to establish that Steven Hemmes who's  
16 an employee of the steak house was leaving to change  
17 his an article of clothing, his shoes. He sees  
18 Marlo Thomas and another male, and they know Marlo  
19 because he was a former employee, walking through  
20 the parking lot.

21 Mr. Thomas asked Mr. Hemmes who was  
22 on duty at the time as the manager and he was told  
23 the name Vince, meaning Mr. Vince Oddo. He asked  
24 Hemmes how long he'd been gone to which he stated  
25 about 20 minutes. And at that time both Thomas and

1 hall enter the rear of the restaurant. This is a  
2 crime scene diagram that he have. It's a little  
3 hard to see on the monitor, but --

4 Q. We've got a larger one and I'm gonna pull  
5 that out. Why don't we pull that out?

6 A. Okay.

7 Q. I mean, we've got a really large one  
8 here.

9 A. Okay.

10 Q. For the record, this is Exhibit No. 3.  
11 And while we're getting out this diagram, can I ask  
12 if this was in a shopping center area?

13 A. Yes. There's a large shopping center  
14 that contains a Wal-Mart store.

15 Q. There's a Wal-Mart store there?

16 A. Yes. At that intersection.

17 Q. Okay.

18 A. This is the rear door. This is where  
19 Thomas and Hall entered the restaurant.

20 Q. All right.

21 A. And I need to go back to the -- can I  
22 just take this down?

23 Q. Pull it down if that helps you.

24 A. Okay.

25 Q. Set that down right in front there.

1 A. This is a view of the rear door to the  
2 restaurant as we found it that day. It was standing  
3 opened, propped open with a rock. We can determine  
4 that Thomas and Hall headed for the office because  
5 of the -- what Mr. Oddo had told us. And the only  
6 way they could get there is a path through the  
7 kitchen, the back part of the kitchen down the  
8 hallway and then to the office.

9 This is a view taken inside the  
10 restaurant. We're standing actually by the front  
11 door of the restaurant looking to the west. The  
12 kitchen is behind the little sign that says office.  
13 And that office door is opened.

14 Thomas and Hall knock on the office  
15 door which was closed at the time. They were let in  
16 by Mr. Oddo. Hall produces a hand gun and demands  
17 money. Oddo complies and places all the cash from  
18 the cash drawers and the safe inside the bags.

19 This is a little closer shot of the  
20 front door or the door to the office. Again,  
21 straight behind there you can see part of the  
22 kitchen, the storage area. These are the empty cash  
23 drawers that were found in the office and the safe  
24 that was standing opened that had nothing in it.

25 Q. That's the way that it appeared when you

1 arrived there --

2 A. Yes.

3 Q. -- during your investigation?

4 A. Yes. Thomas leaves Hall in the office  
5 with Oddo while Oddo is getting the money, and he  
6 goes to the rest rooms while he's looking for other  
7 employees. He knew there were at least two other  
8 employees in the building. He's concerned about  
9 them so he locates both victims, Gianakis and Dixon,  
10 inside the men's room. Gianakis was washing his  
11 hands, Dixon was at the urinal.

12 The intent of Thomas was to prevent  
13 them from leaving because Thomas knew what was going  
14 on in the office. And according to Marlo Thomas  
15 statement, there was a knife on the wash basin  
16 counter.

17 Q. And that information about the intent of  
18 Thomas that you've got a little source down at the  
19 bottom of the slide there?

20 A. Yes. These were gleaned from Marlo  
21 Thomas's statement to us and also Kenya Hall's  
22 statement to Trooper David Bailey in Hawthorne.

23 Q. Okay.

24 A. This is another photograph that's taken  
25 from the front door area of the Lonestar looking to

1 the west. This area right here a meat counter,  
2 and the men's room is gonna be right over here. We  
3 have a little closer shot of that. And then this is  
4 the meat counter and the rest rooms are in here and  
5 then here you can see the sign that says -- almost  
6 says woman's. And then inside that little alcove  
7 are the doors to the rest rooms.

8 Q. So these rest rooms that the employees  
9 use would also be the ones used by the public?

10 A. Yes. Those were the only rest rooms in  
11 the restaurant.

12 Q. Okay.

13 A. We have a confrontation in the men's room  
14 when Marlo Thomas goes in. Marlo Thomas tells both  
15 employees that they cannot leave the rest room.  
16 Dixon tries to leave and is pushed by Thomas.

17 Matthew Gianakis tries to intercede  
18 with the interaction between those two. Thomas  
19 grabs the knife and stabs Gianakis. Dixon then  
20 grabs Thomas around the neck at which time Thomas  
21 repeatedly begins to stab Dixon until he falls.

22 Thomas then leaves the rest room to  
23 go back to the office where his -- where the young  
24 Kenya Hall is and he sees Matthew walking toward the  
25 kitchen.

1 Q. And the source of this information again  
2 is the defendant's --

3 A. The defendant's statement.

4 Q. -- Marlo Thomas's statement?

5 A. Yes.

6 Q. All right.

7 A. This is a photograph that's gonna show  
8 some blood splatter. I don't know if you can see  
9 it on the screen, but these little speckles here are  
10 actually blood. This is the, one of the stalls  
11 across from where the wash basin and urinals are and  
12 we project this out and this is all different blood  
13 splatter. And to me the blood is thrown off during  
14 some sort of violent confrontation and lands on  
15 these partitions.

16 Q. When you say "thrown off", what do you  
17 mean?

18 A. It's either during a struggle or it could  
19 be when somebody with blood on his hands that's  
20 making a motion like this. (Indicating.) There's a  
21 number of ways. You know, it could be as a result  
22 of the struggle or a stabbing motion.

23 And again, we have -- this is the,  
24 another shot of a petition dividing the two urinals  
25 and these again here are blood splatters thrown off

1 from some sort of motion.

2 These next ones are called blood  
3 smears. Now, these are caused when somebody that is  
4 bleeding will lean up against an object and move,  
5 smear blood on that.

6 And here is Carl Dixon as he was  
7 found. The door to the men's room is right in that  
8 area there and he is across from where the urinals  
9 would be.

10 Q. So where is he positioned in relation to  
11 that door to the rest room?

12 A. Pardon me?

13 Q. Where is he positioned in relation to  
14 that door?

15 A. His door -- his feet are right where the  
16 door was. And we believe Matthew Gianakis left the  
17 rest room and he was gonna take the shortest route  
18 out of that restaurant.

19 And that would have been out of  
20 this -- out of the rest room, down this little  
21 passageway and out this door which is on the north  
22 side of the restaurant and walks straight over  
23 toward the Rebel Gas Station where he was found.

24 We can confirm that by looking in  
25 the kitchen. This is that west door I was talking

1 about here. You see a rack that contains, actually  
2 contains potatoes. Here's a little closer shot of  
3 the rack.

4 And right behind the rack we find a  
5 pool of blood. This pool of blood is most likely  
6 deposited there by Gianakis standing there probably  
7 hiding behind this rack before he exits. Because in  
8 order to get this amount of blood, someone would  
9 have to stand there and bleed for a few seconds.

10 Q. Let me ask you: The statement by the  
11 defendant Mr. Thomas, he took responsibility for the  
12 stabbing. He talks about the stabbing --

13 A. He did, yes.

14 Q. -- of Mr. Dixon. What about the stabbing  
15 of Mr. Gianakis?

16 A. Yes, he took responsibility for both of  
17 them. Okay. After the robbery's over and Hall and  
18 Thomas hook back up, they leave the restaurant via  
19 the back door and there's a vehicle driven by Angela  
20 Love, the girlfriend of Thomas. It's a green  
21 Mitsubishi.

22 Q. Let's me stop it there for just one  
23 second. You might want to go ahead and have a seat  
24 again for just one moment.

25 A. Okay.

1 Q. Before we leave that scene, I'd like  
2 to show you State's Exhibit No. 26 and 27 in  
3 evidence.

4 In looking at 26 right now that's an  
5 evidence impound report.

6 A. Okay.

7 Q. Do you recognize that impound report?

8 A. I do recognize this as some of the  
9 reports we received during the investigation. It  
10 has the right date and the event number on it.

11 Q. And this is a report that would have been  
12 filled out by the crime scene analyst?

13 A. Yes. David Reffino filled this out and  
14 it details the evidence that was taken at the scene.

15 Q. At the scene of the Lonestar --

16 A. Yes.

17 Q. -- restaurant?

18 A. Yes.

19 Q. If I can get that back, I'm gonna hand  
20 you number 27. What is that?

21 A. This is an evidence envelope that  
22 contains the initials and personnel number of Dave  
23 Reffino. It contains blood flakes and samples and  
24 control swabs that were collected at the restaurant.

25 Q. Okay. And when you say blood flakes and

1 controls, what do you mean?

2 A. Well, the some of the blood had dried and  
3 turned into flakes, coagulated, and so that's what  
4 he means when he says flakes. Some was taken from  
5 actual blood that hadn't done that and then they do  
6 a control sample which is a swab of someplace where  
7 there's no blood but close to the other blood just  
8 as a control.

9 Q. And so what we would expect to find  
10 inside the evidence envelope number 27 is a number  
11 of swabs and samples of blood that are recovered  
12 from the scene at Lonestar?

13 A. Yes. And they should all be in plastic  
14 containers.

15 Q. Okay. And those items in Exhibit No. 27  
16 are listed on the report No. 26 as having been  
17 gathered by crime scene analyst Mr. Reffino --

18 A. Yes.

19 Q. -- from the Lonestar?

20 A. Yes.

21 Q. You also impounded a number of other  
22 things. I mean, there's mention of a steak knife  
23 with a wooden handle --

24 A. Yes.

25 Q. -- that was found in a planter outside

1 Rebel Gas Station?

2 A. Yes.

3 Q. Was there any relationship that you can  
4 find between the knife at the Rebel Station and this  
5 crime?

6 A. No. We could not link that to the crime  
7 at all. It didn't match any of the knives that were  
8 inside the restaurant.

9 Q. But out of an abundance of caution, they  
10 recovered that item?

11 A. Yes.

12 Q. All right. There was also some clothing  
13 that had been left at the scene by the victims?

14 A. Yes.

15 Q. And a wallet that was impounded as well?

16 A. Yes.

17 Q. All right. Thank you. Go ahead and  
18 leave that there now. And I think you're talking,  
19 if you want to come on back down again.

20 A. Oh, sure.

21 Q. In your presentation we're moving to  
22 another area in the investigation?

23 A. Yes. They're leaving the -- they leave  
24 the restaurant and they're in a vehicle, a green  
25 Mitsubishi that's being drive by Angela Love. They

1 immediately go to 2505 Cartier. That is the  
2 residence of Marlo's aunt.

3 There Marlo has bloody clothes and  
4 blood on his shoes. He leaves his -- a thousand  
5 dollars of the robbery money. And the money is  
6 supposed to be for his mother. There he changes and  
7 discards his clothes in the desert and then he gives  
8 Emma Nash a blue steel revolver. This revolver was  
9 the one that was used in the robbery.

10 Q. All right. Let me stop you there one  
11 second. You've got listed as a source of this  
12 information from Mr. Thomas's statement?

13 A. Yes.

14 Q. As an investigator, how did you get on to  
15 this residence?

16 A. Pardon me?

17 Q. How did you got on to this residence in  
18 the investigation?

19 A. Well, we have the ability to run criminal  
20 history and do checks on -- do driver's license and  
21 last known addresses. And we were able to do that  
22 through that system, the system we call SCOPE. And  
23 we also use the assistance of the North Las Vegas  
24 Police Department.

25 Q. And that gave you an address?

1 A. Yes.

2 Q. And after you got that address, what did  
3 you do with that information?

4 A. We immediately went to that address.

5 Q. And who did you find there?

6 A. We spoke with -- Emma Nash was there.

7 Q. And was she forthright with you about  
8 what she knew?

9 A. Yes, yes. She told us that Marlo had  
10 come to the house, his clothing was bloody, he had  
11 been crying, he immediately changed his clothes and  
12 then he wanted -- they were gonna leave and go to  
13 Hawthorne.

14 Q. And then you contacted another person  
15 there as well?

16 A. Yes, but the name escapes me right now.

17 Q. All right. It was another relative?

18 A. Yes. I want to say Smith was the last  
19 name.

20 Q. Was it Barbara?

21 MR. SCHWARTZ: Uh-huh.

22 BY MR. OWENS:

23 Q. Barbara Smith?

24 A. Yes.

25 Q. All right. And what happened next?

1 A. Okay. From this part of the  
2 investigation, we learned that all three, Hall,  
3 Thomas and Love, had left the Las Vegas area and  
4 were in route to Hawthorne, Nevada. That's where  
5 Hall and Love's family is living right now. Back  
6 then.

7 Q. Did you put out an attempt to locate?

8 A. We put out an all-points bulletin to all  
9 state-wide jurisdictions; highway patrol, Mineral  
10 County Sheriff as well as the Metro officers that  
11 worked that night. I think it's the 95 and 93  
12 quarter, whatever one that goes north. I think it's  
13 95.

14 Q. And what are we looking at?

15 A. Right here is the front of the residence  
16 of 2505 Cartier. This is where Marlo changed his  
17 clothes.

18 This is standing in the backyard of  
19 the residence looking to the south. You can see the  
20 Stratosphere Tower in the background.

21 And you can also see right here  
22 something. We get a little closer to that and we  
23 find that's the clothing that Marlo had discarded  
24 when he changed his clothes. Those are his shoes  
25 and the pants have blood like splatter on them.

1 These were impounded by our crime scene people.

2 We're doing a further search of the  
3 desert and here we have another photo. Right here  
4 are the clothes we just saw in the prior slide.

5 And as we are searching this area  
6 right here, we come upon another item right there.  
7 And the closer view of that item is a knife. And  
8 this knife has blood like substance on it. And we  
9 had that knife impounded. Also we believe at that  
10 time that that was the knife that was discarded  
11 after the murder.

12 Q. What happened next?

13 A. We also obtained at that residence a  
14 Smith and Wesson 32 caliber revolver from the  
15 residence of Emma Nash.

16 Q. And how did you get that?

17 A. It was turned over to us by them, the  
18 people that were at the residence.

19 Q. So this would be the residence where his,  
20 the defendant's relatives were?

21 A. His aunt was living, yes.

22 Q. On Cartier?

23 A. Yes.

24 Q. Okay. Why don't you go ahead and have a  
25 seat again.

1 MR. SCHWARTZ: Judge, can we approach?

2 THE COURT: You may.

3 (Whereupon, an off-the-record  
4 discussion was had at the bench.)

5 THE COURT: You may continue.

6 MR. OWENS: Thank you.

7 BY MR. OWENS:

8 Q. I want to show you now State's Exhibit  
9 32. This is another evidence impound report that  
10 lists evidence recovered by a crime scene analyst?

11 A. Yes.

12 Q. And this particular report was prepared  
13 by?

14 A. Monte Spoor.

15 Q. Is Monte Spoor one of the crime scene  
16 analysts for the police department?

17 A. Yes.

18 Q. Now, this involves the process of the  
19 evidence that you just showed to us at that Cartier  
20 address?

21 A. That's correct.

22 Q. And among the items that are listed there  
23 are the ones we saw in the photos, there were some  
24 articles of clothing?

25 A. Yes. Clothing, shoes, a revolver,

1 bandana, a swab of blood from the knife I believe it  
2 is. Yes. More blood samples, yes.

3 This is all the items that were  
4 recovered at Emma Nash's home.

5 Q. Okay. And I'm going to hand you now four  
6 evidence packages which are marked as items 33, 34,  
7 36 and 37.

8 Let's start with 33. Take a look at  
9 that and why don't you tell us what that is?

10 A. These are gonna be the shorts that were  
11 depicted in the photograph of one of the previous  
12 slides that, that was found in the desert.

13 Q. All right. We lost our controller there.  
14 Let's go back.

15 A. One more. Two more. Right there. That  
16 will be -- yes, that will be the shorts.

17 Q. And what was the significance of  
18 recovering that particular clothing?

19 A. It had blood on it and we were told that  
20 the items were at that -- the items had been  
21 discarded in the desert, all we had to do was go out  
22 there and collect them.

23 Q. And whose clothing was it?

24 A. Marlo Thomas's clothing.

25 Q. With blood on it?

1 A. Yes.

2 Q. Okay. And I'm handing you now item  
3 number 36. I'm sorry. Let's go to 34, another  
4 evidence envelope.

5 What was placed in there by Mr.  
6 Monte Spoor of the police department?

7 A. Yes. These are the athletic shoes, white  
8 athletic shoes, the Nike's, that Marlo Thomas had  
9 discarded. They also had blood like substance on  
10 them.

11 Q. And where were they found in relation to  
12 Marlo Thomas's other clothing?

13 A. They were found with the shorts.

14 Q. And item number 36?

15 A. 36 is the knife that had the blood on it  
16 that we found in the desert.

17 Q. Now that has a designation of a  
18 bio-hazard on it outside of the package?

19 A. Yes.

20 Q. It's been opened in a prior proceeding in  
21 the court?

22 A. Yes.

23 Q. Do you want to have gloves on if we open  
24 that and look at it?

25 A. I don't think so.

1 Q. Are you okay?

2 A. Yeah.

3 Q. If you can go ahead and remove the  
4 contents there. And for the record, I believe that  
5 would be 36A, and describe what you're removing?

6 A. This is a -- I would call it a boning  
7 knife. Long skinny blade with a dark handle.

8 Q. All right. If you can pick that up  
9 and -- Your Honor, would it be all right if he can  
10 step down and show the jury that item?

11 THE COURT: Sure.

12 BY MR. OWENS:

13 Q. If you can take that over and let the  
14 jury see the knife that you've removed.

15 A. I don't want to fall on a step. This is  
16 the knife that was depicted in the photograph from  
17 the desert.

18 Q. And this is the one I believe you  
19 testified that there had been a blood sample that  
20 was taken from it?

21 A. Yes.

22 Q. Court's indulgence for one moment. I'm  
23 gonna show you what's been marked as Exhibit No. 83,  
24 I believe another evidence envelope that's from that  
25 same scene on Cartier.

1 Mr. Monte Spoor of the police  
2 department took some swabs of this blood substance  
3 from the knife and placed it in this particular  
4 envelope?

5 A. Yes, there are four separate samples in  
6 here.

7 Q. And that was for the purpose of doing  
8 later testing --

9 A. Yes.

10 Q. -- along with this blood that was  
11 recovered in the case?

12 A. Yes.

13 Q. You can put that there with the knife.  
14 State will look at this last item that we have here  
15 from that location.

16 State's Exhibit No. 37, if you can  
17 take a look at that, what was that of?

18 A. This is the RG 32 caliber revolver. And  
19 I have to point out that on my slide it says Smith  
20 and Wesson, and I apologize for that error, but this  
21 is an RG 32.

22 Q. And the RG would stand for? That's the  
23 manufacturer?

24 A. That's the manufacturer, yeah.

25 Q. Okay.

1 A. And this is the pistol that was turned  
2 over to my partner, Detective Bryant, at the  
3 residence on Cartier. Detective Bryant then gave it  
4 to Monte Spoor to impound.

5 Q. This was the firearm that had been left  
6 there by the defendant?

7 A. Yes.

8 Q. All right. Thank you. Okay. If you  
9 want to go ahead and step down again. And I think  
10 we're moving on to another location, the scene of  
11 the autopsy that you attended?

12 A. Yes.

13 Q. Who was present at the -- this was two  
14 autopsies that were done?

15 A. Yes. I was present at both autopsies  
16 along with Detective Bryant.

17 Q. Okay.

18 A. We have the autopsy of Carl Dixon that  
19 was completed the same day of the incident at 3:45  
20 in the afternoon. The wounds on Mr. Dixon were  
21 quite extensive.

22 We have 19 stab wounds to the left  
23 side of the chest, three stab wounds to the right  
24 side of the chest, nine stab -- stab and defensive  
25 cutting wounds on the left arm.

1 A defensive wound is a wound that  
2 occurs while someone is trying to defend themselves.  
3 I'll show you photographs of those.

4 He had a defensive wound on the tip  
5 of the middle finger, six defensive wounds on the  
6 right hand and a stab wound on the left thigh.

7 The cause of death as ruled by the  
8 coroner was multiple stab wounds. The manner of  
9 death was homicide.

10 These are defensive wounds on Carl  
11 Dixon. You can see where he was trying to fend off  
12 someone with the knife, that being Mr. Thomas. So  
13 those are what they call defensive wounds. These  
14 are stab wounds. Those are penetrating wounds into  
15 the body.

16 The autopsy of Matthew Gianakis was  
17 accomplished the same day at 5 p.m. at the coroners  
18 office. He had two stab wounds. One to the chest  
19 and one to the back.

20 Q. And were there two pathologists in  
21 attendance at these?

22 A. There were. There was Dr. Sheldon Green  
23 and Dr. Robert Jordan.

24 Q. All right. Go ahead.

25 A. Cause of death on Matthew Gianakis were

1 stab wounds to the chest and back. Manner of death  
2 was also homicide.

3 This is the stab wound to the back  
4 of Matthew Gianakis. You remember the first  
5 photograph I showed you of him walking into the  
6 Rebel. This is what caused the blood on the back of  
7 his shirt. This is the chest wound he was holding  
8 as he walked into the Rebel.

9 The suturing is medical intervention  
10 that was done at UMC Trauma.

11 Q. Can you go over and point to that area on  
12 there?

13 A. The suturing?

14 Q. Yeah.

15 A. Yes. This is the medical intervention  
16 right here and this is the stab wound.

17 We move on to Hawthorne, Nevada.  
18 Earlier that day we were notified that our broadcast  
19 did some good and the vehicle containing Long -- or  
20 I'm sorry. Love, Hall and Thomas was stopped as  
21 they were entering the Hawthorne, city of Hawthorne.  
22 The vehicle is stopped at 1:45 in the afternoon and  
23 the suspects were taken into custody for us and the  
24 vehicle was secured at the Mineral County Sheriff's  
25 Office.

1 We go up to the Mineral County  
2 Sheriff's Office and in a secured and locked  
3 facility, it's a garage used by the Mineral County  
4 Sheriff's Office, we are shown the green Mitsubishi  
5 that they were in. They took a number of  
6 photographs showing different views of the car.  
7 Just run through those.

8 We open the trunk, nothing  
9 remarkable. We look in the spare tire cover carrier  
10 and underneath the spare tire there's a bag. We  
11 pull the bag out and look inside and here is the  
12 \$5,857. This is the money from robbing of the  
13 Lonestar.

14 Q. Let me stop here for a moment. If you  
15 can go back up there, let's take a look at some of  
16 these items.

17 A. Okay.

18 Q. I want to show you first what's been  
19 marked as State's Exhibit No. 66. It's another  
20 evidence impound report like the ones we've referred  
21 to before.

22 This one occurred at what location?

23 A. This is in Hawthorne, Nevada.

24 Q. And who is the person that was doing the  
25 processing and writing that report?

1 A. This is crime scene analyst Yolonda  
2 McClary.  
3 Q. She's from our local police department?  
4 A. Yes. We all traveled up in one vehicle  
5 to Hawthorne the next morning.  
6 Q. Okay. And then she processed the vehicle  
7 that you were just showing us on the screen --  
8 A. Yes.  
9 Q. -- a little while ago?  
10 A. Yes.  
11 Q. And in doing so, she collected a number  
12 of items of evidence?  
13 A. Yes.  
14 Q. And those are listed on that particular  
15 report?  
16 A. Yes, they are.  
17 Q. Okay. I want to show you now what's been  
18 marked as State's Exhibit Nos. 70 and 72. Let's  
19 take a look at 70 first.  
20 What was this item of evidence that  
21 Ms. McClary recovered from the vehicle?  
22 A. This is the plastic grocery bag that you  
23 saw when the spare tire was up and a blue pillow  
24 case that you see in the photograph right in front  
25 of you.

1 Q. And I'm showing you now -- what's the  
2 significance of the blue pillow case and --  
3 A. While we were at the house on Cartier, we  
4 learned that money was transferred from bank bags to  
5 a blue pillow case.  
6 Q. Okay. And that is the blue pillow case  
7 that's contained in No. 70?  
8 A. Yes.  
9 Q. All right. I'm handing you No. 72 now,  
10 an evidence envelope that's currently sealed up?  
11 A. Yes.  
12 Q. It hasn't been opened?  
13 A. Let's hope not.  
14 Q. Okay. And what's inside of that  
15 envelope?  
16 A. According to the writing on here, this is  
17 the \$5,857.  
18 Q. Okay. Now, with the court's permission,  
19 I'd like to be able to hand scissors to the witness.  
20 THE COURT: You may.  
21 BY MR. OWENS:  
22 Q. Have him open the evidence bag, State's  
23 Exhibit No. 72.  
24 A. This one?  
25 Q. No, the one with the --

1 A. This one?  
2 Q. Yes. And take out the contents for us  
3 there. And can you describe what you're seeing  
4 there for the record?  
5 A. Yes. This is a plastic bag that contains  
6 a lot of money.  
7 THE COURT: And what inquiring minds  
8 would like to know is why the police department has  
9 not either photocopied that or photographed it and  
10 returned it to the restaurant?  
11 THE WITNESS: I don't know, Your Honor.  
12 THE COURT: I mean, this is now almost 10  
13 years ago.  
14 THE WITNESS: Yes, it is and it's still  
15 in the -- well --  
16 THE COURT: So I'm gonna suggest very  
17 strongly that that's what occurs following this  
18 trial.  
19 THE WITNESS: Okay. Well, I think this  
20 money is now in the custody of the court clerk.  
21 THE COURT: Well, we're gonna give a  
22 receipt to somebody.  
23 MR. OWENS: We would ask the court why it  
24 hasn't been returned.  
25 THE COURT: Because it's never been

1 opened. The court is not at liberty to open  
2 exhibits. They're lodged with the court. But trust  
3 me, ladies and gentlemen, before the week is out,  
4 the money is gonna go back to whom it belongs to and  
5 this will not be sitting around in some courthouse  
6 locker or police locker.  
7 BY MR. OWENS:  
8 Q. If you can hold that up for the jurors to  
9 be able to see that money. And is that the way that  
10 you found it?  
11 A. Well, this is the way that -- it was  
12 loose. There was some of it was banded, but this is  
13 pretty much the way it came out the pillow case.  
14 Q. Okay. The plastic bag was something that  
15 was used by Ms. --  
16 A. Yeah.  
17 Q. -- McClary?  
18 A. The crime scene Ms. McClary used the  
19 plastic bag just to -- so it wouldn't be loose in  
20 the envelope.  
21 Q. And she put her initials on it for  
22 purposes of identification?  
23 A. Yes.  
24 Q. Some of the money has rubber bands on it  
25 and some didn't. Was that the way that it was when



1 it was --

2 A. Yes.

3 Q. And there's some kind of rubber bands  
4 that have kind of fallen apart in the bag --

5 A. Yes.

6 Q. Now, I'm gonna hand you a report that was  
7 done at the autopsy we talked about a minute ago,  
8 another crime scene analyst's report listing the  
9 evidence that was recovered. There was items of  
10 clothing.

11 A. Yes.

12 Q. And in addition to that, there was some  
13 serological kits that were taken?

14 A. Yes.

15 Q. And when we say serological kits, what do  
16 we mean?

17 A. These are blood samples. Back then I  
18 think it was just blood. Now they take bone and  
19 tissue samples along with the blood.

20 Q. I want to hand you what's been marked as  
21 State's Exhibits No. 57 and 58. Those would be the  
22 blood sample kits for our two victims in this case?

23 A. Yes. Carl Dixon and Matthew Gianakis.

24 Q. And those were recovered at the time of  
25 the autopsy by the pathologist?

1 A. Yes. They were turned over to our crime  
2 scene analyst Peterson.

3 Q. And I want to show you also what's been  
4 marked as State's Exhibits No. 73 and 74, two  
5 additional blood tests kits.

6 What are those?

7 A. These are serological standards that we  
8 obtained from Marlo Thomas and Kenya Hall. These  
9 were obtained by Detective Bryant. They have his  
10 name and initials on them. These were obtained at  
11 the Clark County Detention Center.

12 Q. What would be the purpose of getting  
13 blood samples from Mr. Hall and the defendant in  
14 this case?

15 A. This would be used in the whole scheme of  
16 things to determine whose blood was actually at the  
17 scene and on the clothing. So if they were not  
18 injured at all, we take this to show that they could  
19 be ruled out as sources of the blood.

20 Q. Was there any evidence that Mr. Hall or  
21 the defendant Mr. Marlo Thomas were injured in any  
22 manner whatsoever during this crime?

23 A. None whatsoever.

24 Q. There was no bleeding that you were you  
25 aware of?

1 A. No.

2 Q. But it's just police practice to go ahead  
3 and take the samples anyway?

4 A. Yes.

5 Q. In case that became an issue?

6 A. Yes.

7 Q. But it did not?

8 A. It did not.

9 Q. And there was in fact some testing done  
10 on the samples from the victims in this case as well  
11 as certain other items of evidence, including  
12 samples taken by I believe Mr. Spoor from the knife  
13 found at the Cartier location?

14 A. The knife and the clothing, yes.

15 Q. And the clothing would have been the  
16 clothing found at that same location?

17 A. Yes.

18 Q. And there was some charts done that are  
19 marked as Exhibits No. 75 and 76. If I can have you  
20 step down just for one second. I'm gonna go ahead  
21 and place those up on the little stand that we have  
22 here.

23 And this testing was done by one of  
24 the criminalists?

25 A. Yes. I believe it was done by Jerry

1 Cook.

2 Q. And the criminalist Mr. Cook, what does  
3 that mean?

4 A. He's a scientist. He can type -- back  
5 then we typed -- we typed the blood. They don't do  
6 it anymore. And that's the ADO, what you see the  
7 ADO on the chart there.

8 Q. You say we don't do it anymore?

9 A. But we did it back then to determine the  
10 source of blood.

11 Q. We're more dependent on the DNA at this  
12 point?

13 A. Yes. DNA.

14 Q. And we have this other chart here,  
15 Exhibit No. 76. I'm gonna go ahead and put that up  
16 here. If you can, would you just summarize us for  
17 us, and I think these charts do that, what the  
18 findings of Mr. Jerry Cook were?

19 A. Testing the blood on the shorts and the  
20 knife against the serological standards of Kenya  
21 Hall, Marlo Thomas, Carl Dixon and Matthew Gianakis  
22 tells us that the blood, the source of the blood  
23 that was on the shorts and the knife are most likely  
24 Matthew Gianakis' blood.

25 Q. So the shorts and the knife that were

1 found at the Cartier location --

2 A. Yes.

3 Q. -- probability was that that belonged to  
4 the victim Mr. Matthew Gianakis?

5 A. Yes. The others -- the others had been  
6 ruled -- the Hall, Thomas and Dixon are excluded as  
7 the source of that blood.

8 Q. All right. Thanks. Go ahead and have --  
9 why don't you stay down here and we'll go ahead and  
10 continue. I'm sorry.

11 We're going to one point of  
12 statements here, I think, and we have the power  
13 point, so why don't we go back into that.

14 A. Okay. We took statements. Kenya Hall  
15 gave a statement to Trooper David Bailey in  
16 Hawthorne, Nevada. He knows the young man. He  
17 actually coached him in school. He gave a complete  
18 statement to David Bailey. We then took all three  
19 suspects from the Mineral County jail or -- yes.  
20 Mineral County jail on the 17th and transported them  
21 to Las Vegas and booked them into the Clark County  
22 Detention Center.

23 While we were there, Marlo Thomas  
24 asked to give a statement, however, he wanted it on  
25 videotape. We agreed and we videotaped a statement

1 with him.

2 Angela Love was arrested, however,  
3 the district attorney did not charge her in this  
4 case. And that's the end of this presentation.

5 Q. Okay. Why don't you go ahead and have a  
6 seat. And if I can get Exhibits 78 and -- or 79 and  
7 80 I think.

8 I want to show you those two  
9 photographs and ask you if you recognize those.

10 A. Yes. This is a photograph of Marlo  
11 Thomas when we, the day we brought him to the jail,  
12 and this is Kenya Hall in the blue jail uniforms.

13 Q. So that's how they appeared at that  
14 particular time?

15 A. Yes. Yes, at that time it looks like  
16 Kenya Hall had already changed into jail clothes by  
17 the time we got his photograph.

18 Q. Okay. And you used portions of these  
19 photographs in your power point?

20 A. Yes.

21 Q. Okay. I want to hand you now what's been  
22 marked as State's Exhibit No. 81. We heard  
23 testimony previously that the defendant had been  
24 advised of his rights --

25 A. Yes.

1 Q. -- the officer up in the Hawthorne  
2 area?

3 A. Yes.

4 Q. That's Officer Bailey, Trooper Bailey?

5 A. He advised Marlo Thomas, yes. Or Kenya  
6 Hall.

7 Q. Kenya Hall. And what are we holding  
8 here, Exhibit 81?

9 A. This is a rights card signed by Mr.  
10 Thomas dated 4/17 1996. There's two dates on it  
11 actually. 10:00 in the morning, and that was in  
12 Hawthorne. And then the 6:27 in the evening, that  
13 was in Las Vegas. The card that bears the case  
14 number, my name and Detective Bryant's name.

15 Q. And why were there the two different  
16 times listed on that item?

17 A. The first time we were going to interview  
18 him in Hawthorne, then he told us he would only give  
19 a videotaped statement. So we needed to get to the  
20 video state -- video equipment and that's when the  
21 second time was done.

22 Q. All right. Your Honor, if you could push  
23 the button for us, please, over to document camera.

24 THE COURT: All right. Hold on for a  
25 second.

1 MR. OWENS: Okay. Excellent.

2 BY MR. OWENS:

3 Q. Okay. All right. For the record, we're  
4 publishing up particular rights of person card. Do  
5 you see that up on your screen?

6 A. Yes.

7 Q. So in fact did you take a video  
8 statement?

9 A. Yes, we did.

10 Q. I want to show you now what's been marked  
11 as State's Exhibit No. 82. What is that item?

12 A. This is a videotape that bears the name  
13 on the label of Marlo Thomas, edited copy.

14 Q. Okay. And is this a copy of the  
15 videotape that was made of the defendant's  
16 statement --

17 A. Yes.

18 Q. -- that you described to us? All right.  
19 Your Honor, given the hour, I don't know if you want  
20 to go into it at this point of time.

21 THE COURT: Well, let's just play it.

22 MR. OWENS: All right.

23 THE COURT: Play it.

24 MR. OWENS: All right. I'm gonna take  
25 this item and give it to the clerk and ask her to

1 place it in the VHA machine which is gonna require  
2 the court to press yet another button.

3 THE COURT: Okay. We have the VHS  
4 machine?

5 MR. OWENS: You do.

6 THE COURT: This is all new to us.

7 MR. OWENS: It may be necessary to rewind  
8 that. There's actually -- if you hit the VCR, you  
9 should get some controls for it there.

10 THE COURT: Rewind, play, fast forward?

11 MR. OWENS: Yes. And you can control  
12 that from your location.

13 THE COURT: Teri's gonna do that.

14 MR. OWENS: Okay.

15 THE COURT: Do you know about how long  
16 the statement was?

17 THE WITNESS: I want to say about 30  
18 minutes.

19 THE COURT: Okay. That will be fine.

20 MR. OWENS: And the record should reflect  
21 that we rewound that tape and we're gonna play it  
22 now.

23 THE CLERK: Maybe we won't.

24 THE COURT: Is the play ready?

25 THE CLERK: I can hit the play, judge.

1 (Whereupon, the tape was played.)

2 THE COURT: The lights are gonna go off  
3 about 5:30, but the bailiff's gonna turn them on.  
4 They're on a timer and we can't stop it. So if it's  
5 dark, it will be right back on.

6 (Whereupon, the tape stopped.)

7 THE COURT: All right. Teri, you can  
8 turn the tape off. Thank you. You may conclude  
9 your examination of Detective Mesinar, retired.

10 MR. OWENS: May we approach, Your Honor?

11 THE COURT: You may.

12 (Whereupon, an off-the-record  
13 discussion was had at the bench.)

14 BY MR. OWENS:

15 Q. All right. There were a couple places on  
16 the tape where the sound cut out and you mentioned  
17 the day before when we heard the tape that this was  
18 an edited copy?

19 A. Yes.

20 Q. There were some portions in a prior  
21 proceeding that were removed where the defendant in  
22 his statement was talking about being in jail for  
23 another offense?

24 A. Yes.

25 Q. And where he had some kind of an

1 appointment of something involving parole?

2 A. Yes.

3 Q. Okay. And other than that, those  
4 portions in here where we lost the sound where they  
5 were edited, is this a true and accurate  
6 representation of the conversation that you had with  
7 Mr. Thomas?

8 A. Yes, it is.

9 Q. Now, you said earlier on in my  
10 questioning to you, I asked you if he took  
11 responsibility for both stabbings?

12 A. Yes.

13 Q. And he said that he did?

14 A. Yes.

15 Q. But his version was some kind of a  
16 self-defense thing it sounds like?

17 A. Yes, it was.

18 Q. And he was even telling you in there that  
19 the gun that you recovered wasn't the gun that was  
20 used?

21 A. Yes.

22 Q. Was that right?

23 A. That's -- that's -- the gun that we  
24 recovered was the gun that was used in the robbery.

25 Q. That was the one used in the robbery?

1 A. Yes. He -- he alluded to a second gun,  
2 but from all the investigation and the problems in  
3 the rest room, I don't believe there was a second  
4 gun.

5 Q. Okay. So in the statement, you're  
6 talking about a 9mm and a 32 caliber?

7 A. Yes.

8 Q. But you recovered a 32 caliber?

9 A. Yes.

10 Q. And he was insisting there was some other  
11 gun there?

12 A. Yes.

13 Q. And you found no evidence to support that  
14 anywhere in your investigation?

15 A. No.

16 Q. Did you --

17 A. And logic would say that if you have a  
18 gun and you had some guys coming at you why use a  
19 gun. If you got a gun, use it. I don't think there  
20 was one.

21 Q. And there was also a conversation in  
22 there about them attacking him. And I think I asked  
23 you previously did you see any evidence at the scene  
24 or in the physical condition of the defendant when  
25 you interviewed him that would indicate that he'd

1 been in a fight?

2 A. No, I did not.

3 Q. Any bruising, stabbing or anything?

4 A. No, nothing. And we had specific photos  
5 taken of his upper area with him looking up and  
6 there was nothing.

7 Q. I'm gonna show you what we're going to  
8 refer to as Exhibit No. 111 for identification, have  
9 you take a look at that.

10 Is that a true and accurate copy of  
11 the transcript that was prepared of the statement  
12 that we just watched that was given by the defendant  
13 Marlo Thomas?

14 A. Yes.

15 Q. And that contains the information that  
16 was edited, the sound portion that was taken out of  
17 this particular recording that we just watched?

18 A. Yes. That should be the entire  
19 transcript of the videotape.

20 MR. OWENS: All right, thank you. I'm  
21 going to move this into evidence at this time, Your  
22 Honor.

23 THE COURT: 111 will be admitted.

24 MR. OWENS: Thank you. And that's all  
25 the questions we have.

1 THE COURT: Cross-examination for  
2 Detective Mesinar?

3 MR. ALBREGTS: Yes, judge.

4 THE COURT: You may proceed.

6 CROSS-EXAMINATION

7 BY MR. ALBREGTS:

8 Q. Detective, Angela drove the car to the  
9 Lonestar Steak House, correct?

10 A. Yes.

11 Q. And Angela drove the car away from the  
12 Lonestar Steak House after the incident, correct?

13 A. Yes.

14 Q. And on Mr. Thomas's clothing after they  
15 got out of the restaurant was visible blood,  
16 correct?

17 A. Yes.

18 Q. And then Angela drove them to Mr.  
19 Thomas's relatives house where they disposed of some  
20 of the evidence of the crime, correct?

21 A. The clothing and the knife, yes, and the  
22 gun, yes.

23 Q. And transferred proceeds from the crime  
24 to a separate bag and put them in the trunk of the  
25 car Angela was driving, correct?

1 A. Yes.

2 Q. And then Angela drove Mr. Thomas and Mr.  
3 Hall to Hawthorne, correct?

4 A. Yes.

5 Q. Now, if Angela was aware that a robbery  
6 was going to occur at the restaurant and drove them  
7 there, knowing that she would be an accessory to the  
8 crime; is that correct?

9 MR. OWENS: Objection. Calls for a legal  
10 conclusion, relevance.

11 THE COURT: Your objection is noted but  
12 overruled.

13 THE WITNESS: Yes.

14 BY MR. ALBREGTS:

15 Q. And if she knew what occurred inside the  
16 restaurant yet drove them away from the restaurant,  
17 that would also be aiding and abetting, wouldn't it?

18 A. Yes.

19 Q. And it would also be accessory to a crime  
20 after the fact, correct?

21 A. That's correct.

22 Q. And not to belabor the point, but if she  
23 drove them to the house and then to Hawthorne,  
24 again, she's culpable for the crimes, correct?

25 A. Yes.

1 Q. And, in fact, you as a detective arrested  
2 her for those crimes, didn't you?

3 A. Yes, I did.

4 Q. And you submitted that case to the  
5 district attorney's office?

6 A. Yes.

7 Q. And they declined to prosecute Angela,  
8 correct?

9 A. That's correct.

10 Q. Now, you testified during the course of  
11 your rather pressing power point, once we got it  
12 figured out, to what you all thought happened inside  
13 the restaurant, correct?

14 A. Yes.

15 Q. And that was somewhat difficult in this  
16 case because two of the individuals who could  
17 testify to that were deceased, correct?

18 A. Yes.

19 Q. And then the third individual who worked  
20 there only saw a brief portion of what occurred in  
21 the restaurant, correct?

22 A. Well, there were two others. There was  
23 one that left to change his shoes and then the  
24 manager. Those two can gave us information as to  
25 part of it, yes.

1 Q. Right. But the one who left to change  
2 his shoes never was inside the restaurant?  
3 A. No, he was not.  
4 Q. And so you were left then to retrace what  
5 happened in there from the statements of Mr. Thomas  
6 and Mr. Hall, correct?  
7 A. And Mr. Oddo, yes.  
8 Q. And when you put in your power point  
9 presentation that at some stage Mr. Thomas told Mr.  
10 Hall to get the money and shoot the manager in the  
11 back of the head, that information came from Mr.  
12 Hall, correct?  
13 A. Yes.  
14 Q. And his statement that was given up in  
15 Hawthorne, correct?  
16 A. Yes. To Mr. Bailey.  
17 Q. Right. The highway patrol guy --  
18 A. Yes.  
19 Q. -- that coached him?  
20 A. Yes.  
21 Q. Now, in this statement with Mr. Thomas,  
22 you advised him of the rights that were on this  
23 card, correct?  
24 A. Yes.  
25 Q. I presume that you didn't coerce him or

1 force him to make this statement, did you?  
2 A. No.  
3 Q. In fact, your partner indicated that  
4 during the drive back from Hawthorne Mr. Thomas was  
5 offering you information, was willing to speak to  
6 you about what had happened, correct?  
7 A. Yes. He initiated conversation. You  
8 know, he already said he didn't want to talk in  
9 Hawthorne.  
10 Q. But that he would talk?  
11 A. And then all of a sudden he's wanting to  
12 talk but only with a videotape there.  
13 Q. And you told him that he could have a  
14 lawyer there with him and he didn't have to talk,  
15 right?  
16 A. That's right.  
17 Q. And you told him that if he couldn't  
18 afford a lawyer, that you would wait and have the  
19 court appoint him a lawyer to advise him about  
20 whether he should talk, correct?  
21 A. Yes.  
22 Q. And he told you he didn't want to do any  
23 of that, did he?  
24 A. That's correct.  
25 Q. He told you he wanted to cooperate with

1 you and answer our questions as long as it was  
2 videotaped?  
3 A. Yes.  
4 Q. So he was cooperative in that sense  
5 obviously, correct?  
6 A. Yes.  
7 Q. Now, I notice that during this statement  
8 and as he was talking and gesturing with his hands,  
9 Mr. Thomas has what appears to be a tissue in his  
10 right hand, correct?  
11 A. I can't recall what he had if anything.  
12 I really didn't notice. I'm sorry.  
13 Q. Do you question whether or not he had  
14 one?  
15 A. No, I don't.  
16 Q. Do you recall whether or not he had  
17 one --  
18 A. No, I don't.  
19 Q. -- independently?  
20 A. I don't.  
21 Q. Do you recall whether prior, just prior  
22 to the tape that we just viewed? And I don't want  
23 to go back and belabor it and show you the tissue,  
24 but do you recall --  
25 MR. OWENS: Your Honor, I'd object to

1 counsel testifying as to what he saw.  
2 THE COURT: Objection is sustained. The  
3 jury saw it and the jury can determine what there  
4 was or wasn't.  
5 BY MR. ALBREGTS:  
6 Q. And was he upset before this interview  
7 started?  
8 A. No, not at all. As a matter of fact,  
9 before we started the interview is when we did the  
10 photographs of him, how he was dressed in the  
11 clothing you saw in the videotape. He didn't appear  
12 upset at all.  
13 Q. So you don't recall him having a tissue  
14 because he had been crying a little bit before about  
15 the incident before he --  
16 MR. OWENS: Judge, asked and answered.  
17 THE COURT: The objection is sustained.  
18 It's been asked and answered.  
19 BY MR. ALBREGTS:  
20 Q. So if he had a tissue or something in his  
21 hand, you don't recall and you don't know what it --  
22 A. That's correct.  
23 Q. But he did tell you that when he went to  
24 his aunt's house that he had been crying shortly  
25 after the incident, correct?

1 A. Yes, he did.

2 Q. And you went and talked to that aunt,  
3 didn't you?

4 A. I did not, but I have -- I learned from  
5 other detectives that that's what she stated.

6 Q. Right. Because your job I think as the  
7 primarily investigator was the witness and suspect  
8 interviews, correct?

9 A. Right.

10 Q. So you were you aware of the other  
11 interviews, correct?

12 A. Yes.

13 Q. And his aunt was cooperative, wasn't she?

14 A. Yes.

15 Q. Showed you all the things that they had  
16 tried to hide or get rid of, correct?

17 A. Yes.

18 Q. And during the course of that  
19 conversation, she confirmed what Marlo told you  
20 which was that he had been crying and was very  
21 upset?

22 A. She stated that he had been crying, yes.

23 MR. ALBREGTS: Nothing further, judge.

24 THE COURT: Do we have any redirect,  
25 counsel?

1 MR. OWENS: Yeah.

2

3 REDIRECT EXAMINATION

4 BY MR. OWENS:

5 Q. You said he wasn't upset during his  
6 statement?

7 A. No. He didn't appear to be upset at all.

8 Q. Did she -- in her statement to the police  
9 and by his aunt and his cousin, in fact, they told  
10 the police that he didn't start crying until they  
11 started crying. Is that true?

12 MR. ALBREGTS: Objection. It's leading.

13 THE COURT: Objection to the form to the  
14 of the question, but you can answer, officer.

15 THE WITNESS: That's correct.

16 BY MR. OWENS:

17 Q. And you were asked a number of questions  
18 about Angela, the defendant's wife or girlfriend,  
19 about the charges against her?

20 A. Yes.

21 Q. There were a whole series of questions  
22 that were asked about if she knew this, if she knew  
23 they were doing the robbery, if she drove away  
24 knowing that if she, you know, aided and abetted  
25 them.

1 at was based on a series of  
2 assumptions about what she knew?

3 A. Yes.

4 Q. Did she give a statement to you?

5 A. She did.

6 Q. And your decision to arrest her was based  
7 upon a probable cause determination?

8 A. Yes.

9 Q. The decision of the district attorney's  
10 case --

11 MR. ALBREGTS: Judge, I'd ask him not to  
12 lead the witness.

13 THE COURT: Your objection is sustained.  
14 BY MR. OWENS:

15 Q. The decision made by the district  
16 attorney, is that a different kind of a decision?

17 A. Yes, I believe it was.

18 Q. And that's based upon a standard of proof  
19 that's different?

20 MR. ALBREGTS: Judge --

21 THE WITNESS: Yes.

22 MR. ALBREGTS: He's still leading.

23 MR. OWENS: It's foundation.

24 THE COURT: Your objection is noted, but  
25 you started this, Mr. Albregts. You know, whether

1 or not there --

2 MR. ALBREGTS: Judge --

3 THE COURT: Mr. Albregts, please.

4 Whether or not -- the instructions are whether or  
5 not the State charges one, all, half of them is a  
6 decision for the prosecuting attorney. It's not  
7 something for this jury to worry or be considered  
8 about. She's not on trial here now.

9 And why the district attorney didn't  
10 decide to prosecute her is not a defense in the case  
11 because we're not here to defend the case. It's not  
12 even mitigation. So I don't know why you brought it  
13 up.

14 I should have sustained the first  
15 objection.

16 MR. ALBREGTS: Well, judge, you didn't  
17 and it doesn't mean that he can lead. So what I'm  
18 asking is to have the court tell him to stop  
19 leading. That's my objection.

20 THE COURT: You may continue, Mr. Owens.

21 BY MR. OWENS:

22 Q. So the decision that's standard that the  
23 district attorney's looking at is different than  
24 probable cause?

25 A. Yes.

1 Q. What kind of a standard is that?  
 2 A. Pardon me?  
 3 Q. What kind of a standard is that?  
 4 A. Is which one?  
 5 Q. The standard the DA looks at?  
 6 A. They look at the provability of the case.  
 7 Q. Okay. And the standard of guilt beyond a  
 8 reasonable doubt?  
 9 A. Yes.  
 10 Q. And they would consider all the  
 11 evidence --  
 12 MR. ALBREGTS: A standing objection on  
 13 leading, please.  
 14 THE COURT: The objection is sustained.  
 15 Mr. Owens.  
 16 MR. OWENS: I think we've covered it.  
 17 THE COURT: I think you have, too.  
 18 MR. OWENS: All right. Thank you, Your  
 19 Honor. That's all I have.  
 20 THE COURT: Recross?  
 21 MR. ALBREGTS: None.  
 22 THE COURT: Ladies and gentlemen, if you  
 23 have questions for Detective Mesinar, if you would  
 24 please write them down and put your name on the  
 25 back.

1 Any questions? No questions.  
 2 All right. Detective Mesinar, thank  
 3 you, sir, for your testimony.  
 4 Now, are all these exhibits have  
 5 been lodged with the clerk so the clerk has to take  
 6 charge of them?  
 7 MR. ALBREGTS: Yes.  
 8 THE COURT: All right. Thank you.  
 9 Ladies and gentlemen, we'll be in recess now for the  
 10 evening. We'll be back in session tomorrow morning  
 11 at 10 o'clock.  
 12 During the evening recess, you're  
 13 admonished not to talk or converse among yourselves  
 14 or with anyone else on any subject connected with  
 15 this trial.  
 16 Don't read, watch or listen to any  
 17 report of or commentary on the trial or any person  
 18 connected with this trial by any medium of  
 19 information, including, without limitation,  
 20 newspapers, television, internet and radio.  
 21 Don't form or express any opinion on  
 22 any subject connected with the trial until the case  
 23 is finally submitted to you. You're excused will be  
 24 in recess until 10 o'clock tomorrow morning. Thank  
 25 you.

1 Where they go. There they go. The  
 2 switch is right by your right hand. The switch as  
 3 you go out. Put the switch on, please. Somebody  
 4 turn the lights on. Thank you, Jonathan.  
 5 I guess the timer, they've moved it  
 6 back. All last week it was at 5:30. The lights  
 7 went off automatically at 5:30.  
 8 (Whereupon, the jury exited the  
 9 courtroom.)  
 10 THE COURT: Counsel, we have a continued  
 11 hearing from this morning so we need you to pick up  
 12 your stuff and move on out, so that I can finish the  
 13 morning calendar.  
 14 MR. ALBREGTS: What time did you say  
 15 tomorrow morning?  
 16 THE COURT: 10 o'clock tomorrow morning.  
 17 We have a relatively short criminal calendar in the  
 18 morning that we start at 8:30, so we'll be starting  
 19 the trial at 10:00.  
 20 Counsel, what I want you to do  
 21 between now and tomorrow is figure out how you want  
 22 to preserve the money because this is not good  
 23 business to keep.  
 24 MR. OWENS: It's got blood all over it,  
 25 Your Honor.

1 THE COURT: \$5,000. So what? Then it  
 2 goes back to the -- it's not money that it has no  
 3 value. So if you're gonna test it for blood, let's  
 4 get does tested for blood. If it isn't, let's get  
 5 it counted, receipted, get it to the clerk's office  
 6 to do whatever they want to do with it, whatever you  
 7 want to do with it, but it belongs to our Lonestar  
 8 Steak House.  
 9 But if it has to go to be destroyed  
 10 at the federal reserve, at least they will replace  
 11 it with that much new money.  
 12 MR. OWENS: Well, I'm sure it was kept  
 13 from the new trial because there's some tactile  
 14 significance to having that visible in front of the  
 15 jury versus photographs.  
 16 Secondly, with the blood on it, I  
 17 mean, there's -- obviously it's a bio-hazard  
 18 potentially. And nobody came and asked for it.  
 19 Now, we haven't finished our hearing  
 20 here. This could evolve into other additional  
 21 hearings. We could be doing this again.  
 22 THE COURT: I know. But there's no  
 23 necessity of keeping something that's worth \$5,000  
 24 unless the police department wants to issue a check  
 25 to Lonestar for that and then it becomes the police

1 department's money and the police department can  
2 keep in into perpetuity.

3 But as far as I'm concerned, it's  
4 property that belongs to a victim.

5 If it's got evidentiary value, fine.

6 Let's take blood tests off of it, let's take the  
7 fingerprints off of it and let's do whatever you  
8 need to do with it but then let's get it returned.  
9 It's valuable. And if it's -- if you think it's a  
10 bio-hazard, then write the company a check and then  
11 we'll say it's metro's money and they can use it for  
12 whatever purpose they want to use it for.

13 MR. OWENS: It's in the court's custody.  
14 The court can do whatever it wants with it. If the  
15 defense wants to test it, we don't intend to.

16 THE COURT: All right. They left.

17 MR. OWENS: Thank you.

18

19

20 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE  
PROCEEDINGS.

21

22

*JoAnn Orduna*

JO ANN ORDUNA

CCR NO. 370

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1 TRAN  
2 CASE NO. C136862  
3 DEPT. NO. XV

FILED IN OPEN COURT

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SHIRLEY B. PARRAGUIRRE, CLERK

BY *Theresa Lee*

THERESA LEE DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \*

**ORIGINAL**

7 THE STATE OF NEVADA, )

8 Plaintiff, )

9 vs. )

REPORTER'S TRANSCRIPT

OF

PENALTY HEARING

10 MARLO THOMAS AKA MARLOW )

11 DEMITRIUS THOMAS, )

12 Defendant. )

13 -----  
14  
15 BEFORE THE HONORABLE SALLY LOEHRER  
DISTRICT COURT JUDGE

16 WEDNESDAY, NOVEMBER 2, 2005  
17 10:00 A.M.

## 18 APPEARANCES:

19 For the Plaintiff: CHRIS OWENS, ESQ.  
20 DAVID SCHWARTZ, ESQ.  
Deputy District Attorneys

21 For the Defendant: DAVID SCHIECK, ESQ.  
22 DANIEL ALBREGTS, ESQ.  
Attorneys-at-Law

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25 Reported by: Mary Beth Cook, CCR #268, RPR

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LAS VEGAS, CLARK COUNTY, NEVADA  
WEDNESDAY, NOVEMBER 2, 2005  
10:00 A.M.

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

THE COURT: The record will reflect the presence of the parties and counsel, all officers of the court and the absence of the jury.

I believe there was something we had to take up outside the presence; is that correct?

MR. OWENS: Yes, Your Honor. We're waiting for Mr. Schieck. We prepared a clean copy of the statement of the defendant from the videotape. We didn't have a clean copy yesterday.

THE COURT: This is the unedited. It's 111, correct?

MR. OWENS: Right. The one we had yesterday had highlighter.

THE COURT: So a clean copy of the transcript of Mr. Thomas's statement to the police which we watched the videotape yesterday which was an edited videotape. 111 will be the full transcribed copy of that conversation with the police department. That will be admitted.

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(Thereupon, State's Exhibit 111 was admitted into evidence.)

THE COURT: Anything else we want to take up outside the presence of the jury?

MR. OWENS: We wanted to offer a copy of the statement that Kenya Hall gave to Trooper Bailey. They don't have an objection to foundation, but they want to make the same objection as they did yesterday as to hearsay, or was it Crawford, Mr. Schieck?

MR. SCHIECK: Yes, Crawford.

THE COURT: So the State is moving to admit the transcript of Kenya Hall's conversation with Trooper Bailey conducted in Hawthorne on April 15th of 1996.

And what is your objection, Mr. Schieck?

MR. SCHIECK: The objection is that under the confrontation clause under the Sixth Amendment that out-of-court testimonial statements are not admissible under the US Constitution and --

THE COURT: In an adversary proceeding? Of course they wouldn't be admissible in trial, but we're not in trial. We're in a penalty hearing.

MR. SCHIECK: But the Nevada statutes provides that evidence that is entered in violation of the Constitution is not admissible at a penalty hearing despite the other relaxed rules of evidence at a penalty hearing.

THE COURT: It wasn't gathered in an unconstitutional matter. You're arguing it was gathered in an unconstitutional manner and that's not true.

MR. SCHIECK: The admission is what's unconstitutional. There's no ability to confront the declarant here in court.

THE COURT: Mr. Owens.

MR. OWENS: I don't know if it was Mr. Schieck or somebody else had argued the same thing, Crawford's application. We had this over in Department XII a few weeks ago. There are no cases of Crawford that I'm aware of that are applying it to the penalty phases. I've heard that allegation, but I have yet to see the cases. Trooper Bailey testified yesterday that as to the conversation that he had with Kenya Hall. We just want to have that conversation in its entirety to put before the jury.

THE COURT: Well, didn't we read Kenya

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Hall's preliminary hearing testimony?

MR. OWENS: We read his preliminary hearing testimony, but that's not as comprehensive as his statement is.

THE COURT: His preliminary hearing testimony would be what does not violate Crawford, and that was used at trial.

MR. SCHIECK: Well, I'm not going to concede that it doesn't violate Crawford.

THE COURT: It was at a hearing where Mr. Thomas was under oath, and Mr. Thomas was represented and where Mr. Thomas's representatives had the right to cross-examine Kenya Hall, and it was admitted and it was read. And the question is in a penalty proceeding can the transcript of an out-of-court statement be admitted, and I think that to be safe, to always err on the side of caution so we're not looking at ourselves ten years from now in number three, it would be better not to admit the statement.

MR. OWENS: We're going to have to recall the officer who testified at length about the statement that he took from --

THE COURT: Why didn't you ask him the right questions yesterday?

RA 000674



1 MR. OWENS: We're not sure if we did.  
 2 We think that we did.  
 3 THE COURT: You have an overnight  
 4 transcript. You can review it.  
 5 MR. OWENS: We'll take a look at it and  
 6 see, but we think there was one key area that came  
 7 up yesterday that wasn't covered. We thought this  
 8 was the cleanest way to put that in, just put the  
 9 statement in. If Crawford starts applying to  
 10 sentencing hearings, which is what we're in right  
 11 here, the judge wouldn't be able to read a PSI.  
 12 We'd have to have a hearing, we'd have to  
 13 cross-examine every person that put information in  
 14 that PSI. Crawford has not been extended to that  
 15 sentencing process. If it ever did, it would be  
 16 ridiculous, and that's the process we're in here  
 17 with this jury. It's already come in in large  
 18 part. We just want the full statement in its  
 19 context rather than just the paraphrasing that we  
 20 got from Trooper Bailey. It's already come in.  
 21 MR. SCHIECK: Over our objection which  
 22 we raised confrontation.  
 23 THE COURT: I allowed Trooper Bailey to  
 24 testify regarding a conversation because hearsay  
 25 is admissible in a penalty proceeding. However,

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1 that was your chance to get that in. If you have  
 2 to recall him, you have to recall him, but I'm not  
 3 going to allow the transcript of the conversation.  
 4 MR. SCHIECK: Just as yesterday we would  
 5 object to him recalling and having him testify.  
 6 Yesterday we objected on hearsay and on  
 7 confrontation.  
 8 THE COURT: Isn't that the witness I  
 9 asked do I get to ask a question? That's a big  
 10 flag, guys, that there's something that you all  
 11 told us was going to happen that didn't happen.  
 12 Mr. Schieck being quick on the switch said no, but  
 13 that's your clue, gentlemen, that something that  
 14 was set forth in opening statement hasn't come in  
 15 yet.  
 16 MR. OWENS: I don't know if we're  
 17 talking about the same thing, but when the Court  
 18 asked to ask the question, Mr. Schieck may have  
 19 been saying no, but my head was down here going  
 20 yes. And I know that this Court is not shy about  
 21 asking questions.  
 22 MR. SCHIECK: If the State doesn't ask  
 23 the right questions, I don't think the Court  
 24 should help them out.  
 25 MR. OWENS: We've got him on stand-by.

1 We can call him.  
 2 THE COURT: Are we ready to proceed this  
 3 morning?  
 4 MR. OWENS: Yes.  
 5 THE COURT: Jonathan, please bring in  
 6 the panel.  
 7 (Whereupon, the jury entered  
 8 the courtroom.)  
 9 THE COURT: Good morning, ladies and  
 10 gentlemen. Welcome back to continuation of  
 11 penalty hearing in the State of Nevada versus  
 12 Marlo Thomas. The record will now reflect the  
 13 presence of the full jury and alternate jurors.  
 14 Yesterday afternoon when we had  
 15 concluded, we had watched and listened to the  
 16 statement of the defendant by Detective Mesinar  
 17 and his partner. And at this time the State may  
 18 call its next witness.  
 19 MR. OWENS: We're going to call Barbara  
 20 Smith, but we're going to have read testimony from  
 21 a prior proceeding. We have Nikki Hearon who's  
 22 here to read that testimony.  
 23 THE COURT: Ms. Hearon, would you please  
 24 take the stand and be sworn to read the testimony  
 25 of Barbara Smith to the best of your ability and

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1 truthfully.  
 2 MR. OWENS: If I may approach with a  
 3 copy for the Court.  
 4 THE COURT: You may.  
 5 Whereupon,  
 6 NIKKI HEARON,  
 7 was administered the following oath by the court  
 8 clerk.  
 9 THE CLERK: You do solemnly swear that  
 10 you will faithfully and accurately read the  
 11 transcript of Barbara Smith to the best of your  
 12 ability so help you God.  
 13 THE READER: Yes.  
 14 THE CLERK: State your name and spell  
 15 your first and last name for the record.  
 16 THE READER: N-I-K-K-I H-E-A-R-O-N.  
 17 MR. SCHIECK: I think the record needs  
 18 to reflect that Ms. Barbara Smith is unavailable  
 19 to testify and she is deceased and that's why  
 20 we're reading her testimony.  
 21 THE COURT: That's correct,  
 22 Mr. Schwartz?  
 23 MR. SCHWARTZ: I believe so, your Honor,  
 24 yes.  
 25 THE COURT: Ladies and gentlemen,

RA 000675

1 Ms. Barbara Smith obviously testified at a prior  
2 proceeding, and the State and the defense both  
3 agree that she's no longer with us and that's why  
4 Ms. Hearon will be reading her testimony.  
5 Who's going to be reading for the State?  
6 MR. SCHWARTZ: I will, your Honor.  
7 THE COURT: Mr. Schwartz, you may  
8 proceed.

10 DIRECT EXAMINATION

11 BY DISTRICT ATTORNEY:  
12 Q. Ms. Smith, where were you living on  
13 April the 14th, 1996? That would be a Sunday.  
14 A. 2505 West Cartier.  
15 Q. Was your mom, Emma Nash, also staying  
16 with you on that date?  
17 A. Yes, sir.  
18 Q. Who else resided there with you on that  
19 day?  
20 A. Me, my three kids and Marlo Thomas.  
21 Q. Now, on that particular day, was Marlo  
22 Thomas just visiting?  
23 A. Yeah.  
24 Q. Was he visiting with other people?  
25 A. Matter of fact, he spent the night and

1 Q. On West Cartier?  
2 A. Yes, sir.  
3 Q. And how was the defendant Marlo --  
4 strike that. Is Marlo your cousin?  
5 A. Yes, sir.  
6 Q. How was Marlo behaving when you saw him  
7 at 9:00 that Monday morning?  
8 A. He was like he was kind of, like, shaky  
9 a little bit.  
10 Q. How about Angela's brother? How was he  
11 acting?  
12 A. He be -- he was real quite. He was  
13 shaky too.  
14 Q. Did there come a time that Marlo  
15 indicated that he wanted to talk to you privately?  
16 A. Well, when Marlo first came into my  
17 house, I noticed his clothes.  
18 Q. What did you notice about his clothes?  
19 A. His clothes had bloodstains on them.  
20 Q. Do you remember where on the clothes you  
21 saw bloodstains?  
22 A. On the legs.  
23 Q. On the legs?  
24 A. Mm-hmm. Like he just take something and  
25 just wipe like this, like on his legs.

1 we played Spades.  
2 Q. Who did he come to your house with that  
3 Sunday?  
4 A. Angela and her brother.  
5 Q. Do you see Marlo in the courtroom today?  
6 A. Yeah.  
7 Q. Could you indicate what he's wearing  
8 today?  
9 A. He's wearing a suit, white, and white  
10 shoes.  
11 DISTRICT ATTORNEY: Record reflect the  
12 identification of the defendant, your Honor?  
13 THE COURT: Record will so reflect.  
14 BY DISTRICT ATTORNEY:  
15 Q. You say Marlo, Angela and Angela's  
16 brother visited you that night -- that Sunday  
17 night they spent the night. Let me direct your  
18 attention to the next day which would be Monday at  
19 about 9:00 in the morning. Did you have occasion  
20 again to see Marlo, Angela, and Angela's brother?  
21 A. I don't -- I don't recall seeing  
22 Angela's brother. I mean, I don't recall seeing  
23 Angela, but I seen Marlo and Angela's brother.  
24 Q. That was at your house?  
25 A. Yeah.

1 Q. Was he wearing long pants or short  
2 pants?  
3 A. He was wearing long pants.  
4 Q. So it was on the pant legs?  
5 A. Mm-hmm.  
6 Q. Did you see any blood anywhere else  
7 beside the pants?  
8 A. That's all I noted was his pants.  
9 Q. Now, after you made that observation  
10 regarding his clothing, did you then have a  
11 conversation with him?  
12 A. No. I -- we was -- we were just sitting  
13 down talking, and Marlo says, Barbara, I have  
14 something to tell you. So I goes, Okay. I  
15 followed him down the hallway. That's when he  
16 hold the money up like this and then he -- held he  
17 hold the money up like this and I grabbed the bag  
18 and I poured the money on my bed, and I started  
19 counting the money, and then when I was counting  
20 the money Marlo said, Bobbi, I did it. I say, Did  
21 what? He said, I did it. I say, Did what? He  
22 say, I did it. I say, Did what? He say -- no.  
23 He said, I had to take care of something. I said,  
24 Take care of what? He say, I had to do it, and I  
25 say, What are you talking about? Then I looked up

1 at him, then and I said, Marlo, you mean to tell  
 2 me. He said yes, I did, and I said oh. Then I  
 3 just started crying.  
 4 Q. What did he say he did?  
 5 A. He say he had to -- he had to get rid of  
 6 two people.  
 7 Q. But you indicated that Marlo was holding  
 8 a bag that contained money?  
 9 A. Yeah.  
 10 Q. Do you know what kind of a bag it was?  
 11 A. A blue pillowcase.  
 12 Q. I'm sorry?  
 13 A. A blue pillowcase.  
 14 Q. A blue pillowcase? And you emptied that  
 15 pillowcase onto your bed?  
 16 A. Yeah.  
 17 Q. Could you tell how much money was there?  
 18 A. First I counted it 13,000. Then I  
 19 counted 15. Then I counted 2,000, so I don't know  
 20 how much there was.  
 21 Q. When you say 13,000, could you mean  
 22 1300?  
 23 A. Yeah.  
 24 Q. Did you notice anything on the money  
 25 itself?

16

1 A. I noticed it had -- there's speckles of  
 2 blood on it.  
 3 Q. You mentioned a moment ago seeing blood  
 4 on Marlo's clothing. Did you have occasion to  
 5 notice his shoes?  
 6 A. I didn't -- I didn't notice his shoes.  
 7 I noticed that he had kind of a gun in his pocket  
 8 and I thought to ask him about it and I was, like,  
 9 maybe it's none of my business, so I left it  
 10 alone.  
 11 Q. So you saw something in his pocket that  
 12 looked like the outline of a gun?  
 13 A. Yeah.  
 14 Q. Do you know if Marlo changed his clothes  
 15 while he was at your home?  
 16 A. Yes, he did.  
 17 Q. Where did he change his clothes?  
 18 A. Into my bathroom.  
 19 Q. And when he came out of the bathroom  
 20 after changing his clothes, did he have anything  
 21 with him? Was he carrying anything?  
 22 A. He was carrying a bundle of clothes.  
 23 Q. Do you know what happened with the  
 24 bundle of clothes?  
 25 A. I don't know that he -- I think he took

1 them to the backyard with him.  
 2 Q. Did Marlo tell you who was with him when  
 3 he had to get rid of these two people?  
 4 A. No. I think his brother, his brother  
 5 was with him, Angela -- Angela is the one driving  
 6 the car.  
 7 Q. So Angela's driving the car and Angela's  
 8 brother was with Marlo?  
 9 A. Mm-hmm.  
 10 THE COURT: Is that yes? You have to  
 11 say yes or no, ma'am.  
 12 THE WITNESS: Oh, okay.  
 13 THE COURT: Was that yes?  
 14 THE WITNESS: Yes.  
 15 THE COURT: All right.  
 16 BY DISTRICT ATTORNEY:  
 17 Q. What was done with the money after you  
 18 counted it?  
 19 A. He took it.  
 20 Q. Did he leave any of it with you?  
 21 A. He left a thousand with me.  
 22 Q. What, if anything, were you to do with  
 23 the thousand dollars that he left?  
 24 A. I called -- he left a thousand with me  
 25 and told me I was supposed to give this to his

18

1 mother. He said, I want you to understand that  
 2 he'd do anything for his mother. If I needed done  
 3 for me, he'd do anything for me, he say, because  
 4 we are family. I said okay. So after me -- at  
 5 the time I called his mother, and I told his  
 6 mother I had something for her and she said, okay,  
 7 I'll be up there in a minute to get it.  
 8 Q. Did there come a time when mother came  
 9 over to your --  
 10 A. Yes. She came --  
 11 Q. -- to your home?  
 12 A. She came to the home to get the money.  
 13 Q. Did you give her the money?  
 14 A. Yeah.  
 15 Q. How much was that?  
 16 A. A thousand.  
 17 Q. A thousand dollars? Ma'am, do you have  
 18 a son who was living at your home by the name of  
 19 Patrick?  
 20 A. Yes, I do.  
 21 Q. Was anything done with regard to  
 22 Patrick's --  
 23 A. He told --  
 24 Q. -- shoes?  
 25 A. -- Patrick that he'd give Patrick a

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1 hundred or \$20 or something to take the shoes from  
2 him, so Patrick said fine. So he switched shoes  
3 with Patrick, and two days later I was cleaning up  
4 the hall and I happened to find the shoes and I  
5 called the police and I told them I have Marlo's  
6 shoes here.

7 Q. Did your cousin indicate to you whether  
8 or not you could tell people that he'd been  
9 around, he'd been in town?

10 A. He told me he said, Barbara, no  
11 matter -- if anybody say anything to you, tell  
12 them that you hadn't seen me today, you hadn't  
13 seen me today. And I said, What do you mean? He  
14 say, Just tell them that I have not been here. If  
15 anybody asks any questions, tell them I haven't  
16 been here today.

17 DISTRICT ATTORNEY: Thank you. Pass the  
18 witness, your Honor.

19 THE COURT: You have anything, any  
20 cross-examination?

21 DEFENSE ATTORNEY: If we have the  
22 Court's indulgence one moment.

23 THE COURT: Certainly.

24 BY DEFENSE ATTORNEY:

25 Q. Good afternoon, Ms. Smith.

20

1 A. Good afternoon.

2 Q. Is it true that during the time you were  
3 having these conversations with your cousin Marlo  
4 that you were crying?

5 A. Yes, I was.

6 Q. Okay. Isn't it also true that Marlo was  
7 crying when he told you about what had happened?

8 A. No, he wasn't.

9 Q. No, he wasn't. Okay. Did you have a  
10 good relationship with your cousin Marlo?

11 A. I think -- yes, I did. I think I'm the  
12 closest one to Marlo.

13 Q. Would it be fair to say that your  
14 mother, Emma Nash, did not have a good  
15 relationship with Marlo?

16 A. They had a fair relationship.

17 Q. Had a fair relationship?

18 A. Yeah.

19 Q. When you say fair, was it like her  
20 relationship with the other children in the  
21 family, other cousins, Marlo's brothers?

22 A. They argue every once in awhile, but  
23 they get along fine.

24 Q. Okay. Thank you, Ms. Smith.

25 DEFENSE ATTORNEY: I have no further

1 questions.

2 THE COURT: Is that it?

3 MR. SCHWARTZ: Yes.

4 THE COURT: Since she's not really  
5 Barbara Smith we can't ask her any questions, so  
6 that concludes the testimony of Barbara Smith.

7 The State may call its next witness.

8 MR. SCHWARTZ: Court's indulgence.

9 MR. OWENS: Your Honor, we want to have  
10 the Court's copy marked as an exhibit.

11 THE COURT: Certainly. That will be  
12 Court exhibit not admitted but marked for  
13 identification purposes.

14 MR. OWENS: The next one we have is also  
15 a reading, your Honor, for a witness that  
16 testified previously, Emma Nash.

17 THE COURT: And we're going to have the  
18 same reader?

19 MR. OWENS: No. We've got Eileen Davis.

20 MR. SCHIECK: For the record, your  
21 Honor, Emma Nash is also deceased.

22 THE COURT: Emma Nash is no longer with  
23 us, so we have -- she did testify at a prior  
24 proceeding and her testimony will now be read by.

25 THE READER: Eileen Davis.

22

1 THE COURT: And Teri you may swear.

2 Whereupon,

3 EILEEN DAVIS,

4 was administered the following oath by the court  
5 clerk.

6 THE CLERK: You do solemnly swear that  
7 you will faithfully and accurately read the  
8 transcript of Emma Nash to the best of your  
9 ability so help you God.

10 THE READER: Yes.

11 THE COURT: State your name for the  
12 record.

13 THE READER: Eileen Davis.

14 MR. OWENS: I'm going to read the part  
15 of Mr. Schwartz if that's okay.

16 THE COURT: That's fine.

17 BY DISTRICT ATTORNEY:

18 Q. Good morning, Ms. Nash. I'm going to  
19 ask you some questions and then the defense  
20 counsel will be able to ask you some questions.  
21 We all appreciate if you can answer by speaking  
22 into that microphone so the members of the jury  
23 can hear your answers.

24 A. Okay.

25 Q. Thank you. Mrs. Nash, where were you

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1 living on Sunday, April the 14th, 1996?  
 2 A. 2505 Cartier.  
 3 Q. Is that here in Clark County, Nevada?  
 4 A. North Las Vegas.  
 5 Q. North Las Vegas. And who did you live  
 6 there with?  
 7 A. I was staying at my daughter's house.  
 8 Q. Who else lived with you at 2505 Cartier?  
 9 A. Her kids and about 6:00 Marlo came in.  
 10 Q. Let's get to who was living there first.  
 11 A. Okay.  
 12 Q. Okay? Back on Sunday.  
 13 A. Myself, Barbara, Shadora, Tasha, and  
 14 Pat.  
 15 Q. Now, Barbara is your daughter?  
 16 A. Yes.  
 17 Q. And the other three children are her  
 18 children?  
 19 A. Yes.  
 20 Q. So they're your grandchildren?  
 21 A. Yeah.  
 22 Q. Do you know Marlo Thomas?  
 23 A. Yes, I do.  
 24 Q. How is it that you know him?  
 25 A. He's my nephew.

1 Marlo?  
 2 A. Yes.  
 3 Q. Where was it that you saw him?  
 4 A. 2505 Cartier.  
 5 Q. So he came to the house where you were  
 6 staying?  
 7 A. Yes.  
 8 Q. Was he with anyone?  
 9 A. He brought his wife with him and her  
 10 brother.  
 11 Q. Do you know his wife's name?  
 12 A. No, I can't think of it.  
 13 Q. Would it be Angela?  
 14 A. Yes.  
 15 Q. And do you know Angela's brother's name?  
 16 A. They never did tell me his name.  
 17 Q. Did you ever learn it after?  
 18 A. I think it's Kenya.  
 19 Q. Kenya?  
 20 A. Mm-hmm.  
 21 Q. Would that be Kenya Hall, if you know?  
 22 A. I don't know the last name.  
 23 Q. Now, did the three of them arrive to  
 24 2505 Cartier together?  
 25 A. Yes.

24

1 Q. So you're Marlo's aunt?  
 2 A. Yes.  
 3 Q. Do you see Marlo in the courtroom today?  
 4 A. Yes.  
 5 Q. Could you point to where he's located  
 6 and describe what he's wearing?  
 7 A. He's sitting there. He got brown pants  
 8 on with stripes and a white shirt and a flowered  
 9 necktie.  
 10 DISTRICT ATTORNEY: Could the record  
 11 reflect the identification of the defendant, your  
 12 Honor?  
 13 THE COURT: Record will so reflect.  
 14 DISTRICT ATTORNEY: Thank you.  
 15 BY DISTRICT ATTORNEY:  
 16 Q. Do you know where your nephew Marlo was  
 17 living back in April of 1996?  
 18 A. No, because he was living in Hawthorne,  
 19 Nevada.  
 20 Q. He was living somewhere in Hawthorne,  
 21 Nevada?  
 22 A. Yes.  
 23 Q. Okay. Now, on April the 14th, that  
 24 would be a Sunday, 1996, at about 6:00 in the  
 25 evening, 6 p.m., did you have occasion to see

26

1 Q. Do you know how they got to 2505  
 2 Cartier? Were they walking, were they driving?  
 3 A. They were driving.  
 4 Q. Do you know whose car they were driving?  
 5 A. I was told it was her mother's car.  
 6 Q. That would be Angela's mother's car?  
 7 A. Yes.  
 8 Q. Did they arrive there on Sunday, April  
 9 the 14th? Let me direct your attention to the  
 10 next day which would be Monday, April the 15th,  
 11 1996, at about 9:00 in the morning. Do you recall  
 12 seeing Marlo and the other two people come back to  
 13 your house?  
 14 A. I let them in about 7:00 or something,  
 15 close to 7:00.  
 16 Q. Did there come a time when they left  
 17 again?  
 18 A. Yes, they did.  
 19 Q. And then they came back sometime after  
 20 9:00 a.m.?  
 21 A. Yes.  
 22 Q. Let's talk about the second time they  
 23 came back. That would be after 9:00 a.m. that  
 24 Monday morning. What happened when the defendant  
 25 that would be Marlo, Angela and Kenya came back at

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1 about 9:00 in the morning?  
2 A. I didn't see anybody but Marlo.  
3 Q. So when you saw Marlo at about 9:00 that  
4 morning, he was by himself at that time?  
5 A. Yes.  
6 Q. Did he have a conversation with either  
7 you or your daughter when he first came into the  
8 house?  
9 A. I think he was already in there and he  
10 was talking to Barbara. He came back to my door  
11 and said to me you haven't seen me.  
12 Q. Let's slow it down now. You first  
13 became aware that he was talking to your daughter  
14 Barbara?  
15 A. Yes, he came from --  
16 Q. Where was that taking place?  
17 A. In her bedroom.  
18 Q. And then there came a time when Marlo  
19 came into your room?  
20 A. Yes.  
21 Q. And he said you haven't seen me?  
22 A. Yes.  
23 Q. What happened after that?  
24 A. Well, that was the second time that he  
25 had said that to me, so I got up to find out why

1 on your daughter's hand from the money?  
2 A. Yes, it did.  
3 Q. Did it also concern you when Marlo, on  
4 those two occasions, told you you haven't seen me?  
5 A. Yes.  
6 Q. Did there come a time when your nephew  
7 was in your house or in the house at 2505 Cartier  
8 that Monday morning that you talked to him about  
9 what was going on?  
10 A. Yes, I did. That was -- that also was  
11 in my daughter's room.  
12 Q. And that was after you visited your  
13 daughter's room?  
14 A. Okay. Marlo was sitting on the foot of  
15 the bed. My daughter was sitting at the head of  
16 her bed, and when I got there I noticed my  
17 daughter was also crying so I asked her what was  
18 wrong were her and she just started to continue  
19 crying. So I turned to Marlo and asked him to  
20 tell me what's wrong with her. Then I turned --  
21 then I asked -- I said to him, Marlo, have you  
22 done something that would put you back in jail.  
23 Q. You asked Marlo if he did something that  
24 could get him in trouble?  
25 A. Yes.

1 he was saying that, and by that -- by that time,  
2 about -- he was -- Marlo was in my daughter's  
3 room.  
4 Q. Did you go into your daughter's room?  
5 A. Yes, I did.  
6 Q. Who was in your daughter's room when you  
7 went in there?  
8 A. Marlo and my daughter.  
9 Q. What, if anything, was your daughter  
10 doing when you went into her room?  
11 A. Counting money.  
12 Q. Could you tell how much money she was  
13 counting?  
14 A. No, because I didn't try to find out.  
15 Q. Did it look like a lot of money?  
16 A. No, about a thousand, a little bit more.  
17 Q. Was there anything unusual about the  
18 money she was counting?  
19 A. Yes, because Barbara's hand was getting  
20 bloody and I -- that's the only thing she had was  
21 money, so I figured it come off the money. And --  
22 Q. So you noticed blood coming on your  
23 daughter's hand from the money she was counting?  
24 A. Yes.  
25 Q. Did this concern you when you saw blood

1 Q. Ms. Nash, you indicated that Marlo told  
2 you he was in trouble. I believe you said that he  
3 was in trouble enough to go to prison?  
4 A. Yes.  
5 Q. Did he say to you what he did that got  
6 him into this trouble?  
7 A. No.  
8 Q. Did he indicate why he had gotten this  
9 money?  
10 A. No, he didn't. He didn't do that. He  
11 said I -- my mother needed some, a thousand  
12 dollars, and he got it.  
13 Q. He said his mother needed a thousand  
14 dollars and he got it?  
15 A. Yes.  
16 Q. Did he indicate to you that he ran into  
17 trouble getting this money?  
18 A. No. He said that it would send him to  
19 prison if he --  
20 Q. Okay. Did you ask Marlo if he hurt  
21 anybody getting this money?  
22 A. No.  
23 Q. Do you recall telling me in my office  
24 that he said yes, but that one of the two people  
25 got away?

1 A. Oh, yeah.  
 2 Q. So as you think about it now, what do  
 3 you remember him saying to you about hurting  
 4 anyone?  
 5 A. He said he hoped -- one guy got away and  
 6 he hope he dies.  
 7 Q. Did he say that one guy away and he  
 8 hoped that that guy dies?  
 9 A. Yes.  
 10 Q. Did your nephew show you any emotion  
 11 when he was talking about these two people?  
 12 A. No.  
 13 Q. When you saw your nephew that Monday  
 14 morning, did he have a gun?  
 15 A. Yes.  
 16 Q. Did he show you the gun?  
 17 A. Yes.  
 18 Q. What, if anything, did he do with the  
 19 gun?  
 20 A. He gave the gun to me and told me to  
 21 give it to my son Matthew.  
 22 Q. How old is your son Matthew in 1996, a  
 23 year ago?  
 24 A. Twenty, 20, 21, somewhere in there.  
 25 Q. Did he live at home with you, Matthew?

32

1 A. No, he had his own house.  
 2 Q. Did your nephew actually give you the  
 3 gun to give to Matthew?  
 4 A. Yes.  
 5 Q. What type of gun was it?  
 6 A. I haven't the slightest idea.  
 7 Q. Was it one that you hold in your hand?  
 8 A. Yes.  
 9 Q. A small gun. And what, if anything, did  
 10 you do with the gun that your nephew gave you?  
 11 A. I put it -- no, I put it in my coat  
 12 until David got there and I gave it to him.  
 13 Q. You gave it to David?  
 14 A. Yes.  
 15 Q. Who is David?  
 16 A. My son.  
 17 Q. Do you know if David subsequently later  
 18 on turned that gun over to the police?  
 19 A. Yes.  
 20 Q. While your nephew was at the residence  
 21 2505 Cartier that Monday morning, did he have  
 22 occasion or did you have occasion to see him  
 23 coming out of the bathroom?  
 24 A. Yes.  
 25 Q. And when he came out of the bathroom,

1 did he have anything in his hands?  
 2 A. A bag.  
 3 Q. Did he indicate what he had in the bag?  
 4 A. No.  
 5 Q. Could you tell if he was wearing the  
 6 same clothes when he went into the bathroom as  
 7 when he came out?  
 8 A. I can't tell you that because he had  
 9 went into the bathroom before I looked.  
 10 Q. What, if anything, did he say with  
 11 regards to the bag that he was carrying?  
 12 A. Nothing.  
 13 Q. Did he do anything with that bag?  
 14 A. Yeah. He throwed it across the desert,  
 15 my back of my sister's house -- my daughter's  
 16 house.  
 17 Q. So in the back of your daughter's house  
 18 at 2505 Cartier?  
 19 A. Yeah.  
 20 Q. He threw that bag into the desert area?  
 21 A. Yes.  
 22 Q. Now, did there come a time, Mrs. Nash,  
 23 when your nephew, Angela, and Kenya left your  
 24 daughter's house to go back to Hawthorne?  
 25 A. Yes.

34

1 Q. Did there come a time after those three  
 2 individuals left your daughter's home that the  
 3 police contacted you sometime later?  
 4 A. He -- the police didn't contact me.  
 5 My -- see, they sent my daughter up there where  
 6 Barbara stay at to get me.  
 7 Q. So there came a time when you met with  
 8 the police?  
 9 A. Yes.  
 10 Q. Did they take a statement from you?  
 11 A. Yes.  
 12 Q. Do you know if that statement was  
 13 recorded?  
 14 A. Yes.  
 15 Q. And it was transcribed; isn't that  
 16 correct?  
 17 A. Yes.  
 18 Q. And you've seen the statement that you  
 19 gave to the police?  
 20 A. Yes.  
 21 Q. And did you tell the police pretty much  
 22 what you told this jury today?  
 23 A. Yes.  
 24 Q. Do you know what happened to the money  
 25 that your daughter Barbara was counting in her

1 room?  
 2 A. Mm-hmm.  
 3 Q. Okay. What happened to it?  
 4 A. She gave it to Marlo's mother.  
 5 Q. Do you know who requested her to do  
 6 that?  
 7 A. Marlo did.  
 8 Q. Thank you. I have no further -- I'm  
 9 sorry. Court's indulgence.  
 10 Mrs. Nash, recognizing you're not  
 11 familiar with guns and they're not very pleasant  
 12 things to look at, can I just show you this -- I  
 13 haven't asked if it's kind of like the gun you  
 14 saw?  
 15 A. It is kind of like it. It looks like  
 16 it.  
 17 Q. It is kind of like the gun?  
 18 A. Yes.  
 19 Q. Thank you.  
 20 THE COURT: What exhibit is that,  
 21 Counsel?  
 22 DISTRICT ATTORNEY: I'm sorry. This is  
 23 State's Exhibit 37A.  
 24 THE COURT: All right.  
 25 Cross-examination.

1 A. Yes.  
 2 Q. -- and told her to give your -- to your  
 3 son Matthew?  
 4 A. Yes.  
 5 Q. Okay. When you were asked Matthew's  
 6 age, you said 20 or 21?  
 7 A. Yes, I did. I have six kids. Do you  
 8 expect me to know all their ages?  
 9 Q. Okay, but isn't, in fact, your son  
 10 Matthew about 29?  
 11 A. Probably is.  
 12 Q. Probably is. Okay. I'd like to call  
 13 your attention to your testimony regarding the  
 14 money, okay? Now, you saw your daughter counting  
 15 this money?  
 16 A. Yes.  
 17 Q. Is that correct?  
 18 A. Mm-hmm.  
 19 Q. And you made a statement that part of  
 20 that money was given to Marlo's mother?  
 21 A. Yes.  
 22 Q. And she, in fact, is your sister; is  
 23 that correct, Mrs. Nash?  
 24 A. Yes.  
 25 Q. Did you see this money being given to

1 BY DEFENSE ATTORNEY:  
 2 Q. Good afternoon, Mrs. Nash.  
 3 A. Good afternoon.  
 4 Q. I have in front of me a statement that  
 5 you gave to the Metropolitan Police Department on  
 6 the incident that you've just testified about.  
 7 A. Mm-hmm.  
 8 Q. And you were asked if you remember  
 9 making that statement?  
 10 A. What statement?  
 11 Q. To the police, the recorded statement?  
 12 A. Yes.  
 13 Q. Okay. That statement was given the same  
 14 day that this occurred; is that correct?  
 15 A. Yes.  
 16 Q. Isn't it true in that statement that you  
 17 told -- that you did not tell the police that  
 18 Marlo made a statement to you that he hoped that  
 19 the one escaped died?  
 20 A. Yes.  
 21 Q. You didn't recall it at that time?  
 22 A. No, I didn't at that time -- at the  
 23 time.  
 24 Q. Mrs. Nash, you stated that Marlo gave  
 25 you a gun --

1 your sister or did you give it to her?  
 2 A. No, I didn't. Barbara did.  
 3 Q. Barbara did it?  
 4 A. Yes.  
 5 Q. Did you see Barbara do this?  
 6 A. No, I didn't.  
 7 Q. Okay. So of your own personal  
 8 knowledge, you don't know, in fact, that that  
 9 occurred; is that correct?  
 10 A. I know Barbara told me she gave it to  
 11 her, so that's the fact.  
 12 Q. Well, now, that's a statement from your  
 13 daughter to you.  
 14 A. It is.  
 15 Q. Okay. Now, this home where these event  
 16 occurred, was that your daughter's home?  
 17 A. Yes.  
 18 Q. Okay. And were you living there?  
 19 A. At the time, yes.  
 20 Q. Okay. Would you characterize the  
 21 relationship between your daughter Barbara and  
 22 your -- Marlo as a close one?  
 23 A. Marlo had been close to all of us.  
 24 Q. And him and Barbara had -- he came to  
 25 Barbara's house when they came up there, and so I



1 say he was very close --  
 2 MR. SCHIECK: I'm sorry that's your  
 3 answer.  
 4 A. And him and Barbara -- he come to  
 5 Barbara's house when they come up there and eat,  
 6 and so I say he was very close to her.  
 7 Q. How would you describe your relationship  
 8 with your nephew?  
 9 A. I love him. Still, in -- Marlo was the  
 10 only -- was born when I was at home. I helped. I  
 11 saw him delivered. So as that fact, Marlo and I  
 12 was pretty close, at least I hope we was.  
 13 Q. So you felt you had a close relationship  
 14 with Marlo?  
 15 A. Yes.  
 16 Q. In fact, spent time with him during the  
 17 years he was growing up?  
 18 A. Yeah, when he was at home.  
 19 DEFENSE ATTORNEY: I have no further  
 20 questions.  
 21 THE COURT: Any further questions from  
 22 the State?  
 23 MR. OWENS: No, your Honor.  
 24 THE COURT: Thank you, Ms. Davis, for  
 25 reading the testimony of Emma Nash, and you may be

40

1 excused.  
 2 Counsel, you may call your next witness.  
 3 MR. OWENS: For the record we're going  
 4 to mark this as the next for identification.  
 5 THE COURT: The testimony of Emma Nash  
 6 will be marked next in line.  
 7 THE CLERK: That will be 113.  
 8 MR. SCHWARTZ: State's going to call  
 9 Michael Holly.  
 10 Whereupon,  
 11 MICHAEL HOLLY,  
 12 was administered the following oath by the court  
 13 clerk.  
 14 THE CLERK: You do solemnly swear that  
 15 the testimony you give shall be the truth, the  
 16 whole truth, and nothing but the truth so help you  
 17 God.  
 18 THE WITNESS: I do.  
 19 THE CLERK: State your name and spell  
 20 your first and last name for the record.  
 21 THE WITNESS: Michael B. Holly,  
 22 M-I-C-H-A-E-L H-O-L-L-Y.  
 23  
 24 / / /  
 25 / / /

DIRECT EXAMINATION

1  
 2 BY MR. SCHWARTZ:  
 3 Q. By whom were you employed on August the  
 4 10th, 1990?  
 5 A. City of North Las Vegas Police  
 6 Department.  
 7 Q. And how long had you been a police  
 8 officer in 1990?  
 9 A. Almost about six years.  
 10 Q. Are you still employed by the police  
 11 department?  
 12 A. Yes, sir.  
 13 Q. And directing your attention to August  
 14 the 10th, 1990, did you have occasion to arrest an  
 15 individual by the name of Marlo Thomas?  
 16 A. Yes, sir.  
 17 Q. Could you relate to the members of the  
 18 jury the facts and circumstances surrounding that  
 19 particular arrest?  
 20 A. Yes, sir. On August 10th approximately  
 21 2355 hours I was called to the 7-Eleven store at  
 22 Las Vegas Boulevard and Civic Center reference to  
 23 a robbery. When I got there I contacted the  
 24 victim, Mr. Beltran. Mr. Beltran was Spanish  
 25 speaking and had a little difficulty with his

42

1 English. Because of the difficulty in speaking, I  
 2 asked him take me to the crime scene which was at  
 3 2300 block of Las Vegas Boulevard, about one block  
 4 from the 7-Eleven.  
 5 As I was talking to Mr. Beltran,  
 6 Mr. Beltran pointed out to me Mr. Thomas who was  
 7 alone walking northbound on the Boulevard towards  
 8 us. Mr. Beltran says, That's the one that took my  
 9 money, reference to the robbery. So I tried to  
 10 talk with Mr. Marlo Thomas walking up. He became  
 11 evasive, trying to walk around me. Mr. Beltran  
 12 said, He's the one who took my money.  
 13 At that time Mr. Thomas started to run.  
 14 I used my Capstun I had in my hand at the time,  
 15 sprayed his face. We had a short foot pursuit,  
 16 and he was found about ten minutes later hiding  
 17 underneath the bush. Because of what Mr. Beltran  
 18 told me during the robbery, that there was two  
 19 suspects, Mr. Thomas along with another person.  
 20 One of them had an 8-inch knife in their hand, and  
 21 he took \$475 out of his front left pants pocket  
 22 during the robbery.  
 23 Q. Did Mr. Beltran indicate to you which of  
 24 the two individuals had the knife?  
 25 A. No, sir.

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1 Q. And based upon the statement of  
 2 Mr. Beltran, you then arrested Marlo Thomas; is  
 3 that correct?  
 4 A. Yes, sir, I did. I arrested him for  
 5 robbery with use of a deadly weapon and  
 6 obstructing a police officer and transported down  
 7 to juvenile home where he was booked and detained.  
 8 Q. Are you aware that the defendant  
 9 subsequently entered a plea of guilty to the  
 10 attempt robbery and received a prison sentence  
 11 based upon that arrest?  
 12 A. I was told that --  
 13 Q. Just yes or no, if you know.  
 14 A. Yes, sir.  
 15 Q. Thank you. It's been 14 years, sir. Do  
 16 you think you'd recognize Marlo Thomas if you saw  
 17 him again?  
 18 A. No, sir.  
 19 Q. Thank you.  
 20 THE COURT: Cross-examination.  
 21  
 22 BY MR. SCHIECK: CROSS-EXAMINATION  
 23 Q. Was it Mr. Beltran that was the robbery  
 24 victim?  
 25 A. I'm not sure if his last name is

1 happened to have \$475 in his pocket?  
 2 A. Yes, sir. He said he was working. He  
 3 went to Rudy's Bar, cashed a check at Rudy's Bar  
 4 and was walking from Rudy's Bar and as he was in  
 5 the 2300 block of Las Vegas Boulevard that's when  
 6 he was approached by the two suspects and was  
 7 robbed.  
 8 MR. SCHWARTZ: Thank you very much.  
 9 MR. SCHIECK: Nothing further.  
 10 THE COURT: Ladies and gentlemen of the  
 11 jury, do you have any questions for Officer Holly?  
 12 I see there are no questions.  
 13 Officer Holly, thank you, sir, for your  
 14 testimony. You may be excused. Please don't  
 15 discuss your testimony with anyone other than the  
 16 attorneys.  
 17 Your next witness, please.  
 18 MR. SCHWARTZ: David Bailey.  
 19 MR. OWENS: Your Honor, we wanted to  
 20 note for the record Exhibits 88 and 101,  
 21 exhibit 88 being a certified copy of the judgment  
 22 of conviction of the defendant for the incident we  
 23 just heard about from Officer Holly, and the other  
 24 item, Exhibit 101, being a copy of his discharge  
 25 from Nevada State Prison for that same offense.

1 Beltran, first name Beltran. One of the part of  
 2 the names I can't pronounce. It started with an  
 3 F.  
 4 Q. There was a problem communicating  
 5 because of the language barrier?  
 6 A. Yes, sir.  
 7 Q. It was hard to get very accurate  
 8 information from him other than he pointed out  
 9 somebody walking down the street?  
 10 A. Yes. I got the idea that two people had  
 11 held him. One had the knife was getting the money  
 12 from him. I was getting something what happened  
 13 from the incident.  
 14 Q. I take it you don't speak Spanish?  
 15 A. I speak a few words but not enough to  
 16 carry on a conversation.  
 17 Q. Mr. Beltran spoke only a few words of  
 18 English, not enough to carry on a conversation in  
 19 English?  
 20 A. Correct.  
 21 MR. SCHWARTZ: One further.  
 22  
 23 REDIRECT EXAMINATION  
 24 BY MR. SCHWARTZ:  
 25 Q. Sir, did Mr. Beltran tell you how he

1 THE COURT: Exhibit 88 and 101 will be  
 2 admitted which have to do with the judgment of  
 3 conviction and the release from the prison did you  
 4 say?  
 5 MR. OWENS: Released from prison.  
 6 THE COURT: For the 1990 attempt  
 7 robbery.  
 8 (Thereupon, State's Exhibit 88 & 101  
 9 were admitted into evidence.)  
 10 Whereupon,  
 11 DAVID BAILEY,  
 12 was administered the following oath by the court  
 13 clerk.  
 14 THE CLERK: You do solemnly swear that  
 15 the testimony you give shall be the truth, the  
 16 whole truth, and nothing but the truth so help you  
 17 God.  
 18 THE WITNESS: I do.  
 19 THE CLERK: State your name for the  
 20 record.  
 21 THE WITNESS: David Bailey,  
 22 B-A-I-L-E-Y.  
 23 MR. SCHIECK: Could we have a continuing  
 24 objection to the line of questioning as previously  
 25 discussed?

1 THE COURT: Just based on hearsay?  
 2 MR. SCHIECK: And confrontation clause,  
 3 your Honor.  
 4 THE COURT: Objection is noted.  
 5  
 6 BY MR. SCHWARTZ: DIRECT EXAMINATION  
 7 Q. Sir, you testified here yesterday, and I  
 8 just wanted to ask you a couple of questions  
 9 regarding the statement that you took from Kenya  
 10 Hall. Did Mr. Hall during the course of that  
 11 statement indicate to you why Marlo Thomas left  
 12 the area of the office?  
 13 A. Yes, he did.  
 14 Q. What did he say?  
 15 A. He said that he had left the office and  
 16 he was going back to where the other gentlemen  
 17 were because that he was a witness to what had  
 18 occurred.  
 19 Q. The other gentleman was a witness to  
 20 what had occurred?  
 21 A. Yes.  
 22 MR. SCHIECK: Your Honor, could we ask  
 23 whether Trooper Bailey is reading from a document  
 24 or doing this from his own recollection?  
 25 THE COURT: You may.

1 it on your review of a copy of his transcript?  
 2 A. I'm basing it on the review of the copy  
 3 of the transcript from the interview that was  
 4 conducted at the time.  
 5 MR. SCHIECK: Thank you. No further  
 6 questions.  
 7 MR. SCHWARTZ: Just one follow-up basec  
 8 upon that question.  
 9  
 10 REDIRECT EXAMINATION  
 11 BY MR. SCHWARTZ:  
 12 Q. Trooper Bailey, the transcript that you  
 13 reviewed, the statement of Kenya Hall, that was  
 14 recorded, correct?  
 15 A. Yes, it was.  
 16 Q. And it was taken in the presence of  
 17 Kenya Hall's mother, correct?  
 18 A. Yes, it was.  
 19 Q. Thank you. At the time shortly after it  
 20 was taken, did you review it?  
 21 A. Yes, I did.  
 22 Q. Was it accurate?  
 23 A. Yes, it was.  
 24 Q. Thank you.  
 25 / / /

1 THE WITNESS: I refreshed my memory from  
 2 the interview that I had conducted with Mr. Kenya  
 3 Hall.  
 4 BY MR. SCHWARTZ:  
 5 Q. I gave you a copy of Kenya Hall's  
 6 transcript to look at; is that correct?  
 7 A. Yes, you did.  
 8 Q. Did Kenya Hall relate to you any  
 9 statements that Marlo Thomas made to Angela  
 10 concerning what had occurred when he went in to  
 11 see this other person who was a witness?  
 12 A. In reference to going into the --  
 13 Ms. Thomas was in the rest room and he had began  
 14 to stab the individual that was in the bathroom,  
 15 and he started yelling, Marlo, why are you doing  
 16 this to me, I thought we were friends, and Marlo  
 17 stated that he was a witness to it so he had to.  
 18 Q. Thank you.  
 19 MR. SCHWARTZ: I have no further  
 20 questions, your Honor.  
 21 THE COURT: Cross-examination.  
 22  
 23 BY MR. SCHIECK: CROSS-EXAMINATION  
 24 Q. Do you have an independent recollection  
 25 of the interview with Mr. Hall, or are you basing

1  
 2 RECROSS-EXAMINATION  
 3 BY MR. SCHIECK:  
 4 Q. Besides his mother, how many other  
 5 people were in the room?  
 6 A. There was four other people in the room.  
 7 There was several deputies from the Mineral County  
 8 Sheriff's Department, one officer from the  
 9 juvenile probation department, myself, Kenya and  
 10 his mother.  
 11 Q. Were these uniformed officer?  
 12 A. Yes, they were.  
 13 Q. Wearing guns?  
 14 A. Yes.  
 15 Q. Badges?  
 16 A. Yes.  
 17 MR. SCHIECK: Thank you, nothing  
 18 further?  
 19 MR. SCHWARTZ: Your Honor, we would lik  
 20 to have this transcript marked and offered.  
 21 THE COURT: It will be marked. Court's  
 22 not going to admit it because Officer Bailey is  
 23 here is here to tell us about his conversation  
 24 with Kenya Hall on April 15th of 1996.  
 25 MR. OWENS: Your Honor, may we approach

1 THE COURT: You may.  
 2 (Bench conference.)  
 3 MR. OWENS: I think that the question by  
 4 Mr. Schieck makes the transcript admissible now in  
 5 a different way than we had argued earlier in that  
 6 the memory of the officer has been impugned. On  
 7 the cross-examination there's some suggestion that  
 8 he maybe didn't remember it right and that he had  
 9 to rely only upon the transcript. And, secondly,  
 10 that the presence of the police there that were  
 11 armed was perhaps a coercive environment in which  
 12 Mr. Hall gave that statement.  
 13 The admissibility of the entire  
 14 statement would allow the jury to see the entire  
 15 context of the conversation, see the relaxed  
 16 nature of the conversation and the lack of any  
 17 coercion and the validity of the things that were  
 18 said and recorded in there; that it's not just  
 19 based upon memory or failure of memory but was  
 20 actually well-documented at the time and that they  
 21 would be allowed to see the context of that  
 22 statement and the context of everything else that  
 23 he told the officer.  
 24 THE COURT: Your response, Mr. Schieck.  
 25 MR. SCHIECK: Well, number one, the

1 hands, so Trooper Bailey you're once again  
 2 excused.  
 3 Counsel, call your next witness.  
 4 MR. OWENS: Court's indulgence. We have  
 5 another transcript from a prior proceeding. The  
 6 witness is Loletha Jackson, and we have another  
 7 individual, Jessica Orben, here to read the part  
 8 of Ms. Jackson.  
 9 THE COURT: Ms. Orben, would you please  
 10 come forward and be sworn to read the testimony of  
 11 Loletha Jackson.  
 12 MR. SCHIECK: Can we have  
 13 representations why she's not available, your  
 14 Honor?  
 15 MR. OWENS: I don't think availability  
 16 is an issue here since she testified in a prior  
 17 proceeding. This is information that this jury  
 18 would inure to their general knowledge anyway  
 19 along with --  
 20 MR. SCHWARTZ: Additionally, your Honor,  
 21 our investigator has been trying to locate her,  
 22 and as recently as yesterday or perhaps the day  
 23 before he has not been able to find her.  
 24 THE COURT: She doesn't have to be  
 25 unavailable for the purpose of penalty proceeding

1 Court had ruled the statement is not admissible  
 2 and he was basing his testimony on an inadmissible  
 3 document. The Court had already ruled that it  
 4 shouldn't be admitted under the confrontation  
 5 clause, yet they back door it in by him sitting up  
 6 there reading and telling them what it said.  
 7 Number two, Mr. Schwartz asked the question was  
 8 his mother present. I think that prompted me to  
 9 have to ask who else was present. They opened  
 10 that door, not me. I had the right to rebut it  
 11 was just his mother sitting there, so I don't  
 12 think I opened any doors. And if the Court wants  
 13 to admit it, that's fine. We need some issues on  
 14 appeal so.  
 15 MR. OWENS: That's a great argument.  
 16 THE COURT: Based upon the argument at  
 17 the bench, the Court is going to admit Mr. Hall's  
 18 recorded statement with Officer Bailey, and it  
 19 will be admitted as Exhibit No.  
 20 THE CLERK: 114, your Honor.  
 21 THE COURT: 114. Thank you.  
 22 (Thereupon, State's Exhibit 114  
 23 was admitted into evidence.)  
 24 THE COURT: Ladies and gentlemen, do you  
 25 have any questions for Trooper Bailey? I see no

1 because we're not retrying the case. We are  
 2 giving a summary of the case, and since she did  
 3 testify before under oath and was subject to  
 4 cross-examination we will simply read her recorded  
 5 testimony and, Ms. Orben, if you would please be  
 6 sworn to read that testimony accurately and  
 7 completely.  
 8 MR. SCHIECK: I have an objection under  
 9 Crawford, your Honor, on confrontation issues on a  
 10 witness that I don't think they've established  
 11 couldn't be here to testify live.  
 12 THE COURT: I think you misunderstand  
 13 the Court's ruling, Mr. Schieck. The  
 14 confrontation clause has been protected by the  
 15 fact that she testified at a prior proceeding  
 16 where she was subject to cross-examination, and we  
 17 can't change her testimony today because she is  
 18 going to be testifying exactly to the same things  
 19 because it's written down, so your  
 20 cross-examination is going to be directly the same  
 21 so there is no violation of anything.  
 22 Whereupon,  
 23 JESSICA ORBEN,  
 24 was administered the following oath by the court  
 25 clerk.

1 THE CLERK: You do solemnly swear that  
2 you will faithfully and accurately read the  
3 transcript of Loletha Jackson to the best of your  
4 ability so help you God.

5 THE WITNESS: Yes.

6 THE CLERK: State your name and spell  
7 your last name for the record.

8 THE WITNESS: Jessica Orben,

9 J-E-S-S-I-C-A O-R-B-E-N.

10 THE COURT: Counsel, you may proceed.

11  
12 DIRECT EXAMINATION

13 BY DISTRICT ATTORNEY:

14 Q. Ms. Jackson, how old are you?

15 A. Thirty-two.

16 Q. And back in March, March the 5th, 1996,  
17 were you living at 2500 Clayton?

18 A. Yes.

19 Q. And who were you living there with or  
20 staying there with?

21 A. With a father and some friends.

22 Q. On that date of March the 5th, 1996, did  
23 a Pam Davis visit you at your home?

24 A. Yes.

25 Q. I'm going to ask you some questions. If

1 Q. Where did you go for cover?

2 A. I hid behind the door in the bedroom.

3 Q. Was there anybody with you in the  
4 bedroom at that time?

5 A. Yeah, my son.

6 Q. Who? Your son?

7 A. Mm-hmm.

8 Q. Is that a yes?

9 A. Yes.

10 Q. How old was your son?

11 A. About five.

12 Q. Okay. Did there come a time when you  
13 came out of hiding and you went to see what had  
14 happened?

15 A. Yes.

16 Q. What did you see when you came out of  
17 hiding?

18 A. Marlo coming down the hallway pointing a  
19 gun at me.

20 Q. You indicated he had a gun in his hand?

21 A. Yes.

22 Q. And it was pointed at you?

23 A. Yes.

24 Q. What's the next thing you remember  
25 happening?

1 you could speak up into the microphone so  
2 everybody here can hear you, okay?

3 A. Mm-hmm.

4 Q. Was that a yes?

5 A. Yes.

6 Q. After Pam Davis visited you on March the  
7 5th, 1996, did there come a time when an  
8 individual by the name of Marlo Thomas came into  
9 your home?

10 A. Yes.

11 Q. Where were you when Marlo Thomas entered  
12 your residence?

13 A. In the back, in the back room.

14 Q. What, if anything, did you hear after  
15 Marlo Thomas entered your home?

16 A. A lot of arguing.

17 Q. Okay.

18 A. Before and then gunshot.

19 Q. So you heard a lot of argument and then  
20 you heard a gunshot?

21 A. Yes.

22 Q. What, if anything, did you do after  
23 hearing this loud argument and -- this argument  
24 and the gunshot?

25 A. What did I do then? I ran for cover.

1 A. Him busting me in the face and I just  
2 remember being unconscious. That's it.

3 Q. So for some period of --

4 A. I was knocked unconscious.

5 Q. -- time you were rendered unconscious?

6 A. Yes.

7 Q. Do you remember anything happening  
8 between the time you were busted in the face and  
9 the time you woke up?

10 A. No.

11 Q. Did you feel any pain to your stomach  
12 area?

13 A. Yes, to my chest.

14 Q. What caused that?

15 A. Him stomping me with his feet.

16 Q. So Marlo Thomas was stomping you --

17 A. Yes.

18 Q. -- as well? What area of your body was  
19 he stomping you?

20 A. Up in the chest area.

21 Q. The chest area?

22 A. Yes.

23 Q. Did you lose any teeth as a result of  
24 this incident?

25 A. Yes.

1 Q. Do you see Marlo Thomas in the courtroom  
2 today?  
3 A. Yes.  
4 Q. Would you point to where he's located  
5 and describe what he's wearing today?  
6 A. Oh, he's to the left there, got on a  
7 beige shirt and beige pants.  
8 DISTRICT ATTORNEY: The record reflect  
9 the identification of the defendant, your Honor?  
10 THE COURT: The record will so reflect.  
11 DEFENSE ATTORNEY: Thank you.  
12 BY DEFENSE ATTORNEY:  
13 Q. Ms. Jackson, presently are you  
14 incarcerated in the North Las Vegas Detention  
15 Center?  
16 A. Yes.  
17 Q. Is that on a drug charge?  
18 A. Yes.  
19 Q. Did you plead guilty to some drug charge  
20 and have you been referred to drug court?  
21 A. Yes.  
22 Q. Is that to help you get off --  
23 A. Yes.  
24 Q. -- the drug problem?  
25 A. Yes.

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1 Q. Do you have any other convictions?  
2 A. No.  
3 Q. Thank you.  
4 THE COURT: Do you have any cross?  
5 BY DEFENSE ATTORNEY:  
6 Q. Ms. Jackson, isn't it true that  
7 Mr. Thomas was there that day and was quite upset  
8 and agitated over the fact that he believed that  
9 his wife's wedding rings or some rings were  
10 stolen?  
11 A. No, they weren't stolen.  
12 Q. No, they weren't? Excuse me.  
13 Was there an issue about some rings  
14 though?  
15 A. It was -- didn't never get to that point  
16 until after he was sent to jail and, no, there  
17 wasn't.  
18 Q. There was no issue? I mean, that's --  
19 today is the first time you have heard anything  
20 about rings?  
21 A. No, it isn't.  
22 Q. Do you recall an individual by the name  
23 of Angela Thomas or Angela Love?  
24 A. Yes.  
25 Q. All right. How do you know her?

1 A. This is my neighbor's niece.  
2 Q. And do you know her to be Mr. Thomas's  
3 wife or fiancé at the time?  
4 A. No, I didn't know that was his wife.  
5 Q. All right. These rings that I've asked  
6 you about earlier?  
7 A. Mm-hmm.  
8 Q. Did Marlo ask you for some rings back?  
9 Just yes or no.  
10 A. No.  
11 Q. He never asked you for the rings back?  
12 A. No.  
13 Q. So you are denying that today?  
14 A. When he come to me down the hallway with  
15 a gun pointing to me he was like, bitch, where's  
16 my rings. The next thing I know was a boom, boom,  
17 boom. He never gave me a chance to say anything.  
18 I was knocked out conscious.  
19 Q. Whose rings was he referring to?  
20 A. He's referring to Angela's rings.  
21 Q. And those were her wedding rings?  
22 A. I don't know what kind of rings they  
23 were, sir.  
24 Q. But it's your testimony he never gave  
25 you an opportunity to answer?

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1 A. That's right.  
2 DEFENSE ATTORNEY: No further question  
3 your Honor.  
4 THE COURT: Anything else?  
5 MR. SCHWARTZ: No, your Honor.  
6 THE COURT: Thank you, Ms. Orben, for  
7 reading the testimony of Loletha Jackson. You may  
8 be excused. Loletha Jackson's transcript will be  
9 marked for identification purposes as the next in  
10 line.  
11 Counsel, you may call your next witness.  
12 MR. SCHWARTZ: Prior to calling our next  
13 witness, your Honor, I believe Exhibit 103 should  
14 reflect a judgment of conviction for this  
15 particular incident.  
16 THE COURT: 103 is the judgment of  
17 conviction that goes along with the incident  
18 regarding Loletha Jackson, and it will be  
19 admitted.  
20 MR. SCHWARTZ: Thank you.  
21 (Thereupon, State's Exhibit 103  
22 was admitted into evidence.)  
23 MR. SCHWARTZ: State would call  
24 Dr. Jordan.  
25 / / /

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1 Whereupon,  
 2 ROBERT JORDAN, M.D.,  
 3 was administered the following oath by the court  
 4 clerk.  
 5 THE CLERK: You do solemnly swear that  
 6 the testimony you give shall be the truth, the  
 7 whole truth, and nothing but the truth so help you  
 8 God.  
 9 THE WITNESS: I do.  
 10 THE CLERK: State your name and spell  
 11 your first and last name for the record.  
 12 THE WITNESS: Dr. Robert Jordan,  
 13 R-O-B-E-R-T J-O-R-D-A-N.  
 14  
 15 BY MR. SCHWARTZ: DIRECT EXAMINATION  
 16 Q. Sir, by whom are you currently employed?  
 17 A. I'm retired.  
 18 Q. Prior to your retirement, how were you  
 19 employed?  
 20 A. I was employed as a deputy medical  
 21 examiner for Clark County.  
 22 Q. And how long were you employed as a  
 23 deputy medical examiner for Clark County?  
 24 A. Five years.  
 25 Q. Prior to that where were you employed?

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1 A. Harris County, Texas.  
 2 Q. In what capacity?  
 3 A. As a medical examiner.  
 4 Q. And how long had you been a medical  
 5 examiner in Harris County, Texas?  
 6 A. Ten years.  
 7 Q. Could you briefly describe for the  
 8 members of the jury your educational background,  
 9 just briefly?  
 10 A. I received combined MD, Ph.D. degrees  
 11 from Tulane University, took a four-year residency  
 12 in pathology, and I'm board certified in forensic,  
 13 clinical, and anatomic pathology.  
 14 Q. Dr. Jordan, during your tenure with both  
 15 the Clark County Medical Examiner's Office and in  
 16 Harris County, Texas, have you qualified as an  
 17 expert in the field of forensic pathology?  
 18 A. I have.  
 19 Q. On how many occasions, if you know?  
 20 A. Approximately 200.  
 21 Q. Could you briefly tell the members of  
 22 the jury what you mean or what is meant by the  
 23 term forensic pathology?  
 24 A. Forensic pathology is the study of  
 25 pathology as it applies to the law.

1 Q. Dr. Jordan, let me direct your attention  
 2 to April the 15th, 1996. Were you present and  
 3 involved in the autopsy of two young men?  
 4 A. Yes, sir.  
 5 Q. Who else was involved in the autopsy of  
 6 those two individuals?  
 7 A. Dr. Sheldon Green.  
 8 Q. Was he also a medical examiner in Clark  
 9 County?  
 10 A. He was the chief medical examiner.  
 11 Q. So he was your boss or your supervisor?  
 12 A. That is correct.  
 13 Q. Where did those autopsies take place?  
 14 A. At the office of the Clark County  
 15 Coroner Medical Examiner.  
 16 Q. Where's that located?  
 17 A. Pinto and Shadow Lane.  
 18 Q. Here in Las Vegas?  
 19 A. In Las Vegas.  
 20 Q. And were the persons upon whom those  
 21 examinations performed identified to you as Carl  
 22 Dixon and Matt Gianakis?  
 23 A. They were.  
 24 Q. And do you recall approximately what  
 25 time the first autopsy took place? That would be

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1 the autopsy of Mr. Dixon.  
 2 A. Both of them were done in the afternoon.  
 3 Mr. Dixon's autopsy was done exactly at 1530.  
 4 Q. So that would be 3:30 in the afternoon?  
 5 A. That is correct.  
 6 Q. And then subsequently an autopsy was  
 7 performed on Matt Gianakis?  
 8 A. That is correct.  
 9 Q. And were law enforcement personnel  
 10 present during the performance of both autopsies?  
 11 A. Yes.  
 12 Q. And you indicated that you were present  
 13 during the performance of both autopsies?  
 14 A. That is correct.  
 15 Q. Regarding the autopsy of Carl Dixon  
 16 which began as you stated at 3:30 in the afternoon  
 17 on April the 15th, 1996, did you personally  
 18 perform the autopsy on Carl Dixon?  
 19 A. I assisted Dr. Green.  
 20 Q. And did you witness Dr. Green conducting  
 21 the autopsy?  
 22 A. I did.  
 23 Q. Was an external examination on Carl  
 24 Dixon performed?  
 25 A. Yes.

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1 Q. And what, if anything, significant  
2 resulted from that external examination?  
3 A. He was well-developed, well-nourished,  
4 appeared his stated age of 23. There were no  
5 signs of natural disease and there were multiple  
6 traumatic injuries.  
7 Q. When you say multiple traumatic  
8 injuries, what type of injuries did you observe?  
9 A. There were multiple stab wounds, cutting  
10 wounds, pinprick-like wounds on the entire body.  
11 Q. With regard to the external examination  
12 on Mr. Dixon, did you determine approximately how  
13 many wounds were present?  
14 A. We counted 19 cutting and stabbing  
15 wounds to the chest and abdomen and 15 defensive  
16 type wounds to the hands and left forearm.  
17 Q. When you use the terminology defensive  
18 wounds, what do you mean?  
19 A. Defensive wounds are usually wounds on  
20 the extremities made by the perpetrator and the  
21 victim is trying to protect himself from the  
22 weapon.  
23 MR. SCHWARTZ: Court's indulgence.  
24 BY MR. SCHWARTZ:  
25 Q. Dr. Jordan, showing you what has been

1 with your finger and it will.  
2 A. Here is one, two, three and one little  
3 one there.  
4 Q. Would -- you may have answered this.  
5 Would these be examples of defensive wounds?  
6 A. Yes, sir.  
7 Q. And showing you Exhibit 42, what do we  
8 see in that exhibit?  
9 A. That's a photograph of what I believe to  
10 be the arm of the victim. It's difficult to  
11 identify orientation of this photograph. I  
12 believe it's the arm and showing again a defensive  
13 type wound.  
14 Q. And how would you describe that wound,  
15 as a stab wound or a cutting wound?  
16 A. Differential is difficult. It probably  
17 is a stab wound.  
18 Q. And what distinguishes a stab wound from  
19 a cutting wound?  
20 A. A stab wound usually is deeper than it  
21 is long. A cutting wound is usually longer than  
22 it is deep.  
23 Q. I'm showing you Exhibit 43, Dr. Jordan.  
24 What do we see in that exhibit?  
25 A. This again is difficult to orient as far

1 marked as State's Exhibit 39 and ask if you can  
2 identify -- I'll have to move it around.  
3 MR. SCHIECK: For the record, your  
4 Honor, we would preserve any objection made at the  
5 previous trial to the admission of these  
6 photographs.  
7 THE COURT: Objection is noted and  
8 overruled.  
9 BY MR. SCHWARTZ:  
10 Q. Dr. Jordan, Exhibit 39, what do we see  
11 in that exhibit?  
12 A. Exhibit 39 is a photograph of a face of  
13 the decedent, Carl Dixon, upon whom we performed  
14 an autopsy with our assession number 961627.  
15 Q. So each autopsy has a certain number  
16 affixed to it from the coroner's office?  
17 A. That is right.  
18 Q. And showing you Exhibit 41, what do we  
19 see in that exhibit?  
20 A. Exhibit 41 is a photograph of the left  
21 hand of Mr. Dixon showing the various defensive  
22 type wounds on the fingers.  
23 Q. Dr. Jordan, I'm told that you can  
24 actually if you need to illustrate something on  
25 any of these exhibits you can draw on that screen

1 as what exactly extremity it is. It could be the  
2 arm or it might be the lower -- this might be the  
3 thigh and the leg. It's hard to tell because of  
4 the distance of the photograph, but, again, we see  
5 the cutting and stab type wounds, one here, one  
6 here, one here, one here, one here.  
7 Q. I'm now showing you Exhibit 44, Doctor.  
8 What do we see in that exhibit?  
9 A. This is the chest, the left chest, of  
10 the decedent showing multiple what I would  
11 classify as a majority of stab wounds, one here,  
12 one here, one here, one there, one there, one  
13 there and one here and one here.  
14 Q. And above those three stab wounds on the  
15 screen, what do we see at the top area of that  
16 exhibit or can you tell what that is,  
17 discoloration?  
18 A. It could be discoloration or it could be  
19 dried blood. It's hard to tell or indeed it might  
20 be pinprick type wounds. It's hard to tell from  
21 the photograph.  
22 Q. Exhibit 45, what do we see in that  
23 exhibit?  
24 A. This appears to be a stab wound to the  
25 chest.



1 Q. 46?  
 2 A. Multiple stab and cutting wounds and I  
 3 can't -- this may be the right groin if I were to  
 4 classify it anatomically, but here's one wound,  
 5 two, three, four, five, six in that photograph.  
 6 Q. In 47, sir, what do we see?  
 7 A. Again, it's difficult to orient the  
 8 photograph anatomically, but we have multiple what  
 9 appear to be stab wounds, one, two, three, four,  
 10 five.  
 11 Q. And in 48, Dr. Jordan?  
 12 A. Same thing applies. These should be  
 13 preceded by photographs taken from a distance so  
 14 you can tell exactly what anatomic part we're  
 15 talking about, but here is a long wound which is  
 16 probably a stab wound, one, two, three.  
 17 Q. And finally Exhibit 49, what do we see  
 18 in this exhibit?  
 19 A. That appears to be the arm. This is the  
 20 armpit here. We have two wounds to the chest,  
 21 one, two, and one to the arm.  
 22 Q. As you've told the jury how difficult it  
 23 is to actually specify the exact location of these  
 24 stab or cutting wounds, I'd like to show you  
 25 Exhibit 38, and does this exhibit fairly and

1 cause of death?  
 2 A. Yes, sir.  
 3 Q. What was your opinion?  
 4 A. My opinion Carl Dixon died as a result  
 5 of multiple stab wounds to the chest and abdomen.  
 6 Q. Was a comprehensive blood screen  
 7 performed on Mr. Dixon?  
 8 A. Yes.  
 9 Q. And what were the results?  
 10 A. There was no alcohol present, there were  
 11 no drugs present.  
 12 Q. Thank you. Doctor, with regard to the  
 13 stab and cutting wounds that you've identified and  
 14 that are depicted in this large exhibit here,  
 15 Exhibit 38, going back to the time you performed  
 16 the autopsy, were you able to determine whether or  
 17 not each of those wounds was contemporaneous?  
 18 A. We considered them contemporaneous.  
 19 Q. What do you mean by contemporaneous?  
 20 A. They occurred at the same time or  
 21 approximately the same time frame.  
 22 Q. Thank you.  
 23 Now, Doctor, let me direct your  
 24 attention to the second autopsy performed on that  
 25 particular day, the autopsy of Matt Gianakis. You

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1 accurately depict the locations of those external  
 2 injuries that you've been testifying to?  
 3 A. It does.  
 4 MR. SCHWARTZ: May I show this to the  
 5 jury, your Honor?  
 6 THE COURT: You may.  
 7 BY MR. SCHWARTZ:  
 8 Q. And these stabbing/cutting wounds that  
 9 you've identified were external injuries that you  
 10 observed upon the body of Carl Dixon; is that  
 11 correct?  
 12 A. They are.  
 13 Q. Now, sir, in addition to doing an  
 14 external examination on the body of Carl Dixon,  
 15 was an internal examination performed?  
 16 A. Yes.  
 17 Q. What, if anything, significant resulted  
 18 from the internal examination of Carl Dixon?  
 19 A. Of the 19 stab and cutting wounds to the  
 20 torso, six wounds penetrated the chest into the  
 21 heart and major vessels and two entered the  
 22 abdomen cutting loops of small bowel.  
 23 Q. Doctor, based upon the autopsy that you  
 24 and Dr. Green performed upon the body of Carl  
 25 Dixon, did you formulate an opinion as to the

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1 indicated that you yourself performed that  
 2 autopsy?  
 3 A. Yes.  
 4 Q. And, again, there were police personnel  
 5 present?  
 6 A. There were.  
 7 Q. And what's the purpose of having police  
 8 personnel present at an autopsy?  
 9 A. To give them some insight into the cause  
 10 of death and perhaps gain information as to the  
 11 perpetrator.  
 12 Q. And do they collect evidence at the  
 13 autopsy?  
 14 A. They do.  
 15 Q. With regard to the autopsy of Mr. Matt  
 16 Gianakis, was an external examination performed?  
 17 A. Yes.  
 18 Q. And what was found during your external  
 19 examination? What were the significant findings?  
 20 A. He was well-developed, well-nourished  
 21 adult male, appeared his stated age of 22 years.  
 22 There were no signs of natural disease and there  
 23 was both surgical and prior trauma to his body.  
 24 Q. When you say surgical, what do you mean  
 25 by that?

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