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WILLIE MASON,

Appellant,

No.: 68497

vs.

DC No.: C267882

THE STATE OF NEVADA,

Respondent.

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| 01 | Sealed Transcripts from Hearing | 10/16/2014 | 1 | 01-82 |
| 02 | Transcript of Jury Trial Day 3 | 1/22/2015 | 1 2 | 83-250 251-325 |
| 03 | Transcript of Jury Trial Day 9 | 1/30/2015 | 2 3 | 326-500 501-544 |
| 04 | Transcript of Jury Trial Day 11 | 2/6/2015 | 3 4 | 545-750 751-753 |
| 05 | Transcript of Jury Trial Day 14 | 2/11/2015 | 4 | 754-955 |
| 06 | Transcript of Jury Trial Day 15 | 2/12/2015 | 4 5 | 956-1000 1001-1052 |
| 07 | Jury Instructions | | 5 | 1053-1110 |

1 Now, this is the remarkable statement that was
2 characterized by the State yesterday. This is page 11, and
3 it's in these two lines here at page 11 that the issue about
4 what Devonia said she heard Cornelius say when she was laying
5 on the bathroom is this.

6 Isn't it interesting that they didn't ask a single
7 witness over the weeks of this trial to tell you all what
8 happened during this exchange. Instead, they wait until
9 closing argument and put in the words and say that's what she
10 said. Well, they're not allowed to testify no more than I am.
11 Listen to the tape.

12 And by the way, don't think for a second that
13 uncovering this particular speech tells you who shot Derecia,
14 because that's not the case. Again, they have the burden of
15 proof. We are giving you explanations as in perspective as to
16 what these items they provided for your consideration were,
17 and I will echo again to review the statement.

18 There was some talk about the hair, the hair length
19 in the statement. And I asked Detective Bunting whether or
20 not she ever said the hair was cut, the hair was cut.
21 Detective Bunting would later say in the statement, Curly?
22 And then she said, Yes. Listen to it for yourself and see
23 what you think she said.

24 Now, the tactics employed in the case in order to
25 advocate, compare, compare the attack on Ifill for not

1 recording when he had typewritten notes with him to Monica
2 Martinez who does proffers and they don't even bother to take
3 notes. They have their main witness in the case and they take
4 no notes. Agent Boles said, My notes are in the car, my notes
5 are in the car. Houghton left his notes in his locker. That
6 was all okay. But Ifill, don't you come in here and not
7 record everything. I mean, that's a joke.

8 I circle back then to the only evidence in this case
9 that cannot be twisted, contorted, manipulated, given an
10 agenda. It has no motive to lie. And we come back to where
11 we started in opening. We need to put the suspects in the car
12 and in both residences. They knew -- this, by the way, is
13 September 30. Why is that date important? Because of all the
14 things they had done prior to the 30th.

15 They had David Burns's statement. They had these
16 letters. They had Monica Martinez's statement. They had
17 cellphone records. They had a grand jury proceeding. They
18 had all kinds of information already. They had nothing
19 scientific. They knew. This right here is an admission that
20 they knew they needed something more. And that's where it
21 stopped, because there would never in this case be anything
22 more.

23 Now, reasonable doubt. I put up there it's always
24 constant, and I'll tell you why. Because as we told you when
25 we were questioning you when you were being selected as

1 jurors, you know, the burden of proof in any criminal case,
2 even a traffic ticket, is beyond a reasonable doubt.

3 That burden stays the same no matter how serious the
4 crime gets as you go up the ladder from whatever it is. Drug
5 trafficking to robbery to using a weapon to rape to murder,
6 that burden's always the same. And I asked you in voir dire
7 if you'd be tempted to lessen the burden because of how
8 serious the crime was, and you all told me no, the ones I
9 spoke to anyway. You all confirmed a commitment to hold the
10 State to its burden, and that I know for sure.

11 And it says the weighty affairs in life. If you have
12 a reasonable doubt as to the guilt of a defendant, he is
13 entitled to a verdict of not guilty, and that's justice. And
14 I'll reiterate to you a comment made yesterday. What we seek
15 from you is justice at the end of the day. But we want it as
16 much as they want it.

17 We want you to go back there and ask yourselves did
18 they satisfy me to the extent on a weighty affair of life that
19 they've met their burden. Because if they didn't, justice
20 requires, not a profession like that firearms stuff, justice
21 requires that you come back and you enter a verdict of not
22 guilty.

23 When you look at the quantum of proof that they've
24 advanced to you in the absence of science, these are some of
25 the individuals you have to rely on. Can you rely on these

1 folks for proof beyond a reasonable doubt? And then let me
2 ask you it the inverse way.

3 The inverse way is very simple. If David Burns --
4 and this is hypothetical. He has no burden of proof. If
5 David Burns had called -- and I just picked three. You can
6 pick from any of them. But if he called Monica Martinez,
7 Donovan Rowland and Cornelius Mayo, and we came to you at the
8 end of the case and said, hey, all of them said David Burns
9 was nowhere near that scene that night, what would the attack
10 be on their credibility by the State? Would you go back and
11 say, well, if them three said it, we're done here because
12 that's beyond a reasonable doubt?

13 And the point is this. It does not matter whose name
14 is on the subpoena. It does not matter whose witness they
15 are. It is a level playing field. And if they come in here
16 and they are not believable, then they are not believable
17 either direction. And if we couldn't call them to persuade
18 you to acquit, then how can they stand up here and call them
19 and ask you to convict? That would be unfair.

20 Ladies and gentlemen, this case is serious. Someone
21 lost their life and it is horrible. At the end of the day
22 though, in this case, as to David Burns they have failed.
23 They have failed in their burden. They have attempted to
24 deceive. And they are not entitled to do anything more than
25 to hear you come in and say that David Burns is not guilty.

1 And I thank you for your time.

2 THE COURT: All right. Now, ladies and gentlemen,
3 Mr. DiGiacomo is entitled to a reply argument. Does anybody
4 wish a recess before the reply argument?

5 All right. Mr. DiGiacomo -- is that a yes? Okay.
6 During the recess, it's again your duty not to converse among
7 yourselves or with anyone else on any subject connected with
8 this trial, or to read, watch or listen to any report of or
9 commentary on the trial from any medium of information,
10 including newspapers, television and radio, and you're not to
11 form or express an opinion on any subject connected with this
12 case until it is finally submitted to you.

13 Be in recess for about ten minutes.

14 (Jurors recessed at 11:31 a.m.)

15 THE COURT: The record will reflect that the jury has
16 left the courtroom. Ten minutes.

17 (Court recessed at 11:32 a.m. until 11:40 A.M.)

18 (In the presence of the jury.)

19 THE COURT: All right. You may be seated. State of
20 Nevada vs. Burns and Mason, the record will reflect the
21 presence of the defendants, their counsel, the district
22 attorneys, and all members of the jury.

23 Mr. DiGiacomo.

24 MR. DiGIACOMO: Thank you.

25

1 STATE'S REBUTTAL ARGUMENT

2 MR. DiGIACOMO: What happens in courthouses across
3 America and what should be happening in this courtroom by a
4 jury of 12 people is that it's a search for a truth. And
5 before about 20 minutes ago, that would seem to be what we
6 were all doing here for the last four weeks.

7 MR. ORAM: Judge, I object to that. That's
8 disparaging counsel.

9 MR. DiGIACOMO: He just accused me --

10 MR. ORAM: To -- to --

11 MR. DiGIACOMO: -- of lying and deceiving this jury.

12 THE COURT: Please. Objection's overruled.

13 MR. DiGIACOMO: Thank you.

14 THE COURT: Sit down. Let's go.

15 MR. DiGIACOMO: The past 20 minutes Mr. Sgro got up
16 here as opposed to two sides arguing an issue and suggested
17 that the players themselves somehow are manipulating what
18 happens with the 12 people to search for that truth.
19 Certainly a jury system, that's all this is, 12 jurors decide
20 what the truth is and then decide whether or not Ms. Weckerly
21 and I can establish beyond a reasonable doubt that these two
22 individuals committed the crimes that they are accused of.

23 Mr. Sgro suggested to you that our version of events
24 has to be true in order for you to convict the defendants.
25 Really? That's not what your jury instructions say. Your

1 jury instructions say if every material element of the offense
2 is established, you convict these defendants. If they fired
3 six shots, if they fired seven shots, if they fired 15 shots,
4 if someone got murdered and they're the perpetrators, you
5 convict them. It's wholly irrelevant how many shots were
6 fired. You don't have to believe Detective Bunting wanted
7 six.

8 And now you can kind of see why Detective Bunting was
9 as angry as he was on the stand during cross-examination by
10 Mr. Sgro. The suggestion that he was manufacturing the story
11 and manufacturing the evidence. Apparently now he's written
12 David Burns' letters that are in evidence that came out of his
13 cell that were collected with his address on them, because
14 there's two different handwritings.

15 Actually, look at the letters. The two we put up
16 were absolutely consistent, and the third one is a different
17 handwriting. Why? It's Willie Mason's handwriting. Look at
18 the letters: The letters are in only have one envelope, so
19 please forward a letter onto Job-Loc. And there's two
20 different letters in that exhibit. One is the Willie Mason
21 letter, one is the -- the David Burns letter, written by two
22 different people. No kidding there's going to be different
23 handwriting on those. That's the truth of what happened.

24 There's only one thing that happened in this case.
25 Whether or not we can establish every tiny little thing where

1 every person was standing at any given time is irrelevant.
2 The question is can we establish that the two of them were at
3 the crime scenes, that they were involved in a conspiracy,
4 that they aided and abetted each other, and ultimately one of
5 them -- or, hey, maybe Stephanie or Monica's the shooter, I'm
6 not real sure -- but one of them, one of these two fired the
7 shots. I'm going to suggest to you, and I think Ms. Weckerly
8 did, there isn't any doubt that David Burns is the shooter in
9 this case. Right. I mean, that's not going to be -- there's
10 no surprise that our position is the evidence establish he's
11 the shooter.

12 But the law tells you it's not really relevant who
13 the shooter is in this phase of the trial. This is a guilt
14 phase. And the question is applying the law to the evidence.
15 Do you convict the defendants? You could talk about the
16 shooter and not the shooter, because that's what the truth is.
17 Ultimately, a jury's supposed to find that truth.

18 So let's start off with Mr. Sgro's suggestion that,
19 well, one, apparently we were manipulating the witnesses. But
20 two, the quality of the witnesses. God, I wish that --

21 MR. ORAM: Objection as to what he wishes.

22 THE COURT: Sustained.

23 MR. DiGIACOMO: It would be a wonderful situation
24 should we be standing in -- or we should be living in a world
25 in which people who are selling crack out of their house who

1 get murdered happen to have a priest and a nun who's standing
2 there and is part of the witnesses in the case. Or maybe
3 Mother Theresa to tell us who's living in Job-Loc's apartment
4 over at the Brittnae Pines.

5 Those aren't the people that are involved in murders.
6 I don't get to choose these people. There's no doubt that
7 these are these two individuals' friends. They're not my
8 friends. These are people that are associated with these two
9 defendants. You can't blame us for the quality of the
10 witnesses.

11 But more importantly, it's not about were they
12 telling the truth on the stand completely about that. Right?
13 It's not a question, did what he say, is that what he said, is
14 that true? No. It's what did he say that makes it relevant?
15 What can we figure out from what they said in this particular
16 case.

17 And why do I say that? For example, Donovan Rowland,
18 was that guy a real credible witness? No. But when you look
19 at his taped statement and you go back and you look at it, now
20 you have an understanding of why in the letters they're
21 talking about, Hey, West, or that Donovan Rowland bitch, as
22 they put it, he gave -- he got out of a gun charge by giving
23 up the burner. Well, now you understand, right? He didn't
24 get charged with being in possession with -- of the murder
25 weapon.

1 They don't say, Hey, West got out of the murder by
2 giving up the weapon. No. What are they telling you in those
3 statements? Why do we call Donovan Rowland? Why did -- why
4 is he up there? Because he's believable? No. Because the
5 information he has to provide you is going to lead you to what
6 the truth in the case is.

7 That's the same with Monica Martinez. Because I have
8 to wonder to myself, right. Monica Martinez starts off with
9 the same thing that David Burns does. She's a little bit more
10 angry with Detective Wildemann when she says, Can I pull a
11 rabbit out of my ass, I don't know what happened. But
12 ultimately that's her first story.

13 And what happens after that? Detective Bunting, the
14 most patient human being on Earth, apparently, after watching
15 that five and a half hours, sits there with her for a very
16 long period of time. But what is her first story after she
17 tries for about 30 seconds and goes, I don't remember; what
18 does she say?

19 And I'm not sure that anybody in this courtroom
20 caught it. I'm not even sure the detectives at the time
21 caught it. She says, I'm with two guys in a car, we go and we
22 pick up this -- this crack head, and we go to an apartment.
23 Now, Detective Bunting and Detective Wildemann, they're
24 thinking the apartment she's talking about is the murder
25 scene. But she's not. And then she says, After we leave that

1 apartment, I drive somewhere, it was dark, Chris, it was dark,
2 Chris. Yes. And then she won't give up any more information.
3 That's her first story.

4 Well, guess what? When you get to the end of this
5 case, the physical evidence is going to establish that that
6 version of events is actually true. And what is she trying to
7 do? She's trying to avoid liability in the case, much like
8 Mr. Burns is doing. Do you think that he actually has mental
9 problems after reading those letters? No. There's no
10 evidence before you he has mental problems. He is whistling
11 and humming and doing whatever he can to avoid having to
12 answer the questions. Why? Because unlike Monica Martinez,
13 he has no moral out.

14 David Burns has no explanation that is going to save
15 him from the horrific knowledge that he put a gun,
16 a .44-caliber, that giant hog-leg of a revolver, to the head of
17 a woman and pulled the trigger without ever letting her
18 getting a word out edgewise, and then chased a 12-year-old
19 girl down. What reasonable explanation could he give? Well,
20 I was really high on drugs. That wouldn't excuse it.

21 Well, and notice in his statement he doesn't ever
22 deny. He just says, I don't remember, I don't remember.
23 Until he gets to the death penalty part. Do you believe in
24 hell, Detective? And then also listen for the tune that he's
25 humming and singing and whistling in the background.

1 So let me start with one last thing I want to talk
2 about Monica, which is Story No. 2. Right. First story is
3 she kind of gives you the sequence of events, but she wants to
4 go with I don't remember. What's Story No. 2? Because I
5 haven't heard an explanation for this.

6 Mr. Langford got up there and said to you, The
7 evidence suggests to you it was a dope deal gone bad and
8 somebody went crazy. And if -- he didn't point the finger at
9 anybody as to who went crazy. But Willie, he's merely
10 present, but it's just the dope deal, was kind of what the --
11 what I took from what Mr. Langford said to you.

12 Well, if that's true, why isn't the second version of
13 Monica's story, Hey, I had two guys, they went up to pick up a
14 girl, and we went up to do a dope deal and somebody went
15 crazy? Why does she implicate herself with a robbery at that
16 point?

17 When you look at her statement, she has given no
18 identifying information of the perpetrators whatsoever. The
19 only thing she's done is convicted herself of first degree
20 murder. Before she ever identifies anybody, the first thing
21 she says is, It's a robbery.

22 Why is that important? Well, you now know that the
23 punishment for first degree murder is 20 to life. What does
24 Monica Martinez plead to? She pleads to a bunch of charges
25 where she's eligible for a life sentence and a minimum parole

1 eligibility is somewhere going to be between 10 and 18 years.

2 So she got on the stand, got basically two years cut
3 off her parole eligibility date, and told you she was a driver
4 on a robbery. Anything else she has to say you don't need to
5 know about. You can ignore everything else the woman says in
6 the entire case. The fact of the matter is, is Monica
7 Martinez establishes this isn't a dope deal gone bad. Because
8 there's no reason for her to lie.

9 Because otherwise she's innocent. She's the woman
10 going to 18 to life who's innocent of a crime. Right. If I'm
11 just a driver on a dope deal and -- and somehow the dope deal
12 goes bad, maybe I have some accessory liability for driving
13 them away. But if I don't know anything's going to happen
14 before it happens, well, then, I'm not guilty. I'm innocent.

15 And yet she's 18 to life up there telling the story
16 about how this is a robbery. That fact's got to be true, that
17 this is, in fact, a robbery. Anything else she says you can
18 completely ignore for all I care. Who cares what else she
19 says after that.

20 See, because the other thing is she took two years
21 off her minimum parole eligibility sentence for what? To be a
22 snitch for the next 18 years in prison. Mr. Sgro got up here
23 and said, Snitches get stitches. Meaning she put herself at a
24 significant amount of risk in order to get up on the stand and
25 save two years on her life. For what? Ultimately, to

1 establish there's no question in anybody's mind that anybody
2 who's in this care knew it was a robbery, they were engaged in
3 a robbery. And who cares who the identity of the perpetrators
4 are. She establishes that fact and that fact alone.

5 Mr. Sgro also went through the State's theory of this
6 is the six shots. Not the State's theory. Detective Bunting
7 thinks it's consistent with six shots. But this is about a
8 search for the truth. So let's talk a little bit about the
9 truth, whether or not it's six shots or eight shots. Because
10 I've got to tell you, if it's eight shots, it's really bad for
11 Mr. Burns. Because after he fired six shots, he reloaded the
12 gun two times and continued firing. That's even worse than
13 emptying the last shot into your six -- into the 12-year-old
14 little girl and then searching her pockets while whistling
15 about it.

16 Here's your crime scene. And I didn't realize Mr.
17 Sgro was going to continue with his slide from his opening
18 statement here, so I cut a little bit of his opening in for
19 you.

20 I apologize, Judge. Give me just...

21 (Audio/Video played.)

22 First of all, there's no evidence that the revolver
23 was loaded when the person entered the residence. Okay. But
24 whatever gun was used had to be loaded at some point. Right?
25 I mean, does it really matter whether they loaded it in the

1 front room or they loaded it outside or they loaded it -- or
2 they took it from Job-Loc when it was already preloaded? I'm
3 not really sure why that's relevant.

4 Can tell you this, the evidence suggests -- because
5 it would be better for the State when we come to talking about
6 how egregious this crime is, had there been either two
7 shooters, because there could be Mr. Mason and Mr. Burns being
8 shooters, and it would also be better for us if there were,
9 you know, someone had to reload that weapon. Because that
10 just makes this that much more offensive, what happened in
11 that house.

12 But that's just not the truth. Here's the crime
13 scene. I'm going to say that the evidence is pretty darn
14 compelling. Mr. Burns is our shooter at the end of this case.
15 Mr. Burns comes through the front door. Stephanie bumps into
16 that table that you're going to see right there, knocking the
17 items off of it as Mr. Burns fires a round into Derecia
18 Newman.

19 Now, look at the one, two, three pieces of firearms
20 evidence that's found in the area where Derecia Newman is.
21 And then look at the pieces that are pulled out of her head.
22 What do you have? You basically have a complete bullet. On
23 the left-hand side is --

24 The laser pointer's not working real good. Right
25 here, that bullet is able to have enough identifying

1 information on it to conclusively tie it to the other bullets
2 in the case. There's the little fragment, when you go back
3 there and look, that Mr. Krylo said is consistent, but it's
4 just not big enough and doesn't quite have enough. But that
5 little fragment is found right between her legs.

6 So I'm going to suggest to you that that is one
7 bullet, and that there isn't really a compelling argument you
8 can make otherwise about there being more than one shot that
9 happened in that living room.

10 So what happens? As Devonian runs down the hall, Mr.
11 Burns doesn't chase. He doesn't need to chase. What has he
12 got? He's got a .44-caliber revolver. He doesn't need to run
13 after her, that's why he doesn't catch her. He just doesn't
14 quite hit her.

15 Shot No. 1 enters the right side of the fridge, it
16 comes out the back side of the fridge, it enters the wall
17 that's right there and skims back down to the wall behind the
18 wall that sits at the closet of the bunk-bed room and then
19 hits that dresser and drops to the bottom. At least what's
20 left of that bullet.

21 Why? Because despite digging out the hole there that
22 happens in the first skim of the wall, digging out the hole on
23 the top left -- or on the bottom left there, on the top side,
24 that's the hole that enters into the closet. And that's the
25 hole at the bottom where they tried to see if maybe the -- the

1 bullet stuff dropped down.

2 Ultimately, they get no evidence, or no -- of the
3 outside of the bullet that would give them rifling
4 characteristics. They got three little pieces of lead. But
5 I'm going to suggest to you that there's no other firearms
6 related evidence associated with that bullet that's recovery
7 [sic]. So that has to be Bullet No. 2.

8 Bullet No. 3, the -- either a magic bullet or the
9 bullet that people are lying about, or maybe it's just the
10 bullet that doesn't establish anything. I'm not real sure.

11 I'm going to suggest to you that one thing you know
12 for sure is we don't manipulate the witnesses. Why? Because
13 in the beginning of the case we called the crime scene analyst
14 who's present at this scene, who doesn't know about this at
15 the time that she's at the scene, the bullets that happened to
16 go into that TV. And what does she say about trajectory? She
17 says the bullet goes into the vacuum cleaner, fakes a -- goes
18 down a little bit farther, makes a hard right-hand turn, it
19 hits the mattress and it comes up there. Now, bullets do
20 weird things at a scene, but I'm pretty sure that if it went
21 through a wall, you'd see it.

22 Her problem is, is that she sees a bullet strike to
23 the vacuum cleaner, and she doesn't see the bullet strike that
24 happens in that wood shelving. And so she sees, How is that
25 humanly possible that it struck the -- and I don't see any

1 evidence of anywhere else that that bullet went. She just
2 missed it.

3 Like we talked about, there are good -- there are
4 good crime scene analysts and there are bad crime scene
5 analysts. And you know what, everybody's human. Even the
6 best of people make mistakes.

7 But what does the evidence show? The evidence shows
8 that if you were to draw a line from the bullet entry and exit
9 out of the -- the vacuum cleaner, there's a defect right in
10 the side of that cabinet. And most important about that
11 defect, notice two things. There's a big hole that's mostly
12 rounded. And then on this side there is -- it kind of -- kind
13 of has a non-round and there's kind of a weird shape to the
14 bullet hole.

15 What happens after it passes through there? And then
16 I don't have the picture, the defense put it in, where the two
17 trajectories cross about two or three or -- inches outside of
18 the wall. When it hits the back of the shelving, it finally
19 comes -- the bullet finally comes apart. They change
20 direction, like Krylo says, what happens to them? You could
21 see this bullet on the -- going inside, the big one's on
22 bottom, the little one's on top. Going out, the big one's on
23 top, the little one's on bottom. And then you look at the TV
24 and there's two bullet strikes to the TV.

25 Now, what did the CSA -- Keller -- whose name escapes

1 me what -- what her name was, I think her name -- married name
2 now is Keller. What did she say? I took off the bottom of
3 the TV, and I took off the back of the TV, and I found this
4 little fragment. That's all I found. I didn't see any exits
5 to the TV. I just saw two bullet holes. She doesn't find
6 that bullet.

7 Well, there's two possibilities. Somehow Cornelius
8 Mayo has the real murder weapon, he fired the round to -- to
9 call the police, because he knows the forensic analysis that
10 happened here and he's going to now help us fix the fact that
11 there's only five bullets in this house, or that bullet wound
12 up wedged up in the actual workings of the TV, and when it got
13 moved, eventually shook out, and when it came out, Cornelius
14 Mayo turned it over.

15 Because either Mr. Krylo is absolutely crazy or that
16 bullet that looks like a completely pristine bullet that just
17 happens to physically match the little fragment off the front
18 end, the little lead piece off the front end that's missing
19 from that bullet, either one of those two -- two things is
20 true. Either one of those two -- two things is true. Either
21 someone had -- did a hell of a job manufacturing the evidence
22 in this case, which doesn't really matter one way or the other
23 how many shots there are, or the truth just is some CSA missed
24 it.

25 Next shot. Now Devonia's turned the corner and Mr.

1 Burns was following her. And as she goes into the bedroom
2 there's another shot. That shot winds up hitting the bed,
3 hitting -- bouncing up into the two coverings of the window,
4 and ultimately is recovered at the bottom of those two
5 coverings right there, and it's almost a complete bullet.
6 Bullet No. 4.

7 Now what happens? Devonian runs into the bathroom.
8 And notice what Devonian says in her statement that just --
9 maybe Cornelius Mayo told her this that morning, there are
10 towels hanging off the door to the bathroom. So she couldn't
11 get the bathroom door completely closed.

12 He shoots a round through the door, she lets go of
13 the door, that round winds up behind the sink there in the
14 wall. And while they cut out the wall, they ultimately never
15 recover that bullet. That's Shot No. 5.

16 And then she exits the bathroom and she gets shot
17 right in her stomach, right in the front where she should be
18 shot if she's coming out of that bathroom. And that's Bullet
19 No. 6.

20 Does it matter if there's eight bullets? Does it
21 matter if there's seven bullets? Does it matter if there's 15
22 bullets? No. But a jury's job is to find what the truth is.
23 And, ultimately, I don't know any other explanation you could
24 come up with.

25 So let's talk about Jerome Thomas's DNA from the

1 opening. This is a big deal, because on the -- the September
2 12th of 2011, Detective Bunting tells the lab, We never
3 collected Jerome Thomas's DNA. The part that everybody's
4 missing, though, is the report from the DNA comes out in
5 October of 2011. So now you have the reports. It doesn't say
6 Detective Bunting is never going to collect Jerome Thomas's
7 DNA. It says buccal swabs have not been collected or never
8 been collected per Chris Bunting. And it's true; by September
9 of 2011, it wasn't collected.

10 But what do we know now? We have one piece of
11 foreign DNA inside the residence. You have a small cigarette
12 butt, which, if you look at that table that Stephanie would
13 have bumped against when the door hit her, there is a kind of
14 a handmade little ashtray that falls down and there's a
15 cigarette butt.

16 Any evidence that the shooters in this case were
17 smoking a cigarette when they came through the door and
18 executed Derecia Newman? No. But more importantly would be
19 that other little red circle, that the cabinet that nobody
20 says anybody disturbed during this crime doesn't appear to be
21 disturbed, that door -- that cabinet happens to hand -- have a
22 handle that has Unknown Male's -- No. 1's DNA, too.

23 So what could that tell you if you had an answer to
24 the question? Well, if it was Job-Loc's DNA, well, that would
25 be, you know, sort of bad. But as I'll explain shortly, it's

1 impossible. It can't be Job-Loc's DNA.

2 What else do you know? Well, there is at least one
3 male that lives in this room that's not the child of Derecia
4 Newman. And guess what? Of all those samples they took of
5 all those places where they had DNA, those are the only two
6 pieces that you don't have the answer to, and it comes back to
7 Unknown Male No. 1.

8 Would you expect to find Cornelius Mayo's DNA in the
9 house that he lives in? Of course you would. Would you
10 expect to find them on the cabinets that he would be using?
11 Would you expect him to be smoking the cigarettes? Remember,
12 he had cigarettes stolen during the -- during the robbery.
13 Newport cigarettes, interesting two packs that happened to be
14 -- two packs happened to be found in Job-Loc's apartment. But
15 would you expect that to be Cornelius Mayo's DNA? Yes. But
16 even if it's not Cornelius Mayo's, as long as it's not
17 Job-Loc's DNA -- because you know it's not Donovan Rowland's
18 DNA -- it doesn't really matter.

19 So then you get to Job-Loc. What happens when you go
20 to Job-Loc's place? You go to Job-Loc's place, you collect
21 the toothbrushes that are there, you collect the cigarettes
22 that are there, you collect a poem that's there. And, weird,
23 there's three toothbrushes there; one's Monica, and one's
24 Donovan, and one's Unknown Male No. 4. His -- his DNA found
25 on a single cigarette, Unknown Male No. 4, mixed with DNA with

1 David Burns, Unknown Male No. 4, and mixed with the DNA of
2 Monica Martinez, Unknown Male No. 4.

3 Unknown Male No. 4 cannot be Unknown Male No. 1. So
4 whose DNA is found at Job-Loc's apartment? Well, it's Unknown
5 Male No. 4. So the suggestion is that Detective Bunting is
6 supposed to fly back to California, get Jerome Thomas's DNA to
7 establish that he's Unknown Male No. 4. Now, that may be
8 important if we ever get Job-Loc out of his prison sentence in
9 California. But he's tied to this apartment 19 ways to
10 Sunday. It's his apartment.

11 You have his medical records in there, you have his
12 prescription medications in there, nobody -- his cell phone --
13 oh, and my favorite deception, his cell phone alibis -- the
14 way that they're making it sound, his cell phone alibis him.
15 But his cell phone puts him at that location.

16 Nobody's disputing that's Job-Loc's apartment. And
17 who is the only unknown male coming out of that apartment in
18 DNA? Job-Loc. And what would you expect to find in a guy's
19 own apartment? Unknown Male 4's DNA.

20 (Audio/Video played.)

21 That was from opening, as well. I didn't hear
22 anything about that in closing today. But we can know that
23 that can't possibly be Job-Loc, as well. And here's why.

24 Because when Monica, at 4:29, makes the phone call
25 where she's hitting near the Texas Station, remember that map

1 that we showed? The person she's calling is Job-Loc. And
2 Job-Loc answers -- or Job-Loc's phone answers and it's pinging
3 next to his apartment. But more importantly, continue to
4 watch at 4:38, as Monica Martinez walks into the Texas
5 Station.

6 (Audio/Video played.)

7 4:42, as she walks out of the Texas Station.

8 (Audio/Video played.)

9 And 4:46, what is she pulling out of her purse? And
10 what is she doing with her phone? And there's an --
11 one-minute -- or 147-second phone call answered by Job-Loc's
12 phone, where Job-Loc's phone's pinging at his apartment.

13 And I know he said in opening that this is shortly
14 after Monica left that there's that guy who's allegedly on
15 crutches. It's actually three minutes before. So somehow he,
16 on his crutches, got out of the Texas Station and got home in
17 time to answer the phone where he'd be pinging off the tower
18 next to his house.

19 Mr. Oram suggested this yesterday, and I know I
20 didn't do it with Tyler, but do you remember Tyler being on
21 the stand and saying she'd never met G-Dogg? She only met him
22 once? The suggestion that she wasn't stressed that made a
23 mis-ID. Actually, I think she probably flipped the names.
24 But ultimately, you don't think it was stressful for her to be
25 in this courtroom and sit up there and have to testify? I

1 don't know. Her identifications don't really matter, as long
2 as it's these two people that we're talking about.

3 But what does she say? I only met them both one
4 time. And it was here in Las Vegas. And that's the only time
5 I met them.

6 When you go to her records, you will see that on
7 August 6th -- and I didn't go back, but there's an -- earlier
8 August 6th and -- and August 5th, as well. But remember when
9 you go to Mr. Mason's phone records, he starts the month of --
10 of August in San Bernardino, when you look at his cell phone
11 records. And if you keep looking, clearly Tyler has met
12 G-Dogg, because in July of 2010, he's sending a text to her,
13 Hey, you up, girl? So she knows him before August.

14 Now, four and a half years later, she's sitting up
15 here and I asked, Did you ever drive to California to meet
16 with your mother to -- and you met G-Dogg? She doesn't
17 remember it. Does that mean she's lying about it? Or does
18 that just mean four and a half years later someone's asking
19 you did you meet G-Dogg about a month before you saw him here
20 in Las Vegas and he was texting with you?

21 Her records are also important because it establishes
22 that D-Shot, Mr. Burns, would be using Job's phone, because he
23 didn't have a phone. Because he says in there, Hey, this is
24 D-Shot. Job's sleeping. I just want to check on you.

25 So let's get to -- to Mr. Oram's circle of

1 coincidence. Let me make one thing perfectly clear. As a
2 prosecutor, there is absolutely no doubt in my mind that
3 Jerome Thomas --

4 MR. LANGFORD: Objection, Your Honor.

5 THE COURT: Sustained.

6 MR. DiGIACOMO: There's no doubt that the evidence
7 establishes that Jerome Thomas is guilty of a crime. And
8 there's no doubt that he's involved in this crime.

9 Now, whether or not the Rules of Evidence allow him
10 to be charged with murder is one thing. But the circle of
11 coincidence that Mr. Oram put there was to suggest to you that
12 these pieces of evidence establish that he's physically in the
13 car, right? That's what he was suggesting to you. Right?
14 He's the shooter, he must be in the car, these pieces of
15 evidence establish that he was in the car.

16 Well, let's talk about it. Monica's the driver.
17 Actually, the fact that Monica's driving this car establishes
18 Job-Loc's not in the car. Why? Because if he doesn't have
19 the broken leg, like in July when he goes to do that petty
20 larceny at Walmart with Donovan Rowland, Baby Job-Loc, he
21 dragged the car. He'd drop her off and allow her to be
22 prostituting for him in the Golden Nugget while he drove his
23 -- drove his buddies around to commit the robbery. The fact
24 that she's the driver suggests he's not present, not that he
25 is present.

1 Some of these are a little bit hard to hear.
2 Monica's covering up. Well, no kidding Monica's covering up.
3 Why? Well, one, he's involved. But what about her covering
4 up means that he's the shooter? Right? It's his gun, the
5 evidence certainly suggests, whether or not it's provable in a
6 case where Job-Loc's sitting at that table, that he actually
7 physically gave the shooters the gun with the knowledge that
8 they were going to go commit a robbery or had an idea that
9 they're going to go commit the robbery, under the instructions
10 as required by law, whether or not you can establish that
11 independent of any other conspirator in this case, that's an
12 issue for Job-Loc.

13 But that's not really an issue in this case. We can
14 all probably agree or you can all agree that he gave the gun
15 to these two yahoos to go out there and commit the crime.

16 Job-Loc's consequences. You're right, these are
17 Job-Loc's friends, who -- or Job-Loc, however you say it.
18 These are Job-Loc's friends that she's going to be giving up.
19 She's going to be giving up Job-Loc, who's got his warrant out
20 of California, that she's in a very short period of time gone
21 from a middle-aged woman who has a regular job to now identity
22 theft, prostitution, selling drugs, and ultimately driving
23 somebody on an armed robbery as a middle-aged -- middle-aged
24 woman.

25 He's her pimp. She's out there prostituting herself

1 to give him money. Of course, the prostitute's going to be
2 concerned about the consequences from her pimp should she rat
3 -- should he -- she rat out him or his friends with the crime.
4 That doesn't make Job the shooter.

5 Two weeks ago in her car, it's much like what Monica,
6 being the driver in this case. Right. He doesn't need her to
7 drive if he's capable of driving the car. The fact of the
8 matter is he's not capable of driving the car. That's why she
9 goes over to pick them up.

10 They're stressed for money. They are stressed for
11 money. It's why she's going to prostitute herself. It's why
12 she's willing to drive these guys on armed robbery. And what
13 do you think Job's going to get from it? Some of the money,
14 because it's his gun. He brought these guys up there. And he
15 -- of course, he's going to be -- he's involved. But what
16 about that fact makes him in the car or makes him the shooter?

17 Disposal of the murder weapon. Well, it's his gun
18 and he now knows it's been used in a murder. Of course, he's
19 going to get rid of it. Of course he's charged with that
20 fact. He's charged currently as an accessory to this murder
21 for getting rid of that gun. Of course, you're going to get
22 rid of the gun. It's -- if you believe Monica, it's his gun.

23 I found it interesting that they want you to believe
24 Monica about certain facts and reject her about others. The
25 only way to establish that he's the owner of the gun or that

1 he even disposed of the gun is Donovan Rowland and Monica
2 Martinez. They like that fact, they want you to rely on that
3 fact, but reject everything else they have to say.

4 He's wanted in California for a serious offense.
5 That's true. But it's not quite like being involved in the
6 execution of Derecia Newman and the shooting of a 12-year-old
7 girl. Everybody involved in this case is getting on that bus
8 using a false name and getting the hell out of town. No
9 question about it.

10 Baby Job-Loc. Once again, the suggestion that he's
11 associated with Baby Job-Loc, how is that relevant? Is there
12 any evidence whatsoever that Baby Job-Loc could possibly even
13 be the shooter in this case? He doesn't match the physical
14 description in the least bit, he's not on any video, his cell
15 phone records don't seem to be connecting with -- with Job-Loc
16 at the time that the crime committed. There's no connection
17 whatsoever to him other than Ulonda Cooper. Oh, wait, we
18 didn't hear from Ulonda Cooper. She's not a witness in this
19 case. Did you assess Ulonda Cooper's credibility?

20 MR. ORAM: Objection. Burden shifting. That's
21 burden shifting. We didn't hear from Ulonda Cooper is
22 implying that we have a duty to call a witness. So I object.

23 THE COURT: You don't have a duty to call witnesses.

24 MR. DiGIACOMO: They don't have a duty. But they
25 certainly want them to rely upon Ulonda Cooper's statement

1 that's relayed by Detective Bunting --

2 THE COURT: All right.

3 MR. DiGIACOMO: -- in a police report.

4 THE COURT: Objection -- go ahead.

5 MR. DiGIACOMO: Thank you. How do you assess that
6 woman's credibility? How do you know if she was telling the
7 truth or not telling the truth? She got parts of it right,
8 she got parts of it wrong. It was \$400 versus \$4,000. It was
9 a thousand dollars. He implied he was involved. What about
10 that made him the shooter? There's a knife being grabbed, as
11 I recall, that she was -- reported. Does it turn out that Mr.
12 Rowland was attempting to sell a gun? Yeah. That fact is --
13 seems to be corroborated. But what about the rest of it
14 somehow makes him the shooter in this case?

15 Flight. My recollection is all three people got on
16 that bus using fake names. So what about his flight makes it
17 more likely that he's the shooter versus Mr. Burns or Mr.
18 Mason? See, because everybody has a role in this case, right?
19 Job's the OG, Job's the El Capitan, as Mr. Burns like to put
20 it in his letters. He's the guy. He's the guy who provides
21 the weapon, gets the transportation, that's his role. And Mr.
22 Mason, he's the guy who gets Stephanie Cousins to get the
23 target.

24 So what's Mr. Burns's role in this case? What about
25 his involvement means that Mr. Burns would be the person who's

1 leaving town? Because he's got the single role in this case.
2 And that role is to be the executioner, owner of the murder
3 weapon.

4 Once again, straight from Monica. But ultimately
5 whether or not that makes him the shooter or not, we know the
6 murder weapon was inside of Job-Loc's apartment. What's to
7 say Mr. Burns or Mr. Mason -- although I would suggest to you
8 that facts don't indicate that, but certainly they had access
9 to the weapon as much as anybody else in this particular case.
10 But what about that makes Job the shooter?

11 Perhaps my favorite, the grand jury testimony. And
12 Mr. Sgro actually referenced this at the end of his. That on
13 September 30th of 2010, Stephanie Cousins -- suspect, by the
14 way, so if somebody once again, who has some serious
15 credibility issues -- says, But wait, they were calling this
16 guy Job-Loc. And -- well, the cops told her his real name is
17 D-Shot.

18 The part they're missing out is the day before they
19 go and interview Mr. Burns in -- in California that you heard
20 on September 12th of 2010, they show Stephanie Cousins a photo
21 lineup saying, Who's the shooter? And she picks out David
22 Burns. Whether or not she thinks his nickname is Job-Loc or
23 she thinks his nickname is D-Shot, the facts are Stephanie
24 Cousins identifies this man as being the shooter. That's what
25 she says.

1 The text messages. I don't see anywhere in those
2 text messages where Job-Loc says that he did the shooting.
3 More importantly, as we all know, D-Shot liked to use
4 Job-Loc's phone. So who knows who's sending those text
5 messages back and forth? But either way, I don't know what
6 about that makes him the shooter.

7 So then there's the letter. What does Job-Loc write?
8 Well, you can't really say anything about me. I mean, who
9 knows what Job knows about conspiracy to aiding and abetting
10 law? But then he says, And either can Stephanie -- I think he
11 uses a more colorful term for her. And, you know, even if she
12 knows my name, she can't pick me out of a photo lineup.

13 And now we know what that all means, right? Because
14 they're getting discovery back and forth and they're finding
15 out about what the witnesses said. And she's saying, Hey,
16 this guy, the shooter, might have the name of Job-Loc.

17 Well, she can't pick him out of a photo lineup. Why?
18 Because Tamika tells you, or Christine Pierce, Stephanie
19 Cousins' daughter, who by the way, buries Willie Mason, right?
20 Because Willie's threatening to kill Stephanie if he tells --
21 if she tells anybody about what happened here. But --

22 MR. LANGFORD: Objection. That's not the evidence,
23 Your Honor.

24 THE COURT: I'm confused.

25 MR. DiGIACOMO: Christine Pierce says that Willie

1 Mason threatened to kill her mother if she told anybody about
2 what happened in the crime.

3 THE COURT: Okay.

4 MR. LANGFORD: That's absolutely not correct.

5 THE COURT: We'll let the jury decide what the
6 evidence is.

7 MR. DiGIACOMO: Oh. Okay. If you didn't hear that
8 on the 911, you let me know. Or, I guess --

9 THE COURT: No.

10 MR. DiGIACOMO: -- if you -- I -- I apologize, Judge.
11 If you didn't hear that on the 911, then that's your
12 determination. But that 911, she says it. She says Willie
13 Mason threatened to kill her if she told anybody about what
14 they'd done.

15 MR. LANGFORD: I'm -- I'm going to continue to
16 object, Judge.

17 MR. DiGIACOMO: But more importantly --

18 MR. LANGFORD: He's still making the same argument.
19 It's not in evidence.

20 THE COURT: All right. He says it is. I -- we'll
21 let the jury decide what the evidence is.

22 MR. LANGFORD: Thank you.

23 THE COURT: I don't remember one way or the other.

24 MR. DiGIACOMO: Listen to Christine Pierce's 911.
25 Well, what else do you know from Christine Pierce?

1 Her mom doesn't know Job-Loc. She knows Job-Loc, but
2 her mom never met Job-Loc. So she would have no idea who
3 Job-Loc is.

4 So that leaves you with two things. They left up
5 there, "Science," which I'd like to call more technology than
6 science, because there's certain things that can't be
7 manipulated, it can't lie.

8 And then Job's opportunity. So let's look at this.
9 Who's in the car. I think we can all establish that if Monica
10 Martinez is driving on a robbery and Stephanie Cousins is
11 setting up the dope deal, and Willie Mason finds Stephanie
12 Cousins and they're all in agreement to go up there and rob
13 the dope man, that whoever else is in that back seat's guilty,
14 whether the shooter or they're not the shooter, they've
15 certainly now all conspired to commit this crime.

16 So let's start with the facts. The facts show, just
17 like Christine Pierce testified, that Mr. Mason has been
18 contacting her for a period of time. And eventually she gives
19 up her mother's phone number. When does that happen? Well,
20 if you look at Willie Mason's phone records, the last call to
21 Christine before the first call to Stephanie is about 10:00 at
22 night on the 6th.

23 Then there's the suggestion that Job-Loc could be at
24 our scene. Because the cell phone records don't alibi him.
25 The cell phone records do alibi him. No question about it.

1 If you think I'm lying to you about that, go ahead and find
2 these two not guilty. Because he's alibi'd by those cell
3 phone records. It's not solely by his cell phone records,
4 it's all of the cell phone records. You can't take a single
5 piece of evidence and go, What about this evidence can we
6 fight about? No, you take it as a whole. You take every
7 single one of these cell phone records and tell yourself how
8 it's humanly possible Job-Loc's at the scene.

9 Why? Because at 2:00 in the morning Job-Loc's
10 pinging off his apartment. And what do you know from
11 surveillance video? That's 1:51 in the morning. There's
12 Willie, there's Monica, and notice Mr. Burns with his hands in
13 both pockets.

14 (Audio/Video played.)

15 A little after 1:52 in the morning, then 2:06 as
16 she's holding her cell phone in her hand, she walks out of the
17 Golden Nugget.

18 (Audio/Video played.)

19 So Job-Loc is not with Monica at 2:00 in the morning.
20 The question is, is there an opportunity for Job-Loc to get
21 into Monica's car before the crime occurred. Right? Because
22 we all know Job doesn't have a car, and unless he can somehow
23 jump on a Greyhound bus or -- or a CAP bus and get somehow
24 over there in some manner, the only motive of transportation
25 that he has, like when Tyler would drive him around --

1 testified to by Monica's friend Samantha -- is that he'd be in
2 the passenger seat of the vehicle.

3 Which also tells you something, a little something
4 about the DNA in that vehicle. Right? There's one thing of
5 unknown DNA in the vehicle. It's Unknown Male No. 2. It's
6 not Unknown Male No. 4. And where is it found? It's on a
7 seat belt latch. And let me ask you this. You think the two
8 people who committed this murder or the four people that
9 committed this murder are such law-abiding citizens that
10 they're going to follow the seat-belt law, so they must have
11 grabbed the seat belt when they got in and out of this
12 vehicle? No. None of the suspects, including Job-Loc, who we
13 know has been in the car, DNA has shown up inside the car.

14 What happens? Well, let's go to Mr. Mason's cell
15 phone records. You could do these with Monica's, as well.
16 But if you go to Mr. Mason's cell phone records at 2:00 in the
17 morning, where is he? He's downtown. So's Monica. And I'm
18 going to suggest to you that -- you've got to remember that
19 Mr. Mason and Ms. Cousins use Metro PCS, and T-Mobile uses --
20 is -- is Job-Loc and Monica.

21 And why is that important? Because everybody --
22 every company sets their own clock. Sort of like the Las
23 Vegas Metropolitan Police Department. When you hear these
24 911s, they have their clock.

25 So when you put these records together, and I -- I

1 guess maybe there's a dispute about the one-hour off one, if
2 you want to start on August 5th and go through the first 175
3 entries thereafter and see if they match up between the two
4 records, go ahead. I'm going to suggest to you if you do
5 that, that 175 is where I gave up. At 175, if you want to
6 keep going, you can. But you can go on for days and match up
7 the two records by that one hour.

8 But if you were to take Monica's and match them up to
9 Mason's, there's three hour -- there's approximately three
10 minutes off between the records. And if you were to take
11 Mason's to Job-Loc's, they're about three minutes off. But if
12 you take Monica's to Job-Loc's, they match. You take
13 Stephanie's to Mason's, they match. And that's important when
14 you get to the 911 call and how it is you know that the killer
15 is still in the house while -- while Mr. Mayo is using -- or
16 is calling 911.

17 But at 2:25, Mr. Mason's phone is hitting downtown.
18 And then at 2:32, surprisingly, he's hitting off Jerry's
19 Nugget. That phone call -- well, let me do this first.

20 (Audio/Video played.)

21 2:37, Job-Loc doesn't get out of the car. I find it
22 interesting that Mr. Mason has a white shirt and there is some
23 orange on his hat and the letter D, or what appears to be a
24 letter D.

25 (Audio/Video played.)

1 2:57, those individuals exit together from the Opera
2 House Casino. So notice 2:03 to 2:25 to 2:32, Job-Loc's way
3 over here. So the car didn't go way over here.

4 2:32 is the phone call to Stephanie, Hey, are you
5 ready yet? And then if you really wanted to do an analysis of
6 the cell phones, you could actually go back and find out
7 something that Monica Martinez is wrong about. It's in her
8 statement, as well, I think, as on the stand. She says, I
9 don't remember. I know I went to Stephanie's twice, but I
10 can't remember the sequencing of events.

11 If you actually were to tape Mr. Mason's phone
12 records, and then Monica has a single phone call at 1:32, you
13 could see that before they actually go downtown, they drive
14 over to Stephanie's apartment. And there's contact between
15 Stephanie and Mason. And then they go driving downtown. But
16 it doesn't matter, because you know that Job-Loc's at home at
17 2:00.

18 So 2:32, you have the call to Stephanie, Hey, I'm not
19 ready yet. So they go up to the Opera House. And then as
20 they're leaving the Opera House, 2:57, which I'm going to
21 suggest to you, because it was Mason's phone, was actually
22 3:00 in the morning. But 2:57, 2:58 to Stephanie, 3:07 to
23 Stephanie. And as they're driving south, 3:10, 3:11, 3:13.
24 Not heading over here to pick up Job-Loc. And at 3:13, he's
25 actually calling Job-Loc. Same as 2:57. And guess what?

1 Job-Loc's not answering the phone.

2 3:24, which I'm going to suggest to you is actually
3 3:27, 3:24 he's all the way down here by Stephanie's. So 11
4 minutes later, he's able to get basically from the Opera House
5 down to Stephanie's apartment in a vehicle, which we know to
6 be Monica's vehicle, because her cell phone records track down
7 there, too.

8 And then there's these calls right here. His records
9 show at 3:29, 3:29, and 3:30, between his phone and Monica's
10 phone. Well, what do you know? They were separated two times
11 during that evening. One time when Mr. Mason and Mr. Burns go
12 inside the residence at Stephanie's residence, and one time
13 when Mr. Mason and Mr. Burns go up to the failed robbery
14 attempt because there was a gun.

15 They'll -- you'll -- you will see that at least at
16 some point in time there was a reason for some of them to try
17 and call each other back.

18 Then you just keep following these records. You'll
19 see 2:58, 3:07, 3:24, 3:24, 3:24. Who's calling Stephanie's
20 phone back and forth? Willie Mason. Then they get together
21 and what happens?

22 3:37, which I'm going to suggest to you is 3:40 in
23 the morning, Derecia Newman's being called. Hey, you got any
24 stuff? Can we come up there and get some stuff?

25 And where are they? They're all the way down by

1 Stephanie's house.

2 Flip forward. This is why I'm going to tell you that
3 it's three minutes off and go back to -- here's Mr. Mason's
4 contacts, 3:29, 3:29, 3:30. Here's Ms. Martinez's contacts,
5 3:22:24, 3:33:29, 3:33:59. Those numbers are slightly off,
6 but the contact is there. And look where Monica Martinez's
7 car is.

8 And then I'm going to suggest to you that her time is
9 right at 4:40 -- at 3:45, as she's heading north on Nellis, to
10 go to where? Derecia Newman's house. And then follow the
11 phone records. These are Cousins' phones. And I'm going to
12 suggest to you these are three minutes off.

13 Why do I say that these are three minutes off versus
14 the time period of -- of maybe that they're three minutes
15 early? Well, that would mean that this -- this crime happened
16 way before or that T-Mobile was off by six minutes as opposed
17 to three minutes. But more importantly, if you add three
18 minutes to this phone call right here, approximately some time
19 between two and a half and three minutes, you'd hit about
20 exactly the same time as the 911 call. And if you actually
21 were to use Monica's phone for the time, she gets the first
22 phone call from Willie Mason as she's running out of the house
23 saying, Hey, where are you? Where are you? And then Mr.
24 Mayo's phone connects to 911.

25 But more importantly on her phone, Stephanie's phone,

1 what happens? 3:47, she has this weird kind of, I don't know,
2 seven-star-one. It's not answered, but it hits the tower. It
3 hits that tower that you would expect it to be hitting on the
4 northwest part of town.

5 And then the weird one is 3:47:52, which I'm going to
6 suggest to you is about 3:51 in the morning, what happens? It
7 hits this tower. Why? She's calling Derecia. Why is she
8 hitting this tower when she's up here and then down there?
9 You only have to ask yourself, remember the guy from T-Mobile,
10 the expert that talks about you don't always hit the closest
11 tower if there's obstructions? Well, what do you know, she
12 calls from right outside that door. She calls from right
13 outside the door, Hey, I'm here. She has a blockage to that
14 cell tower. She has a blockage to that cell tower. So what
15 cell tower is she going to hit? That's why she hits that cell
16 tower right before she goes through the front door.

17 Now what do you know from Mason's phone? Well, at
18 3:51:09 he makes a phone call and he hits the tower to the --
19 to the east of the crime scene to Monica -- to Stephanie
20 Cousins' phone. All right. And then he makes another phone
21 call to Stephanie Cousins' phone at 3:51:25 and it starts on
22 that east tower, but somehow ends on that west tower.
23 Suggestive of what? Sort of like what Monica said, I pulled
24 out, I hung a left, I started driving towards the east, I then
25 had to do a U-turn to get back to Christy Lane and to pick up

1 Stephanie.

2 There is no opportunity either for David Burns --

3 MR. ORAM: Judge, I object to that.

4 MR. DiGIACOMO: -- to not be in the car --

5 MR. ORAM: The Supreme Court has said that you cannot
6 do what he has just done. In fact, that's why I didn't call
7 it a circle of guilt.

8 Put it back up there, Mr. DiGiacomo, so the judge can
9 see it.

10 He's called it a circle of guilt. The Supreme Court
11 just reversed a case for saying "guilt" like that over the
12 defendant. That's why I specifically called it circle of
13 coincidences, because I didn't think I could do that. So I
14 object to that and ask that it he remove it.

15 MR. DiGIACOMO: That was in opening. The Court said
16 it was argumentative and it shouldn't have been done. This is
17 now closing. I certainly can say that he's guilty and this is
18 a circle of guilt.

19 MR. ORAM: If I refrain --

20 THE COURT: I'm not familiar with the case you're
21 talking about.

22 MR. ORAM: If I refrain from it based on that, I -- I
23 am shocked that a prosecutor could do that.

24 THE COURT: I'm not -- I'm not familiar with it. I
25 know Mel Harmon used -- that was Mel Harmon's --

1 MR. ORAM: That's right.
2 THE COURT: -- argument.
3 MR. DiGIACOMO: Classic Mel Harmon.
4 THE COURT: He was never reversed for it.
5 MR. DiGIACOMO: Yes. He was never reversed for it.
6 THE COURT: That I'm aware of.
7 MR. ORAM: No, he wasn't. But the Supreme Court
8 overturned a case in the last -- in the last few months saying
9 that the prosecutor --
10 THE COURT: I'm not familiar with the case.
11 MR. DiGIACOMO: And that was in opening.
12 THE COURT: In opening?
13 MR. DiGIACOMO: Not in closing. This is argument.
14 THE COURT: Okay.
15 MR. DiGIACOMO: That was opening.
16 THE COURT: All right. Let's go.
17 MR. DiGIACOMO: Thank you. So what do you have left?
18 Your science and your technology gives you one person with the
19 opportunity to be the fourth person in the car. And that's
20 him.
21 And like I said before, once you put David Burns in
22 the car, once he's there, once he's there and Willie's there
23 and Monica's driving them on a robbery, they're both guilty of
24 murder. This guilt phase is over.
25 But this is about the truth. Don't we want to know

1 who executed Derecia Newman? Who's the person with that big
2 gun in their pocket? Who is that person? Because that's what
3 this whole trial's about, right?

4 Let's talk about Mr. Burns. What do we know? Well,
5 Stephanie Cousins identifies him as a shooter. Whether or not
6 that's real relevant or not, she's a codefendant, she didn't
7 testify, much like Ulonda Cooper.

8 Okay. Well, maybe Derecia Newman. Maybe Derecia
9 Newman at 10:45 in the morning on August 7th of 2010, when
10 Cornelius Mayo is inside that room as she's just gone through
11 an operation, her first of many operations, to try and save
12 her life, some five hours or six hours after this crime
13 occurs, as she's got the high levels of Versed, and Cornelius
14 Mayo says she's sleeping, which seems to be very reasonable at
15 10:45 in the morning after the operation that she had to
16 receive, somehow he was able to convey with her -- to her
17 every single fact that happened in this case that matches
18 every single piece of physical evidence inside the crime
19 scene. Is that a reasonable conclusion? Is that honestly a
20 reasonable conclusion?

21 Or that the overalls here were somehow made up by an
22 individual. Really? Because when they talk to her, they
23 don't have the video. They have no idea what the video is
24 going to say or who it's going to be. She hits on he's tall.
25 She says 6'2". He's African-American. He's skinny. He's got

1 curly hair that goes about halfway down his ear, but he had a
2 hat on. He's got a little bit of a -- of a shadow, dark
3 shadow for a mustache that's on his lip. Every single fact
4 she gives about the case, not just about the perpetrator, is
5 corroborated by the evidence with the exception of some
6 colors.

7 But who is the tall skinny guy wearing overalls?
8 What else do we know? Mom was executed coming through the
9 door. There's no if, ands, or buts about it. Stephanie
10 Cousins is there trying to fake a dope transaction for \$20.
11 The \$20 is still in Derecia Newman's hands, for God's sake.

12 She does run down the halls, because the shots follow
13 her down the halls. She does go in the bathroom and there's a
14 shot through the bathroom door. And then the door opens and
15 ultimately she gets shot in the stomach. And her dad is in
16 the shower. All of those facts are corroborated by every
17 single piece of evidence in the case.

18 Whether or not she makes a photo identification or
19 not, he's the only person in the car that matched that
20 description. He's got to be the shooter. You can never get
21 away from the overalls in this case. They can't get away from
22 it. That's why they tried to suggest to you that Cornelius
23 Mayo had to give her that information. That somehow Stephanie
24 Cousins related to Cornelius Mayo, who's capable of relaying
25 to Derecia -- or Devonia, the 12-year-old girl, who could

1 repeat that story. That's reasonable?

2 But you don't even need to know that. Look at Mr.
3 Burns as he's got his hands in his pockets, the -- both hands
4 in his pockets, actually, at the Binions. Well, there's a lot
5 of video, though, in this night, and we haven't really talked
6 about it.

7 Any time this guy is standing -- any time he is
8 standing in any one of the videos, his left hand is in his
9 pocket. And funny, really kind of weird about the whole
10 situation, is this is the back, because there's a camera
11 there, that's the front. His hand's barely in his pocket, but
12 from looking at the front, when you watch that video -- and
13 watch it live on the video -- there is something big and heavy
14 in his front left pocket. And the only time he ever takes his
15 hand out of his pocket is when he sits at that machine. Now
16 his hand is out and that big, heavy, hog-heel of a revolver is
17 sitting in that left pocket.

18 The video establishes it. Watch him as he walks out
19 of that casino and he's got his left hand in his pocket.
20 There's something in the left side of his pants as he's
21 walking out like this. Just watch the video. He's the
22 shooter.

23 And if that didn't convince you, how about what he
24 tells you? What he says in his writings?

25 "What it zoom, my Loc. I got my paperwork. Goat

1 mouth is not the culprit. Willie Mason is not the guy who
2 ratted me out. It's actually the black fuckin' ho or hope.
3 We went to court today, the Loc brought all his paperwork.
4 The fuckin' bay west put your name all through the shit. I
5 seen it with my own eyes."

6 Go look at West's statement. Why is West put on the
7 stand? So you could admit his statement and listen to his
8 statement in consideration of what Mr. Burns is telling you.

9 "They added the battery with the deadly resulting in
10 substantial bodily harm count, that's the eighth count. The
11 stupid pinche hina [phonetic], somehow her daughter taking the
12 stand along with that black piece of shit. Who's put in the
13 bullshit. They have something, some T-Mobile shit and Metro
14 PCS. I don't know all details, I'm just keeping you up to
15 date."

16 Who's he updating? He's updating Job-Loc about the
17 crime.

18 "Donovon Rowland is the bitch-ass nigger name he got
19 in detail, which is all a lie, but bitch keep hisself out of a
20 firearms charge so-called. The alpha bitch boys, Greyhound
21 pictures of us really just don't mean shit, but our weekend
22 was over in Vegas."

23 He's not saying to you he ain't here in Vegas, like
24 he's telling the police, I don't ever remember going to Vegas.

25 "I got a new copy of charges." And then go look at

1 some of these other ones. "I should have got my transcripts
2 before I got to accusing the Dogg. They spooked my young ass.
3 I'm not going to lie."

4 "That only shows what I was wearing, though,
5 basically, and that the three of us were together on the
6 Strip."

7 "Smoker got gang a different stories." The Smoker
8 being Stephanie Cousins. "Which all points to me as El
9 Capitan," which I actually think may very well be a reference
10 or -- let me rephrase -- the evidence suggests may actually be
11 a reference to the Smoker calling him Job-Loc, "that had on
12 blue overalls and curly hair. The Dogg says it's possible
13 together to get her statement ruled out because she got five
14 of them. Little Mama," the victim, "says I had on blue
15 overalls, orange hat, white shirt under with curly hair. I
16 would even feed" -- "feel a little more relaxed if you all
17 wasn't in this shit with me. Not going to get in detail, but
18 a nigga love the Locs and don't want to see you all sink in my
19 boat."

20 He's not accusing Job-Loc of putting him in this
21 situation. He's apologizing to Job-Loc.

22 But probably most spectacularly, who's he -- who's he
23 apologizing to? He's apologizing to Monica Monroe, the woman
24 who allegedly manufactured the story to put him in that seat
25 as the shooter in this case. He's apologizing to her. And

1 there's a suggestion to you that he's not the guy.

2 But maybe what was subtle and was lost on everybody
3 was how particularly disgusting and despicable the crime
4 itself was. That it was -- got to be something horrific for
5 most human beings on Earth. And when you're in an interview
6 room with detectives and you get told about it, your behavior
7 of humming and singing and whistling is really kind of
8 offensive, to be honest with you. And you can't really blame
9 the cops for using the kind of terms that they used with him.

10 But it's also relevant for something else. Because
11 Cornelius Mayo's inside that shower when the shots ring out.
12 And he calls 911. And if that matches the clock at T-Mobile,
13 that means it's while the shooter's still in that house. And
14 he's not obviously the person whistling on that 911. So
15 whoever shot Derecia Newman and then put a bullet in Devonia
16 Newman --

17 (Audio/Video played.)

18 -- whoever that shooter is, he's whistling as he's
19 going through the crack cocaine and the drugs inside that
20 residence as Cornelius Mayo, in that very small bathroom in
21 that shower, is calling 911. Listen to that 911 over and over
22 and over again. Cornelius Mayo doesn't see Devonia until
23 after the whistling ends.

24 And when you get to walking to a -- someone's
25 apartment here, whether they're a drug dealer or they're not a

1 drug dealer, when you walk in and you place a .44-caliber
2 revolver against their head and blow half their face off,
3 chase down their 12-year-old daughter, shoot her in the
4 stomach, rifle through her pockets, and then get up and
5 whistle, that is a cold, calculated murder. That is first
6 degree murder.

7 Because this case is about the truth and the truth is
8 undeniable. It is undeniable that David Burns is the shooter.
9 And I'd ask you to hold him accountable.

10 Thank you.

11 THE COURT: All right. Ladies and gentlemen, this
12 matter is now submitted to you for your determination. You're
13 going to have with you in the jury room the exhibits that were
14 marked and admitted during the trial. You'll have all the
15 exhibits. You're going to have a computer so that if you wish
16 to play any of the discs that are in evidence, you can do so,
17 and, I think, speakers to go with the computer. And -- and I
18 checked the computer myself and it's -- it's -- it's going to
19 work, I'm pretty sure. So somebody among you I'm sure knows
20 how to work a computer.

21 And you'll have the instructions that I read to you
22 and you'll have forms of verdict, which we have prepared for
23 your convenience. Now, I'm aware sometimes jurors start
24 marking on the instruction -- on the forms of verdict. If you
25 mess them up and you need more forms, we've got lots of

1 copies. So just ask the marshal for another copy. You can
2 have as many copies of the forms of verdict as you want.

3 All right. The clerk will swear in the officers.

4 (Officers sworn.)

5 THE COURT: All right. The 12 regular members of the
6 jury will follow the officers out here. Ms. Petty, you have
7 to stay where you are for a minute.

8 (Jury recessed to deliberate at 12:49 p.m.)

9 THE COURT: All right. The record reflect that the
10 jury and the alternate have left the courtroom. We'll be in
11 recess until subject to the call of the marshals.

12 (Court recessed at 12:49 p.m.)
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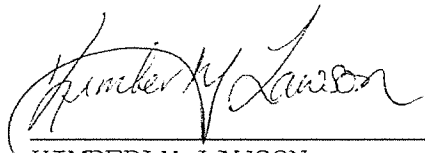
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

KARR REPORTING, INC.
Aurora, Colorado


KIMBERLY LAWSON

KARR Reporting, Inc.

1 INST

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6 DISTRICT COURT
CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,)

9 Plaintiff,)

10 -vs-)

11 WILLIE DARNELL MASON and)
12 DAVID JAMES BURNS,)

13 Defendants.)
14

CASE NO: C267882-1, 2

DEPT NO: XX

15 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

16 MEMBERS OF THE JURY:

17 It is now my duty as judge to instruct you in the law that applies to this case. It is
18 your duty as jurors to follow these instructions and to apply the rules of law to the facts as
19 you find them from the evidence.

20 You must not be concerned with the wisdom of any rule of law stated in these
21 instructions. Regardless of any opinion you may have as to what the law ought to be, it
22 would be a violation of your oath to base a verdict upon any other view of the law than that
23 given in the instructions of the Court.
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If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

A Superseding Indictment is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in a Superseding Indictment that on or about the 7th day of August, 2010, the Defendants committed the offenses of CONSPIRACY TO COMMIT ROBBERY (Felony - NRS 199.480; 200.380); BURGLARY WHILE IN POSSESSION OF A FIREARM (Felony - NRS 205.060); ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380, 193.165); MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165), ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Felony - 200.010, 200.030, 193.330, 193.165), and BATTERY WITH A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Felony - 200.481) at and within the County of Clark, State of Nevada, as follows:

COUNT 1 – CONSPIRACY TO COMMIT ROBBERY

did then and there meet with each other and/or STEPHANIE JEAN COUSINS and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS aka JOB-LOC and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: robbery, and in furtherance of said conspiracy, Defendants and/or their co-conspirators committed the acts as set forth in Counts 3 thru 8, those acts incorporated by reference as if fully set forth herein.

COUNT 2 – CONSPIRACY TO COMMIT MURDER

did then and there meet with each other and/or STEPHANIE JEAN COUSINS and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS aka JOB-LOC and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: murder, and in furtherance of said conspiracy, Defendants and/or their co-conspirators committed the acts as set forth in Counts 3 thru 8, those acts incorporated by reference as if fully set forth herein.

COUNT 3 - BURGLARY WHILE IN POSSESSION OF A FIREARM

did then and there wilfully, unlawfully, and feloniously enter, while in possession of a

1 firearm, with intent to commit larceny and/or assault and battery and/or a felony, to-wit:
2 robbery and/or murder, that certain building occupied by DEREZIA NEWMAN and/or
3 CORNELIUS MAYO and/or DEVONIA NEWMAN, located at 5662 Meikle Lane,
4 Apartment A, Las Vegas, Clark County, Nevada, the defendants being responsible under the
5 following principles of criminal liability, to-wit: 1) by directly or indirectly committing the
6 acts constituting the offense; and/or 2) by engaging in a conspiracy to commit larceny and/or
7 assault and/or battery and/or robbery and/or murder and/or burglary whereby Defendants had
8 the specific intent to commit burglary; and/or 3) by aiding or abetting each other in the
9 commission of the crime by Defendant WILLIE DARNELL MASON aka G-DOGG
10 accompanying Defendant STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES
11 BURNS aka D-SHOT to the residence while MONICA LOUISE MARTINEZ drove the
12 getaway vehicle and/or acted as a lookout, Defendant STEPHANIE JEAN COUSINS
13 creating a ruse for DEREZIA NEWMAN to open the door, Defendant WILLIE DARNELL
14 MASON aka G-DOGG and/or Defendant STEPHANIE JEAN COUSINS and/or Defendant
15 DAVID JAMES BURNS aka D-SHOT entering the residence with the intent to commit
16 larceny and/or assault and/or battery and/or robbery and/or murder, Defendant WILLIE
17 DARNELL MASON aka G-DOGG and/or Defendant DAVID JAMES BURNS aka D-
18 SHOT possessing the firearm, the Defendants and/or MONICA LOUISE MARTINEZ
19 and/or JEROME THOMAS aka JOB-LOC offering counsel and encouragement to each
20 other throughout.

21 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

22 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
23 cocaine and/or lawful money of the United States, from the person of DEREZIA
24 NEWMAN, or in her presence, by means of force or violence or fear of injury to, and
25 without the consent and against the will of the said DEREZIA NEWMAN, said defendant
26 using a deadly weapon, to-wit: a firearm, during the commission of said crime, the
27 defendants being responsible under the following principles of criminal liability, to-wit: 1)
28 by directly or indirectly committing the acts constituting the offense; and/or 2) by engaging

1 in a conspiracy to commit larceny and/or assault and/or battery and/or robbery and/or murder
2 and/or burglary; and/or 3) by aiding or abetting each other in the commission of the crime by
3 Defendant WILLIE DARNELL MASON aka G-DOGG accompanying Defendant
4 STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES BURNS aka D-SHOT to
5 the residence while MONICA LOUISE MARTINEZ drove the getaway vehicle and/or acted
6 as a lookout, Defendant STEPHANIE JEAN COUSINS creating a ruse for DEREZIA
7 NEWMAN to open the door, Defendant WILLIE DARNELL MASON aka G-DOGG and/or
8 Defendant DAVID JAMES BURNS aka D-SHOT possessing the firearm, Defendant
9 WILLIE DARNELL MASON aka G-DOGG and/or Defendant DAVID JAMES BURNS
10 aka D-SHOT shooting DEREZIA NEWMAN in the head, Defendant WILLIE DARNELL
11 MASON aka G-DOGG and/or Defendant STEPHANIE JEAN COUSINS and/or Defendant
12 DAVID JAMES BURNS aka D-SHOT taking money or cocaine, the Defendants and/or
13 MONICA LOUISE MARTINEZ and/or JEROME THOMAS aka JOB-LOC offering
14 counsel and encouragement to each other throughout.

15 COUNT 5 - MURDER WITH USE OF A DEADLY WEAPON

16 did then and there wilfully, feloniously, without authority of law, and with malice
17 aforethought, kill DEREZIA NEWMAN, a human being, by shooting at and into the head
18 and/or body of said DEREZIA NEWMAN, with a firearm, the actions of defendants and/or
19 MONICA LOUISE MARTINEZ resulting in the death of the said DEREZIA NEWMAN,
20 the killing having been (1) done with premeditation and deliberation, and/or (2) committed
21 during the perpetration or attempted perpetration of robbery and/or burglary; the defendants
22 being responsible under one or more of the following principles of criminal liability, to-wit:
23 1) by directly or indirectly committing the acts constituting the offense; and/or 2) by
24 engaging in a conspiracy to commit robbery and/or murder and/or burglary; and/or 3) by
25 aiding or abetting each other in the commission of the crime with the intent a killing occur
26 by Defendant WILLIE DARNELL MASON aka G-DOGG accompanying Defendant
27 STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES BURNS aka D-SHOT to
28 the residence while MONICA LOUISE MARTINEZ drove the getaway vehicle and/or acted

1 as a lookout, Defendant STEPHANIE JEAN COUSINS creating a ruse for DEREZIA
2 NEWMAN to open the door, Defendant WILLIE DARNELL MASON aka G-DOGG and/or
3 Defendant STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES BURNS aka
4 D-SHOT entering the residence with the intent to commit larceny and/or assault and/or
5 battery and/or robbery and/or murder, Defendant WILLIE DARNELL MASON aka G-
6 DOGG and/or Defendant DAVID JAMES BURNS aka D-SHOT possessing the firearm,
7 Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant DAVID JAMES
8 BURNS aka D-SHOT shooting DEREZIA NEWMAN in the head resulting in her death,
9 Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant STEPHANIE
10 JEAN COUSINS and/or Defendant DAVID JAMES BURNS aka D-SHOT taking money or
11 cocaine, the Defendants and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS
12 aka JOB-LOC offering counsel and encouragement to each other throughout.

13 COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON

14 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
15 cocaine and/or lawful money of the United States, from the person of DEVONIA
16 NEWMAN, a twelve (12) year old child, or in her presence, by means of force or violence or
17 fear of injury to, and without the consent and against the will of the said DEVONIA
18 NEWMAN, said defendant using a deadly weapon, to-wit: a firearm, during the commission
19 of said crime, the defendants being responsible under the following principles of criminal
20 liability, to-wit: 1) by directly or indirectly committing the acts constituting the offense;
21 and/or 2) by engaging in a conspiracy to commit larceny and/or assault and/or battery and/or
22 robbery and/or murder and/or burglary; and/or 3) by aiding or abetting each other in the
23 commission of the crime by Defendant WILLIE DARNELL MASON aka G-DOGG
24 accompanying Defendant STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES
25 BURNS aka D-SHOT to the residence while MONICA LOUISE MARTINEZ drove the
26 getaway vehicle and/or acted as a lookout, Defendant STEPHANIE JEAN COUSINS
27 creating a ruse for DEREZIA NEWMAN to open the door, Defendant WILLIE DARNELL
28 MASON aka G-DOGG and/or Defendant DAVID JAMES BURNS aka D-SHOT possessing

1 the firearm, Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant
2 DAVID JAMES BURNS aka D-SHOT shooting DEVONIA NEWMAN in the stomach,
3 Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant STEPHANIE
4 JEAN COUSINS and/or Defendant DAVID JAMES BURNS aka D-SHOT taking money or
5 cocaine, the Defendants and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS
6 aka JOB-LOC offering counsel and encouragement to each other throughout.

7 COUNT 7 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

8 did then and there, without authority of law, and with malice aforethought, willfully
9 and feloniously attempt to kill DEVONIA NEWAN, a twelve (12) year old child, by
10 shooting at or into the body of the said DEVONIA NEWMAN, with a deadly weapon, to-
11 wit: a firearm, during the commission of said crime, the defendants being responsible under
12 the following principles of criminal liability, to-wit: 1) by directly or indirectly committing
13 the acts constituting the offense; and/or 2) by engaging in a conspiracy to commit assault
14 and/or battery and/or robbery and/or murder and/or burglary with the specific intent to kill;
15 and/or 3) by aiding or abetting each other in the commission of the crime with the intent a
16 killing would occur by Defendant WILLIE DARNELL MASON aka G-DOGG
17 accompanying Defendant STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES
18 BURNS aka D-SHOT to the residence while MONICA LOUISE MARTINEZ drove the
19 getaway vehicle and/or acted as a lookout, Defendant STEPHANIE JEAN COUSINS
20 creating a ruse for DEREZIA NEWMAN to open the door, Defendant WILLIE DARNELL
21 MASON aka G-DOGG and/or Defendant DAVID JAMES BURNS aka D-SHOT possessing
22 the firearm, Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant
23 DAVID JAMES BURNS aka D-SHOT shooting DEVONIA NEWMAN in the stomach, the
24 Defendants and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS aka JOB-
25 LOC offering counsel and encouragement to each other throughout.

26 COUNT 8 - BATTERY WITH A DEADLY WEAPON RESULTING IN SUBSTANTIAL
27 BODILY HARM

28 did then and there wilfully, unlawfully, and feloniously use unlawful force or violence

1 upon the person of DEVONIA NEWMAN, a twelve (12) year old child, with use of a deadly
2 weapon, to wit: by shooting into the body of DEVONIA NEWMAN with a firearm, causing
3 substantial bodily harm to the said DEVONIA NEWMAN; the defendants being responsible
4 under the following principles of criminal liability, to-wit: 1) by directly or indirectly
5 committing the acts constituting the offense; and/or 2) by engaging in a conspiracy to
6 commit assault and/or battery and/or robbery and/or murder and/or burglary; and/or 3) by
7 aiding or abetting each other in the commission of the crime by Defendant WILLIE
8 DARNELL MASON aka G-DOGG accompanying Defendant STEPHANIE JEAN
9 COUSINS and/or Defendant DAVID JAMES BURNS aka D-SHOT to the residence while
10 MONICA LOUISE MARTINEZ drove the getaway vehicle and/or acted as a lookout,
11 Defendant STEPHANIE JEAN COUSINS creating a ruse for DEREZIA NEWMAN to open
12 the door, Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant DAVID
13 JAMES BURNS aka D-SHOT possessing the firearm, Defendant WILLIE DARNELL
14 MASON aka G-DOGG and/or Defendant DAVID JAMES BURNS aka D-SHOT shooting
15 DEVONIA NEWMAN in the stomach resulting in substantial bodily harm, the Defendants
16 and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS aka JOB-LOC offering
17 counsel and encouragement to each other throughout.

18 It is the duty of the jury to apply the rules of law contained in these instructions to the
19 facts of the case and determine whether or not either or both of the Defendants are guilty of
20 one or more of the offenses charged.
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To constitute a crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of a Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

1
2 The Defendants are presumed innocent until the contrary is proved. This presumption
3 places upon the State the burden of proving beyond a reasonable doubt every material
4 element of each crime charged and that the Defendants are the persons who committed those
5 offenses.

6 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a
7 doubt as would govern or control a person in the more weighty affairs of life. If the minds of
8 the jurors, after the entire comparison and consideration of all the evidence, are in such a
9 condition that they can say they feel an abiding conviction of the truth of the charge, there is
10 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
11 speculation.

12 If you have a reasonable doubt as to the guilt of a Defendant, he is entitled to a verdict
13 of not guilty.
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INSTRUCTION NO. 6

You are here to determine whether the Defendants are guilty or not guilty from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of one or both of the Defendants, you should so find, even though you may believe one or more other persons are also guilty.

The statements, arguments and opinions of the attorneys are not evidence in the case. The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by the attorneys.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether a Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

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2 A conviction shall not be had on the testimony of an accomplice unless he is
3 corroborated by other evidence which in itself, and without the aid of the testimony of the
4 accomplice, tends to connect the defendant with the commission of the offense; and the
5 corroboration shall not be sufficient if it merely shows the commission of the offense or the
6 circumstances thereof.

7 An accomplice is defined as one who is liable for prosecution, for the identical
8 offense charged against the defendant on trial in the cause in which the testimony of the
9 accomplice is given.

10 To be an accomplice, the person must have aided, promoted, encouraged, or
11 instigated by act or advice the commission of such offense with knowledge of the unlawful
12 purpose of the person who committed the offense.
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To corroborate the testimony of an accomplice there must be evidence of some act or fact related to the offense which, if believed, by itself and without any aid, interpretation or direction from the testimony of the accomplice, tends to connect the defendant with the commission of the offense charged.

However, it is not necessary that the evidence of the corroboration be sufficient in itself to establish every element of the offense charged, or that it corroborate every fact to which the accomplice testifies.

In determining whether an accomplice has been corroborated, you must first assume the testimony of the accomplice has been removed from the case. You must then determine whether there is any remaining evidence which tends to connect the defendant with the commission of the offense.

If there is not such independent evidence which tends to connect the defendant with the commission of the offense, the testimony of the accomplice is not corroborated.

The fact that a witness was given an inducement in exchange for his cooperation may be considered by you only for the purpose of determining the credibility of that witness. The existence of such an inducement does not necessarily destroy or impair the credibility of the witness. It is one of the circumstances that you may take into consideration in weighing the testimony of such a witness.

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it. If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of their testimony which is not proved by other evidence.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any other evidence that you believe.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. The testimony of one witness worth of belief is sufficient for the proof of any fact and would justify a verdict in accordance with such testimony, even if a number of witnesses have testified to the contrary. If, from the whole case, considering the credibility of witnesses, and after weighing the various factors of evidence, you believe that there is a balance of probability pointing to the accuracy and honesty of one witness, you should accept his testimony.

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

INSTRUCTION NO. 13

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

The flight of a person immediately after the commission of a crime, or after he is accused of a crime, is not sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in light of all other proved facts in deciding the question of his guilt or innocence. Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to such a circumstance are matters for your deliberation

A conspiracy is an agreement between two or more persons for an unlawful purpose. To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission of, the specific crime agreed to. The crime is the agreement to do something unlawful; it does not matter whether it was successful or not.

A person who knowingly does any act to further the object of a conspiracy, or otherwise participates therein, is criminally liable as a conspirator. However, mere knowledge or approval of, or acquiescence in, the object and purpose of a conspiracy without an agreement to cooperate in achieving such object or purpose does not make one a party to conspiracy. Conspiracy is seldom susceptible of direct proof and is usually established by inference from the conduct of the parties. In particular, a conspiracy may be supported by a coordinated series of acts, in furtherance of the underlying offense, sufficient to infer the existence of an agreement.

A conspiracy to commit a crime does not end upon the completion of the crime. The conspiracy continues until the co-conspirators have successfully gotten away and concealed the crime.

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2 It is not necessary in proving a conspiracy to show a meeting of the alleged
3 conspirators or the making of an express or formal agreement. The formation and existence
4 of a conspiracy may be inferred from all circumstances tending to show the common intent
5 and may be proved in the same way as any other fact may be proved, either by direct
6 testimony of the fact or by circumstantial evidence, or by both direct and circumstantial
7 evidence.

Whenever there is slight evidence that a conspiracy existed, and that the defendant was one of the members of the conspiracy, then the statements and the acts by any person likewise a member may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuance of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy.

The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators. Every conspirator is legally responsible for a specific intent crime of a co-conspirator so long as the specific intent crime was intended by the Defendant. A conspirator is also legally responsible for a general intent crime that follows as one of the reasonably foreseeable consequence of the object of the conspiracy even if it was not intended as part of the original plan and even if he was not present at the time of the commission of such act.

Evidence that a person was in the company or associated with one or more other persons alleged or proven to have been members of a conspiracy is not, in itself, sufficient to prove that such person was a member of the alleged conspiracy. However, you are instructed that presence, companionship, and conduct before, during and after the offense are circumstances from which one's participation in the criminal intent may be inferred.

INSTRUCTION NO. 10

Where two or more persons are accused of committing a crime together, their guilt may be established without proof that each personally did every act constituting the offense charged.

All persons concerned in the commission of a crime who either directly and actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission or, whether present or not, who advise and encourage its commission, with the intent that the crime be committed, are regarded by the law as principals in the crime thus committed and are equally guilty thereof.

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the commission of such crime with the intention that the crime be committed.

The State is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

INSTRUCTION NO. 21

Mere presence at the scene of a crime or knowledge that a crime is being committed is not sufficient to establish that a defendant is guilty of an offense, unless you find beyond a reasonable doubt that the defendant was a participant and not a merely a knowing spectator.

However, the presence of a person at the scene of a crime and companionship with another person engaged in the commission of the crime and a course of conduct before and after the offense, are circumstances which may be considered in determining whether such person aided and abetted the commission of that crime.

INSTRUCTION NO. 22

Any person, who by day or night, enters any house, room, apartment, tenement, shop, warehouse, store, other building, automobile or other vehicle with the intent to commit larceny, robbery and/or murder is guilty of burglary.

When two or more persons participate in the commission of a burglary, and one or more of them enters the structure, it is not necessary to prove the other individual actually entered because one who aids and abets another in the commission of a burglary is equally guilty as a principal.

INSTRUCTION NO. 24

The intention with which an entry was made is a question of fact which may be inferred from the defendant's conduct and all other circumstances disclosed by the evidence.

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2 It is not necessary that the State prove the defendant actually committed a larceny,
3 robbery, or murder inside the house after he entered in order for you to find him guilty of
4 burglary. The gist of the crime of burglary is the unlawful entry with criminal intent.
5 Therefore, a burglary was committed if the defendant entered the house with the intent to
6 commit a larceny, robbery or murder regardless of whether or not that crime occurred.
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Consent to enter is not a defense to the crime of burglary so long as it is shown that entry was made with the specific intent to commit a larceny, robbery, or murder therein. Moreover, force or a "breaking" as such is not a necessary element of the crime.

INSTRUCTION NO. 27

Larceny is the stealing, taking and carrying away of the personal goods or property of another, with the specific intent to permanently deprive the owner thereof.

Every person who, in the commission of a burglary, commits any other crime may be prosecuted for each crime separately.

INSTRUCTION NO. 29

Every person who commits the crime of burglary, who has in his possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure, or upon leaving the structure, is guilty of burglary while in possession of a weapon.

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. Such force or fear must be used to:

1. Obtain or retain possession of the property,
2. To prevent or overcome resistance to the taking of the property, or
3. To facilitate escape with the property.

In any case the degree of force is immaterial if used to compel acquiescence to the taking of or escaping with the property. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

The value of property or money taken is not an element of the crime of Robbery, and it is only necessary that the State prove the taking of some property or money.

Robbery may spread over considerable and varying periods of time. All matters immediately prior to and having direct causal connection with the robbery are deemed so closely connected with it as to be a part of the occurrence. Thus, although acts of violence and intimidation preceded the actual taking of the property and may have been primarily intended for another purpose, it is enough to support the charge of robbery when a person takes the property by taking advantage of the terrifying situation he created.

Murder in the First Degree is a specific offense crime. A defendant cannot be liable under a conspiracy and/or an aiding and abetting theory for First Degree Murder for acts committed by a co-conspirator unless Defendant also had a premeditated and deliberate specific intent to kill and/or the intent to commit a robbery and/or the intent to commit burglary.

Murder in the Second Degree and Robbery are general intent crimes. As such, a defendant may be may liable under a conspiracy theory and/or aiding and abetting for Murder of the Second Degree and Robbery for acts committed by a co-conspirator if the killing or taking of property by force is a one of the reasonably foreseeable consequences of the object of the conspiracy.

Where several parties join together in a common design to commit any unlawful act, each is criminally responsible for the reasonably foreseeable general intent crimes committed furtherance of the common design. In contemplation of law, as it relates to general intent crimes, the act of one is the act of all. Robbery and battery are general intent crimes. Second Degree Murder is a general intent crime.

Additionally, a co-conspirator is guilty of the specific intent offenses which he specifically intended to be committed. Burglary and Attempt Murder are specific intent crimes. First Degree Murder is a specific intent crime unless the Felony-Murder Rule applies.

In this case the defendants are accused in a Superseding Indictment alleging an open charge of murder. This charge may include murder of the first degree or murder of the second degree.

The jury must decide if the defendant is guilty of any offense and, if so, of which offense.

Murder is the unlawful killing of a human being with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

Express malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

Murder of the first degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements -- willfulness, deliberation, and premeditation -- must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the actions.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

There are certain kinds of Murder in the First Degree which carry with them conclusive evidence of malice aforethought. One of these classes of First Degree Murder is a killing committed in the perpetration or attempted perpetration of a Burglary and/or Robbery. Therefore, a killing which is committed in the perpetration of a Burglary and/or Robbery is deemed to be Murder in the First Degree, whether the killing was intentional, unintentional, or accidental. This is called the Felony-Murder Rule.

The intent to perpetrate or attempt to perpetrate a Burglary and/or Robbery must be proven beyond a reasonable doubt. In order for the Felony-Murder Rule to apply under a robbery theory, the intent to take the property must be formed prior to the act constituting the killing.

Although your verdict must be unanimous as to the charge, you do not have to agree on the theory of guilt or liability. Therefore, even if you cannot agree on whether the facts establish the defendant is guilty of Premeditated and Deliberate Murder or Felony Murder or is liable as a principle, aider and abettor, or co-conspirator, so long as all of you agree that the evidence establishes the defendant's guilt of murder in the first degree, your verdict shall be Murder of the First Degree.

You are instructed that if you find that the State has established that the defendant has committed First Degree Murder you shall select First Degree Murder as your verdict. The crime of First Degree Murder includes the crime of Second Degree Murder.

The distinguishing feature between first and second degree murder is the presence or absence of premeditation and deliberation. If the unlawful killing is done with malice, but without deliberation and premeditation, that is, without the willful, deliberate and premeditated intent to take life which is an essential element of First Degree Murder, then the offense is Murder of the Second Degree.

In practical application this means that the unlawful killing of a human being with malice aforethought, but without a deliberately formed and premeditated intent to kill, is Murder of the Second Degree.

If you believe from the evidence beyond a reasonable doubt that a defendant is guilty of Murder, and there is in your minds a reasonable doubt as to which of the two degrees he is guilty, he must be convicted of the lesser offense which is Murder of the Second Degree.

Attempted murder is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate intention unlawfully to kill.

It is not necessary to prove the elements of premeditation and deliberation in order to prove attempted murder.

Battery with a Deadly Weapon means any willful and unlawful use of force or violence upon the person of another with the use of a deadly weapon. Any harmful or offensive unconsented touching with the deadly weapon, however slight, constitutes sufficient force or violence upon the person of another. If substantial bodily harm results to the victim of a battery, the crime committed is Battery with a Deadly Weapon Resulting in Substantial Bodily Harm.

"Substantial bodily harm" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any body member or organ, or prolonged physical pain.

INSTRUCTION NO. 45

You are instructed that if you find a defendant guilty of Robbery, 1st or 2nd Degree Murder, and/or Attempt Murder you must also determine whether or not a deadly weapon was used in the commission of this crime.

If you find beyond a reasonable doubt that a deadly weapon was used in the commission of such an offense, then you shall return the appropriate guilty verdict reflecting "With Use of a Deadly Weapon".

If, however, you find that a deadly weapon was not used in the commission of such an offense, but you find that it was committed, then you shall return the appropriate guilty verdict reflecting that a deadly weapon was not used.

"Deadly weapon" means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death, or, any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

A firearm is a deadly weapon.

The State is not required to have recovered the deadly weapon used in an alleged crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon was used in the commission of the crime.

If more than one person commits a crime, and one of them uses a deadly weapon in the commission of that crime, each may be convicted of using the deadly weapon even though he did not personally himself/herself use the weapon.

An unarmed offender "uses" a deadly weapon when the unarmed offender is liable for the offense, another person liable to the offense is armed with and uses a deadly weapon in the commission of the offense, and the unarmed offender had knowledge of the use of the deadly weapon.

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

At this point in the proceedings you may not discuss or consider the subject of punishment. Your duty now is confined to a determination of the guilt or innocence of one or more of the defendants. If, and only if, you return a verdict of Murder in the First Degree, you will, at a later hearing, consider the subject of penalty or punishment.

When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

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2 If, during your deliberations, you should desire to be further informed on any point of
3 law or hear again portions of the testimony, you must reduce your request to writing signed
4 by the foreperson. The officer will then return you to court where the information sought
5 will be given you in the presence of the defendants and their attorneys.

6 The testimony in this trial was recorded. A playback of portions of the testimony is
7 possible. However, playing back the testimony is time consuming and is not encouraged
8 unless you deem it a necessity. Should you require a playback, you must carefully describe
9 the testimony you want to hear so that the recorder can locate your request. Remember, the
10 court is not at liberty to supplement the evidence.

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendants and the State of Nevada.

GIVEN:

DISTRICT JUDGE

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WILLIE MASON,

Appellant,

No.: 68497

vs.

DC No.: C267882

THE STATE OF NEVADA,

Respondent.

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|-------|---------------------------------|------------|--------|-----------------------|
| 01 | Sealed Transcripts from Hearing | 10/16/2014 | 1 | 01-82 |
| 02 | Transcript of Jury Trial Day 3 | 1/22/2015 | 1 2 | 83-250 251-325 |
| 03 | Transcript of Jury Trial Day 9 | 1/30/2015 | 2 3 | 326-500 501-544 |
| 04 | Transcript of Jury Trial Day 11 | 2/6/2015 | 3 4 | 545-750 751-753 |
| 05 | Transcript of Jury Trial Day 14 | 2/11/2015 | 4 | 754-955 |
| 06 | Transcript of Jury Trial Day 15 | 2/12/2015 | 4 5 | 956-1000 1001-1052 |
| 07 | Jury Instructions | | 5 | 1053-1110 |

1 MR. SGRO: Yes, I'll send him over a redacted copy,
2 and then we can argue about it on Monday.

3 MR. DIGIACOMO: I mean, I may agree to most of it, or
4 I may agree to all of it. I don't know. As long as they --

5 THE COURT: If it's of no value, take it out.

6 MR. DIGIACOMO: Sure. No, I understand that. I just
7 -- I need them to tell me, and I know Mr. Sgro may be more
8 liberal than I am as to whether it's an admission or not.

9 THE COURT: Well, that's probably true, but you know
10 what I'm saying.

11 MR. DIGIACOMO: So let me see what he says, but
12 certainly any time the cops ask Mr. Burns a question, and he
13 chooses to start humming, like -- like, We have a 12-year-old
14 girl here who's been shot, and he's humming and he's singing
15 and all that. They may not think that's admission. I
16 certainly do.

17 He starts whistling, and he starts, like --

18 MR. SGRO: There's some poetic license with the
19 description of the statement being taken by the State right
20 now. I would tell you this, Your Honor. I will submit a
21 redacted --

22 THE COURT: See if you can get it worked out.

23 MR. SGRO: We'll see if we can get it worked out.
24 I'll get it to him on Sunday with what I think should be
25 eliminated, and then he can let us know. What we can do for

1 sure is come to court on Monday with a minor area in dispute.

2 THE COURT: Why don't we come to court on Monday at
3 8:30, and we'll resolve it.

4 MR. DIGIACOMO: That would be great.

5 MR. SGRO: Your Honor, I can't -- I -- with all due
6 respect, Your Honor, we have a lot we have to get
7 accomplished.

8 THE COURT: You've got a whole weekend to do this.

9 MR. SGRO: Yes, sir, but my -- you know what, we can
10 work all day and all night every day, but unfortunately,
11 people we rely on cannot. They cannot, and so we've been very
12 diligent in this case, one-hour lunch instead of 90 minutes.
13 We're here on time.

14 THE COURT: Who takes a 90-minute lunch?

15 MR. SGRO: Every other case I've done.

16 MR. DIGIACOMO: Only because he asks.

17 THE COURT: Not with me you haven't.

18 MR. SGRO: No, sir, not with you, but what I'm
19 suggesting is 9:30 cuts it right to the dime for us for what
20 we have to get done in the mornings so we can come ready to
21 roll. So we can come at 9:30 --

22 THE COURT: How about 9 o'clock?

23 MR. SGRO: We'll be here. We'll be here by 9.

24 THE COURT: 9 o'clock. We'll see you at 9 o'clock on
25 Tuesday -- Monday morning.

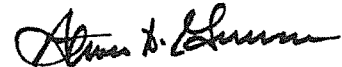
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MS. WECKERLY: Thank you.

MR. DIGIACOMO: Thank you, Judge.

MR. SGRO: Thank you, Your Honor.

(Court recessed for the evening at 3:46 p.m.)



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA,

Plaintiff,

vs.

WILLIE DARNELL MASON, AKA
WILLIE DARNELL MASON, JR.,
AKA G-DOGG,
DAVID JAMES BURNS, AKA
D-SHOT,

Defendants.

CASE NO. C-10-267882-1
C-10-267882-2
DEPT NO. XX

**TRANSCRIPT OF
PROCEEDING**

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

JURY TRIAL - DAY 14

WEDNESDAY, FEBRUARY 11, 2015

APPEARANCES:

For the State:

MARC P. DIGIACOMO, ESQ.
PAMELA C. WECKERLY, ESQ.
Chief Deputy District Attorneys

For Defendant Mason:

ROBERT L. LANGFORD, ESQ.

For Defendant Burns:

CHRISTOPHER R. ORAM, ESQ.
ANTHONY P. SGRO, ESQ.

RECORDED BY SUSAN DOLORFINO, COURT RECORDER
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1 LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 11, 2015, 9:32 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: All right. State vs. Mason and Burns.
5 The record will reflect the presence of the defendants, their
6 counsel, and the district attorneys, in the absence of the
7 jury. We're going to make a record on the Shoemaker issue?

8 MR. SGRO: Yes, sir. So there -- there's --
9 actually, Mr. Oram reminded me of a second one, but we can
10 resolve that as we speak as well.

11 So Detective Shoemaker is a former homicide
12 detective who is now retired. I interviewed him. I don't
13 remember how long ago. But in the course of the interview, I
14 learned the following information: That he was a part of the
15 team that was involved in the prosecution of David Burns, and
16 as being part of the team, they would regularly have these
17 debriefing meetings, which Mr. Shoemaker attended.

18 He was to be apprized of the case because I think he
19 had a supervisory role in the case, and he admittedly did
20 not personally interview any of the witnesses in this case;
21 however, he was to compile information and then he had a
22 specific role of delivering that compiled information to CPS.

23 The Court has heard mention in this case through
24 various witnesses the parallel investigation that was
25 occurring with CPS insofar as Cornelius Mayo and his children

1 were involved. Devonian Newman also a victim in this case was
2 also involved with CPS. And I have had all of those witnesses
3 and I've asked each of those witnesses their different
4 interactions with CPS.

5 Detective Shoemaker was going to be offered to
6 testify to the fact that he advised CPS that Derecia Newman --
7 sorry, Devonian Newman was, quote/unquote, "a mule". And by
8 that I mean she would go to the front door to collect money
9 from Mom and deliver it to the back room to Dad to pick up
10 drugs to return to the front door. And that is consistent
11 with the evidence in this case, in that she was at the front
12 door at the time that Ms. Cousins knocked on the door.

13 So I asked Mr. Mayo, Did you use Devonian as a mule?
14 Did you ever say that to CPS? I asked Erica Newman if she was
15 aware of Devonian's involvement. I did not ask Devonian. It
16 was clear, and I think the Court probably would agree with me,
17 that she had little if any recollection of the events today.
18 The -- in fact, the State offered her prior recorded statement
19 into evidence based on her inability to recall.

20 So my plan was to then call Shoemaker, who would
21 testify that he was personally involved in these debriefings,
22 number one. Number two, no notes were ever taken at the
23 debriefing, so no report was ever generated. Number three, he
24 cannot tell me which police officer gave him the information;
25 however, he did specifically recall the information, and that

1 would be offered to do a couple of things.

2 Number one, to show the course of the CPS
3 investigation to the extent that that -- it would be offered
4 for that purpose; it would not be hearsay. It would simply be
5 to advise the jurors what -- what was going on at CPS at given
6 times, given the testimony that's come in thus far. The
7 second thing is, Your Honor, I would be offering it, if the
8 Court did find it to be hearsay, as a prior inconsistent
9 statement relative to the -- my ability to impeach Cornelius
10 Mayo and Erica Newman.

11 And number three, I would offer it as an inherently
12 -- it's -- it's in a state -- it's a statement that has
13 inherent indicia of reliability because it's being made from a
14 summary law enforcement investigation to another arm of -- and
15 it's not criminal, but it's pseudo -- it's pseudo criminal in
16 nature, the proceedings done at CPS, and so I would offer the
17 statement as inherently -- inherently reliable.

18 And the statement is number one, Derecia Newman was
19 a mule for the parents --

20 THE COURT: Devonia.

21 MR. DIGIACOMO: Devonia.

22 MR. SGRO: Devonia, I don't know why I keep doing
23 that. Devonia was the mule.

24 THE COURT: Apparently, at one point Detective
25 Shoemaker testified at a CPS hearing that Devonia had gone to

1 the front door and then taken money down -- is that what he
2 said?

3 MR. DIGIACOMO: No. On August 10, I believe of 2010,
4 so three days after our homicide, there's a conversation
5 between Detective Shoemaker and CPS to generally give them an
6 overview of what happened at the scene so CPS could make some
7 of the -- the decisions about what's happening. There's a
8 report from CPS saying, Detective Shoemaker reported that --
9 and I'm -- let's read it directly --

10 MR. SGRO: Yeah, I'll --

11 MR. DIGIACOMO: -- into the record.

12 MR. SGRO: It says here, His investigation -- this is
13 Shoemaker -- His investigation has revealed that Devonias was
14 accustomed to collecting money from Derecia at the front door
15 of the apartment and taking it to the back bedroom where
16 Cornelius would give her drugs to bring back to Derecia.
17 Detective Shoemaker stated, This is why Devonias was at the
18 front door during the robbery.

19 Now, the other thing was that Cornelius Mayo,
20 according to Detective Shoemaker, was going to call 9-1-1,
21 then he decided to hang up and call some friends, presumably
22 to pick up his product. Now, those two statements are things
23 that we have made much hay about in this case through a number
24 of different witnesses. So to -- to exclude it simply on
25 hearsay denies us the opportunity to use it for impeachment,

1 as well as the fact, Your Honor, that we're not -- I'm -- I'm
2 not even sure it is hearsay because it simply explains what
3 CPS did after receiving the information.

4 Because what -- what's going to happen is they're
5 going to now move towards making the kids wards of the state.
6 They're going to limit the contact with Devonian and the rest
7 of the outside world. They -- they become significantly --
8 significantly involved. Detective Bunting, that I -- and I
9 had asked him about this yesterday -- will ultimately testify
10 at a hearing and also suggest to a judge that Cornelius Mayo
11 is not an honest person.

12 And so it just -- it helps to articulate to the jury
13 what was going on in the -- in the days, weeks, and months
14 prior to those hearings.

15 THE COURT: As I understand it, Detective Shoemaker
16 never interviewed any of the witnesses; is that correct?

17 MR. DIGIACOMO: That is correct.

18 MR. SGRO: That's my understanding as well.

19 THE COURT: So what he told CPS was based upon what
20 he thought he knew from briefings with the officers in
21 homicide?

22 MR. SGRO: Right. And here's --

23 THE COURT: Is that right?

24 MR. SGRO: Yes, sir. And if I might address that
25 just for a moment. Relative to -- to this particular case --

1 and I want to make sure the Court understands we're just
2 focusing here and not making some global pontification here --
3 it is unfair that the Defense -- it can be restricted from
4 introduction of this evidence with a hearsay objection because
5 the notes, whether or not they're taken, we have no control
6 over that. And what I mean by that is, if notes were taken at
7 this debriefing when this important information came out, I
8 would then be able to figure out who said what and I would be
9 able to do my own investigation and go track it down.

10 The difficult --

11 THE COURT: If it's hearsay, it's hearsay.

12 MR. SGRO: No, but -- right. But what -- what --
13 what might start as hearsay -- if Shoemaker would have taken a
14 note down and said, I got this from Bunting, or I got this
15 from Wildemann, or Wildemann wrote a note that made its way to
16 the homicide file, today here's what we discussed, I would
17 have been able to ultimately get to who Mr. Mayo said this to
18 and put that person on.

19 And so --

20 MR. DIGIACOMO: That assumes the fact that Mr. Mayo
21 ever said it, and I believe that there is absolutely no
22 witness on earth who is ever going to say that Mr. Mayo ever
23 made those statements.

24 THE COURT: Well --

25 MR. SGRO: Well, it came from somewhere, Judge.

1 THE COURT: We -- well, he --

2 MR. SGRO: I'm not making it up. It's in the report.

3 THE COURT: I don't know where it came from, but we
4 certainly don't have percipient knowledge by a witness to
5 testify to that.

6 MR. SGRO: If that's -- if that's the case, Your
7 Honor, isn't it -- then doesn't it then become a reward for
8 the State to engage in a tactical decision to not record notes
9 because what happens is, if you don't take notes of this
10 debriefing, someone like me and the next 10, 20 attorneys
11 after me can never find out. And so if I'm a DA or if I'm in
12 charge of homicide, I instruct people, Listen, don't take
13 notes, let's tell person X to make a report and that way it
14 never comes in evidence if it hurts us.

15 Now, that -- maybe it's just coincidental, but
16 clearly that's a consequence of not taking notes, and perhaps
17 it's an unintended consequence, but it's certainly a decision
18 that Mr. Burns and his defense attorneys had nothing to do
19 with. So I guess what I'm suggesting to the Court is the
20 statements -- I'm not making the statements up. They come
21 from reports and they came from somewhere. So for Mr.
22 DiGiacomo to state he never said it to anyone in the planet,
23 well, that implies that Detective Shoemaker then made the
24 whole thing up. That's not --

25 MR. DIGIACOMO: No, that doesn't imply that.

1 Detective Shoemaker -- it was Sergeant Shoemaker, I think will
2 say, Hey, there was discussions in which were, like, we
3 theorized that maybe this happened, but I don't have any
4 evidence that anyone ever told me that they had evidence that
5 this fact happened. I was pontificating, for lack of a better
6 word. I was speculating that this is possible and that is not
7 admissible evidence.

8 THE COURT: It's a possibility because --

9 MR. SGRO: That's not what he told me, though, Judge.

10 THE COURT: -- the -- the argument is there's a claim
11 that the perpetrator went down and went through the pockets of
12 Devonia.

13 MR. DIGIACOMO: Correct.

14 THE COURT: And if -- and the argument could be made
15 if that occurred, then it occurred because Devonia had
16 something like drugs or money on her.

17 MR. SGRO: Exactly.

18 MR. DIGIACOMO: So that's an inference that can be
19 drawn from the evidence that they have. They can't put a
20 witness on to speculate that that's what happened.

21 THE COURT: That sounds to me like what Shoemaker was
22 guessing that Devonia had done that and said that. But that's
23 no more than you could guess or the jurors could guess.

24 MR. SGRO: Well --

25 THE COURT: I'm sorry. They -- it's -- it's hearsay,

1 and I have to sustain the objection on it.

2 MR. SGRO: Okay. What of the -- so does -- does his
3 testimony -- does that sustaining of that objection also go to
4 the fact that Cornelius Mayo didn't call 9-1-1 until after he
5 called some friends?

6 THE COURT: If he interviewed Cornelius --

7 MR. SGRO: He did not, sir.

8 THE COURT: -- well --

9 MR. SGRO: It's the same factual predicate as the one
10 we just outlined.

11 MR. DIGIACOMO: There's no basis to believe that that
12 fact is true.

13 THE COURT: I mean, he's got to have percipient
14 knowledge of something.

15 MR. SGRO: Your Honor, I don't mean to quarrel with
16 the Court, I understand the ruling. I just, for purposes of
17 the record, wanted to make sure --

18 THE COURT: I mean, the hearsay rule does apply to
19 the defense too.

20 MR. SGRO: Of course, sadly, that's true. I guess at
21 the end of the day, though, I was offering it under a couple
22 of exceptions, and I -- I'm asking the Court if the --

23 THE COURT: Because it's inherently reliable.

24 MR. SGRO: And because it comes in to impeach a
25 number of the State witnesses.

1 THE COURT: I'm not about to hold that the records or
2 reports from CPS are inherently reliable. I can't say that.

3 MR. SGRO: And the ruling relative to the prior
4 inconsistent statement, the denial of that is based on the
5 unavailability or the inability of us to produce someone that
6 Mr. Mayo spoke to; is that right, Your Honor?

7 THE COURT: That's true.

8 MR. SGRO: Okay. So -- and that applies, then, to
9 the 9-1-1 situation where in the CPS records it reflects that
10 Sergeant Shoemaker advised them that he called somebody before
11 he called 9-1-1. The same ruling, Your Honor?

12 THE COURT: Yes, that would be the same record.

13 MR. SGRO: Okay. Then -- then the -- then while
14 we're here, I would invite the Court to consider -- to save a
15 witness -- a business records exception ruling. There is a
16 security log from UMC. It's part of the medical records chart
17 that Dr. Goshi testified from. The Court will recall me
18 showing him some pages of a medical chart from which he opined
19 what Fentanyl was and what Versed was and the effects, et
20 cetera.

21 THE COURT: You can get those into evidence.

22 MR. SGRO: Sure. In the same medical records chart
23 there are entries by UMC security guards relative to the visit
24 between Mr. Mayo --

25 THE COURT: I would admit those.

1 MR. DIGIACOMO: Yeah.

2 THE COURT: Those are --

3 MR. DIGIACOMO: If he -- if he --

4 THE COURT: -- medical records --

5 MR. DIGIACOMO: I think I have that one.

6 THE COURT: Medical records are almost always
7 admissible --

8 MR. SGRO: Yeah.

9 THE COURT: -- if they're certified. And even if
10 they're not certified, you can get them certified. So I
11 wouldn't have any problem.

12 MR. SGRO: Right. So to save time, then, I just need
13 the piece of paper where the security guard logged the visit
14 and the statements perceived that --

15 THE COURT: If you have it and it's a medical record,
16 then --

17 MR. SGRO: I do.

18 THE COURT: -- it can come in.

19 MR. SGRO: Yeah.

20 THE COURT: It can come in.

21 MR. DIGIACOMO: Yeah, if we could just look
22 beforehand, we probably wouldn't even object to it because I
23 think it's the same one that I found in the -- in the records,
24 but there is about 15,000 pages of records.

25 MR. SGRO: Right. I'll -- I'll get that to them at

1 -- so I'm assuming we're going to break around 11, and I'll
2 have it here --

3 THE COURT: We can't break until you guys quit
4 talking and we get the jury in here.

5 MR. SGRO: Thank you, Judge.

6 MR. DIGIACOMO: Also, for the record, I had joined in
7 Mr. Sgro's request to have Detective Shoemaker testify, Your
8 Honor.

9 THE COURT: The record will so reflect.
10 Bring in the jury.

11 MR. SGRO: I'm just going to call to get that record
12 down here. I'll need to give him a minute.

13 MR. DIGIACOMO: Do you want me to put Detective
14 Bunting back on the stand?

15 THE MARSHAL: All rise for the entering jury, please?
16 Juror's please.

17 (Jury entering at 9:47 a.m.)

18 THE COURT: All right. State of Nevada vs. Burns and
19 Mason. The record will reflect the presence of the
20 Defendants, their counsel, the district attorneys, all members
21 of the jury. Good morning, Ladies and gentlemen.

22 We are still -- and you may be seated, Detective.
23 We're still on the cross-examination of Detective Bunting.

24 And, Mr. Sgro, you may proceed.

25 MR. SGRO: Thank you. May I approach the witness,

1 Your Honor?

2 THE COURT: Yes.

3 CHRISTOPHER BUNTING, STATE'S WITNESS, PREVIOUSLY SWORN

4 CROSS-EXAMINATION - (Continued)

5 BY MR. SGRO:

6 Q I'm showing you what's been marked as Defense
7 Exhibit W. Is that a picture of Job-Loc or Jerome Thomas?

8 A Yes, sir.

9 MR. SGRO: I'd move for its objection.

10 MS. WECKERLY: No objection.

11 THE COURT: It will be received.

12 (Defendant's Exhibit W admitted.)

13 BY MR. SGRO:

14 Q We spoke a little bit about the Grand Jury
15 yesterday. Do you recall that conversation?

16 A Yes, sir.

17 Q And during the Grand Jury proceedings, do you
18 recall testimony that there was information that Job-Loc was
19 actually the shooter in this case, correct?

20 A I -- I recall that there were potential
21 witnesses -- or not witnesses, excuse me, possibilities of
22 other people being the shooter at that time at the beginning
23 of the case.

24 Q You don't recall Job-Loc was the shooter as
25 information that you'd received?

1 A That he was the shooter?

2 Q He --

3 A No.

4 Q You don't recall that?

5 We spoke a little bit about Devonia Newman's
6 statement yesterday. I want to show you -- I want to refer
7 you to one page, this is page 11. Now, on page 11, does it
8 start with, Okay. And then what?

9 A On the floor, okay. And then what? Yes, sir.

10 Q And then it says, That was it. Homey left.
11 Yeah. Okay. He was the -- and have I read it all accurately
12 so far?

13 A That's what it says.

14 Q Now, we had this conversation yesterday about
15 the lines being things that the transcriber, as he or she was
16 typing, didn't catch, right?

17 A Correct.

18 Q All right. Now, there is a few lines which --
19 the lines basically suggest that it's shorter or more lengthy,
20 right? The more lines we have, the more unintelligible
21 conversation, fair?

22 A Possibly.

23 Q In this particular section, do you remember
24 hearing Devonia tell you, He, speaking of Cornelius, said, I
25 shot my daughter. I shot my daughter?

1 A That Devonia said that he shot her?

2 Q Listen to my question because I don't want to
3 get -- I don't want to lose track of the speaker. I want to
4 focus on the words that were uttered. Did you hear in this
5 part of the interview, when you were with Devonia, when you
6 say, Okay. He was the -- do you hear Devonia say, He was
7 telling family where we stay and he said, I shot my daughter,
8 I shot my daughter.

9 A Doesn't say that on there, so I don't know.

10 Q You don't recall that from the interview?

11 A That she said that Mayo shot her? No.

12 Q Not Cornelius Mayo shot me, okay? I'm saying,
13 Telling family where we've stayed. Do you remember that?

14 A At the -- I don't understand your question.

15 Q I'm simply referencing you to a part of Devonia
16 Newman's statement --

17 A Okay.

18 Q This is page 11 of the transcript.

19 A Right.

20 Q Okay? And I am asking you if in this portion of
21 the transcript, if you recall Devonia uttering the phrase, He
22 was telling family where we stay. Does that ring a bell to
23 you?

24 A No, I don't remember. No.

25 Q Do you recall it from hearing it yesterday as we

1 were all listening to the tape?

2 A No, but I'll -- I'll listen to it again.

3 Q Do you recall in this same section the phrase, I
4 shot my daughter, I shot my daughter?

5 A No, I don't remember.

6 Q Now, you told the jury yesterday that you did a
7 lot of repeating information back to Devonia Newman to verify
8 what it was she was telling you. Is that the gist of what you
9 said?

10 A Correct.

11 Q On this one here at page 11, do you see where
12 I'm pointing, you say, Okay. Hold on, let me slow you down.

13 A Okay.

14 Q Right? Did I read that right?

15 A Yes, sir. That's what it says.

16 Q Then you -- instead of clarifying that
17 unintelligible language here, you ask another question. You
18 don't -- in other words, would this be an example on this page
19 of something different than you had done in the remainder of
20 the statement?

21 A Well, I'd have to see the remainder of the
22 statement to see how many times I had specifically not
23 repeated what she said to answer that.

24 Q Would this be an example -- this particular
25 page, would this be an example of not going back to clear up

1 whatever it was that she said that was unintelligible?

2 A Well, can I read what's after that to see what I
3 say? Thank you.

4 Q Can you see that on your screen?

5 A I can see all the way down to, At this point is
6 the last three words?

7 Q Yes, that's the last three words on the page.

8 A (Witness complied.) For that particular one,
9 yes, sir, I'd agree with that.

10 Q Okay.

11 MR. SGRO: May I approach the witness, Your Honor?

12 MS. WECKERLY: Your Honor, can we approach as well?

13 (Bench conference.)

14 MS. WECKERLY: You can ask him that, but that's from
15 Stephanie's statement, and she doesn't say Job-Loc's the
16 shooter. She says, My daughter told me Job-Loc associates
17 with Melanie Mason and a friend of his is the shooter. So
18 that's why --

19 MR. SGRO: Well, that's --

20 MS. WECKERLY: -- he's saying that. So what he's
21 basing it on is stuff that the State would -- what I'm happy
22 to go into, and [inaudible], you know, I'm going to ask him
23 about it.

24 MR. DIGIACOMO: We asked him, What does that mean?
25 He's going to tell you that.

1 MS. WECKERLY: Stephanie's [inaudible] --
2 MR. DIGIACOMO: If you want to go into that --
3 THE COURT: It is what it is.
4 MR. DIGIACOMO: -- that Stephanie talked to her --
5 MS. WECKERLY: Stephanie talked to her [inaudible]
6 you know, later on, and her daughter says, Willie Mason -- the
7 daughter -- yeah, Willie Mason associates with Job-Loc, and it
8 was a friend of his -- a friend of Job-Loc's that's the
9 shooter. That's what Stephanie's interview says.
10 MR. SGRO: That's not what this says, though.
11 MS. WECKERLY: Correct. That statement is a
12 [inaudible].
13 MR. SGRO: Okay.
14 MS. WECKERLY: Okay? But -- but --
15 THE COURT: I guess we'll find out?
16 MR. SGRO: Yeah, we'll find out --
17 MS. WECKERLY: We're going to ask why you said it.
18 (End of bench conference.)
19 THE COURT: All right.
20 MR. SGRO: Okay.
21 BY MR. SGRO:
22 Q You referred to your officer's report yesterday,
23 correct?
24 A Yes.
25 Q And you -- did -- and you sit there and --

1 A This is a copy of it, yes, sir.

2 Q All right. You had met with Cornelius Mayo on
3 October 1, 2010, to show you some text messages; is that
4 right?

5 A I believe that's the correct date. Yes, we met.

6 Q And did he tell you, as he showed you the text
7 messages, that he thought Job-Loc was involved in the murder?

8 A Yes, that was the context of the -- yes, the
9 text.

10 Q And did he tell you that based on some text
11 messages that had dropped from his phone that he believed
12 Job-Loc was the shooter?

13 A I don't know that he said that he believed he
14 was the shooter or not. I know that he knew that he was
15 involved based on the text messages.

16 Q So you can't tell the jury if Cornelius Mayo
17 told you -- well, let me back up.

18 Do you know that Cornelius Mayo's phone held a
19 certain finite number of text messages and as he reached that
20 limit they would drop off?

21 A Correct.

22 Q He met with you in October of 2010 and told you
23 that he was --

24 A Can I turn to the page that you're referring to?

25 Q Would that refresh your recollection?

1 A Well, I just want to read what -- what it says,
2 so yeah.

3 Q It's page --

4 A It's what --

5 Q -- page 28.

6 A 28? Thank you.

7 Q And it's the first full paragraph.

8 A Mayo was involved in the --

9 Q Sir, you've --

10 A -- shooting --

11 Q -- got to -- sir --

12 A -- or Job-Loc --

13 Q Sir? You have to read it to yourself.

14 A Okay. Well, that -- it doesn't say what you're
15 saying. It says that he was involved.

16 Q I'm going to ask -- sir --

17 A So --

18 Q -- have you read it?

19 A -- that's what I recall is that he was involved.

20 Q Have you read the information to yourself?

21 A Not all of it.

22 Q Do you need time to finish that paragraph?

23 A Please. Okay.

24 Q Have you read that paragraph?

25 A Yes, sir.

1 Q Does it say, Mayo stated he learned Job-Loc was
2 involved in shooting Derecia and Devonia Newman?

3 A Yes, it does.

4 Q And sent him two text messages that had been
5 erased. Does it say that? It's the same sentence, sir.

6 A It had been -- I was looking at the next one,
7 Was involved in the shooting. Let me see, Sent him two text
8 messages that had been erased. Yes, sir.

9 Q Did you ever go see Jerome Thomas about this
10 case? Did you ever try to visit him?

11 A No.

12 Q Did you ever try to effect an extradition
13 warrant?

14 A I don't know that they did an extradition on him
15 -- actually, that may have been done, but that's not done by
16 me.

17 Q Are you aware of one? Can you go to anywhere in
18 your file to show me one?

19 A Well, I can't go to anywhere on this report,
20 that's -- we'll say that -- no. It's somebody else would be
21 involved in that, not me.

22 Q Early on in the morning hours of this case you
23 had information that the assailant in this case had a white
24 T-shirt on, correct?

25 A I believe Ms. Cousins had said that, yes.

1 Q And that came hours after the investigation
2 began, correct?

3 A Sometime around the time of the investigation,
4 yes, sir.

5 Q And you know that Cornelius Mayo was -- and this
6 is my words, not your words, but he was shaking her down for
7 information. He was threatening her.

8 A Who?

9 Q Cornelius Mayo.

10 A Right.

11 Q Is, shaking down, Stephanie Cousins?

12 A Oh, yeah, he was pissed off.

13 Q And Cornelius Mayo also learned from Stephanie
14 Cousins that the assailant had a white T-shirt on, correct?

15 MS. WECKERLY: Objection. Calls for speculation as
16 to what Mr. Mayo heard from --

17 THE COURT: Oh --

18 BY MR. SGRO:

19 Q Did you --

20 THE COURT: -- you can't ask what his state of
21 mind -- you can't -- you can't ask him to relate what
22 Cornelius Mayo's state of mind was.

23 MR. SGRO: Fair enough. I'll rephrase.

24 BY MR. SGRO:

25 Q Did Cornelius tell you that he had learned --

1 A He did not tell me anything. I didn't speak to
2 him that morning.

3 Q Let me finish my question.

4 A Okay.

5 Q At any time, did Cornelius Mayo tell you that
6 the assailant in this case had on a white T-shirt?

7 A He didn't tell me that, no.

8 Q He told others that and you learned of it later?

9 A I don't know what his description -- well, he --
10 I know he didn't see the shooter, so I don't know what he told
11 the other detectives, but I'm sure it's in his statement. I
12 think he --

13 Q There's no -- there's no more question pending.

14 A Okay.

15 Q Did you have anything to do with charging Jerome
16 Thomas with obtaining and using personal identification of
17 another -- the whole Albert Davis situation? Were you
18 involved in that prosecution at all?

19 A No, sir.

20 Q You were asked some questions about letters. Do
21 you remember those questions? And I think you read some
22 yesterday.

23 A Yes.

24 Q Letters in the jail are not copied as a matter
25 of course; is that right?

1 A You mean, just everybody's?

2 Q Everybody's letters all day, every day, they're
3 not copied?

4 A No, we request those to be done.

5 Q And so you make an affirmative request on a
6 given day, right? So you can call and say, hey, I want you to
7 start copying letters from person X, correct?

8 A Correct.

9 Q And then you also have the ability to say, We
10 don't need you to copy any more, we're good?

11 A Correct.

12 Q Do you know what the dates are in this case of
13 when you started --

14 A No.

15 Q Let me finish my question.

16 A Okay.

17 Q Do you know the day that you first asked for
18 letters to be copied?

19 A No.

20 Q Is that memorialized in a report anywhere or in
21 a note?

22 A No, I don't believe so.

23 Q Do you recall the day that you asked for the
24 letters to not be copied anymore?

25 A No.

1 Q You know who Donovan Rowland is?
2 A I do.
3 Q And you know who Ulonda Cooper is?
4 A Speaking to her, I do.
5 Q You spoke to her, right?
6 A Right. Yes, sir.
7 Q Now, we talked yesterday about things that you
8 have to do -- draft under oath, right?
9 A I'm not following you on that one, I'm sorry.
10 Q You remember talking about search warrant
11 applications yesterday?
12 A Correct.
13 Q Those search warrant applications are drafted
14 sometimes by you, sometimes by others, but the --
15 A Correct.
16 Q -- the one common thing is they're all done
17 under oath?
18 A Correct.
19 Q Judges are supposed to be able to look at the
20 documents --
21 A Yes, sir.
22 Q -- police officers and -- and they know that the
23 police officers are sworn that what they put in there is true?
24 A Correct.
25 Q And you did an application and affidavit for a

1 search warrant for 3260 Fountain Falls; is that right?

2 A Correct.

3 Q And that was associated with?

4 A Donovan Rowland.

5 Q And in every application for a search warrant
6 you have to say why you need certain materials?

7 A Correct.

8 MR. SGRO: May I approach the witness?

9 THE COURT: Yes.

10 BY MR. SGRO:

11 Q And just so you can orientate yourself, does
12 this look like a copy of the application and affidavit for a
13 search warrant?

14 A Yes.

15 Q For the Fountain Falls Way address?

16 A Correct.

17 Q And so this is what you're telling the Judge
18 under oath relative to why you need to search Donovan
19 Rowland's home?

20 A Yes, sir.

21 Q And do you recall stating under oath, Rowland
22 implied --

23 MS. WECKERLY: Objection. Hearsay.

24 THE COURT: No, it's not.

25 MS. WECKERLY: What Rowland said?

1 THE COURT: If it's his statement.

2 MS. WECKERLY: What Rowland --

3 MR. SGRO: His statement --

4 MS. WECKERLY: -- said?

5 MR. SGRO: Yeah, Your Honor, it's his statement to
6 the Court.

7 THE COURT: It's his statement to the Court. It
8 isn't offered for the truth. It was proffered why he said --
9 or what he said to the Court.

10 MS. WECKERLY: What he said to the Court that Rowland
11 said.

12 THE COURT: The objection is overruled.

13 BY MR. SGRO:

14 Q Rowland implied he was at the victim's apartment
15 at the time of the shooting; did I read that correct?

16 A Yes.

17 Q The mother grabbed a knife and that was why she
18 was shot?

19 A Correct.

20 Q The -- the fact that the mother grabbed a knife,
21 and that's why she was shot, is that also -- strike that.

22 Is that consistent with a statement that Cornelius
23 Mayo made to you?

24 A That the mother grabbed a knife?

25 Q Yes, sir. Do you remember that?

1 A No.

2 Q Okay. Rowland was not specific as to why the
3 daughter was shot nor did he give their names; did I read that
4 correctly?

5 A Specific why the daughter was shot nor did he
6 give their names. Correct.

7 Q Okay. Now, if we drop down, Rowland admitted
8 his involvement; did I read that right?

9 A Mm-hmm.

10 Q Yes?

11 A Yes.

12 Q And stated, They took \$4,000 weed and dope out
13 of the apartment?

14 A That's a yes, sir.

15 Q Rowland received \$1,000 for participating?

16 A Correct.

17 Q And that's what you told the Judge under oath in
18 order to get the search warrant for Donovan Rowland's
19 residence?

20 A For Ulonda Cooper, correct.

21 Q Well, getting a search warrant is serious
22 business, right?

23 A Yes, it is.

24 Q And you're not going to invade a private
25 citizen's rights and swear to things under oath unless you

1 believe in what you're doing, fair?

2 A That's fair, but the context of what you're
3 reading is inaccurate.

4 Q Did I read it correct?

5 A You read those sentences correct, yes, sir, you
6 did.

7 Q I didn't write those sentences, did I?

8 A No, sir, you did not.

9 MR. SGRO: May I have just a moment, Your Honor?

10 THE COURT: Sure.

11 While you're doing that, Officer, are you familiar
12 with the term "burner"?

13 THE WITNESS: I've heard the term used, yes, sir.

14 THE COURT: In what context?

15 THE WITNESS: It's used in different ways, depending
16 on what the subject is. Sometimes it's a firearm, sometimes
17 it's cell phones, sometimes -- it can be used in a different
18 variation of context.

19 THE COURT: Thank you.

20 THE WITNESS: Yes, sir.

21 MR. SGRO: May I have just a moment, Your Honor?

22 THE COURT: Yes, you may.

23 THE CLERK: What juror was this, please?

24 JUROR NO. 11: 11.

25 MR. DIGIACOMO: You done?

1 MR. SGRO: Oh, that's all I have, Your Honor.

2 MR. LANGFORD: Mr. Sgro has covered the areas I
3 intended to cover, Your Honor. So I have no questions.

4 THE COURT: Okay. Redirect?

5 MS. WECKERLY: Mr. Sgro, can I see the -- what you
6 just showed the detective?

7 MR. SGRO: Yes.

8 MS. WECKERLY: Thank you.

9 MR. SGRO: You're welcome.

10 REDIRECT EXAMINATION

11 BY MS. WECKERLY:

12 Q Detective, Mr. Sgro just asked you about the
13 search warrant, and he was reading statements that he asked
14 you; Were these statements that were made by Donovan Rowland?

15 A Correct.

16 Q And this is the entire warrant? I'll let you
17 look at it. Can you flip to the page that he was reading, or
18 having you read?

19 A Okay. It's --

20 Q Okay.

21 A -- right there. And --

22 Q Let me just --

23 MS. WECKERLY: Can I have this put on the overhead,
24 please.

25 THE COURT: Sure.

1 MS. WECKERLY: Thank you.

2 BY MS. WECKERLY:

3 Q Now, we're on page 8. Will you read from the
4 top?

5 A On August 18, 2010, Wednesday, at approximately
6 ten-hundred hours, Detective C. Bunting was contacted by
7 Detective A. McClelland, I believe, from Southeast Burglary
8 Detail. Detective McClelland said she was contacted by Ulonda
9 Cooper who informed her she had information regarding a friend
10 of her son's named Donovan Rowland who was trying to sell a
11 handgun recently used in a murder.

12 Detective Bunting called Cooper and she told him the
13 following on August --

14 Q Well, let me [inaudible]. So what he read from,
15 and we'll get to that, is what Ms. Cooper told you after you
16 called her?

17 A Correct.

18 Q All right. So let's read that.

19 A On --

20 Q This is information from Ms. Cooper?

21 A Correct. On August 17, 2010, Cooper was at home
22 with her son Michael Johnson and her boyfriend Damian Kelley.
23 At approximately twenty-one hundred hours Donovan Rowland
24 arrived at her residence located at 2968 Juniper Hills,
25 Building 15 -- I can't -- sorry, it's a little blurry on here,

1 I think it's 16, Apartment 102, Las Vegas, Nevada, 89124.
2 Upon entering the residence, Rowland asked if anyone wanted to
3 buy a gun? Kelley asked, What kind and how much? Rowland
4 stated the firearm was a .44 Ruger revolver recently used in
5 the shooting of a mother and her daughter and was selling it
6 for \$250.

7 Rowland implied he was at the victim's apartment at
8 the time of the shooting and the mother grabbed a knife and
9 that was why she was shot. He was not specific as to why the
10 daughter was shot, nor did he give their names. He explained
11 an unnamed crackhead, quote/unquote, set the whole thing up
12 and there was four people involved total. Two fled to
13 Pasadena and one was wanted out of San Bernardino.

14 Rowland admitted his involvement and stated they
15 took \$4,000, weed, and dope out of the apartment. He received
16 \$1,000 for participating, but wasn't specific as to what he
17 did.

18 Q So none of that was anything that Mr. Rowland
19 told you. It was all what Ms. Cooper relayed on the phone,
20 sort of detailing what she believed Rowland said to her?

21 A Correct. Nor anybody else that was involved in
22 that case.

23 Q I know you didn't interview Mr. Mayo the first
24 morning, but you've reviewed his interview?

25 A Yes.

1 Q Did he ever say he saw the shooter and he was
2 wearing a white shirt or I know he was wearing overalls or
3 anything like that?

4 A No.

5 Q He never gave -- did he even give a description
6 of gender or -- or race?

7 A He had no information from a firsthand account
8 of what took place.

9 Q And this was after he spoke to Stephanie
10 Cousins?

11 A Correct.

12 Q Or threatened her in that way?

13 A Right.

14 Q Mr. Sgro asked you about Stephanie Cousins and
15 her interview with the police, and he asked you if she said
16 that in that first interview, The shooter was wearing a white
17 T-shirt. Do you recall being asked that on cross-examination?

18 A Yes, ma'am.

19 Q Now, ultimately, Stephanie Cousins made an
20 identification of the shooter, correct?

21 A She did.

22 Q It wasn't Job-Loc?

23 A No.

24 Q Then when you were speaking to Monica Martinez
25 in the videotaped interview?

1 A I'm sorry, say that one more time?

2 Q When you were speaking to Monica Martinez in the
3 -- in the --

4 A Oh, yeah.

5 Q -- videotaped interview --

6 A Yes, ma'am.

7 Q -- room, there was a suggestion on
8 cross-examination that she reached out her hands and that
9 there was some form of you -- you being played or some form of
10 manipulation; do you --

11 A Correct.

12 Q -- recall that?

13 Is that, like, a successful tactic typically when
14 you're doing suspect interviews?

15 A Successful from the suspect's point of view?

16 Q From your -- well --

17 A No.

18 Q -- does that --

19 A No.

20 Q -- work on you?

21 A No. No, I mean, every -- everybody that sits
22 across from me as a suspect in any -- any interview lies. And
23 if that ever happens that they don't, I'll fall out of my
24 chair. Everybody lies and in this case. She was no
25 different.

1 MR. SGRO: Objection, Your Honor. Everybody lies?

2 That's not responsive. The question was real simple --

3 THE COURT: Yeah, that's not responsive.

4 BY MS. WECKERLY:

5 Q Okay. Well, the fact that she put out her hands
6 and she touched you, does that make you more likely to believe
7 her?

8 A No, that's why the interview was so long.

9 Q And the interview lasted 12 hours because you
10 kept challenging her on her versions of events?

11 A Absolutely.

12 Q Now, Mr. Sgro asked you about -- this is Defense
13 Exhibit BB, which is the lab request. Can you see that or do
14 you want me to bring it up to you?

15 A It's -- it's still a little fuzzy on this
16 screen.

17 Q Okay. I'll -- I'll approach. It's -- this is
18 Defense Exhibit BB. I'd ask you to review that.

19 A Myself?

20 Q Yeah, just to yourself.

21 A (Witness complied.)

22 Q So this --

23 A The rest of it too, or --

24 Q No, that's okay.

25 A -- okay.

1 Q So this is a conversation that someone wrote
2 notes on -- about a conversation that occurred on September
3 the 30th of 2010?

4 A Correct.

5 Q Now, what is the process you have to go through
6 to request that items of evidence be analyzed for DNA?

7 A Well, we submit all the related items of
8 evidence through a request through the crime lab and then they
9 review that request. In this case because of the great number
10 of -- of things that we asked or requested that they test they
11 in turn had a conversation with me of, like, trying to ask me
12 why I needed all of these things tested, which isn't uncommon.

13 Q I mean, in -- in your experience, does the lab
14 try to limit --

15 A Yeah, they have --

16 Q -- for various reasons the number of actual
17 pieces of evidence that are analyzed for the presence of DNA?

18 A They have an extreme number of cases that they
19 have to work, not only from our own agency, but from other
20 agencies and limited resources to do so. So they request --
21 they try and get us to limit the amount of things that we
22 test.

23 Q And because of the nature of the case you were
24 investigating, did you want them to go and analyze everything,
25 rather than a portion of the collected evidence?

1 A Yes, as much stuff that we felt was pertinent
2 for that case, absolutely.

3 Q Okay. And so did you have a conversation where
4 you said, Look, I want every piece of evidence analyzed?

5 A Yeah, and I don't recall specifically exactly
6 what, but yes. I mean, ultimately we want everything that
7 we're requesting, we want it analyzed, so...

8 Q Okay. And the Defense has highlighted that you
9 said that you're trying to corroborate a story. Is that -- is
10 that why you wanted every piece of evidence analyzed?

11 A Well, as I said before, everybody -- we believe
12 that everybody is in this case that I spoke to and that other
13 detectives spoke to, we know that they're going to be
14 deceptive or minimize their involvement --

15 MR. SGRO: Objection to what -- Judge, that's just
16 not appropriate. We know everyone we talk to is going to be
17 deceptive. That's not to call the question.

18 MS. WECKERLY: Well, I asked why he made -- if he
19 made this request that they --

20 THE COURT: Objection's overruled.

21 MS. WECKERLY: -- validated --

22 BY MS. WECKERLY:

23 Q So why did you make the request that you did?

24 A Well, we want to basically confirm or, you know,
25 show that basically, that the story that each individual is

1 giving is consistent with the evidence at the scene and to
2 match those things up. That helps us determine what is truth
3 and what is deception.

4 Q And, I mean, in the real world the reality is
5 you don't -- although you swab something for DNA, you don't
6 always get results on it?

7 A Probably less than 50 percent is a guess, but
8 there are many times where we -- I mean, I know we request
9 prints and DNA, all sorts of things and -- many times and we
10 don't get half of that stuff. It just doesn't show up for
11 many -- a multitude of reasons.

12 Q Now, when you finally got the DNA results at the
13 Meikle Lane scene, was there any unidentified male DNA?

14 A Yes.

15 Q And that was on a cigarette butt and a kitchen
16 knob?

17 A That's correct. Excuse me.

18 Q Going to Job-Loc's apartment in Las Vegas, was
19 there unknown DNA in that apartment?

20 A Yes.

21 Q And was that -- some of that DNA labeled as
22 Unknon Male No. 4?

23 A Yes.

24 Q Do you recall the types of items Unknon Male No.
25 4 was on?

1 A I believe a -- some cigarette butts. There was
2 a number of items. I don't recall specifically each one,
3 though.

4 Q We've heard testimony that's -- there was
5 unknown male DNA mixed with Monica Martinez's DNA on a
6 cigarette butt and also with Mr. Burns and that there was also
7 a toothbrush of his -- of Unknon Male 4?

8 A Correct.

9 Q So at that point it probably wouldn't have been
10 surprising that Job-Loc's DNA would be in his own apartment?

11 A No. No, not --

12 Q And --

13 A -- at all.

14 Q -- if he's Unknon Male No. 4, and you know he's
15 not in your crime scene?

16 MR. SGRO: Objection. Calls for --

17 THE WITNESS: Correct.

18 MR. SGRO: -- speculation. How would he know who
19 Unknon Male No. 4 is?

20 MS. WECKERLY: Well, if -- Your Honor, we have
21 testimony that Unknon Male No. 4 is an Unknon Male No. 1,
22 which is the only thing I can --

23 THE COURT: Objection overruled.

24 BY MS. WECKERLY:

25 Q Detective, I'm showing you now what has been

1 marked as State's 282, and it's a collection of photographs?

2 A Correct.

3 Q Do you recognize those photographs?

4 A I do.

5 Q Where are they taken from? Look at --

6 A Well, this is Jerome Thomas or Job-Loc, that we
7 know as Job-Loc, and he's strapped down in a gurney, obviously
8 receiving medical care from medical attendants.

9 Q And are these Metro photos?

10 A They are.

11 Q And what incident are they associated with?

12 A This is from a petty larceny at Walmart on West
13 Charleston -- 6310 West Charleston Boulevard.

14 Q And this was in July of '10?

15 A Correct.

16 MS. WECKERLY: The State moves to admit 282.

17 MR. SGRO: May I just see them, first? Which number?

18 MS. WECKERLY: 282.

19 MR. SGRO: No problem. No objection.

20 MR. LANGFORD: No objection.

21 THE COURT: They'll be received.

22 (State's Exhibit 282 admitted.)

23 BY MS. WECKERLY:

24 Q So in July there was an incident he was involved
25 with at a Walmart where Job-Loc or Jerome Thomas got medical

1 attention, and I'm putting one of the photographs on the
2 scene, and this is one of the photographs that was taken
3 associated with his treatment or that incident?

4 A Correct.

5 Q And now, sir, I'm showing you a letter that was
6 admitted as State's 345. It's written by Willie Mason and
7 it's to who?

8 A Jerome Thomas.

9 Q And on page 1, can you read -- it's pretty
10 faint, but can you read that -- that second sentence?

11 A I hope this letter finds you in good health due
12 to your unfortunate situation with your leg and all.

13 Q Now, when you showed the photographic lineup to
14 Devonia, did you tell her that it is one of the six, or you
15 have to pick one of the six, or --

16 A No.

17 Q -- did you make her read the instructions, or
18 because she's a child would you have explained them?

19 A I read the instructions.

20 Q Okay. When you -- when you spoke to Devonia,
21 there's a transcript eventually made, correct?

22 A Correct.

23 Q And we see it -- we've seen the transcript and
24 there are -- there are lines, which as Mr. Sgro mentioned,
25 indicate that at least the transcriber found that portion

1 unintelligible?

2 A Yes.

3 Q And in those portions there is actual dialogue
4 or someone saying something at -- at some point; would that be
5 fair?

6 A Correct.

7 Q And when you're listening to her live, as that
8 interview is occurring, had she said something like, my dad,
9 Cornelius or some -- C-note, anybody like that, shot me, that
10 probably would have gotten your attention?

11 A No. In fact, she said that -- she mentioned
12 specifically --

13 MR. SGRO: Objection, Your Honor.

14 A -- somebody else shot her.

15 MR. SGRO: This is a narrative and it's not
16 responsive. That --

17 THE COURT: Rephrase the question.

18 BY MS. WECKERLY:

19 Q If she had said that Cornelius Mayo in some way
20 was responsible for the gunshot wound to her stomach, do you
21 think that you -- that would have alerted you in some way
22 during the interview?

23 A Yes.

24 Q And would you have followed up on that?

25 A Absolutely.

1 Q In this case, we have Job-Loc's phone records,
2 the cell phone data and the towers from the phone company,
3 correct?

4 A Yes.

5 Q Did you ever have his physical phone?

6 A No.

7 Q How about Willie Mason's physical phone?

8 A No, ma'am.

9 Q But we have the records?

10 A Yes, ma'am.

11 Q So you can get data on phones without having the
12 phone in your hand?

13 A Yes.

14 Q When you -- when you testified in family court
15 about the investigation -- do you recall that?

16 A I recall testifying, yes, ma'am.

17 Q You -- were you the only detective that
18 testified?

19 A I believe so.

20 Q And were you testifying as to a narrow aspect of
21 the investigation, or broadly what the investigation had
22 shown?

23 A I think just the general overall of what took
24 place, the circumstances.

25 Q When you met with Monica Martinez and her

1 attorneys and myself and Mr. DiGiacomo for that proffer, is
2 that -- was that pretty soon after her arrest or was that
3 something more recent?

4 A Definitely it wasn't recent. I don't recall the
5 date, but it definitely was not recent.

6 Q And just because these haven't -- I don't think
7 these have been admitted yet. Showing you State's Proposed 7.
8 Do you recognize who that is?

9 A I do.

10 Q Who is that?

11 A That is Stephanie Cousins.

12 Q And who is the -- 8?

13 A Monica Martinez.

14 Q And who is in -- sorry, 12?

15 A Donovan Rowland.

16 Q And are -- are those all fair and accurate
17 pictures of how those three individuals looked back in 2010?

18 A Yes, ma'am.

19 THE COURT: While we're on Stephanie Cousins, did you
20 personally interview Stephanie Cousins?

21 THE WITNESS: Yes.

22 THE COURT: When?

23 THE WITNESS: Well, I did more than once. I don't
24 know the specific dates, but I have them in my OR. I can get
25 them for you. I just don't know off the top of my head.

1 THE COURT: Where?

2 THE WITNESS: A couple different places. I believe
3 -- I know we did at our office for sure.

4 THE COURT: Was she in any way intoxicated or under
5 the influence when you interviewed her?

6 THE WITNESS: I don't think so. No.

7 MS. WECKERLY: State moves to admit 7, 8, and 12.

8 MR. SGRO: No objection, Your Honor.

9 THE COURT: Okay. They'll be received.

10 (State's Exhibit 7, 8, and 12 admitted.)

11 BY MS. WECKERLY:

12 Q Okay. Let's start with --

13 MS. WECKERLY: Oh, could we please move that over to
14 marked. Thank you.

15 BY MS. WECKERLY:

16 Q -- 7.

17 MR. DIGIACOMO: Might want to wait for --

18 MS. WECKERLY: Oh.

19 MR. DIGIACOMO: -- it to come back over to you. Just
20 a second.

21 BY MS. WECKERLY:

22 Q Who is that?

23 A That's Ms. Cousins.

24 Q And 8, please?

25 A It's --

1 MR. SGRO: -- a computer --

2 MR. DiGIACOMO: -- for the Court, Judge.

3 MR. SGRO: -- it's a computerated -- computer
4 generated -- it's like -- it's the difference between a court
5 transcript and a minute order or in the court minutes. The
6 minutes serve to very summarily reflect the proceedings in a
7 courtroom. That's what a CAD is to 911 calls. That's all we
8 had. We didn't talk about this in opening. We didn't talk
9 about this through any examination of any of the other
10 witnesses. We didn't -- we, Your Honor, are completely
11 surprised by this.

12 It's far more -- even -- even if the Court finds
13 that it's -- it's somehow an exception to the hearsay rule,
14 and by the way you'd have to do a double loop, excited
15 utterance to excited utterance, which I've never heard of
16 before. I understand if I'm excited and I relay information,
17 that's maybe an exception. But if I'm excited and then I get
18 Mr. Oram excited and then he goes and tells somebody else, is
19 my initial excited utterance admissible through him?

20 THE COURT: You can cross-examine her on it why she
21 said what she said.

22 MR. SGRO: Well, the other -- the other issue is --

23 THE COURT: That's not the important thing. I think
24 it's an excited statement to the -- calling to the police,
25 asking for help. I think that that's good enough to get it

1 into evidence. Now, the only issue I'm concerned about is why
2 this wasn't produced as part of discovery.

3 MR. SGRO: And the other issue is the prejudice
4 versus the probative value. Even if they meet the hearsay
5 exception, I'll tell you why, Your Honor. She says Willie
6 Mason, and then she says the word them. Them. The -- the --
7 the inability of us to examine of who them is or who --

8 THE COURT: You can cross-examine her.

9 MR. SGRO: We can't because she doesn't know. She
10 -- in order to cross-examine --

11 THE COURT: I thought she was going to testify.

12 MR. SGRO: Yeah, but we have to cross-examine her
13 based on what her mother told her. She wasn't there at the
14 scene. How are we going to do that?

15 THE COURT: You can still cross-examine her. She's
16 going to be -- she's going to be on the stand.

17 MR. DiGIACOMO: Judge, on your screen -- yes. And
18 on your screen is the document that they got showing the event
19 number, the call, and then the report of the -- the call
20 taker's notes as to what it is that this person is reporting
21 is going on at that location at that time.

22 MR. SGRO: Right. And that's Cornelius Mayo. As we
23 read the discovery in its entirety, this CAD is Cornelius
24 Mayo.

25 MR. DiGIACOMO: Really? It says suspect, Willie

1 Mason, black male adult, 27 years old --

2 MR. SGRO: Right.

3 MR. DiGIACOMO: -- 5'4, 130 pounds, black hair, and
4 have no further description, white Jeep, unknown plates, two
5 other suspects also involved. Suspects known to do drive,
6 this male --

7 THE COURT: It does sound like you had it. All
8 right. We're going to go ahead. Let's go.

9 MR. DiGIACOMO: Thank you, Judge.

10 THE COURT: Bring in the jury.

11 THE MARSHAL: Yes, sir.

12 MR. ORAM: Judge, just to prefect the record, just
13 -- I understand the ruling --

14 THE COURT: Bring in the jury.

15 (In the presence of the jury.)

16 THE COURT: State of Nevada versus Mason and Burns.

17 The record will reflect the presence of the defendants, their
18 counsel, the district attorneys, and all members of the jury.

19 We're ready to proceed with the State's next witness.

20 MS. WECKERLY: Thank you, Your Honor. The State
21 calls Monica Monroe.

22 MONICA MONROE, STATE'S WITNESS, SWORN

23 THE CLERK: Please be seated. Please state your
24 name and spell your first and last name for the record.

25 THE WITNESS: Monica Monroe; M-O-N-I-C-A

1 M-O-N-R-O-E.

2 DIRECT EXAMINATION

3 BY MS. WECKERLY:

4 Q Ms. Monroe, are you related to someone named
5 David Burns?

6 A Yes.

7 Q Ma'am, can you say yes or no for the record
8 just because --

9 A Yes.

10 Q -- of our recording? Thank you. And do you
11 see him in the courtroom today?

12 A Yes.

13 Q Could you point to him and describe what he's
14 wearing?

15 A Over here in the blue.

16 MS. WECKERLY: Your Honor, may the record reflect
17 identification?

18 THE COURT: The record will so reflect.

19 MS. WECKERLY: Thank you.

20 BY MS. WECKERLY:

21 Q How are you related to him, ma'am?

22 A He's my cousin, second cousin.

23 Q Okay. And back in August and September of
24 2010, can you give us the county or just sort of general
25 description of where you were living?

1 A Victorville, San Bernardino County.

2 Q Okay. At the -- towards the beginning of
3 August of 2010, did you receive some phone calls from Mr.
4 Burns?

5 A I received a phone call, and the reason I know
6 that was because it was on an answering machine. That's it.
7 Not --

8 Q Okay. And do you know or can you remember the
9 number that he was dialing from?

10 A I remember a digit.

11 Q What do you remember?

12 A There was a 5. That's what I told the
13 deputies when they came. Well, the officers when they came
14 out.

15 Q Okay. And some detectives did come and talk
16 to you in September of '10; correct?

17 A Yes.

18 Q And they were asking you about these calls?

19 A They asked me have I heard from my cousin and
20 I said, yeah, on my answering machine he called. And then
21 they didn't ask the number -- yeah, they did ask the number
22 and I gave them a 5 because I remember there it was a 5
23 something.

24 Q Okay. Do you remember giving them a number
25 that you received a call from that was a 909 area code?

1 A I don't recall.

2 Q Okay.

3 A I don't know.

4 Q You did give a taped statement to them?

5 A No. He asked for one.

6 Q Okay.

7 MS. WECKERLY: Can I -- may I approach the witness,
8 Your Honor?

9 THE COURT: Yes.

10 MS. WECKERLY: This is the top of page 5.

11 MR. ORAM: Thank you, Counsel.

12 BY MS. WECKERLY:

13 Q Ms. Monroe, I'm showing you a document which
14 you -- I don't know if you've seen it before.

15 A No.

16 Q But it appears to be a transcript of an
17 interview that you gave to the detectives. Do you recall
18 that?

19 A I've never seen that.

20 Q Okay.

21 A Uh-huh.

22 Q Do you recall them speaking with you?

23 A Yeah.

24 Q Okay. And they sort of start the interview
25 out and they say they're with you. And they discuss --

1 A They came, they knocked at the door, they
2 asked me did I know a guy, and they said his name.

3 Q Uh-huh.

4 A And I said yeah. And they said he was
5 [indecipherable] in Las Vegas and we would like to talk with
6 him.

7 Q Okay. And so are you saying you didn't do
8 this tape recorded statement?

9 A No, I didn't do a tape recorded statement.

10 Q Okay.

11 A I don't recall doing no tape recorded
12 statement. The man asked me and I told him no.

13 Q Okay. You will agree with me, though, that
14 there is a question here about how you're related to a David
15 -- it says Burn in the transcript. This is page 2. And you
16 somewhat answer his cousin.

17 A I always say second cousin because his mom is
18 my first.

19 Q Okay.

20 A I said cousin.

21 Q So you're denying that this is you talking
22 maybe? Or what are your -- what do you remember about that?

23 A I remember talking to him and he asked me
24 could he record it and I told him no.

25 Q Okay. So if there's a recorded statement

1 where the detectives are openly recording you --

2 A Uh-huh.

3 Q -- that's not you on the tape?

4 A If it's my voice, it's my voice. But I didn't
5 -- he wasn't recording me. I don't recall him recording me.

6 Q Okay. Is it possible they could have recorded
7 you and you don't remember it?

8 A Could be.

9 Q Okay. Let me -- let me have you look at a
10 different page.

11 MS. WECKERLY: And this will be page 5, counsel, at
12 the top.

13 THE WITNESS: Okay.

14 BY MS. WECKERLY:

15 Q And it looks like they ask you -- well, the
16 detective starts off I showed you a couple of numbers that
17 those phone calls came from and he gives a -- a 909-233-0860
18 phone number; correct?

19 A I don't know about that because he asked me --

20 Q Right. And what is your --

21 A -- did I get a call. And the only thing I
22 said to him was yeah.

23 Q Okay.

24 A And I told him the number was a 5-something
25 number. But he was mentioning another number, but I never

1 said I got a call from no other number. I said 5 because he
2 only called one time that I could recall because I never
3 talked to him verbally.

4 Q Uh-huh.

5 A He was on the answering machine. He just said
6 Auntie and held the phone --

7 Q Okay.

8 A -- when he called.

9 Q And now we're referring page 3 and into page
10 4. Can you read the bottom of page 3 and to the top half of
11 page 4 and just let me know when you're doing reading it,
12 please.

13 A Start here?

14 Q Yeah. Just to yourself, though.

15 A Uh-huh.

16 Q Whoops. The next page is underneath.

17 A Okay.

18 Q That's okay.

19 A I don't remember this. Seriously. Okay. I'm
20 old in the brain.

21 Q That's okay. No, that's okay.

22 A I remember --

23 Q Is it -- is it jogging --

24 A Uh-huh.

25 Q -- your memory a little bit?

1 A Uh-huh. And the shoe thing. Yeah.

2 Q Okay.

3 A Uh-huh.

4 Q Was there -- was there more than one call to
5 the best of your recollection after you read this?

6 A I don't remember.

7 Q Is it fair to say there's a discussion about
8 there maybe being a couple calls in the interview?

9 A Yeah, because this shoe thing. Yeah.

10 Q Okay. So a couple calls about shoes.

11 A No, I don't remember. Just that one and then
12 the other one was just the answering machine.

13 Q Okay. So maybe there were two calls.

14 A Yeah.

15 Q Okay. And they ask you about this 909 number.
16 And at least your answer on the transcript is yes; right? Or
17 yeah?

18 A Well, when he asked me I kept saying no
19 because I didn't know this was that there. All I remember is
20 checking the answering machine and seeing a 5 number.

21 Q Okay.

22 A So I never said yes to that number. But if
23 this came from that number, it must have been yes, but I never
24 said yes to that number. I just said 5. He called me from a
25 5-something number.

1 Q Okay. Would you agree with me, though, that
2 your answer after he says the 909 number, at least on the
3 transcript says yeah?

4 A I guess because --

5 Q Okay.

6 A I mean, like it was so long ago and I don't
7 remember --

8 Q Sure.

9 A -- saying that, so I don't --

10 Q Okay. And then -- and then he does mention
11 the number that you're talking about; right?

12 A Yeah.

13 Q The 512?

14 A Well, I told him that it was a 5 number
15 because that's the only one I remember.

16 Q Okay. And you actually said he might have
17 called from 512.

18 A 5-something number. Yeah.

19 Q What is your answer there? Can you read that?

20 A Oh, and I said he might have called from a
21 512. Well, maybe, then, I did say that.

22 Q Okay. So at least that's what it says on
23 the --

24 A Uh-huh.

25 Q Is that yes? Sorry.

1 A Yes, that's yes.

2 Q Okay.

3 A Uh-huh.

4 Q And just one last question. Does David Burns

5 -- doe she have a nickname?

6 A I was told he has a nickname.

7 Q Have you ever --

8 A I've never called him a nickname.

9 Q Okay. Have you ever --

10 A Peep. That's all I've called him. But I've

11 never called him a nickname. I was told when they asked me.

12 Q Okay. Have you heard the nickname D-Shot?

13 A They asked me that. Yeah.

14 Q And you actually indicated you had.

15 A I've heard it, yes.

16 Q Ma'am, at that time what was your home number?

17 A Oh, God.

18 Q Do you remember if you told the detectives?

19 A Yeah, I did. I think I did because I remember

20 him telling him the other officer go get -- like go get, I

21 guess, the information for their phone number.

22 Q Okay. And did you tell them yourself, too?

23 A Most likely. I probably did.

24 Q Okay.

25 MS. WECKERLY: And then, counsel, this is at page 9.

1 BY MS. WECKERLY:

2 Q Maybe this will help you remember. Looking at
3 the middle of page 9 they actually ask you what was your cell
4 number, and what's the answer you give?

5 A 909. That was my cell, yes.

6 Q And what is it?

7 A 909-522-7798.

8 Q And then they ask you your home number, right?

9 A Uh-huh.

10 Q Is that yes?

11 A Yes, that's the home number, 760-596-3191 was
12 it.

13 Q Okay. So your home number is 760-596-31 --

14 A 3191.

15 Q Okay. Thank you.

16 A Uh-huh.

17 MS. WECKERLY: I'll pass the witness.

18 MR. ORAM: No questions, Your Honor.

19 MR. LANGFORD: No questions, Your Honor.

20 THE COURT: Thank you for being a witness, miss.

21 THE WITNESS: Okay.

22 THE COURT: You will be excused.

23 THE WITNESS: Okay. Thank you, Your Honor.

24 MS. WECKERLY: Christine Pierce.

25 TAMIKA PIERCE, STATE'S WITNESS, SWORN

1 THE CLERK: Please be seated. Please state your
2 name and spell your first and last name for the record.

3 THE WITNESS: Tamika Pierce; T-A-M-I-K-A
4 P-I-E-R-C-E.

5 THE CLERK: I'm sorry. I didn't hear the first
6 name.

7 THE COURT: Your first name is?

8 THE WITNESS: Tamika.

9 THE COURT: And spell Tamika again.

10 THE WITNESS: T-A-M-I-K-A.

11 THE CLERK: Thank you.

12 THE COURT: Thank you.

13 DIRECT EXAMINATION

14 BY MS. WECKERLY:

15 Q And do you call your -- do you go by
16 Christine?

17 A Yes.

18 Q Is that your middle name?

19 A Yes.

20 Q Are you related to Stephanie Cousins?

21 A Yes.

22 Q And can you --

23 THE MARSHAL: I'm sorry, ma'am. Can you --

24 BY MS. WECKERLY:

25 Q -- pull that a little closer to you?

1 THE COURT: Yeah, would you move up a little closer
2 to that microphone. Talk right into it please.

3 THE WITNESS: Okay.

4 BY MS. WECKERLY:

5 Q You are related to Stephanie Cousins?

6 A Yes.

7 Q How?

8 A She's my mother.

9 Q Okay. Back in August of 2010, what street
10 were you living on?

11 A Aloha.

12 Q And where was your mom living?

13 A On Vegas Valley.

14 Q How close were your two residences?

15 A Like two minutes away. Right across the
16 street.

17 Q As of August of 2010, did you know someone by
18 the name of Willie Mason?

19 A Yes.

20 Q Do you see him in the courtroom today?

21 A Yes.

22 Q Could you point to him and describe what he's
23 wearing today, please.

24 A A burgundy plaid shirt.

25 MS. WECKERLY: Your Honor, may the record reflect

1 identification of Mr. Mason.

2 THE COURT: The record will so reflect.

3 BY MS. WECKERLY:

4 Q How did you – how did you know Mr. Mason?

5 A I've known him for years through my kids'
6 father.

7 Q Okay. And what's your child's father's name?

8 A Latoy.

9 Q Latoy what?

10 A Clinkscale.

11 Q Okay. And did Latoy have any brothers?

12 A Yes.

13 Q Who were the brothers?

14 A Shawn Clinkscale.

15 Q Okay. Did you know anyone at that time by the
16 name of Jerome Thomas?

17 A Not by that name, but yes.

18 Q How about Job-Loc?

19 A Yes.

20 Q Okay. Did you know him socially, or you just
21 kind of were aware of him?

22 A We were all social.

23 Q Social?

24 A Yeah.

25 Q I'm that yes?

1 A Yes.

2 Q I'm sorry. We're recording, so you have to
3 say yes or no rather than yeah just so it's a little bit
4 clearer.

5 A Okay.

6 Q Thank you. Did you know Mr. Mason's mom?

7 A Yes.

8 Q What was her name -- or what is her name?

9 A Natalie.

10 Q And how long -- as of 2010, how long had you
11 known Mr. Mason?

12 A From 2002, eight years.

13 Q So a pretty long time.

14 A Yeah.

15 Q Is that yes?

16 A Yes. I'm sorry.

17 Q That's okay. And you said you kind of
18 socialized with him?

19 A Yes.

20 Q Now, as of August 2010, did you -- well, using
21 that date as a marker, August 2010, how much previous had you
22 heard from Mr. Mason?

23 A The last time before then, the last time I
24 heard from him was in May of 2009.

25 Q Okay. May of 2009 you hear from him. And do

1 you hear from him in August of 2010?

2 A Yes.

3 Q So a little over a year later?

4 A Yes.

5 Q How is it that you come in – you get
6 contacted or do you contact him or he contacts you in August?

7 A He contacted me.

8 Q In person or how?

9 A Over the phone.

10 Q And when he contacted you in person, was it a
11 voice call?

12 A We – in the year 2010 we never had no
13 personal contact.

14 Q In August?

15 A Yeah, we never seen each other in August.

16 Q Okay. But was it a voice call like on a cell
17 phone?

18 A Yes.

19 Q Okay. And tell us about the conversation that
20 you had.

21 A He was telling me to come help him, save him,
22 and he needed help.

23 Q And when you got the call, do you remember if
24 it was towards the beginning of August?

25 A It was towards – it was like, yeah, the

1 beginning of August, end of July. He called a few times.

2 Q And when you spoke to him when he was saying
3 come to help me – or come help me, was there anything else
4 discussed between the two of you?

5 A No, he –

6 MR. LANGFORD: Your Honor, may we approach.

7 THE COURT: Certainly.

8 (Bench conference.)

9 MR. LANGFORD: I just want to make sure that they
10 have pre-trialed this witness not to say anything about my
11 client's –

12 THE COURT: I'm sorry. I can't hear you.

13 MR. LANGFORD: I just want to make sure that they
14 have pre-trialed this witness that she's not to say anything
15 about my client's background.

16 MR. DiGIACOMO: Yes. We have instructed her both at
17 the pre-trial and I just walked outside and said no gang, no
18 prison.

19 THE COURT: What's – what's his background?

20 MR. LANGFORD: That he went to prison on a robbery.

21 THE COURT: Oh, okay. He was in prison.

22 MR. DiGIACOMO: Yes, so –

23 THE COURT: Okay.

24 MR. DiGIACOMO: – we said no gang, no prison.

25 THE COURT: All right. Good.

1 MR. DiGIACOMO: She's been instructed.

2 MR. LANGFORD: All right.

3 (End of bench conference.)

4 BY MS. WECKERLY:

5 Q May I call you Christine?

6 A Uh-huh.

7 THE COURT: You've got to say yes or no.

8 THE WITNESS: Yes.

9 THE COURT: Thank you.

10 BY MS. WECKERLY:

11 Q We're going to bother you every time you do
12 that.

13 A I see.

14 Q In August 2010 you get a voice call from him.

15 A Yes.

16 Q And is it just a single call or is there more
17 than one call?

18 A He called me more than one time, but the
19 majority of the conversation was through text message.

20 Q Okay. The first time is it a voice call?

21 A Yes.

22 Q And that's the help me, come get me?

23 A That was -- the first call was before August,
24 like the end of July was the first call. And he called me for
25 a ride, but I wasn't available to go pick him up. The calls

1 after that was the call stating to come help him.

2 Q Okay. And the -- when he asked you for a
3 ride, did you know where he was?

4 A No.

5 Q And did you give him a ride?

6 A No.

7 Q Okay. After that there were text messages,
8 you said?

9 A Yes.

10 Q And what was the nature of the text messaging?
11 What was talked about?

12 A He had sent me a picture of himself looking
13 sad and depressed, scared, and asking me to come help him.

14 Q Okay. And did you answer I'll come help you?

15 A No, I avoided the text messages because it
16 didn't seem right. Like it was weird to me.

17 Q Okay. Did he ask -- did he ever send another
18 text besides the sad picture and come help me?

19 A Yes.

20 Q And what was that message?

21 A It was to come help him, and then the text
22 message regarding, you know, his mom and my mom getting back
23 in contact with each other.

24 Q Okay. When -- explain what that message was.

25 A Which one, the contact message?

1 Q Yes.

2 A Oh, that his mom wanted my mom's number and I
3 sent my mom's number.

4 Q And was your mom friends with his mom?

5 A Yes.

6 Q And so did that seem like a normal request?

7 A Yes.

8 Q So you -- you, I guess, text messaged Mr.
9 Mason your mom's phone number?

10 A Yes.

11 Q Okay. Do you remember what time of day it was
12 that you did that?

13 A The only thing I could say was night because I
14 was in the bed. I don't know the time.

15 Q Did you get any response from your mom after
16 you sent that text message?

17 A When I called and told her that I gave him the
18 number to give to Natalie and she yelled at me because she was
19 at the slot machines gambling. And I was like, well, don't
20 answer the phone, then.

21 Q Okay.

22 A And that was it.

23 Q And after that conversation with your mom, did
24 you have any more contact with your mom or Mr. Mason that
25 evening?

1 A No, not until after the incident took place.

2 Q Okay.

3 A That's when I got contact from my mom.

4 Q After that conversation with mom, your mom,

5 how many hours passed before you have contact with your mom

6 again?

7 A After hours because it was like early morning,

8 late early morning when I heard back from her.

9 Q Okay. And I'm -- I'm not trying to give you a

10 hard time, but was it like two hours or more like five hours?

11 Or if you don't remember.

12 A I'm going to be honest with you. This was so

13 long ago I don't remember.

14 Q Okay.

15 A But I know it was hours in between.

16 Q And how is that you come in contact with your

17 mom those hours later?

18 A She came beating down my door.

19 Q And was the knock on the door like just a

20 gentle, you know, knock or --

21 A No, it was a police knock of beating down my

22 door.

23 Q Okay. A pretty hard knock.

24 A Yes.

25 Q And was it -- were you in bed or were you

1 awake or --

2 A We were in bed, but we were woke. The kids
3 were in bed.

4 Q Okay. Was the knock pretty hard?

5 A Yes, loud and hard.

6 Q Did you open the door?

7 A No, my husband did.

8 Q And did you see who it was eventually.

9 A Once they came into my room and they were
10 screaming and hollering, yeah, I knew it was my mom.

11 Q Okay. So your husband answers the door, but
12 then your husband and your mom appear in your bedroom?

13 A Yes.

14 Q And describe how your mom looked at that time.

15 A Hysterical, shaken up, red eyes, crying, feet
16 cut up.

17 Q And her feet were cut up?

18 A Yes.

19 Q Did she have shoes on?

20 A No.

21 Q And you could actually see like blood or
22 injuries to her feet?

23 A Yes.

24 Q And you used the word hysterical.

25 A Yes.

1 Q Was her voice raised?

2 A Yeah. She was screaming and hollering they're
3 dead, they're dead. I'm like, who? What are you talking
4 about? Like --

5 Q Were her -- was -- I mean, was she -- was she
6 able to hold still physically, or how would you describe how
7 she was moving around?

8 A No, she was not holding still physically
9 because then her phone ended up ringing and she's on her phone
10 screaming and hollering and you hear the other voice screaming
11 and hollering. So I'm like, calm down, call the police. And
12 that's when I called the police.

13 Q Okay. Did you talk to -- did you under --
14 well, let me back up. Did you have a conversation with your
15 mom or could you get any information out of her before you
16 called the police?

17 A Somewhat, yes. She was saying -- that's how I
18 knew who did it because she was able to say that. And I'm
19 like he did what? What did he do and who? And I was able to
20 know the people, plus the victim's husband called. So it like
21 all put two and two together.

22 Q As you listened to what your mom was saying,
23 did you react at all emotionally or how did you feel after
24 what your -- your discussion with your mom?

25 A Yeah, it scared me because now you're running

1 to my house and I got like eight kids up in here. And either
2 they can come for you or the other people can come for you,
3 but you're bringing it to my house around my kids now.

4 Q Okay. So --

5 A So, yeah, it scared.

6 Q So you decide you're going to call the police?

7 A Yeah.

8 Q And we've met before; correct?

9 A Uh-huh.

10 Q Is that a yes?

11 A Yes.

12 Q Okay. And we actually played you your 911
13 phone call?

14 A Yes.

15 Q And you recognize that as your voice?

16 A Yes.

17 MS. WECKERLY: At this time the State will move to
18 admit 293, which is the disc of the recording.

19 THE COURT: All right. It'll be received.

20 (State's Exhibit 293 admitted.)

21 MS. WECKERLY: And, Your Honor, we'd move to publish
22 it.

23 THE COURT: All right.

24 (State's Exhibit 293 played.)

25 BY MS. WECKERLY:

1 Q So the – at the end of the – that 911
2 recording you're giving some phone numbers and you actually
3 say sort of like you're calling from a phone that's not yours?

4 A Yeah. Okay.

5 Q Explain that to me.

6 A Yes. All of our phone numbers started with
7 622, so the four digits of everybody's phone number was
8 different. So I had my brother's phone and my phone. But
9 being that it was so long ago and I no longer have that
10 number, my sister who is outside, the phones was in her name.
11 She told me the last four digits of the phone number, that
12 0829 was my brother's number and other one was mine.

13 Q You don't remember what your number was back
14 then?

15 A No.

16 Q Okay. Would it be fair to say you tried to
17 give an accurate number to the 911 operator?

18 A Yeah. Well, both numbers were accurate.

19 Q Okay. That's – that's actually my question.
20 Do you know of a person by the name of Cornelius Mayo?

21 A Yes.

22 Q Okay. And – and your facial expression
23 suggests he's someone you're not fond of?

24 A Yes.

25 Q Okay. How – how long have you known him?

1 A 2001.

2 Q Is he someone you socialize with?

3 A No.

4 Q How is it that you know who he is, then?

5 A Him and my aunt and my mother are friends.

6 They socialize.

7 Q Okay. After this -- after your mom comes to
8 your house on the morning of the 7th when she's upset, do you
9 ever hear from Cornelius Mayo?

10 A Yes.

11 Q And do you ever actually hear him on the phone
12 and hear what he's saying?

13 A I actually talked to him on the phone.

14 Q Okay. And what types of things was -- was he
15 saying on that morning?

16 A Threatening messages. He was going to come to
17 her house and kill her, he was going to kill her family,
18 trying to find our location and --

19 Q So he was aggressive and threatening to you?

20 A Yes.

21 Q Prior to the 7th you said you knew of him or
22 he socialized with your mom since about 2001?

23 A Yes.

24 Q Had you ever been over to his residence?

25 A I've been to his residence. Not inside his

1 residence.

2 Q Okay. And what was your purpose to drive --
3 in driving over to the residence and not going inside?

4 A Because I don't affiliate with people like
5 that and I was taking my mother over there.

6 Q Okay. You're -- you're taking your mother
7 over there. After your -- after you took your mother there,
8 did she ever come back and you give her a ride home?

9 A Yes.

10 Q And did she have anything with her?

11 A Yes.

12 Q What?

13 A Narcotics.

14 Q Okay. And so did she have that before you --
15 you let her -- drop her off there?

16 A No, that was my whole purpose of taking her
17 over there.

18 Q Okay. And your mom is someone who -- how
19 would you describe -- how would you describe her in terms of
20 narcotics?

21 A She's an addict.

22 Q And how long has that been the case?

23 A Like 25 years.

24 Q After you make the 911 call, we're into, I
25 guess, the early morning of the 7th. So are you kind of with

1 me on the time frame I'm talking about?

2 A Uh-huh.

3 Q That's yes?

4 A Yes.

5 Q Okay. Do you ever hear from Willie Mason
6 again?

7 A Yes, he called later on that day.

8 Q What did he say?

9 A Is moms okay, what's going on?

10 Q Who is moms?

11 A My mother, Stephanie.

12 Q Okay. And what did you say?

13 A I went off. I cussed him out.

14 Q Okay. So you're angry?

15 A Yeah.

16 Q And so you cuss him out. I mean, do you
17 remember anything about the nature of what you said?

18 A What the fuck you mean what's going on? You
19 know what the fuck you did.

20 Q Okay.

21 A Just went off from there.

22 Q What was his response to what you said?

23 A He paused. I hung up. And Detective Marty
24 came.

25 Q And who is Detective Marty?

1 A The detective who worked the case.

2 Q Okay. And so when you had that first phone
3 call -- well, not the first one. When you had the phone call
4 where you're cussing him out, is Detective Marty there at that
5 time or does he come right after?

6 A He came right after.

7 Q And so do you -- you interact with Detective
8 Marty?

9 A Yes.

10 Q Do you try to call Willie Mason back?

11 A He told me to call back and I called back. I
12 didn't get a response.

13 Q Since that attempt at calling back, have you
14 had any other phone contact with him?

15 A No.

16 Q Did -- in the calls prior to the incident
17 where you said you had several calls with Willie Mason, you
18 had the one call, I guess, is the voice call where it's come
19 help me and the picture sent, and then you said there are text
20 messages?

21 A Uh-huh.

22 Q Is that yes?

23 A Yes.

24 Q Okay. Was there ever any conversation about
25 any kind of drugs?

1 A He asked me one time for some marijuana. That
2 was about it.

3 MR. LANGFORD: Objection. Foundation.

4 THE COURT: Okay.

5 BY MS. WECKERLY:

6 Q Do you remember about when that text was?

7 A July, like the end of July.

8 Q The end of July. Okay. Thank you very much.

9 A Uh-huh.

10 THE COURT: Cross-examination.

11 MR. ORAM: None, Your Honor.

12 THE COURT: Mr. Langford.

13 MR. LANGFORD: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. LANGFORD:

16 Q We just listened to the 911 tape and that's
17 clearly you on the phone; is that correct?

18 A Yes.

19 Q Okay. You were angry; is that right?

20 A I was scared.

21 Q You were scared?

22 || A Yes.

23 Q And angry?

24 A No, I wasn't angry.

25 Q You weren't --

1 A I was scared.

2 Q You weren't angry that – I think you said
3 earlier you were upset that your mother brought this to your
4 house; is that right?

5 A When she asked me a question pertaining to
6 something else. It wasn't pertaining to the 911 call when she
7 asked me the question.

8 Q When she asked you what question?

9 A She had asked me a question pertaining to
10 something else. Yes, I was mad my mom brought it to my house.
11 I had eight kids there.

12 Q Okay.

13 A But it had nothing to do with the 911 call.

14 Q Okay. So you're mad she brought this to your
15 house, but then you're not mad when you make the 911 call?

16 A If you're getting threatening messages and you
17 have kids at your house, wouldn't you be more scared than mad?

18 Q Probably a little bit of both. Yeah. Yeah.

19 A Well, no, I was more scared.

20 Q Okay. You were getting text messages. Who
21 were those text messages from?

22 A Willie.

23 Q Okay. And they were threatening?

24 A I never stated Willie sent me a threatening
25 text messages.

1 Q Okay. So we'll –

2 A Now, if you want the threats came to my mom's
3 phone.

4 Q Okay.

5 A Not mine.

6 Q Okay. And then you also said, then, a little
7 later Willie called and you talked with Willie; is that right?

8 A No, I said I only had one voice call with
9 Willie.

10 Q Okay.

11 A And then he called after, hours after the
12 incident.

13 Q Okay. Hours after the incident you talked to
14 him again; is that right?

15 A Yes.

16 Q Okay. And in that call he said how is your
17 mom?

18 A Yes.

19 Q He didn't threaten?

20 A No.

21 Q He didn't threaten you?

22 A No.

23 Q Did you talk to Cornelius Mayo that day?

24 A That morning, yes.

25 Q You personally talked to Cornelius?

1 A Yes, I answered my mom's phone.

2 Q How long after your mom had showed up before
3 you talked to Cornelius Mayo?

4 A I don't know. This is like four years ago.

5 Q Possibly you talked to Cornelius before you
6 made the 911 call?

7 A No. She probably talked to him before I made
8 the 911 call, but, no, I didn't talk to him until after and
9 that's a known fact.

10 Q But you think she talked to him before you
11 made the 911 call?

12 A Nine times out of ten, yes.

13 Q Okay. In other words you're almost sure that
14 happened?

15 A Nine times out of ten.

16 Q Other than -- you say there are three guys; is
17 that right?

18 A I'm going off hearsay, yes.

19 Q Okay. It's all hearsay. So your -- you say
20 there's three guys?

21 A Yes.

22 Q That's what you said on the 911 call?

23 A Yes.

24 Q Other than Willie Mason, you didn't know
25 anybody else; correct?

1 A No.

2 Q Fair to say you were pretty angry at Willie at
3 that point?

4 A I'm not going to say I was pretty angry at him
5 because, one, I know Willie himself wouldn't do nothing like
6 this. I'm more so I feel he was stupid. Yeah. So I wasn't
7 angry at him.

8 MR. LANGFORD: No further questions, Your Honor.

9 THE COURT: Anything further?

10 MS. WECKERLY: No, Your Honor. Thank you.

11 THE COURT: Thank you for being a witness, miss.
12 You'll be excused.

13 MR. DiGIACOMO: Judge, may we approach?

14 THE COURT: Yes.

15 (Bench conference.)

16 MR. DiGIACOMO: I don't think we have anybody here
17 until 3:00, so you want to let the jury out for just a few
18 minutes? Then we have just a fingerprint expert. This is
19 because we had Larry --

20 THE COURT: That's only 15. We'll take a break
21 right now and then we'll -- okay.

22 (End of bench conference.)

23 THE COURT: All right. The attorneys have a witness
24 coming, but it will be a few minutes. So we're going to take
25 our mid-afternoon recess right now, ladies and gentlemen.

1 During the recess it's again your duty not to
2 converse among yourselves or with anyone else on any subject
3 connected with this trial, or to read, watch, or listen to any
4 report of or commentary on the trial from any medium of
5 information, including newspapers, television, and radio. You
6 may not form or express an opinion on any subject connected
7 with this case until it is finally submitted to you.

8 And by the way, for those of you that need to leave
9 early, we will be through before 5:00. I promise.

10 (Jury recessed at 2:48 p.m.)

11 THE COURT: The record will reflect that the jury is
12 out of the courtroom. Tell us when you're witness is here --

13 MS. WECKERLY: Sure.

14 THE COURT: -- so we can get everybody together.

15 MS. WECKERLY: Thank you.

16 MR. SGRO: Thank you, Judge.

17 (Court recessed at 2:48 p.m. until 3:05 p.m.)

18 (Outside the presence of the jury.)

19 MR. ORAM: When I asked her, Do you know who --
20 should they bring the jury in?

21 THE COURT: She what?

22 MR. ORAM: They're bringing the jury in.

23 MS. WECKERLY: I just told them to wait.

24 MR. ORAM: It's -- she says that -- I asked her, Do
25 you know of either one of these two? She said, Yes, I know

1 that one of them is my cousin. I said, Which one? She said,
2 David Burns.

3 THE COURT: Okay. Well, tell her to keep away.

4 UNIDENTIFIED ATTORNEY: Absolutely.

5 THE COURT: You can bring them in.

6 (Jury entering 3:10 p.m.)

7 THE COURT: State of Nevada versus Mason and Burns.

8 The record will reflect the presence of the defendants, their
9 counsel, the district attorneys and all members of the jury.

10 And – okay. You were hiding. I didn't see you
11 there for a second. All right. You can call your next
12 witness.

13 MS. WECKERLY: Thank you.

14 KATHRYN AOYAMA, STATE'S WITNESS, SWORN

15 THE CLERK: Please be seated.

16 THE WITNESS: Thank you.

17 THE CLERK: Please state your name and spell your
18 first and last name for the record.

19 THE WITNESS: Kathryn Aoyama. K-a-t-h-r-y-n,
20 A-o-y-a-m-a.

21 DIRECT EXAMINATION

22 BY MS. WECKERLY:

23 Q And how are you employed?

24 A I'm a forensic scientist with the latent-print
25 unit of Las Vegas Metropolitan Police Department's forensic

1 laboratory.

2 Q And what does a forensic scientist in the
3 latent-print section do?

4 A As a latent print examiner for LVMPD, it is our
5 job to analyze prints – latent prints that are collected in
6 the field for comparison quality and compare those to known
7 exemplars or take those higher qualities prints and search
8 them through the databases looking for investigative leads.
9 We also process evidence for latent prints to compare or
10 search for investigative leads and issue reports with our
11 findings.

12 Q And what's your training or educational
13 background that allows you to work in latent prints?

14 A I have a bachelor's degree from the University
15 of California, San Diego from the Biology Department in Animal
16 Physiology. I've successfully completed a two-year training
17 program at Las Vegas Metropolitan Police Department in the
18 latent-print unit doing hundreds of exercises and researching
19 certain topics designed to train my eye to look at
20 fingerprints and eventually looking to search latent prints
21 against known prints.

22 Q And have you testified before in the area of
23 latent fingerprint identification and comparison?

24 A I have.

25 Q Can you just distinguish for us what a latent

1 fingerprint is versus a known fingerprint.

2 A A known print is usually an electronic capture
3 or an ink capture of a known person's fingerprints or
4 exemplars. So they either roll with ink or electronically
5 against a glass platen the image of your -- of each finger and
6 then of the four fingers and the thumb. Like, they call it a
7 flat impression, where you just press down and record that
8 impression.

9 So those are what's known as known prints, where you
10 know the source of those fingerprints, as opposed to a latent
11 prints which is called latent because it's usually not
12 immediately visible to the naked eye, and it usually becomes
13 visible with black powder processing or chemical processing to
14 develop that print.

15 Q And how is it that people leave fingerprints on
16 an object?

17 A Every time you touch an object, you won't
18 necessarily leave a print, but it depends on various
19 conditions. It depends on the condition of your skin. People
20 who do a lot of outdoor work, masonry, that type of jobs will
21 have -- tend to have dry rough skin, and it will probably be
22 harder for them to leave a clean impression of their
23 fingerprint as opposed to somebody who -- like a masseuse who
24 has their hands well hydrated all day long.

25 So every time you touch an object, you may or may not

1 leave a print. Like when you got dressed today, you touched
2 your clothes in every different way imaginable to put them on
3 and fix them and adjust them. Well, the cloth itself, if it's
4 very smooth, like silk, you may be able to leave an impression
5 if you had enough residue left on your hands, but, of course,
6 if you didn't have very much residue or your hands tend to be
7 dry, you won't be able to leave a print.

8 And prints are more readily developed on certain
9 surfaces than others, clothing, more difficult as opposed to
10 smooth plastic, which is better. A glass or a glass surface
11 is a better surface to leave a print on because that print --
12 that -- I'm sorry -- that surface is nonporous, as opposed to
13 a more porous surface, like paper is a porous surface, but it
14 is also a good surface to develop latent prints on.

15 Q Now, besides which surfaces are more likely to I
16 guess hold the latent fingerprint or one that you're more
17 likely to leave a print on, are there environmental factors
18 that can affect whether or not a latent fingerprint is left on
19 an object or how long it might remain on an object?

20 A Environmental factors of course do affect
21 whether or not a latent print is detectable on a surface. The
22 drier it -- because the transferred impression is -- depends
23 on how -- how much residue is present on your hand, oil, sweat
24 and the like. If your hands are -- like I said, if your hands
25 are really dry and it's a hot sunny day, of course what little

1 residue was on your fingers is evaporating with the
2 temperature and the environment.

3 If it's raining, that could have an effect, too. If
4 you're really sweaty and you left a sweaty print on a car and
5 it started raining torrential rain, like it was a few months
6 ago, then of course it would be more difficult to retrieve a
7 print from the surface, even though you put your hand on the
8 surface, and it's a nice nonporous surface, readily -- it's a
9 nice good surface -- receptive surface to a latent print, but,
10 of course, the environment could -- environmental conditions
11 are such that it won't stay for very long if you do leave a
12 print.

13 Q And, I mean, why are fingerprints valuable in a
14 forensic setting?

15 A Fingerprints are -- we like to say highly
16 discriminating and persistent, which means the pattern that
17 develops in utero that you're born with is yours for your
18 entire life. There are -- it doesn't change, meaning you
19 don't have additional ridges popping up here and there in
20 between ridges. Those ridges that are present are yours for
21 life. Of course, there are things that happen over time. The
22 older you get, your skin starts to flatten out and smooth --
23 smooth out, but those ridges are still there.

24 Q And so fingerprints are unique to the
25 individual?

1 A The information in those prints are highly
2 discriminating, enough so that we can distinguish one person's
3 prints from another's.

4 Q Now, why you're here this afternoon with us is
5 you were asked to analyze some latent fingerprints that were
6 collected from a crime scene, from a car, and then also you
7 were asked to look at a weapon, correct?

8 A Yes, I was.

9 Q You had exemplars of certain individuals that
10 you were looking at to compare with the latent prints that
11 were recovered from these three locations?

12 A Yes, I was.

13 Q Can you tell the members of the jury the
14 exemplars that you had. Whose known prints did you have for
15 comparison?

16 A I would have to refer to my report.

17 Q If that'll refresh your recollection, and if --

18 THE COURT: Please do.

19 THE WITNESS: In this case, I was asked to compare
20 prints from Monica Martinez, a Stephanie Cousins, a David
21 Burns, Willie Mason, Jerome Thomas, Donovan Rowland, and
22 Derecia Newman.

23 BY MS. WECKERLY:

24 Q Okay. Now, let's talk about each of the areas
25 that you kind of looked at for latents, and one of the items

1 that you were asked to look at was a gun and a holster for the
2 gun. Do you recall that?

3 A Yes, I was asked to process a gun and a holster
4 for latent prints.

5 Q And is it unusual for the expert who does the
6 comparison to process a particular item of evidence?

7 A It's not unusual. As I said, part of our job is
8 to evaluate the prints that are submitted by outside personnel
9 and also to process evidence in the lab.

10 Q Now, in terms of the holster, did you process
11 that item for the presence of latent fingerprints?

12 A The holster, I did not process for evidence. It
13 was a highly textured canvas-type of material. So it's not
14 conducive to latent print retrieval.

15 Q Okay. And what about the gun?

16 A The firearm, I did process for latent prints.

17 Q What methods did you do -- or did you utilize to
18 attempt to I guess locate a latent fingerprint on that gun?

19 A For the firearm, because it is a nonporous item,
20 first, we visually inspect it to see if I can see any latent
21 prints that are present on the surface itself without any
22 processing. There was no visible latent prints. So then I
23 proceeded to use cyanoacrylate fuming or -- it's a thicker
24 type of superglue basically that we fume in a humidified
25 chamber, and that fumes -- those vapors of superglue adhere to

1 any residue that is present on the firearm itself.

2 And after that process, I visually inspect it to see
3 if there are any latent prints of value for comparison that I
4 might retrieve from the firearm, and then following the
5 cyanoacrylate fuming, I applied a fluorescent dye stain to it,
6 which also adheres to the cyanoacrylate itself in order to
7 bring up fluorescence under laser light.

8 Q And after completing those processes, were you
9 able to recover any latent fingerprints off that gun?

10 A I was not. There were no – there were no
11 latent prints of value for comparison developed on the gun.

12 Q And do you know of any other method or process
13 that could be used to attempt any further, I guess, treatment
14 of the gun in order to locate a latent print?

15 A That is the normal process that we go through in
16 the laboratory to develop prints on nonporous items.

17 Q So no prints were discovered or found on the
18 gun?

19 A Correct.

20 Q You were also given prints collected from an
21 address identified to you as being from Meikle Lane?

22 A Yes.

23 Q Do you recall approximately how many fingerprint
24 lift cards were turned into you for analysis?

25 A Exactly?

1 Q Uh-huh. Well, just an approximation.

2 A Approximately 30 -- 20 -- sorry -- 23.

3 Q And what were your findings with regard to those
4 fingerprint cards collected from Meikle Lane?

5 A Those latent print cards did not have any latent
6 prints of value for comparison on them. So there was nothing
7 that I could compare to a known print to make a determination
8 of identification or exclusion.

9 Q And is there anything else you could do to those
10 cards to enhance the latent or get it to a point where you
11 could do a comparison, or is it just the nature of the
12 fingerprint collection that sometimes you just don't get a
13 usable print?

14 A Sometimes there's just nothing to -- to --
15 that's present on the card for you to compare. We could take
16 a closer look under glass. We usually use what we call a loop
17 to get a magnified view of what is on the card to see if
18 there's anything of value that we might compare.

19 Q And none were of value from that location?

20 A Correct.

21 Q Now, there were also latent print cards
22 submitted to you from a Crown Victoria vehicle or purportedly.
23 You just -- you don't look at the car. You get the cards that
24 were lifted from the vehicle?

25 A Correct.

1 Q And in terms of your findings from the list from
2 the car, were you able to identify any individuals'
3 fingerprints in that car?

4 A I was.

5 Q Who were the individuals you were able to
6 identify?

7 A I was able to identify Monica Martinez, and I
8 identified two other individuals through a fingerprint
9 database search, Albert Brody and Jermaine Brody.

10 Q And can you explain what that database search
11 is.

12 A AFIS is an Automatic -- Automatic Fingerprint
13 Identification System, and it houses known fingerprints of
14 individuals. So we take the latent print and mark the
15 minutia.

16 And when I'm talking about minutia, I'm speaking of
17 -- if you are looking at the details on your palms and on your
18 fingers, you'll see -- if you follow the ridges, you'll see
19 that they end, and that's what we call a ridge ending, or they
20 fork or bifurcate, and we mark those ridge endings and
21 bifurcations in relationship to each other and to the core or
22 the center of the fingerprint.

23 And then that database is searched. It comes up with
24 a candidate list of possible candidates based on the minutia
25 that we marked because the machine itself is looking at the

1 minutia, the relative distance between each of them and the
2 relationship to each other.

3 Q So in that vehicle, you found latent prints
4 belonging to Monica Martinez, Jermaine Brody and Albert Brody?

5 A Yes, I did.

6 Q Can you – can you tell when you look at a
7 latent fingerprint how old it is or how long it might have
8 been at a particular location?

9 A No, we have no way of evaluating how long a
10 fingerprint has been on a surface.

11 Q So it could've been there a month? It could've
12 been there a year? It could've been there a day?

13 A Correct.

14 Q And is there any way to determine that that you
15 know of?

16 A Not my knowledge.

17 Q The locations of those prints, can you tell us
18 where Ms. Martinez's were.

19 A Ms. Martinez was identified on the – a lift
20 card from the right side of the exterior front windshield of
21 the vehicle and also on the interior driver's window of the
22 vehicle.

23 Q And what about Jermaine Brody?

24 A Jermaine Brody was identified on the exterior
25 left rear wing window of the vehicle and on the right side of

1 the exterior of the front windshield of the vehicle.

2 Q Okay. So both of Jermaine Brody's prints were
3 on the outside of the car?

4 A Correct.

5 Q And what about Albert Brody?

6 A Albert Brody was identified on the small rear
7 window of the exterior left rear window of Vehicle 1 and also
8 from the exterior left rear wing window of Vehicle 1.

9 Q And so Albert Brody's prints were both on the
10 outside of the car as well?

11 A Correct.

12 MS. WECKERLY: I'll pass the witness.

13 CROSS-EXAMINATION

14 BY MR. ORAM:

15 Q Good afternoon.

16 A Good afternoon.

17 Q Okay. So you prepared a report in this case,
18 and I believe the first report you prepared and completed, the
19 distribution date was April 12, 2012; is that --

20 A Yes, correct.

21 Q And in that report, you actually asked -- am I
22 moving too fast?

23 A Nope. Go ahead.

24 Q Okay. In that report, you recall it's
25 approximately six pages long?

1 A Yes.

2 Q And at the end of -- on page 6, you ask for
3 additional exemplars?

4 A I did.

5 Q Okay. And that's because there's something
6 you're seeing as an expert that you think, I need some more
7 information?

8 A Not all exemplars are going to look exactly the
9 same. So some are more well captured than others, and in this
10 case, I was looking for palm exemplars because there was a
11 section of the palm exemplars from two individuals that I
12 needed better exemplars, or it was missing, or the information
13 wasn't there for me to determine whether or not that person
14 left the impression based on the information that was
15 recorded.

16 Q And that was on card Q37?

17 A It was.

18 Q And so what was card Q37? Was that the exterior
19 left rear window of the vehicle?

20 A Correct.

21 Q So you wanted a palm print, and the two people
22 you wanted the palm print on would've been Mr. Burns, and
23 Cousins?

24 A Correct.

25 Q Okay. And then you obtained that information,

1 didn't you?

2 A I did.

3 Q And you prepared a subsequent report September
4 20, 2013?

5 A I did.

6 Q And in that report, you determined that Mr.
7 Burns is excluded?

8 A Correct.

9 Q So you looked at a bunch of different
10 fingerprints from the Meikle address; is that correct?

11 A I looked at the lift cards submitted by the
12 person in the field for that address.

13 Q Do you remember where in the apartment these
14 fingerprints were located?

15 A Do I remember? No, I would have to look at the
16 report for the exact locations of the lift cards.

17 Q It seems like -- how many were there? Do you
18 recall?

19 A From the address, I believe I -- 23 --
20 approximately 23.

21 Q Do you remember how many came from a bathroom
22 door?

23 A I don't recall. There's -- there appears to be
24 approximately four lift cards from the doorframe of the
25 central bathroom.

1 Q Okay. And let's go through those. Which cards
2 are those?

3 A Q4.

4 Q Q4, and that was a print listed from the east
5 side of the doorframe of the east facing door to the west
6 central bathroom?

7 A Correct, it is a lift card. It's not
8 necessarily a print because there were no prints on it to
9 compare.

10 Q Okay. Fair to say that you looked at all of
11 these prints, and you compared them to a man named Mr. Burns?

12 A I did. I looked at all the lift cards that had
13 comparison quality prints on them and then compared them to
14 the subjects that were listed.

15 Q And as of September 20, 2013, once you did the
16 supplemental report, you can tell us to a reasonable degree of
17 scientific certainty that Mr. Burns is not located on any of
18 these prints in any of the fingerprints you analyzed?

19 A My report has excluded Mr. Burns as the source
20 of any of the comparable prints in this case.

21 Q Okay. Now, I'd like to talk to you about these
22 individuals, the Brody – Albert Brody and Jermaine Brody,
23 okay. Where did you locate their fingerprints?

24 A On the exterior of the vehicle.

25 Q Could you be as exact as you could, please, with

1 regard to Albert Brody first?

2 A Albert Brody –

3 Q Yes.

4 A – was identified on the small rear window.

5 Q Okay. Which card number?

6 A Card No. Q39.

7 Q Okay.

8 A And – I'm sorry – the small rear window of the
9 exterior left rear window of Vehicle No. 1.

10 Q So if we're – if we're looking at a vehicle and
11 I'm the driver of the vehicle, okay, that would be the door
12 behind the driver?

13 A Left rear, correct.

14 Q And that, it came back as the index finger of
15 Albert Brody?

16 A Yes, it did.

17 Q And is that the only time that you find his
18 fingerprint?

19 A No, I identified him a second time.

20 Q And what card number is that?

21 A Q45.

22 Q And that lift card is from the exterior left
23 rear wing window of Vehicle No. 1?

24 A Yes, it is.

25 Q And he is located there?

1 A Yes, his – Albert Brody is identified. His
2 left palm is identified on that location.

3 Q And how about Jermaine, is he also on there?

4 A Yes.

5 Q On the same card?

6 A On the same card, correct. There were two
7 latent prints of value for comparison, and they were each
8 identified, one palm to Mr. Jermaine Brody and one to Mr.
9 Albert Brody.

10 Q So Jermaine Brody, right palm; Albert Brody,
11 left palm?

12 A Yes, that is correct.

13 Q Okay. How about Q50 – card Q50?

14 A Q50 was lifted from the right side of the
15 exterior front windshield of Vehicle No. 1.

16 Q And my understanding is, at least on your
17 report, it says you searched AFIS and received positive
18 results?

19 A I did.

20 Q And that was a criminal record database?

21 A It is – AFIS has both criminal and civil prints
22 in them. For example, our local base – our local database
23 has everybody who applies for a CCW. It has everyone who
24 works for Las Vegas Metro. It's not necessarily just a
25 criminal database.

1 Q Do you know whether Albert and Jermaine Brody
2 have been charged with extraordinarily serious crimes?

3 A I have no way of knowing that. The database
4 doesn't tell me anyone's criminal history or reasons why their
5 prints are in the system.

6 Q Were you specifically asked to look further into
7 Brody's palm prints?

8 A I don't understand your question.

9 Q Did you talk to homicide in this case --
10 homicide investigators?

11 A I don't recall.

12 Q Okay. Fair enough. Fair to say there is
13 absolutely -- you looked at the gun. You decided not to test
14 the holster because you didn't think it would be a good
15 material to obtain prints on, right?

16 A It's a heavily textured surface. So, no, it was
17 not a good receptive.

18 MR. ORAM: Okay. That concludes cross-examination.

19 THE COURT: Mr. Langford.

20 MR. LANGFORD: Yes, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. LANGFORD:

23 Q Were you able to match any of the latent prints
24 that you collected to Mr. Mason?

25 A I was not.

1 Q None?

2 A There were no prints identified to Mr. Mason.

3 MR. LANGFORD: Nothing further.

4 THE COURT: Any redirect?

5 MS. WECKERLY: Yes, just one question.

6 REDIRECT EXAMINATION

7 BY MS. WECKERLY:

8 Q Just to be -- well, actually, two. Just to be
9 clear, there were no prints of value that you could make a
10 comparison to anybody from the Meikle Lane address?

11 A That is correct. There were lift cards
12 submitted, but on closer examination of each lift card, there
13 were no -- there was no friction-ridge detail present or not
14 sufficient friction-ridge detail present in order to evoke a
15 comparison in which I could determine, yes, it -- someone had
16 left the print or people were excluded from leaving the print.

17 Q So there's no inclusion or exclusion when the
18 print isn't of value?

19 A Correct.

20 Q The card --

21 A Well, the card. So there are no suitable latent
22 -- so when we make a determination of no suitable latent
23 prints, there's either no friction-ridge detail on the card,
24 or there's friction-ridge detail present but not sufficient to
25 compare to an individual.

1 Q And that's the same with the gun?

2 A Correct.

3 MS. WECKERLY: Thank you.

4 THE COURT: Nothing further? Thank you, Miss, for
5 being a witness. You'll be excused.

6 THE WITNESS: Thank you.

7 THE COURT: I understand that that's our last witness
8 for this afternoon, ladies and gentlemen. So you'll be coming
9 back on Monday morning. We anticipate starting at 9:30 Monday
10 morning. We'll see you then.

11 During the recess, it's again your duty not to
12 converse among yourselves or with anyone else on any subject
13 connected with this trial or to read, watch or listen to any
14 report of or commentary on the trial from any medium of
15 information including newspapers, television and radio, and
16 you may not form or express an opinion on any subject
17 connected with this case until it is finally submitted to you.

18 Have a good weekend. We'll see you Monday morning at
19 9:30.

20 (Jury recessed 3:38 p.m.)

21 THE COURT: The record will reflect the exit -- the
22 jurors have exited the courtroom.

23 Anything further on the record this afternoon,
24 gentlemen?

25 MR. DIGIACOMO: Judge, there is one issue, and I had

1 spoken to both Mr. Oram and Mr. Sgro about that. We expect
2 Detective Bunting to get on the stand either sometime Monday
3 or Tuesday, and they were supposed to tell me a very long time
4 ago what it is they do or do not object to in Mr. Burns's
5 statement because we may decide to play his entire statement
6 to the police.

7 THE COURT: I didn't know he had a statement.

8 MR. DIGIACOMO: He did. Mr. Mason does not have a
9 statement. Mr. Burns does -- well, Mr. Mason has a statement
10 that we agreed not to use in pretrial rulings. Mr. Burns does
11 have a statement, and I understand that there's things that we
12 may agree to redact, and then there's one thing that we need
13 to argue about the redactions for, and at some point -- it's
14 going to take me a night to do the redactions. So at some
15 point they need to be able to get this to me so this can get
16 done.

17 MR. SGRO: Well, Your Honor, from our perspective,
18 it's very simple. So just so the Court has an idea of the
19 statement, Mr. Burns is reticent during the interview, and by
20 that I mean he's doing a lot more listening than he is
21 talking, and there are -- the statement itself isn't that many
22 pages.

23 It takes a long time, and what you have in what
24 they're calling Mr. Burns's statement is really the police on
25 and on and on, sometimes for five, six pages. They're just

1 telling him, We know it was you. We know you went there, and
2 you did this. Why don't you be a man? Why don't you take
3 responsibility? The Court knows exactly what I'm talking
4 about.

5 The long and short of it is, I said to Mr. DiGiacomo
6 a couple weeks ago, We're going to object because that's not
7 Mr. Burns's statement. So to the extent that there is a
8 question posed and an answer given, then if they want to play
9 it, they can play it; however, our objection and our redaction
10 would be to any of the colloquy by the police.

11 So it won't take a lot of imagination to understand
12 what we want redacted because, like I said, literally -- I
13 think that near the end of the statement there is literally a
14 five-page run-on where it's just transcription of what the
15 police are saying to Mr. Burns, where he says nothing, and
16 that would be --

17 MR. DIGIACOMO: There's two issues I would have,
18 Judge, and to the extent that the detectives make a statement,
19 and -- and I know we did this in Crawley because they had the
20 same objection -- the Court instructs the jury that they're
21 not offered for the truth of the matter asserted, but there's
22 two reasons why it's relevant in this case, one is they tell
23 him a number of things, and then ultimately he makes a few
24 admissions. They tell him some other things. He kind of
25 sings and hums. Then it goes back and forth for some period

1 of time.

2 One of the things they tell him that is highly
3 important, which is actually false, is, We know everything
4 we're telling you from Mr. Mason, G-Dogg. And what happens
5 after that is that Mr. Burns tells Job-Loc, G-Dogg ratted on
6 me. And what you will hear and what you will see in the
7 testimony is that Job-Loc then writes a letter to Mr. Mason
8 saying, I can't believe you ratted everybody out. I can't
9 believe you ratted everybody out.

10 Mr. Mason then makes admissions by writing back to
11 him, Hey, unless you get this in black and white, I didn't say
12 a damn thing to anybody. The people that sung in this case
13 were the two women. And then there is a response back from
14 Job, You know what? I'm sorry. I'm wrong. Mr. Burns just
15 told me you didn't rat out.

16 Well, then you go to Mr. Burns's letters to Job, and
17 he comes back and tells him, I found out from my discovery,
18 these aren't the people -- G-Dogg didn't rat me out. It was
19 the rest of these people that ratted me out.

20 THE COURT: To the extent that there's a colloquy
21 where there's some sort of an arguable admission, that's
22 probably going to come in. The rest of it, if it's just
23 statements by the law enforcement saying, This is what we
24 know, you know, I'd exclude that.

25 MR. DIGIACOMO: Okay. But at the very least, I need

1 to be able to establish that law enforcement told Mr. Burns
2 they got this information from --

3 THE COURT: I don't quarrel with that.

4 MR. DIGIACOMO: -- from Mr. Mason.

5 THE COURT: I'm just saying that if you've got
6 sections where all we've got is just the law enforcement
7 giving a colloquy -- actually a story --

8 MR. DIGIACOMO: Right.

9 THE COURT: -- about what they think they know and he
10 doesn't agree with it or doesn't make any admission to it,
11 it's of no value.

12 MR. DIGIACOMO: But if the response is some sort of
13 admission, for example --

14 THE COURT: If there is an admission to it, I don't
15 have a problem.

16 MR. DIGIACOMO: -- like, they show him videos of --

17 THE COURT: If there is an admission to it, I don't
18 have any problem --

19 MR. DIGIACOMO: -- and then they make statements.

20 THE COURT: -- but if there's no admission to it, it
21 doesn't come in.

22 MR. DIGIACOMO: Well, then I need them to give me --
23 by let's say Sunday morning -- what they believe needs to be
24 taken out of the statement.

25 THE COURT: Maybe over the weekend you could do that.

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WILLIE MASON,

Appellant,

No.: 68497

vs.

DC No.: C267882

THE STATE OF NEVADA,

Respondent.

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| 01 | Sealed Transcripts from Hearing | 10/16/2014 | 1 | 01-82 |
| 02 | Transcript of Jury Trial Day 3 | 1/22/2015 | 1 2 | 83-250 251-325 |
| 03 | Transcript of Jury Trial Day 9 | 1/30/2015 | 2 3 | 326-500 501-544 |
| 04 | Transcript of Jury Trial Day 11 | 2/6/2015 | 3 4 | 545-750 751-753 |
| 05 | Transcript of Jury Trial Day 14 | 2/11/2015 | 4 | 754-955 |
| 06 | Transcript of Jury Trial Day 15 | 2/12/2015 | 4 5 | 956-1000 1001-1052 |
| 07 | Jury Instructions | | 5 | 1053-1110 |

1 argument for why someone should be allowed the opportunity to
2 return to society?

3 PROSPECTIVE JUROR NO. 509: Well, after spending
4 time in jail people sometimes, you know, change their ways.

5 MR. SGRO: Okay. You have heard a lot of talk about
6 the rights that certain accused of crimes have; right? We all
7 do as American citizens. Have you ever heard of the
8 presumption of innocence before?

9 PROSPECTIVE JUROR NO. 509: Yes.

10 MR. SGRO: And I've used that phrase where there's
11 smoke there's fire. You understand that that phrase can have
12 no application here. Do you understand that?

13 PROSPECTIVE JUROR NO. 509: Yes.

14 MR. SGRO: Do you think that the police can arrest
15 somebody? You work with a lot of these folks. Can they
16 arrest someone that hasn't committed the crime they're accused
17 of?

18 PROSPECTIVE JUROR NO. 509: Yes.

19 MR. SGRO: Do you think that you believe that
20 because Mr. Burns is here that he must have done something
21 consistent with what he's charged with or he wouldn't have
22 been here?

23 PROSPECTIVE JUROR NO. 509: Not necessarily.

24 MR. SGRO: Okay. Well, when you say not
25 necessarily, do you equivocate on that or do you – are you

1 able –

2 PROSPECTIVE JUROR NO. 509: Well, I mean people are
3 mistaken identity or people are just, you know, running away
4 from a crime scene because they were scared. I mean, that
5 doesn't necessarily mean they're the person who did it.

6 MR. SGRO: Okay.

7 PROSPECTIVE JUROR NO. 509: That's what I mean.

8 MR. SGRO: Any trouble with the fact that Mr. Burns
9 may not take the witness stand?

10 PROSPECTIVE JUROR NO. 509: I mean, I don't know why
11 you wouldn't want to if -- to tell your side of the story.

12 MR. SGRO: Okay. Well, it is a right that people
13 have in our country that they don't have to if they don't want
14 to. And I understand what you just said. Do you think that
15 you would hold it against Mr. Burns if he made a decision to
16 not testify?

17 PROSPECTIVE JUROR NO. 509: I don't know that I
18 would hold it -- I mean, I guess I would question why it
19 didn't happen, but I guess I don't really have any information
20 to make a decision --

21 MR. SGRO: Well, okay.

22 PROSPECTIVE JUROR NO. 509: -- why that decision was
23 made. So I don't know how I could evaluate that, really.

24 MR. SGRO: Well, would you think to yourself, if he
25 really is not guilty, he would have testified? Because

1 people --

2 PROSPECTIVE JUROR NO. 509: No, I mean, there's a
3 lot of strategy going on, so --

4 MR. SGRO: Okay.

5 PROSPECTIVE JUROR NO. 509: I don't -- I wouldn't
6 necessarily think that he was automatically guilty because he
7 didn't testify.

8 MR. SGRO: All right. And you can imagine a
9 situation where someone that's not guilty would make a choice
10 to not testify?

11 PROSPECTIVE JUROR NO. 509: Sure.

12 MR. SGRO: We have spoken about Mr. Burns being 18
13 at the time of the alleged offense is to have occurred; right?

14 PROSPECTIVE JUROR NO. 509: Yes.

15 MR. SGRO: Could his youth be a factor as to why he
16 doesn't want to testify?

17 PROSPECTIVE JUROR NO. 509: Sure.

18 MR. SGRO: Seasoned, experienced prosecutors might
19 make someone nervous. Would that be fair?

20 PROSPECTIVE JUROR NO. 509: Yeah. You guys make me
21 nervous and I'm not 20.

22 THE COURT: They do that to jurors intentionally.

23 PROSPECTIVE JUROR NO. 509: Right.

24 MR. SGRO: I guess what we need to know is we have a
25 commitment from you that you will not be tempted to infer

1 anything negative about Mr. Burns' choice if he chooses to not
2 testify. Do we have that commitment?

3 PROSPECTIVE JUROR NO. 509: Yes.

4 MR. SGRO: On the other hand, do you think because
5 he's the one accused, you'd scrutinize his testimony a little
6 bit more carefully than that of another witness?

7 PROSPECTIVE JUROR NO. 509: I don't think so. I
8 mean, I think everybody presenting the facts or presenting
9 them on their own --

10 MR. SGRO: Okay.

11 PROSPECTIVE JUROR NO. 509: -- involvement.

12 MR. SGRO: You work with some fingerprint folks.
13 You're friends with one of them that you go to lunch with. Do
14 you ever discuss the application of science in the context of
15 a criminal case?

16 PROSPECTIVE JUROR NO. 509: No.

17 MR. SGRO: Do you have an opinion -- well, let me
18 start with this. Do you watch any of those shows like
19 Forensic Files or the -- the science shows at home?

20 PROSPECTIVE JUROR NO. 509: No, I don't watch --

21 MR. SGRO: Okay.

22 PROSPECTIVE JUROR NO. 509: -- a lot of TV.

23 MR. SGRO: Do you have an opinion that science has a
24 value in a criminal prosecution?

25 PROSPECTIVE JUROR NO. 509: Yes.

1 MR. SGRO: And I've asked you some questions about
2 credibility. You've heard me talk earlier about motives for
3 fabrication; right? Earlier today?

4 PROSPECTIVE JUROR NO. 509: I believe so, but --

5 MR. SGRO: Well.

6 PROSPECTIVE JUROR NO. 509: Sorry.

7 MR. SGRO: That's okay. Can people have motives to
8 lie?

9 PROSPECTIVE JUROR NO. 509: Yes.

10 MR. SGRO: Can people swear to tell the truth, take
11 the witness stand, and lie?

12 PROSPECTIVE JUROR NO. 509: Yes.

13 MR. SGRO: Science, on the other hand, typically has
14 no agenda; right? It is what it is.

15 PROSPECTIVE JUROR NO. 509: Right.

16 MR. SGRO: And is that one of the reasons why
17 science has a pretty important role in a criminal case?

18 PROSPECTIVE JUROR NO. 509: Yes.

19 MR. SGRO: Have you ever heard of a plea bargain?
20 Do you know what that is?

21 PROSPECTIVE JUROR NO. 509: Yes.

22 MR. SGRO: And in this case would you be able to
23 consider a person's motive to testify to reduce their criminal
24 exposure? Do you think you could consider that as a motive to
25 fabricate, see what weight to give it?

1 PROSPECTIVE JUROR NO. 509: You mean do I think
2 someone would lie so that they could get a plea bargain for a
3 lesser sentence?

4 MR. SGRO: Can – can that be the case, yes, ma'am.

5 PROSPECTIVE JUROR NO. 509: Sure.

6 MR. SGRO: Okay. Would you be willing to evaluate
7 that particular possibility in this case whether that's what
8 happened or whether it didn't?

9 PROSPECTIVE JUROR NO. 509: Sure.

10 MR. SGRO: Okay. Have you ever heard this concept
11 eyewitness identification?

12 PROSPECTIVE JUROR NO. 509: Eyewitness
13 identification?

14 MR. SGRO: Eyewitness, yes, ma'am.

15 PROSPECTIVE JUROR NO. 509: Yes.

16 MR. SGRO: Have you ever been mistaken for someone?
17 Someone walks up to you then they realize that you're not the
18 person that they were looking for?

19 PROSPECTIVE JUROR NO. 509: Yes.

20 MR. SGRO: Have you ever done that, walked up to
21 someone and then realized that that's not the right person?

22 PROSPECTIVE JUROR NO. 509: Yes.

23 MR. SGRO: Have you ever been accused of something
24 you haven't done?

25 PROSPECTIVE JUROR NO. 509: I – I don't think so.

1 MR. SGRO: You've never had –

2 PROSPECTIVE JUROR NO. 509: I mean, probably. I'm
3 sure when I was a kid, you know, my brother said I hit him
4 when I didn't or something. I don't know. I can't really
5 think of anything substantial right now.

6 MR. SGRO: Okay.

7 THE COURT: She's put it all out of her mind.

8 MR. SGRO: That's right. Let's talk about the –
9 the – what I like to call the water cooler talk after the
10 case is done, okay. As you are a juror in this case, the
11 Judge is going to tell you you can't speak to anyone about the
12 case until it's been submitted to you for your consideration,
13 right. So as the case goes on, people at work will know
14 you're on jury duty, but they're not going to know anything
15 about the case.

16 PROSPECTIVE JUROR NO. 509: Right.

17 MR. SGRO: There will come a time when the case is
18 finished and you can talk to your coworkers and your friends
19 as much as you want to about the case. Mr. DiGiacomo asked
20 you, you know, what's it going to feel like if you return back
21 to the office and you have found an individual in a capital
22 murder trial not guilty? Now, you know capital murder is the
23 most serious case we have in our system; right?

24 PROSPECTIVE JUROR NO. 509: Yes.

25 MR. SGRO: Do you think you'd take a little bit of

1 criticism returning back to work at Metro having found the
2 defendant not guilty?

3 PROSPECTIVE JUROR NO. 509: I don't think so.

4 MR. SGRO: You think that they wouldn't have -- they
5 -- this, you know, theoretical group of folks at work, they
6 wouldn't ride you a little bit or -- or bust your chops that
7 you didn't side with the State?

8 PROSPECTIVE JUROR NO. 509: I'm not sure if they
9 would or not. I mean, unless they're here to hear all the
10 evidence, I don't know how they can really judge.

11 MR. SGRO: Okay. You own a cell phone?

12 PROSPECTIVE JUROR NO. 509: Yes.

13 MR. SGRO: Have you ever looked carefully at your
14 cell phone bill?

15 PROSPECTIVE JUROR NO. 509: Yes.

16 MR. SGRO: Have you -- I spoke of this earlier.
17 Have you had the experience where you texted someone or got a
18 text and there's this conversation, you know, I didn't get
19 your text message or sorry I didn't get that or you're hearing
20 it on the opposite side. Have you had that experience?

21 PROSPECTIVE JUROR NO. 509: Yes.

22 MR. SGRO: Have you ever found any errors on your
23 cell phone bill?

24 PROSPECTIVE JUROR NO. 509: Yes.

25 MR. SGRO: Just lastly, five weeks trial, capable

1 prosecutors, a lot of police officers coming in. If they
2 don't meet their burden of proof, what would your verdict be?

3 PROSPECTIVE JUROR NO. 509: Not guilty.

4 MR. SGRO: Okay. And do you have any quarrel with
5 not ever getting to the point where you impose sentence? Do
6 you understand what your job would be in stage one?

7 PROSPECTIVE JUROR NO. 509: Yes.

8 MR. SGRO: Okay. And – and this is my last area of
9 inquiry, so you're almost finished.

10 PROSPECTIVE JUROR NO. 509: Okay.

11 MR. SGRO: Your job in this case as a juror –

12 THE COURT: With this lawyer.

13 MR. SGRO: This lawyer. That's right. Your job in
14 this case would be very specific. Here is this set of facts.
15 Did the State meet its burden as to the charging document with
16 the – with the facts they presented? You understand that?

17 PROSPECTIVE JUROR NO. 509: Yes.

18 MR. SGRO: You understand this is not a job task of,
19 well, if it didn't happen the State's way, let me figure out
20 how it did happen.

21 PROSPECTIVE JUROR NO. 509: Right.

22 MR. SGRO: Do you understand that?

23 PROSPECTIVE JUROR NO. 509: Yes.

24 MR. SGRO: Sometimes people that watch shows, let
25 you know the whole – the whole crime is buttoned up in an

1 hour, right? We have the crime, we have the three people that
2 they thought did it that really didn't, we get to the real
3 person that did it, and then we solve the whole thing and put
4 it to bed in 60 minutes; right? Sometimes people can get
5 frustrated because they are in a position where they don't
6 know what happened. Do you understand how that can be case?

7 PROSPECTIVE JUROR NO. 509: Yes.

8 MR. SGRO: Okay. Are you okay with not trying to
9 solve the case if the State doesn't meet its burden? Does
10 that make sense?

11 PROSPECTIVE JUROR NO. 509: Yes.

12 MR. SGRO: Are you okay with that?

13 PROSPECTIVE JUROR NO. 509: Yes.

14 MR. SGRO: Okay. And are you okay with going back
15 and -- and letting the jurors know, you know, I don't know
16 what happened, but it didn't happen how the State says it
17 happened? Do you understand?

18 PROSPECTIVE JUROR NO. 509: Sure.

19 MR. SGRO: Okay. So I want to impress upon you your
20 job task in this case is a very focused and specific one, and
21 I want to make sure you're okay with that.

22 PROSPECTIVE JUROR NO. 509: Yes.

23 MR. SGRO: Okay.

24 PROSPECTIVE JUROR NO. 509: I understand.

25 MR. SGRO: That's all, Your Honor. Pass for cause.

1 Thank you, ma'am.

2 PROSPECTIVE JUROR NO. 509: You're welcome.

3 MR. ORAM: May we approach, Your Honor?

4 THE COURT: Mr. Langford.

5 MR. ORAM: May we approach, Your Honor?

6 THE COURT: Certainly.

7 (Bench conference.)

8 MR. ORAM: Judge, I --

9 THE COURT: Speak up.

10 MR. ORAM: Yeah. I think what I was hearing is,
11 Judge, when she said that she would believe a police officer
12 over a lay person, the only question I had when I heard that,
13 maybe you could ask, if -- let's say the defendant testifies
14 that the light is green and the police officer testifies the
15 light is red, it sounds to me like she said, hey, the police
16 officer wins. And that causes --

17 THE COURT: No, she said she would -- she said if
18 the photographs shows that the light was red and the police
19 officer said it was green, she would understand the
20 difference.

21 MR. ORAM: That's true with the photograph. But
22 what I'm concerned about is that when she's saying with two
23 different people's testimony, it causes me --

24 THE COURT: The fact that people have a tendency to
25 believe police officers more than they do other witnesses is a

1 fact that many people have in and of itself. It does not
2 disqualify them from being a juror.

3 MR. ORAM: All right.

4 THE COURT: That's life.

5 MR. ORAM: Yes, sir.

6 MR. LANGFORD: May I question the juror, Your Honor?

7 THE COURT: Hold on. I've got to -- I've got to
8 remember how to push these buttons.

9 (End of bench conference.)

10 THE COURT: Okay. This -- I was an elected juror
11 for -- or an elected judge for many, many years, and they
12 didn't have all these buttons when I was here.

13 You may examine.

14 MR. LANGFORD: Thank you, Your Honor.

15 Good afternoon.

16 PROSPECTIVE JUROR NO. 509: Good afternoon.

17 MR. LANGFORD: All right. As you know, I'm short --

18 PROSPECTIVE JUROR NO. 509: o k.

19 MR. LANGFORD: -- and sweet. Two individuals, one
20 trial. Can you listen to the evidence as to each individual?

21 PROSPECTIVE JUROR NO. 509: Yes.

22 MR. LANGFORD: And hear the evidence as to that
23 individual and judging that individual and not allow yourself
24 to say, well, they did a good job of proving the other guy, so
25 he must be guilty, as well? Will you be able to do that and,

1 you know -- I mean, will you be able to separate the two and
2 judge only one at a time?

3 PROSPECTIVE JUROR NO. 509: Yes.

4 MR. LANGFORD: Tell me about the case in the early
5 '90s.

6 PROSPECTIVE JUROR NO. 509: It was a week-long
7 battery case.

8 MR. LANGFORD: Battery --

9 PROSPECTIVE JUROR NO. 509: Like a felony battery.
10 Like someone beat someone else up kind of thing.

11 MR. LANGFORD: Somebody else beat somebody else up?

12 PROSPECTIVE JUROR NO. 509: Yes.

13 MR. LANGFORD: Oh, okay. And -- and it seems to
14 have left a really sour taste in your mouth about --

15 PROSPECTIVE JUROR NO. 509: Well, I just -- I mean,
16 it was the only other jury case that I was on. I just
17 remember it and I believe the questionnaire asked something
18 about it.

19 MR. LANGFORD: Okay.

20 PROSPECTIVE JUROR NO. 509: So I believe that it was
21 inappropriate what they said.

22 MR. LANGFORD: Okay. It's not going to affect your
23 ability to be a juror here today, though; right?

24 PROSPECTIVE JUROR NO. 509: No.

25 MR. LANGFORD: Okay. You're not going to hold it

1 against the State of Nevada; right?

2 PROSPECTIVE JUROR NO. 509: Right.

3 MR. LANGFORD: Penalty, okay. We haven't talked too
4 much about that in awhile. As to Mr. Mason the maximum
5 penalty is -- is only life without the possibility of parole.
6 You understand that?

7 PROSPECTIVE JUROR NO. 509: Yes.

8 MR. LANGFORD: Okay. So, again, it's -- I need you
9 to make a commitment that you will give Mr. Mason a fair
10 sentencing hearing, as well as Mr. Burns, even though he's not
11 facing the same penalty. Can you do that?

12 PROSPECTIVE JUROR NO. 509: Yes.

13 MR. LANGFORD: Okay. Will you give him a fair
14 trial?

15 PROSPECTIVE JUROR NO. 509: Yes.

16 MR. LANGFORD: Pass for cause, Your Honor.

17 PROSPECTIVE JUROR NO. 509: Judge, if I have a
18 scheduling issue that I didn't have when I did that
19 questionnaire, when would be the appropriate time to discuss
20 that?

21 MR. LANGFORD: I'm sorry, you what?

22 PROSPECTIVE JUROR NO. 509: I have -- I'm actually
23 moving in the middle of February.

24 THE COURT: You're moving?

25 PROSPECTIVE JUROR NO. 509: Not out of state, just

1 moving.

2 THE COURT: From one house to another you mean?

3 PROSPECTIVE JUROR NO. 509: Yes, sir. And so I had

4 a couple things booked on like Fridays in February that I -- I

5 don't know if the Court -- the marshal said that the Court

6 meets on Fridays. I don't know how I can get around those

7 things in order for me to move out of my residence.

8 THE COURT: Well, let's worry about it when we get

9 there.

10 PROSPECTIVE JUROR NO. 509: Oh, okay.

11 THE COURT: Which Friday is it?

12 PROSPECTIVE JUROR NO. 509: Friday, February 6th and

13 the 13th.

14 THE COURT: The 6th and the 13th. All right.

15 PROSPECTIVE JUROR NO. 509: Yes, sir.

16 THE COURT: I'll make a note of that.

17 PROSPECTIVE JUROR NO. 509: Thank you.

18 THE COURT: Thank you.

19 All right. Ms. -- is it Paradise?

20 PROSPECTIVE JUROR NO. 510: Paradis.

21 THE COURT: Paradis?

22 PROSPECTIVE JUROR NO. 510: Yes, sir.

23 THE COURT: Okay. Ms. Paradis, you -- you came from

24 California here?

25 PROSPECTIVE JUROR NO. 510: That's correct, sir.

1 THE COURT: When did you come?
2 PROSPECTIVE JUROR NO. 510: In '96.
3 THE COURT: Oh, I see. And your husband, as I
4 understand it, is a plumber; is that right?
5 PROSPECTIVE JUROR NO. 510: That's also correct.
6 THE COURT: Does he have his own business?
7 PROSPECTIVE JUROR NO. 510: Yes, sir.
8 THE COURT: Does it have a name?
9 PROSPECTIVE JUROR NO. 510: MP Pool Plumbing.
10 THE COURT: And what kind of plumbing? I mean, is
11 it household or commercial or whatever anybody wants?
12 PROSPECTIVE JUROR NO. 510: It would be swimming
13 pool contracting. In-ground swimming pools need, obviously,
14 plumbing, so that's the type that he does.
15 THE COURT: So he specializing in swimming pool
16 plumbing?
17 PROSPECTIVE JUROR NO. 510: That's correct, sir.
18 THE COURT: Okay. How long has he been doing that?
19 PROSPECTIVE JUROR NO. 510: Gosh, most of his life.
20 I'd say at least 20 years.
21 THE COURT: Okay. You – you have a young child at
22 home?
23 PROSPECTIVE JUROR NO. 510: That's correct, sir.
24 THE COURT: Okay. And is your child healthy?
25 PROSPECTIVE JUROR NO. 510: He's healthy. He's a

1 special needs child. He was born with Down Syndrome. So
2 right before he was born I made sure that I actually
3 terminated the job that I was at specifically so that I would
4 be home for his care and for his appointment needs.

5 THE COURT: What job were you at?

6 PROSPECTIVE JUROR NO. 510: I was actually
7 scheduling swimming pool – swimming pool construction.
8 That's how my husband and I met. I was working for a
9 particular company, and at the time that was the job that I
10 terminated.

11 THE COURT: Okay. If you're here during the week
12 for the trial, do you have someone who will look after the
13 child?

14 PROSPECTIVE JUROR NO. 510: Unfortunately, no, sir,
15 I do not. All my family is located out of town. Actually,
16 out of state. His mother was a possible caregiver, but as of
17 recently her Alzheimer's has advanced and so she's no longer
18 able to care for our son. So it's really left to either my –
19 my husband or myself to care for him. Everybody else works
20 during the day. They all have jobs.

21 MR. SGRO: May we approach, Your Honor?

22 THE COURT: Yes.

23 (Bench conference.)

24 MR. SGRO: Your Honor, I – I wanted to revisit the
25 prior juror. She's got moving obligations. That, to me –

1 THE COURT: Well, let's see if she's selected as a
2 juror first.

3 MR. SGRO: So if we select her are we going to take
4 those Fridays off?

5 THE COURT: Yeah, we're going to have to or
6 something. Maybe just something in the morning or whenever
7 she's got something.

8 MR. SGRO: But that -- that --

9 THE COURT: I'm worried with this juror with her
10 child because --

11 MR. SGRO: I understand. I just --

12 THE COURT: -- because the kid has Down Syndrome.

13 MR. SGRO: I understand and [inaudible]. Just for
14 the record, Your Honor, it may not be just the moving dates.
15 I mean, are we going to have her she's packing late at night?
16 None of us knew, and so I would invite the Court to conduct a
17 little bit further inquiry, or we can do it, because we want
18 to make sure she's not distracted.

19 THE COURT: I don't want to do that. I'm on another
20 juror now. The question is what do I do with this juror?

21 MR. DiGIACOMO: She's free to go as far as we're
22 concerned.

23 THE COURT: What do you want me to do with this one?
24 I don't know what to do with her if she's got --

25 MR. SGRO: Well, I want -- I want --

1 MS. WECKERLY: [Inaudible].

2 MR. DiGIACOMO: We're on the next juror. The Judge
3 already said that.

4 MS. WECKERLY: I mean, you don't --

5 MR. DiGIACOMO: So you don't want -- well, I believe
6 it's medical reasons.

7 THE COURT: Okay.

8 (End of bench conference.)

9 THE COURT: All right. Ms. Weckerly.

10 MS. WECKERLY: Your Honor, the State will pass for
11 cause.

12 THE COURT: All right. Mr. Sgro.

13 MR. ORAM: Pass for cause, Your Honor.

14 MR. LANGFORD: Pass for cause.

15 THE COURT: All right.

16 You want to hand the microphone over to Mr. --

17 PROSPECTIVE JUROR NO. 521: Allen.

18 THE COURT: Is it Allen?

19 PROSPECTIVE JUROR NO. 521: Yes, sir.

20 THE COURT: All right. Mr. Allen, as I understand
21 it, you're an attorney.

22 PROSPECTIVE JUROR NO. 521: Yes, Your Honor.

23 THE COURT: I don't know that I've met you before,
24 have I?

25 PROSPECTIVE JUROR NO. 521: I haven't met you as far

1 as I can recall, Your Honor.

2 THE COURT: Good. And you work for the City of
3 North Las Vegas?

4 PROSPECTIVE JUROR NO. 521: No, Your Honor. I work
5 for the North Las Vegas Police Officer's Association, and I
6 have my own practice so I work for several other public sector
7 unions, as well.

8 THE COURT: Okay. And you primarily are working for
9 the unions. Do you have any practice in court on anything
10 other than union business? You don't do any outside work on
11 divorces or criminal or anything like that?

12 PROSPECTIVE JUROR NO. 521: I have, Your Honor, but
13 not recently.

14 THE COURT: Okay. Where did you go to law school?

15 PROSPECTIVE JUROR NO. 521: Boston University.

16 THE COURT: What brings you to Las Vegas?

17 PROSPECTIVE JUROR NO. 521: My wife wanted to get
18 out of Los Angeles, I think, is probably the bottom line.

19 THE COURT: And what does your wife do?

20 PROSPECTIVE JUROR NO. 521: She -- she stays at home
21 with the kids.

22 THE COURT: Okay. Because you have this background
23 as an attorney, you think that you could serve as a -- a juror
24 in a case like this?

25 PROSPECTIVE JUROR NO. 521: Yes.

1 THE COURT: You heard the instructions I gave or the
2 -- the information I gave to the other jurors about their
3 presumption of innocence and so on. Have any quarrel with
4 that?

5 PROSPECTIVE JUROR NO. 521: No.

6 THE COURT: Do you think you could be fair to both
7 sides?

8 PROSPECTIVE JUROR NO. 521: Yes.

9 THE COURT: All right. Mr. DiGiacomo.

10 MR. DIGIACOMO: Thank you.

11 Good afternoon, sir.

12 PROSPECTIVE JUROR NO. 521: Good afternoon.

13 MR. DIGIACOMO: I imagine that arbitrations go a
14 little bit faster than jury selection in a capital case.

15 PROSPECTIVE JUROR NO. 521: Yes.

16 MR. DIGIACOMO: Would that be fair?

17 PROSPECTIVE JUROR NO. 521: Yes.

18 MR. DIGIACOMO: Is that the majority of your legal
19 work, are they in arbitrations?

20 PROSPECTIVE JUROR NO. 521: Yes.

21 MR. DIGIACOMO: Have you done any proceedings in a
22 courtroom?

23 PROSPECTIVE JUROR NO. 521: Yes.

24 MR. DIGIACOMO: And have you done a jury trial?

25 PROSPECTIVE JUROR NO. 521: Yes.

1 MR. DiGIACOMO: I don't have a whole lot of
2 questions because I imagine you know what we're doing and you
3 understand how the process works. Is there anything that
4 anyone said here that you think might be important for the
5 lawyers to note before we select a jury?

6 PROSPECTIVE JUROR NO. 521: No.

7 MR. DiGIACOMO: Do you think you're a fair person?

8 PROSPECTIVE JUROR NO. 521: Yes.

9 MR. DiGIACOMO: Talk about penalty, and you know the
10 way this works. Ultimately, can you reserve judgment until
11 the very end and decide which one of the four punishments you
12 would select?

13 PROSPECTIVE JUROR NO. 521: Yes.

14 MR. DiGIACOMO: Any reason whatsoever you couldn't
15 be fair and impartial in this case?

16 PROSPECTIVE JUROR NO. 521: No.

17 MR. DiGIACOMO: The last question is you represent
18 police officers, a whole heck of a lot of them. Would that be
19 fair?

20 PROSPECTIVE JUROR NO. 521: Yes.

21 MR. DiGIACOMO: The other public -- are they all
22 public sector unions that you represent?

23 PROSPECTIVE JUROR NO. 521: Yes.

24 MR. DiGIACOMO: Like -- like who? Like SEIU or --

25 PROSPECTIVE JUROR NO. 521: No, the Las Vegas City

1 Employees Association, which is the civilian's bargaining unit
2 for the City of Las Vegas. And different locals of the
3 International Association of Firefighters.

4 MR. DiGIACOMO: Okay. So you do both police and
5 fire?

6 PROSPECTIVE JUROR NO. 521: Yes.

7 MR. DiGIACOMO: Anything about the nature of your
8 relationship with those police officers, I know they're not
9 Metro, but they're still police officers, that affect your
10 ability to be fair and impartial?

11 PROSPECTIVE JUROR NO. 521: No.

12 MR. DiGIACOMO: Do you think you'd be a fair juror?

13 PROSPECTIVE JUROR NO. 521: Yes.

14 MR. DiGIACOMO: Thank you very much, sir.

15 Judge, we pass for cause.

16 THE COURT: Mr. Oram.

17 MR. ORAM: Thank you, Your Honor.

18 Good afternoon.

19 PROSPECTIVE JUROR NO. 521: Good afternoon.

20 MR. ORAM: Obviously, since you've had the training,
21 you realize constitutional principle which I won't go over.

22 You have no problem with that whatsoever; is that right?

23 PROSPECTIVE JUROR NO. 521: That's right.

24 MR. ORAM: Okay. You know what the concern is going
25 to be from our point of view.

1 PROSPECTIVE JUROR NO. 521: Yeah.

2 MR. ORAM: It's that, you know, you represent police
3 officers.

4 PROSPECTIVE JUROR NO. 521: Right.

5 MR. ORAM: And that -- obviously that's a really
6 good thing, isn't it? I mean, you know, if I took my -- Mr.
7 Sgro over there, his partner represents police officers, okay.
8 And so it just causes some concern that you would then have
9 some type of allegiance to the police. And we're going to
10 hear a lot of police in here, and then that would cause
11 concern that you're sitting there thinking, you know, the
12 police officer is straightforward, this is an easy case. Does
13 that make sense?

14 PROSPECTIVE JUROR NO. 521: It does.

15 MR. ORAM: Could you -- could you -- can you relieve
16 that concern or is that something that if you were standing
17 where I am you think I'm concerned?

18 PROSPECTIVE JUROR NO. 521: I can see how you would
19 be concerned. I don't know how I can allay your concern other
20 than telling you I think I could be fair and notwithstanding
21 my relationship with -- with police officers and police unions
22 tell you I think I can weigh the evidence and render a fair
23 decision.

24 MR. ORAM: Okay. And did you -- do you represent
25 police officers because it was an opportunity that you got and

1 here's a great opportunity and now I'm doing my job as a
2 lawyer, or was it something that you searched out?

3 PROSPECTIVE JUROR NO. 521: I fell into it.

4 MR. ORAM: You fell into it?

5 PROSPECTIVE JUROR NO. 521: Yes.

6 MR. ORAM: Okay. And then it was a great job.

7 PROSPECTIVE JUROR NO. 521: It's a good job.

8 MR. ORAM: And I imagine while representing police
9 officers, some of them have gotten themselves in trouble.

10 PROSPECTIVE JUROR NO. 521: Yes.

11 MR. ORAM: Okay. So if -- some -- did some of the
12 officers get charged that you have represented?

13 PROSPECTIVE JUROR NO. 521: Criminally, yes. And
14 mainly -- I don't handle criminal work administratively
15 discipline.

16 MR. ORAM: So --

17 PROSPECTIVE JUROR NO. 521: So, yes.

18 MR. ORAM: So if they -- if they get charged, then
19 they're sent out to somewhere -- farmed out to somewhere else?

20 PROSPECTIVE JUROR NO. 521: Yes.

21 MR. ORAM: Okay. If I understand you correctly,
22 you're representing the police officer who is in some kind of
23 difficulty; is that right?

24 PROSPECTIVE JUROR NO. 521: Technically I represent
25 the Union, and the police officer is a third-party

1 beneficiary.

2 MR. ORAM: Okay.

3 PROSPECTIVE JUROR NO. 521: But for the lay person,
4 you would say I represent the police officer, I guess.

5 MR. ORAM: Because I – you know, I'm a criminal
6 lawyer. So, you know, what you're describing is a little -- I
7 understand now. So you're not actually going to court for the
8 police officer. You're representing the Union; is that right?

9 PROSPECTIVE JUROR NO. 521: That's right.

10 MR. ORAM: Okay. But you have a lot of interaction
11 with police officers?

12 PROSPECTIVE JUROR NO. 521: Absolutely.

13 MR. ORAM: So you probably see, just like in any
14 profession, some really good police officers, and you've also
15 seen some probably pretty bad ones.

16 PROSPECTIVE JUROR NO. 521: Correct.

17 MR. ORAM: In fact, the bad apples probably come
18 along your line?

19 PROSPECTIVE JUROR NO. 521: That's right.

20 MR. ORAM: So you've seen police officers that have
21 been untruthful?

22 PROSPECTIVE JUROR NO. 521: I have seen police
23 officers being accused of untruthfulness.

24 MR. ORAM: Did you think any of those people were
25 untruthful?

1 PROSPECTIVE JUROR NO. 521: Yes.

2 MR. ORAM: So there were times where you looked at
3 the police officers that you were involved in and thought,
4 boy, this – for one reason or another, I don't think this
5 female or this male is being truthful?

6 PROSPECTIVE JUROR NO. 521: You're killing me, but,
7 yes.

8 MR. ORAM: Am I killing you? I don't mean –
9 because – is it because I'm talking about your clients?

10 PROSPECTIVE JUROR NO. 521: Right. I mean, exactly.

11 MR. ORAM: And I don't mean to put you on the spot.
12 I just want to – you understand why I am asking you these
13 questions?

14 PROSPECTIVE JUROR NO. 521: I do.

15 MR. ORAM: Okay. You know, Mr. Burns over there,
16 you heard the State, they keep getting up and start asking
17 jurors, which is their right, they have a right to a fair
18 trial, talking about executing Mr. Burns over there. I'm
19 sitting right next to him, right. So I'm asking some hard
20 questions.

21 PROSPECTIVE JUROR NO. 521: Understood. Yes. Yes.

22 MR. ORAM: And so it sounds to me like – it isn't a
23 law school exam, right. I mean, what we're doing here is the
24 real thing. But I think as you being an advocate you can see
25 sometimes both sides, is that fair?

1 PROSPECTIVE JUROR NO. 521: That's fair.
2 MR. ORAM: And do you feel that because you
3 represent police officers, I know you're saying there's no
4 inherent bias, that do you feel like you could come back into
5 this court on a murder and say I don't think they proved it?
6 Do you think you could do that?

7 PROSPECTIVE JUROR NO. 521: Yes.

8 MR. ORAM: Do you think that that's going to cause
9 ridicule at your job, like are you kidding me?

10 PROSPECTIVE JUROR NO. 521: It's possible.

11 MR. ORAM: Oh, all right. So it's possible. Is
12 that going to weigh on you?

13 PROSPECTIVE JUROR NO. 521: No.

14 MR. ORAM: No? Why?

15 PROSPECTIVE JUROR NO. 521: Most police officers
16 don't like attorneys anyways, but --

17 MR. ORAM: So you're -- you're in a bad situation.

18 PROSPECTIVE JUROR NO. 521: No, I'm immune to it. I
19 -- if they were, you know, then that's -- they're entitled to
20 their opinion.

21 MR. ORAM: How long have you been practicing in our
22 state?

23 PROSPECTIVE JUROR NO. 521: In Nevada?

24 MR. ORAM: Yeah.

25 PROSPECTIVE JUROR NO. 521: For nine years.

1 MR. ORAM: And California before that?
2 PROSPECTIVE JUROR NO. 521: Right.
3 MR. ORAM: How long?
4 PROSPECTIVE JUROR NO. 521: For eight years before
5 that.
6 MR. ORAM: So you graduated BU in '98?
7 PROSPECTIVE JUROR NO. 521: Correct.
8 MR. ORAM: Okay. And what did you do in California?
9 You may have said it and I missed it.
10 PROSPECTIVE JUROR NO. 521: I practiced any number
11 of different areas of law, but I guess ultimately you could
12 say litigation.
13 MR. ORAM: General – sort of general practice?
14 PROSPECTIVE JUROR NO. 521: I was in different – I
15 was in personal injury at first, then I did business
16 litigation, then I did professional malpractice defense. I've
17 done a lot of different things.
18 MR. ORAM: Never criminal defense, never --
19 PROSPECTIVE JUROR NO. 521: No.
20 MR. ORAM: -- never a District Attorney's office
21 anywhere?
22 PROSPECTIVE JUROR NO. 521: Correct.
23 MR. ORAM: When you were in intern, nothing like
24 that?
25 PROSPECTIVE JUROR NO. 521: I -- actually, when I

1 was in law school I was in the – the Boston University Public
2 Defender's program or something like that.

3 MR. ORAM: Like a legal aid kind of thing?

4 PROSPECTIVE JUROR NO. 521: It was a class and we
5 actually got hands-on experience. You could go in and
6 practice as similar to a public defender as a student.

7 MR. ORAM: Did you actually go to court and defend?

8 PROSPECTIVE JUROR NO. 521: I did.

9 MR. ORAM: Misdemeanors?

10 PROSPECTIVE JUROR NO. 521: Yes.

11 MR. ORAM: Felonies?

12 PROSPECTIVE JUROR NO. 521: I don't believe they
13 would trust us with felonies, so I don't – I don't think so.

14 MR. ORAM: Did you win?

15 PROSPECTIVE JUROR NO. 521: I settled everything.

16 MR. ORAM: You settled?

17 PROSPECTIVE JUROR NO. 521: Yeah.

18 MR. ORAM: Okay. At the end of this case you know I
19 am going to come to you and say they didn't prove it. You
20 know the State is going to disagree with that; right?

21 PROSPECTIVE JUROR NO. 521: Right.

22 MR. ORAM: Do you feel like you have a leaning? Are
23 you basically looking at this saying, what a silly question,
24 you know as a lawyer basically the way I look at this is let's
25 see what the evidence is, let's see what the witnesses say,

1 and then I'll make a decision.

2 PROSPECTIVE JUROR NO. 521: Right.

3 MR. ORAM: If you in those misdemeanor cases thought
4 somebody was probably guilty but beyond a reasonable doubt no,
5 what would your verdict be?

6 PROSPECTIVE JUROR NO. 521: They would have to be
7 not guilty.

8 MR. ORAM: And is that something you think -- is
9 that a hard concept? Like in other words, I think that people
10 -- that's a really difficult thing for people to actually
11 accept. Does that make sense?

12 PROSPECTIVE JUROR NO. 521: Sure.

13 MR. ORAM: If I'm asking a confusing question, I
14 don't want to do that to you. You know what I mean? In other
15 words, okay, there's been a murder, okay.

16 PROSPECTIVE JUROR NO. 521: Okay.

17 MR. ORAM: Let's say eight people were murdered,
18 okay. And in the end you looked at it and thought, yeah, I've
19 got a reasonable doubt, but, boy, you know, like Mr. Sgro
20 said, where there's some there's fire. Do you really think
21 that you could walk into a courtroom and announce a not guilty
22 verdict with that?

23 PROSPECTIVE JUROR NO. 521: Yes.

24 MR. ORAM: It's your training?

25 PROSPECTIVE JUROR NO. 521: What's that?

1 MR. ORAM: It's your training and it's the
2 constitution of the United States of America?

3 PROSPECTIVE JUROR NO. 521: That's true.

4 MR. ORAM: Science, you're going to have to deal
5 with science here.

6 PROSPECTIVE JUROR NO. 521: Okay.

7 MR. ORAM: Okay. And DNA can prove someone guilty,
8 can't it?

9 PROSPECTIVE JUROR NO. 521: Yes.

10 MR. ORAM: But it's not infallible, is it?

11 PROSPECTIVE JUROR NO. 521: No.

12 MR. ORAM: Mistakes happen.

13 PROSPECTIVE JUROR NO. 521: Yes.

14 MR. ORAM: Scientists can make mistakes.

15 PROSPECTIVE JUROR NO. 521: Correct.

16 MR. ORAM: You judge a scientist the same way you'd
17 judge anybody else?

18 PROSPECTIVE JUROR NO. 521: Yes.

19 MR. ORAM: Plea bargaining can cause someone to
20 think I'll say things to get a better deal, does that make
21 sense?

22 PROSPECTIVE JUROR NO. 521: Yep.

23 MR. ORAM: Do you have any problem with that
24 concept?

25 PROSPECTIVE JUROR NO. 521: No.

1 MR. ORAM: I don't know how much you know of a
2 capital case, but the way it works is if you find Mr. Burns
3 not guilty, end of story, right. And I don't -- I feel like
4 asking penalty, every time I do it in front of these panels I
5 always think there must be people who think by the very fact
6 I'm talking about penalty that I must have no confidence in
7 the case. Do you see that?

8 PROSPECTIVE JUROR NO. 521: I understand.

9 MR. ORAM: When you're hearing us talk about
10 penalty, do you feel that way?

11 PROSPECTIVE JUROR NO. 521: No.

12 MR. ORAM: You understand why we're doing it?

13 PROSPECTIVE JUROR NO. 521: Yes.

14 MR. ORAM: Okay. Because if somebody says, you
15 know, I'm -- I'm going to kill that guy, I want to execute no
16 matter what, that's a problem; right? You don't want to ask
17 those questions. If you find Mr. Burns guilty, then we're
18 going to go to a penalty phase, okay. And it's like another
19 little mini trial. We actually -- you'll hear opening
20 arguments, okay. The State gets to present evidence. We can
21 present evidence if we wish. The Judge instructs you on the
22 law in the penalty phase, and then there's opening -- or,
23 excuse me, closing arguments again and you guys all deliberate
24 again, okay. Did you know that?

25 PROSPECTIVE JUROR NO. 521: I didn't.

1 MR. ORAM: Okay. And then in – under Nevada law
2 there is no – there's nothing in Nevada law that says if the
3 State proves X, Y, and Z, you must return a particular
4 penalty. Does that make sense?

5 PROSPECTIVE JUROR NO. 521: Yep.

6 MR. ORAM: Okay. So it's not like the State can
7 say, okay, we proved four murders, therefore, you must kill,
8 it says it right here, okay. That never happens. The jury
9 could hear a mass murder, which is obviously not here, and
10 come back in and say, you know, for whatever reason, we like
11 the defendant's mother, we're not going to kill him, okay.
12 You have no problem with that concept at all?

13 PROSPECTIVE JUROR NO. 521: No problem.

14 MR. ORAM: It makes sense, doesn't it?

15 PROSPECTIVE JUROR NO. 521: Yes.

16 MR. ORAM: It's up to the jury.

17 PROSPECTIVE JUROR NO. 521: Right.

18 MR. ORAM: Okay. Is there anything about mitigation
19 that you would have a hard time hearing? You're going to hear
20 – you'd hear psychologists potentially, you could hear about
21 someone's background, all of that stuff. You could weigh all
22 of that?

23 PROSPECTIVE JUROR NO. 521: Yes.

24 MR. ORAM: And as you sit here, do you feel that you
25 would lean towards one penalty or not if you found somebody

1 guilty of first degree murder?

2 PROSPECTIVE JUROR NO. 521: No, I'd have to know the
3 facts.

4 MR. ORAM: Have you ever heard that term guilt by
5 association?

6 PROSPECTIVE JUROR NO. 521: Yes.

7 MR. ORAM: Back to the penalty for a second. You
8 said some people deserve to die. When -- when you said that,
9 a lot of times that means that somebody believes in the death
10 penalty.

11 PROSPECTIVE JUROR NO. 521: Yes.

12 MR. ORAM: There are probably cases you can think of
13 that you think, yeah, that person should be executed; is that
14 right?

15 PROSPECTIVE JUROR NO. 521: Yes.

16 MR. ORAM: But not all first degree murders. I
17 mean, our legislature said there's four possible punishments
18 for it. You don't have a quarrel with that, do you?

19 PROSPECTIVE JUROR NO. 521: No.

20 MR. ORAM: If you were sitting or had a loved one
21 sitting where Mr. Burns is sitting, would you want someone
22 like you sitting on this jury? I'll ask it again if --

23 PROSPECTIVE JUROR NO. 521: Yeah. The -- the jury
24 is not going to decide a case involving a loved one, so you're
25 saying --

1 MR. ORAM: Yeah.

2 PROSPECTIVE JUROR NO. 521: -- I think -- okay.

3 MR. ORAM: You understand?

4 PROSPECTIVE JUROR NO. 521: So then, yes, sure.

5 MR. ORAM: Why?

6 PROSPECTIVE JUROR NO. 521: I'm fair.

7 MR. ORAM: You can look at that man Mr. Burns and

8 promise him a fair trial?

9 PROSPECTIVE JUROR NO. 521: Yeah.

10 MR. ORAM: Is there anything about the way he looks?

11 I mean, he's an African American, he's got long hair, you

12 know. And obviously is there anything about that that would

13 cause you to think I don't think I could be fair?

14 PROSPECTIVE JUROR NO. 521: No.

15 MR. ORAM: If you're back there and other jurors

16 were saying, hey, he didn't testify, you wouldn't tolerate

17 that, would you?

18 PROSPECTIVE JUROR NO. 521: That is -- glad you

19 touched on that. That's something that I actually do have an

20 issue with is not testifying. I would find it hard to not

21 make a negative assessment if somebody were to not testify. I

22 would question why they're not testifying. And I know what

23 the law says. It's not supposed to make a difference.

24 MR. ORAM: Right.

25 PROSPECTIVE JUROR NO. 521: But I'm just telling

1 you, in my opinion, if I'm accused of something, I'm screaming
2 from the rooftops I didn't do it. And so their silence, it
3 does, in my mind, it's something I would consider.

4 MR. ORAM: Okay. Well, now --

5 PROSPECTIVE JUROR NO. 521: You know, I know -- I
6 think the law says you're absolutely not supposed to consider
7 it, I would still personally consider that.

8 MR. ORAM: And you're a really articulate male,
9 aren't you? Wouldn't you consider yourself -- you're -- we're
10 listening to you.

11 PROSPECTIVE JUROR NO. 521: Okay.

12 MR. ORAM: You're very articulate.

13 PROSPECTIVE JUROR NO. 521: Thank you.

14 MR. ORAM: Okay. No, I mean, if I come at you and
15 argue with you, you're going to be able to, you know, stand up
16 for yourself, aren't you?

17 PROSPECTIVE JUROR NO. 521: Right.

18 MR. ORAM: You're smart, you're intelligent, you're
19 highly educated.

20 PROSPECTIVE JUROR NO. 521: Right.

21 MR. ORAM: Fair to say?

22 PROSPECTIVE JUROR NO. 521: Yes.

23 MR. ORAM: You represent police officers, and you're
24 telling them the way they should be acting or the way their
25 defense should go, is that fair to say?

1 PROSPECTIVE JUROR NO. 521: Yes.

2 MR. ORAM: Because they come to you because you're
3 the expert; right?

4 PROSPECTIVE JUROR NO. 521: Right.

5 MR. ORAM: This young man is 18 years old at the
6 time, right. Okay. And one thing you're going to hear is
7 he's not -- he doesn't have a Juris Doctorate from Boston
8 University.

9 PROSPECTIVE JUROR NO. 521: Right.

10 MR. ORAM: Okay. And our Fifth Amendment to the
11 United States Constitution guarantees what? That you have a
12 right to -- that you do not have to testify.

13 PROSPECTIVE JUROR NO. 521: Right.

14 MR. ORAM: So the framers of our country who are a
15 lot smarter than me came up with that; right?

16 PROSPECTIVE JUROR NO. 521: Maybe.

17 MR. ORAM: Well, they were a lot smarter than me.
18 But it sounds to me as though if Mr. Burns, through the advice
19 of counsel, elects not to testify, in other words we look at
20 the case and say they haven't proved this case, we're not
21 putting -- putting Mr. Burns up there. Let's get up and
22 argue.

23 PROSPECTIVE JUROR NO. 521: Right.

24 MR. ORAM: Okay. They -- you're -- which is
25 legitimate, you're saying, boy, that's going to weigh on me?

1 PROSPECTIVE JUROR NO. 521: Yes.

2 MR. ORAM: Is it to the point where you think I'm
3 not sure I can be fair?

4 PROSPECTIVE JUROR NO. 521: I could be fair. I'm
5 pretty sure I could be fair. I know I could be fair. I'm
6 just telling you that that's something that would be occurring
7 to me.

8 MR. ORAM: Okay. Let me ask you this, okay. You're
9 back there. He hasn't testified.

10 PROSPECTIVE JUROR NO. 521: Right.

11 MR. ORAM: You'll have a reasonable doubt, you and
12 the other 11.

13 PROSPECTIVE JUROR NO. 521: Right.

14 MR. ORAM: Are you -- are you going to stop that
15 process because of it?

16 PROSPECTIVE JUROR NO. 521: No.

17 MR. ORAM: Can you put it aside and just follow the
18 law?

19 PROSPECTIVE JUROR NO. 521: Yeah.

20 MR. ORAM: Okay. So could you just for a second
21 think, that guy Oram, I know he's over there going, no, you're
22 not getting up there. Can you do that?

23 PROSPECTIVE JUROR NO. 521: I can.

24 MR. ORAM: Okay. Because maybe -- although maybe
25 I'm not smarter than him, maybe I'm trying to tell him the way

1 things are. Make sense?

2 PROSPECTIVE JUROR NO. 521: Yes.

3 MR. ORAM: You probably know that's the way it is.

4 PROSPECTIVE JUROR NO. 521: Right.

5 MR. ORAM: Anything we haven't asked you?

6 PROSPECTIVE JUROR NO. 521: No.

7 MR. ORAM: Do you want to be on this jury?

8 PROSPECTIVE JUROR NO. 521: No.

9 THE COURT: Nobody wants to be on the jury.

10 PROSPECTIVE JUROR: I vote no also. It's not my

11 turn.

12 MR. ORAM: Okay. Thank you very much.

13 Pass for cause.

14 THE COURT: Mr. Langford.

15 MR. LANGFORD: Thank you.

16 You know, not to beat a dead horse, but you

17 understand that The Constitution was developed so we could

18 create a fair society, would you agree with that?

19 PROSPECTIVE JUROR NO. 521: Yes.

20 MR. LANGFORD: Okay. And The Constitution is

21 basically rules that we have decided that we're all going to

22 live by in the United States of America, would you agree with

23 that?

24 PROSPECTIVE JUROR NO. 521: Yes.

25 MR. LANGFORD: Okay. If the rule is that you can't

1 hold it against somebody if they don't testify, then if you do
2 hold it against them, would you agree with me that that's not
3 fair?

4 PROSPECTIVE JUROR NO. 521: I would agree with you
5 that you would be breaking the rules.

6 MR. LANGFORD: And if the rule is designed to make
7 the process fair, then what you would be engaging in is an
8 unfair assessment of the case.

9 PROSPECTIVE JUROR NO. 521: Well, it depends on
10 whose opinion of fair you're going with. If we're going with
11 my opinion, then, no, I wouldn't say it's unfair. But I would
12 acknowledge that it would be breaking the rules.

13 MR. LANGFORD: Well, you just -- you start out by
14 saying that you agree that The Constitution of the United
15 States was designed so that we could live in the most fair
16 society that we can think of.

17 PROSPECTIVE JUROR NO. 521: Yeah, I -- that's
18 probably a correct statement.

19 MR. LANGFORD: General welfare, the whole Preamble
20 thing; right?

21 PROSPECTIVE JUROR NO. 521: Right.

22 MR. LANGFORD: And part of that fairness is the
23 process that we develop in our justice system; correct?

24 PROSPECTIVE JUROR NO. 521: Yes.

25 MR. LANGFORD: Okay. And one of those rules is that

1 you cannot hold it against somebody.

2 PROSPECTIVE JUROR NO. 521: Right.

3 MR. LANGFORD: Okay. And if you did hold it against
4 them, you would disagree that that wouldn't be unfair?

5 PROSPECTIVE JUROR NO. 521: I personally think that
6 that law should not exist.

7 MR. LANGFORD: Okay.

8 PROSPECTIVE JUROR NO. 521: But I understand what
9 you're saying that you're supposed to follow the law and
10 that's my job to follow the law. And so if you're asking me
11 will you try to do that, the answer is yes.

12 MR. LANGFORD: Okay. Even though you think – so I
13 guess my question is you think that it's unfair, the Fifth
14 Amendment to The Constitution is unfair?

15 PROSPECTIVE JUROR NO. 521: No, that's not what I'm
16 saying.

17 MR. LANGFORD: Pass for cause, Your Honor.

18 THE COURT: All right. Let's take a break, ladies
19 and gentlemen, for about ten minutes. If you can remember
20 what seat you're in. And we'll have you return. The Court
21 will be at ease while the jury leaves for a few minutes.

22 (Prospective jury panel recessed at 2:31 p.m.)

23 THE COURT: All right. The record will reflect that
24 the prospective jurors left the courtroom. We'll have a ten
25 minute break.

1 MR. SGRO: Your Honor.

2 THE COURT: Yes.

3 MR. SGRO: We'd like to challenge the last juror for
4 cause if you want to talk about that for a second now.

5 MR. DiGIACOMO: Didn't you just pass for cause?

6 MS. WECKERLY: Yeah.

7 MR. ORAM: Yeah, but –

8 MR. SGRO: Well, based on Mr. Langford's colloquy,
9 we don't believe this juror has the capacity to follow the
10 law. He equivocated and, in fact, said the law is – is wrong
11 or I don't remember now the euphemism.

12 MR. ORAM: He says he doesn't agree with it, but he
13 would follow it if he had to.

14 MR. SGRO: Well, he said if you're asking me, you
15 know – I can't remember. Here's what he didn't say. He
16 didn't say he could. He said will you try to follow the law.
17 And that's not the operative mechanism by which jurors are
18 qualified. No one asked him can he follow the law because he
19 can't. He's sitting here arguing.

20 And by the way, Your Honor, this is an attorney so
21 it's more troubling because he has a voice potentially louder
22 than other jurors because they may have a tendency to rely
23 upon him much like they would rely on a nurse if it's a
24 medical malpractice case. He's going to have a voice on what
25 the law is. Potentially we have a man going in who admittedly

1 cannot and does not agree with the law.

2 And we're asking him to play mental gymnastics which
3 he seems like he's got a pretty strong personality, he's
4 extremely articulate, he's been practicing for 16 years, and
5 as an attorney has a pretty significant quarrel with the
6 presumption of innocence and -- and what the impact would be
7 if Mr. Burns did not testify. Clearly it's not fair to us.

8 He clearly falls under the rubric of a challenge for
9 cause at this point given what Mr. Langford -- and I don't
10 mean to step on Mr. Langford's toes, I just wanted to catch
11 you, Your Honor, before we took a break. So I apologize to
12 Mr. Langford, but it was that colloquy that causes us to renew
13 -- or to revisit our position, Your Honor.

14 MR. ORAM: And, Judge, what caused me --

15 MR. DiGIACOMO: He passed for cause, too, Mr.
16 Langford.

17 MR. ORAM: What caused me concern, too, is, you see,
18 I wasn't even questioning him about it. He -- I was almost
19 done and then all of the sudden that came out which sort of
20 surprised me given that it was an attorney that he would have
21 such a strong view on the Fifth Amendment. He didn't even
22 know what the Fifth was.

23 MR. DiGIACOMO: Judge, I would tell you that I would
24 imagine that the very articulate Jeffrey Allen, the questions
25 being asked by Mr. Langford in his Socratic method like we're

1 back in law school and the answers being given were completely
2 appropriate. It's exactly what you want a juror to do. Even
3 if you -- you ask them, even if you don't agree with the law,
4 can you follow the instructions of the Court? And he kept
5 answering that, yes, I'm telling you I don't necessarily agree
6 with it, but I can follow the instructions of the Court.
7 That --

8 THE COURT: That --

9 MR. DiGIACOMO: -- qualifies him --

10 THE COURT: That was what --

11 MR. DiGIACOMO: -- as a juror.

12 THE COURT: -- I gathered from his last testimony.

13 I'm going to deny your challenge. We're going to take a break
14 for ten minutes.

15 (Court recessed at 2:34 p.m. until 2:50 p.m.)

16 (In the presence of the prospective jury panel.)

17 THE COURT: All right. Back on the record. Burns
18 and Mason. The record will reflect the presence of the
19 defendants, counsel, the deputy district attorneys and the
20 prospective jurors in the box.

21 Is it Mrs. Leasure?

22 PROSPECTIVE JUROR NO. 559: Yes.

23 THE COURT: Okay. Speak into the microphone there,
24 please. Do you know any of the witnesses or attorneys
25 involved in the case?

1 PROSPECTIVE JUROR NO. 559: No.
2 THE COURT: You are a registered nurse?
3 PROSPECTIVE JUROR NO. 559: Yes.
4 THE COURT: And it says you're with Healthcare
5 Partners?
6 PROSPECTIVE JUROR NO. 559: Correct.
7 THE COURT: What's Healthcare Partners?
8 PROSPECTIVE JUROR NO. 559: We are actually Davita
9 Healthcare Partners. I do care management. We're the third
10 party payer for Humana Gold patients and United Medicare
11 Complete.
12 THE COURT: And what kind of patients do you get?
13 PROSPECTIVE JUROR NO. 559: The senior, the Medicare
14 patients, patients who have Medicare.
15 THE COURT: Senior Medicare patients?
16 PROSPECTIVE JUROR NO. 559: Uh-huh, Medicare
17 Advantage program.
18 THE COURT: Any Medicare patient can come to you,
19 or --
20 PROSPECTIVE JUROR NO. 559: Well, they have to sign
21 up either with Humana or United Medicare Complete, and then we
22 -- I manage a group of patients.
23 THE COURT: Okay. Well, Medicare, I thought you
24 could go to any doctor?
25 PROSPECTIVE JUROR NO. 559: You can but you can buy

1 the advantage plan. It puts you into, like, HMO, and then
2 that way things are cheaper for you, but you have to do HMO.
3 You know, you have to go to a certain network. You need
4 referrals.

5 THE COURT: Is there an advantage to signing up with
6 Medicare -- what do you call it, Advantage?

7 PROSPECTIVE JUROR NO. 559: There are some. Some
8 programs have no co-pays for specialty doctors. Medications
9 are a little bit cheaper. There are some.

10 THE COURT: I'll have to talk to you about that.
11 Maybe I signed up at the wrong thing. Okay.

12 How long have you been doing that?

13 PROSPECTIVE JUROR NO. 559: Just over three years.

14 THE COURT: And do you have a particular place that
15 you work out of?

16 PROSPECTIVE JUROR NO. 559: I work off of Warm
17 Springs, by the airport.

18 THE COURT: And before that, what did you do?

19 PROSPECTIVE JUROR NO. 559: I was a hospice nurse for
20 Solari.

21 THE COURT: And your husband?

22 PROSPECTIVE JUROR NO. 559: He works for Credit One
23 Bank. He's a web designer.

24 THE COURT: He's in computers then?

25 PROSPECTIVE JUROR NO. 559: Yes.

1 THE COURT: You said in your questionnaire here that
2 you had a car that was broken into a few times; is that right?

3 PROSPECTIVE JUROR NO. 559: Yes.

4 THE COURT: What happened?

5 PROSPECTIVE JUROR NO. 559: I think it was just kids
6 in the neighborhood, stole some CDs. It was a while ago when
7 I first moved out here.

8 THE COURT: Did you report it to the police?

9 PROSPECTIVE JUROR NO. 559: No.

10 THE COURT: And you had a sister-in-law that was
11 assaulted?

12 PROSPECTIVE JUROR NO. 559: Yes.

13 THE COURT: When did that happen?

14 PROSPECTIVE JUROR NO. 559: Maybe eight years ago, in
15 Michigan.

16 THE COURT: Oh, in Michigan?

17 PROSPECTIVE JUROR NO. 559: Yes.

18 THE COURT: It has nothing to do with Las Vegas then?

19 PROSPECTIVE JUROR NO. 559: No.

20 THE COURT: Do you know very much about any case
21 involving that?

22 PROSPECTIVE JUROR NO. 559: In her case, I know the
23 guy did go to jail. He was convicted and went to jail and was
24 just recently released.

25 THE COURT: Do you think those experiences might have

1 a tendency to make you favor one side or the other in this
2 case?

3 PROSPECTIVE JUROR NO. 559: No.

4 THE COURT: You understand that under our system of
5 criminal justice you and I -- and I've mentioned this before
6 -- we're kind of like a team. You're the judge of the facts,
7 and I'm the judge of the law, and I'm going to tell the jurors
8 after the evidence what the law is, and you decide what the
9 facts are and apply those to the law to reach a fair verdict.

10 Do you think you can do that?

11 PROSPECTIVE JUROR NO. 559: Yes.

12 THE COURT: Do you understand that the defendants are
13 presumed to be innocent? That means they're presumed to be
14 not guilty. It's up to the State to prove that they are
15 guilty by evidence beyond a reasonable doubt, and if the State
16 fails to meet that burden, they're entitled to verdicts of not
17 guilty. Any quarrel with that?

18 PROSPECTIVE JUROR NO. 559: No.

19 THE COURT: If you were one side or the other in a
20 case like this, would you want 12 jurors sitting in judgment
21 of your case?

22 PROSPECTIVE JUROR NO. 559: Yes.

23 THE COURT: Do you have an open mind?

24 PROSPECTIVE JUROR NO. 559: I do.

25 THE COURT: Willing to listen to the evidence and be

1 fair to both sides?

2 PROSPECTIVE JUROR NO. 559: Yes.

3 THE COURT: Mr. DiGiacomo.

4 MR. DIGIACOMO: Thank you. Ma'am, you indicated your
5 father was a police officer back in Texas?

6 PROSPECTIVE JUROR NO. 559: Correct.

7 MR. DIGIACOMO: Kind of the same questions I'm going
8 to ask as it related to a prior juror. Do you think that
9 there are good cops in this world, and there's bad cops in
10 this world?

11 PROSPECTIVE JUROR NO. 559: Yes.

12 MR. DIGIACOMO: And really the fact that your father
13 used to be a police officer, that's nothing that's going to
14 affect your ability to be fair and impartial in this case?

15 PROSPECTIVE JUROR NO. 559: No. I was really young
16 when he was an officer. So I didn't know too much about it.

17 MR. DIGIACOMO: Let me jump to the penalty questions.
18 Maybe I could just ask you a broad question. At this point,
19 you've been in here about six hours I'm guessing, maybe five.
20 We've asked a whole heck of a lot of questions of a lot of
21 jurors. Anything you've heard that you said to yourself,
22 wait, I think maybe the lawyers need to know something about
23 me?

24 PROSPECTIVE JUROR NO. 559: I think I can – the
25 easier part for me is going to be guilty or not guilty. The

1 hard part is going to be the sentencing because of how I feel
2 about each level of it.

3 MR. DIGIACOMO: Well, let me back up just a second,
4 and let me tell you I would probably tell you that almost
5 every juror is going to find that deciding what happened and
6 applying it to the law and deciding whether or not we met our
7 burden is kind of a mathematical equation that ultimately
8 there's a right and a wrong answer to, right?

9 PROSPECTIVE JUROR NO. 559: Right.

10 MR. DIGIACOMO: You know, did something happen? Did
11 it not happen? Did this person do it? Did he not do it?
12 That has a tendency to be easier than the second part which is
13 deciding what should happen, and there's a lot less rules that
14 apply to it. Let me ask it this way. Do you think that you
15 could be open to all four punishments?

16 PROSPECTIVE JUROR NO. 559: Yes.

17 MR. DIGIACOMO: And do you think that at the end of
18 the day they're -- let's say Ms. Weckerly and I not only --
19 obviously you had to have found him guilty at this point, but
20 not only that but we establish that the appropriate penalty
21 for Mr. Burns is the ultimate punishment. Do you envision
22 yourself as capable of voting for that punishment?

23 PROSPECTIVE JUROR NO. 559: I do, but I also feel
24 that it would be hard to deal with.

25 MR. DIGIACOMO: Okay. And I don't want to put words

1 in your mouth. So maybe you can expand on that.

2 PROSPECTIVE JUROR NO. 559: I believe in the death
3 penalty, but it's hard for me to justify – like, who am I to
4 say this person should die? I don't know. It's hard to
5 explain, but – but I do understand that in some cases people
6 should have the death penalty, but I just don't know if I'm
7 confident in myself and how I would feel if I had to give that
8 decision.

9 MR. DIGIACOMO: Well, let me back up, and this is --
10 we are on day three, and I don't think anyone has brought this
11 up in this group yet, but this is not an unusual feeling. So
12 let me back up a little bit. Would you agree with my
13 statement -- just so I can see if I'm clear -- that in a
14 general concept you believe that the death penalty serves a
15 purpose? Would you agree with that statement?

16 PROSPECTIVE JUROR NO. 559: Yes.

17 MR. DIGIACOMO: And that if you were the person
18 deciding what punishments there should be, that it would be
19 one of the available punishments that could be given by the
20 jury?

21 PROSPECTIVE JUROR NO. 559: Correct.

22 MR. DIGIACOMO: And I'm assuming the rest of the
23 punishments as well is something that in concept at least you
24 can agree with?

25 PROSPECTIVE JUROR NO. 559: Correct.

1 MR. DIGIACOMO: Now, there are some people who will
2 make that statement but then also say, but looking inside of
3 myself, I lack the capacity to ever vote for one of the four
4 ones, and it's either usually life with parole or the death
5 penalty. Most people, the life without the possibility of
6 parole doesn't present as much of a moral dilemma. So let me
7 -- you're the one who can tell us. I mean, if you're sitting
8 here -- let me back up. Maybe I left this part out. I
9 imagine -- had you thought of the death penalty before you
10 came down here and filled this out?

11 PROSPECTIVE JUROR NO. 559: You know, you hear about
12 it in different cases on TV, this and that, but I've never
13 considered it myself, you know, but after filling this out
14 I've definitely given it thought.

15 MR. DIGIACOMO: And then now that you've been sitting
16 in here, I mean, you've got to recognize that David Burns is a
17 living, breathing human being; would that be fair?

18 PROSPECTIVE JUROR NO. 559: Correct.

19 MR. DIGIACOMO: And, you know, not to discount
20 anything that may happen to Mr. Mason -- because none of
21 that's going to be good for him if he gets convicted -- he as
22 well is a living, breathing human being, correct?

23 PROSPECTIVE JUROR NO. 559: Correct.

24 MR. DIGIACOMO: And you're going to spend the next
25 four weeks or so in a courtroom with him, and at the end of

1 the day, if you ultimately believe that the punishment that
2 fits the crime is the death penalty, you not only would have
3 to vote for it, but you've got to come back here in court, and
4 you have to tell the world in front of Mr. Burns that that's
5 the appropriate punishment for him?

6 PROSPECTIVE JUROR NO. 559: Correct.

7 MR. DIGIACOMO: There's some people that when they
8 get into this position it becomes a much more real situation
9 than what's on a piece of paper. Would you agree with that?

10 PROSPECTIVE JUROR NO. 559: I agree.

11 MR. DIGIACOMO: Is that kind of the situation you're
12 in right now?

13 PROSPECTIVE JUROR NO. 559: Yes.

14 MR. DIGIACOMO: Well, I guess the question is –
15 because it's the only chance to talk to you – is: In your
16 mind, can you conceive of yourself voting for the death
17 penalty?

18 PROSPECTIVE JUROR NO. 559: I could. It won't be
19 easy. You have to have a very strong case, but I could.

20 MR. DIGIACOMO: I mean, I could imagine. The death
21 penalty is a really bad punishment, but, I mean, there are a
22 lot of people here who checked off that life without is even
23 worse, right?

24 PROSPECTIVE JUROR NO. 559: Yeah.

25 MR. DIGIACOMO: And the consequences for Mr. Mason

1 and Mr. Burns from a guilty verdict are going to be severe no
2 matter what your penalty verdict is; would you agree with
3 that?

4 PROSPECTIVE JUROR NO. 559: Yes.

5 MR. DIGIACOMO: And so I would imagine that, you
6 know, the first part, when you decide that he's guilty, that's
7 a very high burden for you, beyond a reasonable doubt; would
8 that be fair?

9 PROSPECTIVE JUROR NO. 559: Yes.

10 MR. DIGIACOMO: You'd have to be very comfortable
11 with your decision before you ever made it to penalty; would
12 that be fair?

13 PROSPECTIVE JUROR NO. 559: Correct.

14 MR. DIGIACOMO: Do you believe that Ms. Weckerly and
15 I should have any concerns that in your mind you would say, I
16 believe he deserves the death penalty, but I'm just not
17 willing to vote for it, that I just can't personally do it?

18 PROSPECTIVE JUROR NO. 559: No.

19 MR. DIGIACOMO: Do we have your – I haven't used
20 this term, but I've heard Mr. Oram say, Can you promise this?
21 Can you promise Ms. Weckerly and I a fair trial, that if we
22 establish not only the crimes that were committed but
23 establish that Mr. Burns deserves that ultimate punishment
24 that you'd be willing to vote for it and set aside any
25 concerns about what it's going to feel like the next morning?

1 PROSPECTIVE JUROR NO. 559: I do. I can.
2 MR. DIGIACOMO: Do you think you'd be a fair juror?
3 PROSPECTIVE JUROR NO. 559: I do.
4 MR. DIGIACOMO: Do you think you are basically a fair
5 person?
6 PROSPECTIVE JUROR NO. 559: I do.
7 MR. DIGIACOMO: And you're willing to sit back,
8 listen, wait to the end and weigh the evidence and make a
9 determination?
10 PROSPECTIVE JUROR NO. 559: Yes.
11 MR. DIGIACOMO: If you were sitting either where we
12 were sitting or where these two individuals are sitting, would
13 you want 12 like-minded people like yourself sitting on a jury
14 deciding, first, not only whether or not they committed the
15 crime but also what the punishment should be?
16 PROSPECTIVE JUROR NO. 559: I would.
17 MR. DIGIACOMO: Thank you very much, ma'am.
18 PROSPECTIVE JUROR NO. 559: Thank you.
19 MR. DIGIACOMO: Judge, we pass for cause.
20 THE COURT: Mr. Sgro.
21 MR. SGRO: Good afternoon.
22 PROSPECTIVE JUROR NO. 559: Good afternoon.
23 MR. SGRO: So it's funny, you know, once people get
24 confronted with a questionnaire like this, and the time that
25 passes and more reflection is had, you know, people change.

1 You've seen that today with other jurors as well. Because,
2 honestly, when I was looking at the questionnaire, I thought
3 we were going to have a much different conversation.

4 Do you remember what you wrote down when you filled
5 the questionnaire out? And I know it's been several weeks,
6 but the gist of it was if someone takes a life and they're
7 convicted of that they should forfeit theirs, and those are my
8 words, not yours, but that was the gist of it. Does that
9 sound familiar?

10 PROSPECTIVE JUROR NO. 559: Yeah, when -- at the
11 time, yes.

12 MR. SGRO: At the time. So since the time you wrote
13 this you've had a chance to think about it, and now you're at
14 a different state of mind; would that be fair?

15 PROSPECTIVE JUROR NO. 559: That's fair to say, yes.

16 MR. SGRO: Okay. So having now been faced with the
17 reality of a penalty hearing that may come down the road, is
18 -- is the opportunity for someone convicted of first-degree
19 murder, is the opportunity available for that person to get
20 back on the streets someday, in your opinion?

21 PROSPECTIVE JUROR NO. 559: Again, it would be very
22 hard, but it is an option if the case was there. I know
23 people change, but it would be hard for me though. I will say
24 that.

25 MR. SGRO: Okay. So Mr. DiGiacomo used the phrase,

1 you know, If the facts justify it, and I think it's important
2 we clarify. You understand we only talk about the penalty
3 hearing in the context of a first-degree murder conviction,
4 right?

5 PROSPECTIVE JUROR NO. 559: Correct.

6 MR. SGRO: And so I don't want there to be confusion
7 that quote, unquote, if the facts justify it; that's got
8 nothing to do with, well, if you prove to me he's guilty of
9 murder, well, then, yeah, I mean, it's the death penalty,
10 right? You get it –

11 PROSPECTIVE JUROR NO. 559: Right.

12 MR. SGRO: – it's two different stages?

13 PROSPECTIVE JUROR NO. 559: Correct.

14 MR. SGRO: Okay. So you have heard us speak of and
15 you have read the factual scenario that exists in this case.
16 Mr. Burns is accused of shooting and killing somebody, right?

17 PROSPECTIVE JUROR NO. 559: Correct.

18 MR. SGRO: And he's accused of shooting a 12-year-old
19 girl in the stomach, right?

20 PROSPECTIVE JUROR NO. 559: Correct.

21 MR. SGRO: So now the question is to put yourself
22 mentally in a place where you have convicted someone of
23 first-degree murder, right? And as Mr. DiGiacomo says, Only
24 you know. Is the option there to put someone convicted of
25 first-degree murder, it that option there that they come back

1 into society, to have that opportunity?

2 PROSPECTIVE JUROR NO. 559: If I go with my gut
3 instinct, I would say no.

4 MR. SGRO: Okay. And that's consistent with what you
5 put on the questionnaire, right?

6 PROSPECTIVE JUROR NO. 559: I believe so.

7 MR. SGRO: Okay. So I guess -- you have heard many
8 people. Some have said parole is out. Some have said
9 struggle with the death penalty, that sort of thing. I am
10 gleaned from your answers that if you convicted someone of
11 first-degree murder -- in other words, this isn't
12 self-defense. This isn't some crazy accident -- first-degree
13 murder, and really for you, if I understand correctly, you're
14 coming down life without parole, or if it was extreme enough,
15 potentially the death penalty; would that be fair?

16 PROSPECTIVE JUROR NO. 559: That would be fair, yeah.

17 MR. SGRO: Okay. And really, in your heart of
18 hearts, there is no room for someone convicted of first-degree
19 murder to ever come back into society -- to be given the
20 opportunity to come back into society; would that be fair?

21 PROSPECTIVE JUROR NO. 559: Yeah. Yeah. I mean,
22 like I said, I know people do change, but it's -- you know,
23 taking someone else's life is in my mind not right.

24 MR. SGRO: I think in --

25 PROSPECTIVE JUROR NO. 559: Not right at all.

1 MR. SGRO: -- in everyone's minds, and I get it.
2 You've heard me talk about potentially just because you're not
3 the right juror in this case doesn't mean you can't be a juror
4 in another case, right? You'd be fine in a breach of
5 contract, a car accident, right? There's different kinds of
6 cases.

7 Our job here, our responsibility to the State, our
8 responsibility to Mr. Burns is to make sure you're okay in
9 this case, and it sounds to me like you're saying you're
10 probably not the right juror for this case because of your
11 inability to consider the punishments that would provide an
12 opportunity for Mr. Burns to get back on the street, fair?

13 PROSPECTIVE JUROR NO. 559: Fair.

14 MR. SGRO: Okay. I challenge for cause, Your Honor.

15 THE COURT: Traverse?

16 MR. DIGIACOMO: Just very briefly. Ma'am, I just
17 want to make sure -- I don't want to quarrel with you.
18 Because if that's your opinion, that's your opinion. Earlier
19 Mr. Oram said something like, you know, They're going to say
20 Mr. Burns is the shooter. So I'm assuming that in the
21 question and answer that you're having with Mr. Sgro here,
22 you're assuming that the person who is convicted of
23 first-degree murder is the person who physically killed
24 another human being; would that be fair?

25 PROSPECTIVE JUROR NO. 559: Say it one more time.

1 MR. DIGIACOMO: In the question and answer that
2 you're having with Mr. Sgro you're making an assumption in
3 your mind that he's talking about somebody who physically
4 killed the other person, took out the gun to shoot the pooch,
5 right?

6 PROSPECTIVE JUROR NO. 559: Correct.

7 MR. DIGIACOMO: Okay. You recognize obviously Mr.
8 Mason is sitting here, and he's charged with first-degree
9 murder as well -- well, he's charged with murder, and it could
10 be first-degree murder. Would that be fair?

11 PROSPECTIVE JUROR NO. 559: Yes.

12 MR. DIGIACOMO: The law provides that you may be
13 responsible for murder even though you're not the person who
14 pulled the trigger, okay?

15 PROSPECTIVE JUROR NO. 559: Okay.

16 MR. DIGIACOMO: The law provides that -- and I'm not
17 going to tell you what the definition of first-degree murder
18 is, but there is a lot of different ways in which someone may
19 ultimately be liable for first-degree murder, okay?

20 PROSPECTIVE JUROR NO. 559: Okay.

21 MR. DIGIACOMO: Do you think in a situation where
22 someone may not be the actual triggerman that that person may
23 be somebody that you might be willing to consider giving the
24 possibility of parole?

25 MR. SGRO: Objection, Your Honor. That's not

1 appropriate under NRS 7.1. He's asking for a specific
2 hypothetical for a – I don't think that question is
3 appropriate the way it's phrased, Your Honor.

4 MR. DIGIACOMO: You've been asking about the shooter
5 all week for a matter of fact.

6 THE COURT: I don't think that that's inappropriate.

7 MR. DIGIACOMO: I don't think it's an inappropriate
8 question.

9 THE COURT: The objection is overruled.

10 MR. DIGIACOMO: Would you consider the possibility of
11 parole for somebody who may not be the shooter?

12 PROSPECTIVE JUROR NO. 559: Yes.

13 MR. DIGIACOMO: So there may be a number of factors,
14 I guess, a number of facts that you'd want to know before you
15 made the decision as to which one of the four punishments;
16 would that be fair?

17 PROSPECTIVE JUROR NO. 559: Yes.

18 MR. DIGIACOMO: You know very little about this case
19 other than the brief statement that I've made and that was in
20 that questionnaire; is that fair?

21 PROSPECTIVE JUROR NO. 559: Correct. Uh-huh.

22 MR. DIGIACOMO: All right. Would you be open to
23 listening to all the facts before you made any sort of
24 decisions about what should be the proper punishment for the
25 crimes that were committed?

1 PROSPECTIVE JUROR NO. 559: Of course.

2 MR. DIGIACOMO: Do you think you could be fair?

3 PROSPECTIVE JUROR NO. 559: I do.

4 MR. SGRO: Your Honor, may we approach briefly?

5 THE COURT: Certainly.

6 (Bench conference.)

7 MR. SGRO: Your Honor, I'm going to ask the Court to

8 instruct on the felony murder because what they are doing now

9 is inappropriate. They are --

10 THE COURT: (Inaudible) -- give them an example of a

11 felony murder. It has nothing to do with this case. How's

12 that?

13 MR. DIGIACOMO: Well, that's not true. That's a

14 felony murder rule against both of them, and it's alleged in

15 both, in the indictment and in --

16 THE COURT: It is alleged in both?

17 MR. DIGIACOMO: Oh, absolutely it is.

18 MR. SGRO: Yes, and that's the problem. Because

19 their theory is that David Burns is the shooter.

20 MR. DIGIACOMO: That's not a problem. He's alleged

21 in multiple different theories of liability. Am I going to

22 suggest to you that I'm going to argue to the jury he's not to

23 shooter? No. But that's not the question with this jury.

24 The jury -- the question for the jury is in a hypothetical

25 situation. The jury may not believe he's the shooter --

1 THE COURT: Yes, they may determine that he's not the
2 shooter.

3 MR. DIGIACOMO: Shooter and still convict him.

4 MR. SGRO: But that's not the State's theory. What
5 they're doing --

6 MR. DIGIACOMO: So what?

7 MR. SGRO: Well, here's the so what. The ethical
8 guidelines for the prosecution --

9 THE COURT: I think her answers were inconsistent.
10 At one point, she would consider all forms of punishment, and
11 then she decided that maybe she didn't like somebody ever
12 getting released. I'm going to find out which it is. I'll
13 ask some questions.

14 MS. WECKERLY: That was the same as Mr. Ramos.

15 MR. DIGIACOMO: Right. I mean, she's got the same
16 answers as Mr. Ramos, and we had to keep him, the crazy guy in
17 the back row yesterday.

18 THE COURT: I remember Mr. Ramos.

19 MR. DIGIACOMO: So, yes. I mean, this is --

20 MR. SGRO: She has -- she has suggested that she
21 thought about convicting someone of first-degree murder, and
22 we can't -- we can't disregard. It's the same as saying,
23 well, you know, there's a 12-year-old little girl. The jurors
24 have been told that a woman was shot. The jurors have been
25 told a 12 year old has been shot.

1 THE COURT: It may be that some people think that if
2 you shoot and kill somebody and then you also shoot a
3 12-year-old girl that you shouldn't get parole. People can
4 think that.

5 MR. SGRO: Right.

6 MR. DIGIACOMO: And they're still a good juror.

7 THE COURT: And they can still be a juror.

8 MR. SGRO: But what the State is doing is they're
9 suggesting to the jury that they can consider parole if Mr.
10 Burns is not the shooter, and they're never going to argue
11 anything other than Mr. Burns is the shooter, and we're
12 letting them get away with the fiction.

13 THE COURT: I don't think that that's the case. Let
14 me talk to her.

15 MR. SGRO: Okay.

16 (Bench conference ends.)

17 THE COURT: Mrs. Leasure, I think there's been some
18 confusion about what you originally said and then you said
19 later.

20 PROSPECTIVE JUROR NO. 559: Okay.

21 THE COURT: There may be some inconsistent statements
22 in this.

23 PROSPECTIVE JUROR NO. 559: Okay.

24 THE COURT: If we have a second phase where the jury
25 is to determine punishment of either one or both of the

1 defendants, the State, first of all, has not sought the death
2 penalty as to Defendant Mason but has sought the death penalty
3 as to Defendant Burns. There are four possible punishments
4 for Defendant Burns, three possible punishments for Defendant
5 Mason.

6 The four possible punishments are death, life
7 imprisonment without the possibility of parole, a life
8 imprisonment with the possibility of parole and a term of
9 years, many years. If the jury – if the jury finds Mr. Burns
10 guilty of murder, whether he is the shooter or whether he is
11 guilty of murder for some other reason – we call it felony
12 murder. In other words, he participated in a felony that
13 caused a murder, that resulted in a murder – you have to
14 consider all forms of punishment. Death is one of them. Life
15 without the possibility is one. Life with the possibility of
16 parole is one, and the term of years is one.

17 Your indication was to me originally that you would
18 consider all forms of punishment. Is that true?

19 PROSPECTIVE JUROR NO. 559: I could consider it, but
20 again it would – well, I guess not then. I guess not for
21 the –

22 THE COURT: In other words, you wouldn't follow my
23 instructions?

24 PROSPECTIVE JUROR NO. 559: I – no.

25 THE COURT: If you won't follow the instructions, I

1 need to know. Will you consider it or not? If you will
2 follow the instructions -- you know, there's lots of people
3 who are sentenced to prison for many years, and they change.
4 They are rehabilitated in some respect, or their full outlook
5 on life changes, and after that they convince a parole board
6 that they are entitled to be released back to society.

7 I have had over a number -- I've had a number of
8 defendants in my own career that I have sentenced to prison
9 for life with the possibility of parole that have been
10 released, and there are some that have been sentenced to life
11 without the possibility of parole that have been released.

12 That's no longer the case after 1995, but there have been
13 some.

14 Are you telling me that if you find that defendant
15 guilty of murder, whichever defendant it is, you will not
16 consider life with the possibility of parole if you find that?
17 If you tell me that, I'll excuse you.

18 PROSPECTIVE JUROR NO. 559: If either one?

19 THE COURT: Either one or both.

20 PROSPECTIVE JUROR NO. 559: Can you explain it one
21 more time. It's just -- it's getting jumbled in my head.
22 It's just --

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 559: I'm sorry.

25 THE COURT: It's confusing sometimes.

1 PROSPECTIVE JUROR NO. 559: It is.

2 THE COURT: If a person is convicted of murder in the
3 state of Nevada, the law says that if there are certain
4 aggravating factors the district attorney can charge that
5 defendant with murder and seek the death penalty. If the
6 district attorney does that and the case goes to a jury, the
7 jury first in the first phase determines whether the defendant
8 is guilty of murder.

9 If the jury determines that the defendant is guilty
10 of murder, the law then says that that same jury is to decide
11 what punishment should be imposed. The law says that the jury
12 must consider four different forms of punishment, and there
13 are some rules as to how you consider those, but if a jury
14 says, no, I'm not going to follow the law, I won't consider
15 those certain forms of punishment, we can't use them as
16 jurors.

17 The four possible punishments are death penalty, life
18 without the possibility of parole, life with the possibility
19 of parole and a term of years. The question – my question
20 is: Can you consider all four?

21 PROSPECTIVE JUROR NO. 559: I guess, no, then.

22 THE COURT: I'll grant the case challenge for cause.
23 Thank you very much for being here. If you'd hand the
24 microphone over to Mr. – Is it Flores?

25 PROSPECTIVE JUROR NO. 563: That's correct, Your

1 Honor.

2 THE COURT: Okay. You'll be excused.

3 PROSPECTIVE JUROR NO. 559: I'm excused?

4 MR. SGRO: I apologize, Your Honor. We had one quick
5 question before we begin with this particular juror. May we
6 approach briefly?

7 THE COURT: This juror is excused.

8 MR. SGRO: I'm sorry?

9 MR. DIGIACOMO: No. No. Before we --

10 MR. SGRO: Before we begin the next one.

11 MR. DIGIACOMO: Mr. Flores. Before we begin Mr.
12 Flores, may we approach for a second?

13 THE COURT: Yes, certainly.

14 (Bench conference.)

15 MR. SGRO: Your Honor, just to make it perfectly
16 clear for the record and for this panel, can we have --
17 there's a standard jury instruction that says that life
18 without parole means what it is, and --

19 THE COURT: Well, after 1995 that's true, but before
20 that it was -- it didn't.

21 MR. SGRO: We all know that.

22 MS. WECKERLY: He said it.

23 MR. SGRO: I would like some emphasis put on the fact
24 because one of the -- one of the areas of voir dire -- and we
25 haven't had it yet, but it's not unusual for jurors to say,

1 well, I could do life without because life without doesn't
2 mean life without, words to that effect.

3 THE COURT: Okay.

4 MR. SGRO: I would like the Court to --

5 THE COURT: If we ever get to a penalty, I'll give
6 them the instruction that says that.

7 MR. SGRO: I would like this panel to know that. It
8 hasn't come up. In days of voir dire it hasn't come up.
9 Because that mention was made I would ask on behalf of Mr.
10 Burns that life without be given to the jurors by way of an
11 instruction, and it really means post-1995 life without.

12 THE COURT: We'll do that when we get to penalty.
13 Let's do it when we get to penalty.

14 (Bench conference ends.)

15 THE COURT: All right. Mr. Flores, do you know any
16 of the attorneys or witnesses involved in the case?

17 PROSPECTIVE JUROR NO. 563: Yes.

18 THE COURT: Who is it you know?

19 PROSPECTIVE JUROR NO. 563: I know the corrections
20 officer.

21 THE COURT: You're going to have to speak up.

22 PROSPECTIVE JUROR NO. 563: I'm sorry. I know one of
23 the corrections officers.

24 THE COURT: Who's that?

25 PROSPECTIVE JUROR NO. 563: Batu. That was listed,

1 and then I also -- I don't know what records you have at Texas
2 or whatever -- Texas Station, but I worked there before. So I
3 don't know if that has anything to do with it.

4 THE COURT: How is it you know this gentleman?

5 PROSPECTIVE JUROR NO. 563: Mr. Batu?

6 THE COURT: Yes.

7 PROSPECTIVE JUROR NO. 563: I know him from when he
8 used to work there. I also know him because we're --

9 THE COURT: Where did you used to work?

10 PROSPECTIVE JUROR NO. 563: I used to work at Texas
11 Station, the casino.

12 THE COURT: Okay. Do you think that that friendship
13 would have a tendency to make you favor one side or the other
14 in this case?

15 PROSPECTIVE JUROR NO. 563: It could, yeah. I mean,
16 I know him pretty good. So if he comes up, when he's a
17 witness --

18 THE COURT: Is he going to testify?

19 MR. DIGIACOMO: He is.

20 PROSPECTIVE JUROR NO. 563: Yeah, I would probably
21 say yes. I have known him for a while.

22 THE COURT: Because I don't know what the testimony
23 is about. You're a claims adjuster now, right?

24 PROSPECTIVE JUROR NO. 563: That's correct.

25 THE COURT: What kind of claims?

1 PROSPECTIVE JUROR NO. 563: I do worker's
2 compensation.

3 THE COURT: Workman's comp?

4 PROSPECTIVE JUROR NO. 563: Correct.

5 THE COURT: Do you want to ask questions, Mr.
6 DiGiacomo? Because I don't know what testimony he's going to
7 have. So you're going to have to find out.

8 MR. DIGIACOMO: Let me ask you, if Officer Batu took
9 the stand, do you think based upon your relationship that they
10 have any chance of harming his credibility?

11 PROSPECTIVE JUROR NO. 563: I would say, no. I mean,
12 I know him pretty well. We hang out outside of work or
13 whatever. We're in a fantasy football league. So I talk to
14 him pretty much --

15 MR. DIGIACOMO: You have a pretty good relationship
16 with him?

17 PROSPECTIVE JUROR NO. 563: Correct.

18 MR. DIGIACOMO: If he gets to the stand, I'm assuming
19 he comes in with a -- he's telling the truth?

20 PROSPECTIVE JUROR NO. 563: He's pretty high
21 credibility, yes. Correct. I -- yeah.

22 MR. DIGIACOMO: We'd be willing to submit it.

23 THE COURT: Do you want to make a challenge for
24 cause?

25 MR. LANGFORD: Yes, Mr. Mason does, Your Honor.

1 MR. DIGIACOMO: We'll submit it.

2 MR. ORAM: Submit it.

3 THE COURT: All right. I'll excuse Mr. Flores for
4 cause.

5 Thank you for appearing today.

6 PROSPECTIVE JUROR NO. 563: Thank you, sir, very
7 much.

8 THE COURT: All right. Ladies and gentlemen, that
9 concludes the examination of prospective jurors today. We
10 actually started Monday of this week, and we are going to
11 continue tomorrow. Hopefully by tomorrow afternoon we will
12 have enough jurors to make a final selection. So I'm going to
13 ask that you come back tomorrow afternoon at 3:30, and we hope
14 at 3:30 tomorrow afternoon we'll be able to tell you and the
15 other jurors that we have examined which ones will be the
16 jurors in the case.

17 You're excused until 3:30 tomorrow afternoon, and
18 I'll see you then.

19 PROSPECTIVE JUROR: Where do we come?

20 THE COURT: The marshal will tell you. I think
21 they're going to put you across – down on the third floor
22 again. I'm not in charge of that.

23 Thank you for being here today.

24 (Panel of prospective jurors recessed 3:21 p.m.)

25 THE COURT: All right. The prospective jurors have

1 exited the courtroom.

2 We are scheduled at 9 o'clock tomorrow. I'd like you
3 here at a quarter to 9, and we will start on time.

4 MR. SGRO: Your Honor, may we be heard on one quick
5 issue?

6 THE COURT: Certainly.

7 MR. SGRO: Relative to – and I don't remember if we
8 were on the record or not, but there was a proposal suggested
9 that we get through 28 – I think – jurors, and then exercise
10 our peremptories on the jury, and then do the alternates, and
11 the genesis of it was an idea the State had. We didn't hear
12 about it, talk about it, discuss it, et cetera.

13 Our position is we would object to that procedure,
14 and I'll let, you know, why, Your Honor. One of the things
15 that we have to decide and one of the things we have to know
16 is the alternates that are coming because in a five week trial
17 the likelihood increases significantly that an alternate is
18 going to serve as a juror. So if this was a three-day
19 hand-to-hand sale with an undercover police officer, it would
20 be one thing, but the fact of the matter is we have to
21 evaluate the alternates which means we have to determine
22 whether or not strategically we want to exercise all the
23 peremptory challenges that we are given.

24 And I know I've been asking for more throughout the
25 course of the proceedings, but at the end of the day, if we

1 are forced to exercise all of our peremptories, we do so in a
2 vacuum not knowing who the alternates are that are coming,
3 especially because we don't know when the --

4 THE COURT: It's not uncommon for me to select a jury
5 without you ever calling an alternate to be examined and have
6 the jurors sworn in and then pick the alternates. I do this
7 all the time.

8 MR. SGRO: I'm not familiar with that, Your Honor. I
9 mean obviously --

10 THE COURT: Every Judge does it differently, but
11 that's -- as a matter of fact, there's no law that says I have
12 to even call alternates.

13 MR. SGRO: Your Honor, I'm simply -- in the context
14 that --

15 THE COURT: Hopefully if we can get 28 passed for
16 cause by tomorrow, we'll select the 12 that are going to hear
17 the case. If we can't, we'll be over -- we'll be working on
18 it on Monday, but I'll do the best I can. That's all I can
19 do.

20 MR. SGRO: Okay. Thank you, Judge.

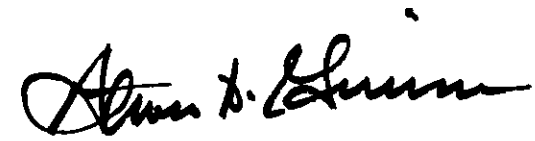
21 MR. DIGIACOMO: Thank you, Judge.

22 (Court recessed for the evening at 3:23 p.m.)

23

24

25



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
WILLIE DARNELL MASON, AKA)
WILLIE DARNELL MASON, JR.,)
AKA G-DOGG,)
DAVID JAMES BURNS, AKA)
D-SHOT,)
)
Defendants.)

CASE NO. C-10-267882-1
C-10-267882-2
DEPT NO. XX

**TRANSCRIPT OF
PROCEEDING**

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

JURY TRIAL - DAY 9

FRIDAY, JANUARY 30, 2015

APPEARANCES:

| | |
|----------------------|--|
| For the State: | MARC P. DIGIACOMO, ESQ. PAMELA C. WECKERLY, ESQ. Chief Deputy District Attorneys |
| For Defendant Mason: | ROBERT L. LANGFORD, ESQ. |
| For Defendant Burns: | CHRISTOPHER R. ORAM, ESQ. ANTHONY P. SGRO, ESQ. |

RECORDED BY SUSAN DOLORFINO, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

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WITNESSES FOR THE STATE:

MONICA MARTINEZ

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1 **LAS VEGAS, NEVADA, FRIDAY, JANUARY 30, 2015, 9:39 A.M.**

2 *** * * * ***

3 (In the presence of the jury.)

4 THE COURT: Good morning, ladies and gentlemen. This
5 is State of Nevada vs. Mason and Burns. The record will
6 reflect the presence of the defendants, their counsel, the
7 district attorneys and all members of the jury.

8 We're still on cross-examination of Ms. Martinez, and
9 Mr. Oram. And I had indicated that because Job-Loc was a
10 co-conspirator, at least insofar as the covering up of the
11 act, that asking her to relate what was said in the course and
12 in furtherance of that co-conspiracy would be admissible.

13 You may continue.

14 MONICA MARTINEZ, STATE'S WITNESS, PREVIOUSLY SWORN

15 CROSS-EXAMINATION - (Continued)

16 MR. ORAM: Thank you.

17 BY MR. ORAM:

18 Q Good morning.

19 A Good morning.

20 Q Now, when we ended last night, I'd like to know
21 if you have spoken to anybody about this case since last
22 night.

23 A No.

24 Q You did not meet with your attorneys?

25 A No.

1 Q You have met with anyone from the district
2 attorney's office?

3 A No.

4 Q You have talked to no one about this case?

5 A No.

6 Q Okay. Now, you would write love letters to
7 Jerome Thomas, Job-Loc, after you were arrested, fair?

8 A Yes.

9 Q And he would write you love letters, fair?

10 A Yes.

11 Q And in one of the letters that you wrote, do you
12 recall telling him, I told the police you weren't there?

13 A I don't recall, no.

14 Q You don't recall saying that?

15 A I don't remember.

16 Q Okay. Do you recall that Job-Loc was very
17 concerned -- or was -- or was concerned that he was going to
18 be identified out of a lineup as being present at the scene of
19 the crime?

20 MR. DiGIACOMO: Objection as to form of the question,
21 as to Job-Loc's state of mind. He can ask about the
22 statements. But what was in Job-Loc's mind at the time he
23 said it this witness would have no personal knowledge of.

24 MR. ORAM: I'll rephrase it.

25

1 BY MR. ORAM:

2 Q Did you receive a letter from Job-Loc where he
3 talked to you about being identified at the scene of a -- at
4 the scene of the crime in a lineup?

5 A I don't remember the contents of any of the
6 letters that I received from him.

7 Q If I showed you a copy, would that refresh your
8 memory?

9 A Yes.

10 MR. ORAM: Permission to approach?

11 THE COURT: Yes.

12 MR. ORAM: I'm going to show for the record
13 Defendant's Proposed Exhibit M.

14 BY MR. ORAM:

15 Q Do you recognize the writing on that?

16 A Yes.

17 Q Do you see a date at the top?

18 A Yes.

19 Q Is the date October 22, 2010?

20 A Yes, it is.

21 Q I want you to read the first portion of it, and
22 specifically I would like you to read just past the
23 highlighted portion and let me know when you're done.

24 A You said this?

25 Q I'd like you to read from the top all the way

1 down two lines past the highlighted portion and let me know
2 when you're done.

3 A Okay. To my everything --

4 Q No. Just read it to yourself.

5 A Oh. Oh, I'm sorry.

6 Q Have you had an opportunity to read that?

7 A I'm still in the highlighted -- okay.

8 Q Does that refresh your memory as to the letter
9 that Job-Loc wrote you?

10 A Yes.

11 Q And in that letter, he indicated to you that he
12 was worried that if the smoker bitch told them I was there,
13 she can't pick me out of no lineup and even if she did, it
14 documents saying my leg is broke, I couldn't even walk or run.
15 Is that what he's telling you?

16 A Yes.

17 Q Okay. Now, this is your lover, right?

18 A Yes.

19 Q And you're telling the ladies and gentlemen of
20 the jury that he wasn't there at the scene of the crime,
21 right?

22 A Yes.

23 Q Okay. And if he wasn't at the scene of the
24 crime, then he would know that he wasn't at the scene of the
25 crime, right?

1 A Yes.

2 Q And yet he's having a conversation with you
3 about his concern that he could be identified at the scene of
4 this crime.

5 MR. DiGIACOMO: Object to the form of concerned.

6 THE COURT: It's argumentative as well.

7 MR. ORAM: Okay.

8 BY MR. ORAM:

9 Q He tells you in this letter about the belief
10 that the smoker bitch -- who is the smoker bitch?

11 A Stephanie Cousins.

12 Q That he gives you advice on what to say, doesn't
13 he, on the fact that he may be identified and what to say if
14 he is, right?

15 A I don't remember reading that part in there.

16 Q Doesn't he say that he had a broken leg and he
17 couldn't even walk or run?

18 A Yes.

19 MR. ORAM: Move for its admission.

20 MR. DiGIACOMO: We have no objection.

21 MR. LANGFORD: I have no objection, Your Honor.

22 THE COURT: It'll be received.

23 (Defendant's Exhibit M admitted.)

24 BY MR. ORAM:

25 Q Do you recall in that same letter he's talking

1 to you about discovery?

2 A I don't recall.

3 Q If I showed it to you, would that refresh your
4 memory?

5 A Yes.

6 MR. ORAM: Permission to approach?

7 THE COURT: Yes.

8 BY MR. ORAM:

9 Q Showing you page 2, in the middle. If you could
10 read the highlighted portion to yourself and let me know when
11 you're done.

12 A [Complies.]

13 Q Have you finished that?

14 A Yes.

15 Q Does that refresh your memory as to what he told
16 you?

17 A Yes.

18 Q Does he tell you, Since you get your discovery,
19 write me something brief on everybody that said something?

20 A Yes.

21 MR. ORAM: Can you put up Exhibit 2, is that
22 possible, Counsel?

23 MR. DiGIACOMO: Sure.

24 MR. SGRO: I'm sorry, Your Honor. I had it switched
25 because I know we have some things.

1 MR. ORAM: That's fine. I can do it another time.
2 That's fine.

3 MR. DiGIACOMO: Well, you just switch it back to me
4 and --

5 THE COURT: I have no idea what you're talking about.

6 MR. DiGIACOMO: I think the court reporter knows,
7 Judge.

8 MR. ORAM: Yes.

9 BY MR. ORAM:

10 Q Can you see that on your monitor?

11 A Yes, I can see it.

12 Q Now, do you see where the pin is?

13 A Yes.

14 Q That's the scene of the crime, correct?

15 A Yes.

16 Q And you know that area really well, don't you,
17 Monica?

18 A Further north, not so much as the -- I'm more
19 familiar with the south part of like towards Charleston,
20 Washington.

21 Q Well, how far do you live from there? How far
22 did you live from there, Monica?

23 A About a major block or two over.

24 Q A major block or two over. So really close?

25 A Yes.

1 Q So most people -- how long had you lived at that
2 area where you lived on -- it's Cinnabar, right?

3 A I had just moved there. About two months.

4 Q So you had been in that area for two months?

5 A Yes.

6 Q So you must have been reasonably familiar with
7 it, right?

8 A Yes.

9 Q And if I understood you, you said to the ladies
10 and gentlemen of the jury that there were actually two
11 stoplights between the crime scene and your house?

12 A About one or two, yes.

13 Q Isn't it in fact true that if you come out of
14 that house and go left and then take a right, you don't have
15 to stop at any stoplights?

16 A Are you talking about on the dark street?

17 Q Yes.

18 A Yes.

19 Q So you don't have to, do you?

20 A No.

21 Q So why did you tell the jury that there were two
22 major -- or there were two stoplights if you don't --

23 A I was talking about from Nellis, the major
24 streets.

25 Q So it'd be fair to say that it would only take

1 you a matter of minutes to get from your house to that crime
2 scene, fair?

3 A Taking the side streets?

4 Q Yes.

5 A Yes.

6 Q Especially at 3:00 in the morning, right?

7 A Yes.

8 Q And you notice that your house, your street is
9 actually not on there, is it?

10 A No. It's -- well, I haven't examined it enough
11 to know.

12 Q Point to the direction for the jury, touch your
13 screen to where you think your house would be approximately.
14 Can you draw an arrow so we can see?

15 MR. ORAM: May I approach the witness, Your Honor?

16 THE COURT: Maybe her screen doesn't --

17 MR. ORAM: Just because I can't --

18 THE COURT: I thought it did though.

19 MR. DiGIACOMO: If she pushes hard enough it will.
20 She might just be pushing too light.

21 THE COURT: These are the John Madden screens. You
22 know John who used to do this at football?

23 THE WITNESS: It was right there.

24 BY MR. ORAM:

25 Q Okay. Do you see Cinnabar on there?

1 A Yes.

2 Q I don't think the jury can see.

3 MR. ORAM: Judge, do you mind if I approach the big
4 screen so I can imitate where she's pointing and --

5 THE COURT: Sure.

6 MR. ORAM: Your point -- do you see where it says
7 Google on there?

8 THE COURT: Why don't you do it on your screen, can
9 you do that?

10 MR. DiGIACOMO: She's now got a mark there, or close
11 to it.

12 THE COURT: Oh, she's got a mark there. Yeah.

13 BY MR. ORAM:

14 Q Okay. So that's where you're saying you lived
15 approximately?

16 A Yes.

17 Q Right before the murder, Monica, you would have
18 had to drive [inaudible] easily have driven right by your
19 house to go to that scene, couldn't you?

20 A Can you repeat the question?

21 Q Where had you come from directly before that
22 murder? Where?

23 A From the other apartment where they said that
24 the guy had a gun in the window.

25 Q And where would that be on this map?

1 A It wouldn't be on this map.

2 Q Would it be lower out like if you looked at your
3 screen, would it be lower?

4 A Yes.

5 Q So in order to get from that apartment that you
6 just referred to, to that murder scene, you could easily have
7 gone right by your house; isn't that right?

8 A Yes.

9 Q And you'd only be a minute or two away, right?

10 A Yes.

11 Q Yesterday when we were watching the video, on
12 page 46 of our transcript you told -- the police asked you had
13 you ever been to Job-Loc's house. Do you remember those
14 questions?

15 A Yes.

16 Q And you started talking about how you'd been to
17 rooms. Do you remember that?

18 A Yes.

19 Q And they, the police asked you what do you mean,
20 rooms, right?

21 A Yes.

22 Q And you talked about hotel rooms, motel rooms;
23 am I getting that right?

24 A Yes.

25 Q And was that true or was that a lie?

1 A It was a lie.

2 Q The police asked you if Job-Loc had ever been to
3 your residence. Do you remember that?

4 A Yes.

5 Q And you said he hadn't, right?

6 A Yes.

7 Q And that was a lie?

8 A Yes.

9 Q You told the police you don't know if you had
10 seen Albert that night, the night of the crime; Albert being
11 Job-Loc, also known as Jerome Thomas, also known as
12 [inaudible]. Had you seen him that night?

13 A Yes.

14 Q So that was a lie?

15 A Yes.

16 Q At one point during the interview you asked the
17 police do you think there's something wrong with me. Do you
18 recall that?

19 A Yes.

20 Q Did you mean psychologically?

21 A Yes.

22 Q Were you asking a legitimate question, or were
23 you -- was this something made up?

24 A Well, I was being interviewed, so I was nervous
25 and it was legitimate.

1 Q So you think there's something wrong with you
2 mentally?

3 A Well, at the time. I was suicidal.

4 Q Did you think they would have the answers?

5 A No.

6 Q At one point during the interview, page 60, you
7 told the police you don't know where the guy with the braids
8 went that evening. Do you recall that?

9 A Yes.

10 Q Was that made up?

11 A Yes.

12 Q So it was a lie?

13 A Yes.

14 Q Yesterday I asked you questions about meeting
15 with the district attorneys. Do you remember that?

16 A Yes.

17 Q You talked about you don't know what building
18 you were in exactly, but you were at some building, there was
19 an FBI agent, you thought, DA's or attorneys, right?

20 A Correct.

21 Q And you told the ladies and gentlemen of the
22 jury that you even then withheld information from the district
23 attorneys, fair?

24 A Yes.

25 Q So you deceived them, correct?

1 A Yes.

2 Q You looked them in the eye, these two
3 prosecutors, and you deceived them, right?

4 A Yes.

5 Q And that was years after this incident, correct?

6 A The first time, no.

7 Q There were multiple times?

8 A Just recently.

9 Q Okay. So the first time you admit that you
10 deceived them, correct?

11 A Yes.

12 Q When did you meet with them again?

13 A I think it was like one or two weeks in this
14 last month.

15 Q I'm sorry. I didn't hear you. Say that again.

16 A Like one or two weeks in this last month.

17 Q So just within this last month?

18 A Yes.

19 Q Where did this occur?

20 A I don't -- I don't know where it was at.

21 Q They brought you out of your jail cell and they
22 took you somewhere, correct?

23 A Yes.

24 Q And who was present at this meeting?

25 A Both of my attorneys and Marc and Pam.

1 Q Was it video-taped?

2 A No.

3 Q Was it audio-taped?

4 A Not to my knowledge.

5 Q Any notes on this meeting?

6 A I didn't take any.

7 Q How long did it last?

8 A A few hours.

9 Q Monica, did Mr. DiGiacomo and Ms. Weckerly go
10 over cellphone records with you?

11 A No.

12 Q It was never discussed in any of your meetings?

13 A Not to my recollection.

14 Q So is it your testimony that the only time you
15 went over cellphone information was with the detective?

16 A That I remember, yes.

17 Q During your interview with the police, you told
18 the police that they had pulled more out of you than you could
19 pull out yourself, and that was page 61. That wasn't true,
20 was it?

21 A No.

22 Q It was a lie?

23 A Yes.

24 Q I asked you yesterday about your attorneys, and
25 you said that you had complained about your attorneys to

1 anybody who would listen, right?

2 A You said that.

3 Q Is it true?

4 A Yes.

5 Q And you complained to different people in the
6 jail, right?

7 A Yes.

8 Q You complained over the phone to different
9 people that you have relationships with, family members and
10 such, right?

11 A Yes.

12 Q She's not here right now, but one of your
13 attorneys has black hair. Do you remember she was here
14 yesterday?

15 A Yes.

16 Q Ms. Luem, right?

17 A Yes.

18 Q And Ms. Luem is actually attending court right
19 now on a pro bono basis; is that right?

20 A I don't know where she's at.

21 Q Do you know what pro bono means?

22 A [No audible response.]

23 Q Pro bono means to do something to help a client
24 for free.

25 A Okay.

1 Q Is she helping you for free right now?

2 A No.

3 Q She's being paid?

4 A I don't know what -- I don't know what's going
5 on with her right now. She's through the public defender.
6 She was appointed to me through the PD's office.

7 Q Okay. And now she's a private attorney; is that
8 right?

9 A [No audible response.]

10 Q You don't know?

11 A I don't know.

12 Q All right. Did you feel that they had not done
13 a good job for you?

14 A At times, yes.

15 Q And yet you're going to be eligible for parole,
16 you're hoping, in five years?

17 A Yes, I'm hoping.

18 Q You indicate in several letters that you're here
19 behind a man. Do you remember saying that?

20 A Yes.

21 Q You said that to numerous people in numerous
22 letters, didn't you?

23 A Yes.

24 Q And what you meant was you were talking about
25 how as a woman you've got yourself in a relationship with --

1 you've been in some bad relationships with men, right?

2 A Yes.

3 Q And here you are in this situation because of a
4 bad relationship with a man, right?

5 A Yes.

6 Q Because you're blaming in those letters Job-Loc,
7 right?

8 A Yes.

9 Q You feel he's victimized you, right?

10 A Yes.

11 Q Your attorneys have not done a good job, right?

12 A [No audible response.]

13 Q Right?

14 A Are you asking me like --

15 Q Yes, I'm asking you.

16 A -- directly?

17 Q Yes.

18 A I feel that they -- now I feel that they've done
19 what they can.

20 Q You told the police on video that you were as
21 much a victim -- you were a victim in this case. Do you
22 remember saying that?

23 A I do.

24 Q And the police weren't very happy about that,
25 were they?

1 A No.

2 Q They reminded you that a woman had been shot in
3 the face and a child chased down, right?

4 A Yes.

5 Q And you persisted saying that you were still in
6 your mind sort of a victim, right?

7 A Yes.

8 Q Now, my understanding is you've told the judge
9 that you're guilty of murder, right?

10 A Second degree.

11 Q Second degree murder?

12 A Yes.

13 Q You've said you're guilty. You are guilty,
14 aren't you?

15 A Yes.

16 Q And so if you're guilty of the murder of this
17 lady, how are you a victim?

18 A I mean, that was 4 1/2 years ago when I made
19 that statement.

20 Q You would agree with me that you're not a victim
21 at all, correct?

22 A Not in comparison to everything, no, not at all.

23 Q I don't mean any kind of comparison. I'm asking
24 you do you feel like you're a victim of this circumstance?

25 A Of this circumstance, no.

1 Q The police asked you for DNA. Do you recall
2 that?

3 A Yes.

4 Q And there was a portion of the video where we
5 see them take a buccal swab from you. Do you recall that?

6 A Yes.

7 Q And you seemed quite nervous about that, Monica.
8 Do you remember that?

9 A Yes.

10 Q Do you remember you kept asking, where's the
11 warrant, I want to see it? Do you remember that?

12 A Yes.

13 Q And Detective Hardy said to you, look, if
14 it's -- if we don't have one -- he kept assuring you we have
15 one, right?

16 A Yes.

17 Q And do you recall that you said at one point,
18 does the DNA -- is it on my -- are you guys looking at the
19 house, in the house? Do you remember that?

20 A No, I don't.

21 Q You don't remember that. You were nervous,
22 Monica, because you thought DNA was going to harm you; isn't
23 that right?

24 A No.

25 Q Okay. Yesterday the prosecutor asked you if you

1 had had a chance to review discovery. Do you remember that?
2 Do you remember the prosecutor asking you that question?

3 A If I had a chance to what?

4 Q Review discovery in this case.

5 A If I had a chance to review it, yes.

6 Q And you have?

7 A Yes.

8 Q And tell the ladies and gentlemen of the jury
9 what you understand discovery to mean.

10 A All statements, witness statements, any DNA a
11 medical examiner --

12 Q Any DNA. And you had a chance to review it
13 because you just told us that, right?

14 A Yes.

15 Q Now, without telling me anything that DNA report
16 says, were you concerned about the DNA?

17 A Not at all.

18 Q Not at all. You're telling the truth to the
19 jury?

20 A Yes.

21 Q It wouldn't concern you whether your DNA was on
22 a murder weapon?

23 A No.

24 Q Because you never touched that murder weapon,
25 right?

1 A Correct.

2 Q You're lying, aren't you?

3 A No.

4 Q During the interview with the police you asked
5 the police, and you say, I don't know if Albert's involved.
6 You say that on page 104. Albert being Job-Loc, correct?

7 A Yes.

8 Q You were worried they were going to implicate,
9 get Job-Loc in trouble, weren't you?

10 A Yes.

11 Q And here at that point you're saying you don't
12 know if he's involved, right?

13 A Yes.

14 Q Was that true or was that a lie?

15 A That was true. I didn't know if he was
16 involved. Like he wasn't there, but I don't know if he put
17 them up to anything.

18 Q Okay. Well, although you don't say it on your
19 statement to the police, you have told the ladies and
20 gentlemen of the jury you saw Job-Loc wiping down a firearm,
21 right?

22 A Yes.

23 Q The firearm had to have been in your car, right?

24 A Yes.

25 Q You had to be driving that vehicle with that

1 firearm to that crime scene, right?

2 A Yes.

3 Q Away from that crime scene?

4 A Yes.

5 Q You're seeing your lover wiping it down, right?

6 A Yes.

7 Q You're seeing another man being told to bury it,
8 get rid of it, right?

9 A Yes.

10 Q And you don't know if Albert's involved, right?

11 A Yes.

12 Q During your statement to the police, you tell
13 the police that the defendant, Mr. Burns, gets out of the car
14 at some point after the Opera House. Do you recall that?

15 A No.

16 Q Did you see the defendant leave your vehicle
17 after the Opera House and before going to that murder scene?
18 Think, Monica.

19 A Only the time when we got -- when we walked into
20 the Opera House and then he got back in with us.

21 Q Oh, Monica. Help me understand this. Are you
22 telling the ladies and gentlemen of the jury he gets back in
23 after the Opera House and he never leaves that seat until he
24 gets to the murder scene; is that what you're trying to
25 tell us?

1 A Yes.

2 Q Oh, but what about those other robberies?

3 Remember, you go pick up Stephanie Cousins, right?

4 A Yes.

5 Q And then you go to do a robbery, right?

6 A Yes.

7 Q And they get out of the vehicle?

8 A Yes.

9 Q So he does get out of the vehicle.

10 A Oh, I thought you meant like permanently, like
11 he was no longer in the vehicle. So it was a
12 misunderstanding.

13 Q Okay. So he gets out of the vehicle at times
14 according to you --

15 A Yes.

16 Q -- right?

17 But it's your testimony he gets back in that vehicle?

18 A Yes.

19 Q And at one point he gets back in that vehicle
20 and he has blood on him, right?

21 A That's what he said.

22 Q And you've looked at that DNA report, haven't
23 you?

24 A [No audible response.]

25 Q Haven't you?

1 A I don't remember.

2 Q You don't remember looking at the DNA report?

3 A [No audible response.]

4 Q Do you remember telling the police that you
5 didn't need to protect Stephanie Cousins because you didn't
6 know Stephanie Cousins?

7 A Yes.

8 Q So fair to say that if you don't really know
9 somebody very well, you don't feel any obligation to protect
10 them, right?

11 A I guess. I don't know. I mean --

12 Q Well, I'm asking you.

13 A -- they had told me that she pointed me out, so.

14 Q You thought you'd give her back some?

15 A No. I didn't think that at all.

16 Q Well, when you said, I don't need to protect her
17 because I don't know her, what'd you mean?

18 A I just didn't know her.

19 Q So you didn't need to protect her?

20 A Correct. That's what I said, yes.

21 Q Fair to say in your mind if you really care
22 about somebody then you need to protect them, right?

23 A Yes.

24 Q Like your kids?

25 A Yes.

1 Q Do you remember on that video when the police,
2 in an effort to assist your children, asked you where are your
3 children? Do you remember that?

4 A I do.

5 Q They said they wanted to make sure your children
6 were safe. Do you remember that?

7 A That's what they said, yes.

8 Q And you didn't even know where your children
9 were.

10 A I did know where my children were.

11 Q Oh, so you were lying to them?

12 A Yes.

13 Q You were lying to the police about the
14 whereabouts of your children?

15 A I'm not going to tell anybody where my children
16 were.

17 Q Monica, one of your children was 12 years old at
18 the time that you were in that police station, correct?

19 A Yes.

20 Q And the police wanted to make sure that those
21 children would be safe, correct?

22 A I don't know that. I didn't know that.

23 Q What did you think they were going to do?

24 A Try to take them away.

25 Q You were going to be arrested for murder.

1 A I understand that, but they were better off with
2 my family.

3 Q The night of the incident, you tell us that you
4 go to Texas Station and then up to Job-Loc's, right?

5 A Yes.

6 Q You have sex, you fall asleep, right?

7 A Yes.

8 Q Where are your kids?

9 A At home.

10 Q Do you recall the police say you don't even care
11 about your children?

12 A I do.

13 Q Do you recall the police say you care about one
14 person, Monica, and that person is a woman that you see when
15 you look in the mirror?

16 A Yes.

17 Q And that's pretty accurate, isn't it, Monica?
18 You care about yourself.

19 A No, that's not -- it wasn't accurate.

20 Q They even said that they thought you had a
21 heart, but you don't?

22 A Yes.

23 Q After telling the police numerous times about
24 this person with braids in the back seat, you change it to
25 curly hair, right?

1 A Yes.

2 Q And then just like with the braids, you go on a
3 really good description about the hair, right?

4 A Yes.

5 Q The -- how the curls are. Do you remember that?
6 You even described a film I was unfamiliar with, Vern or
7 something like that.

8 A Yes.

9 Q And so we could have a visual of the curls,
10 right?

11 A Yes.

12 Q And at one point you pointed at Marty Wildemann.
13 Do you remember Detective Wildemann?

14 A Yes.

15 Q He was the man who had stormed out in the
16 beginning. And you start showing him how his hair has
17 similarities to the person in the back seat's hair. Do you
18 remember that?

19 A Yes.

20 Q And at one point you say the hair is as short as
21 Marty Wildemann's, don't you?

22 A I don't remember.

23 Q Well, were you watching the video yesterday?

24 A Yes.

25 Q And you weren't -- were you paying attention to

1 the video?

2 A Yes.

3 Q I mean, this was something that you were
4 pointing at his hair and saying, hey, Marty, you know, do you
5 remember that?

6 A Yes.

7 Q So you do remember.

8 A But I don't remember making the statement of the
9 comparison of the shortness.

10 Q So you just let the video speak for itself; fair
11 to say?

12 A Yeah.

13 Q And so you gave the details of the curls because
14 you wanted the police to be able to apprehend the killer,
15 right?

16 A Yes.

17 Q But at that point, Monica, they had asked you
18 about a hat, and you had said that the person didn't have a
19 hat on. Do you remember that?

20 A Yes.

21 Q Was that true or was that a lie?

22 A It was a lie.

23 Q And later in your statement you tell the police,
24 oh, he had a hat on, right?

25 A Yes.

1 Q The police, fair to say, were extraordinarily
2 frustrated with you because you lied so often; is that fair?

3 A Yes.

4 Q You told the police you didn't know if the
5 person with the braids or the curls or the hat or the jeans or
6 the overalls had light skin or dark skin. Do you remember
7 saying that?

8 A Yes.

9 Q Is that true or is that a lie?

10 A It was a lie.

11 Q We talked about the person you're saying is Mr.
12 Burns saying he had blood on him. Is that true or is that a
13 lie?

14 A He did say that.

15 Q You haven't washed your car -- you hadn't washed
16 your car in quite a while before that murder, had you?

17 A Not that I remember.

18 Q And we all see pictures of the inside of your
19 car. Your car was pretty dirty. And I don't mean it in a bad
20 way. I just mean it hadn't been cleaned, just like you say.
21 You told the truth.

22 A Yes.

23 Q You told the police you couldn't identify the
24 person you're saying is Mr. Burns. Do you recall saying that?

25 A Yes.

1 Q So that's a lie?

2 A Yes.

3 Q And I just want to make sure, Monica, I'm
4 talking -- I've been talking now in the -- about things you've
5 been saying in the mid-hundreds of this statement. Okay.
6 When I say mid-hundreds, I mean we've been going through pages
7 146 through 180. You've already taken this oath that they've
8 put you under, right? Right?

9 A For the court, yes.

10 Q Say again.

11 A You're talking about being sworn in?

12 Q No. You remember the police put you under oath
13 a couple times?

14 A Oh, yes.

15 Q And then you had the hand holding moment for
16 moral support, and we're talking about things you're lying
17 about after that point, right?

18 A Yes.

19 Q You told the police you had a bad memory. Do
20 you have a bad memory?

21 A I tend to not remember everything.

22 Q So that was true?

23 A Yes.

24 Q You told the police that Job had nothing to do
25 with this. Do you remember saying that?

1 A Yes.

2 Q And that was a lie?

3 A I don't know that. He wasn't there. That's
4 the -- he wasn't there when everything happened. That's what
5 I was implying.

6 Q That letter he sent you, that must have been
7 shocking to you, just to think, well, why would you think --
8 why would you be worried about being identified at the scene
9 by the smoker bitch when you and I both know you weren't
10 there.

11 MR. DiGIACOMO: Objection. Argumentative.

12 THE COURT: Sustained.

13 BY MR. ORAM:

14 Q You told the police -- do you remember the
15 police asked, what's going on, who are you hiding, who are you
16 covering up for? Do you remember that?

17 A Yes.

18 Q And you told the police you were covering up for
19 Job-Loc?

20 A Yes.

21 Q And a few pages later Marty Wildemann tells you,
22 I don't understand, why are you covering up for somebody who
23 has no involvement. Do you remember that on the video?

24 A Vaguely.

25 Q Do you want me to show it to you?

1 A Sure.

2 MR. ORAM: Page 220, Counsel.

3 Permission to approach, Your Honor?

4 THE COURT: Yes.

5 BY MR. ORAM:

6 Q Okay. In the middle of the page on 220, if you
7 could read to yourself where it says, MW, Marty Wildemann, if
8 you could just read what I have in that box to yourself and
9 let me know when you're done.

10 A Okay.

11 Q Does that refresh your memory as to the
12 detective asking you how could you be essentially covering up
13 for somebody who has no involvement?

14 A That's not what he said.

15 Q That's not what he says. Does he say, "I don't
16 want to get into that. I want you to get into the whole I'm
17 protecting Job-Loc, because right now I don't even understand
18 why, why you would be protecting Job-Loc because you haven't
19 told me anything that would need protecting"? Do you remember
20 him saying that?

21 A Yes. Yes.

22 Q It seems like a legitimate question, doesn't it?

23 A Yes.

24 Q And as you sit here today, Monica, you're still
25 protecting Job-Loc, aren't you?

1 A No.

2 Q In that video, you knew that homicide was
3 desperately trying to apprehend people involved in this crime.
4 I mean, that's obvious, right?

5 A Yes, it is.

6 Q And of course one of the things that they would
7 have liked to have known is where the murder weapon is. That
8 would be a great thing, wouldn't it?

9 A Yes.

10 Q And you knew. You had seen that murder weapon
11 pass hands, hadn't you?

12 A After the incident?

13 Q Yes.

14 A Yes.

15 Q You had seen it be given to Donovan Rowland,
16 right?

17 A Yes.

18 Q The same man who you'd let use your vehicle to
19 commit crime with Job-Loc just weeks before?

20 A I don't know that they were committing any
21 crime.

22 Q And you knew that he had possession of that
23 murder weapon, right?

24 A Yes.

25 Q And you failed to tell the police anything about

1 that murder weapon. We watched the video. You don't mention
2 it.

3 A I described what the gun looked like. I did
4 mention it.

5 Q That's right, you did.

6 A Yes.

7 Q You talked about the Dirty Harry thing.

8 A Yes.

9 Q Right. And it was a big gun. And that was the
10 big gun they were looking for, right?

11 A Yes.

12 Q And you knew that's what they were looking for,
13 right?

14 A Yes.

15 Q And you lied and deceived and covered it up,
16 didn't you?

17 A They didn't ask about the weapon early on. So
18 when they did ask about it, I described it.

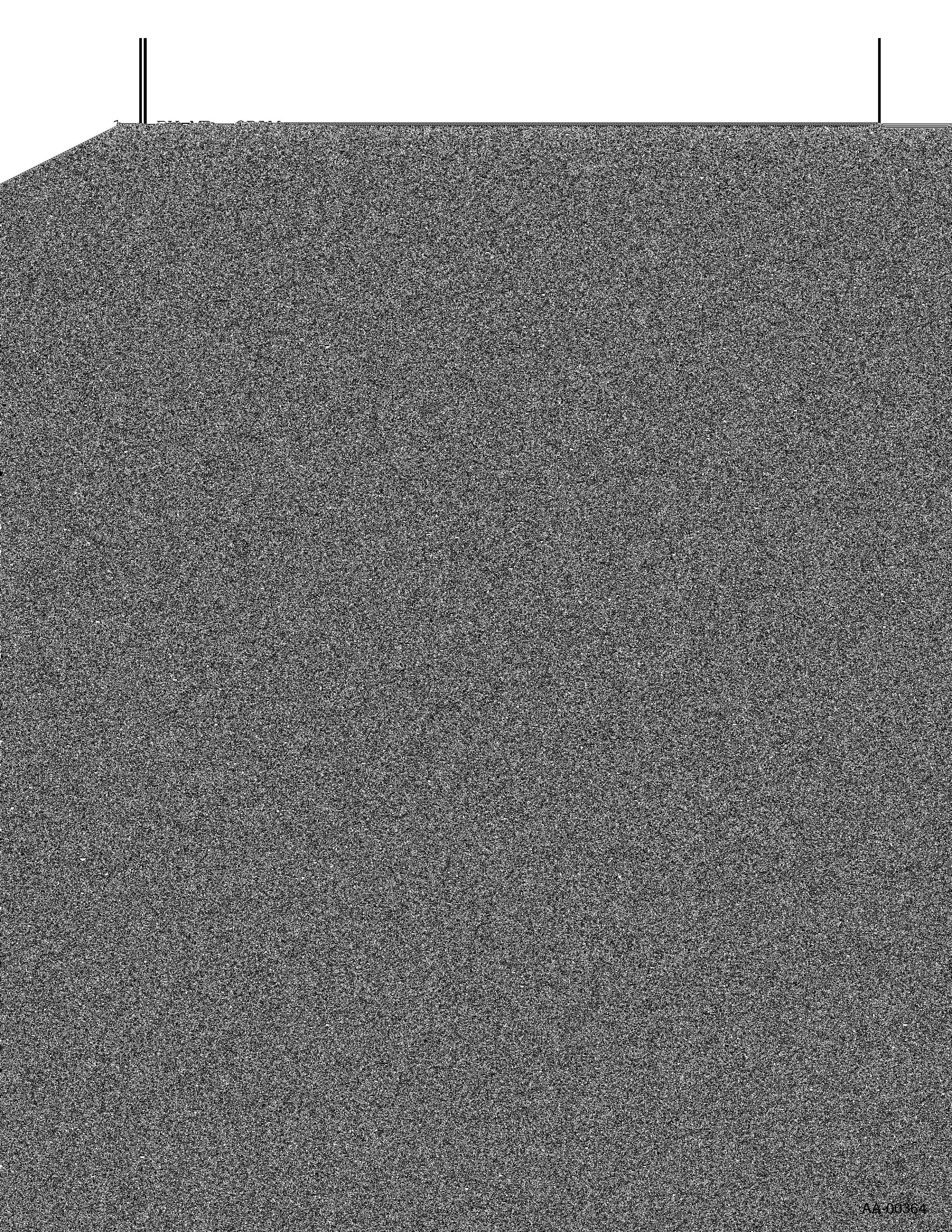
19 Q Twelve hours you're in that room, correct?

20 A Yes.

21 Q And is it your testimony in front of this jury
22 that you didn't think maybe that was something important to
23 tell them?

24 MR. DiGIACOMO: Well, objection to argumentative.

25 THE COURT: Yeah, that is argumentative.



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WILLIE MASON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
No.: 68497 Feb 08 2016 10:31 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

DC No.: C267882

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| 01 | Sealed Transcripts from Hearing | 10/16/2014 | 1 | 01-82 |
| 02 | Transcript of Jury Trial Day 3 | 1/22/2015 | 1 2 | 83-250 251-325 |
| 03 | Transcript of Jury Trial Day 9 | 1/30/2015 | 2 3 | 326-500 501-544 |
| 04 | Transcript of Jury Trial Day 11 | 2/6/2015 | 3 4 | 545-750 751-753 |
| 05 | Transcript of Jury Trial Day 14 | 2/11/2015 | 4 | 754-955 |
| 06 | Transcript of Jury Trial Day 15 | 2/12/2015 | 4 5 | 956-1000 1001-1052 |
| 07 | Jury Instructions | | 5 | 1053-1110 |

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

| | | |
|------------------------------|------------------------|---------------|
| THE STATE OF NEVADA, |) | |
| |) | |
| Plaintiff,) | CASE NO. C-10-267882-1 | |
| |) | C-10-267882-2 |
| vs. |) | DEPT NO. XX |
| |) | |
| WILLIE DARNELL MASON, AKA |) | |
| WILLIE DARNELL MASON, JR.,) | | TRANSCRIPT OF |
| AKA G-DOGG, |) | PROCEEDING |
| DAVID JAMES BURNS, AKA |) | |
| D-SHOT, |) | |
| |) | |
| Defendants. |) | |

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

JURY TRIAL - DAY 3

THURSDAY, JANUARY 22, 2015

APPEARANCES:

| | |
|----------------------|--|
| For the State: | MARC P. DIGIACOMO, ESQ. PAMELA C. WECKERLY, ESQ. Chief Deputy District Attorneys |
| For Defendant Mason: | ROBERT L. LANGFORD, ESQ. |
| For Defendant Burns: | CHRISTOPHER R. ORAM, ESQ. ANTHONY P. SGRO, ESQ. |

RECORDED BY SUSAN DOLORFINO, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

AA-00083

1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 22, 2015, 9:27 A.M.

2 * * * * *

3 (Outside the presence of the prospective jurors.)

4 THE COURT: On the record. Mason and Burns, the
5 defendants, are not present yet, but they're coming in, in a
6 few minutes. In the meantime, counsel and I have discussed
7 some of the prospective jurors that have been summoned for
8 today. Juror No. 496 and Juror No. 367, I understand both
9 parties have stipulated to excuse her – or them; is that
10 correct?

11 MS. WECKERLY: Yes, Your Honor.

12 MR. LANGFORD: I have a different record I need to
13 make, Your Honor. And that is that –

14 THE COURT: Well, if you don't stipulate, then I'm
15 not excusing them.

16 MR. LANGFORD: I believe they're being excused
17 because of their positions on the death penalty.

18 MS. WECKERLY: If Mr. Langford won't stip on these,
19 we will agree –

20 THE COURT: If you don't stip, I'm not excusing them.

21 MR. DIGIACOMO: Well, 367's not being dismissed –

22 THE COURT: 367 is because he has seizures.

23 MR. LANGFORD: Okay. I'd stip to that.

24 THE COURT: Okay. Are we all agreeing to 367 for
25 medical reasons?

1 All right. And I am excusing Juror 469, who says she
2 is going to be seven months pregnant today, and for medical
3 reasons I am excusing her. Now, 496 was being excused because
4 of his view of the death penalty. If you disagree with that,
5 I would not excuse him.

6 MR. LANGFORD: The problem, Your Honor, is that I
7 really -- I don't have -- for my client's purposes it doesn't
8 make any difference what his opinion is on the death penalty.
9 I understand Mr. Burns and the State, why they have issues.

10 But for my client it's -- there's nothing I'm going
11 to be able to say one way or another, because the Court's
12 either going to sustain a challenge for cause or not. And it
13 sounds like that both parties agree that a challenge for cause
14 would be successful and why are we wasting time. So I really
15 don't have a position in terms of whether that --

16 THE COURT: If you don't take a position, I'm going
17 to agree to their stipulation to excuse him.

18 MR. LANGFORD: Except that I need to make the record
19 that -- for my client. And this is all I want to say, Your
20 Honor. For my client that would have been a good juror, or a
21 potentially good juror.

22 MS. WECKERLY: If he's not stipulating, we won't.

23 THE COURT: All right.

24 MS. WECKERLY: He can come in.

25 THE COURT: 496 remains. That means we are excusing

1 two jurors, 469 and 367, and the marshal is directed to bring
2 the remaining jurors up.

3 THE MARSHAL: Yes, sir. 469 and 367.

4 MR. SGRO: Your Honor, based on that ruling, I'd
5 renew our request for an additional peremptory challenge. And
6 I think that the record's going to bear out --

7 THE COURT: You can go ahead. The record would now
8 reflect the presence of both defendants with their counsel.

9 MR. SGRO: Thank you, Your Honor. The record's going
10 to bear out a couple things. Number one, obviously Mr.
11 Mason's lost some African-Americans which otherwise could have
12 been qualified jurors, and they would have been more
13 consistent with his cross-section of the community. As to Mr.
14 Burns, we're concerned about penalty. I've said that from the
15 inception of this case.

16 And one -- we just had a situation where the State
17 agreed to relieve someone of duty, of jury duty because they
18 could not consider a parole situation. Now, as we have seen
19 already in a couple days of doing voir dire, jurors who filled
20 out these questionnaires have done the things that jurors with
21 certain tendencies do.

22 And by that I mean the people that are against the
23 death penalty have a tendency to remain firm in their view and
24 get kicked off for cause, and the State gets that challenge.
25 On the other end of the spectrum are the people that are pro

1 death. The people that are pro death have tendencies, and
2 this is 25 years of experience and 120 jury trials, they have
3 tendencies of wanting to figure out how to stay, and they stay
4 and they modify their answers as we've seen. We've seen it
5 ten times.

6 Sir – I asked a guy yesterday, Sir, you wrote in
7 your questionnaire that if someone commits first degree murder
8 you would only vote death. His actual answer to me was, you
9 know, I was in a different frame of mind when I filled out the
10 questionnaire. Really, from three weeks ago?

11 And so the point I'm trying to make is this. We have
12 a situation now where we are obviously divided relative to how
13 best to apply peremptory challenges. And I fully appreciate
14 the Court's view when it says, you know, you can just use a
15 peremptory. And if Mr. Burns was here by himself, that view
16 makes a lot more sense potentially because we're flowing
17 through the trial, Mr. Burns gets to use all his peremptories
18 how he deems appropriate.

19 We now have a situation where if this man, for
20 example -- and prior to beginning the proceedings today, when
21 we were off the record, I sought from the State some
22 agreements on other persons that had a bend towards capital
23 punishment. We were not able to reach an agreement.

24 But if -- if these people change their minds from
25 what they wrote on the questionnaire, then the penalty to

1 Mr. Burns is, you know, using a peremptory. And when now it's
2 been cut from eight to four, I don't have that luxury on
3 behalf of Mr. Burns to simply use that peremptory challenge.

4 So it's with that eye that I look with more scrutiny
5 at these questionnaires, to avoid the problem of the pro death
6 people modifying their answer just enough, after they're
7 educated and learn how to do it, they modify it just enough to
8 stay on the jury. So I would ask initially for additional
9 peremptory challenges.

10 And for the record, if that motion for additional
11 peremptories is denied – and I think I previously asked for
12 two extra, two extra, and I would renew that request. If that
13 motion is denied, then I would ask for a severance so that I
14 could pick the jury that I want and not have to deal with –
15 and I don't mean this pejoratively, not have to deal with
16 Mr. Langford and the jury that he wants. So I'll submit that
17 for the record, Your Honor.

18 MR. DiGIACOMO: It's a common request of the defense.
19 First, Mr. Sgro's factual assertions are not going to be borne
20 out by this record. I can count more jurors who were – would
21 not impose the death penalty who changed their mind and said,
22 well, in some circumstance, hey, maybe if it's Hitler I
23 would be.

24 There were certainly more of those people than there
25 were people who when they filled out the questionnaire quickly

1 checked off some boxes, may not fully have understood what
2 they were saying and what their answers are. And that's the
3 purpose of voir dire. This request is routinely made. It has
4 been denied previously in this case. There's no new basis to
5 make the request.

6 And the last thing is, is that the Supreme Court has
7 repeatedly said there's not a basis for severance and that
8 peremptory challenges are a statutory right set by statute,
9 and there's no constitutional issue as it relates to how those
10 statutes -- how those peremptory challenges are utilized. And
11 so there is no basis to change the prior ruling of the Court.

12 We're halfway through -- or a third of the way
13 through jury selection. We shouldn't be changing the rules in
14 the middle of jury selection because of something Mr. Sgro
15 perceives.

16 THE COURT: Well, I would agree that there's no basis
17 for severance in the case, and I've already made my ruling on
18 the peremptory challenges. I'm not going to change it. So
19 the motion's denied.

20 We'll be in recess for a few minutes while the
21 jury --

22 MR. SGRO: Your Honor, I do have a housekeeping
23 matter, unless the Court needs to take care of something.

24 THE COURT: No.

25 MR. SGRO: Okay. May we stay on the record then for

1 a moment?

2 THE COURT: Certainly.

3 MR. SGRO: Okay. We have been over the last few days
4 consistently providing to the State different things related
5 to discovery. I've given the State some phone calls from
6 Ms. Martinez that we got, some phone calls from his cousins
7 today. I learned for the first time, I think, two days ago
8 there was an order for CPS records related to the 12-year-old
9 victim in this case, Devonian Newman. In those records there's
10 a lot of interviews with Mr. Mayo, the boyfriend, with
11 Devonian, et cetera. It never occurred to me that --

12 THE COURT: The boyfriend of who?

13 MR. SGRO: The boyfriend of the victim, Your Honor.

14 THE COURT: Oh, okay.

15 MR. SGRO: Of the adult victim. The State advised me
16 that Judge Tao hadn't provided them a copy, so I gave them
17 that copy of all those records this morning. One of the
18 things the State has asked for is the fetal alcohol syndrome
19 experts that we have, all their reports. And we've given them
20 a lot of the information.

21 And I have told them there is the -- one of the
22 things in the fetal alcohol syndrome machinations is a request
23 for an MRI. And we have been trying to traipse through
24 between the jail and facilitating the MRI and an order that
25 was not signed for some period of time. We've done everything

1 we can.

2 We outlined -- we actually submitted the order for
3 the MRI on November 26, 2014. It's almost two months ago.
4 For whatever reason it didn't get signed until December 18, so
5 we lost almost a month because it hadn't been signed. And
6 then we've been going back and forth.

7 And as opposed to relaying the tortured history, I
8 will simply report this. We called the jail yesterday and
9 they won't tell us for security reasons if an MRI is
10 scheduled, even though it was ordered, or when. And I get
11 when because, you know, theoretically we could plan to break
12 out Mr. Burns. I understand that. But the troubling part is
13 if.

14 So I'm simply putting the parties on notice we
15 have -- we're providing them as we get them. The MRI I have
16 no control over. And I've been having staff fight with the
17 jail literally, January 8, January 9, January 12, January 14,
18 January 15 and January 21, trying to push it through and get
19 it done. So I'm simply making a record to avoid any complaint
20 about untimeliness. We're doing the best that we can. And
21 that's all, Your Honor.

22 MR. DiGIACOMO: I wonder why it took until November
23 2014 to submit a request on a four-year-old case, but other
24 than that, I accept his representation.

25 THE COURT: Anything further on the record?

1 MR. SGRO: That's it.

2 THE COURT: Be in recess until the jurors get here.

3 (Court recessed at 9:38 a.m. until 9:47 a.m.)

4 (Outside the presence of the prospective jurors.)

5 THE COURT: -- down to the jury pool and tells me

6 that there are four no-shows?

7 THE MARSHAL: Five, but one was one we excused.

8 THE COURT: Okay.

9 THE MARSHAL: The no-shows was Juror No. 367, who we

10 excused. Juror 494 --

11 MR. SGRO: Hang on one second, please.

12 THE COURT: 494, that's --

13 THE MARSHAL: Zachary Lien.

14 MR. SGRO: Okay.

15 THE COURT: Lien, yes.

16 THE MARSHAL: 496, Jonathan Grant.

17 MS. WECKERLY: We excused --

18 MR. DiGIACOMO: That's one that we were having the

19 argument over.

20 THE COURT: That's the one we were talking about

21 agreeing to and never did.

22 MR. SGRO: Okay.

23 THE MARSHAL: Juror 528, Orpheus Valentin.

24 MR. SGRO: Okay.

25 THE COURT: Hold on. 528, Valentin.

1 THE MARSHAL: And Juror 549, Sara Johnson.
2 THE COURT: That's too bad. All right.
3 MR. SGRO: So are those four going to be excused,
4 Your Honor?
5 THE COURT: We don't have any choice. They're not
6 here.
7 MR. SGRO: Okay. Thank you.
8 THE COURT: I put them in a no-show category. If you
9 want me to do bench warrants or --
10 MR. SGRO: No. No, sir. Not on behalf of Mr. Burns,
11 no.
12 THE COURT: I wasn't going to unless you...
13 MR. DiGIACOMO: So is our first juror up today Louai
14 Eid?
15 THE COURT: Yeah. And the first juror --
16 THE MARSHAL: I'm sorry, sir. And Juror 364 was the
17 kidney stones.
18 THE COURT: Yeah. Would you explain on the record
19 what he told you? That's the first juror.
20 THE MARSHAL: Juror 364, Mr. -- and I hope I'm
21 pronouncing this, Louai Eid --
22 THE COURT: E-i-d.
23 THE MARSHAL: -- E-i-d, he informed me, once we got
24 up to the 10th floor outside of the courtroom, that he has
25 kidney stones and is currently on medication for it, and has

1 to frequently use the restroom.

2 MR. SGRO: I really don't know much about that, Your
3 Honor. I'll defer to whatever you –

4 THE COURT: I have not had kidney stones, I can tell
5 you.

6 MR. SGRO: No. Maybe you've had jurors who have.

7 THE MARSHAL: I have had kidney stones and the
8 medication they put you on is Flomax, and you go to the
9 bathroom quite frequently.

10 MR. DiGIACOMO: The State would agree to release him.

11 MR. LANGFORD: I have to go to the bathroom just
12 hearing about it, Your Honor, so I agree.

13 MR. SGRO: Okay. Fine, Your Honor.

14 THE COURT: All right. He's excused.

15 THE MARSHAL: Yes, sir.

16 MR. ORAM: Judge, you know, we've been trying to work
17 stuff out. I'm looking at that police officer. You know,
18 we've been trying to be reasonable. And I just want to put on
19 the record, is the State unwilling to having –

20 THE COURT: He's not a police officer.

21 MR. ORAM: Or CSI, crime scene analyst.

22 THE COURT: Oh. She would be a civil servant with
23 the Metro.

24 MR. ORAM: Is the State unwilling to remove her?

25 MS. WECKERLY: No.

1 MR. DiGIACOMO: I've had police officers sit on
2 capital juries before.

3 THE COURT: Really?

4 MR. DiGIACOMO: Mr. Langford and I had a police
5 officer on our last capital jury. If they can pass the
6 canvass they don't automatically go.

7 THE COURT: If you don't stipulate, that's fine. We
8 just need to know. All right. You're going to excuse the
9 very first juror --

10 THE MARSHAL: Yes, sir.

11 THE COURT: -- and bring the rest in.

12 THE MARSHAL: Yes, sir.

13 MR. DiGIACOMO: So now we're starting at 368.

14 THE COURT: We're starting with 368.

15 MR. DiGIACOMO: And we go through Christopher Sloan,
16 572?

17 THE COURT: That's 567.

18 MR. DiGIACOMO: Is the very last one?

19 THE COURT: That's what I've got.

20 (Pause in proceedings)

21 (Court recessed at 9:51 a.m. until 9:56 a.m.)

22 (In the presence of the prospective jurors.)

23 THE COURT: State of Nevada vs. Willie Mason, David
24 Burns. The record will reflect the presence of the
25 defendants' counsel and the district attorneys.

1 Good morning, ladies and gentlemen. My name is
2 Charles Thompson. I am a senior district court judge. This
3 is Department No. 20 of the Eighth Judicial District. Until
4 recently Judge Tao was the judge in this department. And when
5 you received jury questionnaires and filled them in, it had
6 Judge Tao's name on it because he did them.

7 On January 1, the governor appointed Judge Tao to the
8 new intermediate court of appeals, and so there is no judge in
9 this department for a period of weeks, probably months. And
10 it may be April or May before there's a judge appointed by the
11 governor to replace Judge Tao.

12 I'm a senior district court judge. Under Nevada law,
13 the Supreme Court of Nevada is authorized to appoint certain
14 retired district court judges as senior district court judges,
15 and then assign them as needed throughout the court system. I
16 have been appointed by the -- I'm retired, and I have been
17 appointed by the Supreme Court to handle Department 20 matters
18 until the governor appoints a replacement for Judge Tao. This
19 case is one that had routinely been assigned to Department 20,
20 which is the reason that I'm handling the case in the absence
21 of an elected judge.

22 My staff includes the clerk of the court. That's
23 Linda Skinner. She's right here. And she's in charge of
24 swearing the witnesses, taking the minutes of the court, and
25 also in charge of exhibits that are marked and admitted during

1 the trial.

2 I also have a recorder. That's the lady to the far
3 right over there. Her name is Susan Dolorfino, and she's in
4 charge of recording everything that I say and everything that
5 you say and everything that the lawyers say throughout the
6 course of the trial. And then she sees that transcripts are
7 prepared and provides them to the lawyers in the case.

8 There's a law clerk over here, her name is Holly
9 Walker, who assists the Court. And occasionally you may see a
10 secretary coming in and out. Her name is Paula Walsh. She's
11 not in here right now, but she occasionally comes in and out
12 and assists us. You're already familiar with Randy Hawkes.
13 He's the marshal that helped get you up here, I think.

14 As you're already aware, you've been summoned to
15 serve as jurors in this case. It's a criminal case. The
16 defendants in the criminal case are Willie Mason and David
17 Burns. This is Mr. Burns in the blue shirt right here, and
18 Mr. Mason in the white shirt over there. They're represented
19 by attorneys. Mr. Tony Sgro is the gentleman here. He
20 represents -- along with Chris Oram represents Mr. Burns. And
21 Mr. Langford, Robert Langford represents Mr. Mason.

22 The deputy district attorneys assigned to prosecute
23 this case are Marc DiGiacomo and Pam Weckerly. They're seated
24 at the table right over here. I'm going to ask them to
25 explain to you, that is ask the prosecutors to explain to you

1 now the nature of the case, in addition to what you've already
2 read in the jury questionnaire, and list for you the witnesses
3 that may be called by the prosecution to testify during the
4 case.

5 Make a mental note of anybody that you might know,
6 because I'll be asking all the prospective jurors if you're
7 acquainted with the witnesses or the attorneys and so on.

8 Mr. DiGiacomo.

9 MR. DiGIACOMO: Thank you, Your Honor.

10 Good morning, ladies and gentlemen. As you've just
11 heard, my name is Marc DiGiacomo, and this is Pam Weckerly.
12 And we are deputy district attorneys here in Clark County.
13 We've been assigned to prosecute the case against David Burns
14 and Willie Mason.

15 Mr. Burns and Mr. Mason are accused of a number of
16 crimes that occurred on August 7, 2010. They are accused of
17 entering an apartment here in Las Vegas which is generally in
18 the northeast area of town, at 5662 Meikle Street. It's
19 Apartment No. A. They are accused of entering that apartment,
20 shooting and killing Derecia Newman, and then shooting her
21 12-year-old daughter. However her daughter lives and Derecia
22 does not survive her wounds.

23 For those crimes they are accused with two other
24 individuals, one of which is a woman by the name of Monica
25 Martinez and another individual by the name of Stephanie

1 Cousins, with the following crimes: Conspiracy to commit
2 robbery, burglary while in possession of a firearm, robbery
3 with use of a deadly weapon, murder with use of a deadly
4 weapon, attempt murder with use of a deadly weapon, and
5 battery with a deadly weapon resulting in substantial bodily
6 harm.

7 In order to establish the crimes that we've accused
8 them of, the State's going to call a number of witnesses.

9 Now, I'm about to read off a list of witnesses that would make
10 you think you'd be here for the next six months of your life.

11 We're not going to call all of these witnesses, but you're
12 going to be asked the question if you know any of these
13 people, because that may be relevant to jury selection and
14 your ability to serve.

15 Those individuals include FBI Agent Scott Hendricks;
16 a corrections officer by the name of Jay Batu; Officer Curtis
17 Atwood; a Kathryn Ayoama, who is a fingerprint examiner here
18 with Metro; Benjamin Baines, who works at Greyhound; an FBI
19 agent by the name of Kevin Boles; a crime scene analyst by the
20 name of T. Brownlee;

21 A Detective Chris Bunting, who is a homicide
22 detective; a crime scene analyst, Danielle, and I have a hard
23 time with this name every time, it's Carvounaiaris. There is
24 a Maurice Clinkscale, a Ulonda Cooper.

25 And then there's a number of custodian of records.

1 We give these records out not because you're going to know
2 necessarily who the custodian is when they walk in the room,
3 but because you may either work or have a close relationship
4 with any one of these entities.

5 There's Binion's hotel and casino records. There's
6 the Clark County Detention Center. There's the Fremont Street
7 Experience. There's Greyhound bus lines. Obviously the Las
8 Vegas Metropolitan Police Department. The Opera House, which
9 is a casino here in town. There's a number of cellphone
10 companies; T-Mobil, Metro PCS, Nextel. There is the Texas
11 Station hotel and casino, and the Western hotel and casino.

12 Crime scene analyst Robbie Dahn; two doctors at UMC
13 by the name of Dr. Filmore and Dr. Goshi; crime scene analyst
14 Shawn Fletcher; Officer Hector Gonzalez; Officer Wessley
15 Gonzalez; a retired homicide detective by the name of Kenneth
16 Hardy; an Officer Jonathan Houghton; a homicide detective
17 Barry Jensen; Matt Johns, who's an investigator for the
18 district attorney's office;

19 Samantha Knight; Detective Teresa Kyger; James Krylo,
20 who is a firearms and tool mark analyst at the Las Vegas
21 Metropolitan Police Department; Anthony Lasseter; a sergeant
22 with Metro by the name of Maines; Cornelius Mayo; Tyler
23 Mitchell; Monica Monroe; Devonia Newman, who I told you is the
24 surviving daughter of Derecia; Erica Newman; Sheree Norman,
25 who's a crime scene analyst;

1 Dr. Alane Olson, who is a medical examiner here in
2 Clark County; Officer A. Peterson; Christine Tamika Pierce;
3 Donovan Rowland; Charisse Salmon; Officer M. Scanlon; Officer
4 J. Scott; Jan Seaman-Kelly, who is a footwear analyst at
5 Metro; crime scene analyst William Speas; crime scene analyst
6 Joe Szukiewicz; crime scene analyst Erin Taylor; Jennifer
7 Thomas, who is a DNA analyst with the Las Vegas Metropolitan
8 Police Department;

9 Officer K. Thomas; crime scene analyst Brenda
10 Vaandering; John Vasek, who is an officer with the San
11 Bernardino County police, I think it's maybe a sheriff's
12 office, but the police in San Bernardino; Detective Marty
13 Wildemann, who's a homicide detective; Marie Willis; and as I
14 already mentioned, Monica Martinez.

15 Thank you very much.

16 THE COURT: Mr. Sgro, do you wish to advise any of
17 the prospective jurors of witnesses that you may be calling?

18 MR. SGRO: I would, Your Honor.

19 THE COURT: Okay.

20 MR. SGRO: Good morning. My name is Tony Sgro, and
21 along with Chris Oram we are representing David Burns in this
22 case. We are about to go through what they call voir dire,
23 which is where we ask you a bunch of questions, let you know a
24 little bit about the case. And you will soon learn that the
25 defense has no burden of proof and Mr. Burns is presumed

1 innocent.

2 However, in an abundance of caution, sometimes there
3 are people that might be mentioned which are also relevant to
4 the case. So because this is the only time I get to speak to
5 you, I do have a list of potential names to give you.

6 Samantha Burch-Leech; Malcolm Turner; Marilyn Eley,
7 E-l-e-y; Rochelle Sparks; Shantel Amaya; Vernon Burch; Craig
8 Altmeyer; Tidelaide Oyenusi; Tina Luek; Anthony Lasseter;
9 Dr. Mel Pohl; Lyndsay Elliott; Richard Adler; Natalie Brown;
10 Paul Connor; Larry Smith is former Metro; Willis Eiffel;
11 Jerome Thomas; Russell Shoemaker, who's at Metro; Hava
12 Simmons; Tiffany Flowers Palms; Carla Blackwood; Thomas
13 Dillard.

14 And then in terms of the businesses from which we may
15 have custodians of records, those would be Medic West
16 Ambulance; University Medical Center, UMC; Sunrise Hospital;
17 Department of Family Services; and the Dixie Regional Medical
18 Center. And as to the charges that were read, Mr. Burns has
19 entered a plea of not guilty.

20 Thank you, Your Honor.

21 THE COURT: Mr. Langford, do you wish to advise any
22 of the prospective jurors of witnesses that you're going to be
23 calling?

24 MR. LANGFORD: Your Honor, Mr. Mason will assert his
25 defense through the witnesses called by the State and by

1 Mr. Burns, and he has entered a not guilty plea as well.

2 THE COURT: Ladies and gentlemen, this Court and the
3 lawyers and all persons involved in the case are deeply
4 interested in having the case tried by a jury composed of 12
5 open minded unbiased individuals who have no bias or prejudice
6 for either side in the case. You've all filled out jury
7 questionnaires, and the attorneys each have copies of those
8 questionnaires.

9 In addition to the written answers that you have
10 given, I'm going to ask you some questions and the attorneys
11 are going to be given the opportunity to ask you some
12 questions. I don't have any particular desire to pry into
13 your personal lives, nor do the lawyers. But in order for us
14 to learn whether or not you can serve as fair jurors, we have
15 to ask you some personal questions.

16 The questioning of the jury at the beginning of the
17 case is called jury voir dire, as counsel mentioned. The
18 jurors are first placed under oath before any of the questions
19 are asked. I'll now ask that you all stand, raise your right
20 hand, and the clerk will administer that oath to you.

21 (Prospective jurors sworn.)

22 THE COURT: It's important that you understand the
23 significance of full, complete and honest answers to all the
24 questions that we're going to ask of you, because if you hide
25 something or don't tell the truth, that fact may tend to

1 contaminate your verdict and subject you to further inquiry
2 even after you're discharged as jurors. If you are excused,
3 you have to report back to the jury commissioner on the third
4 floor.

5 I'm going to start talking with each of the
6 prospective jurors, and each attorney is given the opportunity
7 to ask questions as well. I'll start with Mr. Mendoza, and
8 they give you a microphone. Not that I couldn't hear you from
9 where you are, but the recording system requires that you keep
10 that microphone up to your mouth there and then the recording
11 can hear you.

12 Okay. All right. Mr. Mendoza, do you know any of
13 the attorneys or witnesses that were mentioned by the – by
14 counsel here?

15 PROSPECTIVE JUROR NO. 368: No.

16 THE COURT: You're working for the ARIA hotel?

17 PROSPECTIVE JUROR NO. 368: Yes, sir.

18 THE COURT: As an engineer. How long have you been
19 working at ARIA?

20 PROSPECTIVE JUROR NO. 368: Three years now.

21 THE COURT: You were in the Army?

22 PROSPECTIVE JUROR NO. 368: Yes, Your Honor.

23 THE COURT: How many years in the Army?

24 PROSPECTIVE JUROR NO. 368: [Unintelligible] about
25 two years, a year and a half.

1 THE COURT: Did you see action?

2 PROSPECTIVE JUROR NO. 368: [No audible response.]

3 THE COURT: Okay. Under our system of criminal
4 justice, you and I are like a team. It's your job to listen
5 to the evidence, decide what the facts are. It's my job to
6 decide what the law is. And at the conclusion of the
7 evidence, I'll give to the jurors written instructions on what
8 law applies in this particular case. And then you decide what
9 the facts are and apply those to the law to reach a fair
10 verdict. Do you think you can do that?

11 PROSPECTIVE JUROR NO. 368: Yes, sir.

12 THE COURT: There are times when there are principles
13 of law with which we disagree. Sometimes jurors will disagree
14 with the law. Sometimes even judges do. But I'm obligated to
15 tell the jurors what Nevada law applies in the case, and
16 you're obligated to follow those instructions even if you
17 disagree with them. Are you willing to do that without
18 knowing in advance what they are?

19 PROSPECTIVE JUROR NO. 368: Yes, sir.

20 THE COURT: Sometimes for example, I've had drug
21 cases where some people thought that the laws of Nevada on the
22 use, possession or sale of drugs shouldn't be as they are.
23 But I have to instruct on Nevada law involving drugs, which
24 isn't -- this case doesn't have a charge involving drugs. But
25 there are times when there are jurors that disagree with the

1 law, but you have to follow it even if you disagree with it;
2 fair enough?

3 PROSPECTIVE JUROR NO. 368: Fair.

4 THE COURT: You've probably heard of the presumption
5 of innocence that each defendant in a criminal case carries.
6 Have you heard that?

7 PROSPECTIVE JUROR NO. 368: Not really.

8 THE COURT: All right. Under our system of justice,
9 a defendant who's charged with a crime is presumed not to be
10 guilty of that crime, and it's up to the State to prove the
11 defendant's guilt by evidence beyond a reasonable doubt. And
12 if the State fails to meet that burden, the defendant's
13 entitled to a verdict of not guilty.

14 In other words, the defendants don't have to prove
15 that they're not guilty. It's up to the State to prove that
16 they are. And the State has to prove that by evidence beyond
17 a reasonable doubt, and I'll define that later on in the
18 instructions. Do you have any quarrel with that procedure?

19 PROSPECTIVE JUROR NO. 368: No, I don't.

20 THE COURT: You're willing to follow those
21 instructions on the law regarding the presumption of innocence
22 and the burden of proof?

23 PROSPECTIVE JUROR NO. 368: Yes, sir.

24 THE COURT: If you were a defendant in a criminal
25 case like this, unfortunately charged with an offense, would

1 you want 12 citizens of your frame of mind, people like you
2 sitting in judgment of the case?

3 PROSPECTIVE JUROR NO. 368: Yeah, I would.

4 THE COURT: Is that because you have an open mind?

5 PROSPECTIVE JUROR NO. 368: Yes, sir.

6 THE COURT: Willing to listen to the evidence, do the
7 best job you can?

8 PROSPECTIVE JUROR NO. 368: Yes, sir.

9 THE COURT: That's all we can ask of any of the
10 jurors is they keep an open mind, listen to the evidence,
11 listen to all the witnesses that testify, and then do the best
12 job they can in reaching a fair verdict. Are you willing to
13 do that?

14 PROSPECTIVE JUROR NO. 368: Yes, sir.

15 THE COURT: Any reason you couldn't be fair to both
16 sides in the case?

17 PROSPECTIVE JUROR NO. 368: No.

18 THE COURT: Ms. Weckerly.

19 MS. WECKERLY: Thank you.

20 Good morning, sir.

21 PROSPECTIVE JUROR NO. 368: Good morning.

22 MS. WECKERLY: How are you?

23 PROSPECTIVE JUROR NO. 368: Good.

24 MS. WECKERLY: Good. You are a facilities engineer?

25 PROSPECTIVE JUROR NO. 368: Yes, ma'am.

1 MS. WECKERLY: What does that mean you do?

2 PROSPECTIVE JUROR NO. 368: I take care of the
3 facility, the kitchen shop, anything to run the building, to
4 make it keep it running. Like the air conditioning, if it
5 break down we fix it.

6 MS. WECKERLY: Have you worked at a property prior to
7 ARIA?

8 PROSPECTIVE JUROR NO. 368: I was working as a
9 contractor outside, but we do work on different kind of hotel.

10 MS. WECKERLY: Okay.

11 PROSPECTIVE JUROR NO. 368: So I was working for a
12 company.

13 MS. WECKERLY: And then you decided to move --

14 PROSPECTIVE JUROR NO. 368: Yes.

15 MS. WECKERLY: Okay. Sir, if it's okay with you, I'm
16 going to start at the back of your questionnaire, which you
17 may remember were questions about the death penalty and
18 punishment and that sort of thing.

19 In this case, it's -- well, in all first degree
20 murder cases in Nevada, there's sort of a two-step process in
21 first degree murder cases. The first step for yourself and
22 collective jurors is to decide if the State has proven charges
23 beyond a reasonable doubt. And that's a factual
24 determination, were the facts proven that these individuals
25 committed the crime beyond a reasonable doubt.

1 Now, if there is a conviction for first degree murder
2 we move into what's called the penalty phase. Now, as to
3 Mr. Burns, there's four possible choices of punishment, which
4 on the low end, the least sentence is what we would call a
5 term of years in prison all the way up to the most severe
6 punishment in our criminal justice system, which is the death
7 penalty.

8 Now, Mr. Mason isn't -- there's no death allegation
9 against Mr. Mason, so he -- his most extreme punishment would
10 be life without the possibility of parole; meaning he'd never
11 get out of prison. If we get into that second phase of
12 punishment, it would only be if the jury found first degree
13 murder beyond a reasonable doubt.

14 In that second phase you would be given, as jurors,
15 additional information and additional instructions on the law
16 by the judge. If we get into that phase, are you someone who
17 could consider the death penalty as a potential punishment?

18 PROSPECTIVE JUROR NO. 368: Yes, I would.

19 MS. WECKERLY: And what happens in that phase, as I
20 just said, is that you're given more information and more law,
21 and really it's a determination of yourself and then
22 collectively as a group what you think the punishment should
23 be for these individuals. And it's sort of up to the jurors
24 what they decide and what's important and what -- based on the
25 evidence they hear and the law.

1 Are you someone who could wait and hear the law and
2 hear additional information before deciding what punishment
3 you think is appropriate?

4 PROSPECTIVE JUROR NO. 368: Yes. I can do that.

5 MS. WECKERLY: I mean, as you sit here now, you
6 haven't heard anything and you don't know anything that you
7 might hear either about the crime or anything you might hear
8 in that penalty phase. So I assume you really can't make any
9 decision right now.

10 PROSPECTIVE JUROR NO. 368: Correct.

11 MS. WECKERLY: And if – if you hear information in
12 that penalty phase, are you open to the possibility that you
13 might hear something that would make you think, you know what,
14 this isn't an appropriate case for the death penalty, I could
15 pick one of the other options?

16 PROSPECTIVE JUROR NO. 368: Yes. I can do that.

17 MS. WECKERLY: And one of those options might be, or
18 would be, one of the options is whether is allowing the person
19 to have the possibility of parole, not meaning they get it,
20 but meaning they would have an opportunity to go before a
21 parole board. Is that something that you could consider as a
22 potential punishment?

23 PROSPECTIVE JUROR NO. 368: Kind of hard to answer
24 that question without knowing what –

25 MS. WECKERLY: Right. And it's sort of unfair to ask

1 you, hey, what do you – and we're not asking you what
2 sentence you would impose. We're asking if you can reserve
3 judgment and reserve decision making until you hear all the
4 information.

5 PROSPECTIVE JUROR NO. 368: Yes.

6 MS. WECKERLY: So all of those sentences are in play
7 depending on what you hear?

8 PROSPECTIVE JUROR NO. 368: Yes.

9 MS. WECKERLY: And you can do that?

10 PROSPECTIVE JUROR NO. 368: Yes, I can.

11 MS. WECKERLY: In your – in your questionnaire you
12 were asked about your opinion of attorneys, and your opinion
13 of defense attorneys wasn't necessarily what I would call
14 positive. Do you remember what you wrote about them?

15 PROSPECTIVE JUROR NO. 368: I don't remember. That
16 was – that was last month.

17 MS. WECKERLY: It was last month, and sometimes
18 people, they write stuff on questionnaires that maybe they
19 wouldn't necessarily say is their opinion when they're sitting
20 in court. You wrote that defense attorneys are weak. Do you
21 remember writing that?

22 PROSPECTIVE JUROR NO. 368: Oh, yeah. Now I
23 remember. [Unintelligible] the public defender, you know,
24 most of the time.

25 MS. WECKERLY: I'm sure you haven't met these defense

1 attorneys --

2 PROSPECTIVE JUROR NO. 368: I haven't met them, yeah.

3 MS. WECKERLY: -- because I wouldn't use that word.

4 Nothing about what you wrote about your opinion of

5 defense attorneys, I assume that wouldn't affect how you

6 evaluate the case or evaluate the presentation that they do?

7 PROSPECTIVE JUROR NO. 368: No.

8 MS. WECKERLY: You said that generally you consider

9 the police and judges to be fair, and I think you said that

10 you thought the criminal justice system was fair but sometimes

11 controversial.

12 PROSPECTIVE JUROR NO. 368: It's true.

13 MS. WECKERLY: Can you explain what you mean by

14 controversial?

15 PROSPECTIVE JUROR NO. 368: Well, sometimes the

16 decision of the verdict is not what it supposed to be or

17 people expect it to be.

18 MS. WECKERLY: Right. I mean, sometimes there's

19 media attention about cases --

20 PROSPECTIVE JUROR NO. 368: Yeah, media attention.

21 MS. WECKERLY: -- and it's shocking what the

22 verdict --

23 PROSPECTIVE JUROR NO. 368: And shock and for

24 example, I don't know, can I give an example here or what?

25 MS. WECKERLY: Sure.

1 PROSPECTIVE JUROR NO. 368: Like some, you know,
2 sometimes people get prosecuted where they don't supposed to,
3 and people supposed to get prosecuted kind of get away.

4 MS. WECKERLY: Yeah. It's on both sides.

5 PROSPECTIVE JUROR NO. 368: Both side. I think, I
6 guess it's the way the lawyer wants it.

7 MS. WECKERLY: Right. And sometimes would you agree
8 with me that the media can show or just give you a little bit
9 of what's happening in a trial, and unless you're sitting
10 there as a juror you don't hear the whole thing?

11 PROSPECTIVE JUROR NO. 368: That's true. Media can
12 also make an impact on the case, you know. They can not
13 really 100 percent what they say until you're really in a jury
14 and hear the verdict of the case.

15 MS. WECKERLY: And as a juror, all you just need to
16 understand, and I'm sure you do, that what you decide about
17 this case has to be based on the evidence that you hear in
18 court and the instructions given to you by the judge.

19 PROSPECTIVE JUROR NO. 368: True.

20 MS. WECKERLY: Nothing that you've ever read or heard
21 or whatever, anything like that.

22 PROSPECTIVE JUROR NO. 368: Correct.

23 MS. WECKERLY: Only what's in here.

24 PROSPECTIVE JUROR NO. 368: What's in here.

25 MS. WECKERLY: No problem with that?

1 PROSPECTIVE JUROR NO. 368: No problem with that.

2 MS. WECKERLY: Okay. You were also asked in your
3 questionnaire how you felt drugs and alcohol interacted with
4 crime, and you said there was a big impact. Can you explain a
5 little bit why you have that opinion?

6 PROSPECTIVE JUROR NO. 368: Well, if someone's under
7 the influence, they're not really themselves. Usually they're
8 impaired to make the judgment for what they supposed to do,
9 and the drugs can enhance that or the alcohol can enhance that
10 for their judgment.

11 MS. WECKERLY: Do you think people have
12 responsibility for their actions when they are under the
13 influence?

14 PROSPECTIVE JUROR NO. 368: Yes, they -- I do.

15 MS. WECKERLY: If you were sitting where me and
16 Mr. DiGiacomo are, can you assure us that you would be fair to
17 the State?

18 PROSPECTIVE JUROR NO. 368: Yes.

19 MS. WECKERLY: And can you assure Mr. Mason and
20 Mr. Burns that you will be fair to them as well?

21 PROSPECTIVE JUROR NO. 368: Yes.

22 MS. WECKERLY: Thank you very much, sir.

23 Pass for cause, Your Honor.

24 THE COURT: Mr. Sgro.

25 MR. SGRO: Thank you, Your Honor.

1 Good morning, sir.

2 PROSPECTIVE JUROR NO. 368: Good morning.

3 MR. SGRO: So because you get to be the first one,
4 we're going to take the longest amount of time with you, so we
5 apologize in advance.

6 PROSPECTIVE JUROR NO. 368: That's okay.

7 MR. SGRO: So if you haven't put it together yet,
8 this is the part where we get to determine all together if
9 this is the right case with the right prospective jurors. So
10 by that I mean some people can't be fair in a car accident
11 case because maybe they were hit by a drunk driver and they
12 just couldn't be in that kind of case. It doesn't make it
13 right or wrong. It's just they're not the right fit for that
14 particular case. Make sense?

15 PROSPECTIVE JUROR NO. 368: Makes sense.

16 MR. SGRO: So in this particular case, we have to vet
17 whether or not each of you could be fair. You know, the State
18 has a right to a fair trial too. Most people think it's just
19 Mr. Burns. But everyone has the right to a fair trial.
20 You're okay with that, right?

21 PROSPECTIVE JUROR NO. 368: Yes.

22 MR. SGRO: And so we need to make sure that, as
23 Ms. Weckerly just said, you can be fair to both sides. So
24 when we look at a case like this, it's a murder case, we have
25 a very unusual job. Because as defense attorneys, we have to

1 talk about a part of the case we don't think we're ever going
2 to get to.

3 And by that I mean you understand if you get to a
4 point in the case where the case is given to you and you don't
5 think the State has proven the case, not guilty verdict, there
6 is no penalty. Do you understand that?

7 PROSPECTIVE JUROR NO. 368: Yes.

8 MR. SGRO: And the fact that we have to get up here
9 and talk about a penalty is simply because we don't get to
10 speak to you guys ever again. Okay. So we could have a
11 situation where we get to the end of the case and someone
12 says, well, death penalty, I'm not going to do death, or I'm
13 never going to let that person out on the street. Does that
14 make sense as well?

15 PROSPECTIVE JUROR NO. 368: Yes.

16 MR. SGRO: Okay. So one of the things that the judge
17 will allude to is something called a burden of proof. In
18 other words, the State has to prove their case beyond a
19 reasonable doubt. Have you ever heard burden of proof or
20 beyond a reasonable doubt before?

21 PROSPECTIVE JUROR NO. 368: Yes.

22 MR. SGRO: And do you have any quarrel with the
23 concept that the State has the burden of proof?

24 PROSPECTIVE JUROR NO. 368: No, I don't.

25 MR. SGRO: And do you understand -- and let me give

1 you an extreme example. The State could call a hundred
2 witnesses. We could be here for two months. And Mr. Oram and
3 I, we don't ask a single question, we don't call a single
4 witness. And at the end of the case you think to yourself,
5 you know, I don't think they proved it. You understand your
6 obligation would be to come back and vote not guilty?

7 PROSPECTIVE JUROR NO. 368: I understand.

8 MR. SGRO: Any problem with that?

9 PROSPECTIVE JUROR NO. 368: No.

10 MR. SGRO: So let's talk about – I'm going to go
11 backwards to let's start with the questions about the penalty.

12 So I want to again, I'm in an uncomfortable spot, but this is
13 what the law requires. So I have to speak to you in terms of
14 assuming that there has been a first degree murder conviction.

15 Okay. Because sometimes people say, well, I could consider
16 all the punishments depending on the circumstances.

17 Well, one of the circumstances you have to assume
18 that's true when we do this hypothetical is that there's a
19 conviction. So what you did when you did your questionnaire,
20 you saw the little fact pattern that was there, that a woman
21 was shot and killed?

22 PROSPECTIVE JUROR NO. 368: [No audible response.]

23 MR. SGRO: You have to answer out loud.

24 PROSPECTIVE JUROR NO. 368: Yes. Yes, I did. Yes.

25 MR. SGRO: We have a court recorder and so –

1 PROSPECTIVE JUROR NO. 368: Okay.

2 MR. SGRO: -- everything has to be [inaudible].

3 Thank you. And you recall the statement about a 12-year-old
4 girl who was shot?

5 PROSPECTIVE JUROR NO. 368: Yes.

6 MR. SGRO: So now what you have to do is put yourself
7 mentally in a place where someone's guilty, guilty of first
8 degree murder. This wasn't accident. It's not self-defense.
9 Okay.

10 PROSPECTIVE JUROR NO. 368: Yeah.

11 MR. SGRO: So from the prospective of someone that's
12 already been found guilty of first degree murder, do you think
13 you could give that person a 20 year sentence, what we call a
14 term of years? Is that an option for you?

15 PROSPECTIVE JUROR NO. 368: Possible.

16 MR. SGRO: So it's possible that that person be
17 allowed to walk on the street again?

18 PROSPECTIVE JUROR NO. 368: [No audible response.]

19 MR. SGRO: And then I'll tell you -- and I know you
20 hesitate. And I want to -- I know you did the questionnaire a
21 month ago. But in your questionnaire you said, If the person
22 kills someone intentionally, that person should get the death
23 penalty.

24 PROSPECTIVE JUROR NO. 368: True.

25 MR. SGRO: And that's okay. Because we have persons

1 that say I have a strong religious belief and I could never
2 impose a death penalty, I don't care who it is. You
3 understand there's two ends?

4 PROSPECTIVE JUROR NO. 368: Yes.

5 MR. SGRO: It's not unusual for someone to say if
6 someone commits first degree murder I can't let that person
7 back on the street. It's not unusual. It just means there's
8 another case more appropriate for that juror to sit on.
9 Right?

10 PROSPECTIVE JUROR NO. 368: Correct.

11 MR. SGRO: Mr. Mason isn't facing the death penalty.
12 If he were here by himself, you'd be totally fine, right?

13 PROSPECTIVE JUROR NO. 368: Correct.

14 MR. SGRO: Because it wouldn't be an option. So I
15 want to explore with you your hesitation on letting someone
16 back out on the street, because that's a very real option and
17 one that in a case like this the person that's accused of a
18 crime, he has to have a commitment from you that you could
19 really consider it.

20 Right. And consider it at a time, consider at a time
21 when you've already decided beyond a reasonable doubt first
22 degree murder. So can you tell me what your thoughts are on
23 that given what you said on the questionnaire?

24 PROSPECTIVE JUROR NO. 368: The thought about him
25 walking out –

1 MR. SGRO: Yes, sir.

2 PROSPECTIVE JUROR NO. 368: -- on the street?

3 That would be like a long shot. That's just you're
4 asking me to know if somebody found guilty like you say, but
5 [unintelligible] see if he's going to get the death penalty or
6 the life in prison.

7 MR. SGRO: And for purposes of just trying to make it
8 clear, would you agree -- have you ever thought about the
9 death penalty before coming in and doing the questionnaire?

10 PROSPECTIVE JUROR NO. 368: Yes. Yes.

11 MR. SGRO: And have you always believed the same as
12 what you wrote down, that if someone commits first degree
13 murder they should get death?

14 PROSPECTIVE JUROR NO. 368: Yes.

15 MR. SGRO: Okay. That wasn't something that came to
16 you that day?

17 PROSPECTIVE JUROR NO. 368: No.

18 MR. SGRO: So and I heard you just say the word "long
19 shot," and I don't want to quarrel with you on the use of the
20 adjective. But would it be fair that for you as you sit here
21 today, because of your beliefs, you know, not right, not
22 wrong, but just because your personal beliefs, really if
23 someone gets first degree murder, you're not really going to
24 consider letting them back on the street; would that be fair?

25 PROSPECTIVE JUROR NO. 368: I can't really answer

1 that. I don't -- [unintelligible] on that one.

2 MR. SGRO: So here's the -- here's the difficulty.

3 Okay. We don't get to talk to you again.

4 PROSPECTIVE JUROR NO. 368: Yes.

5 MR. SGRO: And the judge has indicated, you know,
6 everyone's got to follow the law. Sometimes judges don't like
7 the law, the lawyers don't like it, but we all have to follow
8 it. Right.

9 And so we can't hear for the first time -- we can't
10 hear for the first time, hey, you know what, now that I've
11 been in trial for a month -- because this trial's like five
12 weeks it's scheduled for. Now that I've been here for a
13 month, I'm not going to be able to follow the law. It's
14 becoming more and more apparent to me putting someone on the
15 street who's convicted of first degree murder's not an option.

16 So while I appreciate the unusual position you're in
17 of having to decide now, we really need to know now. Why?
18 Because this is our only chance to speak with you.

19 PROSPECTIVE JUROR NO. 368: Okay.

20 MR. SGRO: And again, recognizing it's okay, by the
21 end of this session I'm pretty sure we're going to hear from
22 someone that says I could never do the death penalty. Do you
23 understand?

24 PROSPECTIVE JUROR NO. 368: I understand that.

25 MR. SGRO: So I need you to be -- really search and

1 be honest with me and tell me is what you wrote on the
2 questionnaire really the best way to assess where you're
3 coming from on penalty?

4 PROSPECTIVE JUROR NO. 368: Yes. Yes.

5 MR. SGRO: So you would agree with me that if
6 someone's convicted of first degree murder, they're really not
7 going to get a shot at being back on the street?

8 PROSPECTIVE JUROR NO. 368: Correct.

9 MR. SGRO: I appreciate it and I don't mean to pry.
10 You understand this is the most serious case we have.

11 PROSPECTIVE JUROR NO. 368: Right. Yes.

12 MR. SGRO: Thank you, sir.

13 I challenge for cause, Your Honor.

14 THE COURT: Mr. Mendoza, in the event the jury finds
15 Mr. Burns guilty of murder in the first degree, we would have
16 a second phase of the trial where the jury would determine
17 punishment. And I would give to the jurors some additional
18 instructions on the law.

19 Those instructions would include a direction that the
20 jurors follow the law which gives the jurors four different
21 punishments for murder in the first degree. One of them is
22 the death penalty. One of them is a life without the
23 possibility – a life imprisonment without the possibility of
24 parole. One of them is life imprisonment with the possibility
25 of parole, but doesn't require it. And one of them is a term

1 of years which after which the individual can be paroled.

2 Would you consider all different forms, or are you
3 telling me that there's no way that you're going to impose
4 anything other than death?

5 PROSPECTIVE JUROR NO. 368: I would consider other --

6 THE COURT: You would consider all of them?

7 PROSPECTIVE JUROR NO. 368: Yes, after I hear
8 everything.

9 THE COURT: Now, you just told Mr. Sgro that if you
10 are found guilty of murder in the first degree, you're going
11 to get sentenced to death. That told me that you wouldn't
12 consider the other three.

13 PROSPECTIVE JUROR NO. 368: I didn't hear that
14 [unintelligible].

15 THE COURT: You didn't understand what he was saying?

16 PROSPECTIVE JUROR NO. 368: Yeah.

17 THE COURT: You will consider the alternatives?

18 PROSPECTIVE JUROR NO. 368: Yes, of course.

19 Alternative, yes.

20 THE COURT: Because there are alternatives.

21 PROSPECTIVE JUROR NO. 368: I didn't -- I didn't
22 quite get that when he was asking me the question.

23 THE COURT: That's what I thought.

24 Mr. Sgro, I'm going to deny the challenge.

25 MR. SGRO: Okay. May I proceed then, Your Honor?

1 THE COURT: Yes.

2 MR. SGRO: Now I apologize. Maybe I misunderstood.

3 But let me back up to the questionnaire where it says, If
4 someone is convicted of first degree murder they should get
5 the death penalty, right?

6 PROSPECTIVE JUROR NO. 368: Right.

7 MR. SGRO: Now, with what the judge just said, you
8 said you would consider an alternative form of punishment?

9 PROSPECTIVE JUROR NO. 368: Yes.

10 MR. SGRO: Would you consider life without parole?

11 PROSPECTIVE JUROR NO. 368: Yes.

12 MR. SGRO: Okay. Would you consider life with
13 parole?

14 PROSPECTIVE JUROR NO. 368: No.

15 MR. SGRO: And I think that's the disconnect, Your
16 Honor.

17 THE COURT: Oh. You wouldn't consider a life with
18 the possibility --

19 PROSPECTIVE JUROR NO. 368: No. No.

20 MR. SGRO: Right. And the alternative punishment, I
21 think you were saying you'd consider his life without parole.

22 THE COURT: Oh, I thought you said you would consider
23 all four.

24 PROSPECTIVE JUROR NO. 368: Oh, no. I kind of
25 misunderstood you there, Judge.

1 MR. SGRO: Yes, sir. And that's what I saw. I saw
2 life without as the alternative, Your Honor.

3 THE COURT: All right. Traverse?

4 MS. WECKERLY: Submit it, Your Honor.

5 THE COURT: All right. I'll excuse you, Mr. Mendoza.
6 Thank you for being here and being a prospective juror. If
7 you'd hand the microphone to the next juror right next to you,
8 I would appreciate it. You can leave at this time,
9 Mr. Mendoza.

10 PROSPECTIVE JUROR NO. 368: All right. Thank you.

11 THE COURT: Mr. -- is it Peterson?

12 PROSPECTIVE JUROR NO. 380: Yes.

13 THE COURT: You need to speak into that microphone,
14 Mr. Peterson, so the recorder can hear you and we can all hear
15 you a little bit better that way. Do you know any of the
16 attorneys or the witnesses involved in this case?

17 PROSPECTIVE JUROR NO. 380: No.

18 THE COURT: **You -- are you working for the State of
19 Nevada?

20 PROSPECTIVE JUROR NO. 380: No. I work for Southern
21 Nevada Regional Housing Authority.

22 THE COURT: Okay. I wasn't -- you had some initials
23 down here and I wasn't sure what that stood for. Okay. The
24 housing authority. And what do you do for the housing
25 authority?

1 PROSPECTIVE JUROR NO. 380: I'm a senior service
2 coordinator. I make sure that our senior citizens in our --
3 our public housing and affordable projects get the services
4 that they need. I help them with their applications, refer
5 them to whatever kind of help they need.

6 THE COURT: Do you assist them in the particular
7 locations where they live?

8 PROSPECTIVE JUROR NO. 380: Yes.

9 THE COURT: Do you -- do you -- do you have anything
10 to do with maintaining those locations or --

11 PROSPECTIVE JUROR NO. 380: No.

12 THE COURT: You don't help them in any way in that
13 regard?

14 PROSPECTIVE JUROR NO. 380: I'm not in maintenance,
15 no.

16 THE COURT: You're not in maintenance. Do you -- do
17 you call other people to do that for them?

18 PROSPECTIVE JUROR NO. 380: Yes.

19 THE COURT: Okay. And is this a county agency or a
20 state agency?

21 PROSPECTIVE JUROR NO. 380: It's a public non --
22 public nonprofit. We're funded through federal funds.

23 THE COURT: I knew that you -- I thought it was a
24 federally funded thing. But who -- who maintains it? Who's
25 in charge of it?

1 PROSPECTIVE JUROR NO. 380: The -- the Housing
2 Authority.

3 THE COURT: And who's the Housing Authority? Is it
4 -- it's not a State agency?

5 PROSPECTIVE JUROR NO. 380: No, it's not a State
6 agency.

7 THE COURT: It's not a County agency?

8 PROSPECTIVE JUROR NO. 380: No. It's a -- a public
9 nonprofit --

10 THE COURT: Okay.

11 PROSPECTIVE JUROR NO. 380: -- funded with federal
12 dollars.

13 THE COURT: All right. How long have you been doing
14 that?

15 PROSPECTIVE JUROR NO. 380: 15 years. Well, you mean
16 here?

17 THE COURT: Did you do it someplace else before you
18 came here?

19 PROSPECTIVE JUROR NO. 380: Yes.

20 THE COURT: Where did you come from?

21 PROSPECTIVE JUROR NO. 380: Oregon.

22 THE COURT: And you were doing this in Oregon?

23 PROSPECTIVE JUROR NO. 380: Yes.

24 THE COURT: Is that why you came here?

25 PROSPECTIVE JUROR NO. 380: Yes.

1 THE COURT: All right. You're married and your wife
2 is retired, you say?
3 PROSPECTIVE JUROR NO. 380: Yes.
4 THE COURT: What's she retired from?
5 PROSPECTIVE JUROR NO. 380: She's an insurance
6 broker.
7 THE COURT: You have two grown children?
8 PROSPECTIVE JUROR NO. 380: Yes.
9 THE COURT: And you were in the Navy at one time; is
10 that right?
11 PROSPECTIVE JUROR NO. 380: Yes.
12 THE COURT: Did you see action in the Navy?
13 PROSPECTIVE JUROR NO. 380: Yes.
14 THE COURT: Where?
15 PROSPECTIVE JUROR NO. 380: San Diego.
16 THE COURT: Okay. You indicated that you have been a
17 juror three times previously, and they were all on civil
18 cases?
19 PROSPECTIVE JUROR NO. 380: Yes.
20 THE COURT: At least two of them were in Oregon, I
21 believe; is that right?
22 PROSPECTIVE JUROR NO. 380: Correct.
23 THE COURT: I don't know what the -- is -- is
24 undersized crabs an offense on Oregon or? That's what you
25 wrote down.

1 PROSPECTIVE JUROR NO. 380: It -- it --

2 THE COURT: I couldn't -- I've never had that before,
3 so.

4 PROSPECTIVE JUROR NO. 380: It was like a speeding
5 ticket. If you're -- if you're harvesting crabs, they have to
6 be within a certain size. And --

7 THE COURT: Okay. I guess I knew that. They're
8 Dungeness crabs?

9 PROSPECTIVE JUROR NO. 380: Yes.

10 THE COURT: And they have to be certain -- so big?

11 PROSPECTIVE JUROR NO. 380: Correct.

12 THE COURT: So if you harvest one that's too small,
13 what -- they give you a ticket?

14 PROSPECTIVE JUROR NO. 380: Yes.

15 THE COURT: And you get a jury trial on that?

16 PROSPECTIVE JUROR NO. 380: If you push it far
17 enough.

18 THE COURT: Wow. I got to go to Oregon and try some
19 cases. I get rid of these murder cases and go up to Oregon
20 and do crab cases.

21 Okay. In all these three cases, did the jury reach a
22 verdict in all three cases?

23 PROSPECTIVE JUROR NO. 380: Yes.

24 THE COURT: Were -- were you the foreman of any of
25 those juries? Foreperson?

1 PROSPECTIVE JUROR NO. 380: No.

2 THE COURT: And do you think that those experiences
3 might tend to make you favor one side or the other in this
4 kind of a case?

5 PROSPECTIVE JUROR NO. 380: No.

6 THE COURT: Doesn't have much to do with this case,
7 huh?

8 PROSPECTIVE JUROR NO. 380: No.

9 THE COURT: All right. You -- you indicated that you
10 have a coworker whose son was the victim of a homicide?

11 PROSPECTIVE JUROR NO. 380: Yes.

12 THE COURT: When did that happen? Or do you know
13 that much about it?

14 PROSPECTIVE JUROR NO. 380: It was probably about six
15 years ago.

16 THE COURT: Here in Las Vegas?

17 PROSPECTIVE JUROR NO. 380: Yes.

18 THE COURT: Do you know what happened to him?

19 PROSPECTIVE JUROR NO. 380: He was coming out of a --
20 a club and -- and shot.

21 THE COURT: Did they find or arrest the person that
22 caused the homicide or do you know?

23 PROSPECTIVE JUROR NO. 380: I'm not sure.

24 THE COURT: You don't know much -- anymore about it
25 than that?

1 PROSPECTIVE JUROR NO. 380: Right.

2 THE COURT: Okay. That isn't going to affect your
3 ability to be a fair juror here? You understood the -- the
4 procedure whereby the -- the jurors decide what the facts are
5 and I decide what the law is, and then you listen to the law
6 and reach a fair verdict; do you understand that procedure?

7 PROSPECTIVE JUROR NO. 380: Yes.

8 THE COURT: Any reason you couldn't -- you couldn't
9 do that?

10 PROSPECTIVE JUROR NO. 380: No.

11 THE COURT: You think you could be a fair juror in
12 the case?

13 PROSPECTIVE JUROR NO. 380: I believe I could.

14 THE COURT: Listen to both sides and do the best job
15 you can?

16 PROSPECTIVE JUROR NO. 380: Yes.

17 THE COURT: Follow the instructions on the law that I
18 give to you?

19 PROSPECTIVE JUROR NO. 380: Yes.

20 THE COURT: We've talked about the -- the possible
21 punishment in the event we get to a second phase. We don't
22 know whether we will or not, but in the event we get to a
23 second phase, you talk about possible punishments, you'd be
24 willing to consider all four?

25 PROSPECTIVE JUROR NO. 380: Yes.

1 THE COURT: Okay. Ms. Weckerly?

2 MS. WECKERLY: Thank you. Good morning, sir.

3 PROSPECTIVE JUROR NO. 380: Good morning.

4 MS. WECKERLY: I'm going to start off where the judge

5 left off, talking about the four potential punishments that

6 you would be able to choose from in the event of a first

7 degree murder conviction. As Mr. Sgro discussed with Juror

8 No. 1, one of those possibilities is a sentence where a person

9 could come before the parole board and possibly get released.

10 Is that a punishment that you can consider in the event of a

11 first degree murder conviction?

12 PROSPECTIVE JUROR NO. 380: I could consider it.

13 MS. WECKERLY: Okay. And it doesn't -- I mean, right

14 now you know nothing about what facts you're going to hear.

15 And certainly if we get to a penalty hearing, you'd hear

16 additional information and you'd get additional instructions

17 on the law. Can you at least leave open the possibility of

18 imposing that type of sentence until you hear more, and then

19 once you hear that other information, then decide from the

20 four choices?

21 PROSPECTIVE JUROR NO. 380: Yes.

22 MS. WECKERLY: And as you sit here now, you're not

23 ruling out any of the four possible punishments?

24 PROSPECTIVE JUROR NO. 380: No.

25 MS. WECKERLY: Okay. The flip side of that, are

1 there situations where you believe the death penalty could be
2 an appropriate sentence in the case of first degree murder?

3 PROSPECTIVE JUROR NO. 380: Yes.

4 MS. WECKERLY: Okay. And I don't need to know what
5 those are, but if you thought the situation warranted it, is
6 there any religious or philosophical impediment to you voting
7 for such a punishment?

8 PROSPECTIVE JUROR NO. 380: No.

9 MS. WECKERLY: Okay. You mentioned on your
10 questionnaire that your -- your agency is understaffed?

11 PROSPECTIVE JUROR NO. 380: Yes.

12 MS. WECKERLY: And that there's -- I guess there
13 would be a burden on your coworkers as well as the people
14 you're trying to place?

15 PROSPECTIVE JUROR NO. 380: Yes.

16 MS. WECKERLY: If you are imposed upon and -- and
17 become a juror, can you assure us that you'll give us your
18 full attention even though your work, I would assume, is
19 stacking up?

20 PROSPECTIVE JUROR NO. 380: It would be in the back
21 of my mind.

22 MS. WECKERLY: Okay. And I think I -- everybody --
23 it's an imposition, certainly, on everybody and -- and this is
24 not a short trial by any stretch. But what we need is people
25 who aren't going to be, like, Well, you know, I don't care

1 what happens here, I've got to get back to work. Can you --
2 can you weigh the evidence carefully and follow your oath?

3 PROSPECTIVE JUROR NO. 380: I would just as soon not.

4 MS. WECKERLY: Yes, I get that from what you wrote.

5 THE COURT: I've got to tell you that every juror
6 that wrote an answer to here said that they had something else
7 they'd rather be doing.

8 MS. WECKERLY: Well...

9 THE COURT: Believe me, everybody here would rather
10 be someplace else.

11 MS. WECKERLY: So can you assure us, though, that
12 you'll take your task seriously?

13 PROSPECTIVE JUROR NO. 380: Yes.

14 MS. WECKERLY: Because, I mean, this is -- I mean,
15 this is as serious as it gets, actually, in the criminal
16 justice system. There's been -- the crime is serious, and
17 certainly the prospective punishments for Mr. Burns and Mr.
18 Mason. These are -- these are heavy punishments. And we need
19 people that can -- can come here and devote their attention to
20 this, even though we realize everybody else has another life
21 going on and -- and has stuff they would rather be doing.

22 PROSPECTIVE JUROR NO. 380: I could.

23 MS. WECKERLY: Okay. The only other question I have
24 for you is -- and you'll find this is the case -- you've said
25 that the criminal justice system was slow, and as is jury

1 selection, you'll learn, or if you haven't already gotten
2 that. Do you think it generally works, though? Do you think
3 it's fair or just or a good system?

4 PROSPECTIVE JUROR NO. 380: I believe it works.

5 MS. WECKERLY: Okay. And is there anything about
6 your -- your perceptions of the criminal justice system that
7 would, I guess, predispose you to -- to favor one side or the
8 other?

9 PROSPECTIVE JUROR NO. 380: No.

10 MS. WECKERLY: Okay. And you can assure us all that
11 -- that you can be fair to both sides?

12 PROSPECTIVE JUROR NO. 380: Yes.

13 MS. WECKERLY: Thank you. I'll pass for cause, Your
14 Honor.

15 THE COURT: Mr. Oram?

16 MR. ORAM: Thank you, Your Honor. Good morning.

17 PROSPECTIVE JUROR NO. 380: Good morning.

18 MR. ORAM: Usually when I'm up here, the first few
19 jurors I talk a lot about the burden of proof and

20 Constitutional rights and what's going to happen at a trial.

21 But what I've heard from your answers with the judge and with
22 the prosecution, it seemed to me you have some reservations
23 about this case; is that fair? In other words, about your
24 ability to sit and concentrate when you think maybe you have
25 some other --

1 PROSPECTIVE JUROR NO. 380: Yes.

2 MR. ORAM: -- obligations. Okay. And -- and Judge
3 Thompson pointed out, you know, everybody has obligations.
4 Some are more pressing than others. And so Ms. Weckerly told
5 you this is the most important case both to the State of
6 Nevada and to Mr. Burns and Mr. Mason, obviously.

7 PROSPECTIVE JUROR NO. 380: Yes.

8 MR. ORAM: Judge was making light of it, but it's not
9 a crab case. We're talking about, well, the, you know,
10 ramifications of murder. And so we want to make sure that
11 both sides have a -- a fair jury, right? That makes sense?
12 And so if your mind is somewhere else, not because you don't
13 want to do your civic duty, but simply because you really feel
14 these obligations are so strong that they're taking you away
15 from being in that box, we'd want to know rather than you just
16 feeling like, I'll -- I'll say yes, I can hear the case. When
17 in reality you're thinking, I'm not sure I can do this job.
18 Does that make sense what I'm asking?

19 PROSPECTIVE JUROR NO. 380: It makes sense.

20 MR. ORAM: Okay. So tell me, just, you know, voir
21 dire -- that's picking a jury, it means, in translation, to
22 tell the truth. Okay. So there's no right or wrong answer.
23 It's not as though, you know, some people say, I could never
24 give the death penalty. It's not like, That's bad, what kind
25 of citizen are you? That's not -- that's not what we're doing

1 here. We're just trying to find out what the truth is and if
2 -- if the truth is that you don't think that you can put your
3 full mind here and concentrate and that maybe a few months
4 from now you'd be a better juror, then tell us.

5 PROSPECTIVE JUROR NO. 380: Honestly, it would always
6 be in the back of my mind of, you know, that I'm putting an
7 extra burden on my coworkers and I would just as soon get --
8 get the trial over with so I could get back to work.

9 MR. ORAM: So -- so to be -- I understand that.
10 Okay. Let me ask you a couple of questions. It's almost like
11 you feel like, Let's speed it up, speed it up. Because not
12 that I'm an unfair person, but simply because there's this
13 thing nagging in the back of my head called my job.

14 PROSPECTIVE JUROR NO. 380: Correct.

15 MR. ORAM: Okay. And so if you were deliberating,
16 okay, you sat on the jury and you were deliberating whether
17 Mr. Burns, Mr. Mason were guilty or not guilty, do you think
18 it's possible that you would not want to fight your particular
19 -- or give your particular opinion simply because you're
20 thinking to yourself, I've got to get this done?

21 PROSPECTIVE JUROR NO. 380: Actually, yes.

22 MR. ORAM: Okay. Do you feel it's such a way -- such
23 a strong manner that it would affect and impair your ability
24 to be a fair juror?

25 PROSPECTIVE JUROR NO. 380: Yes.

1 MR. ORAM: I appreciate your honesty. Do you think
2 if we had brought you in, let's say, six months ago, that
3 these would have been the same answers, or is it just because
4 of the situation you're in at work right now?

5 PROSPECTIVE JUROR NO. 380: It'd be the same.

6 MR. ORAM: It'd be the same?

7 PROSPECTIVE JUROR NO. 380: Ask your question again?

8 MR. ORAM: Sure. I'm sorry. Is the situation at
9 work right now so pressing that maybe six months from now it
10 wouldn't be that pressing and you could really put your mind
11 to a case?

12 PROSPECTIVE JUROR NO. 380: That's hard to say,
13 because there's a lot of different things going on at work
14 besides just the work. And, I mean, it's -- it's always -- to
15 me it's always pressing. Does that make sense?

16 MR. ORAM: Yes.

17 PROSPECTIVE JUROR NO. 380: Okay.

18 MR. ORAM: So could you put it aside or do you feel
19 this is going to impair you to the point where you don't think
20 you could be fair to either the State or to Mr. Burns and Mr.
21 Mason?

22 PROSPECTIVE JUROR NO. 380: Probably not be fair.

23 MR. ORAM: Let me go through a couple of other things
24 that caused you some pause. You were asked questions about
25 penalty. Now, I want to make sure that you understand. We

1 have to ask these questions. We -- we believe -- Mr. Sgro and
2 I believe that when the jury hears all the evidence, they're
3 going to walk -- after deliberating, they're going to walk
4 back through that back door and they're going to say, State,
5 you didn't prove the case. Okay. But we have to ask these
6 questions. Do you understand that?

7 PROSPECTIVE JUROR NO. 380: Yes.

8 MR. ORAM: Okay. And -- and it seemed to me that --
9 well, in your answers in the questionnaire, you took the
10 position that if you take the life of someone else for no
11 reason than gain -- I think -- I think you said gain -- you
12 should pay the price with your life. And when I heard you
13 answering questions, you said that you thought you could
14 consider the death penalty, life without parole. But could
15 you really consider life with the possibility of parole?

16 PROSPECTIVE JUROR NO. 380: Depends on what the facts
17 are.

18 MR. ORAM: Okay. So you could consider all four
19 forms of punishment?

20 PROSPECTIVE JUROR NO. 380: Based on the facts, yes.

21 MR. ORAM: Okay. So the answer that you gave, you're
22 open to everything; is that right?

23 PROSPECTIVE JUROR NO. 380: Yes.

24 MR. ORAM: Okay. And so you're telling us today that
25 the only reason you feel that you couldn't be fair to both

1 sides would be the work-related issue?

2 THE COURT: I don't think he said he couldn't be fair
3 to both sides. I – I think he said he's having a tough time
4 concentrating because of other commitments he's also got.

5 MR. ORAM: So you're -- is that accurate?

6 PROSPECTIVE JUROR NO. 380: Yes.

7 MR. ORAM: Okay. We could be fighting for this young
8 man's life, whether he's guilty or not. Right. And we need
9 12 people who really can concentrate.

10 PROSPECTIVE JUROR NO. 380: Understood.

11 MR. ORAM: Would you be able to?

12 PROSPECTIVE JUROR NO. 380: Yes.

13 MR. ORAM: If you can't, tell us. Sir, we have -- we
14 have had -- you know, we've been doing this for days. And
15 there've only -- I can't -- I don't want to say none, but I
16 don't remember anybody saying that something was bothering
17 them so badly. I mean, we've had medical reasons. But if
18 it's such a situation where you just don't feel you can bring
19 your mind here, and that you feel your mind will wander, or
20 that you will not be fair, then just tell us.

21 PROSPECTIVE JUROR NO. 380: Okay. I don't feel I
22 could be fair.

23 MR. ORAM: Challenge for cause.

24 MS. WECKERLY: Submit it, Your Honor.

25 THE COURT: All right. I'll excuse you, Mr.

1 Peterson.

2 All right. Mr. -- is it Looney?

3 PROSPECTIVE JUROR NO. 383: Yes.

4 THE COURT: Mr. Looney, are you familiar with any of
5 the attorneys or the witnesses here?

6 PROSPECTIVE JUROR NO. 383: No.

7 THE COURT: I -- you know, I didn't understand who
8 your employer was. You wrote JT3, and that didn't mean
9 anything to me.

10 PROSPECTIVE JUROR NO. 383: It's JT3, it's part of
11 the J-TECH contract that does basically all the communications
12 at the Nevada Test Range.

13 THE COURT: At the Nevada test sites?

14 PROSPECTIVE JUROR NO. 383: Test and Training Range.

15 THE COURT: Okay. I didn't know they had
16 communications up there. I thought they just used -- used it
17 for bombing or something.

18 PROSPECTIVE JUROR NO. 383: No. All the radio
19 communications and --

20 THE COURT: Okay.

21 PROSPECTIVE JUROR NO. 383: -- infrastructure and
22 stuff.

23 THE COURT: Are -- are you a private contractor to
24 the government?

25 PROSPECTIVE JUROR NO. 383: Yes. JT3 is a private

1 contractor for the DOD.

2 THE COURT: Okay. And you've only been doing this a
3 short period of time?

4 PROSPECTIVE JUROR NO. 383: I've -- I've been there
5 since Thanksgiving. I previously worked on another -- for
6 another contractor working for the DOD, also.

7 THE COURT: So you've had the same job for a long
8 time, just a different contractor?

9 PROSPECTIVE JUROR NO. 383: More or less, yes.

10 THE COURT: Okay. How long have you been -- do you
11 physically go out to the test site or do you work here in
12 town?

13 PROSPECTIVE JUROR NO. 383: I work between Nellis Air
14 Force Base, Creech Air Force Base, and with this new position
15 I will be going to the Test and Training Range, but I haven't
16 yet.

17 THE COURT: Okay. Are you -- you don't go to the
18 secret bases out there that nobody's supposed to know about?

19 PROSPECTIVE JUROR NO. 383: No.

20 THE COURT: Okay. Your wife is working in plastics?

21 PROSPECTIVE JUROR NO. 383: Yes.

22 THE COURT: What does she do?

23 PROSPECTIVE JUROR NO. 383: She's a scheduler. She
24 schedules the run time.

25 THE COURT: What -- what is the company?

1 PROSPECTIVE JUROR NO. 383: Berry Plastics.
2 THE COURT: What do they do?
3 PROSPECTIVE JUROR NO. 383: They make containers,
4 food containers, five-gallon buckets.
5 THE COURT: Here locally?
6 PROSPECTIVE JUROR NO. 383: Yes. Henderson.
7 THE COURT: Oh, okay. You -- I believe you said that
8 you were an alternate juror in the 1990s; is that right?
9 PROSPECTIVE JUROR NO. 383: Yes. Yes.
10 THE COURT: Where was that?
11 PROSPECTIVE JUROR NO. 383: It was here in Las Vegas.
12 THE COURT: What kind of a case were you on?
13 PROSPECTIVE JUROR NO. 383: It was -- I can't
14 remember if it was a murder or manslaughter case.
15 THE COURT: And --
16 PROSPECTIVE JUROR NO. 383: One person had been
17 accused of killing --
18 THE COURT: But you never actually --
19 PROSPECTIVE JUROR NO. 038: -- another person.
20 THE COURT: -- deliberated with the regular --
21 PROSPECTIVE JUROR NO. 383: No, I didn't.
22 THE COURT: But do you know whether the jury reached
23 a verdict?
24 PROSPECTIVE JUROR NO. 383: Yes, they did.
25 THE COURT: But you were excused because you were an

1 alternate and they didn't need you?

2 PROSPECTIVE JUROR NO. 383: Correct.

3 THE COURT: All right. Anything about that
4 experience that would tend to make you favor one side or the
5 other in this case?

6 PROSPECTIVE JUROR NO. 383: No, I don't believe so.

7 THE COURT: Did you understand the portion of the
8 trial that I discussed where -- where there's really two
9 phases to the case, we have a -- what we call a -- a guilt
10 phase, where you decide whether either of the defendants or
11 both are guilty of an offense, and then if you found the
12 defendants guilty of murder in the first degree, and only
13 then, we would have a second phase where you would be
14 determining punishment; do you understand that?

15 PROSPECTIVE JUROR NO. 383: Yes. I understood that.

16 THE COURT: Do you have any quarrel with that
17 procedure?

18 PROSPECTIVE JUROR NO. 383: No.

19 THE COURT: Do you think you can consider all
20 punishments that are -- are -- in the event we got to the
21 second phase, you would consider all four punishments?

22 PROSPECTIVE JUROR NO. 383: Yes.

23 THE COURT: Again, under our system of criminal
24 justice, we're a team. I -- you -- you decide what the facts
25 are, I decide what the law is, I give you the instructions on

1 the law and you reach a fair verdict from it. Think you can
2 do that?

3 PROSPECTIVE JUROR NO. 383: Yes.

4 THE COURT: Any reason you couldn't be fair to both
5 sides in the case?

6 PROSPECTIVE JUROR NO. 383: I don't believe so.

7 THE COURT: All right. Mr. DiGiacomo?

8 MR. DiGIACOMO: Thank you. In order to -- good
9 morning, I guess I should say.

10 In order to be a telecommunications tech, I'm
11 assuming you have some specialized training and experience in
12 that area?

13 PROSPECTIVE JUROR NO. 383: Yes.

14 MR. DiGIACOMO: Okay. Any of it dealing with cell
15 phone technology?

16 PROSPECTIVE JUROR NO. 383: No.

17 MR. DiGIACOMO: So what you deal with is not
18 necessarily what AT&T and Verizon and the rest of us all deal
19 with?

20 PROSPECTIVE JUROR NO. 383: Absolutely not.

21 MR. DiGIACOMO: Assuming you have a cell phone,
22 though, too.

23 PROSPECTIVE JUROR NO. 383: I have a cell phone, yes.

24 MR. DiGIACOMO: Okay. Let me flip further into this.

25 There were some questions asked in your questionnaire that

1 was, you know, generally, how do you feel about the criminal
2 justice system. You said, No real opinion good or bad.

3 PROSPECTIVE JUROR NO. 383: Correct.

4 MR. DiGIACOMO: Am I going to guess that that's from
5 the fact that you just haven't had a lot of contact with the
6 criminal justice system?

7 PROSPECTIVE JUROR NO. 383: Exactly.

8 MR. DiGIACOMO: Okay.

9 PROSPECTIVE JUROR NO. 383: Haven't --

10 MR. DiGIACOMO: You have --

11 PROSPECTIVE JUROR NO. 383: -- either way.

12 MR. DiGIACOMO: -- been the victim of a crime where
13 people have broken into your cars before?

14 PROSPECTIVE JUROR NO. 383: Yes.

15 MR. DiGIACOMO: Did the police ever come out on those
16 occasions?

17 PROSPECTIVE JUROR NO. 383: No. Well, no. I went
18 and filed reports, but that was it and pretty much the end of
19 it.

20 MR. DiGIACOMO: Nothing ever happened?

21 PROSPECTIVE JUROR NO. 383: No.

22 MR. DiGIACOMO: Okay. Have you ever had any sort of
23 negative law enforcement contact, you know, angry cop that
24 wrote you a bad ticket, anything like that?

25 PROSPECTIVE JUROR NO. 383: No.

1 MR. DiGIACOMO: Okay. You made some mention about
2 your association of drugs and alcohol to criminal behavior.

3 PROSPECTIVE JUROR NO. 383: Uh-huh.

4 MR. DiGIACOMO: And you sort of said about half the
5 time it – it exists.

6 PROSPECTIVE JUROR NO. 383: Yes.

7 MR. DiGIACOMO: How did you draw that opinion?

8 PROSPECTIVE JUROR NO. 383: I have friends that do
9 drugs, alcohol, whatever, and they're normal everybody people.

10 They have – I've never heard of them – I know them pretty –
11 some of them pretty well. Some of them I don't know as well.

12 But I've never – they've never, as far as to my knowledge,
13 done a crime besides using drugs.

14 MR. DiGIACOMO: Sure.

15 PROSPECTIVE JUROR NO. 383: And I – I trust them.

16 MR. DiGIACOMO: So, I mean, I'm guessing the other
17 half that you see is on TV, it always seems like every time
18 something happens around here, there's drugs or alcohol
19 involved.

20 PROSPECTIVE JUROR NO. 383: Correct. Yeah.

21 MR. DiGIACOMO: And so that's kind of the conclusion
22 you were able to draw?

23 PROSPECTIVE JUROR NO. 383: Yeah.

24 MR. DiGIACOMO: And trust me, this is – this case is
25 not going to be a referendum on drugs and the legality of

1 drugs.

2 Let me ask the question this way. Do you think
3 someone who's using drugs and chooses to commit certain acts,
4 that those individuals should be held responsible for their
5 actions?

6 PROSPECTIVE JUROR NO. 383: Yeah.

7 MR. DiGIACOMO: Flip side, it's very often in our
8 community that people who are victims of a crime have engaged
9 in risky behavior, maybe even some drug use, that wind up in
10 the results of them being victimized. They may make choices
11 that you wouldn't make or a reasonable person wouldn't make.
12 Do you think that despite the choices or the use of drugs,
13 that people can still deserve the protection of our criminal
14 justice system?

15 PROSPECTIVE JUROR NO. 383: Yes.

16 MR. DiGIACOMO: I'm going to just briefly touch on
17 the -- the sentencing provisions. I'm assuming by now we're
18 on Juror No. 3, maybe you're the lucky charm and you'll get to
19 stay.

20 PROSPECTIVE JUROR NO. 383: Lucky?

21 MR. DiGIACOMO: Well, for us. Maybe not for you.

22 PROSPECTIVE JUROR NO. 383: Okay.

23 MR. DiGIACOMO: You know, Mr. Sgro got up here and he
24 -- he asked some questions of some prior jurors and then Mr.
25 Oram asked some, too. And he made some mention of a term of

1 years being a 20-year-sentence. I think he misspoke. He
2 meant if it's a 50-year sentence with parole eligibility after
3 20 years. But at the end of the day, the jury never decides
4 on parole. It's just the possibility that maybe someone could
5 go to the parole board. You – you understand that?

6 PROSPECTIVE JUROR NO. 383: Yes, I understand that.

7 MR. DiGIACOMO: And I imagine now that you've sat
8 here, you've listened to this, you've filled out the
9 questionnaire, and you've answered the judge's questions,
10 you're willing to keep an open mind about all four forms of
11 punishment until such time as you hear some evidence, right?

12 PROSPECTIVE JUROR NO. 383: Correct.

13 MR. DiGIACOMO: You'd want to know more than just
14 what the crime was, but who is David Burns, who is Willie
15 Mason – I don't want to forget about Mr. Mason, it's pretty
16 important to him, too – before you made any decision on what
17 punishment they should receive from an act that occurred in
18 2010; would that be fair?

19 PROSPECTIVE JUROR NO. 383: Yes.

20 MR. DiGIACOMO: You think you're an open-minded
21 individual?

22 PROSPECTIVE JUROR NO. 383: Yes.

23 MR. DiGIACOMO: Do you think you're a fair person?

24 PROSPECTIVE JUROR NO. 383: Yes.

25 MR. DiGIACOMO: Do you think you'd make a good juror?

1 PROSPECTIVE JUROR NO. 383: Yeah.

2 MR. DiGIACOMO: Thank you very much, sir. Judge, we
3 pass for cause.

4 THE COURT: Mr. Sgro?

5 MR. SGRO: Good morning, sir.

6 PROSPECTIVE JUROR NO. 383: Good morning.

7 MR. SGRO: So, I – I wanted to start with some of
8 the questions in the questionnaire. There is a section in the
9 questionnaire about racial prejudice; do you remember those
10 questions?

11 PROSPECTIVE JUROR NO. 383: Yes, I do.

12 MR. SGRO: And you had – you had an opinion about
13 that, as well.

14 PROSPECTIVE JUROR NO. 383: Yes.

15 MR. SGRO: Can you – can you tell me what your
16 thoughts are on that?

17 PROSPECTIVE JUROR NO. 383: Go ahead and be specific.

18 MR. SGRO: Sure, sure.

19 PROSPECTIVE JUROR NO. 383: I can't remember exactly
20 everything I wrote.

21 MR. SGRO: That some – some people might deserve or
22 believe – I'm sorry – some people believe they deserve
23 special treatment because they're a minority.

24 PROSPECTIVE JUROR NO. 383: Okay. Yes.

25 MR. SGRO: Okay. Can you just give me a minute or so

1 on what you meant by that?

2 PROSPECTIVE JUROR NO. 383: Well, I just believe that
3 some people abuse the system and try and get not -- not get a
4 job and -- and just abuse the system, get money through the
5 government in whichever way they can instead of, you know,
6 going to work and working hard and earning a living. Instead
7 of me and you having to pay for them to do what they want to
8 do, we're having to work for other people instead of just
9 ourselves, basically.

10 MR. SGRO: Okay. Okay. So I think I have a sense of
11 where you're going. So I guess the question to follow up is
12 -- is this. Obviously, Mr. Burns is -- is African-American,
13 so he'd be a minority, right?

14 PROSPECTIVE JUROR NO. 383: Okay.

15 MR. SGRO: And so let's take an extreme situation.
16 If we had a juror here that said I hate all African-Americans
17 -- pick your minority, right -- I hate all --

18 PROSPECTIVE JUROR NO. 383: Understood.

19 MR. SGRO: -- African-Americans. And I -- I look at
20 an African-American and I assume he or she did whatever
21 they're accused of. Right? That would be an extreme example.
22 And as I said earlier, that juror might be perfectly fine for
23 a car accident case, right? But -- but maybe not the right
24 one where someone accused is African-American.

25 PROSPECTIVE JUROR NO. 383: Correct.

1 MR. SGRO: Do you know where I'm going?

2 PROSPECTIVE JUROR NO. 383: Yes, I do.

3 MR. SGRO: And -- and by no means am I suggesting
4 that your statement you just made is that extreme situation.

5 As Mr. Burns' attorney, though, I want to make sure Mr. Burns
6 gets a fair shake from each of you, right?

7 PROSPECTIVE JUROR NO. 383: Yes.

8 MR. SGRO: And being a minority, does that have any
9 -- any sort of bearing on your decision-making at all?

10 PROSPECTIVE JUROR NO. 383: No, I don't believe so.

11 MR. SGRO: Okay. And I got your commitment on that,
12 right?

13 PROSPECTIVE JUROR NO. 383: Yes.

14 MR. SGRO: Okay. Now, you had heard a term the judge
15 used with the very first juror called presumption of
16 innocence. Had you ever heard that term before?

17 PROSPECTIVE JUROR NO. 383: Not really. But I do
18 understand --

19 MR. SGRO: Okay.

20 PROSPECTIVE JUROR NO. 383: -- basically you guys --
21 they have to prove that they did something. They're --

22 MR. SGRO: Exactly.

23 PROSPECTIVE JUROR NO. 383: -- they're innocent right
24 now. There's two innocent people sitting there as we speak.

25 MR. SGRO: 100 percent correct. So you heard Mr.

1 DiGiacomo refer to a charging document. You've seen the
2 factual predicate in that jury questionnaire. You've seen Mr.
3 Burns is here. You ever heard of that phrase where there's
4 smoke, there's fire?

5 PROSPECTIVE JUROR NO. 383: Yeah.

6 MR. SGRO: Okay. You understand that adage, that
7 phrase has no application here.

8 PROSPECTIVE JUROR NO. 383: Right.

9 MR. SGRO: Okay. And some people -- some people
10 believe, well, I mean, Mr. Burns got arrested. I mean, he's
11 sitting here. He must have done something. Do -- do you --
12 does that makes sense?

13 PROSPECTIVE JUROR NO. 383: Yes. I understand what
14 you're saying.

15 MR. SGRO: Okay. Do you -- do you have the belief
16 that, well, if he's sitting here, he must have done something?

17 PROSPECTIVE JUROR NO. 383: No.

18 MR. SGRO: Okay. So you have no quarrel with the
19 presumption of innocence?

20 PROSPECTIVE JUROR NO. 383: Correct.

21 MR. SGRO: All right. And do you understand that
22 when a charging document, like the one that Mr. DiGiacomo was
23 referring to, when someone says, you know, I didn't do it, I'm
24 not -- a not-guilty plea is entered, and this trial is the
25 natural consequence of, you know, charged with something, I

1 pled not guilty, we go to court; you get that?

2 PROSPECTIVE JUROR NO. 383: Yes.

3 MR. SGRO: Any – any quarrel with that at all?

4 PROSPECTIVE JUROR NO. 383: No.

5 MR. SGRO: All right. I want to talk to you about
6 another couple of rights that people that are accused of crime
7 enjoy. One of them is that they can make an election whether
8 or not they testify. Okay. So let's start with the – the
9 overall question. Do you think you would hold it against Mr.
10 Burns if he did not take the witness stand?

11 PROSPECTIVE JUROR NO. 383: No, I don't think so.

12 MR. SGRO: Okay. Well, let me ask the flip side of
13 it. Can you think of a reason why someone that was not guilty
14 of a crime wouldn't get on the witness stand and tell you
15 that?

16 PROSPECTIVE JUROR NO. 383: No.

17 MR. SGRO: Okay. Well, and this is – this is –
18 this is why we need to go into it a little bit. So let's take
19 a for-instance. Mr. Burns was 18 at the time these events are
20 alleged to have occurred. Do you think that his youth might
21 be a reason why he doesn't want to testify? Think that that
22 could have a bearing on it?

23 PROSPECTIVE JUROR NO. 383: It could be, sure.

24 MR. SGRO: Maybe he's nervous. There's two
25 exceptional very experienced prosecutors. Maybe he's nervous.

1 Could that be a reason?

2 PROSPECTIVE JUROR NO. 383: Sure.

3 MR. SGRO: Potentially, right?

4 PROSPECTIVE JUROR NO. 383: Yes.

5 MR. SGRO: I guess the point of it is that there are
6 those people, okay, that would go in the back room, even after
7 having been instructed by the Court, right, and they'd go in
8 the back room and they'd say, you know what, I -- I am not
9 sure, but, man, I wish he would have -- I wish he would have
10 called the witness. I wish he would have testified. That
11 makes sense, right?

12 PROSPECTIVE JUROR NO. 383: Right.

13 MR. SGRO: You, by being on this jury, have to make a
14 commitment that you would not allow that to occur. Do you
15 think you can do that?

16 PROSPECTIVE JUROR NO. 383: Yeah.

17 MR. SGRO: Okay. Another thing that you will be
18 called upon to do is to judge credibility of witnesses. Okay.
19 Have you ever been in a situation at job, home, out, where two
20 people have come to you and said things to you that are in
21 conflict?

22 PROSPECTIVE JUROR NO. 383: Yes.

23 MR. SGRO: Okay. And have you been called upon to
24 resolve that conflict?

25 PROSPECTIVE JUROR NO. 383: Yes.

1 MR. SGRO: Do you look at other external
2 circumstances, other than just what the people are telling
3 you?

4 PROSPECTIVE JUROR NO. 383: I've had to in the
5 situations, yes.

6 MR. SGRO: All right. And some of those things have
7 to do with other information you may have, but you're able to
8 come to a conclusion who's being honest with you?

9 PROSPECTIVE JUROR NO. 383: Correct.

10 MR. SGRO: When someone comes into a courtroom and
11 swears to tell the truth, would you agree that we all are
12 hopeful that they're actually going to tell the truth?

13 PROSPECTIVE JUROR NO. 383: Yeah.

14 MR. SGRO: Do you think it's possible for someone to
15 swear to tell the truth and flat out lie?

16 PROSPECTIVE JUROR NO. 383: I mean, it's possible. I
17 mean...

18 MR. SGRO: Well, I'm going to tell you -- I'm going
19 to tell you that there are going to be witnesses in this case
20 that are going to have conflicts in their statements. Do you
21 feel comfortable assessing whether those conflicts are part of
22 a fabricated story?

23 PROSPECTIVE JUROR NO. 383: Yeah.

24 MR. SGRO: Okay. You were asked some questions about
25 drugs.

1 PROSPECTIVE JUROR NO. 383: Uh-huh.

2 MR. SGRO: Right? You need to say yes.

3 PROSPECTIVE JUROR NO. 383: Yes.

4 MR. SGRO: And the accountability that attaches even
5 to individuals that elect to do drugs or alcohol, right?

6 PROSPECTIVE JUROR NO. 383: Correct.

7 MR. SGRO: You would hold witnesses accountable, too,
8 wouldn't you, if they came here and said, you know, I did
9 drugs every day during this timeframe that you're asking me
10 about. You would hold them accountable, too, right? They
11 don't get a free pass?

12 PROSPECTIVE JUROR NO. 383: Right.

13 MR. SGRO: Okay. So in other words, when you're
14 considering credibility, certainly the witness's drug use is
15 going to be something you take into consideration, too, isn't
16 it?

17 PROSPECTIVE JUROR NO. 383: To – to an extent, yes.

18 MR. SGRO: Okay. And have you ever heard this term
19 plea bargain or plea negotiation?

20 PROSPECTIVE JUROR NO. 383: Yeah.

21 MR. SGRO: What does it mean to you?

22 PROSPECTIVE JUROR NO. 383: You agree to say you did
23 something for a lesser charge, basically, is what I would say.

24 MR. SGRO: Okay. Fair enough. Do you think – do
25 you think that someone that's taken a plea bargain may also

1 have a motive to fabricate?

2 PROSPECTIVE JUROR NO. 383: I guess it's possible.

3 MR. SGRO: Would you be able to consider someone's
4 motivation if they took a deal in order to get time off of
5 their sentence; would you be able to consider that in terms of
6 assessing someone's credibility?

7 PROSPECTIVE JUROR NO. 383: Yeah, I think so.

8 MR. SGRO: Do you watch any of these TV shows that
9 are on, the science shows like Forensic Files, NCIS? There's
10 -- there's several.

11 PROSPECTIVE JUROR NO. 383: Little bit.

12 MR. SGRO: Do you have any opinion as to the value of
13 science in a criminal case?

14 PROSPECTIVE JUROR NO. 383: I think it's a good
15 factor in it, I guess you would say. It's --

16 MR. SGRO: Have you ever heard of terms like DNA
17 evidence, fingerprint evidence, things like that?

18 PROSPECTIVE JUROR NO. 383: Sure.

19 MR. SGRO: Would you agree that science typically has
20 no motivation or agenda, it is what it is?

21 PROSPECTIVE JUROR NO. 383: Yeah. I think so.

22 MR. SGRO: And what I mean is the comparison from
23 science to someone that may have a motive or a bias; would you
24 agree --

25 PROSPECTIVE JUROR NO. 383: Right.

1 MR. SGRO: Okay. And in terms of credibility of
2 witnesses, there are going to be police officers that testify
3 in this case, right?

4 PROSPECTIVE JUROR NO. 383: Okay.

5 MR. SGRO: Several of them were read by Mr. DiGiacomo
6 and I even mentioned a few.

7 PROSPECTIVE JUROR NO. 383: Yes.

8 MR. SGRO: All right. Now, similar to how we hope
9 people tell the truth, we hope our police officers do the best
10 job that they can, right?

11 PROSPECTIVE JUROR NO. 383: Yes.

12 MR. SGRO: They're – they're honest, that they're
13 accurate, those sorts of things, right?

14 PROSPECTIVE JUROR NO. 383: Yes.

15 MR. SGRO: Now, as jurors, though, one of the
16 commitments that you need to make is that every witness comes
17 in on a level playing field. Make sense?

18 PROSPECTIVE JUROR NO. 383: Yeah.

19 MR. SGRO: So, for example, in your opinion, if a
20 police officer says the light is red, the person accused of
21 the crime says the light is green, do you automatically tend
22 to believe the police officer because he or she is a police
23 officer?

24 PROSPECTIVE JUROR NO. 383: Not necessarily.

25 MR. SGRO: Okay. And I guess that's – that's sort

1 of the point. And again, I think we're going to hear today,
2 and -- and we've heard over the last couple of days, some
3 people would lean towards the police officer, right? We're --
4 we're brought up that way sort of. When we come in here,
5 though, everyone gets -- starts and stops the same benefit of
6 an evaluation. Can you do that?

7 PROSPECTIVE JUROR NO. 383: Yes.

8 MR. SGRO: And remember we spoke about Mr. Burns not
9 testifying? Do you think if Mr. Burns did testify you would
10 scrutinize his testimony more carefully? In other words, he
11 would have to go just a little bit more for you to have to
12 believe him because he's the one accused of a crime?

13 PROSPECTIVE JUROR NO. 383: I don't think so.

14 MR. SGRO: Okay. He gets the same level playing
15 field as everybody else?

16 PROSPECTIVE JUROR NO. 383: Yeah.

17 MR. SGRO: Confident about that?

18 PROSPECTIVE JUROR NO. 383: Yeah.

19 MR. SGRO: All right. You own a cell phone --

20 PROSPECTIVE JUROR NO. 383: Yeah.

21 MR. SGRO: -- I assume? Have you ever looked at your
22 records when you get your cell phone bill?

23 PROSPECTIVE JUROR NO. 383: It's been a while, but I
24 used to a lot.

25 MR. SGRO: Yeah. It's amazing. Not very many people

1 do. Let me ask you this question. Have you ever had a
2 situation where you've said, Hey, I texted you, did you get
3 it? Or you're asked, Did you get my text? And you didn't get
4 it? Are you --

5 PROSPECTIVE JUROR NO. 383: Yes.

6 MR. SGRO: You know what I'm talking about --

7 PROSPECTIVE JUROR NO. 383: Yes.

8 MR. SGRO: -- right? Has that happened to you?

9 PROSPECTIVE JUROR NO. 383: Yes.

10 MR. SGRO: Voicemails that supposedly get left, you
11 didn't get, that sort of thing, right?

12 PROSPECTIVE JUROR NO. 383: Not voicemails, but text.
13 Yes.

14 MR. SGRO: Texts? Okay. Let me ask you this
15 question, if -- if records came in, although you're not used
16 to looking at your own personal bill, if -- if records came
17 into evidence in this case, can you commit to scrutinize those
18 records and not accept them as wholesale because they come in
19 a computer printout and they're nicely packaged? You -- you
20 get what I'm saying, right?

21 PROSPECTIVE JUROR NO. 383: I don't quite understand
22 that.

23 MR. SGRO: Let me ask you this --

24 PROSPECTIVE JUROR NO. 383: Okay.

25 MR. SGRO: -- would you be willing to look at cell

1 phone records as opposed to accepting what they represent to
2 say?

3 PROSPECTIVE JUROR NO. 383: I think so.

4 MR. SGRO: Okay. And I'm probably not wording it
5 very -- very well. But the -- the point is, records can come
6 into evidence, as well. They still deserve the jury to
7 scrutinize those records to see if they say what the State is
8 saying that they say.

9 PROSPECTIVE JUROR NO. 383: Okay.

10 MR. SGRO: Do you understand?

11 PROSPECTIVE JUROR NO. 383: Yes, I understand now.

12 MR. SGRO: Some people might look at records which
13 are a computer printed -- computer-generated printout and say,
14 Well, the computer did it, they must be right. Right?

15 PROSPECTIVE JUROR NO. 383: Okay.

16 MR. SGRO: Okay. Now, another thing that is -- is
17 something we talk about is as the case proceeds, one of the
18 things you're going to see are some pretty graphic photos,
19 autopsy pictures, the photo of the -- the woman that was
20 killed. Okay. These are not things that people that aren't
21 in our system see every day. And regardless of what you ever
22 think you've seen on a TV or movie, when it's real life,
23 murder's -- murder's violent and they're difficult to deal
24 with. And I need you to be able to commit that you accept
25 those as -- as the evidence for what they are as opposed to --

1 as opposed to someone that -- and I've seen this before --
2 they'll look at the photo, they look at the defendant, and
3 that's it. Right? Can you -- can you imagine how that could
4 happen?

5 PROSPECTIVE JUROR NO. 383: Yeah.

6 MR. SGRO: Because of the graphic nature of what
7 you're looking at, do you think that you'd be able to evaluate
8 that kind of evidence without having a knee-jerk response to
9 try to, you know, retaliate, for lack of a better word --

10 PROSPECTIVE JUROR NO. 383: Yes.

11 MR. SGRO: -- on behalf of the victim?

12 PROSPECTIVE JUROR NO. 383: Yes.

13 MR. SGRO: You -- you going to be okay with that?

14 PROSPECTIVE JUROR NO. 383: Yeah.

15 MR. SGRO: All right. So let's talk a little bit
16 about the second phase.

17 Do you understand, sir, that it is mine and Mr.
18 Oram's and Mr. Burns' assessment that we're never getting to a
19 penalty; do you get that?

20 PROSPECTIVE JUROR NO. 383: Yeah.

21 MR. SGRO: Okay. And without repeating everything I
22 -- I said to the prior juror, do you understand we have to
23 speak to you now about it even though we think we're never
24 going to get there?

25 PROSPECTIVE JUROR NO. 383: Yep.

1 MR. SGRO: Okay. Now, I know it's been a month since
2 you did the questionnaire, but when we get to the penalty –
3 and again, remembering what I said to the first juror about
4 both sides get a fair trial –

5 PROSPECTIVE JUROR NO. 383: Right.

6 MR. SGRO: – right? So, relative to the State's
7 concerns that they need someone that can consider the death
8 penalty?

9 PROSPECTIVE JUROR NO. 383: Yes.

10 MR. SGRO: And relative to Mr. Burns' concerns, we
11 need someone that can also consider coming back out on the
12 street some day?

13 PROSPECTIVE JUROR NO. 383: Yes.

14 MR. SGRO: Okay. So what you put on the
15 questionnaire was, "I believe if someone has done the crime
16 that would call for the death penalty, no reason to waste
17 money keeping someone in prison for life or to return to get
18 out."

19 PROSPECTIVE JUROR NO. 383: Correct.

20 MR. SGRO: Okay. So when I read that, I think we
21 have to assume first degree murder conviction, right?

22 PROSPECTIVE JUROR NO. 383: Okay.

23 MR. SGRO: So when someone says, Well, depends what
24 the facts are, you understand the clarifying point there that
25 needs to be made there is you read the factual predicate,

1 right, 12-year-old little girl gets shot, her mom was shot and
2 killed, right?

3 PROSPECTIVE JUROR NO. 383: Okay.

4 MR. SGRO: And they're saying that David Burns was
5 the shooter.

6 PROSPECTIVE JUROR NO. 383: Okay.

7 MR. SGRO: Okay. Now, when you say depends on what
8 the facts are, one of the things that -- that doesn't depend,
9 you have to assume someone's convicted of first degree
10 murder --

11 PROSPECTIVE JUROR NO. 383: Okay.

12 MR. SGRO: -- the State's proven that beyond a
13 reasonable doubt, right, and I had a similar conversation with
14 the first juror. And it doesn't make it bad, good, or
15 indifferent. It just means maybe this is not the case for
16 you, it's a different case. Okay? From reading your
17 questionnaire, I get a sense that if -- you're going to hold
18 the State to their burden, but if they prove it to you beyond
19 a reasonable doubt, really, for you in your mind at that point
20 it's the death penalty; would that be fair?

21 PROSPECTIVE JUROR NO. 383: I'm not sure anymore.

22 MR. SGRO: Okay. Well, let me ask you this. I -- I
23 just relayed to you what you --

24 PROSPECTIVE JUROR NO. 383: Yeah.

25 MR. SGRO: Later in -- in the questionnaire -- and I

1 apologize, one second.

2 PROSPECTIVE JUROR NO. 383: That's fine.

3 MR. SGRO: You also – let me give you the gist of
4 it. That you have a concern about wasting time and money?

5 PROSPECTIVE JUROR NO. 383: Right.

6 MR. SGRO: Okay. And so had you thought about the
7 death penalty prior to filling out this questionnaire?

8 PROSPECTIVE JUROR NO. 383: Never.

9 MR. SGRO: Since you filled out this questionnaire,
10 had you thought about the death penalty?

11 PROSPECTIVE JUROR NO. 383: A little bit, yes.

12 MR. SGRO: Would it be fair to say that you have
13 thought about it with an eye towards being summonsed to appear
14 today?

15 PROSPECTIVE JUROR NO. 383: Yes.

16 MR. SGRO: Now, you say you've – you may be able to
17 consider different forms of punishment now?

18 PROSPECTIVE JUROR NO. 383: It's possible, yes.

19 MR. SGRO: Okay. And at the risk of being
20 repetitive, this is our only chance to speak with you.

21 PROSPECTIVE JUROR NO. 383: Yes.

22 MR. SGRO: You cannot, several weeks into the trial,
23 realize for the first time, Oh, crap, I'm not going to be able
24 to do anything other than death. Right? Because at that
25 point it's too late.

1 PROSPECTIVE JUROR NO. 383: Right.

2 MR. SGRO: And this is a slow, deliberate process,
3 and no one wants to start over again.

4 PROSPECTIVE JUROR NO. 383: Uh-huh.

5 MR. SGRO: This is the most serious case we have in
6 our system, so we unfortunately need to press on people we've
7 never met before and extricate from them information that, you
8 know, this is not dinner table conversation, right?

9 PROSPECTIVE JUROR NO. 383: Right.

10 MR. SGRO: So apologizing in advance, I need to press
11 you a little bit, because I get a sense that there's
12 hesitation. So now, I want to take you to a place mentally –
13 mentally where, understanding the factual predicate in this
14 case, right?

15 PROSPECTIVE JUROR NO. 383: Yes.

16 MR. SGRO: Understand that you have concluded that
17 things have been proven to you beyond a reasonable doubt.

18 PROSPECTIVE JUROR NO. 383: Okay.

19 MR. SGRO: There's a first degree murder conviction,
20 right?

21 PROSPECTIVE JUROR NO. 383: Okay.

22 MR. SGRO: Can you, in that circumstance, really
23 contemplate letting the perpetrator that you have just
24 convicted, can you really consider letting that person back
25 out?

1 MR. DiGIACOMO: Judge, I object to the form of the
2 question.

3 THE COURT: Yeah, rephrase that --

4 MR. DiGIACOMO: The possibility that a parole board
5 might --

6 THE COURT: -- because that's not right.

7 MR. SGRO: I'm sorry. I'll rephrase. He's right.
8 Can you consider affording that person the opportunity to get
9 out?

10 PROSPECTIVE JUROR NO. 383: I -- I think I can now,
11 yes.

12 MR. SGRO: Okay. What has changed? Obviously, you
13 understand we're a little bit --

14 PROSPECTIVE JUROR NO. 383: Yes.

15 MR. SGRO: -- concerned about this.

16 PROSPECTIVE JUROR NO. 383: I understand where you're
17 coming from.

18 MR. SGRO: Right. So can you please help me to
19 understand the change from the time you filled this out a few
20 weeks ago to today?

21 PROSPECTIVE JUROR NO. 383: I've just had a lot more
22 time to think about it and realizing that people can change
23 even though they may -- might have done something before,
24 they'll -- they'll change in their lifetime and not be that
25 way in the future, I guess you would say. They wouldn't even

1 think about stuff – doing stuff today that they did years and
2 years ago, you know.

3 MR. SGRO: So let me ask you – let me ask you this
4 question. What's the best argument to give someone the
5 penalty of life with the possibility of parole? What's –

6 PROSPECTIVE JUROR NO. 383: Best argument?

7 MR. SGRO: Yes, sir. In your opinion, give me your
8 best argument why you would consider life with the possibility
9 of parole.

10 PROSPECTIVE JUROR NO. 383: I don't -- I don't really
11 understand where you're coming from with that.

12 MR. SGRO: You have this -- this hypothetical
13 situation, right, someone's been convicted of first degree
14 murder --

15 PROSPECTIVE JUROR NO. 383: Okay.

16 MR. SGRO: -- you're sitting in the back deliberating
17 with the jurors, and you believe the person convicted should
18 be afforded the opportunity to return to society.

19 PROSPECTIVE JUROR NO. 383: Okay.

20 MR. SGRO: Okay. Give me an argument why that should
21 be. You can draw from any set of facts. We're in a
22 theoretical situation now. So can you articulate to me why
23 anyone -- why would anyone ever deserve life with the
24 possibility of parole?

25 PROSPECTIVE JUROR NO. 383: You mean if they

1 understood what they've done, and I guess being in the prison
2 system, which they'll probably be for years and years, that
3 system would modify, I don't know, for lack of a better term,
4 modify their behavior, they would assist them -- the people
5 there would understand and see that this person has changed
6 and they're not the same person they were back then --

7 MR. SGRO: Okay.

8 PROSPECTIVE JUROR NO. 383: -- I guess you would say.

9 MR. SGRO: Okay. Very fair. And -- and now tell me
10 if you would consider life without parole? And I understand
11 your views changed from death to, Okay, well, maybe I can give
12 someone this shot, the shot of getting out someday.

13 PROSPECTIVE JUROR NO. 383: Uh-huh.

14 MR. SGRO: Tell me if your opinion has changed
15 relative to wasting time and money in terms of life without
16 parole. Can you tell me if that's still the same answer?

17 PROSPECTIVE JUROR NO. 383: The answer is still the
18 same. I think that would be a lot of waste of time and money.
19 But to me, personally, that would be the worst punishment of
20 the four, personally.

21 MR. SGRO: So, let -- let me ask the direct question,
22 then.

23 PROSPECTIVE JUROR NO. 383: Okay.

24 MR. SGRO: Is life without the possibility of parole,
25 despite your opinion of the waste of time and money --

1 PROSPECTIVE JUROR NO. 383: Uh-huh.

2 MR. SGRO: -- is life without the possibility of
3 parole something that's an option for a sentence for someone
4 who --

5 PROSPECTIVE JUROR NO. 383: Yes.

6 MR. SGRO: Okay.

7 PROSPECTIVE JUROR NO. 383: I think so.

8 MR. SGRO: You would consider it?

9 PROSPECTIVE JUROR NO. 383: Yes.

10 MR. SGRO: Okay. You -- you may quarrel with how
11 much money and your time it's taking, but you would consider
12 it if -- if you thought it was fair?

13 PROSPECTIVE JUROR NO. 383: It's not my money, but in
14 a sense it is, but it's not.

15 MR. SGRO: Okay. Do you have any hesitation in terms
16 of the questions we've now gone through about other than
17 having other things to do, do you have any hesitations about
18 your ability to sit here as a juror?

19 PROSPECTIVE JUROR NO. 383: My ability to sit here?
20 No.

21 MR. SGRO: Okay. And you can look at Mr. Burns and
22 promise him the benefit of your individual opinion?

23 PROSPECTIVE JUROR NO. 383: Yes, I think so.

24 MR. SGRO: And promise him you're going to give him a
25 fair shake?

1 PROSPECTIVE JUROR NO. 383: Yes.

2 MR. SGRO: And you're going to be able to do the
3 mental gymnastic exercise we're required to do and understand
4 we're coming at you saying not guilty of murder; you
5 understand that, right?

6 PROSPECTIVE JUROR NO. 383: Yeah, I do.

7 MR. SGRO: Okay. Thank you, Your Honor. Pass for
8 cause.

9 THE COURT: Mr. Langford?

10 MR. LANGFORD: I finally get to say something. The
11 good news is if I stand up, it's just about over. Okay. At
12 least as to you. My -- my question is going to be a lot
13 shorter, because, you know, both the State and the attorneys
14 for Mr. Burns have gone into depth, a lot of depth about, you
15 know, things that we're all concerned about, and that's
16 picking a fair jury. I don't need to, because they've already
17 said it. But there are some unique things about my client,
18 Mr. Mason, that I would like to touch on. For one thing,
19 you've heard it, I don't know if you've quite really -- it's
20 sunk in, and that is that the State is only seeking to
21 execute, if convicted of first degree murder, Mr. Burns, not
22 my client. My client, the possible penalty, the maximum
23 possible penalty for Mr. Mason is life without the possibility
24 of parole.

25 So you've heard already the talk about four possible

1 penalties. Not to Mr. Mason. To Mr. Mason there are three
2 possible penalties: Life without the possibility of parole,
3 life with the possibility of parole, and a term of years, as
4 you've already heard. So death is off the table as to Mr.
5 Mason. Okay.

6 I need to make sure, however, that the fact that
7 you're sitting in a capital murder trial, that's not going to
8 have a bearing on whether you're going to then automatically
9 find Mr. Mason guilty, if you automatically – if you decide
10 you want to find Mr. Burns guilty. You need to tell me that,
11 you know, I've – I've described it before as they're really
12 two trials here. There are two trials, because they're two
13 individuals – two individuals on trial.

14 One set of witnesses is going to come in. One set of
15 exhibits are going to come in. But it's evidence as to two
16 individual people. And you need to assure us that you're
17 going to be able to hear that evidence, apply that evidence as
18 to those individuals. Do you think you could do that?

19 PROSPECTIVE JUROR NO. 383: Yes.

20 MR. LANGFORD: And give Mr. Mason a fair trial as to
21 Mr. Mason, without anything having to do with Mr. Burns; can
22 you do that?

23 PROSPECTIVE JUROR NO. 383: Yes.

24 MR. LANGFORD: Because that – that really is, you
25 know, some people are, like, Well, they did a good job of

1 proving this guy, but not so much this guy. But, you know
2 what...

3 So what I need to know is if, in your heart and mind
4 you decide that they have proved the case as to one person,
5 you could enter a split decision as it were, you could come
6 into court and say, you know, there was evidence sufficient to
7 support a conviction for this person, but not for this person;
8 do you think you could do that?

9 PROSPECTIVE JUROR NO. 383: Yes.

10 MR. LANGFORD: Okay. And that kind of calls up to
11 mind can you -- can you -- I mean, this is going to be a long
12 trial. It's going to be a long trial. Can't help it. After
13 five weeks of hearing evidence and deliberating, if you
14 believe that the State had not met its burden, can you come in
15 and say, Well, you know, I know we sat here for a long time,
16 but you didn't meet your burden, State, you just didn't meet
17 your burden; could you do that and come in and say not guilty
18 and allow two people, after five weeks of trial, to go free
19 out of the courtroom?

20 PROSPECTIVE JUROR NO. 383: Yeah.

21 MR. LANGFORD: Would your consider yourself a person
22 of strong opinion? You're like, Well, what does that mean?
23 Well, I'll tell you what that means. Okay.

24 If you got back into the jury deliberation room and
25 it was -- the vote was 11 to 1 for either acquittal or

1 conviction, you were the one, would you say that you would
2 hold your ground and say, No, these are my convictions and
3 it's what I believe? Would you be able to do that?

4 PROSPECTIVE JUROR NO. 383: I mean, they would have
5 to sway me to change my mind. That's -- from what I saw, I
6 guess.

7 MR. LANGFORD: Okay. That -- I mean, and that's the
8 flip side to it, right?

9 PROSPECTIVE JUROR NO. 383: Yeah.

10 MR. LANGFORD: I mean, being a reasonable person,
11 sometimes you have to say, Yeah, but you know what, I'm going
12 to reevaluate the evidence, and if I then agree with the
13 remainder of the jurors, the rest of the jurors that I'm wrong
14 about my opinion, you know, I -- I could suspend my ego at
15 that point?

16 PROSPECTIVE JUROR NO. 383: Yeah. For sure.

17 MR. LANGFORD: And say, you know, I -- I understand.
18 So it's a two-edged --

19 PROSPECTIVE JUROR NO. 383: Right.

20 MR. LANGFORD: You know, at one point you'd really
21 have to say, Well, no, no, no, what's right is right, and at
22 the same time, you have to be sure you're right. Will you be
23 able to do that?

24 PROSPECTIVE JUROR NO. 383: Yes. I think so.

25 MR. LANGFORD: Are you going to give Mr. Mason a fair

1 trial?

2 PROSPECTIVE JUROR NO. 383: Yes.

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

4 THE COURT: Okay. Mr. Looney, would you pass that
5 microphone to Mr. – is it Mr. Prosperi?

6 PROSPECTIVE JUROR NO. 451: Yes. Yes, Your Honor.

7 THE COURT: Good morning.

8 PROSPECTIVE JUROR NO. 451: Good morning.

9 THE COURT: Do you know any of the witnesses or
10 attorneys involved in this case?

11 PROSPECTIVE JUROR NO. 451: No, I don't.

12 THE COURT: As I understand it, you're retired?

13 PROSPECTIVE JUROR NO. 451: Yes.

14 THE COURT: You were a pastry chef?

15 PROSPECTIVE JUROR NO. 451: Yes, I was. Yeah.

16 THE COURT: Where was that?

17 PROSPECTIVE JUROR NO. 451: Let's see.

18 THE COURT: Here in town or?

19 PROSPECTIVE JUROR NO. 451: Yeah, here. I was a
20 pastry chef for Andre's French Restaurant in the Monte Carlo.

21 THE COURT: There was an Andre's French Restaurant
22 downtown here.

23 PROSPECTIVE JUROR NO. 451: Yeah.

24 THE COURT: Was it –

25 PROSPECTIVE JUROR NO. 451: It's through – that's

1 the same guy.

2 THE COURT: Is that the same Andre's?

3 PROSPECTIVE JUROR NO. 451: Yeah. Same Andre. Yeah.

4 His name's Andre Rouchette [phonetic].

5 THE COURT: He's -- yeah, I think that they've closed
6 that a couple of years ago.

7 PROSPECTIVE JUROR NO. 451: Yeah. I heard that,
8 yeah. Yeah. I was in the Monte Carlo.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 451: Uh-huh.

11 THE COURT: And how long were you a pastry chef in
12 the Monte Carlo?

13 PROSPECTIVE JUROR NO. 451: Almost about two years.

14 THE COURT: Okay. Before that what kind of work did
15 you do?

16 PROSPECTIVE JUROR NO. 451: I've always been in the
17 restaurant and cake --

18 THE COURT: And you're from New York?

19 PROSPECTIVE JUROR NO. 451: No, I'm from Connecticut.
20 Well, originally from New York, but I'm from Connecticut.

21 THE COURT: New York and Connecticut?

22 PROSPECTIVE JUROR NO. 451: Yep.

23 THE COURT: So when did you come to the state of
24 Nevada?

25 PROSPECTIVE JUROR NO. 451: I came here in year of

1 1998.

2 THE COURT: Okay. So you've been here --

3 PROSPECTIVE JUROR NO. 451: It was going to onto '99.

4 It was the fall of '98.

5 THE COURT: Okay. So you've been here about 16, 17
6 years, something like that?

7 PROSPECTIVE JUROR NO. 451: Yeah. Yeah.

8 THE COURT: And why did you come to Nevada?

9 PROSPECTIVE JUROR NO. 451: Well, I was living in
10 Tahoe and I got tired of scooping muffins at wee hours of the
11 morning. So I came here to better my career.

12 THE COURT: Okay. You -- you said you had a foot
13 injury of some sort. What happened --

14 PROSPECTIVE JUROR NO. 451: Yeah.

15 THE COURT: -- to your foot?

16 PROSPECTIVE JUROR NO. 451: Well, yeah. I was in a
17 bad car wreck in 1987 and I pretty much annihilated both of my
18 femurs. They said I'd never walk again. But I bit the bullet
19 for all those years and never said anything. And I -- I
20 pressed on.

21 THE COURT: Well, we won't ask you to stand very
22 much, but if you need to stand and stretch a little bit, we
23 can let you do that, too.

24 PROSPECTIVE JUROR NO. 451: Yeah. I appreciate it.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR NO. 451: But I was left with nerve
2 paralysis in my right foot. And until I got older, or maybe I
3 came here with a high volume of -- of customers were so high,
4 it really did some damage to my good leg. So I had to step
5 out and retire early. So that's where I'm at.

6 THE COURT: I understand. You -- you also indicated
7 that you had some sort of a traffic problem?

8 PROSPECTIVE JUROR NO. 451: Traffic problem?

9 THE COURT: Did you -- I thought -- I thought you
10 said that you had some sort of a -- maybe this is somebody
11 else has an outstanding warrant or something.

12 PROSPECTIVE JUROR NO. 451: Oh, no. Yeah, I had a
13 warrant. A traffic warrant. Uh-huh.

14 THE COURT: Do you still have a traffic problem or is
15 that all resolved?

16 PROSPECTIVE JUROR NO. 451: No, no more traffic
17 problems.

18 THE COURT: Okay. Good. Did you hear the
19 explanation that I gave to the other jurors about our jobs,
20 your job and my job?

21 PROSPECTIVE JUROR NO. 451: Yes.

22 THE COURT: You have to decide what the facts are;
23 are you willing to do that?

24 PROSPECTIVE JUROR NO. 451: Yes. Yes.

25 THE COURT: I have to decide what the law is. And

1 you have to apply those facts to the law to reach a fair
2 verdict; are you willing to do that?

3 PROSPECTIVE JUROR NO. 451: Yes. With respect, yes.

4 THE COURT: You understand that the defendants are --
5 don't have to prove they're not guilty? It's up to the State
6 to prove, by evidence beyond a reasonable doubt, that they
7 committed the offenses that they're charged with. And if the
8 State fails to meet that burden, the defendants are entitled
9 to a verdict of not guilty. Do you understand that?

10 PROSPECTIVE JUROR NO. 451: Yes, sir.

11 THE COURT: Do you have any quarrel with that
12 procedure?

13 PROSPECTIVE JUROR NO. 451: No.

14 THE COURT: All right. If -- if you were one of the
15 parties in this case, either the prosecution prosecuting this
16 case or -- or the defense defending the -- would you want
17 citizens like yourself, with your frame of mind, sitting in
18 judgment of the case?

19 PROSPECTIVE JUROR NO. 451: Well, sure. Yeah.

20 THE COURT: Is that because you have an open mind,
21 you're willing to listen to the evidence, do the best job you
22 can?

23 PROSPECTIVE JUROR NO. 451: Absolutely. Yeah.

24 THE COURT: All right. Mr. DiGiacomo?

25 MR. DiGIACOMO: Thank you, Your Honor. Good morning,

1 sir.

2 PROSPECTIVE JUROR NO. 451: Good morning.

3 MR. DiGIACOMO: I noticed in the back of your
4 questionnaire that there was some concerns about potentially
5 the jury pay may affect your disability?

6 PROSPECTIVE JUROR NO. 451: Yeah. I was wondering
7 about that.

8 MR. DiGIACOMO: I think the Court would be best to
9 address that to you.

10 THE COURT: It's not going to affect your disability.

11 MR. DiGIACOMO: Yeah, I don't believe that that's
12 going to have any effect whatsoever.

13 PROSPECTIVE JUROR NO. 451: Okay. Thank you.

14 MR. DiGIACOMO: So you can allay your concerns up
15 front.

16 PROSPECTIVE JUROR NO. 451: Thank you.

17 MR. DiGIACOMO: I'm going to start at what appears to
18 be the hot button question, not just today, every day. I'm
19 going to start at the back, at penalty. And then if we get
20 through those questions, we'll go forward, okay?

21 PROSPECTIVE JUROR NO. 451: Okay.

22 MR. DiGIACOMO: You've kind of heard the way this
23 works. Ms. Weckerly and I are going to have a burden to prove
24 beyond a reasonable doubt that these two individuals committed
25 the crimes we've charged them with. Now, you understand that,

1 right?

2 PROSPECTIVE JUROR NO. 451: Yes. Yeah.

3 MR. DiGIACOMO: I'm assuming you're willing to give
4 them their presumption of innocence and require Ms. Weckerly
5 and I to prove it, and if we don't prove it, you're going to
6 walk in here and you're going to find them not guilty; is that
7 fair?

8 PROSPECTIVE JUROR NO. 451: Well, I would say that
9 they're innocent until proven guilty, right?

10 MR. DiGIACOMO: Right. So if we don't do our jobs,
11 your job is to find them not guilty, and you can do that?
12 Flip side, assuming Ms. Weckerly and I do meet our burden, any
13 reason whatsoever that you think you couldn't come back in
14 this courtroom and find them guilty if we prove it to you
15 beyond a reasonable doubt?

16 PROSPECTIVE JUROR NO. 451: Well, when you say beyond
17 a reasonable doubt, I would take your word for it.

18 MR. DiGIACOMO: Well, I mean, yeah -- I mean, you
19 haven't seen the evidence yet. The Court's going to instruct
20 you on what beyond a reasonable doubt is and what that
21 standard is. But ultimately you're going to have to decide
22 did we present you enough evidence to prove it beyond a
23 reasonable doubt. Do you think you can do that?

24 PROSPECTIVE JUROR NO. 451: Yeah. I understand that.
25 Yeah.

1 MR. DiGIACOMO: Okay. So then if we get to that
2 point, then we get to phase 2. Okay? In phase 2, you're
3 going to get more evidence. It's a whole nother mini trial.
4 It's usually much shorter than the guilt phase. Not always,
5 but it usually is. You find out not only what you -- you
6 already know about the crime, but you find out, you know,
7 things about, you know, could be things about the victims,
8 it'll be things about the defendants, the aggravating
9 circumstances, mitigating circumstances, who they are and what
10 they did. And at the end of that, you're -- the jury fixes a
11 punishment for the crime. You've kind of got that by now that
12 we've been here a couple of hours?

13 PROSPECTIVE JUROR NO. 451: Yeah. I understand that.
14 Yeah. Yeah.

15 MR. DiGIACOMO: Do you think that you could wait
16 until the end of the case before you made some sort of
17 judgment as to what the punishment should be?

18 PROSPECTIVE JUROR NO. 451: Yeah. I can be quite
19 reserved. Yeah. Yeah.

20 MR. DiGIACOMO: Are you the type of person who wants
21 to know all of the information that you could possibly know
22 before you decide such an important thing to not only the
23 victims, but, I mean, to these two gentlemen sitting here,
24 that pretty severe consequences; would you agree?

25 PROSPECTIVE JUROR NO. 451: I would say that's fair,

1 yeah.

2 MR. DiGIACOMO: Do you think that you're a person who
3 could consider all four forms of punishment?

4 PROSPECTIVE JUROR NO. 451: As -- as instructed by
5 the judge, of course. Yeah.

6 MR. DiGIACOMO: And we're talking about there's a
7 possibility and, you know, we've alleged against one person,
8 so I want to make sure we separate Mr. Mason and Mr. Burns.
9 But for one person there's four possible punishments. It's
10 death, life without the possibility of parole, life with the
11 possibility of parole, or a term of years, all of which are
12 really harsh sentences, because the crime is such a severe
13 crime. Would you agree with that?

14 PROSPECTIVE JUROR NO. 451: Yeah. Yeah, I would.

15 MR. DiGIACOMO: And can you -- without telling me
16 what you -- where you're leaning or anything else, do you
17 think that you could -- could wait and -- to consider all four
18 of those possible sentences depending on what the evidence is?

19 PROSPECTIVE JUROR NO. 451: Can you rephrase that?

20 MR. DiGIACOMO: Sure. Can you wait until the end and
21 keep an open mind as to all four sentences before you --
22 before you make a decision?

23 PROSPECTIVE JUROR NO. 451: Yeah. I think you asked
24 me that, and I said I -- I can be quite reserved. Yeah.
25 Yeah.

1 MR. DiGIACOMO: Okay.

2 PROSPECTIVE JUROR NO. 451: Okay.

3 MR. DiGIACOMO: And that's what I just want to make

4 sure, is there's no particular one that you're automatically

5 going to jump to; is that correct?

6 PROSPECTIVE JUROR NO. 451: That's correct.

7 MR. DiGIACOMO: I think Mr. Sgro put it this way, and

8 generally you could potentially wait until -- or you

9 potentially return a sentence that may result in the

10 possibility that one of these individuals receives parole at

11 some point?

12 PROSPECTIVE JUROR NO. 451: Yeah. Depending on the

13 evidence.

14 MR. DiGIACOMO: Depending on what the evidence is; is

15 that fair? You think you'd be a good juror?

16 PROSPECTIVE JUROR NO. 451: I think so, yeah.

17 MR. DiGIACOMO: You think you're an open-minded

18 individual?

19 PROSPECTIVE JUROR NO. 451: Absolutely.

20 MR. DiGIACOMO: All right. Thank you very much, sir.

21 Judge, we pass for cause.

22 THE COURT: Mr. Oram?

23 MR. ORAM: Thank you, Your Honor.

24 THE COURT: Got to keep that microphone close to you

25 there.

1 PROSPECTIVE JUROR NO. 451: Okay.

2 THE COURT: Thank you.

3 MR. ORAM: Good morning.

4 PROSPECTIVE JUROR NO. 451: Good morning.

5 MR. ORAM: Just a little bit of it left. Okay. Now,

6 you understand that, remember when the State got up and they

7 read the charges; do you remember that?

8 PROSPECTIVE JUROR NO. 451: Yes. Yes, I do. Yes.

9 MR. ORAM: And you understand that the way a jury

10 trial works is that they charge Mr. Burns, Mr. Mason. Mr.

11 Burns comes in, says I'm not guilty. Okay. And then as a

12 natural consequence there is a trial, and we do it by jury.

13 Make sense?

14 PROSPECTIVE JUROR NO. 451: Yes. Yeah.

15 MR. ORAM: You have no problem with that concept?

16 PROSPECTIVE JUROR NO. 451: Right. I understand

17 that. Yeah.

18 MR. ORAM: Okay. And the Constitutional principles

19 -- we call them Constitutional principles -- that Judge

20 Thompson was going through with you, right to remain silent,

21 somebody doesn't have to testify, you have no problem with

22 that, do you?

23 PROSPECTIVE JUROR NO. 451: I understand the

24 Constitution, yes. Yeah.

25 MR. ORAM: I want to make sure of something. It's

1 sort of a silly example, but I – I think for everybody who's
2 sitting around you, as well, it – it really sort of
3 illustrates the point. And that is, as you can see, we ask
4 questions. Okay. But let's say I don't want to do this
5 anymore, I don't want to participate. Mr. Sgro and I, we just
6 go over there, jury for the next five weeks is, like, Boy,
7 those lawyers are doing nothing. Okay? Nothing. We don't do
8 – we don't do anything. Okay? Play Twiddly-Winks, we call
9 no witnesses. Mr. Burns does not testify. You won't go out
10 to deliberate and you think – you along with 11 other people
11 – I have a reasonable doubt as to whether Mr. Burns is
12 guilty, what would be your verdict?

13 PROSPECTIVE JUROR NO. 451: Well, you're just
14 throwing a hypothetical thing at me?

15 MR. ORAM: Right. Yes.

16 PROSPECTIVE JUROR NO. 451: Well, let me give you a
17 hypothetical answer then, I guess.

18 MR. ORAM: Sure.

19 PROSPECTIVE JUROR NO. 451: I wouldn't know until I
20 heard what the evidence was. I – I don't know where you're
21 really hypothetically going with this. You know what I mean.

22 MR. ORAM: Here's what I'm asking sir. It – it
23 really isn't a – it isn't a trick question. What I'm saying
24 to you is if Mr. Burns doesn't need to do anything, we don't
25 need to do anything, you understand? We can sit and do

1 nothing.

2 PROSPECTIVE JUROR NO. 451: Oh, I see -- I see what
3 you're --

4 MR. ORAM: Do you see what I mean?

5 PROSPECTIVE JUROR NO. 451: -- I see what you mean
6 now. Okay.

7 MR. ORAM: And so at the end we've done nothing. I
8 mean, we've just been lazy. We haven't done our jobs. Okay.

9 But you guys all go back and you think, I've got a reasonable
10 doubt, okay, that he's guilty. I have a reasonable doubt. I
11 don't think the guy did it. Okay. You would come back in
12 here and say not guilty, right? Does that make sense to you?

13 PROSPECTIVE JUROR NO. 451: Not necessarily. I think
14 maybe the -- you're forgetting that the State is also involved
15 in this, too.

16 MR. ORAM: No. What I mean is you've heard the whole
17 trial.

18 PROSPECTIVE JUROR NO. 451: Right. Not just you
19 being lazy, but I've heard them working hard, maybe. I don't
20 know. I'm hypothetically thinking -- you're as frustrating as
21 my leg. Sorry, but...

22 MR. ORAM: Sir, what I'm asking you is if --

23 PROSPECTIVE JUROR NO. 451: I didn't mean anything
24 bad by that.

25 MR. ORAM: That's all right. At the end of this

1 case, okay, if you have a reasonable doubt as to the guilt of
2 the people charged, how would you vote?

3 PROSPECTIVE JUROR NO. 451: If I have a reasonable
4 doubt?

5 MR. ORAM: Yes. I don't mean to frustrate you. You
6 -- do you understand you'd have to vote not guilty?

7 PROSPECTIVE JUROR NO. 451: Right. I know that.

8 MR. ORAM: And so that's all I'm asking you. And you
9 have -- do you have a problem with that?

10 PROSPECTIVE JUROR NO. 451: No, I don't have a
11 problem with that.

12 MR. ORAM: And so I'm not trying to say we're just
13 being lazy. I'm trying to illustrate the point.

14 PROSPECTIVE JUROR NO. 451: Yeah. That's a tough
15 one. Okay. I see where you're going with it. Yeah, I would
16 be able to -- I would be able to vote not --

17 MR. ORAM: Okay. And that's all I'm asking is that
18 basically I'm trying to tell you that we don't have to do
19 anything.

20 PROSPECTIVE JUROR NO. 451: Right.

21 MR. ORAM: In other words --

22 PROSPECTIVE JUROR NO. 451: Right.

23 MR. ORAM: -- if you hear them working hard, as you
24 say, they worked hard, they've done their -- you've put the
25 witnesses on there. But in the end, you're -- you're thinking

1 about it, and you think, I don't think the guy did it.

2 PROSPECTIVE JUROR NO. 451: Yeah. But I'm just a
3 little confused by the way that you're hypothetically coming
4 up with this scenario, because your clients would be very mad
5 at you for not doing anything. And it seems really irrational
6 thing to present me with. I -- I don't --

7 MR. ORAM: Okay.

8 PROSPECTIVE JUROR NO. 451: Can you choose another
9 one or something?

10 MR. ORAM: Sure. If at the end of this case, you
11 hear the whole case --

12 PROSPECTIVE JUROR NO. 451: Okay.

13 MR. ORAM: -- okay, where everybody's working hard --

14 PROSPECTIVE JUROR NO. 451: Okay.

15 MR. ORAM: -- you have a reasonable doubt, how would
16 you find the defendant?

17 PROSPECTIVE JUROR NO. 451: Not guilty.

18 MR. ORAM: And that's -- that's not going to be a
19 problem for you to at all?

20 PROSPECTIVE JUROR NO. 451: No. I don't --

21 MR. ORAM: Okay. So if --

22 PROSPECTIVE JUROR NO. 451: I guess that was more of
23 a problem than --

24 MR. ORAM: Okay. Well, there's a bigger point, sir.

25 Okay. And the point I'm trying to make is that we don't have

1 a burden of proof. Mr. Burns doesn't have a burden of proof.

2 Have you heard that term before?

3 PROSPECTIVE JUROR NO. 451: Yes.

4 MR. ORAM: Okay. And what -- what essentially that
5 means is that the Constitution of the United States means that
6 -- guarantees us that we can just sit over there and do
7 nothing.

8 PROSPECTIVE JUROR NO. 451: Oh, I see what you mean.

9 MR. ORAM: You see? And that it's the State that has
10 to prove the case beyond a reasonable doubt.

11 PROSPECTIVE JUROR NO. 451: That's right.

12 MR. ORAM: That's not a problem to you, is it?

13 PROSPECTIVE JUROR NO. 451: No, no. I understand
14 that. Yeah.

15 MR. ORAM: And you know what, sometimes I ask
16 confusing questions. Okay. So that's my fault.

17 PROSPECTIVE JUROR NO. 451: Okay.

18 MR. ORAM: Okay. I'm sorry I'm not --

19 PROSPECTIVE JUROR NO. 451: Oh, I'm sorry. I
20 apologize. Okay.

21 MR. ORAM: It's not a problem. Okay. I want to ask
22 you some individual questions.

23 You said at one point in your life you'd -- you'd
24 helped out a World War II veteran; do you recall that?

25 PROSPECTIVE JUROR NO. 451: Yes, I do.

1 MR. ORAM: And what -- what happened there? What was
2 that about? What did you do?

3 PROSPECTIVE JUROR NO. 451: His son was in, let's
4 see, his son was away in Costa Rica and he needed help with
5 doing things around his condo. He was a retired judge, too,
6 from Chicago. Really -- really an interesting fellow, you
7 know, so...

8 MR. ORAM: And you wrote something interesting. You
9 said that he had mentioned to you that in court the facts that
10 come in are what are down on paper is what's considered first;
11 do you remember writing those?

12 PROSPECTIVE JUROR NO. 451: Yeah. I do remember
13 that.

14 MR. ORAM: What -- what did you mean by that?

15 PROSPECTIVE JUROR NO. 451: Well, when you -- maybe
16 the -- was the question in regards to the judicial system?

17 MR. ORAM: Yes, it was. Did you know anybody?

18 PROSPECTIVE JUROR NO. 451: Right. I remember him
19 telling me when he was a judge is that when it came down to
20 things that mattered, it always came back to what was on paper
21 that was taken the most serious than anything else.

22 MR. ORAM: Okay. In -- in a trial like this, you
23 realize if you sat on the jury, that you're going to hear
24 witnesses that are going to get up on that witness stand.
25 Okay. And -- and there may be a situation where you and your

1 other jurors are having to decide if somebody's telling you
2 the truth. That makes sense, right?

3 PROSPECTIVE JUROR NO. 451: Yeah. Yeah.

4 MR. ORAM: Okay. Because you may have a situation.
5 Just think of a car accident for a second where somebody comes
6 in and says the light was red, somebody else comes in and
7 says, Hey, the light's green. And then you as a juror, and
8 along with other jurors, would have to decide, hey, is it
9 green, red, or is it orange?

10 PROSPECTIVE JUROR NO. 451: Oh, I can indifferate
11 [sic] that, yeah. I can --

12 MR. ORAM: In your job when you were working as a
13 pastry chef or as -- at any time in your life, have you been
14 called upon to determine or to decide whether people were
15 lying to you?

16 PROSPECTIVE JUROR NO. 451: Oh, yeah. Yeah.

17 MR. ORAM: Can you -- when was -- when would that
18 have been?

19 PROSPECTIVE JUROR NO. 451: When my a.m. baker was
20 drinking the vanilla extract.

21 MR. ORAM: Okay. Somebody was -- was it -- might
22 have been taking stuff from the --

23 PROSPECTIVE JUROR NO. 451: He was pouring it in his
24 coffee and drinking it and then the -- the -- the purchasing
25 agent of the hotel -- this was in Aspen, Colorado -- he came

1 to me and says, Connor, the -- where's all the vanilla extract
2 going? And so I went over to my a.m. baker there, a Mexican
3 guy, you know, and said -- I took a little sip of his coffee.
4 I go, Oh, this is where it's going.

5 MR. ORAM: Did he lie about it or did he tell you the
6 truth?

7 PROSPECTIVE JUROR NO. 451: Yeah, he lied about it.
8 At first he lied about it. Sure.

9 MR. ORAM: But -- but from everything you saw, you
10 were able to determine he -- you came in here and told us he
11 lied about it. So from what you saw with the facts, you
12 determined that what he had to say was a lie.

13 PROSPECTIVE JUROR NO. 451: Well, I talked to other
14 people, like, in room service that are there, you know, in the
15 wee hours of the morning when everyone's sleeping. And I -- I
16 think I was tipped off on -- on how he was doing it.

17 MR. ORAM: Okay. So that's good. Because that --
18 that kind of proves --

19 PROSPECTIVE JUROR NO. 451: Yeah, it proved it.

20 MR. ORAM: -- what you'd be doing in a trial, too.
21 Do you see how that has similarities to a jury?

22 PROSPECTIVE JUROR NO. 451: Right. I didn't -- I
23 didn't tell him that I -- that I spoke with somebody that saw
24 him pour the extract into his coffee. He lied to me first,
25 you know, and then I -- I already knew.

1 MR. ORAM: Do you ever watch any of those crime scene
2 shows?

3 PROSPECTIVE JUROR NO. 451: No, I try not to.

4 MR. ORAM: But you've heard of scientific terms, like
5 DNA, fingerprints?

6 PROSPECTIVE JUROR NO. 451: Forensics? Yeah.

7 MR. ORAM: Yeah, forensics. Okay. And you're going
8 to hear forensics in this case. You're open to that, aren't
9 you?

10 PROSPECTIVE JUROR NO. 451: Yes.

11 MR. ORAM: I think at least one other gentleman said
12 earlier that it can be used as a tool. Okay. Obviously,
13 right? In other words, fingerprints -- if -- if I said I've
14 never been in this courtroom and you had my fingerprints all
15 over that jury box, you may think I was lying. Okay.

16 PROSPECTIVE JUROR NO. 451: Yeah.

17 MR. ORAM: Okay. And so it can be a tool. Does that
18 make sense?

19 PROSPECTIVE JUROR NO. 451: Yes.

20 MR. ORAM: Okay. And so science can help prove
21 somebody guilty, right?

22 PROSPECTIVE JUROR NO. 451: Yes.

23 MR. ORAM: It can also help prove somebody didn't do
24 it, too.

25 PROSPECTIVE JUROR NO. 451: Absolutely.

1 MR. ORAM: And so when you're listening to the
2 scientists in this case, you're going to be open to science,
3 whether it's helpful or hurtful?

4 PROSPECTIVE JUROR NO. 451: Oh, yes. Of course.
5 Yeah. I see.

6 MR. ORAM: Did you hear the questions about cell
7 phone records?

8 PROSPECTIVE JUROR NO. 451: Yeah, I heard that.
9 Yeah.

10 MR. ORAM: Do you have a cell phone?

11 PROSPECTIVE JUROR NO. 451: Yeah, I do.

12 MR. ORAM: Do you ever pay attention to your bill?

13 PROSPECTIVE JUROR NO. 451: I don't get one.

14 MR. ORAM: You don't get one?

15 PROSPECTIVE JUROR NO. 451: No contract.

16 MR. ORAM: No contract. Oh, so that you just buy
17 minutes when you get one?

18 PROSPECTIVE JUROR NO. 451: No. I just buy a monthly
19 service. Yeah.

20 MR. ORAM: Oh, okay.

21 PROSPECTIVE JUROR NO. 451: Every month, yeah.

22 MR. ORAM: So you don't ever have to scrutinize --

23 PROSPECTIVE JUROR NO. 451: No. But I know what you
24 mean. When I used to have a landline phone I used to see who
25 made the calls and all that. There you go. Yeah, yeah. I

1 know.

2 MR. ORAM: And so you may be called upon in this case
3 to look at that. Okay. So you've -- you've already answered
4 the question for me, because you said, When I had a landline I
5 -- I looked at things like that.

6 PROSPECTIVE JUROR NO. 451: Uh-huh.

7 MR. ORAM: And I think the bigger question that we
8 would ask you is that just because a big stack of paper comes
9 in, you -- you would be willing to look at it and maybe
10 compare it to, you know, somebody else's phone; does that make
11 sense? Like, in other words --

12 PROSPECTIVE JUROR NO. 451: Oh, I see. Yeah.

13 MR. ORAM: See what I mean?

14 PROSPECTIVE JUROR NO. 451: Compare and contrast.
15 Right.

16 MR. ORAM: Yeah, compare and contrast. Do you have
17 any problem with that at all?

18 PROSPECTIVE JUROR NO. 451: No, no I don't.

19 MR. ORAM: Okay. How -- how about if -- if Mr. Burns
20 elects not to testify; would you use that against him?

21 PROSPECTIVE JUROR NO. 451: No.

22 MR. ORAM: And let me ask you something else. Mr.
23 Burns is African-American. Okay. Is -- does that play a
24 bearing in your mind? In other words, do you feel like, I
25 couldn't be fair to him because he's African-American?

1 PROSPECTIVE JUROR NO. 451: Absolutely not.

2 MR. ORAM: Okay. And -- and so, basically, what

3 you're saying is that you would judge the facts in this case

4 not on race, but on --

5 PROSPECTIVE JUROR NO. 451: No, no. No. I was born

6 in Queens, New York. And I had friends of every ethnic

7 background.

8 MR. ORAM: And so could you promise Mr. Burns a fair

9 trial?

10 PROSPECTIVE JUROR NO. 451: Absolutely.

11 MR. ORAM: If they fail to prove him guilty beyond a

12 reasonable doubt at the end, everybody worked hard and we say

13 they didn't prove it, could you come back in this courtroom

14 and say -- you could announce that?

15 PROSPECTIVE JUROR NO. 451: I'd have to.

16 MR. ORAM: And just one last sort of point I'd like

17 to talk with you about. You know, we talked about

18 photographs. Okay.

19 PROSPECTIVE JUROR NO. 451: Okay.

20 MR. ORAM: Some of those photographs, you know, you

21 -- maybe you think you've seen movies -- not you, but I think

22 it's natural to think, I've seen movies, I've seen really bad

23 things. When you actually see the horrific nature of a murder

24 victim, you know, it can be very upsetting. Make sense?

25 PROSPECTIVE JUROR NO. 451: Yeah. Makes perfect

1 sense. Yeah. In 1987, my car accident that I was in, I
2 killed somebody in a car. And I was pinned in that car for
3 five hours while this dead guy, which was my best friend's
4 older brother... So I have memories of that. I've lived with
5 it all my life. It's something that doesn't go away. But I
6 don't know how that would affect me.

7 MR. ORAM: I'm sorry to hear that. And so I think we
8 – we warn people just so that it's not a shock. Because, you
9 know, if we don't say anything – see those computers or big
10 TV screens? You know, we get to an opening argument and all
11 of a sudden you're looking at this, it's coming right at you.
12 You know, you – at that point you don't even have a chance to
13 talk about it like we're doing right now. Does that make
14 sense?

15 PROSPECTIVE JUROR NO. 451: Yes. Yeah, it makes
16 sense. Yeah.

17 MR. ORAM: You okay?

18 PROSPECTIVE JUROR NO. 451: Yeah.

19 MR. ORAM: Okay. And so given everything, it sounds
20 to me like you're saying that you could consider the evidence
21 and be a fair trial; is that right?

22 PROSPECTIVE JUROR NO. 451: Yeah. Yeah.

23 MR. ORAM: Okay. Court's indulgence. Two people are
24 on trial here. Would you give them separate but equal
25 consideration, makes sense, right?

1 PROSPECTIVE JUROR NO. 451: Right. Right.

2 MR. ORAM: You eat -- you eat at two different
3 restaurants, you'd judge them both differently, right?

4 PROSPECTIVE JUROR NO. 451: Yes.

5 MR. ORAM: Okay. And so in the end you would take a
6 look at the evidence, look at Mr. Burns, and you would decide
7 with other people whether the State had proved their case
8 beyond a reasonable doubt, right?

9 PROSPECTIVE JUROR NO. 451: Correct.

10 MR. ORAM: Okay. Thank you so much, sir. Pass for
11 cause.

12 THE COURT: Mr. Langford?

13 MR. LANGFORD: Can you be fair to Mr. Mason, as well?

14 PROSPECTIVE JUROR NO. 451: Yes, I can.

15 MR. LANGFORD: Pass for cause, Your Honor.

16 THE COURT: All right. It's almost noon, so let's
17 take our luncheon recess now, ladies and gentlemen.

18 We're going to come -- have you come back at 1:00.
19 Maybe the marshal will ask you to be here a few minutes before
20 1:00. The court will be at ease while the jury leaves and
21 we'll see you at 1:00.

22 (Prospective jury panel recessed at 11:51 a.m.)

23 THE COURT: The record will reflect that the jury, or
24 prospective jurors, have left the courtroom.

25 While you were doing voir dire this morning, the

1 secretary for this department came in and approached me.
2 After we brought the jurors up here and we started voir dire,
3 Prospective Juror 494, Mr. Lien, showed up at the jury office.
4 She asked me what I wanted to do with that juror, and I said
5 bring him back tomorrow. So he's coming in tomorrow as a
6 prospective juror. Shall we put him at the end of the list
7 tomorrow?

8 MR. SGRO: Could I just -- one moment, Your Honor.

9 THE COURT: Is -- it's 494, Mr. Lien.

10 MR. SGRO: Zachary Lien?

11 THE COURT: Zachary Lien.

12 MR. DiGIACOMO: And just for the record, since we're
13 doing this each day, there were 12 jurors today. One of which
14 is clearly African-American, Ms. Brown. That makes it six out
15 of 41.

16 THE COURT: I thought maybe the last one was
17 African-American, too. I wasn't sure. Juror -- Flores.

18 MR. DiGIACOMO: The -- the very last guy on the --

19 THE COURT: Yes.

20 MR. DiGIACOMO: I don't know the answer to that
21 question.

22 THE COURT: He looked African-American to me.

23 MR. SGRO: He's Filipino.

24 THE COURT: I don't know.

25 MR. SGRO: He's Filipino, Your Honor.

1 MR. DiGIACOMO: I don't know if he filled out --
2 THE COURT: He's Filipino?
3 MR. SGRO: Yes, sir.
4 MS. WECKERLY: As was Juror No. 1, Mr. --
5 THE COURT: When Mr. Hawkes gets back, if -- Mr.
6 Hawkes?
7 THE MARSHAL: Sir?
8 THE COURT: While we were doing voir dire,
9 Prospective Juror 494, Mr. Lien, showed up at the jury
10 commissioner's office and they asked me what to do with him.
11 I told them to bring him in tomorrow. So I'm going to put him
12 at the end of tomorrow's list.
13 THE MARSHAL: Absolutely.
14 THE COURT: The next question I have is I -- I had
15 Juror 567, Ms. Austin, as the 20th juror today, and somehow I
16 must have made a mistake, because the clerk says that Ms.
17 Austin would be coming in tomorrow --
18 THE MARSHAL: I don't think she was -- I think she
19 was coming in tomorrow. I don't believe she was called today.
20 THE COURT: I don't know how I miscounted. But...
21 MR. DiGIACOMO: I think Ms. Austin is the 20th, but I
22 have a notation that we talked about calling through 563 last
23 night. So maybe that's just how I have it.
24 THE COURT: I don't know how that occurred. So
25 anyway, Ms. Austin, I guess, will be the first juror tomorrow.

1 MR. DiGIACOMO: Correct.

2 THE COURT: And then we'll make Mr. Lien the last
3 juror tomorrow. So we -- hopefully we will have enough.

4 MR. SGRO: Also, Your Honor, I was going to ask the
5 Court if it wanted to reconsider having these groups of
6 individuals come tomorrow at 3:30, now that we're going to
7 Monday. Obviously, whatever you want to do. But it may be
8 more efficient to have them come on Monday at 3:30 instead of
9 Friday at 3:30.

10 THE COURT: You know, actually, Mr. DiGiacomo on his
11 way out last night had an idea, and I don't know if it'll work
12 or not, but I'm -- I'm hoping it will. If we are able to pass
13 28 for cause rather than 35, we would have enough for each of
14 you to exercise eight peremptts, and then we would have 12
15 regular jurors sworn in tomorrow afternoon. Right now we've
16 passed 15 for cause. If we can pass another 13 between today
17 and tomorrow, we might be able to swear in the regular jurors
18 and then pick the alternates on Monday.

19 MR. DiGIACOMO: Bring the jury back on --

20 THE COURT: It's possible.

21 MR. SGRO: Yeah. I don't know if we could agree to
22 that, Your Honor.

23 THE COURT: It isn't agreement. I -- it's what I've
24 decided to do. If, in fact, we can pass that many.

25 MR. SGRO: Okay. I'd like -- we can get there when

1 we get there, I suppose. And as to the CPS records, Your
2 Honor, I -- I'm aware of the statute. I just want the record
3 to be clear, there is an order in place from Judge Tao that
4 instructs me to deliver CPS records to another party. So I
5 want to make sure --

6 MR. DiGIACOMO: There is. There was an agreement
7 between the party that was the order of the Court, but when
8 the Court got them, they just released them to Mr. Sgro. The
9 Court was supposed to release them to both of us, but Mr. Sgro
10 got the only copy. So I'm sure that this Court would have
11 ordered him to give it to us if Judge Tao's order --

12 THE COURT: I'm sure if Judge -- Judge Tao would have
13 given them to both of you. Probably didn't think about it and
14 -- and -- or was just an oversight. So you need to give those
15 copies to --

16 MR. SGRO: Yes, sir. There's a criminal statute that
17 prevents me from doing so. I just --

18 MR. DiGIACOMO: Without a court order.

19 MR. SGRO: Without a court order.

20 MR. DiGIACOMO: So that's what he's looking for, is
21 the court order.

22 THE COURT: I'll direct you to do that.

23 MR. SGRO: Thank you, sir.

24 MR. DiGIACOMO: I'm not arresting him today.

25 THE COURT: Anything else on the record before we

1 recess?

2 MR. DiGIACOMO: Not from the State.

3 THE COURT: We'll resume examination at 1:00 this
4 afternoon.

5 MR. SGRO: We can leave our stuff here, right, Judge?

6 THE COURT: You certainly can. I don't have a
7 calender during lunch hour today.

8 MR. SGRO: Thank you.

9 THE COURT: For a change.

10 (Court recessed at 11:57 a.m. until 1:05 p.m.)

11 (In the presence of the prospective jury panel.)

12 THE COURT: All right. State versus Burns and
13 Mason. The record will reflect the presence of the
14 defendants, counsel, and the prospective jurors in the box. I
15 think we are at Mr. Connolly now.

16 PROSPECTIVE JUROR NO. 465: Yes.

17 THE COURT: Good afternoon, Mr. Connolly.

18 PROSPECTIVE JUROR NO. 465: Hi.

19 THE COURT: And I get -- my first question, of
20 course, is do you know any of the witnesses whose names were
21 mentioned by counsel, or do you know any of the attorneys in
22 the case?

23 PROSPECTIVE JUROR NO. 465: I don't know any of the
24 attorneys. Possible one witness.

25 THE COURT: Which witness is that?

1 PROSPECTIVE JUROR NO. 465: Mayo. Mayo.
2 THE COURT: Mayo?
3 PROSPECTIVE JUROR NO. 465: He may have graduated
4 with my son-in-law.
5 THE COURT: Whose witness is he?
6 MR. DiGIACOMO: It's Cornelius Mayo. I guess we --
7 how old is his son-in-law?
8 PROSPECTIVE JUROR NO. 465: He is probably right
9 around 30 now.
10 MR. DiGIACOMO: Possibly.
11 THE COURT: What is he, an officer?
12 MS. WECKERLY: No, he's lay witness.
13 MR. DiGIACOMO: He's a lay witness.
14 THE COURT: He's a lay witness?
15 PROSPECTIVE JUROR NO. 465: Oh, then that's --
16 THE COURT: Are you going to call him?
17 PROSPECTIVE JUROR NO. 465: He's not an officer. He
18 didn't --
19 MS. WECKERLY: He's not.
20 PROSPECTIVE JUROR NO. 465: Yeah, then that's --
21 MR. DiGIACOMO: No, he's not an officer.
22 PROSPECTIVE JUROR NO. 465: I don't know.
23 THE COURT: A different Mayo, I guess.
24 PROSPECTIVE JUROR NO. 465: Yeah.
25 THE COURT: Okay. You've been in Nevada for about

1 15 years now?

2 PROSPECTIVE JUROR NO. 465: Yes.

3 THE COURT: And as I understand it, you work for Cox
4 Communication.

5 PROSPECTIVE JUROR NO. 465: That's correct, yes.

6 THE COURT: And your -- you are like a repairman or
7 a --

8 PROSPECTIVE JUROR NO. 465: Yeah, I do the
9 maintenance, powering, work with electricity.

10 THE COURT: And you go to homes to do this or a
11 business or --

12 PROSPECTIVE JUROR NO. 465: Just on the outside --

13 THE COURT: Oh, you --

14 PROSPECTIVE JUROR NO. 465: -- the plant.

15 THE COURT: -- work outside on --

16 PROSPECTIVE JUROR NO. 465: Outside in the --

17 THE COURT: -- the pole.

18 PROSPECTIVE JUROR NO. 465: -- in the plant.

19 THE COURT: Do you climb up the poles or --

20 PROSPECTIVE JUROR NO. 465: No, thank goodness. I
21 don't. Everything is on the ground for --

22 THE COURT: Everything is on --

23 PROSPECTIVE JUROR NO. 465: -- for me --

24 THE COURT: -- the ground.

25 PROSPECTIVE JUROR NO. 465: Or I use --

1 THE COURT: All right.

2 PROSPECTIVE JUROR NO. 465: -- a bucket. Yes.

3 THE COURT: And your wife is self-employed?

4 PROSPECTIVE JUROR NO. 465: Yes. She works for SNOA

5 as a referee. Or not a referee, but --

6 THE COURT: SNOA? Southern Nevada --

7 PROSPECTIVE JUROR NO. 465: Associate -- SNO --

8 Officials Association. So she actually works for herself, but

9 they do the scheduling for her.

10 THE COURT: What does she --

11 PROSPECTIVE JUROR NO. 465: Basketball timer --

12 THE COURT: Basketball?

13 PROSPECTIVE JUROR NO. 465: Yeah, timer/scorekeeper.

14 THE COURT: For what, high schools or --

15 PROSPECTIVE JUROR NO. 465: High school, sometimes

16 college.

17 THE COURT: College and high schools?

18 PROSPECTIVE JUROR NO. 465: Yeah, mostly high school

19 and grade or middle school.

20 THE COURT: Okay. And you have five children?

21 PROSPECTIVE JUROR NO. 465: Five, yes.

22 THE COURT: Over quite a few years. One of them, I

23 believe, works for Metro; is that right?

24 PROSPECTIVE JUROR NO. 465: My daughter works in the

25 evidence vault, and her husband works for Metro as a police

1 officer, one of the officers.

2 THE COURT: Do you -- do you feel because of that
3 association you're aligned with the prosecution in a case like
4 this, or is that going to make any difference to you?

5 PROSPECTIVE JUROR NO. 465: I'm afraid, yes, that I
6 have a tendency to lean towards them.

7 THE COURT: Do you think -- do you think you can be
8 fair in the case?

9 PROSPECTIVE JUROR NO. 465: I think if it came down
10 between one or the other, I would probably choose --

11 THE COURT: All right.

12 PROSPECTIVE JUROR NO. 465: -- Metro over them.

13 THE COURT: I'll entertain a challenge for cause.

14 MR. SGRO: Challenge for cause, Your Honor.

15 THE COURT: Any traverse?

16 MR. DIGIACOMO: Submit it, Judge.

17 THE COURT: All right. Mr. Connolly, I'll excuse
18 you. Thank you for being here today. If you'd had the
19 microphone over.

20 And you're Mr. Breitigan?

21 PROSPECTIVE JUROR NO. 472: Yes, sir.

22 THE COURT: Do you know any of the attorneys or the
23 witnesses in the case?

24 PROSPECTIVE JUROR NO. 472: No, I do not.

25 THE COURT: And you're working security at the -- at

1 the test site?

2 PROSPECTIVE JUROR NO. 472: I'm security police
3 officer at the test site, yes.

4 THE COURT: Okay. What -- what company do you work
5 for?

6 PROSPECTIVE JUROR NO. 472: Sentara (phonetic).

7 THE COURT: Is that a private company?

8 PROSPECTIVE JUROR NO. 472: Yeah, we're a private
9 military group.

10 THE COURT: And you're on contract to the test site?

11 PROSPECTIVE JUROR NO. 472: To the DOE.

12 THE COURT: And what do you do?

13 PROSPECTIVE JUROR NO. 472: Police security. We --

14 THE COURT: Well, do you -- I mean, are you out in
15 the field or are you in an office or --

16 PROSPECTIVE JUROR NO. 472: I'd be out in the field,
17 yes.

18 THE COURT: You're out in the field?

19 PROSPECTIVE JUROR NO. 472: Uh-huh.

20 THE COURT: You're riding a vehicle around?

21 PROSPECTIVE JUROR NO. 472: Sometimes, yes.

22 THE COURT: Walking around?

23 PROSPECTIVE JUROR NO. 472: Sometimes, yes. Yeah.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR NO. 472: I'm sorry. I can't talk

1 a whole lot about it because of my clearance.

2 THE COURT: Okay. Do you carry a firearm?

3 PROSPECTIVE JUROR NO. 472: Yes, I do.

4 THE COURT: Do you -- are you considered law
5 enforcement or are you --

6 PROSPECTIVE JUROR NO. 472: We do have --

7 THE COURT: -- private security?

8 PROSPECTIVE JUROR NO. 472: -- arrest authority. We
9 do have arrest authority on the --

10 THE COURT: You have --

11 PROSPECTIVE JUROR NO. 472: -- on the test site,
12 yes.

13 THE COURT: -- arrest authority? Okay. How long
14 have you been doing that?

15 PROSPECTIVE JUROR NO. 472: Since July.

16 THE COURT: And what did you do before that?

17 PROSPECTIVE JUROR NO. 472: Private security.

18 THE COURT: For who?

19 PROSPECTIVE JUROR NO. 472: Progressive Force
20 Concepts.

21 THE COURT: And who did -- what did you secure?

22 PROSPECTIVE JUROR NO. 472: Executive protection or
23 personal security detail --

24 THE COURT: Okay.

25 PROSPECTIVE JUROR NO. 472: -- for high value

1 clients.

2 THE COURT: Individuals who --

3 PROSPECTIVE JUROR NO. 472: Individuals, properties.

4 THE COURT: -- need personal security?

5 PROSPECTIVE JUROR NO. 472: Yes, sir.

6 THE COURT: For like actors or --

7 PROSPECTIVE JUROR NO. 472: Sometimes, yes.

8 THE COURT: Politicians?

9 PROSPECTIVE JUROR NO. 472: Not politicians, no.

10 THE COURT: Not a politician.

11 PROSPECTIVE JUROR NO. 472: Never a politician.

12 THE COURT: They don't need security, do they? All

13 right. Did you hear the questions that I asked about the

14 criminal justice system to say that defendants are presumed to

15 be innocent until they're proven guilty?

16 PROSPECTIVE JUROR NO. 472: Yes, sir.

17 THE COURT: Do you have any quarrel with that?

18 PROSPECTIVE JUROR NO. 472: No, I do not.

19 THE COURT: And you understand that it's the burden

20 of the State to prove their guilt. Then if the State fails to

21 prove that by evidence beyond a reasonable doubt, they're

22 entitled to a verdict of not guilty.

23 PROSPECTIVE JUROR NO. 472: Yes, sir.

24 THE COURT: Do you understand that? You have no

25 quarrel with that?

1 PROSPECTIVE JUROR NO. 472: No, I do not.

2 THE COURT: You – you think you could be fair to

3 both sides in the case?

4 PROSPECTIVE JUROR NO. 472: Yes, sir.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR NO. 472: The only thing that I

7 had a quarrel with would be the four options if it went to the

8 second stage.

9 THE COURT: Yeah.

10 PROSPECTIVE JUROR NO. 472: I don't believe in life

11 with no parole.

12 THE COURT: You don't believe in life without

13 parole?

14 PROSPECTIVE JUROR NO. 472: Yes, sir.

15 THE COURT: So in other words you couldn't consider

16 a sentence of life imprisonment without the possibility of

17 parole?

18 PROSPECTIVE JUROR NO. 472: No, I couldn't.

19 MR. SGRO: Challenge, Your Honor.

20 THE COURT: Could you consider a death sentence?

21 PROSPECTIVE JUROR NO. 472: Yes, sir.

22 THE COURT: Would you consider a life with the

23 possibility of parole?

24 PROSPECTIVE JUROR NO. 472: It would depend on the

25 facts.

1 THE COURT: You would consider it, at least?

2 PROSPECTIVE JUROR NO. 472: Yes.

3 THE COURT: And why is it you wouldn't consider life

4 without the possibility of parole?

5 PROSPECTIVE JUROR NO. 472: I just think it's a

6 waste on the system.

7 THE COURT: Okay.

8 MR. SGRO: It's a challenge, Your Honor. It's

9 consistent with his questionnaire, Your Honor.

10 MS. WECKERLY: I'll submit it.

11 THE COURT: All right. I'll excuse you, Mr.

12 Breitigan. Thank you for appearing as a prospective juror.

13 PROSPECTIVE JUROR NO. 472: Thank you, sir.

14 THE MARSHAL: Can you just pass the microphone down

15 to the young lady on the end over there, please.

16 THE COURT: Oh, yeah. Ms. Brown.

17 PROSPECTIVE JUROR NO. 474: Yes, sir.

18 THE COURT: Okay. You had another name, too?

19 PROSPECTIVE JUROR NO. 474: Sharon Brown Warren.

20 THE COURT: Warren?

21 PROSPECTIVE JUROR NO. 474: Yes, sir.

22 THE COURT: Which do you use?

23 PROSPECTIVE JUROR NO. 474: Warren mostly.

24 THE COURT: You use Warren?

25 PROSPECTIVE JUROR NO. 474: Yeah.

1 THE COURT: Okay. They put Brown on the one list,
2 and then I saw Warren on another, so I didn't know what you
3 wanted. So we'll use Warren. How's that?

4 PROSPECTIVE JUROR NO. 474: That's fine, sir.

5 THE COURT: Do you know any of the attorneys or the
6 witnesses in the case?

7 PROSPECTIVE JUROR NO. 474: No, sir.

8 THE COURT: You're a registered nurse at the Health
9 District? PROSPECTIVE JUROR NO. 474: Yes.

10 THE COURT: What – what do you do there? Do you
11 give shots or do you do –

12 PROSPECTIVE JUROR NO. 474: We do a little bit of
13 everything, but mostly HIV/AIDS case management.

14 THE COURT: Okay. I mean, I've – I've got my shots
15 there. You didn't give me the shot, I guess.

16 PROSPECTIVE JUROR NO. 474: No.

17 THE COURT: Okay. Well, somebody did. I don't
18 remember who it was, but it could have been you. All right.
19 And your – your case management for HIV cases?

20 PROSPECTIVE JUROR NO. 474: Yes.

21 THE COURT: All right. How long have you been doing
22 that?

23 PROSPECTIVE JUROR NO. 474: About 19 months now?

24 THE COURT: And before that what kind of work did you do?

25 PROSPECTIVE JUROR NO. 474: Case management for

1 Kindred and United Healthcare.

2 THE COURT: Okay. So you've been a nurse for many
3 years?

4 PROSPECTIVE JUROR NO. 474: 20.

5 THE COURT: Okay. What does your husband do?

6 PROSPECTIVE JUROR NO. 474: He is a sales rep for
7 Identifix.

8 THE COURT: And what is that?

9 PROSPECTIVE JUROR NO. 474: They sell the diagnostic
10 systems for like Pep Boys or car mechanic shops.

11 THE COURT: Diagnostic systems?

12 PROSPECTIVE JUROR NO. 474: Yeah, they -- the -- you
13 hook --

14 THE COURT: They diagnose --

15 PROSPECTIVE JUROR NO. 474: -- your car up --

16 THE COURT: -- your car or something?

17 PROSPECTIVE JUROR NO. 474: Exactly.

18 THE COURT: Oh, okay. Well, that's more than I
19 know, believe me. All right. And he's been doing that for
20 some time, huh?

21 PROSPECTIVE JUROR NO. 474: He's -- about a year
22 now, yes.

23 THE COURT: Okay. You -- you heard the questions
24 that I asked of the other jurors about do you understand the
25 burden of proof and the presumption of innocence?

1 PROSPECTIVE JUROR NO. 474: Yes, sir.
2 THE COURT: Do you have any quarrel with that?
3 PROSPECTIVE JUROR NO. 474: No, sir.
4 THE COURT: Any reason you couldn't be fair to both
5 sides in the case?
6 PROSPECTIVE JUROR NO. 474: No, sir.
7 THE COURT: All right. Mr. -- Ms. Weckerly.
8 MS. WECKERLY: Thank you.
9 Hi there.
10 PROSPECTIVE JUROR NO. 474: Hello.
11 MS. WECKERLY: How are you?
12 PROSPECTIVE JUROR NO. 474: I'm fine. And you?
13 MS. WECKERLY: Good, thank you. In your -- in your
14 work at the Health District, are you ever called upon to give
15 people the -- like the initial finding that they're HIV
16 positive or -- or something like that?
17 PROSPECTIVE JUROR NO. 474: No.
18 MS. WECKERLY: You're just in there -- once they've
19 been diagnosed you help manage their -- their treatment and
20 their care?
21 PROSPECTIVE JUROR NO. 474: Yes.
22 MS. WECKERLY: Are some of the -- I would imagine
23 some of the people that you -- some of your patients have drug
24 problems along with the diagnosis of being HIV positive.
25 PROSPECTIVE JUROR NO. 474: Yes.

1 MS. WECKERLY: And so do you coordinate care or
2 treatment to address maybe illegal drug use as well as sort of
3 the maintaining or the HIV --

4 PROSPECTIVE JUROR NO. 474: Yes.

5 MS. WECKERLY: -- regimen, I guess?

6 PROSPECTIVE JUROR NO. 474: Yes.

7 MS. WECKERLY: Okay. I don't know if that's the
8 right word, but -- and in your -- in your contact are you, I
9 guess, talking to people a lot about their lifestyles and
10 risks and things they can do to improve their overall health
11 situation?

12 PROSPECTIVE JUROR NO. 474: Yes.

13 MS. WECKERLY: And so it's probably a lot of one on
14 one contact with certain patients?

15 PROSPECTIVE JUROR NO. 474: Yes.

16 MS. WECKERLY: What -- what caused you to move from,
17 I believe that was a private company, into the Health
18 District?

19 PROSPECTIVE JUROR NO. 474: I wanted to help the
20 public understand HIV and AIDS.

21 MS. WECKERLY: Okay. So it was kind of a personal
22 calling to contribute?

23 PROSPECTIVE JUROR NO. 474: Yes.

24 MS. WECKERLY: How many patients are you managing?

25 PROSPECTIVE JUROR NO. 474: Right now our load is a

1 little bit low, so about 20.

2 MS. WECKERLY: 20?

3 PROSPECTIVE JUROR NO. 474: Uh-huh.

4 MS. WECKERLY: Still, though, that – I'm sure
5 there's varying needs and they're at varying stages of health?

6 PROSPECTIVE JUROR NO. 474: That's – that's true,
7 yeah.

8 MS. WECKERLY: Okay. Are the – are the patients
9 also at kind of varying abilities to – to manage their lives
10 for lack of a better term because of all kinds of, I guess,
11 circumstances?

12 PROSPECTIVE JUROR NO. 474: Yes.

13 MS. WECKERLY: Do you – in that regard are you ever
14 contacting other agencies that might offer assistance for
15 those people?

16 PROSPECTIVE JUROR NO. 474: Absolutely.

17 MS. WECKERLY: Okay. So you – you kind of go
18 beyond even the strict confines of the – the medicine or
19 maintaining that – that regimen for treatment and try to get
20 an overall health improvement?

21 PROSPECTIVE JUROR NO. 474: Yes, ma'am.

22 MS. WECKERLY: Okay. That must be exhausting.

23 PROSPECTIVE JUROR NO. 474: Challenging.

24 MS. WECKERLY: Challenging. Probably rewarding. In
25 your – in your questionnaire you were asked about your

1 impression of the criminal justice system. And you said
2 overall you think it's fair, is that --

3 PROSPECTIVE JUROR NO. 474: Yes.

4 MS. WECKERLY: Okay. And is that based on -- a lot
5 of people, their experience is based on maybe what they've
6 read in the paper or seen on the news more than like a
7 personal experience with it?

8 PROSPECTIVE JUROR NO. 474: Primarily, yes.

9 MS. WECKERLY: Okay. And you also -- you were asked
10 on the questionnaire questions about race or when you might
11 have faced discrimination.

12 PROSPECTIVE JUROR NO. 474: Yes.

13 MS. WECKERLY: And you mentioned a personal instance
14 when you experienced discrimination when you would go out and
15 go to a restaurant. Do you remember that, what you wrote in
16 your questionnaire about that?

17 PROSPECTIVE JUROR NO. 474: Can you please refresh
18 my memory because --

19 MS. WECKERLY: Yeah, you were asked have you ever
20 been -- or have you ever had prejudice thoughts about another
21 person based on their racial background? And you said when
22 others -- sort of like when you go to a restaurant because we
23 are ladies of color we are expected not to tip well so service
24 starts off kind of poorly.

25 PROSPECTIVE JUROR NO. 474: Uh-huh.

1 MS. WECKERLY: Is that yes? Sorry.

2 PROSPECTIVE JUROR NO. 474: Yes. I'm sorry.

3 MS. WECKERLY: We're recording this.

4 PROSPECTIVE JUROR NO. 474: I apologize. Yes.

5 MS. WECKERLY: Is that something that you feel is
6 like a pervasive experience or has that been your experience
7 that it's -- that it's pretty common that that occurs in a lot
8 of restaurants?

9 PROSPECTIVE JUROR NO. 474: It's not common, but it
10 does -- it has happened.

11 MS. WECKERLY: Okay. And it's probably fairly
12 recognizable right from the beginning, do you think, that
13 prejudice that people have?

14 PROSPECTIVE JUROR NO. 474: Some. Sometimes, yes.

15 MS. WECKERLY: And is there -- you know, I don't
16 know, is that something you address with the restaurant staff
17 or managers or is it something that you haven't -- you know
18 what I'm asking? Like have you ever complained about the
19 service, or is it --

20 PROSPECTIVE JUROR NO. 474: It depends upon the
21 service, yes, ma'am.

22 MS. WECKERLY: But there probably have been
23 instances where you have?

24 PROSPECTIVE JUROR NO. 474: Yes.

25 MS. WECKERLY: Okay. So you -- you can assert

1 yourself if you're being treated unfairly?

2 PROSPECTIVE JUROR NO. 474: Yes, ma'am.

3 MS. WECKERLY: Okay. And then you had another
4 instances that you mentioned where it seems like a supervisor
5 was giving different -- difficult patients to certain nurses
6 versus others based on race.

7 PROSPECTIVE JUROR NO. 474: Yes, ma'am.

8 MS. WECKERLY: And was that -- was that addressed at
9 all in the workplace that -- that that supervisor was acting
10 unfairly?

11 PROSPECTIVE JUROR NO. 474: Yes, ma'am, it was.

12 MS. WECKERLY: And was it corrected or --

13 PROSPECTIVE JUROR NO. 474: Yes, ma'am.

14 MS. WECKERLY: Okay. And did you feel the
15 correction was appropriate given what had occurred?

16 PROSPECTIVE JUROR NO. 474: Yes, ma'am.

17 MS. WECKERLY: Okay. Those -- those problems and
18 those aspects of society, I think everyone in the jury pool
19 brings different experiences to them. And some of them are --
20 are, you know, broad, complicated issues that -- that we have
21 just in our society, would you agree?

22 PROSPECTIVE JUROR NO. 474: Yes, ma'am.

23 MS. WECKERLY: Okay. And having those experiences,
24 I think everyone brings something different into the jury
25 room. I guess my question is is there anything about those

1 experiences that would at all affect your ability to be fair
2 to both sides? I can't imagine that it would.

3 PROSPECTIVE JUROR NO. 474: No, ma'am.

4 MS. WECKERLY: Okay. You were asked about your
5 opinion about the death penalty.

6 PROSPECTIVE JUROR NO. 474: Yes.

7 MS. WECKERLY: And you said you don't oppose it, but
8 you'd have to know without a reasonable doubt that the crime
9 warrants the death penalty. Do you remember writing that?

10 PROSPECTIVE JUROR NO. 474: Yes, ma'am.

11 MS. WECKERLY: Okay. And I think you've probably
12 gathered that this is a two-step process and at first the
13 jurors decide whether or not we've even proven the case beyond
14 a reasonable doubt, then we move on in to phase 2 and you
15 decide between four possible punishments.

16 PROSPECTIVE JUROR NO. 474: Yes, ma'am.

17 MS. WECKERLY: I would assume you're someone who
18 could reserve judgment about what punishment you thought might
19 be appropriate until you hear all the information that's
20 presented.

21 PROSPECTIVE JUROR NO. 474: Yes, ma'am.

22 MS. WECKERLY: Is there any difficulty that you
23 would have, you don't have to tell me what it is, but is there
24 any difficulty if you thought the crime warranted it? I'm
25 sure it wouldn't be an easy decision, but could you return a

1 death verdict if you thought the case warranted it?

2 PROSPECTIVE JUROR NO. 474: Yes, ma'am.

3 MS. WECKERLY: Okay. And so I think I asked another
4 gentleman, there's no religious or philosophical problem with
5 it, it just has to be a particular type of case warranting it
6 in your mind?

7 PROSPECTIVE JUROR NO. 474: Yeah, the facts needs to
8 prove it. Yes, ma'am.

9 MS. WECKERLY: Okay. And if – sort of the flip
10 side of that, if you heard the facts of the case and you find
11 the defendant guilty and you hear information suggesting that
12 that should not be the punishment, that should be the
13 punishment, that it should be life without the possibility of
14 parole, meaning Mr. Burns would spend the rest of his life in
15 prison. I assume you could impose that punishment, as well,
16 if you thought it was appropriate?

17 PROSPECTIVE JUROR NO. 474: Yes, ma'am.

18 MS. WECKERLY: And the least severe sentence, which
19 still is a substantial amount of time, I mean, these are all
20 grave, heavy sentences, you could consider allowing him to go
21 before a parole board?

22 PROSPECTIVE JUROR NO. 474: Yes, ma'am.

23 MS. WECKERLY: Okay. Is there anything about any of
24 those choices that you rule out right now, or are all of them
25 on the table depending on what you hear?

1 PROSPECTIVE JUROR NO. 474: All of them are on the
2 table depending on what I hear. Yes, ma'am.
3 MS. WECKERLY: Thank you very much.
4 We'll pass for cause.
5 THE COURT: Mr. Oram.
6 MR. ORAM: Thank you.
7 Good afternoon.
8 PROSPECTIVE JUROR NO. 474: Good afternoon.
9 MR. ORAM: So are you working on a Master's?
10 PROSPECTIVE JUROR NO. 474: Yes.
11 MR. ORAM: Okay. So I didn't read that wrong. Is
12 that in nursing?
13 PROSPECTIVE JUROR NO. 474: Yes.
14 MR. ORAM: Does that qualify you to be in a certain
15 area of nursing?
16 PROSPECTIVE JUROR NO. 474: No, just I'm going for
17 personal reasons.
18 MR. ORAM: Oh, for personal reasons?
19 PROSPECTIVE JUROR NO. 474: Yes.
20 MR. ORAM: Prove yourself?
21 PROSPECTIVE JUROR NO. 474: Yeah.
22 MR. ORAM: Okay. And you do that -- where do you
23 attend school?
24 PROSPECTIVE JUROR NO. 474: Right now Grand Canyon
25 University online.

1 MR. ORAM: Okay. I imagine just the nature of your
2 job you deal with science to a certain degree; is that right?

3 PROSPECTIVE JUROR NO. 474: Deal with science?

4 MR. ORAM: Science.

5 PROSPECTIVE JUROR NO. 474: Yes, sir.

6 MR. ORAM: Okay. Medicine is a form of science,
7 isn't it?

8 PROSPECTIVE JUROR NO. 474: Yes.

9 MR. ORAM: If you sit as a juror in this case you're
10 going to hear about certain scientific principles, DNA,
11 fingerprints.

12 PROSPECTIVE JUROR NO. 474: Yes, sir.

13 MR. ORAM: Do you believe that can be used as a tool
14 to assist jurors in determining whether somebody has committed
15 a crime?

16 PROSPECTIVE JUROR NO. 474: Yes, sir.

17 MR. ORAM: And it can also be used as a tool by
18 someone like Mr. Burns to say I didn't commit the crime?

19 PROSPECTIVE JUROR NO. 474: Yes, sir.

20 MR. ORAM: And so you're open to that; is that
21 right?

22 PROSPECTIVE JUROR NO. 474: Yes, sir.

23 MR. ORAM: Okay. The constitutional principles
24 we've been talking about, you don't have any problem with
25 that, do you?

1 PROSPECTIVE JUROR NO. 474: No, sir.

2 MR. ORAM: You understand we don't have a burden of
3 proof, right?

4 PROSPECTIVE JUROR NO. 474: I understand, sir.

5 MR. ORAM: Okay. So that we -- you know I don't
6 have to ask you these questions; right?

7 PROSPECTIVE JUROR NO. 474: Yes, sir.

8 MR. ORAM: I'm sure you wish I wasn't, but -- but,
9 you see, it's a bigger -- a bigger issue here and that is that
10 the State has to prove it beyond a reasonable doubt. And
11 Judge Thompson will advise you on the law at a later time.
12 You don't have a problem with that; right?

13 PROSPECTIVE JUROR NO. 474: No, sir.

14 MR. ORAM: Mr. Burns, he can testify if he wants to,
15 and he can elect not to testify. Do you understand that?

16 PROSPECTIVE JUROR NO. 474: Yes, sir.

17 MR. ORAM: Okay. And he has two reasonably
18 experienced attorneys sitting next to him who could probably
19 tell him, hey, you don't need to testify. Do you see that?

20 PROSPECTIVE JUROR NO. 474: Yes, sir.

21 MR. ORAM: And you have no problem with us giving
22 him advice, obviously?

23 PROSPECTIVE JUROR NO. 474: No, sir.

24 MR. ORAM: Okay. He was 18 years old at the time
25 they're making these allegations, okay. You have any -- when

1 I say that, I tell you that because at 18 years old, I think
2 people -- that's a pretty young age; right?

3 PROSPECTIVE JUROR NO. 474: Yes, sir, that's young.

4 MR. ORAM: If you're looking and you're in a
5 situation where, forget about this case, 11 people disagree
6 with you, okay. Let's say 11 people thought the light was
7 red, and you say, whoa, I heard the evidence, the light was
8 green. Would you simply give up and say, okay, I'm just going
9 to go with the 11 people who think it's a red light, I'm the
10 only one thinking it's a green light, I'm just going to give
11 up and go and say -- agree with the others?

12 PROSPECTIVE JUROR NO. 474: No, sir.

13 MR. ORAM: Okay. You'd stand your ground?

14 PROSPECTIVE JUROR NO. 474: Yes, sir.

15 MR. ORAM: On the flip side, would you be willing to
16 listen to the other 11 as to why they think it's a red light?

17 PROSPECTIVE JUROR NO. 474: Yes, sir, I'm willing to
18 listen.

19 MR. ORAM: Sounds like you're a pretty open-minded
20 person.

21 PROSPECTIVE JUROR NO. 474: I tried to be, yes, sir.

22 MR. ORAM: In your job as a nurse, do you ever have
23 situations where you have to determine whether somebody is
24 being truthful with you?

25 PROSPECTIVE JUROR NO. 474: When someone is being --

1 MR. ORAM: Truthful with you.

2 PROSPECTIVE JUROR NO. 474: Yes.

3 MR. ORAM: Can you give me an example of when you
4 have ever had to do that?

5 PROSPECTIVE JUROR NO. 474: When some -- determine
6 if someone is being truthful?

7 MR. ORAM: Yes.

8 PROSPECTIVE JUROR NO. 474: Well, you -- if I
9 understand your question correctly, I asked a series of
10 questions, and based on what they -- their lab work, whatever
11 science that comes up, that will help me determine if they're
12 telling the truth or not. But if there's something that's
13 hearsay, then I have to take their word for it.

14 MR. ORAM: Okay. So you just look at all sorts of
15 -- it's almost like you look at the totality of the
16 circumstances, you look at all the facts and then you make
17 your determination.

18 PROSPECTIVE JUROR NO. 474: Yes, sir.

19 MR. ORAM: You have two children, I see.

20 PROSPECTIVE JUROR NO. 474: Two, yes.

21 MR. ORAM: And sometimes, I'm a parent myself, and
22 sometimes you get the two kids pointing the finger at each
23 other. Have you ever had that?

24 PROSPECTIVE JUROR NO. 474: Oh, yes, sir.

25 MR. ORAM: And then you've got to make a

1 determination who may have taken cookies and who didn't;
2 right?

3 PROSPECTIVE JUROR NO. 474: Yes, sir.

4 MR. ORAM: It seems simplistic, but sometimes even
5 as parents we have to make a determination, which child is the
6 one who has done something wrong; right?

7 PROSPECTIVE JUROR NO. 474: Yes, sir.

8 MR. ORAM: Okay. And so in a trial like this, you
9 understand to a certain degree, I mean, that's a really minor
10 example, but in a big trial like this you're going to hear
11 witnesses; right? And you're going to have to make a
12 determination whether you think they're being truthful or not.

13 PROSPECTIVE JUROR NO. 474: Yes, sir, I understand.

14 MR. ORAM: If somebody gets up on this witness stand
15 and swears to tell the truth, okay, can they lie?

16 PROSPECTIVE JUROR NO. 474: Yes, sir, they can.

17 MR. ORAM: And if somebody gets up and tells the
18 truth, we hope that – excuse me, if somebody swears to tell
19 the truth, we hope they're going to tell the truth; right?

20 PROSPECTIVE JUROR NO. 474: Yes, sir.

21 MR. ORAM: Okay. But you see it doesn't necessarily
22 mean they're going to. You have to look at it carefully.

23 PROSPECTIVE JUROR NO. 474: Yes, sir, I understand.

24 MR. ORAM: You have any problem with that at all?

25 PROSPECTIVE JUROR NO. 474: No, sir, I don't.

1 MR. ORAM: Another thing, the way a trial works is
2 the State puts a witness on, okay, and they're going to
3 question that witness. As you know from the burden of proof,
4 we don't have to ask questions. But you would wait for us to
5 ask questions if we wanted to, wouldn't you?

6 PROSPECTIVE JUROR NO. 474: Yes, sir.

7 MR. ORAM: You'd wait for arguments that we had on
8 behalf of Mr. Burns, and I'm sure Mr. Langford on behalf of
9 Mr. Mason would want the same. You'd listen to all of it,
10 wouldn't you, before you made a determination?

11 PROSPECTIVE JUROR NO. 474: Yes, sir.

12 MR. ORAM: Remember that question I've asked about
13 photographs? You know, you're probably used to it, but, you
14 know, you're going to see some really gruesome photographs,
15 okay.

16 PROSPECTIVE JUROR NO. 474: Yes, sir.

17 MR. ORAM: I think it's just natural human instinct
18 to see a photograph of somebody who has been killed and feel a
19 form of injustice. Does that make sense?

20 PROSPECTIVE JUROR NO. 474: I understand, sir.

21 MR. ORAM: And that you may feel a gut instinct of
22 like that's really bad and it makes me really angry. Can you
23 -- obviously you use that, the picture, for what it is that
24 you need to use it for, and in this case it'll be that
25 somebody has been shot in the head, okay. But can you set

1 aside anger and emotion and decide the case on the facts?

2 PROSPECTIVE JUROR NO. 474: Yes, sir.

3 MR. ORAM: Okay. In other words, not be swayed just
4 by the injustice of somebody being killed?

5 PROSPECTIVE JUROR NO. 474: No, sir.

6 MR. ORAM: And I ask this question, and I always
7 wonder because I've never been a juror, okay.

8 PROSPECTIVE JUROR NO. 474: Uh-huh.

9 MR. ORAM: But in this case, if at the end of the
10 case you want to find Mr. Burns not guilty, you think this
11 young man should be found not guilty, could you really walk
12 into a courtroom sort of realizing, hey, I didn't solve the
13 puzzle? Does that make sense what I'm saying? Because the
14 State is saying that this woman has been murdered; right?

15 PROSPECTIVE JUROR NO. 474: Yes.

16 MR. ORAM: And you'd be coming in and saying, yeah,
17 State, you say that's the man who shot her. We don't agree,
18 okay. And do you see how it must feel somewhat hollow?

19 PROSPECTIVE JUROR NO. 474: Uh-huh.

20 MR. ORAM: Is what I'm saying making sense?

21 PROSPECTIVE JUROR NO. 474: Yes, it makes sense.

22 MR. ORAM: Okay. And you think you could do that?

23 PROSPECTIVE JUROR NO. 474: Yes, sir, I think so.

24 MR. ORAM: Is there anything I haven't asked you
25 that you thought I've asked other people or one of the

1 prosecutors have asked other people that you should tell us
2 about?

3 PROSPECTIVE JUROR NO. 474: No.

4 MR. ORAM: You think you can be fair to both sides?

5 PROSPECTIVE JUROR NO. 474: Yes, sir.

6 MR. ORAM: Can you look at that man and promise him
7 a fair trial?

8 PROSPECTIVE JUROR NO. 474: Yes.

9 MR. ORAM: Thank you very much.

10 Pass for cause.

11 THE COURT: Mr. Langford.

12 MR. LANGFORD: Thank you, Your Honor.

13 Ma'am, you -- you also heard me talk about two
14 trials, but really one set of evidence?

15 PROSPECTIVE JUROR NO. 474: Yes.

16 MR. LANGFORD: Can you hear the evidence as it
17 regards to both men separately and weigh the evidence against
18 them separately?

19 PROSPECTIVE JUROR NO. 474: Yes, sir.

20 MR. LANGFORD: And you'll be fair to Mr. Mason?

21 PROSPECTIVE JUROR NO. 474: Yes.

22 MR. LANGFORD: I'd pass for cause, Your Honor.

23 THE COURT: Okay. Thank you.

24 Would you hand the microphone to -- is it Ms.
25 Prucnal?

1 PROSPECTIVE JUROR NO. 509: Yes. Yes.

2 THE COURT: Okay. You're a crime scene analyst?

3 PROSPECTIVE JUROR NO. 509: No, sir. Well, during

4 that questionnaire, I am a senior analyst in the budget

5 division, and I was recently promoted to budget director.

6 THE COURT: I'm sorry, you've got to speak up.

7 PROSPECTIVE JUROR NO. 509: I am the budget director

8 in the finance department.

9 THE COURT: Oh, you're a budget director.

10 PROSPECTIVE JUROR NO. 509: Yes, sir.

11 THE COURT: For the finance for the Metro?

12 PROSPECTIVE JUROR NO. 509: Yes.

13 THE COURT: I'm going to guess you know some of the

14 officers that are testifying, or do you?

15 PROSPECTIVE JUROR NO. 509: There was a lot of names

16 I recognized. There was a few people that I've talked to

17 personally. The first FBI agent, I'm sorry, I don't remember

18 his name, I've talked to him on the phone.

19 THE COURT: Wait a minute. Time out.

20 MR. DiGIACOMO: Scott Hendricks.

21 PROSPECTIVE JUROR NO. 509: Scott Hendricks. Yes,

22 sir.

23 THE COURT: Can we identify which one we're talking

24 about?

25 MR. DiGIACOMO: I believe it'll be Agent Scott

1 Hendricks.

2 PROSPECTIVE JUROR NO. 509: Yes.

3 THE COURT: Do you know him?

4 PROSPECTIVE JUROR NO. 509: I've talked to him on

5 the phone in regards to work issues.

6 THE COURT: Anything to do with this case?

7 PROSPECTIVE JUROR NO. 509: No, sir.

8 THE COURT: Okay. Have you ever talked with anybody

9 about this case?

10 PROSPECTIVE JUROR NO. 509: No.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR NO. 509: No. And then there was

13 a couple others.

14 THE COURT: Who are the other ones?

15 PROSPECTIVE JUROR NO. 509: James Krylo. I don't

16 know him personally. His wife and I work together. He's a

17 forensic scientist for Metro. And then the Crime Scene

18 Analyst, Danielle with the weird last name, her -- she -- our

19 CFO is her daughter, so we've all had lunch together and she's

20 brought her kid in to work and stuff like that.

21 THE COURT: Have you ever talked to anybody about

22 this case?

23 PROSPECTIVE JUROR NO. 509: No.

24 THE COURT: Okay. Do you think you could be a fair

25 juror in the case?

1 PROSPECTIVE JUROR NO. 509: I think so.

2 THE COURT: Okay. Do you know any of these
3 attorneys here?

4 PROSPECTIVE JUROR NO. 509: No.

5 THE COURT: All right. You heard my explanation of
6 the process whereby the defendants are presumed to be
7 innocent. It's up to the State to prove their guilt by
8 evidence beyond a reasonable doubt?

9 PROSPECTIVE JUROR NO. 509: Yes.

10 THE COURT: And do you have any quarrel with that
11 procedure?

12 PROSPECTIVE JUROR NO. 509: No.

13 THE COURT: Do you – you understand that you're
14 going to decide what the facts are, I'll decide with the law
15 is, I'll give those instructions to the jurors at the
16 conclusion of the case, and then you reach a fair verdict.
17 You think you can do that?

18 PROSPECTIVE JUROR NO. 509: Yes.

19 THE COURT: All right. Mr. DiGiacomo.

20 MR. DIGIACOMO: Thank you, Judge.

21 Good afternoon, ma'am.

22 PROSPECTIVE JUROR NO. 509: Hi.

23 MR. DIGIACOMO: I'm going to start with the
24 questions which I'm sure the defense is going to ask, so let
25 me just ask them up front. I imagine you work with a lot of

1 police officers, at least you come into contact with a lot of
2 police officers.

3 PROSPECTIVE JUROR NO. 509: Yes, I do.

4 MR. DiGIACOMO: Would you acknowledge that being a
5 police officer is like any other profession in that there are
6 good police officers and there are bad police officers?

7 PROSPECTIVE JUROR NO. 509: Sure.

8 MR. DiGIACOMO: Okay. And, you know, look, there's
9 good lawyers, bad lawyers, there's good everything. Would
10 that be fair?

11 PROSPECTIVE JUROR NO. 509: Sure.

12 MR. DiGIACOMO: Okay. Would you agree that each
13 individual officer should be judged based upon, you know,
14 himself, who he is and what he has done and hasn't done?

15 PROSPECTIVE JUROR NO. 509: Yes.

16 MR. DiGIACOMO: And can you accept the notion that
17 there's potentially a bad officer that may come in and testify
18 in the courtroom?

19 PROSPECTIVE JUROR NO. 509: Yes.

20 MR. DiGIACOMO: I guess the question is going to be
21 is merely because they happen to be an employee for Metro, is
22 that something that's going to necessarily make them
23 automatically credible to you, or can you critically analyze
24 their testimony and the evidence that's going to be presented?

25 PROSPECTIVE JUROR NO. 509: I mean, I believe that

1 officers are credible witnesses.

2 MR. DiGIACOMO: And that may very well be true.

3 PROSPECTIVE JUROR NO. 509: Okay.

4 MR. DiGIACOMO: But I guess the question is is
5 merely because of your employment, does that mean that you
6 can't set aside the idea that, you know, most people want to
7 believe police officers are doing the right thing and doing
8 their job correctly, would you agree with that?

9 PROSPECTIVE JUROR NO. 509: Yes.

10 MR. DiGIACOMO: Okay. But the question is is does
11 that mean that if an officer comes in here and it turns out
12 he's just not that good at being a cop that you're going to be
13 able to – to analyze that, or is it because you work for
14 Metro there's no real chance that you're going to be able to
15 critically analyze the witnesses that are going to be coming
16 into Court?

17 PROSPECTIVE JUROR NO. 509: I mean, I don't think
18 because I work at Metro that I think that cops are all, you
19 know, credible witnesses. I just generally think that cops
20 are good people who have a very difficult job, and I – and I
21 believe that they would not be lying.

22 MR. DiGIACOMO: Okay.

23 PROSPECTIVE JUROR NO. 509: So that's what we learn
24 at work. You don't – you always tell the truth.

25 MR. DiGIACOMO: Right. I mean, ultimately that's

1 the goal. It gets to the question --

2 PROSPECTIVE JUROR NO. 509: I mean, at Metro it's
3 more of a goal than other employers --

4 MR. DiGIACOMO: That's true.

5 PROSPECTIVE JUROR NO. 509: -- is what I'm thinking.

6 MR. DiGIACOMO: Well, you would hope that it is;
7 right? I mean, you would hope that your employer -- that your
8 police department would have a rule to that effect?

9 PROSPECTIVE JUROR NO. 509: We do. Yes, we do.

10 MR. DiGIACOMO: And I imagine that you know that
11 there's a rule to that effect.

12 PROSPECTIVE JUROR NO. 509: That's right. Everybody
13 does.

14 MR. DiGIACOMO: And let me ask it this way. You
15 know, if at the end of the day you think Mr. Burns and Mr.
16 Mason are not guilty, is it going to be a problem for you
17 going back to work and afterwards having to tell people at
18 Metro who have expended a lot effort on this case, that, hey,
19 you just -- you didn't believe they did it and there is -- I
20 had -- I found them not guilty because I had to?

21 PROSPECTIVE JUROR NO. 509: I don't think I would
22 have a problem with that, no.

23 MR. DiGIACOMO: You think you can be fair to Mr.
24 Burns and Mr. Mason despite what your employment is?

25 PROSPECTIVE JUROR NO. 509: Yes.

1 MR. DiGIACOMO: All right. Let's talk about just a
2 few other things that are in your questionnaire. There's a
3 question about drugs, and everybody writes down something
4 about the correlation between drugs and crime and it's not
5 that much of a -- of a unique idea to have. But what would be
6 the basis that you have? I mean, some people say it's TV,
7 some people say I know people that are -- that are involved in
8 drugs. What caused you to believe there's a correlation
9 between the two?

10 PROSPECTIVE JUROR NO. 509: Just -- I don't -- I
11 don't remember what I wrote. I just -- I think experience
12 that people when they're doing drugs or drinking excessively
13 don't make the right choices.

14 MR. DiGIACOMO: They make bad choices?

15 PROSPECTIVE JUROR NO. 509: Right.

16 MR. DiGIACOMO: Do you think people that are on
17 drugs should be held criminally responsible for their actions?

18 PROSPECTIVE JUROR NO. 509: Yes.

19 MR. DiGIACOMO: Flip side, do you think victims who
20 may be engaging in risky behavior, engaged in drugs, they
21 still deserve the protections of our system?

22 PROSPECTIVE JUROR NO. 509: Yes.

23 MR. DiGIACOMO: So I'll jump to kind of the -- well,
24 actually, the Judge didn't ask you about this. I guess I
25 should since apparently you had an interaction with a

1 prosecutor that you thought was very inappropriate.

2 PROSPECTIVE JUROR NO. 509: Yes, it was a long time

3 ago.

4 MR. DiGIACOMO: Was it here in Las Vegas?

5 PROSPECTIVE JUROR NO. 509: Yes.

6 MR. DiGIACOMO: And was it -- you said it was in

7 1990 and it was some sort of a criminal trial.

8 PROSPECTIVE JUROR NO. 509: Yeah.

9 MR. DiGIACOMO: I'm assuming the prosecutor wasn't

10 real happy with whatever the verdict was --

11 PROSPECTIVE JUROR NO. 509: Right.

12 MR. DiGIACOMO: -- or whatever happened, and then

13 came down there and told you a whole bunch of stuff that you

14 didn't appreciate.

15 PROSPECTIVE JUROR NO. 509: He told us that there

16 were other things -- other facts that they couldn't present in

17 the case that we didn't know about as jurors.

18 MR. DiGIACOMO: I'm hoping that, you know, it's 25

19 years ago, that there's nothing about that particular

20 situation that's going to cause you to be fair -- unfair.

21 PROSPECTIVE JUROR NO. 509: No, I just -- I think it

22 asked, so I put it on there.

23 MR. DiGIACOMO: Okay. You can separate that

24 situation from this situation and not allow that to affect

25 your --

1 PROSPECTIVE JUROR NO. 509: Yeah, I don't believe
2 all attorneys would do that or prosecutors or whatever, yes.

3 MR. DiGIACOMO: Let me back up. Before you had the
4 interaction with the prosecutor, did you find that being a
5 juror was a rewarding experience?

6 PROSPECTIVE JUROR NO. 509: Yeah, it was -- it was
7 fine.

8 MR. DiGIACOMO: Do you consider it your civic duty?

9 PROSPECTIVE JUROR NO. 509: Yes.

10 MR. DiGIACOMO: I think generally your questions --
11 your answers on the death penalty in your questionnaire are
12 pretty much straight down the line as what you've heard here
13 today. You would agree that should you get to that point you
14 could consider all four forms of punishment.

15 PROSPECTIVE JUROR NO. 509: Yes.

16 MR. DiGIACOMO: And if the right evidence is
17 presented to you in the right case under the right facts, you
18 could return a verdict of death?

19 PROSPECTIVE JUROR NO. 509: Yes.

20 MR. DiGIACOMO: And on the flip side of that, if the
21 evidence and the information you receive during the second
22 phase of the trial, if that suggested to you that this is
23 somebody that someday should have the opportunity of parole,
24 you can return that verdict, as well?

25 PROSPECTIVE JUROR NO. 509: Yes.

1 MR. DiGIACOMO: Do you think you're essentially a
2 fair person?

3 PROSPECTIVE JUROR NO. 509: I do.

4 MR. DiGIACOMO: You think you'd be a good juror?

5 PROSPECTIVE JUROR NO. 509: Yes.

6 MR. DiGIACOMO: Thank you very much, ma'am.

7 PROSPECTIVE JUROR NO. 509: You're welcome.

8 MR. DiGIACOMO: Judge, we pass for cause.

9 THE COURT: Mr. Sgro.

10 MR. SGRO: Thank you, Your Honor.

11 Good afternoon.

12 PROSPECTIVE JUROR NO. 509: Hi.

13 MR. SGRO: This whole working at Metro thing, that's
14 going to obviously spur -- spark a few questions from us;
15 right?

16 PROSPECTIVE JUROR NO. 509: I -- yes, sir.

17 MR. SGRO: So the trial that you participated in was
18 before you began working at Metro; right?

19 PROSPECTIVE JUROR NO. 509: Yes.

20 MR. SGRO: All right. So you have heard a lot of
21 the questions and answers throughout the course of the day.
22 And I would like to start with the police officer questions.
23 And you heard a prior juror said, you know, I have relatives
24 in law enforcement and so I tend to side with the police and I
25 don't think I could -- you know, that whole level playing

1 field; right? So given that, these are not relatives of
2 yours, it's actually you in there and you're speaking with FBI
3 agents and fingerprint examiners, etcetera. Do you think that
4 you could be in a position where you'd still have them on a
5 level playing field? Do you think that's possible?

6 PROSPECTIVE JUROR NO. 509: You mean as far as their
7 credibility as witnesses versus other non-Metro people?

8 MR. SGRO: Yes, ma'am.

9 PROSPECTIVE JUROR NO. 509: I mean, I think that I
10 would give their testimony more credibility than --

11 MR. SGRO: Right.

12 PROSPECTIVE JUROR NO. 509: -- than non -- just I
13 think I -- I know some of those people and, I mean, I know
14 what kind of work they do. And I just think that that would
15 -- that's my general predisposition, I guess.

16 MR. SGRO: Right. And it's -- it's similar to the
17 conversation we've had a couple times today where it's not
18 wrong or right, it just may mean you're suited for a different
19 kind of case instead of a police officer heavy kind of a case;
20 right? And so I want to explore that with you a little bit.
21 So one of the things that you would have to make a commitment
22 to is that every witness as they walk in the courtroom has
23 your equal and separate consideration. In other words, people
24 don't get to come in with a sliding scale, right. So it would
25 not be fair to Mr. Burns if you were instinctively going to

1 adopt a police officer's testimony easier, quicker, you know,
2 you can pick your adjective, than you would someone a
3 non-police officer. It makes sense; right?

4 PROSPECTIVE JUROR NO. 509: Right.

5 MR. SGRO: So only you know the answer; right?

6 And --

7 PROSPECTIVE JUROR NO. 509: I don't even know if I
8 know the answer. I mean, I -- I just don't know for sure that
9 I know that answer.

10 MR. SGRO: Right. And you heard me, unfortunately,
11 say this is the last time we get to speak to you. And so we
12 can't have a few weeks into the trial you sitting back
13 thinking, man, this is a mistake. I'm really -- I'm finding
14 myself buying all of the testimony of the police officers
15 pretty easily, and I'm really struggling when the lay
16 testimony or the non-police officer testimony conflicts with
17 it, right. We can't -- we can't do anything at that point.

18 And so the dilemma we have is I -- and apologizing
19 in advance, right, I have to press you to extract from you to
20 force you to make a decision. Because we either get the
21 benefit of your individual vote, right, get commitment from
22 I'm going to be fair for both sides, or we have to have the
23 disclosure that, you know what, I could be fair. And, you
24 know, I've used the car accident case, a breach of contract
25 case where it's not police officer involved; right?

1 PROSPECTIVE JUROR NO. 509: Right.

2 MR. SGRO: So we need to know today if this is the
3 wrong case for you to be fair and impartial or if you can
4 commit to following the Judge's instructions when he says you
5 have to give fair and equal consideration to every witness.
6 Do you think you can really do that given the relationships
7 that you have?

8 PROSPECTIVE JUROR NO. 509: I think that if a police
9 officer's testimony is conflicting with someone else's, that I
10 would put more weight on the officer's. I think I would think
11 that his was more truthful.

12 MR. SGRO: Automatically; right?

13 PROSPECTIVE JUROR NO. 509: Right.

14 MR. SGRO: And just because of your training and
15 experience?

16 PROSPECTIVE JUROR NO. 509: I haven't -- yeah, and I
17 haven't had any cops lie to me at work. They --

18 MR. SGRO: Well, that's good; right? I mean --

19 PROSPECTIVE JUROR NO. 509: Yeah.

20 MR. SGRO: And no one disputes that we want our
21 police officers to walk in -- well, to even be on the street
22 and be honest. No one disputes that; right?

23 PROSPECTIVE JUROR NO. 509: Right.

24 MR. SGRO: And no one disputes that when people
25 swear to tell the truth we're hopeful that they're going to do

1 it. But in this case we're going to be critical of some of
2 the things that police officers did. And you probably will
3 discount that a little bit given your relationships, fair?

4 PROSPECTIVE JUROR NO. 509: I don't know if I would,
5 but I -- when you said when there's two people testifying --

6 MR. SGRO: Sure.

7 PROSPECTIVE JUROR NO. 509: -- and the officer's
8 testimony says one thing and someone else's says -- I just
9 think that I'm going to believe that officer's testimony more
10 than I would the other.

11 MR. SGRO: Okay. So let me --

12 PROSPECTIVE JUROR NO. 509: I don't know if you have
13 -- you know, if you have some evidence that an officer did
14 something wrong, I don't think that I would automatically
15 believe that that's not truthful. I just think that I'm going
16 to give an officer's testimony more truthfulness weight --

17 MR. SGRO: Okay.

18 PROSPECTIVE JUROR NO. 509: -- if it conflicted with
19 someone else's.

20 MR. SGRO: So let me -- let me ask it a different
21 way. The Judge is going to give you the law. You would have
22 an obligation to follow the law. If the Judge instructed you
23 that you had to give fair and equal consideration to every
24 witness regardless of, you know, who he or she is, would --
25 would you be able to follow that instruction, or would you not

1 be able to follow that instruction given your relationships --

2 MR. DiGIACOMO: Judge, I --

3 MR. SGRO: -- that you have at the police
4 department?

5 MR. DiGIACOMO: -- I apologize, but, one, that would
6 be an instruction on the law, but, two, I don't believe that's
7 going to be the instruction on the law.

8 THE COURT: That is not an instruction that we have
9 to give equal weight to all of the witness's testimony.

10 MR. SGRO: Well, let me --

11 THE COURT: If that's what you're trying to infer,
12 that's not true.

13 MR. SGRO: No, sir.

14 THE COURT: They have to fairly evaluate the
15 witness's testimony, but they don't have to give them equal
16 weight. They may not be equal.

17 MR. SGRO: Can you -- can you --

18 THE COURT: And by the way, just because a juror
19 thinks that they have a tendency to believe police officers it
20 not a -- is not in and of itself a grounds for challenge for
21 cause.

22 MR. SGRO: Understood, Your Honor.

23 THE COURT: Okay.

24 MR. SGRO: Can you, in evaluating witness
25 credibility, understand or evaluate other factors independent

1 of just what you hear from the witness stand? Do you think
2 you'd be able to do that?

3 PROSPECTIVE JUROR NO. 509: Like what kind of
4 factors?

5 MR. SGRO: So if a police officer says the light is
6 red and we he photographs that show the light was green, you'd
7 be able to take that into consideration --

8 PROSPECTIVE JUROR NO. 509: Yes.

9 MR. SGRO: -- before adopting what a police officer
10 told you?

11 PROSPECTIVE JUROR NO. 509: Yes.

12 MR. SGRO: That would be fair?

13 PROSPECTIVE JUROR NO. 509: Yes.

14 MR. SGRO: Okay. Relative to what we've called the
15 second portion of this case, the penalty hearing, let's talk
16 about what -- what your opinions are. Have you -- had you
17 thought about the death penalty before filling out this
18 questionnaire?

19 PROSPECTIVE JUROR NO. 509: Sure. Sure.

20 MR. SGRO: Okay. And what -- if you had to just
21 tell me, what's your belief about the death penalty?

22 PROSPECTIVE JUROR NO. 509: That there's some crimes
23 that warrant it.

24 MR. SGRO: Okay. As you have heard, in our state if
25 there's a conviction for first degree murder, the death

1 penalty is an option; right?

2 PROSPECTIVE JUROR NO. 509: Yes.

3 MR. SGRO: Okay. So you know the predicate, right,
4 of we don't think we're getting a penalty hearing and we're
5 forced to talk about this now. Do you understand that?

6 PROSPECTIVE JUROR NO. 509: Yes.

7 MR. SGRO: So I want to take you to a place
8 mentally, right, that I don't think we're ever going to get
9 to, but for purposes of this -- this question, you read the
10 factual predicate, you've heard us all speak of a woman who
11 was shot and killed; right?

12 PROSPECTIVE JUROR NO. 509: Yes.

13 MR. SGRO: And -- and her 12 year old daughter that
14 was shot and survived?

15 PROSPECTIVE JUROR NO. 509: Yes.

16 MR. SGRO: Now, I want you to imagine that there's
17 been a -- a conviction for first degree murder.

18 PROSPECTIVE JUROR NO. 509: Okay.

19 MR. SGRO: Okay. Can you, believing that the State
20 has met its burden of beyond a reasonable doubt, can you
21 imagine a scenario giving the person you have just convicted
22 of first degree murder, allowing that person the opportunity
23 to be back in society?

24 PROSPECTIVE JUROR NO. 509: Yes.

25 MR. SGRO: You can. What -- what is your best