

## CERTIFICATE

STATE OF NEVADA       )  
                              ) ss.  
CLARK COUNTY           )

I, LEE M. BAHR, CP, CCR 173, do hereby certify  
that I reported the foregoing proceedings; that the same  
is true and correct as reflected by my original machine  
shorthand notes taken at said time and place before the  
Hon. James M. Bixler, District Judge, presiding.

Dated at Las Vegas, Nevada, this  
15th day of November, 2008.



LEE M. BAHR, CP, CCR 173

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*E. M. Bahr*  
CLERK OF THE

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

HON. JAMES M. BIXLER, DISTRICT COURT JUDGE, PRESIDING

THE STATE OF NEVADA,  
Plaintiff,

v.  
NARCUS S. WESLEY,  
Defendant.

Case No. 07-C-232494-C  
Dept. 24  
Volume II

TRANSCRIPT OF PROCEEDINGS

Jury Trial

COURTHOUSE

April 9, 10 and 11, 2008

Las Vegas, Nevada

Reported by:

Lee M. Bahr, CP, CCR 173

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CLERK OF THE COURT

001701

## 1 APPEARANCES:

2  
3 For the State:4 LISA LUZAICH, ESQ.  
5 Deputy D. A.  
6 200 Lewis Ave.  
7 Las Vegas, NV. 89155  
8 and  
9 STACY KOLLINS, ESQ.  
10 Deputy D. A.  
11 200 Lewis Ave.  
12 Las Vegas, NV. 89155

13 Defendant present in court out of custody.

14 For the Defendant:

15 CASEY LANDIS, ESQ.  
16 Deputy Public Defender  
17 309 South Third Street  
18 Suite 226  
19 Las Vegas, NV. 89101  
20 and  
21 JEFFREY BANKS, ESQ.  
22 Deputy Public Defender  
23 309 South Third Street  
24 Suite 226  
25 Las Vegas, NV> 89101

No other appearances..

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## TRANSCRIPT OF PROCEEDINGS

(Whereupon, on April 10, 2008, all parties present, the following proceedings were had outside the presence of the jury panel:)

\*\*\*\*\*

THE BAILIFF: You may be seated. Court is back in session.

THE COURT: We are back on the record in the State of Nevada v. Narcus Wesley.

Is there anything that we need to address before we bring in the jury pool?

MR. LANDIS: Not from us, Judge.

THE COURT: Okay.

MS. LUZAICH: Nothing.

THE COURT: Okay, that's fine.

THE BAILIFF: I am going to bring him in first so we can --

THE COURT: That's fine.

THE BAILIFF: So he can --

THE COURT: Kind of show him that he can kind of wheel in there after they have all gotten in.

(Whereupon, all parties present, the following proceedings were had we are in the presence of the jury panel:)

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1 THE BAILIFF: You are going to be right here.

2 JUROR KENIEUTUBBE: Oh, okay.

3 THE COURT: Howard, you might want to come and  
4 stay out until they all get in, and then you can just,  
5 you know --

6 JUROR KENIEUTUBBE: Oh, all right then.

7 THE COURT: Just wheel in there, okay?

8 THE BAILIFF: Do you want to give me the jury  
9 list?

10 THE COURT: All right. Just have a seat.  
11 We know the right order, if you are out of order, it is  
12 not going to kill us, we will just figure it out.

13 THE BAILIFF: Please be seated.

14 THE COURT: This is a little confusing, coming  
15 from that courtroom into this courtroom.

16 So if you are not exactly in the right order,  
17 it won't make much difference because we actually work  
18 off of the list that was provided to us from the Jury  
19 Commissioner's office that is in the correct order.

20 So, as we -- as we move people in and out, we  
21 will be moving them off of this list. So don't worry  
22 about it if you are not exactly in the right order. It  
23 is just kind of nice for you to know who is coming up  
24 next.

25 We are still in the process of jury selection,

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1 and the next person --

2 THE CLERK: We need to do a roll call.

3 THE COURT: Oh yeah, we need to do a roll call  
4 first, and being as this was overnight, and we have changed  
5 the composition of the jury panel, we are going to have a  
6 roll call to make sure that we are still on the right list  
7 so answer present, or here, as you hear your name called.

8 Go ahead.

9 THE CLERK: Molly Magura.

10 JUROR MAGURA: Present.

11 THE CLERK: Howard Kenieutubbe.

12 JUROR KENIEUTUBBE: Here.

13 THE CLERK: Debbie C. Deschaine.

14 JUROR DESCHAINED: Here.

15 THE CLERK: Gary Orta.

16 JUROR ORTA: Here.

17 THE CLERK: Maryjo Loretto.

18 JUROR LORETTO: Here.

19 THE CLERK: Eve Crossman-Keenan.

20 JUROR CROSSMAN-KEENAN: Here.

21 THE CLERK: Betty Fisher.

22 JUROR FISHER: Here.

23 THE CLERK: Nichole Dunmore.

24 JUROR DUNMORE: Here.

25 THE CLERK: Robert Franklin.

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1 JUROR FRANKLIN: Here.  
2 THE CLERK: Christine Foresta.  
3 JUROR FORESTA: Here.  
4 THE CLERK: John Oberweis.  
5 JUROR OBERWEIS: Here.  
6 THE CLERK: Melida Wright.  
7 JUROR WRIGHT: Here.  
8 THE CLERK: John Eshelman.  
9 MS. LUZAICH: He was excused yesterday.  
10 THE CLERK: He was excused yesterday, right.  
11 Wayne Daley.  
12 JUROR DALEY: Here.  
13 THE CLERK: Donna Bella.  
14 JUROR BELLA: Present.  
15 THE CLERK: Justin Gries.  
16 JUROR GRIES: Here.  
17 THE CLERK: Mark Snelling.  
18 JUROR SNELLING: Here.  
19 THE CLERK: Michael Baird.  
20 JUROR BAIRD: Here.  
21 THE CLERK: Denise Andalon.  
22 JUROR ANDALON: Here.  
23 THE CLERK: Everett Carney.  
24 JUROR CARNEY: Here.  
25 THE CLERK: John Little.

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1 JUROR LITTLE: Present.  
2 THE CLERK: Elizabeth Martin.  
3 JUROR MARTIN: Here.  
4 THE CLERK: Kelly Russo-Winn.  
5 JUROR RUSSO-WINN: Here.  
6 THE CLERK: Bonnie Huerta.  
7 JUROR HUERTA: Here.  
8 THE CLERK: Becky Hansen.  
9 JUROR HANSEN: Here.  
10 THE CLERK: Susan Gregg.  
11 JUROR GREGG: Here.  
12 THE CLERK: Aminne Menghisteab.  
13 JUROR MENGHISTEAB: Here.  
14 THE CLERK: Barbara Wagner.  
15 JUROR WAGNER: Here.  
16 THE CLERK: Robbie Holley.  
17 JUROR HOLLEY: Here.  
18 THE CLERK: Stephanie Abernathy.  
19 JUROR ABERNATHY: Present.  
20 THE CLERK: Bonnie Brunson.  
21 JUROR BRUNSON: Here.  
22 THE CLERK: Joann Czerwinski.  
23 JUROR CZERWINSKI: Here.  
24 THE CLERK: Juaneta Gibson.  
25 JUROR GIBSON: Here.

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1 THE CLERK: Brenda Medeiros.  
2 JUROR MEDEIROS: Here.  
3 THE CLERK: Kelly Bethel.  
4 JUROR BETHEL: Here.  
5 THE CLERK: Kay McCary.  
6 JUROR MC CARY: Here.  
7 THE CLERK: Paula Socha.  
8 JUROR SOCHA: Here.  
9 THE CLERK: Greg Middleton.  
10 JUROR MIDDLETON: Here.  
11 THE CLERK: James Vaughn.  
12 JUROR VAUGHN: Here.  
13 THE CLERK: Madlyn Shook.  
14 JUROR SHOOK: Here.  
15 THE CLERK: Barbara anderson.  
16 JUROR ANDERSON: Here.  
17 THE CLERK: Richard Rehm.  
18 JUROR REHM: Here.  
19 THE CLERK: Nicholis Morales.  
20 JUROR MORALES: Here.  
21 THE CLERK: Salvatore Falcone,.  
22 JUROR FALCONE: Here.  
23 THE CLERK: Patrick Mitchell.  
24 JUROR MITCHELL: Here.  
25 THE CLERK: Bruce Leal.

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1 JUROR LEAL: Present.  
2 THE CLERK: Mario Barela.  
3 JUROR BARELA: Here.  
4 THE CLERK: Roy Fish, Jr.  
5 JUROR FISH: Here.  
6 THE CLERK: Catherine Beta.  
7 JUROR BETA: Here.  
8 THE CLERK: Emie Trie.  
9 JUROR TRIE: Here.  
10 THE CLERK: David Zeamer.  
11 JUROR ZEAMER: Here.  
12 THE CLERK: Doc Wiener.  
13 JUROR WIENER: Here.  
14 THE CLERK: Gary Morris.  
15 JUROR MORRIS: Here.  
16 THE CLERK: Andrea Adams.  
17 JUROR ADAMS: Here.  
18 THE CLERK: Lawrence Kinsler.  
19 JUROR KINSLER: Here.  
20 THE CLERK: Maryann Russo.  
21 JUROR RUSSO: Here.  
22 THE CLERK: Robert Skinner, Sr.  
23 JUROR SKINNER: Here.  
24 THE CLERK: Robert Golechen.  
25 JUROR GOLECHEN: Here.

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1 THE CLERK: Melissa Celeste.

2 JUROR CELESTE: Here.

3 THE CLERK: Ellen Mackey.

4 JUROR MACKEY: Here.

5 THE COURT: Okay. I will just remind all of  
6 the members of the jury pool that you were sworn in  
7 yesterday, and that still applies, you are still all  
8 under oath as we go through this voir dire process.

9 And I do believe that we left off yesterday,  
10 and our next juror to converse with is Even -- is it  
11 Kennan-Crossman.

12 JUROR CROSSMAN-KEENAN: Crossman-Keenan.

13 THE COURT: Crossman-Keenan.

14 VOIR DIRE EXAMINATION OF JUROR CROSSMAN-KEENAN  
15 BY THE COURT:

16 Q. Eve, how long have you been here in Las  
17 Vegas?

18 A. 32 years.

19 Q. Where are you? There you are.

20 32 years? You have been here just about your  
21 whole life?

22 A. My whole life.

23 Q. Are you -- what do you do for a living?

24 A. I am a hairdresser.

25 Q. Where do you work?

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- 1 A. Madeline Salon.
- 2 Q. Are you married?
- 3 A. Yes.
- 4 Q. What does your husband do?
- 5 A. He is unemployed.
- 6 Q. When he is not employed, what does he do?
- 7 A. Food and beverage manager.
- 8 Q. Do you guys have children?
- 9 A. We have one daughter.
- 10 Q. How old?
- 11 A. Three years.
- 12 Q. Okay. Have you -- we will start, I guess,
- 13 with the important stuff.
- 14 Have you or anyone close to you ever been the
- 15 victim of or accused of a sexually related offense?
- 16 A. No.
- 17 Q. Have you or anybody close to you ever been
- 18 the victim of or charged with just any crime?
- 19 A. No.
- 20 Q. Have you ever had any training in law
- 21 enforcement?
- 22 A. No.
- 23 Q. Have you or anybody close to you ever been
- 24 employed in law enforcement?
- 25 A. My brother-in-law works for Metro, and my

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1 brother is in the academy right now.

2 Q. Okay. Your brother-in-law, who is on the  
3 Metropolitan Police Department, how long has he been on  
4 the Police Department?

5 A. About a year.

6 Q. Okay. And do you ever discuss his work  
7 with him?

8 A. No.

9 Q. Not really. Do you realize that any police  
10 witnesses in this case are going to come from the Henderson  
11 Police Department, not the Metropolitan Police Department?

12 A. Yes.

13 Q. Do you see any problem with having a  
14 brother-in-law that's a police officer right now, and  
15 you sitting on the jury listening to police officer's  
16 testimony?

17 A. No problem.

18 Q. Anything about that relationship that would  
19 cause you to give the testimony of a police officer any  
20 greater or lesser weight than any other non police officer  
21 witness?

22 A. No.

23 Q. Have you ever been on a jury before?

24 A. No.

25 Q. Can you think of anything that I haven't

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1 asked you about that would cause you difficulty in sitting  
2 on a case like this as a juror, being fair and impartial  
3 to both sides in this case?

4 A. No.

5 Q. Can you withhold forming an opinion about  
6 anything having to do with this case until such time as  
7 you have heard all the evidence, and I have instructed  
8 you on the law?

9 A. Yes.

10 Q. Do you believe that you have a neutral  
11 frame of mind such that if you were one of the litigants  
12 in this case, you would be comfortable with somebody being  
13 on the jury that has the frame of mind that you have?

14 A. Yes.

15 THE COURT: Okay, good enough.

16 Ms. Kollins?

17 VOIR DIRE EXAMINATION OF JUROR CROSSMAN-KEENAN  
18 BY MS. KOLLINS:

19 Q. Good morning, Ms. Crossman.

20 Do you think it's embarrassing for a young person  
21 to take the stand and talk about the details of a sexual  
22 assault?

23 A. It could be.

24 Q. In what circumstances do you think it would  
25 not be?

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1 A. Not embarrassing?

2 Q. Well, just because you said you said it  
3 could be so I'm not trying to --

4 A. (Interposing) I guess that depends on the  
5 individual.

6 Q. Do you have any expectations of how a victim  
7 should act?

8 A. No.

9 Q. Have you ever known anyone who has been the  
10 victim of sexual abuse, sexual assault, friends, family  
11 friends, anyone?

12 A. I found out many years later that my cousin  
13 was molested when she was a child. I found out after she  
14 was an adult.

15 Q. So was it disclosed when she was a child?

16 A. No.

17 Q. Was law enforcement ever involved in it?

18 A. I don't know. I don't think so.

19 Q. Okay. When you found out, did you find out  
20 from her?

21 A. Yes.

22 Q. Was it difficult for her to speak to you  
23 about that even though so many years had transpired??

24 A. Yes.

25 Q. Anything that we should know about you,

001716

1 anything else that the Judge hasn't asked you?

2 A. No.

3 Q. Anything distracting you from your service  
4 over the next few days?

5 A. No.

6 MS. KOLLINS: Okay, thank you.

7 Pass for cause, Judge.

8 THE COURT: Mr. Landis?

9 MR. LANDIS: Thank you, Judge.

10 VOIR DIRE EXAMINATION OF JUROR CROSSMAN-KEENAN  
11 BY MR. LANDIS:

12 Q. Good morning.

13 What do you think about the burden of proof that  
14 we have here in America, of beyond a reasonable doubt?

15 A. I believe in it.

16 Q. Do you think it's a fair burden? It  
17 doesn't give the State too much work? It doesn't give  
18 too big an advantage to the Defense?

19 A. I believe in the jury system.

20 Q. As I think we all do, and I definitely  
21 do. Sometimes it doesn't work though, would you agree  
22 with that?

23 A. Yes.

24 Q. Sometimes people are wrongly convicted?

25 A. Sometimes.

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1 Q. And do you think that sometimes people who  
2 are guilty get off the hook?

3 A. Sometimes.

4 Q. Do you have any reason to think that happens  
5 in cases?

6 A. From lack of evidence.

7 Q. What do you think you would do in a case  
8 if in your gut you feel that the person probably did it  
9 but you don't think that the State met their burden?

10 A. Can you explain that just a little more?

11 Q. Sure, I mean, let's say you hear the case,  
12 and you hear the witnesses, and through that evidence  
13 something in your heart or in your gut, whatever you want  
14 to call it, makes you feel that the person probably did  
15 whatever it is they are accused of.

16 But at the same time, you don't think the State  
17 has met their burden of proving it beyond a reasonable  
18 doubt. There are some holes in their case, whatever it  
19 may be. Some of their witnesses aren't strong. What do  
20 you think you do in that situation?

21 A. Um, I guess --

22 Q. And I know it's a hard question.

23 A. It would depend on the evidence --

24 Q. Okay.

25 A. -- given.

001718

1 Q. Do you think it matters what kind of crime  
2 it is? Let me give you an example.

3 Do you think it would matter if it's, let's say,  
4 a forgery case versus a murder case?

5 A. I guess it would be each individual situation.  
6 You would still go with the evidence and the proof.

7 Q. Do you think you would walk out of a courtroom  
8 after a jury trial feeling comfortable if that was what you  
9 felt, that the State didn't prove their case, but this person  
10 probably did it, and your jury ended up acquitting a person.  
11 Do you think you could walk out of the courtroom from those  
12 facts?

13 A. I would definitely express myself and my  
14 feelings.

15 Q. Do you think you would sleep that night?

16 A. Um --

17 Q. Do you feel -- let me ask you this:

18 Do you feel like you would have done your job  
19 as a juror in that situation?

20 A. I don't really know how to answer, but I  
21 guess if I have that gut feeling, I would make it known  
22 as, well, I mean, I would express myself and if I didn't  
23 agree with the rest of the jury, I would let it be known.

24 Q. Do you think you could be convinced otherwise  
25 by other members of the jury panel in the deliberation

001719



1 room?

2 A. I have a fairly strong personality, and I  
3 would --

4 Q. Would it take a lot of doing?

5 A. Yeah.

6 MR. LANDIS: Thank you. Pass for cause, Judge.

7 VOIR DIRE EXAMINATION OF JUROR FISHER

8 BY THE COURT:

9 Q. Betty Fisher?

10 A. Here.

11 Q. All right. Tell us a little about yourself.  
12 How long have you been here?

13 A. Four years.

14 Q. And where did you come from?

15 A. California.

16 Q. Southern California?

17 A. Ranch Crest, in the Mohave Desert.

18 Q. Oh, okay. Well, do you work?

19 A. No, I am retired.

20 Q. What did you do before you retired?

21 A. I was an administrative assistant for the  
22 Mohave Desert Resource Conservation and Development, and  
23 the Family Resource Conservation District.

24 Q. What did you do for them?

25 A. I had have a board of directors, and I

001720

1 did everything.

2 Q. Are you married?

3 A. Yes.

4 Q. Does your husband still work?

5 A. Yes.

6 Q. What does he do?

7 A. He works for the U. S. Department of Labor  
8 for the Mine Safety and Health Administration.

9 Q. And does he live here and do that from  
10 here?

11 A. He inspects mines.

12 Q. Oh, okay.

13 A. Until December.

14 Q. Very good. Do you have grown children?

15 A. Yes.

16 Q. What do they do?

17 A. Well, my daughter works at a hardware  
18 store, a feed store in Curren, California, (phonetically),  
19 and my stepson and daughter-in-law work for the State  
20 of Washington, for the state troopers.

21 Q. As a highway patrolman?

22 A. Well, he works in communications, and she  
23 works as a liaison for the HEF, FBI.

24 Q. Okay.

25 A. All of those --

001721

1 Q. Kind of a joint task force thing?

2 A. Year.

3 Q. Okay. And those are the two, and one was  
4 an in-law, I mean, one was your --

5 A. One is my stepson and daughter.

6 Q. Oh, stepson, okay.

7 Have you ever been trained in any kind of law  
8 enforcement?

9 A. No.

10 Q. Okay.

11 Anybody close to you employed or trained in  
12 law enforcement besides -- well, those people that work  
13 for the department in Washington, they are not really --  
14 they are not badge? They are --

15 A. Yes, they are.

16 Q. They are. So they have a very specific  
17 area of law enforcement that they are engaged in?

18 A. Right.

19 Q. A lot of which is communications?

20 A. Yes.

21 Q. Do they ever discuss their work with you?

22 A. The work industry.

23 Q. Have you ever discussed their work with  
24 them much?

25 A. Well, sometimes, but not real often.

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1 Q. Is there anything about the relationship  
2 of having them working for the department like that that  
3 would cause you difficulty being on a jury like this in  
4 a criminal case like this, and listening to police personnel  
5 on the witness stand?

6 A. No.

7 Q. Could you treat the testimony of a police  
8 officer witness just exactly the same as any other non police  
9 officer witness and not give their testimony any greater  
10 or lesser weight than anybody else?

11 A. I could.

12 Q. Okay. Have you or anybody close to you  
13 ever been accused of or the victim of any kind of a sexual  
14 related offense?

15 A. Yes, my daughter was raped when she was  
16 12.

17 Q. And how old is she now?

18 A. She will be 44 tomorrow.

19 Q. And was there a criminal proceeding? That  
20 was a long time ago.

21 A. Yes.

22 Q. Were there criminal proceedings as a result  
23 of all that?

24 A. Yes.

25 Q. Was there anything about that incident, I

001723

1 assume being the mother, you were intimately involved in  
2 everything --

3 A. Actually, they never allowed me in the  
4 courtroom. I had to be out so other than being with my  
5 daughter, I don't know.

6 Q. Okay. You actually weren't that involved  
7 then --

8 A. Right.

9 Q. -- in what actually went on in the court  
10 proceedings then?

11 A. Right.

12 Q. Okay. Well, still, that had to have been  
13 a highly emotional experience?

14 A. Yes, it was.

15 Q. Even that many years ago, probably very  
16 emotional, very traumatic?

17 A. Yes, it was.

18 Q. Probably very traumatic for your daughter?

19 A. Very.

20 Q. Is there anything about that whole experience,  
21 that whole scenario, that would cause you difficulty and  
22 difficulty to the point where it would almost be impossible  
23 for you to be fair and impartial as a juror in this case?

24 A. No.

25 Q. You don't think -- can you leave all of that

001724

1 outside?

2 A. I left that behind a long time ago.

3 Q. It is the kind of thing you just have to  
4 leave behind?

5 A. You have to.

6 Q. Exactly. And do you think that you can do  
7 that?

8 A. Yes.

9 Q. And you have pretty much already done it?

10 A. Oh yes.

11 Q. And put it behind you?

12 A. Put it behind me.

13 Q. And you don't think that you would get in  
14 the jury deliberation room, and start bringing up things  
15 about that incident that happened?

16 A. No.

17 Q. Okay. Because all we want you to do is  
18 be fair and impartial to both sides, and render a verdict  
19 based strictly upon the evidence that you hear in this  
20 case and the instructions on the law that I give you.

21 Can you do that?

22 A. Oh, yes.

23 Q. Okay. Have you ever been on a jury before?

24 A. Yes.

25 Q. About how long ago?

001725

1 A. In the '70's.

2 Q. In California?

3 A. In Los Angeles, yes.

4 Q. Okay. Was it a criminal or a civil case?

5 A. Civil.

6 Q. And you were on the actual jury? You were  
7 on a civil case?

8 A. Yes.

9 Q. Did that jury deliberate?

10 A. Yes.

11 Q. Were you the foreman of that jury?

12 A. No.

13 Q. Without telling us what happened, did that  
14 jury come back with a verdict?

15 A. Yes.

16 Q. Is there anything about your experience  
17 of being on that jury that would cause you difficulty being  
18 on this jury?

19 A. No.

20 Q. To be fair and impartial to both sides?

21 A. Nothing.

22 Q. In other words, it's real important that,  
23 first of all, two different kinds of cases. That was a  
24 civil case, and this is a criminal case.

25 A whole lot of the instruction that you would

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1 receive will be different.

2 A. Yes.

3 Q. So what you need to do is just forget about,  
4 besides that Judge may have been real smart, but then you  
5 have got to forget whatever the instructions, whatever  
6 happened in that case, leave that outside, and just render  
7 a verdict based upon the instructions that I give you, and  
8 what you hear in this case, that's all.

9 A. Okay.

10 Q. Can you do that?

11 A. Yes, sir.

12 Q. Okay.

13 Can you think of anything that I haven't asked  
14 you about that would cause you difficulty in being fair  
15 and impartial to both sides in a case like this?

16 A. No.

17 Q. Can you withhold forming an opinion about  
18 any aspect of this case, or any person having to do with  
19 this case until after you have heard all of the evidence?

20 A. Yes.

21 Q. And heard the instructions?

22 A. Yes.

23 Q. Can you do that?

24 A. Yes.

25 Q. Do you think that you have a healthy,

001727



1 neutral perspective towards your jury duty in a case  
2 like this?

3 A. Yes.

4 Q. So that, if you were one of the litigants,  
5 you would be comfortable with somebody with your frame of  
6 mind being on the jury?

7 A. Definitely.

8 THE COURT: Okay.

9 MS. LUZAICH: Thank you.

10 VOIR DIRE EXAMINATION OF JUROR FISHER

11 BY MS. LUZAICH:

12 Q. Ms. Fisher, and I'm so sorry, I am going  
13 to ask you questions about your daughter just very briefly.

14 Was it a stranger or somebody she knew?

15 A. Someone she knew.

16 Q. A family member?

17 A. No.

18 Q. She, when you talked about being in court  
19 and not being allowed in, she had to testify?

20 A. Yes.

21 Q. Two times, like in a probable cause hearing  
22 and then again in a trial?

23 A. Yes.

24 Q. Do you feel that she was treated well by  
25 the State, you know, the police, the D. A.'s, and what

001728

1 not?

2 A. Definitely.

3 Q. Okay.

4 So you don't have any bad feelings towards police,  
5 or the State, or anything like that?

6 A. No, I don't.

7 Q. Okay, thanks.

8 Would you consider yourself to be a fair and  
9 open-minded individual?

10 A. Yes, I do.

11 Q. You have common sense?

12 A. Oh yes.

13 Q. You would bring it into the courtroom.  
14 You would not leave it outside?

15 A. Right.

16 Q. Okay.

17 Mr. Landis had asked the last juror about if you  
18 had a gut feeling that the Defendant did what he is charged  
19 with, but the State had not met its burden, I mean, you  
20 understand that that is possible. You can just have that  
21 gut feeling, but maybe the State doesn't put on enough  
22 evidence. That is possible, hopefully not, but it's possible?

23 A. Yes.

24 Q. You understand that if that happened, you  
25 would have to find the Defendant not guilty?

001729

1 A. Right.

2 Q. Because we have the burden of proof. We  
3 have the only burden of proof.

4 A. That's right.

5 Q. But now, on the other hand, if the State  
6 does meet the burden, as far as you are concerned, would  
7 you be able to say, guilty?

8 A. Yes.

9 Q. Nothing about you that would prevent you  
10 from being able to sit in judgment?

11 A. Nothing.

12 MS. LUZAICH: Thank you.

13 Pass for cause, Your Honor.

14 THE COURT: Mr. Banks?

15 VOIR DIRE EXAMINATION OF JUROR JUROR

16 BY MR. BANKS:

17 Q. Hi, Ms. Fisher.

18 A. Hi.

19 Q. Nice to meet you.

20 A. Nice to meet you.

21 Q. You had said that you felt that there was --  
22 that your daughter, and I guess your family was treated  
23 well through that horrible experience that --

24 A. Yes. .

25 Q. -- you all had to go through.

001730

1 A. Yes.

2 Q. This case is different than that case in  
3 a lot of ways, in just about every way?

4 A. All right.

5 Q. Okay. There may come a time in a case  
6 like this, I mean, these are -- these are some pretty  
7 serious accusations.

8 Let me ask you, how did you feel when you heard  
9 sexual assault?

10 A. Well, my first thought was, was it a boy,  
11 a girl, a woman, you know.

12 Q. Okay.

13 A. I had 15 questions.

14 Q. Okay.

15 A. That's all I thought.

16 Q. Okay. So I guess in your mind, when  
17 you hear that, there is a lot of -- opens up a lot of  
18 avenues?

19 A. Right.

20 Q. Or questions that may pop into your mind,  
21 questions that may need to be asked, experiences, or  
22 whatever.

23 A. Yes.

24 Q. In a case like this, there may be some  
25 really tough questions that need to be asked of some of

001731

1 these witnesses, and we heard a good portion yesterday,  
2 and we heard a little bit today from, from these two  
3 prosecutors about expectations of an accuser, and do  
4 you expect them to act in a certain way, and this sort  
5 of thing, and I don't think anybody realistically expects  
6 a certain personnel.

7 A. Everybody is different.

8 Q. Right, okay. No black and white way to  
9 react --

10 A. Right.

11 Q. -- to some kind of a situation where there  
12 are some questions, shades of gray maybe.

13 A. Yes, everyone is different.

14 Q. Okay.

15 A. And everybody is an individual. So you  
16 can't really put a box around that, I mean, someone is  
17 going to ask.

18 Q. Okay.

19 A. I just have to listen to them.

20 Q. Okay. If I -- if Mr. Landis or I have to  
21 ask some of those tough questions that are, you know, bottom  
22 line, that are necessary in cases like this, are you going  
23 to hold that against my, my client, Mr. Wesley here?

24 A. No.

25 Q. Okay. You understand that that's part of the

001732

1 job?

2 A. Yes.

3 Q. At this table, to ask the tough questions?

4 A. Yes.

5 Q. Okay.

6 Sometimes the tough question gets a reaction out  
7 of a witness, and sometimes it's a reaction that you don't  
8 expect. Are you -- are you going to hold that against  
9 either side?

10 A. No.

11 Q. Okay. It depends on the circumstances?

12 A. Yes.

13 Q. Would you agree that stressful and traumatic  
14 situations might cause somebody to react maybe in a fashion  
15 that if it wasn't so stressful or traumatic?

16 A. Yes.

17 Q. Okay. Everybody is different?

18 A. Yes.

19 Q. And I appreciate your answers today.

20 But there is one thing that I wouldn't be doing  
21 my job if I didn't follow up on this a little bit because  
22 that is up there, what happened in your family is up there  
23 with, you know, one of the worst things that can happen,  
24 and, and it's not to pry, or to anything like that, but  
25 again, I wouldn't be doing my job if I didn't ask, because

001733

1 the Judge asked if you would be able to set that aside,  
2 and I appreciate your answer that you have set it aside  
3 long ago and moved on.

4 But, and again, I have got to ask this because  
5 sometimes -- sometimes folks in your situation may get the  
6 impression that some of us here are looking for certain  
7 answers, be it the Court, be it me or Landis, be it the  
8 government table, and I just want to ask you again:

9 This is -- you are not -- you are not giving that  
10 answer because you think that's what the Court or somebody  
11 in this room might want to hear?

12 A. No, no, I would not.

13 Q. Okay.

14 A. I wouldn't think that.

15 Q. Okay.

16 A. I live myself with the guidance, you see --

17 Q. That's the answer. You are probably right  
18 about that.

19 Thank you so much for your answers.

20 Judge, I will pass for cause.

21 THE COURT: Very good.

22 VOIR DIRE EXAMINATION OF JUROR DUNMORE

23 BY THE COURT:

24 Q. All right. It's Nichole Dunmore.

25 A. Yes.

001734

1 Q. Nichole, how long have you been in Las  
2 Vegas?

3 A. I'm a native.

4 Q. A native, perfect. What do you do for a  
5 living?

6 A. Food service.

7 Q. I'm sorry?

8 A. Food service.

9 Q. Okay. And where do you work?

10 A. Bellagio.

11 Q. Bellagio. Are you married?

12 A. Yes.

13 Q. Do you have any children?

14 A. Yes.

15 Q. How old?

16 A. Two.

17 Q. Okay, too young to be working. Have you  
18 ever been trained in law enforcement?

19 A. Yeah, Metro.

20 Q. In what capacity?

21 A. Well, I got to blue cap as a prison guard.

22 Q. And then you voluntarily decided that that  
23 wasn't for you?

24 A. Right.

25 Q. How long ago was that?

001735



1 A. Like two years ago.

2 Q. Two years ago. Anybody close to you in  
3 law enforcement?

4 A. There were some people that have been there,  
5 but not many.

6 Q. So there is nothing -- well, let me rephrase  
7 that. Is there anything about your experience in training  
8 that would cause you difficulty being on a jury and listening  
9 to the testimony of police officer witnesses?

10 A. No.

11 Q. Would you be able to be treat their testimony  
12 the same as any non police officer witness?

13 A. Yes.

14 Q. You wouldn't give their testimony any greater  
15 or lesser weight than if a non police officer was a witness?

16 A. No.

17 Q. Okay. How long were you actually in the  
18 program?

19 A. For almost six months.

20 Q. Six months?

21 A. Yeah. Well, with the training, and everything.

22 Q. All right, we got it.

23 Have you or anyone close to you ever been the  
24 victim of or charged with any kind of a sexually related  
25 offense?

001736

- 1 A. No, not that I know of.
- 2 Q. Have you or anybody close to you --
- 3 A. Not that I know of.
- 4 Q. I'm sorry.
- 5 A. Not that I know of.
- 6 Q. Just nobody that you know of?
- 7 A. Right.
- 8 Q. All right. Have you or anybody close to
- 9 you ever been charged with or convicted of just any kind
- 10 of a crime?
- 11 A. I have had a family members who has committed
- 12 crimes or --
- 13 Q. Was charged with crimes?
- 14 A. Yes.
- 15 Q. Who, and what kind of crime?
- 16 A. My cousins.
- 17 Q. You have got cousins?
- 18 A. Yes.
- 19 Q. What type of crimes were they charged with?
- 20 A. Like getting into a business like that.
- 21 They did some things that, you know, you can't --
- 22 Q. So you really don't -- you didn't too close
- 23 of attention of what was going on?
- 24 A. Yes. I didn't pay any attention.
- 25 Q. So is there anything about the fact that

001737

1 you have some cousins that were -- now, these people, are  
2 you talking about more than one cousin or just one cousin?

3 A. A couple of them.

4 Q. A couple of cousins that were charged with  
5 criminal conduct?

6 A. Yes.

7 Q. But you don't really know what --

8 A. They went to jail for it so --

9 Q. They did?

10 A. Yeah.

11 Q. Okay. Did you -- you weren't paying too  
12 close attention to what was going on at the time?

13 A. No, I wasn't.

14 Q. Is there anything about the fact that you  
15 have cousins that were charged with crimes that would cause  
16 you difficulty in being on a jury in a criminal case like  
17 this?

18 A. No.

19 Q. Do you still believe you can be on a jury  
20 in a case like this and be fair and impartial to both the  
21 State and the Defense?

22 A. Yes.

23 Q. Okay. Have you ever been on a jury before?

24 A. No. But I want to do it now. I am being  
25 honest.

001728

1 Q. I understand that. That is not an unusual  
2 reaction. Okay. Can you withhold forming an opinion about  
3 anybody, or anything, that has anything to do with this  
4 trial until after you have heard all the evidence in this  
5 case, and I have instructed you on the law. Can you do  
6 that?

7 A. Yes.

8 Q. Do you think that you have a healthy, neutral  
9 perspective, as you approach your jury service in such that  
10 if you were one of the litigants in this case, would you be  
11 comfortable, if you were the Defendant or the prosecution,  
12 with somebody being on the jury that has your frame of mind?

13 A. Most definitely.

14 THE COURT: Okay, good.

15 MS. KOLLINS: Thank you, Judge.

16 THE COURT: Ms. Kollins.

17 VOIR DIRE EXAMINATION OF JUROR DUNMORE

18 BY MS. KOLLINS:

19 Q. Well, I would imagine the Bellagio is a  
20 much prettier place to work than the Metro Academy?

21 A. Yeah, that's right.

22 Q. Yes. Where did you get in the academy,  
23 like what were you doing when you finally decided to  
24 leave?

25 A. Well, they were doing the polygraph thing,

001739

1 and they were getting too personal, so that's why I decided  
2 to quit.

3 Q. Okay. So that's when you made your decision  
4 to leave?

5 A. Yes.

6 Q. How, other than the polygraph portion of  
7 the academy, and that decision to leave, how did you feel  
8 about the job other than that?

9 A. It was interesting. It was cool, I just --  
10 I'm a personal person, and I don't like if they are too  
11 nosy.

12 Q. Yeah, that whole law enforcement thing,  
13 they are nosy, you know, they're nosy.

14 A. Yeah.

15 Q. Yeah, we are. Why don't you want to be  
16 here?

17 A. I just don't feel comfortable doing it.

18 Q. Okay. What makes you uncomfortable about  
19 it?

20 A. Well, just, you know, just the whole thing.  
21 I don't what, you know, I don't know this man, and I don't  
22 know, I wasn't there, and he did say something happened,  
23 and you have witnesses that come to cry their way into  
24 something, or something like that so I just don't feel  
25 comfortable about the whole thing.

1 Q. What do you mean, a witness come to cry there  
2 into doing this.

3 A. I am saying, when they were saying, something  
4 about the rape, and all this other stuff, I just don't feel  
5 comfortable with the whole thing.

6 Q. Okay.

7 A. I just don't.

8 Q. When you were trying to be a Metro officer,  
9 you were training to determine, you know, take information  
10 from somebody and make a decision. That's something that  
11 they were going to call upon you to do, right?

12 A. Yes.

13 Q. If you were going to be a patrol officer,  
14 a victim would be reporting an incident, and you would  
15 have to take that information and assimilate it and make  
16 a decision, right?

17 A. Right.

18 Q. Okay. So you weren't comfortable with it  
19 then either?

20 A. No.

21 Q. Okay. Do you think that you can be fair in  
22 this case?

23 A. Yeah, I'm a fair person. I am being honest.

24 Q. No, I mean --

25 A. I am a fair person, but this is just something,

001741

1 you know, I don't like it.

2 Q. Okay. When your cousins got in trouble, were  
3 they adults, or juveniles?

4 A. They were adults, I think they were around  
5 18 years old.

6 Q. Did they go to jail or did anything to prison?

7 A. One went to prison.

8 Q. Did that happen here in Las Vegas?

9 A. Yes.

10 Q. Okay.

11 So that would have been here handled by this District  
12 Attorney's office?

13 A. Yes.

14 Q. Anything -- you said you didn't know that  
15 much about it, but just from what you do know about it,  
16 anything about the way that that was handled, would it  
17 cause you any angst against the prosecutor or police?

18 You told me you want to be honest so --

19 A. I am being honest, but I am trying to say  
20 it, you know, in a rightful manner.

21 Q. Well, say it however you want. Just say  
22 it.

23 A. Like one of my cousins, he was on the news,  
24 his face was on the news.

25 Q. Okay.

001742

1 A. For robbery.

2 Q. For Robin?

3 A. No, robbery.

4 Q. For robbery?

5 A. Yeah.

6 Q. Okay.

7 A. And that was the first time he had ever did  
8 it in his entire life. Never, I mean, from the time he was  
9 arrested, I just didn't agree with that part, and with the  
10 idea. There were other cases and --

11 Q. Well, and then --

12 A. I am a fair person.

13 Q. Okay. Then again, I guess my question to  
14 you is:

15 If you felt the resolution of him committing  
16 robberies, and his coming into the system, and coming through  
17 this District Attorney's office was less than fair, are  
18 you going to hold that against the State?

19 A. No, no; I wouldn't do that. That was a  
20 different situation.

21 Q. Okay. What about the other cousin?

22 A. He was, you know, involved with Metro police  
23 cars.

24 I don't know too much about that.

25 MS. KOLLINS: Pass for cause, Judge.

001743



1 THE COURT: Mr. Landis, are you up?

2 MR. LANDIS: That's what they tell me.

3 VOIR DIRE EXAMINATION OF JUROR DUNMORE

4 BY MR. LANDIS:

5 Q. Where exactly do you work in the Bellagio?

6 A. Cafe Bellagio.

7 Q. Do you ever go to that place that's in the  
8 front, that piano bar?

9 A. No, I don't think so.

10 Q. Oh, maybe the best drink in the world. Maybe  
11 you should try it sometime.

12 About your cousin, and I am not prying, and I  
13 don't mean to pry, you say he was on the news, or his face  
14 was on the news.

15 What stage in the proceedings was that?

16 Was it after he was sentenced?

17 Was it as soon as he was arrested?

18 Was it when they were looking for him, if you  
19 know?

20 A. I guess it was when they were looking for  
21 him, and he was arrested.

22 Q. Did you hear any reactions from people,  
23 family members, anybody, when you saw his face on the  
24 news?

25 A. I don't, I mean, not really, because I don't

001744

1 know really, like I said, I'm a private person, I don't  
2 really like to talk about stuff like that. They said things,  
3 but I don't care to talk about that.

4 Q. How -- do you think people tend to have a  
5 certain reaction when they view when so and so, and I'm not  
6 thinking of anyone in particular is arrested, or so and so  
7 is accused of this, or so and so is going to stand trial for  
8 this, how do you think people tend to read that kind of stuff  
9 when they see it in the news or read it in the newspaper?

10 A. When they read it in the newspaper, I mean  
11 what do you --

12 Q. Which reaction do you think is more common?  
13 He did it or how dare they accuse him of that?

14 A. Well, it would probably mean that he did it.  
15 That's what they are attempting to say.

16 Q. Do you think they are that open-minded?

17 A. Yeah, some people are.

18 Q. Are you familiar with the phrase, threw the  
19 book at him?

20 A. Yes.

21 Q. What does that mean to you?

22 A. I would guess it would be the whole thing.

23 Q. What do you think you would do in this  
24 situation, where there is a case, a person is charged with  
25 robbery, and the evidence says that they went into a store,

001745

1 and they followed the customer in there, and then stole a  
2 few candy bars.

3 MS. LUZAICH: You know, I'm sorry, Judge. These  
4 are improper questions.

5 MR. LANDIS: Can we approach?

6 THE COURT: Yes, come here.

7 (Whereupon, a brief, informal discussion was had  
8 at the bench between the Court and counsel.)

9 BY MR. LANDIS:

10 Q. You said, you don't want to be here, and  
11 we have heard this phrase a few times over the past couple  
12 days, and I am not asking you this question but we have  
13 heard this question:

14 Do you feel comfortable standing in the judgment  
15 of others or judging others?

16 A. No, I don't, I really don't.

17 Q. I think that's understandable, and I don't  
18 know if I would either. But that's kind of how we do  
19 our business here in America. You would agree with that,  
20 right?

21 A. I know that.

22 Q. Do you think that's a good way to do it?

23 A. Yeah, if that's what you want to do. I just  
24 don't agree with the questioning. I went myself through  
25 that, you know. I am doing it because you have to.

001746

1 Q. Are you saying it's a good system but you're  
2 just not the person to do it?

3 A. Right, it's fine, a little bit of --

4 Q. Oh, a lot -- excuse me, I'm sorry to  
5 interrupt you. A lot of other countries do it where it's  
6 just the judge. There is no jury involved. Do you think  
7 that's a better system?

8 A. Like I said, I mean, if that's the way you  
9 guys do it, that's the way you do it. I'm just not going  
10 to do it.

11 MR. LANDIS: I understand. Thank you for your  
12 honesty.

13 I will pass, Judge.

14 THE COURT: Okay.

15 VOIR DIRE EXAMINATION OF JUROR FRANKLIN

16 BY THE COURT:

17 Q. And then we have Robert Franklin, is that  
18 correct?

19 A. Yes.

20 Q. Robert, how long have you been in Las Vegas?

21 A. Since 1978.

22 Q. Quite a while.

23 A. 30 years.

24 Q. What do you do for a living?

25 A. Public works inspector.

001747

1 Q. For who?

2 A. For the City of Henderson.

3 Q. Do you know any of the policemen out there?

4 A. No, just, you know, sitting here today, where  
5 we fill up our gas, and coming and going. I don't know any  
6 of them.

7 Q. Any possibility of being on a jury where there  
8 is going to be some police officers from Henderson testifying  
9 that would cause you problems?

10 A. No.

11 Q. Okay. How long have you worked for the City  
12 of Henderson?

13 A. Since 1988.

14 Q. Okay. And you do what kind of inspection  
15 you say?

16 A. Public works inspector.

17 Q. Oh, okay, okay. Are you married?

18 A. Yes.

19 Q. Does your wife work?

20 A. Not now, sir. She is at home.

21 Q. What did she do?

22 A. She was in the dental business.

23 Q. Okay. Grown children?

24 A. Pardon?

25 Q. Do you have grown children?

001748

- 1 A. Yes, three grown children.
- 2 Q. What do they do for a living?
- 3 A. My oldest is at home out of work with one
- 4 granddaughter, and the other two boys work here in town.
- 5 Q. In what capacity?
- 6 A. One is a server at Bellagio, and one works
- 7 at Whole Foods.
- 8 Q. Okay. Nobody involved in law enforcement?
- 9 A. No.
- 10 Q. Okay. Have you ever been, you, or anybody
- 11 close to you ever been trained in any kind of law enforcement
- 12 activities?
- 13 A. No.
- 14 Q. No one employed?
- 15 A. Pardon?
- 16 Q. Nobody that is close to you have been employed
- 17 in law enforcement?
- 18 A. The father of my granddaughter is a Metro
- 19 police officer.
- 20 Q. Okay. How long has he been on the department?
- 21 A. I am going to guess at maybe several years,
- 22 plus or minus. I'm not sure, to tell you the truth.
- 23 Q. So this is your --
- 24 A. The father of my granddaughter.
- 25 Q. Granddaughter, okay. Do you talk to him

1 A. Yes.

2 Q. And what were you employed as in San Francisco  
3 before you came to Las Vegas?

4 A. I was working for Wells Fargo Financial as  
5 the marketing manager in corporate.

6 Q. It indicates on here, it looks like you  
7 have college education, or some college. Where did you  
8 go to school?

9 A. San Pedro State.

10 Q. Did you receive your degree there?

11 A. Yes.

12 Q. What did you study there?

13 A. Psychology and negotiations, liberal arts  
14 degree.

15 Q. Did you hear ask me ask Mr. Daley some  
16 questions earlier about having expectations of a victim,  
17 did you hear me asking those questions or --

18 A. Yes.

19 Q. Do you have any like preconceived idea of  
20 what a victim should sound like on the stand?

21 A. Yes, I would think so because I have watched  
22 a lot of movies and TV.

23 Q. Do you realize this is real life and not  
24 movies?

25 A. This is real life.

001650

1 Q. Not every -- would you agree with the  
2 statement that not everybody reacts the same to every  
3 situation?

4 A. No.

5 Q. You disagree with that? Why do you disagree  
6 with that?

7 A. Everybody is different and have different  
8 life experiences.

9 Q. And so while one person may come in here,  
10 and speak to you, and be very upset, it would be understandable  
11 if another person, who is a victim of the crime may be very  
12 guarded and very shy?

13 A. Yes.

14 Q. That doesn't mean that they are any less  
15 credible in the information they are delivering to you?

16 A. Of course not.

17 Q. How did you feel when you got your juror  
18 summons, having not served before?

19 A. I have, in the distant past, but this is --  
20 it wasn't in Las Vegas? I was just not able to go because  
21 I was going to be out of the country so that's why I didn't.

22 Q. Okay. But you didn't actually sit on a  
23 case, and listen to evidence, and go deliberate?

24 A. No.

25 Q. Okay. Do you think that you can sit in

001651



1 judgment of another?

2 A. In judgment of another?

3 I try not to judge, but if, of course, I have to  
4 hear all -- if I need to, then I will have to.

5 Q. I guess that was a bad question, and my  
6 apologies.

7 If called calls on to listen to the evidence in  
8 this case and to sit through the few days of this trial,  
9 and go back with, you know, your peers, and come to a  
10 decision, can you do that?

11 A. Yes.

12 Q. If you feel that the State has proved their  
13 case beyond a reasonable doubt, do you have any problems  
14 with returning a verdict of guilty against the Defendant  
15 for the crimes with which he is charged?

16 A. Not at all.

17 MS. KOLLINS: Thank you. Pass for cause.

18 THE COURT: Mr. Landis?

19 VOIR DIRE EXAMINATION OF JUROR BELLA

20 BY MR. LANDIS:

21 Q. Good afternoon?

22 A. HI.

23 Q. A few times today, drinking and driving,  
24 or driving under the influence has been mentioned, and  
25 would you agree that in the past 10, 20 years, we have

001652

1 kind of started taking that more seriously?

2 A. Yes.

3 Q. I have heard stories of how, you know,  
4 in the early '80's, late '70's, almost impossible to  
5 get arrested for it.

6 A. Yes.

7 Q. Now, it's kind of the opposite where I  
8 think every time you get pulled over, you might get  
9 arrested.

10 Let me give you some scenarios.

11 Let's say we are friends, I come up to your  
12 house to pick you up, we are going to go out for the  
13 night, and you have realized that I have had some  
14 drinks, and you get in the car with me.

15 Do you think you somehow should be responsible  
16 if I then get pulled over.

17 MS. LUZAICH: Objection. We talked about that.

18 MR. LANDIS: Could we approach?

19 THE COURT: Sure.

20 (Whereupon, a brief, informal discussion was  
21 had at the bench between the Court and counsel.)

22 BY MR. LANDIS:

23 Q. I will be withdrawing that scenario.

24 A. Okay, fine.

25 Q. You said you spent some time in San Francisco,

001653

1 right?

2 A. Yes, that's where I grew up.

3 Q. You have got some longtime friends from  
4 there?

5 A. Oh, yes, family.

6 Q. Do you still spend some time with those  
7 people from time to time?

8 A. I was up there last week.

9 Q. Okay.

10 And I am guessing you are like me, and when  
11 you get together with old friends, the whole family, you  
12 talk about old stories, things that happened in the past,  
13 right?

14 A. Yes.

15 Q. And when, you know, you go over those  
16 stories, a lot of times some people remember this, some  
17 people remember that, and it kind of becomes a group  
18 story?

19 A. Uh-huh.

20 Q. Would you agree with that?

21 A. Yes.

22 Q. Do you think those stories get more and  
23 more accurate as time goes on, or do you think they  
24 almost become a hybrid of what really happened?

25 A. Sometimes. Some people have better

001654

1 memory or recollection than others. I think that would  
2 be appropriate.

3 Q. Okay. I think what I am getting at is:

4 As you go back and think about, or something,  
5 that a bunch of your friends experienced, and you  
6 experienced 10, 20 years ago, and you've went over this  
7 story every time you see each other because it was a  
8 really great event or a really bad event, do you think  
9 the story over time is very accurate to what really  
10 occurred, or do you think it really becomes a creature  
11 of you guys telling the story over and over again?

12 A. I wouldn't know. The situation is the  
13 same. Some people have a better memory than others.

14 Q. Do you think if you were talking about  
15 something that happened maybe 20 years ago, and then  
16 you actually kind of take a time machine and go back  
17 there to what did actually happen, do you think it  
18 would be pretty accurate as you guys remembered it and  
19 as you told the stories over the years?

20 A. With some modifications, yes, but --

21 Q. Okay, that's okay.

22 Di you, when you are telling those stories,  
23 when you guys are talking about things that happened in  
24 the past, do you think you kind of adopt as part of your  
25 memory things that other people remember, things that

001655

1 other people say they remembered about what did actually  
2 occur?

3 A. Yes, but my personal experience, obviously,  
4 would be more explicit.

5 Q. Okay, okay. I will give you my favorite  
6 jury question, and you don't get a pass;

7 Which one is worse, the innocent person getting  
8 convicted or the guilty person not getting off?

9 A. Well, out of my heart, it would be the  
10 innocent person getting convicted.

11 MR. LANDIS: Thank you, Miss Bella. Pass for  
12 cause.

13 THE COURT: Very good.

14 VOIR DIRE EXAMINATION OF JUROR DESCHAIINE

15 BY THE COURT:

16 Q. Debbie, is it Deschaine?

17 A. That's right.

18 Q. Debbie, how long have you been in Las  
19 Vegas?

20 A. I was born out at Nellis.

21 Q. Really, my word. A native.

22 Have you lived here all of your life?

23 A. No, I have lived part of the time here,  
24 and part in California.

25 Q. Okay. Are you employed?

001656

1 A. Yes.

2 Q. What do you do for a living?

3 A. I'm an executive assistant.

4 Q. Okay. For, in the hotel industry or --

5 A. Yes, the vice chairman of Harrah's  
6 Entertainment.

7 Q. Okay. Are you married?

8 A. I'm divorced.

9 Q. Grown children?

10 A. Yes.

11 Q. What do they do for a living?

12 A. My daughter lives in California, works at  
13 a winery, and my son lives here, and he is in construction.

14 Q. Okay. Have you or anybody close to you  
15 ever been the victims of or accused of any kind of a  
16 sexually related crime?

17 A. No.

18 Q. Have you or anybody close to you ever been  
19 the victim of or accused of any kind of a crime?

20 A. Yes.

21 Q. What would that be?

22 A. My son, when he was younger, he was convicted,  
23 and he actually served three years at Indian Springs.

24 Q. So that all occurred right here in Las Vegas?

25 A. Yes.

001657

1 Q. How many years ago was that?

2 A. He was 18. He is 29 now.

3 Q. Was there anything -- I assume that you  
4 followed what was going on very closely?

5 A. Yes.

6 Q. Was there anything about that whole process  
7 as it unfolded and occurred that you felt was unfair to  
8 your son?

9 A. I will say I have had some negative experiences  
10 with law enforcement.

11 Q. You mean related to that?

12 A. Uh-huh.

13 Q. To that incident?

14 A. Yes.

15 Q. And that whole little scenario?

16 A. Yes.

17 Q. That was how many years ago did you say,  
18 eight?

19 A. He was 18 at the time.

20 Q. Okay. So, is there anything about -- can  
21 we ask this:

22 You realize that that was then?

23 A. Right.

24 Q. It was those people that were involved in  
25 that matter.

001658

1           Is there anything about that experience that  
2 would cause you difficulty, difficulty from the point that  
3 it might be impossible for you to be able to sit on a jury  
4 in a case like this and be fair and impartial to both sides  
5 of this case?

6           A.    I think I could be fair.

7           Q.    Can you set aside that whole experience,  
8 leave it outside in the hallway, sit here and listen to  
9 the testimony, and the evidence that's presented, and not  
10 let anything that happened back then interfere with your  
11 process about evaluating the witnesses, and the testimony,  
12 and be able to be fair and impartial.

13           Can you still do that, do you think?

14           A.    Yes.

15           Q.    Nothing about the experiences with law  
16 enforcement, if you hear the testimony of a police officer  
17 as a witness, can you treat his testimony just like any  
18 other witness that wasn't a police officer?

19           Can you not give it any lesser weight or not  
20 give it any greater weight, just because he is a police  
21 officer?

22           Can you do that?

23           A.    Yes.

24           Q.    Okay.

25           If you were, the prosecution, which you said you

001659



1 can do, if you were the prosecution or the defense, do  
2 you think that you have a healthy approach to your duty  
3 as a juror?

4 A. Yes.

5 Q. Do you think that you would be comfortable  
6 if you were sitting on either one of these two tables  
7 over here with somebody with your frame of mind on the  
8 jury?

9 A. Yes.

10 Q. Can you think of anything else that I haven't  
11 asked you about? I don't know if I got to this:

12 Have you ever been on a jury before?

13 A. I was excused because of that incident.

14 Q. Previously?

15 A. Yes.

16 Q. A criminal jury pool like --

17 A. Yes, it was a criminal case, and they decided  
18 not to have me as a juror.

19 Q. Okay.

20 A. I was excused.

21 Q. Was there anything about that experience  
22 of being in a jury pool, and then being excused out, that  
23 would cause you difficulty from sitting on a jury in a  
24 case like this?

25 A. No, that has nothing to do with this.

001660

1 Q. Okay. How long ago was this?

2 A. 10 years.

3 Q. Okay. Obviously here in Clark County?

4 A. Yes.

5 Q. Okay. Well, when you lived in California,  
6 where did you live?

7 A. Orange County.

8 THE COURT: Okay. Anything, questions?

9 MS. LUZAICH: Oh yes.

10 VOIR DIRE EXAMINATION OF JUROR DESCHaine

11 BY MS. LUZAICH:

12 Q. Ma'am, when you said that you were excused  
13 because of that incident, did you tell them that you could  
14 be fair?

15 A. He didn't ask so --

16 Q. Do you know, and probably this is over your  
17 head, but there is a difference between a challenge for  
18 cause and a peremptory challenge, I mean, do you know, did  
19 they excuse you for cause before?

20 A. I don't remember.

21 Q. Okay. How long ago was that?

22 A. About 10 years.

23 Q. Oh, so it was right around the time of --  
24 was your jury service where you were excused around the  
25 same time of your son's incident?

001661

1 A. No, it was after.

2 Q. Okay. What was he convicted of?

3 A. He and another boy were in a car, and he --  
4 the driver, the other boy shot at another vehicle. They  
5 were -- it was gang related with that.

6 Q. Was anybody hurt as a result of it?

7 A. Yes.

8 Q. Did your son go to trial or did he enter  
9 a plea?

10 A. He entered a plea, he got three years.

11 Q. Did the other kid also?

12 A. I don't know what happened to him.

13 Q. Was it a friend of his?

14 A. I guess.

15 Q. Okay. When your son was part of that  
16 incident, the agency that investigated, was it Henderson  
17 Police or Metro?

18 A. It was probably Metro.

19 Q. So it didn't happen --

20 A. It happened on the freeway.

21 Q. Or potentially even NHP.

22 A. Uh-huh.

23 Q. All right. Well, in this case, there  
24 aren't going to be any Metro officers, there aren't going  
25 to be any NHP officers, it's just going to be Henderson

001662

1 Police.

2 Do you think that deep down inside, you might  
3 just kind of hold that against any of the officers that  
4 come in here?

5 A. No.

6 Q. Because he was prosecuted, somebody from  
7 the D. A.'s office would have handled it. That could have  
8 been us. I doubt it was, but do you think that deep down  
9 inside, you just might feel that you would have to hold  
10 anything like that against us or the State of Nevada?

11 A. No.

12 Q. All right. And I have to ask these questions,  
13 you understand that?

14 A. Sure.

15 Q. Do you think that you might feel sorry for  
16 the Defendant because he is about the same age that your  
17 son was at the time your son went through the incident,  
18 that you may feel some sort of --

19 A. No.

20 Q. No connection with the Defendant?

21 A. No.

22 Q. Okay. And, really, all we want to do is  
23 make sure that everybody who sits on the jury and hears  
24 the testimony is fair and impartial because, you know,  
25 the people that are coming in to testify deserve that.

001663

1 A. Yes.

2 MS. LUZAICH: Thank you.

3 Pass for cause, Judge.

4 THE COURT: Mr. Banks?

5 VOIR DIRE EXAMINATION OF JUROR DESCHAINED

6 BY MR. BANKS:

7 Q. Ms. Deschaine?

8 A. Uh-huh.

9 Q. If you picture in your mind, rolling, green  
10 hills, and the kind of faint sound of the ocean, and as  
11 the night turns into the morning, kind of a fog rolls off  
12 of that ocean onto that kind of -- on that green hill, and  
13 the grapes on those green hills are just perfect, and they  
14 get that -- is that kind of like the -- is that kind of  
15 the winery that your daughter works at, or something like  
16 that?

17 A. It seems immaculate so it's not like Napa,  
18 no.

19 Q. So it's kind of like outside here?

20 A. Right.

21 Q. Okay, I am just -- I am just teasing you a  
22 little. What did you think when you heard sexual assault?

23 A. That it was serious.

24 Q. Okay. I'm sure everybody agrees with you.  
25 Anything beyond that, I mean, did it hit you on

001664

1 a gut level, make you think one thing or another?

2 A. No.

3 Q. Not really?

4 A. No.

5 Q. What about the other charges, like the  
6 robberies, and that stuff, is that -- how did that make  
7 you feel?

8 A. It was serious.

9 Q. Do you think that people should be held  
10 responsible for their actions?

11 A. Yes.

12 Q. And nothing more?

13 A. What do you mean by nothing more?

14 A. Well, I'm not --

15 MS. LUZAICH: Objection.

16 BY MR. BANKS:

17 Q. More than your actions.

18 THE COURT: It's all right. Go ahead.

19 BY MR. BANKS:

20 Q. Do you think you should be held for more  
21 than your actions?

22 A. Well, that, I don't understand what you  
23 mean by that.

24 Q. Should you be held responsible above and  
25 beyond your actions?

001665

1 A. In some cases, probably.

2 Q. In the right cases?

3 A. Yes.

4 Q. Okay. And circumstances differ, would you  
5 agree with that?

6 A. Yes.

7 Q. Okay. And recounting of an incident can  
8 be affected by circumstances, would you agree with that?

9 A. Yes.

10 Q. And then I suppose it's common sense, how  
11 we react to situations depends on the circumstances, fair?

12 A. Yes.

13 Q. I am going to use Mr. Landis's question,  
14 and I am going to ask you:

15 How do you feel? Do you think it's more of a  
16 tragedy when someone who is innocent gets convicted?

17 A. Yes.

18 Q. Why?

19 A. Absolutely.

20 Q. And why?

21 A. I don't know.

22 I would put that -- myself in that place of  
23 that person, and I would just agree that you have  
24 to give the person the benefit of a doubt.

25 MR. BANKS: I think that's all I have.

CC1666

1 Thank you.

2 Pass for cause, Judge.

3 THE COURT: Thank you.

4 VOIR DIRE EXAMINATION OF JUROR ORTA

5 BY THE COURT:

6 Q. Is it Gary Orta?

7 A. Yes, Your Honor.

8 Q. Gary, how long have you been in Las Vegas?

9 A. 40 years.

10 Q. What do you for a living?

11 A. Sir?

12 Q. What do you for a living?

13 A. Rural mail carrier, USPS.

14 Q. So you work for the Post Office?

15 A. Yes, sir.

16 Q. How long have you done that?

17 A. 12 years.

18 Q. Are you married?

19 A. Yes, sir.

20 Q. Does your wife work?

21 A. Yes, sir.

22 Q. What does she do?

23 A. Nurse.

24 Q. With one of the hospitals?

25 A. Yeah, North Vista.

001667



1 Q. Have you got grown children?

2 A. One daughter.

3 Q. How old is she?

4 A. 16.

5 Q. So she is not working?

6 A. Right.

7 Q. Okay.

8 Have you or anyone close to you each been the  
9 victim of, or accused of a sexually related offense?

10 A. No, Your Honor.

11 Q. Have you or anybody close to you ever  
12 been the victim of or accused of any kind of a criminal  
13 offense?

14 A. Not that I know of.

15 Q. Have you ever been trained in any kind of  
16 law enforcement?

17 A. No, Your Honor.

18 Q. Have you ever been employed -- anybody close  
19 to you ever been trained or employed in law enforcement?

20 A. No.

21 Q. Okay. Have you ever been on a jury before?

22 A. Yes, Your Honor, three years ago.

23 Q. Three years ago?

24 A. I think it was three.

25 Q. Here in Clark County?

001668

- 1 A. Yes, sir.
- 2 Q. Was it a criminal or a civil case?
- 3 A. Civil case.
- 4 Q. Civil case?
- 5 A. Yes.
- 6 Q. And you were actually on the jury?
- 7 A. I think I was a backup.
- 8 Q. Okay. So did you -- were you part of the
- 9 deliberations or not?
- 10 A. It never got to that point.
- 11 Q. Okay.
- 12 Did something happen the case got resolved before
- 13 then?
- 14 A. Yes, it ended up in a mistrial.
- 15 Q. Oh, okay. So, you didn't actually deliberate
- 16 on that case?
- 17 A. No, Your Honor.
- 18 Q. So you had a mistrial before you got a chance
- 19 to deliberate?
- 20 A. Yes.
- 21 Q. Okay. Anything about that experience of
- 22 being on that jury that would cause you any kind of
- 23 difficulty being on this kind of a jury in this criminal
- 24 case?
- 25 A. No, Your Honor.

001669

1 Q. Can you set aside all of the information  
2 and instructions that you got on that case, and just  
3 forget about it, and pay attention to just the evidence  
4 and the instructions that you are given in this case?

5 A. Yes, Your Honor.

6 Q. Can you do that?

7 A. I could.

8 Q. Okay.

9 Can you think of any relationships or background  
10 incidents in your history that would cause you to give the  
11 testimony of a police officer any greater or lesser weight  
12 than anybody else?

13 A. No, Your Honor.

14 Q. How about a nurse? If a nurse gets on the  
15 stand and testifies in this case because your wife is a  
16 nurse, would that cause you to give her testimony any  
17 greater or lesser weight than anybody else just because  
18 your wife is a nurse?

19 A. No, Your Honor.

20 Q. Okay.

21 Can you think of anything that I haven't asked  
22 you about that would cause you difficulty in -- you have  
23 got a 16 year old daughter, is that what you said?

24 A. Yes, Your Honor.

25 Q. If you heard some teenagers on the witness

001670

1 stand in a case like that, the fact that you have a teenage  
2 daughter, would that affect your ability to sit as a juror  
3 and listen to some young witnesses testify about information?

4 A. A little bit.

5 Q. Would that make you a little sensitive about --  
6 would you continually inject the fact that you have a 16  
7 year old daughter, and would that kind of be overpowering  
8 in your mind, or can you set that aside and to be a juror,  
9 and just listen to the evidence, and base a verdict on just  
10 what you hear as the evidence and the instructions that I  
11 give you.

12 Can you set the fact that you have got a 16 year  
13 old daughter aside?

14 A. Yeah, I can do that.

15 Q. Can you do that?

16 A. Yes, Your Honor.

17 Q. But at the same time, you understand what  
18 it's like for teenagers, and you understand that -- and  
19 you are going to have to base your verdict on your assessment  
20 of the credibility of all the witnesses?

21 A. Yes, Your Honor.

22 Q. That is going to be okay with you?

23 A. Yes.

24 Q. And you are not going to let the fact  
25 that you have a 16 year old daughter interfere with that

001671

1 process?

2 A. No, Your Honor.

3 Q. Okay, all right.

4 Can you think of anything that I haven't asked  
5 you about that would cause you difficulty in sitting as a  
6 juror in a case like this?

7 A. No, Your Honor.

8 Q. Okay.

9 Would you be comfortable as the prosecutor or  
10 the Defendant in this case, if you were sitting over here  
11 with somebody that has your frame of mind being on the  
12 jury?

13 A. Yes. Your Honor.

14 THE COURT: Good. Go ahead.

15 MS. KOLLINS: Thank you, Judge.

16 VOIR DIRE EXAMINATION OF JUROR ORTA

17 BY MS. KOLLINS:

18 Q. Mr. Orta, are you aware of what caused the  
19 mistrial in the previous case?

20 A. Yes.

21 Q. What was it, do you know?

22 A. We had -- the lady was suing the company.  
23 She passed out.

24 Q. Oh, in front of the jury?

25 A. And before the break, after four weeks,

001672

1 and on her way out to the parking lot she passed out, and  
2 they asked -- the defense asked for a new trial.

3 Q. Your wife is a nurse. What kind of nursing  
4 does she practice?

5 A. Medical surgical.

6 Q. If you know, does she have any involvement  
7 with sexual assault examinations?

8 A. No.

9 Q. Do you discuss her job with her on a regular  
10 basis?

11 A. Yes.

12 Q. And if you heard a nurse testify in here you  
13 realize you couldn't go home and get your wife's input on  
14 whatever she had to say in here.

15 You have to just save your opinions on that  
16 testimony for deliberations?

17 A. Yes.

18 Q. Do you think a victim should act one way or  
19 another?

20 Do you have any expectations of how someone who  
21 has been the victim of a crime should come in here and  
22 speak to you?

23 A. No.

24 Q. Do you think everybody can have a different  
25 personalities when they are speaking in public?

001673

1 A. Yes.

2 Q. Mr. Landis asked some questions earlier  
3 about how you might adopt someone else's version of an  
4 event over time.

5 A. Yes.

6 Q. You know, everybody would kind of come  
7 to a consensus.

8 A. Yes.

9 Q. Do you think that everyone, if four people  
10 or five people witnessed this same thing, do you think  
11 they would describe it identically?

12 A. No.

13 Q. Based on things like their ability to  
14 articulate, their memory, all different kinds of factors  
15 like that?

16 A. Yes.

17 Q. Anything that would preclude you from  
18 sitting in judgment of another?

19 A. No.

20 Q. If you believe that the State has proved  
21 its case beyond a reasonable doubt against the Defendant,  
22 can you return a verdict of guilty?

23 A. Yes.

24 MS. KOLLINS: Thank you.

25 Pass for cause, Judge.

001674

1 THE COURT: Mr. Landis?

2 VOIR DIRE EXAMINATION OF JUROR ORTA

3 BY MR. LANDIS:

4 Q. I heard you say you worked with the USPS.  
5 I had a hearing problem. Did you say you were a royal  
6 post officer?

7 A. Rural.

8 Q. Oh, rural.

9 A. Yes, Post Office, rural.

10 Q. Okay. I was excited to find out what that  
11 was. What's your route?

12 A. I work in Henderson.

13 Q. Okay. Where exactly?

14 A. By Gibson and Rutledge.

15 Q. That's my area. I am guessing as a postal  
16 officer, it's all about the route, right?

17 The better the route, the better the job?

18 A. I think they are all the same now.

19 Q. They are?

20 A. Yes.

21 Q. Do you mind working in Pahrump?

22 A. Oh yes.

23 Q. Okay.

24 As soon as after you and everyone else walked  
25 in here, maybe before the Judge even said it, you realized

001675



1 that it's a criminal trial?

2 A. Yes.

3 Q. And you realized that Narcus here is a  
4 criminal Defendant?

5 A. Yes.

6 Q. What's the first thing that pops in your  
7 head when you come to that realization?

8 A. Nothing really.

9 Q. No?

10 A. Why?

11 Q. Correct me if I'm wrong, before you came in  
12 the door, you didn't know if this was a criminal or a civil  
13 trial?

14 A. No.

15 Q. Were you hoping for one or the other?

16 A. No, I was in a jury pool for a lot of times.  
17 I am already here today to show up.

18 Q. Not as lucky as some other people, okay.

19 A. I got the picture.

20 Q. On that last jury you talked about, where  
21 the lady passed out, or you did say passed out, or whatever  
22 it was, I think you did say passed out.

23 Were you happy or disappointed that that mistrial  
24 was declared?

25 A. It was okay. I wasn't happy, but I wasn't

001676

1 looking forward to it, and I think they told us where to  
2 go. So in a way, it was happy, but in a way, I was  
3 disappointed.

4 Q. Well, correct me if I'm wrong. You're a  
5 man who gets paid for his job when he is here, right?

6 A. Yes.

7 Q. You wanted to deliberate though, right,  
8 especially after putting in four weeks of time?

9 A. Yes.

10 Q. Okay.

11 Do you think we as citizens of America, kind of  
12 expect the State to only prosecute guilty people?

13 A. No.

14 Q. You don't think we expect that? Let me ask  
15 you this:

16 Do you think we want that?

17 A. It just depends, you know, I mean, the  
18 prosecutor where they think they are guilty, but eventually,  
19 10 years, 12 years, they are not.

20 Q. Popular case recently has been our friend,  
21 O. J. Simpson, who has pending charges here in Clark County.

22 Have you read about that?

23 A. No.

24 Q. You haven't read about that?

25 A. No.

001677

1 Q. You might be the only one. They will probably  
2 be calling you for jury service on that case.

3 I will tell you, I always ask my favorite question.  
4 I give one person a pass.

5 The second person I always ask my favorite question,  
6 and try not to give them a pass.

7 The third person I tend to ask it, and then after  
8 they answer it, I surprise them with a why.

9 Somebody stole my thunder today so I won't ask you  
10 my final question.

11 Thank you for your time.

12 Pass for cause, Judge.

13 THE COURT: Very good.

14 VOIR DIRE EXAMINATION OF JUROR LORETTO

15 BY THE COURT:

16 Q. Maryjo Loretto, is that correct?

17 A. Yes.

18 Q. Mary --

19 A. It's Maryjo.

20 Q. Maryjo, do you go by Jo or --

21 A. Do you go by Joe or?

22 A. I go by Jo.

23 Q. Jo, okay. All right, Jo. How long have  
24 you been in Las Vegas?

25 A. 36 years.

001678

1 Q. Good for you. Do you work?

2 A. Yes.

3 Q. What do you do?

4 A. I am a third level tech. I work for a  
5 company that resells software and hardware around the  
6 world, and I take care of other property.

7 Q. So you are in an I T expert?

8 A. I don't know if I'm an expert but -- I know  
9 my job.

10 Q. Who do you work for?

11 A. Genesis.

12 Q. Okay. Do you actually write software?

13 A. No.

14 Q. Okay. Are you married?

15 A. No.

16 Q. Do you have grown people?

17 A. Yes, one daughter.

18 Q. And what does she do?

19 A. She works at Smith's as a bagger.

20 Q. Oh, okay. Have you or anyone close to you  
21 ever been the victim of or accused of any kind of a sexually  
22 related offense?

23 A. No.

24 Q. Do you or anyone close to you ever been the  
25 victim of or accused of a crime?

001679

1 A. No.

2 Q. Okay. Have you ever had any training in law  
3 enforcement?

4 A. No.

5 Q. Have you ever been employed or anybody close  
6 to you ever been employed in the capacity of law enforcement?

7 A. Yes.

8 Q. Who is that?

9 A. My youngest nephew is a police officer. I  
10 have a nephew-in-law who is a police officer, and my other  
11 nephew works at the Courthouse.

12 Q. Here?

13 A. Yes.

14 Q. Police officers, who do they work for? You  
15 have got two nephews?

16 A. Yes, a nephew-in-law, and my youngest nephew  
17 are police officers at Metro.

18 Q. Both Metro?

19 A. Yes.

20 Q. And how long have they been on the department?

21 A. My youngest nephew has probably been 14  
22 years, and my nephew-in-law is probably two.

23 Q. Two years?

24 A. Two.

25 Q. Are you pretty close to these guys?

001680

1 Are they -- they are both nephews so that -- are  
2 you pretty close to these guys?

3 A. They are pretty close, yes.

4 Q. Do you see them and talk to them a lot?

5 A. Yes.

6 Q. Do you talk to them about their jobs?

7 A. We do have discussions, yes.

8 Q. Now, do you understand that the police officers  
9 that are going to be testifying in this case aren't Metro  
10 officers.

11 They are from the Henderson Police Department.

12 But the fact that you have got two nephews that  
13 you are pretty close to that are police officers, would  
14 that cause you any difficulty in seeing a police officer  
15 from the Henderson Police Department on the witness stand?

16 A. In no way.

17 Q. Would you treat the testimony of a police  
18 officer from Henderson any differently than any non police  
19 officer witness?

20 A. No.

21 Q. You could look at him and realize that you  
22 are going to have to treat him just like any other witness,  
23 can you do that?

24 A. Yes.

25 Q. Okay. Did I ask you if you have been on a

001681

1 jury before?

2 A. I was -- I have been called before but I  
3 wasn't picked.

4 Q. You never actually got on the jury. You were  
5 just in the jury pool?

6 A. Right.

7 Q. Okay.

8 Anything about that experience having been on a  
9 jury pool before that would cause you difficulty in sitting  
10 on a jury in a case like this?

11 A. No.

12 Q. Okay.

13 Can you think of anything that I haven't actually  
14 touched upon that might bear upon your ability to be fair  
15 and impartial to both sides of this case, in this criminal  
16 case?

17 A. No.

18 Q. Okay.

19 Do you think that you have a healthy, neutral  
20 kind of mindset approach to your duty as a juror in this  
21 case?

22 A. Yes.

23 Q. Do you think that you would be comfortable  
24 if you were the Defendant or the prosecution with somebody  
25 being on the jury that has your frame of mind being on the

001682

1 jury?

2 A. Yes.

3 THE COURT: Okay. Good enough.

4 VOIR DIRE EXAMINATION OF JUROR LORETTO

5 BY MS. LUZAICH:

6 Q. Ms. Loretto, your daughter, how old is she?

7 A. 17.

8 Q. Does she work at Smith's while she goes to  
9 school or is she done with school?

10 A. No, she is still at school. She graduates  
11 this June.

12 Q. Congratulations. Is she going to go to  
13 college?

14 A. Well, we are working on that one.

15 Q. Well, hopefully?

16 A. Yes.

17 Q. Okay. Now, you mentioned you have two  
18 nephews in law enforcement, one is two years on, is he  
19 patrol?

20 A. Yes.

21 Q. Yes. And your nephew that's 14 years on,  
22 has he done more than patrol? Has he been in other types  
23 of service?

24 A. Yes, he is applying right now for a sergeant.

25 Q. But has he been in the detective bureau,

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1 work like property crimes, sex crimes, major crimes,  
2 anything like that?

3 A. Yes.

4 Q. Do you know which?

5 A. Well, a little bit of everything. He is  
6 kind of -- he is on TV a lot, too, so, I mean, he is the  
7 one that goes out when there is a crime, and stuff, and  
8 he gets everything ready for the reports, the reporters.

9 Q. Like the PIO, the public information officer?

10 A. Right.

11 Q. And then you also mentioned that you have  
12 a close relative that works in the Courthouse?

13 A. Yes.

14 Q. Would it be like a bailiff, like Joe is?

15 A. Yes.

16 Q. Do you know for which Judge?

17 A. No.

18 Q. Are you allowed to know that?

19 A. No.

20 Q. Now, you know, of course, that you can't  
21 talk to any of these guys about what's going on in here.  
22 You can't ask them questions about what they are saying,  
23 or anything like that, as hard as it might be, you can't  
24 do that until it's done. Once it's done, you can talk  
25 to whoever you want to.

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1 Is that something that you think that you can  
2 do or --

3 A. Yes.

4 Q. All right. Do you think that different  
5 people react differently to the same set of circumstances?

6 A. Yes.

7 Q. That is not unusual.

8 And different people perceive the same set of  
9 circumstances differently.

10 Would you agree with that, based on just perception  
11 and age, and life experiences, and things like that?

12 A. Yes.

13 Q. Would you consider yourself to be the kind  
14 of person who really carefully weighs everything you hear  
15 or closer to somebody who might, you know, listen and maybe  
16 jump to a conclusion?

17 A. I weigh things, I believe.

18 Q. Do you weigh everything?

19 A. Yes.

20 Q. And you will do that here, listen to everything  
21 and not make any decisions until everything is all done  
22 and submitted to you?

23 A. Yes.

24 Q. And if you are serving as a juror, and you  
25 are back in the deliberation room, and everybody feels

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1 one way, but you feel a different way, what will you do?

2 A. I would do it my way, and fight it.

3 Q. All right. Will you listen to what they  
4 have to say?

5 A. Yes.

6 Q. Will you be open to at least the possibility  
7 that maybe you had missed something?

8 A. Yes.

9 Q. And if that were actually shown to you, is  
10 it possible that you could change your mind?

11 A. Yes.

12 Q. But if you were sure, would you stick to  
13 your grounds?

14 A. Yes.

15 Q. Okay. Now, is there anything that would  
16 prevent you from being able to sit in judgment of someone?

17 A. No.

18 Q. And if you do serve, and you hear all  
19 the testimony, and you see the evidence, if you are  
20 convinced beyond a reasonable doubt that the Defendant  
21 committed the crimes he is charged with, would you be  
22 able to say, guilty?

23 A. Yes.

24 MS. LUZAICH: Thank you. Pass for cause.

25 THE COURT: Mr. Banks?

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## VOIR DIRE EXAMINATION OF JUROR LORETTO

BY MR. BANKS:

Q. How do you do.

A. Good.

Q. Let me ask you:

Did you walk in here today and say to yourself, oh, my God, they have got another innocent man being accused of a crime?

A. No.

Q. What did -- what did you think when you first walked in?

A. Nothing.

Q. But you didn't think that?

A. No.

Q. Do you think that sometimes -- do you think that just because somebody has been arrested, or accused, that they have necessarily done something wrong?

A. No.

Q. All right. What did you think of when you heard one charge, that it was a sexual assault charge?

A. That it was bad.

Q. Bad?

A. Yes.

Q. Yeah, it's one of our -- and like you heard me say, I'm sure everybody here agrees with that.

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1           Anything beyond, wow, that's bad, that it turns  
2 your stomach, I mean, anything, any, any other kind of a  
3 reaction?

4           A.   That's it, that's bad.

5           Q.   Did you ever talk about sex assault cases  
6 with your nephews that maybe if --

7           A.   Not really, no.

8           Q.   No? Okay. That's not something that you  
9 just sit around and talk about and converse about everyday  
10 I would imagine.

11          A.   No.

12          Q.   Okay.

13               What do you see Mr. Landis's and my job in this  
14 whole process, what do you think our job is?

15          A.   To prove him innocent.

16          Q.   Do you feel that if Mr. Landis and I have  
17 not proven him innocent that we wouldn't have done our job  
18 you realize?

19          A.   Maybe so.

20          Q.   Okay.

21               And you know, like I said before, there are no  
22 right or wrong answers here.

23               And just like we have been talking about proceedings,  
24 situations, and decisions, and all that kind of stuff, and  
25 even His Honor talked about we bring our everyday life

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1 experiences to this -- to this process, and I guess maybe  
2 your, what you think Mr. Landis's and my job is is something  
3 that has maybe evolved for you in your mind over the years,  
4 is that fair?

5 A. Yes.

6 Q. Okay.

7 And because it has evolved over the years, it's  
8 not something that we just set aside, it is something that  
9 I guess is a part of you, that belief.

10 Is that fair?

11 A. Yes.

12 Q. Okay.

13 Do you think that you can be fair to the State  
14 and to the Defense, if in your eyes Mr. Landis and I have  
15 not done what you feel is our job, that is, prove our client  
16 innocent?

17 A. Yes.

18 Q. Do you think -- should I have some concern  
19 about that?

20 Because you believe that my job is, that I am  
21 a professional, and I am going to do my job, and that is  
22 to prove my client innocent.

23 Is that a fair characterization? Kind of where  
24 your mind is at on that particular issue?

25 A. Yes.

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1 A. Yes.

2 Q. Would you consider yourself to be an  
3 open-minded person?

4 A. Uh-huh.

5 Q. Are you somebody who hears somebody something  
6 and kind of jumps to conclusions or very precisely weighs  
7 out everything you say?

8 A. I wouldn't jump to conclusions, no.

9 Q. If you are, some people do. That's not a  
10 bad thing. I'm just trying to figure out where in the  
11 spectrum you are.

12 And you also have a daughter, correct?

13 A. I do.

14 Q. How old is your daughter?

15 A. She is 31.

16 Q. Okay. So not anywhere near the age of  
17 anybody that is going to testify here.

18 Is there anything about this that would prevent  
19 you from being able to sit in judgment of someone?

20 A. No.

21 Q. So if you do sit on this case, and you  
22 are convinced, after you hear all the testimony and seeing  
23 the evidence that you are convinced beyond a reasonable  
24 doubt the Defendant committed the crime he is charged with,  
25 would you be able to say guilty?

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1 (Discussion off the record.)

2 MR. BANKS: Judge, can we approach?

3 THE COURT: Sure.

4 (Whereupon, a brief, informal discussion was had  
5 at the bench between the Court and counsel.)

6 THE COURT: Okay. Come here while we are here.

7 (Whereupon, another brief, informal discussion was  
8 had at the bench between the Court and counsel.)

9 VOIR DIRE EXAMINATION OF JUROR LORETTO

10 BY THE COURT: (Continuing).

11 Q. Okay. I have got a couple of things  
12 to explain to you.

13 This applies to everybody, and it's just important,  
14 and when we go through this questioning process, sometimes  
15 we get off on some philosophical areas, about what you think,  
16 how you think about certain aspects of our criminal justice  
17 system, and without having had any instruction, it is certainly  
18 easy to have a variety of philosophies, but now I am going  
19 to give you some instruction on the law on how it actually  
20 works, and I want to see if you grasp it, and understand it,  
21 and can bite into it, okay?.

22 As I said earlier, as Marcus Wesley sits here,  
23 he is the Defendant. He has only been accused. He is an  
24 innocent man.

25 The whole purpose of this trial is to determine



1 whether the State can meet their burden of proof of proving  
2 that he is guilty beyond a reasonable doubt.

3 The Defense has certain privileges, one of which  
4 is they don't have to prove anything.

5 It's the State's obligation to prove the Defendant  
6 guilty.

7 It's not the Defense's obligation to prove the  
8 Defendant's innocence.

9 So at the end of the trial if the State puts on  
10 their case, and proves absolutely nothing, the jury will  
11 decide whether the State has proven the Defendant guilty  
12 beyond a reasonable doubt, and not one conclusion can be  
13 simulated, or drawn by the fact that the Defense put on  
14 not one witness.

15 That's the way the system works, and that's the  
16 way the instruction in some fashion will be explained to  
17 you.

18 Now, do you understand that?

19 A. Yes.

20 Q. So when you say in answer to these questions  
21 that it is Defense counsel's job is to prove the Defendant  
22 innocent, do you realize that in reality, the way it works  
23 in the real courtroom, they don't have to prove anything.

24 They don't have to prove he is innocent.

25 They don't have to prove one single, solitary

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1 thing.

2 They can sit there and do nothing but poke holes  
3 in the State's case, and that's all they have to do, and  
4 that's all that they are required to do.

5 The fact that they may or may not have proven  
6 has absolutely nothing to do with what goes on in the  
7 trial itself. They are permitted and allowed to do that,  
8 just sit there.

9 Is that -- do you understand that?

10 A. Yes.

11 Q. Is that okay with you?

12 A. Yes.

13 Q. I mean, if I tell you that that's the law,  
14 and you just say, I don't think that's right, I mean, they  
15 have to do something.

16 Can you follow those instructions and understand  
17 them, and abide by them?

18 A. Yes.

19 Q. So all of that discussion when you first  
20 said to Mr. Banks, that, you know, their job was to prove  
21 him innocent, you do understand that under our system,  
22 they don't have to prove that he's innocent.

23 They don't have to prove a darn thing. Are you  
24 okay with that?

25 A. I'm okay with that.

1 THE COURT: Okay. Any more questions, Mr. Banks,  
2 that you want to ask?

3 I will give you a little leeway.

4 VOIR DIRE EXAMINATION OF JUROR

5 BY MR. BANKS: (Continuing)

6 Q. But that is a belief that has evolved  
7 in your mind over several years that defense counsel's  
8 obligation is to prove their client innocent?

9 A. Sure.

10 Q. Okay.

11 And sometimes, you know, human nature, I mean,  
12 it's easy to say, can you set that aside, but, I mean, if  
13 these are things that you've thought about, and values that  
14 you held for years, should I be nervous for my client when  
15 there is something that you, a thought that you had for  
16 many years that you are able to say, you can just set it  
17 aside and not consider and not think about it or do you  
18 really think that you would be able to do that?

19 A. Yes.

20 MR. BANKS: Okay. No further questions.

21 THE COURT: Okay. We are going to take a break  
22 here. We are going to take an overnight break here.

23 It's is almost 10 after. So here is what we  
24 are going to do, a couple of things.

25 First of all, I want everybody to make close

1 note where you are sitting because, and you know what,  
2 because tomorrow, we are not going to come back here. We  
3 are going to be next door, and it's going to be a little  
4 different, we have got enough jurors off that we have got  
5 enough room next door to reconvene in the morning, okay?  
6 Next door in Department 24.

7 So just as best you can, see who you are sitting  
8 next to, and in the morning, Joe will meet you outside the  
9 double doors and bring everybody in, and try the best you  
10 can to because the jury box over there is completely different  
11 than it is here.

12 Just know where you are sitting, and who you are  
13 sitting between. And then Joe will get you all fixed up.

14 There is one more thing. We have gone through  
15 the process, and we are going to do this now, okay?

16 We have gone through the process, and I have a  
17 pretty good handle on the number of people that we have,  
18 and the number of people that we are going to need to have.

19 So I am going to have the following jurors in the  
20 pool excused. So when I call your names, just go down to  
21 the third floor, and let them know that you were excused  
22 off, and they will recycle you in three or four months  
23 back onto jury duty:

24 Frances Franklin, Prisilla Rivera.

25 THE CLERK: Wait, wait, Judge, I need their number,

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1 their badge number.

2 THE COURT: Okay. Frances Franklin is number  
3 250.

4 THE CLERK: 258, right?

5 THE COURT: I think 250.

6 THE CLERK: Oh, I made a mistake, 258.

7 THE COURT: 258? Okay.

8 THE CLERK: 258.

9 THE COURT: Priscilla Rivera is 449.

10 THE CLERK: 449, okay.

11 THE COURT: Romeo Samblero.

12 THE CLERK: Number 384.

13 THE COURT: 384. Is it Cameron Sanchez?

14 THE CLERK: What number, Judge?

15 THE COURT: 372, all right.

16 JUROR SANCHEZ: Carmen.

17 THE COURT: Carmen, Carmen, Carmen Sanchez.

18 THE CLERK: We already let her go.

19 THE COURT: Oh, all right.

20 THE CLERK: She is the one that had child care  
21 issues.

22 THE COURT: Elisa Scarrone.

23 JUROR SCARRONE. Scarrone.

24 THE COURT: Scarrone. The number is 389.

25 You guys go down to the third floor. We are going

1 to have enough people, and I appreciate it.

2 Thank you very much.

3 JURORS: Thank you, Your Honor.

4 (Above-referred to jurors excused at this time.)

5 THE COURT: All right. Now, as for the rest of  
6 us, we will be here tomorrow, but we are getting close.

7 We are making really very good process. This  
8 won't take too much longer.

9 We are going to start at 10 o'clock in the morning.

10 I have a calendar that starts at 8:30. I am sure  
11 we will be done before ten o'clock.

12 So that having been said, when you leave, again,  
13 I am going to say this kind of casually, but I will repeat  
14 this, and please, please pay close attention.

15 Don't discuss this case with anybody, including  
16 each other.

17 You are going to have family, friends, overnight  
18 recess, you are going to tell them that you are on a jury  
19 pool, the jury is being picked, and that's it.

20 Don't say anything else.

21 Don't discuss the kind of case it is.

22 Don't discuss any of the facts that have been  
23 disclosed in this early process.

24 Just leave what's going on, and if anybody says  
25 anything, just tell them that the Judge instructed us

1 repeatedly to not say anything to anybody about the case.

2 If you do that, we just can eliminate the possibility  
3 of having problems.

4 That having been said, you are admonished not  
5 to converse amongst yourselves, or with anyone else, on any  
6 subject having to do with this trial, or any, including in  
7 person, having had anything to do with this trial.

8 I am going to instruct you not to listen, listen  
9 to any reports or commentaries on any aspect of this trial  
10 through any medium of information, which includes radio,  
11 television network, internet.

12 Don't form or express any opinions whatsoever on  
13 any aspect of this trial until such time as this case has  
14 been finally submitted to the jury.

15 That having been said, you are in overnight  
16 recess.

17 Meet Joe outo in front of the doors tomorrow  
18 morning about five till 10.

19 Again, please try to avoid contact with anybody  
20 that doesn't have one of those juror badges on.

21 Don't talk to anybody that might be a witness.  
22 If you have a question, ask Joe.

23 A JUROR: What time?

24 THE COURT: About five till 10.

25 A JUROR: Five to 10 tomorrow morning?

1 THE COURT: Right.

2 A JUROR: Thank you.

3 THE COURT: Thank you all.

4 \*\*\*\*\*

5 (Whereupon, a recess was taken until 10:45,  
6 Thursday morning, April 10, 2008. At that time, all  
7 parties present, the following proceedings were had in  
8 open court in the absence of the jury panel:)

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1 I get no money. I have to work.

2 THE COURT: That's something that happens to a  
3 lot of us.

4 Unfortunately, that's --

5 JUROR RIVERA: (Interposing) I have to pay a  
6 mortgage for next month.

7 THE COURT: I'm sorry?

8 JUROR RIVERA: I got to pay my mortgage for  
9 next month.

10 THE COURT: It will only be a couple of days.  
11 The next couple of days aren't going to make or break  
12 anybody.

13 JUROR RIVERA: Did you say five days, Your Honor?

14 THE COURT: I'm sorry?

15 JUROR RIVERA: Didn't you say five days?

16 THE COURT: Well, not till Tuesday. That's the  
17 latest.

18 JUROR RIVERA: That's five days, Your Honor.  
19 That's hard.

20 THE COURT: You won't have to work Saturday and  
21 Sunday. You will have to add that on.

22 JUROR RIVERA: No, My schedule is Tuesday through  
23 Saturday.

24 THE COURT: Tuesday to Saturday.

25 Well, let's see how we are doing here because,

1 I mean, those reasons aren't normally good enough.

2 All right. Now, I am going to explain real  
3 quickly the function of a jury, and I am going to ask  
4 and make sure that everybody can do what I am explaining  
5 to you.

6 In jury trials, there are actually two judges.  
7 There is the jury that acts collectively as the judge of  
8 the facts of the case, and there is myself, who is the  
9 Judge that presides over the proceeding and instructs the  
10 jury on the law of the case.

11 So I need to make sure that anybody on this  
12 jury understands their role as a fact finder, and their  
13 responsibility to listen and follow the instructions on  
14 the law that the Court gives you.

15 So I need to know:

16 Is there anybody who could not follow those  
17 instructions, even if though those instructions differ  
18 from what you believe the law is or ought to be?

19 In other words, you have got to follow my  
20 instructions on the law even if you don't like them.

21 Is there anybody that would be unable to do  
22 that?

23 Okay, the answer is no.

24 There are a few principles of law in criminal  
25 cases that I am going to explain to you real quickly, and

1 I need to understand those principles, and you don't have  
2 a problem with them.

3 The -- this is an information, right?

4 THE CLERK: Yes, Your Honor, second amended.

5 THE COURT: There is -- the information is the  
6 document that is used to charge a Defendant with a crime.

7 It is simply an accusation.

8 It is not evidence of guilt in any fashion.

9 The Defendant, as he sits here today, is innocent.  
10 The purpose of this trial is to determine whether or not  
11 the State of Nevada can meet their burden of proof.

12 They must prove that the Defendant is guilty  
13 beyond a reasonable doubt.

14 As he sits here right now, no evidence has been  
15 admitted. He is innocent.

16 Is there anyone in this jury pool who does not  
17 understand that concept or believe in those legal principles?

18 The answer is no.

19 Is there anybody that knows anything at all about  
20 this case?

21 No.

22 All right. We are going to start now what is a  
23 little more pointed voir dire, voir dire, however you want  
24 to say it, and I will now start to ask persons here in the  
25 jury box questions.

001602

1           They will be the same questions.

2           Everybody is going to be asked the same questions.

3   All right.

4                   VOIR DIRE EXAMINATION OF JUROR MAGURA

5   BY THE COURT:

6           A.   Yes.

7           Q.   You are going to be the first one, and I  
8   will give you freedom so that you kind of have a little  
9   bit of an idea of what I am going to be asking you.

10           I am going to ask you how long you have been in  
11   Las Vegas, where you work, what kind of training you have,  
12   if you are married, what your husband or your wife do, if  
13   they work.

14           Do you have children, or do you have adult  
15   children?

16           What do they do for a living?

17           Have you ever been trained in law enforcement?

18           I'll ask if you have ever been on a jury.

19           I will ask if you have ever been on a jury. I  
20   will ask if you have ever been the victim of or accused  
21   of a sexual related crime, in fact, I am going to ask you  
22   that first.

23           And then we will ask if you have ever been the  
24   victim of or charged with a crime in general.

25           Is there anything in your background that would

1 cause you to give the testimony of a police officer more  
2 or less weight than anybody else?

3 If you can withhold forming an opinion about  
4 any aspect of this case until after you have heard all  
5 of the evidence in the case, and one real important  
6 question I am going to ask you, the very last question  
7 will be this:

8 If you were sitting over here as the Defendant  
9 or as a prosecutor, would you be comfortable with somebody  
10 being on the jury that has your frame of mind, okay?

11 And I am going to ask everybody as we go those  
12 same basic questions.

13 So, Molly, before we get into all of that other  
14 kind of stuff, have you ever been the victim of or accused  
15 of a sexual related offense?

16 A. No.

17 Q. Okay. How long have you been in Las Vegas?

18 A. Three years.

19 Q. Three or 30?

20 A. Three.

21 Q. Three years. Where did you come from?

22 A. Ohio.

23 Q. Ohio?

24 A. Yes.

25 Q. Are you working?

1 A. Yes.

2 Q. Where do you work?

3 A. I work for the Clark County School District.  
4 I am a teacher.

5 Q. What about, are you married?

6 A. No, divorced.

7 Q. Do you have grown children?

8 A. Grown children.

9 Q. So nobody is employed?

10 A. My children?

11 Q. Yes.

12 A. They are all employed.

13 Q. Oh, good. All right. What do they do?

14 A. One works for the Department of Justice in  
15 D. C.

16 Q. What does he do?

17 A. He is an antitrust economics counselor.

18 Q. Not an attorney?

19 A. No.

20 Q. Okay. Who else?

21 A. My other son works in Asia. He is a  
22 consultant for computers.

23 My daughter is a librarian at Ashville, part of  
24 the County, and my other son is in Vancouver Washington.  
25 He's a nurse.

1 Q. Well, good for you.

2 Have you ever had any kind of specialized training  
3 in law enforcement?

4 A. No.

5 Q. Anybody close to you?

6 A. No.

7 Q. Can you think of any reason in your background  
8 that would make it difficult for you to give a police officer's  
9 testimony any greater or lesser weight than anybody else?

10 A. No.

11 Q. And you would treat him just like any other  
12 witness?

13 A. Yes.

14 Q. No problem?

15 A. No problem.

16 Q. Would you -- have you ever been on a jury  
17 before?

18 A. Yes, actually, in the early '80's.

19 Q. In Ohio?

20 A. In Ohio.

21 Q. Where in Ohio are you from?

22 A. Lima. I am not from there, I shouldn't say  
23 that.

24 Q. Okay.

25 A. I got stuck in Ohio for 36 years, sorry.

1 Q. So you were on a jury in the early '80's?

2 A. Yes.

3 Q. In Ohio?

4 A. Yes.

5 Q. What kind of case, was it criminal or in  
6 civil court?

7 A. It was criminal but it was --

8 Q. Okay. Let me ask the question.

9 A. Okay.

10 Q. So it was a criminal trial?

11 A. Yes.

12 Q. Were you actually on the jury or were you  
13 in like a jury pool?

14 A. No, I was on the jury.

15 Q. You were on the jury. Were you the foreman  
16 of the jury?

17 A. No.

18 Q. Did -- without telling us what happened,  
19 did that jury deliberate and reach a verdict?

20 A. No, it was settled out of court.

21 Q. Okay, all right.

22 Is there anything about having participated in  
23 that jury service that would make it difficult for you to  
24 sit on a jury in this case and be fair and impartial to  
25 both sides?



1 A. No.

2 Q. I need to kind of put -- whatever the  
3 instructions, whatever you remember about it, I need you  
4 to kind of forget that.

5 A. Well, it was easy to forget.

6 Q. It was easy to forget?

7 A. Of course.

8 Q. All right. Well, that's good.

9 Let me see here. I think we pretty much got all  
10 the good stuff here.

11 Can you withhold forming an opinion about anything  
12 having to do with this case until you have heard all the  
13 evidence, and I have instructed you on the law?

14 A. I can do that, yes.

15 Q. Okay.

16 A. Yes.

17 Q. Do you think that you have a nice, neutral  
18 kind of frame of mind? You don't have any biases or  
19 prejudice towards or against anybody, or anything, that  
20 would cause you any different in sitting as a fair and  
21 impartial juror to both sides?

22 A. Your Honor, I have no problem with that.  
23 I could be fair.

24 Q. As I said, if you were sitting over here  
25 as one of the litigants in this case, either for the

1 prosecution or the defense, would you be comfortable  
2 with a juror on the jury that has your frame of mind?

3 A. Yes.

4 THE COURT: Okay. Questions?

5 MS. LUZAICH: Thank you.

6 VOIR DIRE EXAMINATION OF JUROR MAGURA

7 BY MS. LUZAICH:

8 Q. Ms. Magura, how are you doing?

9 A. Fine.

10 Q. You said you were divorced. What does the  
11 ex do?

12 A. He is retired.

13 Q. What did he retire from?

14 A. He was a university professor.

15 Q. Okay. So nothing to do with -- he wasn't  
16 a police officer, or anything like that?

17 A. No.

18 Q. What did he teach?

19 A. Economics.

20 Q. Okay. And what -- you are a teacher here  
21 in town?

22 A. Yes, I am.

23 Q. What grade do you teach?

24 A. I teach art from grades three through five.

25 Q. Okay.

1 Do you know anybody that had ever been either  
2 the victim of or accused of a sex offense?

3 A. No, I don't.

4 Q. Do any of your kids have kids?

5 A. Yes.

6 Q. Grandkids? How many?

7 A. Five.

8 Q. Okay. If you sit on a case like this,  
9 the charges you heard involved robbery, but it also involved  
10 sexual assault.

11 Well, obviously, a girl is going to come in here  
12 and talk about having been sexually assaulted. She is in  
13 her, you know, mid to late teens.

14 You have a daughter who is older than that, you  
15 know, you will be able to put that aside, right?

16 A. Yes.

17 Q. Okay. If you serve as a juror in this case,  
18 you are going to have to evaluate the testimony of all the  
19 people who come in to testify.

20 Is that something that you feel comfortable doing?

21 A. Yes.

22 Q. Would you consider yourself to be a fair  
23 and impartial person?

24 A. Yes.

25 Q. Do you have common sense?

1 A. Hope so.

2 Q. You will bring it into the courtroom with  
3 you. You won't leave it outside just because there is a  
4 Judge, and a robe, and a flag?

5 A. No, I won't.

6 Q. Knowing what you know about yourself, is  
7 there anything that would prevent you from being able to  
8 sit in judgment of someone?

9 A. No.

10 Q. So, if you listen to all the testimony, see  
11 any evidence, if you are convinced beyond a reasonable doubt  
12 that the Defendant committed the crimes he is charged with,  
13 would you be able to say, guilty?

14 A. I would.

15 MS. LUZAICH: Thank you. Pass for cause.

16 THE COURT: The Defendant, who is going to go  
17 first?

18 Mr. Banks. .

19 MR. BANKS: Yes, sir.

20 VOIR DIRE EXAMINATION OF JUROR MAGURA

21 BY MR. BANKS:

22 Q. Ms. Magura?

23 A. Yes.

24 Q. How do you do.

25 You said, and you said, and I don't want to

1 misquote you here, but if I heard you, 36 years you were  
2 stuck in Ohio?

3 A. I don't know, I don't know how I was but I  
4 was in Ohio. I'm sorry.

5 Q. No, I -- my boss, I just, you know.

6 A. He said that's where we moved from. I like  
7 the ocean.

8 Q. Okay. You are not a landlocked kind of  
9 person?

10 A. Right.

11 Q. So you came right to Las Vegas, Nevada?

12 A. For a different reason.

13 Q. A different reason, and, I mean, I don't  
14 mean to pry.

15 A. No.

16 Q. And there are no right or wrong answers to  
17 any of this stuff, everybody, we are just trying to get  
18 the most fair jurors for both sides.

19 What -- what was the situation that you left?  
20 Why did you leave Ohio?

21 A. I retired from teaching in Ohio. I came  
22 here. I'm a teacher.. I thought I could make more money.

23 Q. And you are teaching here?

24 A. Yes.

25 Q. And how long did you teach in Ohio?

1 A. I spent 21 years in Ohio, three years in  
2 Massachusetts, two years in Pennsylvania.

3 Q. What ages did you teach generally?

4 A. I taught elementary.

5 Q. Okay, like one through six?

6 A. A through six except second grade.

7 Q. Okay. And you raised -- you raised your  
8 kids yourself, and so you have had a lot of experience  
9 with a lot of different kinds of kids?

10 A. I didn't raise them by myself. They were  
11 in college when I worked.

12 Q. Not by yourself.

13 A. Yes.

14 Q. I meant, you yourself have raised children,  
15 I'm sorry?

16 A. That's okay.

17 Q. I will be more clear. And you got a lot of  
18 experience with a lot of kids over the years?

19 A. Yes.

20 Q. Okay. A lot of different personalities with  
21 those kids?

22 A. 29 years of teaching, yes.

23 Q. Okay. Some behavioral problems with some of  
24 those kids?

25 A. That's for sure, some problems with some of

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1 the kids.

2 Q. What about bullying?

3 A. Bullying?

4 Q. Did you ever -- bullying? Was there ever  
5 bullies at school that you know of?

6 A. There is usually a couple of bullies, yes.

7 Q. Okay.

8 A. We have bullies every day in school.

9 Q. Is that here or is that in Ohio or is that --

10 A. That's here.

11 Q. Really?

12 A. Every classroom, yes, bullies in the classroom.

13 Q. Oh, wow, I didn't know that.

14 A. Yes.

15 Q. I guess because bullying is -- becomes so  
16 much of a problem that everybody is raising their hand saying  
17 I won't be a bully.

18 A. No, it's not so much of a problem. It is just  
19 a problem with some of them.

20 Q. Okay, okay. The kids that get bullied, not  
21 that they are weaker personalities, but maybe the bully is  
22 able to, I don't know, get them to do things, or they pick  
23 on them in certain ways, or scare them, or --

24 A. Yes, sometimes that happens. They pick on  
25 someone, things like that.

1 Q. All right. Have you ever been in a real  
2 stressful situation?

3 A. Such as?

4 Q. Where you are really, really scared for you,  
5 or for somebody else?

6 A. You mean in my family?

7 Q. Anywhere, just in your lifetime?

8 A. I suppose I have. I am pretty old. There  
9 is stress out there.

10 Q. Yeah.

11 A. But I don't what you are -- I don't know  
12 exactly what you mean, I mean, we have everyday stresses.  
13 We have stresses.

14 Q. Okay. Well, let me ask you this.  
15 I heard you say, I think I heard you say divorce.

16 A. Yes.

17 Q. Was that kind of a stressful thing for you?

18 A. Yes, it is.

19 Q. Okay.

20 Have you known other folks that have gotten  
21 divorced over the years?

22 A. Yes.

23 Q. Okay. And that's a pretty stressful situation,  
24 I would imagine?

25 A. Yes.



1 Q. Is everybody at their best in thinking  
2 rationally and clearly in stressful situations like that?

3 A. Some people are, some people aren't.

4 Q. Okay.

5 It just kind of depends on perhaps what you  
6 bring to the table, and the severity of the stress in the  
7 situation, is that fair?

8 A. That's fair I would think.

9 MR. BANKS: I think that's all I have. Thank  
10 you so much.

11 Pass for cause, Your Honor.

12 THE COURT: Wayne, is it --

13 JUROR DALEY: Daley.

14 THE COURT: Daily.

15 VOIR DIRE EXAMINATION OF JUROR DALEY

16 BY THE COURT:

17 Q. Wayne, first of all, important question,  
18 have you ever been THE victim of or accused of any kind  
19 of a sexually related offense?

20 A. No, sir.

21 Q. Anybody close to you?

22 A. No.

23 Q. Okay. How long have you been in Las  
24 Vegas?

25 A. Seven and a half years.

1 Q. Are you married?

2 A. Yes, sir.

3 Q. Do you work?

4 A. Yes, I do for the Coast Casinos Bowling  
5 Centers.

6 Q. What about your wife? Does she work?

7 A. She is disabled.

8 Q. Okay. Do you have grown children?

9 A. No children at all. I have a stepson.

10 Q. Okay. Is he old enough to be to be employed?

11 A. Yes, he's 30.

12 Q. Okay. What does he do for a living?

13 A. He is an electrician for Fisk Electric here.  
14 He works at the City Center.

15 Q. Okay. Have you ever received or been employed  
16 in any kind of a law enforcement capacity?

17 A. No, sir.

18 Q. Have you received any training in law  
19 enforcement?

20 A. No.

21 Q. Okay.

22 Can you think of anything that has happened to  
23 you because of people that are close to you, family, friends  
24 that are in law enforcement that would cause you to give  
25 the testimony of a police officer any greater or lesser

1 weight than any other non police officer or witness?

2 A. No, Your Honor.

3 Q. Okay. Have you ever been on a jury before?

4 A. No, this the first time.

5 Q. Have you ever or anybody close to you ever  
6 been the victim of or accused of any kind of a crime?

7 A. No.

8 Q. Okay. You are pretty easy.

9 Do you think you would have any trouble withholding  
10 the formation of an opinion about anybody, or anything having  
11 to do with this trial until after you have heard all the  
12 evidence, and I have instructed you on the law?

13 A. No, sir.

14 Q. Can you do that?

15 A. Yes, sir.

16 Q. Okay.

17 Do you think that you have a good, healthy, neutral  
18 frame of mind so that if you were one of the litigants, and  
19 you were sitting over here at one of these tables either as  
20 a prosecutor or a Defendant, would you be comfortable with  
21 somebody being on the jury that has the frame of mind that  
22 you have?

23 A. Yes, I would.

24 THE COURT: Okay. Counsel?

25 MS. KOLLINS: Thank you, Judge.

## VOIR DIRE EXAMINATION OF JUROR DALEY

BY MS. KOLLINS:

Q. Good afternoon, Mr. Daley.

A. Hi.

Q. Where did you come from before you came to Las Vegas?

A. Southern California.

Q. What did you do when you lived in Southern California?

A. I worked in the bowling center business for about 37 years.

Q. And when you say "the bowling center business", in what capacity do you work there?

A. As the coordinator, the public relations.

Q. Okay. Tournaments, stuff like that?

A. Yes.

Q. You have a stepson. Has he resided with you -- have you been together with his mother since he was small or --

A. Since he was 16.

Q. Okay. So did he go to college or any technical school when he lived with you or --

A. Yeah, he moved up to Northern California to -- he went to some college up there for like a semester. That was it.

1 Q. Okay. And now he is back in Vegas?

2 A. Yeah, he moved from Pennsylvania to Vegas to  
3 get work because of the weather out here so --

4 Q. So much for that empty map, huh?

5 A. Yeah, really.

6 Q. You are going to hear from some kids here  
7 in this case that went through some pretty traumatizing  
8 events. Do you have any expectation of what, say, a victim  
9 of sexual assault should sound like when they testify?

10 A. Not really, no.

11 Q. Do you think everyone reacts the same to  
12 every situation?

13 A. Oh no.

14 Q. Would this person have to be crying for you  
15 to find her credible?

16 A. No, not at all.

17 Q. You have never known anyone that has been  
18 accused of a crime, arrested for a crime?

19 Never had any interaction with law enforcement,  
20 managing bowling centers?

21 A. Well, yes, one of the guys I worked with  
22 at the Orleans actually is a Metro police officer right  
23 now.

24 Q. Okay. And a Metro police officer full-time  
25 and works with you part-time?

1           A.    No, he works with them full-time. He is  
2 now with the Clark County School District.

3           Q.    Do you socialize with him?

4           A.    I talk to him about once every two weeks.

5           Q.    Do you talk about what he does for a living,  
6 what he does as a Metro officer, or anything like that?

7           A.    We do every once in a while, but mostly we  
8 are just really good friends.

9           Q.    Okay.

10          Would you let your friendship with him in any  
11 way influence what decision you might make in here?

12          A.    No, I don't think so at all.

13          Q.    You wouldn't feel a need to justify your  
14 verdict to him one way or the other?

15          A.    No.

16          Q.    How did you feel when you got your jury  
17 summons, having not ever served before?

18          A.    I said I guess they finally caught up to  
19 me after 56 years.

20          Q.    Yeah, they found you. I know.

21          After you sit here, and you listen to the  
22 evidence, and if you believe the Defendant is guilty as  
23 charged, based -- beyond a reasonable doubt, based on  
24 what you hear, can you return a verdict of guilty?

25          A.    Yes, I could.

1 Q. Anything that prevents you from sitting  
2 in judgment of another?

3 A. No, not really. I mean, I'm not really --  
4 I don't have a prejudice. I guess it would be called a  
5 prejudice. I just don't like people that come into our  
6 country and disrespect our country, not any certain, you  
7 know, background, race, or anything, but anybody that  
8 would come in here and disrespect what the United States  
9 is built on.

10 Q. Okay. But that has nothing to do with --

11 A. Nothing to do with, yeah.

12 Q. -- with this case?

13 A. Right. No.

14 Q. So, in other words, it's not sitting in  
15 judgment, just anybody that would commit a crime in the  
16 United States, you have a problem with, not just -- I  
17 guess I don't understand your response. Maybe it's my  
18 question.

19 A. No, not as a crime like this, no.

20 Q. Do you have a problem sitting and receiving  
21 evidence and --

22 A. Oh no.

23 Q. And working with a group of your peers and  
24 coming to a conclusion?

25 A. No, not at all.

1 MS. KOLLINS: All right, pass for cause.

2 THE COURT: Okay. Mr. Landis?

3 VOIR DIRE EXAMINATION OF JUROR DALEY

4 BY MR. LANDIS .

5 Q. Good afternoon, sir.

6 The Judge said, you are pretty easy, and I will  
7 tell you a story.

8 When I was about 16 years old, I was with a  
9 bunch of my friends, and we were in my parents' garage,  
10 and we were talking about school, and we may have been  
11 talking about a certain female, and one of my friends may  
12 have said something along the lines, well, she's easy.

13 Mom busts through the door, and she says, you  
14 never say, anybody is easy. So I am not going to repeat  
15 that.

16 We talked a little bit about -- the Judge talked  
17 a little bit about the standard of proof, and it's the same  
18 standard of proof in every criminal trial in this country,  
19 and it's beyond a reasonable doubt. It's the highest standard  
20 we have.

21 A. Right.

22 Q. Do you think that standard is a good measure?  
23 Do you think it's too high, possibly too low?

24 A. No, I think it's good.

25 Q. Do you think that standard may make it too

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1 hard for the State or prosecutors to sometimes convict  
2 guilty people?

3 A. No.

4 Q. No?

5 A. No.

6 Q. Another principle we have in this case, and  
7 in every case is criminal Defendants have the right to  
8 remain silent.

9 A. Right.

10 Q. They have the right to not testify?

11 A. Yeah.

12 Q. Even beyond that, we as defense counsel don't  
13 have any duty to present evidence to you?

14 A. Yes.

15 Q. You can hear the State's case, we could stay  
16 silent, and not say a word, and if you don't think that  
17 they've met that burden, it's your duty, as the instructions  
18 will tell you, to acquit that person.

19 How do you feel about those things?

20 A. I think it's a given right, you know, like  
21 you say, if he does not want to testify, and that they don't  
22 think they can prove it beyond, you know, a doubt, we can  
23 come to some type of verdict.

24 Q. I have never sat on a jury. I am not quite  
25 as experienced as you. I hope I get to your age without

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1 having to, but I don't know, I mean, sitting on a jury with  
2 somebody sitting there hearing these accusations for day  
3 after day.

4 A. Yeah.

5 Q. Is there something that ticks and says, why  
6 doesn't this guy talk?

7 A. I, I don't know. Like I said, I have never  
8 done this. I really couldn't tell you.

9 Q. Are you comfortable with that?

10 A. I think I am, yes.

11 Q. Okay. I will ask you my very favorite.  
12 question for juries in the whole world.

13 Do you think it's worse if a guilty person gets  
14 off or an innocent person gets convicted?

15 A. I really don't have an answer for that. I --

16 Q. It's a tough question, I know.

17 A. It is, it is.

18 Q. No one ever wants to answer it. I will let  
19 you off the hook, but nobody else is getting a free pass.

20 Thank you, sir.

21 A. You are welcome.

22 MR. LANDIS: I will pass for cause.

23 Pass for cause, Judge.

24 THE COURT: Very good.

25 VOIR DIRE EXAMINATION OF JUROR KENIEUTUBBE

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1 BY THE COURT:

2 Q. Is it Howard? And you are going to have to  
3 help me out here. Is it Kenieutubbe?

4 A. Kenieutubbe.

5 Q. Kenieutubbe.

6 A. Uh-huh.

7 Q. Tell me about yourself, Howard.

8 A. All right. I have been in Vegas about 15  
9 years. I am disabled.

10 Prior to coming here, I was -- I am from L. A.

11 Prior to my losing my leg, I was employed as a  
12 sheet metal mechanic for aircraft and label ships, and  
13 the only conviction I ever had was a DUI. That was back  
14 in '78, I believe, and that's about it.

15 Q. Are you married?

16 A. No, I'm not, single.

17 Q. Do you have children?

18 A. No kids.

19 Q. No kids. How did you lose your leg?

20 A. Diabetis.

21 Q. Okay. How long ago was that?

22 A. Eight years ago.

23 Q. Have you ever -- were you ever employed in  
24 any kind of law enforcement in your --

25 A. No, I did serve four years in the Navy.

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1 Q. Okay.

2 Have you ever been accused of or the victim of  
3 any kind of a sexually related offense?

4 A. No.

5 Q. Anybody close to you?

6 A. No.

7 Q. Okay. You said you spent four years in the  
8 Navy. You didn't have anything to do with the shore patrol,  
9 did you?

10 A. I served a couple of times when we were in  
11 port on shore patrol.

12 Q. Okay. But did they give you any kind of  
13 special training in law enforcement?

14 A. Oh no, they just gave us a little helmet  
15 and a baton.

16 Q. Gave you a helmet --

17 A. And watch the boys.

18 Q. And then go hit them over the head.

19 A. Yeah, or get hit.

20 Q. Or get hit on the head?

21 A. Yes.

22 Q. All right. Have you ever been on a jury  
23 before?

24 A. No, I haven't, no.

25 Q. Have you ever been the victim of or accused

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1 of any kind of a crime?

2 A. Just that DUI.

3 Q. That DUI?

4 A. Yes.

5 Q. Other than that, nothing else?

6 A. No, nothing else.

7 Q. Okay.

8 Have you had an experience of any sort that you  
9 could think of that would cause you to give greater or lesser  
10 weight to a police officer witness as opposed to a non police  
11 officer witness?

12 A. No.

13 Q. Can you treat a police officer as a witness?

14 A. Yes.

15 Q. Exactly the way you would treat any other  
16 non police officer witness?

17 A. Right.

18 Q. Okay. Do you have any friends in law  
19 enforcement?

20 A. No.

21 Q. Can you think of anything that we haven't  
22 touched on that would cause you to have difficulty in  
23 being fair and impartial to both sides in a case like  
24 this?

25 A. No.

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1 Q. Do you think that you have a nice, healthy,  
2 neutral frame of mind that would make you an ideal juror  
3 if you were sitting here as either as the defense or the  
4 prosecution, would you be the kind of juror that you would  
5 want to have, sitting on the jury?

6 A. Yes, I believe so.

7 THE COURT: Okay. Sounds good to me.

8 MS. LUZAICH: Thank you.

9 VOIR DIRE EXAMINATION OF JUROR KENIEUTUBBE  
10 BY MS. LUZAICH:

11 Q. So tell me, Mr. Kenieutubbe, what do you think  
12 about yourself would make yourself a good juror?

13 A. I would treat everybody fair, and I always  
14 listen to both sides whoever, you know, I listen to, you  
15 know, and kind of pick my own decision about the matter,  
16 whatever comes up.

17 Q. Okay.

18 As a juror, the Judge mentioned earlier that you  
19 would be the judge of the facts. You get to decide what  
20 happens in this case after hearing all the evidence and  
21 testimony from the witness stand.

22 Do you think that you could be comfortable evaluating  
23 people and making that determination?

24 A. I, not -- I would listen to the facts. I  
25 would listen to the facts, and then make my determination

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1 on that.

2 Q. Okay.

3 Well, sometimes when you listen to facts, they  
4 conflict with each other. One person says, blue shirt, the  
5 other person says green shirt?

6 A. Right.

7 Q. Or whatever. That's what I mean by weighing  
8 conflicting testimony.

9 So do you think you would be able -- would you be  
10 comfortable doing that?

11 A. Oh yes, uh-huh.

12 Q. Okay. You would listen to what everybody  
13 has to say and see how it kind of comports to each other,  
14 right?

15 A. Right.

16 Q. So when there is some conflicting testimony,  
17 could it be as easy as maybe just somebody forgot something,  
18 or was mistaken?

19 A. It is possible, yeah.

20 Q. But it's also possible that somebody was  
21 being intentionally dishonest?

22 A. Right, that could arise, too, yeah.

23 Q. That wouldn't --

24 A. No.

25 Q. -- be out of the ordinary, right?

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1 A. Right.

2 Q. Would it surprise you that it's possible  
3 that somebody could come in here, raise their right hand,  
4 swear to tell the truth, the whole truth, and nothing but  
5 the truth, and then not tell the whole truth?

6 A. It's possible.

7 Q. Do you think that when people do that, it  
8 is because they have a reason to?

9 A. They might, yeah.

10 Q. I mean, people don't come in and lie under  
11 oath just for the hell of it, right?

12 A. Well, it's a human -- it's in the human.  
13 To say where some people would kind of not tell the truth  
14 just because it's -- they think it's true.

15 Q. The truth appears different to different  
16 people?

17 A. Right.

18 Q. Based on perception?

19 A. Right..

20 Q. Okay.

21 Do you think that if you are serving as a juror  
22 in this case, and you go back into the deliberation room,  
23 and 11 people feel one way, and you feel a different way,  
24 what do would you do?

25 A. I would state my points on the matter and

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1 kind of sit back and listen to them and as to why -- try  
2 to figure out why they are looking at the matter in a  
3 different way, and maybe I have to -- maybe I missed something  
4 along the road, you know, that would convince me to change  
5 my mind.

6 Q. So it's possible that if they pointed out  
7 something, you would be able to change your mind?

8 A. Right.

9 Q. But if you were convinced of your point of  
10 view, would you hang tough?

11 A. Right, I would.

12 Q. Okay. What if it's Friday, it's five to  
13 five, and you have been here for a really long time, and  
14 you want to go. Will you change your mind just because  
15 of that?

16 A. Oh no, oh no, I will sit here all night.

17 Q. Okay. Well, hopefully, we won't make you  
18 stay that long.

19 Is there anything about you that would prevent  
20 you from being able to sit in judgment of someone?

21 A. No.

22 Q. So if you do listen to all the evidence  
23 and testimony, and you are convinced beyond a reasonable  
24 doubt that the Defendant committed the crimes he is  
25 charged with, would you be able to say, guilty?

1 A. Yes.

2 MS. LUZAICH: Thank you.

3 Pass for cause, Your Honor.

4 THE COURT: Mr. Banks, your turn?

5 MR. BANKS: Thanks, Judge.

6 VOIR DIRE EXAMINATION OF JUROR KENIEUTUBBE

7 BY MR. BANKS:

8 Q. It's Mr. Kenieutubbe or tubbay?

9 A. Well, you can say Kenieutubbe.

10 Q. Kenieutubbe, okay, nice to meet you.

11 You were talking with Ms. Luzaich a little  
12 bit about truth, and how somebody may think something  
13 is the truth.

14 Would you agree that someone's version of  
15 the truth really depends on a couple of things, their  
16 perception of an event maybe?

17 A. Right.

18 Q. And what they bring to the table, their  
19 life experiences. Would you agree with that?

20 A. It depends on what their life experiences  
21 are.

22 Q. Okay. And that's a great point because  
23 as we -- as we get older, and, you know, necessarily, we  
24 have more life experiences?

25 A. Yes.

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1 Q. Maybe more stressful situations that we've  
2 kind of been through?

3 A. Right.

4 Q. To maybe draw on?

5 A. Yes.

6 Q. In deciding, um, in deciding how we maybe  
7 approach a situation?

8 A. Right, yeah, aspects of life.

9 Q. Okay. Do you want to serve?

10 A. Oh yeah.

11 Q. Okay.

12 What did you think when you heard sexual assault  
13 with use of a deadly weapon?

14 A. That don't sound good to me.

15 Q. Why?

16 A. Because I think if someone is taking advantage  
17 of someone against their will, and it's just my outlook on  
18 life as, you know, that's criminal to me.

19 And on the other side of the coin is they also  
20 have got to prove, you know, that he did it.

21 Q. Okay.

22 A. And that's the reason I think I would be a  
23 good on the jury because I have to listen to both aspects.

24 Q. Sure.

25 A. And, like the lady said, I'm assuming a

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1 little, but the innocent man and the guilty man went free  
2 or the innocent man went to prison.

3 Q. That was Landis.

4 A. I think that was a good question because  
5 he would have to really look at what was presented.

6 Like the prosecution is supposed to present the  
7 facts and prove the facts, and to me, that's something  
8 both sides would have to convince me of, of the party  
9 being guilty of that fact.

10 Q. What do you see my and Mr. Landis's job  
11 be? What do you -- what do you perceive our job to be?

12 A. Yours is to defend the innocent until  
13 proven guilty is the basis of the Constitution that I  
14 believe in.

15 Q. I think a lot of what you said here today,  
16 if everybody in the room would rely and probably agrees  
17 with a lot of what you've said here.

18 I don't want to ask, and I imagine, a lot of  
19 people would agree with you.

20 Do you feel that people should be held responsible  
21 for their actions?

22 A. Correct.

23 Q. Okay.

24 Do you think that people should be held responsible  
25 for more than their actions?

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1 A. No.

2 Q. And why not?

3 A. Because, to me, I don't want to say the  
4 Defendant, but he is here on one matter, on that specific  
5 matter, and that's it, no more and no less. He is here  
6 for that one matter, and that's our job just to concentrate  
7 on that matter and decide guilty or not guilty.

8 Q. Okay. And I guess it may -- let me expand  
9 a little bit, life in general, I mean, somebody shouldn't  
10 be on the hook for something --

11 A. Right.

12 Q. -- that maybe somebody else did?

13 A. Right.

14 MR. BANKS: Okay. Thank you for your honest  
15 answers today.

16 Pass for cause, Your Honor.

17 MS. LUZAICH: Could we approach?

18 THE COURT: Sure.

19 (Whereupon, a brief, informal discussion was  
20 had at the bench between the Court and counsel.)

21 THE BAILIFF: Anybody who needs to go to the  
22 restroom can just go ahead and go.

23 THE COURT: No, no, Joe, we are going to take  
24 a break here in just a second. Everybody just relax.  
25 We are going to take a break.

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1 THE BAILIFF: Hold on.

2 THE COURT: Okay. We are going to take a break  
3 for the next 10 minutes, give everybody a chance to go  
4 to the restroom, and I am going to admonish you, the  
5 first of about 500 times during the course of this trial.

6 We are going to take a 10 minute break, you can  
7 go outside, you can go to the restroom, meet outside, meet  
8 Joe outside, out here, and during the next 10 minutes, I  
9 don't want you to discuss with anybody, including amongst  
10 yourselves, anything having to do with this trial about  
11 anybody having to do with this trial.

12 I don't want you to watch, listen or read any  
13 reports or commentaries about anything connected with this  
14 trial through any medium of information, which includes  
15 newspapers, radio, television network, or internet.

16 Don't form or discuss any opinion on any subject  
17 relating to this trial until such time as this case has  
18 been submitted to the jury.

19 That having been said, you've got 10 minutes,  
20 and then meet Joe outside in 10 minutes.

21 There you go. We are on break. We are going  
22 to come back before the jury panel comes back in.

23 . \*\*\*\*\*

24 (Whereupon, a brief recess was had.

25 After recess, all parties present, the following

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1 proceedings were had in open court in the absence of the  
2 jury panel:)

3 \*\*\*\*\*

4 THE BAILIFF: All right, remain seated. Court is  
5 back in session.

6 THE COURT: All right.

7 MS. KOLLINS: Judge, when we left, we were at  
8 the bench, and we had lodged the objection that the line  
9 of questioning to the jury as to on whether someone can be  
10 responsible for another's conduct is appropriate.

11 First of all, that's incorrect on the law.

12 You can be responsible for the actions or the  
13 actions of another can be is repeated to you either as a  
14 coconspirator or an aider and abetter, and that is how  
15 this case is charged.

16 And so, you know, if we are going to give them  
17 a primer on the law, then we are going to have to give  
18 them a primer on the whole law.

19 Our position is they shouldn't be able to  
20 prejudge the evidence, prejudge the case, and that line  
21 of questioning was inappropriate for purposes of jury  
22 selection.

23 THE COURT: I don't, you know, I don't -- I think  
24 that you are correct phraseology in terms of what somebody  
25 else does or that is -- it is probably not appropriate.

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1 I think if you want to take that is appropriate  
2 to say, somebody tempted me, bullied, and if you want to  
3 take that kind of -- and so you are saying that somebody  
4 could be intimidated by somebody else, you can be bullied  
5 by somebody, blah, blah, blah, if you want to take that  
6 approach, I think that's fine.

7 I don't think there is anything wrong with  
8 questioning them if they understand the potential, have  
9 you ever known a bully, did they intimidate you, or did  
10 they do something that you wouldn't want to do, I think  
11 that that's fine, but I think that --

12 MR. BANKS: And the --

13 THE COURT: -- the legal concept of responsibility  
14 for somebody else's act is probably getting -- then we  
15 are going to have to start explaining all kinds of other  
16 things.

17 MS. LUZAICH: Well, not explaining, but they are  
18 asking him to prejudge the law, and prejudge the case, and  
19 when you look at the Eighth Judicial Court Rules, we are  
20 specifically prohibited from doing that.

21 THE COURT: Well, if we are not going to, then  
22 I am going to have to start explaining all the other stuff  
23 about, you know, when he said, if it is a conspiracy, to  
24 aid and abet somebody, and blah, blah, blah, and, you know,  
25 let's just not even get to that point.

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1 Just kind concentrate on what you were doing,  
2 which wsa if someone is intimidated on something, or  
3 coerced, or intimidated, or threatened, or whatever,  
4 bullied. That's one thing.

5 MR. BANKS: And, you know, Judge, I was just  
6 exploring the mindset of that particular juror as far as  
7 how he feels about being held responsible for your actions,  
8 and that, you know, and I, I heard the Court's ruling, and  
9 I will limit it as the Court has indicated.

10 THE COURT: Okay, bring them in.

11 MR. BANKS: I won't get into all the other people's  
12 actions as to that.

13 THE COURT: Okay, perfect.

14 \*\*\*\*\*

15 (Whereupon, all parties present, the following  
16 proceedings were had in the presence of the jury panel.)

17 \*\*\*\*\*

18 THE BAILIFF: Please be seated.

19 THE COURT: All right.

20 Now, before we get started again, are there any  
21 empty seats that weren't empty before we left? So we  
22 don't have to go through the whole roll call again.

23 And will counsel stipulate to the presence of  
24 the jury pool?

25 MS. LUZAICH: Yes, we will.

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1 MR. LANDIS: Yes, Your Honor.

2 MR. BANKS: Yes, Judge.

3 THE COURT: Okay. All right.

4 VOIR DIRE EXAMINATION OF JUROR ESHELMAN

5 BY THE COURT:

6 Q. Is it John Eshelman?

7 A. Eshelman.

8 Q. Eshelman. Mr. Eshelman, how long have you  
9 been here in Las Vegas?

10 A. Since 1974, about 32 years.

11 Q. Good for you. What do you do for a living?

12 A. I am retired.

13 Q. And what did you do before you retired?

14 A. When I first came to town, I was in the  
15 printing industry for about 20 years, and then I went  
16 into the food industry in sales. I was with Valley Food  
17 Distributors for 18 years.

18 Q. Really. Are you married?

19 A. Yes.

20 Q. Does your wife work?

21 A. Yes, she does.

22 Q. Where does she work?

23 A. She works at Southwest Company.

24 Q. Okay. Do you have grown children?

25 A. Yes, I have got a 36 year old and a 28 year

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1 old.

2 Q. What do they do for a living?

3 A. The 36 year old works for setting up the  
4 convention and tearing them down, and the 28 year old son  
5 works with a lawn service.

6 Q. Okay. Have you or anyone close to you ever  
7 been accused of or the victim of any kind of sexual related  
8 event?

9 A. No.

10 Q. Have you or anybody close to you ever been  
11 the victim or or accused of any kind of a crime?

12 A. I have a friend that was convicted of dealing  
13 in drugs some years ago.

14 Q. Were you close to him?

15 A. I didn't know him at the time he was --

16 Q. Oh, after all that happened?

17 A. Right.

18 Q. Then you got to know him?

19 A. Right.

20 Q. Anything about that that would cause you  
21 difficulty in sitting on a jury in a criminal case like  
22 this and being fair and impartial to both sides?

23 A. No.

24 Q. Do you think that you could handle it all  
25 right?

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1 A. I believe so.

2 Q. Okay. Have you ever had any training or  
3 employment in law enforcement?

4 A. No.

5 Q. Anybody close to you?

6 A. No.

7 Q. Have you ever been on a jury before?

8 A. No.

9 Q. Have you ever had any kind of a relationship  
10 with anybody in law enforcement such that it would cause  
11 you to treat the testimony of a police officer differently  
12 than the testimony of any non police officer witness?

13 A. Well, not really. I really don't have a  
14 high regard for the police as far as that goes.

15 Q. That's what I am asking you.

16 Did something happen to you in your background  
17 that causes you?

18 A. Well, there have been several incidents  
19 where I never thought that I was ever treated with any  
20 respect from a police officer.

21 Q. Well, like traffic stops?

22 A. Yeah.

23 Q. Or things like that?

24 A. Yes.

25 Q. Can you set aside those feelings, like a

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1 police officer may have a good day, a bad day, and you  
2 may find that they --

3 A. It would be very hard.

4 There was an the incident that happened at my  
5 home some years ago when the police was looking for my  
6 older son, and I offered them to come into the house,  
7 and my younger son ended up standing in handcuffs out  
8 in front of the neighbors on a Sunday morning, and for  
9 no reason at all.

10 Q. How long ago was that?

11 A. Oh, probably 18 years ago, or so.

12 Q. But that's a long time -- a long time ago.

13 You don't think that enough time has passed that  
14 you can kind of let that go and --

15 A. Well, there have been other instances where  
16 I just don't hold the police in high regards.

17 Q. Here is what we are really getting at.

18 Can you, because the police testimony in this  
19 makes up only a portion of the testimony that is going to  
20 be heard. There is a lot of non police officer witnesses  
21 testifying.

22 Can you set aside any prejudices that you might  
23 have against policemen from what happened 18 years ago,  
24 can you leave that stuff out in the hallway and just look  
25 at the evidence and, in particular, a police officer witness,

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1 and say, look, all right, you know, he has nothing to do  
2 with anything that has happened to me over the years.

3 I am going to judge his credibility based strictly  
4 on what I see and hear right here in the courtroom, and  
5 I am not going to attach any preconceived prejudices, or  
6 anything else, just because he is a police officer.

7 Do you think that you can do that?

8 A. It would be tough.

9 MS. LUZAICH: Challenge.

10 MR. BANKS: Submit it.

11 THE COURT: There is a lot of litigation going  
12 on in this Courthouse that doesn't have any police officers  
13 involved in it.

14 Why don't we send you down to the third floor,  
15 and they will reassign you in another kind of case, how's  
16 that, okay?

17 JUROR ESHELMAN: Okay.

18 (Juror Eshelman excused.)

19 THE COURT: We are going to replace Mr. Eshelman  
20 with?

21 THE CLERK: Donna Bella, badge 196.

22 JUROR ESHELMAN: Where do I go?

23 THE BAILIFF: Third floor, Jury Commissioner's  
24 office.

25 THE COURT: Donna, if you will take that fourth

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1 seat right there, please?

2 JUROR BELLA: Okay.

3 THE COURT: All right.

4 VOIR DIRE EXAMINATION OF JUROR BELLA

5 BY THE COURT:

6 Q. Donna, have you been paying attention?

7 A. Yes, sir.

8 Q. All right, good.

9 Tell us a little about yourself. How long have  
10 you been in Las Vegas?

11 A. Five years as of May.

12 Q. And where did you come from?

13 A. San Francisco.

14 Q. San Francisco. Do you work?

15 A. Yes.

16 Q. What do you do for a living?

17 A. I own a marketing consulting agency, and  
18 working out of the home.

19 Q. Oh, you work out of your home?

20 A. Yes.

21 Q. Okay. Are you married?

22 A. No.

23 Q. Do you specialize in any particular kind  
24 of marketing?

25 A. Specific, well, technology, but a lot of

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1 local districts are here so like real estate, and we also  
2 do rentals, advertising for rentals.

3 Q. Oh, okay, all right. What did you say your  
4 husband did? Did you say you were married?

5 A. No.

6 Q. Oh, okay. How about children?

7 A. No children.

8 Q. Okay.

9 Have you or anybody close to you ever been the  
10 victim of or accused of any kind of a sexually related  
11 offense?

12 A. Not that I know of.

13 Q. Okay.

14 Have you or anybody close to you ever been  
15 the victim of or accused of just any kind of a criminal  
16 offense?

17 A. Not that I know of.

18 Q. Okay. Have you ever been on a -- have  
19 you ever had kind of special training in law enforcement?

20 A. No.

21 Q. Anybody close to you ever been trained  
22 or employed in law enforcement?

23 A. No.

24 Q. Have you ever been on a jury before?

25 A. First time.

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1 Q. First time.

2 Can you think of anything in your background  
3 that would make sitting as a juror in a case like this  
4 difficult in listening to the testimony and being fair  
5 and impartial to both sides, anything difficult about  
6 any of that?

7 A. Sometimes attention span, but I will try  
8 when I focus, and it is not a problem.

9 Q. Is there anything that would cause you  
10 difficulty in focusing on the evidence as it's produced  
11 over three or four days?

12 A. Well, no, Judge. I know that all would be  
13 crucial.

14 Q. Okay.

15 A. Right.

16 Q. So you can stay focused on what's going on  
17 here?

18 A. Yes.

19 Q. Okay, all right. Can you think of any  
20 special circumstances that would cause you to give the  
21 testimony of a police officer greater or lesser weight  
22 than any other police officer witness?

23 A. Not really. I will give it the same weight  
24 as anybody else.

25 Q. Okay.

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1 Can you think of any reason why you would be  
2 unable to withhold forming an opinion about anything  
3 having to do with this trial, or anybody having to do  
4 with this trial until you have heard all the evidence,  
5 and I have instructed you on the law.

6 Can you do that?

7 A. I can do that.

8 Q. Do you think you have a healthy, neutral  
9 kind of mindset towards approaching your duty as being  
10 a juror in a case like this?

11 A. Yes, I would.

12 Q. Not lean toward one side or the other  
13 side?

14 A. I will remain centered all the time.

15 Q. Would you be comfortable if you were the  
16 Defendant or the prosecution in this case, if you were  
17 sitting over here, and somebody that has your mindset  
18 was on the jury, would you be comfortable with that?

19 A. Most comfortable, yes.

20 THE COURT: Okay, very good.

21 MS. KOLLINS: Thank you, Judge.

22 VOIR DIRE EXAMINATION OF JUROR BELLA

23 BY MS. KOLLINS:

24 Q. Ms. Bella, did you live most of your adult  
25 life in San Francisco?

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1 MR. BANKS: 'Yeah, I've got a child care thing  
2 but 5:30 works great.

3 \*\*\*\*\*

4 (Whereupon, a brief recess was had.

5 After recess, all parties present, the following  
6 proceedings were had in open court in the presence of the  
7 jury panel.)

8 \*\*\*\*\*

9 THE COURT: There you go, perfect.

10 You guys, as soon as get to your chair, go ahead  
11 and sit down. Everyone have a seat. There shouldn't be  
12 any extras.

13 All right. Ladies and gentlemen, you are in  
14 the Eighth Judicial District Court for the County of  
15 Clark, this is Department 24.

16 My name is James Bixler, and I am the presiding  
17 Judge in this Department.

18 There is a little confusion, we are actually  
19 in Department 23.

20 24 is my Department next door, but because of  
21 the large jury panel involved here, we are using this  
22 courtroom just for the purposes of seclction, of jury  
23 selection.

24 So when the jury is selected, we will be moving  
25 next door, into Department -- actually Department 24.

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1           This is the State of Nevada v. Narcus Wesley,  
2           this is Case Number C-232494.

3           Ladies and gentlemen, what we are about to  
4           engage in is the process of selecting a jury, and a couple  
5           of bits of information to try to help you figure out where  
6           we are, and what we are going to be doing for the next  
7           period of time.

8           It's going to take a little while to pick this  
9           jury so we will be taking numerous breaks during this  
10          process.

11          If anybody has to go to the restroom, tell Joe,  
12          and go ahead and check out and come back.

13          I need to give you a little basic information  
14          about how this works until we get down to our actual  
15          jurors. A few bits of information.

16          Number one, we are going to explain to you in  
17          just a second what the case is all about, but I want you  
18          to pay close attention to where you are sitting. You  
19          have been placed in a strategic numerical order, having  
20          been assigned to you from the Jury Commissioner's office.

21          It is important that you stay in the order that  
22          you were assigned the numbers from the Jury Commissioner's  
23          office. That way everybody knows who is where without  
24          having to repeatedly ask you.

25          So we ask you that every time we take a break,

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1 make sure you note where you are sitting, and then you will  
2 get back to the same spot, and then we'll be all right.

3 We can also easily tell if somebody is missing,  
4 and we will tell who it is if you are in numerical order.

5 The second thing about the breaks.

6 When we take breaks, until we actually get a  
7 jury, you will be going in and out of the front doors  
8 here. This is important. This is the most important  
9 thing which during the trial, I will repeat to the actual  
10 jurors many, many times.

11 It is imperative that you do not discuss with  
12 anybody anything having to do with this trial, and that  
13 includes, most importantly, with each other.

14 Do not discuss this trial, anybody having to do  
15 with this trial, any aspect of this trial with anybody  
16 including each other throughout the entire course of this  
17 trial. To do so you could compromise a jury's verdict,  
18 which would result in the possibility of a case having  
19 to be tried again. So don't do it.

20 It's primarily one of the major causes of having  
21 to have retrials.

22 So just follow that instruction carefully to  
23 the letter. We won't have a problem.

24 There will be in the early stages of this process  
25 of selecting a jury, you will be going in and out.

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1           It's possible that you might see witnesses during  
2 this case. Do not engage anybody in any subject matter  
3 having to do with this trial, in fact, the best rule is  
4 don't engage anybody outside, including the court personnel  
5 with anything, anything. Don't discuss, don't talk to  
6 them.

7           If you overhear somebody outside saying anything  
8 about this case, or about anybody having to do with this  
9 case, vacate yourself from that area. Do not listen or  
10 overhear any discussions because that's a possibility of  
11 the people we don't have control over. They may say something  
12 out in the hallway.

13           Don't listen to any conversations that you overhear,  
14 and if you do hear it, come and report it to the bailiff,  
15 okay?

16           It's important that we separate the jury and the  
17 jury pool from witnesses and spectators, and the court  
18 personnel.

19           I am going to start off with a quick introduction  
20 of the people that are here that work for the Court, and  
21 I am going to have counsel introduce themselves. Give  
22 you a little, brief statement, explanation about what  
23 their case is about, and they can also introduce their  
24 witnesses.

25           It's important that you pay close attention

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1 because in a few minutes, I am going to then come back  
2 and ask you if you know anybody.

3 As counsel has introduced themselves, or their  
4 witnesses are disclosed, pay attention to who they are  
5 so you can tell us if there is anybody there that you are  
6 familiar with.

7 This is Lee Bahr right here in front of me. He  
8 is the court reporter. Lee's job is to make a verbatim  
9 record of everything that is said during this trial  
10 proceedings.

11 In order to do that, he has to hear everything  
12 that is said in the courtroom. He has to hear a question.  
13 He has to hear an answer.

14 During this jury selection process, I will be  
15 doing a lot of the questions. So will counsel.

16 So there will be questions. There will always  
17 be questions and answers throughout this whole process.

18 You may hear him stop, he may even have to yell  
19 at some point if counsel may be talking on top of each  
20 other. He may be the one that you will hear yelling, stop,  
21 I can't hear you.

22 He is not being rude. He is just doing his job.  
23 So don't hold that against him if you see that happen.

24 Teri Lee is right here. She is the Court Clerk.  
25 Her function is to swear in the witnesses. She

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1 will mark and take care of the exhibits as they are admitted  
2 into evidence.

3 She also makes the official minutes of what goes  
4 on throughout the court proceedings.

5 Here is Joe, Joe Downing, he is the bailiff.

6 He is the actual only person that the jurors  
7 are allowed to converse with.

8 You are not allowed to converse with the attorneys,  
9 or with the parties, with the witnesses, or with me, or  
10 with Lee, or with Teri. Nobody.

11 Joe is the only one that jurors are allowed to  
12 converse with.

13 So, keep that in mind. All these instructions  
14 that I give you, if you have questions, if you have problems,  
15 if you have issues of any sort, you raise your hand, you  
16 notify Joe, and Joe passes that information onto us, okay?

17 All right. Now, at this point, I am going to  
18 have the State introduce themselves, their witnesses, and  
19 then we will do the same thing with Mr. Landis and Mr.  
20 Banks.

21 Go right ahead.

22 MS. KOLLINS: Thank you, Your Honor.

23 Good afternoon, ladies and gentlemen.

24 My name is Stacy Kollins. I'm the Chief Deputy  
25 District Attorney here with the Clark County District

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1 Attorney's office.

2 This is my co-counsel, Chief Deputy District  
3 Attorney, Lisa Luzaich. We have been assigned to prosecute  
4 the matter of State of Nevada v. Narcus Wesley.

5 These crimes occurred in February, of 2007, here  
6 in Henderson, Clark County, Nevada.

7 Mr. Wesley is charged with a series of crimes,  
8 and I am going to read those to you as well and a list of  
9 witnesses that will participate, you will hear from or hear  
10 about.

11 The list is, rather long. We won't necessarily  
12 call all of these people, but it's our duty to inform you  
13 of anyone you might be aware of or have any relationship  
14 outside this case with.

15 On February 18, of 2007, Mr. Delarian Wilson was  
16 charged with committing the crimes of conspiracy to commit  
17 burglary, conspiracy to commit robbery, burglary while in  
18 possession of a deadly weapon, robbery with the use of a  
19 deadly weapon, sexual assault with the use of a deadly  
20 weapon, as well as first degree kidnapping with a deadly  
21 weapon.

22 Thank you, Ms. Luzaich.

23 The victim in this -- the named victims in this  
24 case are Danielle Browning, Justin Richardson, Aitor  
25 Eskandon, Justin Foucault, Ryan Tognotti, and Clinton

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1 Tognotti.

2 The additional witnesses that the State anticipates  
3 you will hear from or about in this case, and again, this is  
4 kind of long, so bear with me:

5 The Henderson Police Department Officer Troy  
6 Herron (phonetically), Henderson Police Department Officer  
7 Rand Allison, Henderson Police Crime Scene Analyst Jennifer  
8 Ayers, Henderson Police Department Officer David Barnes,  
9 Henderson Police Department Officer Bakalas, Henderson  
10 Police Department Detective June Castro.

11 The custodian of records from three establishments,  
12 businesses here in town, Alta Wireless, Circus Circus Hotel  
13 and Casino, as well as Nevada Power Company.

14 Additionally, you may hear from or about Henderson  
15 Police Sergeant Brian Dunaway, sexual assault nurse examiner,  
16 Linda Ebbert, Detective, Henderson Police Department Detective  
17 Bryan Hartshorn, Henderson Police Detective Itzhak Henn, a  
18 resident of Henderson, Nevada, Grant Hieb, Henderson Police  
19 Sergeant Michael Johnston, Henderson resident Michael --  
20 excuse me, Victor Michalak, Henderson Police Department  
21 Detective Anthony Niswonger, security from the Wells Fargo  
22 Bank, Walter O'Neal, Henderson Police Department Detective  
23 Rodrigo Pena, Circus Circus Hotel Security, Gerald Piro,  
24 Henderson resident Brandon Preston, Henderson Police  
25 Department Detective Craig Ridings, Henderson Police Crime

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1 Scene Analyst Joy Self, Joy Self, S-e-l-f, Wells Fargo  
2 Security, Veronica Silva, Henderson Police Department Officer  
3 Kevin Slattery, Henderson Police Department Amber Swartwood,  
4 Henderson Police Department Havon Tillmon, Henderson Police  
5 Department Fingerprint Analyst Kent Timothy, Henderson --  
6 or, excuse me, Tricia Vincente, Henderson Police Department  
7 Detective Curtis Weske, and Delarian Wilson.

8 Thank you.

9 THE COURT: Thank you, counsel.

10 Mr. Banks, Mr. Landis, which one?

11 MR. BANKS: Hi everybody.

12 My name is Jeff Banks. This is Mr. Wesley.

13 This is my co-counsel, Casey Landis.

14 There is a lot of names on that list that was  
15 just read to you all, and everybody please listen carefully  
16 to those names because if the State chooses not to call  
17 them, so please, please take note of those names, and I  
18 have got a few more that the detective may call.

19 The first one is Narviez Wesley, Mel Washington,  
20 Brian Murray, Randy Morgan, Carlos Diaz, William Harrington,  
21 and Carolyn Merit (phonetically).

22 Thank you very much.

23 THE COURT: Thanks.

24 All right. The next step in this process is to  
25 have a roll call, and so I am going to have Teri Lee call

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1 through the roll call of the jury pool that was sent to  
2 us from the Jury Commissioner's office, and as I said  
3 earlier, you are going to notice that it's in order.

4 I need for you to answer loud enough and clear  
5 enough, here, present, whatever you feel is appropriate,  
6 so that Lee can record on the record everyone's presence.

7 Teri?

8 THE CLERK: I apologize if I mispronounce your  
9 name.

10 Molli Magura.

11 JUROR MAGURA: Present.

12 THE CLERK: Eric Butler.

13 JUROR BUTLER: Here.

14 THE CLERK: Howard Kenieutubbe.

15 JUROR KENIEUTUBBE: Here.

16 THE CLERK: Ronald Polk.

17 JUROR POLK: Present.

18 THE CLERK: Debbie C. Deschaine.

19 JUROR DESCHAINED: Here.

20 THE CLERK: Gary Orta.

21 JUROR ORTA: Here.

22 THE CLERK: Mary Jo Loretto.

23 JUROR LORETTO: Here.

24 THE CLERK: Eve Crossman-Keenan.

25 JUROR CROSSMAN-KEENAN: Here.

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1 THE CLERK: Betty Fisher.  
2 JUROR FISHER: Here.  
3 THE CLERK: Nichole Dunmore.  
4 JUROR DUNMORE: Here.  
5 THE CLERK: Robert Franklin.  
6 JUROR FRANKLIN: Here.  
7 THE CLERK: Christine Foresta.  
8 JUROR FORESTA: Here.  
9 THE CLERK: John Oberweis.  
10 JUROR OBERWEIS: Here.  
11 THE CLERK: Melinda Wright.  
12 JUROR WRIGHT: Here.  
13 THE CLERK: John Eshelman.  
14 JUROR ESHELMAN: Here.  
15 THE CLERK: Wayne Daley.  
16 JUROR DALEY: Here.  
17 THE CLERK: Donna Bella.  
18 JUROR BELLA: Here.  
19 THE CLERK: Justin Gries.  
20 JUROR GRIES: Here.  
21 THE CLERK: Mark Snelling.  
22 JUROR SNELLING: Here.  
23 THE CLERK: Kim Chapkis.  
24 JUROR CHAPKIS: Here.  
25 THE CLERK: Michael Baird.

1 JUROR BAIRD: Here.  
2 THE CLERK: Denise Andalon.  
3 JUROR ANDALON: Here.  
4 THE CLERK: Jesus Gonzalez.  
5 JUROR GONZALEZ: Here.  
6 THE CLERK: C. Arnone.  
7 JUROR ARNONE: Here.  
8 THE CLERK: Everett Carney.  
9 JUROR CARNEY: Here.  
10 THE CLERK: John Little.  
11 JUROR LITTLE: Here.  
12 THE CLERK: Elizabeth Martin.  
13 JUROR MARTIN: Here.  
14 THE CLERK: Robert Hoffman.  
15 JUROR HOFFMAN: Present.  
16 THE CLERK: Julie Gleason.  
17 JUROR GLEASON: Here.  
18 THE CLERK: Kelly Russo-Winn.  
19 JUROR RUSSO-WINN: Here.  
20 THE CLERK: Danielle Martin or Daniel Martin.  
21 JUROR MARTIN: Here.  
22 THE CLERK: Bonnie Huerta.  
23 JUROR HUERTA: Here.  
24 THE CLERK: Frances Franklin.  
25 JUROR FRANKLIN: Here.

1 THE CLERK: Emily Guido.  
2 JUROR GUIDO: Here.  
3 THE CLERK: Becky Hansen.  
4 JUROR HANSEN: Here.  
5 THE CLERK: Susan Gregg.  
6 JUROR GREGG: Here.  
7 THE CLERK: Aminne Menghisteab.  
8 JUROR MENGHISTEAB: Here.  
9 THE CLERK: Barbara Wagner.  
10 JUROR WAGNER: Here.  
11 THE CLERK: Robbie Holley.  
12 JUROR HOLLEY: Here.  
13 THE CLERK: Stephanie Abernathy.  
14 JUROR ABERNATHY: Here.  
15 THE CLERK: Bonnie Brunson.  
16 JUROR BRUNSON: Here.  
17 THE CLERK: Joann Czerwinski.  
18 JUROR CZERWINSKI: Here.  
19 THE CLERK: Juaneta Gibson.  
20 JUROR GIBSON: Here.  
21 THE CLERK: Brenda Medeiros.  
22 JUROR MEDEIROS: Here.  
23 THE CLERK: Sheila Rivera.  
24 JUROR RIVERA: Here.  
25 THE CLERK: Kelly Bethel.

1 JUROR BETHEL: Here.  
2 THE CLERK: Kay McCary.  
3 JUROR MC CARY: Here.  
4 THE CLERK: Kyu Choe.  
5 JUROR CHOE: Here.  
6 THE CLERK: Paula Socha.  
7 JUROR SOCHA: Here.  
8 THE CLERK: Greg Middleton.  
9 JUROR MIDDLETON: Here.  
10 THE CLERK: James Vaughn.  
11 JUROR VAUGHN: Here.  
12 THE CLERK: Madilyn Shook.  
13 JUROR SHOOK: Here.  
14 THE CLERK: Barbara Anderson.  
15 JUROR ANDERSON: Here.  
16 THE CLERK: Richard Rehm.  
17 JUROR REHM: Here.  
18 THE COURT: Carmen Sanchez.  
19 JUROR SANCHEZ: Here.  
20 THE CLERK: Nicholis Morales.  
21 JUROR MORALES: Here.  
22 THE CLERK: S. Falcone.  
23 JUROR FALCONE: Here.  
24 THE CLERK: Patrick Mitchell.  
25 JUROR MITCHELL: Here.



1 THE CLERK: Romeo Samblero.  
2 JUROR SAMBLERO: Here.  
3 THE CLERK: Elisa Scarone.  
4 JUROR SCARONE: Here.  
5 THE CLERK: Bruce Leal.  
6 JUROR LEAL: Present.  
7 THE CLERK: Alice Barnes.  
8 JUROR BARNES: Here.  
9 THE CLERK: Mario Barela.  
10 JUROR BARELA: Here.  
11 THE CLERK: Roy Fish, Jr.  
12 JUROR FISH: Here.  
13 THE CLERK: Catherine Beta.  
14 JUROR BETA: Present.  
15 THE CLERK: Emei Trie.  
16 JUROR TRIE: Here.  
17 THE CLERK: Timothy D. Thompson.  
18 JUROR THOMPSON: Here.  
19 THE CLERK: David Zeamer.  
20 JUROR ZEAMER: Here.  
21 THE CLERK: John Scrutchens.  
22 JUROR SCRUTCHENS: Here.  
23 THE CLERK: Doc Wiener.  
24 JUROR WIENER: Here.  
25 THE CLERK: Gary Morris.

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1 JUROR MORRIS: Here.  
2 THE CLERK: Andrea Adams.  
3 JUROR ADAMS: Here.  
4 THE CLERK: Diana Henry.  
5 JUROR HENRY: Here.  
6 THE CLERK: Lawrence Kinsler.  
7 JUROR KINSLER: Here.  
8 THE CLERK: Maryann Russo.  
9 JUROR RUSSO: Here.  
10 THE CLERK: Robert J. Skinner, Sr.  
11 JUROR SKINNER: Here.  
12 THE CLERK: Robert Golechen.  
13 JUROR GOLECHEN: Here.  
14 THE CLERK: Priscilla Rivera.  
15 JUROR RIVERA: Here.  
16 THE CLERK: Melissa A. Celeste.  
17 JUROR CELESTE: Here.  
18 THE CLERK: Ellen Mackey.  
19 JUROR MACKEY: Here.  
20 THE CLERK: Mackey, I'm sorry. They are all  
21 here.  
22 THE COURT: Is there anybody present whose name  
23 was not called? I don't know how that could happen. We've  
24 got every seat full.  
25 All right. We are about to start the process of

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1 jury voir dire questions to test for qualifications to see  
2 if you are going to be able to serve as a juror.

3 It's important that you understand that it's  
4 imperative you be truthful and you be honest, and you be  
5 open about this, the questions -- the answers to the questions  
6 that I am about to ask you.

7 We are not prying into your personal lives, but  
8 it's important for everybody -- the State, the Defense, the  
9 Court, that we determine whether or not there are such a  
10 bias or prejudice that you may harbor from things that have  
11 happened to you in the past that you would not be able to  
12 sit as a fair and impartial juror, which is the only thing  
13 that we are trying to find.

14 We are trying to find persons who can be fair  
15 and impartial both to the Defense and the State in this  
16 case.

17 We realize that everyone comes here with life  
18 experiences. You can call them whatever, baggage, however  
19 you want to approach it, but we don't live in a bubble,  
20 we realize that we all come with a certain amount of life  
21 experiences.

22 But what we want to know is if something so  
23 traumatic, dramatic has occurred in your past, if there  
24 is something about your background that you simply cannot  
25 leave out in the hallway, and approach your job as a juror

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1 fairly and impartially, that's all we are trying to do is  
2 to find out.

3 So, with that in mind, as we say repeatedly, we  
4 want you to leave all of those things out in the hallway,  
5 and we want you to bring your good common sense here in  
6 your service as a juror.

7 Now, with that in mind, we do this questioning,  
8 this voir dire under oath.

9 So the first -- the next step is I am going to  
10 have everybody stand, raise your right hand, and Teri Lee  
11 is going to swear you all in as members of this prospective  
12 jury pool.

13 (Jury panel duly sworn.)

14 THE CLERK: Thank you, you may be seated.

15 THE COURT: Later on, at some point during the  
16 selection process, there will be what is referred to as  
17 challenges that each side in the case are allowed a certain  
18 number of exemptions.

19 They just simply say for whatever reason they  
20 ask a particular juror to step down, and they will be  
21 replaced.

22 I don't want you, when we get to that point, I  
23 don't want anybody to get offended because you are just  
24 asked to step down. It is just a part of the selection  
25 process to make sure that everybody is treated fairly.

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1           So don't get -- get upset if you sat through here  
2           for hours, and then you get towards the end, and somebody  
3           says, just please step down for no reason. That's just  
4           the way the system works.

5           I am going to ask everybody in the jury pool a  
6           certain number of basic foundational, qualifying questions.

7           It's important that we make a record of these  
8           questions and answers.

9           If there is nobody that raises their hand, first  
10          of all, if your answer is affirmative, yes, I want you to  
11          raise your hand and just kind of hold it until I get to you.

12          When I get to you, we will start from your right,  
13          my left in the back row, and we will kind of sweep around  
14          the room in this direction until I have gotten to everybody,  
15          all right?

16          If there is no affirmative answer by anybody,  
17          then I will make the answer so the answer is complete and  
18          will say that there was no answer and the answer was no,  
19          all right?

20          Here are the basic under foundational, qualifying  
21          questions.

22          Is there anyone here in this jury pool who has  
23          ever been convicted of a felony?

24          Okay. All right. In the middle. I need you  
25          to stand up, identify yourself by name, and then the last

1 three numbers of your jury badge.

2 Okay.

3 JUROR HOFFMAN: My name is Robert Hoffman,  
4 242.

5 THE COURT: What were you convicted of?

6 JUROR HOFFMAN: A DUI.

7 THE COURT: A felony?

8 JUROR HOFFMAN: I do believe, in 1990.

9 THE COURT: Where, here in Clark County?

10 JUROR HOFFMAN: Here in Vegas.

11 THE COURT: Was it a third offense or what  
12 made it a felony?

13 JUROR HOFFMAN: They just charged me with a  
14 felony.

15 THE COURT: Was somebody -- was there an  
16 accident and somebody hurt?

17 JUROR HOFFMAN: No.

18 THE COURT: Was it a third --

19 JUROR HOFFMAN: No accident.

20 THE COURT: Was it a third offense?

21 JUROR HOFFMAN: Well, I have had several of  
22 these DUI's in the past so --

23 THE COURT: Okay. That's part of what happened  
24 in Clark County. And you have never had your civil rights  
25 reinstated or restored in any fashion?

1 JUROR HOFFMAN: Not that I know of, no.

2 THE COURT: Okay. Go on back down to the third  
3 floor to the Jury Commissioner's office and let them know  
4 that, okay?

5 JUROR HOFFMAN: Okay.

6 THE COURT: Thank you very much.

7 JUROR HOFFMAN: Thank you.

8 (Juror Hoffman excused.)

9 THE COURT: And then beside him, I saw another  
10 hand?

11 JUROR CARNEY: Yeah, Everett Carney, juror number  
12 232.

13 THE COURT: Okay. What were you convicted of?

14 JUROR CARNEY: You name it, other than killing  
15 somebody.

16 I'm serious, armed robbery, burglary, and grand  
17 theft auto. As a juvenile, in the State of California,  
18 I was expunged, and I worked with kids in the system for  
19 many years.

20 THE COURT: Did you have your civil rights  
21 restored?

22 JUROR CARNEY: That's the expungement I believe  
23 took care of that.

24 THE COURT: Well, not exactly. Expunging your  
25 record just simply means that it is sealed, but there is

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1 a different process to have, when you actually have your  
2 civil rights reinstated.

3 JUROR CARNEY: I believe they were. I had a  
4 paper made. This was 40 some years ago, I mean, it was  
5 so far -- I had a wife and kid. I'm a decent and knowing  
6 citizen. That's all I said. I sat on jury duty in this  
7 County before.

8 THE COURT: You have?

9 JUROR CARNEY: Yes, sir.

10 THE COURT: And they -- you told them what you  
11 just told us?

12 JUROR CARNEY: Yes, sir.

13 THE COURT: Have a seat.

14 JUROR CARNEY: I told them when they called me  
15 this time so, yeah, I asked them every time because I don't  
16 want to mess up anybody's time.

17 THE COURT: Okay. You are all right then.

18 JUROR CARNEY: Okay?

19 THE COURT: Anybody else? No. Oh, I see another  
20 hand.

21 JUROR SAMBLERO: It's Romea Samblero, it's 384.

22 THE COURT: All right. What were you convicted  
23 of?

24 JUROR SAMBLERO: I got a DUI in '91, and this is  
25 the first time. That's the only thing I had.



1 THE COURT: What happened to you as a result of  
2 your DUI?

3 JUROR SAMBLERO: There was an accident that I hit  
4 a pole. 19 --

5 THE COURT: Did you get fined?

6 JUROR SAMBLERO: I got fined. I went to classes.

7 THE COURT: You went to DUI classes?

8 JUROR SAMBLERO: Yes.

9 THE COURT: AND you got fined?

10 JUROR SAMBLERO: Yes.

11 THE COURT: You're all right.

12 Anybody else?

13 Okay. Is there anybody in this jury pool who  
14 is not a citizen of the United States?

15 All right. There is no responses. The answer  
16 is, no.

17 Is there anyone here who has such a sympathy,  
18 or a prejudice, or a bias that relates to age, race,  
19 religion, gender, national origin that they feel it would  
20 affect their ability to be open-minded, and fair and  
21 impartial to both sides in this case?

22 No, there is no response. So the answer is  
23 no.

24 Are there any persons in this jury pool who  
25 know any of the attorneys, any attorneys for the State?

1 No.

2 Any of the attorneys for the Defense?

3 No.

4 The Defendant?

5 No.

6 Any of the witnesses that were named by the State  
7 or the Defense?

8 We have a couple of hands here.

9 All right. Then next, stand and identify yourself  
10 with your juror number.

11 JUROR WAGNER: Barbara Wagner, and my number is  
12 275.

13 THE COURT: Okay. Who did you know?

14 JUROR WAGNER: If IT'S Brian Murray that was  
15 a coach at Western High School, I worked at Western High  
16 School with him, and my kids have also.

17 THE CLERK: I can't hear you. You have to speak  
18 up, I'm sorry.

19 JUROR WAGNER: I'm sorry. Brian Murray, who was  
20 on the Defense list, he was a teacher at Western High School,  
21 a coach. I don't know if it is the same Brian Murray or  
22 not.

23 MR. LANDIS: It is, Judge.

24 THE COURT: Did you know him -- do you know him  
25 personally, I mean --,

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1 JUROR WAGNER: Well, I worked at the school with  
2 him.

3 THE COURT: Did you -- was he a personal friend  
4 of yours? Did you socialize with him.

5 THE COURT: No not out of school.

6 THE COURT: But was there -- is there anything  
7 about the fact that you know him, I mean, did you know him  
8 so well that if you saw him here on the witness stand, you,  
9 I mean, you may have had a pleasant experience knowing him,  
10 or maybe unpleasant, but is there anything about your  
11 experience of knowing him if you saw him on the witness  
12 stand you would give his testimony any greater or lesser  
13 weight than any other witness?

14 JUROR WAGNER: I don't think so.

15 THE COURT: That's fine. You're fine. There was  
16 another hand that I saw.

17 Yes?

18 JUROR FALCONE: Salvatore Falcone, 377.

19 There were two next door neighbors who were with  
20 the Henderson Police Department. One was an officer and  
21 the other one is a detective.

22 THE COURT: Do you remember their names?

23 JUROR FALCONE: I don't remember their names.

24 I might remember their faces, but they moved about a year  
25 and a half ago. I met them at a few neighborhood community

1 associations, but that's about all.

2 THE COURT: Well, my question to you is the same  
3 basic question.

4 You don't know their names, but you might recognize  
5 them if they would walk in, and you see them get on the witness  
6 stand?

7 JUROR FALCONE: Yes.

8 THE COURT: You might recognize them?

9 JUROR FALCONE: Yes.

10 THE COURT: Again, not knowing if you had pleasant  
11 experiences or unpleasant experiences with them, if you saw  
12 one or both of them on the stand, and it turns out that they  
13 were people that you actually recognized, as being a neighbor,  
14 would you treat their testimony any differently than anybody  
15 else's testimony that you didn't know?

16 JUROR FALCONE: No.

17 THE COURT: Would you give it more or lesser  
18 weight than to anybody else?

19 JUROR FALCONE: No.

20 THE COURT: Okay, good enough. Anybody else?

21 Okay, that was it for that.

22 THE COURT: All right. Before I ask this next  
23 question, I need to kind of give you a little explanation.

24 This trial is expected to last the rest of this  
25 day, Thursday, Friday, into Monday and then Tuesday, but

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1 it won't go any further than that, and it may only be a  
2 little bit of Tuesday, as a matter of fact.

3 So, in the big picture of what goes on in this  
4 Courthouse, this trial isn't going to last too long.

5 Some trials last weeks. Unfortunately, some of  
6 them last longer than that.

7 So the next thing I am going to ask you that I  
8 want you to be careful about bailing out of here too easily  
9 or too quickly because if you got something that you absolutely  
10 have to do that you can't get out of over the next five days,  
11 then I will consider letting you off. But be careful what  
12 you ask for because you might get recycled onto a real long  
13 trial. So like I say, be careful what you ask for.

14 Now, with that having been said, this case is going  
15 to last for the next five days possibly.

16 Is there something in your life over the next five  
17 days that is of such an emergency type of a matter that would  
18 prevent you from being able to serve as a juror over the  
19 next five days, from now until possibly Tuesday, and the  
20 kinds of things that I am referring to.

21 If you have a paid ticket to someplace that you  
22 cannot get a refund on, and if you miss, you are going to  
23 be out a bunch of money, or if you have a doctor's appointment  
24 that you have been waiting six months or eight months for,  
25 and it will take another six or eight months if you have to

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1 reschedule it.

2 If you have something of that nature that you  
3 simply cannot make arrangements to reschedule, or to move,  
4 and you just can't serve, because what will happen is if  
5 you are in that category, if it qualifies, I will excuse  
6 you and send you down to the third floor, but again, they  
7 will recycle you, and you don't get out. You just get  
8 moved.

9 Economic reasons, economic hardships are in and  
10 of themselves not enough to excuse somebody.

11 Almost everybody here will in some fashion or  
12 another incur some kind of an economic hardship from serving  
13 on a jury.

14 We try to minimize that by paying you a lot of  
15 money to be here.

16 Sometimes it's not enough, but I just want you  
17 to know, economic hardship reasons alone are not going to  
18 get you off, okay?

19 Now, who has something of an emergency nature  
20 between now and next Tuesday that would absolutely prevent  
21 them from being able to serve as a juror?

22 All right. Stand up.

23 JUROR POLK: Yes, sir.

24 THE COURT: Who are you, and what is your badge  
25 number?

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1 JUROR POLK: Badge number 0077.

2 THE COURT: What's your name?

3 JUROR POLK: Ron Polk.

4 THE COURT: Okay.

5 JUROR POLK: I don't know if this is important  
6 enough, but I work for the Department of Defense out at  
7 Nellis Air Force Base, and we have Pentagon inspection  
8 next week.

9 THE CLERK: I can't hear him.

10 THE COURT: He works for the Department of  
11 Defense. He has a Pentagon inspection.

12 JUROR POLK: Yes, sir.

13 THE COURT: And when is it, is that over the  
14 weekend?

15 JUROR POLK: It starts Friday, Saturday, Sunday,  
16 Monday and Tuesday.

17 THE COURT: But you are not in the Air Force?  
18 You are just a contractor?

19 JUROR POLK: I work for the Department of Defense.

20 THE COURT: 'Oh, okay, all right.

21 Actually, that's probably just exactly what I'm  
22 talking about. They probably don't come out very often.

23 JUROR POLK: Okay.

24 THE COURT: Here's the deal.

25 You need to, when you go down to the third floor,

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1 let them know that you are off because you got a Department  
2 of Defense inspection, and give them a better time frame.  
3 I don't know if you have them, what, every six months or  
4 so?

5 JUROR POLK: Sure, every six months.

6 THE COURT: All right. Well, tell them when  
7 your next one is scheduled and say, you know, can you recycle  
8 me in like 90 days, or something.

9 JUROR POLK: Sure.

10 THE COURT: And they will fix you up, okay?

11 JUROR POLK: Thank you sir.

12 THE COURT: All right.

13 (Juror Polk excused.)

14 THE COURT: Now, anybody else.

15 THE CLERK: We need to replace Mr. Polk.

16 THE COURT: Yeah, and we are going to replace --  
17 he is in the number four position.

18 THE CLERK: Yeah, and that will be John Eshelman,  
19 badge 190.

20 THE COURT: John, you are coming in the one odd  
21 seat right there so you go ahead and take that fourth seat.  
22 We are going to have somebody try and keep everybody  
23 straight.

24 Okay. Now, anybody else? And we will start  
25 over here, you, sir.

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1 JUROR ARNONE: Charles Arnone, 228.

2 THE COURT: Okay.

3 JUROR ARNONE: I have litigation settlement Friday  
4 afternoon at one o'clock.

5 THE COURT: A civil litigation settlement?

6 JUROR ARNONE: Correct.

7 THE COURT: You are with your attorney, or something,  
8 on Friday afternoon?

9 JUROR ARNONE: Well, we are settling a class action  
10 lawsuit, and all the people are receiving their checks that  
11 we have coming.

12 THE COURT: Well, you have got to be able to get  
13 your check.

14 JUROR ARNONE: It's a big check.

15 THE COURT: All right, that's fine.

16 That would be right in the middle of what we are  
17 doing, and that is probably going to be too distracting,  
18 so that's fine.

19 When you go down to the third floor Jury  
20 Commissioner's office, you let them know, and they will  
21 recycle you. Just tell them when it is going to be convenient  
22 because then they have -- the pools are coming in every  
23 single week, you know, so tell them 90 days, whatever,  
24 okay?

25 JUROR ARNONE: Okay.

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1 THE COURT: Okay?

2 JUROR ARNONE: Thank you.

3 THE COURT: All right. Thank you very much.

4 JUROR ARNONE: Thank you.

5 (Juror Arnone excused.)

6 THE CLERK: There's a hand way in the back.

7 THE COURT: Oh, okay, sorry.

8 JUROR Special occasions.

9 THE COURT: Well, like your anniversary?

10 JUROR well; not quite. It's my little brother's  
11 first birthday, and I got a couple of rooms reserved in  
12 Laughlin, and if I don't make the reservation, it will  
13 be charged to my card.

14 THE COURT: When is it?

15 JUROR BUTLER: It's tonight, Thursday and Friday.

16 THE COURT: No, go ahead and go.

17 JUROR BUTLER: Thank you.

18 THE COURT: What is your name?

19 JUROR BUTLER: Eric Butler.

20 THE COURT: All right. Go ahead and go down.

21 Again, let them know what a good time frame would  
22 be, and they will recycle you back in, say, like anywhere  
23 from 90 to 180 days, okay?

24 JUROR BUTLER: All right. Thanks.

25 (Juror Butler excused.)

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1 THE CLERK: And Wayne Daley, badge 192 to take  
2 that chair, please.

3 THE COURT: Mr. Daley, if you will take that  
4 second chair right there, please.

5 Okay, there was somebody in that -- we'll take  
6 the first row. Right there, you are up, ma'am.

7 JUROR CHAPKIS: Kim Chapkis, badge 209. I have  
8 child care issues. I have to pick up my child home from  
9 school.

10 My husband cannot do it because he is in a one  
11 person office. He works solely on commission, and my  
12 husband leaves for work at 5:30 every morning until 4:30  
13 in the afternoon.

14 THE COURT: Here is how we kind of do this. Do  
15 you have any other family in town?

16 JUROR CHAPKIS: No.

17 THE COURT: All right. We will let somebody  
18 off once, but the next time that you get subpoenaed down  
19 here, you are going to have enough of a lead time, and I  
20 will be telling you right now, make some arrangements  
21 because this is one of those things that a lot of women  
22 have, whether they are married or single, if they are  
23 single, obviously, it's different, but if they are married,  
24 you have got a husband that works, the child care issues  
25 that are very touchy and difficult. But they will have

1 to have some kind of arrangements made.

2 So the next time, ask them to give you enough  
3 lead time so that you can make some other arrangements to  
4 handle that.

5 JUROR CHAPKIS: Okay.

6 THE COURT: Because, like I say, it would only  
7 be for a few days so it won't be impossible or difficult  
8 to make arrangements for a few days.

9 So let them know. Go ahead and go on down to  
10 the third floor, and then tell them that you will need  
11 enough lead time next time so that you can make some  
12 arrangements.

13 JUROR CHAPKIS: Okay.

14 THE COURT: Okay?

15 JUROR CHAPKIS: Thank you.

16 THE COURT: All right.

17 (Juror Chapkis excused.)

18 THE COURT: All right. We were in the first row.

19 All right. In the second row, let's go, start  
20 with the end. Did somebody down at the end have their  
21 hand up?

22 JUROR FRANKLIN: Hi, my name is Frances Franklin,  
23 and my number is 258.

24 THE COURT: What's wrong, Frances?

25 JUROR FRANKLIN: I'm up here because one of the

1 reasons you said that I could be up here, but I really  
2 cannot afford to miss that many days from work.

3 I live by myself, and I live from paycheck to  
4 paycheck, and today I am not getting paid.

5 THE COURT: Where do you work?

6 JUROR FRANKLIN: The silver Nugget.

7 THE COURT: What do you do there?

8 JUROR FRANKLIN: Work in the bowling alley.

9 THE COURT: And like I said, let's do this,  
10 because we are not supposed to let you go because, you  
11 know, you are off work and don't get paid. There is a  
12 lot of people that fall into that category.

13 Let's, let's see how we are doing. If we run  
14 out of people, then we got to start this whole thing all  
15 over again. So let's just kind of put you on hold here.  
16 See how far we get, okay?

17 JUROR FRANKLIN: Okay. Thank you, sir.

18 THE COURT: Somebody right next to her. Yes,  
19 sir, you.

20 JUROR MARTIN: Daniel Martin, 250.

21 I'm a student, and I have class tomorrow and  
22 classes all next week, and it would be very difficult to  
23 reschedule those lectures.

24 THE COURT: What -- where do you go to school?

25 JUROR MARTIN: UNLV.

1 THE COURT: They are not finals yet. Finals don't  
2 start until another month.

3 JUROR MARTIN: Yeah, but that's tomorrow, if  
4 I miss the lectures, they are hard of difficult to make  
5 up.

6 THE COURT: Well, that's probably true. Are you  
7 out of school in the summer?

8 JUROR MARTIN: Yeah.

9 THE COURT: All right. Go on down foot to the  
10 Jury Commissioner's office and tell them to reschedule you,  
11 say, in about 60 days when you will get out of school, and  
12 you won't have that problem.

13 THE CLERK: Is your badge 210, sir?

14 JUROR MARTIN: 250.

15 THE CLERK: 2?

16 JUROR MARTIN: 250.

17 THE CLERK: Thank you.

18 THE COURT: Okay.

19 (Juror Martin excused.)

20 THE COURT: Yes.

21 JUROR GLEASON: I'm Julie Gleason, 247. I also  
22 have child care issues.

23 My husband is out of the country so I am kind  
24 of a single mom for the next couple of weeks.

25 THE COURT: How old are your kids?

1 JUROR GLEASON: They are 10 and 12, Your Honor.

2 THE COURT: Well, you don't pick them up and  
3 take them to school, do you?

4 JUROR GLEASON: Oh yeah, I do. We -- they go  
5 to a private school, and I don't live close to the school,  
6 and they have after-school activities, and things that  
7 go on, so they get picked up at different times and --

8 THE COURT: When are they out of school?

9 JUROR GLEASON: One is out in --

10 THE COURT: No, no, I mean, they are not in  
11 year around school at that age, are they?

12 JUROR GLEASON: No, they are not.

13 THE COURT: Are they off for the summer?

14 JUROR GLEASON: Yeah, and I can do it at another  
15 time. I just don't have any help right now.

16 THE COURT: Then we will do that. We will schedule  
17 you -- we will go ahead and I'll excuse you, and let them  
18 know and say, please recycle me during June, July, August,,  
19 something like that, okay?

20 JUROR GLEASON: Okay.

21 THE CLERK: Is that badge 247?

22 JUROR GLEASON: Yes.

23 THE COURT: YES.

24 THE CLERK: Thank you.

25 JUROR GLEASON: Thank you.

1 (Juror Gleason excused.)

2 THE COURT: Okay. That's the second row. Third  
3 row, right down at the end. Yes, you?

4 JUROR GUIDO: My name is Emily Guido. My number  
5 is 259.

6 THE COURT: What's wrong?

7 JUROR GUIDO: It's my birthday tomorrow, and my  
8 sister already made an arrangement for starting tomorrow  
9 into the whole weekend for us to go away to California.

10 THE COURT: Again, Joe will make you a birthday  
11 cake. Okay, that's fine.

12 JUROR GUIDO: I'm sorry, Your Honor.

13 THE COURT: No, that's fine, that's fine.

14 Just go down, just tell them that it's your  
15 birthday tomorrow, and that we said you could come back  
16 and recycle later.

17 JUROR GUIDO: Okay.

18 THE COURT: That's fine.

19 JUROR GUIDO: Thank you, Your Honor.

20 (Juror Guido excused.)

21 THE COURT: There was another hand in that row  
22 right there.

23 Okay. Yes, sir, and I will come back to you in  
24 just a second.

25 Yes, sir.

001587



1 JUROR GONZALEZ: My name is Jesus Gonzalez, 227.  
2 I got to take care of my kids.

3 THE CLERK: Take care of who?

4 THE COURT: You have to take care of who?

5 JUROR GONZALEZ: My kids. I have got two.

6 THE COURT: Where is your wife?

7 JUROR GONZALEZ: She works swing shift.

8 THE COURT: What time is that shift, what time  
9 does she have to work?

10 JUROR GONZALEZ: She works from 12 o'clock to  
11 ten o'clock.

12 THE COURT: And where are your kids that you have  
13 to --

14 JUROR GONZALEZ: My --

15 THE COURT: You will be home by 5, 5:30 every  
16 day, I can promise you.

17 JUROR GONZALEZ: Okay, but I need to take my  
18 kids to the training yet. I don't know if I can explain.

19 THE COURT: Well, if I let you go this time,  
20 are you going to be able to make arrangements for the,  
21 say, in about three months?

22 JUROR GONZALEZ: Yeah.

23 THE COURT: Okay. I will let you go, but you  
24 need, the next time you get subpoenaed, let them know  
25 that like maybe over the summertime, and then you tell

1     them you need a little time to make some arrangements,  
2     okay?

3             JUROR GONZALEZ: No problem, I can do that.

4             THE COURT: All right. Go on down to the third  
5     floor.

6             JUROR GONZALEZ: Okay, thank you.

7             (Juror Gonzalez excused.)

8             THE COURT: The last row back there.

9             JUROR RIVERA: My name is Sheila Rivera, my  
10     badge number is 301.

11             I am raising my granddaughter. She is 11. She  
12     has been with me since she was five years old.

13             My husband is not healthy, so I have to take  
14     her to activities after school. I do take her to school  
15     in the morning, but I am willing to serve in June or July  
16     when she is off to her other grandmother's house.

17             THE COURT: All right. Go down and let them  
18     know that you have got a time frame, a window that you  
19     don't have that problem through the summer, okay?

20             JUROR RIVERA: Yes, thank you.

21             (Juror Rivera excused.)

22             THE COURT: And then two over. Yes? I don't  
23     mean to be pointing.

24             JUROR GIBSON: I don't mind you pointing.

25             THE CLERK: We need you to speak up.

1 JUROR GIBSON: Okay. Badge number 9-- or 298,  
2 okay. I also have a child care issue but mainly, my husband  
3 is going to go ballistic if you say like only four days,  
4 how early do you have to be here in the morning?

5 THE COURT: We won't be starting before ten  
6 o'clock.

7 JUROR GIBSON: Oh, okay. He can handle either  
8 taking them in or taking them out. That would be fine.

9 THE COURT: One or the other he can handle?

10 JUROR GIBSON: But I think he will growl at  
11 the picking up, but that should work.

12 THE COURT: Okay, all right.

13 And so you know, we have matters that start  
14 like before the trial starts. So the trial really won't  
15 ever start before 10, and we try to be done by 5, 5:30, and  
16 so that's kind of the time frame.

17 JUROR GIBSON: I don't have that much because  
18 they can't even get into their school until 8:40 because  
19 of the law now.

20 THE COURT: That won't be a problem.

21 JUROR GIBSON: Thank you.

22 (Juror Gibson excused.)

23 THE COURT: Did I see somebody else back there  
24 or not?

25 Okay. Are we on this side? The front row.

001590

1           You, sir.

2           JUROR CHOE: My name is Kyu Choe my badge number  
3 is 332. I have a problem.

4           THE COURT: What's your number again?

5           THE CLERK: 332.

6           JUROR CHOE: 332, sir. I have a problem with  
7 the English, sir.

8           THE COURT: You have a problem with what?

9           THE CLERK: English.

10          JUROR CHOE: I just speak little English, but I  
11 cannot, you know, documents, and I don't understand.

12          THE COURT: There won't be any technical testimony  
13 involved here.

14          MS. LUZAICH: Sexual assault exam. Fingerprints.  
15 Sorry.

16          THE COURT: Well, do you think that that language  
17 barrier would cause a problem?

18          MR. BANKS: We have no objection to his being  
19 excused.

20          THE COURT: Okay.

21                Maybe, maybe for purposes of this, there is going  
22 to be some technical information that might be difficult  
23 to grasp.

24                All right. Go down there.

25                They have got plenty of litigation going on.

1           Go down to the third floor and tell them what  
2 happened, and they will recycle you back into another kind  
3 of a case, okay?

4           JUROR CHOE: Yes. Thank you.

5           (Juror Choe excused.)

6           THE COURT: All right. First row, I am looking  
7 at. Yes, you right there.

8           JUROR SANCHEZ: Carmen Sanchez, badge number 272.

9           I have the same issue with child care. I don't  
10 have anybody to pick up my daughter and take her. My husband  
11 works at --

12          THE CLERK: Did you say 272?

13          JUROR SANCHEZ: 272, I'm sorry, 372.

14          THE CLERK: I was going to say, I don't have a  
15 272. Okay, thank you.

16          JUROR SANCHEZ: My husband works at night, and  
17 I work during the day, so I would be able to serve on a  
18 jury in the summertime when my husband works in the morning  
19 as well as I do, then he could take our daughter and pick  
20 her up.

21          THE COURT: Okay.

22                Again, you will need to tell them.

23                I will let you go, and you will need to tell  
24 them that you have some time periods during the summertime  
25 where you won't have this particular issue.

1           Otherwise, if they can't get you back in the  
2 next time you have to tell them, I need enough lead time  
3 to get some other arrangements made, okay?

4           JUROR SANCHEZ: Okay, thank you.

5           THE COURT: All right.

6           (Juror Sanchez excused.)

7           THE COURT: In the second row, let me go this  
8 way. Third down. You, sir.

9           JUROR SAMBLERO: Romea Samblero, 384.

10          I really got two issues.

11          The first issue is I work with six employees,  
12 and I am, and where I am behind right now with my car  
13 payment for one month, and secondly, I turned 50 yesterday,  
14 and the celebration at my house. I don't know if I can  
15 have another 50, or so.

16          THE COURT: You probably only get one of those  
17 but when is the party?

18          JUROR SAMBLERO: Actually, my wife started cooking  
19 this morning, and I have got a lot of friends from out of  
20 town and everyone is coming over.

21          THE COURT: Will you be able to -- let me do  
22 this. We are getting rid of a lot of a lot of people  
23 here.

24          Let's wait and see how this goes, see how many  
25 people we have got left. We are going to be getting a

1 little short here.

2 Yes, right next to him.

3 JUROR SCARRONE: My name is Elisa Scarrone. My  
4 badge number is 389.

5 I have issues with my parents. My father just  
6 had a heart attack, and I have to go back to work to take  
7 care of him.

8 THE COURT: What about your mom?

9 JUROR SCARRONE: And when you mentioned 5:30,  
10 it's a bit late.

11 THE COURT: Well, 5:30 is the latest. Most of  
12 the time, we are out of here by five o'clock. Is that going  
13 to be impossible?

14 JUROR SCARRONE: Well, I finish work at three,  
15 and I always go over there after three and help them out.

16 THE COURT: Can you make some other arrangements  
17 for a couple days? Who does it when you --

18 JUROR SCARRONE: It's pretty hard. I have brothers,  
19 but they work. Everybody works. I have nobody going over  
20 there. I'm the only one that can go over there.

21 THE COURT: What about your mom?

22 JUROR SCARRONE: My mother? She works, too.

23 THE COURT: Well, again, just -- we are getting  
24 kind of borderline here only because there are some other  
25 people for a few days, you might have to just have to make

1 some arrangements. It's only for an hour or two. Let's  
2 see -- let's see how we are doing here.

3 JUROR SCARRONE: Okay.

4 THE COURT: We are getting -- we are starting  
5 to get kind of thin here on the number of jurors.

6 JUROR SCARRONE: All right, whatever.

7 THE COURT: Yes?

8 JUROR BARNES: I'm Alice Barnes, 402.

9 I work every Tuesday morning. I'm a manicurist.  
10 I have a large convention coming in tomorrow, and people  
11 coming, and they are doing an investigation on my assistant  
12 manager. So I can't miss.

13 THE COURT: Is this something you have to be there  
14 for? Well, all right. I will let you go but you need to --  
15 you are going to be recycled fairly quickly.

16 JUROR BARNES: Yes, I can understand that.

17 THE COURT: All right. You know, let them know  
18 so you have got something outside from work that you can't  
19 get away from.

20 All right. Let them know if you want like 30  
21 days, 90 days, whatever, and they will recycle you.

22 JUROR BARNES: Okay. They might arrest her  
23 tomorrow. That's the only thing.

24 THE COURT: Okay. I understand.

25 (Juror Barnes excused.)



1 THE COURT: All right. Down that same row.  
2 The row behind you, there on the end. Yes.

3 JUROR THOMPSON: Timothy Thompson, 412.

4 My daughter goes to Las Vegas Academy, and at  
5 two in the morning, she is going to a college fair in San  
6 Diego, and I have to take her, and I have to pick her up  
7 at two o'clock tomorrow night.

8 I am not going to get any sleep. I am also in  
9 commission sales. I have a lot of appointments Friday.  
10 If I miss those, I could lose thousands of dollars.

11 THE COURT: Well, again, that's -- the economic  
12 part is something that we are just not -- we can't do  
13 anything about, I mean, grin and take it, but the fact  
14 that you need to take somebody to --- is it like two in  
15 the morning?

16 JUROR THOMPSON: Yes.

17 THE COURT: The next day at two in the morning?

18 JUROR THOMPSON: Two at night tonight, in the  
19 morning, gets back tomorrow night at two in the morning.  
20 It could be later. I could be sitting there, depends on  
21 her bus and the traffic, I could be sitting there until  
22 four in the morning.

23 THE COURT: Your wife can't do it?

24 JUROR THOMPSON: No, she is medically ill. She  
25 just had to take a medical retirement from the City of

1 Las Vegas.

2 THE COURT: All right. This is probably not  
3 something that comes up very often.

4 JUROR THOMPSON: This does not come up very  
5 often. This is the first one.

6 THE COURT: Okay. Again, go ahead and go down  
7 to the third floor, but make sure you don't -- you understand,  
8 they are going to recycle you probably on a very short  
9 basis in only 30 to 60 days.

10 JUROR THOMPSON: That's fine, the timing of it was  
11 everything.

12 THE COURT: Yeah, all right, all right.

13 JUROR THOMPSON: Thank you.

14 (Juror Thompson excused.)

15 THE COURT: All right. And then next to him, I  
16 saw another hand.

17 JUROR SCRUTCHENS: John Scrutchens, 419.

18 I'm like the first gentleman. I work out at  
19 Nellis Air Force Base, and we are being inspected. I'm  
20 the ad-com trainer and the hazardous manager monitor.

21 THE COURT: All right. I will let you guys, I  
22 mean, I understand when you have those kind of inspections.  
23 There is not too much you can do about it.

24 But let them know downstairs so you don't run  
25 into a conflict.

1 JUROR SCRUTCHENS: Yeah, I'll tell them.

2 THE COURT: 30 to 90 days down the road, you  
3 won't have that problem.

4 JUROR SCRUTCHENS: Right.

5 THE COURT: All right, go on.

6 JUROR SCRUTCHENS: Thank you, sir.

7 (Juror Scrutchens excused.)

8 THE COURT: All right. In that third row, same  
9 row, in this last row.

10 JUROR HENRY: My name is Diana Henry. My number  
11 is 432, and my husband is across the street in the Detention  
12 Center, and he goes to court in the morning.

13 I don't know if they are going to send him back  
14 to California or not. I have two kids, and I am the only  
15 one working right now since he is being prosecuted.

16 THE COURT: You mean that he's --

17 JUROR HENRY: He was arrested two days ago  
18 because he bailed in California, we lived in California,  
19 but we moved here, we moved here two years ago, and he  
20 has been fine here, but we just failed to tell them, and  
21 so they picked him up at work, and he has court tomorrow  
22 morning.

23 THE COURT: You have got -- you have got other  
24 kinds of problems. I am going to let you go but you are  
25 a resident of Nevada?

1 JUROR HENRY: Yeah, we are residents, and he  
2 registered here for two years, but he just failed to tell  
3 California that we came out here. So that's why they  
4 arrested him.

5 So I don't know if he will be sent back to California  
6 tomorrow or they have --

7 THE COURT: No, he won't be sent back to California  
8 tomorrow, but they are going to start the process of doing  
9 something with him. I am going to let you go because I can  
10 see that you have got something, you are going to be a little  
11 distracted here.

12 JUROR HENRY: Yes, correct.

13 THE COURT: Go back downstairs, let them know on  
14 the third floor. They will recycle you to some other day.

15 You better tell them you need about six months,  
16 all right?

17 JUROR HENRY: Yes. Thank you.

18 (Juror Henry excused.)

19 THE COURT: Those of you -- yeah, anybody else in  
20 that back row?

21 Did I see another hand there? Yes?

22 JUROR RIVERA: My name is Priscilla Rivera, badge  
23 number 449. It has nothing to do with economics, but I do  
24 own a house, and I am the only one working at home, and I  
25 sell time shares for a living so when I don't go to work

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3       **DELARIAN K. WILSON,**  
4                                   Appellant,  
5       **vs.**  
6       **THE STATE OF NEVADA**  
7                                   Respondent.

**Supreme Court No.:**  
**District Court Case No.:** C232494-1

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25	State's Opposition to Defendant's Motion to Appoint Post-Conviction Relief Counsel filed on 11/23/10	2084-2088
26	Receipt filed on 12/17/10	2089
27	Notice of Change of Hearing filed on 06/15/11	2090
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1 the police officer on the telephone, would it be possible,  
2 unlikely, likely, that if you look under here, you say, well,  
3 detective, the address and the name that you've given me  
4 are no longer active, but there is an active address and a  
5 different address with that name, maybe with a different  
6 Social Security number, or whatever?

7 THE WITNESS: That isn't something that I would  
8 be able to instantly see with a different Social Security  
9 number. When I'm pulling up a record, it's just a unique  
10 record about that Social Security number. I would be able  
11 to see if that Social Security moved to a different address.

12 I would not be able to see someone else's Social  
13 Security number onto that person's record, like any of  
14 these record lack a Social Security number.

15 THE COURT: Okay. So the base then to track this  
16 information is primarily the Social Security number?

17 THE WITNESS: Yes, it is.

18 THE COURT: Okay. And so, but you could while  
19 you are on the telephone say, well, that power that you  
20 have given me was shut off on that particular date, but  
21 I am seeing that the power on that same date was turned  
22 on at a different address with the same name?

23 THE WITNESS: Like a customer moved?

24 THE COURT: Right.

25 THE WITNESS: Correct, that's correct.

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1 THE COURT: And you would be able at that -- and  
2 would that be -- if somebody said that that is what they  
3 were told on the phone, is there any reason to believe to  
4 say that that's true or not true, I mean, is that entirely  
5 possible or is it highly unlikely?

6 THE WITNESS: If a customer moved?

7 THE COURT: Yes, if you are talking to a police  
8 officer, and the police officer said that's what I said on  
9 the phone, is that -- is that likely?

10 THE WITNESS: It could be likely, and the subpoena  
11 was coming over, and it was an emergency situation, it could  
12 have come, that's fine.

13 THE COURT: Actually, what we are more concerned  
14 with here is the actual conversation that you had.

15 Is that information so readily available to you  
16 that that if the police officer said, that's what I was  
17 told that that it's probably accurate?

18 THE WITNESS: Probably accurate.

19 THE COURT: Okay.

20 BY MS. LUZAICH: [Continuing]

21 Q. Just in simple terms:

22 If a police officer calls you and says, I am  
23 looking for John Smith's power. I believe it is at Adams  
24 Drive, and you look up John Smith, and you say, yes,  
25 Officer, John Smith has power, but it was turned off on

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1 Adams Drive on January 1 and turned on on Washington  
2 Drive on January 2, I mean, is that something that you  
3 could determine quickly?

4 A. Yes.

5 Q. And, Officer, John Smith's Social Security  
6 number is 123456789, or whatever, so that you can put that  
7 on the subpoena when you send it to me as soon as you hang  
8 up the telephone?

9 A. Normally under normal circumstances, the  
10 officer gives me a Social Security number.

11 Q. But if they don't have it?

12 A. If they don't have it, a common name would  
13 be too hard to --

14 Q. (Interposing) Well, no, I am just using  
15 John Smith, but if you see it there, you are looking at  
16 the screen, and it says John Smith has power on Washington  
17 Drive, his Social Security number would be on the screen  
18 also, correct?

19 A. If they gave me one, yes.

20 Q. If they gave you one?

21 A. Correct.

22 Q. So, during your conversation with the  
23 detective, so that he would get you the correct information  
24 on the subpoena, is it possible that you would have told  
25 him, yes, John Smith has power at Washington and his Social

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1 Security is 132456, so that he can give you the correct  
2 information to make it easier to comply with the subpoena  
3 because it is easier for you to comply with the subpoena  
4 if you have the Social Security number, correct?

5 A. Correct.

6 MS. LUZAICH: Okay, thank you.

7 THE COURT: Anything else?

8 MR. LANDIS: Yeah, briefly, Judge.

9 THE COURT: Go ahead.

10 REDIRECT EXAMINATION

11 BY MR. LANDIS:

12 Q. As an investigator for Nevada Power, you  
13 have been trained in the importance of details?

14 A. Yes.

15 Q. Is it important that you pay attention to  
16 like numbers in the Social Security number?

17 A. Yes.

18 Q. Or names?

19 A. Yes.

20 Q. If an officer called you and said I want  
21 to know if John Smith has power at 444 Red Street, and  
22 you pull up that record, and it turns out that there was  
23 power at 444 Red Street, however, it wasn't John Smith,  
24 it was James Smith that had power.

25 Based on your training and experience, would

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1 you notice that difference when you are talking to the  
2 officer?

3 A. Yes, I would.

4 Q. And would you inform the officer of that?

5 A. Yes.

6 Q. Is it normal practice or we are talking  
7 about possibilities, I want to talk about what you do.

8 Do you give Social Security numbers to police  
9 officers when they ask for them without a subpoena actually  
10 hitting your desk?

11 A. If it's an emergency situation, and the  
12 subpoena is on the way, information can be communicated,  
13 in an emergency, an extreme emergency situation.

14 Subpoenas need to be provided in order to obtain  
15 the information.

16 MR. LANDIS: The Court's indulgence. Nothing  
17 further, Judge.

18 THE COURT: Thank you very much for your testimony.  
19 I appreciate it.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 THE COURT: Do you want to call somebody else?

23 MR. LANDIS: I call Narviez Wesley.

24 MS. LUZAICH: Who?

25 MR. LANDIS: Narviez Wesley.

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1 THE CLERK: Come forward, please, sir, take the  
2 witness stand, remain standing and raise your right hand.  
3 Whereupon,

4 NARVIEZ WESLEY,  
5 called as a witness herein by the Defendant, having been  
6 first duly sworn, was examined and testified as follows:

7 THE CLERK: Thank you very much. You may have  
8 a seat.

9 State your name, spell your first name and last  
10 name for the record.

11 THE WITNESS: My name is Narvyez Wesley. The  
12 first name is N-a-r-v-i-e-z, and the last name, Wesley,  
13 W-e-s-l-e-y.

14 THE CLERK: Thank you.

15 DIRECT EXAMINATION

16 BY MR. LANDIS:

17 Q. Mr. Wesley, where did you reside in February,  
18 of 2007?

19 A. 4232 Gay Lane, Las Vegas, Nevada.

20 Q. Do you know this guy?

21 A. Yes, I do.

22 Q. Who is this?

23 A. My son.

24 MR. LANDIS: Let the record reflect Mr. Wesley  
25 has I did the Defendant.

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1 THE COURT: The record will so show.

2 BY MR. LANDIS:

3 Q. Were you home in February, of 2007 when  
4 Henderson SWAT entered your home?

5 A. Yes, I was.

6 Q. Who was at at that time?

7 A. My wife, myself, and my son.

8 Q. Narcus?

9 A. Yes.

10 Q. During the course of their search of your  
11 premises, did you have any conversations with members  
12 of either SWAT or the Henderson Police Department?

13 A. Yes, I did.

14 Q. What were those conversations?

15 A. When they came into our home --

16 MS. LUZAICH: Objection, foundation, I mean, who  
17 are we talking about?

18 THE COURT: We are talking about the witness  
19 and the --

20 MS. LUZAICH: Any officer in his home?

21 THE COURT: Well, I don't know. Did you ever  
22 get anybody's name of any of the SWAT as they came in?

23 THE WITNESS: No, sir.

24 THE COURT: Was there one particular person  
25 that appeared to be in charge?

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1 THE WITNESS: Not at the moment.

2 We were asleep, and when they came in, they had  
3 guns in our face and lights shing, and they told me and  
4 my wife to put our hands up, and sit there, and we just  
5 sat there with our hands in the air, and then we asked  
6 them what's going on, and nobody said anything.

7 THE COURT: You don't know who you were talking  
8 to?

9 THE WITNESS: No, because they had on their  
10 helmets and everything so we didn't even see any faces on  
11 them.

12 THE COURT: Go ahead.

13 BY MR. LANDIS:

14 Q. Could you tell the difference between  
15 the initial SWAT officers that entered your house and  
16 other members of that Police Department?

17 A. Yes.

18 Q. How could you tell that difference?

19 A. The SWAT officers were all dressed with  
20 helmets, guns and the lights on, with the lights shining,  
21 and the other officers, the first officer that we really  
22 saw after they made us go in the living room, he had on  
23 just some regular clothes, like a pair of slacks and a  
24 shirt. He wasn't dressed up, or anything.

25 And then it was dark in the room so then another

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1 officer came in, and they talked.

2 Then a few minutes later, a lady officer come  
3 in with another man, like four or five different officers,  
4 but they didn't have on any uniforms. They had on regular  
5 street clothes.

6 Q. Have you seen one of those officers who was  
7 wearing civilian clothes that day in the hallway of this  
8 Courthouse today?

9 A. Yes, I have.

10 Q. I want to first talk about the SWAT people  
11 who came into your house.

12 Did you have any direct conversations with them?

13 A. The only thing, no, well, we asked them what  
14 was going on, you know, what was happening because we didn't  
15 know.

16 And they said, just to be still, and then they sit  
17 there for a minute, and they went in Marcus's bedroom, got  
18 him and brought him out.

19 Then they brought us back up in the living room  
20 and set us down on the couch.

21 Then the SWAT team went outside with Marcus at  
22 first, and the Officer Weske, I remember him because he  
23 told us who he was, stood there in the living room with  
24 us in front of us, and wouldn't let us move. So we were  
25 just sitting there on the couch for like almost an hour,

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1 15, 20 minutes.

2 Q. Did you have any conversations with any  
3 of those officers regarding the existence of a search  
4 warrant?

5 A. Yes, we did.

6 My wife asked them first, where was the search  
7 warrant?

8 And this Officer Weske told my wife that the  
9 search warrant was outside. He would go out and get it  
10 and bring it back.

11 So 10,15 minutes went by while the other officer  
12 entered the bedroom, searching all the back part of my  
13 house, and my wife asked him again for the search warrant.  
14 He said, don't worry about it. We have got it. We are  
15 going to go get it.

16 Then, I guess, about 30, 45 minutes later because  
17 we sat there a long time. My wife asked him, where is the  
18 search warrant? And he said something, and he then just  
19 kind of turned it off.

20 So I think it was about that time, I asked him,  
21 could I call my family attorney because we use one attorney  
22 for the whole family for certain, you know, little stuff.

23 MS. LUZAICH: Judge, can he answer the question?  
24 I am going to object as non responsive. Can he answer the  
25 question, did you review the search warrant?

1 THE WITNESS: Okay. I --

2 THE COURT: Go ahead and answer the question.

3 BY MR. LANDIS:

4 Q. About that attorney issue, who was present,  
5 what members of your family were present at that point in  
6 time?

7 MS. LUZAICH: Objection, relevance, as to --

8 THE COURT: Overruled. Let's get through this.  
9 Let's get through this hearing. C'mon. Go ahead.

10 THE WITNESS: All three of us, my wife, my wife --  
11 I was sitting here, my wife was in the middle, and Narcus  
12 was alongside when I asked about the attorney. So all  
13 three of us were there in the room.

14 BY MR. LANDIS:

15 Q. And what did you ask him?

16 A. I asked him could I call my family attorney  
17 because we wanted an attorney present because they wouldn't  
18 tell us nothing.

19 So I know that the law says you have the right  
20 to an attorney to be there or at least advised by an  
21 attorney. They told me that we didn't need an attorney  
22 there because he wasn't under arrest.

23 Q. Who told you that?

24 A. Officer Weske.

25 MR. LANDIS: Nothing further.

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1 THE COURT: Go ahead.

2 MS. LUZAICH: The Court's indulgence.

3 THE COURT: Okay.

4 CROSS-EXAMINATION

5 BY MS. KOLLINS:

6 Q. Mr. Wesley, you have been at least twice  
7 convicted of felonies in this jurisdiction, is that correct?

8 A. Yes, but that doesn't have anything pertaining  
9 to this case.

10 Q. Well, that's not for you to decide. That's  
11 for the Court to decide.

12 A. Yes, I have been convicted of a felony, yes.  
13 Yes, I have. Assault with a deadly weapon and attempted  
14 murder, yes.

15 Q. Your son was escorted outside by Detective  
16 Weske?

17 A. No.

18 Q. By SWAT?

19 A. Yes.

20 Q. And then talked to by Detective Weske  
21 outside?

22 A. No. Detective Weske was in the house when  
23 they brought our son back into the house because they  
24 said it was cold outside so they brought him back into  
25 the house and set him down.

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1 Q. Okay. And eventually your whole family was  
2 taken out of zip ties, correct?

3 A. No, we were never -- we were never tied  
4 up, no. We were just held that date, I guess you know  
5 they had guns right there so we couldn't move.

6 MS. KOLLINS: No more questions.

7 THE COURT: Is that it?

8 MR. LANDIS: Nothing further, Judge.

9 THE COURT: Okay. Thank you very much for your  
10 testimony, Mr. Wesley, I appreciate it.

11 (Witness excused.)

12 THE COURT: Is that going to be it?

13 MR. LANDIS: The Court's indulgence.

14 I call Angela Wesley, and while we are getting  
15 her, Judge, for the record, I do intend to call my client  
16 as to issues pertaining to this search warrant.

17 I do think the case law is clear, but I want to  
18 make sure we are all on the same page.

19 He can testify as to issues pertaining to his  
20 rights of counsel, and the search warrant.

21 The State, of course, has the right to cross  
22 him as to that, but subsequent issues dealing with the  
23 case cannot be inquired into, and further, it does not  
24 impact anything that would happen at the jury trial later  
25 today.

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1 THE COURT: That's my understanding, just to  
2 make it quite clear.

3 MR. LANDIS: I just wanted to make sure before  
4 we had him take the stand.

5 THE COURT: All right.

6 THE CLERK: Would you come step forward, please  
7 ma'am, take the witness stand.

8 Remain standing, and raise your right hand,  
9 please.

10 Whereupon,

11 ANGELA WESLEY,  
12 called as a witness herein by the Defendant, having been  
13 first duly sworn, was examined and testified as follows:

14 THE CLERK: Thank you very much, you may be  
15 seated.

16 Please state your name and spell your first and  
17 your last name for the record.

18 THE WITNESS: Angela, A-n-g-e-l-a, the last name,  
19 Wesley, W-e-s-l-e-y.

20 THE CLERK: Thank you.

21 DIRECT EXAMINATION

22 BY MR. LANDIS:

23 Q. Ma'am, where did you live in February, of  
24 2007?

25 A. At 4232 Gay Lane.

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1 Q. Did you live there with your husband?

2 A. Yes.

3 Q. And what's his name?

4 A. Narviez Wesley.

5 Q. Were you home in February, of 2007, when  
6 the Henderson Police Department SWAT served a search warrant  
7 at that residence?

8 A. Yes.

9 Q. As part of that execution, did there come  
10 a time when the three of you, and by the three of you,  
11 I mean Narviez, yourself and Narcus were in the living  
12 room?

13 A. Yes.

14 Q. Did you hear any communication between Narviez  
15 and members of the Henderson Police Department concerning  
16 a right to -- his intent to call his attorney?

17 A. To call our family attorney, yes.

18 Q. What was said?

19 A. They told us that we didn't need one at that  
20 time because Narcus was not under arrest.

21 Q. Slow down. What did Narviez say?

22 A. Narviez said could he call his family lawyer?

23 Q. And did one of the Henderson Police Department  
24 officials respond to that request?

25 A. Yes, he did.



1 Q. And what did they say?

2 A. That he didn't need a family attorney because  
3 Narviez wasn't under arrest -- or Narcus wasn't under arrest.

4 MR. LANDIS: Nothing further, Judge.

5 THE COURT: Cross?

6 MS. LUZAICH: Nothing.

7 THE COURT: All right, thank you.

8 Thank you for your testimony. I appreciate it.

9 (Witness excused.)

10 MR. LANDIS: We will call lastly, Judge, Narcus  
11 Wesley.

12 THE COURT: Okay.

13 THE CLERK: Come forward, please, take the witness  
14 stand, remain standing, and raise your right hand.  
15 Whereupon,

16 NARCUS WESLEY,  
17 called as a witness herein by the Defendant, having been  
18 first duly sworn, was examined and testified as follows:

19 THE CLERK: Thank you very much. You may be  
20 seated.

21 State your name and spell your first and last  
22 name for the record.

23 THE WITNESS: Narcus, N-a-r-c-u-s, Wesley,  
24 W-e-s-l-e-y.

25 THE CLERK: Thank you.

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## DIRECT EXAMINATION

BY MR. LANDIS:

Q. Were you at that Gay Lane address we have heard about a few times today in February, of 2007 when a search warrant was executed?

A. Yes.

Q. Did there come a time when your father, your stepmother, and yourself were in the living room of that residence?

A. Yes.

Q. Could you hear everything that was being said amongst your family members and members of the Henderson Police Department?

A. Yes, because we were in the living room.

Q. Did you hear your father at any point talk to the Henderson Police Department regarding an attorney being present?

A. Yes.

Q. What did he say?

A. My dad asked him, he said, well, and he said, what's going on, and he said, we are going to call our family attorney, and the cop say, nobody is under arrest, so you guys don't need that.

Q. And you heard that at that time?

A. Yes.

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1 MR. LANDIS: The Court's indulgence.

2 THE COURT: Sure.

3 MR. LANDIS: Nothing further, Judge.

4 CROSS-EXAMINATION

5 BY MS. LUZAICH:

6 Q. Well, in fact, you were not under arrest  
7 at that point, is that correct?

8 MR. LANDIS: Objection, legal conclusion.

9 BY MS. LUZAICH:

10 Q. Well, did anyone tell him --

11 THE COURT: Go ahead, overruled. Go ahead.

12 BY MS. LUZAICH:

13 Q. Okay. Is that correct? Did anybody tell  
14 you you were under arrest yet?

15 A. Uh-uh.

16 Q. Would that be a "no"?

17 A. No.

18 Q. Okay. And, in fact, you were at that house  
19 that day, correct?

20 A. Correct.

21 Q. Were you sleeping when SWAT got there?

22 A. I really can't recall because --

23 Q. Where were you when SWAT got there?

24 A. I was in my bedroom.

25 Q. So you have a bedroom there?

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1 A. Uh-huh.

2 Q. And you were in that -- is that a yes?

3 A. Yes, yes.

4 Q. You always have to say yes or no, because  
5 our really nice court reporter here has a yes button, a  
6 no button but no uh-uh button?

7 A. Yes, ma'am.

8 Q. Is that fair? So you were at the house  
9 at least for a significant period of time that day,  
10 right?

11 A. Yes.

12 Q. And you drive that white Chrysler 300?

13 A. Yes, I bought it.

14 Q. And that was in the driveway that day?

15 A. Yes.

16 Q. And evening?

17 A. Yes.

18 Q. And you did, in fact, speak with police  
19 officers, just you and Detective Weske and Detective  
20 Hartshorn, correct?

21 A. No, not exactly.

22 Q. So you never talked to them?

23 A. Yes, I talked to them, but it wouldn't  
24 just go to that.

25 Q. Okay. Were you tape recorded?

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1 A. I would assume. I didn't know I was being  
2 tape recorded.

3 Q. Did they remove -- did you have ties on  
4 your wrists when you talked to them?

5 A. Yes.

6 Q. And did they try and get the ties off?

7 A. Well, yes, but it certainly took a while.

8 Q. And it was hard, right?

9 A. Uh-huh.

10 Q. Okay. Did they -- is that a "yes"?

11 A. Yes.

12 Q. But they did try --

13 A. Yes.

14 Q. They did try to help you out because it  
15 was uncomfortable?

16 A. I guess.

17 Q. And they -- well, was it uncomfortable?

18 A. Yes, it was uncomfortable. I still have  
19 the marks on my hands.

20 Q. And they tried to --

21 MR. LANDIS: (Interposing) Well, that is  
22 speculation, Judge. He doesn't know what they were trying  
23 to do.

24 MS. LUZAICH: Well, he knows that they were trying  
25 to take them off.

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1 THE COURT: Overruled, c'mon. Did they finally  
2 get those slip-ons --

3 MS. LUZAICH: Zip ties.

4 THE COURT: -- those ties, zip ties, did they get  
5 those finally off?

6 THE WITNESS: Yes, but they put cuffs on after.

7 THE COURT: All right.

8 BY MS. LUZAICH:

9 Q. Okay. And they read you your rights, correct?

10 A. I don't recall that.

11 Q. So if there is a tape recording of your  
12 rights being read to you, and you say you understand them,  
13 that was justly magically produced?

14 A. Well, if it's on the paper, I guess so, but  
15 at the time when they came in, I was half asleep and telling  
16 me a whole bunch of things, and I was just saying uh-huh,  
17 uh-huh, okay.

18 Q. But you remember your dad asking for a  
19 lawyer?

20 A. Yes, because we were standing there.

21 MS. LUZAICH: Okay, nothing further.

22 THE COURT: Anything else?

23 MR. LANDIS: No, Judge.

24 THE COURT: Okay. I appreciate very much your  
25 testimony. Go ahead and sit by counsel.

1 THE DEFENDANT: Okay.

2 (Witness excused.)

3 THE COURT: Does that conclude our evidentiary  
4 portion of our hearings.

5 MR. LANDIS: Yes, the Defense has no further  
6 witnesses.

7 THE COURT: All right. Let's wrap up your  
8 arguments here.

9 Any supplements to your written motion and  
10 opposition, this should be the time to wrap it up.

11 MR. LANDIS: Judge, contrary to what the State  
12 says two times in their opposition, the information provided  
13 by Detective Weske in his search warrant affidavit concerning  
14 the Nevada Power records which we heard about today, they  
15 did not concern statements made by codefendant concerning  
16 where this guy lived or that he lived with his parents.

17 They also concern the fact that he had a 300-M  
18 Chrysler that was registered to him.

19 So, in effect, it was those two facts and those  
20 two facts alone that the detective purported to tie Mr.  
21 Wesley to that residence.

22 The detective couldn't give good answers as to  
23 where he got that Social Security number from.

24 He couldn't give good answers as to why he didn't  
25 point out that information in the search warrant.

001521

1 I think Donna Lamonte made it pretty clear  
2 that if he would have requested that name or even if  
3 he requested that name and that address if there was a  
4 discrepancy, she would have communicated that to him  
5 over the phone.

6 Further, as to how he got that Social Security  
7 number, which clearly was not Narcus's, he knew it wasn't  
8 Narcus's because he put Narcus's correct Social Security  
9 number throughout the same portion of the case he testified  
10 in putting on the search warrant itself.

11 I think it's pretty clear that he knew at the  
12 time he drafted that search warrant that Narcus Wesley could  
13 not have power at that address, that it was in fact Narvies  
14 Wesley, and he knew that sending that subpoena to that house  
15 with that Social Security number would get him information  
16 that he put in the search warrant.

17 That is, if not a knowingly false statement,  
18 it shows a reckless disregard, Judge. Those facts are  
19 important.

20 Further, as to the Chrysler as to where it was  
21 registered to, he said he got information concerning the  
22 fact that it was registered to Narcus, but if he would  
23 have gotten that information, he would have also found  
24 out that it was registered to Narcus at a different  
25 address.

001522



1 He did not include that information in the  
2 search warrant.

3 Those two statements, which are the only basis  
4 for probable cause in that search warrant have some issues  
5 regarding their veracity.

6 As I say, Judge, we don't have to show that they  
7 were knowingly false. A reckless disregard for the truth  
8 is also as doubt.

9 What this Court needs to do is take out those  
10 statements made by Detective Weske concerning probable  
11 cause that you believe meet those standards, and they  
12 know will, there is no deference due to the magistrate  
13 in this situation, determine whether or not what is in  
14 there, which was not false, which was not submitted without  
15 reckless disregard for the truth, whether those statements  
16 afford a probable cause, Judge, and they just don't. They  
17 just don't.

18 Even if, even if you believe that he did not  
19 have the information regarding the car that he chose not  
20 to put in the search warrant, the fact that an individual  
21 has a car parked in front of the house is not enough to  
22 support probable cause to search that house.

23 If we are talking about an arrest warrant, that's  
24 one thing.

25 But Lord knows any time the cops sees a car

001523

1 parked in front of the house, that does not give him  
2 probable cause to search that house for evidence of a  
3 crime.

4 That alone is not basis for probable cause,  
5 Judge. This was a bad search warrant.

6 You heard what they said. They were in a hurry.  
7 He cut corners, and he did not do a complete job.

8 Second, as to his confession, there is issues  
9 regarding right to counsel.

10 On behalf of his family with my client sitting  
11 there, his father asserted, at least asked if they could  
12 call their family attorney.

13 The answer was:

14 You don't need an attorney, he is not under  
15 the arrest.

16 That's not the law, and that's not the standard.  
17 If an individual wants to have an attorney present for  
18 questioning, or for that matter during the execution of  
19 a search warrant, they have that right.

20 With my client sitting there and hearing that,  
21 the reasonable inferences, the inferences he drew was  
22 that he could not have an attorney there at that time.  
23 Then questioning begins.

24 As to the Miranda warning, they were in quick  
25 succession if you look at the transcript, and the only

001524

1 questions:

2 "Do you understand that?"

3 "Uh-huh, Uh-huh."

4 "Do you understand that?"

5 Detective Weske never went to the second step of  
6 asking:

7 Do you want to waive those rights and talk to us?

8 That's an important step in Miranda, and it's an  
9 important thing for a potential Defendant to hear before  
10 the further questions.

11 Based on that, we ask that you suppress the entire  
12 search, including the statement based on the search warrant  
13 alone.

14 If the Court is not inclined to do it, we would  
15 ask this that you suppress his statement for violation of  
16 Miranda.

17 MR. BANKS: And, Judge, I wanted just to add to  
18 that that there was no indication by Detective Weske that  
19 Narcus had a right to counsel during questioning, and I am  
20 relying on the case of Pope, P-o-p-e, v. Zenon, Z-e-n-o-n.  
21 That's at 69 F.3d 1018, page 1023.

22 That's a Ninth Circuit 1995 case, which indicates  
23 that before interrogation, police must make it clear to the  
24 suspect that he has a right to talk with an attorney before  
25 questioning and to have that attorney present during the

001525

1     interrogation.

2             With that, we will submit it to the Court.

3             THE COURT: Your turn.

4             MS. LUZAICH: First of all, there is no evidence  
5     whatsoever to suggest that Detective Weske either intentionally  
6     misled the reviewing Judge, or that he was reckless in his  
7     disregard for the truth.

8             The way he described it, and the way that is very  
9     much more likely that it occurred, these guys had been up  
10    for two and a half days basically by the time he called Donna  
11    Lamonte, and he calls her and says that he has -- he is  
12    looking for power under the name of Narcus Wesley at Valley  
13    Lane, Valley Drive, whatever, and she looks it up, and she  
14    says, well, there is a Narcus Wesley, but it's not -- it  
15    was turned off at Valley, it's at Gay Lane.

16            Wilson had told him that Narcus drives the  
17    Chrysler 300, that's in the search warrant.

18            He goes to that address, and he immediately as  
19    soon as he hangs up the phone with her, he goes to that  
20    address to corroborate, and sure enough, the white Chrysler  
21    is in the driveway, and he goes, and he writes the search  
22    warrant and gets it done.

23            It's not until the next day after he hears from  
24    Narcus's dad about the power thing that he goes back, and  
25    he sees the subpoena, and it says:

001526

1 "Please note. The individual's first name is  
2 different from your request."

3 And the note on here was indicating that she  
4 did not notice when she was on the phone with him that  
5 the name was different.

6 He knew that the person who committed the offense  
7 with Wilson was Narcus. Narcus's photograph was pointed  
8 out by Wilson. The vehicle is the same, I mean, under the  
9 case law, if there is an intentional misrepresentation, or  
10 reckless disregard, you re-review it, taking that out, and  
11 I think that even without that information, there is still  
12 enough.

13 But there is no evidence that it was an intentional  
14 misrepresentation or that it was reckless.

15 I think there is certainly sufficient probable  
16 cause for the search warrant, and he did everything in  
17 good faith.

18 When you think about it, they had two guys that  
19 commit this -- I mean, forcible guns into the house, kids  
20 on the ground, takes one to the ATM with a gun, with the  
21 other one staying with the others at gunpoint.

22 Then they gratuitously for no reason whatsoever  
23 cause the SA, the sexual assault to occur, and then this  
24 one actually sexually assaults the girl with the gun.

25 So that is something that they are dire trying

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1 to find the individuals that committed the offenses.

2 These guys were working around the clock for  
3 two and a half days, and it is kind of a miracle that  
4 they were able to find the guys.

5 So I think that their intent is absolutely in  
6 good form.

7 So I think that as far as the search warrant,  
8 they're fine.

9 But as far as the Miranda, and invoking, first  
10 of all, daddy can't invoke on behalf of Marcus, absolutely,  
11 positively, the case law says that.

12 Even if he were a juvenile, daddy can't invoke  
13 on his behalf, but he's an adult so daddy can't invoke on  
14 behalf of him.

15 Furthermore, it was very clear. He read from  
16 the transcript. They read him his Miranda rights, and he  
17 understood them, and he chose to speak with them.

18 And then finally, you know, the case law says  
19 there is no teleonomic phrases that have to be put forth.

20 He just has to understand that he has got the  
21 right to an attorney, and he has got the right to an  
22 attorney now. He doesn't have to wait until he gets to  
23 court.

24 And the fact that they said that you have the  
25 right before questioning, dah, it means during questioning

001528

1 as well.

2 What the Court is concerned about is when they  
3 don't say when the right attaches that people, even though  
4 they watch TV, think that they don't have the right until  
5 they get to court.

6 It was very clear that they told him that he  
7 has got the right to an attorney right then and there.

8 So there is no reason for the Court to suppress  
9 anything.

10 MR. LANDIS: Very briefly, Judge, two points.

11 Donna Lamonte made it very clear that she called  
12 with the address and the name and if the name was different,  
13 she would have let them know that.

14 She did not mix her words when she said that,  
15 Judge.

16 And, secondly, to say that Detective Weske didn't  
17 lie, has no reason to lie, we all know very well that if he  
18 loses this motion because of bad police work, he is going  
19 to get in trouble for it.

20 To say that he doesn't have something to gain by  
21 getting out there and trying to fix what he did that day  
22 is a joke.

23 We all know in a case this serious, this guy has  
24 to to make sure the search warrant sticks or he is going  
25 to hear about it back at the station.

001529



1           There is case law after case law where individual  
2 judges who had set against the exclusionary rule talk about  
3 how it support perjury. It puts officers in a spot where  
4 they have to lie to keep evidence in court. This is that  
5 case.

6           And, lastly, Judge, they say it is a miracle,  
7 they say it's a miracle that these people were found.

8           I don't think it's a miracle that these people  
9 were found when constitutional rights are violated.

10          THE COURT: All right. Here is my take, and  
11 I don't think it is very surprising.

12          First of all, I don't think that any of the --  
13 there is no question that there was some misinformation on  
14 that application, as I see it, and everybody understands  
15 it.

16          All right. The question is whether it was done  
17 intentionally or recklessly.

18          My conclusion is no, I don't think so at all  
19 under these circumstances. I think it's quite clear,  
20 the father's name, the son's name. I don't think there  
21 was by any stretch, by any stretch that it was done  
22 intentionally.

23          I think it was all business. If it had been  
24 noticed, I think that even just a minor explanation would  
25 have sufficed, and even if it was, which I don't believe

001530



1 for an instant that it was, I think that the rest of the  
2 information still reaches the level of probable cause,  
3 and I think that it's the test that the Court applies  
4 is a substantial basis for concluding probable cause  
5 exculpatory was a small part of accuracy and clarity is  
6 going to be.

7 Just as importantly, let me address the Miranda  
8 warnings.

9 I am not aware that the complicity, the status  
10 of the law is such that you have to inform the Defendant  
11 not only of their right to an attorney before questioning,  
12 but that you have to go on to a further explanation that  
13 includes specifically the right to have an attorney present  
14 during questioning.

15 He did say that he could stop at any time that  
16 he directed him to stop.

17 The Defendant acknowledged that each one of those  
18 questions was clear.

19 There is nothing wrong with that argument, and the  
20 motion to suppress is denied.

21 Now, it's going to take about 10 minutes to get  
22 them -- we are going to move the courtroom, okay? We do  
23 have the courtroom available.

24 THE BAILIFF: It will take approximately 15 minutes  
25 to get it ready.

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1 THE COURT: Okay.

2 So it will take about 15 minutes to get the jury  
3 pool up.

4 Now, let's discuss a few things here before we  
5 get the jury pool in here.

6 We are going to go back to the original process  
7 of putting 12 in the box, plus are we going to have two or  
8 four?

9 MS. LUZAICH: Alternates?

10 THE COURT: Yeah.

11 MS. LUZAICH: Two is fine.

12 THE COURT: Are you sure?

13 MS. LUZAICH: Yeah.

14 THE COURT: We can do that.

15 All right. So we are going to have 14 in the  
16 box, okay?

17 Everybody understands, it's like we have gone  
18 through this several times at least we are going to know  
19 exactly who, 13 and 14 are the two alternates.

20 We are not going to bring that up. The first  
21 12 are the jurors, 13 and 14 are the alternates. The  
22 alternates do not replace any of the first 12 if they  
23 get excused for whatever reason they have.

24 So 13 and 14 are just handled separately, okay?

25 You get your eight, you get your eight, and you

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1 get your two.

2 MS. LUZAICH: One each for the alternates.

3 THE COURT: Just one each, and then because of  
4 the nature of the charges.

5 MS. LUZAICH: No, if there is a third and fourth  
6 alternate you get a second preempt.

7 THE COURT: Okay.

8 MS. LUZAICH: But not if we have two alternates.

9 THE COURT: Are there any -- are there any other  
10 aspects because of the potential life sentence that I am  
11 not thinking of right at the top of my head?

12 MS. LUZAICH: The jurors cannot know about the  
13 penalty --

14 THE COURT: Okay.

15 MS. LUZAICH: -- at all.

16 THE COURT: Yeah, we will be real -- we will be  
17 real careful. We have already had one faux pah in regards  
18 to that.

19 The questioning, I would like for you to let me  
20 do as much as possible. I am not going to deprive you of  
21 your right to, you know, voir dire the jury, but I would  
22 like to do as much of it as I can.

23 Is there anything in particular that you think  
24 needs to be queried, I mean, if we are going to go through  
25 their exposure to jury duty, the criminal -- there is the

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1 charge, if they have ever been the victim, anybody close  
2 to them, all that kind of stuff.

3 MS. LUZAICH: Right, you know, I always ask the  
4 Court to ask anybody whether they have ever been the victim  
5 of a sexual offense.

6 THE COURT: The victim of or the --

7 MS. LUZAICH: The victim or accused of --

8 THE COURT: -- or accused of a sexual offense.

9 MS. LUZAICH: -- of a sexual offense.

10 But, you know, sometimes the Court gets kind of  
11 bored, and doesn't ask that question until the very end.

12 So we talk to a juror for seven minutes before  
13 discovering that there is no way they can serve.

14 THE COURT: Well, that will be the first question  
15 I ask them.

16 MS. LUZAICH: So maybe if you can ask that earlier  
17 on in your questioning.

18 THE COURT: I will ask that question immediately.

19 MR. BANKS: It would be the Defense request that  
20 if you ask that and hands go up, that whoever's hand goes  
21 up can approach the bench with the lawyers and explain the  
22 situation because I have been burned too many times with  
23 poisoning the well with the jury pool.

24 THE COURT: We will see.

25 If it becomes -- if they say something that, you

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1 know, if they themselves, have personally been the victims  
2 of a sexual assault, I will probably stop right there and  
3 have them approach, but I don't think --

4 MS. LUZAICH: Then just -- is there any reason,  
5 based on that, is there any reason that you can't be fair?

6 Because if they say they can be fair, you don't  
7 just necessarily not pick them, I mean, people don't get  
8 picked just because they have been the victim.

9 THE COURT: I am going to tell you something that  
10 I don't want us to take so long picking this jury because  
11 we are trying to rehabilitate a juror.

12 We will all spend a whole bunch of time jerking  
13 around with jurors who have problems. I am much more  
14 inclined to just excuse them rather than screwing around  
15 and trying to make them -- rehabilitate them.

16 MS. LUZAICH: Yeah, but you know what? Then  
17 your -- then the Defense gets 27 peremptories instead of  
18 seven or eight.

19 THE COURT: How many victims of sexual assault  
20 are going to be in the jury pool?

21 MS. LUZAICH: One never knows. Sometimes one  
22 or two, sometimes 15 or 20. You just are going to have to  
23 ask them.

24 THE COURT: Well, realistically, they are never  
25 going to end up on the jury.

001535

1 MS. KOLLINS: That's not true.

2 MS. LUZAICH: That's not true though.

3 THE COURT: I understand.

4 MS. LUZAICH: The last jury trial, your jury  
5 trial, I tried that case.

6 THE COURT: Okay, all right.

7 Look, we'll play it by ear, but I am telling  
8 you that I am not going to take an hour to rehabilitate  
9 a juror who has been a serious victim of a sexual assault  
10 when we --

11 MS. KOLLINS: (Interposing) But tha's like  
12 saying now on the State's behalf, every person that gets  
13 up there and says, I mistrust the police and hate the  
14 police is automatically gone unless we exercise our  
15 peremptory.

16 THE COURT: No, that's completely different.

17 MS. KOLLINS: No, really.

18 THE COURT: That is completely and entirely  
19 different.

20 MS. KOLLINS: No, I --

21 THE COURT: I mean, those kind of people are  
22 just being jerks, I mean, they were just being jerks  
23 because they want to make something up to let them go  
24 and don't have to serve jury duty.

25 Anything else?

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1 I will move that up, and I will ask it, I  
2 will ask it right off at the get-go so that we can  
3 tell.

4 MR. BANKS: There is one other thing.

5 It's not really related to the jury selection,  
6 you know, jury selection.

7 THE COURT: That is one of the things right  
8 now, but go ahead, hurry up.

9 MR. BANKS: There is a toxicology report that's  
10 still outstanding.

11 The State is in the process of getting us copies  
12 of that.

13 THE COURT: Okay.

14 MR. BANKS: And we should be getting that fairly  
15 soon.

16 THE COURT: Okay.

17 MR. BANKS: There are also some jail phone  
18 calls from -- that are referenced in the police reports  
19 and from what I have seen in the police report, it's our  
20 client making phone calls, I believe, from the Clark County  
21 Detention Center.

22 MS. LUZAICH: Henderson.

23 MR. BANKS: Henderson, I'm sorry, to family  
24 members. I'm not exactly sure who.

25 We've requested those.

001537

1           It's my understanding that whether -- the State  
2 is going to have to make an offer of proof as to why they  
3 are not available.

4           It is just my understanding that they are not  
5 available.

6           In light of the Court's ruling today, and I don't  
7 want to divulge any client confidences, but I believe that  
8 in light of the Court's ruling today, and in light of our  
9 theory of defense, that what's contained in those jail  
10 calls is some exculpatory information, and I --

11           THE COURT: (Interposing) Well, I want the Clerk --  
12 I don't know that I have been put in a position to have  
13 to examine the contents of any jailhouse calls that have  
14 occurred.

15           Is this any information that you are aware of?

16           Have you looked at any calls that were made  
17 to or from the Defendant from the Henderson Jail that  
18 are transcripts or recordings provided to you that have  
19 examined?

20           MS. LUZAICH: Well, we would have loved to.

21           Unfortunately, back when this happened both  
22 this Defendant and the Codefendant made phone calls to  
23 their families, and what the detectives told us is that  
24 both this Defendant and the Codefendant made serious  
25 admissions to their families.

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1           They immediately had downloaded the codefendant's  
2 phone calls and put them on a disk.

3           For some reason, this Defendant's phone calls  
4 were not downloaded.

5           We have been trying all for the last two weeks  
6 to go back to the system and get them downloaded, but it's  
7 too late. They are gone.

8           MR. BANKS: And our position is that they have  
9 been in the possession of a State agency from the beginning.

10          What we have is an excerpt from a police report,  
11 a police officer's perception of what's contained in those  
12 phone calls, and while I respect law enforcement, I don't  
13 necessarily, I mean, I know what they are putting in the  
14 police report.

15          They are not putting the good stuff that we can  
16 use, they are putting stuff to lay a foundation for probable  
17 cause.

18          I think there is a whole -- I think there is  
19 probably two sides to the story in those phone calls, and  
20 I think the side that we are not getting, which is not  
21 contained in the police report is the exculpatory side,  
22 and that's based upon my investigation of the case, and  
23 my conversations with my client.

24          I'm kind of like, say, hesitant to divulge any  
25 confidences, but I feel comfortable making that record.

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1 I think that we are -- I think there is some  
2 exculpatory stuff out there that's in the hands of the  
3 State agency that is now not available to my client, which  
4 could be used for his benefit under his theory of defense,  
5 and I am afraid to go on because I think it's going to  
6 impact his ability to get a fair trial.

7 I think it's going to impact his ability to  
8 confront under the Sixth Amendment the evidence that's --  
9 that can be used against him.

10 It's a good thought --

11 THE COURT: These are statements that were made  
12 by the Defendant on the telephone?

13 MR. BANKS: Yes, sir.

14 THE COURT: And you haven't been able to extract  
15 from your client those exculpatory statements?

16 MR. BANKS: Maybe I have, maybe I haven't, but  
17 if I have, I am not prepared to divulge those in open court.  
18 I am just --

19 THE COURT: Well, let me, just out of curiosity,  
20 sometimes I get lost and maybe I am not looking at it the  
21 same way somebody else is, but if these are exculpatory  
22 statements made by your client on the telephone, how does  
23 it deprive you of an opportunity to produce, discover, or  
24 whatever, the subject of those exculpatory statements if  
25 your client is the one who made them, and all of a sudden

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1 for whatever reason, technology wise, they have been lost,  
2 but your client certainly still -- he's the one that made  
3 them.

4 MR. BANKS: And I appreciate that, Judge.

5 I don't want exculpatory evidence to be lost  
6 and have it impact my client's right to remain silent.

7 As a practical matter, the State is going to  
8 introduce what they have dubbed a confession of my client,  
9 and I think what's contained in those jail phone calls  
10 will directly rebut.

11 THE COURT: Are you going to introduce five  
12 witnesses?

13 MR. BANKS: Am I going to introduce five witnesses?

14 THE COURT: Are they going to introduce five  
15 eyewitnesses?

16 MR. BANKS: Five eyewitnesses?

17 MS. LUZAICH: Six.

18 THE COURT: Six.

19 MR. BANKS: That can identify my client? I'm not  
20 so sure.

21 THE COURT: I have no idea. You know more about  
22 the contents than I do. I'm just --

23 MR. BANKS: My guess is no, but in light of the  
24 Court's ruling today, the exculpatory nature, and the defense  
25 that we will be presenting in light of the Court's ruling

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1 today, makes the contents of those phone calls that much  
2 more important, and gives his defense that much more ability  
3 to protect his rights without compromising his right to  
4 remain silent on the stand.

5 I guess the question is:

6 Well, gee, can't your client get up and just  
7 testify to what he said in the jail?

8 THE COURT: No, I mean, I certainly can understand  
9 that, but I don't understand that if the content of these  
10 statements is that which was made by your client, that your  
11 having been deprived of any of that information, because  
12 what you really want is an exculpatory evidence and your  
13 inability to produce or discover that kind of exculpatory  
14 evidence depriving your client and the right of a particular  
15 defense, or some aspect of the defense.

16 But I still find it hard to grasp that if that --  
17 if that is the subject matter of your client's own statements,  
18 how you can be deprived of any of that inasmuch as he should  
19 be tell tell you.

20 MR. LANDIS: Judge, it's not our argument that  
21 the statements made in the jail would open avenues and give  
22 us relative discovery or find evidence, the statements  
23 themselves.

24 THE COURT: Well, they are going to be hard pressed  
25 to introduce them, and I doubt seriously that they will.

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1 MS. LUZAICH: No, we are not, I mean, I recognize  
2 them because I don't have the tape --

3 THE COURT: But you can't --

4 MS. LUZAICH: -- I lose the benefit of all of  
5 those admissions, which I am not going to offer.

6 THE COURT: As I was going to say, the way it  
7 looks to me is that the State is the one that has been  
8 deprived of that valuable evidence, but who knows, I mean,  
9 that's their perspective and your perspective is it was  
10 exculpatory, but we don't have them anyway so what difference  
11 does it make?

12 MR. BANKS: Well, the difference makes it --  
13 the difference now is, I've got to say look, Narcus, we  
14 are getting hosed here because we can't present your defense  
15 without you having to testify.

16 What it does is it impinges my client and puts  
17 him in a corner, and makes it a lot more difficult decision  
18 as to whether to maintain his right to remain silent or  
19 not.

20 MS. LUZAICH: Actually, I completely disagree  
21 with that.

22 It's my understanding that the theory of the  
23 defense, based on the Court's ruling today is direct,  
24 that he did all these things because he had to because  
25 the codefendant -- he was so scared of the codefendant,

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1 or something along those lines.

2 In order for him to propound that defense, he  
3 has to take the stand.

4 MR. BANKS: Does he?

5 MS. LUZAICH: Yeah, he does. There is no other  
6 way --

7 THE COURT: We are not going to --

8 MR. BANKS: (Interposing) Why can't I play the  
9 phone calls that may get that defense on?

10 MS. LUZAICH: That would be hearsay. The Defense  
11 can't play the Defendant's statements.

12 MR. BANKS: Why can't I -- why can't I play phone  
13 calls to rebut the statement that the State is going to put  
14 in, which is my client's.

15 It's an inconsistent statement that is not hearsay.  
16 It is absolutely not hearsay.

17 It's to -- it's to confront the confession that  
18 they are going to put into evidence.

19 Now, I've got a goose egg because the State lost  
20 it. It's gone. Now, I have got nothing except putting my  
21 client on which my heart goes like (indicating) -- I mean,  
22 there is, if you --- there is things that I am going to  
23 have to advise him of in this life sentence case, and there  
24 is a huge, huge right that he is going to have to decide  
25 whether to invoke or to waive, and that's his right to

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1 remain silent.

2 THE COURT: Well, this will be a strategic decision.  
3 I will make a ruling when it comes up..

4 MR. BANKS: And we just heard the prosecutor --  
5 and and I don't mean to interrupt the Bench, but we just  
6 heard the prosecutor say, hey, get that defense on, the  
7 guy has got to testify.

8 MS. LUZAICH: We were going to ask for an offer  
9 of proof regarding --

10 MR. BANKS: What kind of choice is that?

11 MS. LUZAICH: -- The duress defense anyway because  
12 the defense is I was scared of him, and, therefore, I did  
13 this.

14 It has got to be his own personal knowledge, I  
15 mean, if, for example -- and this is not true but just for  
16 purposes of argument -- if the Defendant had been arrested  
17 two years earlier for robbing -- I'm sorry, the codefendant,  
18 sorry, for robbery, but this Defendant did not know that  
19 personally at the time, he can't use that robbery as a  
20 defense to duress.

21 THE COURT: I understand.

22 MS. LUZAICH: Because it has got to be his  
23 personal knowledge.

24 So we were actually going to ask for an offer  
25 of proof from the Defense before they present that defense.



1           What are they going to show?

2           And I believe that the Defendant needs to take  
3 the stand because it needs to be his own personal knowledge,  
4 and the only person that can testify to his own personal  
5 knowledge is himself.

6           Unless the codefendant were to get on the stand  
7 and say, yeah, I told Narcus that I was convicted of robbery  
8 two years ago, which he wasn't, and he is not testifying  
9 so --

10          MR. BANKS: Whether he knew about the prior robbery  
11 is not the issue.

12          THE COURT: Okay.

13          MR. BANKS: The issue is what was the state of  
14 mind at the time, and those phone calls would give the context  
15 to that.

16          THE COURT: Okay. Here is -- here is the reality.  
17 You don't have them. They are not going to introduce  
18 them.

19          You will have to at some point, if you are going  
20 to use this as the basis of your Defense, or you have to  
21 make some kind of a record, possibly even have to do it  
22 by way of a motion.

23          If the Defendant gets convicted with the basis  
24 of an appeal, you certainly are going to have to do a lot  
25 more than this, but just say, well, there is a possibility

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1 of this and that, and we are being deprived because they  
2 lost it.

3 That will have to have a whole -- a whole  
4 foundation, an inclination that we will probably are never  
5 going to get to before this trial because this trial is  
6 starting in five minutes.

7 So we will keep that in mind but -- and you have  
8 made a record, and I am sure it will require that you make  
9 more of a record at some other point.

10 But we will just muddle through with what we have  
11 got?

12 Anything else?

13 MS. LUZAICH: I actually do have an issue, and  
14 this is more because of the area in which your court, Judge,  
15 is located.

16 Everything is very close and confined here.

17 The Defendant has a lot of family here, some  
18 outside as well, and I am going to ask the Court to  
19 admonish the family that one, they not have any contact  
20 with any of the jurors, but two, that they not speak  
21 about the Defendant, the family, the case, anything,  
22 anywhere in the vicinity of the jurors.

23 There was problems in Justice Court, I mean,  
24 I am not going to rehash that, but I would just ask the  
25 Court to admonish the Defendant and his family that that

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1 can't happen.

2 THE COURT: And which I will do with everybody  
3 anyway just so that everyone understands this so that  
4 I'm not picking on you, I will tell everybody.

5 I am going to tell the jury just about a  
6 thousand times before this case is over with, not to  
7 have any contact with you, not to have any contact with  
8 you or with your family, or with anybody else that's in  
9 this courtroom, including court personnel, and especially  
10 any of the witnesses.

11 I will be advising you, I am going to ask you  
12 to make sure your family understands that, too, because  
13 violations of that only will cause you problems, I mean,  
14 you are the one who is on trial.

15 So if you have problems in that respect, you  
16 are the one who ends up, you know, who pays the bill  
17 for it. So don't -- don't let it happen.

18 MS. LUZAICH: Not only not have contact with  
19 but not talk about anyone or anything --

20 THE COURT: Don't talk about -- what this means  
21 is don't talk about the case --

22 MS. LUZAICH: -- anywhere near the jurors.

23 THE COURT: -- in front of anybody out there,  
24 who is not a community --

25 MS. LUZAICH: Or about the Defendant, and what

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1 a great guy he is, or anything, I mean, just --

2 THE COURT: Anything, anything in that respect.

3 MS. LUZAICH: Yes, and --

4 THE COURT: Just one thing, that -- exactly.

5 The fact that we have mentioned outside the  
6 presence of the jury the seriousness of this and involves  
7 the potential for a life sentence is something that is  
8 not, not, not going to be mentioned anywhere close to  
9 any of the potential jurors.

10 That is something that they are not concerned  
11 with, and they are instructed that they are not to be  
12 concerned with, with any aspect involving the sentencing  
13 in this case so that is not to be mentioned in any  
14 respect.

15 All right. Let's take about five minutes,  
16 and we will reconvene next door in Department 23.

17 See you there in just a minute.

18 MR. BANKS: Judge, how long are we going to  
19 go tonight?

20 THE COURT: We will probably go maybe to 5:30,  
21 no longer than that.

22 MR. BANKS: Okay.

23 THE COURT: 5:30 tonight, that's the latest.

24 MR. BANKS: It's just 5:30 is --

25 THE COURT: Is that all right?

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