

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

$$\begin{array}{c} ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \end{array}$$

Electronically Filed  
Aug 02 2017 09:36 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

V

$$\begin{pmatrix} \cdot \\ \cdot \\ \cdot \\ \cdot \end{pmatrix}$$

\_\_\_\_\_

**VOLUME II – PAGES 0244-0449**

**ATTORNEY FOR RESPONDENT**

**STEVEN WOLFSON**  
Clark County District Attorney  
200 Lewis Avenue, 3rd Floor  
Las Vegas, Nevada 89155  
Telephone: 702.617.2700  
Facsimile: 702.868.2415

ADAM LAXALT  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
Telephone: 702.684.1100  
Facsimile: 702.684.1108

APPENDIX – INDEX (CHRONOLOGICAL ORDER)

Page No.

**VOLUME I - PAGES 0001-0243**

Indictment, filed on 01/30/2015.....	0001-0007
Transcript of Grand Jury Return, held on 01/30/2015.....	0008-0010
Transcript of Initial Arraignment, held on 02/09/2015.....	0011-0016
Transcript of Arraignment Contd., held on 02/23/2015.....	0017-0022
Superseding Indictment, filed on 02/27/2015.....	0023-0029
Transcript of Grand Jury Return, held on 02/27/2015.....	0030-0033
Transcript of Proceedings Re: Superseding Indictment, held on 03/09/2015.....	0034-0043
Notice of Expert Witnesses, filed on 03/26/2015.....	0044-0048
Supplemental Notice of Expert Witnesses, filed on 04/03/2015.....	0049-0053
Transcript of Proceedings Re: Eyewear for Defendant, held on 04/06/2015.....	0054-0056
Transcript of Hearing Re: Calendar Call, held on 04/20/2015.....	0057-0062
Transcript of Hearing Re: Defendant's Petition for Writ of Habeas Corpus, held on 05/20/2015.....	0063-0066
Second Superseding Indictment, filed on 05/29/2015.....	0067-0073
Transcript of Grand Jury Return, filed on 05/29/2015.....	0074-0076
Transcript of Hearing Re: Defendant's Petition for Writ of Habeas Corpus, held on 06/01/2015.....	0077-0098
Transcript of Hearing Re: Status Check/Withdraw Plea/Trial Setting, held on 08/31/2015.....	0099-0104
Transcript of Hearing Re: Status Check Firm Trial Setting, held on 09/21/2015.....	0105-0108
Motion to Sever, filed on 04/03/2016.....	0109-0122
Motion to Dismiss Counsel and Appointment of Alternative Counsel, filed on 04/06/2016.....	0123-0135
State's Opposition to Defendant's Motion to Sever, filed on 04/07/2016.....	0136-0156

1	Transcript of Proceedings Re: Defendant's Motion to Sever, held on 04/18/2016.....	0157-0161
2		
3	Transcript of Hearing Re: Defendant's Motion to Dismiss Counsel/ Defendant's Motion to Sever, held on 05/02/2016.....	0162-0173
4	Transcript of Proceedings Re: Faretta Canvass, held on 05/04/2016...	0174-0177
5	Transcript of Proceedings Re: Joinder to Motion to Sever, held on 05/09/2016.....	0178-0186
6		
7	Motion to Withdraw as Attorney of Record, filed on 07/11/2016.....	0187-0191
8	Transcript of Proceedings Re: Motion to Withdraw as Attorney of Record, held on 07/25/2016.....	0192-0195
9	Transcript of Proceedings Re: Motion to Withdraw as Attorney of Record, held on 07/27/2016.....	0196-0199
10		
11	Motion to Dismiss Counsel and Appointment of Alternative Counsel, filed on 08/03/2016.....	0200-0207
12	Second Supplemental Notice of Expert Witnesses, filed on 08/15/2016.....	0208-0212
13		
14	Third Supplemental Notice of Expert Witnesses, filed on 08/22/2016.....	0213-0233
15	Transcript of Proceedings Re: Defendant's Motion to Dismiss Counsel, held on 08/24/2016.....	0234-0236
16		
17	Transcript of Proceedings Re: Defendant's Motion to Dismiss Counsel, held on 08/31/2016.....	0237-0243
18	<b><u>VOLUME II – PAGES 0244-0449</u></b>	
19	Transcript of Proceedings Re: Defendant's Motion in Limine to Conceal Defendant's Tattoos, held on 09/07/2016.....	0244-0262
20		
21	Motion to Exclude Summer Larsen, filed on 09/08/2016.....	0263-0275
22	State's Opposition to Defendant's Motion to Exclude Summer Larsen, filed on 09/08/2016.....	0276-0282
23	Transcript of Proceedings Re: Defendant's Motion to Exclude Summer Larsen, held on 09/09/2016.....	0283-0306
24		
25	Transcript of Proceedings Jury Trial – Day 1, held on 09/12/2016.....	0307-0449
26	<b><u>VOLUME III – PAGES 0450-0699</u></b>	
27	Transcript of Proceedings Jury Trial – Day 2, held on 09/13/2016.....	0450-0624
28	Transcript of Proceedings Jury Trial – Day 3 (partial), held on 09/14/2016.....	0625-0699

1	<b><u>VOLUME IV – PAGES 0700-0949</u></b>	
2	Transcript of Proceedings Jury Trial – Day 3 (contd.), held on	
3	09/14/2016.....	0700-0852
4	Transcript of Proceedings Jury Trial – Day 4 (partial), held on	
5	09/15/2016.....	0853-0949
6	<b><u>VOLUME V – PAGES 0950-1199</u></b>	
7	Transcript of Proceedings Jury Trial – Day 4 (contd.), held on	
8	09/15/2016.....	0950-1049
9	Transcript of Proceedings Jury Trial – Day 5 (partial), held on	
10	09/16/2016.....	1050-1199
11	<b><u>VOLUME VI – PAGES 1200-1449</u></b>	
12	Transcript of Proceedings Jury Trial – Day 5 (contd.), held on	
13	09/16/2016.....	1200-1264
14	Transcript of Proceedings Jury Trial – Day 6, held on 09/19/2016.....	1265-1385
15	Transcript of Proceedings Jury Trial – Day 7 (partial), held on	
16	09/20/2016.....	1386-1449
17	<b><u>VOLUME VII – PAGES 1450-1694</u></b>	
18	Transcript of Proceedings Jury Trial – Day 7 (contd.), held on	
19	09/20/2016.....	1449-1561
20	Transcript of Proceedings Jury Trial – Day 8, held on 09/21/2016.....	1562-1694
21	<b><u>VOLUME VIII – PAGES 1695-1944</u></b>	
22	Transcript of Proceedings Jury Trial – Day 9, held on 09/22/2016.....	1695-1844
23	Transcript of Proceedings Jury Trial – Day 10 (partial), held on	
24	09/23/2016.....	1845-1944
25	<b><u>VOLUME IX – PAGES 1945-2194</u></b>	
26	Transcript of Proceedings Jury Trial – Day 10 (contd.), held on	
27	09/23/2016.....	1945-2095
28	Transcript of Proceedings Jury Trial – Day 11 (partial), held on	
	09/27/2016.....	2096-2194
	<b><u>VOLUME X – PAGES 2195-2390</u></b>	
	Transcript of Proceedings Jury Trial – Day 11 (contd.), held on	
	09/27/2016.....	2195-2240
	Transcript of Proceedings Jury Trial – Day 12, held on 09/28/2016...	2241-2390

**VOLUME XI – PAGES 2391-2640**

Transcript of Proceedings Jury Trial – Day 13, held on 09/29/2016.....	2391-2555
Transcript of Proceedings Jury Trial – Day 14 (partial), held on 09/30/2016.....	2556-2640

**VOLUME XII – PAGES 2641-2890**

Transcript of Proceedings Jury Trial – Day 14 (contd.), held on 09/30/2016.....	2641-2813
Defendant Murphy’s Supplemental Motion to Sever, filed on 10/03/2016.....	2814-2819
State’s Opposition to Defendant’s Motion for Mistrial, filed on 10/03/2016.....	2820-2830
Transcript of Proceedings Jury Trial – Day 15 (partial), held on 10/03/2016.....	2831-2890

**VOLUME XIII – PAGES 2891-3140**

Transcript of Proceedings Jury Trial – Day 15 (contd.), held on 10/03/2016.....	2891-2898
Transcript of Proceedings Jury Trial – Day 16, held on 10/04/2016.....	2899-3038
Transcript of Proceedings Jury Trial – Day 17, held on 10/05/2016.....	3039-3070
Transcript of Proceedings Jury Trial – Day 18 (partial), held on 10/06/2016.....	3071-3140

**VOLUME XIV – PAGES 3141-3390**

Transcript of Proceedings Jury Trial – Day 18 (contd.), held on 10/06/2016.....	3141-3197
Transcript of Proceedings Jury Trial – Day 19, held on 10/07/2016...	3198-3276
Instruction to the Jury, filed on 10/07/2016.....	3277-3340
Defendant’s Proposed Jury Instructions, filed on 10/05/2016.....	3341-3348
Defendant’s Proposed Jury Instructions Not Used at Trial, filed on 10/06/2016.....	3349-3356
Verdict (Defendant David Murphy), filed on 10/07/2016.....	3357-3359
Transcript of Proceedings Re: Sentencing, held on 11/28/2016.....	3360-3387
Judgement of Conviction (Defendant David Murphy), filed on 12/02/2016.....	3388-3390

**VOLUME XV – PAGES 3391-3401**

Judgement of Conviction (Defendant Summer Larsen), filed on 04/21/2017.....	3391-3394
Judgement of Conviction (Defendant Robert Figueroa), filed on 12/14/2016.....	3395-3396
Amended Judgment of Conviction (nunc pro tunc) (Defendant David Murphy), filed on 03/27/2017.....	3397-3399
Notice of Appeal, filed on 12/30/2016.....	3400-3401

# APPENDIX – INDEX (ALPHABETICAL ORDER)

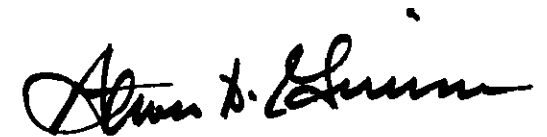
	Page No.
Amended Judgment of Conviction (nunc pro tunc) (Defendant David Murphy), filed on 03/27/2017.....	3397-3399
Defendant Murphy’s Supplemental Motion to Sever, filed on 10/03/2016.....	2814-2819
Defendant’s Proposed Jury Instructions, filed on 10/05/2016.....	3341-3348
Defendant’s Proposed Jury Instructions Not Used at Trial, filed on 10/06/2016.....	3349-3356
Indictment, filed on 01/30/2015.....	0001-0007
Instruction to the Jury, filed on 10/07/2016.....	3277-3340
Judgement of Conviction (Defendant David Murphy), filed on 12/02/2016.....	3388-3390
Judgement of Conviction (Defendant Robert Figueroa), filed on 12/14/2016.....	3395-3396
Judgement of Conviction (Defendant Summer Larsen), filed on 04/21/2017.....	3391-3394
Motion to Dismiss Counsel and Appointment of Alternative Counsel, filed on 04/06/2016.....	0123-0135
Motion to Dismiss Counsel and Appointment of Alternative Counsel, filed on 08/03/2016.....	0200-0207
Motion to Exclude Summer Larsen, filed on 09/08/2016.....	0263-0275
Motion to Sever, filed on 04/03/2016.....	0109-0122
Motion to Withdraw as Attorney of Record, filed on 07/11/2016.....	0187-0191
Notice of Appeal, filed on 12/30/2016.....	3400-3401
Notice of Expert Witnesses, filed on 03/26/2015.....	0044-0048
Second Superseding Indictment, filed on 05/29/2015.....	0067-0073
Second Supplemental Notice of Expert Witnesses, filed on 08/15/2016.....	0208-0212
State’s Opposition to Defendant’s Motion for Mistrial, filed on 10/03/2016.....	2820-2830
State’s Opposition to Defendant’s Motion to Exclude Summer Larsen, filed on 09/08/2016.....	0276-0282

1	State's Opposition to Defendant's Motion to Sever, filed on 04/07/2016.....	0136-0156
2	Superseding Indictment, filed on 02/27/2015.....	0023-0029
3	Supplemental Notice of Expert Witnesses, filed on 04/03/2015.....	0049-0053
4	Third Supplemental Notice of Expert Witnesses, filed on 08/22/2016.....	0213-0233
5	Transcript of Arraignment Contd., held on 02/23/2015.....	0017-0022
6	Transcript of Grand Jury Return, held on 01/30/2015.....	0008-0010
7	Transcript of Grand Jury Return, held on 02/27/2015.....	0030-0033
8	Transcript of Grand Jury Return, filed on 05/29/2015.....	0074-0076
9	Transcript of Hearing Re: Calendar Call, held on 04/20/2015.....	0057-0062
10	Transcript of Hearing Re: Defendant's Motion to Dismiss Counsel/	
11	Defendant's Motion to Sever, held on 05/02/2016.....	0162-0173
12	Transcript of Hearing Re: Defendant's Petition for Writ of Habeas	
13	Corpus, held on 05/20/2015.....	0063-0066
14	Transcript of Hearing Re: Defendant's Petition for Writ of Habeas	
15	Corpus, held on 06/01/2015.....	0077-0098
16	Transcript of Hearing Re: Status Check Firm Trial Setting, held on	
17	09/21/2015.....	0105-0108
18	Transcript of Hearing Re: Status Check/Withdraw Plea/Trial Setting,	
19	held on 08/31/2015.....	0099-0104
20	Transcript of Initial Arraignment, held on 02/09/2015.....	0011-0016
21	Transcript of Proceedings Jury Trial – Day 1, held on 09/12/2016.....	0307-0449
22	Transcript of Proceedings Jury Trial – Day 2, held on 09/13/2016.....	0450-0624
23	Transcript of Proceedings Jury Trial – Day 3 (partial), held on	
24	09/14/2016.....	0625-0699
25	Transcript of Proceedings Jury Trial – Day 3 (contd.), held on	
26	09/14/2016.....	0700-0852
27	Transcript of Proceedings Jury Trial – Day 4, held on 09/15/2016.....	0853-1049
28	Transcript of Proceedings Jury Trial – Day 5, held on 09/16/2016.....	1050-1264
	Transcript of Proceedings Jury Trial – Day 6, held on 09/19/2016.....	1265-1385
	Transcript of Proceedings Jury Trial – Day 7, held on 09/20/2016.....	1386-1561
	Transcript of Proceedings Jury Trial – Day 8, held on 09/21/2016.....	1562-1694



1	Transcript of Proceedings Jury Trial – Day 9, held on 09/22/2016.....	1695-1844
2	Transcript of Proceedings Jury Trial – Day 10, held on 09/23/2016.....	1845-2095
3	Transcript of Proceedings Jury Trial – Day 11, held on 09/27/2016.....	2096-2240
4	Transcript of Proceedings Jury Trial – Day 12, held on 09/28/2016.....	2241-2390
5	Transcript of Proceedings Jury Trial – Day 13, held on 09/29/2016.....	2391-2555
6	Transcript of Proceedings Jury Trial – Day 14 (partial), held on 09/30/2016.....	2556-2641
7	Transcript of Proceedings Jury Trial – Day 14 (contd.), held on 09/30/2016.....	2642-2813
9	Transcript of Proceedings Jury Trial – Day 15, held on 10/03/2016.....	2831-2898
10	Transcript of Proceedings Jury Trial – Day 16, held on 10/04/2016.....	2899-3038
11	Transcript of Proceedings Jury Trial – Day 17, held on 10/05/2016.....	3039-3070
12	Transcript of Proceedings Jury Trial– Day 18, held on 10/06/2016.....	3071-3197
13	Transcript of Proceedings Jury Trial – Day 19, held on 10/07/2016.....	3198-3276
14	Transcript of Proceedings Re: Defendant’s Motion in Limine to Conceal Defendant’s Tattoos, held on 09/07/2016.....	0244-0262
15	Transcript of Hearing Re: Defendant’s Motion to Dismiss Counsel/ Defendant’s Motion to Sever, held on 05/02/2016.....	0162-0173
16	Transcript of Proceedings Re: Defendant’s Motion to Dismiss Counsel, held on 08/24/2016.....	0234-0236
17	Transcript of Proceedings Re: Defendant’s Motion to Dismiss Counsel, held on 08/31/2016.....	0237-0243
18	State’s Opposition to Defendant’s Motion to Exclude Summer Larsen, filed on 09/08/2016.....	0276-0282
19	Transcript of Proceedings Re: Defendant’s Motion to Sever, held on 04/18/2016.....	0157-0161
20	Transcript of Proceedings Re: Eyewear for Defendant, held on 04/06/2015.....	0054-0056
21	Transcript of Proceedings Re: Faretta Canvass, held on 05/04/2016...	0174-0177
22	Transcript of Proceedings Re: Joinder to Motion to Sever, held on 05/09/2016.....	0178-0186
23	Transcript of Proceedings Re: Motion to Withdraw as Attorney of Record, held on 07/25/2016.....	0192-0195
24		
25		
26		
27		
28		

1	Transcript of Proceedings Re: Motion to Withdraw as Attorney of	
2	Record, held on 07/27/2016.....	0196-0199
3	Transcript of Proceedings Re: Sentencing, held on	
4	11/28/2016.....	3360-3387
5	Transcript of Proceedings Re: Superseding Indictment, held on	
6	03/09/2015.....	0034-0043
7	Verdict (Defendant David Murphy), filed on 10/07/2016.....	3357-3359
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		



CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

VS.

JOSEPH LAGUNA,

Defendant.

CASE NO. C-15-303991-5

DEPT. V

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

**WEDNESDAY, SEPTEMBER 7, 2016**

***ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:***

***DEFENDANT'S MOTION IN LIMINE TO CONCEAL DEFENDANT'S TATTOOS***

APPEARANCES:

For the State:

MARC DiGIACOMO, ESQ.,  
AGNES M. LEXIS, ESQ.,  
Chief Deputy District Attorneys

For the Defendant, Mendoza:

WILLIAM L. WOLFBRANDT, ESQ.,

For the Defendant, Murphy:

CASEY A. LANDIS, ESQ.,

For the Defendant, Laguna:

MONIQUE A. McNEILL, ESQ.,

RECORDED BY: LARA CORCORAN, COURT RECORDER

1                   **LAS VEGAS, NEVADA; WEDNESDAY, SEPTEMBER 7, 2016**

2                   [Proceeding commenced at 9:27 a.m.]

3  
4           THE COURT: Case number C303991, State of Nevada versus Jorge  
5 Mendoza, David Murphy and Joseph Laguna -- Laguna. Just state your  
6 appearances for the record.

7           MR. DiGIACOMO: Marc DiGiacomo and Agnes Lexis for the State.

8           MR. LANDIS: Casey Landis for Mr. Murphy.

9           MS. McNEILL: Monique McNeill for Mr. Laguna.

10          MR. WOLFBRANDT: Good morning. Lou Wolfrandt for Mr. Mendoza.

11          THE COURT: All right. And so this is on two things, calendar call and  
12 there's a motion in limine by Mr. Laguna to conceal his tattoos. All right. So  
13 shall we take the latter first?

14          MR. DiGIACOMO: There's two motions for Mr. Laguna that were set by  
15 OST.

16          MS. McNEILL: Just one. Was it the -- the motion in limine is still on for  
17 the first day of trial. I didn't move it up 'cause I didn't think it really affected  
18 our prep.

19          MR. DiGIACOMO: Okay. All right.

20          MS. McNEILL: We can probably --

21          MR. DiGIACOMO: All right. Well, Ms. McNeill and I worked out the other  
22 motion anyways so we can make the representations for the record as to what  
23 we're going to do with that.

24          THE COURT: Okay. Let's do that. So -- oh, what about this one, tattoo  
25 motion 'cause I don't have an opposition? I know it was filed on an order

1 shortening time.

2 MR. DiGIACOMO: It was and as I discussed --

3 THE COURT: What's the State's position?

4 MR. DiGIACOMO: -- with Ms. McNeill, I mean, I don't see this is an  
5 evidentiary issue as -- as it relates -- and I don't see it as anything that I'm  
6 presenting as evidence. And so I don't know, you know, the position that take  
7 has nothing to do with the actual case. It's more with the Court controlling  
8 your calendar in a time period it would take and the amount of delay that's  
9 associated with it.

10 I looked at Mr. Laguna today and I don't see anything there that  
11 would -- it's not like he had a Swastika on him or a tear drop or something  
12 that's going to cause some sort of issue. But I would note in the one case that  
13 that happened, it was during jury selection when they couldn't get a fair and  
14 impartial jury that the decision was made by the Court to do that. I'm not sure  
15 what authority there is to require it.

16 THE COURT: I did have my law clerk research the authorities since there  
17 really none cited in the motion itself. And there -- all of the law and other  
18 jurisdictions on this basically deals with either situations where identification  
19 potentially is involved or -- but -- but you're right. This is not an evidentiary  
20 matter. You're not presenting it. It just happen -- happens to be how he looks  
21 so I liken it to well, okay, what if there are people that don't like redheads. Are  
22 we going to have him dye his hair? I mean, he looks what he looks like.

23 And so I don't -- most of his tattoos can be concealed by way of a  
24 long shirt and tie. I mean, which you're going to put him in any way.

25 MS. McNEILL: Yes, Your Honor.

1 THE COURT: So the only thing -- and I can't see his -- what is on his  
2 face? Because you didn't describe the tattoos in your motion, so I had no idea.

3 DEFENDANT, LAGUNA: It's a teardrop and three dots. And on the side  
4 is letters.

5 THE COURT: Okay.

6 MS. McNEILL: And, Your Honor, just for the record, he has a Federal  
7 Public Defender and this is something that they do routinely in the Feds and the  
8 Prosecutors don't oppose it. It's just a matter -- it's sort of a matter of course  
9 because I mean it's different than just somebody not liking a hair color. I think  
10 that jurors tend to associate face tattoos with gang membership. And I think  
11 that makes it a little more prejudicial especially since it's not an element of the  
12 case of whether or not he's in a gang. And I think it just makes the jurors tend  
13 to come in with more a prejudice than they would have when he comes into the  
14 courtroom.

15 I don't think it's that lengthy of a process. His facial tattoos are not  
16 as [indiscernible] --

17 THE COURT: How is it you're proposing 'cause you don't say anything  
18 about that as to how this will be done? You know, are you going to pay for it?

19 MS. McNEILL: Well, Your Honor, I talked to -- Mr. Figler had this come  
20 up in a case where the -- I think it was in front of Judge Scotti where they  
21 granted it and he had a makeup artist who comes in the jail. Apparently prefers  
22 that it'd be done here instead of over in the jail because then they have to  
23 facilitate getting that person inside the module. There's a makeup artist who  
24 comes in and just puts cover up on. I don't think it's -- would be a lengthy  
25 procedure. She can come in and do it in the courtroom the morning of -- you

1 know , every morning she can come in and do that. I don't think -- I mean, it  
2 wouldn't take that long to cover it.

3 THE COURT: Well, I don't -- I mean, I don't see that there's -- if his -- if  
4 his tattoo was a Swastika, yeah. I can see that because white supremacist-  
5 type things, that's going to be extremely difficult to pick a jury. But I don't  
6 think there's a showing. And I think it's a bad precedent frankly to say that  
7 we're going to start covering up tattoos every time that we have a criminal trial.  
8 And so I mean, I don't see that it's necessary. Most of it -- like I say, most of  
9 his tattoos can be covered up with clothing and so I haven't found any case law  
10 that says that it's a requirement and there's been no showing that the -- that  
11 there's prejudice at this point as far as picking a jury.

12 If we -- if that becomes an issue, then we'll look at that, but -- and  
13 get a -- get a new panel. But I'm not going to do that because I think it's going  
14 to delay the trial and I don't really see the point. So that motion's denied.

15 And what's the other representation about?

16 MR. DiGIACOMO: The other motion was Mr. Figueroa which is the Co-  
17 defendant and Mr. Laguna. How they met was in custody --

18 THE COURT: Okay.

19 MR. DiGIACOMO: They were cell mates.

20 THE COURT: Right.

21 MR. DiGIACOMO: I talked to Ms. McNeill about her motion to not  
22 mention that fact and my idea was to have Mr. Figueroa indicate I know Mr.  
23 Laguna, I've known him for this long and for a period of time I was his  
24 roommate. And we'll leave it at that and we won't go anywhere near his  
25 custody status unless through cross examination something comes up that

1 would open the door. But certainly we could address that outside the presence  
2 with the Court.

3 THE COURT: That would have been what I expected you to resolve  
4 because obviously it would be prejudicial for him to mention that otherwise.

5 All right. So -- so may we accelerate that motion --

6 MS. McNEILL: Yes.

7 THE COURT: -- today and get --

8 MS. McNEILL: Yes, Your Honor, please.

9 THE COURT: -- have it solved? Okay. So go ahead and prepare the  
10 order --

11 MS. McNEILL: I will.

12 THE COURT: -- for that that you've agreed to that. And obviously  
13 probably before Mr. Figueroa testifies, I'll admonish him outside the presence  
14 just to remind him. I know you'll have done that, but I always like to.

15 MR. DiGIACOMO: Yes.

16 DEFENDANT, LAGUNA: Your Honor, what the detective too because he  
17 says the same thing in his statement in the grand jury he stated that me and  
18 Figueroa were cellies --

19 MS. McNEILL: And, Your Honor --

20 DEFENDANT, LAGUNA: -- I'm assuming he's going to say the same thing  
21 here.

22 THE COURT: You have a lawyer for this.

23 MS. McNEILL: Your Honor, I have every assurance that Mr. DiGiacomo  
24 will not elicit that from the detective either.

25 MR. DiGIACOMO: Right. I think that fact is excluded --



1 THE COURT: Right. I mean, it's --

2 MR. DiGIACOMO: -- from evidence.

3 THE COURT: -- all-encompassing --

4 MR. DiGIACOMO: No witness is going to testify --

5 THE COURT: Right.

6 MR. DiGIACOMO: -- to it.

7 THE COURT: All-encompassing motion in limine in that regard, okay. So  
8 that's granted.

9 And calendar call; you ready to go?

10 MR. DiGIACOMO: We are.

11 MR. LANDIS: From my --

12 MS. McNEILL: [indiscernible]

13 MR. LANDIS: I'm sorry. From my position, we have every intent to be  
14 ready. Did the Court preside over the hearing yesterday were summarized after  
15 the negotiation to testify?

16 THE COURT: Yes.

17 MR. LANDIS: Based on that and based on the timing of it, I intend to  
18 bring forth a motion to exclude her. Obviously, it's not in writing today  
19 because I was notified at roughly 4 p.m. yesterday that that went down. Both  
20 for investigation reasons, for fairness reasons, for statutory notice reasons, she  
21 hasn't been properly noticed and I think exclusion is the proper remedy.

22 How this Court wants to address that, I'm not sure because as I  
23 said, I didn't have time to put it in writing, but I think it is something righteous  
24 for this Court to rule on before we start trial.

25 THE COURT: Right. And what's the State's position? Had she -- she

1 had not been noticed as a witness before, but she was --

2 MR. DiGIACOMO: She was a Co-defendant --

3 THE COURT: -- a Co-defendant.

4 MR. DiGIACOMO: -- she's a Co-defendant. They were on notice of her.  
5 They've been given her discovery and immediately upon exiting this courtroom  
6 yesterday they were provided the guilty plea agreement. As the Court is aware  
7 what Exhibit number 2 is; that is notice of the intent of the State to call the  
8 witness. We couldn't give it before her Fifth Amendment privileges were  
9 waived. And so immediately upon waiving her Fifth Amendment privilege, we  
10 provided them notice.

11 THE COURT: So --

12 MR. LANDIS: I don't --

13 THE COURT: -- so, the issue, of course, is you're certainly aware that  
14 she was part of the case and what the allegations against are because you got  
15 the whole discovery and you've been on the case for two years. So how are  
16 you prejudiced by --

17 MR. LANDIS: Knowing she's a Co-defendant certainly different than  
18 knowing she is a testifying witness. Even though they did notice it yesterday,  
19 that does not comply with the five-day notice requirement of statute. Further,  
20 they could have still noticed a year ago if they wanted to even though she had  
21 a Fifth Amendment right and that she might not testify. There's no rule that  
22 says you can't notify -- notice witnesses who end up not testifying.

23 How are we prejudiced? In a lot of ways. It's impossible for me to  
24 do the investigation necessary between now and trial for her. Step one is  
25 phone calls. Jail phone calls especially for a first time offender like her are

1 going to be riddle with exculpatory evidence. I base that on every single case  
2 I've ever had whether there's testifying Co-defendant who's been in jail for that  
3 amount of time. I've used telephone calls during cross because they always  
4 make statements because they just have too much idle time; that's one.

5           Number two, her plea isn't anything that our -- my client's charged  
6 with. Her plea is to a separate crime, a completely separate crime that's an  
7 uncharged bad act as we stand here today. I don't know a lot about it. I don't  
8 know if there's police reports about it. Furthermore, they haven't moved to  
9 admit this uncharged bad act which I got to presume they intend to have her  
10 testify to. And just to make sure it's clear, there's the charged home invasion  
11 robbery that turns into a murder that -- that is this case.

12           Her plea is to conspiring and attempting to rob a completely  
13 different house I believe earlier in the day and I'm assuming that 'cause I don't  
14 know exactly what she's going to say. Based on that, I don't have any  
15 discovery. Furthermore, cellphone data is very important in this case. I now  
16 want to look at the cellphone data to see when she's saying this attempt  
17 robbery went down and I need to know the details about what she's going to  
18 say so I can look at the cellphone data for all of these Defendants and see if  
19 they jive with her story. That's impossible to do even today because I don't  
20 know any details about her -- her intended story except for what's in the guilty  
21 plea which is -- it was an attempt robbery involving all of these Defendants and  
22 it occurred to Joseph Larsen's drug dealers house. That's all that's in there.

23           They haven't provided any statement of any proffer. I have to  
24 assume they chose not to record that proffer so we wouldn't know exactly  
25 what she's saying. So as of today, I don't know those details which makes it

1 impossible to do that investigation. And these aren't fishing expeditions.  
2 These aren't thoughts. I mean, these are concrete things that I think is  
3 important for us to look into.

4 THE COURT: All right. So if there is -- is there any discovery that would  
5 be in connections?

6 MR. DiGIACOMO: No.

7 THE COURT: So there's no --

8 MR. DiGIACOMO: And so that the record --

9 THE COURT: -- recorded statements?

10 MR. DiGIACOMO: -- is absolutely clear, these Defendants were all  
11 charged with engaging in a conspiracy to commit robbery on a particular day.  
12 During the grand jury testimony there was testimony that the initial house they  
13 were going to hit was Joey Larsen's drug supplier when they saw that the drug  
14 supplier was not or at least it's in Robert Figueroa's statement when they saw  
15 that the drug house that they were going to go to had too many people, they  
16 called it off and decided to go back to Joey Larsen's house later that evening.

17 It's all part --

18 THE COURT: Right. That's what I remember.

19 MR. DiGIACOMO: -- and parcel of the conspiracy that's charged in Count  
20 1. She pled to that conspiracy. The factual attempt robbery that she pled to  
21 was to Joey Larsen's drug supplier based upon what I believe her liability is and  
22 the testimony she's going to give. I did request that a transcript be provided,  
23 but other than -- of the plea hearing, but she was only asked about that which  
24 is what was contained in the indictment that they now have. And other than  
25 that, there is no other discovery to give them.

1           Moreover, they have the phone records. They could have done any  
2 investigation they wanted to do about Joey Larsen's drug supplier's home at  
3 some time previous. This is nothing like if I were three days into trial, I could  
4 plead any one of the Defendants and put them on the stand. If they're going to  
5 adjoin trial, you have to assume that one of the Co-defendants may decide to  
6 testify on their own behalf and particularly one who has no criminal history.

7           Ms. Larsen would likely have testified at trial had she not entered a  
8 negotiation. And there wouldn't be any claim that suddenly now I haven't done  
9 the investigation I was supposed to do. They don't have any legitimate basis to  
10 suggest that one, there's more investigation they can do or two, there's some  
11 sort of investigation they should have done before that they didn't do.

12           And so with that I don't see a basis why it is when it's a Co-  
13 defendant entering a plea that there should ever be a continuance of the case  
14 because they have to assume that person's going to testify in prepping their  
15 case already.

16           MR. LANDIS: So notice requirements don't apply because the defense  
17 should have an assumption that people are going to testify. There's no basis  
18 for that in any statute or case law that I'm aware of.

19           And for them to say that Figueroa testified that they were going to  
20 rob Joey Larsen's drug house, it's not in his grand jury testimony. It's not in  
21 his proffer. They said he -- they were --

22           THE COURT: Yes, it is. I --

23           MR. LANDIS: -- they said they were going to --

24           THE COURT: -- read the transcript.

25           MR. LANDIS: -- they said they were going to rob a drug house -- a drug

1 house. Point being, you know what that was before yesterday an uncharged  
2 bad act that they weren't going to get into 'cause they haven't filed a motion.

3 Now, they're going to bootstrap it in and say they can get it in  
4 because Summer Larsen pled to it. To say they're charged with committing a  
5 conspiracy to commit robbery of a different house than the Larsen house in this  
6 information that our clients are charged with that is a first. It's not true. It's  
7 not what they're charged with. They're charged with conspiring to rob Joseph  
8 Larsen's house. So to say they're already charged with committing a separate  
9 robbery, a separate conspiracy, that's insane.

10 THE COURT: Well okay. My recollection of the grand jury testimony  
11 'cause I did read the transcript was that Figueroa said that yes, they were  
12 planning on robbing this other house that they, you know, had this information  
13 from Summer Larsen. Well, from David Murphy -- the woman that David  
14 Murphy was sleeping with; right? Girlfriend, whatever. And that they went  
15 over to the house. They planned this to -- to do this robbery, burglary, what  
16 have you, they drove up and there were all these people out front and -- and  
17 they called it off and went back and hatched the next plan --

18 MR. LANDIS: Certainly.

19 THE COURT: -- which then was partially executed; right? So --

20 MR. LANDIS: I concur with all of that. Here's the huge difference  
21 though; what Figueroa couldn't say was whose house it was or where the  
22 house was. I have to assume based on the State's theory, Summer Larsen  
23 knows where that house is since she told them to go there according to them  
24 and because it was her husband's drug supplier.

25 That enables me to do location data search with the cellphone.

1 Something I was unable to do before because Figueroa never said the location  
2 or really an accurate time for that matter. But I was with -- but even before we  
3 get to that. Understand that wasn't coming in because they didn't file a motion  
4 to -- to admit those bad acts. Those are uncharged bad acts. It's a separate  
5 robbery. They can say we had a legitimate argument to get it in; that's fine.  
6 But as we stand here, they didn't file a motion and that time's passed too.

7           So to overlook that and say hey, since the Co-defendant who's  
8 testifying, we don't have to comply with the bad act statute; that doesn't seem  
9 to make any sense whatsoever. In effect, they're getting a benefit for being  
10 late and the defense is getting penalized. And I don't how that is a proper fair  
11 remedy for this Court to impose.

12           MR. DiGIACOMO: All due respect to Mr. Landis, this isn't a bad act. I'm  
13 not trying to establish that underlying crime as a separate crime to establish one  
14 of the 48.045 Subsection 2. This is the conspiracy. It began that morning and  
15 continued through that evening. He's arguing like it's two separate  
16 conspiracies. It is one conspiracy and thus, you know, I even want to say it's  
17 res gestae 'cause it's not res gestae. That would be a reason to admit another  
18 act. This isn't another act. This is the crime that they're charged with; that's  
19 it. It's just evidence of the crime.

20           THE COURT: I'm looking at the amended indictment. Is that the last?

21           MR. LANDIS: There's a second superseding.

22           MR. DiGIACOMO: There's a second superseding.

23           THE COURT: The conspiracy charge just says that did willfully,  
24 unlawfully and feloniously conspire with each other and/or Robert Figueroa to  
25 commit a robbery. It doesn't say as set forth in Count whatever below.

1 MR. LANDIS: But it does say a robbery, not --

2 THE COURT: A robbery; that's right. It does. And I have not ever seen  
3 any motion to give adequate notice.

4 MR. LANDIS: It does give adequate notice that they're charged with  
5 committing a robbery of Joseph Larsen's house.

6 THE COURT: Well, it doesn't specify that robbery -- I'm sorry. I'm not  
7 speaking to the microphone. I'm being chastised.

8 MR. LANDIS: I would argue -- I'm sorry.

9 THE COURT: All right. So it sounds like you need to file a motion and so  
10 let's get that on file order shortening time. I'll give you permission to file that  
11 without assigned order. So you need to get that filed and we'll set it for  
12 hearing on trial. I can keep this trial here. We'll set it for day one. And you  
13 need to have it filed. Today's Wednesday already. You need to have it filed by  
14 tomorrow.

15 MR. LANDIS: I can expedite things to try to alleviate everybody's  
16 weekend. If there's a way we can here it Friday. I'll get it filed by 8 a.m.  
17 tomorrow.

18 THE COURT: We gave our courtroom to a short trial 'cause we didn't  
19 think we had anything on Friday. But we -- if we can do that, that'd be fine.  
20 We could start -- if we can -- Judge -- use Judge Herndon's courtroom. Or  
21 we'll find a courtroom. There's lots of courtrooms usually available on Friday.

22 MS. McNEILL: And, Your Honor, can I be heard on behalf of Mr. Laguna?

23 THE COURT: Of course.

24 MS. McNEILL: Thank you. I would concur with Mr. Landis, but one of  
25 my issues with Ms. Larsen's testimony and I guess it kind of brings a procedural



1 issue with the trial is, I filed a writ. I don't believe that they can connect my  
2 client to the crime independent of Mr. Figueroa. To get to Mr. Figueroa's  
3 testimony, the Court disagreed with me, but I think they still have to cross that  
4 barrier in front of the jury.

5 I would think that -- and that raises an issue with Ms. Rice's  
6 testimony as well. Can they independently connect my client to the crime  
7 outside of Ms. Rice's testimony? I would have filed a motion to strike her  
8 testimony had I been, you know, known before yesterday that she was  
9 absolutely testifying. I don't believe based on my conversations with Mr.  
10 DiGiacomo she necessarily has much to say about my client specifically. But  
11 again, until she gets on the stand I don't -- I don't know what's going to come  
12 out of her mouth.

13 Again, I think procedurally I would ask that they have to present  
14 evidence to connect my client to the crime before they even put Mr. Figueroa or  
15 Ms. Larsen on the stand. I think that's what the Supreme Court requires. My  
16 contention has always been the phone records aren't going to show what they  
17 have said that they were going to show. And until that is done, we can't even  
18 get to their testimony because they're accomplices.

19 THE COURT: Well, we already --

20 MR. DIGIACOMO: I don't know what's an order of witness rule as it  
21 relates to the accomplice testimony. The end of the day if the jury does not  
22 believe that the accomplice was corroborated, but I don't have to present the  
23 corroborating evidence first. There's no rule of evidence that says that. I think  
24 that the witness is on in the order I choose.

25 THE COURT: We -- yeah. It's just got to be there and then the jury, you

1 know , gets instructed about corroboration as well. But we -- you know , we  
2 already discussed this in your writ and because you didn't -- the motion was  
3 that sufficient evidence wasn't submitted that purpose to -- the purpose of the  
4 probable cause finding by the grand jury in the true bill and I disagreed with you  
5 as you remember.

6           So, I think since we've gotten passed that that doesn't change the  
7 fact that they got to actually put the evidence on and the jury will be instructed  
8 and then, of course, if truly there was insufficient evidence to prove that there  
9 was no evidence to prove the charge against your client, you file a motion after  
10 trial within seven days of the verdict if he was found guilty. You know , that's  
11 assuming that the jury found him guilty.

12           So, I think, you know , you can file any motion you'd like. Join in  
13 Mr. Landis' motion, but I don't have any real motion in front of me now and I  
14 think we've already addressed the issue you're raising previously. And so I  
15 don't think we take witnesses out of order all the time, but at the end of the  
16 day it's got -- they've got to meet their burden and they've got to comply with  
17 the accomplice testimony.

18           MS. McNEILL: And I guess my record is just that I don't think Mr.  
19 Figueroa potentially Ms. Larsen's testimony is even admissible until they cross  
20 they cross the barrier or have they corroborated independently of their  
21 testimony that my client was connected to the crime. I think it -- it's  
22 inadmissible testimony until they do that.

23           THE COURT: Well that's -- the case law isn't -- that's not the case law.  
24 The case law is you can't -- can't be convicted. It doesn't say it's not  
25 admissible. It's not an evidentiary rule. So to the extent this is an oral motion,

1 it's denied.

2 [Colloquy between the Court and the Clerk]

3 MR. DiGIACOMO: I know Judge Herndon doesn't start until 10:30 on  
4 Friday 'cause I have a slight of motions in there. Perhaps he would allow you  
5 to use his courtroom at 9 a.m.

6 THE COURT: Okay. We're going to go check.

7 MR. DiGIACOMO: One last issue. On Thursday I think it was, late  
8 Thursday, Ms. McNeill filed a notice of alibi on behalf of Mr. Laguna. I drafted a  
9 brief motion to strike and then I had a conversation with Ms. McNeill. It's my  
10 belief that she's not intending to necessarily call the witness, but for the record  
11 I wanted to file my motion to strike in case things change in trial. And if they  
12 want to raise this, we haven't gotten the type of notice that's required by the  
13 statute. I want to be able to preserve that record to make that argument.

14 And so if I could, I'd like to file it in open court. I provided a copy  
15 to Ms. McNeill this morning.

16 MS. McNEILL: Your Honor, I did receive that. As Mr. DiGiacomo  
17 indicated, I had told him I was withdrawing my notice of alibi witnesses and  
18 don't intend to present that witness. I can't foresee a scenario that would --  
19 well, I guess you never know what might happen. I don't want to say that. At  
20 this point I can't foresee something happening where I would put that witness  
21 on.

22 I understand these arguments. I provided a specific as I could base  
23 on the information I was provided from the witness. I think based on the  
24 statute the Court can still allow it. It's a decision Your Honor can make. But at  
25 this point I'm withdrawing that notice.

1 THE COURT: All right. If she is on the record withdrawing the notice,  
2 then the Court will order that stricken since she's withdrawing it. Do you want  
3 it stricken?

4 MS. McNEILL: That's fine, Your Honor.

5 THE COURT: Okay. So we'll strike her notice because she's --

6 MR. DIGIACOMO: Then this is moot.

7 THE COURT: -- and that makes your opposition moot. Exactly.

8 Just trying to find a courtroom for you so you know where to go  
9 and won't be in search. So we won't hold you up anymore, we'll just email  
10 you to let you know where we'll be on Friday.

11 MS. McNEILL: Thank you, Your Honor.

12 MR. DIGIACOMO: Thank you, Judge.

13 MR. WOLFBRANDT: Thank you.

14 MS. McNEILL: Otherwise, we are set to start Monday?

15 THE COURT: We are. So you have priority and -- 'cause there's only one  
16 other case that's older and it's overflow eligible so I was going to keep this one  
17 because my understanding is two weeks; do you think that's a good estimate of  
18 how long given our half day except on Fridays?

19 MS. McNEILL: Yes, Your Honor.

20 MR. WOLFBRANDT: Monday we'll be --

21 MR. DIGIACOMO: So would it be 1:30 on Monday?

22 THE COURT: Yes because we have calendar on Monday, so 1:30  
23 Monday.

24 What are you -- are you going to style your motion?

25 MR. LANDIS: Motion to exclude.

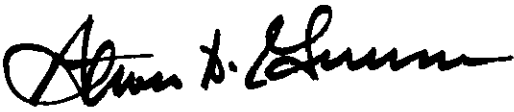
1 THE COURT: Motion to exclude witness.  
2 MR. LANDIS: Summer Rice, Summer Larsen aka Rice.  
3 THE COURT: So we'll put that on for Friday at 9 and then we'll let you  
4 know what courtroom.  
5 THE CLERK: Is that L-A-R-S-E-N?  
6 MR. LANDIS: Yes.  
7 THE CLERK: And that will be Friday, September 9<sup>th</sup> at 9 a.m.  
8 MR. LANDIS: Thank you, Judge.  
9 MS. McNEILL: Thank you, Your Honor.  
10 THE COURT: Thank you.  
11 MR. DiGIACOMO: Thank you.

12 [Proceeding concluded at 9:56 a.m.]  
13  
14

15 ATTEST: I hereby certify that I have truly and correctly transcribed the  
16 audio/video proceedings in the above-entitled case to the best of my ability.

17 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I  
18 acknowledge that this is a rough draft transcript, expeditiously prepared, not  
19 proofread, corrected or certified to be an accurate transcript.

20   
21 Michelle Ramsey  
22 Transcriber  
23  
24  
25

  
CLERK OF THE COURT

**MOT**  
CASEY A. LANDIS, ESQ.  
Nevada Bar No. 9424  
**LANDIS LAW GROUP**  
200 Hoover Ave.  
Las Vegas, Nevada 89101  
Telephone: 702.487.3650  
Facsimile: 702.664.2632  
E-mail: [clandis@lvjusticeadvocates.com](mailto:clandis@lvjusticeadvocates.com)  
*Attorney for Defendant*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

v.

DAVID MURPHY,

Defendant.

CASE NO.: C-15-303991-4

DEPT. NO.: V

**MOTION TO EXCLUDE SUMMER LARSEN**

COMES NOW, the Defendant, DAVID MURPHY, by and through his attorney, CASEY A. LANDIS, ESQ., and hereby moves this Honorable Court for an Order prohibiting the State from admitting the bargained for testimony of Summer Larsen at trial. Defendant's request is based on the State's tardy disclosure of its intent to call Summer Larsen as a witness and the prejudiced imposed on Murphy based on the inability to prepare for, and effectively cross-examine, Summer Larsen at trial due to the State's late disclosure.

This Motion is based upon all the papers and pleadings on file herein and any information provided to the Court at the time set for hearing this motion.

///

///

///

///

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Murphy was arraigned in District Court on the first (of three) Indictments filed in the case  
4 on January 30, 2015. For over nineteen months, the State made the decision to not solidify a  
5 cooperation agreement with Summer Larsen. Instead, the State waited until 3:52 p.m. on  
6 Tuesday, September 7, 2016, to inform Murphy that a negotiation was reached with Larsen and  
7 they intended to call her as a witness at trial. Put differently, the State provided notice of its  
8 intent to call an alleged coconspirator to Murphy three judicial days before trial was set to begin.

9 To date, the State has not provided a justification that necessitated the eleventh hour,  
10 tardy disclosure of its intent to call Summer Larsen as a witness. This Court has not asked the  
11 State to provide justification for its late disclosure of this witness. First, this Court should  
12 require the State to provide good cause to excuse their inadequate notice. Murphy submits that  
13 the State does not have an explanation to provide that justifies the late disclosure of witness  
14 Summer Larsen. Second, this Court must weigh the prejudice Murphy is likely to receive based  
15 on the State's late disclosure. Specifically, the State's late disclosure prejudices Murphy's ability  
16 to investigate and prepare for the witness, which provides the State with a strategic advantage  
17 over the defense. Perhaps a strategic advantage should be considered as the motivation that  
18 prompted the State's unnecessarily late disclosure of Summer Larsen.

19 If this Court permits Larsen to testify without requiring the State to provide good cause  
20 for the late disclosure, then the Court is effectively awarding the State for this conduct and  
21 providing incentive for them to repeat these actions in the future because it benefits them and  
22 increases the chances they win the trial. Beyond bestowing an award to the transgressor, Murphy  
23 will be severely prejudiced by the late disclosure because there is insufficient time to conduct the  
24 meaningful investigation necessary to effectively cross-examine Larsen. The specific  
25 investigation Murphy must perform to effectively cross-examine Larsen is detailed herein. In  
26 effect, the State's tardy disclosure will directly penalize Murphy's ability to present a defense if  
27 Larsen is permitted to testify at trial starting the week of September 12, 2016. The idea that the  
28 State procures an award and the defendant a penalty due to the State's unjustified failure to

1 comply with the rules must run contrary to this Court's interest in promoting fundamental  
2 fairness and justice.

3 Finally, the negotiations reached between Larsen and the State resulted in a guilty plea to  
4 crimes that are uncharged in this case and implicate Murphy as a coconspirator. The State has  
5 failed to file a motion to admit those uncharged crimes against Murphy in this case and the time  
6 to file a motion to do so has expired. Based on the State's negotiation decisions, Murphy cannot  
7 cross-examine Larsen about the testimony-inducing plea negotiation she made with the State  
8 unless he wants the jury to learn of uncharged crimes he is alleged to have committed.  
9 Therefore, the State enjoys another benefit stemming from its eleventh hour tactics in that they  
10 force Murphy to choose between a fair cross-examination of Larsen and the admission of  
11 uncharged bad acts or a less than adequate cross-examination of Larsen and the uncharged bad  
12 acts are not heard by the jury. Again, the record does not contain a single justification that  
13 should permit the State to bask in the spoils of their malfeasance while Murphy treads water in a  
14 flood of unfair prejudice.

15 **PROPERLY CATEGORIZING LARSEN'S ANTICIPATED TESTIMONY**

16 NRS 174.234 requires the written notice of anticipated witnesses no later than five  
17 judicial days before the commencement of trial. Murphy acknowledges that there are occasions  
18 where a late witness disclosure should not result in the sanction of excluding the testimony of  
19 that witness. There are those cases where the defendant will not be prejudiced because the  
20 witness is minor and the adequate time remains for the defense to adequately investigate and  
21 prepare for that witness. See, e.g., Grey v. State, 124 Nev. 110, 120 (2008) (defendant must  
22 show how a more thorough investigation or preparation would have assisted his defense).  
23 Likewise, there are those cases where the State provides good cause justifying or excusing their  
24 inadequate notice. See, e.g., Founts v. State, 87 Nev. 165, 169 (1971) (listing situations  
25 demonstrative of good cause for a late alibi notice); Nunnery v. State, 127 Nev. 749, 762 (2011)  
26 (before allowing a late notice of intent to seek the death penalty the Court must find good cause  
27 for the tardiness, which requires a reason external to the prosecutor).

28 Larsen's anticipated testimony is found on the opposite end of the spectrum from those



witnesses where late disclosure can be excused because the risk of prejudice is unrealistic. Initially, the defense assumes<sup>1</sup> that Larsen will present first-hand testimony that directly implicates Murphy. Resultantly, Larsen cannot be viewed as an insignificant witness whose late disclosure is unlikely to prejudice the defendant. Of greater importance, it is crucial to view Larsen's bargained for testimony with skepticism and to utilize every safeguard available based on the inherent unreliableness of snitch testimony. The Nevada Supreme Court has cautioned all Nevada trial courts that "...in any criminal case, where issues of guilt are close, the testimony of a jailhouse informant should be regarded with particular scrutiny." Lobato v. State, 120 Nev. 512, 519 (2004). Courts have acknowledged that "[i]n recent years, there have been a number of high profile cases involving wrongful conviction based on the false testimony of jailhouse informants." State v. Arroyo, 973 A.2d 1254, 1260 (Conn. 2009). "[J]ailhouse informants frequently have motive to testify falsely that may have nothing to do with the expectation of receiving benefits from the government." Id; see also, A. Natapoff, Beyond Unreliable: How Snitches Contribute to Wrongful Convictions, 37 Golden Gate. U. Law Rev. 107 (2006) (estimating that twenty percent of wrongful convictions in California result from false snitch testimony); R. Warden, The Snitch System: How Snitch Testimony Sent Randy Steidl and Other Innocent Americans to Death Row, Northwestern University School of Law, Center on Wrongful Convictions (2004) (testimony by jailhouse snitches is leading cause of wrongful convictions in United States capital cases). "[N]umerous scholars and criminal justice experts have found testimony by 'jailhouse snitches' to be highly unreliable. Jailhouse informants have a significant incentive to offer testimony against other defendants in order to curry favor with prosecutors and the proffered testimony is oftentimes partially or completely fabricated. Thus, the use of jailhouse informants to obtain convictions may be one of the most abused aspects of the criminal justice system." Zapulla v. New York, 391 F.3d 462, 470 n3 (2nd Cir. Ct. App.

---

<sup>1</sup> As of the time of this filing, Murphy has not been provided with any information about the anticipated contents of Larsen's testimony. Thus, Murphy must speculate regarding what Larsen will say on the stand. The State's decision to not record Larsen's proffer statements was a tactical decision, which directly prejudices Murphy because he will be ambushed at trial when he first discovers the contents of Larsen's testimony.

2004) (citations omitted).

In Sheriff v. Acuna, the Nevada Supreme Court recognized the inherent unreliability of snitch testimony and enacted procedural safeguards that must be followed before a snitch testifies at trial. 107 Nev. 664, 669 (1991) (the testimony of an accomplice, induced by a bargain with the State, is generally admissible where “established safeguards are followed.”) In detailing the need for procedural safeguards, the Nevada Supreme Court recognized the potential for abuse possessed by every prosecutor who bargains for snitch testimony. Id. As stated by Acuna Court,

It is difficult to envision a responsible prosecutor proceeding to trial without having carefully developed a trial plan or strategy designed to prove the truth of a theory upon which the prosecution is based. Indeed, in Barren v. State, 99 Nev. 661, 669 P.2d 725 (1983), we stated that “[a]lthough any prosecutor might well desire the luxury of having an option not to reveal his or her basic factual theories, and wish for the right to change the theory of a case at will, such practices hardly comport with accepted notions of due process.” Id. at 668, 669 P.2d at 729.

Acuna, 107 Nev. at 668. In fact, the Nevada Supreme Court has repeatedly viewed the State’s discovery obligations pertaining to anticipated informant testimony through a lens more expansive than that used in other discovery disputes. See Roberts, 110 Nev. at 1132-34; Jimenez v. State, 112 Nev. 610, 620 (1996); Mazzan v. Warden, 116 Nev. 48, 67 (2000).

If Larsen is permitted to testify at trial on the fourth judicial day after the defense was noticed that she would be called as a witness while the defense, at the same time, is left clueless about the substance of Larsen’s anticipated testimony, this Court will be lessening the procedural safeguards that are necessary to ensure reliability in the outcome of this trial. Witnesses who testify in exchange for a benefit from the State are inherently unreliable. There is a heightened risk of wrongful convictions based on the testimony of witnesses such as Larsen. The primary safeguard provided to the defendant facing a witness who was purchased by the State is the opportunity to effectively cross-examine that witness after receiving and/or locating all

admissible evidence relevant to that witness's credibility.

As enumerated upon in the following section, Murphy lacks sufficient time to prepare an adequate and reasonably effective cross-examination of Larsen. Based on this reality, permitting Larsen to testify at trial the week of September 12, 2016, directly increases the probability of an uninformed jury rendering an unreliable verdict. No justification exists to allow this risk to blossom into a reality. If there is a scenario where the late disclosure of a witness should not be overlooked, it is in those cases where the witness has an incentive to fabricate and their testimony is central to the case. See Roberts, 110 Nev. at 623 (informant's "testimony was central to the case, and therefore the jury's assessment of his credibility was important to the outcome of the trial"). This case embodies the situation where adequate notice must be provided to the defense to ensure the jury is placed in a position to fairly assess Larsen's credibility. The State should care about ensuring justice in this respect, but their actions showcase the prioritization of gamesmanship over fairness. Therefore, this Court must fill in that void and exclude Larsen from Murphy's trial.

#### **PREJUDICE TO MURPHY BASED ON THE UNTIMELY NOTICE**

Until 1991, the Nevada Supreme Court forbid prosecutors from entering into cooperation agreements akin to the agreement reached between the State and Larsen in this case because of the danger of perjury. See Franklin v. State, 94 Nev. 220, 226 (1978), overruled by, Acuna, 107 Nev. at 669. When the Court cautiously changed course and permitted bargains like that at issue here, it further imposed three primary safeguards intended to protect the integrity of trials involving cooperation agreements. Acuna, 107 Nev. at 668-70. One of those necessary safeguards requires that the defendant receives an opportunity for full and fair cross-examination of the cooperating witness. Id. However, a full and effective cross-examination cannot occur without an opportunity to adequately investigate and discover impeachment evidence prior to trial. See Reynoso v. Giurbino, 462 F.3d 1099, 1112 (9th Cir. 2006) ("In particular, if counsel's failure to investigate possible methods of impeachment is part of the explanation for counsel's impeachment strategy (or a lack thereof), the failure to investigate may in itself constitute ineffective assistance of counsel").

1 “Impeachment evidence is especially likely to be material when it impugns the testimony  
2 of a witness who is critical to the prosecution’s case.” Silva v. Brown, 416 F.3d 980, 987 (9th  
3 Cir. 2005). The prejudice Murphy will experience in this case will deprive him of the  
4 opportunity for an effective cross-examination of Larsen. Without this safeguard in place, the  
5 reliability of the jury’s credibility determination of Larsen, which may well determine the  
6 outcome in this case, is weakened. And what is the prevailing interest that necessitates this risk?

7 Murphy recognizes that defendants and their counsel routinely claim unfair prejudice  
8 based on a variety of issues while providing neither substance nor specificity to those claims. See  
9 Grey v. State, 124 Nev. 110, 120 (2008) (“although Grey complains that he was prejudiced  
10 because he was unable to adequately investigate or prepare to cross-examine Dr. Karagiozis,  
11 Grey has not shown specifically how a more thorough investigation or preparation would have  
12 [been material]”). This Court should recognize the instant situation as one where the defense  
13 provides both substance and specificity to its claim of prejudice to wit:

14 1) Clark County Detention Center (“CCDC”) recorded telephone calls placed by  
15 Summer Larsen. Larsen has been incarcerated continually since December, 2014. Larsen has  
16 placed an unknown number of phone calls during that time period that were recorded and  
17 preserved by the jail. Counsel for Murphy estimates Larsen averaged ten calls every week,  
18 which now likely extend over one-hundred hours.<sup>2</sup> There is a reasonable probability that those

---

19 <sup>2</sup> Counsel for Murphy, over the past three years, has defended two trials in this jurisdiction  
20 where the State entered into a cooperation agreement with a codefendant similar to the case at  
21 bar. See State of Nevada v. Edmond Paul Price, C-12-281695-1; State of Nevada v. Edward  
22 Manuel Thompson, C-12-284282-2. Both of those cases further paralleled this case in that the  
23 cooperating codefendant was a female first time offender who spent over a year in jail waiting to  
24 testify against their codefendant. In both of those cases, the defense was provided adequate time  
25 to request, obtain, and review the Clark County Detention Center records for the cooperating  
26 codefendant. Specifically, those jail records contained recorded phone calls and “inmate  
27 grievance forms” (a.k.a. “kites”) with statements made by the cooperating codefendant. In both  
28 cases, the inmates jail calls and kites contained relevant, exculpatory evidence admissible to  
impeach that witness’s credibility at trial. Further, counsel for Murphy has practiced criminal  
defense in Clark County for over a decade. Through that employment there have been countless  
cases where relevant admissible evidence for both parties were found in CCDC jail calls and  
kites. The estimations and assumptions presented through this pleading are based on that

1 calls contain relevant exculpatory evidence that Murphy should be permitted to utilize when  
2 cross-examining Larsen. Murphy has never been provided with Larsen's jail calls with the  
3 exception of five calls Larsen made within a month of her arrest. Thus, Murphy must subpoena  
4 those calls, which will delay the start of their review. It is impossible for defense counsel to  
5 listen to those calls during evening recesses of this trial. Murphy should not be prevented from  
6 procuring this important evidence based on the faults of the State.<sup>3</sup>

7 2) CCDC Inmate Grievance Forms (a.k.a. kites) written by Larsen and preserved by  
8 the jail. Inmates at CCDC routinely write kites asking questions or requesting information that is  
9 relevant to their credibility generally as well as the truthfulness of their trial testimony. Murphy  
10 estimates that Larsen has written over 100 kites during her time in jail. Murphy has not been  
11 provided with a single kite to date, and therefore, akin to the jail calls, must subpoena them  
12 before they can be reviewed.

13 3) Cellular telephone location data. Murphy was provided with Larsen's guilty plea  
14 agreement on September 6, 2016. It contained information that the defense was oblivious to  
15 previously. Specifically, it claims that Larsen conspired with Murphy and the other defendants  
16 in this case to commit a home invasion and robbery of Joseph Larsen's drug supplier. There is  
17 little doubt that Larsen will testify that she was aware of location of her husband's drug supplier  
18 and provided that information to one or more of the remaining defendants. Murphy (and all  
19 other parties) is in possession of cellular telephone location data for all of the defendants for the  
20 time period when Larsen will claim this robbery was to occur. The State will allege at trial that  
21 the group staked out the drug dealers house while parked nearby. In fairness, Murphy has the  
22 right to inspect that cellular telephone location data to determine if it supports Larsen's claims.

23 Determining the cellular towers those phones "pinged" off of during that time period  
24 requires expert assistance. The telephone records themselves only provide a cellular tower  
25 experience.

26 <sup>3</sup> Of note, the State utilized most of those early jail recordings from Larsen during the grand jury  
27 presentment in this case and is likely to do so again at trial. Therefore, the State seeks to be in a  
28 position where they utilize phone calls from Larsen that are to their liking and Murphy is  
prevented from even discovering what calls exist to aid in his defense.

1 number (such as “65327”) with latitude and longitude coordinates for the tower. An expert is  
2 required to determine the location of the tower and to determine the approximate radius that  
3 tower provides cellular service for. Murphy has retained and noticed a cellular location data  
4 expert in this case. However, Murphy must obtain additional funding from the Office of  
5 Appointed Counsel before said expert will perform additional services. The lack of time  
6 provided to Murphy through the State’s choices prevents him from testing the veracity of  
7 Larsen’s testimony on this highly relevant issue.

8 4) Witness Interviews. Based on the fact that Larsen intends to testify about a  
9 planned robbery of the drug supplier’s house, Murphy has the need and right to interview  
10 multiple witnesses the State will call at trial. Ashley Hall testified before that grand jury that she  
11 was giving Summer a ride when Summer disclosed that she had plans to rob Joseph’s house  
12 again. See Reporter’s Transcript of Proceedings, Grand Jury hearing held January 8, 2015, pp.  
13 23-26. Based on Larsen’s guilty plea agreement, it would appear that Ashley’s testimony may  
14 directly contradict Larsen’s trial testimony. Murphy needs to interview Ashley to clarify the  
15 contents of Larsen’s statements to her. This need did not exist prior to Larsen’s cooperation  
16 agreement.

17 Murphy further needs to attempt to ask Joseph Larsen about the veracity underlying  
18 Summer Larsen’s guilty plea agreement. Joseph can say if Summer knew the location of his  
19 drug supplier. Joseph can say if he even had a drug supplier located in Clark County.

20 Murphy recognizes that he may be able to interview these witnesses before they testify.  
21 However, their availability to talk is not guaranteed with the short window of time before trial.  
22 There is a less than remote possibility that trial will start before Murphy can conduct this  
23 investigation.

24 The prejudice to Murphy that will result from his inability to pursue these relevant  
25 avenues of impeachment evidence is real. This prejudice is not the product of Murphy’s conduct  
26 in any fashion. There is no legitimate reason for this Court to allow said prejudice to occur when  
27 remedies exist to prevent it.

28 ///

**LARSEN ENTERED A GUILTY PLEA TO INADMISSIBLE UNCHARGED BAD ACTS**  
**IMPLICATING MURPHY**

Murphy is not charged with conspiring to, or attempting to commit a robbery of Joseph Larsen's drug supplier. If Summer Larsen testifies she will testify that about the crimes she pled guilty to, which implicate Murphy in uncharged crimes. If Summer Larsen testifies that Murphy was involved in these crimes they amount to uncharged bad acts that the State has failed to file a timely motion to admit. See Petrocelli v. State, 101 Nev. 46 (1985); Tinch v. State, 113 Nev. 1170, 1176 (1997). The State again asks this Court to grant them a windfall by excusing their failure to file a timely motion to admit and to allow the admission of those bad acts nevertheless.

For the entire duration of this prosecution, the State has charged Summer Larsen with conspiring to commit a burglary, home invasion, and robbery of Joseph Larsen. Unless the State's entire theory of prosecution was factually incorrect this entire case, they should have reached a plea agreement with Summer where she pled to crimes involving Joseph Larsen. There is no compelling reason necessitating that Summer plead to crimes involving uncharged conduct. Murphy is forced to assume the State's motivation is the admission of those uncharged bad acts through the proverbial back door.

Relevant to this issue, the State argued during the calendar call hearing on September 7, 2016, that the pending Indictment in this case charges Murphy with conspiring to rob the home of Joseph Larsen's drug supplier. A review of the Second Superseding Indictment shows that the State is mistaken. Count 1 charges Murphy with conspiring to commit "a robbery." Every other count charged in the Second Superseding Indictment specifically alleges that the crime was against Joseph Larsen and/or Monty Gibson (Joseph's roommate) and/or Joseph's residence.

The Second Superseding Indictment does not provide a shred of notice to Murphy that it charges him with conspiring to commit a robbery on Joseph's drug supplier. Instead, a fair reading of entire Indictment provides notice that Count 1 alleges a conspiracy to rob Joseph Larsen at his residence. An Indictment charging a conspiracy requires that "one or more overt acts shall be expressly alleged in the Indictment[.]" NRS 175.251. The pending Indictment here alleges overt acts in furtherance of the conspiracy to commit a robbery of Joseph Larsen. That

1 Information does not allege a single act, overt or covert, related to the robbery of Joseph's drug  
2 supplier. To the extent Count 1 charges a robbery of Joseph's drug dealer it is insufficiently pled  
3 because it fails to allege an overt act in furtherance of that conspiracy as mandated by NRS  
4 175.251. Conversely, a more accurate reading of the Second Superseding Indictment provides  
5 notice that Count 1 charges a conspiracy to commit a robbery against Joseph Larsen at his  
6 residence.

7 **ABSENT AN ORDER EXCLUDING LARSEN, MURPHY MUST REQUEST A**  
8 **CONTINUANCE**

9 Murphy does not want a continuance of this trial. Murphy intended to announce ready  
10 for trial as did his remaining codefendants. All remaining codefendants anticipated trial starting  
11 the week of September 12, 2016. If Murphy is to receive a fair trial the week of September 12,  
12 2016, Larsen must be excluded as a witness therein.

13 To remedy a violation of the notice and discovery provisions of NRS Chapter 174, a  
14 district court "may order the party to permit the discovery or inspection of materials not  
15 previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the  
16 material not disclosed, or it may enter such other order as it deems just under the circumstances."  
17 Sampson v. State, 121 Nev. 820, 827 (2005). As previously argued, Murphy submits that  
18 exclusion of Larsen's testimony is the proper remedy in this case and the only remedy that will  
19 see a fair trial occur in September of 2016. Absent an Order excluding Larsen, Murphy is  
20 compelled to seek a continuance of the trial as a secondary remedy. The failure to request a  
21 continuance will prejudice Murphy's appellate rights in the future if he is convicted in this case.  
22 See Grey, 124 Nev. at 120 (holding that the state's tardy disclosure of an expert witness did not  
23 mandate reversal partially based on the defendant's failure to request a continuance to prepare  
24 for the inadequately noticed witness). Thus, absent exclusion, Murphy request a continuance of  
25 the trial, which will provide adequate time to investigate and prepare to effectively cross-  
26 examine Larsen.

27 ///

28 ///



**CONCLUSION**

This Court has gained a reputation as one that follows the rules and expects the same from the litigants appearing before it. Counsel for Murphy attempted to withdraw from this case in August based on a decision to leave Las Vegas and relocate to another state. This Court denied that motion based on a finding that a change of attorneys would cause a delay in the trial and, therefore, violate the rules governing motions to withdraw. Counsel for Murphy respected the Court's ruling and did not voice a single objection or argument when the decision was announced. Despite the financial burden of the decision, Counsel for Murphy respects the letter of the law and adherence to rules in judicial proceedings more than the ability to choose his domicile for the month of September.

The State is asking this same Court to bend those rules and to find a way to justify their inability to comply with them. And the State makes this request without providing the Court with a single explanation for their shortcomings. Counsel for Murphy remains confident that this Court will enforce the rules with an even hand. Counsel for Murphy remains confident that this Court will demand justification for the State's tardy disclosure of Larsen as a witness before it seeks a justification to excuse the State's failure to follow the rules. Consistency compels the exclusion of Summer Larsen as a witness. The protection of Murphy's Constitutional rights to a prepare a defense and to a fair trial do as well. Simply put, Murphy cannot realize a fair trial that starts the week of September 12, 2016, if that trial includes the testimony of Summer Larsen.

DATED this 8th day of September, 2016.

**LANDIS LAW GROUP**

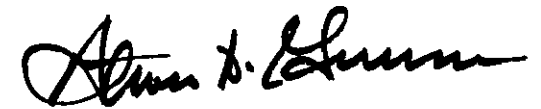
/s/ Casey A. Landis  
CASEY A. LANDIS, ESQ.  
Nevada Bar No. 9424  
200 Hoover Ave.  
Las Vegas, Nevada 89101

**CERTIFICATE OF EMAIL**

I hereby certify that service of the above and forgoing was made this 22<sup>nd</sup>  
day of August, 2016, by email to:

CLARK COUNTY DISTRICT ATTORNEY  
Email: PDmotions@clarkcountyda.com

By /s/ Casey A. Landis



CLERK OF THE COURT

1 **OPPS**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 MARC DIGIACOMO  
6 Chief Deputy District Attorney  
7 Nevada Bar #006955  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 JORGE MENDOZA,  
13 #2586625  
14 **DAVID MURPHY,**  
15 aka, David Mark Murphy, #0859628  
16 JOSEPH LAGUNA, aka, Joey Laguna,  
17 #1203205

Defendants.

CASE NO: C-15-303991-1  
C-15-303991-4  
C-15-303991-5

DEPT NO: V

17 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO EXCLUDE**  
18 **SUMMER LARSEN**

19 DATE OF HEARING: 9/9/16  
20 TIME OF HEARING: 9:00 AM

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
22 District Attorney, through MARC DIGIACOMO, Chief Deputy District Attorney, and hereby  
23 submits the attached Points and Authorities in Opposition to Defendant's Motion To Exclude  
24 Summer Larsen.

25 This Opposition is made and based upon all the papers and pleadings on file herein, the  
26 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
27 deemed necessary by this Honorable Court.

28 //

//

1 **POINTS AND AUTHORITIES**

2 **I. CO-DEFENDANT LARSEN WAS PROPERLY NOTICED**

3 Defendant Murphy suggests that he had no way to prepare for the testimony of an  
4 unsevered party to the case for which he has been preparing for trial for nineteen (19) months.  
5 The argument is more than ridiculous, but it is specious. Moreover, without reference to the  
6 text of the statute, Defendant claims that the notice of co-defendant Larsen is late. However,  
7 the State properly conformed to the both the spirit and the plain language of the statute. Even  
8 if some aspect of the statute had been violated, exclusion of a witness would not be the remedy.  
9 Finally, Defendant provides no reason why he did not do any of the investigation he now  
10 claims he needs to do, or, frankly, how he intends to conduct that investigation.

11 NRS 174.234 states, in relevant part:

12 1. Except as otherwise provided in this section, not less than 5 judicial days  
13 before trial or at such other time as the court directs:(a) If the defendant will be  
14 tried for one or more offenses that are punishable as a gross misdemeanor or  
felony:

15 (1) The defendant shall file and serve upon the prosecuting attorney a written  
16 notice containing the names and last known addresses of all witnesses the  
defendant intends to call during the case in chief of the defendant; and

17 (2) The prosecuting attorney shall file and serve upon the defendant a written  
18 notice containing the names and last known addresses of all witnesses the  
prosecuting attorney intends to call during the case in chief of the State.

19 ...

20 3. After complying with the provisions of subsections 1 and 2, each party has a  
continuing duty to file and serve upon the opposing party:

21 (a) Written notice of the names and last known addresses of any additional  
22 witnesses that the party intends to call during the case in chief of the State or  
23 during the case in chief of the defendant. A party shall file and serve written  
24 notice pursuant to this paragraph as soon as practicable after the party  
25 determines that the party intends to call an additional witness during the case in  
chief of the State or during the case in chief of the defendant. The court shall  
prohibit an additional witness from testifying if the court determines that the  
party acted in bad faith by not including the witness on the written notice  
required pursuant to subsection 1.

26 As is clear from the statute, the State must file a notice of witnesses it intends to call in the  
27 case in chief of the state. That notice of witness was filed on March 26, 2015, well in advance  
28 of the five (5) day deadline. On September 6, 2016, Co-Defendant Larsen entered a plea of

1 guilty in the instant case and agreed to waive her Fifth Amendment privilege against self-  
2 incrimination. Until she entered her plea, passed the plea canvass by the Court and the Court  
3 accepted her plea, the State has no ability to call her in their case in chief absent conferring  
4 immunity, which was not an option for the State. Upon the Court accepting her plea,  
5 Defendant Murphy was notified immediately and provided the Guilty Plea Agreement,  
6 Amended Indictment, and Agreement to Testify on September 6, 2016.<sup>1</sup> As it was late in the  
7 day, the State filed the formal notice of witness the morning of September 7, 2016. As is  
8 demonstrated in NRS 174.234(3)(a), the State properly conformed to the witness notice  
9 requirements. Defendant cannot make a colorable claim of bad faith. Thus, NRS  
10 174.234(3)(a) makes clear that the witness cannot be excluded. Bad faith requires an intent  
11 to act for an improper purpose. See *Fink v. Gomez*, 239 F.3d 989, 992 (9<sup>th</sup> Cir. 2001). As the  
12 Nevada Supreme Court has noted, “there is a strong presumption to allow the testimony of  
13 even late-disclosed witnesses, and evidence should be admitted when it goes to the heart of  
14 the case.” *Sampson v. State*, 121 Nev. 820, 122 P.3d 1255 (2005).

15 Instead of providing the Court to the controlling statute, Defendant tries to liken this  
16 situation to other cases where it was determined that there was late notice. As described above,  
17 the notice in this case was not late. However, even if it were, Additionally, NRS 174.295  
18 gives broad discretion in to the Court fashioning a remedy after bad faith is ruled out.  
19 However, in order for the Court to consider a remedy, Defendant has to make some colorable  
20 claim of prejudice.<sup>2</sup>

21 Defendant attempts to portray to the Court that he had no indication that an un-severed  
22 co-defendant in the case may testify in the trial of the matter. How could any defense attorney  
23 ever believe that a party to the action, who alone holds the right to testify and make the  
24 decision, would not testify? Defendant has been in possession of all the documents associated  
25  
26

---

27 <sup>1</sup> Which is four judicial days prior to trial. Had Monday not been a non-judicial day, the State assumes that the Court  
28 would have taken Ms. Larsen’s plea on Monday and the statute would have been satisfied.

<sup>2</sup> Defendant’s motion is noteworthy for its citation to irrelevant cases and an argument that co-defendant Larsen is not credible as she plead guilty, but why that is relevant to the motion is beyond comprehension.

1 with co-defendant Larsen and the discovery in this case since the inception.<sup>3</sup> If he chose not  
2 to prepare to cross-examine a potential witness, that decision was his tactical choice.  
3 Likewise, it is not uncommon for Defendants to request jail recordings of their own as well as  
4 their co-defendants. Nothing about the fact that co-defendant Larsen will now testify changes  
5 his failure to acquire those records previously. This is particularly disconcerting as the State  
6 has previously disclosed jail recordings between Defendants Murphy and Larsen to establish  
7 the connection of the co-conspirators at the grand jury.

8 Defendant claims he now has new information in that co-defendant Larsen is going to  
9 say that the initial planned robbery was of Joey Larsen's drug supplier, instead of a drug  
10 supplier. Thus, he argues, he needs to now determine whether or not the cellular phone records  
11 corroborate that information. He also claims that he needs an expert to do so. Defendant has  
12 a noticed cellular phone expert. Defendant has been in possession of the phone records, the  
13 tower information and tower location for most of the last nineteen months. Moreover, at the  
14 Grand Jury, Mr. Figueroa testified to the earlier robbery attempt as well as the general location  
15 in town where that attempt occurred. Detective Jensen testified to some of the tower location  
16 evidence that corroborated that testimony. (GJT, Vol. 3, p. 33). Thus, Defendant's claim that  
17 he now needs to investigate that prior robbery is unsupported by the record.<sup>4</sup>

18 Finally, Defendant Murphy suggests he now needs to interview witnesses. Both the  
19 witnesses he identified testified before the grand jury and have been on the State's witness list  
20 since March 26, 2015. His failure to interview these witnesses prior to trial is not a burden the  
21 State must shoulder.

## 22 II. THE EARLIER PLAN TO ROB A DRUG HOUSE IS NOT A 23 COLLATERAL BAD ACT IMPLICATING NRS 48.045(2)

24 Defendant asserts that the fact that the Defendant Larsen is going to testify to telling  
25 Defendant Murphy about Joey Larsen's drug supplier's home and showed him the location is  
26

---

27 <sup>3</sup> The only thing he recently received is the plea canvass transcript which contains the same information as the  
28 Amended Indictment.

<sup>4</sup> Defendant also claims he can get an address for that location. He fails to inform the Court of how he is going to get  
that address.

1 a prior bad act which is inadmissible. The entire purpose of NRS 48.045 is to prevent evidence  
2 of collateral acts from being presented to a jury as propensity evidence. In the instant case,  
3 the five (5) defendants are charged, on or about September 21, 2014, with conspiring to  
4 commit a robbery. To establish that fact, co-defendant Larsen will testify that she met with  
5 Defendant Murphy and talked with him about an opportunity to rob a drug house. She will  
6 also testify that she showed the location of that drug house. Co-Defendant Figueroa will testify  
7 that on the morning of September 21, 2015, he was asked by Co-Defendant Laguna to commit  
8 a robbery. When he was picked up to commit the robbery, Co-Defendant Murphy and  
9 Mendoza were also present. They first scouted a robbery at one drug house but there were too  
10 many people around to commit the crime, so they did not rob that house. Later in the day, the  
11 same four people, went and attempted to rob the 1661 Broadmore address.<sup>5</sup> The acts in the  
12 morning of September 21, 2014 were in furtherance of the conspiracy to rob formulated that  
13 morning, just as the subsequent attempted robbery was in the evening of that day. Nothing  
14 about that testimony is collateral to the charge, it is evidence of the charge.

15 The Nevada Supreme Court has addressed a similar situation in Greene v. Nevada, 113  
16 Nev. 157, 931 P.2d 54 (1997). In Greene, the defendant and his co-conspirator shot and killed  
17 a woman. The next day, Greene told his co-conspirator in the presence of a witness that he  
18 was not finished “killing” yet. Id at 165. The defendant attempted to argue that the statement  
19 was other acts evidence precluded by NRS 48.045(2). In rejecting that argument, the Court  
20 found that the statement was not other act evidence, but merely evidence of the conspiracy to  
21 commit murder for which Greene was charged. See also, Salgado v. State, 114 Nev. 1039, 968  
22 P.2d 324 (1998) (A Petrocelli hearing is not required where the evidence does not relate to  
23 acts which do not implicate “prior bad acts” or “collateral offenses” for which a defendant  
24 may be charged. If the evidence simply concerns facts which were relevant to prove an  
25 element of the crime, it is neither irrelevant character evidence nor evidence of collateral acts.)

26  
27  
28 <sup>5</sup> The reason there is not a charge associated with the earlier robbery is that the scouting of the residence the morning  
of the homicide was not sufficiently beyond preparation to qualify as an attempt. Moreover, there wasn't two  
separate conspiracies in this case, merely one as a conspiracy is not over until the crime is complete and the  
conspirators have gotten away with the crime.

1 The testimony of both co-defendants is not related to collateral bad acts, but it merely evidence  
2 of the conspiracy charged in Count 1. As the Nevada Supreme Court has noted:

3 "[C]onspiracy is seldom susceptible of direct proof and is usually established by  
4 inference from the conduct of the parties." Gaitor v. State, 106 Nev. 785, 790 n.  
5 1, 801 P.2d 1372, 1376 n. 1 (1990) (quoting State v. Dressel, 85 N.M. 450, 451,  
6 513 P.2d 187, 188 (1973)). In particular, a conspiracy conviction may be  
supported by "a coordinated series of acts," in furtherance of the underlying  
offense, "sufficient to infer the existence of an agreement". Id.

7 Doyle v. State, 112 Nev. 879, 894, 921 P.2d 901, 911 (1996) (*overruled on other grounds by*,  
8 Kaczmarek v. State, 120 Nev. 314, 91 P.3d 16 (2004)). These coordinated series of acts  
9 support the conspiracy. As such, co-defendant Larsen's testimony is not inadmissible.

### 10 CONCLUSION


11 Based on the foregoing, Defendant Murphy's motion should be denied.

12 DATED this 8th day of September, 2016.

13 Respectfully submitted,

14 STEVEN B. WOLFSON  
15 Clark County District Attorney  
Nevada Bar #001565

16  
17 BY

  
18 MARC DIGIACOMO  
19 Chief Deputy District Attorney  
Nevada Bar #006955

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //



CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing, was made this 8 day of  
September, 2016, by Electronic Filing to:

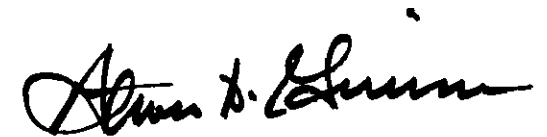
WILLIAM WOLFBRANDT, ESQ  
lewwolfbrandt@embarqmail.com

CASEY LANDIS, ESQ.  
clandis@call-law.com

MONIQUE MCNEILL, ESQ.  
mam@moniquemcneill-law.com

  
Secretary for the District Attorney's Office

MD/tgd/MVU



CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JOSEPH LAGUNA,

Defendant.

CASE NO. C-15-303991-5

DEPT. V

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

**FRIDAY, SEPTEMBER 9, 2016**

***ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:***

***DEFENDANT'S MOTION TO EXCLUDE SUMMER LARSEN ON ORDER  
SHORTENING TIME***

APPEARANCES:

For the State:

MARC DiGIACOMO, ESQ.,  
Chief Deputy District Attorney

For the Defendant, Mendoza:

WILLIAM L. WOLFBRANDT, ESQ.,

For the Defendant, Murphy:

CASEY A. LANDIS, ESQ.,

For the Defendant, Laguna:

MONIQUE A. McNEILL, ESQ.,

RECORDED BY: LARA CORCORAN, COURT RECORDER

1                   **LAS VEGAS, NEVADA; FRIDAY, SEPTEMBER 9, 2016**

2                   [Proceeding commenced at 9:04 a.m.]

3  
4           THE COURT: All right. Case number C303991, State of Nevada versus  
5 Jorge Mendoza, David Murphy and Joseph Laguna. Record will reflect the  
6 presence of the Defendants with their respective counsel. And this is on for the  
7 David Murphy's motion to exclude Summer Larsen as a witness at trial. Would  
8 you like to hear my -- I've read all the documents right and as well as done  
9 some additional research by reading cases that were cited. So you want to  
10 hear my thoughts before you argue so you know what to say?

11           MR. LANDIS: Of course.

12           THE COURT: Okay. All right. So, first of all I don't believe that the  
13 notice was untimely. So NRS 174.234 Subsection 1, paragraph 1 of that  
14 statute sets forth what the notice requirements and it basically says that a  
15 prosecuting attorney shall not less in five -- judicial days before trial file and  
16 serve a written notice listing the witnesses that -- and known -- last known  
17 addresses of all witnesses the State intends to call in its case in chief. All right.  
18 So that was done in this case. A notice was filed like a year ago or whatever it  
19 was. Long time ago. Certainly more than five judicial days.

20                   Now paragraph 3 requires that there's a continuing duty by both  
21 sides of course to file and serve the names of additional witnesses as when  
22 they become known as soon as practicable to, in fact, notify the other side of  
23 witnesses again that the -- that side intends to call.

24                   In this case, Summer Larsen signed a guilty plea agreement and an  
25 agreement to testify on September 6<sup>th</sup>. And this Court took her plea pursuant

1 to that agreement on the 6<sup>th</sup>. The hearing commenced a little after 2 o'clock in  
2 the afternoon. It took about half an hour 'cause I take a pretty thorough plea.  
3 And you received your formal notice the following day. So I don't -- there is no  
4 bright line rule that says there's a particular time. It's as soon as practicable. I  
5 think that the notice being given by 11 o'clock in the morning the next day  
6 which is less than 24 hours is sufficient. So I don't think that there was a late  
7 notice.

8 But even assuming arguendo that someone would later say that it  
9 was, I don't think that you can show that you were prejudiced by this notice  
10 because you say a couple of things in your papers. First of all on page 3 you  
11 talk about how Murphy -- you say, Murphy cannot cross examine Larsen about  
12 the testimony inducing plea negotiation she made with the State unless she  
13 wants the jury to learn of uncharged crimes he's alleged to have committed.  
14 Okay. So how would this have been any different had you received notice a  
15 year ago?

16 MR. LANDIS: That's a separate issue from notice to be honest with you.

17 THE COURT: Okay. All right. In other words, you're not prejudiced in  
18 this. Your whole argument here is that you're prejudiced by this late notice. So  
19 obviously the fact that you got this late notice doesn't change the fact that you  
20 have to make tactical decisions on how you cross examine someone.

21 MR. LANDIS: I concur that the late notice does not affect that issue, but  
22 here's what I think is important.

23 THE COURT: Right. Do you want to hear my thoughts first and then go  
24 into them?

25 MR. LANDIS: I'm sorry. I thought you were engaging.

1 THE COURT: No. No. No. I just want to give you everything.

2 MR. LANDIS: Sure.

3 THE COURT: And then you'll make all your arguments, okay. So let me  
4 just go through it.

5 So that's the first one. Then you say on page 4 that in your -- you  
6 say at the time the filing Murphy's not been provided with any information  
7 about the anticipated contents of Larsen's testimony thus Murphy must  
8 speculate regarding what Larsen will say on the stand. The State position not  
9 to record Larsen's proffer statements was a tactical decision which directly  
10 prejudices Murphy because he'll be ambushed at trial when he first discovers  
11 the contents of Larsen's testimony.

12 Well there's no requirement to record a proffer. And how is this  
13 different from any other witness situation where there has not been a recorded  
14 or written statement taken? It's no different. Your -- you find out when they  
15 testify. We don't have discovery rules like we do in civil cases where you can  
16 take a deposition of every witness. So, you're not prejudiced by a later notice  
17 if assuming arguendo could be considered late. So there's no prejudice there  
18 either.

19 Let's see. Also you say -- oh, you talked about the jail calls. So  
20 obviously jail calls you could have subpoenaed jail calls had you wanted to.  
21 There was nothing precluding that. Certainly you were aware that Summer  
22 Larsen has been in Clark County jail and so if you felt that jail calls are likely to  
23 contain some kind of exculpatory evidence or evidence that would be helpful to  
24 your cross examination, you could have subpoenaed that information.

25 Moreover, you really engage in a lot of speculation in your

1 arguments that -- that she made calls at all which we don't know. And that  
2 there would be, you know, you estimate well she's making ten calls and how  
3 long those calls would be so that your -- you come up with saying there are  
4 hundreds of calls which there's absolutely no support for that. But then you  
5 kind of go on about how you seem to be totally baffled about what she would  
6 possibly say.

7 Well, the State's theory of this case is completely -- was completely  
8 laid out before the grand jury and nothing's changed about that because Mr.  
9 Figueroa testified at length. And he testified 'cause I reviewed the grand jury  
10 testimony again yesterday to refresh my recollection, so he testified at length  
11 about the conspiracy which began as they were going to, in fact, rob the drug  
12 supplier and that they knew, you know, there was -- between Figueroa and  
13 Ashley Hall's statements at testimony, at the grand jury hearing was very clear  
14 as to what that, you know, what happened. That Murphy, Dough Boy, got the  
15 information from Summer Larsen. Ashley also got some additional indication  
16 that there was this intent to -- to rob Joey Larsen or the supplier or somebody.  
17 And so there was pretty detailed discussion of how they went about it.

18 And so the theory of the case really has not changed. And, of  
19 course, Ashley Hall as well as Joseph Larsen have always been listed as  
20 witnesses. Let's see, yours said a conspiracy -- you think that conspiracy is an  
21 uncharged bad act. So of course Count 1 is conspiracy to commit robbery and  
22 it indicates the -- on the superseding indictment the timeframe we're talking  
23 about. And it's clear from the testimony at grand jury that there was, you  
24 know, agreements to apparently to -- first to rob the first -- well they say  
25 Figueroa says the house. But obviously the people in the house that had

1 whatever and they drive to that location.

2 And because there's a whole gardening crew in the front yard as  
3 well as other people, a decision is made together that they're -- they're not  
4 going to go. He says Dough Boy wants -- still wants to go and so they go back  
5 and regroup and talk about plan B. And so they're going to get -- they're going  
6 to rob somebody that day and its conspiracy to commit robbery.

7 Now you argue in your papers that the indictment was improper  
8 because you say an indictment -- and this is on page 10 in your papers at line  
9 26 -- an indictment charging a conspiracy requires that one or more overt acts  
10 shall be expressly alleged in the indictment, and you cite 175.251. Well  
11 175.251 does, in fact, say that you have to do that if the crime requires that,  
12 but no overt act is required for conspiracy to commit robbery. And so  
13 conspiracy to commit robbery is 199.480 and 199.490 specifically expressly  
14 says there's no overt -- no requirement for an overt act. So you don't -- you  
15 don't have to allege it.

16 This clearly to me was a continuing conspiracy and I don't think  
17 that you're in any way prejudiced. I don't think that there's an issue of  
18 uncharged bad acts that would require a Petrocelli hearing. And the rest of the  
19 cases that you cited which I started to read, they're in opposite. They don't  
20 even apply to the issue we're discussing today.

21 MR. LANDIS: May I speak?

22 THE COURT: Yes. Now you may go.

23 MR. LANDIS: I don't think they're in opposite. I agree there's very -- I'll  
24 say there's no case law directly on point in Nevada about this issue. I would --  
25 thus you're forced to cite law that's both out of the jurisdiction and isn't

1 directly on point. I believe I paraphrased every case accurately and stated for  
2 what it meant.

3 Let me start if I can with the bad act issue or the conspiracy count.  
4 I don't think it's a fair reading to say that Count 1 charges a conspiracy to  
5 commit a robbery other than the robbery of Larsen's house. There's nothing  
6 else in that indictment that says that. And if they were charging them with a  
7 conspiracy to commit any other robbery, why didn't they charge them with an  
8 attempt robbery for that house or any other crime?

9 THE COURT: Well an attempt would require at overt act.

10 MR. LANDIS: Which driving to the house and staking it out.

11 THE COURT: Maybe. The Supreme Court has been really iffy about that  
12 actually and reversed a case where on an attempt issue where a purported, you  
13 know, a husband who'd hire a purported hit man who fortunately was an  
14 undercover agent actually gave him plans of drawings of the house and met  
15 with him. And they said that wasn't sufficient for an attempt because it --  
16 there wasn't sufficient overt act, so.

17 MR. LANDIS: Sure. But it is my position that we do not have notice that  
18 that first count for any other robbery other than the Larsen house. And I'll tell  
19 you quite frankly I sure wasn't preparing for a trial where I was defending  
20 against those charges. I think that notice is insufficient. And that's why I do  
21 think what Summer Larsen's going to testify to are bad acts. And even if the  
22 Court -- I accept the Court's position about the conspiracy to commit robbery of  
23 the drug supplier's house, Larsen already pled to an -- also pled to an attempt  
24 robbery naming these Co-defendants for that same drug supplier, Robert.

25 Thus, that is an uncharged bad act. I don't see how it can be



1 anything else. Even if we agree about the conspiracy, the attempt robbery she  
2 pled to that she'll testify is something that's uncharged in this case. Thus, I do  
3 think it's a bad act.

4 THE COURT: So you're saying now that if a Co-defendant pleads to even  
5 it maybe a fictional plea perhaps, as part of the plea negotiation that now  
6 suddenly that becomes an uncharged bad act as to the remaining Defendants?

7 MR. LANDIS: If it involves a crime they're not charged with and it names  
8 them as this one does, yes. Because this one clearly says these men along  
9 with Larsen attempt robbery, drug supplier house. There's certainly something  
10 they're not charged with. I hope we can all agree about that. In this case yes,  
11 very much I think that's an uncharged bad act. It's an attempt robbery they're  
12 not charged with.

13 And I don't see how Larsen testifies without that coming in because  
14 obviously the jury gets the right to know about the -- the ins and outs of her  
15 plea negotiation so they can judge her credibility. So I definitely do think the  
16 attempt robbery is a bad act even putting aside your position about the  
17 conspiracy.

18 Moving on though, the jail call thing -- sure you can tell me it's  
19 speculation, but I base it on my experience and righteously so I would say to  
20 you I do think I've had cases -- every case I've ever had [indiscernible] into  
21 them, they're full of exculpatory evidence. When this Court says I could have  
22 subpoenaed them, I'm not sure if it means prior to their disclosure this week or  
23 if it -- if you mean since Tuesday, Wednesday.

24 THE COURT: No. Prior. Prior because I mean she's a Co-defendant.  
25 Every Co-defendant in this case has the absolute right to take the stand and

1 testify at the trial if they choose too after consulting with their clients say why  
2 would you just assume she's not -- even if she was still sitting up there in the  
3 box and on trial, why would you just assume she wouldn't get up and testify?

4 MR. LANDIS: Here's the different. If she is a Co-defendant at the time  
5 she testifies versus if she's a cooperating witness, if she's a Co-defendant  
6 she's not going to get up there and say things adverse to my client and she  
7 can't because it will create a Bruton issue which demands severance. Thus,  
8 I'm not going to prepare for her or whoever the Co-defendant is as an adverse  
9 witness where I'm going to have to cross them and impeach them and expect  
10 them to say things that are inculpatory about my client. That's the difference.

11 Now that she's turned into a State's witness obviously that's what  
12 she's going to do. Thus, I have a reason to impeach her. More importantly,  
13 until I knew she was going to make a statement that implicates my client which  
14 I did not know until Tuesday afternoon, I don't know what I'm looking for in  
15 these jail calls to impeach her with. I mean, you can't generate impeachment  
16 evidence when you don't know what you're impeaching. It's impossible.

17 Further, beyond that, in a case like this where we're dealing with  
18 multiple Co-defendants, the idea that the defense should subpoena everybody's  
19 jail records for the records you're speaking about of safety, listen to all of the  
20 jail calls, there's no way the Office of Appointed Counsel will pay for that and  
21 there's no practical way that an attorney would have time to do that. What if  
22 it's a case with 20 Co-defendants? I mean, it gets to a point where it's  
23 probably literally impossible.

24 And that's why I think that prejudice is real. And I don't think it's  
25 speculative as to those jail calls because I think there's every reason to believe

1 there will be information in them. I think it's important that this Court ask the  
2 State if they have them 'cause if they have them they should be turning them  
3 over. There's no doubt about that whether or not they've listened to them.

4 THE COURT: Well if they have exculpatory evidence or Brady material  
5 and Giglio material, yes.

6 MR. LANDIS: Or if they're unlistened to I still -- I mean, if they're in their  
7 possession and they're going to say they haven't listened to them, I don't think  
8 that excuses their duty to disclose them.

9 I agree with this Court that they could take the position that we  
10 would listen to every one of Summer Larsen's jail calls and if there's nothing to  
11 disclose, if that's the record they want to make, that's the record they want to  
12 make. I understand that. However, if they haven't listened to them and they  
13 possess them, I think they have a duty to give them to us even though it's  
14 going to be difficult to listen to them between now and whenever that she  
15 testifies.

16 But I do think those jail calls are righteous. I don't think it was fair  
17 to expect me to subpoena them and listen to them before we had decisions  
18 from that she was going to testify. I don't.

19 The same with the jail records such as the kites. I think that stuff --  
20 if they have it, they should turn it over if they haven't reviewed it. I also think  
21 there's a reasonable basis to assume that will have exculpatory evidence.

22 THE COURT: Give me an example of that 'cause I was trying to figure  
23 how a kite which is generally used to request things like medical treatment or  
24 property or, you know, I can't think of how a kite will contain anything. So, in  
25 your experience, what have you found?

1 MR. LANDIS: I will. And I've used this in a trial at cross examination.  
2 When people are in jail for a long time, sometimes when they might not have as  
3 much attorney contact, they -- they write questions to whoever it is that  
4 answers these kites. And they ask very specific legal questions sometimes.  
5 And it's not a protected by attorney-client privilege 'cause it's not going to an  
6 attorney. But they'll ask questions such as this is an exact example I've used  
7 before, I'm unhappy with my attorney because he's forced me to take a  
8 negotiation that makes me testify in a way I don't want to.

9 THE COURT: Okay.

10 MR. LANDIS: And that's it, an example the things people say. They also  
11 make requests sometimes for documents, case files or certain court things that  
12 the fact that they're looking those is also curious to -- to their decision to plea  
13 or their decision to testify. And what I mean by that is I've had cases where  
14 people request information about how to withdraw pleas after they've accepted  
15 a cooperating agreement and they're doing it on the eve of trial which I think is  
16 admissible to -- to the decisions they made and the truthfulness of their -- their  
17 [indiscernible] of a testimony. I do.

18 But sure I can't say Summer Rice has X, Y and Z, but the  
19 requirement can't be I have to tell you today that there's specific exculpatory  
20 evidence on that -- those -- those calls or those kites 'cause how can any  
21 defense attorney do that when they haven't listened to them. It's not fair to  
22 put the blame on me for not listening to them and that's my whole point.

23 The State had no reason to delay this plea to the time that they did.  
24 They didn't. If there was a compelling reason that made them do it last minute,  
25 I think that's different than the situation we're in and that's what I'm trying to

1 stress. Sometimes things come up last minute and you deal with them and I  
2 think that's what the statute talks about. But the State should not be allowed  
3 to delay a plea -- delay the disclosure of a witness for no reason whatsoever as  
4 to -- to leave the defense with less time. And that's a situation we have here.

5           This isn't a case where there was a meeting of the minds between  
6 Rice Larsen -- Summer Rice Larsen and the State at the last minute and they  
7 decided to get this done. This was agreed to a long time ago I believe. And I  
8 believe the State for no good reason other than to prejudice us waited until last  
9 week to put it on calendar and get it. I'm sorry, this week to get it done. And I  
10 think the Court should make a determination about that and I think the Court  
11 should care about that because it definitely has something to do with the  
12 fairness of this. I do.

13           If it is was -- this is how it had to be, I think the Court should be  
14 more lenient with the State than if it was they did this for no good reason at  
15 the last minute and now we are prejudiced. I just think there's a difference  
16 there. I do.

17           The other thing I will say is she's not a small witness. And I  
18 disagree with the Court that the grand jury transcript testifies in any way about  
19 a robbery of Joseph Larsen's drug supplier's house. I'll concede that Figueroa  
20 testified about the early robbery. There's no doubt about it and I'll -- I'll testify  
21 that that the person was a drug dealer of some sort based on Figueroa's  
22 testimony. But I -- there's nothing to glean from that that it was Summer -- I'm  
23 sorry -- Joseph Larsen's drug supplier's house.

24           THE COURT: Well it seemed to me it was because the testimony was  
25 about that he knew of that location because Summer Larsen's husband that's

1 where he got the drugs that would be at his house.

2 MR. LANDIS: I certainly didn't read that.

3 THE COURT: That was his supplier. That was my understanding as I  
4 read it. It seemed pretty clear to me.

5 MR. LANDIS: I certainly didn't read that. And I don't think that that  
6 disclosure was made until we got the guilty plea agreement this week.

7 Further, just don't see how --

8 THE COURT: And besides your client would know details and so you  
9 would certainly be able to talk to your client about what he knows and --

10 MR. LANDIS: Well that's presuming he's guilty which I don't do.

11 THE COURT: I didn't say that. I said you could talk to your client about  
12 what he knows and because Figueroa's testimony, you know -- I mean, he  
13 never said David Murphy. He just referred to this person as Dough Boy which  
14 that was then hooked up later by phone records, etcetera.

15 But I mean there's still Figueroa's talks about being told things.  
16 And, you know, you had the ability to certainly talk to your client about what  
17 Figueroa is going to testify to and you know he's going to be a witness and  
18 he's saying a lot of these same types of things.

19 MR. LANDIS: I take that argue presumes my client has information about  
20 the crime. I do. I really do.

21 THE COURT: Well no. You could talk to him and he could deny  
22 everything and say this guy is just lying. I mean, I'm not presuming anything.  
23 I'm just saying --

24 MR. LANDIS: Right. And if that's --

25 THE COURT: -- he knew -- he knew --

1 MR. LANDIS: I'm sorry.

2 THE COURT: -- what the theory of the case is.

3 MR. LANDIS: Sure. And if -- I just want to make it clear that my client  
4 can't be assumed to be a source of information that would help me discover the  
5 State's theory of prosecution. He can't. What if I said to him what do you  
6 know about Figueroa, and he said to me never heard of the guy. Not a source  
7 of information. He's not going to help me discover the State's theory of  
8 prosecution. I don't think the Defendant should ever be the source to discover  
9 those things. I don't.

10 And the other thing I'll say about that grand jury, Ashley Hall  
11 certainly doesn't testify about the robbery of a drug supplier's house. Her  
12 testimony's clear and it seems to be inconsistent with Summer's recently  
13 secured testimony. Because she testifies Summer said don't worry, I'll have  
14 money because I'm going to rob Joey tomorrow. Not Joey's drug supplier.

15 THE COURT: Right. That sounds like a good argument for closing.

16 MR. LANDIS: Sure. But -- but I believe the Court said Ashley Hall's  
17 grand jury testimony sheds light on the fact that they were planning to rob a  
18 drug supplier which I don't think it does. If the Court wasn't saying that, I  
19 apologize, but that's what I heard.

20 There's -- whether or not the Court believes there's prejudice which  
21 I will say there definitely is, the Court is giving the State a benefit for doing this  
22 and I don't understand why that is.

23 THE COURT: Benefit for doing?

24 MR. LANDIS: A last minute disclosure of an important witness. There's  
25 no reason they needed to do it that late. And I believe it prejudices the

1 defense. And the idea that we're going forward just to keep a trial date I don't  
2 understand. And the reason I don't understand it is almost every trial I've ever  
3 done in this jurisdiction has these huge problems that come up last minute. I'm  
4 not saying they're always the State's fault because it creates huge appellate  
5 issues time after time and cases get reversed time after time because of these  
6 last minute issues. And I just don't understand why we keep doing this 'cause  
7 it's a huge waste of time and money. It is.

8 THE COURT: Well, your client is presumed innocent. He's been jail for  
9 how long?

10 MR. LANDIS: Almost two years. Right.

11 THE COURT: So if that's why, you know, we're supposed to give people  
12 speedy trials.

13 MR. LANDIS: Yes.

14 THE COURT: That's their constitutional right. And when we have -- now  
15 we're down to three lawyers. Before we had more, you know. And it's come  
16 down. But still to get three busy lawyers on the defense as well as busy  
17 Prosecutors schedules together to jive with a very busy docket of the Court --

18 MR. LANDIS: Sure.

19 THE COURT: -- is difficult. And so if there is not a legitimate reason to  
20 continue a trial, I'm not going to continue a trial. And what I'm saying is I'm  
21 not seeing the prejudice that you're trying to make of this.

22 MR. LANDIS: No. And I understand that. And I do understand the  
23 difficulty of scheduling these trials. I do. But the speedy trial rights and the --  
24 the Defendant's rights to -- to prove their innocence or go to trial and have that  
25 happen, it doesn't mean that they should do so disadvantage. And I really do



1 think that's what this late disclosure does. It puts them at a disadvantage to  
2 have their day in Court and prove they're -- they're not guilty. It just does.

3 And there's nothing I'm going to be able to do to convince this  
4 Court that we're prejudiced, but I would hope you see that. A lot of those  
5 things are important. And the same goes for those cellphone records which is  
6 something the Court didn't bring up. We have every right to look at this  
7 cellphone records to determine if they comport with what Summer was going to  
8 say. I'd like to see if those guys are in that area wherever this drug supplier's  
9 house is which I still don't know.

10 Next to impossible I'm going to be able to do that between now and  
11 whenever that she testifies. And I think that's something that we should  
12 certainly be able to get into because it's relevant, it's admissible and it could be  
13 impeachment evidence. It could be. I can't say it is again because I haven't  
14 had time to look at it, but it could be.

15 And I think that's another area where why do we get punished for  
16 not being able to look at these things because their decision to make a  
17 disclosure at the last minute that was unnecessary.

18 And what bothers me the most is this, when the Court stands and  
19 says we need to keep this trial date for the reasons you said and they are  
20 legitimate reasons, the Court voices no frustration towards the State for -- for  
21 this 11<sup>th</sup> hour discovery that was unnecessary.

22 THE COURT: Well that's because I'm not engaging in speculation. All I  
23 know is what occurred and that was that Summer Larsen signed an agreement  
24 to testify and pled guilty on September 6<sup>th</sup>. Now there's one document that is  
25 signed by Mr. DiGiacomo on August 22<sup>nd</sup> that was the agreement to testify, but

1 it's not signed by her lawyers until the 6<sup>th</sup>. So --

2 MR. LANDIS: I'm not asking --

3 THE COURT: -- I don't know anything beyond that. So you're -- you're  
4 asking me to say that the State intentionally in bad faith, you now, conspired to  
5 not let you know about this until the last moment and I don't have any -- who  
6 does that.

7 MR. LANDIS: I don't want -- I don't want the Court to speculate. I want  
8 the Court to determine and make a decision based on it. I want the Court to  
9 ask the State and if necessary ask Summer's attorney. I don't want you to  
10 speculate. I want you to determine if there was a reason for this to be as late  
11 as it was. I think that's a fair request because I think it's relevant to the  
12 position of this case.

13 I can't make them tell me that. I can't determine that. So to say  
14 that I haven't put forth enough evidence, sure. I'm not asking you to speculate.  
15 I'm asking you to figure out and I think you have the power to do that 'cause  
16 you have the power to ask these people questions about why this was done at  
17 the last second, why it wasn't done before, when did you have a meeting of  
18 the minds and when did it -- why did it take so long from that meeting of minds  
19 to actually come to fruition. I think it's fair. I think those questions are fair.

20 But to say I have to put forth evidence that proves that when this  
21 Court's in a position to determine if those things are true, that's all I'm asking  
22 you to do and I don't think it's an unreasonable request.

23 THE COURT: Okay. State.

24 MR. DiGIACOMO: Thank you. Judge, so that we're clear, you're talking  
25 about what you could figure out from the grand jury transcript. You don't have

1 the four thousand pages of discovery in which it talks about the fact that the  
2 reason that they know to go to Joey's house is because he always re-ups on  
3 Sunday and so they went to the first house thinking well if he's re-upping later  
4 in Sunday we're going to be able to get the dope at the first house.

5 All of the discovery in this case indicates that the first house and  
6 that second house are tied not only to Joey Larsen, but also Summer Larsen.  
7 And so the suggestion in this case that suddenly I'm shocked by this that this  
8 allegation that it's Joey Larsen's drug house it may not say specifically in their -  
9 - this was Joey Larsen's drug house. But certainly when you read the discovery  
10 that's the only interpretation you could take from it and you got that just from  
11 reading the grand jury transcript.

12 Moreover, Figueroa says Summer Larsen provided both locations.  
13 He says it in the grand jury transcript that she provided both locations for this  
14 robbery. And so for them to suggest that suddenly they're shocked that  
15 Summer is going to plead to the fact that she provided location number one to  
16 the Co-defendants seems to be somewhat disingenuous.

17 What is also somewhat disingenuous and I wasn't going to bring up  
18 are off the record conversations, but since Mr. Landis wants to make a record  
19 about them, that's fine. He's been in my presence when we've discussed the  
20 fact with Mr. Coyer about hey, look, Greg, you have to come to the table and,  
21 you know, she's going to have to testify or maybe I'll, jokingly, I said this  
22 maybe I'll roll Murphy to get Summer Larsen. And I've said that in front of Mr.  
23 Coyer for -- I'm sorry, Mr. Landis -- for months because Mr. Coyer and Mr.  
24 Landis are friends. And I'm sure he's aware that some period of time ago we  
25 had discussions about negotiations. And I'm sure he's also aware that as to

1 the three Defendants that are remaining, we all tried to negotiate this case.  
2 And when it fell through on August 22<sup>nd</sup> or around about that time period, I  
3 drafted a GPA, I sent it over to Mr. Coyer and it was Mr. Coyer's request for  
4 the September 6<sup>th</sup> date.

5           Until such time as she enters that plea, I don't have the ability to  
6 call her as a witness. But to -- for Mr. Landis to suggest in this case that he  
7 didn't think Summer Larsen or any one of these other Defendants were going to  
8 testify. He's never requested those -- those jail calls. To say I'm in possession  
9 of them, do I have the ability to access them? Sure. I probably have the ability  
10 to access it. I could facilitate it for him if he's requesting it.

11           Since Wednesday he still hasn't requested them from me. If he  
12 wants them I'll give him all the jail calls for any of the Defendants, all of the  
13 Defendants. I'll get those from the jail for him. I could get him the kites. I  
14 could help facilitate getting the kites. This is an argument about the State did  
15 something wrong and therefore I deserve a continuance. That's not what's  
16 happening here.

17           Mr. Landis decided not to do what defense attorneys routinely do in  
18 multiple Co-defendant cases and now he's arguing for a continuance. And he's  
19 not entitled to one unless he could establish some basis to believe that there's  
20 legitimate information in these calls. We have turned over jail calls from early in  
21 this case between Summer Larsen and this Defendant. We've played them in  
22 the grand jury before. And those are the only calls I have and they have been  
23 provided. There are several other calls that are turned over in which he denies  
24 having any culpability whatsoever in these crimes. So they have that type of  
25 cross examination impeachment evidence between her and Joey Larsen talking

1 on the phone.

2           So I'm not exactly sure what it is they think they're looking for. For  
3 her to say again that she had nothing to do with this crime, they're going to  
4 have that ability to cross examine her. I think she told the police that when  
5 they arrested her. So I'm not exactly sure what it is they're looking for that  
6 might be helpful to them. But the pure speculation in saying if the State's in  
7 possession of them, I'm not in possession of them. The jail is. But if they want  
8 them, they can have them. But they don't get a continuance for it. That's  
9 unacceptable.

10           In order to get a continuance you have to show good cause and  
11 there is no good cause in this case to continue this -- this trial.

12           Obviously, I've already pled one Defendant for testimony and he's  
13 testified. Certainly, in the middle of this case I may decide because Mr. Murphy  
14 and Mr. Laguna are being obstinate in negotiations, then all right fine. In the  
15 middle of trial it maybe Mr. Mendoza's going to get a deal and go up there even  
16 though he's the shooter in this case. That's the way trials work. They're  
17 dynamic situations and you prepare for all the eventualities.

18           Moreover, I would have expected Summer Larsen to testify in this  
19 case based on the way I read the discovery and everything else that she told  
20 Murphy where the drug supplier house is. Murphy knows Joey and that, you  
21 know, the fact that Joey re-upped on Sunday was no secret to anybody in this  
22 case or between Murphy and Larsen. I know the rest of them know Mr. -- Mr.  
23 Larsen. And thus Mr. Murphy when the first house goes bad makes the  
24 decision to go over to Joey Larsen's house and commit the robbery. I don't  
25 know that -- why that would be a shock to anybody and I would believe Ms.

1 Larsen would do that in this case in order to argue that the second robbery is  
2 attenuated that she could only be convicted of conspiracy to commit robbery.  
3 That's what I expect her testimony would have been in a joint trial. That's  
4 what I expect her testimony to be now that she's severed and testifying.

5 And so with that there's no legitimate basis upon which to grant a  
6 motion to continue or simply to exclude the witness. The only thing I want to  
7 add for the record is that I had to write that very quickly 'cause I got it  
8 sometime yesterday. I didn't get to it until yesterday after lunch. When I went  
9 back and read the grand jury transcript last night, I forgot that they actually  
10 physically lead house number one go back to Laguna's and it's right then and  
11 there they decide tonight we're going to rob Joey Larsen's house.

12 And so for the record, this is -- there's no break in the sequencing  
13 of events that occurred during this day. It's a conspiracy to commit a robbery.  
14 That's what the crime is. The fact that they, you know, were unsuccessful or  
15 decided not to do this place and change to that place to change to this place,  
16 it's not two separate conspiracies. It's one conspiracy among five people to  
17 commit a crime, the crime of robbery. And I'd submit it.

18 MR. LANDIS: Can I just two quick factual things?

19 THE COURT: [indiscernible]

20 MR. LANDIS: Regarding Mr. Coyer and whose fault it was that the plea  
21 went down to the last second, I'm hesitant to do this, but I'm reading directly  
22 from Greg Coyer's words, sorry for the drama, and this is last night, hate that  
23 you're having to deal with that. Wasn't my choice to wait to last minute for  
24 the deal to go down.

25 So either Coyer's lying to me or he's lying to the Court because

1 Coyer -- Mr. Coyer's of the opinion it wasn't his choice that it goes down at  
2 that point. It's his opinion that Mr. DiGiacomo drug his feet. And again I think  
3 that's important. I do.

4 MR. DIGIACOMO: Well that's -- I don't find that to be a lie at all. When  
5 these Defendants decided they didn't want to plea, I decided that I was going  
6 to give Summer the deal that she wanted as opposed to making her take more  
7 in order -- because I thought we were going to go to trial. I don't have any  
8 objection to that. But the idea -- and I know you can ask your law clerk, Mr.  
9 Coyer was out of town for seven days when we were trying to get this set to  
10 enter a plea. And so we just couldn't get it done prior to the 6<sup>th</sup> because Mr.  
11 Coyer wasn't present. So, you know, it could have gone down maybe a week  
12 earlier. But Mr. Coyer was out of the jurisdiction. So thus until she signs it and  
13 waives all her rights, I don't have anything I can do.

14 I've been there when the Defendant had stood up at an entry of  
15 plea, haven't passed the canvass. I've been there when the Court hasn't  
16 accepted the guilty plea. And I've been there when the Defendant just shows  
17 up and goes, you know what, it's too much risk to me to testify against these  
18 guys. I rather sit in trial, take my chances with the jury and argue I'm only  
19 guilty of conspiracy. All of that has happened before. Until such time as she's  
20 entered the plea, then that's the way, you know, trials work.

21 And so I have never had a case continued when a Co-defendant has  
22 entered a plea before in 17 years. In fact, I've only seen the argument once  
23 and it was a very short one. I can't comprehend the idea that we're here on an  
24 argument that we should either continue this case or that she should be  
25 excluded for some reason. It is just absolutely incomprehensible in a multiply --

1 multiple Co-defendant case that these Defendants would not be ready to -- to  
2 go to trial.

3 MR. LANDIS: I've had the same situation come up before in this  
4 jurisdiction and I've had Court's grant them the motion. So for him to say it's  
5 incomprehensible or something that doesn't up, I just don't think is fair. But  
6 again, I'm not going to keep arguing my points to this Court.

7 I do think there's prejudice. I do think getting into an uncharged  
8 bad act without question through her testimony. And I do think exclusion and  
9 it's not exclusion continuance is a fair remedy that we shouldn't take the risk  
10 and go to this trial. I just don't that's -- that's wisest way to proceed. I don't.

11 THE COURT: All right. The motion to exclude Summer Larsen is denied  
12 and insofar as the motion it's captioned as that. And insofar as it also requests  
13 a continuance as alterative relief, that's denied as well for all the reasons we've  
14 discussed and the Court has stated on the record. I don't feel that the notice  
15 was untimely. I don't feel that even if one could say that it was, somehow  
16 untimely that the defense is prejudiced that -- and I don't think that her  
17 testimony amounts to uncharged bad acts.

18 I think it's very clear that you've been on notice that there was this  
19 continuing conspiracy to rob someone that day. That to me evident from the  
20 grand jury testimony at which you've had for a long time. And if there -- if Mr.  
21 DiGiacomo's correct and there's additional evidence to that fact and the  
22 discovery, that's fine as well. But I don't know that 'cause I haven't seen it.  
23 All I can look at is what I do have access to and that's the grand jury and I  
24 think it's quite clear that there was, in fact, a continuing conspiracy. And I  
25 think it was adequately pled under the law. And moreover, you never



1 complained about notice, so -- until today. So, motion denied.

2 And we'll start trial on Monday picking the jury. Obviously it's  
3 going to take a while. So Mr. DiGiacomo has indicated to you if you want him  
4 to obtain jail calls for you. He can certainly do that. It's going to take us  
5 awhile 'cause we only have -- I only have half days because on every day of the  
6 week except Fridays because of my docket. So -- plus we've got life tail, right?  
7 So we got eight peremptory challenges per side. I pick a jury -- have you done  
8 a trial in my department yet? I don't think you have. I know you have and you  
9 haven't.

10 MR. WOLFBRANDT: I know I haven't.

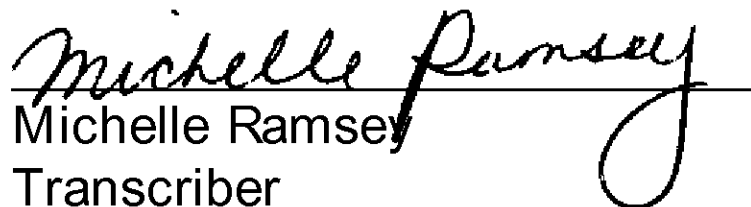
11 THE COURT: Okay. So I pick a jury -- I'd like to say the old fashioned  
12 way.

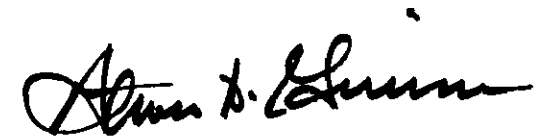
13 Yeah, we'll go off the record to give you this info. Thanks.

14 [Proceeding concluded at 9:44 a.m.]

15  
16  
17  
18  
19 ATTEST: I hereby certify that I have truly and correctly transcribed the  
audio/video proceedings in the above-entitled case to the best of my ability.

20  
21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I  
acknowledge that this is a rough draft transcript, expeditiously prepared, not  
22 proofread, corrected or certified to be an accurate transcript.

23  
24   
Michelle Ramsey  
25 Transcriber



CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,

Plaintiff,

vs.

JORGE MENDOZA,  
DAVID MURPHY, a/k/a  
DAVID MARK MURPHY,  
JOSEPH LAGUNA, a/k/a  
JOEY LAGUNA,

Defendants.

. . . . .

CASE NO. C-15-303991-1  
CASE NO. C-15-303991-4  
CASE NO. C-15-303991-5

DEPT. V

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 1**

MONDAY, SEPTEMBER 12, 2016

APPEARANCES:

FOR THE STATE:

MARC P. DiGIACOMO, ESQ.  
AGNES M. LEXIS, ESQ.

FOR DEFENDANT MENDOZA:

WILLIAM L. WOLFBRANDT, ESQ.

FOR DEFENDANT MURPHY:

CASEY A. LANDIS, ESQ.

FOR DEFENDANT LAGUNA

MONIQUE A. McNEILL, ESQ.

COURT RECORDER:

LARA CORCORAN  
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC  
Englewood, CO 80110  
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

1       LAS VEGAS, NEVADA, MONDAY, SEPTEMBER 12, 2016, 1:29 P.M.

2               (Outside the presence of the prospective jurors)

3               THE COURT: All right. Case No. C-303991. State of  
4 Nevada versus Jorge Mendoza, Joey Laguna and David Murphy.  
5 And, good afternoon. The record will reflect the presence of  
6 all three of the defendants, with their respective counsel.  
7 If you'll just state your appearances for the record for the  
8 first time.

9               MS. McNEILL: Yes, Your Honor. Monique McNeill on  
10 behalf of Mr. Laguna.

11              MR. WOLFBRANDT: And Lou Wolfbrandt for Mr. Mendoza.

12              MR. LANDIS: Casey Landis for David Murphy.

13              THE COURT: Thank you.

14              MR. DiGIACOMO: Marc DiGiacomo and Agnes Lexis on  
15 behalf of the State.

16              THE COURT: I'm going to send the Marshal --  
17 actually, I already sent him, to go retrieve the jury venire,  
18 and we've got 50. Are there any matters outside the presence  
19 before we get rolling here?

20              MR. LANDIS: Not from me.

21              MS. McNEILL: No.

22              MR. DiGIACOMO: No.

23              THE COURT: All right. So we'll just be at ease  
24 while the Marshal gets the venire.

25               (Off the record at 1:30 p.m. until 1:49 p.m.)

1 (In the presence of the prospective jurors)

2 THE MARSHAL: All members of the venire are present  
3 and accounted for, Your Honor.

4 THE COURT: Thank you. Please be seated. And this  
5 is Case No. C-303991, State of Nevada versus Jorge Mendoza,  
6 David Murphy and Joey Laguna. And the record will reflect the  
7 presence of the defendants with their counsel, the Deputies  
8 District Attorney prosecuting the case and all officers of the  
9 court. Will counsel so stipulate?

10 MS. McNEILL: Yes, Your Honor.

11 MR. LANDIS: Yes.

12 MR. WOLFBRANDT: Yes.

13 MR. DiGIACOMO: Yes, Your Honor.

14 THE COURT: Thank you. Ladies and gentlemen,  
15 welcome to Department 5 of the District Court. You've been  
16 summonsed here today so you can assist in our choosing a jury  
17 panel for this trial. And so, welcome. I know you've been  
18 waiting. You got here in the afternoon, I hope, and you  
19 haven't been waiting too long. And, of course, Monday it's  
20 always better to come in the afternoon than in the morning  
21 when all the other jurors are getting here.

22 So ladies and gentlemen, we're going to go through a  
23 process that is known as voir dire. And what that means is we  
24 ask questions of you all in order to determine whether you are  
25 suitable to be serving as fair and impartial jurors in this

1 case. That process is done under oath, so I'd ask you all to  
2 please stand and we'll swear in the jury -- or venire.

3 (THE CLERK SWEARS THE PROSPECTIVE JURORS)

4 THE CLERK: Thank you, please be seated.

5 THE COURT: All right. So the first thing I need to  
6 find out is if there is anyone who's having difficulty  
7 hearing? All right. So we have some headphones. Marshal,  
8 did you see who raised their hands?

9 THE MARSHAL: No, ma'am. Yes, sir.

10 THE COURT: Hearing, we've got two.

11 THE MARSHAL: Got two? Okay.

12 THE COURT: All right. Testing, testing. Do I have  
13 -- can you hear me loud and clear? No. We've got one.  
14 Ma'am, can you hear? No. Okay. Let's try it again.

15 Testing. Marshal, can you hear? Are they on? Are they dead?

16 THE MARSHAL: We just had to turn them up.

17 THE COURT: Okay. Testing, one, two, three, four.

18 UNIDENTIFIED PROSPECTIVE JUROR: Yeah.

19 THE MARSHAL: They're good.

20 THE COURT: Sir, how are you hearing me now?

21 PROSPECTIVE JUROR NO. 636: Good.

22 PROSPECTIVE JUROR NO. 333: They're loud.

23 THE COURT: Five by five?

24 PROSPECTIVE JUROR NO. 333: I'll have to take my  
25 hearing aids off.

1           THE COURT: Okay. All right. All right. So ladies  
2 and gentlemen, some years ago, our legislature decided that  
3 everybody should serve on juries. Before that time, there  
4 were lots of excuses. People could get automatic exemptions  
5 from service. So if you were a lawyer, you were a doctor, you  
6 were a teacher, and there were things that you just kind of  
7 automatically got excused from, and that really wasn't a very  
8 fair way of doing things.

9           And so the legislature got rid of virtually all, and  
10 leaving only two exemptions from jury service. But there --  
11 only citizens can serve as jurors. And is there anyone  
12 present who is not a citizen of the United States? Please  
13 raise your hand. And the record will reflect a negative  
14 response.

15           You'll notice that in the courtroom there are these  
16 what you might not recognize as microphones, but they are.  
17 And the way we keep the record here in court is by a  
18 recording. There is an audio/visual recording system. And  
19 during the trial, the microphones on the witness box activate  
20 the camera there and at counsel table, activate the camera  
21 there.

22           The camera never focuses on the jury box so there is  
23 a no camera coverage there. And that's intentional. There  
24 are a couple of microphones on that front rail there, but  
25 that's basically to capture the voices of the attorneys when

1 they address the jury in closing arguments or opening  
2 statements.

3           And so, we use a handheld microphone if we need to  
4 ask you a specific question and hear your answer, and we use a  
5 handheld microphone for that purpose, which the Marshal will  
6 get ready for your use. If you're called upon to speak into  
7 that microphone, I need you to, every time, state your full  
8 name and the last three digits of your badge number that's on  
9 your badge you've got there. And that's the way we keep the  
10 record.

11           Now, this handheld microphone that you'll see when  
12 the Marshal gets it, it's very important that you speak into  
13 the microphone. And if you have a tendency to gesture as you  
14 speak, that you do that, not with the microphone hand.  
15 Gesture with the other hand. Okay? All right? Because if  
16 you're doing this, then we can't get it. All right.

17           And so is there anyone who is -- has been convicted  
18 of a felony, but not had their civil rights restored so that  
19 they're not eligible to serve on a jury? And again, the  
20 record will reflect a negative response.

21           So there's those two exemptions I told you about.  
22 The first one is this; if you are 70 years of age or older and  
23 you do not wish to serve on a jury, you may avail yourself of  
24 that exemption. That does not necessarily mean that we don't  
25 want you to serve. Of course, if you are qualified to make

1 use of that exemption, but you want to serve, then you don't  
2 have to. If you're availing yourself of that exemption --  
3 calm down. We have anxious people in the back. That I need  
4 you to get your ID out because as I peruse the room, we have a  
5 very youthful looking jury panel. Okay. Go ahead. We have  
6 one person in the back who's now standing. And give him the  
7 microphone.

8 PROSPECTIVE JUROR NO. 439: Name is Paul Edwards.  
9 Last three are 439.

10 THE COURT: All right. And you're 70?

11 PROSPECTIVE JUROR NO. 439: Way over 70.

12 THE COURT: Over? You're over --

13 PROSPECTIVE JUROR NO. 439: Over 70.

14 THE COURT: Oh, I wouldn't have been --

15 PROSPECTIVE JUROR NO. 439: Thank you.

16 THE COURT: -- able to tell. So now you've outed  
17 yourself as being over 70 when you didn't even need to because  
18 you look so young.

19 PROSPECTIVE JUROR NO. 439: Thank you.

20 THE COURT: All right. So you don't want to serve,  
21 and now, if you -- you don't necessarily have to do this, but  
22 if you don't wish to be called in the future, let the Jury  
23 Commissioner know downstairs.

24 PROSPECTIVE JUROR NO. 439: Okay.

25 THE COURT: And you need to check out down there, I



1 think. But also, just let -- because they'll drop you from  
2 the rolls, all right?

3 PROSPECTIVE JUROR NO. 439: Okay, Your Honor. Thank  
4 you.

5 THE COURT: All right. Thank you. You're excused.  
6 We have another gentleman standing in the back.

7 PROSPECTIVE JUROR NO. 333: John Frederick  
8 Christensen, 333.

9 THE COURT: Thank you, sir. And you as well are  
10 over 70 or --

11 PROSPECTIVE JUROR NO. 333: Yes.

12 THE COURT: -- older?

13 PROSPECTIVE JUROR NO. 333: Yes, ma'am.

14 THE COURT: And you don't wish to serve?

15 PROSPECTIVE JUROR NO. 333: I would like to serve,  
16 but my hearing's not that great.

17 THE COURT: All right. And so if you want to be  
18 excused permanently from jury service, you need to let the  
19 Jury Commissioner know downstairs.

20 PROSPECTIVE JUROR NO. 333: Yes, ma'am.

21 THE COURT: All right. And you'll be excused as  
22 well.

23 PROSPECTIVE JUROR NO. 333: Thank you, Your Honor.

24 THE COURT: Thank you. Thank you. Was there anyone  
25 else? All right. And the record will reflect a negative

1 response.

2 All right, so the other exemption is this, if you  
3 are 65 years of age or older and you live at least 65 miles  
4 one way from the courthouse, then you can avail yourself of  
5 that. That means you would need to live in either -- you need  
6 to be 65 or older and you need to live in either Mesquite or  
7 Laughlin. Is there anyone that meets that criteria that wants  
8 to take advantage of that? And the record will reflect a  
9 negative response.

10 All right. The first thing I'm going to go over  
11 with you is the trial schedule because this will come into  
12 play later, not immediately. But this trial is expected to  
13 last three weeks, and the schedule we keep is one that is not  
14 quite the normal schedule, and it's because I also have the  
15 Drug Court docket. So I'm in court every morning all morning,  
16 not only on my criminal calendar, but on my Drug Court docket,  
17 and so I'm doing something else in the mornings except Friday  
18 mornings. So the schedule is a more leisurely paced than you  
19 might otherwise expect.

20 And that is, we would be starting probably at 1:30  
21 every day except Friday, and on Fridays we'd start at 9:00 or  
22 possibly 8:30. And we will go until 5:00 every evening and  
23 then recess.

24 Now, if we're in the middle of a witness and we're  
25 almost done or we're close to finishing something, then we may

1 stay past 5:00. But we stay long past 5:00, because when I  
2 finish with the trial, then I have to go back to my office and  
3 prepare for several hours for the next morning's calendar. So  
4 we can't stay too long. And also staff, you know, is working  
5 hard every day and they're with me in the mornings as well,  
6 and they need to have their rest.

7           So for those reasons, we're -- we try to adhere to  
8 that schedule as best we can. If we get a little behind, we  
9 may be flexible slightly within those time parameters that  
10 I've described. So the dates that this covers is September  
11 12th through September 30th. All right. And that's today  
12 through the 30th. All right.

13           So ladies and gentlemen, what I'm going to do is I'm  
14 going to have the District Attorney representative who's  
15 trying the case, one of them -- I'm not sure who it's going to  
16 be. Is it going to be Mr. DiGiacomo who's --

17           MR. DiGIACOMO: Ms. Lexis.

18           THE COURT: Ms. Lexis. Ms. Lexis is going to give  
19 you a very brief synopsis of the case, basically, what the  
20 charges are and she's going to read to you a list of  
21 witnesses. I need you to pay close attention to those list of  
22 witness names because you're going to be asked if you know any  
23 of those. And this is not argument. This is just basically  
24 to -- because you're also going to be asked if you know  
25 anything about this case before you came to court today. And

1 so it's important that you have some idea what it is, and  
2 that's the purpose of this. Ms. Lexis?

3 MS. LEXIS: Thank you, Your Honor. Good afternoon,  
4 everyone. My name is Agnes Lexis. I'm a Chief Deputy  
5 District Attorney. This is my co-counsel, Marc DiGiacomo,  
6 he's also a Chief Deputy District Attorney. We are the  
7 prosecutors who have been assigned to this case.

8 Brief synopsis of the case; on September 21st, 2014,  
9 at approximately 8:00 p.m., four men attempted to commit a  
10 robbery, burglary, home invasion on a home located at 1661  
11 Broadmere. That's in Pecccole Ranch right off of Charleston  
12 and Hualapai. Two people were home at the time, Joey Larsen  
13 and an individual by the name of Monty Gibson. A gun fight  
14 ensued, and Monty Gibson was killed.

15 During our case-in-chief, the State intends to call  
16 or anticipates calling in one of the following witnesses: Las  
17 Vegas Metropolitan police officer D. Abraham, R. Agin, N.  
18 Alexander, C. Alfonso, C. Allen, C. Arnold, A. Baca, A.  
19 Bauman, S. Beck, K. Bell, T. Bernard, a lay witness by the  
20 name of Elizabeth Bird and also Jeffrey Bonne.

21 A Metro Officer C. Bunn, Metro Officer B. Burns, a  
22 crime scene analyst with the last name Charleston -- M.  
23 Charlton, a coroner's investigator Aleen Chinn, an officer by  
24 the name of B. Choat, D. Chudoba, lay witness Cindy Cruz,  
25 several custodians of records from the Clark County Detention

1 Center, a place called EZ Pawn.

2 From Las Vegas Metropolitan Police Department,  
3 police officers by the name of D. Darragh, J. David, Roger Day  
4 -- or excuse me, Roger Day is a lay witness. An Officer  
5 Christopher Donohue, Officer D. Eason, Officer M. Eshe, lay  
6 witness Michelle Estavillo, Officer E. Fields, Robert  
7 Figueroa, Officer D. Fletcher, Officer J. Giannone, a lay  
8 witness by the name of Latonya Gibson, Officer S. Giles, a lay  
9 witness by the name of Ashley Hall, Officer A. Hardman,  
10 Officer F. Harrison, Officer R. Hart, Officer J. Haynes, FBI  
11 special agent S. Hendricks, Officer K. Holloway, a canine  
12 handler at Metro, Officer Horn, who handles a canine by the  
13 name of Paco.

14 Officer C. Howell, Officer S. Hurley, Officer M  
15 Ibarra, Detective Barry Jensen, Officer B. Jones, Officer A.  
16 Kazee, Officer M. Kennoy, Officer M. Kovacich, Officer J.  
17 Langenhan, Officer M. Lardomita, a witness by the name of Joey  
18 Larsen, Steve Larsen, Summer Larsen, Officer C. Lavole,  
19 Officer B. Lee, Officer E. Lindberg, Officer C. Loucks,  
20 Officer A. Macias, Officer B. Martines, Officer J. McCarthy,  
21 Detective McCarthy, an individual by the name of Dan  
22 Michalski, Officer C. Mikalonis, Officer J. Miller, Officer J.  
23 Milligan, Officer C. Necas, another canine Officer D. Newton,  
24 handler to Wilco.

25 Officer M. Nitzel, Officer F. Pacchiega, Officer

1 Page, first initial K. Officer A. Pennucci, Officer R.  
2 Peterson, Officer C. Pittit, Officer M. Pluck, Officer K.  
3 Prior, a witness by the name of Chandelea Pruse, an AMR  
4 employee by the name of N. Reale, Officer C. Reich, Officer H.  
5 Rivers, Officer B. Roberts, Officer K. Romane, a witness by  
6 the name of Tracy Rowe, and also Renee Salgado.

7           Officer R. Scavone, Officer B. Sette, S-e-t-t-e,  
8 Officer W. Smith an AMR employee by the name of A. Snyder,  
9 another witness by the name of Gabriel Sotelo, Officer R.  
10 Steiber. Actually, Lt. Steiver. Officer R. Theobald, Officer  
11 M. Thiele, Officer Gregory Thielen, Officer C. Travis, Officer  
12 S. Yarphe, an individual by the name of Gene Walker,  
13 Detective Marty Wildemann, Detective Tod Williams, Detective  
14 B. Woolard.

15           And, we've got a of witnesses. One of our  
16 investigators that works with Mr. DiGiacomo and myself either  
17 Ed Dougherty or Ron Acuna. And let's see, a detective by the  
18 name of Gino Basilotta, Noreen Charlton, who's a crime scene  
19 analyst, custodians of records from several phone companies,  
20 AT&T, Cricket, Metro PCS, Neustar, T-Mobile, Verizon Wireless.

21           A medical examiner, Dr. Timothy Dutra, a crime scene  
22 analyst by the name of Adam Felabom, another detective Chris  
23 Gandy, crime scene analyst Daniel Holstein, firearms examiner  
24 James Krylo, firearms examiner Anya Lester, crime scene  
25 analyst Kristen Meckler, crime scene analyst Amy Nemcik, crime

1 scene analyst Shelly Shrum, crime scene analyst Joseph  
2 Szukiewicz, DNA forensic analyst Jennifer Thomas. Her last  
3 name is now Brown. Crime scene analyst Kristina Thomas. And  
4 those are all of our anticipated witnesses.

5 THE COURT: And what are the charges that are  
6 alleged?

7 MS. LEXIS: Yes, Your Honor. Court's brief  
8 indulgence so I make sure I get this right. Your Honor, the  
9 charges, according to the Second Superseding Indictment are  
10 conspiracy to commit robbery, burglary while in possession of  
11 a deadly weapon, home invasion while in possession of a deadly  
12 weapon, attempt robbery with use of a deadly weapon and murder  
13 with use of a deadly weapon and lastly, attempt murder with  
14 use of a deadly weapon.

15 THE COURT: Thank you. And ladies and gentlemen,  
16 there are a lot -- it took her a long time to read all those  
17 names. And she reads every possible witness who could  
18 testify. That doesn't mean that all of those people are going  
19 to testify. If they were, I would have told you that the  
20 trial was going to take several months, all right.

21 So but we need to let you know all the names so that  
22 you can let us know whether you know any of those names.

23 Now the next thing we're going to do is I'm going to  
24 have each of the defense lawyers introduce themselves, their  
25 clients, and if they have any law partners, to let us know

1 about that so because you're going to be asked if you know any  
2 of these lawyers. Mr. Landis, would you like to begin?

3 MR. LANDIS: Thank you. Good afternoon, folks. My  
4 name is Casey Landis. Usually when you see a group of  
5 attorneys sitting at a table, they're on the same team. Not  
6 the case in this trial. Each of us has our own client. We're  
7 not on the same team. So the person directly behind me is my  
8 client, David Murphy.

9 Beyond those witnesses that the State listed, we  
10 intend to call Larry Smith, who's a local forensic expert, and  
11 Rick Frankie, who's also an investigator here in town. Thank  
12 you.

13 THE COURT: Thank you, Mr. Landis. Mr. Wolfbrandt?

14 MR. WOLFBRANDT: Hi, everyone. Excuse me. My name  
15 is Lou Wolfbrandt. I represent Jorge Mendoza. I've had my  
16 own private practice for about 25 years now. I have no  
17 partners or whatnot, and other than Jorge, I don't anticipate  
18 calling any other witnesses.

19 THE COURT: Thank you. Ms. McNeill.

20 MS. MCNEILL: Thank you, Your Honor. My name is  
21 Monique McNeill. I represent Mr. Joey Laguna. My potential  
22 witnesses are my investigator Craig Retke and Mr. Laguna's  
23 wife, Darcy Laguna.

24 THE COURT: Thank you very much. All right. And so  
25 the first question I'm going to be asking all -- these next



1 set of questions to everybody, everybody that's already seated  
2 in the jury box and then everybody out in the gallery, and  
3 what I'm looking for is a show of hands, and I'll follow up  
4 with you as necessary, remembering if you are called upon to  
5 give a answer, speak into the microphone. First give your  
6 full name as well as the last three digits of your badge  
7 number.

8 So first question, are any of you acquainted with  
9 any of the defendants whose names were read out to you, so  
10 Jorge Mendoza, Joey Laguna or David Murphy? Any of those?  
11 And the record will reflect a negative response.

12 Are there any of you who are acquainted with any of  
13 the defense lawyers in the case? And we have one in the back.  
14 We have two, actually.

15 PROSPECTIVE JUROR NO. 416: Good afternoon, Your  
16 Honor. Lou Schneider. My badge number is 416.

17 THE COURT: And Mr. Schneider, which of the defense  
18 attorneys are you acquainted with?

19 PROSPECTIVE JUROR NO. 416: All of them.

20 THE COURT: All right. And do you think that that  
21 will impair your ability to be a fair and impartial juror in  
22 this case?

23 PROSPECTIVE JUROR NO. 416: No. Your Honor.

24 THE COURT: Okay. Thank you. Someone in the back.  
25

1 PROSPECTIVE JUROR NO. 330: Hello, my name is  
2 Preston Miklich, 0330. I know Mr. Wolfbrandt's son. I went  
3 to school with him so --

4 THE COURT: All right.

5 PROSPECTIVE JUROR NO. 330: Faith Lutheran.

6 THE COURT: Do you know Mr. Wolfbrandt himself?

7 PROSPECTIVE JUROR NO. 330: Not his -- I wasn't  
8 sure. I just wanted to --

9 THE COURT: All right.

10 PROSPECTIVE JUROR NO. 330: Sorry.

11 THE COURT: So do you think that this would impair  
12 your ability to be a fair and impartial juror in this case?

13 PROSPECTIVE JUROR NO. 330: I don't think so.

14 THE COURT: You'll be able to set aside your  
15 personal relationship with --

16 PROSPECTIVE JUROR NO. 330: Yeah.

17 THE COURT: -- his son?

18 PROSPECTIVE JUROR NO. 330: Yeah.

19 THE COURT: Is that right?

20 PROSPECTIVE JUROR NO. 330: Yes.

21 MR. WOLFBRANDT: What was his name again?

22 THE COURT: Thank you. I'm sorry?

23 MR. WOLFBRANDT: What was his name again?

24 THE COURT: Could you state your name for the  
25 record?

1 MR. WOLFBRANDT: Preston Miklich, okay.

2 PROSPECTIVE JUROR NO. 330: Yeah.

3 MR. WOLFBRANDT: I got it.

4 PROSPECTIVE JUROR NO. 330: Preston Miklich.

5 THE COURT: Mr. English?

6 PROSPECTIVE JUROR NO. 330: Miklich.

7 THE COURT: Miklich. Okay.

8 PROSPECTIVE JUROR NO. 330: Yes.

9 THE COURT: Okay, thank you.

10 PROSPECTIVE JUROR NO. 330: Thank you.

11 THE COURT: And there was no one else? All right.

12 The record will reflect no further responses. Are there any  
13 of you who are acquainted with either of the Deputies District  
14 Attorney prosecuting the case, Mr. DiGiacomo or Ms. Lexis?

15 PROSPECTIVE JUROR NO. 416: Again, Your Honor, Louis  
16 Schneider, Badge No. 416. I know both of these Chief Deputy  
17 District Attorneys. That would not keep me from being fair  
18 and impartial.

19 THE COURT: Okay. As for your relationship with all  
20 the attorneys, do you have any personal social relationships  
21 with any of them?

22 PROSPECTIVE JUROR NO. 416: No. Your Honor.

23 THE COURT: These are all professional relationships  
24 because you're a lawyer?

25 PROSPECTIVE JUROR NO. 416: That's correct, Your

1 Honor.

2 THE COURT: All right. Thank you very much.

3 PROSPECTIVE JUROR NO. 416: Thank you, Your Honor.

4 THE COURT: All right. Okay. Are there any of you  
5 who believe you may be acquainted with any of the witnesses?  
6 And I know there were a lot, but as you were hearing them and  
7 many of them you only heard the last name, but is there anyone  
8 who believes that they may know one of the witnesses? We  
9 have --

10 PROSPECTIVE JUROR NO. 416: Again, Your Honor, I  
11 know some of the detectives. I know the -- oh, sorry, Louis  
12 Schneider, 416. I know some of the detectives. I know some  
13 of the -- he know both of the investigators for the District  
14 Attorneys Office, and no, it would not keep me from rendering  
15 a fair and impartial verdict, Your Honor.

16 THE COURT: Thank you.

17 PROSPECTIVE JUROR NO. 416: Thank you, Your Honor.

18 THE COURT: And we have a gentleman in the back on  
19 this side.

20 PROSPECTIVE JUROR NO. 326: Mark Petrasich, 326. I  
21 know Horn, Hart and Pennucci from Metro PD. I also -- well, I  
22 served on the 137th MP Unit so I worked with a lot of them  
23 hand-in-hand.

24 THE COURT: All right. Do you think that you could  
25 be a fair and impartial juror in this case?

1 PROSPECTIVE JUROR NO. 326: I do.

2 THE COURT: All right. So you can set aside the  
3 fact that you know them and --

4 PROSPECTIVE JUROR NO. 326: Yes, ma'am.

5 THE COURT: -- judge their testimony in the same way  
6 you would any other witness --

7 PROSPECTIVE JUROR NO. 326: Yes, ma'am.

8 THE COURT: -- if they testify?

9 PROSPECTIVE JUROR NO. 326: Yes, ma'am.

10 THE COURT: Thank you. All right. Okay. All  
11 right, so the next question I'm going to ask you, I've got a  
12 -- a kind of lengthy introduction to this first. And the  
13 question -- don't raise your hand yet, but it's going to be  
14 whether you have any reason that you can't serve for the time  
15 period on the schedule that I've outlined for you, that being  
16 September 12th through the 30th on that schedule, which is  
17 basically afternoons on Monday through Thursday and all day on  
18 Fridays.

19 Before you answer that, I know that obviously,  
20 that's a long time, that there are sometimes trials that take  
21 less time. There are trials that take longer. We have trials  
22 that go to trial in this courthouse that take several weeks,  
23 you know, more than a couple of months. We've had -- we had  
24 one trial that was scheduled to last a year.

25 So the fact that just that you work and that your

1 boss will miss you, that doesn't really cut it. If you have  
2 some financial hardship, you're going to need to articulate  
3 what that is. There is a lot of employers in Las Vegas do pay  
4 their employees for jury service. I'm talking about large  
5 employers like the school district, the state, the county,  
6 most of the large gaming employers, the phone company, the  
7 power company.

8           So these types of employers pay their -- because  
9 they're good corporate citizens, they pay their employees for  
10 jury service. So don't -- if you haven't inquired, I mean,  
11 you should have inquired of your employer when you got your  
12 summons about that issue. So if you haven't, let me know  
13 whether you have or haven't, if you're going to make a  
14 hardship argument.

15           So some of the things that I absolutely want to know  
16 about is, if you are expected to have a baby in the next three  
17 weeks, then I need to know about that. If you are scheduled  
18 to have surgery during the next three weeks, then I need to  
19 know about that. If you're scheduled to have surgery on the  
20 fourth week, but you need to go in and have your work-up to  
21 make sure that you can withstand the surgery, you know, the  
22 routine cardio, et cetera, for surgery, then, you know, I need  
23 to know about that. Or if you have some type of medical  
24 appointment with a specialist that you scheduled and you've  
25 been trying to get into and have been waiting. I'm not

1 talking about routine physicals, but you can reschedule those,  
2 but those.

3 The other thing would be if you have a fabulous  
4 prepaid vacation that you have tickets for, reservations for.  
5 Of course, all of us who will be in court working hard will be  
6 jealous, but we understand, and we want to know about that.  
7 Those are just some examples of things that, you know, we will  
8 consider if you're asking to be excused.

9 It's not an all-inclusive list because I don't know  
10 what your individual circumstances are. I would just say  
11 this, it is very important to all of the participants in this  
12 trial that we get a fair and impartial jury. Our system of  
13 justice could not work without people who are willing to serve  
14 as fair and impartial jurors in these types of cases and all  
15 of the cases where we need juries in this courthouse.

16 And so it's one of the ways that you can serve your  
17 country short of military service is by serving on a jury, and  
18 it's one of the things that people who are citizens look at as  
19 a right. A right to be able to serve on a jury. So I would  
20 encourage your participation if you can possibly do so.

21 Now, this is how we approach that. When I ask the  
22 question, you'll raise your hand. We'll start with taking the  
23 folks in the box starting at the -- we take it in order of how  
24 you're seated, and so we go through that way and you'll tell  
25 me what your excuse is. I will take notes and then I will go

1 to the next person until we get to the end.

2 And then depending on how many people it is, we will  
3 probably either take a break or I will confer with counsel at  
4 the bench. We will as a group decide who will be excused and  
5 who will not, but I don't make the decision at the time. So I  
6 have to hear it from everybody first.

7 All right. So that long introduction being done,  
8 now I pose the question, is there anyone who feels that they  
9 could not possibly serve for the next three weeks on the  
10 schedule that I've outlined? Please raise your hands.

11 THE MARSHAL: Name and badge number, everybody.

12 PROSPECTIVE JUROR NO. 240: Dallas Duncan, 240. I  
13 just recently got employed to a new job, and I live by myself  
14 so I pay my rent, and I'm not too sure if the payment will  
15 subside my rent. So I have to actually check in with my  
16 employers as well.

17 THE COURT: Who is your employer?

18 PROSPECTIVE JUROR NO. 240: Frias Company, the  
19 transportation.

20 THE COURT: And you haven't checked with them? You  
21 don't know whether they --

22 PROSPECTIVE JUROR NO. 240: No, I haven't. I'm  
23 sorry.

24 THE COURT: Okay. So you're going to need to do  
25 that when we go ahead and break. And how long have you been



1 employed with them?

2 PROSPECTIVE JUROR NO. 240: About a week now.

3 THE COURT: And you live alone, you say? You're  
4 your sole support?

5 PROSPECTIVE JUROR NO. 240: Yes.

6 THE COURT: Thank you. Next.

7 PROSPECTIVE JUROR NO. 242: David Bishop, 242. I  
8 have a medical procedure scheduled. I'm also over 70. Am I  
9 clear to just do that?

10 THE COURT: All right. So do you just want to take  
11 advantage of the fact that you're over 70 for today?

12 PROSPECTIVE JUROR NO. 242: That might be the  
13 easiest way to do it.

14 THE COURT: All right. So you're excused.  
15 Although, as I say, you don't look over 70, but I'll take your  
16 word for it.

17 PROSPECTIVE JUROR NO. 242: Do you want to see my  
18 license?

19 THE COURT: Well, you're under oath so if we find  
20 otherwise, you'll be in big trouble. All right. You're  
21 excused. Thank you, sir.

22 PROSPECTIVE JUROR NO. 246: Gerry Steward, 580  
23 (sic). My employer will not pay me to be out for three weeks,  
24 and I live by myself, and there's no way I'll be able to  
25 afford to pay my bills.

1 THE COURT: Who's your employer?

2 PROSPECTIVE JUROR NO. 246: My employer is Motech.

3 THE COURT: What is it?

4 PROSPECTIVE JUROR NO. 246: It's called Motech.

5 THE COURT: Motech? How do you spell that?

6 PROSPECTIVE JUROR NO. 246: M-o-t-e-c-h.

7 THE COURT: Okay. What do you do for them?

8 PROSPECTIVE JUROR NO. 246: I am an auto mechanic.

9 THE COURT: And you've already checked with your  
10 employer and they don't you when you're in --

11 PROSPECTIVE JUROR NO. 246: He will not pay me for  
12 days off, no, he will not.

13 THE COURT: Okay. Even when it's jury service?

14 PROSPECTIVE JUROR NO. 246: Um-h'm.

15 THE COURT: Is that correct?

16 PROSPECTIVE JUROR NO. 246: That is correct.

17 THE COURT: Thank you. And do you live alone?

18 PROSPECTIVE JUROR NO. 246: Yes, I do.

19 THE COURT: Thank you. Next.

20 PROSPECTIVE JUROR NO. 252: Erik Wirtner, Badge 252.  
21 I have a business trip planned from the 21st through the 23rd  
22 of this month that requires me to leave.

23 THE COURT: Where do you work?

24 PROSPECTIVE JUROR NO. 252: I work here locally.

25 THE COURT: Okay. Where? For who?

1 PROSPECTIVE JUROR NO. 252: Oh, I work for Chase  
2 Bank down at Howard Hughes.

3 THE COURT: All right. So you have a business trip,  
4 and what do you do for Chase Bank?

5 PROSPECTIVE JUROR NO. 252: I'm a manager.

6 THE COURT: What's the nature of this business trip?

7 PROSPECTIVE JUROR NO. 252: I believe, it's a  
8 manager's meeting. They usually give us the agenda when we  
9 get there. Meaning, just go over directives and things like  
10 that. I don't have the actual agenda, but --

11 THE COURT: Okay. So you --

12 PROSPECTIVE JUROR NO. 252: People in my similar  
13 position from all over the company come in to -- we're going  
14 into Phoenix for three days.

15 THE COURT: Okay. So you could be briefed on that?

16 PROSPECTIVE JUROR NO. 252: I could, Your Honor.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR NO. 252: If it would please the  
19 Court, I could ask for an excusal.

20 THE COURT: Okay. Okay. All right, thank you.

21 PROSPECTIVE JUROR NO. 259: Name is James Pirih, 809  
22 (sic), and I can't do it. I have --

23 THE COURT: What's your badge number?

24 PROSPECTIVE JUROR NO. 259: 809.

25 THE COURT: Nope.

1 MR. WOLFBRANDT: 259.

2 THE COURT: We don't --

3 PROSPECTIVE JUROR NO. 259: Oh, wait a minute. Oh,  
4 wait, 259. 259.

5 THE COURT: 259, all right. Thank you. Go ahead.

6 PROSPECTIVE JUROR NO. 259: I got a passage booked  
7 on the Queen Mary next week from London to New York.

8 THE COURT: Is there a new Queen Mary that's  
9 sailing?

10 PROSPECTIVE JUROR NO. 259: Queen Mary 2.

11 THE COURT: Oh, okay.

12 PROSPECTIVE JUROR NO. 259: Yeah. And it's already  
13 been paid and booked and everything's set up.

14 THE COURT: Pleasure trip, I take it?

15 PROSPECTIVE JUROR NO. 259: Yes.

16 THE COURT: Thank you.

17 THE MARSHAL: Anyone else? Raise your hand, please.

18 PROSPECTIVE JUROR NO. 287: Josh Hoepfner, 287.

19 THE COURT: All right. Yes, sir?

20 PROSPECTIVE JUROR NO. 287: I run my own business.

21 I will be -- I have coverage right now, but I have -- well, my  
22 other coverage is actually leaving in two weeks for a business  
23 trip. And I also have three kids that I take care of. Me and  
24 my wife, we -- our schedules we have differently to take care  
25 of the children. I have a five-year-old, a one-year-old and a

1 four-month-old.

2 THE COURT: Okay. So the business, that's your  
3 employment?

4 PROSPECTIVE JUROR NO. 287: Yes.

5 THE COURT: Your sole employment is your own  
6 business. And what kind of business is it?

7 PROSPECTIVE JUROR NO. 287: I run a custom shop,  
8 wheel and tire shop.

9 THE COURT: Did you say it's a custom tire shop?

10 PROSPECTIVE JUROR NO. 287: Yeah. Like, a custom  
11 shop. Wheels and tires and like custom fabrications, stuff  
12 like that.

13 THE COURT: Oh, do you -- I didn't know that you  
14 could get custom tires. Really? I thought it was like tires  
15 were manufactured by big manufacturers.

16 PROSPECTIVE JUROR NO. 287: Yeah, I import them.

17 THE COURT: Oh, okay. So you're not manufacturing  
18 them? You just order them for special things; is that right?

19 PROSPECTIVE JUROR NO. 287: Yes.

20 THE COURT: Oh, okay. And you don't have employees  
21 that can cover for you?

22 PROSPECTIVE JUROR NO. 287: Not for my position, no.

23 THE COURT: What -- and what do you do? Do you  
24 run --

25 PROSPECTIVE JUROR NO. 287: I'm the general manager.

1 I do all the sales, basically.

2 THE COURT: Does your wife work in the business?

3 PROSPECTIVE JUROR NO. 287: No, she does not.

4 THE COURT: Does she work at all?

5 PROSPECTIVE JUROR NO. 287: Yes. She works full  
6 time.

7 THE COURT: Okay. Where does she work?

8 PROSPECTIVE JUROR NO. 287: At a tool store.

9 THE COURT: And could she support your family on  
10 just her salary?

11 PROSPECTIVE JUROR NO. 287: Yes.

12 THE COURT: Thank you. And who's next?

13 PROSPECTIVE JUROR NO. 302: Tecleab Toumizghi. My  
14 badge number is 302. The main problem is English is like my  
15 fourth language. I can't catch up what people says. I think  
16 I'm not qualified to be a jury.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR NO. 302: I don't understand well  
19 English.

20 THE COURT: What is your first language?

21 PROSPECTIVE JUROR NO. 302: Tigragna.

22 THE COURT: Could you spell this for us. The court  
23 recorder doesn't -- your language.

24 PROSPECTIVE JUROR NO. 302: T-i-g-r-a-g-n-a (sic).

25 THE COURT: Okay. How long have you lived here in

1 Las Vegas?

2 PROSPECTIVE JUROR NO. 302: About five years.

3 THE COURT: Okay. And how about in the country?

4 PROSPECTIVE JUROR NO. 302: Until 23.

5 THE COURT: Twenty-three years?

6 PROSPECTIVE JUROR NO. 302: Yeah.

7 THE COURT: And you're a citizen?

8 PROSPECTIVE JUROR NO. 302: Yeah, I'm a citizen.

9 THE COURT: Okay. And what do you do for a living?

10 PROSPECTIVE JUROR NO. 302: I'm driving a taxi.

11 THE COURT: Okay. Who do you drive for?

12 PROSPECTIVE JUROR NO. 302: Frias Company.

13 THE COURT: I'm sorry, what was it?

14 PROSPECTIVE JUROR NO. 302: Frias Company.

15 THE COURT: Okay. And are you married?

16 PROSPECTIVE JUROR NO. 302: Yeah, I'm married.

17 THE COURT: How many children -- what does your wife  
18 do for a living?

19 PROSPECTIVE JUROR NO. 302: Well, my wife, she will  
20 be come after a week from Africa.

21 THE COURT: She'll become after a week what?

22 PROSPECTIVE JUROR NO. 302: She's coming after a  
23 week.

24 THE COURT: Oh, she's coming, okay. And do you have  
25 any children?

1 PROSPECTIVE JUROR NO. 302: Not yet.

2 THE COURT: Okay. So do you speak with your  
3 customers in the cab?

4 PROSPECTIVE JUROR NO. 302: Yes, I do.

5 THE COURT: Have you been having any trouble  
6 understanding what's being said up to this point?

7 PROSPECTIVE JUROR NO. 302: Well, if people are  
8 talking fastly, I can't catch up. Of course, I get a little  
9 trouble.

10 THE COURT: All right. All right, so we'll keep  
11 track of this, and so far you seem to be doing pretty well,  
12 but we'll take this into account. Did you have any other  
13 reason besides your language that you could not attend?

14 PROSPECTIVE JUROR NO. 302: No. Just the language  
15 and my wife, she will come, too, after a week. That's it.

16 THE COURT: Okay. Where is she coming from?

17 PROSPECTIVE JUROR NO. 302: From Ethiopia.

18 THE COURT: Okay. Thank you. Next.

19 PROSPECTIVE JUROR NO. 311: Hi. My name is Kevin  
20 Guersey, Badge No. 311. Ma'am, my fiancé is pregnant, and  
21 she's due October 1st, and she's already showing signs of  
22 giving birth so I'm just asking if it's possible to be  
23 excused.

24 THE COURT: All right. So fiancé?

25 PROSPECTIVE JUROR NO. 311: Yes, ma'am.



1 THE COURT: Not wife.

2 PROSPECTIVE JUROR NO. 311: Yes, ma'am.

3 THE COURT: Okay. And October 1st, did you say?

4 PROSPECTIVE JUROR NO. 311: Yes.

5 THE COURT: And you're expected to be there?

6 PROSPECTIVE JUROR NO. 311: What is that?

7 THE COURT: The delivery, she wants you --

8 PROSPECTIVE JUROR NO. 311: Yeah.

9 THE COURT: -- to be there?

10 PROSPECTIVE JUROR NO. 311: She would like me to be  
11 there, yeah. And just in case for emergency so I could drive  
12 her --

13 THE COURT: Okay.

14 PROSPECTIVE JUROR NO. 311: -- from home.

15 THE COURT: All right. So you live with her and  
16 you're the one that's going to take her to the hospital?

17 PROSPECTIVE JUROR NO. 311: Yes, ma'am.

18 THE COURT: Okay. Thank you. Next.

19 PROSPECTIVE JUROR NO. 330: My name is Preston  
20 Miklich, 330. I'm a full-time college student and I also just  
21 recently was hired at Apple. And the next few weeks was  
22 supposed to be my training period. They were supposed to --  
23 my background check just went through so they were supposed to  
24 give me a call or they're going to give me a call within the  
25 week so I can't really have my phone off.

1 THE COURT: So full-time student where?

2 PROSPECTIVE JUROR NO. 330: CSN.

3 THE COURT: How many units are you carrying?

4 PROSPECTIVE JUROR NO. 330: Fifteen.

5 THE COURT: And what days do you have class?

6 PROSPECTIVE JUROR NO. 330: Monday and Wednesday.

7 And then I have two online classes.

8 THE COURT: All right. Who's next?

9 PROSPECTIVE JUROR NO. 332: Justin Volpone, 332. I  
10 have a business trip scheduled for this week, actually. I'm  
11 scheduled to leave on a plane tonight at 7:00 o'clock and  
12 return on Thursday evening. Scheduled by my company.

13 THE COURT: Who do you work for?

14 PROSPECTIVE JUROR NO. 332: I work for ADT Security,  
15 home alarm company.

16 THE COURT: And where is the business trip to and  
17 what's the purpose of the --

18 PROSPECTIVE JUROR NO. 332: So I'm a sales manager  
19 for Nevada, so I have to go and visit my second office in Reno  
20 once a month. So I'll be going to Reno.

21 THE COURT: All right. But you could reschedule  
22 that?

23 PROSPECTIVE JUROR NO. 332: Well, the flights are  
24 unrefundable, and I would have to pay for the flight out of my  
25 own pocket, and the whole trip's about a thousand dollars. I

1 could reschedule it, yes, but we would be out a thousand  
2 dollars. I don't want to pay for that myself.

3 THE COURT: But your employer pays for you to go on  
4 this, right?

5 PROSPECTIVE JUROR NO. 332: Correct, but if we  
6 cancel something or we lose a receipt or whatever, we are  
7 responsible for it ourselves. The company won't pay for it  
8 because we made the mistake or whatever the case might have  
9 been.

10 THE COURT: Well, but if you were ordered by the  
11 Court to be here, that's a little different than you just  
12 saying --

13 PROSPECTIVE JUROR NO. 332: Yeah.

14 THE COURT: -- oh, I don't want to go.

15 PROSPECTIVE JUROR NO. 332: True, yeah.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR NO. 332: I'm just trying to be  
18 cautionary though. I have a thousand dollars to pay for it.

19 THE COURT: Why is it a thousand dollars?

20 PROSPECTIVE JUROR NO. 332: Airfare, hotel and  
21 rental car.

22 THE COURT: Are you -- what kind of --

23 PROSPECTIVE JUROR NO. 332: It's four days.

24 THE COURT: -- plane are you taking?

25 PROSPECTIVE JUROR NO. \$332,380 just to get to Reno

1 plus the hotel, airfare -- or the airfare and the rental car.

2 THE COURT: When is this trip?

3 PROSPECTIVE JUROR NO. 332: I'm scheduled to leave  
4 tonight at 7:10, and then I return Thursday evening at 8:30.

5 THE COURT: And when did you schedule this trip?

6 PROSPECTIVE JUROR NO. 332: I believe, it was about  
7 two to three weeks ago.

8 THE COURT: And when did you get your Jury Summons?

9 PROSPECTIVE JUROR NO. 332: I believe, it was after  
10 that or before -- yeah, before that, sorry. So I had the jury  
11 beforehand, yes.

12 THE COURT: So you scheduled a trip --

13 PROSPECTIVE JUROR NO. 332: Put the dates together  
14 until after it was scheduled.

15 THE COURT: You scheduled a trip when you had jury  
16 service?

17 PROSPECTIVE JUROR NO. 332: Forgot about it, yeah.

18 THE COURT: Okay. Who's next?

19 THE MARSHAL: Anyone in the front row? Back here?

20 PROSPECTIVE JUROR NO. 416: Your Honor, I hate to do  
21 this but may I -- Lou Schneider, 416. May I approach the  
22 bench, please?

23 THE COURT: All right.

24 PROSPECTIVE JUROR NO. 416: Thank you.

25 (Off-record bench conference)

1 THE COURT: Step back. Okay. Who else?

2 PROSPECTIVE JUROR NO. 440: Michael Speer, 440.

3 THE COURT: Okay. Go ahead.

4 PROSPECTIVE JUROR NO. 440: Transportation mostly.

5 As of today, I've had somebody take me here and somebody  
6 picking me up, afterwards a different person. I'm retired now  
7 and I don't have a vehicle.

8 THE COURT: Okay. What part of town do you live in?

9 PROSPECTIVE JUROR NO. 440: Southwest.

10 THE COURT: So how do you get around to do, you  
11 know, all the wonderful things we all plan to in retirement?

12 PROSPECTIVE JUROR NO. 440: Well, I live -- I live  
13 kind of in an area that has -- has decent stores. Plus, I  
14 live in a senior center so they have a lot of things where  
15 they take buses and go different places if I have to do that.  
16 Or I have friends there as far as an if I needed something  
17 like for a doctor appointment or something like that.

18 THE COURT: And do you ever take the bus?

19 PROSPECTIVE JUROR NO. 440: Pardon me?

20 THE COURT: You ever take the bus?

21 PROSPECTIVE JUROR NO. 440: No. Just the buses that  
22 are at the senior centers.

23 THE COURT: Okay. So you haven't looked into what  
24 taking the bus would entail?

25 PROSPECTIVE JUROR NO. 440: I have not.

1           THE COURT: All right. Anybody else? All right.  
2 So we're going to take a ten-minute recess, and during which  
3 we'll discuss who will be excused and who will not.

4           Now, every time you take a recess, I need to read to  
5 you this admonishment. So, ladies and gentlemen, we're going  
6 to take a ten-minute recess. During this recess, it is your  
7 duty not to converse among yourselves or with anyone else on  
8 any subject connected with the trial or to read, watch or  
9 listen to any report on the trial or commentary on the trial  
10 by any person connected with the trial or by any medium of  
11 information, including without limitation, newspaper,  
12 television, radio or Internet. And you're not to form or  
13 express any opinion on any subject connected with this case  
14 until it's finally submit today you.

15           We'll be in recess for ten minutes. We're going by  
16 the clock on the wall. So we'll be in recess until 10 minutes  
17 to 3:00.

18           THE MARSHAL: Rise for the venire panel.

19           (Prospective jurors recessed at 2:40 p.m.)

20           THE COURT: All right. The record will reflect the  
21 venire has departed the courtroom. Do you want to have this  
22 discussion on record or off the record?

23           MR. DiGIACOMO: Court's pleasure.

24           MS. McNEILL: Yeah, the Court's pleasure. I don't  
25 know that it needs to be on the record.

1 THE COURT: Okay. So we'll go off the record.

2 (Off the record at 2:41 p.m. until 2:55 p.m.)

3 (In the presence of the prospective jurors)

4 THE MARSHAL: All members of the venire panel are  
5 present and accounted for, ma'am.

6 THE COURT: Thank you. Please be seated. And the  
7 record will reflect that we have been rejoined by the venire  
8 panel. The record will also reflect presence of all three  
9 defendants, their counsel, the Deputies District Attorney  
10 prosecuting the case, all officers of the court.

11 And so, ladies and gentlemen, now, this is how we're  
12 going to do this. I'm going to read out your badge number and  
13 your name, if you've been excused, and if you hear your name,  
14 just get up and leave the courtroom. And so that's how it  
15 will be. If you don't hear your name, it means you have not  
16 been excused. So Badge No. --

17 (Court/Clerk conferring)

18 THE COURT: Okay. So Badge No. 240, Dallas Duncan,  
19 Badge No. 246, Gerry Steward, Badge No. 259, James Pirih,  
20 Badge No. 287, Joshua Hoepfner, Badge No. 302, Tecleab  
21 Toumizhi, Badge No. 311, Kevin Guersey, Badge No. 330, Preston  
22 Miklich, Badge No. 332, Justin Volpone, Badge No. 416, Louie  
23 Schneider, and Badge No. 440, Michael Speer. And thank you  
24 very much.

25 So ladies and gentlemen, I just want to commend the

1 rest of you because this is a long projected trial and that  
2 you haven't tried to get out of jury duty makes -- it warms my  
3 heart with the warm cockles of my heart to see that today  
4 because I've had trials before where we've had a three-day  
5 trial and half the panel wants to get off serving for three  
6 days, so thank you very much.

7 And so what we're going to do next is we're going to  
8 fill in order that you're seated, we'll call the next to fill  
9 the empty seats in the order in the jury box. And so the next  
10 will be --

11 THE CLERK: Next in line --

12 THE COURT: -- Seat No. 2.

13 THE CLERK: -- will be Jasmine White, Badge No. 276.

14 THE COURT: And that will be in Seat No. 2 up there  
15 on the top row.

16 THE CLERK: Next will be Theresa Mason, Badge No.  
17 277.

18 THE COURT: That's for the --

19 THE CLERK: Next will be Wendy Stitt, Badge No. 282.  
20 Next will be Alma Martinez, Badge No. 284.

21 THE COURT: All right. So ladies and gentlemen, the  
22 next questions that I'm going to pose again, show of hands,  
23 but this time instead of the whole gallery and the box, just  
24 the box answers these questions. All right.

25 So is there anyone who's seated in the jury box at



1 the present time who has ever served as a juror before?

2 Please raise your hand. We got one.

3 PROSPECTIVE JUROR NO. 018: Theodore Compehos. I'm  
4 Badge 018.

5 THE COURT: You've been a juror before?

6 PROSPECTIVE JUROR NO. 018: No.

7 THE COURT: Oh, you misunderstood the question?

8 PROSPECTIVE JUROR NO. 018: Yeah. That's why I was  
9 double checking.

10 THE COURT: Okay. So no one -- the record will  
11 reflect that no one answered affirmatively to the question.

12 Next question then, is there anyone who has ever  
13 been either currently or in the past in law enforcement? Any  
14 capacity. And again, the record will reflect a negative  
15 response.

16 Is there anyone seated in the box who's ever been  
17 the victim of a crime? Okay, so anyone that, like, if you've  
18 ever had your car stolen, your wallet picked, your house  
19 burglarized, anything like that? Your car burglarized, things  
20 stolen out of your car. Okay. And so starting with Seat No.  
21 3.

22 PROSPECTIVE JUROR NO. 277: Theresa Mason.

23 THE COURT: Thank you.

24 PROSPECTIVE JUROR NO. 277: 227 (sic).

25 THE COURT: What crimes have you been the victim of?

1 PROSPECTIVE JUROR NO. 277: I've had my car  
2 burglarized, I've had my home burglarized.

3 THE COURT: Is that it? You sounded like you were  
4 going to go on so --

5 PROSPECTIVE JUROR NO. 277: I'm trying to think if  
6 there's anything else. Personally, I think that's it for me.

7 THE COURT: All right. So -- wait, wait. So  
8 additional question. So was that here in Clark County?

9 PROSPECTIVE JUROR NO. 277: No.

10 THE COURT: Where did that occur?

11 PROSPECTIVE JUROR NO. 277: The car was in Chicago  
12 and my home was in Indiana.

13 THE COURT: And how long ago was your car burglary?

14 PROSPECTIVE JUROR NO. 277: 1978.

15 THE COURT: Okay, so quite a long time ago.

16 PROSPECTIVE JUROR NO. 277: Yes.

17 THE COURT: And what about your home burglary?

18 PROSPECTIVE JUROR NO. 277: I want to say 1998.

19 THE COURT: So did you report those crimes to the  
20 police?

21 PROSPECTIVE JUROR NO. 277: The home burglary, yes.

22 THE COURT: You did not --

23 PROSPECTIVE JUROR NO. 277: I think.

24 THE COURT: -- report the car burglary to the  
25 police?

1 PROSPECTIVE JUROR NO. 277: No.

2 THE COURT: Why did you not do that?

3 PROSPECTIVE JUROR NO. 277: Because we were on our  
4 honeymoon and we just wanted to get the heck out of there.

5 THE COURT: Okay. So you were just visiting in  
6 Chicago --

7 PROSPECTIVE JUROR NO. 277: Yes.

8 THE COURT: -- and the car -- was it forcibly broken  
9 into or --

10 PROSPECTIVE JUROR NO. 277: Yes.

11 THE COURT: Okay. All right. And so now, with the  
12 home burglary in Indiana, you said you did report that to the  
13 police. Was anyone ever apprehended for that crime?

14 PROSPECTIVE JUROR NO. 277: I don't believe so.

15 THE COURT: So you were never --

16 PROSPECTIVE JUROR NO. 277: No.

17 THE COURT: When you say you don't believe so, were  
18 you ever called to testify in any kind of trial?

19 PROSPECTIVE JUROR NO. 277: No.

20 THE COURT: Were you ever contacted or notified by  
21 the police department or the prosecutors that, in fact,  
22 someone had been caught?

23 PROSPECTIVE JUROR NO. 277: No.

24 THE COURT: Did police respond out to your home when  
25 you made that report?

1 PROSPECTIVE JUROR NO. 277: I honestly, don't  
2 remember.

3 THE COURT: It was a while ago. All right. Will  
4 you be able to set that aside, that as well as the incident in  
5 Chicago, and base your decision on what you hear as is the  
6 evidence in this case and nothing else?

7 PROSPECTIVE JUROR NO. 277: I don't know.

8 THE COURT: All right. So tell me why you say that.

9 PROSPECTIVE JUROR NO. 277: Because it's upsetting  
10 when you have your home and, you know, and your burglar -- I  
11 mean, somebody breaks into your home. It's just -- actually,  
12 I've had it happen twice, now that I think about it. So my  
13 home broken into.

14 THE COURT: Both times in Indiana?

15 PROSPECTIVE JUROR NO. 277: No, one was in Iowa back  
16 in the early '80s.

17 THE COURT: Okay. So the Midwest is not the panacea  
18 that we thought it was. Is that what we're saying?

19 PROSPECTIVE JUROR NO. 277: Not necessarily, no.

20 THE COURT: All right. So but --

21 PROSPECTIVE JUROR NO. 277: It can happen anywhere.

22 THE COURT: -- in each case you understand that  
23 those were separate things that occurred and --

24 PROSPECTIVE JUROR NO. 277: Yeah.

25 THE COURT: -- you wouldn't be able to listen to the

1 evidence in this case and make a decision based upon the  
2 evidence you hear in this case as opposed to trying to -- you  
3 think you would be biased against the defendants in this case  
4 because you were the victim of a crime more than --

5 PROSPECTIVE JUROR NO. 277: Yes, I do.

6 THE COURT: -- 20 years ago.

7 PROSPECTIVE JUROR NO. 277: Personally, yes, I do.

8 THE COURT: All right. Well, if you can't be fair  
9 and impartial, then we can't have you on this jury so you're  
10 excused. Thank you.

11 PROSPECTIVE JUROR NO. 277: I'm sorry, Your Honor.

12 THE COURT: Call the next in order.

13 THE CLERK: Next will be Jennifer Quiros, Badge No.  
14 291.

15 THE COURT: All right. Ms. Quiros, hello.

16 PROSPECTIVE JUROR NO. 291: Hi.

17 THE COURT: Welcome. And have you ever been a juror  
18 before?

19 PROSPECTIVE JUROR NO. 291: I have.

20 THE COURT: When was that?

21 PROSPECTIVE JUROR NO. 291: At least 15 years ago.

22 THE COURT: Was that here in Clark County?

23 PROSPECTIVE JUROR NO. 291: Yes, it was.

24 THE COURT: And do you recall whether it was a  
25 criminal or a civil case?

1 PROSPECTIVE JUROR NO. 291: It was a criminal.

2 THE COURT: Without telling us what the verdict was,  
3 did the jury reach a verdict?

4 PROSPECTIVE JUROR NO. 291: No.

5 THE COURT: And did the jury deliberate?

6 PROSPECTIVE JUROR NO. 291: We did.

7 THE COURT: Okay. But you were unable to reach a  
8 verdict?

9 PROSPECTIVE JUROR NO. 291: Right.

10 THE COURT: All right, thank you. And were you the  
11 foreperson of that jury?

12 PROSPECTIVE JUROR NO. 291: No, I was -- I was not.

13 THE COURT: All right. Anything about that  
14 experience that makes you think you could not be a fair and  
15 impartial juror in this case?

16 PROSPECTIVE JUROR NO. 291: No.

17 THE COURT: And have you ever been in law  
18 enforcement?

19 PROSPECTIVE JUROR NO. 291: I have not.

20 THE COURT: Have you ever been the victim of a  
21 crime?

22 PROSPECTIVE JUROR NO. 291: No.

23 THE COURT: All right. So the next person who  
24 raised their hand affirmatively was right next to you. If you  
25 could hand the microphone over.

1 PROSPECTIVE JUROR NO. 282: Okay. My name is Wendy  
2 Stitt, and my number is 948. I too was burglarized in  
3 Indiana.

4 THE COURT: I didn't know Indiana was a hot bed of  
5 crime.

6 PROSPECTIVE JUROR NO. 282: Hammond, Indiana right  
7 outside of Chicago.

8 THE COURT: All right. How long ago was that?

9 PROSPECTIVE JUROR NO. 282: It was probably a good  
10 45 years ago.

11 THE COURT: Oh, a very long time ago?

12 PROSPECTIVE JUROR NO. 282: Yes.

13 THE COURT: All right. And so did you call the  
14 police?

15 PROSPECTIVE JUROR NO. 282: Yes, I did.

16 THE COURT: And did they come to your house?

17 PROSPECTIVE JUROR NO. 282: Yes.

18 THE COURT: Did you feel that they did an adequate  
19 job of doing what they could when they came?

20 PROSPECTIVE JUROR NO. 282: I would say so.

21 THE COURT: Was the person or persons that committed  
22 the burglary ever apprehended?

23 PROSPECTIVE JUROR NO. 282: No, they were not.

24 THE COURT: And so therefore, you didn't ever  
25 testify in a court or anything. And do you think that you

1 could -- is there anything about that burglary that happened  
2 45 years ago makes you think that you could not be fair and  
3 impartial in this case.

4 PROSPECTIVE JUROR NO. 282: I just felt really  
5 violated, and I just never really got over it. I got  
6 paranoid.

7 THE COURT: Forty-five years later?

8 PROSPECTIVE JUROR NO. 282: To this day I -- I still  
9 lock my doors real careful.

10 THE COURT: All right. Well, that's good.  
11 Everybody should do that, but you understand that what  
12 happened to you 45 years ago could not possibly have been  
13 committed by any of the defendants in this case since they're  
14 not that old, right?

15 PROSPECTIVE JUROR NO. 282: No, they couldn't.

16 THE COURT: Okay. So will you be able to listen to  
17 the evidence in this case and decide based upon the evidence  
18 as you find it in this case?

19 PROSPECTIVE JUROR NO. 282: I'd still be pretty  
20 freaked out. I don't think so.

21 THE COURT: So you're saying that you've already  
22 made up your mind? You're not -- you can't be fair and  
23 impartial?

24 PROSPECTIVE JUROR NO. 282: No, I don't think so  
25 because if it's a break-in, it's still a break-in.



1           THE COURT: All right. Well, let me just say this,  
2 the defendants are presumed to be innocent unless and until  
3 the State proves otherwise. And so it's very important for  
4 everybody in the courtroom that's a prospective juror to  
5 understand that you must and should presume the defendants to  
6 be innocent. Until you hear evidence from the State,  
7 otherwise, and that you are satisfied beyond a reasonable  
8 doubt that they're guilty, then they are innocent.

9           And just because they're sitting here in court as  
10 defendants does not mean anything. They're presumed to be  
11 innocent. All right. Is there anyone who does not understand  
12 that? Please raise your hand. All right, the record will  
13 reflect a negative response.

14           And so you understand that as well; is that correct,  
15 ma'am?

16           PROSPECTIVE JUROR NO. 282: Yes.

17           THE COURT: Okay. But nonetheless, you can't be  
18 fair, right?

19           PROSPECTIVE JUROR NO. 282: No, I --

20           THE COURT: All right, you're excused. Call the  
21 next in order.

22           THE CLERK: Yes, Your Honor. That will be Michael  
23 Goehring, Badge No. 312.

24           THE COURT: Mr. Goehring, how are you?

25           PROSPECTIVE JUROR NO. 312: The best ever.

1 THE COURT: Oh, good. Have you ever been a juror  
2 before?

3 PROSPECTIVE JUROR NO. 312: Yes, I have.

4 THE COURT: Was that here in Clark County?

5 PROSPECTIVE JUROR NO. 312: No, California.

6 THE COURT: How long ago?

7 PROSPECTIVE JUROR NO. 312: Probably in the '90s.

8 THE COURT: And do you recall if that was a civil  
9 case or a criminal case?

10 PROSPECTIVE JUROR NO. 312: Civil.

11 THE COURT: Without telling us what the verdict was,  
12 did the jury reach a verdict?

13 PROSPECTIVE JUROR NO. 312: Yes.

14 THE COURT: Were you the foreperson?

15 PROSPECTIVE JUROR NO. 312: No.

16 THE COURT: Okay. Now, you understand that the  
17 burden of proof in a civil case is not the same as in a  
18 criminal case, so the rules concerning the burden of proof are  
19 different?

20 PROSPECTIVE JUROR NO. 312: Yes.

21 THE COURT: Okay. Also, some of the rules of  
22 procedure in evidence in California are different than in  
23 Nevada. So I'd ask you to put aside what you might remember  
24 from that trial that you had there in California. Will you be  
25 able to do that and just listen to the law as I instruct you

1 in this case?

2 PROSPECTIVE JUROR NO. 312: Yes.

3 THE COURT: All right, thank you. Have you ever  
4 been in law enforcement?

5 PROSPECTIVE JUROR NO. 312: No.

6 THE COURT: Have you ever been the victim of a  
7 crime?

8 PROSPECTIVE JUROR NO. 312: No.

9 THE COURT: And, thank you. Who was the next person  
10 -- wait, we already passed you. All right.

11 PROSPECTIVE JUROR 018: (Inaudible).

12 THE COURT: So who was the next person who said that  
13 they were the victim of a crime? All right, no, we passed you  
14 already. We'll come back to you, perhaps.

15 PROSPECTIVE JUROR 018: Okay.

16 THE COURT: All right. Was there anyone in the  
17 front row?

18 THE MARSHAL: No, ma'am.

19 THE COURT: All right. So in Seat No. 1, give the  
20 microphone back to him. Badge number and name.

21 PROSPECTIVE JUROR NO. 018: 018, Theodore Compehos.

22 THE COURT: Mr. Compehos, what is it you're needing  
23 to tell me?

24 PROSPECTIVE JUROR NO. 018: Victim of a crime, I  
25 guess, you know. I had --

1 THE COURT: Did you not understand the question  
2 before?

3 PROSPECTIVE JUROR NO. 018: No, I didn't -- I didn't  
4 -- no.

5 THE COURT: All right. What crime are you the  
6 victim of?

7 PROSPECTIVE JUROR NO. 018: Well, I just got some  
8 cars stolen in 2006. I live in Greene Valley and I --

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 018: -- got my truck stolen,  
11 and two of my cars in Hawaii. And I'm in the music business,  
12 and places that I played at there were three shootings. I  
13 think two of them died. And ever since I got my car stolen  
14 and all that, pretty much for a while, I just was, you know,  
15 whenever I see somebody and --

16 THE COURT: Okay, you're under oath, right? You  
17 understand that?

18 PROSPECTIVE JUROR NO. 018: Yeah.

19 THE COURT: Okay. So you didn't -- when I asked the  
20 question before, you did not answer. You said you had not  
21 been the victim of a crime.

22 PROSPECTIVE JUROR NO. 018: No, I thought you said  
23 that if I was a juror before.

24 THE COURT: Okay. And then I asked -- after I  
25 finished with that question, I asked about law enforcement and

1 then I asked if you were the victim of a crime.

2 PROSPECTIVE JUROR NO. 018: I already passed the mic  
3 on.

4 THE COURT: No, you did not raise your hand. Okay.  
5 So go ahead and tell me about these car thefts. When did they  
6 happen?

7 PROSPECTIVE JUROR NO. 018: I think it's 2006 in  
8 Greene Valley. It was reported, a police report and  
9 everything.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR NO. 018: It was recovered. It  
12 was -- they burned the -- they burned my whole car. It was  
13 maybe two months old.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR NO. 018: Brand new.

16 THE COURT: All right. And that was the only time  
17 your car was stolen in Greene Valley?

18 PROSPECTIVE JUROR NO. 018: Yeah. And then I had  
19 couple times up in Hawaii.

20 THE COURT: Okay. How long was that?

21 PROSPECTIVE JUROR NO. 018: I really don't know.  
22 Maybe '96.

23 THE COURT: Okay. And did you report those to the  
24 police?

25 PROSPECTIVE JUROR NO. 018: Yeah. Report one of --

1 two of them.

2 THE COURT: Okay. Were your cars --

3 PROSPECTIVE JUROR NO. 018: Truck and a sports car.

4 THE COURT: Were they recovered?

5 PROSPECTIVE JUROR NO. 018: Yeah. It was totaled.

6 It was -- they stripped everything. It was a sports car.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR NO. 018: The truck they did the  
9 same thing.

10 THE COURT: And those were both in Hawaii?

11 PROSPECTIVE JUROR NO. 018: Yeah.

12 THE COURT: All right. Did they ever catch who did  
13 it?

14 PROSPECTIVE JUROR NO. 018: No.

15 THE COURT: Okay. And do you -- are you suffering  
16 trauma as a result of those car thefts?

17 PROSPECTIVE JUROR NO. 018: Well, sometimes I just  
18 get upset and, you know, because pretty much keep to myself.  
19 I don't bother anybody. I'm pretty, I guess you call a good  
20 guy. And for the things happen to me, sometimes I get upset  
21 like why, you know? Sometimes when I -- I used to look at the  
22 -- look at some guys and thinking, oh, maybe those guys stole  
23 my car or something, you know, for a long time, but I'm over  
24 that now.

25 THE COURT: All right. So how long ago was it that

1 your car was stolen in Greene Valley? How long --

2 PROSPECTIVE JUROR NO. 018: 2006, I think, yeah.

3 THE COURT: Okay. So ten years ago?

4 PROSPECTIVE JUROR NO. 018: Yeah.

5 THE COURT: So are you over it?

6 PROSPECTIVE JUROR NO. 018: Yeah, I got a new car.

7 THE COURT: All right. Thank you.

8 PROSPECTIVE JUROR NO. 018: Okay.

9 THE COURT: All right. Next question, is there  
10 anyone seated in the jury box who -- you know, who has either  
11 had anyone in their family or closely associated with them  
12 that's been the victim of a serious violent type of crime?

13 PROSPECTIVE JUROR NO. 255: How are you doing? My  
14 name is Gregory Anderson. My number is 255, and I was going  
15 to say this at this first, but I kind of -- I didn't want to  
16 say it because it brings back bad memories for me. My son was  
17 killed in a drug robbery so --

18 THE COURT: I'm very sorry.

19 PROSPECTIVE JUROR NO. 255: -- I don't know if I  
20 really want to be in here.

21 THE COURT: All right. How long ago was that?

22 PROSPECTIVE JUROR NO. 255: It's been five years  
23 now.

24 THE COURT: All right. So a loss of any child is a  
25 terrible loss, and --

1 PROSPECTIVE JUROR NO. 255: Right.

2 THE COURT: -- five years is not very long for that  
3 kind of loss. And you feel that you would not be as a result  
4 of that --

5 PROSPECTIVE JUROR NO. 255: Oh, no.

6 THE COURT: -- to be fair and impartial?

7 PROSPECTIVE JUROR NO. 255: They wouldn't want me up  
8 here.

9 THE COURT: Thank you very much. You're excused.  
10 Call the next in order.

11 THE CLERK: Yes, Your Honor. It would be Kimberly  
12 Key, Badge No. 314.

13 THE COURT: Ms. Key, do you have the microphone?

14 PROSPECTIVE JUROR NO. 314: Yes, I do.

15 THE COURT: All right. And so have you ever served  
16 as a juror before?

17 PROSPECTIVE JUROR NO. 314: I have not.

18 THE COURT: Have you ever been in law enforcement?

19 PROSPECTIVE JUROR NO. 314: I have not.

20 THE COURT: Ever been the victim of a crime?

21 PROSPECTIVE JUROR NO. 314: No, I have not.

22 THE COURT: Anyone in your family or closely  
23 associated with you been the victim of a serious crime?

24 PROSPECTIVE JUROR NO. 314: No.

25 THE COURT: All right. Question to the entire



1 panel. Is there any one of you who has family member or close  
2 friend in law enforcement? Okay, one on the top.

3 PROSPECTIVE JUROR NO. 252: Erik Wirtner, 252. My  
4 girlfriend is actually a Corrections Officer.

5 THE COURT: All right. Is that here in Clark  
6 County?

7 PROSPECTIVE JUROR NO. 252: Here. Right here.

8 THE COURT: Okay. And so the question here is  
9 whether you can assess the testimony of corrections -- not a  
10 Corrections Officer, but any law enforcement officer, in the  
11 same manner that you would another witness, which means by  
12 observing their demeanor on the stand, listening to what they  
13 have to say and making a determination whether it makes sense,  
14 whether it appears to be credible testimony in light of other  
15 testimony that you've heard and you believe, whether or not  
16 that witness said something or wrote something that  
17 contradicts their testimony today. You know, if they wrote  
18 something or said something prior to their testimony in court  
19 that contradicts them. Would you be able to evaluate the  
20 testimony of a law enforcement officer in the same -- that  
21 same way as you would other witnesses or would you just say  
22 well, it's a law enforcement officer so I don't care what they  
23 say, I'm going with that?

24 PROSPECTIVE JUROR NO. 252: I would probably have a  
25 tendency to side with the law enforcement officer having known

1     them, not that particular law enforcement officer.

2             THE COURT:   If you knew the law enforcement  
3     officer --

4             PROSPECTIVE JUROR NO. 252:   No, no, no.   I'm saying  
5     I would tend to side more with the law enforcement officer in  
6     a situation like that understanding that they are a law  
7     enforcement officer.

8             THE COURT:   Regardless of what they say?   So if they  
9     took the stand and said that the sky is purple with yellow  
10    polka dots, you'd say oh, yeah, opposed to somebody else that  
11    said it was blue they weren't law enforcement?

12            PROSPECTIVE JUROR NO. 252:   Well, that would  
13    probably not settle with me, no.   I would probably question  
14    something of that drastic nature, yes.

15            THE COURT:   All right.   So that's what I'm talking  
16    about.   Will be able to evaluate what the witness says and  
17    take that as a whole?

18            PROSPECTIVE JUROR NO. 252:   I'm sorry, I  
19    misunderstood the question.   I thought you said in weighing it  
20    against what somebody else says, meaning --

21            THE COURT:   No, that --

22            PROSPECTIVE JUROR NO. 252:   -- if -- if another  
23    witness is in the same exact situation as a law enforcement  
24    officer, whose -- who would I give credence to.   I  
25    misunderstood you.

1           THE COURT: No, I'm not asking you to prejudge any  
2 witness. I'm just saying would you listen to what a law  
3 enforcement says and use your same analytical tools to  
4 determine whether you think that person is being truthful or  
5 giving you credible testimony by listening to what they have  
6 to say? All the examples I gave to you, would you do that?

7           PROSPECTIVE JUROR NO. 252: Yeah, I -- I would  
8 listen to them and consider their testimony credible.

9           THE COURT: All right. But would you analyze it?  
10 In other words, before they take the stand, are you saying  
11 you're going to say no matter what they say I'm going -- I'm  
12 starting out with what they must say is credible and then work  
13 back from that or are you going to wait and listen to what  
14 they have to say first and make your decision?

15          PROSPECTIVE JUROR NO. 252: Well, I would imagine  
16 that I would probably sit and listen to what they had to say  
17 first. I don't know.

18          THE COURT: Okay. I don't know how else you'd do  
19 it, but you're the person answering the question so I don't --  
20 if that's your answer, that's good. I mean, that's fine.  
21 There's no right or wrong answer to these questions. We're  
22 just trying to figure out what your thought process is, all  
23 right? Thank you, I appreciate that. Okay.

24          Let's see, and there was no one else that has any  
25 close friends or relatives that are in law enforcement? And

1 the record will so reflect. All right.

2           Okay. Let's see. All right. Now, is there anyone  
3 sitting in the box who believes that they would not be able to  
4 follow the law as I instruct you? There are some people who  
5 just feel that they cannot -- if they don't agree with the  
6 law, then they can't follow it. Here I'm telling you that it  
7 is your duty as jurors, if you're on the jury, to follow the  
8 law as I instruct you. Is there anyone who feels they  
9 couldn't do that? And the record will reflect a negative  
10 response.

11           Okay. Now, I think I've already told you that a  
12 person that's accused of a crime is presumed to be innocent  
13 unless and until the State proves beyond a reasonable doubt  
14 that they are guilty, and that is an important premise in our  
15 system of justice. Is there anyone who disagrees with that?  
16 Please raise your hand. The record will reflect a negative  
17 response.

18           All right, so everybody usually answers that  
19 question in that way, and because intellectually you  
20 understand that. You took your Civic lessons and you  
21 understand that, but some people still have a feeling that  
22 well, okay, I understand that they're presumed to be innocent,  
23 but I still feel that they should have to prove that they're  
24 innocent and they should offer some evidence or some -- take  
25 the stand, something like that.

1           Is there anyone who feels that way? Even though  
2 they understand the legal premise of presumption of innocence,  
3 they still feel the need for a defendant to prove their  
4 innocence. Is there anyone who feels that way? The record  
5 will reflect a negative response.

6           Is there anyone who does not understand that the  
7 defense doesn't have to present any evidence? The State does  
8 all the proving. And if they fail to prove the case to you  
9 beyond a reasonable doubt, you're the deciders of the facts.  
10 If they fail to prove it, then they failed in their burden.  
11 Is there anyone who disagrees with that? And the record will  
12 reflect a negative response.

13           All right. Is there anyone who has a personal moral  
14 or religious belief that makes it impossible for them to sit  
15 and do the job of a juror which is to determine the facts and  
16 then to apply the law as I instruct you and come up with a  
17 verdict? And the record again will reflect a negative  
18 response.

19           All right. Is there anybody seated in the jury box  
20 who has ever been accused of or convicted of a crime? And the  
21 record will reflect a negative response. Is there anyone  
22 seated in the jury box who has a family member or a close  
23 friend, associate, who's been convicted of a crime? And the  
24 record again will reflect a negative response.

25           Is there anyone seated in the box who feels for

1 whatever reason they could not be a fair and impartial juror  
2 in this case? And the record will reflect a negative  
3 response.

4 All right. Now, what we're going to do next is  
5 we're going to have -- taking each juror separately starting  
6 with Seat No. 1 on the top row, and I'm going to be asking you  
7 this question, tell me about yourself. What I want to know  
8 when I ask you that question is I want to know how long have  
9 you lived in Clark County, what do you do for a living, are  
10 you married, single, divorced, significant other, partner, et  
11 cetera? If you have such a person in your life, then I want  
12 to know what that person does for a living.

13 Oh, if you are retired or your spouse, anything  
14 other, partner, et cetera is retired, I want to know what you  
15 or that person did before retirement. I want to know if you  
16 have any children, their ages. And if they're adult children,  
17 I want to know what they do for a living. And finally, I want  
18 to know what your education is. Your background and your  
19 education.

20 So that may sound like a lot, and don't worry about  
21 it, I mean, actually, you'll probably -- everybody will fall  
22 into knowing how to respond to the question, but worry about  
23 it, if you miss something, I'll follow up. After I finish  
24 having you answer that question, any follow-up questions I  
25 have, then the lawyers will have the opportunity to ask you

1 questions as well. All right?

2 Okay. Have the microphone, sir. All right. Tell  
3 me about yourself.

4 PROSPECTIVE JUROR NO. 018: I'm a musician. Started  
5 playing -- I started playing music in the '60s, and I have a  
6 son that's 45 and two grandkids. Married, a beautiful lady.  
7 She works over at the -- oh, I don't know -- Mandalay, I  
8 guess.

9 THE COURT: Okay. What does she do there?

10 PROSPECTIVE JUROR NO. 018: As a banquet. She works  
11 with the banquets.

12 THE COURT: How long have you lived in Clark County?

13 PROSPECTIVE JUROR NO. 018: We moved over in '97.

14 THE COURT: And you say you're a musician. Do you  
15 have a regular full-time job or do you --

16 PROSPECTIVE JUROR NO. 018: Well, I played almost  
17 every casino and I played in some shows and concerts and stuff  
18 as a drummer. But now I'm a solo musician and I go on tour  
19 every summer, and I just got back Thursday.

20 THE COURT: What instrument do you play?

21 PROSPECTIVE JUROR NO. 018: Now, I'm guitar and I  
22 play percussion and sing at the same time and play my guitar.

23 THE COURT: And your adult son, you said, what does  
24 he do?

25 PROSPECTIVE JUROR NO. 018: He owns a coffee

1 plantation over at the Big Island of Hawaii.

2 THE COURT: All right. And -- okay. All right.  
3 And is there any reason you feel that you could not be a fair  
4 and impartial juror in this case?

5 PROSPECTIVE JUROR NO. 018: No.

6 THE COURT: Thank you. Would the State like to  
7 inquire further?

8 MS. LEXIS: Yes, Your Honor. Hello, sir.

9 Mr. Compehos, what island are you from in Hawaii?

10 PROSPECTIVE JUROR NO. 018: Oahu, island of Oahu.

11 MS. LEXIS: Okay. But your son owns a coffee  
12 plantation --

13 PROSPECTIVE JUROR NO. 018: On the Big Island.

14 MS. LEXIS: -- on the Big Island?

15 PROSPECTIVE JUROR NO. 018: Pahala.

16 MS. LEXIS: Okay. Okay. (Indiscernible). Where do  
17 you play? I know you're a musician. Where do you play in Las  
18 Vegas?

19 PROSPECTIVE JUROR NO. 018: Well, I just got back so  
20 I'm not really -- I just got back Thursday from Alaska so I'm  
21 not really working right now.

22 MS. LEXIS: Okay. You indicated earlier that --  
23 sorry. You indicated earlier that there were some shootings  
24 at your prior work?

25 PROSPECTIVE JUROR NO. 018: Yeah, over in Seattle, I



1 kind of forgot what year was that, but a guy got shot right on  
2 the dance floor.

3 MS. LEXIS: And were you present --

4 PROSPECTIVE JUROR NO. 018: Yeah, I was --

5 MS. LEXIS: -- when that happened?

6 PROSPECTIVE JUROR NO. 018: -- I was the drummer  
7 back then and I kind of seen everything. And also in Hawaii,  
8 as a drummer I saw one of my -- the manager, he was the nicest  
9 guy, I mean, I was talking to him, and ten minutes later, and  
10 I actually saw the guy, you know, stick his gun out and I  
11 heard the shot and everything, you know. And I was pretty  
12 upset because he's such a nice guy. And -- and as far as I  
13 know, nobody got convicted, you know. And I was kind of, it's  
14 like, well --

15 MS. LEXIS: Okay. Let's talk about it one at a  
16 time. So the one in Seattle, what year was that?

17 PROSPECTIVE JUROR NO. 018: I think it's in the  
18 '80s.

19 MS. LEXIS: In the '80s? Okay.

20 PROSPECTIVE JUROR NO. 018: Yeah.

21 MS. LEXIS: And that happened right in front of you?  
22 You were playing and --

23 PROSPECTIVE JUROR NO. 018: Yeah, about --

24 MS. LEXIS: -- the guy -- someone got killed on the  
25 dance floor?

1 PROSPECTIVE JUROR NO. 018: -- 40 feet away or so.  
2 Yeah. Well, I don't know if he got killed, but he got -- he  
3 got shot and I was looking over. I could see all the blood  
4 and he have gone coming out, and I think eventually he died.

5 MS. LEXIS: Okay. Were you ever called as a  
6 witness?

7 PROSPECTIVE JUROR NO. 018: No.

8 MS. LEXIS: Did you fill out like a statement or  
9 talk to the police?

10 PROSPECTIVE JUROR NO. 018: No. Just had a whole  
11 club full of people so --

12 MS. LEXIS: Okay. Did you follow that case? You  
13 indicated you didn't know if someone was convicted, but did  
14 you follow that case?

15 PROSPECTIVE JUROR NO. 018: No. I asked somebody  
16 down the road if he -- they knew what happened to the guy, and  
17 I -- I think they said he was in like a vegetable or something  
18 for -- I'm not too sure.

19 MS. LEXIS: Okay.

20 PROSPECTIVE JUROR NO. 018: But he didn't really die  
21 right -- right then.

22 MS. LEXIS: Right then. Okay. And how about the  
23 time in Hawaii?

24 PROSPECTIVE JUROR NO. 018: In Hawaii, I'm not too  
25 sure what -- I think it was in the '70s.

1 MS. LEXIS: Okay.

2 PROSPECTIVE JUROR NO. 018: And --

3 MS. LEXIS: You witnessed that as well?

4 PROSPECTIVE JUROR NO. 018: I didn't -- I didn't go  
5 to court, but -- or anything, but I -- I saw it, but --

6 MS. LEXIS: Okay.

7 PROSPECTIVE JUROR NO. 018: -- one of the guys in  
8 the band, his father was a Captain, Captain Bradbury  
9 (phonetic), and he testified, I guess, but I didn't really  
10 follow up.

11 MS. LEXIS: Okay. And did you say -- was someone  
12 prosecuted for the one in Hawaii?

13 PROSPECTIVE JUROR NO. 018: Far as I know, I don't  
14 think so. I think they got away, which --

15 MS. LEXIS: Okay.

16 PROSPECTIVE JUROR NO. 018: -- I was kind of upset,  
17 like, how can they get away, you know?

18 MS. LEXIS: Okay. Did you talk to police and  
19 provide a statement at that time?

20 PROSPECTIVE JUROR NO. 018: No.

21 MS. LEXIS: Okay. But you followed it enough to  
22 know that, perhaps, someone got away with it?

23 PROSPECTIVE JUROR NO. 018: Yeah.

24 MS. LEXIS: Okay. Now, you understand from the  
25 limited information that we gave you concerning the case, this

1 case involves a shooting?

2 PROSPECTIVE JUROR NO. 018: Yeah.

3 MS. LEXIS: You remember that part?

4 PROSPECTIVE JUROR NO. 018: Yeah.

5 MS. LEXIS: Okay. So does the fact that you  
6 personally witnessed or observed two shootings -- I know it  
7 was in the '70s and in the '80s -- do you think that would  
8 cause you to not be fair or impartial in this case?

9 PROSPECTIVE JUROR NO. 018: I'm not too sure. I  
10 guess.

11 MS. LEXIS: Okay. Let me ask you this, are you the  
12 type of person who can wait -- I mean, understanding that  
13 Mr. DiGiacomo and I have, we have the burden of proof in this  
14 case, right? You understand that?

15 PROSPECTIVE JUROR NO. 018: Yeah.

16 MS. LEXIS: Okay. Are you the type of person what  
17 can wait until we've presented all of the evidence, put  
18 witnesses on, showed all of the evidence before you can make  
19 up your mind?

20 PROSPECTIVE JUROR NO. 018: Yeah, I guess so. Yeah.

21 MS. LEXIS: Okay. Are you the type of person who  
22 can talk to the other jurors if you're selected openly about  
23 the case?

24 PROSPECTIVE JUROR NO. 018: Yeah.

25 MS. LEXIS: Okay. So you're not going to take your

1 experiences from, you know, witnessing those two other  
2 shootings -- that's not going to make you overly sympathetic  
3 to, say, the victims in this case, would it?

4 PROSPECTIVE JUROR NO. 018: I don't think so.

5 MS. LEXIS: Okay, okay. And you're certainly -- you  
6 said you were upset that someone may have gotten away with the  
7 Hawaii shooting. You're not going to take that out on the  
8 defendants who are sitting here because you know they had  
9 nothing to do with that?

10 PROSPECTIVE JUROR NO. 018: Yeah.

11 MS. LEXIS: Okay. How long have you been in Las  
12 Vegas?

13 PROSPECTIVE JUROR NO. 018: '97.

14 MS. LEXIS: Okay. And do you live here most of the  
15 year except for when you're --

16 PROSPECTIVE JUROR NO. 018: Yeah.

17 MS. LEXIS: -- traveling?

18 PROSPECTIVE JUROR NO. 018: Yeah.

19 MS. LEXIS: Okay. Like, where do you travel?

20 PROSPECTIVE JUROR NO. 018: To Valdez, Alaska.

21 MS. LEXIS: Okay. Is that the only other state that  
22 you --

23 PROSPECTIVE JUROR NO. 018: Yeah, that's the only --

24 MS. LEXIS: -- go to?

25 PROSPECTIVE JUROR NO. 018: -- other place I go.

1 MS. LEXIS: Okay. And you play a lot of different  
2 instruments, huh?

3 PROSPECTIVE JUROR NO. 018: Try to.

4 MS. LEXIS: Okay. One-man show? Sir, have you ever  
5 had any negative or positive contact with law enforcement here  
6 in Las Vegas?

7 PROSPECTIVE JUROR NO. 018: No, no, but in Hawaii,  
8 yeah.

9 MS. LEXIS: In Hawaii? Okay. How long ago?

10 PROSPECTIVE JUROR NO. 018: I was in my early 20s,  
11 and a police officer said I ran the light, a red light, and I  
12 -- I was kind of laugh because I said, hey, I saw you, you  
13 know. And I said, why should I run the light? And I got --  
14 you know, they let me -- they let me go.

15 MS. LEXIS: They let you go?

16 PROSPECTIVE JUROR NO. 018: Yeah, because I -- you  
17 know, I said, you know, I said, I have nothing to hide.

18 MS. LEXIS: Right.

19 PROSPECTIVE JUROR NO. 018: I didn't -- I saw you  
20 right there, you know. So I was kind of mad at the cops for a  
21 little bit.

22 MS. LEXIS: You were mad for a little bit?

23 PROSPECTIVE JUROR NO. 018: Yeah.

24 MS. LEXIS: Are you the type of person who stays mad  
25 kind of for a while before you let something go?

1 PROSPECTIVE JUROR NO. 018: Sometimes. Especially  
2 when I see stuff's on the Internet now, you know. I see how,  
3 you know, people, they don't really -- they get stopped for a  
4 traffic violation and they get shot, you know. It's like, I  
5 get kind of ticked off, you know.

6 MS. LEXIS: Okay.

7 PROSPECTIVE JUROR NO. 018: It's like, wow, you  
8 know.

9 MS. LEXIS: So do you watch the news often?

10 PROSPECTIVE JUROR NO. 018: Fox News.

11 MS. LEXIS: Fox news? Okay. And you're aware of,  
12 you know, what's going on in our nation?

13 PROSPECTIVE JUROR NO. 018: Yeah.

14 MS. LEXIS: Okay. A lot of those officer-involved  
15 shootings, you know, racially heated events, you understand  
16 that those are not -- that's not happening -- or that's at  
17 least not the subject at issue here in this particular --

18 PROSPECTIVE JUROR NO. 018: Yeah.

19 MS. LEXIS: -- trial? Okay. Yes?

20 PROSPECTIVE JUROR NO. 018: Yes.

21 MS. LEXIS: Okay. And you understand that -- would  
22 you agree with me that there are in every profession good  
23 cops, bad cops, good lawyers, bad lawyers, good musicians, bad  
24 musicians?

25 PROSPECTIVE JUROR NO. 018: I just was going to say

1 that, yeah.

2 MS. LEXIS: Yes? Okay. So do you think the  
3 negative portrayal of law enforcement on the news that you've  
4 been watching, do you think that will shade how you view  
5 police officer witnesses in this case?

6 PROSPECTIVE JUROR NO. 018: I'm not too sure.

7 MS. LEXIS: Okay. Because you heard me read off a  
8 bunch of officer names, right?

9 PROSPECTIVE JUROR NO. 018: Sometimes they cover  
10 each other, you know. I don't know.

11 MS. LEXIS: Okay. Okay. Do you see that kind of  
12 stuff on Fox News, too?

13 PROSPECTIVE JUROR NO. 018: Yeah.

14 MS. LEXIS: What other TV shows do you watch?

15 PROSPECTIVE JUROR NO. 018: In Alaska, I hardly  
16 didn't watch any TV there.

17 MS. LEXIS: You hardly watch any TV?

18 PROSPECTIVE JUROR NO. 018: But now over here I just  
19 kind of like I'm a news freak.

20 MS. LEXIS: Okay.

21 PROSPECTIVE JUROR NO. 018: I always watch -- watch  
22 the news.

23 MS. LEXIS: Because you're not working right now?

24 PROSPECTIVE JUROR NO. 018: Well, I -- I play tennis  
25 and go fishing on my boat and stuff.



1 MS. LEXIS: Okay.

2 PROSPECTIVE JUROR NO. 018: Then I just work during  
3 the summer.

4 MS. LEXIS: Okay. Do you watch like the First 48?  
5 Other news shows, First 48, Dateline, things -- other shows  
6 like that?

7 PROSPECTIVE JUROR NO. 018: Yeah, sometimes. Yeah.

8 MS. LEXIS: Okay. And what do you think of how  
9 police officers are portrayed on those shows?

10 PROSPECTIVE JUROR NO. 018: Right offhand I -- I  
11 seen so much I cannot really -- can't really say.

12 MS. LEXIS: Okay. What do you mean by you've seen  
13 so much?

14 PROSPECTIVE JUROR NO. 018: Well, you know, I -- I  
15 watch a lot of the Dateline stuff and sometimes I get amazed  
16 of how they find out how to -- how to get the -- what do you  
17 call? How to go about in catching a guy.

18 MS. LEXIS: Solving.

19 PROSPECTIVE JUROR NO. 018: Yeah, solving the --

20 MS. LEXIS: Solving the crime?

21 PROSPECTIVE JUROR NO. 018: Yeah.

22 MS. LEXIS: Okay.

23 PROSPECTIVE JUROR NO. 018: I get amazed sometimes,  
24 you know.

25 MS. LEXIS: Okay. And we'll talk about that in a

1 minute. But I guess, what I want to know, I mean, just to get  
2 to the point is you mentioned seeing some negative stuff about  
3 just police officers in general all over the country. I  
4 guess, you'd be blind or, you know, deaf not to hear that  
5 stuff nowadays.

6 But do you think -- you said something like, you  
7 know, you think police officers cover each other up and things  
8 like that. Do you think that negative view of law enforcement  
9 would cause you to take the testimony of a police officer to  
10 be less credible? Like, are you automatically suspicious of  
11 police officers because of that?

12 PROSPECTIVE JUROR NO. 018: Sometimes I feel like  
13 that, you know. I just -- you know, you just being honest,  
14 you know.

15 MS. LEXIS: Yeah. I mean, that's all we're asking,  
16 right?

17 PROSPECTIVE JUROR NO. 018: Yeah.

18 MS. LEXIS: This is -- we're canning for the truth  
19 because, you know what, the defendants, the State, we want a  
20 fair and impartial jury. We want someone who can decide this  
21 based on the facts and evidence, and we understand that people  
22 are going to walk in here with different experiences,  
23 different biases, different prejudices, but we appreciate you  
24 telling the truth so that we can each kind of evaluate --

25 PROSPECTIVE JUROR NO. 018: Yeah. I don't hate

1 cops, but --

2 MS. LEXIS: Okay.

3 PROSPECTIVE JUROR NO. 018: -- I still behind the  
4 cop -- police officers and all that, but --

5 MS. LEXIS: Right.

6 PROSPECTIVE JUROR NO. 018: Yeah.

7 MS. LEXIS: Okay. But do you think that all the  
8 negative, you know, publicity, we'll call it, or the negative  
9 news reports that you've seen about police officers, do you  
10 think that would cause you to view their testimony here in  
11 this case as less credible than other witnesses?

12 PROSPECTIVE JUROR NO. 018: I don't know.

13 MS. LEXIS: Okay. Let me ask you this, do you want  
14 to be a juror?

15 PROSPECTIVE JUROR NO. 018: Not really.

16 MS. LEXIS: Okay. Why? Besides the fact that you  
17 get to spend three weeks in court.

18 PROSPECTIVE JUROR NO. 018: Sometimes I -- like, I'm  
19 kind of quick sometimes judging people sometimes, you know,  
20 because things that happened in the past, you know.

21 MS. LEXIS: Like what sort of things?

22 PROSPECTIVE JUROR NO. 018: I don't know, sometimes  
23 I just -- like, okay, this one guy up in Alaska, you know, I  
24 said hey, how are you doing, you know? I'm on stage. He  
25 doesn't smile or anything, and right off I said man, what a

1 boom, boom, you know. And then he turns around and he buys  
2 one of my CDs, and I said oh, wow, you know? It just threw me  
3 off, you know, to kind of judged him because he didn't smile,  
4 he didn't answer me and -- and he came up, he gave me a tip  
5 plus he bought my CD, you know. I said oh, geez, I didn't  
6 expect that, you know.

7 MS. LEXIS: Okay. Are you the type of person who  
8 rushes to judgment, kind of like with that experience?

9 PROSPECTIVE JUROR NO. 018: Sometimes.

10 MS. LEXIS: Okay. Okay. But in this particular  
11 case, if you were selected as a juror, we would ask you to  
12 hold off reserving -- reserve forming an opinion until you've  
13 heard all of the evidence and until you've had an opportunity  
14 to deliberate with the other jurors. Do you think you could  
15 do that?

16 PROSPECTIVE JUROR NO. 018: Probably, yeah.

17 MS. LEXIS: Okay. Being that you watch the news a  
18 lot, have you heard anything about this case previously?

19 PROSPECTIVE JUROR NO. 018: I just heard about, you  
20 know, some shootings and some home invasions, but I don't know  
21 if this is the one.

22 MS. LEXIS: Okay.

23 PROSPECTIVE JUROR NO. 018: I'm not too sure.

24 MS. LEXIS: Okay. Do you own any guns?

25 PROSPECTIVE JUROR NO. 018: Just a hunting rifle.

1 MS. LEXIS: Okay. Do you have any opinions about  
2 gun ownership one way or the other?

3 PROSPECTIVE JUROR NO. 018: Oh, no.

4 MS. LEXIS: No?

5 PROSPECTIVE JUROR NO. 018: No.

6 MS. LEXIS: Okay. I know Judge Ellsworth asked  
7 this, but are you the type of person who can follow the law  
8 even if you disagree? And let me give you an example, okay?  
9 In Las Vegas, medical marijuana is being passed, right? And  
10 so long as you meet certain requirements, you can apply for  
11 and receive a medical marijuana card and have a certain amount  
12 of marijuana in your possession, okay.

13 But the law still says absent that kind of  
14 exception, it is illegal to possess a certain amount of  
15 marijuana. Okay? So say you're a juror in a marijuana case  
16 and you're asked to decide the guilt or innocence or the guilt  
17 of the defendant who has marijuana in his possession, but you  
18 believe marijuana should be legal for everybody. Do you think  
19 you could set that opinion aside and decide the case based on  
20 the facts and the evidence that was presented in court and  
21 then the instructions that the Court would give you, or are  
22 you the type of person who would say well, forget that, I  
23 think it should be legal so I'm going to go this way?

24 PROSPECTIVE JUROR NO. 018: I think I could go with  
25 the Court, I guess.

1 MS. LEXIS: You could follow the law?

2 PROSPECTIVE JUROR NO. 018: Yeah.

3 MS. LEXIS: Okay. You kind of -- you kind of  
4 hesitated for a little bit, were you just thinking about it?

5 PROSPECTIVE JUROR NO. 018: Yeah.

6 MS. LEXIS: Okay. Okay. Court's brief indulgence.

7 As all of you have heard, when Judge Ellsworth asked  
8 me to talk about the charges in this particular case, one of  
9 the charges is murder with use of a deadly weapon. And if  
10 there is a conviction for first degree murder, there's going  
11 to be another phase to this trial. It's called the penalty  
12 phase.

13 So the first part's going to be called the guilt  
14 phase. It's where the jurors were selected, decide on the  
15 guilty or innocence of the defendants. If there is -- if and  
16 only if there is a first degree murder conviction, we're going  
17 to go into a second phase, which is called the penalty phase.  
18 The penalty phase is when the jurors get to decide the  
19 punishment for the defendants that were convicted.

20 Okay? And the different punishment choices are a  
21 definite term of years, 20 to 50 years in the Nevada  
22 Department of Corrections, or life with the possibility of  
23 parole after 20 years, and the third is life without the  
24 possibility of parole. Those are the different choices, okay?

25 So Mr. Compehos, I have to ask you, if you are

1 selected as a juror and if and only if the jury decides you  
2 unanimously on a first degree murder conviction, would you be  
3 able to consider all types of punishment? All the three  
4 different types of punishment during the penalty phase?

5 PROSPECTIVE JUROR NO. 018: Yes.

6 MS. LEXIS: Court's brief indulgence. I have no  
7 more questions for this juror. Thank you.

8 THE COURT: Thank you. Mr. Landis.

9 MR. LANDIS: Good afternoon, sir. I know you've  
10 been asked a lot of questions so I'm going to try to be quick.  
11 Some of the answers you've been giving are the things lawyers  
12 are scared to hear. And what I mean by that is when you're  
13 unsure if you can keep an open mind or if you can be fair.  
14 Things like that scare lawyers, and it doesn't mean it's a  
15 wrong answer. And none of us are trying to trick any of you  
16 guys and get you to say things you don't want to say. We're  
17 just trying to get you to disclose truly what you believe.

18 And when I say that, what I mean is, if we should  
19 have concerns that as this trial goes on you might not be able  
20 to be fair because something that happened in the past, we  
21 want to know that because it's a lot easier to deal with it  
22 now versus three weeks from now. And that's all it is.  
23 That's all it is.

24 Our concern when you say things like probably -- and  
25 I'm not trying to say your answers are wrong because I want

1 you to be honest, but we don't want a case where you've heard  
2 three officers testify and at that point, you say, you know,  
3 I'm not judging these guys fair because of my past experiences  
4 with police officers or with things I've seen on TV about  
5 police officers. So, that's all we want.

6 As I sit at my table as a defense attorney and I'm  
7 trying to get a fair juror for my client, should I be  
8 comfortable with you? Let me just ask you that.

9 PROSPECTIVE JUROR NO. 018: Say that again?

10 MR. LANDIS: Sure. As the defense attorney sitting  
11 at that table doing my job of trying to get fair jurors, should  
12 I be comfortable with you? You can use an answer I hate even  
13 though -- you can say I don't know. It's okay if that's the  
14 truth.

15 PROSPECTIVE JUROR NO. 018: Yeah, I don't know.

16 MR. LANDIS: When a police officer walks through  
17 those doors to testify and you see they're wearing their  
18 outfit and they're going to get on that witness stand, you  
19 don't know that person, you've never heard them talk. When  
20 you see the police outfit, are you going to have a  
21 preconceived notion that they're less than honest or more  
22 honest than the average Joe?

23 PROSPECTIVE JUROR NO. 018: No, I'm not going to  
24 judge them like that.

25 MR. LANDIS: And as it applies to everybody, every



1 witness no matter what their jobs are, no matter what they  
2 look like?

3 PROSPECTIVE JUROR NO. 018: I hope.

4 MR. LANDIS: And don't get me wrong, we want you to  
5 make decisions based on what you see in that witness box when  
6 they're testifying. We just don't want you to draw an things  
7 outside of this trial to make those decisions and that's all.

8 Let me phrase the question this way. Are you at  
9 least confident that you can be fair to both the prosecution  
10 and to the defense? When we get to the end of this trial and  
11 you guys have to make a decision, are you confident you'll be  
12 a fair juror? And if you're unsure, please say so, and that's  
13 okay.

14 PROSPECTIVE JUROR NO. 018: Unsure.

15 MR. LANDIS: And I'll leave it at that. And I  
16 appreciate you being honest.

17 THE COURT: I'm going to follow up with the question  
18 of why do you think -- why are you unsure?

19 PROSPECTIVE JUROR NO. 018: Because, you know, like  
20 when I said, you know, I mean, I have nothing against cops,  
21 but I seen it a lot of times where they cover each other. And  
22 even in Hawaii, I knew some cops and they kind of -- they quit  
23 the force because they said -- they gave me the reasons why.  
24 They were -- they're supposed to give so many tickets or  
25 whatever, and they didn't like the idea so they left -- they

1 left the profession, you know, so -- am I making sense? I  
2 don't know.

3 THE COURT: All right. So here's what I need, do  
4 you understand the word "unequivocal"? All right. So that  
5 means that you can say for certain one way or the other. So I  
6 need an answer. Can you be fair in this case or not?

7 PROSPECTIVE JUROR NO. 018: I don't think I would be  
8 that fair.

9 THE COURT: Then you're excused. Thank you. Call  
10 the next in order.

11 THE CLERK: Next would be Luis Munoz, Badge No. 319.

12 THE COURT: All right, so folks, this is not a  
13 forced march here so does anybody need a break? Use the  
14 restroom or anything? Show of hands. Don't be shy. I'm  
15 sorry?

16 PROSPECTIVE JUROR NO. 343: I just need to check on  
17 my kids.

18 THE COURT: All right.

19 MS. LEXIS: She needs to check on her kids.

20 THE COURT: She just wants a break. She's just  
21 holding up her hands.

22 MS. McNEILL: She wanted to check on her kids.

23 THE COURT: I know. I don't care why if -- I just  
24 want to know if anybody needs a break and that's fine. We'll  
25 take ten minutes. This will be our final break for the day so

1 use it wisely, all right?

2           So ladies and gentlemen, during this recess, it is  
3 your duty not to converse among yourselves or with anyone else  
4 on any subject connected with the trial or to read, watch or  
5 listen to any report of or commentary on the trial by any  
6 person connected with the trial or by any medium of  
7 information, including without limitation, newspaper,  
8 television, radio or Internet, and you are not to form or  
9 express an opinion on any subject connected with this case  
10 until it's finally submitted to you. We'll be in recess for  
11 ten minutes.

12           THE MARSHAL: Rise for the venire panel.

13           (Prospective jurors recessed at 3:53 p.m.)

14           THE COURT: And the record will reflect the venire  
15 has departed the courtroom. Any matters outside the presence?

16           MR. DiGIACOMO: No, Your Honor.

17           MS. McNEILL: No, Your Honor.

18           THE COURT: We're in recess.

19           (Court recessed at 3:54 p.m. until 4:11 p.m.)

20           (In the presence of the prospective jurors)

21           THE MARSHAL: All members of the venire panel are  
22 present, Your Honor.

23           THE COURT: All right. Thank you. Please be  
24 seated. And the record will reflect that we're back within  
25 the presence of the venire. All three defendants are present

1 with their respective counsel, the Chief Deputy District  
2 Attorneys are present, as are all officers of the court.

3 We have replaced Seat No. 1 with Mr. Munoz; is that  
4 right?

5 PROSPECTIVE JUROR NO. 319: Yes.

6 THE COURT: And do you have the microphone,  
7 Mr. Munoz? No. All right.

8 PROSPECTIVE JUROR NO. 319: 0319, Luis Munoz.

9 THE COURT: Mr. Munoz, have you ever been a juror  
10 before?

11 PROSPECTIVE JUROR NO. 319: No.

12 THE COURT: Have you ever been in law enforcement?

13 PROSPECTIVE JUROR NO. 319: No.

14 THE COURT: Do you have anyone in your family or any  
15 close friends that are in law enforcement?

16 PROSPECTIVE JUROR NO. 319: No.

17 THE COURT: Have you ever been the victim of a  
18 crime?

19 PROSPECTIVE JUROR NO. 319: No.

20 THE COURT: Has anyone in your family or closely  
21 associated with you ever been the victim of a violent crime?

22 PROSPECTIVE JUROR NO. 319: No.

23 THE COURT: Have you ever been accused of a crime?

24 PROSPECTIVE JUROR NO. 319: No.

25 THE COURT: Or convicted of a crime?

1 PROSPECTIVE JUROR NO. 319: No.

2 THE COURT: Has anyone in your family or someone  
3 closely associated with you been convicted of a crime?

4 PROSPECTIVE JUROR NO. 319: No.

5 THE COURT: Do you believe that you could be a fair  
6 and impartial juror in this case?

7 PROSPECTIVE JUROR NO. 319: I never done -- always  
8 the first time.

9 THE COURT: So the question still remains, this is  
10 the first time?

11 PROSPECTIVE JUROR NO. 319: Yes.

12 THE COURT: Will you be able to be a fair and  
13 impartial juror in this case?

14 PROSPECTIVE JUROR NO. 319: I believe so.

15 THE COURT: Okay. Do you agree and understand the  
16 presumption of innocence?

17 PROSPECTIVE JUROR NO. 319: Yes.

18 THE COURT: Will you be able to follow the law as I  
19 have -- as I will instruct you at the end of the case? Will  
20 you be able to follow the law?

21 PROSPECTIVE JUROR NO. 319: Yes, ma'am.

22 THE COURT: Now, the prosecutor mentioned, if you  
23 were paying attention when she was questioning the last person  
24 who sat in that seat that if, and only if the jury reaches a  
25 guilty verdict, then the jury would be required to determine

1 the sentence for the murder charge, if the jury found the  
2 defendants or any one of them guilty of that crime, right?

3 And there are three potential punishments. Do you  
4 remember what those were? I'm not going to quiz you? I'm  
5 just asking you do you remember?

6 PROSPECTIVE JUROR NO. 319: I do, yes.

7 THE COURT: Okay. Would you be able to consider all  
8 three punishments?

9 PROSPECTIVE JUROR NO. 319: Yes.

10 THE COURT: Thank you. All right. Would the State  
11 like to inquire further?

12 MS. LEXIS: Yes, Your Honor. Good afternoon,  
13 Mr. Munoz.

14 PROSPECTIVE JUROR NO. 319: Good afternoon.

15 MS. LEXIS: Sir, do you want to be on this jury?

16 PROSPECTIVE JUROR NO. 319: If I have to so --

17 MS. LEXIS: Okay. How long have you lived in Las  
18 Vegas?

19 PROSPECTIVE JUROR NO. 319: Thirty-one years.

20 MS. LEXIS: Okay. And where did you move from?

21 PROSPECTIVE JUROR NO. 319: New York.

22 MS. LEXIS: Okay. And never been a juror before?

23 PROSPECTIVE JUROR NO. 319: No.

24 MS. LEXIS: Okay. Are you the type of person who  
25 can wait before you hear all of the evidence, the testimony

1 that the State presents because we have the burden of proof;  
2 you understand that?

3 PROSPECTIVE JUROR NO. 319: Right.

4 MS. LEXIS: Okay. Are you the type of person who  
5 can wait until all of that evidence and testimony comes in  
6 before forming an opinion?

7 PROSPECTIVE JUROR NO. 319: Yes.

8 MS. LEXIS: Okay. Do you own any guns, sir?

9 PROSPECTIVE JUROR NO. 319: Yes, I have.

10 MS. LEXIS: Okay. What type of gun?

11 PROSPECTIVE JUROR NO. 319: .45.

12 MS. LEXIS: Okay. And what do you have the gun for?  
13 Not that you have to have a reason.

14 PROSPECTIVE JUROR NO. 319: I own a business.

15 MS. LEXIS: Okay.

16 PROSPECTIVE JUROR NO. 319: To defend myself and the  
17 business, yeah.

18 MS. LEXIS: Okay. Do you have any opinions about  
19 gun ownership, gun use?

20 PROSPECTIVE JUROR NO. 319: Because here, myself,  
21 you know, like anybody who owns a business they should have a  
22 gun to defend themselves.

23 MS. LEXIS: Okay. Do you think you would be a good  
24 juror?

25 PROSPECTIVE JUROR NO. 319: I never been, but I'll

1 give it a try.

2 MS. LEXIS: Okay. What kind of qualities do you  
3 have that would make you a good juror?

4 PROSPECTIVE JUROR NO. 319: That's a good question.  
5 I'll be judging the person. It's hard, you know, it's the  
6 first time so it will be hard for me.

7 MS. LEXIS: Okay. I mean, understanding -- I mean,  
8 do you have anything that would prevent you from being able to  
9 sit in judgment?

10 PROSPECTIVE JUROR NO. 319: No.

11 MS. LEXIS: Okay. I understand that it would be  
12 difficult to sit on a jury. Certainly, this is, you know, a  
13 very serious trial, but do you think it's a role that you  
14 would take seriously?

15 PROSPECTIVE JUROR NO. 319: Yes, I will, if I have  
16 to.

17 MS. LEXIS: Okay. Okay. Court's brief indulgence.  
18 Sir, how are you employed?

19 PROSPECTIVE JUROR NO. 319: I'm employ myself. I  
20 own a business.

21 MS. LEXIS: Is that VIP Motors?

22 PROSPECTIVE JUROR NO. 319: Yes.

23 MS. LEXIS: Okay. And you're married?

24 PROSPECTIVE JUROR NO. 319: Yes.

25 MS. LEXIS: What does your wife do?



1 PROSPECTIVE JUROR NO. 319: She run a newspaper, but  
2 she's semi-retired.

3 MS. LEXIS: Semi-retired?

4 PROSPECTIVE JUROR NO. 319: Yes.

5 MS. LEXIS: Okay. Which newspaper?

6 PROSPECTIVE JUROR NO. 319: Nevada Legal News.

7 MS. LEXIS: Okay. And so does she have training or  
8 experience in legal aspects?

9 PROSPECTIVE JUROR NO. 319: Yes.

10 MS. LEXIS: Okay. Like what? What's her experience  
11 in?

12 PROSPECTIVE JUROR NO. 319: That's a newspaper. We  
13 run everything about the law, Nevada Legal News.

14 MS. LEXIS: Okay.

15 PROSPECTIVE JUROR NO. 319: Yeah, that's what she's  
16 been working for 31 years.

17 MS. LEXIS: Okay. And so do you and your wife talk  
18 about her publications or what's published in that news -- or  
19 in that news?

20 PROSPECTIVE JUROR NO. 319: Yes, we do. Yes.

21 MS. LEXIS: Okay. Do you have friends that are  
22 defense attorneys?

23 PROSPECTIVE JUROR NO. 319: What? Do I have what?

24 MS. LEXIS: Friends that are attorneys?

25 PROSPECTIVE JUROR NO. 319: Yes, a lot.

1 MS. LEXIS: Okay.

2 PROSPECTIVE JUROR NO. 319: A lot of attorneys, yes.

3 MS. LEXIS: Okay. Are they most -- are they civil  
4 or criminal attorneys?

5 PROSPECTIVE JUROR NO. 319: Both, civil and  
6 criminal.

7 MS. LEXIS: Okay.

8 PROSPECTIVE JUROR NO. 319: Yes.

9 MS. LEXIS: Are you familiar with prosecutors? Do  
10 you know any prosecutors?

11 PROSPECTIVE JUROR NO. 319: No.

12 MS. LEXIS: Okay. How about criminal defense  
13 attorneys?

14 PROSPECTIVE JUROR NO. 319: No.

15 MS. LEXIS: How about civil attorneys? Which ones  
16 are you -- do you have a personal relationship with?

17 PROSPECTIVE JUROR NO. 319: No, no personal  
18 relationship. Just, you know, because my wife deal with the  
19 -- with -- she's the one who deal with the lawyers, you know,  
20 but not friends, just in the business, you know.

21 MS. LEXIS: Okay.

22 PROSPECTIVE JUROR NO. 319: Part of the business.

23 MS. LEXIS: Okay. What's your opinion about our  
24 criminal justice system?

25 PROSPECTIVE JUROR NO. 319: My opinion is everything

1 should be fair.

2 MS. LEXIS: Okay. Do you think it is fair?

3 PROSPECTIVE JUROR NO. 319: It is fair, yes.

4 MS. LEXIS: Okay. We try our best, right? Okay.  
5 Do you have any children?

6 PROSPECTIVE JUROR NO. 319: No.

7 MS. LEXIS: I have no more questions for this  
8 potential juror. Thank you, Mr. Munoz.

9 THE COURT: Mr. Landis.

10 MR. LANDIS: Good afternoon, sir. Before today, at  
11 some point you got that Jury Summons in the mail that said,  
12 hey, you've been summoned for jury service. You wake up today  
13 knowing today's that magical day that had the date. What's  
14 the first thought that crosses your mind?

15 PROSPECTIVE JUROR NO. 319: I'm going to learn  
16 something today.

17 MR. LANDIS: Awesome. I like that. Based on  
18 something that was said earlier, before you were up here,  
19 before you were getting asked questions, a lot of things in  
20 the news about police lately. Do you have strong views one  
21 way or the other about current policing in the United States?

22 PROSPECTIVE JUROR NO. 319: I got to trust. If you  
23 don't trust them, so I've been -- you know, we got to trust  
24 them. I trust them.

25 MR. LANDIS: And I respect that wholly. Let me ask

1 you this, though -- and I talked about there a moment ago --  
2 when witnesses come in to testify, the fact that they're a  
3 police officer, that won't make you judge them a different  
4 way, will it? In other words, you won't say, you know, I  
5 wasn't sure, but since he's a police officer I'm going to  
6 trust him? Will you say that in this court during this case?

7 PROSPECTIVE JUROR NO. 319: Eventually, I trust --  
8 you know, I trust the police. That's my way of thinking.

9 MR. LANDIS: And let me rephrase it. Obviously,  
10 there's what you do in your daily life on the streets and your  
11 interactions with people and the police, then what you're here  
12 to do in this court of law if you're a juror.

13 My question is simply this, a police officer's going  
14 to testify and somebody who's not a police officer is going to  
15 testify. Do you view one of them as more believable just  
16 because they are or are not a police officer?

17 PROSPECTIVE JUROR NO. 319: Both, they would be  
18 trusted for me. Both.

19 MR. LANDIS: Okay. So the fact that he's a police  
20 officer getting on that stand doesn't give him the leg up --

21 PROSPECTIVE JUROR NO. 319: No.

22 MR. LANDIS: -- if I can put it that way?

23 PROSPECTIVE JUROR NO. 319: Both should be trusted,  
24 both.

25 MR. LANDIS: When you walked into this courtroom

1 today, and eventually you learned it was a criminal trial as  
2 opposed to a civil trial, did that make you have any thoughts,  
3 make you think anything good or bad?

4 PROSPECTIVE JUROR NO. 319: Just walking in to learn  
5 and to see what is going on, but, you know, it's --

6 MR. LANDIS: Let me ask you a question I asked  
7 before as well. If you were me, would you be comfortable with  
8 somebody like you on this jury?

9 PROSPECTIVE JUROR NO. 319: Yes.

10 MR. LANDIS: I have no further questions. Thank  
11 you, sir.

12 THE COURT: Mr. Wolfbrandt.

13 MR. WOLFBRANDT: Thank you.

14 THE COURT RECORDER: Mr. Wolfbrandt, (inaudible).

15 MR. WOLFBRANDT: I was going to ask you, where do  
16 you want me?

17 THE COURT RECORDER: (Inaudible).

18 MR. WOLFBRANDT: Is right here fine?

19 THE COURT RECORDER: Sure.

20 THE COURT: You can be there. Just -- we just need  
21 you close to a microphone. It doesn't do any good to have a  
22 microphone there and then have you stand in a dead zone over  
23 there. That's --

1 MR. WOLFBRANDT: Right. If it's okay with you, just  
2 so the microphone's right here, I can ask some questions from  
3 right here.

4 THE COURT: Okay. That's perfect.

5 MR. WOLFBRANDT: Is that all right?

6 THE COURT: Yep.

7 MR. WOLFBRANDT: Yeah. Well, I'm asking you, is  
8 that okay that I can stand all the way back here?

9 PROSPECTIVE JUROR NO. 319: Sure, no problem.

10 MR. WOLFBRANDT: Okay.

11 THE COURT: Okay, that's perfect.

12 MR. WOLFBRANDT: Is that all right?

13 THE COURT: Yep.

14 MR. WOLFBRANDT: Yeah. No, I'm asking you, is that  
15 okay that I could stand all the way back here?

16 PROSPECTIVE JUROR NO. 319: Sure, no problem.

17 MR. WOLFBRANDT: Okay. In questioning from the  
18 State, you mentioned that you -- do you currently own a .45  
19 caliber handgun?

20 PROSPECTIVE JUROR NO. 319: Yes.

21 MR. WOLFBRANDT: Okay. Is that the own gun you own?

22 PROSPECTIVE JUROR NO. 319: Yes.

23 MR. WOLFBRANDT: Okay. And I believe, you said you  
24 have it for -- because of your business.

25 PROSPECTIVE JUROR NO. 319: Yes, my business. Yes.

1 MR. WOLFBRANDT: Okay. Do you also carry that back  
2 and forth to home?

3 PROSPECTIVE JUROR NO. 319: No. It's in my  
4 business. It's only in my business.

5 MR. WOLFBRANDT: You just leave it there at the  
6 office?

7 PROSPECTIVE JUROR NO. 319: Yes.

8 MR. WOLFBRANDT: So there's in firearms at home?

9 PROSPECTIVE JUROR NO. 319: No. Not at all.

10 MR. WOLFBRANDT: Okay. Have you -- do you have a  
11 permit to carry that concealed?

12 PROSPECTIVE JUROR NO. 319: I do have a permit when  
13 I bought it, yes.

14 MR. WOLFBRANDT: No, I'm talking about a separate  
15 permit to carry it concealed --

16 PROSPECTIVE JUROR NO. 319: No, I do --

17 MR. WOLFBRANDT: -- where you have to take --

18 PROSPECTIVE JUROR NO. 319: -- not have.

19 MR. WOLFBRANDT: -- classes and --

20 PROSPECTIVE JUROR NO. 319: No, no, I do not have  
21 it.

22 MR. WOLFBRANDT: And actually get trained in how to  
23 shoot it?

24 PROSPECTIVE JUROR NO. 319: No, I don't. I don't --  
25

1 MR. WOLFBRANDT: Okay.

2 PROSPECTIVE JUROR NO. 319: -- not have that.

3 MR. WOLFBRANDT: All right, thanks. That's all I  
4 have.

5 PROSPECTIVE JUROR NO. 319: No problem.

6 THE COURT: Ms. McNeill.

7 MS. MCNEILL: Thank you, Your Honor. Mr. Munoz, the  
8 District Attorney asked you if you could -- or I think,  
9 actually, the judge did. If you could consider all the  
10 punishments that the District Attorney indicated were possible  
11 on -- if there was a conviction in the murder. Do you have  
12 any strong feelings about any of those sentences?

13 PROSPECTIVE JUROR NO. 319: My feelings I'll be  
14 fair.

15 MS. MCNEILL: Okay. But when we're talking about  
16 when Ms. Lexis indicated that if there's a verdict of guilt on  
17 the murder charge, you will be responsible for choosing  
18 between a term of years of 20 to 50 years, a sentence of 20 to  
19 life or a sentence of life without parole. Do you have strong  
20 feelings about any of those sentencing ranges that you would  
21 have to choose --

22 PROSPECTIVE JUROR NO. 319: Yes, I will -- I will  
23 have a strong feelings because the difference of those years,  
24 it will be very meaningful for that person.

25 MS. MCNEILL: Okay. And so where would those



1 feelings come from? Those feelings that you have?

2 PROSPECTIVE JUROR NO. 319: I don't know much -- you  
3 know, I'm learning, but I don't know much about the case and  
4 what is, you know, it's just a learning just for me today, you  
5 know?

6 MS. McNEILL: Okay. So it sounds like you're saying  
7 at this point you don't know because you haven't heard  
8 anything, right?

9 PROSPECTIVE JUROR NO. 319: Right, yeah.

10 MS. McNEILL: Okay.

11 PROSPECTIVE JUROR NO. 319: Right.

12 MS. McNEILL: But as you sit here when you hear that  
13 those are your options, you don't have a strong feeling one  
14 way or the other about any of those sentencing ranges?

15 PROSPECTIVE JUROR NO. 319: Yes, I'll be having  
16 strong feelings, and of course, yeah, we all human.

17 MS. McNEILL: Okay. So you'll have a strong  
18 feeling, but it will come from once you hear the facts? Is  
19 that what you're saying?

20 PROSPECTIVE JUROR NO. 319: Yes.

21 MS. McNEILL: Okay. All right. I have nothing  
22 further, Your Honor.

23 THE COURT: Thank you. All right. If you'll pass  
24 the microphone over to Ms. White, who is seated next to you.

25 PROSPECTIVE JUROR NO. 276: Hello. Good afternoon,

1 my name is Jasmine White, No. 276. I'm 28 years old of age,  
2 born and raised in Las Vegas, Nevada. I'm a small business  
3 owner of a nail salon in central Las Vegas. I've been a  
4 business owner since April of 2012. I am not married. I'm  
5 single with no children of my own, but my two dogs, Dolce and  
6 Louie.

7 THE COURT: Thank you. And would the State like to  
8 inquire further?

9 MR. DiGIACOMO: Good afternoon, ma'am. How are you?

10 PROSPECTIVE JUROR NO. 276: Good afternoon.

11 MR. DiGIACOMO: So let me tell you the good news.  
12 The good news is that the first juror always takes the longest  
13 and then as we move along, everybody hears all the questions  
14 already and so we should be able to get through it fairly  
15 quickly, okay?

16 PROSPECTIVE JUROR NO. 276: Okay.

17 MR. DiGIACOMO: Let me ask you just a couple of  
18 general questions. What kind of dogs do you have?

19 PROSPECTIVE JUROR NO. 276: I have a shiatsu and an  
20 apple head Chihuahua.

21 MR. DiGIACOMO: All right. So little dogs?

22 PROSPECTIVE JUROR NO. 276: Um-h'm.

23 MR. DiGIACOMO: And how long have you had dogs?

24 PROSPECTIVE JUROR NO. 276: I've had Dolce since  
25 2012 -- I mean, since 2010, and I just got Louie in May.

1           MR. DiGIACOMO: And you said you've been a salon  
2 owner since 2012?

3           PROSPECTIVE JUROR NO. 276: Correct.

4           MR. DiGIACOMO: Do you have employees as well?

5           PROSPECTIVE JUROR NO. 276: I have one commissioned  
6 girl.

7           MR. DiGIACOMO: One commission girl? Do you also  
8 have independent contractors that use the space or is it just  
9 the two of you?

10          PROSPECTIVE JUROR NO. 276: I did, but I no longer  
11 do.

12          MR. DiGIACOMO: You no longer do. Okay. Do you  
13 also do work on the nails --

14          PROSPECTIVE JUROR NO. 276: Yes.

15          MR. DiGIACOMO: -- I guess, manicures, pedicures,  
16 whatever.

17          PROSPECTIVE JUROR NO. 276: I'm the CEO and the  
18 janitor.

19          MR. DiGIACOMO: Okay. So basically, you have a lot  
20 of work --

21          PROSPECTIVE JUROR NO. 276: Yes.

22          MR. DiGIACOMO: -- to go on? Do you own a firearm?

23          PROSPECTIVE JUROR NO. 276: No, I do not.

24          MR. DiGIACOMO: So you don't keep one within the  
25 nail shop like the juror before you?

1 PROSPECTIVE JUROR NO. 276: No, I do not.

2 MR. DiGIACOMO: Have you ever fired a firearm  
3 before?

4 PROSPECTIVE JUROR NO. 276: No, I have not.

5 MR. DiGIACOMO: Let's talk a little bit about the  
6 criminal justice system. The judge asked some questions about  
7 victim of a crime, accused of a crime. I want to ask just a  
8 more broad question. Have you ever had to come to the  
9 courthouse for any reason prior to getting your Jury Summons  
10 and coming down here for this case?

11 PROSPECTIVE JUROR NO. 276: Traffic tickets.

12 MR. DiGIACOMO: Traffic tickets? Okay.

13 PROSPECTIVE JUROR NO. 276: Um-h'm.

14 MR. DiGIACOMO: Have you ever had any sort of  
15 contact with law enforcement you thought was negative or  
16 positive since that's sort of been an issue that's discussed  
17 with prior jurors?

18 PROSPECTIVE JUROR NO. 276: No, I have not.

19 MR. DiGIACOMO: Okay. Do you have an opinion about  
20 what kind of what the news is talking about these days? I  
21 mean, do you think when you see a police officer -- well, let  
22 me ask it this -- open ended. When you see a police officer,  
23 what thought goes through your mind?

24 PROSPECTIVE JUROR NO. 276: When I see a police  
25 officer, basically they're just doing their job, basically.

1 They have to, you know, look at the reason and go about it how  
2 they're supposed to with the law.

3 MR. DiGIACOMO: So ultimately, I mean, you'd agree  
4 with me there's good cops, there's bad cops, right?

5 PROSPECTIVE JUROR NO. 276: Yes.

6 MR. DiGIACOMO: You're going to judge the cops from  
7 the stand the same way you're going to judge the lay  
8 witnesses?

9 PROSPECTIVE JUROR NO. 276: Correct.

10 MR. DiGIACOMO: Kind of like what the judge says if,  
11 you know, the sky is -- if someone says the sky is purple and  
12 that's just ridiculous, it doesn't matter, you know, what his  
13 job is, you can decide that person's not a very credible  
14 witness, right?

15 PROSPECTIVE JUROR NO. 276: Correct.

16 MR. DiGIACOMO: Do you think you're essentially a  
17 fair person?

18 PROSPECTIVE JUROR NO. 276: Yes, I am.

19 MR. DiGIACOMO: Do you think you could wait until  
20 you hear all of the evidence to make a decision as to whether  
21 or not Ms. Lexis and I carried our burden in this case?

22 PROSPECTIVE JUROR NO. 276: Yes.

23 MR. DiGIACOMO: Now, we have to sort of talk about  
24 this up-front because we don't get to talk about this again,  
25 but assuming Ms. Lexis and I make it there, and one or more of

1 these defendants are convicted of first degree murder, then in  
2 the State of Nevada, you know, there is a second phase. And  
3 this is the only time the defense attorneys get to talk to you  
4 and we get to talk to you so we got to kind of know now.

5           There are people in the world that say, hey, look, I  
6 have no problem sitting down looking at what the evidence is,  
7 applying it to what the judge says the law is and making a  
8 decision, did the State prove this case beyond a reasonable  
9 doubt or not? That's sort of what we call the first phase of  
10 this trial, where that decision will be made. Then there's  
11 sort of this second step, which is what should happen to the  
12 individuals? And there are people in the world who say, I can  
13 do step number one, but I don't feel comfortable sitting in  
14 judgment in deciding what the punishment should be for those  
15 people.

16           Are you somebody who's capable of making that type  
17 of determination?

18           PROSPECTIVE JUROR NO. 276: Yes.

19           MR. DiGIACOMO: And I think Ms. Lexis mentioned that  
20 there's three possible forms of punishment. And, you know,  
21 the judge will give you much further instructions on what this  
22 means, but, you know, there's the term of years, there's life  
23 with the possibility or parole and there's life without the  
24 possibility of parole. Some people say, look, if I convict  
25 somebody of first degree murder, I am only imposing life

1 without the possibility of parole, I don't care what else I  
2 know about it, they should get life.

3 And there's other people who will say, I just don't  
4 believe in, you know, life without parole. There's no hope  
5 involved with that type of situation. And so those type of  
6 jurors are not jurors that the State of Nevada says should be  
7 sitting on a jury. We want somebody who's open-minded.  
8 Someone who can consider all three forms of punishment once  
9 you hear kind of the other evidence that might be relevant  
10 that you wouldn't hear in the first phase of the trial.

11 Do you think you're a person who's capable of doing  
12 that?

13 PROSPECTIVE JUROR NO. 276: Yes, I am.

14 MR. DiGIACOMO: Do you think that you're a fair  
15 person?

16 PROSPECTIVE JUROR NO. 276: Yes, I am.

17 MR. DiGIACOMO: If, you know, you were in the court  
18 system for any reason and there was a juror that was going to  
19 make a decision about, you know, something relevant to you,  
20 whether it's somebody who's suing you over the nail salon,  
21 something else like that, would you want somebody like  
22 yourself, 12 of you, basically, sitting in the box, making a  
23 decision as to first, what happened in this case and second,  
24 what the proper punishment should be assuming we actually are  
25 able to prove the case?

1 PROSPECTIVE JUROR NO. 276: 100 percent.

2 MR. DiGIACOMO: Thank you very much, ma'am. Judge,  
3 we'd pass for cause.

4 THE COURT: Thank you. All right. And defense, are  
5 we --

6 MR. WOLFBRANDT: I'll go first this time. Just  
7 split it up.

8 THE COURT: Okay.

9 MR. WOLFBRANDT: Good afternoon, Ms. White.

10 PROSPECTIVE JUROR NO. 276: Good afternoon.

11 MR. WOLFBRANDT: So you grew up here in Las Vegas?

12 PROSPECTIVE JUROR NO. 276: Yes, born and raised.

13 MR. WOLFBRANDT: Right, go ahead. What high school  
14 did you graduate from?

15 PROSPECTIVE JUROR NO. 276: Las Vegas, home of the  
16 Wildcats.

17 MR. WOLFBRANDT: And your salon you said was kind in  
18 the central --

19 PROSPECTIVE JUROR NO. 276: Yeah, central.  
20 Charleston and Decatur.

21 MR. WOLFBRANDT: Okay. Let me just follow up on a  
22 little bit of the topic about firearms. You said you've never  
23 fired one, you haven't owned one. I take it you have no  
24 desire to ever own one?

25 PROSPECTIVE JUROR NO. 276: I do.



1 MR. WOLFBRANDT: Do you?

2 PROSPECTIVE JUROR NO. 276: I do.

3 MR. WOLFBRANDT: Okay. What would be your reason  
4 for having one?

5 PROSPECTIVE JUROR NO. 276: For protection. Solely  
6 because I am a business owner, and Charleston can be a little  
7 hectic at times at night because I'm open from 10:00 a.m. to  
8 10:00 p.m., so I don't have any alarm systems or anything so I  
9 would like to eventually own one. But I would like to follow  
10 whatever the protocols it is to learn how to use one properly  
11 and get the licensings and all that good stuff.

12 MR. WOLFBRANDT: Okay. So I take it you're in favor  
13 of expanding background checks for gun ownership?

14 PROSPECTIVE JUROR NO. 276: Yes.

15 MR. WOLFBRANDT: Okay. And how soon are you looking  
16 to -- besides just the shop, are you looking to also carry --  
17 or keep it for protection for your home?

18 PROSPECTIVE JUROR NO. 276: Yes.

19 MR. WOLFBRANDT: Okay. All right, thank you.  
20 That's all I have.

21 THE COURT: Ms. McNeill.

22 MS. McNEILL: Thank you, Your Honor. Mr. DiGiacomo  
23 asked you a question about could you wait for the State to  
24 prove to you that they met their burden. Do you understand  
25 what their burden -- what that means when he says it's his

1 burden?

2 PROSPECTIVE JUROR NO. 276: Yes.

3 MS. McNEILL: Okay. What does that mean to you?

4 PROSPECTIVE JUROR NO. 276: Are you -- are you  
5 saying or referencing to like will I wait until everything is  
6 said before I make a judgment on the defendants?

7 MS. McNEILL: Well, let me ask you this, do you  
8 understand that the State has the burden of proof here? I  
9 mean, that's kind of lawyer term meaning they have to prove  
10 their case beyond a reasonable doubt. I don't have to prove  
11 anything. Just like these gentlemen don't have to prove  
12 anything. Do you understand that?

13 PROSPECTIVE JUROR NO. 276: Yes.

14 MS. McNEILL: Okay. And how do you feel about that?

15 PROSPECTIVE JUROR NO. 276: I'm open to it. I'm  
16 fair.

17 MS. McNEILL: Okay. When you say you're open to it,  
18 do you feel like it should be different? That we, the defense  
19 should have to prove something?

20 PROSPECTIVE JUROR NO. 276: No.

21 MS. McNEILL: You don't? Okay. So you would wait  
22 for them to prove the charges to you?

23 PROSPECTIVE JUROR NO. 276: Correct.

24 MS. McNEILL: Okay. And would you hold it against  
25 any of these gentlemen if we didn't put on any witnesses?

1 PROSPECTIVE JUROR NO. 276: No.

2 MS. McNEILL: Okay. You indicated that at your nail  
3 salon you have just one other employee?

4 PROSPECTIVE JUROR NO. 276: Yes.

5 MS. McNEILL: Okay. Do you ever have to handle  
6 disputes maybe between your employee and customers?

7 PROSPECTIVE JUROR NO. 276: Yes.

8 MS. McNEILL: How do you handle those?

9 PROSPECTIVE JUROR NO. 276: Well, just depending on  
10 what happens. Let's say, for instance, a lady comes in and my  
11 commissioned girl does her nail, she doesn't like her nails,  
12 normally what happens is they don't want to go back to that  
13 person so I will have to -- either have to offer them a  
14 service of maybe a discount, or I can take care of their nails  
15 free of charge because I want to keep their business. I want  
16 them to still come so --

17 MS. McNEILL: Okay. So you'll try to just smooth  
18 the situation over?

19 PROSPECTIVE JUROR NO. 276: Correct.

20 MS. McNEILL: Okay. Do you kind of consider  
21 yourself good at handling confrontation or disputes?

22 PROSPECTIVE JUROR NO. 276: Yes.

23 MS. McNEILL: Have you had any training in that or  
24 it's just something you've picked up?

25 PROSPECTIVE JUROR NO. 276: I'm a very easy going

1 person. I've never been in a physical altercation. I've  
2 never been really into arguments. I always like to view that  
3 person what they have to say and they listen to me, and I  
4 listen to them, and we can work something out.

5 MS. McNEILL: Okay. So it sounds like you're fairly  
6 open-minded when people are talking to you in different  
7 situations?

8 PROSPECTIVE JUROR NO. 276: Yes.

9 MS. McNEILL: Is that fair?

10 PROSPECTIVE JUROR NO. 276: Yes.

11 MS. McNEILL: Okay. Do you think you're a good  
12 judge of character?

13 PROSPECTIVE JUROR NO. 276: Yes.

14 MS. McNEILL: And how do you -- what sort of tools  
15 do you use to judge someone's character when you are talking  
16 to them?

17 PROSPECTIVE JUROR NO. 276: Eye contact, body  
18 language. The choice of words that they use.

19 MS. McNEILL: Okay. All right. So you factor all  
20 those things in to what someone's telling you and not just  
21 taking, maybe, what they're saying at face value?

22 PROSPECTIVE JUROR NO. 276: Yes.

23 MS. McNEILL: Okay. All right. I have nothing  
24 further, Your Honor.

25 MR. LANDIS: And Ms. White, nothing personal, but

1 we'd pass for cause, no questions.

2 THE COURT: Thank you, Mr. Landis. And pass the  
3 microphone over. We have Jennifer Quiros.

4 PROSPECTIVE JUROR NO. 291: Yes.

5 THE COURT: Tell us about yourself.

6 PROSPECTIVE JUROR NO. 291: Hi. My name's Jennifer  
7 Quiros. I've lived in Clark County for about 30 years. Not  
8 married, no kids. And I take care of my mom, who's retired.  
9 And I have one sister, who works for Family Court.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR NO. 291: And on my spare time I  
12 like to drink and gamble.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR NO. 291: That's true.

15 THE COURT: All right. Well, I guess, you're in the  
16 city for that.

17 PROSPECTIVE JUROR NO. 291: I work in retail, been  
18 if retail for 22 years for Smith's.

19 THE COURT: Okay. And thank you. I was going to  
20 ask you that. So you haven't always taken care of your  
21 mother?

22 PROSPECTIVE JUROR NO. 291: No.

23 THE COURT: You say you're her caretaker. Does she  
24 require --

25 PROSPECTIVE JUROR NO. 291: No, no.

1 THE COURT: -- care?

2 PROSPECTIVE JUROR NO. 291: She just -- my dad  
3 passed away so I just -- she just retired from the airport --

4 THE COURT: Okay.

5 PROSPECTIVE JUROR NO. 291: -- a couple years ago,  
6 but --

7 THE COURT: All right.

8 PROSPECTIVE JUROR NO. 291: -- I help her pay the  
9 bills and the house.

10 THE COURT: Okay. So are you working?

11 PROSPECTIVE JUROR NO. 291: Yes, I work for  
12 Smith's --

13 THE COURT: Okay.

14 PROSPECTIVE JUROR NO. 291: -- Grocery Store.

15 THE COURT: All right. And what do you do for them?

16 PROSPECTIVE JUROR NO. 291: I'm a -- just a health  
17 and beauty manager.

18 THE COURT: Okay. And so do you take care of the  
19 ordering stock for that department or --

20 PROSPECTIVE JUROR NO. 291: Well, I'm basically, the  
21 assistant. My manager does.

22 THE COURT: Oh.

23 PROSPECTIVE JUROR NO. 291: Yeah.

24 THE COURT: And what's your education background?

25 PROSPECTIVE JUROR NO. 291: I did not graduate.

1 THE COURT: You didn't graduate from high school  
2 or --

3 PROSPECTIVE JUROR NO. 291: From high school, yes.

4 THE COURT: Oh, okay. And have you taken any  
5 classes or had any on-the-job training?

6 PROSPECTIVE JUROR NO. 291: No.

7 THE COURT: Would the State like to inquire further?

8 MS. LEXIS: Yes, Your Honor.

9 PROSPECTIVE JUROR NO. 291: Okay. Not yet.

10 MS. LEXIS: Hello, Ms. Quiros.

11 PROSPECTIVE JUROR NO. 291: Hello. How are you?

12 MS. LEXIS: Good afternoon. I'm fine.

13 PROSPECTIVE JUROR NO. 291: Good afternoon.

14 MS. LEXIS: Thank you. Ms. Quiros, you were a prior  
15 juror?

16 PROSPECTIVE JUROR NO. 291: Yes.

17 MS. LEXIS: For a civil case?

18 PROSPECTIVE JUROR NO. 291: I believe it was civil,  
19 yeah.

20 MS. LEXIS: Okay. And was -- or no, I put down  
21 criminal. Was it criminal? Do you remember?

22 PROSPECTIVE JUROR NO. 291: It was like 15 years ago  
23 so --

24 MS. LEXIS: Fifteen years ago, okay.

25 PROSPECTIVE JUROR NO. 291: I think it was criminal,

1    yeah.

2                   MS. LEXIS:   Okay.   Was that here in Las Vegas?

3                   PROSPECTIVE JUROR NO. 291:   Yes.

4                   MS. LEXIS:   Okay.   In this courthouse?

5                   PROSPECTIVE JUROR NO. 291:   I believe so, yes.

6                   MS. LEXIS:   I believe, the old courthouse.

7                   PROSPECTIVE JUROR NO. 291:   I think it was the old  
8   one.

9                   MS. LEXIS:   Okay.

10                  PROSPECTIVE JUROR NO. 291:   The old one, yeah.

11                  MS. LEXIS:   Okay.   Did anything about that prior  
12   jury service in a criminal trial leave you with any opinions  
13   about how our criminal justice system works here in Las Vegas?

14                  PROSPECTIVE JUROR NO. 291:   No.

15                  MS. LEXIS:   Okay.   Do you think -- well, do you have  
16   any opinions in general about our criminal justice system?

17                  PROSPECTIVE JUROR NO. 291:   It was a mistrial so --

18                  MS. LEXIS:   Okay.

19                  PROSPECTIVE JUROR NO. 291:   Yeah.

20                  MS. LEXIS:   Okay.   Were you sad that you didn't get  
21   the opportunity to deliberate?

22                  PROSPECTIVE JUROR NO. 291:   Not really.

23                  MS. LEXIS:   Okay.   Just meant getting out of jury  
24   service early?

25                  PROSPECTIVE JUROR NO. 291:   Yeah.



1 MS. LEXIS: Okay. Do you want to be on this jury?

2 PROSPECTIVE JUROR NO. 291: Yeah, I would like to.

3 MS. LEXIS: Okay. Why?

4 PROSPECTIVE JUROR NO. 291: I think I can be fair.

5 MS. LEXIS: Okay. And you have the time?

6 PROSPECTIVE JUROR NO. 291: Yes.

7 MS. LEXIS: Okay.

8 PROSPECTIVE JUROR NO. 291: Yes.

9 MS. LEXIS: Have you had any positive or negative  
10 contact with law enforcement?

11 PROSPECTIVE JUROR NO. 291: No.

12 MS. LEXIS: No traffic tickets that you, you know,  
13 wanted to dispute?

14 PROSPECTIVE JUROR NO. 291: I've had some, but --

15 MS. LEXIS: Or anything like that?

16 PROSPECTIVE JUROR NO. 291: No, no.

17 MS. LEXIS: Okay.

18 PROSPECTIVE JUROR NO. 291: No.

19 MS. LEXIS: Never been treated unfairly? We did  
20 talk a little bit about, you know the negative publicity or  
21 the news reportings concerning police officers in our country.  
22 Do you share any of those opinions that are being reported on?

23 PROSPECTIVE JUROR NO. 291: Not really.

24 MS. LEXIS: Okay.

25 PROSPECTIVE JUROR NO. 291: I don't watch the news

1 too much.

2 MS. LEXIS: Okay. Do you watch crime scene kind of  
3 shows? CSI?

4 PROSPECTIVE JUROR NO. 291: Not really.

5 MS. LEXIS: First 48? Okay, just you don't watch TV  
6 hardly?

7 PROSPECTIVE JUROR NO. 291: Not really.

8 MS. LEXIS: Okay.

9 PROSPECTIVE JUROR NO. 291: I don't.

10 MS. LEXIS: Okay. Can you consider the three  
11 different forms of punishment that we discussed if there is a  
12 conviction for first degree murder?

13 PROSPECTIVE JUROR NO. 291: Yes.

14 MS. LEXIS: Okay. And do any of the choices give  
15 you pause or cause you to, you know, feel --

16 PROSPECTIVE JUROR NO. 291: No.

17 MS. LEXIS: -- uncomfortable?

18 PROSPECTIVE JUROR NO. 291: No.

19 MS. LEXIS: Okay. Do you own a gun?

20 PROSPECTIVE JUROR NO. 291: I do not.

21 MS. LEXIS: Would you like to?

22 PROSPECTIVE JUROR NO. 291: No.

23 MS. LEXIS: Do you have any opinions one way or the  
24 other about people who own guns?

25 PROSPECTIVE JUROR NO. 291: Well, to each their own,

1 you know. Not really.

2 MS. LEXIS: All right. Do you think you could be a  
3 fair juror?

4 PROSPECTIVE JUROR NO. 291: Yes, I can.

5 MS. LEXIS: What do you think qualifies you to be a  
6 fair juror?

7 PROSPECTIVE JUROR NO. 291: Qualifies me?

8 MS. LEXIS: Yeah. Or why would you want -- would  
9 you want a juror like yourself say as Mr. DiGiacomo asked Ms.  
10 White, you know, if she needed jurors, if she was in -- if she  
11 found herself either as a defendant or a plaintiff in a case  
12 here, and she needed to select jurors, would she want someone  
13 like herself or someone with her mindset sitting as a juror?

14 I'm going to pose the same question to you, would  
15 you feel comfortable having someone like you on a jury?

16 PROSPECTIVE JUROR NO. 291: Yes.

17 MS. LEXIS: Court's brief indulgence. I have no  
18 more questions for this juror.

19 THE COURT: Mr. Landis.

20 MR. LANDIS: Hi, ma'am. Let me start with a topic  
21 that was brought up with Ms. White before. The rule for all  
22 criminal trials in the United States, the defense has no  
23 obligation to present any evidence at all. So in theory, we  
24 could sit there and sleep the next three weeks. And if you  
25 guys don't believe they've proven their case beyond a

1 reasonable doubt, the instructions are going to say it's your  
2 job to find the defendants not guilty.

3           Some people struggle with that idea. Is it  
4 something you're comfortable with?

5           PROSPECTIVE JUROR NO. 291: Yes.

6           MR. LANDIS: How about kind of a -- within that,  
7 there's also a rule that defendants can't be compelled to  
8 testify. I'm sure you've heard that. We've all heard it. In  
9 other words, the defendant, with the assistance of their  
10 attorney, so Mr. Murphy and I will talk about at the end of  
11 this case, whether or not he should testify.

12           Oftentimes in criminal trials, the defendant doesn't  
13 testify, and I'm not here to tell you what we're going to do,  
14 but if my client or any of these defendants don't testify in  
15 this trial, the instruction is you're not supposed to consider  
16 that when you're making a decision. Is that something you're  
17 going to struggle with?

18           PROSPECTIVE JUROR NO. 291: No.

19           MR. LANDIS: Do you think that's a fair rule?

20           PROSPECTIVE JUROR NO. 291: Yes.

21           MR. LANDIS: And when I say that, there's oftentimes  
22 people (inaudible) will say, you know, if I was accused of  
23 something, I'd want to get up there and say my peace about it.  
24 And I can understand that viewpoint, but to be clear, that's  
25 not something that you would agree with? In other words, if

1 somebody doesn't talk, you won't hold it against them?

2 PROSPECTIVE JUROR NO. 291: I won't, no.

3 MR. LANDIS: I'll pass for cause.

4 THE COURT: Thank you. Mr. Wolfbrandt.

5 MR. WOLFBRANDT: Thank you. You mentioned, was it a  
6 sister-in-law that works in Family Court?

7 PROSPECTIVE JUROR NO. 291: No, she's my sister.

8 MR. WOLFBRANDT: So it is your sister?

9 PROSPECTIVE JUROR NO. 291: My little sister, yeah.

10 MR. WOLFBRANDT: Okay. Is that Susan?

11 PROSPECTIVE JUROR NO. 291: Susan, yes, it is.

12 MR. WOLFBRANDT: Do you ever associate with -- or do  
13 you talk to her a lot, obviously?

14 PROSPECTIVE JUROR NO. 291: Not a lot. Here and  
15 there, but not a lot.

16 MR. WOLFBRANDT: About her work at all?

17 PROSPECTIVE JUROR NO. 291: Not really.

18 MR. WOLFBRANDT: Okay. You ever socialize with her  
19 -- or ever get invited to some of her office parties?

20 PROSPECTIVE JUROR NO. 291: No, no.

21 MR. WOLFBRANDT: I just want to follow up on another  
22 one to make sure -- you have no desire to own a gun, but did  
23 you have any opinion, good, bad or in different as to whether  
24 other people should have guns?

25 PROSPECTIVE JUROR NO. 291: I think everybody should

1 have the right to own a gun for protection.

2 MR. WOLFBRANDT: Okay. Just like you would have the  
3 right not to have one because you choose not to?

4 PROSPECTIVE JUROR NO. 291: Right.

5 MR. WOLFBRANDT: Okay. All right, thank you.  
6 That's all I have.

7 PROSPECTIVE JUROR NO. 291: Thank you.

8 THE COURT: Ms. McNeill.

9 MS. McNEILL: Thank you, Your Honor. I heard drink  
10 and gamble and I completely missed what you said you did for a  
11 living so --

12 PROSPECTIVE JUROR NO. 291: Oh, I'm sorry.

13 MS. McNEILL: That's okay.

14 PROSPECTIVE JUROR NO. 291: I work in retail. I  
15 work the Smith's grocery --

16 MS. McNEILL: Okay.

17 PROSPECTIVE JUROR NO. 291: -- store.

18 MS. McNEILL: Okay. Are you a cashier or --

19 PROSPECTIVE JUROR NO. 291: No, I'm a health and  
20 beauty assistant manager.

21 MS. McNEILL: Oh, okay. So you work in the health  
22 and beauty section?

23 PROSPECTIVE JUROR NO. 291: Yeah.

24 MS. McNEILL: Like ordering things?

25 PROSPECTIVE JUROR NO. 291: Ordering and stocking

1 and yeah.

2 MS. McNEILL: Okay.

3 PROSPECTIVE JUROR NO. 291: Yeah.

4 MS. McNEILL: And you said you like to drink and  
5 gamble. What do you -- what's your gambling of choice? Your  
6 game of choice?

7 PROSPECTIVE JUROR NO. 291: Keno.

8 MS. McNEILL: Keno, okay. All right. Fair enough.  
9 You said your sister works in Family Court. Does she -- what  
10 does she do down in family court?

11 PROSPECTIVE JUROR NO. 291: I'm not sure what she  
12 does.

13 MS. McNEILL: Okay. So I guess, you're not that  
14 close?

15 PROSPECTIVE JUROR NO. 291: That close.

16 MS. McNEILL: You don't really talk about her work?

17 PROSPECTIVE JUROR NO. 291: Right, yeah.

18 MS. McNEILL: Okay. All right. I want to just  
19 briefly go back to Mr. Landis was talking about if a defendant  
20 decides not to testify. And you said that that wouldn't  
21 bother you. Can you think of some reasons why a defendant  
22 might not want to testify?

23 PROSPECTIVE JUROR NO. 291: I think that's his  
24 right.

25 MS. McNEILL: Okay, well, fair enough. Right, he

1 has the right not to.

2 PROSPECTIVE JUROR NO. 291: Right.

3 MS. McNEILL: Can you think of any other reasons why  
4 someone might choose not to get up there? Do you think --  
5 well, these seasoned attorneys get to question him. Do you  
6 think that might be scary?

7 PROSPECTIVE JUROR NO. 291: No.

8 MS. McNEILL: No, that wouldn't be scary to be  
9 questioned by Mr. DiGiacomo? I mean, he looks nice but -- any  
10 other reasons you can think of that someone might say, you  
11 know what, I just don't want to get up there and talk?

12 PROSPECTIVE JUROR NO. 291: No.

13 MS. McNEILL: No? Okay. You seem very easy going.  
14 Is that just generally your personality?

15 PROSPECTIVE JUROR NO. 291: Yes.

16 MS. McNEILL: Yeah? Would you consider yourself  
17 open-minded?

18 PROSPECTIVE JUROR NO. 291: Yes.

19 MS. McNEILL: Yeah? Okay. All right. I'll pass  
20 for cause, Your Honor.

21 THE COURT: Thank you. If you'll hand the  
22 microphone over.

23 PROSPECTIVE JUROR NO. 291: Thank you.

24 THE COURT: All right. And Michael Goehring, Badge  
25 No. 312. Tell us about yourself.



1 PROSPECTIVE JUROR NO. 312: I got used to listening  
2 to people mispronounce my name --

3 THE COURT: Oh.

4 PROSPECTIVE JUROR NO. 312: -- 30 years ago.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR NO. 312: No, no, no. It's -- you  
7 know, it doesn't matter, but --

8 THE COURT: How do you pronounce it?

9 PROSPECTIVE JUROR NO. 312: -- the actual  
10 pronunciation is Goehring, but --

11 THE COURT: Goehring.

12 PROSPECTIVE JUROR NO. 312: -- it's not the end of  
13 the world --

14 THE COURT: Thank you.

15 PROSPECTIVE JUROR NO. 312: -- if you don't say it  
16 right.

17 THE COURT: No, that's okay. I'd rather you correct  
18 me.

19 PROSPECTIVE JUROR NO. 312: Retired. Early retired,  
20 working full time just to get medical insurance until I can go  
21 on Medicare, which won't be too long from now. So I work  
22 retail at Walgreens on the Strip. Busiest store in the whole  
23 United States.

24 I've worked part-time since '96. Living in  
25 California, unless you make a lot of money, it's challenging

1 to pay all the bills so I actually had two jobs for 15 and a  
2 half years until I moved away. Associate Arts Degree. Never  
3 married. Significant other for 26 years. She works a couple  
4 days a week at a small retail outlet in Chinatown. No  
5 children. She has a son from her first marriage, but I've  
6 never had the privilege of having children. Did I answer all  
7 the questions?

8 THE COURT: Well, sort of. You said you're retired  
9 and so until you get on Medicare you're working part time at  
10 Walgreens, but what jobs did you have?

11 PROSPECTIVE JUROR NO. 312: My career was in  
12 manufacturing. Office support for production lines. I did  
13 that up until 2012.

14 THE COURT: All right. And those jobs were always  
15 part time?

16 PROSPECTIVE JUROR NO. 312: The -- the manufacturing  
17 office support was always the full-time job, and I had no  
18 part-time job until '96, when I decided I needed more money to  
19 be able to accomplish a house publish, et cetera.

20 THE COURT: And so when you then decided, okay, I'm  
21 going to take on a second job to supplement my income, what  
22 kind of jobs did you have then?

23 PROSPECTIVE JUROR NO. 312: The first up until the  
24 time when I moved to Las Vegas, I worked as a drive-thru order  
25 taker for a fast food chain.

1 THE COURT: What part of California did you live in?

2 PROSPECTIVE JUROR NO. 312: Southern. Ventura  
3 County.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR NO. 312: Just above LA County.

6 THE COURT: So it's expensive, as you pointed out.

7 PROSPECTIVE JUROR NO. 312: In the city I lived in.

8 THE COURT: Okay. And so better here?

9 PROSPECTIVE JUROR NO. 312: Well, California's the  
10 kind of place, you know, if you own your house, by the time  
11 you're retired, you can probably stay there even though  
12 property taxes are high. If you don't own your house, you  
13 haven't got a prayer. It's time to get out.

14 THE COURT: Okay. All right. Would the State like  
15 to inquire further?

16 MR. DiGIACOMO: Yes, Your Honor. How are you, sir?

17 PROSPECTIVE JUROR NO. 312: Good. How about  
18 yourself?

19 MR. DiGIACOMO: Not bad. Ten minutes until 5:00.  
20 Somewhat of a long day. Probably more for you than us. At  
21 least we get to focus on ourselves or on the whole group and  
22 you just have yourself to worry about here, but sort of with  
23 the prior jurors I sort of understood day-to-day what they do  
24 for a living. What exactly does it mean that you  
25 manufacturing office supplies. What did you do to do that?

1 PROSPECTIVE JUROR NO. 312: Well, the -- most of the  
2 companies -- most of the companies were aerospace related,  
3 some were not. When -- my actual job title was production  
4 planner. So basically, the job is to be sure that the buyers  
5 get all the parts in when they're supposed to, and that the  
6 internal people get the parts to the assembly area when  
7 they're supposed to, and it doesn't end -- my job doesn't end  
8 until the product actually ships.

9 I mean, the shipping department doesn't work for me,  
10 but I have to be sure they do their job and I'm -- they come  
11 back to me if it didn't go out on time. They don't go to the  
12 shipping department.

13 MR. DiGIACOMO: Okay.

14 PROSPECTIVE JUROR NO. 312: So the planner basically  
15 interfaces with everybody in the company. I've got people  
16 from, you know, the salesmen saying my customer said I didn't  
17 get the parts on time, what happened, why are you late?  
18 Fairly responsible position. Quite interesting because you  
19 get to deal with basically everyone in the company.

20 MR. DiGIACOMO: Did you run a department that did  
21 that or were you in a supervisory role?

22 PROSPECTIVE JUROR NO. 312: No, I was -- was part of  
23 -- there were a group of people, and everyone would have a  
24 different product line that they were responsible for, and  
25 you're given a -- a goal. You know, like the first of the

1 month is the beginning, and if you're given a million dollars  
2 to ship and it doesn't all go out, you have to answer for  
3 that.

4 MR. DiGIACOMO: Okay. I imagine at times that there  
5 were situations that came up where you had to kind of sort of  
6 figure out what happened. Like was it the production  
7 department's problem? Was it the shipping department's  
8 problem or something like that, right? You had to go  
9 looking --

10 PROSPECTIVE JUROR NO. 312: Usually, you know what's  
11 going on. I knew sometimes two weeks ahead that I wasn't  
12 going to be in a good spot at the end of the month.

13 MR. DiGIACOMO: Okay. And were you able to resolve  
14 those conflicts or how did you go about that?

15 PROSPECTIVE JUROR NO. 312: Different -- there's no  
16 one, you know -- I've called vendors up and said, hey, could  
17 you do me a favor, could you put mine ahead of somebody  
18 else's? You do almost whatever it takes to get the result  
19 that you need.

20 MR. DiGIACOMO: And I'm guessing you've been  
21 retired, then, for like the -- since '96, I think you said?

22 PROSPECTIVE JUROR NO. 312: No, no, uh-uh. I worked  
23 -- I worked up until 2010 in my field -- 2012 in my field.  
24 Then when I moved to Las Vegas, not a whole lot of  
25 manufacturing here so there was no chance for me to find a job

1 in my field. So I just got a job in some field that would  
2 give me benefits and it was a field -- it was a field related  
3 to something I've done before. Basically, what I'll call  
4 customer service.

5 MR. DiGIACOMO: So what is it that you do now?

6 PROSPECTIVE JUROR NO. 312: Cashier.

7 MR. DiGIACOMO: So I'm getting in trouble for not  
8 being close enough to a microphone here so. Let me ask you  
9 just the general questions everybody's sort of been asked.  
10 Have you ever had any positive or negative contact with law  
11 enforcement before?

12 PROSPECTIVE JUROR NO. 312: Very few tickets in my  
13 life, but even when I got one, I didn't consider them a  
14 negative experience.

15 MR. DiGIACOMO: Okay. What about you said you were  
16 a prior juror. Did you find that to be a rewarding  
17 experience?

18 PROSPECTIVE JUROR NO. 312: I did. I think I have  
19 -- I've never looked at this as something I want to try and  
20 get out of. If I were to get picked, then I would say, you  
21 know, I'm -- I'm doing what I feel is an obligation to  
22 everyone in this country has.

23 MR. DiGIACOMO: Let me ask, before you -- well, the  
24 first time you were a juror, did you have the same thought  
25 about jury service?

1 PROSPECTIVE JUROR NO. 312: Yes. I wouldn't say  
2 that I was saying oh, I hop I get picked, I hope I get picked,  
3 but I was very satisfied with the fact that I ended up on a --  
4 a case.

5 MR. DiGIACOMO: And we don't have a lot of prior  
6 jurors here, but you hear that quite often is, you know,  
7 everybody -- although, this group, almost nobody raises their  
8 hand and says I don't want to be here, but by the end of the  
9 experience, they're very happy with it.

10 So you would say that it was a positive experience  
11 in your life to do this?

12 PROSPECTIVE JUROR NO. 312: Oh, absolutely. I  
13 learned something that I didn't know.

14 MR. DiGIACOMO: Do you own a firearm?

15 PROSPECTIVE JUROR NO. 312: No. I have shot  
16 firearms many times in my life, but I've never had a gun  
17 registered in my name.

18 MR. DiGIACOMO: And what about the penalty  
19 questions? Assuming we were to get there --

20 PROSPECTIVE JUROR NO. 312: I'm okay with that. I  
21 -- the only -- the only kind of penalty I would have an issue  
22 with would be death. I don't know if I could, you know, judge  
23 a case that was going to have a -- but other than that, no  
24 problem.

25 MR. DiGIACOMO: Sure. And I guess, we didn't say it

1 overtly, but this is not a capital case --

2 PROSPECTIVE JUROR NO. 312: Right.

3 MR. DiGIACOMO: -- there's no death penalty. That's  
4 not an issue.

5 PROSPECTIVE JUROR NO. 312: I know. They usually  
6 tell you right away.

7 MR. DiGIACOMO: Yeah. We usually jump up -- that  
8 usually is the main focus of those cases. You think you're a  
9 fair person?

10 PROSPECTIVE JUROR NO. 312: Absolutely.

11 MR. DiGIACOMO: Think you'd be a good juror?

12 PROSPECTIVE JUROR NO. 312: Absolutely.

13 MR. DiGIACOMO: Thank you very much, sir. Judge,  
14 we'd pass for cause.

15 THE COURT: Mr. Landis.

16 MR. LANDIS: If you don't mind me asking, sir, how  
17 did you know that they usually tell you that right away about  
18 a death penalty?

19 PROSPECTIVE JUROR NO. 312: Oh, I constantly watch  
20 the news. I -- I watch more news than probably many people.  
21 I'm either -- when I'm on my cell phone or smartphone, I'm  
22 usually looking at one news reporting agency or another.

23 MR. LANDIS: And do you watch kind of along those  
24 lines the criminal justice system shows that are based on  
25 reality such as --



1 PROSPECTIVE JUROR NO. 312: No.

2 MR. LANDIS: -- Making a Murder or --

3 PROSPECTIVE JUROR NO. 312: I don't have a lot of  
4 time for TV. If I'm watching TV right now this year, CNN or  
5 MSNBC about politics. But typically, I'm very interested in  
6 what's going on in the world, and -- and yet, I do keep a  
7 focus on what's happening in this country as well related to  
8 all the different issues with police in many cities in this  
9 country.

10 MR. LANDIS: Sure. And let me just put that aside  
11 for a sec. Regarding the criminal justice system, do you  
12 follow cases through the news as they progress because they've  
13 caught your eye or --

14 PROSPECTIVE JUROR NO. 312: Well, especially, you  
15 know, large cases that you can't help but not, you know --  
16 but, yeah, anything, especially something that might be  
17 happening in -- in the town that I live in, I would be -- you  
18 know, if something's happening in -- in some town in Texas, I  
19 might not be as captivated by it as I would a case that --  
20 that might be happening in our town.

21 MR. LANDIS: If I could ask, I'm going to put you on  
22 the spot, but does a case come to mind here in Las Vegas that  
23 caught your eye in the recent past, based on those criteria?

24 PROSPECTIVE JUROR NO. 312: Not so much, no. I -- I  
25 don't really -- I try and catch a little local news, but by

1 the time I get home it's over. So unless I'm, you know,  
2 DVRing it, which I don't do, and sometimes in the morning  
3 before I go to work I can catch something, some local news, if  
4 it's before 9:00 o'clock but I don't always.

5 MR. LANDIS: Have you developed strong feelings,  
6 positive, negative, about the American criminal justice  
7 system?

8 PROSPECTIVE JUROR NO. 312: Well, I -- I'd like to  
9 believe that it's as fair as it can be. You know, I don't  
10 think that -- I understand, you know, I see things happening  
11 with police in different cities. There are some police that  
12 stray from, you know, what their directive is. I don't think  
13 that's the majority. I'd like to think that, you know, the  
14 people that are higher up in those organizations, police  
15 chief, whatever, will do things to make sure that every one of  
16 their officers go out there with the same message.

17 MR. LANDIS: You'd acknowledge that sometimes guilty  
18 people are able to get away with crimes based on our American  
19 criminal justice system, right?

20 PROSPECTIVE JUROR NO. 312: Of course.

21 MR. LANDIS: And the opposite's true, too? In other  
22 words, innocent people get convicted, right? In your view,  
23 and this is my favorite question to ask jurors, which one of  
24 those is a worse outcome? It's a tough question, I know.

25 PROSPECTIVE JUROR NO. 312: Well, of course.

1 Perhaps -- perhaps the cases where -- I don't want to mention  
2 any specific cases. Okay, let me generalize and say I've --  
3 I've seen enough over the years to -- to -- to hear about  
4 cases where because of the way the police collected the  
5 information, the person gets off. Everybody knew he was  
6 guilty, but because the evidence wasn't collected properly --

7 MR. LANDIS: Right.

8 PROSPECTIVE JUROR NO. 312: -- it -- it basically  
9 discounted all of the -- those are cases that are difficult to  
10 accept, but you've got to understand that the system works the  
11 way it does.

12 MR. LANDIS: Sure.

13 PROSPECTIVE JUROR NO. 312: So if somebody wasn't  
14 doing their job, maybe the police department, properly, it's  
15 understandable why the result was what it was.

16 MR. LANDIS: Since it's close to 5:00, you guys  
17 probably won't appreciate many more questions so I'll pass for  
18 cause. Thanks for the time.

19 PROSPECTIVE JUROR NO. 312: Thank you.

20 THE COURT: Mr. Wolfbrandt.

21 MR. WOLFBRANDT: Mr. Goehring, I was kind of curious  
22 as you said you shot firearms on a number of occasions. What  
23 were the circumstances for that?

24 PROSPECTIVE JUROR NO. 312: Oh, when I was young in  
25 California we used to go out in the desert every other

1 weekend. My father, when he was younger, rode motorcycles and  
2 then later we just dune buggies and my first car was a dune  
3 buggy. We used to go out to the desert, and we'd always take  
4 guns. In those days, talking about the '60s, there wasn't as  
5 much --

6 MR. WOLFBRANDT: Those days you could?

7 PROSPECTIVE JUROR NO. 312: -- focus on do you have  
8 a registered gun or -- so we'd just take guns out and we'd  
9 always stop and shoot cans out in the middle of nowhere.

10 MR. WOLFBRANDT: So is there any particular reason  
11 why you don't own one now?

12 PROSPECTIVE JUROR NO. 312: No. I don't have an  
13 opinion about them either way. My father had a bunch of guns.  
14 Sadly, when he died, I didn't get any of them, but -- so no, I  
15 actually do like to target practice. I found that very -- I  
16 mean, not just shooting at cans, but to actually shoot at a  
17 target.

18 MR. WOLFBRANDT: Right.

19 PROSPECTIVE JUROR NO. 312: I'm fascinated in, you  
20 know, seeing how good or accurate I can be at a number of  
21 things, but I don't really have a desire to go out and buy one  
22 just to target practice. And I don't hunt, never been that  
23 kind of a person, and I don't think about carrying one for  
24 protection.

25 MR. WOLFBRANDT: Now, I believe you said you're --

1 currently, your job now is a cashier at the Walgreens on the  
2 Strip?

3 PROSPECTIVE JUROR NO. 312: Um-h'm.

4 MR. WOLFBRANDT: Do you ever see any crimes happen  
5 within the store?

6 PROSPECTIVE JUROR NO. 312: Yeah. How many days a  
7 week can I tell you people run out of the store with a bottle  
8 in their hand --

9 MR. WOLFBRANDT: Sure.

10 PROSPECTIVE JUROR NO. 312: -- that we sadly can't  
11 do anything about. We can't even -- you almost can't even  
12 touch them.

13 MR. WOLFBRANDT: That's the kind of Walgreens  
14 policy.

15 PROSPECTIVE JUROR NO. 312: Of course, you can. I  
16 mean, you touch them, they can sue the store.

17 MR. WOLFBRANDT: Sure. Sure.

18 PROSPECTIVE JUROR NO. 312: That's frustrating.

19 MR. WOLFBRANDT: I'm sure. How about just outside  
20 the store, then, along the Strip?

21 PROSPECTIVE JUROR NO. 312: Well, I mean, maybe if I  
22 clocked out and said, hey, I'm going to take care of some guy  
23 that I just saw steal a bottle of whiskey, no, you can't do  
24 that.

25 MR. WOLFBRANDT: Oh, no, no, no, that's not --

1 that's not what I meant.

2 PROSPECTIVE JUROR NO. 312: I can't really go  
3 outside the store when I'm on the clock.

4 MR. WOLFBRANDT: Well, no, that's not what I meant.  
5 I just meant if while you were working at the cashier, if at  
6 the window you happen to observe, you know, crimes happen out  
7 there?

8 PROSPECTIVE JUROR NO. 312: There are -- Venetian  
9 and Palazzo have security. They're kind of around a lot so  
10 usually, you know, there's enough of a presence where I don't  
11 -- I don't see people getting assaulted out there or anything.

12 MR. WOLFBRANDT: Okay. All right, now you mentioned  
13 you kind of like not sitting down necessarily watching all the  
14 news, but you catch the news highlights on your phone a lot?

15 PROSPECTIVE JUROR NO. 312: Oh, I'm always looking  
16 at news.

17 MR. WOLFBRANDT: Okay. If you were to find --  
18 because I don't know how much I think this case got a little  
19 bit of coverage two years ago. If you were to find that as  
20 the case -- if you're on this jury and the case develops, you  
21 remember things that you had seen on a news show about it,  
22 would you be able to ignore what you saw on TV and keep your  
23 focus on whatever you hear within the courtroom?

24 PROSPECTIVE JUROR NO. 312: I could almost guarantee  
25 you I won't remember. Nothing will come to mind like oh,

1    yeah, I remember that store. Not going to happen.

2               MR. WOLFBRANDT: Okay. All right. Thank you. I'd  
3   pass the --

4               PROSPECTIVE JUROR NO. 312:

5               THE COURT: Ms. McNeill.

6               MS. McNEILL: Thank you. As Mr. Landis indicated,  
7   it is getting close to 5:00, so I'll try to be brief. When  
8   you were talking with Mr. Landis, you were talking about cases  
9   where the police officers maybe didn't collect evidence in a  
10   way that was appropriate and led to guilty people sort of  
11   going free. Do you think that the reverse of that ever  
12   happens, that the police officers maybe collect evidence in a  
13   way that puts an innocent person in jail?

14              PROSPECTIVE JUROR NO. 312: We can't say that it  
15   doesn't happen.

16              MS. McNEILL: Okay. So you --

17              PROSPECTIVE JUROR NO. 312: We're -- we're not there  
18   so how would we know?

19              MS. McNEILL: Right. Do you think there's something  
20   about someone with a badge that makes them some sort of have  
21   super powers or super ethics and they don't do anything wrong?

22              PROSPECTIVE JUROR NO. 312: Well, I don't, and I'd  
23   like to think that people when they get a job, I don't care  
24   what kind of job you've got, I'd like to think that people  
25   perform the job to the expectations of the employer.

1 MS. McNEILL: Okay.

2 PROSPECTIVE JUROR NO. 312: I mean, I can't make  
3 anybody, you know, no matter what profession, I can't make  
4 them do their job right. But I would like to hope, you know,  
5 I have this great hope that most people are honest,  
6 forthright, all those things, that we're all supposed to be in  
7 life.

8 MS. McNEILL: And you say you have a hope, but do  
9 you think that -- do you think that's reality that everyone  
10 abides by that same sort of hope that you have for all of us?

11 PROSPECTIVE JUROR NO. 312: Oh, I think so. I -- I  
12 can't know. You can't know what's in a person's heart.

13 MS. McNEILL: Okay. Do you think that police  
14 officers, would you agree with me, they're just people, right?

15 PROSPECTIVE JUROR NO. 312: Of course. And -- and  
16 do some of them all of a sudden put the uniform on and become  
17 somebody else? I don't know.

18 MS. McNEILL: Correct, okay. But they have all of  
19 the -- they come into their job with all of the things that we  
20 come into --

21 PROSPECTIVE JUROR NO. 312: Sure.

22 MS. McNEILL: -- every day with, right?

23 PROSPECTIVE JUROR NO. 312: Sure. I mean, I try not  
24 to carry baggage to work with me, but sometimes like, you  
25 know, the day that I lost my father and my sister six days



1 apart, it's hard not to show something about you isn't exactly  
2 the same as a normal day so yeah, I'm sure that that happens.

3 MS. McNEILL: Okay. So you would agree sometimes  
4 people are affected by outside things as much as we want them  
5 to be?

6 PROSPECTIVE JUROR NO. 312: Of course.

7 MS. McNEILL: Okay.

8 PROSPECTIVE JUROR NO. 312: I know that I am, so why  
9 wouldn't other people?

10 MS. McNEILL: Right. And so working at the  
11 Walgreens on the Strip, would you say it's a good opportunity  
12 to see sort of all different kinds of people?

13 PROSPECTIVE JUROR NO. 312: Yeah, from all over the  
14 world.

15 MS. McNEILL: Okay. Do you enjoy sort of people  
16 watching and observing people?

17 PROSPECTIVE JUROR NO. 312: I enjoy speaking to  
18 people.

19 MS. McNEILL: Okay.

20 PROSPECTIVE JUROR NO. 312: I probably talk to 400  
21 customers a day.

22 MS. McNEILL: And have you learned anything from all  
23 that experience of talking to all of these people?

24 PROSPECTIVE JUROR NO. 312: Yes.

25 MS. McNEILL: Okay. What is that?

1 PROSPECTIVE JUROR NO. 312: I don't know, it depends  
2 on -- it depends on whether you're talking to people from a  
3 different country, like how many people are worried about  
4 Mr. Trump becoming president. You know, there are a lot of  
5 different things that you learn from a lot of different people  
6 because you're talking to so many different kinds of people,  
7 people from like the southeast of the United States or --

8 MS. McNEILL: Okay. So it sounds like you've  
9 learned a lot sort of about human nature and all of that just  
10 from your interactions with people?

11 PROSPECTIVE JUROR NO. 312: I try.

12 MS. McNEILL: Do you --

13 PROSPECTIVE JUROR NO. 312: I -- I don't just  
14 cashier. You know, I try and give somebody an experience. I  
15 want them to remember our store and maybe our city.

16 MS. McNEILL: Okay. All right. Fair enough. I'll  
17 pass for cause, Your Honor.

18 THE COURT: Thank you. All right, ladies and  
19 gentlemen, it's almost 10 minutes after 5:00 so we are going  
20 to recess for the evening. Everyone has to come back tomorrow  
21 at 1:30. I have a very large calendar tomorrow, almost 100  
22 people on the calendar for Drug Court. So there are a couple  
23 of things. I'm going to read to you the admonition, but as  
24 well I want to tell you one more thing.

25 You know, we have this nice courthouse, and we have

1 the elevators in the hallways. A and you may from time to  
2 time encounter one of the lawyers or maybe more than one of  
3 the lawyers as you're passing in the hall or what have you.  
4 And of course, as you're all courteous people, you would  
5 probable yes be inclined to greet them since that's our normal  
6 courteous behavior and since you've been seeing them in the  
7 courtroom, but I would ask that you please don't do so.

8           And the reason for that is this, they will have to  
9 ignore you, and then they're figure to feel really badly that  
10 they -- that you're going to think that they're discourteous  
11 and rude people, when actually, the reason is that they're not  
12 allowed to have any interaction with the prospective jury  
13 members because it could be thought that they're trying to  
14 curry favor or influence you as prospective jurors.

15           So, of course, under normal circumstances, every one  
16 of them are lovely people and they would, of course, greet you  
17 in the normal circumstance, and if you had greeted them. But  
18 under this circumstance, they can't. So please don't make  
19 them feel bad by trying to engage them in conversation even if  
20 you're on an elevator with them and you see that you're alone.  
21 Just do what we all usually do is face the door and say  
22 nothing. All right? So that you don't have any problems.

23           Because otherwise, what's going to happen if you say  
24 to them oh, hi, how's it going, start wanting to chat about  
25 the weather, and they're going to come in and we're going to

1 spend 20 minutes where they tell me about this, and we then  
2 have to bring you in and ask you if it's going to change your  
3 opinion and it's just going to delay things. So please don't  
4 try and interact with any of the lawyers.

5 As I say, we'll be back tomorrow at 1:30. The  
6 Marshal is going to tell you after you assemble outside, he's  
7 going to tell you when he wants you here. So ladies and  
8 gentlemen, we're taking an overnight recess.

9 During this recess, it is your duty not to converse  
10 among yourselves or with anyone else on any subject connected  
11 with the trial, or to read, watch or listen to any report of  
12 or commentary on the trial by any person connected with the  
13 trial or by any medium of information, including without  
14 limitation, newspaper, television, radio or Internet. And of  
15 course, that covers smartphones. And you are not to form or  
16 express an opinion on any subject connected with this case  
17 until it's finally submitted to you.

18 Additionally, you've heard a brief synopsis of where  
19 the crime happened, general locations. You've heard the names  
20 of witnesses and you now met, you know, through their  
21 introduction to you the lawyers and court staff. So please do  
22 not do any research on your own. You know, don't get on the  
23 Internet and try and look into the backgrounds of anybody that  
24 you've heard the names of, any of the lawyers, the judge,  
25 nothing. Everything that you will need to know, if you are

1 selected as a juror in this case, you will hear while court is  
2 in session, and from witnesses on the stand and information  
3 and exhibits at that are admitted lawfully into evidence. So  
4 please, no investigation on your own and stay away from any of  
5 the potential areas that you've heard about thus far because,  
6 as you know, this is Las Vegas, things change very quickly,  
7 and if you try and make an unauthorized visit to some place  
8 that you've heard about during the trial, you might get an  
9 erroneous impression, and so we can't have that.

10 I will see you tomorrow at 1:30.

11 THE MARSHAL: All rise for the jury panel.

12 (Prospective jurors recessed at 5:11 p.m.)

13 THE COURT: And the record will reflect the venire  
14 panel has left the courtroom. Are there any matters outside  
15 the presence?

16 MR. DiGIACOMO: Not from the State.

17 THE COURT: Defense, anything outside the presence?

18 MS. McNEILL: No, Your Honor.

19 THE COURT: Mr. Wolfbrandt, Mr. Landis, anything  
20 outside the presence?

21 MR. LANDIS: Just briefly, Judge. Talking to my  
22 client, during jury selection when the jury or venire was  
23 here, a Corrections Officer came over and removed a pen from  
24 my client's hand and replaced it with this pencil. I  
25 understand why he did that, but the issue I have with it is

1 this, I've had that happen before, and it's obviously not  
2 something I want to have happen.

3           So today, when today started, I went to one of the  
4 Corrections Officers who was here, and I said, is it okay if  
5 my client has a pen because I'd rather have him have a pencil  
6 than -- and they said, yes, let him have a pen. We'll get it  
7 by the end of the day. Then that happens in front of the  
8 venire, and I -- it's frustrating and I think it's  
9 prejudicial, and I would just prefer that it not happen in the  
10 future.

11           MR. WOLFBRANDT: I would say the same thing happened  
12 with my client. And again, I'd ask permission ahead of time  
13 and, you know --

14           CORRECTIONS OFFICER: Yeah, it was your Marshal that  
15 took the pen.

16           THE MARSHAL: It wasn't none of us.

17                   (Indiscernible cross-talking)

18           THE COURT: Whoa whoa, stop, stop. All right. So  
19 is -- Officer, is there a policy, and if you'd state your name  
20 for the record, so we have a --

21           CORRECTIONS OFFICER BEHNKE: Officer Behnke. It's  
22 kind of a preference thing. Like, I don't have a problem with  
23 them getting a pen. I just make sure that I see it go back to  
24 the attorney afterwards. Some officers want them to have  
25 pencils. That was your Marshal that took the pens from them.

1 It wasn't one of us.

2 THE COURT: Okay. I'm sorry, I did not see that so  
3 I'll -- I mean, as far as I'm concerned, the Corrections  
4 Officers have control of the inmates from the jail.

5 CORRECTIONS OFFICER BEHNKE: Yes. Yes. And --

6 THE COURT: It's your responsibility.

7 CORRECTIONS OFFICER BEHNKE: And I spoke to them,  
8 and they said --

9 THE COURT: Okay.

10 CORRECTIONS OFFICER BEHNKE: -- and I gave them  
11 permission.

12 THE COURT: Okay. And so I will make sure that my  
13 Marshal understands that, that as far as the procedures for  
14 inmates, you guys are in charge, and if he has any question  
15 about that, then he needs to talk to you and then talk to me  
16 about it, if there's a problem.

17 THE MARSHAL: Correct.

18 THE COURT: All right? Thank you very much.

19 MR. LANDIS: Thank you.

20 (Court recessed at 5:14 p.m. until Tuesday,  
21 September 13, 2016, at 1:43 p.m.)

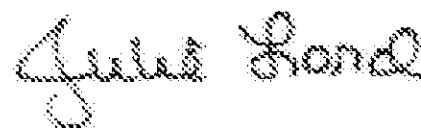
22 \* \* \* \* \*

23

24

25

1 ATTEST: I hereby certify that I have truly and correctly  
2 transcribed the audio/visual proceedings in the above-entitled  
3 case to the best of my ability.

4 

5  
6 

---

  
7 JULIE LORD, INDEPENDENT TRANSCRIBER