

1                                    IN THE SUPREME COURT OF THE STATE OF NEVADA

2                                    \_\_\_\_\_  
3    DONOVINE MATHEWS,                                    )        No. 72701

4                                    Appellant,                                    )

5                                    v.                                    )

6                                    )  
7    THE STATE OF NEVADA,                                    )

8                                    Respondent.                                    )  
9    \_\_\_\_\_ )

Electronically Filed  
Oct 20 2017 01:30 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

10                                    APPELLANT'S APPENDIX VOLUME IV PAGES 751-1000

11    PHILIP J. KOHN  
12    Clark County Public Defender  
13    309 South Third Street  
14    Las Vegas, Nevada 89155-2610

15    Attorney for Appellant

STEVE WOLFSON  
Clark County District Attorney  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89155

ADAM LAXALT  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(702) 687-3538

Counsel for Respondent

**INDEX**  
**DONOVINE MATHEWS**  
**Case No. 72701**

|  | <u>PAGE NO.</u> |
|--|-----------------|
| Amended Information filed 01/09/17 .....   | 421-422         |
| Amended Jury List filed 01/12/17 .....   | 424             |
| Court's Exhibit 4 dated 01/11/17 .....   | 1641-1643       |
| Court's Exhibit 5 dated 01/11/17 .....   | 1644-1685       |
| Court's Exhibit 11 dated 01/12/17 .....  | 1686            |
| Criminal Complaint filed 01/28/16 .....  | 1               |
| Defendant's Motion for Discovery<br>Date of Hrg: 05/31/16 .....  | 137-165         |
| Defendant's Notice of Expert Witnesses filed 10/03/16 .....  | 201-204         |
| Defendant's Notice of Witness filed 10/17/16 .....   | 205-206         |
| Defense Opposition to State's Motion to Continue<br>Date of Hrg: 10/21/16 .....  | 228-234         |
| District Court Minutes from 03/03/16 through 03/07/17 .....  | 458-487         |
| Ex Parte Motion and Order for Release<br>of Medical Records filed 03/30/16 .....   | 123-126         |
| Information filed 03/03/16 .....   | 5-6             |
| Instructions to the Jury filed 01/12/17 .....  | 425-447         |
| Judgment of Conviction filed 03/10/17 .....  | 449-450         |
| Jury List filed 01/10/17 .....   | 423             |
| Justice Court Minutes from 01/28/16 through 02/16/16 .....   | 2-4             |
| Notice of Appeal filed 03/23/17 .....  | 451-454         |
| Notice of Appeal filed 03/30/17 .....  | 455-457         |
| Notice of Expert Witnesses And/or<br>Expert Witnesses filed 03/24/16 .....   | 99-122          |
| Notice of Motion and Motion in Limine to Strike or Limit<br>the Testimony of Defendant's Expert Dr. Lindsey "Dutch"<br>Johnson or in the Alternative a Request for an Evidentiary Hearing<br>Date of Hrg: 01/10/17 ..... | 239-360         |

|    |  |           |
|----|--|-----------|
| 1  | Notice of Motion and Motion to Amend the                             |           |
| 2  | Criminal Information to Conform to the                               |           |
|    | Testimony at the Preliminary Hearing filed 01/09/17 .....            | 413-420   |
| 3  | Notice of Motion and Motion to Continue Trial                        |           |
| 4  | Based On Outstanding Expert Discovery                                |           |
|    | Date of Hrg: 10/20/16 .....  | 211-225   |
| 5  | Opposition to State's Motion in Limine to Strike or Limit            |           |
| 6  | the Testimony of Defendant's Expert Dr. Lindsey "Dutch"              |           |
|    | Johnson and Defense Request for an Evidentiary Hearing               |           |
| 7  | Date of Hrg: 01/10/17 .....  | 361-368   |
| 8  | Order for Discovery filed 10/26/16 .....                             | 235-238   |
| 9  | Order for Production of Inmate Donovine Mathews                      |           |
|    | BAC # 1161064 filed 10/20/16 .....                                   | 226-227   |
| 10 | Second Supplemental Notice of Witnesses                              |           |
| 11 | And/or Expert Witnesses filed 10/18/16 .....                         | 207-210   |
| 12 | Second Supplement to Defense's Opposition to State's Motion          |           |
| 13 | in Limine to Strike or Limit the Testimony of Defendant's Expert And |           |
|    | Defense Request for an Evidentiary Hearing filed 01/12/17 .....      | 387-408   |
| 14 | State's Exhibits 46 dated 01/11/17 .....                             | 1623-1624 |
| 15 | State's Exhibit 63 dated 01/11/17 .....                              | 1621-1622 |
| 16 | State's Exhibit 65 dated 01/11/17 .....                              | 1625-1626 |
| 17 | State's Exhibit 66 dated 01/11/17 .....                              | 1627-1628 |
| 18 | State's Exhibit 77 dated 01/11/17 .....                              | 1629-1630 |
| 19 | State's Exhibit 78 dated 01/11/17 .....                              | 1631-1632 |
| 20 | State's Exhibit 79 dated 01/11/17 .....                              | 1633-1634 |
| 21 | State's Exhibit 80 dated 01/11/17 .....                              | 1635-1636 |
| 22 | State's Exhibit 81 dated 01/11/17 .....                              | 1637-1638 |
| 23 | State's Exhibit 82 dated 01/11/17 .....                              | 1639-1640 |
| 24 | State's Opposition to Defendant's Motion for Discovery               |           |
|    | Date of Hrg: 06/26/16 .....  | 166-200   |
| 25 | Supplemental Notice of Witnesses And/or                              |           |
| 26 | Expert Witnesses filed 05/16/16 .....                                | 127-136   |
| 27 | Supplement to Defense's Opposition to State's Motion                 |           |
| 28 | in Limine to Strike or Limit the Testimony of the Defendant's        |           |
|    | Expert and Defense Request for an Evidentiary Hearing                |           |
|    | Date of Hrg: 01/10/17 .....  | 369-386   |

|    |  |           |
|----|--|-----------|
| 1  | Third Supplemental Notice of Witnesses<br>And/or Expert Witnesses filed 12/20/16 ..... | 409-412   |
| 2  |  |           |
| 3  | Verdict filed 01/13/17 .....   | 448       |
| 4  |  |           |
| 5  | <b><u>TRANSCRIPTS</u></b>  |           |
| 6  | Recorder's Transcript<br><b>Jury Trial Day 1</b>                                       |           |
| 7  | Date of Hrg: 01/09/17 .....  | 579-841   |
| 8  | Recorder's Transcript<br><b>Jury Trial Day 2</b>                                       |           |
| 9  | Date of Hrg: 01/10/17 .....  | 842-1073  |
| 10 | Recorder's Transcript<br><b>Jury Trial Day 3</b>                                       |           |
| 11 | Date of Hrg: 01/11/17 .....  | 1074-1378 |
| 12 | Recorder's Transcript<br><b>Jury Trial Day 4</b>                                       |           |
| 13 | Date of Hrg: 01/12/17 .....  | 1379-1605 |
| 14 | Recorder's Transcript<br><b>Jury Trial Day 5</b>                                       |           |
| 15 | Date of Hrg: 01/13/17 .....  | 1606-1612 |
| 16 | Recorder's Transcript<br>Arraignment Continued   |           |
| 17 | Date of Hrg: 03/08/16 .....  | 490-491   |
| 18 | Recorder's Transcript<br>Arraignment Continued   |           |
| 19 | Date of Hrg: 03/15/16 .....  | 492-494   |
| 20 | Recorder's Transcript<br>Calendar Call   |           |
| 21 | Date of Hrg: 05/24/16 .....  | 499-502   |
| 22 | Recorder's Transcript<br>Calendar Call   |           |
| 23 | Date of Hrg: 10/18/16 .....  | 527-536   |
| 24 | Recorder's Transcript<br>Calendar Call   |           |
| 25 | Date of Hrg: 01/03/17 .....  | 574-578   |
| 26 | Recorder's Transcript<br>Defendant's Motion for Discovery                              |           |
| 27 | Date of Hrg: 05/31/16 .....  | 503-505   |
| 28 |  |           |

|    |   |           |
|----|---|-----------|
| 1  | Recorder's Transcript                     |           |
| 2  | Defendant's Motion for Discovery          |           |
|    | Date of Hrg: 06/30/16.....                | 506-508   |
| 3  | Recorder's Transcript                     |           |
| 4  | Defendant's Motion for Discovery          |           |
|    | Date of Hrg: 07/26/16.....                | 509-526   |
| 5  | Recorder's Transcript                     |           |
| 6  | Initial Arraignment                       |           |
|    | Date of Hrg: 03/03/16.....                | 488-489   |
| 7  | Recorder's Transcript                     |           |
| 8  | Sentencing                                |           |
|    | Date of Hrg: 03/07/17.....                | 1613-1620 |
| 9  | Recorder's Transcript                     |           |
| 10 | State's Motion to Continue Trial Based on |           |
|    | Outstanding Expert Discovery              |           |
|    | Date of Hrg: 10/20/16.....                | 537-545   |
| 11 | Recorder's Transcript                     |           |
| 12 | State's Motion to Continue Trial Based on |           |
|    | Outstanding Expert Discovery              |           |
| 13 | Date of Hrg: 10/21/16.....                | 546-573   |
| 14 | Recorder's Transcript                     |           |
| 15 | Status Check                              |           |
|    | Date of Hrg: 03/31/16.....                | 495-498   |
| 16 |   |           |
| 17 | Reporter's Transcript                     |           |
|    | Preliminary hearing                       |           |
|    | Date of Hrg: 03/01/16.....                | 7-98      |
| 18 |   |           |
| 19 |   |           |
| 20 |   |           |
| 21 |   |           |
| 22 |   |           |
| 23 |   |           |
| 24 |   |           |
| 25 |   |           |
| 26 |   |           |
| 27 |   |           |
| 28 |   |           |

1 version of events that doesn't make sense? How do you sort  
2 it out?

3 PROSPECTIVE JUROR NO. 383: Well, let's say first  
4 time or if the -- if the guest say, hey, listen, I have not  
5 give out the signal to the dealer and the dealer just deal me  
6 the card, I got busted. So I'll see how large the money he  
7 put up.

8 MS. JOBE: Okay.

9 PROSPECTIVE JUROR NO. 383: If it's small one, and  
10 he's a nice customer, I just going to give him back the  
11 money.

12 MS. JOBE: Okay.

13 PROSPECTIVE JUROR NO. 383: Or if the large, then I  
14 can call surveillance, check it out, see all the signal clear  
15 and the dealer did the right things and that, that's all.

16 MS. JOBE: So it's fair to say it depends?

17 PROSPECTIVE JUROR NO. 383: Right.

18 MS. JOBE: Okay. Thank you very much. If you  
19 could pass the --

20 PROSPECTIVE JUROR NO. 383: You're welcome.

21 MS. JOBE: -- microphone to Mr. Terry. Thank you.

22 PROSPECTIVE JUROR NO. 402: Kevin Terry, 402.

23 MS. JOBE: All right. You have lots of kids so I'm  
24 sure you've had times where they've disagreed?

25 PROSPECTIVE JUROR NO. 402: Yes, ma'am.

1 MS. JOBE: Ever have a time where one child tells  
2 you one version of events, another child tells you another  
3 version of events and they were in the same room at the same  
4 time?

5 PROSPECTIVE JUROR NO. 402: Yes.

6 MS. JOBE: And how do you sort that out?

7 PROSPECTIVE JUROR NO. 402: Like interrogate them a  
8 little bit more.

9 MS. JOBE: All right.

10 PROSPECTIVE JUROR NO. 402: Kind of a harsh word.

11 MS. JOBE: And -- okay, and obviously, as it -- say  
12 one child says one version, one says another version. Is  
13 there always a third independent eyewitness?

14 PROSPECTIVE JUROR NO. 402: Sometimes there is.

15 MS. JOBE: Fair to say sometimes there isn't?

16 PROSPECTIVE JUROR NO. 402: And sometimes there  
17 isn't, yeah.

18 MS. JOBE: Right. Ever have when your children  
19 tell you a story that just doesn't add up or doesn't make  
20 sense?

21 PROSPECTIVE JUROR NO. 402: All the time, yeah.

22 MS. JOBE: How do you sort that out?

23 PROSPECTIVE JUROR NO. 402: By the way they say it  
24 and then their demeanor and their body language.

25 MS. JOBE: If you're selected to be a member of the

1 jury, would you have any concerns or problems in reaching a  
2 verdict if you have to piece together evidence to reach the  
3 conclusion?

4 PROSPECTIVE JUROR NO. 402: I think I could do  
5 that.

6 MS. JOBE: Would you necessarily need an eyewitness  
7 to the events in order to reach -- I realize it's a  
8 hypothetical, but would you necessarily need an eyewitness or  
9 would it depend on the other evidence?

10 PROSPECTIVE JUROR NO. 402: I would like to piece  
11 the evidence, and an eyewitness would help out, yeah.

12 MS. JOBE: Okay. Any concerns if there is no  
13 eyewitness?

14 PROSPECTIVE JUROR NO. 402: That would be a bit  
15 harder decision, but I think it could be made.

16 MS. JOBE: Okay. All right. And as far as the  
17 situation with your nephew, I believe, when Judge Leavitt was  
18 asking you questions, you thought your nephew was treated  
19 fairly; is that accurate?

20 PROSPECTIVE JUROR NO. 402: Yes.

21 MS. JOBE: Okay. And were you involved in the  
22 investigation process or just the court process or both?

23 PROSPECTIVE JUROR NO. 402: Just the court process.

24 MS. JOBE: All right. Thank you. If you could  
25 please pass the microphone to Mr., is it Browning? Okay.



1 Please.

2 PROSPECTIVE JUROR NO. 412: Michael Browning, Juror  
3 No. 412.

4 MS. JOBE: Thank you, sir. You said one of your  
5 children is self-employed, correct?

6 PROSPECTIVE JUROR NO. 412: Yes.

7 MS. JOBE: Doing what?

8 PROSPECTIVE JUROR NO. 412: Well, actually, he's  
9 just at odd ends right now.

10 MS. JOBE: Okay.

11 PROSPECTIVE JUROR NO. 412: He's looking to find  
12 himself so.

13 MS. JOBE: And is there any -- I guess, I'll just  
14 cut to the chase. Any investigative background of that child  
15 or any consulting or medical back ground for that child?

16 PROSPECTIVE JUROR NO. 412: You mean --

17 MS. JOBE: For your child who's self-employed.

18 PROSPECTIVE JUROR NO. 412: Uh-huh.

19 MS. JOBE: Does -- has any of that child's training  
20 or experience or work been in the medical field or --

21 PROSPECTIVE JUROR NO. 412: No.

22 MS. JOBE: -- legal field?

23 PROSPECTIVE JUROR NO. 412: No.

24 MS. JOBE: All right. And how do you feel about  
25 listening to evidence and having to weigh all the evidence

1 together when it comes to a situation involving a young  
2 child?

3 PROSPECTIVE JUROR NO. 412: Well, that's always  
4 difficult, but if you can get enough information, then you  
5 have to do the best you can with it.

6 MS. JOBE: Okay. And would you feel comfortable  
7 waiting to make a decision until you've received all the  
8 evidence and are asked to go back and deliberate with the 11  
9 other people if you are selected?

10 PROSPECTIVE JUROR NO. 412: Sure.

11 MS. JOBE: Any concerns or problems with talking  
12 with 11 other people and reaching a verdict one way or the  
13 other?

14 PROSPECTIVE JUROR NO. 412: I don't think so.

15 MS. JOBE: Any thoughts about any of the questions  
16 I've asked panel today, and you're like hey, that sounded  
17 interesting and you had anything to add?

18 PROSPECTIVE JUROR NO. 412: No, I don't -- I don't  
19 think so.

20 MS. JOBE: Okay. If you would please pass the  
21 microphone -- I've talked to Mr. Cleto -- to Mr. Davis,  
22 please. How are you, Mr. Davis?

23 PROSPECTIVE JUROR NO. 416: Rashaad Davis, Badge  
24 No. 416. Doing good, thank you.

25 MS. JOBE: Thank you very much. You -- I believe,

1 you said you are a loan specialist?

2 PROSPECTIVE JUROR NO. 416: Correct.

3 MS. JOBE: Okay. What does -- what does that mean?

4 PROSPECTIVE JUROR NO. 416: So I work in a note  
5 department for Bank of George. So I do a lot of the grunt  
6 work for the loans once they're approved, getting the  
7 customer's information scanned into the system, I'm  
8 processing loan payments, sending out wires, so forth.

9 MS. JOBE: Sounds very detail-oriented; is that  
10 fair?

11 PROSPECTIVE JUROR NO. 416: Yes.

12 MS. JOBE: Okay. So then -- I'm terrible with  
13 details. So if you're -- you have to be detail-oriented  
14 because if someone misses a box or checks something wrong,  
15 then that can affect whether or not the loan goes through; is  
16 that correct?

17 PROSPECTIVE JUROR NO. 416: I'm more of a finish  
18 product of the loan.

19 MS. JOBE: Okay.

20 PROSPECTIVE JUROR NO. 416: Yeah. That describes  
21 the loan officers.

22 MS. JOBE: Okay. So clearly not my in realm. So  
23 what is the finished, product, then?

24 PROSPECTIVE JUROR NO. 416: Finished product the  
25 loan is approved --

1 MS. JOBE: Okay.

2 PROSPECTIVE JUROR NO. 416: -- and all documents  
3 need to be scanned into the system --

4 MS. JOBE: I see.

5 PROSPECTIVE JUROR NO. 416: -- yearly basis,  
6 updated financial documents and so forth.

7 MS. JOBE: I was asking about, I believe, it was  
8 Mr. Herrera, about concrete thinkers where everything has to  
9 be -- you have to see everything that's been you in order to  
10 make a decision and then there would be not so concrete  
11 thinkers who or more like sociology and those types of  
12 things. How would you describe yourself as a (inaudible)?

13 PROSPECTIVE JUROR NO. 416: Basically, I want all  
14 the details to make a decision.

15 MS. JOBE: Okay. How do you feel about making  
16 inferences or making -- how do you feel about making  
17 inferences?

18 PROSPECTIVE JUROR NO. 416: Can you better detail  
19 that, please?

20 MS. JOBE: Okay. Sure. So let's say you have a  
21 friend who's at point A, and your friend is supposed to meet  
22 you at point B, and the information you have is that your  
23 friend text you says, I'm leaving point A, but your friend  
24 never shows up to point B. Later on you find out that at the  
25 time you were supposed to be hanging out with your friend at

1 point B, someone saw your friend hanging at the Bellagio.  
2 Would you be comfortable making inferences about your friend  
3 going to the Bellagio instead of coming to see you or  
4 figuring out why they may have gone to the Bellagio instead  
5 of coming to meet you?

6 PROSPECTIVE JUROR NO. 416: Yes, if you're meeting  
7 someone and they say they're going to be where they're  
8 supposed to --

9 MS. JOBE: And then they're not.

10 PROSPECTIVE JUROR NO. 416: -- then you expect them  
11 to be there, but if not, then you want to know what happened.

12 MS. JOBE: Sure.

13 PROSPECTIVE JUROR NO. 416: So --

14 MS. JOBE: Are you comfortable making those types  
15 of inferences or thinking about those things?

16 PROSPECTIVE JUROR NO. 416: No.

17 MS. JOBE: I'm sorry?

18 PROSPECTIVE JUROR NO. 416: No.

19 MS. JOBE: Okay. All right. Any experience with  
20 getting a second opinion from a medical doctor?

21 PROSPECTIVE JUROR NO. 416: No.

22 MS. JOBE: Any experience with law enforcement?

23 PROSPECTIVE JUROR NO. 416: My god father is a  
24 school police district, 20 plus years.

25 MS. JOBE: Okay. How close are you to your god

1 father?

2 PROSPECTIVE JUROR NO. 416: It's been a 17-year god  
3 father -- god son relationship.

4 MS. JOBE: Okay. And does your god father tell you  
5 stories about things they're investigating or doing or --

6 PROSPECTIVE JUROR NO. 416: No.

7 MS. JOBE: Okay. Any other contacts with law  
8 enforcement?

9 PROSPECTIVE JUROR NO. 416: No.

10 MS. JOBE: Okay. If you are selected to be a  
11 member of this jury, would you have any problems or concerns  
12 with deliberating with 11 other people and reaching a verdict  
13 one way or the other?

14 PROSPECTIVE JUROR NO. 416: No.

15 MS. JOBE: Any concerns about hearing medical  
16 testimony or testimony as it relates to a small child?

17 PROSPECTIVE JUROR NO. 416: I do too have a handful  
18 of nieces and nephews, so depending on, you know, how graphic  
19 the situation is or, you know, the injuries to the child  
20 could be because you would reflect on your own children or  
21 nieces and nephews, yes.

22 MS. JOBE: Sure. And what's -- you don't have to  
23 tell me their exact ages, but what's kind of the range?

24 PROSPECTIVE JUROR NO. 416: So there is an age  
25 range from 1 to 11.

1 MS. JOBE: Wow. And do you see them very often?

2 PROSPECTIVE JUROR NO. 416: Yes.

3 MS. JOBE: Okay. Do you ever get super frustrated  
4 with one of your nieces and nephews for just acting out and  
5 you're like, what are you doing?

6 PROSPECTIVE JUROR NO. 416: I don't -- I don't  
7 parent them. Their mom is usually there. So if there is any  
8 type of -- the, you know, discipline that needs to happen,  
9 she takes care of it. So that's out of my league.

10 MS. JOBE: Okay. So you have the best excuse.  
11 You're like, I am an uncle, you got to go see mom, right?

12 PROSPECTIVE JUROR NO. 416: Correct.

13 MS. JOBE: Excellent. What types of things do you  
14 enjoy doing with your nieces and nephews?

15 PROSPECTIVE JUROR NO. 416: Normal stuff, taking  
16 them out, movies, taking them out to arcades, to parks,  
17 spending time with them.

18 MS. JOBE: Fair to say kind of a range there,  
19 nieces and nephews, different ages, different abilities,  
20 different types of things you can do?

21 PROSPECTIVE JUROR NO. 416: Correct.

22 MS. JOBE: Does your one-year-old -- is it a niece  
23 or nephew, the youngest?

24 PROSPECTIVE JUROR NO. 416: The youngest is a boy,  
25 yeah.

1 MS. JOBE: Does he communicate with you very well?

2 PROSPECTIVE JUROR NO. 416: No.

3 MS. JOBE: Still working on his words and stuff?

4 PROSPECTIVE JUROR NO. 416: Yes.

5 MS. JOBE: Okay. All right. Thank you so much.

6 If you -- I've talked to you Ms. Gonzalez-Garcia. So let's

7 go backwards, and if you could pass the microphone to

8 Mr. Martin, please. All right, Mr. Martin. You said you're

9 a bartender, correct?

10 PROSPECTIVE JUROR NO. 455: Correct.

11 MS. JOBE: Okay. And you'd expressed some concerns

12 with if you were selected to be a member of the jury, but I

13 think at this point, are you okay if you're selected? Okay

14 is probably not the right word, but.

15 PROSPECTIVE JUROR NO. 455: I have no clue as far

16 as making arrangements for the rest of the week --

17 MS. JOBE: Okay.

18 PROSPECTIVE JUROR NO. 455: -- per se.

19 MS. JOBE: And that's for your child, right?

20 PROSPECTIVE JUROR NO. 455: Yes.

21 MS. JOBE: Okay. Do you think that would be

22 something you'd be able to work out or not sure or depends?

23 You'll have to figure that out later?

24 PROSPECTIVE JUROR NO. 455: I know I can work out

25 one or two other days, depending with her mother --



1 MS. JOBE: Okay.

2 PROSPECTIVE JUROR NO. 455: -- for her days off.

3 MS. JOBE: Okay. Where do you bartend, sorry?

4 PROSPECTIVE JUROR NO. 455: Sam's Town.

5 MS. JOBE: Fair to say in your work as a bartender,  
6 you've probably have heard all kinds of stories from  
7 different people in different places; is that fair?

8 PROSPECTIVE JUROR NO. 455: Yes.

9 MS. JOBE: As a bartender, do you engage much with  
10 customers and listen to their stories or you just kind of  
11 listen and move on with whatever you're doing?

12 PROSPECTIVE JUROR NO. 455: Yes, all the above.

13 MS. JOBE: Okay.

14 PROSPECTIVE JUROR NO. 455: It depends.

15 MS. JOBE: I'm sure you have some regular customers  
16 at Sam's Town?

17 PROSPECTIVE JUROR NO. 455: Yes.

18 MS. JOBE: Okay. As far as listening to people and  
19 weighing what they're saying, what types of things do you  
20 look for when you're trying to judge if what they're telling  
21 you is right or wrong?

22 PROSPECTIVE JUROR NO. 455: Can you repeat that?

23 MS. JOBE: Sure. When you are listening to  
24 people's stories or, you know, trying to make an assessment  
25 if the story they're telling you is true or not true, what

1 types of things do you look for?

2 PROSPECTIVE JUROR NO. 455: When they tell me a  
3 story and I give them an opinion on how to correct it, how  
4 often they give me excuses that cannot be -- which are just  
5 really excuses.

6 MS. JOBE: Okay. You have a young child, so ever  
7 have to tack your young child to the doctor for anything?

8 PROSPECTIVE JUROR NO. 455: Yes.

9 MS. JOBE: Ever have concerns about what the doctor  
10 said to you and maybe thinking that might not be the best  
11 advice for my child?

12 PROSPECTIVE JUROR NO. 455: No.

13 MS. JOBE: Or ever needed like a second medical  
14 opinion?

15 PROSPECTIVE JUROR NO. 455: No.

16 MS. JOBE: Any concerns if you're selected to be a  
17 member of the jury and listening to testimony from different  
18 types of experts, including medical experts, about injuries  
19 and what happened?

20 PROSPECTIVE JUROR NO. 455: No, I have -- I have a  
21 little bit of experience in the medical field being my family  
22 background is all medical.

23 MS. JOBE: Oh, what type of experience?

24 PROSPECTIVE JUROR NO. 455: They are -- they are  
25 all nurse practitioners.

1 MS. JOBE: Okay. Anyone specialize in pediatrics  
2 or anything like that or certain types of injuries?

3 PROSPECTIVE JUROR NO. 455: No.

4 MS. JOBE: All right. Would you be able to not  
5 discuss the case with your family if you're selected to be on  
6 the jury until a verdict's been reached and the Judge has  
7 told you, you can talk to other people?

8 PROSPECTIVE JUROR NO. 455: Yes.

9 MS. JOBE: And would you be -- if you're selected,  
10 would you be able to just listen to the evidence presented  
11 and not go seek out other information or try to do your own  
12 research about the issues?

13 PROSPECTIVE JUROR NO. 455: Correct.

14 MS. JOBE: All right. And how do you -- do you  
15 have any concerns if you are asked to piece together  
16 information in order to reach a remembered and whether or not  
17 there's a direct eyewitness or not?

18 PROSPECTIVE JUROR NO. 455: No, I'm fine with that.

19 MS. JOBE: Thank you very much. All right. I am  
20 going to skip over to, is it Mr. Bouch?

21 PROSPECTIVE JUROR NO. 448: Yeah.

22 MS. JOBE: Okay. Talked to both of you gentlemen.  
23 Thank you very much. So you if you could hand the microphone  
24 to him that would be great. Thank you.

25 PROSPECTIVE JUROR NO. 448: Aaron Bouch, 448.

1 MS. JOBE: All right, Mr. Bouch. You are you say  
2 the senior project manager for neon?

3 PROSPECTIVE JUROR NO. 448: Yeah.

4 MS. JOBE: How long is that project going to go on?

5 PROSPECTIVE JUROR NO. 448: For approximately,  
6 another three years.

7 MS. JOBE: And what are your kind of  
8 responsibilities as the senior project manager?

9 PROSPECTIVE JUROR NO. 448: My job is to manage the  
10 personnel, what it takes to relocate and remove and install  
11 utilities, power for street lights, sewer, water, phone,  
12 engineer it, design it and implement it.

13 MS. JOBE: That's a lot. Okay. Do you deal with  
14 the actual plans of what has to be done or are you working  
15 mostly with people?

16 PROSPECTIVE JUROR NO. 448: I am part of the design  
17 task force so I do engineer some of the stuff that comes out  
18 that we supply to NDOT for approval.

19 MS. JOBE: Okay. And how -- you've heard my  
20 questions about concrete thinkers versus more abstract  
21 thinkers. How would you characterize yourself?

22 PROSPECTIVE JUROR NO. 448: I'm a critical thinker.  
23 I have to reevaluate and make decisions multiple times a day  
24 on multiple whims to make sure we're moving in the right  
25 direction.

1 MS. JOBE: Would you have any concerns about  
2 listening to evidence and piecing things together to reach a  
3 verdict one way or the other?

4 PROSPECTIVE JUROR NO. 448: As long as I will every  
5 -- as long as everything was made available to the evidence  
6 and the proof of burden, I don't think I would,

7 MS. JOBE: Okay. Any concerns if there's no direct  
8 eyewitness testimony?

9 PROSPECTIVE JUROR NO. 448: No. Just the more  
10 evidence, the better.

11 MS. JOBE: Okay. You indicated you have, I  
12 believe, you said three children?

13 PROSPECTIVE JUROR NO. 448: I have three children.

14 MS. JOBE: Okay. And one's still at home, correct?

15 PROSPECTIVE JUROR NO. 448: (No audible response).

16 MS. JOBE: Any concerns about listening to evidence  
17 about something that happened to a young child and being able  
18 to set aside your children and your experience as a father  
19 and just listen to the evidence here?

20 PROSPECTIVE JUROR NO. 448: No, I've -- I've  
21 experienced some things in the Middle East that have allowed  
22 me to be able to not have a bias, I guess.

23 MS. JOBE: Okay. Now, you had indicated it might  
24 be a different story if you had to make a decision about  
25 penalty; is that correct?

1 PROSPECTIVE JUROR NO. 448: Yes.

2 MS. JOBE: Okay. And obviously, the Judge has  
3 explained that's not your role, correct?

4 PROSPECTIVE JUROR NO. 448: (No audible response).

5 MS. JOBE: And the job of the jury, as she  
6 explained earlier, was to be the fact finder of what happened  
7 or didn't happen; do you have any concerns with that?

8 PROSPECTIVE JUROR NO. 448: I don't. I just -- I  
9 wanted to verify that. I -- I had strong feelings for my  
10 previous one, and once she said that, obviously, I can be  
11 bias to making a decision based on evidence and outside of  
12 that it would be her job to determine if yay or nay and what  
13 that would be so --

14 MS. JOBE: Okay. And as you sit here right now,  
15 are you leaning for or against either side, the State or the  
16 defense?

17 PROSPECTIVE JUROR NO. 448: I'm indifferent either  
18 way.

19 MS. JOBE: Okay. You indicated, was the experience  
20 with the relatives and their children local?

21 PROSPECTIVE JUROR NO. 448: It was in Washoe  
22 County. It was in Nevada, yes.

23 MS. JOBE: Oh, that's right, Washoe and Douglas,  
24 that's correct. Sorry about that. Any opinions about Child  
25 Protective Services or how that situation plays itself out?

1 PROSPECTIVE JUROR NO. 448: I have strong opinion  
2 of that, actually, in Washoe County. Not -- not in Clark  
3 County I don't.

4 MS. JOBE: Okay. And would you be able to set  
5 those opinions aside and just listen to the evidence as it  
6 relates to the child?

7 PROSPECTIVE JUROR NO. 448: Yeah.

8 MS. JOBE: Okay. All right. Thank you very much,  
9 sir. If you could pass the microphone -- we spoke with  
10 Mr. Lozano and Mr. Miller and Ms. Ibay. Let's talk to  
11 Mr. Boren. If you could pass it down to Mr. Boren, please.  
12 Thank you.

13 PROSPECTIVE JUROR NO. 423: Justin Boren, 423.

14 MS. JOBE: I couldn't help but see you have a very  
15 thick book with you, sir.

16 PROSPECTIVE JUROR NO. 423: Yes.

17 MS. JOBE: May I ask what you're reading?

18 PROSPECTIVE JUROR NO. 423: It's a biography of  
19 Ronald Reagan.

20 MS. JOBE: Oh. And you indicated that you managed,  
21 is it a banker, I believe?

22 PROSPECTIVE JUROR NO. 423: Mortgage banking  
23 company.

24 MS. JOBE: Okay. And so are you more responsible  
25 for the analytical part or the people part or both?

1 PROSPECTIVE JUROR NO. 423: Both.

2 MS. JOBE: All right. You've heard my concrete,  
3 abstract thinker question. Where do you fall?

4 PROSPECTIVE JUROR NO. 423: Typically, it's  
5 abstract because of everybody's situations, financial  
6 situations are different, so you have to take an abstract  
7 idea, which is somebody's financial situation compared to  
8 somebody else's and fit it into a box, which includes a loan.

9 So while you deal with the abstract, there are  
10 certain limitations that are guidelines for the loan. So you  
11 deal with both.

12 MS. JOBE: Would you say you have good critical  
13 thinking skills, average critical thinking skills or  
14 something else?

15 PROSPECTIVE JUROR NO. 423: I think I'm pretty  
16 good.

17 MS. JOBE: Okay. And what type of things when  
18 you're analyzing -- like you said you have to sometimes --  
19 people have different things in whether or not can get along,  
20 all kinds of variables, correct?

21 PROSPECTIVE JUROR NO. 423: Correct.

22 MS. JOBE: Do you ever have people give you  
23 misinformation or bad information trying to get a loan?

24 PROSPECTIVE JUROR NO. 423: All the time.

25 MS. JOBE: And what do you do? What kind of



1 critical thinking skills do you employ in those situations?

2 PROSPECTIVE JUROR NO. 423: Red flags go up so you  
3 ask more questions, you do more background checking, you look  
4 at the history of what's happened in that person's life and  
5 -- and make that decision.

6 MS. JOBE: You said red flags go up. So it kind of  
7 sounds like something from your training or experiences like  
8 something's not quite right so you look into more?

9 PROSPECTIVE JUROR NO. 423: Something doesn't feel  
10 right so you check more.

11 MS. JOBE: Do you ever make snap decisions and go  
12 from there or do you always look into more information and  
13 you kind of see (inaudible)?

14 PROSPECTIVE JUROR NO. 423: You look more because  
15 you can always be wrong.

16 MS. JOBE: Okay. You also indicated you have three  
17 bio children and four stepchildren, correct?

18 PROSPECTIVE JUROR NO. 423: Correct.

19 MS. JOBE: That is a large household, sir.

20 PROSPECTIVE JUROR NO. 423: Yes.

21 MS. JOBE: How do you -- if you don't mind my  
22 asking, what's the age ranges? You don't have to give me all  
23 their ages, but just the range.

24 PROSPECTIVE JUROR NO. 423: My oldest is 17 and the  
25 youngest is 4.

1 MS. JOBE: Let's talk about the four-year-old for a  
2 second or even your other children when they were younger  
3 around that age. How well could your four-year-old or your  
4 other children when they were that age or even younger kind  
5 of explain things that happened?

6 PROSPECTIVE JUROR NO. 423: They're not very good  
7 at it, obviously. With older siblings -- they also have  
8 older siblings that talk for them.

9 MS. JOBE: Sure. That makes a difference, right?

10 PROSPECTIVE JUROR NO. 423: It does.

11 MS. JOBE: So fair to say when they're younger,  
12 their ability to describe or explain, obviously, not so  
13 great?

14 PROSPECTIVE JUROR NO. 423: Absolutely.

15 MS. JOBE: Was there ever something that happened  
16 to your young -- children when they were younger, 4 and under  
17 stage, shall we say, and you were able to kind of figure out  
18 what happened even though they couldn't explain it to you?

19 PROSPECTIVE JUROR NO. 423: Yes.

20 MS. JOBE: Okay. How would you figure it out?

21 PROSPECTIVE JUROR NO. 423: A lot of times, just  
22 like you've been doing for us, you kind of spoon feed  
23 questions, you have to redirect questions, you have to reask  
24 it, tell them what this means, tell them what that means and  
25 then they can eventually understand what you're trying to ask

1 them and eventually, they'll give you the answer or at least  
2 explain enough to make you can make that inference.

3 MS. JOBE: Okay. Fair to say with seven children,  
4 you can ask -- the kids who were about the same age range --  
5 you can ask them the same question and get four different  
6 answers?

7 PROSPECTIVE JUROR NO. 423: Sure.

8 MS. JOBE: And likewise, you can ask, say, the  
9 oldest child a question and they'll understand it the way you  
10 phrase it, but sometimes maybe for another child, you have to  
11 rephrase it to kind of get the same information?

12 PROSPECTIVE JUROR NO. 423: Yes, ma'am.

13 MS. JOBE: Any -- do all your children react the  
14 same way to every situation?

15 PROSPECTIVE JUROR NO. 423: No.

16 MS. JOBE: And do you and your spouse react the  
17 same way when something happens to one of your kids?

18 PROSPECTIVE JUROR NO. 423: No.

19 MS. JOBE: Okay. Who -- let's say there's some  
20 sort of kid falls down and gets injured or whatever, as  
21 between you and your spouse, who's the more we got to do  
22 this, we got to do that and the other one's more the  
23 nurturer?

24 PROSPECTIVE JUROR NO. 423: My wife is the  
25 nurturer.

1 MS. JOBE: Okay.

2 PROSPECTIVE JUROR NO. 423: I guess, you would call  
3 me the enforcer.

4 MS. JOBE: Spring into action mode, we need to do  
5 this, that and the other --

6 PROSPECTIVE JUROR NO. 423: Not always. I mean,  
7 after we've decided what -- what happened or whatever, but  
8 I'm definitely less of the nurturer and she is more of the  
9 nurturer.

10 MS. JOBE: Okay. What's your -- what draws you to  
11 Ronald Reagan or reading a book about him?

12 PROSPECTIVE JUROR NO. 423: I like to read  
13 biographies period. So I've read quite a few, and I like to  
14 learn from people that are successful in what they do.

15 MS. JOBE: Successful in multiple areas.

16 THE COURT: Okay, at this time, I'm just going to  
17 stop you because we're going to take a recess. During this  
18 recess, you are admonished not to talk or converse amongst  
19 yourselves or with anyone else on any subject connected with  
20 this trial or read, watch or listen to any report of or  
21 commentary on the trial or any person connected with this  
22 trial by any medium of information, including without  
23 limitation, newspapers, television, the Internet or radio.  
24 Or form or express any opinion on any subject connected with  
25 this trial until the case is finally submitted to you.

1 We'll be in recess for the next 15 minutes. Thank  
2 you.

3 THE MARSHAL: Thank you. All rise for the exiting  
4 jury panel.

5 (Court recessed at 3:40 p.m. until 3:54 p.m.)

6 (Inside the presence of the prospective jurors)

7 THE COURT: Does the State stipulate to presence of  
8 the jury panel?

9 MS. JOBE: Yes, Your Honor.

10 THE COURT: The defense?

11 MS. HOLIDAY: Yes, Your Honor.

12 THE COURT: Okay. You may continue.

13 MS. JOBE: If you could pass the microphone to Ms.  
14 Rodriguez, please. Thank you very much.

15 All right, Ms. Rodriguez, you indicated you are a  
16 medical assistant, correct?

17 PROSPECTIVE JUROR NO. 466: Yes.

18 MS. JOBE: And what type of medicine or practice do  
19 you work in?

20 PROSPECTIVE JUROR NO. 466: Children's Heart  
21 Center.

22 MS. JOBE: Okay. Is that associated with a  
23 hospital or is it independent?

24 PROSPECTIVE JUROR NO. 466: Independent.

25 MS. JOBE: Okay. How long have you done that?

1 PROSPECTIVE JUROR NO. 466: About ten years.

2 MS. JOBE: What are your general responsibilities  
3 at the Children's Heart Center?

4 PROSPECTIVE JUROR NO. 466: We prep patients.

5 MS. JOBE: For surgery or --

6 PROSPECTIVE JUROR NO. 466: For the doctors.

7 MS. JOBE: Okay.

8 PROSPECTIVE JUROR NO. 466: Um-h'm.

9 MS. JOBE: And in prepping patients you have to do  
10 the history and --

11 PROSPECTIVE JUROR NO. 466: Yes.

12 MS. JOBE: -- go through all that, correct?

13 PROSPECTIVE JUROR NO. 466: Um-h'm.

14 MS. JOBE: Is that a yes?

15 PROSPECTIVE JUROR NO. 466: Correct.

16 MS. JOBE: I apologize, only because she's --

17 PROSPECTIVE JUROR NO. 466: Yes.

18 MS. JOBE: -- typing it. And as far as prepping  
19 the patients, do you speak with the families and kind of get  
20 histories from the parents as well?

21 PROSPECTIVE JUROR NO. 466: Yes.

22 MS. JOBE: Are the histories that the parents  
23 provide, are those always accurate, as far as you know?

24 PROSPECTIVE JUROR NO. 466: Yes.

25 MS. JOBE: Okay. As far as your training and

1 experience, do you have any training with respect to burns or  
2 those types of injuries?

3 PROSPECTIVE JUROR NO. 466: No.

4 MS. JOBE: Would you be able to set aside your  
5 training and your work at the Children's Heart Specialists  
6 and listen only to the evidence presented here?

7 PROSPECTIVE JUROR NO. 466: Yes.

8 MS. JOBE: So in other words, would you be willing  
9 to weigh the evidence here, weigh the -- any testimony by  
10 experts or doctors and not substitute your knowledge for  
11 what's testified to?

12 PROSPECTIVE JUROR NO. 466: Yes.

13 MS. JOBE: Okay. You indicated you have two  
14 children; is that correct?

15 PROSPECTIVE JUROR NO. 466: Yes.

16 MS. JOBE: What are their age ranges?

17 PROSPECTIVE JUROR NO. 466: 17 and 11.

18 MS. JOBE: Okay. Anything about the fact the  
19 testimony you're going to hear and the evidence you're going  
20 to hear is related to a small child that would affect your  
21 ability if you're selected to be on the jury?

22 PROSPECTIVE JUROR NO. 466: No.

23 MS. JOBE: Any concerns about any of the questions  
24 I've asked the rest of the panel?

25 PROSPECTIVE JUROR NO. 466: No.

1 MS. JOBE: All right. What about are you more of  
2 an abstract thinker or a concrete thinker?

3 PROSPECTIVE JUROR NO. 466: Sometimes I over think  
4 things, yeah.

5 MS. JOBE: You over think? What types of things do  
6 you over think?

7 PROSPECTIVE JUROR NO. 466: Situations with my  
8 kids, yes.

9 MS. JOBE: Okay. How so? You over think what you  
10 should do or not do? Over think what's going on with them  
11 or --

12 PROSPECTIVE JUROR NO. 466: Sometimes if they -- if  
13 they come to me and ask me for certain things or can I come  
14 over here or can I come to a friend's house and I over think  
15 things. I just am, I think, over protective.

16 MS. JOBE: Okay.

17 PROSPECTIVE JUROR NO. 466: Yeah.

18 MS. JOBE: You're a mandated reporter, right,  
19 because you're in the medical field --

20 PROSPECTIVE JUROR NO. 466: Yes.

21 MS. JOBE: -- with children? Have you ever had to  
22 make a report?

23 PROSPECTIVE JUROR NO. 466: If we see things on  
24 patients that we have, like cuts, and if we see bruises, then  
25 we have to report it to one of our doctors. She's a



1 behavioral health --

2 MS. JOBE: Okay.

3 PROSPECTIVE JUROR NO. 466: -- and a psychologist  
4 so then she gets involved. And if she feels that they needs  
5 to call CPS, then we -- they're called.

6 MS. JOBE: Okay. And have you ever been involved  
7 in that process?

8 PROSPECTIVE JUROR NO. 466: We have.

9 MS. JOBE: All right.

10 PROSPECTIVE JUROR NO. 466: Yes, I have.

11 MS. JOBE: How -- how involved were you? Did you  
12 have to talk to anybody, be interviewed, or did you just pass  
13 information along to that --

14 PROSPECTIVE JUROR NO. 466: Just pass -- passed on  
15 the information to the doctor.

16 MS. JOBE: Okay. All right, thank you very much.  
17 If you could -- I've already spoken to Mr. Gaytan, and I  
18 appreciate it -- to Ms. Warren. We have spoken about you but  
19 not with you just yet. So you have lots of experience with  
20 kids, correct?

21 PROSPECTIVE JUROR NO. 470: Yes.

22 MS. JOBE: Okay. Oh, and your name and your badge  
23 number?

24 PROSPECTIVE JUROR NO. 470: Oh, sorry. Heather  
25 Warren, 470.

1 MS. JOBE: Great. And I got off track with what we  
2 have to do. You indicated you'd been arrested for  
3 obstructing a police officer, correct?

4 PROSPECTIVE JUROR NO. 470: Um-h'm.

5 MS. JOBE: Is that a yes or is a no?

6 PROSPECTIVE JUROR NO. 470: Yes.

7 MS. JOBE: Okay. Any lingering feelings about  
8 officers or detectives from that situation?

9 PROSPECTIVE JUROR NO. 470: No.

10 MS. JOBE: Okay. And you indicated there was a  
11 time your mother's car was stolen; is that correct?

12 PROSPECTIVE JUROR NO. 470: Yes.

13 MS. JOBE: Did you report that?

14 PROSPECTIVE JUROR NO. 470: She did.

15 MS. JOBE: What, if anything, came of that?

16 PROSPECTIVE JUROR NO. 470: They found -- found out  
17 it was ended up being a ring and they prosecuted.

18 MS. JOBE: Any lasting impressions, good or bad, as  
19 far as detectives go or the prosecution process from what  
20 happened with your mom's car?

21 PROSPECTIVE JUROR NO. 470: No.

22 MS. JOBE: All right. As far as when your mom's  
23 car was stolen, do you know if there were any eyewitnesses?

24 PROSPECTIVE JUROR NO. 470: I don't -- I don't  
25 recall. Its with like ten years ago.

1 MS. JOBE: Okay, and you said --

2 PROSPECTIVE JUROR NO. 470: So --

3 MS. JOBE: -- at least as far as you know it was a  
4 ring --

5 PROSPECTIVE JUROR NO. 470: Um-h'm.

6 MS. JOBE: -- of people stealing cars?

7 PROSPECTIVE JUROR NO. 470: Um-h'm.

8 MS. JOBE: Is that a yes or a no?

9 PROSPECTIVE JUROR NO. 470: Yes, sorry.

10 MS. JOBE: I'm very sorry. After our jury's  
11 settled, ya'll won't have to worry about this again. And as  
12 far as it'd be fair to say they had to piece together the  
13 information of whatever they were investigating to reach a  
14 conclusion in your mom's case?

15 PROSPECTIVE JUROR NO. 470: Yes.

16 MS. JOBE: If you had to piece together information  
17 or to reach a decision in this case, would you have any  
18 concerns or problems with that?

19 PROSPECTIVE JUROR NO. 470: No.

20 MS. JOBE: All right. Anything that we've talked  
21 about today with myself, with the panel you thought hey, I  
22 should probably weigh in on that or have any special concerns  
23 about?

24 PROSPECTIVE JUROR NO. 470: No, not that I can  
25 think of.

1 MS. JOBE: And if you were asked to deliberate with  
2 11 other individuals, would you be able okay with that  
3 process?

4 PROSPECTIVE JUROR NO. 470: Yes.

5 MS. JOBE: Would you go-along-to-get-along or would  
6 you be able to flesh out the evidence?

7 PROSPECTIVE JUROR NO. 470: No, I'd make my own  
8 decision.

9 MS. JOBE: Okay. If you could pass the microphone  
10 to, is it Pypkowski?

11 PROSPECTIVE JUROR NO. 473: Yes.

12 MS. JOBE: All right. Did I actually say that  
13 right or are you just -- okay.

14 PROSPECTIVE JUROR NO. 473: No, it's just how it  
15 looks. Pypkowski.

16 MS. JOBE: Okay. All right. You indicated you  
17 test concrete and asphalt for quality assurance, correct?

18 PROSPECTIVE JUROR NO. 473: Yes.

19 MS. JOBE: So that sounds -- I might be wrong  
20 because clearly, I don't do that, but that sounds pretty  
21 technical; is that fair?

22 PROSPECTIVE JUROR NO. 473: Somewhat, yeah.

23 MS. JOBE: What do you, generally speaking, do you  
24 have to use instruments and do readings and that kind of  
25 stuff?

1 PROSPECTIVE JUROR NO. 473: Yeah, some instruments  
2 and then a lot of math calculations.

3 MS. JOBE: Oh. Are there thresholds or protocols  
4 you have to follow in doing your quality assurance?

5 PROSPECTIVE JUROR NO. 473: Well, the test methods  
6 are clearly defined, and I'm certified on those every two  
7 years. So I have to go by the book and then report the  
8 answers correctly?

9 MS. JOBE: Okay. And is there -- are there levels  
10 or is it just a clear yes or no, it passed or didn't pass?

11 PROSPECTIVE JUROR NO. 473: It's usually a pass and  
12 didn't pass.

13 MS. JOBE: All right. And you said you are  
14 engaged, correct?

15 PROSPECTIVE JUROR NO. 473: Yes.

16 MS. JOBE: Congratulations.

17 PROSPECTIVE JUROR NO. 473: Thank you.

18 MS. JOBE: And congratulations to you as well, Ms.  
19 Warren.

20 PROSPECTIVE JUROR NO. 470: Thank you.

21 MS. JOBE: And you said your fiance's an assistant  
22 manager at Smith's?

23 PROSPECTIVE JUROR NO. 473: Yes.

24 MS. JOBE: All right. And you also indicated you  
25 have two young girls?

1 PROSPECTIVE JUROR NO. 473: Yes.

2 MS. JOBE: What's the age range?

3 PROSPECTIVE JUROR NO. 473: 12 weeks and 2-and-a-  
4 half years.

5 MS. JOBE: Getting much sleep?

6 PROSPECTIVE JUROR NO. 473: Not much.

7 MS. JOBE: All right. Has anything ever happened  
8 to your two-and-a-half-year-old where you've kind of had to  
9 sort out what happened without her being able to explain  
10 everything to you?

11 PROSPECTIVE JUROR NO. 473: Yeah, she still doesn't  
12 talk too well yet so most every day pretty much I have to do  
13 that with her.

14 MS. JOBE: And how do you go about doing that with  
15 her?

16 PROSPECTIVE JUROR NO. 473: I just look around what  
17 could have happened and, you know, look -- like if she fell  
18 down the stairs, you know, she would have a mark here.

19 MS. JOBE: Sure.

20 PROSPECTIVE JUROR NO. 473: You'd hear noises from  
21 it and stuff like that.

22 MS. JOBE: Okay. And you -- all right. And then  
23 as far as if you're selected to be a member of the jury in  
24 this case, would you have any concerns or problems with  
25 deliberating with 11 other individuals?

1 PROSPECTIVE JUROR NO. 473: No.

2 MS. JOBE: And have you ever sought a second  
3 medical opinion?

4 PROSPECTIVE JUROR NO. 473: No.

5 MS. JOBE: Any concerns listening to experts and  
6 their testimony or doctors and weighing their testimony and  
7 what they say in making a decision?

8 PROSPECTIVE JUROR NO. 473: No.

9 MS. JOBE: Would you take their testimony as --  
10 give it any more weight necessarily just because they're a  
11 doctor or just because they're an expert?

12 PROSPECTIVE JUROR NO. 473: Well, in a subject that  
13 I don't know much about, then I would have to because they're  
14 experts. But if there's something that clearly doesn't sound  
15 right, then it doesn't sound right.

16 MS. JOBE: Okay. Would you be able to listen to  
17 the testimony and make a determination as far as  
18 reasonableness of it and whether you accept it or reject it?

19 PROSPECTIVE JUROR NO. 473: Yes.

20 MS. JOBE: Okay. Fair to say they would know --  
21 obviously, they know more information about whatever they're  
22 -- well, let's do the hypothetical with you. You know more  
23 about testing concrete (inaudible) than clearly I do because  
24 I don't do it, correct?

25 PROSPECTIVE JUROR NO. 473: Yes.

1 MS. JOBE: So to some extent if you -- obviously,  
2 you have more information about the subject than someone like  
3 myself would, right?

4 PROSPECTIVE JUROR NO. 473: Yes.

5 MS. JOBE: But if you -- if you were required --  
6 this is kind of backwards, so I apologize. But if someone  
7 were to weigh your testimony as a tester of asphalt and  
8 concrete, obviously, you'd provide some facts, some knowledge  
9 they don't know about, right?

10 PROSPECTIVE JUROR NO. 473: Yes.

11 MS. JOBE: But then we still have to see if it  
12 actually makes any sense, correct?

13 PROSPECTIVE JUROR NO. 473: Yeah. Well, I would  
14 present my information in a way so that the person I'm  
15 telling it to can understand it.

16 MS. JOBE: Sure. And if you listen to doctors or  
17 experts, would you be able to discuss or assess the  
18 reasonableness of it or whether it makes sense at all to  
19 other evidence presented?

20 PROSPECTIVE JUROR NO. 473: Yes.

21 MS. JOBE: All right. I have no additional  
22 question, Your Honor, but I do have challenges.

23 THE COURT: Okay. Do you want to approach?

24 (Bench conference begins)

25 THE COURT: I usually like the challenges for cause



1 to be made when we have them.

2 MS. JOBE: Oh, I apologize, Your Honor.

3 THE COURT: That's okay.

4 MS. JOBE: I'm so sorry.

5 THE COURT: So I can rule on them.

6 MS. JOBE: We have a challenge to Ms. -- number 6,  
7 Marilyn Hernandez.

8 MS. KIERNY: We agree and would stipulate to that  
9 challenge, Your Honor, on --

10 THE COURT: So number 6?

11 MS. JOBE: Um-h'm.

12 THE COURT: Okay, so what I'm going to do right now  
13 is I'm going to let her down.

14 MS. JOBE: Okay.

15 THE COURT: I'll let -- I'll grant the challenge  
16 and then I'm going to seat the next person up.

17 MS. JOBE: Okay.

18 THE COURT: So the person who will become number 6  
19 is Belinda Hightower.

20 MS. KIERNY: Do you have any other challenges?

21 MS. JOBE: I do. The other challenge is to Ms.  
22 Pineda, seat --

23 THE COURT: Okay.

24 MS. JOBE: Ms. Pineda, seat number 2.

25 MS. KIERNY: With their uncomfortableness to judge.

1 MS. JOBE: And she said she would do a -- go along  
2 to get --

3 MS. KIERNY: Yes.

4 MS. JOBE: -- whatever the other 11 do, I would do.  
5 I tried to parse that out if she'd be able to stand --

6 MS. KIERNY: I would agree. I would stipulate.

7 THE COURT: I apologize.

8 MS. JOBE: That's okay. I'm sorry, Your Honor.  
9 Number 2, she said she'd essentially go-along-to-get-along,  
10 whatever the 11 did, she would just do. I tried to see if  
11 she would stand by her guts and she said no.

12 MS. KIERNY: I would stipulate. I would agree.

13 THE COURT: Okay. So number 6, number 2.

14 MS. JOBE: I'm sorry, Your Honor, I'm not going in  
15 any order that makes any sense, so I apologize. As to number  
16 -- seat number 1, Mr. Evans --

17 THE COURT: Uh-huh.

18 MS. JOBE: -- he said he'd have the financial  
19 difficulty of being able to pay his bills because he said he  
20 works five days a week, was calling in as a substitute. And  
21 then he also had issues with, sorry, his friends being  
22 wrongly accused. An, and so based on those, Your Honor, we  
23 would challenge for cause.

24 THE COURT: Okay. I'm not going to excuse him for  
25 the financial, but I didn't hear the second part.

1 MS. JOBE: His statements about his friends being  
2 wrongly accused of some crimes and so I would challenge for  
3 cause on him.

4 MS. KIERNY: We would -- I don't agree on that one.  
5 I would like --

6 THE COURT: Yeah.

7 MS. KIERNY: -- I know you have an issue  
8 (inaudible) I'd like a chance to try to talk to him about  
9 these issues.

10 THE COURT: And so I'm going to grant number 6 and  
11 number 2, and number 1 I'm going to overrule. And so let me  
12 put the -- I'm going to put two new jurors up.

13 MS. JOBE: I have one more, Your Honor.

14 THE COURT: Okay.

15 MS. JOBE: Mr. Lewis, number 18.

16 THE COURT: Okay.

17 MS. JOBE: Your Honor, I asked him multiple times  
18 if he'd be able to set his feelings aside about -- you asked  
19 him at the bench about his own abuse. He hemmed and hawed  
20 and couldn't give a straight answer about being able to set  
21 aside his feelings. I asked him about his feelings about law  
22 enforcement, if he'd able to set those aside, and he hemmed  
23 and hawed and couldn't give a definite yes or a definite no  
24 about it and his feelings would become part of his  
25 deliberations. He couldn't say yes or no because he couldn't

1 give a clear answer. We're challenging for cause.

2 MS. KIERNY: And I disagree. I think he did say he  
3 could try to be fair, but he had an issue if it was child  
4 sexual assault, but obviously, that is not the case here  
5 so.

6 THE COURT: Okay. I'm going to overrule that one.

7 MS. KIERNY: Thank you.

8 MS. JOBE: Okay.

9 THE COURT: But I'm going to number 2 --

10 MS. JOBE: And number 6.

11 THE COURT: You did number 2. Which one did you  
12 challenge first?

13 MS. JOBE: I did 6 first. I should have not, but.

14 THE COURT: So that will be number 6 first, number  
15 2.

16 MS. JOBE: Okay.

17 THE COURT: And then 1 and 15 is overruled.

18 MS. JOBE: Okay.

19 THE COURT: So I'll put two new jurors in there.

20 MS. KIERNY: Okay, thank you.

21 MS. JOBE: Thank you.

22 THE COURT: Thank you.

23 (Bench conference concluded)

24 THE COURT: All right. At this time, I'm going to  
25 ask Ms. Marilyn Lopez-Hernández if you'll step down out of

1 the box. And Ms. Belinda Hightower, you're going -- if  
2 you'll just step down and go sit out in the gallery. I'm  
3 sorry, I should give better instructions. I apologize. Ms.  
4 Belinda Hightower, you're going to be Juror Number 6. Ms.  
5 Lourdes Pineda, if you'll step down as well. Serkalem  
6 Woldermarian is going to become Juror Number 2.

7 THE MARSHAL: Who has the microphone, please? Can  
8 you pass the mic up here, please?

9 THE COURT: Ms. Hightower, how long have you lived  
10 in Clark County?

11 THE MARSHAL: Ms. Hightower, please.

12 PROSPECTIVE JUROR NO. 484: 20 years.

13 THE COURT: I'm sorry?

14 PROSPECTIVE JUROR NO. 484: 20 years.

15 THE COURT: Your employment, training, education  
16 background?

17 PROSPECTIVE JUROR NO. 484: High school, employment  
18 at Unilever Ice Cream Factory.

19 THE COURT: Okay, I'm sorry, I can't hear you.

20 PROSPECTIVE JUROR NO. 484: Unilever Ice Cream  
21 Factory and a high school employment -- I mean, education.

22 THE COURT: All right. Your marital status?

23 PROSPECTIVE JUROR NO. 484: Single.

24 THE COURT: Do you have children?

25 PROSPECTIVE JUROR NO. 484: One.

1 THE COURT: Is that child old enough to be  
2 employed?

3 PROSPECTIVE JUROR NO. 484: Yes.

4 THE COURT: Can you tell me what that child does  
5 in.

6 PROSPECTIVE JUROR NO. 484: He's self-employed.

7 THE COURT: And what is --

8 PROSPECTIVE JUROR NO. 484: A handyman.

9 THE COURT: Self-employed handyman. Do you know of  
10 any reason why you could not be a completely fair and  
11 impartial juror?

12 PROSPECTIVE JUROR NO. 484: I don't feel  
13 comfortable judging someone else no matter what it is.

14 THE COURT: Okay. And remember what I told you  
15 earlier, that's not necessarily disqualifying.

16 PROSPECTIVE JUROR NO. 484: I know, but I'm just  
17 saying that's how I feel.

18 THE COURT: Sure. Most people do feel a little bit  
19 uncomfortable with it. But do you have -- is there -- do you  
20 have any opinions or any beliefs that prevent you from --

21 PROSPECTIVE JUROR NO. 484: I --

22 THE COURT: Let me finish. That prevent you from  
23 serving as a juror?

24 PROSPECTIVE JUROR NO. 484: No, I just -- I've done  
25 it before, and when they asked me the questions about that,

1 I'll explain, you know, but I just --

2 THE COURT: Go ahead.

3 PROSPECTIVE JUROR NO. 484: -- don't think --

4 THE COURT: Here I am.

5 PROSPECTIVE JUROR NO. 484: I don't feel good about  
6 doing it. I did it before, and the outcome -- we didn't do  
7 it right.

8 THE COURT: Okay. You have served as a juror  
9 before?

10 PROSPECTIVE JUROR NO. 484: Yes, I have.

11 THE COURT: All right. And was that here in Clark  
12 County or elsewhere?

13 PROSPECTIVE JUROR NO. 484: Here in Clark County.

14 THE COURT: How long ago was it?

15 PROSPECTIVE JUROR NO. 484: About maybe two years  
16 ago.

17 THE COURT: About two years ago?

18 PROSPECTIVE JUROR NO. 484: Yes.

19 THE COURT: So you got a jury summons pretty  
20 quickly to come --

21 PROSPECTIVE JUROR NO. 484: Yes, I did.

22 THE COURT: -- serve again. Within two years.

23 PROSPECTIVE JUROR NO. 484: Yes.

24 THE COURT: Thank you very much for appearing. But  
25 that is pretty quick, I admit.

1 PROSPECTIVE JUROR NO. 484: Yeah, I thought about  
2 it, too, but you can't get out of it so here I am.

3 THE COURT: And you were selected, you were  
4 impaneled on that jury?

5 PROSPECTIVE JUROR NO. 484: We actually did the  
6 whole court thing.

7 THE COURT: Was that civil or criminal?

8 PROSPECTIVE JUROR NO. 484: Civil.

9 THE COURT: It was civil?

10 PROSPECTIVE JUROR NO. 484: Yes.

11 THE COURT: Okay. And you made a -- you had -- you  
12 don't feel like that was a good experience is kind of the  
13 impression I get.

14 PROSPECTIVE JUROR NO. 484: Well, I -- I mean, I'm  
15 experienced about, you know, the questions and the evidence  
16 and everything that's going to be out there, but like I said,  
17 in the end, it wasn't done right.

18 THE COURT: Okay. Why do you think it wasn't done  
19 right?

20 PROSPECTIVE JUROR NO. 484: Because everybody was  
21 ready to go. One person talked, and there it was. That was  
22 not right.

23 THE COURT: Okay. So you weren't real happy with  
24 the deliberative process?

25 PROSPECTIVE JUROR NO. 484: Exactly.



1 THE COURT: Okay. Anything about that, that would  
2 interfere with your ability to be fair and impartial if you  
3 were selected to serve here?

4 PROSPECTIVE JUROR NO. 484: See, that's what I'm  
5 saying. I'm not into it so you need to -- I'd be focused and  
6 you --

7 THE COURT: Sure.

8 PROSPECTIVE JUROR NO. 484: -- you got somebody --  
9 this is more serious. You got somebody's fate in your hand.

10 THE COURT: Sure, it's serious. I would agree with  
11 that.

12 PROSPECTIVE JUROR NO. 484: Yes, it's real serious,  
13 yes.

14 THE COURT: And if you were asked to be here, you  
15 would take it serious?

16 PROSPECTIVE JUROR NO. 484: Yeah, but like I said,  
17 I don't feel comfortable -- with this.

18 THE COURT: Sure.

19 PROSPECTIVE JUROR NO. 484: I -- I -- the other one  
20 was -- but this one is, yeah.

21 THE COURT: Okay. But you'd take --

22 PROSPECTIVE JUROR NO. 484: I don't like --

23 THE COURT: -- it serious?

24 PROSPECTIVE JUROR NO. 484: I'd have to take it  
25 serious, but I don't know how --

1 THE COURT: You'd listen to the evidence?

2 PROSPECTIVE JUROR NO. 484: -- I would act. Yeah,  
3 I -- I got to be here, so yeah, I will --

4 THE COURT: Sure.

5 PROSPECTIVE JUROR NO. 484: -- all of that, but I'm  
6 not saying that --

7 THE COURT: And since you do have experience, you  
8 know the Court gives you instructions on the law?

9 PROSPECTIVE JUROR NO. 484: Right.

10 THE COURT: You would follow the instructions on  
11 the law?

12 PROSPECTIVE JUROR NO. 484: Best I can.

13 THE COURT: Okay. And although, maybe that wasn't  
14 the most pleasant experience --

15 PROSPECTIVE JUROR NO. 484: Um-h'm.

16 THE COURT: -- would you, if you were asked to be  
17 here, would you sit here and do your duty?

18 PROSPECTIVE JUROR NO. 484: That's what I'm saying  
19 that I don't know what -- what's going to become of, you  
20 know, because we don't know nothing. I don't know if it  
21 would affect me because I've also been -- I see child abuse,  
22 and I've been abused, you know, so you just don't know, some  
23 of this stuff can hit home, and we --

24 THE COURT: Sure.

25 PROSPECTIVE JUROR NO. 484: You just don't know.

1 THE COURT: And that's why, you know, you know it  
2 wouldn't be -- we can't put a case on --

3 PROSPECTIVE JUROR NO. 484: Right.

4 THE COURT: -- try it in front of a jury panel and  
5 then raise your hand and say, can you be fair now that you've  
6 heard all the evidence?

7 PROSPECTIVE JUROR NO. 484: Right.

8 THE COURT: You understand that.

9 PROSPECTIVE JUROR NO. 484: Right.

10 THE COURT: Right?

11 PROSPECTIVE JUROR NO. 484: That's why I'm telling  
12 you now how it could go.

13 THE COURT: Right.

14 PROSPECTIVE JUROR NO. 484: Yeah.

15 THE COURT: So we have to be able to get people  
16 that regardless of what the evidence is --

17 PROSPECTIVE JUROR NO. 484: Yes.

18 THE COURT: -- that they're going to make a  
19 commitment right from the get-go that they're going to be  
20 fair and impartial to both sides and follow the law. And you  
21 understand that because you've done that before, correct?

22 PROSPECTIVE JUROR NO. 484: Right, right.

23 THE COURT: And that regardless of whether you like  
24 the evidence, don't like the evidence, I mean, sometimes you  
25 hear stuff that isn't pleasant in a courtroom. Do you have

1 any problem with that?

2 PROSPECTIVE JUROR NO. 484: I don't know. I don't  
3 know what this case is.

4 THE COURT: Okay. But you understand we can't --

5 PROSPECTIVE JUROR NO. 484: I understand, but yeah.

6 THE COURT: -- tell you what the case is first --

7 PROSPECTIVE JUROR NO. 484: Right.

8 THE COURT: -- but if you're asked to be here,  
9 you're going to follow the instructions on the law, correct?

10 PROSPECTIVE JUROR NO. 484: Yeah. I don't feel  
11 comfortable, but yes.

12 THE COURT: And you'll listen to the evidence as it  
13 comes out in the courtroom?

14 PROSPECTIVE JUROR NO. 484: Yes.

15 THE COURT: And you'll deliberate with your fellow  
16 jurors?

17 PROSPECTIVE JUROR NO. 484: Yeah.

18 THE COURT: Okay. I'm sorry, I -- maybe you're  
19 saying yes, but I -- I didn't -- I didn't understand. And  
20 was that the only other time you've ever served as a juror?

21 PROSPECTIVE JUROR NO. 484: Well, I've been -- oh,  
22 this is about my fourth time.

23 THE COURT: See.

24 PROSPECTIVE JUROR NO. 484: Not -- not being  
25 served, but -- I mean, not being on the panel, but I've come.

1 Sometimes they be like okay, they plead guilty before he got  
2 up here.

3 THE COURT: All right.

4 PROSPECTIVE JUROR NO. 484: This is long -- you  
5 know, a while back.

6 THE COURT: But just one time where you've  
7 actually --

8 PROSPECTIVE JUROR NO. 484: I served.

9 THE COURT: -- been here?

10 PROSPECTIVE JUROR NO. 484: Um-h'm.

11 THE COURT: And you sat through a case, correct?

12 PROSPECTIVE JUROR NO. 484: Right.

13 THE COURT: All right. So if you were picked on  
14 this panel, it would be your second time, correct?

15 PROSPECTIVE JUROR NO. 484: Right.

16 THE COURT: Okay. Have you or anyone close to you  
17 such as a family member or friend ever been the victim of a  
18 crime?

19 PROSPECTIVE JUROR NO. 484: Yes. I had a brother  
20 murdered.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR NO. 484: In California.

23 THE COURT: I'm sorry.

24 PROSPECTIVE JUROR NO. 484: Yes.

25 THE COURT: And how long ago was that?

1 PROSPECTIVE JUROR NO. 484: It's been about nine,  
2 ten years now.

3 THE COURT: Okay. And obviously, the police were  
4 involved?

5 PROSPECTIVE JUROR NO. 484: Yes.

6 THE COURT: Did they find the person?

7 PROSPECTIVE JUROR NO. 484: Yeah, they got him. It  
8 was gang related where gang banging getting initiated into a  
9 gang.

10 THE COURT: Okay. And was that person prosecuted?

11 PROSPECTIVE JUROR NO. 484: That's where it's all  
12 crazy. By being in California, we was not really told when  
13 the trial was or none of that. We end up have to keep  
14 calling, keep calling, and come to find, yeah, they got him.

15 THE COURT: Okay. So the person --

16 PROSPECTIVE JUROR NO. 484: But it was handled  
17 crazy.

18 THE COURT: All right. The person was apprehended,  
19 and the way it was handled was, to quote you, "crazy".

20 PROSPECTIVE JUROR NO. 484: Yes.

21 THE COURT: Why -- tell me why you --

22 PROSPECTIVE JUROR NO. 484: Because we should have  
23 been -- that was our brother and we should --

24 THE COURT: Sure.

25 PROSPECTIVE JUROR NO. 484: -- have been notified

1 what's going on step by step by step.

2 THE COURT: I -- I --

3 PROSPECTIVE JUROR NO. 484: Not calling and --

4 THE COURT: -- agree with you.

5 PROSPECTIVE JUROR NO. 484: -- finding out, you  
6 know, because we might have wanted to be there, which we  
7 would. It's just in California. And we didn't go to no  
8 trial or nothing.

9 THE COURT: Okay. So do you know if it went to  
10 trial?

11 PROSPECTIVE JUROR NO. 484: Yeah, it went to trial.

12 THE COURT: All right. And --

13 PROSPECTIVE JUROR NO. 484: We had a family member  
14 down there that was -- was keeping up, but we needed to know  
15 when was the trial so we could at least have been there.

16 THE COURT: Did the family member that was there  
17 keeping up with it call to tell you to come down for the  
18 trial?

19 PROSPECTIVE JUROR NO. 484: No, and they never got  
20 notified. That's what they -- we talked to some detective.  
21 I don't even know who he is, but he right off the bat, and I  
22 just threw -- threw it up like it was a cold case, but he  
23 promised us that he was going to find out what happened, and  
24 -- and he did.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR NO. 484: Yeah.

2 THE COURT: And so they actually apprehended a  
3 person, that person went to trial and they were convicted?

4 PROSPECTIVE JUROR NO. 484: Yeah.

5 THE COURT: And then what happened? I mean, they  
6 were sentenced.

7 PROSPECTIVE JUROR NO. 484: Yeah.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 484: To prison.

10 THE COURT: And do you know -- did you -- do you  
11 know what the sentence was?

12 PROSPECTIVE JUROR NO. 484: No, I don't -- we don't  
13 know anything. We just know that it went to trial and they  
14 got caught. That's why we was saying, we needed to be  
15 notified. You supposed to notify families.

16 THE COURT: Sure. But you don't know what the  
17 result was or what any --

18 PROSPECTIVE JUROR NO. 484: We don't know --

19 THE COURT: -- punishment was?

20 PROSPECTIVE JUROR NO. 484: -- anything. We just  
21 that they, you know, the guy said we did -- I did hear him  
22 talk -- matter of fact, we was on three-way. I'm here, she's  
23 in California, and she got him on the phone letting him know  
24 that I am on the phone.

25 THE COURT: Okay.



1 PROSPECTIVE JUROR NO. 484: And so that's how we  
2 find out that he -- they did get caught, but we don't know  
3 anything else. I'm like, well, that was crazy. It was a  
4 trial, we should have been there.

5 THE COURT: Sure. Anything about that, that would  
6 affect your ability to be fair and impartial in this --

7 PROSPECTIVE JUROR NO. 484: That's why saying --

8 THE COURT: -- case?

9 PROSPECTIVE JUROR NO. 484: -- I'm -- I'm just --  
10 this is -- I don't know. I don't -- I can't even speak on  
11 that.

12 THE COURT: Okay. Well, you're the only one who  
13 can tell me.

14 PROSPECTIVE JUROR NO. 484: I know.

15 THE COURT: Anything about that experience that  
16 would affect your ability to be fair and impartial in this  
17 case?

18 PROSPECTIVE JUROR NO. 484: All I can say I'm going  
19 to try, but I just -- like I said, this is -- this is some  
20 serious -- the one I was in, it wasn't like this.

21 THE COURT: Okay. I agree. You obviously,  
22 understand the seriousness of it.

23 PROSPECTIVE JUROR NO. 484: Yes.

24 THE COURT: Okay? All right? Is there anything  
25 about your experience with your brother's case that's going

1 to interfere with your ability to be fair and impartial to  
2 the parties here because as you've noted, this is serious?

3 PROSPECTIVE JUROR NO. 484: Yes. I'm going to  
4 say --

5 THE COURT: Anything?

6 PROSPECTIVE JUROR NO. 484: -- very much it could.  
7 It very well could.

8 THE COURT: What could?

9 PROSPECTIVE JUROR NO. 484: Affect the way that I  
10 look at this case.

11 THE COURT: Okay, how so?

12 PROSPECTIVE JUROR NO. 484: Like I said, it depends  
13 on what -- what's going on with, you know, because --

14 THE COURT: Okay. Well, you understand that this  
15 case has to be judged by the evidence and what happens in  
16 this courtroom, correct?

17 PROSPECTIVE JUROR NO. 484: Right.

18 THE COURT: You don't know much. In fact, kind of  
19 sounds like you don't know much about anything about what  
20 happened in that case, right?

21 PROSPECTIVE JUROR NO. 484: Right.

22 THE COURT: Okay. So you'll be able to set that  
23 aside and judge this case solely upon what you --

24 PROSPECTIVE JUROR NO. 484: I should --

25 THE COURT: -- see --

1 PROSPECTIVE JUROR NO. 484: -- be able to set that  
2 aside. Like I said, I'll try.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 484: But --

5 THE COURT: I need to know if you'll be able to set  
6 that aside and judge this case solely upon what you see and  
7 hear in the courtroom and the instructions on the law; can  
8 you do that?

9 PROSPECTIVE JUROR NO. 484: I can try. That's all  
10 I can tell you.

11 THE COURT: Okay. Well, here's another -- here's  
12 what I can tell you. I can't wait until you go back into the  
13 jury deliberation room for jurors to make up their mind. I  
14 need jurors that can tell me now before we get started. And  
15 you understand the importance of that, correct?

16 PROSPECTIVE JUROR NO. 484: Right, correct.

17 THE COURT: So are you a juror that can follow the  
18 instructions on the law as given to you by the Court?

19 PROSPECTIVE JUROR NO. 484: Yeah, I can.

20 THE COURT: Okay. And you can judge this case  
21 based on the evidence that you see and hear in the courtroom;  
22 is that correct?

23 PROSPECTIVE JUROR NO. 484: Yes.

24 THE COURT: Okay. Have you or anyone close to you,  
25 such as a family member or friend ever been accused of a

1 crime?

2 PROSPECTIVE JUROR NO. 484: Not that I know of. I  
3 don't know. No.

4 THE COURT: Okay. Thank you. Ms. Woldermariam.  
5 Did I pronounce your name correctly?

6 PROSPECTIVE JUROR NO. 491: Yes.

7 THE COURT: Okay. How long have you lived in Clark  
8 County?

9 PROSPECTIVE JUROR NO. 491: 14 years.

10 THE COURT: Your employment history?

11 PROSPECTIVE JUROR NO. 491: I work -- before I work  
12 at the MGM.

13 THE COURT: Okay, I can't hear you. So you're  
14 going to have to speak up.

15 PROSPECTIVE JUROR NO. 491: I work at the MGM  
16 before. Right now I work at Planet Hollywood.

17 THE COURT: Do you mind standing up. I mean, I  
18 can't even -- unfortunately, I can't even see your mouth.  
19 Thank you. Now, where do you work?

20 PROSPECTIVE JUROR NO. 491: Right now I work at the  
21 Planet Hollywood.

22 THE COURT: Okay. What do you do?

23 PROSPECTIVE JUROR NO. 491: A hostess.

24 THE COURT: Okay. Your education background?

25 PROSPECTIVE JUROR NO. 491: High school degree plus

1 a little college.

2 THE COURT: Are you married?

3 PROSPECTIVE JUROR NO. 491: Yes.

4 THE COURT: Is your spouse employed?

5 PROSPECTIVE JUROR NO. 491: Yes.

6 THE COURT: What does your spouse do for a living?

7 PROSPECTIVE JUROR NO. 491: He's a butler.

8 THE COURT: A bouncer?

9 PROSPECTIVE JUROR NO. 491: Butler.

10 THE COURT: I'm sorry?

11 PROSPECTIVE JUROR NO. 491: A butler.

12 THE COURT: A butler? Do you have children?

13 PROSPECTIVE JUROR NO. 491: No.

14 THE COURT: Do you know of any reason why you could  
15 not be a completely fair and impartial juror if you were  
16 selected to serve?

17 PROSPECTIVE JUROR NO. 491: I never do and it make  
18 me nervous right now.

19 THE COURT: Sure.

20 PROSPECTIVE JUROR NO. 491: Yeah.

21 THE COURT: Any reason why you could not be a  
22 completely fair and impartial juror?

23 PROSPECTIVE JUROR NO. 491: In my religion, I  
24 believe in forgiveness, so it's hard it's going to be for me.

25 THE COURT: Okay. In your religion you believe in

1 forgiveness?

2 PROSPECTIVE JUROR NO. 491: Yes.

3 THE COURT: No problem.

4 PROSPECTIVE JUROR NO. 491: Yeah.

5 THE COURT: That doesn't disqualify you for -- from  
6 being a juror. Any reason -- do you know of any reason why  
7 you could not be a completely fair and impartial juror?

8 PROSPECTIVE JUROR NO. 491: As I told you, it's  
9 going to be hard to judge someone because I raised, still am  
10 believe in, forgiveness.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR NO. 491: So it's going to be  
13 hard to me, whatever evidence you bring I can't decide, and I  
14 can't judge him.

15 THE COURT: Okay, I'm not sure I understand you.  
16 If you're asked to sit here and serve as a juror, you're  
17 going to sit here and listen to a case, correct?

18 PROSPECTIVE JUROR NO. 491: Yeah, I can listen, but  
19 I can't decide. I can't say nothing.

20 THE COURT: You can't deliberate?

21 PROSPECTIVE JUROR NO. 491: Yeah, I can't because  
22 I --

23 THE COURT: Why not?

24 PROSPECTIVE JUROR NO. 491: -- I told you, I  
25 believe in forgiveness.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 491: I've raise, since I  
3 born.

4 THE COURT: Forgiveness doesn't prevent you from  
5 deliberating.

6 PROSPECTIVE JUROR NO. 491: I didn't believe in  
7 judge someone whatever that's has happened.

8 THE COURT: Okay. Forgiveness doesn't -- none of  
9 those issues prevent you from serving as a juror; do you  
10 understand that?

11 PROSPECTIVE JUROR NO. 491: Yeah, I believe -- I  
12 didn't believe in that interest by judging someone or putting  
13 something on that person. That's my problem.

14 THE COURT: You don't believe in doing jury duty?

15 PROSPECTIVE JUROR NO. 491: Some cases, yeah,  
16 because I can't.

17 THE COURT: Okay. What religious belief do you  
18 have that interferes with your ability to do jury duty?

19 PROSPECTIVE JUROR NO. 491: Excuse me?

20 THE COURT: Okay. I'm not sure I understand you.  
21 You understand as citizens we all have certain duties. One  
22 of the most important duties that we all have as citizens is  
23 to respond to a jury summons when we get it to come to the  
24 courthouse and to serve. And so we've been here all day just  
25 trying to get a panel of members of our community that will

1 sit and listen to a case.

2 PROSPECTIVE JUROR NO. 491: I can sit and --

3 THE COURT: I don't have -- there's no -- unless  
4 you're tell -- forgiveness, judgment, none of those things  
5 interfere with your ability to sit as a juror. The only  
6 thing I want to know; is there any reason why you cannot be  
7 fair and impartial to the State of Nevada or to the defendant  
8 here?

9 PROSPECTIVE JUROR NO. 491: No.

10 THE COURT: There's no reason? Is that a no?

11 PROSPECTIVE JUROR NO. 491: Yeah, there is no  
12 reason.

13 THE COURT: Okay. Have you ever served as a juror  
14 before?

15 PROSPECTIVE JUROR NO. 491: No.

16 THE COURT: Have you or anyone close to you, such  
17 as a family member or a friend ever been the victim of a  
18 crime?

19 PROSPECTIVE JUROR NO. 491: No.

20 THE COURT: Have you or anyone close to you, such  
21 as a family member or friend, ever been accused of a crime?

22 PROSPECTIVE JUROR NO. 491: No.

23 THE COURT: Thank you. State of Nevada.

24 MS. JOBE: I apologize, Ma'am, how do I say your  
25 last name?



1 PROSPECTIVE JUROR NO. 491: Woldermariam.

2 MS. JOBE: Okay. Ms. Woldermariam, when the Judge  
3 was asking you questions, you said you wouldn't be able to  
4 reach a decision. What do you mean by that?

5 PROSPECTIVE JUROR NO. 491: I don't know how to  
6 explain.

7 THE MARSHAL: Can you speak directly into the  
8 microphone, please, so that the recorder can hear you.

9 PROSPECTIVE JUROR NO. 491: I don't know how to  
10 explain, but it is hard for me sitting and talking, it's  
11 making me nervous.

12 MS. JOBE: I -- and I apologize. I apologize that  
13 we have to put you all on the spot and ask you these  
14 questions. But as the Judge says, both sides want someone  
15 who can be fair and impartial to both sides, right?

16 PROSPECTIVE JUROR NO. 491: Um-h'm.

17 MS. JOBE: You said when the Judge was asking you  
18 questions that you wouldn't be able to deliberate; is that  
19 fair as to what you said?

20 PROSPECTIVE JUROR NO. 491: Yeah.

21 MS. JOBE: And why wouldn't you be able to  
22 deliberate?

23 PROSPECTIVE JUROR NO. 491: I don't know, I can't.

24 MS. JOBE: Can we approach, Your Honor?

25 (Bench conference begins).

1 THE COURT: I left her there because I got the  
2 impression she did not want to be here. That was clear, but  
3 that she would do it if she was asked to.

4 MS. JOBE: For the State she never unequivocally --  
5 she never said she could deliberate. She -- the only thing  
6 she said was --

7 THE COURT: I'll be happy to ask her again.

8 MS. JOBE: I'm just -- I asked to approach because  
9 her eyes are welling up with tears and --

10 THE COURT: And then that happens, and guess what  
11 else is going to happen? We're going to fall apart.

12 MS. JOBE: I know.

13 THE COURT: If alls you have to do is shed a few  
14 tears, I'm going to have to call the Jury Commissioner and  
15 get another panel.

16 MS. JOBE: Okay. I will keep asking questions.

17 THE COURT: Clearly, I don't think she wants to be  
18 here, but --

19 MS. JOBE: I appreciate that, but --

20 THE COURT: -- I think --

21 MS. JOBE: -- it's the State's understanding there  
22 has to be an equivocal yes or no you can or can't reach a  
23 decision. As of now she said no.

24 THE COURT: I'll be happy to ask her again.

25 MS. JOBE: Okay.

1 THE COURT: Okay.

2 (Bench conference concluded)

3 THE COURT: Ms. Woldermarian --

4 PROSPECTIVE JUROR NO. 491: Yes.

5 THE COURT: -- one of the questions that I asked  
6 you previously is, you understand that if you're asked to  
7 serve on this jury panel, you'll have to sit in here and  
8 listen to evidence, correct?

9 PROSPECTIVE JUROR NO. 491: Yeah.

10 THE COURT: And at some point the jury will be  
11 excused to go back into the deliberation room to deliberate  
12 upon a verdict. Do you understand that?

13 PROSPECTIVE JUROR NO. 491: Can you repeat?

14 THE COURT: I'm --

15 PROSPECTIVE JUROR NO. 491: Can you repeat for me,  
16 please?

17 THE COURT: Yeah. If you're asked to serving as a  
18 juror, you'll be required to sit in here and listen to the  
19 evidence by both sides. Do you understand that?

20 PROSPECTIVE JUROR NO. 491: Yeah.

21 THE COURT: And you'll do that, correct?

22 PROSPECTIVE JUROR NO. 491: Uh-huh.

23 THE COURT: And then, at some point, the jury will  
24 be -- I'm sorry, the jury will be excused by myself to go  
25 back into a room to deliberate upon a verdict based upon the

1 instructions on the law, which will be given to you by  
2 myself. If you're asked to be on the jury, will you go back  
3 with your fellow jurors and deliberate upon the verdict,  
4 based on the instructions?

5 PROSPECTIVE JUROR NO. 491: Yeah.

6 THE COURT: I'm sorry?

7 PROSPECTIVE JUROR NO. 491: Yes.

8 THE COURT: Yes? Thank you.

9 MS. JOBE: Thank you, Your Honor. During those  
10 deliberations, would you be able to engage with the other 11  
11 people and talk about the evidence so everybody reaches a  
12 decision together?

13 PROSPECTIVE JUROR NO. 491: If I understand.

14 MS. JOBE: What do you mean if I understand?

15 PROSPECTIVE JUROR NO. 491: English is my second  
16 language. If I understand what -- what they speak.

17 MS. JOBE: What is your first language, Ma'am?

18 PROSPECTIVE JUROR NO. 491: Amharic.

19 MS. JOBE: I'm sorry?

20 PROSPECTIVE JUROR NO. 491: Amharic.

21 MS. JOBE: How old were you when you learned  
22 English?

23 PROSPECTIVE JUROR NO. 491: We take English as one  
24 subject. We're not speaking, we're not doing anything -- we  
25 (inaudible) as a subject.

1 MS. JOBE: Okay. You seem actually pretty  
2 articulate. How long have you been in the United States?

3 PROSPECTIVE JUROR NO. 491: 14.

4 MS. JOBE: 14 years?

5 PROSPECTIVE JUROR NO. 491: Um-h'm.

6 MS. JOBE: Okay. And you stated that you work at  
7 the -- at Planet Hollywood now --

8 PROSPECTIVE JUROR NO. 491: Um-h'm.

9 MS. JOBE: -- is that correct?

10 PROSPECTIVE JUROR NO. 491: Yeah.

11 MS. JOBE: Okay.

12 THE MARSHAL: I'm sorry, counselor. Ma'am, can you  
13 speak up and speak directly into the microphone?

14 PROSPECTIVE JUROR NO. 491: Okay.

15 THE MARSHAL: She can't hear you.

16 THE COURT: I'm having a hard time hearing you, and  
17 I'm probably the most important one that has to hear you. So  
18 if you don't mind standing up so I can hear you. Sorry.

19 MS. JOBE: When you interact with your spouse, do  
20 you speak English or do you speak a foreign language with  
21 your spouse?

22 PROSPECTIVE JUROR NO. 491: My language.

23 MS. JOBE: Okay. So not English? And I apologize,  
24 I would say it, but I'm going to mispronounce, which is why I  
25 don't want to disrespect you by mispronouncing it.

1 And your friends and people you spend time with in  
2 Las Vegas, do you speak English or do you speak your native  
3 language?

4 PROSPECTIVE JUROR NO. 491: My language.

5 MS. JOBE: Okay. As a host, you interact with  
6 players and people at the hotel, correct?

7 PROSPECTIVE JUROR NO. 491: No, I'm restaurant  
8 hostess, not the host.

9 MS. JOBE: I'm sorry?

10 PROSPECTIVE JUROR NO. 491: I work in the  
11 restaurant.

12 MS. JOBE: Oh, I see. And what do you do at the  
13 restaurant?

14 PROSPECTIVE JUROR NO. 491: Hostess.

15 MS. JOBE: So you seat people, get the number of  
16 people in a party, that kind of stuff?

17 PROSPECTIVE JUROR NO. 491: Yeah.

18 MS. JOBE: Okay. Now, you talked about how  
19 forgiveness, it would be hard for you to be on the jury; is  
20 that correct?

21 PROSPECTIVE JUROR NO. 491: Um-h'm.

22 THE COURT: Is that a yes?

23 PROSPECTIVE JUROR NO. 491: Yes.

24 MS. JOBE: What would be hard about that?

25 PROSPECTIVE JUROR NO. 491: I forgived, so I have

1 to forgive. I believe in that.

2 MS. JOBE: Sure, but you understand this case isn't  
3 about whether or not someone's deserving of forgiveness or  
4 should be forgiven, it's about whether or not something  
5 happened?

6 PROSPECTIVE JUROR NO. 491: Um-h'm.

7 MS. JOBE: Do you understand that?

8 PROSPECTIVE JUROR NO. 491: Yeah, even though the  
9 things happen, I believe in forgiveness.

10 MS. JOBE: Sure.

11 PROSPECTIVE JUROR NO. 491: That's what I'm saying.  
12 I'm telling you.

13 MS. JOBE: Sure, but the -- the job of the jury is  
14 to decide if something happened or didn't happen.  
15 Forgiveness or punishment or not punishment is a different  
16 day, a different issue.

17 PROSPECTIVE JUROR NO. 491: Um-h'm.

18 MS. JOBE: Do you understand that?

19 PROSPECTIVE JUROR NO. 491: Yeah.

20 MS. JOBE: And do you -- would you be able to set  
21 that aside and make a decision based on the evidence in the  
22 case if something happened or didn't happen?

23 PROSPECTIVE JUROR NO. 491: It's hard, but I'll  
24 try. It's not easy.

25 MS. JOBE: Well, what do you see your role in,

1 then, in your forgiveness in this case?

2 PROSPECTIVE JUROR NO. 491: I believe, in the  
3 second chance. That's --

4 MS. JOBE: Well, do you believe people should be  
5 held accountable if they do something wrong?

6 PROSPECTIVE JUROR NO. 491: If they learn, why not  
7 we give them second chance? I believe in that.

8 MS. JOBE: Okay. And do you think it's the jury's  
9 job, then, to give the second chance or to give the benefit  
10 of the doubt?

11 PROSPECTIVE JUROR NO. 491: That's my believing,  
12 not about the rest of the people.

13 MS. JOBE: Okay. And would you be able to set  
14 aside that belief and make a determination based on the  
15 evidence in the case if something happened or didn't happen?

16 PROSPECTIVE JUROR NO. 491: I have to. I don't  
17 have choice.

18 MS. JOBE: Okay. Choice or not, would you actually  
19 be able to do that?

20 PROSPECTIVE JUROR NO. 491: I'll try.

21 MS. JOBE: Because as the Judge said, we don't want  
22 people going back into the deliberation room after they hear  
23 the evidence and then say I can't do it. Do you understand  
24 why that would be a problem? Is that a yes or a no?

25 PROSPECTIVE JUROR NO. 491: Yes.



1 MS. JOBE: And that is just because she's typing  
2 everything down. As you sit here today, since you speak of  
3 forgiveness, are you leaning towards the State or towards the  
4 defense? Where do you sit?

5 PROSPECTIVE JUROR NO. 491: To decide that, I have  
6 to listen what you have.

7 MS. JOBE: Okay.

8 PROSPECTIVE JUROR NO. 491: Without listen, how I  
9 going to --

10 MS. JOBE: As you sit here today and look at both  
11 sides, which side are you concerned about for forgiveness?

12 PROSPECTIVE JUROR NO. 491: The other side.

13 MS. JOBE: Okay. And why do you think you have any  
14 -- why is forgiveness your issue with this case?

15 PROSPECTIVE JUROR NO. 491: Not only this case, for  
16 every case, if I -- if something happen in my life, I choose  
17 to forgive instead of to go further something.

18 MS. JOBE: Sure, but if you're selected as a juror,  
19 what happened in this case isn't your life. You are an  
20 outside person asked to make a decision if something happened  
21 or didn't happen. Do you understand?

22 PROSPECTIVE JUROR NO. 491: Um-h'm.

23 MS. JOBE: Is that a yes or a no?

24 PROSPECTIVE JUROR NO. 491: Yes.

25 MS. JOBE: And would you be trying to extend

1 forgiveness to -- you indicated to the defense?

2 PROSPECTIVE JUROR NO. 491: I might.

3 MS. JOBE: And would that affect your  
4 deliberations, your ability to reach guilty, not guilty?

5 PROSPECTIVE JUROR NO. 491: Yeah.

6 MS. JOBE: If the Judge told you, you couldn't do  
7 that, what would you do?

8 PROSPECTIVE JUROR NO. 491: Couldn't means?

9 MS. JOBE: That you can't consider whether or not  
10 you'd give forgiveness or don't give forgiveness to the State  
11 or the defense, what would you do?

12 PROSPECTIVE JUROR NO. 491: If I don't have choice,  
13 I'll sit and listen and I'll see what's going to be happen.

14 MS. JOBE: Okay. May we approach?

15 THE COURT: Sure.

16 (Bench conference begins)

17 THE COURT: Is there a challenge for cause?

18 MS. JOBE: There is, Your Honor. She will not give  
19 an unequivocal will not --

20 MS. KIERNY: (Inaudible).

21 MS. JOBE: -- (indiscernible) forgiveness -- my  
22 apologies, one second. I'm almost done.

23 MS. KIERNY: Oh, sorry.

24 MS. JOBE: And she said that she can't say because  
25 she'll only try to set aside forgiveness, but as she sits

1 here today, if anyone's going to get forgiveness, it's going  
2 to be the defense, and that's not part of the deliberative  
3 process and since she can't unequivocally say she'd set that  
4 aside and deliberate, the State challenges for cause.

5 MS. KIERNY: I don't know if this is something that  
6 she's doing -- that she's saying she can't (inaudible) and  
7 sticking to it or this is really her belief. I mean, she's  
8 saying --

9 THE COURT: Well, I've got to --

10 MS. HOLIDAY: -- she's told you that she can be --

11 THE COURT: She's under oath. I've got to take her  
12 at her word.

13 MS. KIERNY: Well, I mean, she told you she can sit  
14 and she can deliberate and --

15 MS. JOBE: She said multiple times, though, that  
16 she can't, and she can't set it aside.

17 THE COURT: Yeah. At this time, I'm going to grant  
18 the challenge for cause. Number 2 is going to be Lynis  
19 Lehne.

20 MS. JOBE: Okay.

21 THE COURT: Okay?

22 MR. BURTON: Thank you, Your Honor.

23 (Bench conference concluded).

24 THE COURT: Ms. Woldermarlam, I'm going to ask you  
25 to step down out of the box. Lynis Lehne, you're going to

1 become juror number 2. Thank you very much for being here,  
2 and thank you. I know that the -- the day is getting long.

3 How long have you lived in Clark County?

4 PROSPECTIVE JUROR NO. 493: 12 years.

5 THE COURT: Your employment, training, education  
6 background?

7 PROSPECTIVE JUROR NO. 493: Some college,  
8 unemployed.

9 THE COURT: What was the last job you had?

10 PROSPECTIVE JUROR NO. 493: Bio skills lab.

11 THE COURT: What did you do?

12 PROSPECTIVE JUROR NO. 493: Front of house work.

13 THE COURT: I'm sorry?

14 PROSPECTIVE JUROR NO. 493: Front of house.

15 THE COURT: Okay. Your marital status?

16 PROSPECTIVE JUROR NO. 493: Single.

17 THE COURT: Do you have children?

18 PROSPECTIVE JUROR NO. 493: Yes.

19 THE COURT: How many?

20 PROSPECTIVE JUROR NO. 493: One child, six years.

21 THE COURT: Do you know of any reason why you could  
22 not be a completely fair and impartial juror if you were  
23 selected to serve on this panel?

24 PROSPECTIVE JUROR NO. 493: No.

25 THE COURT: Have you ever served as a juror before?

1 PROSPECTIVE JUROR NO. 493: No.

2 THE COURT: Have you or anyone close to you, such  
3 as a family member, or a friend, ever been the victim of a  
4 crime?

5 PROSPECTIVE JUROR NO. 493: Yes.

6 THE COURT: Why don't you tell me about that.

7 PROSPECTIVE JUROR NO. 493: My father experienced a  
8 home invasion last year.

9 THE COURT: Was that here in Clark County?

10 PROSPECTIVE JUROR NO. 493: Yes.

11 THE COURT: Did he call the police?

12 PROSPECTIVE JUROR NO. 493: Yes.

13 THE COURT: And the police responded?

14 PROSPECTIVE JUROR NO. 493: Yes.

15 THE COURT: Did they take a report?

16 PROSPECTIVE JUROR NO. 493: Yes.

17 THE COURT: How involved were you in this incident?

18 PROSPECTIVE JUROR NO. 493: I heard about it on the  
19 news and then through my family.

20 THE COURT: Okay. So it was of such magnitude that  
21 it was picked up on the local news?

22 PROSPECTIVE JUROR NO. 493: Yes.

23 THE COURT: All right. Did they catch the person?

24 PROSPECTIVE JUROR NO. 493: No.

25 THE COURT: What made it, I guess, newsworthy that

1 it got picked up on the news?

2 PROSPECTIVE JUROR NO. 493: Probably because  
3 they're elderly.

4 THE COURT: Oh, I'm sorry.

5 PROSPECTIVE JUROR NO. 493: Thank you.

6 THE COURT: And so the police responded and all  
7 that, and they -- did they ever catch him?

8 PROSPECTIVE JUROR NO. 493: No.

9 THE COURT: So it's a -- still an open case?

10 PROSPECTIVE JUROR NO. 493: Yes, to my knowledge.

11 THE COURT: All right. Do you ever any  
12 communication with the police that are involved in that case?

13 PROSPECTIVE JUROR NO. 493: No.

14 THE COURT: All right. Anything about that case  
15 that would affect your ability to be fair and impartial in  
16 this case?

17 PROSPECTIVE JUROR NO. 493: No.

18 THE COURT: All right. Have you or anyone close to  
19 you such as a family member or friend ever been accused of a  
20 crime?

21 PROSPECTIVE JUROR NO. 493: No.

22 THE COURT: Okay. Thank you very much. I'll turn  
23 the juror over to the State of Nevada.

24 MS. JOBE: Thank you, Your Honor. Ms. Lehne, the  
25 situation with your father, do you know what -- do you have

1 any questions or any concerns about the efforts the  
2 detectives took to try to solve the case?

3 PROSPECTIVE JUROR NO. 493: No.

4 MS. JOBE: And is that -- I believe, you said a  
5 cousin who's also a detective with Metro?

6 PROSPECTIVE JUROR NO. 493: Yes.

7 MS. JOBE: Okay. But you weren't sure which  
8 division; is that fair?

9 PROSPECTIVE JUROR NO. 493: Correct.

10 MS. JOBE: So it sounds like you probably don't  
11 talk about work with your cousin that much?

12 PROSPECTIVE JUROR NO. 493: Correct.

13 MS. JOBE: Anything about your father's situation  
14 or your cousin in Metro that would affect your ability to be  
15 fair and impartial?

16 PROSPECTIVE JUROR NO. 493: No.

17 MS. JOBE: Would you give any more or less weight  
18 to testimony of an officer or a detective simply by the fact  
19 that they are an officer or a detective with Metro?

20 PROSPECTIVE JUROR NO. 493: No.

21 MS. JOBE: What about medical experts and other  
22 experts, do you have any concerns listening to their  
23 testimony, weighing the reasonableness of it, and making a  
24 decision as to what to think about or how it fits into the  
25 case if it does at all?

1 PROSPECTIVE JUROR NO. 493: No.

2 MS. JOBE: What about deliberating with 11 other  
3 individuals, Ma'am?

4 PROSPECTIVE JUROR NO. 493: No problem.

5 MS. JOBE: Does your daughter -- she's a minor,  
6 correct?

7 PROSPECTIVE JUROR NO. 493: Yes. Kindergarten.

8 MS. JOBE: I think you've indicated she was little  
9 -- I'm sorry?

10 PROSPECTIVE JUROR NO. 493: She's in kindergarten.

11 MS. JOBE: All right. So anything about the fact  
12 that you have to listen to a case involving a child that it  
13 would affect your ability to be fair and impartial?

14 PROSPECTIVE JUROR NO. 493: No.

15 MS. JOBE: Anything I've covered with all the other  
16 jurors in this process that is so foreign to everyone that  
17 you thought, I need to respond to that or tell them that or  
18 the Court should probably know some information?

19 PROSPECTIVE JUROR NO. 493: No.

20 MS. JOBE: Pass for cause. Oh, I can ask the other  
21 one?

22 THE COURT: Uh-huh.

23 MS. JOBE: Okay. All right. Pass the microphone  
24 down to -- I left my cheat sheet at my desk. Ms., it's  
25 Hightower, correct?



1 PROSPECTIVE JUROR NO. 484: Yes.

2 MS. JOBE: And what's your badge number, Ma'am?

3 PROSPECTIVE JUROR NO. 484: 484.

4 MS. JOBE: Thank you, Ma'am. All right. It sounds  
5 like you have had an interesting experience with jury  
6 service; is that fair?

7 PROSPECTIVE JUROR NO. 484: Correct.

8 MS. JOBE: Okay. You said that when it came time  
9 to deliberate in the case where you were selected to be on  
10 the juror (sic) , one person spoke and a decision was made;  
11 is that -- was that fair memory of what you said fair?

12 PROSPECTIVE JUROR NO. 484: That's what we did.

13 MS. JOBE: Okay.

14 PROSPECTIVE JUROR NO. 484: Was it fair? No.

15 MS. JOBE: Okay. Did you participate? So does --  
16 were you the person who spoke or --

17 PROSPECTIVE JUROR NO. 484: No.

18 MS. JOBE: Okay. Was it kind of a go-along-to-get-  
19 along thing just --

20 PROSPECTIVE JUROR NO. 484: Exactly.

21 MS. JOBE: Okay. And it sounds like you wouldn't  
22 do that again if you had to relive that situation; is that  
23 fair?

24 PROSPECTIVE JUROR NO. 484: Correct. Possible.  
25 I'm not going to say.

1 MS. JOBE: Okay.

2 THE COURT: Well, you don't seem like a pushover.  
3 You don't seem like someone that will just sit there and be  
4 told what to do to me.

5 PROSPECTIVE JUROR NO. 484: Well, he didn't tell us  
6 what to do. He wrote down whatever and we just went along  
7 with it and left.

8 MS. JOBE: Okay.

9 PROSPECTIVE JUROR NO. 484: No, he didn't tell us  
10 what to do. Like she said, a go along, and that's what  
11 happened.

12 MS. JOBE: Okay.

13 THE COURT: And when you say "he", who are you  
14 talking about?

15 PROSPECTIVE JUROR NO. 484: One of the juror people  
16 that was with us.

17 THE COURT: Like the foreperson?

18 PROSPECTIVE JUROR NO. 484: B'm?

19 THE COURT: The foreperson?

20 PROSPECTIVE JUROR NO. 484: No. One of the jurors.  
21 When we went in the room --

22 THE COURT: Right.

23 PROSPECTIVE JUROR NO. 484: -- to deliberate, yeah.

24 THE COURT: Did you elect that person the  
25 foreperson?

1 PROSPECTIVE JUROR NO. 484: Oh, okay, yeah. Yes.

2 THE COURT: Okay. Could it have been the  
3 foreperson was doing his job?

4 PROSPECTIVE JUROR NO. 484: Could he have been  
5 doing his job?

6 THE COURT: Right, because the foreperson is  
7 elected to kind of lead the discussion and be your  
8 spokesperson in court, correct?

9 PROSPECTIVE JUROR NO. 484: Yes, but no, that's not  
10 how it -- like I told you, when we went in there, we just  
11 whatever he did, that's what we went along with, and we left.  
12 And I explained to you, that's not how it goes.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR NO. 484: So I told you, it was  
15 done all wrong.

16 THE COURT: See, you don't have any problem telling  
17 me what's what, right?

18 PROSPECTIVE JUROR NO. 484: Yeah.

19 THE COURT: Okay. So --

20 PROSPECTIVE JUROR NO. 484: Because I -- me -- you  
21 -- what we talking about as far as this is somebody's fate.

22 THE COURT: I agree.

23 PROSPECTIVE JUROR NO. 484: The other -- like I  
24 told you, this is serious. That right there was, we  
25 decided --

1 THE COURT: Did -- did you think that because it  
2 was a civil case and maybe what was at issue wasn't serious  
3 so maybe the jurors didn't take it as serious as they should?

4 PROSPECTIVE JUROR NO. 484: Yes, exactly. That's  
5 why I said, we just whatever he said, we went along with it.  
6 We -- we should have discussed, like you supposed to --

7 THE COURT: Sure.

8 PROSPECTIVE JUROR NO. 484: -- you know.

9 THE COURT: Okay. But if you're selected to be on  
10 this panel, we don't have to worry about that happening,  
11 right?

12 PROSPECTIVE JUROR NO. 484: We got to discuss --  
13 supposed to discuss things.

14 THE COURT: Right. You'll deliberate with your  
15 fellow jurors?

16 PROSPECTIVE JUROR NO. 484: I'll just probably sit  
17 there and listen to them. I -- like I told you, it's hard  
18 for me to try to have somebody's fate in my hand. I don't --

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 484: I don't like that.

21 THE COURT: But you -- understanding the  
22 significance, you would deliberate with your fellow jurors,  
23 correct?

24 PROSPECTIVE JUROR NO. 484: I would be in there  
25 listening to what they say.

1 THE COURT: Okay. And would they be listening to  
2 what you have to say?

3 PROSPECTIVE JUROR NO. 484: I probably wouldn't say  
4 anything.

5 THE COURT: Why is that?

6 PROSPECTIVE JUROR NO. 484: Because I'm -- I don't  
7 know, I just probably wouldn't.

8 THE COURT: Because if you were -- if you were on  
9 this jury and you went back there to deliberate and you had  
10 opinions and things you wanted made known, how would you make  
11 that known to your fellow jurors?

12 PROSPECTIVE JUROR NO. 484: I -- I just probably  
13 wouldn't -- I'm not a talker or none of that. In school we  
14 had to give reports, I -- I didn't do none of that.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 484: I didn't like to be in  
17 that, doing stuff like that.

18 THE COURT: All right. So do we have to worry that  
19 you maybe won't deliberate?

20 PROSPECTIVE JUROR NO. 484: That I won't say  
21 anything?

22 THE COURT: Well, in order to deliberate, I think  
23 deliberation takes words.

24 PROSPECTIVE JUROR NO. 484: Oh, okay.

25 THE COURT: I mean, I don't know how you can

1 deliberate without talking.

2 PROSPECTIVE JUROR NO. 484: Oh, okay.

3 THE COURT: Do you understand that?

4 PROSPECTIVE JUROR NO. 484: Yeah.

5 THE COURT: Okay. And if you are -- if you serve  
6 on this jury, you'd be required to deliberate, you know, talk  
7 to your other jurors, read the instructions, go through the  
8 evidence. Is that something you can do?

9 PROSPECTIVE JUROR NO. 484: I'd try. I don't know,

10 THE COURT: Okay. I mean, if you're not  
11 deliberating, what are you going to do?

12 PROSPECTIVE JUROR NO. 484: Be listening to them  
13 because I -- I can't --

14 THE COURT: Okay. I don't want to make you think  
15 that -- deliberation most importantly requires listening.  
16 Okay? Deliberation does require listening. So that's very  
17 important. You would listen to your fellow jurors. However,  
18 your opinion is just as important as any other juror,  
19 correct?

20 PROSPECTIVE JUROR NO. 484: Yes.

21 THE COURT: And you would make that opinion known?

22 PROSPECTIVE JUROR NO. 484: I don't know. Like I  
23 said, I -- I don't get into that. I just would listen to  
24 what's -- what's going on, because I can't put his fate in my  
25 hand.

1 THE COURT: Okay, listen, I mean, it doesn't sound  
2 like you want to be here. Okay? So I don't know how else I  
3 can say this I don't know how many different ways. You  
4 know --

5 PROSPECTIVE JUROR NO. 484: You said --

6 THE COURT: -- what it's like to be a juror. You  
7 have no problem communicating back and forth with me. I --  
8 if you're selected to be on this jury panel, are you a juror  
9 that would go back and deliberate with your fellow jurors?

10 PROSPECTIVE JUROR NO. 484: I supposed to. Yes, I  
11 will go back.

12 THE COURT: Thank you..

13 MS. JOBE: You said I will go back, but will you  
14 actually participate in the process?

15 PROSPECTIVE JUROR NO. 484: And just what, people  
16 asking questions and going over the same thing; is that what  
17 you talking about?

18 MS. JOBE: To reach a decision about whether  
19 something happened -- the guilty or not guilty decision?

20 PROSPECTIVE JUROR NO. 484: Okay, yeah, I can do  
21 that.

22 MS. JOBE: Okay. And you said multiple times that  
23 it sounds like you don't want to be responsible for someone's  
24 fate?

25 PROSPECTIVE JUROR NO. 484: Fate, right.

1 MS. JOBE: Okay. And why is that a concern to you?

2 PROSPECTIVE JUROR NO. 484: Because I'm -- I'm -- I  
3 don't believe in judging people either.

4 MS. JOBE: Why don't you believe in judging people?

5 PROSPECTIVE JUROR NO. 484: Because I just don't.

6 MS. JOBE: Okay. The American judicial system,  
7 think about it whatever you may, but this is the process that  
8 was established by our four fathers and in every state --

9 PROSPECTIVE JUROR NO. 484: I understand that.

10 MS. JOBE: -- in the country; do you understand  
11 that?

12 PROSPECTIVE JUROR NO. 484: Um-h'm.

13 MS. JOBE: And so, obviously, there has to be some  
14 mechanism of figuring out someone should be as guilty or not  
15 guilty and then punishment is up to the Judge. Do you have  
16 concerns with that?

17 PROSPECTIVE JUROR NO. 484: No.

18 MS. JOBE: Okay. Would you give the extra benefit  
19 or extra anything to either the State or the defense when you  
20 go back to deliberate because of your, you keep saying you  
21 don't want to have someone's fate in your hands?

22 PROSPECTIVE JUROR NO. 484: No, I would listen -- I  
23 wouldn't do no extras. I'll just listen to what we have  
24 there, and think about it and decide my own decision of what  
25 I think it should go.



1 MS. JOBE: Okay. And if it isn't going the way you  
2 think it should go, what would you do?

3 PROSPECTIVE JUROR NO. 484: I would let them know I  
4 don't think that's right and that's it. I'm not going to  
5 argue with nobody.

6 MS. JOBE: Would you go-along-to-get-along just to  
7 be done?

8 PROSPECTIVE JUROR NO. 484: Not in -- no, not in  
9 this case.

10 MS. JOBE: Okay.

11 PROSPECTIVE JUROR NO. 484: No.

12 MS. JOBE: As you sit here today, are both sides  
13 equally situated as far as being fair and impartial to both  
14 sides?

15 PROSPECTIVE JUROR NO. 484: I guess, yeah.

16 MS. JOBE: Well, would you -- you said you thought  
17 you got it wrong in the civil case, right?

18 PROSPECTIVE JUROR NO. 484: I said we didn't do it  
19 right.

20 MS. JOBE: Okay, you didn't do it right. Would you  
21 try to make up for that in the deliberations here?

22 PROSPECTIVE JUROR NO. 484: No. That's long gone.

23 MS. JOBE: Okay. And as far as being able to make  
24 a decision, would you be able to make a decision if you only  
25 hear evidence from the State and there's no defense put on?

1 PROSPECTIVE JUROR NO. 484: I don't know.

2 MS. JOBE: Okay. Would you need to hear from the  
3 defense in order to make a decision?

4 PROSPECTIVE JUROR NO. 484: Probably.

5 MS. JOBE: Why do you say that?

6 PROSPECTIVE JUROR NO. 484: And a witness, too. So  
7 I can make my decision be more standable -- understandable to  
8 me, too.

9 MS. JOBE: Okay. Would you be able to draw  
10 inferences from evidence, or would you be able to make a  
11 decision only if there was an eyewitness?

12 PROSPECTIVE JUROR NO. 484: Eyewitness and  
13 evidence.

14 MS. JOBE: Under the American Constitution of the  
15 United States of America the defense doesn't have to put on  
16 any witnesses, doesn't have to say anything. Like I said  
17 earlier this afternoon, I mean, they can play -- I don't  
18 think people are playing Pokemon Go anymore, but if they  
19 wanted to, they could sit there and play Pokemon or whatever  
20 they wanted to on their phones and the State still has to  
21 carry the burden with the evidence. Do you have any issues  
22 with that?

23 PROSPECTIVE JUROR NO. 484: No.

24 MS. JOBE: Okay. And now, as far as wanting to  
25 hear from both sides, where do you stand on that?

1 PROSPECTIVE JUROR NO. 484: It would be nice to  
2 hear from both sides.

3 MS. JOBE: Okay.

4 PROSPECTIVE JUROR NO. 484: Two sides to a story.

5 MS. JOBE: Could you make a decision without  
6 hearing from both sides?

7 PROSPECTIVE JUROR NO. 484: I could --

8 MS. JOBE: Let me ask the question --

9 PROSPECTIVE JUROR NO. 484: -- if I don't have no  
10 choice, yeah.

11 MS. JOBE: Would you?

12 PROSPECTIVE JUROR NO. 484: Yes. I don't have a  
13 choice, if it's just one side.

14 MS. JOBE: Okay. And after you've heard everything  
15 the Judge has said to you and all of my questions, would you  
16 be able to go back and deliberate and participate in that  
17 process?

18 PROSPECTIVE JUROR NO. 484: Yes.

19 MS. JOBE: You kind of sound a little -- you don't  
20 sound happy about it.

21 PROSPECTIVE JUROR NO. 484: I mean, I don't have no  
22 choice.

23 MS. JOBE: Okay. Court's indulgence. Pass for  
24 cause.

25 THE COURT: Okay. At this time, we're going to

1 conclude for the day. We're going to start tomorrow morning  
2 at 10:30. Everybody that's here will be required to come  
3 back tomorrow morning at 10:30. The people that are sitting  
4 in the box, the 24, don't even bother asking if you have to  
5 come back because you have to come back.

6 The 24 that are sitting in the box, if you'll  
7 please remember where you're sitting because when you come  
8 in, I'm going to ask that you --

9 THE MARSHAL: Don't shake your head no --

10 THE COURT: -- all sit in the same --

11 THE MARSHAL: Or I'll give you a free stay and  
12 you'll be here tomorrow. If you're not here at 10:30, trust  
13 me, I'll come find you.

14 THE COURT: Okay.

15 MS. HOLIDAY: Your Honor, may we approach briefly  
16 before you excuse the jurors for the day?

17 UNIDENTIFIED PROSPECTIVE JUROR: Another day of no  
18 money more my son.

19 MS. HOLIDAY: Do you mind?

20 THE COURT: Sure.

21 (Bench conference begins)

22 THE COURT: Listen, I'm just trying to wind it down  
23 because I was told somebody had to leave.

24 MS. JOBE: I agree. We appreciate that.

25 MS. HOLIDAY: Thank you.

1 We appreciate that, thank you. I know that Your  
2 Honor plans on hearing argument on the motion tomorrow. If  
3 Your Honor decides to grant the evidentiary --

4 THE COURT: I'm bringing this jury back at 10:30.  
5 I mean, you're delaying -- you think this needs to delay the  
6 jury coming back tomorrow?

7 MS. HOLIDAY: I just wonder if we end up having an  
8 evidentiary hearing, if the jury's going to have to sit out  
9 in the hallway for a couple of hours or an hour or --

10 THE COURT: They're going to be selected anyways.  
11 But I want to get this jury selected. I mean, the defense  
12 hasn't even had a chance unless you're just going to pass --

13 MS. JOBE: Would you like --

14 THE COURT: -- the panel for cause --

15 MS. HOLIDAY: I agree.

16 THE COURT: -- and we're going to go.

17 MS. HOLIDAY: No.

18 THE COURT: That's what I thought.

19 MS. HOLIDAY: No.

20 THE COURT: Okay, thank you.

21 (Bench conference concluded)

22 THE COURT: Tomorrow when you come back to the  
23 courthouse, you come to the 14th floor. I ask that you do  
24 not come in the courtroom because we'll be in session. When  
25 it's time for you to come in, Officer Hawkes will come greet

1 you. I just want to remind you that we can't start until  
2 everybody is here.

3 During this recess, you're admonished not to talk  
4 or converse amongst yourselves or with anyone else on any  
5 subject connected with this trial, or read, watch or listen  
6 to any report of over commentary on the trial or any person  
7 connected with this trial by any medium of information,  
8 including without limitation, newspapers, television, the  
9 Internet or radio. Or form or express any opinion on any  
10 subject connected with this trial until the case is finally  
11 submitted to you.

12 Thank you very much for your willingness to be here  
13 today, for your courtesy in answering my questions. At this  
14 time, you are excused until tomorrow morning. Thank you.

15 THE MARSHAL: Thank you. All rise for the exiting  
16 jury panel.

17 THE COURT: The attorneys are not permitted to have  
18 any communication with the members of the jury panel unless  
19 we're in here and on the record.

20 (Outside the presence of the prospective jurors)

21 MS. JOBE: If I could just make a brief record,  
22 Your Honor.

23 THE COURT: Sure. The record will reflect that the  
24 hearing is taking place outside the presence of the jury  
25 panel.

1 MS. JOBE: Just respect to the juror 19, he said  
2 multiple times, can I talk to her? All I said to him was  
3 you're going to have to talk to -- and then you interrupted  
4 so I just wanted it to be clear I didn't --

5 THE COURT: Right.

6 MS. JOBE: -- say anything to him about whatever it  
7 is he wants to talk to Your Honor about. I was just  
8 directing him to the Marshal.

9 THE COURT: Sure. Apparently, he wanted to talk --  
10 I thought he wanted to talk to you, that's why I interrupted  
11 him.

12 MS. JOBE: I appreciate that, Your Honor.

13 THE COURT: Okay. Anything?

14 MS. KIERNY: I don't think there was any  
15 misconduct.

16 MS. HOLIDAY: I just -- no, I just wanted to ask  
17 Your Honor if we should be prepared to go forward with the  
18 hearing on the State's motion tomorrow morning at 10:30 with  
19 our expert or if we're going to finish picking the jury --

20 THE COURT: You should be ready to finish --

21 MS. HOLIDAY: -- first?

22 THE COURT: -- picking a jury.

23 MS. JOBE: Okay.

24 MS. HOLIDAY: Finish picking the jury first and  
25 then we'll have the hearing when we're done?

1 THE COURT: Uh-huh.

2 MS. HOLIDAY: Okay. Thank you, Your Honor.

3 THE COURT: Thank you.

4 MR. BURTON: Thank you, Your Honor.

5 (Court recessed at 4:54 P.M., until Tuesday,

6 January 10, 2017, at 11:02 A.M.)

7 \* \* \* \* \*

8 ATTEST: I hereby certify that I have truly and correctly  
9 transcribed the audio/visual proceedings in the above-  
10 entitled case to the best of my ability.

11

12

*Julie Lord*

13

14

JULIE LORD, INDEPENDENT TRANSCRIBER

15

16

17

18

19

20

21

22

23

24

25



*Steven D. Grierson*

TRAN

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

|                      |   |                        |
|----------------------|---|------------------------|
| THE STATE OF NEVADA, | . | CASE NO. C-16-313047-1 |
|                      | . |                        |
| Plaintiff,           | . | DEPT. NO. XII          |
|                      | . |                        |
| vs.                  | . | TRANSCRIPT OF          |
|                      | . | PROCEEDINGS            |
| DONOVINE MATHEWS,    | . |                        |
|                      | . |                        |
| Defendant.           | . |                        |
| .....                | . |                        |

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

EVIDENTIARY HEARING  
JURY TRIAL - DAY 2

TUESDAY, JANUARY 10, 2017

|                    |   |
|--------------------|---|
| FOR THE PLAINTIFF: | CHRISTOPHER F. BURTON, ESQ.<br>MICHELLE Y. JOBE, ESQ.<br><i>Deputy District Attorneys</i> |
| FOR THE DEFENDANT: | KRISTY S. HOLIDAY, ESQ.<br>CARLI L. KIERNY, ESQ.<br><i>Deputy Public Defenders</i>        |

COURT RECORDER:

KRISTINE SANTI  
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.

INDEXEVIDENTIARY HEARINGDEFENDANT'S WITNESSES:DR. LINDSAY DUTCH JOHNSON

Direct examination by Ms. Holiday . . . . . 74\*

*\*Testimony outside the presence of the jury.*

\* \* \* \* \*

JURY TRIAL

STATE'S OPENING STATEMENT BY MS. JOBE . . . . . 161

DEFENDANT'S OPENING STATEMENT BY KIERNY . . . . . 171

WITNESSESSTATE'S WITNESSES:OFFICER JOHN BETHARD

Direct examination by Mr. Burton . . . . . 177

Cross-examination by Ms. Holiday . . . . . 188

JASMIN CATHCART

Direct examination by Mr. Burton . . . . . 190

\* \* \* \* \*

EXHIBITS

| <u>DESCRIPTION</u> | <u>ADMITTED</u> |
|--------------------|-----------------|
|--------------------|-----------------|

STATE'S EXHIBITS:

|  |     |
|--|-----|
| Exhibits 3 through 13 (by stipulation) . . . . . | 214 |
| Exhibits 14 through 25. . . . .                  | 222 |
| Exhibits 33 and 34. . . . .                      | 237 |
| Exhibit 53. . . . .                              | 235 |
| Exhibit 76. . . . .                              | 213 |

1 LAS VEGAS, NEVADA, TUESDAY, JANUARY 10, 2017, 11:02 A.M.

2 (Inside the presence of the prospective jurors)

3 THE MARSHAL: Thank you. Everyone please be  
4 seated.

5 All rise. Judicial District Court, Department 12  
6 is now in session. The Honorable Michelle Leavitt,  
7 presiding. Come to order and be seated, please.

8 THE COURT: Does the State stipulate to the  
9 presence of the jury panel?

10 MS. JOBE: Yes, Your Honor.

11 THE COURT: The defense?

12 MS. HOLIDAY: Yes, Your Honor.

13 THE COURT: Okay. The State having passed the  
14 panel for cause, the defense. --

15 MS. KIERNY: Thank you, Your Honor.

16 THE COURT: -- may voir dire.

17 MS. KIERNY: Good morning, ladies and gentlemen.  
18 I'm Carli I'm Donovan's other attorney who hasn't spoken so  
19 I'm going to speak now.

20 I'm going to start with the topic that Michelle  
21 touched on, especially with you Mr. Figuered, and kind of ask  
22 a couple of different questions about that. So can anyone  
23 any of a situation where you had to go back in time and  
24 figure out what happened in an event where you have  
25 conflicting information? For example, at my house, two kids,

1 they break things, you got to figure out who broke it.  
2 Anything have anything like that that they want to volunteer?  
3 Otherwise, I can start calling. All right, Mr. Alvaro, you  
4 laughed so can you think of a similar situation?

5 THE MARSHAL: Hang on.

6 PROSPECTIVE JUROR NO. 373: Yes.

7 THE MARSHAL: Name and badge number, please.

8 PROSPECTIVE JUROR NO. 373: Okay.

9 MS. KIERNY: Randy, keep after me on that. I'm  
10 pretty bad at it.

11 PROSPECTIVE JUROR NO. 373: Alvaro Herrera, No.  
12 373.

13 MS. KIERNY: All right.

14 PROSPECTIVE JUROR NO. 373: With my daughters as  
15 well, I have 14-year-old and a 7-year-old, and so there's --  
16 there's always a lot of head butting going on --

17 MS. KIERNY: Okay.

18 PROSPECTIVE JUROR NO. 373: -- where the little one  
19 may do something and the other one -- the older one gets on  
20 her case and so I got to determine, you know, what --

21 MS. KIERNY: Who started it?

22 PROSPECTIVE JUROR NO. 373: -- what the deal is,  
23 exactly.

24 MS. KIERNY: All right.

25 PROSPECTIVE JUROR NO. 373: Yeah, yeah.

1 MS. KIERNY: And what's like the first thing that  
2 you look to?

3 PROSPECTIVE JUROR NO. 373: Just question both of  
4 them, pretty much.

5 MS. KIERNY: So you need both --

6 PROSPECTIVE JUROR NO. 373: You know, what's the  
7 deal, yeah.

8 MS. KIERNY: -- sides -- so -- both stories.

9 PROSPECTIVE JUROR NO. 373: What's going on and --

10 MS. KIERNY: Okay.

11 PROSPECTIVE JUROR NO. 373: -- yeah, exactly and --

12 MS. KIERNY: Anything else you look for?

13 PROSPECTIVE JUROR NO. 373: Just you know how they  
14 react and stuff. You know, the way they say it or to  
15 determine if they're lying or --

16 MS. KIERNY: Okay.

17 PROSPECTIVE JUROR NO. 373: -- if I could pick up  
18 on that, I think.

19 MS. KIERNY: All right.

20 PROSPECTIVE JUROR NO. 373: Yeah.

21 MS. KIERNY: In that situation, would anyone look  
22 for physical evidence? Anyone? No hands. Thank you,  
23 Mr. Herrera. Could you pass the mic to Mr. Figuered? Do you  
24 remember you were asked about this situation yesterday?

25 PROSPECTIVE JUROR NO. 454: 454. Bryan Figuered.

1 MS. KIERNY: Oh, sorry. You're way better at this  
2 than I am. All right.

3 PROSPECTIVE JUROR NO. 454: Asked about what?

4 MS. KIERNY: About a situation involving children  
5 where you had to go back and figure out what happened and who  
6 you would talk to?

7 PROSPECTIVE JUROR NO. 454: A situation?

8 MS. KIERNY: Um-h'm. Can you think of a situation  
9 where you had to go back in time and figure out what  
10 happened, even though you might have had conflicting reports?  
11 Maybe with kids or at work managing people?

12 PROSPECTIVE JUROR NO. 454: Well, work is constant.  
13 It's -- as I fix things at work, maintenance, so it's a  
14 constant everyday process of seeing, you know, what the  
15 situation is physically and then verbally with others.

16 MS. KIERNY: Okay.

17 PROSPECTIVE JUROR NO. 454: Every day, day in and  
18 day out.

19 MS. KIERNY: And how did you start that process of  
20 figuring out what's going on?

21 PROSPECTIVE JUROR NO. 454: Just observation.

22 MS. KIERNY: Okay.

23 PROSPECTIVE JUROR NO. 454: First of all.

24 MS. KIERNY: Observation. And then what?

25 PROSPECTIVE JUROR NO. 454: Listening to details.

1 MS. KIERNY: All right. After you listen to  
2 details?

3 PROSPECTIVE JUROR NO. 454: Start --

4 MS. KIERNY: What else?

5 PROSPECTIVE JUROR NO. 454: -- putting a picture  
6 together.

7 MS. KIERNY: Okay. Now, what if you can't figure  
8 out who did something wrong?

9 PROSPECTIVE JUROR NO. 454: Most of the times it  
10 doesn't matter. When it involves security or something like  
11 that, then we have to be very detailed and figure out exactly  
12 what happened, and a lot of times people get charged money  
13 and that sort of thing.

14 MS. KIERNY: Sure. So like let's say at home, if  
15 between your kids, you can't figure out what happened, do you  
16 know which -- who do you (inaudible) on it?

17 PROSPECTIVE JUROR NO. 454: You don't always get a  
18 chance to figure out what happened exactly.

19 MS. KIERNY: Okay.

20 PROSPECTIVE JUROR NO. 454: Most of the time you  
21 can, but of course, you punish the ones that are guilty, you  
22 know --

23 MS. KIERNY: But if you can't figure out?

24 PROSPECTIVE JUROR NO. 454: -- so they learn a  
25 lesson. If you can't figure it out, then I talk to both of

1 them or all three, whoever's involved.

2 MS. KIERNY: Of course. So if you can't figure out  
3 -- you don't know exactly what happened, do you punish anyone  
4 or do you punish everyone? What's your go-to on that?

5 PROSPECTIVE JUROR NO. 454: There's going to be a  
6 punishment.

7 MS. KIERNY: Okay. So everybody's getting  
8 punished?

9 PROSPECTIVE JUROR NO. 454: Yes.

10 MS. KIERNY: All right. I see. I heard some  
11 laughs. Does anyone disagree with that? Does anyone think  
12 no one should be punished in that situation? No hands. All  
13 right.

14 You've heard from the State that they're going to  
15 be calling a lot of officers and they're going to be calling  
16 a lot of medical professionals, doctors, okay? As we all  
17 know, police officers investigate crime for a living and  
18 they've seen a lot of situations, different situations  
19 involving, you know, alleged crimes. Is anyone going to give  
20 an officer's testimony more credit, you know, if they walk in  
21 here with their uniform on, they've got their badge, is  
22 anyone going to give them more credit just because they're an  
23 officer? Okay. Mr. Evans.

24 THE MARSHAL: Can we get the microphone over to  
25 him, please.



1 PROSPECTIVE JUROR NO. 363: Timothy Evans, 363. In  
2 certain situations I would, especially when it comes to  
3 investigation --

4 MS. KIERNY: Okay.

5 PROSPECTIVE JUROR NO. 363: -- because like you  
6 said, they're professionals. Like, as a lawyer, if you came  
7 in and you were talking about something that was -- you're a  
8 professional on, I'm going to give you more credibility  
9 because you've gone to school, you've been taught that. Just  
10 like me, I have a degree in real estate.

11 If someone asked me -- and someone that was sitting  
12 next to me didn't have a degree in real estate, they would  
13 probably look at me to have more information on that because  
14 that's what I do, or that's what I went to school for. Just  
15 as, you know, some people on this panel are actual teachers  
16 and I'm a sub. I would go to her for more information about  
17 subbing than I would from -- I mean, about teaching than I  
18 would -- or I would refer someone to that person more than  
19 myself because they have more years of experience and they  
20 know what they're doing rather than me, that's someone that's  
21 getting their feet wet.

22 MS. KIERNY: All right.

23 PROSPECTIVE JUROR NO. 363: So I would give them  
24 more credibility because based on that.

25 MS. KIERNY: And that's a very thoughtful answer,

1 and I really appreciate it. There's going to be kind of an  
2 instruction that all witnesses who walk through this door  
3 should start on equal footing with you. Are you -- would you  
4 be able to follow that instruction?

5 PROSPECTIVE JUROR NO. 363: With that aspect, no,  
6 because that's -- my mentality is that as a -- like, I grew  
7 up on that mentality. Like, I grew up in school -- I was  
8 taught that mentality in school --

9 MS. KIERNY: Okay.

10 PROSPECTIVE JUROR NO. 363: -- you know, if --  
11 especially in real estate where I can't ask an appraiser to  
12 go sell a house because they don't know anything about that,  
13 and I couldn't do that. So subconsciously I'm going to do  
14 it. It's not something that you practice or something like  
15 that. It's just like you've been taught to do that so much  
16 that you subconsciously just do it.

17 MS. KIERNY: Sure. So for someone that's, you  
18 know, qualified as maybe a medical expert, if they give you  
19 an opinion --

20 PROSPECTIVE JUROR NO. 363: Um-h'm.

21 MS. KIERNY: -- and a different expert gives a  
22 differing opinion, how would you resolve that if they're both  
23 supposedly experts in their field?

24 PROSPECTIVE JUROR NO. 363: Depending on where  
25 they're -- if they're both in the same field, then it's kind

1 of -- you kind of give them -- you start them off on the same  
2 ground, but say if one's a pediatrics and one's an OB/GYN,  
3 well, a pediatric doctor's going to know a little bit more  
4 about something with children than an OB/GYN would know about  
5 that.

6 So in that aspect, it would be -- for me it would  
7 be a subconscious thing.

8 MS. KIERNY: Okay. So for you it's all about the  
9 titles?

10 PROSPECTIVE JUROR NO. 363: Yeah, it's about --

11 MS. KIERNY: What their title is?

12 PROSPECTIVE JUROR NO. 363: -- it's about --  
13 because I -- for me it's what did you -- you're a  
14 professional in that --

15 MS. KIERNY: Okay.

16 PROSPECTIVE JUROR NO. 363: -- so you need -- if  
17 you're -- if that's what you do, then I expect you to know  
18 more. That's just me -- that's -- like I said, it's a  
19 subconscious thing. It's not something I -- it's not  
20 something that I --

21 MS. KIERNY: Sure.

22 PROSPECTIVE JUROR NO. 363: -- want to do. It's  
23 just something that happens.

24 MS. KIERNY: Okay. And I appreciate you telling us  
25 that. Does anyone agree with Mr. Evans? If someone comes in

1 here that's an expert in a certain field, you're  
2 automatically going to believe them more than another  
3 witness? All right. Could you pass the mic down to  
4 Mr. Gaytan?

5 PROSPECTIVE JUROR NO. 467: Tom Gaytan, 467.

6 MS. KIERNY: Thank you. Go ahead.

7 PROSPECTIVE JUROR NO. 467: I -- I agree with him  
8 just from the standpoint that they would know -- they're more  
9 educated and would know more about what they're talking about  
10 in that particular field --

11 MS. KIERNY: Okay.

12 PROSPECTIVE JUROR NO. 467: -- than say, would I.  
13 So anything both would be saying, I would take into  
14 consideration, but if they have the exact same titles and  
15 they're totally disagreeing, then I'd look for a third  
16 opinion at that point.

17 MS. KIERNY: And if you don't get that third  
18 opinion, how do you make up your mind? What do you look for  
19 in those two opinions you were given?

20 PROSPECTIVE JUROR NO. 467: It would have to be in  
21 the details and the evidence.

22 MS. KIERNY: Okay. There are going to be doctors  
23 called as well. Now, if a doctor has an opinion that you  
24 think doesn't agree with, you know, your life experience,  
25 common sense, do you feel comfortable disagreeing with that

1 doctor?

2 PROSPECTIVE JUROR NO. 467: Based on what evidence  
3 he's saying that oh, yeah.

4 MS. KIERNY: Okay. If you don't think that the  
5 evidence fits what the doctor might be saying, would you be  
6 -- feel comfortable not concluding the same way as the doctor  
7 has?

8 PROSPECTIVE JUROR NO. 467: If that's the -- if  
9 that's the outcome, sure.

10 MS. KIERNY: Okay. I'm going to ask you to pass  
11 the microphone to Ms. Rodriguez. I understand that you are a  
12 -- you work in a Children's Heart Center and you help prep  
13 patients, correct?

14 PROSPECTIVE JUROR NO. 466: Yes.

15 MS. KIERNY: All right. And so before they can see  
16 the doctor, you have -- you take -- do you take their vitals?

17 PROSPECTIVE JUROR NO. 466: Yes.

18 MS. KIERNY: And what would that include?

19 PROSPECTIVE JUROR NO. 466: We do EKGs, weigh them,  
20 do blood pressures.

21 MS. KIERNY: All right. So you want to get -- and  
22 that's because you want to get as much information --

23 PROSPECTIVE JUROR NO. 466: And --

24 MS. KIERNY: -- for the doctor?

25 PROSPECTIVE JUROR NO. 466: Yes, and medical

1 history information, yes.

2 MS. KIERNY: Okay. On that medical history  
3 information, if someone -- if you had -- if the doctor has  
4 information that's incorrect, what could happen?

5 PROSPECTIVE JUROR NO. 466: Well, we'd be  
6 diagnosing the patient wrong or --

7 MS. KIERNY: Okay. So that would lead to wrongful  
8 diagnosis. Can anyone else think how -- think what could  
9 lead to a doctor wrongfully diagnosing a situation? Could  
10 you pass that back to Ms. Ibay?

11 PROSPECTIVE JUROR NO. 425: It --

12 MS. KIERNY: And I'm sorry, name and badge number?

13 PROSPECTIVE JUROR NO. 425: Yeah.

14 MS. KIERNY: I remembered.

15 PROSPECTIVE JUROR NO. 425: 0425, Damaris Ibay. It  
16 really starts with the -- with the staff, like whether  
17 they're medical assistants who are going to do the beginnings  
18 of it, blood pressure, temperature, everything that needs to  
19 get done has to get done before the doctor sees the patient.

20 If there's an error and it's the error of the MA's  
21 or the NA's, then the doctor will have to diagnose whatever  
22 information he has. But if it's wrong and they did a  
23 mistake, then that's on them. That's not the doctor's fault.  
24 That's the medical assistant or whatever --

25 MS. KIERNY: Sure.

1 PROSPECTIVE JUROR NO. 425: -- title they have.

2 MS. KIERNY: So a doctor's --

3 PROSPECTIVE JUROR NO. 425: So --

4 MS. KIERNY: -- diagnosis, in your opinion --

5 PROSPECTIVE JUROR NO. 425: Yeah.

6 MS. KIERNY: -- is only as good as the information  
7 they get?

8 PROSPECTIVE JUROR NO. 425: Yes.

9 MS. KIERNY: Would everyone agree with that  
10 statement?

11 UNIDENTIFIED PROSPECTIVE JUROR: Yeah.

12 MS. KIERNY: Okay. And I'm going to open this up  
13 to the panel. Like I said, there's going to be some doctors  
14 called. Is anybody automatically just going to listen to  
15 what a doctor says and not question what they say simply  
16 because they're a doctor and, you know, they got that white  
17 coat?

18 PROSPECTIVE JUROR NO. 425: No, I'm --

19 MS. KIERNY: Any -- not for you? Okay. And  
20 Mr. Pypkowski's shaking his head. Does anyone disagree with  
21 what I said? That you would -- you would not question a  
22 doctor? Okay. Oh, besides Mr. Evans, who we've already  
23 discussed and would you pass the mic back to Mr. Evans.

24 PROSPECTIVE JUROR NO. 363: I wouldn't say that I  
25 would just automatically just disagree, but it's also comes

1 down to like the evidence sometimes. Like, I guess, I would  
2 say I'm a -- like, I have a technical and bold type of  
3 personality, so I'm not afraid to challenge stuff.

4 MS. KIERNY: Okay.

5 PROSPECTIVE JUROR NO. 363: So it's like that  
6 doesn't make sense to me. And I -- and sitting here we won't  
7 be able to get -- ask questions or anything like that so my  
8 whole time I get stuck on stuff. So --

9 MS. KIERNY: Of course. (Inaudible).

10 PROSPECTIVE JUROR NO. 363: -- if I -- something  
11 like doesn't make sense to me, I'm going to sit here and I  
12 might blank out for a minute because I'm going to be like  
13 that -- his last statement doesn't make sense. Like, that  
14 doesn't make sense.

15 MS. KIERNY: All right.

16 PROSPECTIVE JUROR NO. 363: So I'm that type of --

17 THE COURT: Okay. Sir, you understand as jurors,  
18 jurors will be permitted to ask questions --

19 PROSPECTIVE JUROR NO. 363: Oh, I didn't know that.

20 THE COURT: -- if they have questions of specific  
21 witnesses. Does that help you?

22 MS. KIERNY: You can like write down a question --

23 THE COURT: I don't want you to blank out.

24 MS. KIERNY: -- and send it to the expert if you  
25 have a question.



1 PROSPECTIVE JUROR NO. 363: I mean, I might. It's  
2 just like I said, it's just -- it's something that I'll  
3 probably be the one that ask a lot of did -- because if I  
4 don't understand something, I'm going to ask or I'm going to  
5 be like no, that doesn't make sense. Like, so how does that  
6 -- how is this, that and -- you know, how is this playing up  
7 -- how does that line up or where did you come with that or  
8 what does that make -- like, what are you -- like, I don't --  
9 I don't get it.

10 So sometimes it's like you kind of get stuck on --  
11 like, for me, it's just I'm -- I'm a bold person or I'm very  
12 technical.

13 MS. KIERNY: Um-h'm.

14 PROSPECTIVE JUROR NO. 363: So if I can't  
15 understand it, it's just kind of like -- and then I'm also  
16 the type that if I still don't understand it, I just was like  
17 okay, well, forget it and just move on because it's just  
18 like, I don't get it. Like, what are you talking about? And  
19 just because, you know, like I said, if the evidence doesn't  
20 line up, it's going to be something like for me at times.

21 So like I said, there might be times where I would  
22 be the type to be like, yeah, I don't believe that or just  
23 because you said that, yeah, you are a doctor, yeah, but  
24 where does that come from, from that?

25 MS. KIERNY: Okay. So you won't -- you will

1 question what any witness says up there? You won't just  
2 blindly accept what they say; is that --

3 PROSPECTIVE JUROR NO. 363: Yeah, I'm not --

4 MS. KIERNY: -- (inaudible).

5 PROSPECTIVE JUROR NO. 363: -- going to just be oh,  
6 okay, yeah, you said that, like, oh, the sky is red. Okay.  
7 I'm not going to be that type of person just to --

8 MS. KIERNY: Sure. Does everyone -- does anyone  
9 disagree with Mr. Evans? Of course not. Okay. Thank you,  
10 Mr. Evans. That was very helpful. Hold on to the microphone  
11 because I might have a follow-up question for you.

12 We've been dancing around this issue for pretty  
13 much the entire voir dire, but at the end of the day, this is  
14 a case that involves a three-year-old victim, and he suffered  
15 burns to his hands. Child abuse is not something that anyone  
16 wants to see. No one in this room wants to see kids injured,  
17 okay? It's a hard subject for everyone, us included.

18 Does anyone think that they could not be fair to  
19 Donovine because the allegations involve a young child?  
20 Any --

21 PROSPECTIVE JUROR NO. 363: Yeah, it's --

22 MS. KIERNY: So Mr. Evans is holding on to the mic.  
23 I understand that you had this -- your nephew, your young  
24 nephew, you're very close to him. It would be very hard --

25 PROSPECTIVE JUROR NO. 363: Right.

1 MS. KIERNY: -- to see, but you --

2 PROSPECTIVE JUROR NO. 363: I understand that  
3 you're presumed innocent and all. I understand that. But  
4 it's just to me, it's still like I -- like I said, I have a  
5 younger nephew, and to me, I have like -- I've never been  
6 able -- I couldn't accept the fact that that happened and  
7 that there's no fault or nothing like, there's a -- there's a  
8 child that was in a situation or in a place that they  
9 shouldn't have been.

10 MS. KIERNY: Okay.

11 PROSPECTIVE JUROR NO. 363: And there takes some,  
12 like, I guess, the best way to explain it is when I think of  
13 myself, my -- you know, my nephew, I could never see him in a  
14 -- I could never see myself having him either close to a  
15 situation that that would happen --

16 MS. KIERNY: All right.

17 PROSPECTIVE JUROR NO. 363: -- because of how I am  
18 with that. And not even how I am, but how a lot of people I  
19 know or what I've been brought around or anything like that.  
20 So it kind of -- like I say, it's like that biased -- that  
21 bias situation was like, so what did you do or what part did  
22 you have in that?

23 MS. KIERNY: Sure.

24 PROSPECTIVE JUROR NO. 363: So that's where I --  
25 that's where I kind of get --

1 PROSPECTIVE JUROR NO. 425: As a mother of four, a  
2 grandmother of three, and a hard working mom, grandma and  
3 wife, I can tell you with all honesty, you could try to train  
4 your kids. Your kids are not trainable, first of all. You  
5 have to be on top of your kids constantly.

6 And let me tell you, as much as I was always  
7 constantly, I stayed home, I was mom and grandma, they always  
8 get away with doing something. And that's not the parent's  
9 fault because we only have two eyes, two hands. And if you  
10 have a lot of children, like I had, you have to have really  
11 good techniques. Snatch them over here, you're not looking  
12 there, you got to snatch them over here, you know? Oh, don't  
13 do this. Have you to grab it away. But you have to teach  
14 them in a nice way what's right and what's wrong. That's not  
15 yelling at them. That's not punishing them. That's not  
16 taking things from them because a three-year-old does not  
17 understand.

18 And I'm sorry, I can't compare my kids and my  
19 grandkids to a dog. I have dogs that I love, and they obey  
20 just the same you don't hit your dog, they do something  
21 wrong, you -- you get a treat, you go to the spot, and you  
22 tell them no. Then you take them outside and you give them  
23 the treat. That's how I trained my dogs. That's how I  
24 trained my kids and my grandkids.

25 I never hit them. I talked to them. If I need to

1 take something away from the older ones, then yeah, that  
2 would be my punishment. No cell phone, you're not watching  
3 TV, and yes, usual not going out with your friends this  
4 weekend. But that's how I trained my kids. That's how I  
5 trained my grandkids.

6 So I don't think a little three-year-old even  
7 understands sometimes, especially if you're yelling at them,  
8 they don't understand.

9 MS. KIERNY: Okay.

10 PROSPECTIVE JUROR NO. 425: They have no idea.

11 MS. KIERNY: And you would agree that children have  
12 accidents?

13 PROSPECTIVE JUROR NO. 425: All the time.

14 MS. KIERNY: And you can't -- and it's not always a  
15 -- if a child gets hurt, it's not always a crime?

16 PROSPECTIVE JUROR NO. 425: It's not always a  
17 crime, no.

18 MS. KIERNY: All right. Mr. Pypkowski is nodding  
19 his head a lot. I think he has a lot to say. If you could  
20 pass the mic to him.

21 PROSPECTIVE JUROR NO. 473: No, I had a situation  
22 with my older daughter where she actually burned her hand.

23 MS. KIERNY: Okay.

24 PROSPECTIVE JUROR NO. 473: I was in the kitchen  
25 cooking. I had something in the oven, and I was prepping

1 something else on the counter, and she had crawled in when I  
2 didn't catch her and she stuck her hand between the oven door  
3 and the broiler door to stand up and it burnt her fingers.  
4 So I understand that, you know, stuff happens and you can't  
5 always be a hundred percent on guard.

6 MS. KIERNY: Okay. And when that happened, was  
7 that a situation -- you ultimately -- did you take her to the  
8 hospital?

9 PROSPECTIVE JUROR NO. 473: No, it was -- it wasn't  
10 that bad. I've suffered multiple burns in my life so I  
11 understood what the injuries were myself.

12 MS. KIERNY: Okay.

13 PROSPECTIVE JUROR NO. 473: And I knew it just  
14 needed a few days to heal up and it wasn't serious.

15 MS. KIERNY: So when you first saw what happened,  
16 what was your first reaction?

17 PROSPECTIVE JUROR NO. 473: To pick her up and get  
18 her away from it.

19 MS. KIERNY: Okay.

20 PROSPECTIVE JUROR NO. 473: And of course, she was  
21 screaming her head off.

22 MS. KIERNY: All right.

23 PROSPECTIVE JUROR NO. 473: And then run her hand  
24 under cold water.

25 MS. KIERNY: And then what did you do?

1 PROSPECTIVE JUROR NO. 473: I wrapped it up and  
2 dried it and made sure -- took a look at it to make sure it  
3 wasn't serious and --

4 MS. KIERNY: Okay.

5 PROSPECTIVE JUROR NO. 473: And after about 15  
6 minutes, she calmed down and, you know, she was tender for a  
7 few days, but it wasn't -- it wasn't like second degree. It  
8 wasn't life threatening or anything like that.

9 MS. KIERNY: Okay. Were there any decisions that  
10 you made in the heat of the moment when she was kind of in  
11 pain that maybe when you look back on you're like maybe that  
12 wasn't rational?

13 PROSPECTIVE JUROR NO. 473: No, I don't think so.

14 MS. KIERNY: So you --

15 PROSPECTIVE JUROR NO. 473: I mean, I should have  
16 the baby gate up in the kitchen so she couldn't get in there,  
17 but --

18 MS. KIERNY: Right.

19 PROSPECTIVE JUROR NO. 473: -- for whatever reason,  
20 it just didn't happen.

21 MS. KIERNY: Okay. You could see how someone could  
22 panic once their child's hurt in that situation?

23 PROSPECTIVE JUROR NO. 473: Yeah.

24 MS. KIERNY: I stated -- I talked to Ms. Ibay about  
25 this, and I've talked now to Mr. Pypkowski about this. Does

1 anyone disagree with the statement that children can have  
2 accidents and no one is necessarily criminally liable for  
3 those accidents? Noting no hands. I'm sorry, front row, red  
4 shirt, what's your name?

5 PROSPECTIVE JUROR NO. 436: Nathan Miller.

6 MS. KIERNY: Nathan Miller. If you could hand the  
7 mic back to (inaudible).

8 PROSPECTIVE JUROR NO. 436: Nathan Miller, 436.

9 MS. KIERNY: Okay. Go ahead, Mr. Miller. You --  
10 you agree with that statement?

11 PROSPECTIVE JUROR NO. 436: Yeah. That's all, I  
12 just agree. Accidents happen and --

13 MS. KIERNY: Sure.

14 PROSPECTIVE JUROR NO. 436: -- it's not -- often  
15 it's not a criminal issue. It's just an accident.

16 MS. KIERNY: And do you think it's possible to  
17 protect a child from all possible injuries in the world?

18 PROSPECTIVE JUROR NO. 436: No.

19 MS. KIERNY: All right. I'm going to move on to a  
20 section called like kind of the rules of the law. And it  
21 might be a little dry, but it's super important, so I  
22 apologize. A lot of it's I'm going to be asking for, you  
23 know, raised hands. So if you have any participation,  
24 comments, I appreciate that.

25 So in our system, the person who's doing the



1 accusing has to do all the proving. Whoever's pointing the  
2 finger, they are the ones that have to prove. If they're  
3 making the claim, they have to do the proving. Does anyone  
4 have -- how does everyone feel about that? You have the  
5 microphone, Mr. Miller so --

6 THE COURT: And I'm not sure it's really relevant  
7 how anyone feels. I'm just --

8 MS. KIERNY: Okay.

9 THE COURT: I think it's relevant if anyone has a  
10 problem with that's the way our system is.

11 MS. KIERNY: Sure. And I'll --

12 THE COURT: State has the burden --

13 MS. KIERNY: -- clarify, does that seem --

14 THE COURT: State has the burden to prove each of  
15 the elements as they have alleged in their charging document  
16 by proof beyond a reasonable doubt. The defendant has no  
17 burden. The State of Nevada is the only party that has a  
18 burden. And as I know you heard yesterday, the defense can  
19 sit there and say absolutely nothing, if that's what they  
20 choose to do, because that's the system that we have. And I  
21 think the question's probably does anyone have any problem  
22 with the fact that the State is required to prove their case?

23 PROSPECTIVE JUROR NO. 363: I would feel like it  
24 would be hard.

25 THE COURT: Your name and badge number?

1 MS. KIERNY: Can we pass the microphone, please.

2 PROSPECTIVE JUROR NO. 363: Timothy Evans, 363. I  
3 would think it -- just me, I would think it would be hard  
4 because it's like a -- when you think about it a  
5 investigation, there's always two sides to a story. So if  
6 someone -- if something happened and all they -- and this one  
7 side just has to prove everything, then you're kind of like  
8 so --

9 THE COURT: Do you have any problem with -- I mean,  
10 because that's the way our system runs. Every trial in  
11 every --

12 PROSPECTIVE JUROR NO. 363: Yeah, I do.

13 THE COURT: -- county in every state in the United  
14 States of America, it's the same thing. You have a problem  
15 with that?

16 PROSPECTIVE JUROR NO. 363: Yeah, I would -- I  
17 would have a -- yeah, I would -- I kind of feel like it's  
18 unfair.

19 MS. KIERNY: Okay. So you couldn't follow that?

20 THE COURT: Unfair to who?

21 PROSPECTIVE JUROR NO. 363: Unfair to the State  
22 because, in my opinion --

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 363: And I mean, that's just  
25 my opinion. I mean, I'm entitled to have an opinion.

1 THE COURT: Of course, you are.

2 PROSPECTIVE JUROR NO. 363: But I would feel it's  
3 kind of unfair in certain -- especially in certain cases  
4 where the other -- like, you know, like you said, they can  
5 sit there and stare off into space and just be like prove it.  
6 And it's not --

7 THE COURT: I'm not saying that's what they will  
8 do.

9 PROSPECTIVE JUROR NO. 363: I'm not saying that --  
10 I'm not either.

11 THE COURT: I just try to make sure you understand  
12 that really, the defense could sit there and say absolutely  
13 nothing if that's what they chose because the State has the  
14 burden on each of the elements as they've alleged in their  
15 charging document. But you understand, correct?

16 PROSPECTIVE JUROR NO. 363: Yeah, that's why I just  
17 -- that's what I'm saying that they could sit there and not  
18 do anything and --

19 THE COURT: Sure.

20 PROSPECTIVE JUROR NO. 363: -- the State could do  
21 -- like the State would have to prove everything.

22 THE COURT: Sure.

23 PROSPECTIVE JUROR NO. 363: So to me that is just  
24 like in my opinion, that's kind of like you think of it as  
25 like any problem that you have with -- well, when I worked

1 with youth --

2 THE COURT: Okay, well, let me stop a minute.  
3 Those are the rules.

4 PROSPECTIVE JUROR NO. 363: Right.

5 THE COURT: Do you have any problem with the  
6 fact --

7 PROSPECTIVE JUROR NO. 363: Yes.

8 THE COURT: -- that those are the rules?

9 PROSPECTIVE JUROR NO. 363: Yes.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR NO. 363: I don't -- yes. I  
12 don't have a problem, but it's just I feel like it's unfair.

13 THE COURT: All right. Well, is it -- do you have  
14 -- is your opinion such that it would impede your ability to  
15 be a fair and impartial juror?

16 PROSPECTIVE JUROR NO. 363: I think so consciously,  
17 yes. Like, I can't -- you know, and like you say, it's a  
18 hypothetical. I can't sit there and say definitely, yes,  
19 it's good. Definitely do it. I can't say that.

20 So hypothetical -- or subconsciously -- but I know  
21 subconsciously I probably would think about it. I would sit  
22 there and think about it and be like well -- well, you know,  
23 why can't they -- why do they have to do all this work?  
24 Like, why -- it's kind of --

25 THE COURT: And that type of thing should never

1 even enter into your deliberation. It should never enter  
2 your deliberation, you know, something you think the defense  
3 should have or shouldn't have done.

4 PROSPECTIVE JUROR NO. 363: Right.

5 THE COURT: It's the State's responsibility to  
6 prove their case.

7 PROSPECTIVE JUROR NO. 363: And I understand that.  
8 I'm just saying that subconscious I still would -- I can't  
9 stop myself from doing -- subconsciously, it's like --

10 THE COURT: You can think it all day long that  
11 it's --

12 PROSPECTIVE JUROR NO. 363: Right.

13 THE COURT: -- unfair. Will you follow the rules,  
14 that's all?

15 PROSPECTIVE JUROR NO. 363: And that's what I -- I  
16 -- I can't honestly say yes or no because, like I said, my  
17 subconscious can -- it can get the best of you at times.

18 THE COURT: Okay. Do you believe your opinion will  
19 interfere with your ability to follow the law in this case?

20 PROSPECTIVE JUROR NO. 363: I -- I think so. I am  
21 truthfully --

22 THE COURT: All right. At this time, I'm going to  
23 ask that you step down out of the box, Mr. Evans.

24 (Court/Clerk conferring)

25 THE COURT: Okay. Helene Gottlieb.

1 PROSPECTIVE JUROR NO. 506: Yes.

2 THE COURT: If you'll take seat number 1.

3 PROSPECTIVE JUROR NO. 506: Do you want me to sit  
4 down?

5 THE COURT: Sure, sure, and then I'll turn the  
6 panel back over to -- thank you, Ms. Gottlieb. And thank you  
7 very much. I've noticed you've clearly been paying attention  
8 and you've been engaged in the discussion for the last couple  
9 of days, and I certainly appreciate that, especially your  
10 willingness to be here and now respond to my questions.

11 How long have you lived in Clark County?

12 PROSPECTIVE JUROR NO. 506: 26 years.

13 THE COURT: Your education background?

14 PROSPECTIVE JUROR NO. 506: High school diploma.

15 THE COURT: And what do you do for a living?

16 PROSPECTIVE JUROR NO. 504: I'm retired.

17 THE COURT: What did you do before you retired?

18 PROSPECTIVE JUROR NO. 506: I worked at Dillard's  
19 Department Store in the children's department.

20 THE COURT: How long did you do that?

21 PROSPECTIVE JUROR NO. 506: 13 years.

22 THE COURT: Oh, congratulations to you. And you  
23 just retired, got tired of it or --

24 PROSPECTIVE JUROR NO. 506: I would have stayed  
25 forever, by the way, but my husband had retired so --

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 506: -- I wanted to be with  
3 him.

4 THE COURT: And so you're married?

5 PROSPECTIVE JUROR NO. 506: I am happily married.

6 THE COURT: Okay. And your husband, is he  
7 employed?

8 PROSPECTIVE JUROR NO. 506: I beg your pardon?

9 THE COURT: You just told me your husband's  
10 retired, correct?

11 PROSPECTIVE JUROR NO. 506: My husband's retired,  
12 too.

13 THE COURT: What did he do before he retired?

14 PROSPECTIVE JUROR NO. 506: He worked for the Gold  
15 Coast Casino Hotel.

16 THE COURT: Okay. Do you have children?

17 PROSPECTIVE JUROR NO. 506: I gave birth to two  
18 boys, and I lost my first born --

19 THE COURT: Oh, I'm sorry.

20 PROSPECTIVE JUROR NO. 506: -- to -- to diabetes.

21 THE COURT: I'm sorry. And so your second child,  
22 is that one --

23 PROSPECTIVE JUROR NO. 506: My second child lives  
24 out here, and he works for the new casino called the Golden  
25 Dragon, I think that -- the new one that opened up.

1 THE COURT: Okay. There's one that's called Golden  
2 Dragon?

3 PROSPECTIVE JUROR NO. 506: Not the -- is it the --  
4 the Golden Dragon.

5 THE COURT: Okay. Do you know of any reason why  
6 you could not be a completely fair and impartial juror if you  
7 were selected to serve on this panel?

8 PROSPECTIVE JUROR NO. 506: I would be happy to  
9 serve as --

10 THE COURT: Thank you.

11 PROSPECTIVE JUROR NO. 506: -- as impartial.

12 THE COURT: Have you ever served as a juror before?

13 PROSPECTIVE JUROR NO. 506: Yes, in New York where  
14 I'm from, and out here twice.

15 THE COURT: Okay. So in New York, was that -- that  
16 was one time?

17 PROSPECTIVE JUROR NO. 506: Twice in New York.

18 THE COURT: Twice in New York? Was that civil or  
19 criminal?

20 PROSPECTIVE JUROR NO. 506: It was civil, both --  
21 both case the.

22 THE COURT: Both cases were civil? Were you  
23 selected to be the foreperson in either case?

24 PROSPECTIVE JUROR NO. 506: I was a floor woman  
25 once.



1 THE COURT: Okay. You were elected --

2 PROSPECTIVE JUROR NO. 506: And -- I beg your  
3 pardon. And we were sequestered once.

4 THE COURT: Okay. So two times you served in civil  
5 actions, and once -- one of those times your fellow jurors  
6 selected you to be the foreperson?

7 PROSPECTIVE JUROR NO. 506: Once, right.

8 THE COURT: I'm just curious, in a civil case, why  
9 did you have to be sequestered?

10 PROSPECTIVE JUROR NO. 506: They sequestered us  
11 because it was a big problem with one of the -- one of the  
12 defendants. It was two defendants so they sequestered us.

13 THE COURT: Okay. I'm sure there were good reason.  
14 Anything about those experiences that would affect your  
15 ability to be fair and impartial in this case?

16 PROSPECTIVE JUROR NO. 506: Not at all. No.

17 THE COURT: All right. And you also indicated that  
18 you had been called to serve in this jurisdiction.

19 PROSPECTIVE JUROR NO. 506: Yes.

20 THE COURT: How many times?

21 PROSPECTIVE JUROR NO. 506: Just once.

22 THE COURT: And were you selected?

23 PROSPECTIVE JUROR NO. 506: I beg your pardon?

24 THE COURT: Were you selected to be on the panel?

25 PROSPECTIVE JUROR NO. 506: Yes, I was.

1 THE COURT: Are you selected to be the foreperson?

2 PROSPECTIVE JUROR NO. 506: No, I wasn't.

3 THE COURT: Without telling me what your verdict  
4 was, were you able to reach a verdict?

5 PROSPECTIVE JUROR NO. 506: We were able to reach a  
6 verdict.

7 THE COURT: Okay. In all three cases, did you  
8 reach a verdict?

9 PROSPECTIVE JUROR NO. 506: Yes, we did.

10 THE COURT: Okay. Anything about those experiences  
11 that would affect your ability to be a fair and impartial  
12 juror --

13 PROSPECTIVE JUROR NO. 506: Not at all.

14 THE COURT: -- in this particular case?

15 PROSPECTIVE JUROR NO. 506: Not at all.

16 THE COURT: Thank you. Have you or anyone close to  
17 you, such as a family member or friend, ever been the victim  
18 of a crime?

19 PROSPECTIVE JUROR NO. 506: Not at all.

20 THE COURT: Okay. Have you or anyone close to you,  
21 such as a family or friend, ever been accused of a crime?

22 PROSPECTIVE JUROR NO. 506: No.

23 THE COURT: Okay. Do you know of any reason why  
24 you could not be a completely fair and impartial juror if we  
25 select you to serve on this panel?

1 PROSPECTIVE JUROR NO. 506: It's always my belief,  
2 if I may say it, that you're --

3 THE COURT: Sure.

4 PROSPECTIVE JUROR NO. 506: -- innocent until  
5 proven guilty in a court of law.

6 THE COURT: Okay. So you understand the  
7 presumption of innocence?

8 PROSPECTIVE JUROR NO. 506: Yes, I do.

9 THE COURT: And do you have any problem with that?

10 PROSPECTIVE JUROR NO. 506: Not at all.

11 THE COURT: Okay. At this time, I'll allow State  
12 limited voir dire as to this particular juror.

13 MS. JOBE: Thank you, Your Honor. I apologize for  
14 ignoring all the rest of you, but is it Ms. Gottlieb?

15 PROSPECTIVE JUROR NO. 506: Yeah.

16 MS. JOBE: Okay. I don't want to mispronounce  
17 that, I apologize.

18 PROSPECTIVE JUROR NO. 506: Yeah, you did it right.

19 MS. JOBE: Fantastic. I didn't catch the Nevada  
20 case that you sat on the jury for. Was that civil or  
21 criminal?

22 PROSPECTIVE JUROR NO. 506: It was civil.

23 MS. JOBE: Okay. Is this anymore exciting yet than  
24 the civil cases?

25 PROSPECTIVE JUROR NO. 506: I beg your pardon?

1 MS. JOBE: Is this anymore exciting than the civil  
2 cases you've sat on?

3 PROSPECTIVE JUROR NO. 506: No, it would be the  
4 same. I didn't hear -- no.

5 MS. JOBE: You've heard -- you heard all my  
6 questions yesterday?

7 PROSPECTIVE JUROR NO. 506: Yes, I did.

8 MS. JOBE: Any input? Any thoughts you wanted to  
9 add?

10 PROSPECTIVE JUROR NO. 506: No. I paid attention  
11 to every word that you said and whatever the people said,  
12 too. It's all up here.

13 MS. JOBE: Okay. Any thoughts on evaluating  
14 medical or expert testimony if you're select to be --

15 PROSPECTIVE JUROR NO. 506: I would have to hear it  
16 to decide right or wrong.

17 MS. JOBE: Okay. Are you going to take their word  
18 for it just because they come in with degrees or experience?

19 PROSPECTIVE JUROR NO. 506: Not -- no.

20 MS. JOBE: Okay. Are you going to discount them  
21 just because they come in with degrees or experience?

22 PROSPECTIVE JUROR NO. 506: No. I would have to  
23 hear both sides of the story.

24 MS. JOBE: Okay. And as Ms. Kierny provided a  
25 little more details, this case involves a child approximately

1 three, with burns. Do you have any issues sitting there  
2 hearing testimony --

3 PROSPECTIVE JUROR NO. 506: No, I would have to  
4 hear the evidence on both sides.

5 MS. JOBE: Okay. And would you be comfortable if  
6 you had to piece together all the evidence to reach a  
7 decision?

8 PROSPECTIVE JUROR NO. 506: Yes.

9 MS. JOBE: Any need for a specific eyewitness to  
10 the account?

11 PROSPECTIVE JUROR NO. 506: I would just have to  
12 hear -- again, to reiterate, to listen to everybody.

13 MS. JOBE: Pass for cause.

14 THE COURT: Thank you. The panel's back to the  
15 defense.

16 MS. KIERNY: All right. Thank you, Your Honor.  
17 Ms. Gottlieb, I'm just going to start with you and ignore  
18 everyone again.

19 PROSPECTIVE JUROR NO. 506: Hi.

20 MS. KIERNY: Ms. Gottlieb, you heard that there's  
21 going to be some officers testifying in this matter. Do you  
22 think that you'd give any more weight to their testimony than  
23 that of other witnesses?

24 PROSPECTIVE JUROR NO. 506: No.

25 MS. KIERNY: Okay. And do you -- go ahead.

1 PROSPECTIVE JUROR NO. 506: I would have -- I would  
2 have to hear both sides before I judge.

3 MS. KIERNY: So you wouldn't automatically believe  
4 a --

5 PROSPECTIVE JUROR NO. 506: No.

6 MS. KIERNY: -- police officer just because --

7 PROSPECTIVE JUROR NO. 506: It would have -- I  
8 would hear both sides and decide from there.

9 MS. KIERNY: Okay. What about doctors? Do you  
10 think it's possible for a doctor to get a diagnosis wrong?

11 PROSPECTIVE JUROR NO. 506: It has happened from  
12 life stories of other people, yes. You know, nobody is  
13 perfect in this world so it's my opinion and --

14 MS. KIERNY: So that's kind of why the phrase "get  
15 a second opinion" exists?

16 PROSPECTIVE JUROR NO. 506: Exactly. Right, right.

17 MS. KIERNY: Okay. Now, if a doctor were to offer  
18 his opinion as to something that happened, would you  
19 automatically believe what that doctor said or would you, you  
20 know, weigh it in the same way you would weigh another?

21 PROSPECTIVE JUROR NO. 506: I would have to weigh  
22 the facts.

23 MS. KIERNY: Okay. And obviously, there's going to  
24 be, you know, testimony about a young child. Michelle  
25 touched on that. You know, you're -- obviously, there's some

1 sympathy toward a young child, you would agree with that?

2 PROSPECTIVE JUROR NO. 506: Correct.

3 MS. KIERNY: But you would still be able to be fair  
4 to Donovine?

5 PROSPECTIVE JUROR NO. 506: Yes.

6 MS. KIERNY: Okay. And would you agree that some  
7 children have accidents that aren't necessarily criminal?

8 PROSPECTIVE JUROR NO. 506: Yes. My kids have  
9 growing up, falling, or whatever.

10 MS. KIERNY: Okay. I'm going to get back to the --  
11 what we were talking about earlier. Mr. Evans stated that he  
12 doesn't think it's fair that the State has to do all the  
13 proving. Does anyone agree with that? Showing no hands.  
14 Yes? We have Mr. -- I apologize --

15 PROSPECTIVE JUROR NO. 455: Martin.

16 MS. KIERNY: -- Mr. Martin.

17 PROSPECTIVE JUROR NO. 455: 455.

18 MS. KIERNY: Would you pass the microphone over to  
19 him, please?

20 PROSPECTIVE JUROR NO. 455: Martin, number 455.

21 MS. KIERNY: Okay. And you think it's not fair  
22 that the State has to do all -- the State is making the  
23 accusations and they have to do all the proving?

24 PROSPECTIVE JUROR NO. 455: Never mind. Yes, they  
25 do. They have to prove whether he's fault -- at fault for

1 what has happened.

2 MS. KIERNY: Do you think it's fair that State has  
3 to do all the proving?

4 PROSPECTIVE JUROR NO. 455: Yes, if there's no  
5 witnesses. I mean, if it's based only on physical evidence,  
6 that's all you can go off of.

7 THE COURT: Well, again, I just want to reiterate  
8 that the State is the only party that has a burden in a  
9 criminal case.

10 PROSPECTIVE JUROR NO. 455: Right, I --

11 THE COURT: That they're required to prove  
12 everything they've alleged in their charging document by  
13 proof beyond a reasonable doubt. And you understand that  
14 those are the rules that will be given to you when you sit as  
15 a juror in reaching your determination; do you understand  
16 that?

17 PROSPECTIVE JUROR NO. 455: Yes.

18 THE COURT: Will you follow the instructions on the  
19 law as given to you by the Court?

20 PROSPECTIVE JUROR NO. 455: Yes.

21 THE COURT: And one of these instructions will be  
22 that State has a burden to prove everything. Do you  
23 understand that?

24 PROSPECTIVE JUROR NO. 455: Yes.

25 THE COURT: Anything about your belief that would



1 interfere with your ability to be a fair and impartial juror  
2 in this case?

3 PROSPECTIVE JUROR NO. 455: Accidents happen with  
4 children, but as -- we don't train them, we teach them and --

5 THE COURT: I think we're talking about the burden  
6 of proof. Is there anything about your opinion regarding the  
7 burden of proof that would interfere with your ability to be  
8 fair and impartial if we select you?

9 PROSPECTIVE JUROR NO. 455: No.

10 THE COURT: I'm sorry?

11 PROSPECTIVE JUROR NO. 455: No.

12 THE COURT: Okay. Thank you, Mr. Martin.

13 MS. KIERNY: I'm just worried that in this trial  
14 you're going to expect that the defense has to prove  
15 something. Do you believe --

16 PROSPECTIVE JUROR NO. 455: The defense has to  
17 prove his innocence.

18 MS. KIERNY: You believe we have to prove his  
19 innocence?

20 THE COURT: Okay. Here -- you remember what we  
21 just talked about? The defendant does not have to prove  
22 anything.

23 PROSPECTIVE JUROR NO. 455: Oh.

24 THE COURT: And, you know, I just want to remind  
25 you because not everybody's used to these rules. I mean,

1 these are the rules that we comply with every day. We're  
2 more used to them.

3 But the defendant can sit here and do absolutely  
4 nothing. Do you understand that? And one of the  
5 instructions I'll give you is, you know, you -- the defendant  
6 doesn't have to do anything, they have no burden, they have  
7 no burden of proof, they're not required to prove anything.  
8 The State of Nevada has brought these allegations, and  
9 they're required by law to prove these allegations by proof  
10 beyond a reasonable doubt. Do you understand that?

11 PROSPECTIVE JUROR NO. 455: Yes.

12 THE COURT: Okay. And you'll follow the law?

13 PROSPECTIVE JUROR NO. 455: Yes.

14 THE COURT: Okay. Go ahead.

15 MS. KIERNY: You seem a little bit confused by some  
16 of the questions. Did you have a -- did you work late or you  
17 having a hard time understanding?

18 PROSPECTIVE JUROR NO. 455: A little bit of  
19 everything, yeah. Like what?

20 MS. KIERNY: You just -- you're understanding  
21 everything that I'm asking and everything that the Judge is  
22 asking?

23 PROSPECTIVE JUROR NO. 455: Right.

24 MS. KIERNY: Okay. I'm going to ask you to pass  
25 the microphone back to Ms. Gonzalez-Garcia, who's right

1 behind you. Thank you. Ms. Gonzalez-Garcia, yesterday you  
2 stated that you would be open minded, which is great. And  
3 you said you would listen to both sides. Now, what if we  
4 don't present any evidence, there is no side? Would you  
5 still be able to find Donovine not guilty even if we didn't  
6 present any evidence?

7 PROSPECTIVE JUROR NO. 417: Okay. I'm Ericka  
8 Gonzalez-Garcia, Badge No. 417. Yes, because just like the  
9 Judge stated, the defendant doesn't have to show any evidence  
10 if they don't want to.

11 MS. KIERNY: Okay. And if we presented no  
12 evidence, yet, you still thought the State had not proved  
13 their case, you would be able to find not guilty -- Donovine  
14 not guilty?

15 PROSPECTIVE JUROR NO. 417: Correct.

16 MS. KIERNY: All right. And so, ultimately, at the  
17 end of the day the defense does not have to prove anything.  
18 We don't have to present any evidence. Does anyone have a  
19 problem with that in the box? Okay.

20 Okay. How many of you are aware of the  
21 constitutional principle that says a defendant does not have  
22 to testify in his own trial and cannot be forced to trial?  
23 Is everyone aware of that? Okay. Let's see here,  
24 (inaudible). Mr. Terry. Could you pass the microphone to  
25 Mr. Terry? You were nodding.

1 PROSPECTIVE JUROR NO. 402: Kevin Terry, 401.

2 MS. KIERNY: Okay.

3 PROSPECTIVE JUROR NO. 402: Or 402, excuse me.

4 MS. KIERNY: And so you're aware that the defendant  
5 doesn't have to testify?

6 PROSPECTIVE JUROR NO. 402: That is correct, yes.

7 MS. KIERNY: Okay. And you wouldn't hold it  
8 against him if he didn't testify?

9 PROSPECTIVE JUROR NO. 402: No, no.

10 MS. KIERNY: And can you think of reasons why a  
11 person who is accused of a crime might not testify?

12 THE COURT: Okay. I'm not -- I'm not sure that --  
13 I'm not sure that's appropriate to go into that so I'm not  
14 going to allow that question.

15 MS. KIERNY: Okay. Let me ask you this. If you --  
16 let's see. So your nephew was involved in the criminal  
17 justice system, correct?

18 PROSPECTIVE JUROR NO. 402: Yes.

19 MS. KIERNY: And if he -- and he had a lawyer in  
20 that case, correct?

21 PROSPECTIVE JUROR NO. 402: Yes.

22 MS. KIERNY: And he consulted with that lawyer?

23 PROSPECTIVE JUROR NO. 402: Yes.

24 MS. KIERNY: And he would listen to what that  
25 lawyer said?

1 PROSPECTIVE JUROR NO. 402: Yes.

2 MS. KIERNY: Okay. And if the lawyer gave him  
3 advice such as not to testify, he would have listened to that  
4 lawyer?

5 MS. JOBE: Your Honor.

6 THE COURT: The objection's sustained.

7 MS. KIERNY: Okay. Donovine has said loud and  
8 clear to this crime that he's not guilty. He's pled that in  
9 court. What if there's -- if there's nothing else to say,  
10 you would understand if he doesn't testify?

11 MS. JOBE: Objection, Your Honor.

12 THE COURT: Sustained.

13 MS. KIERNY: Okay. The law says that we are not --  
14 that when you go back to the jury room, you are not supposed  
15 to speculate why Donovine himself would not testify. Does  
16 anyone have a problem not speculating if you were chosen to  
17 be on the jury? Would that enter into your deliberations in  
18 any way? Seeing no hands.

19 If you could pass the microphone to Mr. Bouch --  
20 Boucher, Bouch, sorry. Said it two ways and got it wrong  
21 both ways.

22 PROSPECTIVE JUROR NO. 448: Aaron Bouch, 448.

23 MS. KIERNY: (Inaudible). Now, you indicated  
24 earlier that you would need all the evidence to decide.  
25 Would you be okay deciding if a -- if you didn't hear from

1 Donovan?

2 PROSPECTIVE JUROR NO. 448: Yeah, that would -- as  
3 long as I had the evidence that's being shown to the Court  
4 whether it be physical or whatever it may be, that's what my  
5 decision would be based off of. Not what isn't presented.

6 MS. KIERNY: Sure. Does anyone think there's no  
7 way I could find someone not guilty if they didn't testify?  
8 Seeing no hands.

9 All right. And so not only does the accuser have  
10 to do all the proving, but in a criminal case that has to be  
11 prove beyond a reasonable doubt, and that's going to be  
12 defined for you at the end of the case, but it is the highest  
13 burden there is.

14 Could you pass the microphone to Ms. Gottlieb, at  
15 the beginning. Hi.

16 PROSPECTIVE JUROR NO. 506: Hi.

17 MS. KIERNY: You were a civil juror, correct?

18 PROSPECTIVE JUROR NO. 506: Yes.

19 MS. KIERNY: Oh, I'm sorry, name and badge.

20 PROSPECTIVE JUROR NO. 506: I beg your pardon?

21 MS. KIERNY: I'm sorry, your name and badge number?

22 PROSPECTIVE JUROR NO. 506: Oh, I'm sorry, Helene  
23 Gottlieb --

24 MS. KIERNY: (Inaudible).

25 PROSPECTIVE JUROR NO. 506: -- and it's 506.

1 MS. KIERNY: Okay. So you -- you were in a civil  
2 trial, right?

3 PROSPECTIVE JUROR NO. 506: Yes.

4 MS. KIERNY: And the burden of proof they described  
5 to you is just a preponderance of the evidence. So if one --  
6 the scales of justice tipped one way slightly, then that is  
7 enough; that's correct?

8 PROSPECTIVE JUROR NO. 506: Correct.

9 MS. KIERNY: And you understand in a criminal case,  
10 it's a much higher burden?

11 PROSPECTIVE JUROR NO. 506: Yes.

12 MS. KIERNY: Okay. Does anyone know why it's a  
13 higher burden? No hands. Pass the microphone to  
14 Mr. Pypkowski.

15 THE COURT: I'm not really sure that that's  
16 appropriate. You can ask if anyone has a problem applying  
17 the burden of proof.

18 MS. KIERNY: You don't know -- can he answer the  
19 question, or no?

20 THE COURT: The question's not pending anymore.

21 MS. KIERNY: All right. Does anyone have a problem  
22 with the burden in a criminal case being higher when it's  
23 dealing with someone's freedom as opposed to any civil case  
24 when it's dealing with money? I'm seeing no hands. It  
25 doesn't appear anyone has a problem with that. Okay.

1           Finally, because the accuser has to do all the  
2 proving and the standard in a criminal case is the highest  
3 standard there is, everyone of us enjoys what's called the  
4 presumption of innocence. And as Donovine sits there, he is  
5 presumed innocent. He is not guilty. And if the State  
6 doesn't prove him -- provide proof beyond a reasonable doubt,  
7 he's still not guilty at the end of the trial.

8           So knowing all of that, that the presumption of  
9 innocence exists -- who has my microphone? Mr. Pypkowski, if  
10 you went back to the jury room right now with no evidence  
11 having been heard, how would you find Donovine?

12           PROSPECTIVE JUROR NO. 473: Not guilty.

13           MS. KIERNY: Because of?

14           PROSPECTIVE JUROR NO. 473: Because I don't have  
15 any evidence supporting his guilt.

16           MS. KIERNY: Right. So as Donovine sits there, he  
17 is not guilty in the eyes of this jury. And anyone have a  
18 problem with that? Seeing no hands. Court's brief  
19 indulgence. We're going to pass for cause. Thank you.

20           THE COURT: Okay. The defense and State having  
21 passed the panel for cause, the Clerk has prepared what will  
22 be marked as Court's Exhibit No. 1. The State and defense  
23 may exercise their first peremptory challenge.

24           (Pause in the proceedings)

25           THE COURT: Defense can exercise their first.



1 (Pause in the proceedings)

2 THE COURT: Thank you. The State and the defense  
3 may exercise their second peremptory challenge.

4 MS. JOBE: Your Honor, I apologize. Can we  
5 approach? I have a question.

6 THE COURT: Of course, no problem.

7 (Bench conference begins)

8 MS. JOBE: I apologize, Your Honor, it's been a --

9 THE COURT: That's okay.

10 MS. JOBE: -- minute since I've been in here. Is  
11 it four and then one (inaudible) alternate?

12 THE COURT: Uh-huh. Each side gets four then I  
13 have the 12, and there should be three left --

14 MS. JOBE: Okay.

15 THE COURT: -- and each side will have one  
16 peremptory challenge.

17 MS. JOBE: Thank you.

18 (Bench conference concluded).

19 (Pause in the proceedings)

20 THE COURT: Defense may exercise their second.

21 (Pause in the proceedings)

22 THE COURT: The State and defense may exercise  
23 their third peremptory challenge.

24 (Pause in the proceedings)

25 THE COURT: Defense may exercise their third.

(Pause in the proceedings)

THE COURT: The State and defense may exercise their fourth peremptory challenge.

MS. JOBE: May we approach?

THE COURT: Of course.

(Bench conference begins)

THE COURT: You asked to approach, right?

MS. JOBE: I did, Your Honor.

THE COURT: Oh, okay.

MS. JOBE: I didn't know what to do with the sheet. The State has concerns and wants to raise a challenge because the three preempts they've exercised so far have all been Hispanic jurors.

THE COURT: Okay. Do you want to do it right here at the bench?

MS. JOBE: I didn't know how Your Honor wanted to proceed, but --

THE COURT: You're going to make a Batson challenge?

MS. JOBE: I am making a Batson challenge.

THE COURT: Okay.

MS. JOBE: The first three of the four preempts that they have are Hispanic jurors. They've all been identified on the jury sheets as such and so --

THE COURT: And you checked that before you --

1 MS. JOBE: I did, Your Honor.

2 THE COURT: -- came up here? Okay.

3 MS. JOBE: And so the State has concerns that  
4 they're picking for (inaudible) race neutral reasons.

5 MS. HOLIDAY: I don't even remember. I don't --  
6 okay.

7 MS. KIERNY: Okay, go back and look at it.

8 MS. JOBE: Ms. Lozano, Todd and Rodriguez.

9 THE COURT: Right. I'm looking at them.

10 MS. HOLIDAY: Do you want to --

11 THE COURT: I'm just -- I'm just -- I don't like to  
12 identify people by their race so that's why I asked. You've  
13 specifically --

14 MS. JOBE: I did, Your Honor.

15 THE COURT: -- looked and they self-identified as  
16 being Hispanic?

17 MS. JOBE: They did.

18 MS. HOLIDAY: Is Mr. Lozano Hispanic?

19 MS. JOBE: They all identified on their sheet.

20 THE COURT: That's at least a Hispanic name.

21 MS. HOLIDAY: Okay.

22 THE COURT: Mr. Lozano.

23 MS. KIERNY: Would you like us to make our argument  
24 now or --

25 THE COURT: Go ahead.

1 MS. KIERNY: -- in the back?

2 THE COURT: Right now.

3 MS. KIERNY: Let me grab my sheet, if that's  
4 (inaudible).

5 THE COURT: Okay.

6 MS. KIERNY: So we don't think many --

7 THE COURT: I just want to see where 12 is. Is  
8 that the first person and the second --

9 MS. JOBE: Um-h'm.

10 THE COURT: Okay. All right. (Inaudible).

11 MS. KIERNY: Mr. Lozano was our first challenge.

12 THE COURT: Okay.

13 MS. KIERNY: He's a security officer, and generally  
14 seemed -- seemed to have some, you know, identifying with law  
15 enforcement. That was my main concern with him. That he  
16 seemed to identify as law enforcement and consider himself  
17 law enforcement.

18 THE COURT: Okay. So your race neutral reason  
19 would be that he identifies with law enforcement?

20 MS. KIERNY: Yes.

21 THE COURT: Okay.

22 MS. KIERNY: Okay. Who's number 2?

23 MS. JOBE: Rodriguez is number 2.

24 MS. KIERNY: Which one?

25 MS. JOBE: Rodriguez.

1 THE COURT: Ericka Rodriguez.

2 MS. KIERNY: Oh, (inaudible) --

3 THE COURT: (Inaudible).

4 MS. KIERNY: -- has a medical background and we  
5 were concerned that she would -- works for doctors, works  
6 with children. We would be concerned that she would  
7 basically just agree with what the doctors said when we  
8 wholeheartedly disagree with the doctors in this case.

9 THE COURT: Okay. So your concern was she works  
10 for a doctor and she might accept --

11 MS. KIERNY: And that she has a medical background  
12 in -- with a -- in -- with a similar -- the age range.

13 THE COURT: What's her medical background?

14 MS. KIERNY: She's a nurse in like a child's heart  
15 center and she preps them up for the doctors.

16 THE COURT: And you're worried that because she  
17 works with children? Okay.

18 MS. KIERNY: And --

19 MS. JOBE: For the record, I believe she said she's  
20 a CNA. She's not actually a RN.

21 MS. HOLIDAY: But she does have contact with --

22 THE COURT: She's the one that said she had a CNA,  
23 correct?

24 MS. JOBE: Correct, Your Honor.

25 THE COURT: Okay.

1 MS. HOLIDAY: Yeah. And it's not just that she  
2 works with children, but she works with doctors, she respects  
3 doctors, doctors are her boss, you know, doctors know a lot.  
4 So that's our reason.

5 MR. BURTON: (Inaudible).

6 THE COURT: Okay.

7 MS. KIERNY: And our third one was --

8 THE COURT: Alexandria Todd.

9 MS. KIERNY: Oh, yes, Ms. Todd.

10 MS. HOLIDAY: Is she Hispanic?

11 MS. JOBE: She identifies as Hispanic.

12 MS. KIERNY: Okay. Ms. Todd doesn't have children,  
13 for one. We didn't know a lot of information about her. We  
14 don't have a lot of notes on her. We -- it looks like she  
15 also has some medical. It looks like she was a CNA. So that  
16 was our only concern, but, you know, we just really didn't  
17 know that much about her.

18 THE COURT: That's your race neutral reason, you  
19 didn't much about her?

20 MS. KIERNY: We don't know much about her. She  
21 doesn't have kids. We would like jurors who have kids. And  
22 she --

23 THE COURT: You want jurors to have kids; is that  
24 what you said?

25 MS. KIERNY: Yes. She identified --

1 THE COURT: Just not work with kids?

2 MS. KIERNY: Right.

3 THE COURT: Okay.

4 MS. KIERNY: Well, just not work with kids at a  
5 children's heart hospital.

6 THE COURT: Okay.

7 MS. KIERNY: And she also identified as being a  
8 CNA, so she has some medical background. Same thing as the  
9 other one. If she works with doctors all the time, they're  
10 her boss, they know a lot, they're always the one making the  
11 calls, making the decisions, I'm sure she respects them.

12 THE COURT: Okay. And you're worried because of  
13 the medical testimony that was coming in from the State?

14 MS. HOLIDAY: Yes.

15 MS. KIERNY: Particularly, the State will have  
16 medical doctors testifying.

17 THE COURT: Okay. That this was non-accidental?

18 MS. JOBE: And Your Honor, the State's concern is  
19 as of Mr. Lozano, the State's understanding is there's more  
20 than one security person there. He did state during  
21 questioning without wavering that he could be fair and  
22 impartial. That that wouldn't come into play. He did  
23 discuss how as a security officer he still now defers to  
24 people with more experience in dealing (inaudible) causation.  
25 (Inaudible), but that he would be able to consider the

1 evidence, weigh the evidence, and be fair and impartial to  
2 both sides.

3 As to Ms. Rodriguez, there's -- there's another  
4 medical person who's also here, Ms. Ibay, who is similarly  
5 situated. In fact, she's in the medical office of her  
6 husband and works for him. So same -- she was CNA because  
7 she works with children. The State's position is that's not  
8 a race neutral reason.

9 As far as Ms. Todd is concerned, it simply sounds  
10 like they don't have enough information, they just have a  
11 feeling, and they don't have enough information (inaudible)  
12 but they don't want her there because she doesn't have kids  
13 and that's also not a race neutral reason.

14 THE COURT: Okay. Does defense want to add  
15 anything?

16 MS. KIERNY: When I mentioned that we don't know a  
17 lot about her, it doesn't mean that we're then going off of a  
18 feeling. It means that there are other jurors on the panel  
19 that we feel like we have a lot more information about.  
20 They've spoke more. They've offered more personal  
21 information about their professions or their families. And  
22 so it wasn't that we just have a feeling. We have other  
23 jurors that we know more information about so we feel like,  
24 you know, we have more reasons to keep them.

25 THE COURT: Okay. Is either -- are is both sides



1 done?

2 MS. JOBE: Yes, Your Honor.

3 THE COURT: Okay. I'm going to overrule the  
4 objection. You may exercise your -- who has it?

5 MR. BURTON: We do.

6 MS. JOBE: It's ours, Your Honor, for the fourth.

7 THE COURT: Did you already exercise it?

8 MS. JOBE: We did not, Your Honor.

9 THE COURT: Okay. And the defense may exercise  
10 their fourth.

11 MS. KIERNY: While we're up here, I don't know what  
12 their last challenge is going to be, but the State has  
13 (inaudible) exercised -- raised a Batson challenge as well,  
14 the State has excused two of their -- used two of their  
15 preempts on African-American jurors. Our client, as you see,  
16 is African-American, and we believe that this is an attempt  
17 to not have --

18 THE COURT: Okay.

19 MS. KIERNY: -- jury --

20 MS. JOBE: I'll go get my paper to make sure I make  
21 a thorough record.

22 THE COURT: Okay.

23 MS. HOLIDAY: Your Honor, I'm going to need a  
24 bathroom break soon.

25 MS. JOBE: Your Honor, our first kick was

1 Mr. Lewis. As to him, the information provided during voir  
2 dire is that he believes the judicial system is corrupt when  
3 he was talking about his conversations with his aunt.

4 THE COURT: Okay, just a minute. Ladies and  
5 gentlemen, I just want to remind you that we're still on the  
6 record and we're still conducting court up here, so if you  
7 could just keep it down. Thank you.

8 MS. JOBE: He said the system was corrupt. That  
9 the system puts people in cages. I asked him if that was  
10 just immigration system but the criminal system in whole? He  
11 said the criminal system in whole.

12 I asked him his -- to get details on his what he  
13 said were negative experiences, and negative contacts with  
14 law enforcement. He said he didn't want to talk about them,  
15 but that he had negative ones. He didn't know if he could be  
16 fair and impartial. He said he'd have to wait and see what  
17 happened at trial, how he would feel. He couldn't give an  
18 unequivocal answer that he can leave his feelings set aside  
19 when deliberating.

20 He also would not -- he talked about how his work  
21 -- he was focused on his work and issues with money, that if  
22 he had to be chosen, he'd be forced to close down his  
23 business starting Wednesday, when his -- I think it was  
24 brother would be gone and his business partner wouldn't be  
25 back.

1 He also -- we also observed body language when we  
2 started challenging to get more information about his  
3 disagreements with his aunt and his opinions about law  
4 enforcement. His response to me was, I see where you're  
5 going and what you're trying to do, and that's when he quit  
6 answering the questions about his details with his negative  
7 contact with law enforcement.

8 I also asked him what he agreed on with his aunt in  
9 law enforcement, and he was not responsive to that. When  
10 Your Honor was questioning him, you also asked him some  
11 questions about how experiences, and his background that he  
12 didn't give detail or specific answers to. He just dodged  
13 the question and kept going.

14 He also spoke with all of us at the bench, and my  
15 concern is that was abused as a child. I appreciate it was  
16 sexual abuse and this is physical abuse --

17 THE COURT: Um-h'm.

18 MS. JOBE: -- but he really said he wasn't sure  
19 what his feelings were going to be until he heard the  
20 evidence, and he would do his best. He wasn't sure if he  
21 could set aside his feelings when deliberating.

22 So as to Ms. Hightower, yesterday she said she  
23 doesn't like jury service, doesn't want to do it. She  
24 repeatedly said that she was very concerned about having the  
25 defendant's fate in her hands. She was equivocal about

1 whether she'll participate in deliberations. After much push  
2 and much pleading, she eventually said she would see and she  
3 might.

4 She had -- her body language, she would lean back.  
5 She shrugs her shoulders when I -- she -- we kept pushing her  
6 if you could deliberate if you have to. She said if I have  
7 to, I'll do it, and she shrugged her shoulders. She's kind  
8 of like (indicating). It wasn't convincing to the State that  
9 she would actually participate in deliberation.

10 She also said she herself has been abused as a  
11 child. That she's seen child abuse, and she didn't know how  
12 she would respond. And she also talked about being upset  
13 about how a murder case of a family member was handled and  
14 that it was crazy and how they weren't contacted. So the  
15 totality of all of her statements, Your Honor, the State has  
16 concerns that she would not be fair and impartial and that --  
17 when she was deliberating.

18 The State has concerns about her being so concerned  
19 about the defendant's fate in her hands that she would not be  
20 able to perform her duties.

21 THE COURT: Thank you.

22 MS. KIERNY: Regarding Mr. Lewis, he did indicate  
23 he could be fair to both sides even though he had this --  
24 this concern about law enforcement. Unfortunately, he's  
25 bringing his life experiences to it and those life

1 experiences included some situations that were not so  
2 favorable to him. But I -- he did tell (inaudible) he could  
3 be -- he did believe he could be fair to both sides.

4 THE COURT: Everybody in the box has said that at  
5 this point.

6 MS. KIERNY: Right. Right. So I don't -- and also  
7 regarding Ms. Hightower, she indicated that she didn't want  
8 to be here. Well, so -- no one does. She -- well, we want  
9 to be here, but --

10 THE COURT: Yeah.

11 MS. KIERNY: -- you know, none of the jurors really  
12 want to be here. So I don't know if that's a valid reason.  
13 Additionally, you know, she did have concerns about having  
14 someone's life in her hand, but that's, you know, an  
15 admirable trait and other people have mentioned having that  
16 concern as well.

17 I think, you know, when she was asked about her  
18 life experiences, she was honest and open, and regarding the  
19 murder investigation so I -- I would submit on that.

20 THE COURT: Okay.

21 MS. JOBE: I just -- can I point out two things?  
22 One --

23 THE COURT: Sure.

24 MS. JOBE: -- Mr. Lewis identifies as other as far  
25 as racial profiles go on his sheet.

1 THE COURT: Mr. Lewis --

2 MS. JOBE: He does.

3 THE COURT: -- identifies as other?

4 MS. JOBE: Yes.

5 THE COURT: Okay.

6 MS. JOBE: Additionally, we haven't stricken all of  
7 the African-American jurors. There's still Mr. Rashaad  
8 Evans, who is on panel -- who is an African-American. I'd  
9 turn around and see if there are others, but I don't -- can't  
10 specifically recall off the top of my head.

11 And though Mr. -- there have been a number of  
12 people who had some negative contacts with law enforcement,  
13 Mr. Lewis's demeanor and his refusal to answer detailed  
14 questions about it is the State's concerns.

15 THE COURT: Okay. At this time, I make a ruling  
16 that State has provided race neutral reasons and the  
17 challenge is overruled. Are you going to -- do you have the  
18 sheet?

19 MR. BURTON: Yes.

20 MS. JOBE: I have the sheet for four.

21 THE COURT: Have you done it yet?

22 MS. JOBE: We have not, Your Honor.

23 THE COURT: Okay. All right.

24 MS. JOBE: Thank you.

25 THE COURT: You may exercise your fourth.

1 (Bench conference concluded)

2 (Pause in the proceedings)

3 THE COURT: Defense may exercise their fourth.

4 (Pause in the proceedings)

5 THE COURT: Okay, at this time, the State and  
6 defense may exercise their fifth and final peremptory  
7 challenges to 19 through 24, with the exception of those that  
8 have been already exercised.

9 (Pause in the proceedings)

10 THE COURT: All right. At this time, ladies and  
11 gentlemen, we're going to take a very short recess. I'm just  
12 going to ask that you stay close by. When you come back in,  
13 if everyone will sit in the gallery. And as you come back  
14 in, the Clerk will call our panel of prospective jurors. If  
15 your name is called, you'll be empaneled and we'll proceed.  
16 If not, you'll be excused to go.

17 During this recess, you're admonished not to talk  
18 or converse amongst yourselves or with anyone else on any  
19 subject connected with this trial or read, watch or listen to  
20 any report of or commentary on the trial or any person  
21 connected with this trial by any medium of information,  
22 including without limitation, newspapers, television, the  
23 Internet or radio, or form or express any opinion on any  
24 subject connected with this trial until the case is finally  
25 submitted to you. Thank you very much, and we're in recess.

1 THE MARSHAL: All rise for the exiting jury panel,  
2 please.

3 (Outside the presence of the prospective jurors)

4 THE MARSHAL: Thank you. Please be seated.

5 THE COURT: Okay. The record will reflect that  
6 this hearing is taking place outside the presence of the jury  
7 panel. Before I do announce who our jury panel is, I just  
8 want to make sure both sides had an opportunity to say  
9 everything they wanted to say.

10 I did check; Mr. Lewis did identify as "other".  
11 Based on -- it's self-identifying, so I don't know if you  
12 want to add anything to that based on your perceptions or if  
13 the defense does. I mean, I'm assuming the defense is  
14 contending he's African-American.

15 MS. JOBE: I'm sure they are, Your Honor. He does  
16 appear to be -- he is a light skinned individual. He did  
17 have dreadlocks. He -- based on those, Your Honor, one could  
18 assume that he is African-American, but he did self-identify  
19 on the jury questionnaire as "other". Even so, Your Honor,  
20 the State's race neutral reasons, whether he's other, or  
21 African-American, I believe were captured --

22 THE COURT: Sure.

23 MS. JOBE: -- at the bench conference, and so the  
24 State will let the record stand at that.

25 THE COURT: Right. And my concern is, is that we



1 were going off of a jury group data form, and so I'm going to  
2 make that part of the record. So, because I guess if there  
3 was ever an issue on appeal, and that was reviewed, so that  
4 data form will be made part of the record. Does the defense  
5 want to add anything to that?

6 MS. HOLIDAY: No, Your Honor. I think --

7 THE COURT: You're satisfied?

8 MS. HOLIDAY: Yes, I think we made our record at  
9 the bench conference, thank you.

10 THE COURT: Okay. So our jury panel will be as  
11 follows: Number 1, Helene Gottlieb. Number 2, Lynis Lehne.  
12 Number 3, Gloria Melendez. Number 4, Alvaro Herrera. Number  
13 5, Donny Cheng. Number 6, Kevin Terry. Number 7, Michael  
14 Browning. Number 8, Gabriel Cleto. Number 9, Rashaad Davis.  
15 Number 10, Ericka Gonzalez-Garcia. Number 11, Justin Boren.  
16 Number 12, Damaris Ibay. Number -- and so that's our panel  
17 of 12.

18 And then number 13, which will be our first  
19 alternate, Thomas Gaytan. Number 14, Heather Warren. Any  
20 objection by the State of Nevada?

21 MS. JOBE: No, Your Honor.

22 THE COURT: Any objection by the defense?

23 MS. HOLIDAY: No, Your Honor.

24 THE COURT: Okay. We can bring them in, but I --  
25 are the parties ready to proceed with your hearing while I

1 excuse the jury?

2 MS. KIERNY: Yes.

3 MS. HOLIDAY: Yes, Your Honor.

4 THE COURT: Is your witness here? How long do you  
5 think it will take?

6 MS. HOLIDAY: I suppose that depends on if we're  
7 going to do an evidentiary hearing or not, Your Honor. If  
8 the Court grants an evidentiary hearing, I have quite a few  
9 questions to make a very thorough record on the testimony  
10 that Dr. Johnson would be prepared to give, in addition to  
11 the reasons why his testimony would comply with the law.  
12 So --

13 THE COURT: I think you're entitled to one if you  
14 want a hearing because the State's moving to strike your  
15 witness contending that the witness is not qualified nor that  
16 the witness will be able -- well, I guess, basically, it's  
17 qualifications. You're saying he's not qualified to --

18 MS. JOBE: It's a number --

19 THE COURT: -- render the accident  
20 reconstruction --

21 MS. JOBE: Well, it's --

22 THE COURT: -- of this type of incident.

23 MS. JOBE: It's a number of things, Your Honor.  
24 It's not just qualifications. It's also the assistance and  
25 it's also having reviewed his Power Point, his Power Point.

1 and what he anticipates or thinks he's going to be able to  
2 testify to so far outside the scope. The State has concerns  
3 with that as well.

4 THE COURT: Okay.

5 MS. HOLIDAY: And based on that, Your Honor, I  
6 think if we did an evidentiary hearing that touches on all  
7 the requirements, it could take a few hours.

8 THE COURT: What? It shouldn't take you three  
9 hours to lay a foundation. What kind of witness -- three  
10 hours to lay a foundation on -- no way. Well, you're not  
11 getting three hours.

12 MS. HOLIDAY: And that's fine.

13 THE COURT: Okay?

14 MS. HOLIDAY: That's fine.

15 THE COURT: I mean, I know what it's about. I know  
16 what the expert -- I know what biomechanical experts are. I  
17 know what they can testify to. I'll be able to cut to the  
18 choice a lot quicker.

19 MS. HOLIDAY: Okay.

20 THE COURT: But I think you're entitled to an  
21 evidentiary hearing because the State's indicating, I think,  
22 most importantly, that he's not qualified. So we can bring  
23 them back in. I guess --

24 MS. JOBE: And --

25 THE COURT: -- let's see --

1 MS. JOBE: -- Your Honor, may I have a two-minute  
2 recess between the two hearings so I can take a quick break?

3 MS. HOLIDAY: I need that, too.

4 THE COURT: Oh, yeah, yeah. You want to break  
5 right now go --

6 MS. JOBE: No, no, we can -- We can take care of  
7 the jury now, but just before we get started with the --

8 THE COURT: Okay.

9 MS. JOBE: -- evidentiary --

10 THE COURT: I'll let them go to lunch and then  
11 we'll start. But your witness is here?

12 MS. HOLIDAY: Yes, Your Honor.

13 THE COURT: Okay.

14 THE MARSHAL: All rise for the entering jury panel,  
15 please.

16 (In the presence of the prospective jurors)

17 THE COURT: When your name is called, if you'll  
18 please take your seat in the jury box.

19 (Pause in the proceedings)

20 THE COURT: Ms. Gottlieb, you're Juror Number 1.  
21 Juror Number 1.

22 THE MARSHAL: Come on up, Ma'am. Come on up.

23 THE CLERK: Juror Number 2, Lynis Lehne.

24 THE MARSHAL: Lehne.

25 THE CLERK: Juror Number 2, Lynis Lehne.

1 JUROR NO. 2: Yes.

2 THE COURT: You're Juror Number 2.

3 THE CLERK: Juror Number 3, Gloria Melendez. Juror  
4 Number 4, Alvaro Herrera. Juror Number 5, Donny Cheng.  
5 Juror Number 6, Kevin Terry. Juror Number 7, Michael  
6 Browning. Juror Number 8, Gabriel Cleto. Juror Number 9,  
7 Rashaad Davis. Juror Number 10, Ericka Gonzalez-Garcia.  
8 Juror Number 11, Justin Boren. Juror Number 12, Damaris  
9 Ibay. Juror Number 13, Thomas Gaytan. And Juror Number 14,  
10 Heather Warren.

11 THE COURT: Okay, ladies and gentlemen, we do have  
12 our empaneled jury. If your name was not called, you are  
13 excused to leave. Again, thank you very much for being here,  
14 especially for coming back this second day. You're excused.  
15 You can go.

16 (Prospective jurors exit)

17 THE COURT: Okay. At this time, ladies and  
18 gentlemen, if you'll all please stand and raise your right  
19 hand so the Clerk can administer the oath of service.

20 THE CLERK: Please raise your right hands. Thank  
21 you.

22 (CLERK SWEARS JURY PANEL)

23 THE CLERK: Thank you.

24 THE COURT: Thank you. You can have a seat.  
25 Ladies and gentlemen, I'm about to excuse you for lunch.

1 We're going to take a lunch recess. Before you do, though, I  
2 just want to give you a few instructions. I'll give you more  
3 when you come back.

4 Now that you are an empaneled juror, you take off  
5 the white badges, put the blue badges on there. Those  
6 identify you as a juror in Department 12. And as I had  
7 previously told you, myself, the parties, the witnesses, the  
8 attorneys, everybody involved in this case --

9 (Pause in the proceedings)

10 THE COURT: Okay. Everyone has a badge? Everybody  
11 involved in this case with the exception -- is everything  
12 okay?

13 THE MARSHAL: Just making sure that they got the  
14 right badges.

15 THE COURT: Okay.

16 THE MARSHAL: The Badge Number will correspond with  
17 the seat that you're in.

18 THE COURT: Okay. Nobody is permitted to have any  
19 communication with you with the exception of Officer Hawkes.  
20 Although, he is permitted to have communication with you, I'm  
21 assuming you've figured it out because he's the one that  
22 brings you in, excuses you for recess, so he's permitted to  
23 have limited conversation with you.

24 He's not permitted to discuss the facts and  
25 circumstances of this case with any of you. So like -- he's

1 the only one that can talk to you. Nobody else can talk to  
2 you. If you -- we're going to -- we've been together for the  
3 last couple of days. We'll be together probably throughout  
4 the week. I just want to remind you, you know, if you see  
5 the attorneys, if you see me, if you see any of the parties  
6 involved, we're going to ignore you.

7 If there's something that you need to convey to the  
8 Court or communicate to anyone, I just ask that you make that  
9 known to Officer Hawkes or that you do it while we're in the  
10 courtroom in the presence of both sides.

11 We're going to recess for lunch. When you come  
12 back, just meet at the same place where Officer Hawkes  
13 indicates he wants you to meet. Do not come in the courtroom  
14 until Officer Hawkes tells you we're ready to go.

15 During this recess, you're admonished not to talk  
16 or converse amongst yourselves or with anyone else on any  
17 subject connected with this trial or read, watch or listen to  
18 any report of or commentary on the trial or any person  
19 connected with this trial by any medium of information,  
20 including without limitation, newspapers, television, the  
21 Internet or radio, or form or express any opinion on any  
22 subject connected with this trial until the case is finally  
23 submitted to you.

24 We'll be in recess until 2:30. Come back at 2:30.  
25 Wait for Officer Hawkes, and then we will start.

1 THE MARSHAL: All raise for the exiting jury,  
2 please.

3 (Court recessed at 12:27 p.m. until 12:38 p.m.)

4 (Outside the presence of the jury)

5 THE COURT: Okay. You guys ready? All right. The  
6 motion is the State's motion to strike or limit the testimony  
7 of the defense expert. Does the State -- I guess, does the  
8 State want to be heard first?

9 MS. JOBE: In an effort to be efficient if we're  
10 going to have an evidentiary hearing, we can just move into  
11 that and I'll reserve all my arguments for later.

12 THE COURT: Okay.

13 MS. HOLIDAY: That would be my request, too, Your  
14 Honor. I mean, officially we're requesting this evidentiary  
15 hearing. We think it's necessary to give the State -- or I  
16 mean, to give the Court all the necessary information about  
17 why Dr. Johnson is certainly qualified to testify today. So  
18 if we want to do the hearing, we would --

19 THE COURT: Sure.

20 MS. HOLIDAY: -- be happy it argue afterwards.

21 THE COURT: All right. Bring him in.

22 (Pause in the proceedings)

23 (Testimony outside the presence of the jury)

24 DR. LINDSAY DUTCH JOHNSON, DEFENDANT'S WITNESS, SWORN

25 THE CLERK: Thank you. Please be seated. Could



1 you please state and spell your name for the record.

2 THE WITNESS: Sure. It's Lindsey -- I go by Dutch  
3 -- and Johnson. L-i-n-d-s-a-y, D-u-t-c-h, J-o-h-n-s-o-n.

4 THE CLERK: Thank you. Court.

5 DIRECT EXAMINATION

6 BY MS. HOLIDAY:

7 Q. Good morning, Dr. Johnson.

8 A. Good morning.

9 Q. How are you employed?

10 A. I'm self-employed. The name of my company is  
11 Wiltshire Forensic Biomechanics, and I --

12 Q. Can you tell me a little bit about that company?

13 A. Sure. My work involves injury biomechanics.  
14 Basically, I investigate, analyze and reconstruct how  
15 injuries occur in adults, children. I've been doing that for  
16 the last five years solely focused on cases, criminal cases.  
17 And prior to that, I worked in the area of civil litigation  
18 for an order of I'd say 10 to 15 years.

19 Q. Dr. Johnson, did you go straight to college after  
20 high school?

21 A. I did not.

22 Q. What did you do after high school?

23 A. I went into the Marines Corps.

24 Q. How long were you in the Marines Corps?

25 A. A total of six years, three years active.

1 Q. Can you tell us a little bit about your training  
2 and experience in the Marines Corps?

3 A. Ma'am, specific to this case or in general?

4 Q. Specific to this case.

5 A. Sure. With regards to training, I received combat  
6 medical first aid training and since then, actually, post  
7 Marines Corps, I've continued some of that training,  
8 certified tactical casualty combat care provider. I've --  
9 have a certificate in high risk first responder as a medic.  
10 And I have worked with cadaver tissue performing suturing and  
11 various other medical procedures, pre-hospital medical  
12 procedures.

13 Q. So I want to make sure I understand correctly.  
14 While you were in the Marines Corps, you received specific  
15 training geared towards providing medical care to people who  
16 are injured?

17 A. Yeah, with regards to pre-hospital trauma life  
18 support.

19 Q. Can you tell me a little bit about this training?  
20 Were you in classes? Was this real life training out in the  
21 field? What kind of training specifically?

22 A. Sure. Initially, actually, when I was in the  
23 Marines Corps --

24 THE COURT: You know, maybe we can -- if you're  
25 going to him to give medical -- are you going to ask him to

1 give medical opinions?

2 MS. HOLIDAY: We have a couple opinions that I  
3 don't believe are medical opinions, but I think they get  
4 close, and I think certainly --

5 THE COURT: Okay.

6 MS. HOLIDAY: -- that's part of the State's  
7 challenge.

8 THE COURT: Why don't you ask the question and then  
9 I can tell you how much foundation I think you need to lay or  
10 whether I think it calls for a medical conclusion.

11 MS. HOLIDAY: Specifically, in this case, the State  
12 -- one of the State's experts, Mr. Peltier --

13 THE COURT: Um-h'm.

14 MS. HOLIDAY: -- made a conclusion that he believes  
15 the injury pattern looks like a wrist to fingertips injury  
16 pattern.

17 THE COURT: Okay.

18 MS. HOLIDAY: Mr. -- or Dr. Johnson disagrees with  
19 that. He does not believe that the injury pattern reflects  
20 water running from wrist to fingertips. And it's  
21 specifically related to a burn pattern, that's why I think  
22 maybe it gets into medical a little bit. But I think more  
23 specifically, the State --

24 THE COURT: And --

25 MS. HOLIDAY: -- in their motion --

1 THE COURT: And it's the pediatrician, correct?

2 MS. HOLIDAY: No.

3 THE COURT: Is that who you're talking about?

4 MS. HOLIDAY: Mr. Peltiar, the expert who believes  
5 that the burn pattern is a wrist to fingertips burn pattern,  
6 he is not a medical doctor. He has -- from my understanding,  
7 he has an associate's degree. He has extensive experience in  
8 law enforcement.

9 THE COURT: Okay. So we're talking about burn  
10 patterns on a child's skin?

11 MS. HOLIDAY: Um-h'm, that's correct.

12 THE COURT: Okay. So maybe you should lay a  
13 foundation. I'm not sure you have to be an M.D. to be able  
14 to testify about that but --

15 MS. HOLIDAY: That's correct.

16 THE WITNESS: Excuse me, Your Honor. Is this  
17 water?

18 THE COURT: Oh, sure.

19 THE WITNESS: May I --

20 THE COURT: Are you thirsty?

21 THE WITNESS: -- pour a glass? I'm --

22 THE COURT: Of course.

23 THE WITNESS: -- very dry mouth. Thank you.

24 THE COURT: Of course.

25 BY MS. HOLIDAY:

1 Q. So Dr. Johnson, through your training in the  
2 Marines Corps or your training and education while you  
3 received your doctorate degree and your employment and  
4 practical experience ever since then, what training,  
5 education, and experience makes you qualified to testify  
6 about, let's start with a child's skin?

7 A. Well, I would say one of based on experience, we  
8 start with experience, I guess, for the last 15 years plus,  
9 I've been looking at injuries. I've literally probably seen  
10 tens of thousands. Looked at hundreds of -- probably in the  
11 hundreds of thousands of photographs associated with  
12 injuries.

13 MS. JOBE: I apologize, Your Honor. I appreciate  
14 he has a lot of experience, but he's talking about injuries  
15 in general, and there are any number of injuries of he could  
16 be discussing. Whereas, this case is --

17 THE COURT: I just --

18 MS. JOBE: -- specific to burn injuries.

19 THE COURT: I agree. So just be specific to --

20 BY MS. HOLIDAY:

21 Q. How are these --

22 THE COURT: -- burn patterns.

23 BY MS. HOLIDAY:

24 Q. How did these injuries specifically deal with the  
25 epidermis?

1       A.    Okay. With regards to the, certainly, layers of  
2 skin, I've -- I've for the last five years, certainly, looked  
3 at patterns in skins. Patterns associated with ligature  
4 marks. Patterns associated with bruises, abrasions,  
5 scratches, lacerations, cuts, as well as burns on human skin.  
6 That's in my -- basically, what I've done a lot of. I'd say  
7 the majority of all my cases involve looking at patterns on  
8 skins, especially for the -- since the first certainly last  
9 five years.

10           THE COURT: Looking at patterns of injury on skin?

11           THE WITNESS: Pardon me, Ma'am?

12           THE COURT: Looking at patterns of injury on skin?

13           THE WITNESS: Actually, geometric patterns, such  
14 as, for example, a good example is a ligature mark --

15           THE COURT: Uh-huh.

16           THE WITNESS: -- of which could indicate there was  
17 a force, a mechanical force applied to the neck, for example.

18           THE COURT: Okay.

19 BY MS. HOLIDAY:

20       Q.    When you received your doctorate degree, you, in  
21 fact, did some work at a medical school, correct?

22       A.    Correct.

23       Q.    Did you learn about skin and the layers of skin  
24 during that education?

25       A.    I would say actually doing our, the laboratory work

1 we had at Emory University. We were not specifically  
2 instructed in the area of anatomy and skin layers. We had  
3 that training prior in my anatomy pathophysiology course,  
4 courses at Georgia Tech. So not specifically at that time,  
5 but basically, we were using that information to observe  
6 pathological -- pathology associated with the skin and other  
7 organs and parts of the body.

8 Q. Okay. And in the Marines Corps, more specifically,  
9 you were trained -- is it true that you were trained to treat  
10 significant burn injuries?

11 A. That's correct. And certainly, the Marines Corps  
12 and with my tactical combat casualty care training, we got  
13 into that in more depth. Certainly, that training involved  
14 certainly, education with regards to anatomy, understanding  
15 the characteristics associated with burns, the  
16 classifications of burns at that time we had that training,  
17 as well as looked at ways -- medical intervention that we  
18 could do pre-hospital-wise to assist a burn patient to  
19 hopefully survive their injuries after leaving the field.

20 Q. And you mentioned that since that initial Marine  
21 Corps training, you have had updates to that?

22 A. Correct. And what I was talking about right there,  
23 the -- the tactical combat casualty care, that was actually  
24 post Marines Corps. In the Marines Corps we called it the --  
25 it's been called the combat first aid or combat lifesaver

1 training and it's now been updated to tactical combat care  
2 training.

3           And in that training, yes, we had specific  
4 information associated with burns and basically, pre-hospital  
5 care for those burns.

6           Q.   What courses related to your Ph.D. would give you  
7 specific education in layers of the skin or burns?

8           A.   Certainly, I would say layers of the skin. My  
9 Ph.D. research was on human soft tissue mechanics.  
10 Specifically, I looked at the -- the human eye. So I had to  
11 be very -- very knowledgeable with the layers of the skin in  
12 the cornea. I also worked while I was at Georgia Tech for  
13 doing my Ph.D., I worked in the Georgia Tech injury bio -- or  
14 the biomechanics laboratory for six years, which was a paid  
15 position.

16           We -- fortunately, for me, we also worked in the  
17 area of soft tissue mechanics. So we looked at everything  
18 from vascular tissue, such as the abdominal aorta, tendons  
19 that pull on the heart valves, skin tissue. We looked at  
20 veins in the arms and so forth. So that was about six years  
21 worth of training associated with soft tissues, and  
22 certainly, we've got to be fairly knowledgeable about soft  
23 tissues and the layers within those soft tissues.

24           Q.   Through your employment experience, have you worked  
25 on other cases involving burns?



1 A. I have.

2 Q. Can you tell us a little bit about those cases and  
3 when you worked on them?

4 A. Sure. I guess, the case with regards to water  
5 burns, case -- it was probably about seven years ago prior to  
6 me starting -- forming my company, associated with a break in  
7 a couple pipes in a hot water heating system for a car wash.  
8 The individual was turning valves on and off as they  
9 apparently regularly do, and a valve -- or excuse me, a pipe  
10 burst and causing facial and neck as well as burns to one of  
11 his hands.

12 Q. Thank you. Dr. Johnson, can you --

13 THE COURT: So you've done one case involving  
14 burns?

15 THE WITNESS: Sorry, Your Honor. That was with  
16 regards to water. The other was with regards to burning oil  
17 having to do with oil refinery explosions and injuries  
18 associated with -- fluids associated with that type of  
19 explosion. Again, it would be oil specifically.

20 BY MS. HOLIDAY:

21 Q. Okay.

22 THE COURT: So one case dealing with water burns?  
23 Liquid burns?

24 THE WITNESS: Liquid burns, I would say, Your  
25 Honor, probably three or four case, but water burns, one

1 case, Your Honor.

2 THE COURT: Okay.

3 BY MS. HOLIDAY:

4 Q. Your specific training and education, though,  
5 provided you with experience in the layers of the skin?

6 A. Yes.

7 Q. Some of it had to do with burns?

8 A. Yes.

9 Q. Some of it had to do with other types of injuries  
10 to the skin, like bruises?

11 A. Yes.

12 Q. Or cuts, as you testified to earlier?

13 A. That's correct.

14 Q. Okay. Dr. Johnson, can you tell us a little bit  
15 about the information that you received for this case that  
16 you then used to base your opinion on?

17 A. Sure, if I can remember all that. I would say that  
18 the information, the facts of the case that I used to develop  
19 basically, my -- to my conclusions in this case were  
20 associated with statements given by Mr. Mathews during his  
21 police interview, statements to the police during the -- the  
22 police reenactment at the apartment, the measurement taken of  
23 the counter height by the police department, the dimensions  
24 basically photographed of the mug taken by the police as  
25 well. Measurements taken of the subject mug as well by the

1 defense investigator.

2 The medical records. Chance's medical records and  
3 the photograph associated with the patterns -- the burns on  
4 the back of his hands.

5 Q. And when you were provided this information, what  
6 was your goal or what was the question that you were trying  
7 to answer, provide information on?

8 A. Well, my interest was understanding how these burns  
9 could have been sustained on the back of Chance's hands, and  
10 I was -- looked at what the medical records had to say. The  
11 law enforcement had indicated that it was not -- not  
12 consistent with a cup falling -- him pulling a cup toward  
13 him, and I agreed with that.

14 So I was looking at other possibilities. How could  
15 had this happened? And so using the facts of the case, I  
16 looked at the other ways that this mug could have potentially  
17 spilled. And so instead of looking toward him, which I  
18 agreed, that would -- I would expect probably burns to his  
19 arms as well as his hands. So I looked at different  
20 directions. I looked at well, is it possible, what if he  
21 pushed it away? What if the mug spilled from right to the  
22 left? What if the mug spilled --

23 THE COURT: So you thought of every single  
24 possibility?

25 THE WITNESS: No, Your Honor. I just -- I looked

1 at the --

2 THE COURT: Okay. What facts specifically, did you  
3 rely upon in determining how something could have happened?

4 THE WITNESS: All right, I understand. With  
5 regards to that, the patterns, the burn patterns on Chance's  
6 hands. I agreed that that did not look consistent with him  
7 pulling a mug off of the counter.

8 With regards to the reenactment --

9 THE COURT: Okay, now say that again. You looked  
10 at the photographs and you agreed that the burn patterns were  
11 not what?

12 THE WITNESS: I would agree with the patterns -- I  
13 would agree with the law enforcement's conclusions that it  
14 didn't appear like the mug was spilled towards Chance. Like  
15 he pulled it toward him.

16 THE COURT: Okay.

17 THE WITNESS: So those patterns, I would expect  
18 patterns more up on his arms as well. So based on  
19 Mr. Mathews' testimony -- or not testimony, I guess,  
20 statements provided to the police, he indicated in the  
21 reenactment that he filled the mug, he thought between  
22 halfway and full with hot water. He also indicated in the  
23 reenactment, through physical movement, that he had the pan  
24 on the stove to his right. He picked the pan up with his  
25 right hand he basically -- shows basically what he did and he

1 brings the pan over to the mug.

2           So based on that reenactment, the positioning, the  
3 movements of Mr. Mathews, it was apparent to me that he  
4 picked the pan of hot water up with his right hand. He  
5 poured the water from the pan into the mug in his left hand  
6 based on that reenactment. The location of the mug on the  
7 counter, he -- from the reenactment there was a point in the  
8 video reenactment where Mr. Mathews pointed to a location on  
9 the -- the table -- or on the counter where he recalled  
10 placing the mug.

11           So the counter itself has different layers or, I  
12 guess, a pattern, had a linear pattern in it. So they're  
13 dark, light, dark, light and so forth. So based on that, I  
14 -- from the video, I made a still image of him pointing to  
15 the counter at that location. Then the -- the defense  
16 investigator went out and he measured the distance from the  
17 edge of the countertop into that location, and he found that  
18 -- and with that measurement --

19           THE COURT: Into a very specific location --

20           THE WITNESS: Ma'am --

21           THE COURT: -- that you estimated from a photo?

22           THE WITNESS: Yes, ma'am. Basically, on the  
23 reenactment photo, Mr. Mathews pointed to a specific location  
24 on the countertop. The countertop has these linear -- like  
25 the three-quarter inch wide linear stripes, essentially, on

1 Q. And the medical records were generated on the day  
2 of the accident?

3 A. Yes.

4 Q. Okay. So you could tell how tall Chance was on the  
5 day of the accident?

6 A. Yes, I would say that's plus or minus probably, I  
7 would imagine, probably half an inch.

8 Q. And you could tell how tall the countertop was that  
9 the cup was placed?

10 A. Yes, I knew that from the measurements made by  
11 police.

12 Q. And you could tell how far onto the countertop  
13 Mr. Mathews said he placed the mug?

14 A. Yes.

15 Q. You could also tell what type of mug it was?

16 A. Yes, I could. That was based on police photographs  
17 as well as the measurements taken by the defense  
18 investigators, specifically, he measured the diameter of the  
19 top of the mug as well as the height of the mug.

20 Q. Were you able to tell the exact make and model of  
21 the mug?

22 A. I was. The police photos, there was the photograph  
23 showing the stamping, the manufacture stamping on the bottom  
24 of the mug.

25 THE COURT: There's a make and model of mugs?

1 Okay.

2 THE WITNESS: It was a manufacturer. I believe,  
3 there's kind of somewhat of a model.

4 BY MS. HOLIDAY:

5 Q. Right. That's correct. Are there any other  
6 specific facts related to measurement in that kitchen on the  
7 day of the accident that you took into consideration?

8 A. With regards to the countertop height, with the mug  
9 location and the mug itself and how far the mug was  
10 apparently filled based on Mr. Mathews' understanding with  
11 water, I would say no. Not that I recall at this moment,  
12 anyhow.

13 Q. Okay. So with that information, what were you  
14 trying to determine?

15 A. So with that information, I had, at least based on  
16 those facts, I -- there was hot water in a mug. Chance had  
17 burns to his hands. Based on what Mr. Mathews' statements,  
18 he indicated that he had poured hot water into a mug, he left  
19 the room, he heard a scream, he came back and he saw Chance  
20 with basically burns to his hands. So I -- and the mug was  
21 on the floor.

22 So, I believe, that the mug with hot water was  
23 likely source of the liquid that burned his hands. So from  
24 there, I looked at what the -- read the -- the incident  
25 reports, looked at the medical records, and again, I agreed

1 that, okay, this doesn't look like something where a mug  
2 would just -- he pulled the mug off a counter on to himself.  
3 I would have expected more burns as well or different  
4 locations.

5 So then I looked at, okay, I know where the mug is  
6 located on the counter. So how did he get these -- how could  
7 of he have possibly received these burn patterns to his  
8 hands? So I was placing his hands -- okay, if he pushed the  
9 mug away, I found that that was one of the possibilities.  
10 Although, because he was pushing it away, less likely to have  
11 caused burn patterns on his hands so then left or right.

12 I could -- there are really infinite possibilities.  
13 If we look at a --

14 THE COURT: That's my concern. So basically, you  
15 did an infinite amount of possibilities of how this child --  
16 because that's not what we're here for.

17 MS. HOLIDAY: Well, let me specify.

18 THE COURT: That's my concern an --

19 MS. HOLIDAY: Let me --

20 THE COURT: -- infinite --

21 MS. HOLIDAY: Let me --

22 THE COURT: -- amount of possibilities.

23 MS. HOLIDAY: -- specify.

24 THE WITNESS: Yes.

25 BY MS. HOLIDAY:



1 Q. Dr. Johnson, could you make a determination for  
2 sure about how Chance was burned?

3 A. I -- I will never know exactly how Chance was  
4 burned. I was looking at the purpose of my demonstrations  
5 were to get an idea. Is this a possibility? Did the mug  
6 come from left to right? Because there were an infinite  
7 number of possibilities, I had to choose.

8 THE COURT: Of a non -- of a -- I guess, of an  
9 accidental nature, right? You weren't looking at intentional  
10 ways?

11 THE WITNESS: Well, I was just -- Your Honor, I  
12 wasn't -- they -- the burns themselves, the way actually when  
13 I work, since the body does not distinguish an accidental or  
14 intentional harm, that's really -- my focus is really on the  
15 injuries only. And so how could of these injuries occurred?

16 So I knew there was a pattern on the hands. So to  
17 limit the possibilities, which I have to do in all cases, in  
18 most occasions, then I looked at pushing the mug away from  
19 the left to the right and the right to the left to get --

20 BY MS. HOLIDAY:

21 Q. And again, just to specify, your quest was not to  
22 eliminate all the different possibilities of how Chance could  
23 have gotten burned?

24 A. Absolutely not.

25 Q. Your quest, if I'm correct, was to determine if one

1 way was possible?

2 A. Right. Just looking at a possible explanation for  
3 how Chance received the burns to the back of his hands.

4 Q. When you testify, do you intend to testify that you  
5 have determined the cause of the burns certainly?

6 A. Absolutely not. Basically, it's just one  
7 possibility. I'm offering my demonstrations which fairly,  
8 certainly in one portions of the burns, fairly -- closely,  
9 basically, recreated those -- that burn pattern along his  
10 wrist and back of his right hand. But it's only as a  
11 demonstration, as a possibility that this is something that  
12 could have happened.

13 Q. So to determine if it could have happened, you  
14 don't need to rule out all the other possibilities because  
15 you're only trying to determine if it could have happened  
16 according to this one possibility?

17 A. Right. There was just one possibility, and that's  
18 it. I mean, the infinite number of possibilities would be  
19 not possible for me to investigate.

20 Q. Okay. So moving on, how did you reach that  
21 determination?

22 A. With regards to testing?

23 Q. Yes.

24 A. Okay.

25 THE COURT: So if you were permitted to testify,

1 you would testify that you know -- you would tell the jury  
2 here's one possible way this could have happened?

3 THE WITNESS: Yeah, and, Your Honor, that --

4 THE COURT: In an accidental manner? Because I'm  
5 assuming you're not going to say someone intentionally did  
6 it.

7 THE WITNESS: Well, I would say neither one,  
8 accidental or intentional, Your Honor, because it's just for  
9 me it's the -- I look at the physical evidence and the facts.

10 THE COURT: Okay. And what's that possibility?

11 THE WITNESS: Oh, with regards to --

12 THE COURT: You said that there was -- if you were  
13 appointed to testify, you would testify that this is possible  
14 how this incident occurred.

15 THE WITNESS: Um-h'm.

16 THE COURT: How?

17 THE WITNESS: Oh, based on my testing.

18 THE COURT: Sure.

19 THE WITNESS: Certainly, and through that testing,  
20 I looked at -- I knew pushing the mug away, looking at --  
21 it's just we would not have those patterns. Those patterns  
22 wouldn't have been sustained. It's just not reasonable based  
23 on the depth of the counter and I basically eliminated that  
24 possibility very early on.

25 So then I looked from -- from right to left. And

1 so I ended up, based on medical records, Chance's height, I  
2 estimated, approximated Chance -- the hands of -- of the size  
3 of Chance's hands. There were two photographs in the --

4 BY MS. HOLIDAY:

5 Q. Can I -- ask I just interrupt you really quick --

6 A. Oh, yes.

7 Q. -- Doctor? When you say you estimated the size of  
8 Chance's hands, were you provided a photograph that  
9 specifically had a measuring device next to Chance's hands?

10 A. Yes. There were -- there were only two photographs  
11 taken they hospital. I'm not quite sure if it's UMC or  
12 Sunrise. They were taken of Chance's hands. There are only  
13 two with a scale in the photograph. So I had one scale with  
14 his left hand, one scale with his right hand.

15 So using those scales, and because his hands were  
16 not flat on a flat surface, his fingers were slightly curled  
17 down, I approximated the size of his hands. So basically,  
18 looking at the width of his hands between his little finger,  
19 the joint here, the base and then the forefinger and then  
20 looking at the length of his hand from the wrist crease to  
21 the top of his middle finger.

22 THE COURT: So you estimated the size of the  
23 child's hands?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Okay.

1 BY MS. HOLIDAY:

2 Q. Would you say that the size of the child's hands --  
3 your estimate of the size of the child's hands was similar to  
4 the actual size of the child's hands? Can you say your  
5 estimate is similar to the actual size?

6 A. I -- I believe -- I mean, my estimate from the  
7 photographs, as I mentioned earlier, I have really looked at  
8 a lot of photographs, and I've done a lot of scaling,  
9 probably from literally hundreds -- probably in the thousands  
10 of photographs where I've actually had to look at a scale in  
11 a photograph and use that scale to make estimates,  
12 approximations of other objects within the view of that  
13 photograph.

14 So in this case, I believe, my estimate was fairly  
15 accurate. I would say that one, I believe, I determined to  
16 be within plus or minus a half or plus and minus about a half  
17 of an inch for the width of his hand. Because his hands were  
18 curved a little bit, I didn't have like a perfect picture,  
19 flat down, 90 degrees to his hand. So I believe, based on my  
20 experience, yes, I was fairly close in estimating the size of  
21 his hands.

22 Q. Okay. How did you --

23 THE COURT: But you estimated it from a photo?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Okay.

1 THE COURT: So the hypotheses is the child spilled  
2 the mug from left to right?

3 THE WITNESS: Well, actually, my hypothesis was, is  
4 that the mug of water spilled from the right to the left or  
5 from the left to right over his hands. Now --

6 THE COURT: Okay.

7 THE WITNESS: -- based on other -- based on the  
8 physical characteristic of Chance, it was actually I used a  
9 surrogate, the same height of --

10 THE COURT: So that the child's hands were just for  
11 some reason up on a countertop and --

12 THE WITNESS: No.

13 THE COURT: -- a mug rolled over and the water went  
14 on his hands?

15 THE WITNESS: No. No, Your Honor. And I actually  
16 get -- I know I'm getting ahead of what my testing is, but  
17 basically, based on if we have the mug here, either way --

18 THE COURT: Okay.

19 THE WITNESS: -- his hands, I believe, did -- did  
20 this.

21 THE COURT: Okay.

22 THE WITNESS: And so I believe that the edge of the  
23 mug basically were -- oh, I'm sorry.

24 THE COURT RECORDER: It's okay.

25 THE WITNESS: The -- I believe, one possible

1 explanation for how the mug spilled, and there are a number  
2 of reasons I've chosen that explanation as a possibility, is  
3 that he reached on the counter and tipped the mug like this  
4 and the mug spilled water over both of his hands.

5 THE COURT: Okay. And that's one possibility out  
6 of an infinite amount of possibilities?

7 THE WITNESS: Well, I would say -- I probably  
8 wouldn't say an infinite, but it's certainly based on the  
9 results of my demonstration, I would say it's a good  
10 possibility. It's less than infinity.

11 THE COURT: Okay. Is it reasonably certain to have  
12 occurred?

13 THE WITNESS: I believe so, based on my test  
14 results and the analysis of using the facts of the case, yes.

15 THE COURT: That it's reasonably certain that the  
16 child reached up on to the countertop, I guess, the child  
17 hitting the cup and the water spilled over on to his hands?

18 THE WITNESS: Well, I can say, Your Honor, with --

19 THE COURT: Because I don't know anybody that's  
20 testified to that. So who's going to testify to that?

21 MS. HOLIDAY: Nobody, Your Honor. The constants  
22 that Dr. Johnson has to work with is the height of the  
23 counter, note --

24 THE COURT: Got it.

25 MS. HOLIDAY: -- Chance's height. Another

1 important factor is would Chance at his height --

2 THE COURT: Yeah, but experts can't just come in  
3 here and tell this jury based on all this, this possibly  
4 could have happened.

5 MS. HOLIDAY: Well, let me back up a little bit,  
6 Your Honor, and get into a little bit of argument. My  
7 understanding of the State's theory is that what Mr. Mathews  
8 said is not possible or plausible, that being that there was  
9 a mug on the countertop --

10 THE COURT: Okay.

11 MS. HOLIDAY: -- that ended up somehow on the floor  
12 and somehow in that process caused burns to the backs of  
13 Chance's hands.

14 THE COURT: Okay.

15 MS. HOLIDAY: My understanding of the State's  
16 theory, as they will get out through the testimony of  
17 Dr. Cetl and Mr. Peltiar is that that's not plausible. It's  
18 not plausible that that could have happened. And the reason  
19 it's not plausible that that could have happened is because  
20 if the mug fell off the countertop towards Chance spilling  
21 water onto him, there would be splash marks --

22 THE COURT: Um-h'm.

23 MS. HOLIDAY: -- or there would be burns in other  
24 places besides just on the backs of his hands.

25 THE COURT: Um-h'm.



1 MS. HOLIDAY: It turns out, we agree with that and  
2 so does our expert, Dr. Johnson. That's not plausible.

3 THE COURT: Okay.

4 MS. HOLIDAY: But, Your Honor, we think that the  
5 State's theory fails because they didn't consider the  
6 possibility that a mug wouldn't just fall in one direction.  
7 A mug could fall in, as you said, an infinite, you know,  
8 amount of directions. But if we want to just make it simple  
9 and stick with four general directions, a mug placed on a  
10 countertop could fall, for example, towards me, towards  
11 Chance.

12 THE COURT: Um-h'm.

13 MS. HOLIDAY: It could fall away from him. It  
14 could fall from left to right or from right to left. So we  
15 think that the State's experts did not consider whether it's  
16 plausible that the mug could have fallen from left to right  
17 or right to left causing the types of injuries we see on  
18 Chance's hands. We agree that it's not plausible that it  
19 would have fallen towards Chance.

20 THE COURT: Okay.

21 MS. HOLIDAY: But we think that it is plausible, in  
22 fact, it's very likely, as Dr. Johnson just said, that the  
23 mug could have tipped over from left to right spilling over  
24 Chance's hands, if he was reaching up onto the countertop, by  
25 the way, for the cookies or candy that were on the countertop

1 behind the mug, as we can see in the pictures that the State  
2 has provided. It's plausible --

3 THE COURT: Yeah, but you understand you have to  
4 have facts --

5 MS. HOLIDAY: Right.

6 THE COURT: -- to support these things.

7 MS. HOLIDAY: The facts --

8 THE WITNESS: Yeah --

9 MS. HOLIDAY: -- we have were where --

10 THE COURT: Who's testifying that this child was  
11 reaching on the counter and reaching for cookies or whatever  
12 and -- and hit the mug and the mug fell over on his hands?

13 MS. HOLIDAY: There's nobody to testify --

14 THE COURT: Because your client doesn't even say  
15 that.

16 MS. HOLIDAY: No. There's nobody to testify that  
17 Chance was reaching on the counter. There's --

18 THE COURT: Okay.

19 MS. HOLIDAY: -- also nobody to testify that the  
20 cup would have spilled towards Chance. That the water would  
21 have spilled towards Chance splashing him everywhere.

22 THE COURT: Okay.

23 MS. HOLIDAY: And Mr. Mathews says he doesn't know  
24 how that water spilled on to Chance so --

25 THE COURT: Yeah, but we don't just bring experts

1 in and say here's an infinite amount of ways --

2 THE WITNESS: Okay, Ma'am.

3 THE COURT: -- it could -- okay.

4 THE WITNESS: Oh, I'm sorry, Your Honor.

5 THE COURT: What I'm going to do is I'm going to  
6 ask the witness to --

7 MS. HOLIDAY: Sure.

8 THE COURT: -- step down and step outside of the  
9 courtroom.

10 THE MARSHAL: Sir.

11 THE WITNESS: Okay.

12 THE COURT: I don't want to -- I don't know how  
13 it's going to go or what -- and I don't want to -- I don't  
14 want to get your expert mad at you or me or whomever and just  
15 so I just want to keep him fresh, okay?

16 MS. HOLIDAY: I understand, Your Honor.

17 THE COURT: Because sometimes I don't think they  
18 understand what we're talking about.

19 MS. HOLIDAY: Right.

20 THE COURT: I'm not suggesting that that couldn't  
21 happen, but you can't just come into court and have an expert  
22 testify. I mean, he is -- I've written down "an infinite  
23 amount of things could have happened". I mean, I guess, I  
24 just -- you don't bring in an expert and say set up. It  
25 sounds like you're setting up a set of facts.

1 MS. HOLIDAY: Well, Your Honor, we think that  
2 the --

3 THE COURT: You can't do that.

4 MS. HOLIDAY: We think that State's experts are  
5 going to testify that these burns were likely intentionally  
6 and they certainly --

7 THE COURT: Well, yeah, they've charged him with a  
8 crime.

9 MS. HOLIDAY: I'm sorry?

10 THE COURT: They charged your client with a crime.

11 MS. HOLIDAY: Absolutely. And there's nobody that  
12 can testify that they saw Mr. Mathews burn Chance.  
13 Certainly --

14 THE COURT: I'd agree.

15 MS. HOLIDAY: -- there's nobody to testify to that.  
16 So the fact that we can't have an expert testify that it's  
17 possible that a mug could have accidentally with, of course,  
18 the child's help, accidentally tipped over, spilling water on  
19 to the back of his hands, causing burns consistent with the  
20 burns we see in this case, we think that that is in direct  
21 rebuttal to the State's theory that the reason they think  
22 it's intentional is because Mr. Mathews' statement isn't  
23 plausible.

24 And if we look at their experts' conclusions, their  
25 experts make the same conclusion. Dr. --

1 THE COURT: Okay.

2 MS. HOLIDAY: -- Cetl will testify, we expect, that  
3 part of the reason she thinks these burns are intentional is  
4 because if it happened the way Mr. Mathews said it happened,  
5 there would be splashes on his body, maybe on his face, on  
6 his torso, his arms and legs.

7 THE COURT: I thought your client was not in the  
8 room? I thought what happened was is there's a mug of hot  
9 water for coffee or for what? For coffee?

10 MS. HOLIDAY: That's what his statement is, Your  
11 Honor.

12 THE COURT: For coffee. And then he goes into the  
13 room to attend to another child and hears the child cry.

14 MS. HOLIDAY: That's correct.

15 THE COURT: Right?

16 MS. HOLIDAY: Right. So Dr. Cetl has the  
17 information -- the same information that Dr. Johnson has in  
18 that Mr. Mathews didn't --

19 THE COURT: Yeah, but they're --

20 MS. HOLIDAY: -- see what happened.

21 THE COURT: -- relying upon them as being  
22 non-accidental based on an examination of the burns, correct?

23 MS. HOLIDAY: Based on --

24 THE COURT: Not some recreation of this is how it  
25 happened. No one's going to come in and recreate how it

1 happened, right?

2 MS. JOBE: Actually, our expert could, but we did  
3 not ask him to.

4 THE COURT: Okay. I just -- I mean, it's -- it's  
5 my understanding that the medical opinion that the  
6 pediatrician that said this was not of an accidental nature  
7 didn't do that based on setting up experiments --

8 MS. HOLIDAY: No.

9 THE COURT: -- right?

10 MS. HOLIDAY: That's correct.

11 THE COURT: Did it based on the pattern of the  
12 burns on the child's hands, correct?

13 MS. HOLIDAY: That's correct. And --

14 THE COURT: Okay.

15 MS. HOLIDAY: But it's -- but it's an opinion that  
16 is based on how she thinks his statement is not plausible.  
17 She says it, Dr. Cetl does in her preliminary hearing  
18 testimony.

19 THE COURT: Well, what's his statement?

20 MS. HOLIDAY: That there was a mug on the counter  
21 that fell to the -- to the floor somehow and the child got  
22 burned somehow as a result of that. That's all Mr. Mathews  
23 knows.

24 THE COURT: Okay. Well, your expert didn't -- your  
25 expert said a plausible, I guess, explanation is the child

1 hitting the corner of the mug and the mug falling over and  
2 the water running onto his hands, not on to the floor. Then  
3 when did the child do, pick it up and throw it on the ground?

4 MS. HOLIDAY: Well, one of his further tests that  
5 he conducted was to determine how a mug could tip and roll  
6 off the countertop. So he was able to conclude that a mug  
7 can fall over --

8 MS. JOBE: I object to that based --

9 MS. HOLIDAY: -- and roll to the --

10 MS. JOBE: -- on the videos.

11 MS. HOLIDAY: -- floor.

12 THE COURT: Okay.

13 MS. HOLIDAY: So, Your Honor, all of this, again,  
14 is in direct rebuttal to the State's theory. Mr. Mathews'  
15 statement of how things happened, his limited --

16 THE COURT: Okay.

17 MS. HOLIDAY: -- knowledge of how --

18 THE COURT: The State isn't bringing someone in  
19 here to say how this specifically happened because no one saw  
20 it, right?

21 MS. HOLIDAY: The State is bringing someone in here  
22 to say that this happened intentionally.

23 THE COURT: Right. Based on the burn patterns.

24 MS. HOLIDAY: And Mr. -- or and Dr. Johnson --

25 THE COURT: And based on the other evidence,

1 correct?

2 MS. HOLIDAY: And Dr. Johnson is saying based on  
3 the burn patterns --

4 THE COURT: Right.

5 MS. HOLIDAY: -- and based on the other evidence,  
6 it's plausible, in fact, likely, that these burn patterns,  
7 based on the context of the evidence, could have come from  
8 the mug spilling from left to right over Chance's hands, if  
9 he placed them on the countertop.

10 THE COURT: And --

11 MS. HOLIDAY: So --

12 THE COURT: -- the only problem with all that is  
13 if, if, if, if. You can't just bring someone in here and say  
14 if all of these things happened. These biomechanic experts  
15 have to rely -- there has to be a foundation that -- there  
16 has to be a factual foundation. So there's nobody to testify  
17 to that set of facts.

18 MS. HOLIDAY: We believe --

19 THE COURT: Right?

20 MS. HOLIDAY: Yes.

21 THE COURT: Okay.

22 MS. HOLIDAY: The State's experts, they have to  
23 make assumptions, too. They're assuming, one, that the mug  
24 couldn't have fallen off the countertop without causing other  
25 types of burns. That's one thing that they're going to



1 testify to.

2 Well, they weren't there. They didn't see the mug  
3 fall off the countertop, so they don't know if it couldn't  
4 have created the pattern of burns that they see.

5 The State's experts have to make an assumption.  
6 The assumption that the mug falling off the countertop  
7 couldn't have created that pattern of burns. I don't think  
8 the State's experts, and you can correct me if you think I'm  
9 wrong, I don't --

10 THE COURT: But this is all based on burn patterns,  
11 and burn patterns that doctors see in ERs when children get  
12 brought in, right?

13 MS. HOLIDAY: That's correct.

14 THE COURT: They didn't go out and recreate some  
15 situation and say this is how it happened.

16 MS. HOLIDAY: And that's why I would argue that  
17 they're not qualified to testify that a mug spilling from the  
18 countertop onto the floor couldn't create that burn pattern.  
19 That's part of their -- the basis of their analysis, both  
20 Dr. Cetl and Mr. Peltiar. Both of them say Mr. Mathews'  
21 statement, the way he said it happened is not plausible.  
22 That's what --

23 THE COURT: Okay.

24 MS. HOLIDAY: -- they both say, based on the burn  
25 patterns.

1 THE COURT: Okay.

2 MS. HOLIDAY: And so we think bringing an expert in  
3 to say it is plausible is -- is --

4 THE COURT: But your client didn't say this is how  
5 it happened. It would be one thing if your client was going  
6 to testify and say the child had his hands on the counter,  
7 the child tipped the -- the mug. You want to bring someone  
8 in here to create a completely -- a factual scenario and put  
9 it off in front of this jury as though that's what happened.

10 You want the jury to buy into that -- what this  
11 expert's going to say is actually what happened. Yet,  
12 there's no evidence to support that.

13 MS. HOLIDAY: Well, we think the evidence to  
14 support that is the burn --

15 THE COURT: There's an --

16 MS. HOLIDAY: -- pattern.

17 THE COURT: I mean, he said there's an infinite  
18 amount of --

19 MS. HOLIDAY: Absolutely.

20 THE COURT: -- possibilities.

21 MS. HOLIDAY: One of the things Dr. Johnson will  
22 have to testify to is that he was not in the room when it  
23 happened so he doesn't know for sure. Same with Dr. Cetl.  
24 Same with Mr. Peltiar.

25 They're all basing their conclusions on the medical

1 knowledge that they have -- or not medical knowledge in the  
2 case of Mr. Peltiar, but the knowledge and experience that  
3 they have. Nobody saw what happened to Chance. So even  
4 though they're going to testify in their opinion that it was  
5 intentional, they certainly didn't see it. They're coming to  
6 that conclusion by looking at the burn patterns, just as  
7 Dr. Johnson looks at the burn patterns by looking at the  
8 context of the evidence, understanding that the statement was  
9 that a mug fell from the countertop to the floor.

10 THE COURT: That's it. And then -- and then  
11 bringing a child and saying the child's hands were here, that  
12 this is exactly how it happened and it would happen like  
13 this, the mug would fall from right to left on to the child's  
14 hand and that's what happened.

15 MS. HOLIDAY: I don't think --

16 THE COURT: You basically want to create a  
17 completely -- a complete scenario.

18 MS. HOLIDAY: I don't think Dr. Johnson wants to  
19 say that that's how it happened. He's saying that's how it  
20 could have happened, based on the -- based on the injury.

21 THE COURT: And then I said was that -- because we  
22 don't bring experts in here to tell a jury what could have  
23 happened, okay? Because we'd be here until the cows come  
24 home talking about what could have happened. We talk about  
25 what's reasonably certain to have happened.

1 MS. HOLIDAY: What --

2 THE COURT: I mean, experts have to testify to a  
3 reasonable degree of certainty. He, in my opinion, has  
4 created a scenario that fits the -- the burn patterns.

5 MS. HOLIDAY: That's correct.

6 THE COURT: He's created it based on no facts  
7 whatsoever.

8 MS. HOLIDAY: Based --

9 THE COURT: Except a mug and a hot water.

10 MS. HOLIDAY: Based on the facts of this case that  
11 the mug -- the specific type of mug, the child's height, the  
12 height of the countertop, where the mug was placed on the  
13 counter and how all of those things could have come together  
14 to create burns that are accidental.

15 And I think what's unique about this case is that,  
16 like I said before, part of State's theory is that  
17 Mr. Mathews' statement is not plausible. So to be able to  
18 say yes, it is plausible, you --

19 THE COURT: What's his statement that you keep  
20 saying is plausible? I thought his statement was I walked  
21 out, I didn't see anything.

22 MS. HOLIDAY: But there was a mug --

23 THE COURT: And then there were --

24 MS. HOLIDAY: -- on the countertop that fell to the  
25 floor. I mean, Dr. Cetl will testify --

1 THE COURT: Did he see it fall --

2 MS. HOLIDAY: -- if it happened --

3 THE COURT: -- to the floor? Did he hear it fall  
4 to the floor? I thought there was a mug on the countertop,  
5 he put it there. He can testify to that, right?

6 MS. HOLIDAY: Um-h'm.

7 THE COURT: Or he told the police that.

8 MS. HOLIDAY: That's correct.

9 THE COURT: And he went in the other room, right?

10 MS. HOLIDAY: That's correct, but --

11 THE COURT: Does he have any idea what happened to  
12 the mug --

13 MS. HOLIDAY: Yes.

14 THE COURT: -- when he was in the other room?

15 MS. HOLIDAY: Because when he came back into the  
16 kitchen, the mug was on the floor.

17 THE COURT: Okay. So that's what he knows.

18 MS. HOLIDAY: That's correct, Your Honor.

19 THE COURT: Okay. Doesn't know how the mug got  
20 there, though, right?

21 MS. HOLIDAY: Certainly, not. No, he does not.  
22 Neither does --

23 THE COURT: Okay.

24 MS. HOLIDAY: -- Dr. Cetl, and neither does  
25 Mr. Peltiar. But they are going to testify that the burns

1 wouldn't have happened if the mug falling off the countertop  
2 fell towards Chance.

3 THE COURT: I mean, here's the thing. Here's my  
4 concern. I do not think we bring experts in here to look at  
5 a burn pattern and try to find a non-accidental nature. Do I  
6 think or a -- I'm sorry, I said it the opposite. You know  
7 what I meant.

8 MS. HOLIDAY: Accidentally.

9 THE COURT: An accidental nature. So your theory  
10 is this wasn't intentional, it was accidental?

11 MS. HOLIDAY: Yes, Your Honor.

12 THE COURT: Correct?

13 MS. HOLIDAY: Absolutely, yes.

14 THE COURT: And we're going to create a scenario  
15 that shows you it's accidental? We -- I mean, we just don't  
16 do that in cases.

17 MS. HOLIDAY: Further to our theory is not just  
18 that this was accidental --

19 THE COURT: Okay.

20 MS. HOLIDAY: -- but that the State's assumptions  
21 or the -- the --

22 THE COURT: And let me ask you this. If the burn  
23 patterns could have been created of an accidental nature,  
24 isn't that for cross-examination --

25 MS. HOLIDAY: I think so --

1 THE COURT: -- of your expert? Of the medical  
2 experts?

3 MS. HOLIDAY: Well, maybe, because I don't know  
4 that the medical experts, that either Dr. Cetl or  
5 Mr. Peltiar, I don't know that they could answer questions  
6 that, for example, Dr. Johnson would be qualified to answer,  
7 regarding the mechanics of how mugs, you know, interact with  
8 the countertop or the floor or with gravity. Those are all  
9 things that are the purview of someone like Dr. Johnson,  
10 whose expertise is in mechanics, biomechanics.

11 So, you know, if I were to say Mr. Peltiar --

12 THE COURT: Here's -- I mean, I'm just going to  
13 tell you here's the problem I'm having is you want to -- I  
14 don't have -- what he's saying I'm sure is all accurate, his  
15 assumptions are all accurate. The only problem is he is  
16 creating a factual scenario. He's creating it from nothing.  
17 We don't do that in -- in court cases. We don't do that.

18 You have to lay a proper foundation. So now if he  
19 had a factual basis for all of this, he has a factual basis  
20 for a mug of hot water on a countertop, I agree with all of  
21 the measurements. That all seems to be accurate, and then he  
22 can completely creates something to tell the jury oh, this is  
23 what happened.

24 MS. HOLIDAY: This is what could have happened.

25 THE COURT: Okay. If he's just going to say this

1 is what could have happened, then right there, that's easy  
2 because we don't bring experts in to tell a jury every  
3 possible thing that could have happened.

4 MS. HOLIDAY: Well, I'm not sure in that case,  
5 following that logic, that State's experts can say this is  
6 what happened. I don't think the State's experts can say --

7 THE COURT: I agree. I don't think they can come  
8 in here and say, there was a mug and this is exactly how it  
9 fell. I agree with you. I'm not going to allow their  
10 experts to come in and say this is exactly how it happened.

11 MS. HOLIDAY: But they're --

12 THE COURT: I mean, what we have is we have a  
13 two-year-old that apparently can't communicate or didn't  
14 communicate and say what happened, correct?

15 MS. HOLIDAY: That's correct.

16 THE COURT: So we don't have the two-year-old  
17 that's going to come in. We have there was hot water in a  
18 cup, he was the adult in charge, the child has burns, and the  
19 medical testimony is that they were intentional.

20 MS. HOLIDAY: But part of the medical testimony is  
21 based on the experts, the State's experts', we believe,  
22 flawed assumption that the mug couldn't have spilled towards  
23 Chance creating those burns. We believe that they're built  
24 on a flawed assumption that that mug couldn't have tipped  
25 over in any other way. We believe that --



1 THE COURT: What do you mean in any other way? He  
2 just got through saying it could tip any number of ways.

3 MS. HOLIDAY: That's what we think. But we think  
4 that Dr. Cetl and Mr. Peltier are only analyzing whether the  
5 burns could have been created by a mug falling towards  
6 Chance. And we think that that's a flawed assumption.

7 They're assuming that if the mug fell from the  
8 countertop to the floor, the water must have come towards  
9 Chance. And if it did, another assumption, it wouldn't have  
10 created the burn patterns that we see.

11 THE COURT: No, actually, they will be testifying  
12 based on the lack of injury. So in other words, when we see  
13 mugs or water falling a certain way, we expect to see burn  
14 patterns this way. We don't think that's what happened  
15 because we don't see those burn patterns. We only see burn  
16 patterns on the -- on the front of his hands, correct?

17 MS. HOLIDAY: That's correct. But it relies on the  
18 assumption that when we see mugs falling this way, just like  
19 Your Honor just said. But we -- their experts don't know if  
20 the mug fell that way. Mr. Mathews --

21 THE COURT: I agree, and I'm not going to allow --

22 MS. HOLIDAY: -- doesn't know and neither do they.

23 THE COURT: -- them to testify to that. I'm not  
24 going to allow the State to come in and put on some  
25 experiment about what could have happened because there's no

1 foundation for it. So I'm not going to let the defense do it  
2 either.

3 MS. HOLIDAY: I understand what you're saying, Your  
4 Honor, but the reason this case is unique --

5 THE COURT: Okay.

6 MS. HOLIDAY: -- is because the State's experts are  
7 saying there Mathews' statement is not plausible. In order  
8 to --

9 THE COURT: I don't know.

10 MS. HOLIDAY: -- determine if it's not plausible,  
11 we have to be able to determine if it is plausible. I mean,  
12 that's certainly going to be our theory.

13 THE COURT: I'm going to ask you again, what's his  
14 statement? His statement is, I wasn't in there, I don't  
15 know, right?

16 MS. HOLIDAY: That's correct.

17 THE COURT: So why do you keep saying State says  
18 his statement isn't plausible?

19 MS. HOLIDAY: Because the State's experts are going  
20 to testify that if a mug fell from the countertop to the  
21 floor, it's not plausible that it would have created that  
22 type of injury.

23 THE COURT: Based on the lack of injuries?

24 MS. HOLIDAY: Based on the lack of injury.

25 THE COURT: Okay.

1 MS. HOLIDAY: That's correct. But that -- that is  
2 based on a flawed --

3 THE COURT: To me that's --

4 MS. HOLIDAY: -- assumption.

5 THE COURT: -- different than bringing in an expert  
6 to create some sort of scenario where water runs over a  
7 child's hands in a certain way.

8 MS. HOLIDAY: I think it is different. I think it  
9 is a different conclusion, absolutely, because it has a  
10 different purpose. Their purpose is to analyze the burns and  
11 see if they think they're intentional. The reason that they  
12 both think the burns are intentional is based on both  
13 Dr. Cetl and Dr. Peltiar's analysis of Mr. Mathews'  
14 statement. They both analyze his statement to determine if  
15 they believe his statement is plausible, the statement being,  
16 that the mug somehow fell from the counter to the floor.  
17 That's an assumption we can all make. If the mug was on the  
18 counter when he left the room and it was on the floor when he  
19 came back, it fell from the counter to the floor.

20 THE COURT: Well, we don't know how it did --

21 MS. HOLIDAY: No, we don't.

22 THE COURT: -- if the child didn't -- didn't make  
23 any statements, right?

24 MS. HOLIDAY: That's correct. But I think their  
25 experts, their opinion is based on an analysis of whether

1 that statement is plausible or possible. And so what's  
2 important is analyzing whether that is possible or plausible.  
3 Whether a mug could have fallen from the countertop to the  
4 floor creating this type of injury; is that possible? Is it  
5 plausible?

6 That's the question that is important in this case  
7 because the State's experts say it's not. But we think that  
8 they don't know. And how are we going to show how a mug can  
9 fall to the left or the right? How are we going to show  
10 that? Through our expert who's, you know, an expert in  
11 biomechanics. How are we going to show that the mug could  
12 have fallen in more than one way.

13 THE COURT: I'm going to tell you, that expert  
14 can't come in and just create this scenario based on nothing.  
15 That's what I know. I mean, there is just absolutely no  
16 factual foundation for that expert to make the opinion that  
17 he made when he was in here. That was all based on, I guess,  
18 creating a situation.

19 He created a factual pattern. He 100 percent  
20 created a factual pattern --

21 MS. HOLIDAY: Your Honor, and that's what --

22 THE COURT: -- and said this is what could have  
23 happened, but there still has to be a factual basis.

24 MS. HOLIDAY: And we think that's what science is.  
25 Science is, you don't always see the way something happens.

1 You have to use the information that's in front of you to  
2 make, like you said, go through the scientific method. Make  
3 a hypothesis of how it could have happened. Then analyze  
4 that hypothesis using the facts that you have.

5 Dr. Johnson is only using the facts that we have in  
6 this case. And through the process, like any scientist would  
7 do --

8 THE COURT: Then he wouldn't be able to -- if he's  
9 only going to use the facts in this cause, then that's easy,  
10 I can tell him he can't testify to that scenario happening  
11 because none of that is supported by any facts.

12 MS. HOLIDAY: Okay.

13 THE COURT: I mean, right? None of that -- I  
14 mean --

15 MS. HOLIDAY: I disagree.

16 THE COURT: -- I'm with you all the way up to the  
17 countertop, the height, even the size of the child's hands  
18 I'm with you, because apparently they appear to be estimated  
19 based on at least some sort of measurement guide.

20 MS. HOLIDAY: Um-h'm.

21 THE COURT: But then when he -- he basically told  
22 me, he created this scenario.

23 MS. HOLIDAY: We --

24 THE COURT: He created it. He did experiments --

25 MS. HOLIDAY: Right.

1 THE COURT: -- and he created it and even said  
2 there's an infinite amount of ways. I mean, what I'll let  
3 you do, you mean, I obviously haven't heard -- well, I guess  
4 I have to let the State be heard, but it appears to me is  
5 that the State is calling medical experts to testify  
6 regarding injuries and whether -- I mean, that's what  
7 pediatricians do. They come in and testify whether the  
8 injuries are accidental or intentional, based on, you know,  
9 what the injury looks like.

10 MS. HOLIDAY: Right. And that's what Dr. Johnson  
11 is doing. He's basing his opinion based on what the injury  
12 looks like. No, he wouldn't know if it's possible for the  
13 water to have spilled to left to right or right to left if he  
14 didn't see what the injury actually looked like.

15 Just like Dr. Cetl wouldn't know if Mr. Mathews'  
16 statement wasn't plausible without looking at the injury.

17 THE COURT: Well, I'm sorry, I know the State wants  
18 to be heard. You've been very, very patient. I appreciate  
19 that. I know you want to make your record.

20 MS. JOBE: I do, Your Honor. And first and  
21 foremost, I don't think the expert's testimony about his  
22 background and history actually satisfies the qualification  
23 requirement. The fact of the matter is his -- he has  
24 biomechanics all day long. I am not disputing that at all.

25 What the State's dispute is with his qualifications

1 and background, his lack of expertise and his lack of  
2 experience with respect to burns and more specifically water  
3 burns.

4 What he did say, and I didn't have a chance to  
5 fully flesh it out, but he was talking about one water  
6 incident where he was actually talking about why the pipes  
7 broke. It wasn't --

8 THE COURT: Right.

9 MS. JOBE: -- actually evaluating the injuries that  
10 people sustain from the water. And as far as his assistance,  
11 Your Honor, in the State's review of all of these videos,  
12 there's absolutely nothing in these videos that puts together  
13 what Dr. Johnson just talked about.

14 If you watch all the videos, every --

15 THE COURT: Well, that's my point.

16 MS. JOBE: I know, I'm just trying to make my  
17 record, Your Honor.

18 THE COURT: Oh.

19 MS. JOBE: I apologize.

20 THE COURT: Sorry.

21 MS. JOBE: So, sorry. In every single video  
22 there's -- he captures the surrogate child, as he calls it,  
23 being able to reach to the top of the cup. Though, the State  
24 takes issue with that because he doesn't have the measurement  
25 ever the child -- of Chance's arm length, et cetera. But

1 there's no place where he puts all the pieces together.  
2 There's no video where the surrogate actually hits the top of  
3 the mug, pulls the mug over, has his hands this that position  
4 to get what Dr. Johnson claims is a replica burn pattern or  
5 anything like that.

6 It's piece by piece by piece, and every video where  
7 he claims to have replicated either left to right or right to  
8 left, that pattern, which the State also takes issue with,  
9 the cup moves itself in that video of how he does his  
10 experiment, and the child's hands are always palms down flat.  
11 And there are even a couple instances in the videos where  
12 they tell the child not move their hands. That is not a  
13 realistic scientific replication of what happened to this  
14 child.

15 Any lay person knows; hot, hands coming away.  
16 Faster than I can snap, faster than I can pop my hands. It's  
17 a natural reflex to instantaneous pull away. And the fact  
18 that in all those videos that are the foundation of his  
19 opinion, I'm not saying to intentionally burn a child, please  
20 do not get that --

21 THE COURT: Yeah, of course not.

22 MS. JOBE: -- misstatement, but the fact that he  
23 uses water where there is no reflexive movement, where there  
24 is no pulling away, none of these videos and none of his  
25 experiments actually go -- are even relevant to this case and



1 it is just creating a scenario, creating a possibility based  
2 on his creation and recreation of what little facts he knows.

3           There are a number of assumptions that he had to  
4 make in completing his experiment. The missing facts are his  
5 arm length, exactly where Chance could reach, how Chance was  
6 specifically positioned, how he reached for the cup, how the  
7 cup actually spilled on him.

8           There's also the assumptions he had to do even  
9 whether or not the cup had a handle. The cup Dr. Johnson  
10 uses in the recreations has a handle. The cup the defendant  
11 identifies in the reenactment video at the residence doesn't  
12 have a handle.

13           And so that changes things, that affects things.  
14 He also has to assume that the child, once the water starts  
15 coming down, that the child's hands are flat before the water  
16 ever hits the hands. He has to also assume, Your Honor, that  
17 like I said, that the child's not going to pull his hand  
18 away.

19           And even how he shows the patterns, Your Honor, he  
20 uses water on a child's hands. There's no -- there's nothing  
21 in the water to show exactly where on the child's hands the  
22 water hits, how far the water goes. You can try to see it,  
23 if you have really, I guess, amazing vision or can amplify  
24 it, the picture, but you can't actually see, there's no dye,  
25 there's no nothing to actually see where the water goes,

1 either up on the arm or across the wrists. For all these  
2 things, it's simply an experiment. It's simply an attempt to  
3 create some possibility of what may have happened. But the  
4 fact of the matter is, there's no support in this case,  
5 there's no support in any of the facts that any of the  
6 parties had, and I'd also point out that the -- that  
7 Dr. Johnson wasn't trying to test if it wasn't non-accidental  
8 or an accidental spill. He was just trying to see if he  
9 could recreate it.

10 And so based on all that, Your Honor, the State is  
11 asking to strike him. If we need to get into what he will or  
12 won't testify about, I'm not going to go into all of that  
13 because that will take a while, but I'll leave it at that,  
14 unless the Court has additional questions.

15 THE COURT: Yeah, but it appears as though the main  
16 thing is he wants to testify about a scenario that he says  
17 could have happened. If you --

18 MS. HOLIDAY: He provides -- right.

19 THE COURT: -- assume all of the different things  
20 he assumed.

21 MS. HOLIDAY: That's correct, Your Honor. And it  
22 provides a reasonable explanation of what could have happened  
23 in this case which is, again, a direct rebuttal to the  
24 State's theory that the context of this case doesn't provide  
25 a reasonable explanation for how Chance could have

1 accidentally been burned by a mug falling from the counter to  
2 the floor.

3 THE COURT: I don't think it prevents you from  
4 arguing that it was accidental or from even asking these  
5 witnesses if these burns could have been created in an  
6 accidental manner, but I just -- we just don't bring experts  
7 in and have them create a scenario perfectly for the jury and  
8 then say this is plausibly what could have happened without  
9 any factual support.

10 You have to have the foundation in order for the  
11 expert to testify about that. And no one's going to testify  
12 that that's what happened, right?

13 MS. HOLIDAY: That's correct, Your Honor. Your  
14 Honor, may I --

15 THE COURT: Is that basically, what he was going to  
16 -- I mean, that was his big opinion, correct?

17 MS. HOLIDAY: Correct. The big opinion is that  
18 it's possible that that could have happened. I mean, it  
19 provides a reasonable explanation for how Chance got these  
20 injuries accidentally instead of intentionally, as the State  
21 is providing.

22 And more importantly, it's our theory of the case.  
23 And so like I cited it in the case law in my original  
24 opposition, this is Mr. Mathews' theory of the case.

25 THE COURT: That it was accidental. I mean, I --

1 clearly, he can have a theory it was --

2 MS. HOLIDAY: Right.

3 THE COURT: -- accidental, he didn't do it.

4 MS. HOLIDAY: Right.

5 THE COURT: I mean, he knows.

6 MS. HOLIDAY: Absolutely.

7 THE COURT: He -- he wasn't in the room.

8 MS. HOLIDAY: Absolutely.

9 THE COURT: Okay?

10 MS. HOLIDAY: It was accidental because a mug of  
11 hot water spilled in the counter to the floor. That's his  
12 theory of the case. And we think that our expert can testify  
13 to our theory of the case. And so we think that if our  
14 expert is excluded, it will cause constitutional problems  
15 because Mr. Mathews has a constitutional right, both under  
16 the federal and state Constitutions, to present his theories  
17 of the case.

18 THE COURT: Well, it doesn't go to the -- clearly,  
19 you can maintain your theory that it was accidental, not  
20 intentional, but I don't think the expert is going to have  
21 the foundation in order -- if something changes, I'll leave  
22 it open, but it does not appear as though there's any factual  
23 support for that theory.

24 MS. HOLIDAY: May I ask if Your Honor would  
25 consider limiting his testimony to some pretty specific

1 areas? For example, one question that would be interesting  
2 to know in this case is could Chance have reached on to the  
3 countertop? Who can provide us with that answer? Could he  
4 have reached onto the countertop given his height and given  
5 the height of the countertop?

6 As the State stated, we don't know Chance's exact  
7 arm length, we don't have that measurement. We certainly  
8 couldn't get it because he's now grown, obviously. But the  
9 case law states that it has to be under similar conditions to  
10 those at the time of the incident.

11 THE COURT: Um-h'm.

12 MS. HOLIDAY: Similar. It doesn't have to be  
13 exactly. So if you take --

14 THE COURT: I don't know why you couldn't ask one  
15 of the pediatricians.

16 MS. JOBE: And Your Honor, if -- I don't mean to  
17 interject or interrupt Ms. Holiday's argument, but Jasmin  
18 says in her statement, and I anticipate it's coming out, and  
19 even the defendant says in his statements that if Chance is  
20 up on his tippy toes, he can reach the counter.

21 He's 30 --

22 THE COURT: Okay.

23 MS. JOBE: For the -- I didn't want to correct  
24 Dr. Johnson, but the medical records, Chance is 37 inches.  
25 The counter is 35 inches high. So there's some --

1 THE COURT: Oh, okay, so he's --

2 MS. JOBE: Not that his eyes are necessarily over,  
3 but there's some amount of his body and his head that comes  
4 above the counter. And both of them say he could reach on  
5 his tippy toes. How far he can reach, what he can reach to,  
6 what he would actually reach for is unknown, but that's not  
7 something that is not going to come in unless Dr. Johnson  
8 testifies. I probably wasn't clear in what I just said, but.

9 THE COURT: Okay.

10 MS. HOLIDAY: That would be something I would ask  
11 to let him testify to. A child of Chance's height with a  
12 countertop of the height that we see in this case, can that  
13 child reach on to the countertop, and if so, how far? Can he  
14 get his hands flat on the countertop?

15 THE COURT: How can you do it, if you don't know  
16 how long his arms are?

17 MS. HOLIDAY: Well, again, he can testify under  
18 similar conditions to those at the time of the incident. We  
19 can determine --

20 THE COURT: How long are his arms?

21 MS. HOLIDAY: -- a similar measurement based on how  
22 tall Chance is and based on his average -- the makeup of his  
23 average body type. I believe, I put some information in my  
24 motion.

25 THE COURT: Can't you just ask the mom this?

1 MS. HOLIDAY: I think we can, Your Honor, but I  
2 don't think she can give us an exact idea of how far Chance  
3 can reach on to the countertop.

4 THE COURT: Well, neither can Johnson. The mom  
5 can't, but Johnson can?

6 MS. HOLIDAY: I don't think the mom --

7 THE COURT: The mom whose child it is?

8 MS. HOLIDAY: I don't think the mom ever, you know,  
9 found reason to have Chance reach on to the countertop as far  
10 as he can and then make a note of how far that would be.

11 THE COURT: Neither did Johnson.

12 MS. HOLIDAY: Well, that's true, Your Honor,  
13 however, he did use a child similar to the child at the time  
14 of this incident.

15 MS. JOBE: And --

16 MS. HOLIDAY: Have you to --

17 MS. JOBE: And for the record, Your Honor, this  
18 child who's the surrogate for Chance in his videos is always  
19 being given instruction as to what to do and how to do in all  
20 of these videos. He did provide photographs of the surrogate  
21 reaching up onto the counter. But again, like even he does a  
22 turn-and-run sequence with the child who's of similar -- the  
23 surrogate of Chance, is what we'll call him, and the child  
24 has to be prompted multiple times to get the child to run.

25 Defense even states in their opposition essentially

1 he used children older than Chance to run all his experiments  
2 because they're easier to get to do what they want to do. So  
3 to the extent we're going to rely on the surrogate and what  
4 the surrogate can reach to and all those measurements, the  
5 State would absolutely object based on the lack of foundation  
6 and the fact that this isn't Chance and that this -- based on  
7 the totality of the (indecipherable) that this child's been  
8 given directions as to what to do.

9 THE COURT: Yeah. I -- it appears, though, the  
10 mother can testify. Jasmin, that's the mother, right?

11 MS. HOLIDAY: That's correct, Your Honor.

12 THE COURT: Can't you ask her --

13 MS. HOLIDAY: We can.

14 THE COURT: -- can Chance reach up? Would he be  
15 able -- I mean, mothers know if a kid can -- that's pretty  
16 basic. They usually know how far a child can reach on the  
17 countertop because you have to know where to put everything.

18 MS. HOLIDAY: Right. We can certainly ask her,  
19 Your Honor.

20 THE COURT: I mean, have you spoken to her? Do you  
21 know whether --

22 MS. HOLIDAY: It's in her statement, just like the  
23 -- just like Ms. Jobe said.

24 THE COURT: Okay. So that the --

25 MS. HOLIDAY: She has --



1 THE COURT: So the evidence will --

2 MS. HOLIDAY: -- testified he can reach.

3 THE COURT: -- come in that the child could reach  
4 up on the countertop?

5 MS. HOLIDAY: Could reach items on the countertop.  
6 Now, whether or not the child can reach on to the countertop  
7 and place his hands flat down to the countertop, I'm not sure  
8 if she'll testify to that. I'll have to ask her. I'm not  
9 sure if she can go that far. I'm not sure if she ever had  
10 occasion to witness him putting his hands flat on the  
11 countertop. I don't know if she ever specifically observed  
12 him reaching for the cookies at the back of the countertop.  
13 So I don't know that she could provide that exact  
14 information.

15 Other information that I would --

16 THE COURT: Well, Johnson can't provide that  
17 either.

18 MS. HOLIDAY: Other information that I would ask  
19 the Court if Dr. Johnson can testify, can he testify that a  
20 cup can spill sideways on to counter and roll off the  
21 counter? Again, I don't know if that's something that either  
22 of the State's experts could testify to. I don't know if  
23 that's something that is an assumption that a lay person can  
24 make. I mean --

25 THE COURT: I think it's common sense --

1 MS. HOLIDAY: Common sense.

2 THE COURT: -- that a cup could -- I mean, I don't  
3 know, maybe we're reaching, but I think it's common sense  
4 that a cup can fall over and spill liquid. I think that's  
5 common sense. I'm not sure you have to have an expert come  
6 in and say --

7 MS. HOLIDAY: That a cup could fall over --

8 THE COURT: -- to actually say that.

9 MS. HOLIDAY: -- and fall over onto its side and  
10 then roll on to the floor. Do you think that would be --

11 THE COURT: I think you could probably ask anyone  
12 that comes in to testify.

13 MS. HOLIDAY: Okay.

14 THE COURT: I don't think you need -- you could ask  
15 the mom that. You could ask a doctor that.

16 MS. HOLIDAY: How about the pattern that water  
17 makes whether it spills from a cup or a mug? You heard  
18 Dr. Johnson testify that he was able to run experiments  
19 trying to determine how water behaves and the pattern it  
20 creates when it spills from a mug. I think that would be  
21 important to help us determine whether that pattern would be  
22 similar to the pattern of burns we see on Chance. That would  
23 be something I would ask Dr. Johnson to offer testimony on,  
24 is the pattern that a mug spilling over, the pattern that the  
25 water would make.

1 THE COURT: And the pattern would have to be  
2 exactly within his scenario? The child reaching up, hands,  
3 reaching up, tips over the mug, hands flat and water runs  
4 over the child's hands.

5 He's already told us that's the -- that would be, I  
6 guess, his explanation, correct?

7 MS. HOLIDAY: Yes, Your Honor. But even more  
8 generally, before Dr. Johnson developed his hypothesis, he  
9 had to first determine or to get some more information about  
10 how water behaves and the patterns that it creates when it  
11 spills from a mug. So one of the experiments that he did was  
12 just taking a mug, tipping it over and then taking a picture  
13 of the pattern that resulted as of that spill.

14 So I think we could tell a lot from the pattern  
15 just much the water that it creates when it spills.

16 MS. JOBE: And the State would object because the  
17 information the State has is Dr. Johnson -- there's no water  
18 in here. Just making sure. Dr. Johnson takes the cup and  
19 for the record, I put the cup on top of the table, and I just  
20 knocks it over on a flat surface and sees what the water does  
21 on the same mostly level surface. There's no information the  
22 State has that Dr. -- any of Dr. Johnson's experiments  
23 involve putting a cup with water in it at the edge of 4 or 5  
24 inches, however many inches he approximated, off the edge of  
25 the counter and pushing that off to see what the spill

1 pattern is for the water.

2 MS. HOLIDAY: And the reason for that, Your Honor,  
3 is because he's ruled that out. We can agree on a lot with  
4 the State's experts. We can agree that that's not a  
5 reasonable possibility. That the mug spilling over towards  
6 Chance, spilling water from the countertop to the floor, we  
7 agree that that's not a reasonable possibility.

8 He -- Dr. Johnson could tell that. That's why he  
9 didn't even need to do those experiments because that's not a  
10 reasonable possibility under the facts of this case.

11 MS. JOBE: And Your Honor, if I could --

12 THE COURT: So you want him -- because he can't  
13 testify about this factual scenario he's created, but you  
14 want him to be able to testify about the patterns? Wouldn't  
15 -- isn't it the pattern water makes when it's spilled on to a  
16 child's skin, correct?

17 MS. HOLIDAY: On to any surface. So --

18 THE COURT: Why?

19 MS. HOLIDAY: Because if water --

20 THE COURT: We just need to know what happens when  
21 it goes onto the child's hands.

22 MS. HOLIDAY: If we know how water --

23 THE COURT: I don't think he can testify to that.

24 MS. HOLIDAY: If we know the pattern that water  
25 makes when it spills onto a surface, we can determine that

1 water would make a similar pattern if spilled on to a surface  
2 where a child's hands are. It's going to be a similar  
3 pattern. It might not be exactly the same because,  
4 obviously, a child's hands create more further dimension to  
5 the countertop, for example, or the surface, but we can at  
6 least tell how the water behaves and the movement and flow of  
7 the water so I think --

8 THE COURT: And why is that important? Because I  
9 still don't think that he can testify about burn patterns on  
10 a child's hand.

11 MS. HOLIDAY: Because it still proves the theory of  
12 defense, which is that, the possibility of the mug spilling  
13 over on the countertop --

14 THE COURT: Um-h'm.

15 MS. HOLIDAY: -- is reasonable and plausible, and  
16 it could have happened that way. So if the State is going to  
17 argue that our client's statement is not plausible, that's  
18 our direct rebuttal. It is plausible. Look how it could  
19 have happened. It could have spilled to the side on the  
20 countertop.

21 And that's plausible, because it fits the pattern  
22 that we see in this case of burns on Chance's hands. That's  
23 why we think it supports our theory.

24 THE COURT: I really don't believe your expert can  
25 testify about burn patterns on a child's skin. I mean, I

1 don't think that taking an anatomy class and, you know, his  
2 first aid training in the Marines allows him to testify about  
3 the different burn patterns on a child's skin, and that's  
4 what it sounds like you want him to come in and testify to.

5 MS. HOLIDAY: Well --

6 THE COURT: He can't testify --

7 MS. HOLIDAY: -- partially.

8 THE COURT: -- about burn patterns on a child's  
9 hand.

10 MS. HOLIDAY: Partially, but we don't think it's  
11 the specific burns, the medical knowledge of how burns affect  
12 skin that's important here. We think it's the pattern that  
13 water creates onto the skin. The pattern and the way that  
14 water moves, which is squarely within the field of  
15 biomechanics.

16 THE COURT: Okay. Anything?

17 MS. JOBE: I would just note that none of his  
18 qualifications and what he testified to had to do with  
19 tracking, studying, experimenting with the movement of water  
20 on people's skins or otherwise. So based on everything I've  
21 already said, as well as that the State would object to his  
22 testimony about that.

23 THE COURT: At this point, I don't think there's  
24 going to be any foundation for his testimony. I guess, as  
25 the evidence comes in, if you want to renew your motion to

1 have him testify or have him testify about specific things, I  
2 would consider it.

3 MS. HOLIDAY: Okay. Thank you, Your Honor. Would  
4 Your Honor consider --

5 THE COURT: But he can't come in and testify to  
6 that factual scenario that he's created.

7 MS. HOLIDAY: Would Your Honor consider allowing us  
8 to finish conducting the hearing as a proffer of  
9 Dr. Johnson's qualifications, education, experience and what  
10 he would testify to if the Court were to allow him? That way  
11 we have a clear record of what it is in this case that is  
12 being stricken.

13 THE COURT: I'll allow you to make a proffer of  
14 what he would testify to. You can go ahead.

15 MS. HOLIDAY: A proffer without his testimony, but  
16 just from my --

17 THE COURT: Sure.

18 MS. HOLIDAY: Okay.

19 THE COURT: Sure. I'll let you make a proffer.  
20 And it would include everything that he's already testified  
21 to.

22 MS. HOLIDAY: Yes, that's correct, Your Honor.  
23 Court's indulgence.

24 So, Your Honor, a lot of this is included in the  
25 opposition -- the supplement to my opposition that I already

1 filed, but if allowed to testify in the evidentiary hearing  
2 today, Dr. Johnson would have testified regarding his  
3 education.

4 He would have testified that he has a Ph.D. in  
5 bioengineering. Technically, it's mechanical engineering  
6 with speciality in bioengineering. He would have testified  
7 that some of his course work included the mechanics of  
8 fluids, waters and oils, one, the mechanics of fluids, waters  
9 and oils two, fluid dynamics one, fluid dynamics two,  
10 computational fluid dynamics, incompressible fluid dynamics,  
11 water and other incompressible liquids, clinical anatomy and  
12 pathophysiology, including a laboratory at Emory Medical  
13 School, bio fluid dynamics, bio solid mechanics and  
14 thermodynamics one, two and three.

15 As part of his formal education, he conducted  
16 studies on impact forces on an athlete's body, specifically  
17 working with human soft tissue mechanics and different parts  
18 of the cornea. Part of the testing for him to complete his  
19 Ph.D. included bioengineering questions, applied mathematics  
20 and engineering mechanics. Also including bioengineering  
21 questions related to force analysis associated with various  
22 loads applied specifically to human soft tissue, including  
23 human skin. All of this relates specifically to the  
24 testimony he would have been able to offer about how water,  
25 hot water affects a child's skin or skin in general.



1           His many years of professional experience would  
2 include, tests regarding high temperature fluid sloshes,  
3 specifically related to automotive steering systems, injury  
4 reconstruction tests, including with young children,  
5 including failures and injuries that resulted in facial and  
6 other skin burns.

7           And Your Honor, as I've included in my supplement  
8 to my opposition to the State's motion, he did work on many  
9 -- throughout the years -- throughout his really 30 years of  
10 training and experience, he did work on many, many cases  
11 involving human skin, human body, as you heard him testify.  
12 to burns on the human skin caused by hot water or caused by  
13 other different types of liquid.

14           MS. JOBE: I would just object to the extent his  
15 testimony here today was not that he worked on things with  
16 burns on human skin from hot water.

17           THE COURT: That's correct. He said he had one  
18 case.

19           MS. HOLIDAY: With hot water, and then other cases  
20 dealing with different types of hot liquid that create burns.

21           THE COURT: Okay.

22           MS. HOLIDAY: Your Honor, as we were talking about  
23 with his medical training in the Marines Corps, he didn't  
24 just learn first aid. He learned how to treat massive  
25 bleeding, compromised airways, compromised respiration and

1 chest wounds, compromised circulatory shock, head injury,  
2 hypothermia, associated with bullet wounds, shrapnel, blast  
3 injuries and significant burn injuries.

4 In addition to receiving training in skin anatomy  
5 and suturing, different types of closures of suturing,  
6 administering anesthetics, wound preparation, including  
7 scrubbing, irrigating and cleaning the wound, debridement.

8 THE COURT: Let me ask you this, did you have him  
9 review the photos and make a determination as to whether these were  
10 accidental or intentional?

11 MS. HOLIDAY: Yes, Your Honor.

12 THE COURT: You did?

13 MS. HOLIDAY: Yes.

14 THE COURT: You had him review the photographs and  
15 what was his opinion?

16 MS. HOLIDAY: That it was accidental. But he  
17 didn't just base his opinion on the photographs.

18 THE COURT: That the burns were accidental if you  
19 followed his other hypotheses, right?

20 MS. HOLIDAY: That the burns were accidental based  
21 on the facts of this case, based on --

22 THE COURT: I don't think so because I asked him  
23 that. He said he wasn't here to determine whether it was  
24 accidental or intentional. That's why I asked you. I mean,  
25 I don't know, is he an expert? Can you look at photographs

1 and say these -- the patterns on this child's skin indicates  
2 that this was an accidental or intentional manner?

3 MS. HOLIDAY: Well, the reason he --

4 THE COURT: I don't -- I think he said exactly  
5 opposite.

6 MS. HOLIDAY: He said he wasn't focused on whether  
7 it's accidental or intentional because whether it's accident  
8 or intentional doesn't --

9 THE COURT: Exactly.

10 MS. HOLIDAY: -- really influence the way that the  
11 human body and other elements like water work together. But  
12 what he could determine was that it was accidental based on  
13 the context. Based on the fact that there was a mug left on  
14 the counter. Based on the condition text --

15 THE COURT: Based on if you follow everything he  
16 says.

17 MS. HOLIDAY: Well, the reasonable conclusions  
18 based on the scientific experiments and scientific method  
19 that would lead him to that --

20 THE COURT: Okay.

21 MS. HOLIDAY: -- conclusion.

22 THE COURT: I just want to make sure it was based  
23 on his, I guess, plausible explanation. It wasn't -- he  
24 didn't study those photographs and the burns on that child  
25 outside of a factual scenario, correct?

1 MS. HOLIDAY: That's correct.

2 THE COURT: Okay.

3 MS. HOLIDAY: And neither did Dr. Cetl or  
4 Dr. Peltiar. I mean, Mr. Peltiar. And part of their  
5 testimony is based on if those injuries that they see in the  
6 pictures could have been caused accidentally in the context  
7 of what Mr. Mathews' statement was.

8 I mean, they -- I don't think that the State's  
9 experts would be prepared to offer an opinion that just  
10 looking at the pictures you can tell it's intentional. I do  
11 not believe they could do that.

12 THE COURT: Okay. That's what I'm trying to get  
13 at. It appears as though your expert would not be offering  
14 opinions on just the manner, the way the burns look. It is  
15 these patterns could have been created and I created -- I  
16 created the way it could have happened, and it could have  
17 happened this way. I just wanted to make sure.

18 MS. HOLIDAY: Well, one specific opinion -- and  
19 I'll definitely let Ms. Jobe answer, but I want to answer  
20 State's question. One specific opinion that he would offer,  
21 Mr. Peltiar -- as I stated before, Mr. Peltiar's opinion was  
22 that the burn injury pattern looked like it went from wrist  
23 to fingertips.

24 THE COURT: Um-h'm.

25 MS. HOLIDAY: Dr. Johnson disagrees. Just based on

1 looking at the burn injury pattern, he thinks it looks like a  
2 water flow not from wrist to fingertips, but a water flow  
3 from left to right. And that's without the context of any of  
4 the facts or any of his recreations, that's what the burn  
5 pattern looks like on the pictures. Water flow from left to  
6 right because of the way the injury is on the left side of  
7 the child's hand. It indicates that there could be some  
8 pooling of water here, indicating that the -- the almost  
9 angular line of the burn pattern on the right side of the  
10 hand near the child's pinky is more related to, again, a flow  
11 from left to right as if the water flowed from left to right.  
12 So that's going to be something that he directly disagrees  
13 with Mr. Peltiar about his assessment that it was a wrist to  
14 fingertips.

15           And Mr. Peltiar, with all due respect, doesn't have  
16 medical training either. Again, he's not a medical doctor.  
17 He, from what I could tell, doesn't have training  
18 specifically teaching him about burns. He has vast  
19 experience in law enforcement observing burns or working with  
20 victims who are burned, and then he's written some opinions  
21 about burns, but he doesn't have any medical knowledge either  
22 about --

23           MS. JOBE: I would just note that one of the  
24 references Dr. Johnson lists in his Power Point, the U.S.  
25 Department of Justice 2001 publication was written by Peltiar

1 in conjunction with a medical doctor.

2 MS. HOLIDAY: That is correct, absolutely.

3 THE COURT: All right.

4 MS. HOLIDAY: So yes, he is -- to answer your  
5 question, he was prepared to testify specific about the way  
6 the burn pattern looks without context of considering his  
7 experiments.

8 THE COURT: Okay.

9 MS. HOLIDAY: Your Honor, moving on to his  
10 qualifications. I want to point out that the field of  
11 biomechanics has been recognized by many courts. I provided  
12 an extensive list of those courts in the supplement to my  
13 opposition to the State's motion.

14 I also provided an explanation, according to  
15 Dr. Johnson, about what he bases his opinions on and that  
16 they have been published and subject to peer review. You can  
17 see more details in my supplement. That his methodologies  
18 are generally accepted in the scientific community. Again,  
19 specifically regarding the scientific method, which is what  
20 he used in this case and which is what all scientists use.

21 That the conclusions in this case are based on the  
22 particularized facts of this case rather than assumption,  
23 conjecture or generalization. That's something that I think  
24 he would be able to testify to more specifically if he were  
25 given the opportunity to do so in an evidentiary hearing.

1 And finally, that his calculations are based on the results  
2 of experiments and calculations which were controlled by  
3 known standards, tested under similar conditions to those at  
4 the time of the incident and developed by him for purposes of  
5 this case. Again, those are more details that Dr. Johnson  
6 would be able to provide if given the opportunity to testify  
7 at an evidentiary hearing.

8 Finally, Dr. Johnson would be able to provide  
9 specific ways in way his testimony would be limited to  
10 matters squarely within the scope of his specialized  
11 knowledge. As we started to talk about some of his  
12 specialized knowledge based on his training in the Marines,  
13 his education and Ph.D. and his 30 years of employment and  
14 practical experience and why the things that he was going to  
15 testify to specifically fit within those bounds.

16 So Your Honor, I would just add that there are many  
17 more details that Dr. Johnson would be able to provide to  
18 this court if allowed to testify in an evidentiary hearing.

19 THE COURT: Okay. Anything else? Are we good?

20 MS. JOBE: The State -- I would just note the State  
21 didn't have a chance to respond to supplemental that was  
22 filed late the other day. But as far as his training and  
23 experience goes, they're bootstrapping different pieces  
24 together to try to establish that he has the appropriate  
25 foundation for this case, and it just simply doesn't work.

1 Treating fields -- treating burns from shrapnel,  
2 from things in the Marines Corps, from the first aid training  
3 that he has doesn't equate to being able to talk about burn  
4 patterns, burn injuries on children and biomechanics. I'm  
5 going to spare the additional time to go into all of these,  
6 but based on Hallmark, the assumptions he had to make, his  
7 lack of qualifications specific to what he's proposed to,  
8 that's State's record in asking that one stricken.

9 THE COURT: Okay. So at this point, it's going to  
10 be granted; however, based on how the evidence comes out, if  
11 you want to renew your motion, you may.

12 MS. HOLIDAY: Thank you, Your Honor.

13 THE COURT: Okay? See you in a minute.

14 MS. JOBE: I will rush, Your Honor. I --

15 THE COURT: Okay.

16 MS. JOBE: -- have to eat.

17 THE COURT: No, well, I'll --

18 MS. JOBE: It's 2:06.

19 THE COURT: Because I'm going to want my staff to  
20 be able to get something to eat, too, so it will be a little  
21 bit longer.

22 MS. JOBE: And Your Honor, I'm sure you saw we had  
23 an IT person come in here while this hearing was going on  
24 because if necessary, I was going to use my laptop to ask  
25 Dr. Johnson about certain videos. This connector has a piece



1 broken off, and so it makes my laptop go black and won't  
2 connect and show on the screens.

3 THE COURT: Okay.

4 MS. JOBE: I e-mailed Susan, which I probably  
5 shouldn't have done during the hearing, but I'm happy to use  
6 the defense side for the openings, but I just want to let the  
7 Court know this appears to be a problem.

8 THE COURT: Okay. All right. And did it break  
9 today because I -- this is the first I've heard that this  
10 cable or something is broken.

11 THE MARSHAL: There's nothing broken off.

12 MS. JOBE: Yes, it is. That little piece right  
13 there, the end that's broken in half.

14 THE COURT: Okay.

15 MS. JOBE: I just tried it today, but I haven't  
16 tried it before.

17 THE COURT: So to do your opening you're going to  
18 need to put your laptop somewhere else?

19 MS. JOBE: Yes, Your Honor.

20 THE COURT: Where can she put it, Kris?

21 THE MARSHAL: Kris can you put it on left lock for  
22 a second? We'll get it all figured out.

23 MS. JOBE: Fantastic. I'm going to eat. Thank  
24 you.

25 MR. BURTON: About what time do you want us back?

1 THE COURT: About 2:45.

2 MS. HOLIDAY: About 2:45?

3 THE COURT: Uh-huh.

4 (Court recessed at 2:08 p.m. until 3:09 p.m.)

5 (Inside the presence of the jury)

6 THE COURT: Does the State of Nevada stipulate to  
7 the presence of the jury panel?

8 MS. JOBE: Yes, Your Honor.

9 THE MARSHAL: Please be seated.

10 THE COURT: The defense?

11 MS. HOLIDAY: Yes, Your Honor.

12 THE COURT: Okay. As I told you earlier, there's  
13 just a few instructions that I have to provide you to before  
14 I allow both sides to speak to you in their opening  
15 statements.

16 Ladies and gentlemen, are you're admonished that no  
17 juror may declare to a fellow juror any fact relating to this  
18 case of his or her known knowledge, and if any juror  
19 discovers during the trial or after the jury's retired that  
20 he or she or any other juror has personal knowledge of any  
21 fact in controversy in this case, he or she shall disclose  
22 the situation to myself in the absence of the other jurors.

23 This means that if you learn during the course of  
24 this trial that you are acquainted with the facts of this  
25 case or the witnesses, you've not previously told me of this

1 relationship, you must then declare that fact to me.

2 What I will now say is intended to serve as an  
3 introduction in the trial in this case and is not a  
4 substitute for the detailed instructions on the law, which I  
5 will give you at the close of the case and before you retire  
6 to consider your verdict.

7 This is a criminal case commenced by the State of  
8 Nevada, which I may sometimes refer to as "the State" against  
9 the defendant. This case is based on an information. The  
10 clerk will now read the Information and state the plea the  
11 defendant has made to the information.

12 THE CLERK: Thank you, Your Honor.

13 (CLERK READS AMENDED INFORMATION)

14 THE COURT: Thank you. This case is based on the  
15 information, which has just been read to you by the Clerk of  
16 the court. You should distinctly understand that the  
17 information is simple a charge and that it is not in any  
18 sense evidence of the allegations it contains.

19 The defendant has entered a plea of not guilty.  
20 The State therefore, has the burden of proving each of  
21 elements as alleged in their charging document by proof  
22 beyond a reasonable doubt.

23 As the defendant sits here today, he is presumed  
24 innocent. The purpose of this trial is to determine whether  
25 the State of Nevada will meet their burden of proof. It is

1 your primary responsibility as jurors to find and determine  
2 the facts. Under our system of criminal procedure, you are  
3 the sole judge of the facts. You are to determine the facts  
4 from the testimony you hear and the other evidence, including  
5 exhibits introduced in court.

6 It is up to you to determine the inferences, which  
7 you feel may be properly drawn from the evidence. The  
8 parties may sometimes present objections to some of the  
9 testimony or other evidence. It is the duty of a lawyer to  
10 object to evidence which he or she believes may not properly  
11 be offered and you should not be prejudiced in any way  
12 against a lawyer who makes objections on behalf of the party  
13 he or she represents.

14 At times I may sustain objections or direct that  
15 you disregard certain testimony or exhibits. You must not  
16 consider any evidence to which an objection has been  
17 sustained or which I have instructed you to disregard.  
18 Anything you may have seen or heard outside the courtroom is  
19 not evidence and must also be disregarded.

20 Remember, statements, arguments and opinions of  
21 counsel are not evidence in the case. However, if the  
22 attorneys stipulate as to the existence of a fact, you must  
23 accept the stipulation as evidence and regard that fact as  
24 proved. You must not speculate to be true any insinuations  
25 suggested by a question asked of a witness. A question is

1 not evidence and may be considered only as it supplies  
2 meaning to the answer.

3           You must not be influenced in any degree by any  
4 personal feeling of sympathy for or prejudice against the  
5 State or the defendant. Both sides are entitled to the same  
6 fair and impartial consideration. In considering the weight  
7 and value of the testimony of any witness, you may take into  
8 consideration the appearance, attitude and behavior of the  
9 witness, the interest of the witness in the outcome of the  
10 case, if any, the relation of the witness to the defendant or  
11 the State, the inclination of the witness to speak truthfully  
12 or not and the probability or improbability of the witness's  
13 statements and all the facts and circumstances in evidence.

14           Thus, you may give the testimony of any witness  
15 just such weight and value as you believe the testimony of  
16 the witness is entitled to receive. There are two kinds of  
17 evidence; direct and circumstantial. Direct evidence is  
18 testimony by a witness about what that witness personally saw  
19 or heard or did.

20           Circumstantial evidence is testimony or exhibits  
21 which are proof of a particular fact from which, if proven,  
22 you may infer the existence of a second fact.

23           You must consider both direct and circumstantial  
24 evidence in deciding the case. The law permits you to give  
25 equal weight to both, but it is for you to decide how much

1 weight to give any evidence. Opening statements and closing  
2 arguments of the attorneys are intended to help you in  
3 understanding the evidence and applying the law, but they are  
4 not evidence.

5 No statement, ruling, remark or comment which I  
6 make during the course of this trial is intended to indicate  
7 my opinion as to how you should decide the case or to  
8 influence you in any way in your determination of the facts.

9 At times I may even ask questions of witnesses. If  
10 I do so, it is for the purpose of bringing out matters which  
11 I feel should be brought out and not in any way to indicate  
12 my opinion about the facts or to indicate the weight -- to  
13 indicate the weight I feel you should give to the testimony  
14 of the witness.

15 I may also find it necessary to admonish the  
16 attorneys. And if I do, you should not show prejudice  
17 against a lawyer, his or her client, because I found it  
18 necessary to admonish him or her. Until this case is  
19 submitted to you, you must not discuss it with anyone, even  
20 with your fellow jurors.

21 After it is submitted to you, you must discuss it  
22 only in the jury room with your fellow jurors. It is  
23 important that you keep an open mind and not decide any issue  
24 in the case until the entire case has been submitted to you  
25 under instructions from the Court.

1           The trial will proceed in the following manner:  
2     The deputy district attorney will make an opening statement,  
3     which is an outline to help you in understanding what the  
4     State expects to prove. Next, the defense attorney may, but  
5     does not have to make an opening statement. Opening  
6     statements serve as an introduction to the evidence, which a  
7     party making the statement intends to prove.

8           The State will then present its evidence and  
9     counsel for the defense may cross-examine the witnesses.  
10    Following the State's case, the defendant may present  
11    evidence and the deputy district attorney may cross-examine  
12    the witnesses.

13           However, as I have said, the defendant is not  
14    obligated to present any evidence. After all the evidence  
15    has been presented, I will instruct you on the law. After  
16    the instructions on the law have been read to you, each side  
17    has the opportunity to present oral argue.

18           What is said in closing argument is not evidence.  
19    The arguments are designed to summarize and interpret the  
20    evidence. Since the State has the burden of proving the  
21    defendant guilty beyond a reasonable doubt, the State has the  
22    right to open and close the arguments.

23           After the arguments have been completed, you will  
24    then retire to deliberate upon your verdict. Again, let me  
25    remind you that until this case is submitted to you, do not

1 talk to each other about it or about anyone who has anything  
2 to do with it until the end of the case when you go to the  
3 jury room to decide upon your verdict.

4 Do not talk with anyone else about this case or  
5 about anyone who has anything to do with it until the trial  
6 has ended and you've been discharged jurors. Anyone else  
7 includes members of your family and your friends. You may  
8 tell them you are a juror in a criminal case, but don't tell  
9 them anything else about it until you have been discharged by  
10 myself.

11 Do not let anyone talk to you about the case or  
12 about anyone who has anything to do with it. If someone  
13 should try to talk to you, please report it to me immediately  
14 by contacting the court marshal.

15 Do not read any news stories or articles or listen  
16 to any radio or television reports about the case or about  
17 anyone who has anything to do with it. As jurors, you'll be  
18 given the opportunity to ask written questions of any of the  
19 witnesses called to testify in this case.

20 You are not encouraged to ask large numbers of  
21 questions because that is the primarily responsibility of  
22 counsel. Questions may be asked, but only in the following  
23 manner: After both lawyers have finished questioning the  
24 witness and only in this time, if there are additional  
25 questions you would like to ask the witness, you may then



1 seek permission to ask that witness a written question.

2           Should you desire to ask a question, write your  
3 question down with your juror number on a full sheet of clean  
4 paper and raise your hand. All questions from jurors must be  
5 factual in nature and designed to clarify information already  
6 presented.

7           In addition, jurors must not place, undue weight on  
8 the responses to their questions. The marshal will pick up  
9 your question and present it to the Court. All questions  
10 must be directed to the witness and not to the lawyers or to  
11 the Court.

12           After consulting with counsel, I will then  
13 determine if your question is legally proper. If I determine  
14 that your question may properly be asked, I will ask it. No  
15 adverse inference should be drawn if the Court does not allow  
16 a particular question.

17           When each witness gets called in to testify, State  
18 will do what we call direct examination. The defense may  
19 cross-examine. If the defense cross-examines, the State may  
20 do what we redirect and the defense may do recross, which  
21 means the person probably will get questioned about four  
22 times. They go back and forth.

23           If you want to ask a question, you just need to  
24 write it down on your sheet of paper, but just get my  
25 attention before I excuse the witness. When they're done

1 with the questioning, I'll look at the witness, I'll thank  
2 them for being here, and I will excuse them from their  
3 subpoena. That's when you need to get my attention.

4 If you have a question, I will hold them here.  
5 Once I let a witness leave the courthouse and excuse them  
6 from their subpoena, I will not ask them to come back to  
7 answer any questions of the jury. So in other words, if you  
8 have a question of a witness, you need to ask it at the time  
9 because if you let time go by, you won't be permitted to ask  
10 any questions.

11 You can get my attention by just raising your hand  
12 or letting the court marshal know. Okay, at this time, the  
13 State may address the jury panel in their opening statement.

14 MS. JOBE: Thank you, Your Honor.

15 STATE'S OPENING STATEMENT

16 MS. JOBE: Good afternoon, ladies and gentlemen.  
17 You are the lucky ones who have been selected for jury  
18 selection in this case. This is the case of the State of  
19 Nevada versus Donovine Mathews.

20 As you learned yesterday, myself and Mr. Burton  
21 represent the State, and it is our burden of proof to  
22 establish this case for you. As the Judge said, our opening  
23 statements are for the State to lay out the evidence we  
24 believe we'll be able to prove at trial. So that's what I'm  
25 going to do right now.

1           This is Chance Jacksper. This photo was taken on  
2           January 5th of 2016. Chance was two years and approximately  
3           11 months old at the time. He was born January 30th of 2013.  
4           He was just under three years of age. Chance Jacksper lived  
5           at 1029 Lisbon Avenue, No. 5, with his mother, Jasmin  
6           Cathcart. He also lived there with his sibling, his sister,  
7           Jordyn.

8           Jordyn is roughly a year-and-a-half or so in  
9           January of 2016, when these events take place. Jasmin had a  
10          boyfriend at the time named Donovine Mathews, the defendant,  
11          who was in the home frequently. He stayed the night  
12          sometimes and as you will hear from the evidence on this  
13          particular date, he was helping out to watch both the  
14          children.

15          What you'll learn is that Chance hadn't been in the  
16          home for very long. He had been in California with other  
17          family members, and he had been back in the home for  
18          approximately one week, maybe a little less, on January 5th  
19          of 2016, and it was the very first time the defendant was  
20          left alone with Chance and had to deal with Chance and Jordyn  
21          together.

22          So let's talk about January 5th, 2016. That  
23          morning Jasmin gets up with her children, approximately,  
24          8:45. She changes the diapers of both Chance, the  
25          two-year-old, and Jordyn, the one-year-old. She gets them

1 ready for the day, essentially, and takes care of them.

2 She leaves the apartment because she has a meeting  
3 at the apartment office at about 9:00 a.m. that morning. So  
4 she leaves the apartment, leaves the defendant with her two  
5 children that morning. She -- around 9:19 she gets a phone  
6 call from Donovine calling her saying she needs to come home.  
7 This isn't really the apartment. This is obviously, just an  
8 icon of the house.

9 But when's important to remember is your listening  
10 to the evidence of during this time when the injuries happen,  
11 Donovine is the only adult in that residence. It's Donovine,  
12 Chance, who's almost three -- two, almost three, and Jordyn,  
13 who's less than two. So between 9:00 a.m., when Jasmin  
14 leaves or approximately leaves at 9:19, when she gets that  
15 phone call, the facts that you'll learn is that Chance was  
16 absolutely not injured at the time Jasmin left that  
17 apartment. No problems with his hands, those injuries,  
18 nothing had happened, no worries or concerns about Chance.

19 That Donovine was alone watching Chance and Jordyn  
20 during that time window when the injuries occurred. As I  
21 said, Chance is almost three, Jordyn's one-and-a-half. It's  
22 the first time Donovine's watched Chance by himself. And in  
23 this window, both of Chance's hands are burned by the time  
24 Jasmin comes back to the residence. And both his hands are  
25 burned by the time Donovine places that call to Jasmin

1 telling her to come back, Chance's hands are burned.

2           There are only a few sources, potential sources of  
3 hot water or hot liquids in that apartment during this time  
4 frame. There's -- you'll hear this version of events about a  
5 mug that had water that had been boiled on the stovetop.  
6 There is a sink in the kitchen. There's a sink in the  
7 bathtub, and there's a bathtub that obviously, also runs  
8 water. Those are the only sources of hot water and hot  
9 liquids based on the investigation of Metro.

10           And again, it's just Donovine, Chance and Jordyn at  
11 this time. Jasmin comes back after she's called by Donovine.  
12 She decides they need to go to the hospital. Chance needs to  
13 have some medical attention for the burns on the tops of both  
14 of his hands. So they take him to Sunrise pediatric  
15 emergency department where Chance sees a physician by the  
16 name of Dr. Olson. Dr. Olson's the treating physician at the  
17 emergency department. The hospital contacts LVMPD, stands  
18 for Las Vegas Metropolitan Police Department. But the  
19 hospital contacts LVMPD due to the injuries that Chance has  
20 because of suspicions of something's not right with these  
21 burns.

22           LVMPD responds to investigate, and as they're  
23 investigating, they talked to Jasmin, they talked to the  
24 defendant, they go back to the house, they take photographs  
25 of the house, they do a reenactment with the defendant.

1 You're going to hear all the evidence and all the information  
2 that they gather.

3 They also talk to Dr. Olson. They consulted a  
4 pediatric abuse specialist, Dr. Cetl. They also consulted  
5 eventually, someone by the name of Philip Peltiar, who is a  
6 burn expert. But on January 5th of 2016, it was learned  
7 Chance had second degree burns to the top of both hands.  
8 That was the extent of his injuries. No other location on  
9 his body.

10 And this is a picture of his left hand that was  
11 taken at the hospital at Sunrise on the 5th. And that's a  
12 picture of his right hand and the injuries he sustained taken  
13 on January 5th of 2016 as well.

14 You'll hear that once Chance is discharged from  
15 Sunrise, he has to go receive additional treatment at the UMC  
16 Burn Center, and he does. But the focus is that 19,  
17 20-minute time period of when these injuries occurred to  
18 Chance and what happened.

19 Jasmin's timeline, as she explains to Metro, is  
20 that she fed both of the children, Chance and Jordyn, changed  
21 their diapers around 8:45. She left to go to her 9:00 a.m.  
22 appointment somewhere between 8:50 and 8:59 a.m. That there  
23 are no injuries to Chance when she left. Donovine called,  
24 told her to come back because his hands -- Chance's hands are  
25 burned. And Jasmin tells Metro that when she returns to the

1                                    **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2                                    \_\_\_\_\_

3    DONOVINE MATHEWS,                                    )    No. 72701

4                                    Appellant,                                    )

5                                    vi.                                    )

6                                    )

7    THE STATE OF NEVADA,                                    )

8                                    Respondent.                                    )

9    \_\_\_\_\_ )

10                                    **APPELLANT'S APPENDIX VOLUME IV PAGES IV PAGES 751-1000**

11    PHILIP J. KOHN  
12    Clark County Public Defender  
13    309 South Third Street  
14    Las Vegas, Nevada 89155-2610

15    STEVE WOLFSON  
16    Clark County District Attorney  
17    200 Lewis Avenue, 3<sup>rd</sup> Floor  
18    Las Vegas, Nevada 89155

19    Attorney for Appellant

20    ADAM LAXALT  
21    Attorney General  
22    100 North Carson Street  
23    Carson City, Nevada 89701-4717  
24    (702) 687-3538

25    Counsel for Respondent

26                                    **CERTIFICATE OF SERVICE**

27                                    I hereby certify that this document was filed electronically with the Nevada  
28    Supreme Court on the 20<sup>th</sup> day of July, 2017. Electronic Service of the  
foregoing document shall be made in accordance with the Master Service List as follows:

29    ADAM LAXALT  
30    STEVEN S. OWENS

31    DEBORAH WESTBROOK  
32    HOWARD S. BROOKS

33                                    I further certify that I served a copy of this document by mailing a true and  
34    correct copy thereof, postage pre-paid, addressed to:

35                                    DONOVINE MATHEWS  
36                                    NDOC# 1161064  
37                                    c/o High Desert State Prison  
38                                    PO Box 650  
39                                    Indian Springs, NV 89070

40                                    BY \_\_\_\_\_  
41                                    Employee, Clark County Public Defender's Office

