

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LAMAR CHAMBERS

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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APPELLANT'S APPENDIX

Volume 6

JEAN J. SCHWARTZER, ESQ
Nevada Bar No. 11223
Law Office of Jean J. Schwartzer
10620 Southern Highlands Pkwy
Suite 110-473
Las Vegas, Nevada 89141
(702) 979-9941
Attorney for Appellant

STEVEN B. WOLFSON, ESQ.
Nevada Bar No. 1565
Clark County District Attorney
Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155
(702) 671-2500
Attorney for Respondent

Chambers v. State Case No. 73446

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1 PROSPECTIVE JUROR NO. 184: Right.

2 MR. YANEZ: Okay. Since you met and got married,
3 has he discussed any of those old criminal cases with you?

4 PROSPECTIVE JUROR NO. 184: No. Just from the
5 school district, we had some discussions, and then he was a
6 hearing officer for the State Personnel Commission and I was
7 his secretary. I did all the typing and all the letters for
8 him.

9 MR. YANEZ: I hope you don't take this as a
10 ridiculous question, because it might be obvious, but I'm
11 asking it anyway just in case because we all have our views
12 and our biases. The fact that he was a district attorney,
13 would that in any way influence your ability to be fair and
14 impartial in this case?

15 PROSPECTIVE JUROR NO. 184: No, I don't think so.

16 MR. YANEZ: So your main concern is not paying full
17 attention because of your concern over your business.

18 PROSPECTIVE JUROR NO. 184: Yes.

19 MR. YANEZ: Okay. I appreciate that. Thank you.
20 This is for the entire panel as well. We spoke yesterday a
21 lot about your views on police officers. I'm going to open
22 myself up to criticism. How do you feel about criminal
23 defense attorneys? You raised your eyebrows, ma'am? Let's
24 get started. I'm not going to take any offense on how you
25 feel about criminal defense attorneys. You're 309, ma'am?

1 PROSPECTIVE JUROR NO. 252: No, I'm 252.

2 MR. YANEZ: Oh, 252. Sorry. How do you feel about
3 criminal defense attorneys?

4 PROSPECTIVE JUROR NO. 252: Well, you're definitely
5 doing your job. Sometimes I think because you're doing your
6 job defense attorneys will say anything, even if they think
7 the person is guilty. You know, they'll say whatever it
8 takes. But that's it.

9 MR. YANEZ: Okay.

10 PROSPECTIVE JUROR NO. 252: I don't hate you.

11 MR. YANEZ: Give me some time. I appreciate your
12 honesty. And you touched upon something that I was going to
13 ask as a follow-up question on attorneys saying anything to
14 kind of help their clients. You think that happens? Do you
15 think there's defense attorneys who will say anything, perhaps
16 even untruthful things in order to defend their client?

17 PROSPECTIVE JUROR NO. 252: Yes, I do. Yeah, I
18 think that happens. I'm not saying all the time, but I'm sure
19 it has.

20 MR. YANEZ: Anything in regards to those view that
21 you have, and I appreciate them and I think they're common, a
22 lot of people have those views, are you going to hold that
23 against me or, more importantly, Gary if you're picked as a
24 juror in deciding this case? I know you said you didn't hate
25 me, but you didn't say you loved me either.

1 PROSPECTIVE JUROR NO. 252: I'm very fond of you.

2 MR. YANEZ: Now you're being a defense lawyer. I
3 think your answer was no, nothing in regards to those views
4 that you have as to some defense attorneys perhaps not telling
5 the truth. Let me flip that around. Do you think there's
6 prosecutors who might do the same thing as defense attorneys
7 in order to win?

8 PROSPECTIVE JUROR NO. 252: Yes.

9 MR. YANEZ: Do you think one side or the other is
10 more likely to do it?

11 PROSPECTIVE JUROR NO. 252: [inaudible] that way.
12 No, I don't know if one side is more likely than another. I
13 know it can happen on either side, both sides.

14 MR. YANEZ: I appreciate that. What else? This is
15 your chance to vent against criminal defense attorneys. Who
16 else has views? Pass it on down, 268, correct?

17 PROSPECTIVE JUROR NO. 268: Yes. I kind of feel
18 like it's a police officer's job to bring criminals to justice
19 and it's the criminal defense attorney's job to get them off
20 the hook for it. So you guys have conflicting
21 responsibilities going against each other. But in regards to
22 the defense and the prosecution and who would be more likely
23 to be untruthful in something, I feel that along the lines of
24 there being overwhelming evidence enough to bring somebody
25 before the court and this whole process here, that the

1 prosecution probably has most of their ducks in a row to say,
2 to begin with. So you have your work more cut out for you in
3 that standpoint.

4 We only know at this point that this is a murder
5 case and that there have been steps that have been followed to
6 bring this person here before us today. And, you know, like I
7 said, it can be flawed, the system can be flawed, police
8 officers can be flawed, but it's a police officer's job to get
9 them off the streets. Again, no offense to you --

10 MR. YANEZ: Absolutely not.

11 PROSPECTIVE JUROR NO. 268: -- but a criminal
12 defense attorney's job in general is to get them off the hook
13 for things that they have done. Whether or not that person
14 has been truthful to you and you're defending them going into
15 it, knowing that they're guilty or not guilty, that's another
16 thing to be said and proven, obviously in a court of law. But
17 I think that you guys have very polar opposite ends of the
18 spectrum when it comes to defense attorneys and prosecution
19 and police officers.

20 MR. YANEZ: Let me ask you this, one thing you just
21 said, and I think I know what you meant but I just want to
22 double check. You said that the prosecution has their ducks
23 in a row, more like to have their ducks in a row. Can you
24 explain what you meant by that?

25 PROSPECTIVE JUROR NO. 268: Well, whenever, you

1 know, we were talking about police officers and them having to
2 conduct investigations on their own, they're going to have to
3 collaborate evidence together and they wouldn't be bringing
4 all of us here in front of a judge to do that unless they had
5 done their research and done their work and done their
6 collaboration and put all of their evidence together enough to
7 feel it's presentable in front of a jury to prosecute.

8 So I think that, you know, by the time it gets here,
9 a lot of that work that needed to be done to bring it to this
10 point has been done and it's presented in front of them to
11 state their case. So I would say that you probably have a
12 harder job.

13 MR. YANEZ: Okay. I believe you said that there are
14 some defense attorneys, and I think you said also there might
15 be some prosecutors who might stretch the truth or say things
16 to win on either side. Anything with that view that you hold
17 that you would maybe hold against me in this case or, more
18 importantly, Gary in this case?

19 PROSPECTIVE JUROR NO. 268: No. I wouldn't
20 necessarily say that -- you can't really judge someone's
21 character based on a scenario like that. Like, I can't
22 automatically say that you're stretching the truth to me
23 because this is your job. It could have been that the truth
24 has been stretched to you, for all we know. But that's your
25 guys' job to be able to prove that to us.

1 MR. YANEZ: And you had mentioned that you had a DUI
2 charge a few years ago, right? Did you have an attorney who
3 represented you in that case?

4 PROSPECTIVE JUROR NO. 268: I did.

5 MR. YANEZ: Satisfied, not satisfied with the
6 services that you had from your attorney?

7 PROSPECTIVE JUROR NO. 268: Satisfied, but it was
8 probably a waste of money.

9 MR. YANEZ: Okay. And why do you say that?

10 PROSPECTIVE JUROR NO. 268: Well, I mean, I came in
11 with the attorney and she spoke to the DA and spoke to the
12 judge and I stood at the podium and they told me my fine and
13 my punishment and I was on my way out the door. I feel like I
14 could have probably stood at the podium and been slapped on
15 the wrist myself without paying an enormous amount of money
16 for somebody else to do it for me.

17 MR. YANEZ: Okay. Nothing from that case that's
18 going to impact your ability to be fair and impartial here in
19 this case?

20 PROSPECTIVE JUROR NO. 268: No, of course not.

21 MR. YANEZ: Okay. Let me ask this, along the same
22 lines. I think everyone's probably aware, sometimes
23 attorneys, both for the prosecution and for the defense,
24 sometimes ask tough questions or sometimes aggressively
25 question witnesses. Anybody have issues or problems with the

1 defense if the circumstances require tough questioning or
2 aggressive questioning, let's say? Anyone have any problems
3 with that? Ma'am, go ahead. You were shaking your head. No
4 problem with that?

5 PROSPECTIVE JUROR NO. 268: No. I mean, you have to
6 prove your case just like anybody else does.

7 MR. YANEZ: You can pass the mic. Hello.

8 PROSPECTIVE JUROR NO. 265: 265.

9 MR. YANEZ: How do you feel about that? How do you
10 feel about -- I know you've had some family members who are
11 both in law enforcement and the judicial system. How do you
12 feel about lawyers, criminal defense lawyers asking tough or
13 maybe aggressive questions?

14 PROSPECTIVE JUROR NO. 265: I have no problem with
15 it. You have to fight your case and show evidence to us and
16 defend him.

17 MR. YANEZ: Sir, did you -- 198.

18 PROSPECTIVE JUROR NO. 198: 198, Doug Lautner. I
19 would expect that you would present a vigorous defense and
20 that you would -- that that would be the type of questioning
21 you would do, especially if you were challenging the facts
22 presented by the district attorney and law enforcement. I
23 mean, that would be my expectation. You had mentioned, you
24 had asked questions what if you didn't present a defense at
25 all to the man just to the right of me. I would expect you to

1 ask questions, cross-examine and do those things. In fact, I
2 would want you to.

3 MR. YANEZ: See how I can phrase this question. I
4 guess from what I take from what you said then, you think it's
5 my duty or obligation to sometimes ask tough questions or to
6 kind of grill the witness under the appropriate circumstances?

7 PROSPECTIVE JUROR NO. 198: Yeah. I think it's your
8 duty to provide a vigorous defense. That's what I think your
9 duty is. And if you sat there and no questions or you didn't
10 present a defense, you know, that might give me pause, I
11 guess.

12 MR. YANEZ: Would you still hold the State to their
13 burden of proving the case beyond a reasonable doubt?

14 PROSPECTIVE JUROR NO. 198: Yes, I would. As I
15 explained earlier, you know, it depends on how the evidence
16 was presented by the law enforcement personnel, but I assume
17 that's going to be the bulk of the witnesses here. So, yeah.

18 MR. YANEZ: All right. Thank you, sir. Anyone
19 disagree with that? Anyone have problems or issues with the
20 attorneys sometimes asking tough or aggressive questions of
21 witnesses in this case? No one raising their hands. We're
22 all in agreement that could be a possibility, whether from the
23 prosecution or the defense? No one's going to hold that
24 against either side? Thank you.

25 Yesterday, we talked a little bit about the Second

1 Amendment. Now I'm going to talk a little bit about the Fifth
2 Amendment, which is everyone's right, Gary's right and your
3 right in a criminal case or even not in a criminal situation,
4 to not testify, to not get up on that witness stand and take
5 questions. My question to everybody is in this case if Gary
6 doesn't testify, is someone going to have a problem with that,
7 an issue with that, concerns, might impact your decision as to
8 whether the State has proven their case beyond a reasonable
9 doubt? Who wants to volunteer? I'm going to pass the mic
10 over here then. Thank you, sir. You're in the hot seat now.
11 For the record, you are 310, correct?

12 PROSPECTIVE JUROR NO. 310: Yes.

13 MR. YANEZ: And your last name, ma'am?

14 PROSPECTIVE JUROR NO. 310: Bhakta.

15 MR. YANEZ: The Judge will instruct you if you're a
16 juror here that every person in this country has a Fifth
17 Amendment right not to testify. Basically, what that means is
18 as a juror if a defendant doesn't testify you can't take any
19 negative inferences or assume anything bad from that fact.
20 Let's assume in this case Gary doesn't testify. Would you
21 have a problem with that, an issue with that, that might
22 impact your decision? How do you feel about that?

23 PROSPECTIVE JUROR NO. 310: No. I think if
24 everybody's presenting their case, then I'm listening to all
25 the objections and whatever you guys are saying, and I have to

1 base it on that. If he's not going to testify, it doesn't
2 mean that he's guilty or not guilty.

3 MR. YANEZ: Any thought in your head that you
4 require, you demand that he testify and give his side of it?

5 PROSPECTIVE JUROR NO. 310: No.

6 MR. YANEZ: Any belief that someone who refuses to
7 testify has got to be guilty? Why would you, if you're
8 innocent, you'd go up there and take the stand and give your
9 side of it.

10 PROSPECTIVE JUROR NO. 310: Not necessarily. I
11 don't think so because it, like if I've not done anything and
12 somebody's [indiscernible] for me, I might be a person that
13 may not want to talk about it. I don't know.

14 MR. YANEZ: I appreciate that. Along those same
15 lines that you just mentioned, some people might not want to
16 talk about it. What would be some reasons you think someone
17 who's accused of a crime wouldn't take the stand and would
18 invoke their Fifth Amendment right to testify? Why would
19 someone do that?

20 PROSPECTIVE JUROR NO. 310: [inaudible]

21 MR. YANEZ: Thank you, ma'am.

22 PROSPECTIVE JUROR NO. 195: 195, Stephanie Ocampo.
23 If they take the stand they may have to admit some other type
24 of crime and they don't necessarily want to open themselves up
25 for other charges.

1 MR. YANEZ: Okay. Pass the mic right next to you.
2 We're going to go right next to you. Sir, do you have any
3 thoughts why someone accused of a crime might not want to take
4 the stand?

5 PROSPECTIVE JUROR NO. 196: I don't have any issue
6 with it. They might not be able to react to questioning.
7 They might freeze. It's their right to not testify.

8 MR. YANEZ: So there could be valid reasons besides
9 I'm guilty for not taking the stand. Would you agree with
10 that?

11 PROSPECTIVE JUROR NO. 196: Yes, I would agree.

12 MR. YANEZ: Does anyone know what the number one
13 fear in this country is of? Public speaking. Anyone agree
14 with that, that might be also a reason, maybe scared of public
15 speaking? Okay. Who here is scared of public speaking?
16 Sometimes I am too. Okay. Anyone feel that they have to hear
17 from Gary in this case in order for them to render their
18 decision or have some type of impact with the State proving
19 their case beyond a reasonable doubt? Yes, sir.

20 PROSPECTIVE JUROR NO. 197: I have to look every
21 time, 197. I raise it because it's a contrary opinion. I
22 can't say that -- I believe in the right and I don't think I
23 would hold it against him, but I certainly would think about
24 it, why that would happen. And certainly, there are a number
25 of reasons why somebody wouldn't want to take the stand, and I

1 accept those. But I want to be clear, it will cross my mind.
2 I mean, I would think why. I think I could ignore that and be
3 impartial, but, you know, I want to be honest to say that I
4 wouldn't just ignore it. I would think about it.

5 MR. YANEZ: I appreciate that, and I'm going to keep
6 you on the hotspot. This is obviously a very important case.
7 And I know you have some doubts, which I appreciate you
8 sharing that, and it's fair to have those doubts. The Judge
9 would instruct you of course in this case as to what the law
10 is. I just want your honesty. If you can't, you can't. If
11 you had to make a decision, do you think him not testifying is
12 going to impact your decision on whether the State's proven
13 their case beyond a reasonable doubt?

14 PROSPECTIVE JUROR NO. 197: I think it would depend
15 on a lot of the facts of the case, to be honest. But I think
16 I could.

17 MR. YANEZ: If it was a yes or no answer, and not I
18 think. I'm going to put you on the spot.

19 PROSPECTIVE JUROR NO. 197: Yes.

20 MR. YANEZ: Okay. I appreciate that, and sorry for
21 grilling you.

22 PROSPECTIVE JUROR NO. 197: That's fine.

23 MR. YANEZ: Anyone else out there who has a
24 difference of opinion as to a defendant's Fifth Amendment
25 right not to testify and whether you would hold that against

1 that person? Okay.

2 Now, as you know, this is a murder case. Are there
3 times or circumstances when it is okay for one person to take
4 the life of another person or is that never, never correct or
5 never right? If we can pass it back to the corner, 176. Yes,
6 sir.

7 PROSPECTIVE JUROR NO. 176: Petersen.

8 MR. YANEZ: Thank you.

9 PROSPECTIVE JUROR NO. 176: I think that in a case
10 of self-defense where my life was at risk or my wife or my
11 family was at risk that I would feel justified in doing that.

12 MR. YANEZ: Everyone agree with that? We all have a
13 right to self-defense. Yes? Okay. So, have you ever had a
14 situation where you had to defend yourself from someone else
15 or perhaps you were defending a family member?

16 PROSPECTIVE JUROR NO. 176: No, not really.

17 MR. YANEZ: Anyone else had a situation like that
18 where they had to defend themselves, either because they were
19 being attacked or perhaps they were defending a family member?
20 If we can pass the mic, 343. Correct, sir?

21 PROSPECTIVE JUROR NO. 343: When I drove a, 1981, I
22 had a guy rob me and he pulled a gun on me, said he was going
23 to blow my head off. I had already given the girl all my
24 money, so I turned around and grabbed the gun, you know,
25 because I had nothing left to give. Dead people tell no

1 tales.

2 MR. YANEZ: Okay. And you felt you were justified
3 in doing that under those circumstances of having a gun
4 pointed at you?

5 PROSPECTIVE JUROR NO. 343: Yeah. You know, I was
6 scared, you know.

7 MR. YANEZ: Understandably so. Since you have the
8 mic I did have a follow-up question, so I don't burn too much
9 time. That happened, that armed robbery occurred back in
10 1981, right, here in Las Vegas?

11 PROSPECTIVE JUROR NO. 343: Yes, sir.

12 MR. YANEZ: And that case actually went to trial,
13 right?

14 PROSPECTIVE JUROR NO. 343: Bruce Scott Dickerson
15 was the district attorney.

16 MR. YANEZ: Okay. And you actually testified at
17 that, right?

18 PROSPECTIVE JUROR NO. 343: Yes.

19 MR. YANEZ: How did you feel testifying?

20 PROSPECTIVE JUROR NO. 343: I just got up and told
21 them -- they asked me what happened and I told them.

22 MR. YANEZ: Were you grilled by the defense
23 attorney?

24 PROSPECTIVE JUROR NO. 343: Yes.

25 MR. YANEZ: Anything in that situation with being

1 questioned by the defense attorney that you think might impact
2 your ability to be fair and impartial in this case?

3 PROSPECTIVE JUROR NO. 343: Give me the facts and,
4 you know.

5 MR. YANEZ: Okay. Two separate cases, one is not
6 going to impact your other case.

7 PROSPECTIVE JUROR NO. 343: Yeah.

8 MR. YANEZ: Okay. I know sometimes it might seem
9 like common sense, but I always have to ask to make sure that,
10 you know, whatever's been left over from the past might not
11 affect someone's decision. It's human nature. Thank you,
12 sir. I appreciate that. Anyone else who had a self-defense
13 or had to defend someone else type situation? No one else?
14 Okay.

15 Do you think there might -- sticking on
16 self-defense. Do you think there might be a situation where
17 someone is trying to defend themselves and then doesn't call
18 the police after the attack is over? Do you think that could
19 happen in situations and it could be a reasonable reaction?
20 Sir, you're nodding your head. If you could pass the mic
21 right next to -- you're 186, correct, sir?

22 PROSPECTIVE JUROR NO. 186: Yeah, 186.

23 MR. YANEZ: Okay. Go ahead.

24 PROSPECTIVE JUROR NO. 186: I'd agree to that.
25 There's all kinds of certain circumstances that can happen

1 where you might be attacked or confronted with somebody and
2 you can resolve it or walk away from it, and you don't need to
3 involve the police.

4 MR. YANEZ: But what about a situation where you
5 have to use force or deadly force to defend yourself and you
6 still don't call the police?

7 PROSPECTIVE JUROR NO. 186: Then you messed up. You
8 need to call the police if it turns deadly or becomes
9 physical.

10 MR. YANEZ: Can you think of a scenario where
11 perhaps you wouldn't want to call the police or you don't?

12 PROSPECTIVE JUROR NO. 186: The only time I would
13 think if you had a verbal contact with somebody and maybe got
14 into a heated discussion and it got out of hand a little bit.
15 You can resolve it without any repercussions, then sure.

16 MR. YANEZ: What about a scenario where you're not
17 -- you have a fight with someone and you're not sure who the
18 police is going to believe? Would that maybe be a valid
19 reason on not calling the cops, that they might suspect you?

20 PROSPECTIVE JUROR NO. 186: No. They need to be
21 there for -- to do a follow up to make sure everybody is okay,
22 for one thing. And to find out who's at fault and then go
23 from there.

24 MR. YANEZ: Thank you, sir. I appreciate that.
25 Anyone have a different opinion in regards to you have to use

1 force or deadly force to defend yourself and you're afraid of
2 how the police might react, so you don't call the police? If
3 we can pass the microphone. Thank you. 209. Go ahead, sir.

4 PROSPECTIVE JUROR NO. 209: Well, this has been
5 coming up in recent news, but a lot of the racial tension
6 that's been going on. I mean, if you're white and middle
7 class or upper middle, you'd have no problem calling the
8 police. But there's obviously some people come up in a
9 background where they don't feel safe around the police. So I
10 could see a reason where that person may hesitate in that
11 situation.

12 MR. YANEZ: Okay. So if I understand what you said
13 correctly, you believe that perhaps someone who is validly or
14 legitimately defending themselves might not call the police
15 for those situations or those facts that you just mentioned.

16 PROSPECTIVE JUROR NO. 209: Yeah, for maybe cultural
17 reasons. That may not be their first instinct.

18 MR. YANEZ: Anyone disagree, agree with that in
19 regards to self-defense and perhaps not calling the police?
20 Thank you, sir. Appreciate that. You are 296, right? Oh,
21 232. Okay. How do you feel about that? How do you feel
22 about someone who might defend themselves and then not call
23 the police in response?

24 PROSPECTIVE JUROR NO. 232: Not defend themselves?
25 Not calling the police?

1 MR. YANEZ: Right. Perhaps they get into a fight
2 with someone, they beat the other person up, they shoot the
3 other person, they kill the other person. Any type of
4 situation where you might defend yourself, but you don't call
5 the police. In other words, a lot of people are going to
6 assume you must be guilty, you didn't call the police, you're
7 the one who did it. Do you think that's automatic, that's
8 like a golden rule, or there might be valid, reasonable
9 reasons that someone might not call the police after defending
10 themselves?

11 PROSPECTIVE JUROR NO. 232: I think it's wrong, you
12 should call the police. But again, like they said, it's, you
13 know, you have a background, bad things with you.

14 MR. YANEZ: What about a scenario where it's going
15 to be one person's word against another person's word? Would
16 that maybe be a situation where a person might hesitate to
17 call the police or not call the police at all?

18 PROSPECTIVE JUROR NO. 232: Whether it's they're
19 right or they're wrong, you still should call the police.
20 They're going to have to investigate, right, to see who's
21 telling the truth.

22 MR. YANEZ: Right. Okay. Thank you. Could you
23 pass the mic? 343, correct, ma'am? Okay. Do you want me to
24 repeat the question? Any thoughts?

25 PROSPECTIVE JUROR NO. 343: My husband comes from a

1 family, 10 siblings. So we have -- he has two brothers that
2 probably have [indiscernible] system and then he has another
3 brother making 300 something thousand dollars, very
4 successful. So when you have a big family you have people all
5 over, trouble and not trouble. I could see his brother doing
6 something and not be intentionally, you know, such as a murder
7 or something happened, and him not calling the cops and
8 running and panicking and not being rational for the fact that
9 he's already spent a lot of time in prison and he doesn't want
10 to go again. He would think that everybody would prove him
11 guilty because he's committed crimes in the past. So I could
12 see people doing that.

13 MR. YANEZ: Thank you. I appreciate that. I'm
14 going to move the mic here. You're badge number -- I'm sorry.

15 PROSPECTIVE JUROR NO. 296: 296.

16 MR. YANEZ: 296. Okay. Do you want me to repeat
17 the question? It's kind of a scenario where you -- someone
18 has to defend themselves either by fighting back, shooting
19 back, killing someone, whatever self-defense scenario you
20 want, and not calling the police afterwards. Do you think
21 that person must be automatically guilty because they didn't
22 call the police? Or can you think of situations where a
23 person might not call the police immediately?

24 PROSPECTIVE JUROR NO. 296: I can agree with agree
25 with everybody else that they probably should have called the

1 police, but I guess in some instances they might feel that
2 they're harmless and innocent, but are afraid to call because
3 even if you are innocent and say you shoot somebody in
4 defense, you're probably still going to get handcuffed and
5 questioned and all that. Maybe they have a fear of that, that
6 they'll be wrongfully accused. So, I mean, I can kind of see
7 that. But I still think call the police no matter what and
8 it's their job to work it all out and figure out who's right
9 and who was wrong.

10 MR. YANEZ: Okay. Thank you. And then, if you
11 could pass the microphone right next door. Sir, your views on
12 that issue?

13 PROSPECTIVE JUROR NO. 301: The same views. If they
14 shoot someone in self-defense they should call the police no
15 matter what. And it doesn't mean that they're guilty if they
16 don't call the police, it's just that they should anyway just
17 to report it.

18 MR. YANEZ: Thank you, I appreciate that. Sorry to
19 pick on you guys over there. Another general question to the
20 panel. We have a saying, there's always two sides to every
21 story. Everyone agree with that? Sometimes people say
22 there's three sides to the story. What do you guys think of
23 that? When it comes to -- if you're selected as a juror, your
24 determination is going to be based on part on the testimony of
25 witnesses and what they say and whether you believe them or

1 not. So we all bring in our kind of life experiences on how
2 we judge people's believability, if they're telling the truth
3 or not.

4 Just the entire panel. What are the kind of things
5 -- what are the things you look for if you have two
6 conflicting stories on who is probably telling the truth or
7 not telling the truth, or whether they're both lying? Pass
8 the microphone.

9 PROSPECTIVE JUROR NO. 309: 309, Oki James.

10 MR. YANEZ: Yes, ma'am.

11 PROSPECTIVE JUROR NO. 309: You talked about the
12 eyewitness. To me, that's the most dangerous thing because
13 when you have --

14 MR. YANEZ: I'm sorry. What is it?

15 PROSPECTIVE JUROR NO. 309: Eyewitness. When you
16 have a witness, that situation that you -- what's your
17 emotional state. That make a lot of difference because when
18 you're testifying. So when we getting the evidence from the
19 further investigation and bring it up front to us to look at
20 or whatever, then I think it will go farther in the situation,
21 not just what had happened that day.

22 And then, another thing is the bearing arm right. I
23 don't believe that because I don't own a gun and I don't
24 believe in that. If there's heated discussion, instead of
25 taking someone else's life, to me you walk away. I mean, to

1 me, you know, you shouldn't get into the situation to begin
2 with. But if you had to kill someone, then you have to take
3 responsibility. I don't know what it's called. You know,
4 that's my opinion. That's my life theory because, you know,
5 if there's a problem, you walk away, and then you have to give
6 it thought again. But why you're killing someone, I don't
7 know. Just listening to this, to me is like why you do that
8 is beyond my belief.

9 MR. YANEZ: Okay. Have you had situations where you
10 thought someone was lying to you or not telling you the truth?

11 PROSPECTIVE JUROR NO. 309: Yes.

12 MR. YANEZ: Was it just a gut feeling or certain
13 things that you looked at to get that idea, this person's
14 probably lying to me?

15 PROSPECTIVE JUROR NO. 309: Well, I was in the
16 situation, it was a family member. I invited them from Korea
17 and she was staying with me and telling me that I am doing
18 something wrong, not understanding my circumstances. So
19 sometimes you have to understand the whole situation to judge
20 that person. But because of their hot personality, they will
21 -- you know, saying things that I have not done or such. What
22 have I done in that situation. I said not a word. But truth
23 comes out at the end.

24 But instead of me pushing away and saying get out of
25 my house, instead of doing all those, I let it set for three

1 days and then it still didn't settle, but she had to leave my
2 house because she was threatening me actually. I said, you
3 know, you can threaten me all you want, but this is not the
4 situation that I need to talk to you about because you're
5 having just the wrong information. Well, I didn't want to get
6 in an involvement, so I did have the incident, but I think I
7 -- I still think about that incident and I think I handled it
8 right because do I want to push you out of my house? No, I
9 wasn't going to do that.

10 But am I taking blame on this because I brought
11 someone to my house and my life? No, I don't do that because
12 my life goes on. But taking someone else's life for me, I
13 don't know. That's too harsh. I think I need to sit back. I
14 have to analyze yes, that's bad temper and you had a situation
15 and something happened. Why didn't I call the police? I
16 mean, why did I -- why did Mr. Chambers didn't call the police
17 [indiscernible] didn't call the police? It's that person's --
18 I mean, okay.

19 If you lived a life righteously, I don't know if
20 that's the word you use, why would [indiscernible] that
21 situation. If that is the situation, why could you not be
22 able to call the police? Why could you not convince the
23 person? Was he convicted before? Was he in bad standing with
24 the police? Was he able to -- I don't know. I'm sorry. I'm
25 talking too much.

1 MR. YANEZ: That's fine. That's great. I
2 appreciate the information. I do want to narrow it down just
3 a bit as to your belief on how you determine whether someone's
4 being honest with you or not. What are the things that you
5 look for, whether it's the tone of their voice, whether it's
6 their body language, whether it's they lied before. What are
7 things that you look at?

8 PROSPECTIVE JUROR NO. 309: Why would you carry the
9 guns with you if you're visiting someone? Was it at his
10 house? I don't know the circumstances. I'm just asking
11 questions. So why did he have a gun in his hand? Did he plan
12 beforehand? I mean, I'm just --

13 MR. YANEZ: Maybe I'm not understanding you or maybe
14 I'm not phrasing my question correctly. My specific question,
15 and I don't mean to pick on you, is we talked about you had
16 people who lied to you, you felt had lied to you. How do you
17 determine -- if someone -- if I ever came up to you and I said
18 I'm president of the United States, I just got elected, why
19 would you say that's not true?

20 PROSPECTIVE JUROR NO. 309: That's very nice of you,
21 but I see the picture of the president, whatever his name.

22 MR. YANEZ: What did you -- you looked at other
23 facts.

24 PROSPECTIVE JUROR NO. 309: Then I will say, you
25 know, I think you need to go research a little bit more before

1 you lie to me.

2 MR. YANEZ: Right. And that's where I was going
3 with my question. What you just did, you looked at other
4 facts to determine this must not be true. So that's one thing
5 you did. Right? You just did that.

6 PROSPECTIVE JUROR NO. 309: Well, but there was a
7 [indiscernible]. We are coming after the history is created.

8 MR. YANEZ: I guess my question is more kind of
9 general in regards to witnesses and not really specific to the
10 facts of this case. So looking at other facts to determine
11 whether what a witness says is true or not, that's one thing
12 you look at. What else does everyone look at? That's one
13 thing to look at? What else do we have?

14 PROSPECTIVE JUROR NO. 309: You have a frame you
15 create in your life. The frame that you have, what's in the
16 frame? Is it honesty, your virtue and trust and such. But if
17 you're just having hot temper and then you're having to create
18 an enemy in your life, their frame -- that's what you're frame
19 with in your life. So, you know, I don't know. My life is
20 very simple.

21 MR. YANEZ: I appreciate that. I appreciate you
22 telling me all that information. It's very helpful. I do
23 appreciate it. Pass the mic two down so we can get everybody.
24 Ma'am --

25 PROSPECTIVE JUROR NO. 332: Yes, 332.

1 MR. YANEZ: We talked about credibility of
2 witnesses, whether they're believable or not. If you were a
3 juror what you would do to determine whether someone's telling
4 the truth or not. She had indicated, based on my hypo, my
5 crazy hypo, that she would look at other facts to determine
6 that I wasn't telling the truth. What things do you look at?
7 You bring your life experiences and your common sense as
8 jurors and the Judge is going to instruct you on that. What
9 are some of the things you look at to determine whether
10 someone's telling you the truth, not telling the truth, or
11 somewhere in between?

12 PROSPECTIVE JUROR NO. 332: I would definitely
13 investigate more, get deeper. I had, in my experience,
14 somebody was stealing money from my salon and she denied,
15 denied, denied. I knew she did it. Later on I put the
16 cameras on and I caught her. So my point is I would just
17 research it and investigate until I find the truth. I didn't
18 leave it alone until I found the truth. I show her what
19 happened and that was it.

20 MR. YANEZ: So you kind of --

21 PROSPECTIVE JUROR NO. 332: I'm just telling my
22 experience.

23 MR. YANEZ: -- after you looked at other facts to
24 prove or disprove.

25 PROSPECTIVE JUROR NO. 332: Correct.

1 MR. YANEZ: Okay. What else? What else do we do as
2 human beings? Let me get the mic over here. Go ahead, ma'am.

3 PROSPECTIVE JUROR NO. 268: I would say that
4 somebody having inconsistent stories, if somebody keeps
5 changing their story or changing their recollection of events,
6 or they say one thing and can't remember what they said
7 previously. You mentioned there being two sides to every
8 story and then three sides to every story. I think there's a
9 lot of truth in that. There's what he said and then what she
10 said and then what really happened. In some instances there
11 are three sides to the story.

12 But as far as determining whether or not somebody's
13 telling you the truth, I think that pretty much as adults
14 we've all encountered enough people that are dishonest with us
15 to know, you know, some people just lie. Some people have
16 nervous tells, but it's not really necessarily fair to judge
17 someone on that. Public speaking is a big fear. We talked
18 about that. But I would say the biggest indicator of somebody
19 being dishonest would be inconsistencies in their stories.

20 MR. YANEZ: Okay. Thank you, ma'am. Pass the mic.

21 PROSPECTIVE JUROR NO. 265: I was going to say
22 inconsistency in stories and their body language and how they
23 tell their story, how they present themselves. Personal
24 experience, working with children, you kind of can tell if
25 they get nervous they're kind of hiding something. If you

1 have a kid crying, coming to you straightforward, then I kind
2 of investigate a little bit better. But you start nitpicking
3 a little bit, you know, getting closer and closer to the
4 truth, one kid's going to buckle down, then the other.

5 MR. YANEZ: Okay. Thank you. What else? Pass the
6 mic. Thank you.

7 PROSPECTIVE JUROR NO. 197: 197. I think the sheer
8 number of witnesses that have perhaps the same exact story
9 plays a role.

10 MR. YANEZ: The flip side of inconsistency.

11 PROSPECTIVE JUROR NO. 197: Right. I'm not saying
12 that that always works or anything, but I think that plays a
13 factor. You know, 40 witnesses who say the same thing and one
14 person who says the opposite. I think the tendency is to
15 believe 40 people more than one. But also, the credibility of
16 the witnesses. Is there a past history of lying or what have
17 you. I think that plays a factor.

18 MR. YANEZ: Thank you, sir. Someone else raised
19 their hand. 188. Thank you, sir.

20 PROSPECTIVE JUROR NO. 188: 188. What I look at a
21 lot of times is motivation. What is motivating this person to
22 say what he's saying? Does he really have a dog in the fight
23 or is he just an objective witness that doesn't gain either
24 way. But all of a sudden, for instance, as I spoke earlier
25 that short trial I had, the suspected DUI, and his

1 girlfriend/wife was on the stand and she had the motivation
2 to, you know, spell this story, and she eventually got caught.
3 But the thing as I look at it, and I say why is a person doing
4 this or not doing this.

5 And it actually, I guess, goes back to when you said
6 the Fifth Amendment right, as far as I would look at a person
7 and go what is his motivation not to testify or whatever. I
8 mean, that's just common knowledge. People go well, why. I
9 know if it was murder and I was on trial for murder and it
10 didn't look good and the defense attorney says man, you'd
11 better get up there. I don't care if I was afraid of public
12 speaking or not, I probably would. So, just goes back to the
13 motivation, why do people do this. And that's why police
14 officers I guess are respected is they really don't have a
15 stake in the game, you know. We look at them as being
16 objective.

17 MR. YANEZ: You brought up the Fifth Amendment
18 again. I want to follow up just a few questions on what you
19 said. I appreciate your views. I'm not sure if I heard you
20 correctly, or maybe I might be misinterpreting. The Court, if
21 Gary doesn't testify, will instruct you in regards to not
22 using that against him, holding that against him, or taking
23 any type of negative inference from that. How do you feel
24 about that?

25 PROSPECTIVE JUROR NO. 188: I would like to think

1 that I was totally objective and I believe I could do
2 something like that. It's just, as I said, you always wonder
3 why in something, you know, a serious case like this, a person
4 might not. I understand it's a valuable right, otherwise it
5 wouldn't be an amendment, and a person is not required to
6 testify against himself. But, I don't know, maybe I'm
7 different from everybody else. But in the back of my mind I
8 kind of always ask myself well, why. But if the Court said
9 hey, you have to overlook this and you can't make this in your
10 decision, I would hope I'd be able to do that. If that makes
11 sense.

12 MR. YANEZ: It does make sense. I'm going to grill
13 you just a little bit more because you used the word hope. I
14 think Juror 197 kind of used similar language. You know, this
15 is obviously a very big, important case. Do you think you'd
16 be able to? I hate saying you need to tell me yes or no, but
17 I'm going to ask for a yes or no answer on whether you think
18 you can do that or not. If you can't, then never mind what I
19 just said. You could say, you could tell me, look, I don't
20 know if I can be. I'm just going to grill you a little bit
21 more.

22 PROSPECTIVE JUROR NO. 188: To be honest, I really
23 don't know if I could be. I would hate to tell you one thing
24 and then all of a sudden when it comes down to deliberation
25 and say, you know, I really wasn't being honest. Because I

1 know in the back of my mind it would lead to questions.

2 MR. YANEZ: Okay. I appreciate that. Thank you so
3 much for being honest. Anyone else kind of have the same
4 thoughts as Juror 188 on that issue? And again, it's okay if
5 you do. Both sides would like to know if that's how you guys
6 feel. Right next door. Thank you Juror No. 188. I
7 appreciate that. 343.

8 PROSPECTIVE JUROR NO. 343: Yes. If I was in his
9 shoes and I was paying you, I don't like getting up and
10 talking in front of people, I would be afraid that I might
11 phrase something to put doubt in people's minds. You know,
12 it's a lot of times the way you say something, you know, it
13 gets people thinking where someone with expertise in speaking
14 could, you know, have the case, you know, everybody thinking
15 that he's not guilty. And then, I could come up and say
16 something in a phrase, not knowing, you know, how to say it
17 that would put doubt in people's minds.

18 MR. YANEZ: Okay. So if I understand correctly
19 then, you understand perhaps why someone might not want to
20 take the stand.

21 PROSPECTIVE JUROR NO. 343: Yeah. They're scared of
22 talking in front of people and then, you know, the way things
23 are said sometimes, it's not how you say it, it's the way you
24 say it that puts doubt in people's minds when you didn't mean
25 to -- you know, you meant to put positive thoughts in people's

1 minds, but the way you said it it has people thinking when you
2 didn't mean that in the first place.

3 MR. YANEZ: In this case if you're selected as a
4 juror you would have no problem following the Court's
5 instruction that if Gary doesn't testify that you take nothing
6 negative from that, you have no problems with that?

7 PROSPECTIVE JUROR NO. 343: No.

8 MR. YANEZ: Anyone else? Again, it's common. If
9 you have doubts as to having -- part of it is brutal honesty
10 and I appreciate that, to tell me that you know what, I don't
11 know if I'm going to be able to put that aside, even though
12 I'm instructed by the Judge that I cannot consider the fact
13 that he didn't testify. Anyone else kind of on the fence or
14 have doubts? Thank you. Again, thank you with Juror No.
15 188. I appreciate that.

16 So in summary, then, everyone agrees if Gary doesn't
17 testify in this case, the Court's going to instruct you not to
18 take anything negative from that fact, absolutely nothing.
19 Everyone is okay and will follow that jury instruction? Yes?
20 Okay. Everyone's nodding their heads up and down. Thank you.

21 If we can pass the mic to Mr. Petersen, 176? Sir,
22 quick follow up. I apologize if you answered this yesterday.
23 Sometimes I take sloppy notes. You indicated that you were
24 never a juror, but I thought you said something about being
25 involved in a lawsuit. Is that accurate?

1 PROSPECTIVE JUROR NO. 176: Yes.

2 MR. YANEZ: Is that in regards to what happened to
3 you in high school or is that something different?

4 PROSPECTIVE JUROR NO. 176: No, it's different. It
5 was -- my wife was in a car accident and she sued for damages
6 on that. So, you know, I testified and we participated in the
7 whole trial by jury.

8 MR. YANEZ: That was a civil case?

9 PROSPECTIVE JUROR NO. 176: Yes.

10 MR. YANEZ: Was there any criminal case that came
11 out of that or it was strictly civil for money damages?

12 PROSPECTIVE JUROR NO. 176: It was just civil.

13 MR. YANEZ: I know it was a while back. You
14 indicated, I think you said 50 years ago from high school,
15 right?

16 PROSPECTIVE JUROR NO. 176: Yes.

17 MR. YANEZ: That you had got into a fight or got
18 assaulted. Was the person prosecuted from that? Did someone
19 go to jail or what happened with that scenario?

20 PROSPECTIVE JUROR NO. 176: He was arrested and he
21 got community service.

22 MR. YANEZ: Okay. Did you have to go to court for
23 that at all?

24 PROSPECTIVE JUROR NO. 176: No. I don't believe so.
25 I don't think so, no.

1 MR. YANEZ: And I know it was a while back.
2 Anything about that process that left you with a sour taste in
3 your mouth or you didn't like? Or it's so long ago --

4 PROSPECTIVE JUROR NO. 176: I had a bad taste in my
5 mouth after it happened. But no, I guess maybe from then on I
6 was always, probably more inclined to watch my back because I
7 didn't see it coming. I was facing away from this guy and he
8 just spun me around and hit me with his class ring. You know,
9 it wasn't like we were arguing or anything. I think from then
10 on I've always been more cautious of my surroundings, you
11 know, to this day.

12 MR. YANEZ: All right. Anything from that situation
13 -- I know it happened awhile back -- that you think could
14 impact your ability to be fair and impartial in this case?

15 PROSPECTIVE JUROR NO. 176: I don't really think so,
16 no.

17 MR. YANEZ: And if we could pass the mic to 181, Mr.
18 Eastham. Sir, you mentioned that you had, unfortunately, some
19 issues with your stepson and drug addiction.

20 PROSPECTIVE JUROR NO. 181: Yes.

21 MR. YANEZ: Let me ask you this. The impact of
22 drugs, we talked about credibility or people are believable.
23 Did the fact that he was involved in taking drugs or drug
24 addict, did that impact if you ever had to determine his
25 credibility?

1 PROSPECTIVE JUROR NO. 181: Oh, absolutely.

2 MR. YANEZ: In what way?

3 PROSPECTIVE JUROR NO. 181: Well, we just -- the
4 trust issue -- I mean, we compiled multiple trust issues, so
5 we couldn't believe most of the time what he was saying.
6 [indiscernible] his name turns up in the newspaper.

7 MR. YANEZ: Okay. So that would be one of the
8 factors that you considered in determining whether your
9 stepson was telling the truth or not is the fact, whether he
10 was on drugs or not on drugs.

11 PROSPECTIVE JUROR NO. 181: That's correct.

12 MR. YANEZ: If we can pass the microphone to Mr., is
13 it Georgi, number 185?

14 PROSPECTIVE JUROR NO. 185: Kiley Georgi, 185.

15 MR. YANEZ: Thank you, sir. You mentioned a couple
16 of cases that you had, I know one of them was awhile back, the
17 DUI was 20 years ago I think you said. And then there was a
18 shoplifting case. How long ago was that? A long time ago?
19 Okay. Both of those cases went through the court process in
20 one way or the other?

21 PROSPECTIVE JUROR NO. 185: Correct.

22 MR. YANEZ: Was there anything in your involvement
23 with that court process that left you with a sour taste in
24 your mouth, you didn't like, anything to that extent?

25 PROSPECTIVE JUROR NO. 185: No.

1 MR. YANEZ: Anything from those two situations that
2 happened to you that you think might impact your ability to be
3 fair and impartial in this case?

4 PROSPECTIVE JUROR NO. 185: No, not at all.

5 MR. YANEZ: Thank you, sir. Appreciate it. Mr.
6 Casselman, 186, please.

7 PROSPECTIVE JUROR NO. 186: 186.

8 MR. YANEZ: Thank you, sir. You mentioned your son
9 is a Henderson police officer.

10 PROSPECTIVE JUROR NO. 186: Yes, he is.

11 MR. YANEZ: And just recently joined the force,
12 right?

13 PROSPECTIVE JUROR NO. 186: Yes, as of January. He
14 finished the academy and is now on patrol.

15 MR. YANEZ: Do you talk about the stuff he sees,
16 what goes on in the streets with him?

17 PROSPECTIVE JUROR NO. 186: Yes, occasionally. I
18 see him like once a week, so we talk off and on what he does
19 and some of the experiences he has. Most of it's positive.

20 MR. YANEZ: Anything in those conversations that
21 makes you think you know what, anyone the police arrests is
22 guilty, there's no way they would arrest a person who's not
23 guilty?

24 PROSPECTIVE JUROR NO. 186: Whatever they see and
25 happens to them, they have to react to it. So, that they

1 would arrest somebody who's guilty of what they're doing, yes,
2 I agree to that.

3 MR. YANEZ: Okay. So, do you think because Gary's
4 been charged in this case he's got to be guilty?

5 PROSPECTIVE JUROR NO. 186: No, not necessarily. He
6 needs to be proved one way or the other first.

7 MR. YANEZ: Okay. Would you agree with me, and if I
8 did ask you this I apologize, I mentioned earlier about police
9 investigations and whatever conclusions they might reach being
10 just as -- only as good as perhaps the information they
11 receive. Would you agree with that?

12 PROSPECTIVE JUROR NO. 186: Yeah. They take the
13 witness statements and then they investigate more and then
14 they put that in the report.

15 MR. YANEZ: So, like a scenario if someone came up
16 to your son in the street and said that person over there just
17 took my purse, and that person was lying, your son responds
18 based on that accusation. Is that a type of scenario where
19 your son obviously was being truthful and honest, he wasn't
20 trying to frame anybody, but the information he got was just
21 not correct.

22 PROSPECTIVE JUROR NO. 186: Yes, that's correct.

23 MR. YANEZ: And that could be a scenario that might
24 happen out there?

25 PROSPECTIVE JUROR NO. 186: Oh, yeah. People lie

1 all the time.

2 MR. YANEZ: Thank you, sir. If we can go to 188,
3 Mr. Blythe. Mr. Blythe, I just want to clarify a few things.
4 I know you served as a juror three times, twice in a civil
5 case and one in a criminal case, right?

6 PROSPECTIVE JUROR NO. 188: I served two times.

7 MR. YANEZ: Oh, two times.

8 PROSPECTIVE JUROR NO. 188: Yeah, this is the third.
9 One was criminal and one was civil.

10 MR. YANEZ: I got ya. Okay. I think you said, I
11 don't know if it was in both of them, but as to the civil case
12 there was never a verdict.

13 PROSPECTIVE JUROR NO. 188: That's correct.

14 MR. YANEZ: And I got the sense that you were upset
15 about that because you had to drive I think a far distance and
16 it was a five-week trial.

17 PROSPECTIVE JUROR NO. 188: It was long, four and a
18 half, five weeks, 60 miles one way. But I think the
19 frustrating thing was that you finally had a chance and you go
20 okay, I've gone through this, now we can do a deliberation.
21 And they settled out of court. And basically, the way it
22 seemed like the majority of the jurors, if not all of them,
23 were going to settle with the defendant. You know, the police
24 chasing these guys. So that was kind of frustrating to us in
25 a way that all this effort went in and then it wasn't

1 resolved.

2 MR. YANEZ: Okay. In this scenario, if you were
3 selected as a juror and perhaps as a group you guys can't
4 reach a decision, but you felt strongly about your position,
5 whichever one it was, would you feel pressured or would you
6 kind of change your decision so that the jury could come back
7 with something rather than be stuck and not being able to
8 decide?

9 PROSPECTIVE JUROR NO. 188: No. If I believed that
10 the facts led me to believe what it would be, I would be one
11 of these stubborn people who would say no, you know, I'm not
12 going to change my mind just to get out of here, you know, and
13 leave early.

14 MR. YANEZ: Nothing from that scenario of spending
15 five miserable weeks that might --

16 PROSPECTIVE JUROR NO. 188: No. It was just a
17 frustration that settling out of court because the evidence
18 was very positive for the police department. And to see them
19 all of a sudden having to hand out multi-million dollars, you
20 know, that was kind of frustrating.

21 MR. YANEZ: And on the criminal case, where did that
22 occur, what state?

23 PROSPECTIVE JUROR NO. 188: That was in Victorville,
24 California.

25 MR. YANEZ: And did that go to verdict?

1 PROSPECTIVE JUROR NO. 188: No. Basically, what it
2 was is the accused girlfriend/wife -- it was a drunk driving.
3 He was passed out on the driver's side going the wrong way
4 through an In-N-Out burger drive-thru. So that's a bad sign.
5 Their case was that she was driving and she ran away from him.

6 MR. YANEZ: All right. So you never got the chance
7 to deliberate on that one.

8 PROSPECTIVE JUROR NO. 188: No.

9 MR. YANEZ: Anything from those prior experiences
10 that you think would impact your ability to be fair and
11 impartial here?

12 PROSPECTIVE JUROR NO. 188: No.

13 MR. YANEZ: If we can pass the microphone to 193,
14 please, Mr. Morgan. Mr. Morgan, you mentioned, it's been
15 awhile, you had a DUI back in 1992?

16 PROSPECTIVE JUROR NO. 193: I believe somewhere in
17 that --

18 MR. YANEZ: And you were represented by an attorney,
19 a defense attorney?

20 PROSPECTIVE JUROR NO. 193: Yes.

21 MR. YANEZ: Anything from that experience that left
22 you with a bad taste in your mouth, something you didn't like?

23 PROSPECTIVE JUROR NO. 193: No.

24 MR. YANEZ: Nothing of that situation that might
25 impact your ability to be fair and impartial in this case?

1 PROSPECTIVE JUROR NO. 193: Not at all.

2 MR. YANEZ: Thank you, sir. If we could pass to
3 196, just a few down, please.

4 PROSPECTIVE JUROR NO. 196: David Debenon, 196.

5 MR. YANEZ: Thank you, sir. I know you indicated
6 that you served as a juror. You reached a verdict on that
7 case. Was there anything from that case that you saw, heard,
8 that left you bothered, upset, not happy about?

9 PROSPECTIVE JUROR NO. 196: No, sir.

10 MR. YANEZ: Okay. So I'm assuming, and correct me
11 if I'm assuming wrong, that nothing from that case would
12 affect your ability to be fair and impartial in this case?

13 PROSPECTIVE JUROR NO. 196: No, sir.

14 MR. YANEZ: Thank you. I appreciate that. And
15 then, if we can go next door to 197. Uecker, correct?

16 PROSPECTIVE JUROR NO. 197: Uecker.

17 MR. YANEZ: You indicated, and I'm not tech savvy,
18 you're a network consultant, correct?

19 PROSPECTIVE JUROR NO. 197: Yes.

20 MR. YANEZ: And you had some concerns, like Ms.
21 Hussey had some concerns, about your work and the ability to
22 either make money or I think there's employees who depend on
23 you. Can you explain that to me, how that works?

24 PROSPECTIVE JUROR NO. 197: So typically, I'm the
25 one who does most of the billing, although the employees do

1 too. And so by me being here I obviously can't be with --
2 consulting with clients and billing. So there's a concern
3 that, depending on the length of the trial, and I believe
4 we're talking next week or something, that's a week's worth of
5 income that's at risk.

6 MR. YANEZ: Okay.

7 PROSPECTIVE JUROR NO. 197: I would say practically
8 speaking, it will likely get done, it will just get done at
9 night.

10 MR. YANEZ: Do you think that's going to impact your
11 ability to be able to listen to the witnesses, the testimony
12 in this case because you're going to be thinking about that?

13 PROSPECTIVE JUROR NO. 197: It could, certainly.
14 I'd hope it wouldn't, but I'm using hope again. I'll be
15 honest and say --

16 MR. YANEZ: I appreciate that.

17 PROSPECTIVE JUROR NO. 197: I'd also like to say
18 too, since the two gentlemen behind me when we were talking
19 about the Fifth Amendment, the two gentlemen behind me, after
20 they had spoke, I have some concerns about -- for one thing,
21 you said what did you feel when you came in and said this is a
22 murder trial. And I said, you know, my first thought was
23 crap, because the magnitude of it more than anything. I mean,
24 the defendant's life is going to be dramatically different
25 depending on the outcome of this case. So the magnitude of

1 it.

2 And something the potential juror behind me said was
3 that if that was the case and I was -- it would impact the
4 jury's decision one way or the other, despite the fact that I
5 might not be comfortable, I would want -- I would kind of
6 expect that somebody would get on the -- and testify on their
7 behalf.

8 MR. YANEZ: Okay. You obviously recognize, and I
9 think everyone agreed, that every defendant --

10 PROSPECTIVE JUROR NO. 197: Yes, absolutely.

11 MR. YANEZ: -- has a Fifth Amendment right. And I'm
12 going to put you on the hot seat a little bit more.

13 PROSPECTIVE JUROR NO. 197: Fine. I expected it.
14 And plenty of people have come up with valid scenarios why he
15 wouldn't. I just, you know, it's been churning in my head
16 since they --

17 MR. YANEZ: I appreciate you telling me, because
18 it's obviously a very important issue. And as I indicated,
19 the Judge will instruct you if you're selected as a juror that
20 if Gary does not testify that you are to take no negative
21 inferences from that, take nothing negative away from that
22 fact. Do you think you would be able to follow that
23 instruction or is it Juror 188 who was like I'm not sure? How
24 do you feel about that?

25 PROSPECTIVE JUROR NO. 197: I'm going to say I'm not

1 sure because of -- there's a path where, you know, things look
2 a certain direction and even though we're instructed by the
3 Court not to take that under consideration, I can't say that I
4 wouldn't. I mean, I can't say that I wouldn't think about
5 that because of the magnitude. If this was a different
6 scenario, then you might say well, if he did testify that
7 would lead down a path of bigger consequences. But the
8 consequences are pretty severe in this case.

9 MR. YANEZ: If I understand that last part correctly
10 what you said, are you saying that because it's such a serious
11 charge it's more reason that someone who's accused of that
12 should testify? Or did I misinterpret that?

13 PROSPECTIVE JUROR NO. 197: No, I think that's
14 accurate. I mean, what I understood the juror behind me to
15 say is the consequences are so grave because this is a murder
16 trial. And one of the sentencing could be life in prison
17 without parole. The fact that you have a reason, perhaps it's
18 you're scared of speaking in public that you wouldn't -- I
19 mean, the gravity of the alternative is pretty grave. I would
20 kind of think that probably isn't a reason, in my case,
21 probably isn't what I would have picked.

22 THE COURT: Mr. Uecker, I need to jump in here for a
23 second.

24 PROSPECTIVE JUROR NO. 197: Sure.

25 THE COURT: There's a distinction obviously between

1 wondering why the defendant may not testify and holding it
2 against him for testifying. So, let me just tell you a couple
3 things. First of all, defense counsel is correct, under our
4 constitution there is a Fifth Amendment right not to testify.
5 It's because our founding fathers determined the importance of
6 not allowing the Government to compel people to be a witness
7 against themselves or testify. It's one of our fundamental
8 rights that the Government can't force us to say anything.
9 We're allowed under our system to force the Government to come
10 forward with their evidence and then we can decide what we
11 want to do. We may decide they haven't put on enough proof
12 and decide the Government's not going to force me to talk. So
13 that's what our founding fathers determined.

14 So, it's probably natural for people to wonder why
15 in a trial, if the defendant chooses not to talk, why they
16 didn't talk. It's probably human nature to wonder why a
17 person did or didn't testify. It's probably even natural for
18 a person such as you to think well, if this were me I would
19 probably want to get on the stand, whatever the situation.
20 Right? But what's not proper is once you're done with that
21 wondering, for you to then hold it against the defendant for
22 exercising his constitutional right not to testify.

23 And that's what we're trying to do here, is to find
24 out that, you know, even if you wonder why that person didn't
25 testify, at the end of the day we want you to put that out of

1 your mind and not hold it against the defendant for exercising
2 his right. So that's what defense counsel is legitimately
3 trying to find out from you. Can you set aside your wondering
4 and when you're back there deliberating focus on the evidence
5 and not hold it against the defendant for exercising his
6 right. So what do you say to that?

7 PROSPECTIVE JUROR NO. 197: I think I can do that.
8 Because of the gravity of the case, I wanted to try to be
9 absolutely clear about what was in my head at this point
10 because I don't want it to adversely affect the outcome.

11 THE COURT: None of us want the outcome to be
12 adversely affected by a person exercising their rights and by
13 holding the State to their burden. We want a fair trial on
14 both sides.

15 PROSPECTIVE JUROR NO. 197: Absolutely. So I think
16 I can do that. And you clarifying it has helped. Thank you.

17 MR. YANEZ: Thank you, Judge.

18 THE COURT: All right. Thank you. Because these
19 are very good, legitimate questions by defense counsel. I
20 appreciate him probing everybody on that. Thank you.

21 MR. YANEZ: Thank you, Judge. Those were my
22 follow-up questions. If we can go to Mr. Lautner, 198.

23 PROSPECTIVE JUROR NO. 198: 198.

24 MR. YANEZ: Sir, you were in firefighting; is that
25 correct?

1 PROSPECTIVE JUROR NO. 198: Yes, I'm an assistant
2 fire chief.

3 MR. YANEZ: Right. And you come into contact a lot
4 with police officers.

5 PROSPECTIVE JUROR NO. 198: Mostly at the federal
6 level, but occasionally with Nevada Highway Patrol and some of
7 the rural sheriff's departments.

8 MR. YANEZ: Okay. And I believe you said something
9 yesterday, and I want to kind of dig into it just a little bit
10 more, get your viewpoint. You had mentioned that you had
11 disagreement with -- I think you said the media has portrayed
12 the police recently, or did I get that wrong?

13 PROSPECTIVE JUROR NO. 198: No, that isn't
14 necessarily what I meant. I guess what I meant to say is that
15 hey, there have been some adverse news stories about the
16 police department. Not necessarily here, but throughout the
17 country. And then I mentioned that earlier today that they're
18 under intense media scrutiny or intense scrutiny by all
19 Americans at this point. So fairly or unfairly, that's really
20 what I meant by that.

21 MR. YANEZ: Okay. Thank you, sir, I wanted to
22 clarify that point. If we could pass to 232 up front, please.
23 You're giving me the evil eye. I'm sorry. I just wanted to
24 clarify something you had said yesterday. You served as a
25 juror in a criminal case 17 years ago, I believe you said.

1 PROSPECTIVE JUROR NO. 232: I think it was that
2 long.

3 MR. YANEZ: Okay. And where was that?

4 PROSPECTIVE JUROR NO. 232: This is back in Hawaii.

5 MR. YANEZ: Oh, in Hawaii. Okay. And you were not
6 the foreperson, correct?

7 PROSPECTIVE JUROR NO. 232: No.

8 MR. YANEZ: Did your jury reach a verdict?

9 PROSPECTIVE JUROR NO. 232: Yes.

10 MR. YANEZ: Okay. Anything from that process of
11 your involvement in that, that left you upset or a bad taste
12 in your mouth or anything like that?

13 PROSPECTIVE JUROR NO. 232: No.

14 MR. YANEZ: Okay. Nothing from that you think is
15 going to impact your decision to be fair and impartial in this
16 case?

17 PROSPECTIVE JUROR NO. 232: No.

18 MR. YANEZ: Thank you, ma'am. If we can go to 252,
19 Ms. Tackett, please. Ms. Tackett, you mentioned a couple of
20 incidents or things that happened to you when you were working
21 as a 7-Eleven employee, right?

22 PROSPECTIVE JUROR NO. 252: Right.

23 MR. YANEZ: And you were robbed at gunpoint.

24 PROSPECTIVE JUROR NO. 252: Right.

25 MR. YANEZ: And that was back in 1977.

1 PROSPECTIVE JUROR NO. 252: Yes.

2 MR. YANEZ: I didn't catch. Was that person ever
3 caught?

4 PROSPECTIVE JUROR NO. 252: No.

5 MR. YANEZ: Anything about the fact that that person
6 wasn't caught that might impact your decision here saying I'm
7 not going to let this person get away, this is my chance to --

8 PROSPECTIVE JUROR NO. 252: Oh, no.

9 MR. YANEZ: Nothing like that?

10 PROSPECTIVE JUROR NO. 252: No.

11 MR. YANEZ: Okay. I'm assuming you spoke to the
12 police?

13 PROSPECTIVE JUROR NO. 252: Oh, yes.

14 MR. YANEZ: Were there ever any suspects?

15 PROSPECTIVE JUROR NO. 252: No. I described the man
16 and then later, the police told me that they hadn't found
17 anything so they were wondering if I was involved in it, like
18 an inside job.

19 MR. YANEZ: Did they -- was that what you guess the
20 police were going or did they come out and say hey, were you
21 involved in this in any way?

22 PROSPECTIVE JUROR NO. 252: Yeah, they did.

23 MR. YANEZ: How did that make you feel?

24 PROSPECTIVE JUROR NO. 252: I was done. I couldn't
25 believe that they would say something like that, but they did.

1 MR. YANEZ: Was that the extent of their
2 investigation as to you, they just asked you whether you were
3 involved in it or not?

4 PROSPECTIVE JUROR NO. 252: Yes. So I never heard
5 anything more about it after that. So apparently, they didn't
6 have a clue who the guy was.

7 MR. YANEZ: Okay. And then, you also mentioned a
8 purse snatch from the 1980s. Was anyone caught from that?

9 PROSPECTIVE JUROR NO. 252: No.

10 MR. YANEZ: Anything about either of those two
11 situations that you think would impact your decision to be
12 fair and impartial in this case?

13 PROSPECTIVE JUROR NO. 252: No.

14 MR. YANEZ: All right. Thank you, ma'am. Can we go
15 to --

16 THE COURT: Do you think we should take a break now
17 or do you --

18 MR. YANEZ: I'm not going to be too much longer, but
19 maybe we do need a break, Judge.

20 THE COURT: Why don't we take a break, a 15-minute
21 break, and then if you want to take a few minutes and then we
22 can go to lunch or do you want to go to lunch now? What are
23 you guys thinking?

24 MS. THOMSON: Whatever you want to do.

25 MR. YANEZ: I would say, to give the jurors a break,

1 Judge, maybe go to lunch now. Whatever the jurors, I guess --
2 I'm open to whatever --

3 THE COURT: Let's take a 15-minute break, come back,
4 wrap up your section, and then we can maybe excuse a few
5 people.

6 MR. YANEZ: I don't have too much longer, so I think
7 -- yeah.

8 THE COURT: All right. We're going to take a
9 15-minute break. The admonishment I gave everybody before
10 applies. Don't form any opinions, don't talk to anybody about
11 the case, don't do any research and avoid contact with
12 attorneys and witnesses and be back here in 15 minutes. Thank
13 you. You may bring in beverages, just be careful when you
14 come back.

15 (Prospective jury panel recessed at 12:09 p.m.)

16 THE COURT: -- challenge yet, but just give me a
17 rough idea how many challenges for cause you think you might
18 have?

19 MR. YANEZ: Two or three, tops.

20 THE COURT: So before we break for -- how about then
21 -- I think the State already passed for cause and defense
22 might have two or three. I won't hold you scientifically to
23 that, but I think we can --

24 MR. YANEZ: As of right now.

25 THE COURT: I think we can probably, given that we

1 still have 11 people out there, we probably don't need the 20
2 extras that I had coming back at 1:30. I just don't see that.

3 MR. YANEZ: The only thing I'm -- in an abundance of
4 caution, the remaining follow-up questions I have if it adds
5 to that list.

6 THE COURT: All right. We'll wait then. We'll wait
7 to decide that. Very good. Take a short break. See you back
8 here in 12 more minutes.

9 (Court recessed at 12:11 p.m. until 12:25 p.m.)

10 (Outside the presence of the prospective jury panel.)

11 THE COURT: State v. Chambers, C29298. Are we ready
12 to bring in potential jurors?

13 MR. YANEZ: Yes, Judge.

14 (Prospective jury panel reconvened at 12:27 p.m.)

15 THE COURT: All right. Please be seated. We're on
16 the record. Mr. Yanez, you may continue with your voir dire
17 of the jurors.

18 MR. YANEZ: Thank you. Go to Mr. Carter, 270. Sir,
19 I know you're in the military, you did court martials. You
20 described that yesterday. Something that I was confused
21 about, and I might have heard you wrong, the prosecutor had
22 asked you some questions about the burden of proof here in
23 state court, proof beyond a reasonable doubt compared to what
24 you had there in court martials. What I took from it, this is
25 why I'm confused, I thought you had said it's the same

1 standard, but then I thought I heard you say the standard here
2 is higher. When you were -- you were actually acting as a
3 judge and determining whether someone who had been -- who had
4 been brought up and charged as a military justice, whether
5 they were guilty or not guilty; is that correct?

6 PROSPECTIVE JUROR NO. 270: It's succession. Under
7 the Uniform Code of Conduct everything was in black and white
8 and there was no movement from that except for if I could find
9 mitigating circumstances on the defendant. In other words,
10 there was something totally out of his control that he
11 normally wouldn't have done what he did was a mitigating
12 circumstance.

13 MR. YANEZ: That mitigating -- was that for purposes
14 of determining whether he did or didn't do it or for
15 punishment purposes?

16 PROSPECTIVE JUROR NO. 270: More so to the severity
17 of what he did, what caused him to do that. It's something
18 that he normally wouldn't have done; i.e., if he went AWOL
19 without permission, but didn't take his equipment or clothing
20 with him, that's less severe than if you left the post with
21 your gear, now you're deserting.

22 MR. YANEZ: Okay. So you would take that mitigation
23 into consideration in determining whether that person was
24 guilty or not guilty; is that fair?

25 PROSPECTIVE JUROR NO. 270: Absolutely.

1 MR. YANEZ: Am I understanding correctly? Okay.
2 And was there -- that was awhile back, I think you said in the
3 '70s?

4 PROSPECTIVE JUROR NO. 270: Yes.

5 MR. YANEZ: Anything from your experiences in those
6 court martials acting as a judge that you think would prevent
7 you from being fair and impartial in this case?

8 PROSPECTIVE JUROR NO. 270: Nothing would stop me
9 from being.

10 MR. YANEZ: Okay. Thank you, sir. If we could go
11 to 289, Ms. Lee. You mentioned yesterday that incident where
12 you were actually robbed at gunpoint while working for the
13 water district, right?

14 PROSPECTIVE JUROR NO. 289: Yes.

15 MR. YANEZ: And that was about 30 years ago?

16 PROSPECTIVE JUROR NO. 289: Yes.

17 MR. YANEZ: And no one was caught from that
18 situation.

19 PROSPECTIVE JUROR NO. 289: No.

20 MR. YANEZ: Based on that that no one was caught,
21 any feelings that that might impact your decision here on
22 can't let people get away with these --

23 PROSPECTIVE JUROR NO. 289: No.

24 MR. YANEZ: -- crimes or anything like that you
25 think would affect you?

1 PROSPECTIVE JUROR NO. 289: No.

2 MR. YANEZ: And then, you served as a juror on a
3 criminal case, you weren't a foreperson and you did reach a
4 verdict, correct? Was that here in the State of Nevada?

5 PROSPECTIVE JUROR NO. 289: Yeah.

6 MR. YANEZ: How long ago was that?

7 PROSPECTIVE JUROR NO. 289: Gosh, 25 years ago
8 maybe.

9 MR. YANEZ: Twenty-five years ago. Okay. The
10 prosecutor I remember asked you a question, she kind of gave
11 you a scenario about a car accident happening and how you
12 would -- whether you would remember things, more likely to
13 remember things or not based on kind of the stress of that.
14 And I thought you had said that in those type of situations
15 you think you'd probably be more likely to remember details
16 and things like that. You're nodding your head. Is that yes?

17 PROSPECTIVE JUROR NO. 289: Yes.

18 MR. YANEZ: And why is that? Why do you think that?

19 PROSPECTIVE JUROR NO. 289: I think just when it's
20 happening you're more alert than just something that's -- it's
21 a little bit more traumatic maybe or a little bit more out of
22 the norm, so it kind of snaps you into paying attention a
23 little bit more, I guess.

24 MR. YANEZ: Okay. What about everyone else? A
25 stressful situation and being able to recall it, whether it's

1 minutes or hours or days later, do you think that stressful
2 situation, do you agree with the juror that you're more likely
3 to remember the details because of that anxiety or less likely
4 to remember details?

5 PROSPECTIVE JUROR NO. 289: More likely.

6 MR. YANEZ: More likely? Okay. Does anyone think
7 less likely? Ms. Hussey, are you nodding your head? Let me
8 pass the mic real quick.

9 PROSPECTIVE JUROR NO. 184: 184. Only because you
10 forget things and you don't -- when you're traumatized by
11 something you don't remember everything that happens to you.
12 To me anyway.

13 MR. YANEZ: Do you think -- both to you, Ms. Hussey,
14 and to everyone, do you think how long time has passed since
15 the incident makes a difference on whether you can remember
16 something accurately or once something's burned in your memory
17 you'll remember it? We'll start with you Ms. Hussey, what do
18 you think?

19 PROSPECTIVE JUROR NO. 184: Some things are burned
20 in your memory that you're never going to forget, and then in
21 some situations I think if you're just so traumatized by
22 what's happening to you you don't realize everything that's
23 happening to you.

24 MR. YANEZ: Okay. I think we had some other people
25 raise their hands. Go to 176. I think you were shaking your

1 head. What do you think?

2 PROSPECTIVE JUROR NO. 176: I disagree with that. I
3 was an Air Force pilot for six years and I remember things in
4 Vietnam that happened that I would never, ever forget. It was
5 a stressful situation. And then, after that, I had an
6 accident in an airplane and I can remember every second that
7 developed from the time I had the problem until I was out of
8 the airplane. Every second of it. It was just like slow
9 motion the whole way through the whole thing.

10 MR. YANEZ: Okay. So more likely to remember even
11 though it's a stressful situation.

12 PROSPECTIVE JUROR NO. 176: Absolutely.

13 MR. YANEZ: Okay. Anybody else? All right. If we
14 can pass the mic right here, please. Go ahead, ma'am, 222.

15 PROSPECTIVE JUROR NO. 222: I think it depends on
16 the person. It's more of a psychological factor, because I've
17 met people who have had traumatic situations happen to them,
18 but they're more inclined to forget it. Then, there are other
19 people too who have had really positive experiences and
20 they're more inclined to remember it more compared to the
21 traumatic ones. So it would also depend on a person's outlook
22 in life, how they want to move further. If they're the type
23 of person who would just tend to forget about bad situations,
24 they let go easily, then they tend to not recall in details
25 the more traumatic experiences. I personally believe it

1 depends on -- it's a unique trait for a person.

2 MR. YANEZ: No set rule, then, depends on the
3 individual.

4 PROSPECTIVE JUROR NO. 222: Yes.

5 MR. YANEZ: Okay. Thank you, ma'am. Ms. Boucher,
6 yesterday -- badge number 332 -- you mentioned a couple of
7 things that I wanted to ask you about. You mentioned about
8 being -- whether or not you could be strong enough to make a
9 decision. Do you remember saying that?

10 PROSPECTIVE JUROR NO. 332: Correct.

11 MR. YANEZ: Can you tell me a little bit more about
12 that? What do you mean by that?

13 PROSPECTIVE JUROR NO. 332: Be honest with you, this
14 is my first time and this is a serious decision on somebody
15 else's life. I am very -- in a way I'm strong, but weak same
16 time. And I don't know -- I don't know if I can explain
17 myself. But I feel like I'm not strong enough to
18 [indiscernible] somebody for a murder.

19 MR. YANEZ: Okay. Do you think you could be fair
20 and impartial?

21 PROSPECTIVE JUROR NO. 332: Don't know.

22 MR. YANEZ: Okay. Why do you say you don't know if
23 you can be fair and impartial?

24 PROSPECTIVE JUROR NO. 332: I don't know. Just
25 never been in trial for a murder. I'm very sensitive and I

1 freaked out and I'm afraid I'm not going to make the right
2 decision or right choices or -- I cannot explain. I just
3 don't know.

4 MR. YANEZ: Okay. I appreciate your honesty.

5 PROSPECTIVE JUROR NO. 332: I mean, I'm dealing with
6 somebody else's life, even though he could be a murderer. I
7 don't know, I just -- I cannot say it.

8 MR. YANEZ: Okay. And if you were selected as a
9 juror and the Judge were to instruct you to follow the law and
10 to be fair and impartial --

11 PROSPECTIVE JUROR NO. 332: Correct.

12 MR. YANEZ: -- even with that instruction from the
13 Court, do you think you could be fair and impartial?

14 PROSPECTIVE JUROR NO. 332: I can't tell you.

15 MR. YANEZ: Okay. I guess I'm trying to find out
16 the underlying reason why you think you can't be fair and
17 impartial. Is it because just the whole seriousness of the
18 case and the nature of the charge?

19 PROSPECTIVE JUROR NO. 332: Correct.

20 MR. YANEZ: Okay. Do you think in general you're a
21 fair person?

22 PROSPECTIVE JUROR NO. 332: I am very fair. I'm
23 just like -- I feel like I'm in the middle and I feel bad for
24 both parties. I'm very sensitive and I don't think my
25 feeling's going to be there, strong enough to -- decision.

1 MR. YANEZ: I appreciate that.

2 THE COURT: So, let me follow up. Fair and
3 impartial, some people don't really understand what those
4 terms mean when they're put together. All right? But
5 fairness, when we ask someone to be fair, we want to make sure
6 they're going to pay attention, listen to the law, follow the
7 law, listen to the evidence, and make the best decision that
8 they can based on all that. What we don't want someone to do
9 is just to sit here and close their eyes and at the end of the
10 day when they go back to the jury room just flip a coin,
11 because that's being arbitrary. You're not going to do that,
12 are you?

13 PROSPECTIVE JUROR NO. 332: Not at all.

14 THE COURT: All right. And when we ask somebody if
15 they're impartial, we don't want someone to be biased or
16 prejudiced. All right? We don't want -- like you're not
17 going to -- the gentleman sitting right here, the defendant,
18 he's African American, right?

19 PROSPECTIVE JUROR NO. 332: Right.

20 THE COURT: You're not against him because he's an
21 African American, are you?

22 PROSPECTIVE JUROR NO. 332: Not at all.

23 THE COURT: All right. He's a male. You're not
24 against him because he's a male, right?

25 PROSPECTIVE JUROR NO. 332: Right.

1 THE COURT: Or he's wearing a beard. You're not
2 against him because he has a beard, right?

3 PROSPECTIVE JUROR NO. 332: Correct.

4 THE COURT: Okay. He has glasses --

5 PROSPECTIVE JUROR NO. 332: Trust me, I have --

6 THE COURT: You see what I'm saying? You don't have
7 any like prejudices against him.

8 PROSPECTIVE JUROR NO. 332: Not at all.

9 THE COURT: The fact that he's having to go through
10 this trial where the prosecution is pointing the finger at him
11 and accusing him of stuff, and he has to be here and defend
12 himself. All right? You're not against him just because he's
13 exercising his right to defend himself, right?

14 PROSPECTIVE JUROR NO. 332: It's not him, it's me.
15 Not at all.

16 THE COURT: Okay. I just want to make sure.
17 Because some people do come in here and they have some
18 prejudice based on religion, sex, race, national origin, you
19 know, some mannerisms of the person. Some people,
20 unfortunately, have those things and we need to make sure that
21 we have no one that's biased or prejudiced against the
22 defendant. So what you're saying is you're struggling because
23 it's a very, very difficult decision, very difficult thing
24 that we're asking you to do, which is something you've never
25 had to do before; is that right?

1 PROSPECTIVE JUROR NO. 332: Correct. And my
2 feelings go all over the place. I don't feel like I'm strong
3 enough for any kind of decision, and I don't want to make a
4 bad decision and this is we're dealing with somebody else's
5 life.

6 THE COURT: No, nobody wants a bad decision. It's
7 tough to make -- you know, it's tough to call people to be put
8 in this position. I appreciate you being here. I don't know
9 if you're going to be chosen or not, but if you are chosen
10 you'll do the best job you can, right? You'll try.

11 PROSPECTIVE JUROR NO. 332: Yes.

12 THE COURT: All right. That's what I need to know.
13 Thank you.

14 MR. YANEZ: Thank you, Judge. 348, Ms. Warwick.
15 Okay. You mentioned yesterday something that happened to you
16 when you were in your twenties, a terrible situation where you
17 said you were kidnapped and strangled. I think this was out
18 in Big Bear, California? Is that a yes?

19 PROSPECTIVE JUROR NO. 348: Uh-huh.

20 MR. YANEZ: We have to -- for the record to be
21 clear. No one was ever caught for that incident?

22 PROSPECTIVE JUROR NO. 348: No.

23 MR. YANEZ: Anything about that incident that you
24 think would prevent you from being fair and impartial in this
25 case, in Gary's case?

1 PROSPECTIVE JUROR NO. 348: No.

2 MR. YANEZ: You're not going to say oh, I need to
3 get somebody because of what happened to me, I need to find
4 someone, nothing like that?

5 PROSPECTIVE JUROR NO. 348: No.

6 MR. YANEZ: Okay. Thank you. One last general
7 question. I know you've been bombarded with a bunch of
8 questions the past two days. Is there anything that the
9 Judge, myself, the prosecution haven't asked about you or
10 perhaps a family member, loved one that you think is important
11 for us to know? All right. No one is indicating that there
12 is.

13 Can we approach, Judge?

14 THE COURT: Yes, you may.

15 (Bench conference transcribed as follows)

16 THE COURT: Have to be careful so they don't hear.
17 Sometimes they can overhear us. Just a blank piece of paper.
18 Did you have some challenges? If you could write them down,
19 just the numbers down so I can know, and then we'll see if you
20 oppose it, just write oppose or stipulate. Thank you. I'll
21 let you guys argue [indiscernible] positions. I'm not going
22 to force you guys to argue in front of the jury, so you can go
23 back and sit down. Give me a moment. Thanks.

24 (End of bench conference)

25 (In the presence of the prospective jury panel)

1 THE COURT: So let me ask a couple questions. I
2 want to ask Ms. Hussey, 184. Will you take the microphone,
3 please. Just pass it back to her, if you could. So you had
4 mentioned your concern about maybe being distracted by your
5 work if you're chosen to sit on the jury. I mean, I
6 understand we all have life commitments and they could
7 distract us sometimes. And hopefully, when we're doing
8 sometime important, something that matters a lot, that those
9 distractions can be brief and fleeting. So what I need to
10 know is if you were chosen as a juror here, do you think that
11 thinking about your work and your life distractions is going
12 to be so consuming that you wouldn't be able to accomplish
13 your duty as a juror?

14 PROSPECTIVE JUROR NO. 184: No, I don't think that.
15 I would definitely be a good juror, and I would someday like
16 to be a good juror. I feel very honored even just to be here
17 and be talked to. But it seems a little unfair to my
18 employees and staff that I'm away from work. But no, I could
19 absolutely be a good juror.

20 THE COURT: All right. I appreciate that. You're
21 definitely being very honest and I don't have a sense that
22 you're saying anything to try to get out of your service. I
23 think you're being honest with us. I appreciate that.

24 PROSPECTIVE JUROR NO. 184: Yes, absolutely.

25 THE COURT: Let me think about that over the lunch

1 hour. I need to look at the standard again that applies for
2 my discretion to let people go. I need to look at that.

3 Thank you.

4 After some reflection, I am going to release two
5 people, and then we're going to go to lunch and then we need
6 to fill those two spots. So the following two people, when I
7 state your name you may gather your belongings and you're free
8 to go with the thanks of the Court and thanks of the parties
9 for putting up with us and our difficult questions for a
10 while.

11 Juror No. 188, John Blythe, you're excused. Thank
12 you very much. That's juror in seat number eight. You've
13 been very good, attentive, and we appreciate your service.
14 For reasons I don't need to get into, you are excused, though.
15 But thank you very much, sir.

16 Also, one more, Juror No. 332, Anna Boucher, you're
17 excused. Thank you very much for your attentiveness and your
18 participation in these proceedings. You're excused.

19 I'm going to ask the court clerk to fill the two
20 seats that we have, and then we're going to go take our lunch
21 break.

22 THE CLERK: In seat eight will be badge number 349,
23 Daniel Carranto. And in seat 32 is badge 362, Chris Vasquez.

24 THE COURT: All right. Thank you very much. When
25 you guys get back from lunch we're going to talk to the two

1 new people for a few moments and get your biographical
2 information, I'll let the attorneys ask some questions and
3 we'll see if there's anything important you need to tell us
4 about your qualifications. The rest of you, I still need you
5 to come back after lunch, unfortunately. I know you're
6 anxious to get going. It could be that we might need to call
7 upon some of you.

8 Ladies and gentlemen, you are now free to go for
9 lunch, I'm going to give you an hour. Please be back here at
10 1:50. You're admonished not to talk to anybody about the
11 case. You can have friendly conversation with each other,
12 just don't talk about the case. Don't talk to any witnesses.
13 Don't talk to any of the attorneys. Don't form any opinions.
14 Don't do any research. Come back here in an hour. Okay?
15 Thank you very much. This will get going a lot faster when
16 you get back here.

17 (Prospective jury panel recessed at 12:51 p.m.)

18 THE COURT: We're outside the presence of the jury.
19 Please be seated. For the record, I excused two jurors for
20 cause based upon the stipulation of the parties. Juror badge
21 number 188 and 332 were both stipulated to.

22 I'll allow the defense to make a record as to the
23 two other jurors that it indicated at sidebar it wants
24 excused. Juror No. 184 first. What's your argument?

25 MR. YANEZ: Judge, what she had indicate to me at

1 least, and along the lines of 197, my experience in doing voir
2 dire is when the lawyers ask questions we get answers. And
3 then when the procedure -- the Court asks the questions, we
4 get sometimes different answers. And my concern is that
5 they're trying to obviously please the Court. My concern with
6 184 was she seemed to be fairly -- at least when I questioned
7 her she seemed to be fairly committed to not being able to pay
8 full attention in this case because she'd be concerned about
9 her employees. She is a business owner and she's responsible
10 for her business and her employees. So my concern in
11 requesting -- in my challenge for cause on her was that she's
12 not going to be able to pay the full attention to the
13 proceedings.

14 As to 197, he also kind of made a similar argument
15 that he is responsible for payroll, he brings in money, other
16 employees depend on him. He doesn't know if he could pay the
17 full attention. Perhaps more concerning to me --

18 THE COURT: He was pretty attentive in answering
19 questions.

20 MR. YANEZ: He has, I agree with that.

21 THE COURT: He even volunteered several times.

22 MR. YANEZ: Yes. I'm not questioning that, I'm just
23 questioning what he's told me in regards to -- and I think he
24 self-volunteered that part and he also self-volunteered after
25 I moved along from the discussion of the Fifth Amendment and

1 not testifying and whether he could put that aside and be fair
2 and impartial in this case. I tried to get him as close as
3 possible to giving me a yes or no answer. He couldn't, he was
4 equivocal about it. I think the standard on the case law is
5 if they're anything shy of unequivocal that the Court should
6 strike for cause. That's my request. I know Your Honor did
7 some follow-up questions.

8 THE COURT: Equivocation relates to the ability to
9 be fair and impartial. I don't know that that standard
10 applies to the attentiveness of the juror.

11 MR. YANEZ: I switched gears actually. That
12 argument is more towards him. When we had a discussion he
13 brought it up. After I talked to the juror in the back who we
14 stipulated to kick who had issues with being able to put aside
15 if my client wasn't to testify, whether he could put that
16 aside and take no negative inference from that. He then asked
17 for the mic and said, you know, I kind of, I've been thinking
18 about this, I kind of have the same thought. I asked him
19 again, to try to give me a yes or no answer. He's like I
20 don't know. So there's equivocation there.

21 THE COURT: You're talking about 197 now.

22 MR. YANEZ: Yes. And at that point Your Honor did
23 ask him some further questions and he seemed to indicate that
24 yes, he could put that aside. My concern always in those
25 situations is, you know, again, the Court, the reputation and

1 procedure the Court has does weigh I think on jurors' minds
2 when you ask them can you be fair and impartial versus if one
3 of the attorneys is doing it. So that was the reason --

4 THE COURT: He probably does. I think that's right,
5 but I did hear him say that yes, he wouldn't hold -- even
6 before I asked questions, my note says yes, he would not hold
7 it against him if he didn't testify. He did say he would
8 wonder why. At one point he said it depends on the facts of
9 the case, and then you said, I think you pressed him and said
10 well, if you had to say yes or no, he said yes, I wouldn't
11 hold it against him. And then I just wanted to make sure that
12 he really meant what he said. That's why I kind of delved
13 into it a little bit more.

14 MR. YANEZ: My memory is I think he was a little
15 more equivocal. I think he says I think I can do that. I
16 don't think he gave me a straight yes, I can do that, put that
17 aside. That's my memory.

18 THE COURT: I remember you forcing him to take a
19 position and he said yes. Maybe he added I think with the
20 yes.

21 MR. YANEZ: That could be. So that's my position as
22 to those two jurors.

23 THE COURT: I wanted to question him some more
24 because I wanted to actually confirm what I thought. So
25 that's 197 and 184. Very good. I appreciate your argument on

1 both. Let me hear from Ms. Thomson.

2 MS. THOMSON: Your Honor, my recollection with the
3 gentleman is that he, when pushed, did say in fact that there
4 might be a situation where he thought to himself I wonder why
5 this happened, but that that wondering was not going to affect
6 his ability to separate that out in determining whether or not
7 we've proven the case beyond a reasonable doubt. We don't ask
8 jurors to set aside sort of our natural I wonder why this, I
9 wonder why that.

10 THE COURT: Your brain can -- I mean, things pop
11 into your brain without control sometimes. You can't -- we
12 can't control what thoughts pop into our brains sometimes. So
13 what you've got to do, though, is make a conscious effort to
14 set those aside and our rational brains can do that.

15 MS. THOMSON: And that's what he indicated he would
16 do. And with regard to Ms. Hussey, I don't doubt that she
17 will have some level of thinking about what's going on at
18 work, but the reality is every one of these jurors has a real
19 life outside this room, and there's no doubt that every one of
20 them has something that is going on without them or that they
21 might think about. But she also indicated that she was
22 willing to pay attention to do her duty as a citizen, that she
23 actually wanted to.

24 THE COURT: When push comes to shove. All right.
25 So I'm going to deny both your requests for cause. I do think

1 as to 184 she would prefer not to be here. She might have
2 fleeting moments of distraction, but I'm convinced that she
3 will not allow any fleeting distractions to interfere with her
4 ability to pay attention and to honor her commitment to serve
5 as a juror and honor the oath that she's going to take to
6 serve as a juror.

7 As to 197, I'm convinced that he is not going to
8 hold it against your client if your client exercises his right
9 not to testify. So I do not believe that there's grounds for
10 challenging either 184 or -- or at least there's not
11 sufficient evidence to convince the Court to grant your
12 challenge for cause under NRS 16.050 or the cases interpreting
13 those standards. I will deny those.

14 When we come back from lunch we'll voir dire the new
15 people and then decide what to do. All right?

16 MS. THOMSON: Thank you, Your Honor.

17 THE COURT: How many alternates do we still have out
18 there? Ten, nine, eight? So I really don't think we're going
19 to need the other 20. I don't know. I had a case where
20 someone had a tattoo and they started asking tattoo questions
21 and we went through 20 people in like an hour.

22 MS. THOMSON: I don't expect there will be tattoo
23 questions.

24 THE COURT: No. All right. Very good. Let's take
25 a lunch break. I'll see you guys back here in 55 minutes.

1 MS. THOMSON: Just briefly, Your Honor, what we will
2 be requesting is that we finish up the selection but not swear
3 in the jury tonight, that we do that first thing tomorrow
4 morning, so we can get a better sense of what's going on in
5 Arizona. They have reached out to her, but have not yet
6 received a return phone call from her.

7 THE COURT: I want to swear in the jury. I don't
8 understand the significance from your perspective of swearing
9 in the jury. You swear in the jury and then -- I mean, can we
10 do the opening statements today? You don't want to get to
11 that part?

12 MS. THOMSON: Our concern is if we are able to
13 locate her and she says essentially that's great, I can do it
14 in two weeks, but I just can't be there, I'm having a baby or
15 one of those things where just life happens. Then jeopardy
16 attaches.

17 THE COURT: Double jeopardy attaches once a jury's
18 sworn in. We'll see how it goes. They don't give us credit
19 for a trial day until we swear in the jury. But there's more
20 important factors, such as the due process rights of all the
21 parties and the protection of the State's right to a fair
22 trial. That's my overriding concern.

23 MS. THOMSON: Thank you.

24 THE COURT: All right. Let's take a lunch break.

25 (Court recessed at 1:01 p.m. until 1:57 p.m.)

1 THE COURT: All right. Please be seated. State
2 versus Chambers, C292987. Okay. So this witness stuff is
3 going to be a testy issue, so let's talk about it. So there's
4 two witnesses, I guess you said you're trying to get, Ms.
5 Thomson?

6 MS. THOMSON: Yes, Your Honor.

7 THE COURT: I read your little motion here. Little
8 because it was short. I'm not demeaning it. One witness here
9 is this Bridgett Graham. And Bridgett Graham -- it's a male
10 apparently because it says he in here. I thought it was a
11 female.

12 MS. THOMSON: I just didn't change out the word.
13 It's a she.

14 THE COURT: She?

15 MS. THOMSON: Sorry. Yes.

16 THE COURT: And then, there's another witness you
17 said you're trying to locate.

18 MS. THOMSON: That's correct.

19 THE COURT: All right. Who's the other witness?

20 MS. THOMSON: That's Cynthia Lacey.

21 THE COURT: Cynthia Lacey. Bridgett Graham. All
22 right. So as to Bridgett Graham, critical witness you say,
23 and you want to use her preliminary hearing transcript if you
24 can't find her.

25 MS. THOMSON: Yes, Your Honor.

1 THE COURT: I read the Hernandez case, looked at the
2 cases cited in there, 51.325, 171.198 tests whether you
3 exercised reasonable efforts. I guess we look at two things.
4 If the person's absent from the jurisdiction, then have you
5 made reasonable efforts to procure the person. If the person
6 is not absent from the jurisdiction, then the test is whether
7 the person is persistently refusing to obey a court order.
8 The Hernandez case suggests that it's perhaps, under certain
9 circumstances, reasonable to rely upon oral promises to
10 appear. And if they say they're not going to appear, you
11 know, try to encourage them to appear. Once they don't appear
12 when they're supposed to appear, then you've got to make
13 reasonable efforts to compel them to appear.

14 The question for you is when you indicate that she
15 didn't comply with your subpoena, when did you first realize
16 she didn't comply with the subpoena? When was she supposed to
17 appear?

18 MS. THOMSON: The subpoena was dated for Tuesday
19 morning at 9:30. I came up actually and left my number with
20 your Marshal in the event that she appeared because we
21 actually were starting at 1:00. I had spoken with her via
22 email on Monday, which was a holiday, but via email, and she
23 had indicated that she was in Texas for a funeral that -- she
24 said basically I'll drive back tonight and I'll see you in the
25 morning. I told her if you're actually in Texas, that doesn't

1 make any sense because realistically we're picking a jury on
2 Monday, but I'll talk -- I'm sorry, on Tuesday, I'll talk to
3 you Tuesday night.

4 Contacted her Tuesday night, which would have been
5 last night and said essentially are you going to be back --
6 are you coming back tonight or are you driving back tomorrow
7 so we would know to have her testify this afternoon or
8 tomorrow. She responded, and I can pull up the email on my
9 phone if the Court wants the specific language, but it was --

10 THE COURT: Right now you're just making an offer of
11 proof. If I were inclined to grant the motion you would need
12 to submit an affidavit to support this, everything you're
13 saying. Go ahead.

14 MS. THOMSON: Yes, Your Honor. Sent an email that
15 read quitting on me, I'm not coming. So I responded to her
16 thank you for letting me know and I will seek a warrant. At
17 which point she responded okay, well, fine, I'm just -- I'm
18 stressed. And I said okay. And she said well, I'll be back
19 on Sunday.

20 THE COURT: So you have reason to believe she was
21 outside of the jurisdiction until Sunday, if she's to be taken
22 at her word.

23 MS. THOMSON: If she's to be taken at her word, that
24 is the case. I have asked her for her phone number, she won't
25 give it to me. She won't give us any real contact

1 information, which leads me to be less than confident in her
2 veracity.

3 THE COURT: All right. And then, this morning you
4 sought a material witness warrant.

5 MS. THOMSON: That is correct.

6 THE COURT: What efforts are your investigators
7 undertaking to get that served?

8 MS. THOMSON: I have provided that to the
9 investigator. That's something I had an opportunity to follow
10 up with this -- during lunch break.

11 THE COURT: I thought you only had an email address
12 for her? Maybe a telephone number now.

13 MS. THOMSON: We have an email address. We also
14 have her Social and her date of birth. My expectation is that
15 there is a search being done through CPS, through welfare, all
16 of those kinds of public -- I don't want to say utilities,
17 that's not the right word. Services. That there is a
18 potential for more information to be available through those
19 that would ultimately lead us to be able to --

20 THE COURT: Have you ever had an actual residence
21 address for her?

22 MS. THOMSON: We did back in 2013, and she did
23 appear for a preliminary hearing, obviously, as the Court is
24 aware. So that was part of my relying on her having promised
25 to appear now. While she does not appear and did not appear

1 at the preliminary hearing with bells on because she was
2 thrilled about it, she understood that that was a necessity.

3 THE COURT: You had an address for her at the time
4 of the preliminary hearing and I'm assuming your investigator
5 has followed up with that address and that's fruitless?

6 MS. THOMSON: Yes. And the phone number that we had
7 had is not in service. We had contacted her parents, who
8 don't have contact with her. I realize I'm causing --

9 THE COURT: So you have an email address now. I'm
10 assuming you have sent her by email a copy of the warrant
11 that's now been signed indicating to her that the Court has
12 ordered for her to attend?

13 MS. THOMSON: I have not sent her a copy of the
14 warrant. I can do that if that's what the Court would like.

15 THE COURT: Well, I mean, I think it might get her
16 attention, don't you?

17 MS. THOMSON: I would expect that if --

18 THE COURT: I mean, I don't know --

19 MS. THOMSON: -- we're going to be anything getting
20 her attention telling her, then I will do it because I've told
21 her previously that this is what I will do. The fact that she
22 then responded with oh, then I'll appear -- if it's really
23 getting her attention I imagine it's really getting her
24 attention. I don't know that a physical document --

25 THE COURT: I think it's an important step --

1 MS. THOMSON: Okay.

2 THE COURT: -- before I can determine she's
3 unavailable. I mean, the standard is persistent in refusing
4 to testify despite an order of the Judge. We know that the
5 email address you have is working because she's responded to
6 emails that you're using for that address.

7 MS. THOMSON: That's correct.

8 THE COURT: She needs to know there's a Court order.

9 MS. THOMSON: Yes, Your Honor.

10 THE COURT: You need to provide it to her by that
11 email address, so at least she's aware. And then we need to
12 know if she responds. This is all about Graham.

13 What about Lacey? Is that -- is Lacey as important
14 as Graham?

15 MS. THOMSON: They are each very important. Each of
16 them less important with the presence of the other, but the
17 absence of each is --

18 THE COURT: Detrimental to your case.

19 MS. THOMSON: Correct.

20 THE COURT: So, I'm also a little concerned -- let
21 me ask you this. If you were to use the preliminary hearing
22 transcript, could we proceed with the trial? I'm concerned
23 about the disruption to all these potential jurors' lives that
24 we've had the last two days and prejudice to the defendant
25 being ready for trial and anxious to get to trial and starting

1 trial and then being forced to continue. That's disruption to
2 the defendant and interference with his right to a speedy
3 trial. So I'm balancing that as well. So I have to consider
4 what reasonable steps you made to try to secure your witnesses
5 and telling the calendar call last Tuesday that you were ready
6 to go.

7 MS. THOMSON: At that time --

8 THE COURT: So I have to take that into account in
9 determining whether we continue or just force you to use the
10 preliminary hearing transcript.

11 MS. THOMSON: At that time we believed that we had
12 Bridgett under subpoena and that she was complying with that
13 subpoena. I would say -- this is the kind of thing you don't
14 want to put on the record -- I didn't do as good a job at the
15 preliminary hearing as I would have liked me to have done. So
16 there's that kind of a dynamic. Obviously, the State would
17 want to be in a position where we can put on all of our
18 evidence and be in the best position to present the case to
19 the jury.

20 If the Court were granting the preliminary hearing
21 transcript being admitted, I could see where that is sort of a
22 fallback based upon where we were at the preliminary -- at the
23 time of calendar call. It's not an entirely equal position
24 based upon the fact that we believed that we had her and
25 there's other things within her statement that I would want to

1 elicit from her as a person rather than the transcript, which
2 obviously can't be changed now. I don't know if that answers
3 the question.

4 THE COURT: So what is likely to change between
5 today and tomorrow morning, say at 11, if I were to wait to
6 make a final decision on number one, do you get the
7 transcript; number two, do I continue the trial? What's going
8 to change between now and tomorrow morning at 11?

9 MS. THOMSON: I couldn't tell the Court specifically
10 this is what will be different, but it gives us more
11 opportunity to have the investigator from the DA's Office in
12 Phoenix going out to the address where Cynthia is living. It
13 gives more opportunity for the detective who is from her
14 employment to contact her via telephone or potentially if she
15 has a work shift.

16 THE COURT: So to engage in further due diligent
17 efforts to try to locate the person. All right. So best case
18 scenario, if the witness doesn't show up we're still left with
19 this position: Do we continue trial or do you just use the
20 transcript.

21 MS. THOMSON: And the position that we would take
22 tomorrow is if it's that we have had contact with her and
23 she's just unavailable we would be seeking a continuance. If
24 it's that she -- we've had contact with her and she's
25 uncooperative, then we'll pursue the compelling order and

1 potentially having her arrested there and bringing her here
2 with our investigator, in which case we would not need the
3 continuance. But that's --

4 THE COURT: If you can secure -- get her. Yeah.
5 What's the defense's position on all of this?

6 MR. YANEZ: On all of it.

7 THE COURT: Let me point out one more thing you both
8 need to know. So I have -- today's already Wednesday, we have
9 Thursday, Friday, next week. I'm not here next Friday, so
10 we've got to get this done by next Thursday. All right. I
11 think we've got plenty of time, but -- were you guys
12 anticipating that -- we're getting ahead of ourselves, but if
13 the defendant is found guilty proceeding right away with the
14 penalty phase or are we setting that with the same jury a
15 couple weeks later? What was your plan?

16 MS. THOMSON: I haven't done a penalty phase. My
17 belief was that it's one of those now we start into it.

18 THE COURT: You're prepared to start right into?
19 Sometimes it takes just half a day or day.

20 MS. THOMSON: The only caveat is the victim's mother
21 did not want to be here for trial, and I wasn't going to force
22 her to fly here and stay here from Tennessee for trial. She
23 would like to be here for penalty. So we would need the
24 amount of time it would take to get her here, which would be
25 literally, we get a verdict, we get her on a flight that

1 night.

2 THE COURT: When do you plan on closing or when do
3 you plan on finishing your presentation of evidence, whether
4 you use the transcript or live witness if you get her here?

5 MS. THOMSON: I would anticipate that we would rest
6 on Monday.

7 THE COURT: We have all day Monday, a full day. We
8 can get a lot done on Monday. And, of course, we don't know
9 -- we don't need to know whether the defendant would testify
10 yet. I'm not going to ask you because it's your prerogative
11 not to say at this point. You couldn't possibly know yet.
12 All right. You have the floor. What are your thoughts on all
13 these issues on whether I should wait until tomorrow to make a
14 decision, swear in the jury? What are we going to do about
15 the transcript, and when we're going to finish trial?

16 MR. YANEZ: My understanding, and the State can
17 correct me if I'm wrong, at the time of calendar call they had
18 an oral promise from the witness that she was going to come
19 and appear. That's my understanding. And I do understand
20 under the law that it is equivalent at that point to a
21 subpoena if you get an oral promise. I'm going to submit it
22 as to continuing it to give them a little more time, until
23 tomorrow. I would ask, though, that we finish the jury
24 selection and we swear the jury in today. That would be my
25 request.

1 THE COURT: Once we swear them in we've got two
2 choices. Get the witness from Texas, Arizona, wherever she is
3 here, have her brought in. I don't know how long that could
4 take. Or use the transcript. The third option, there's a
5 third option, is continue the trial a couple weeks with the
6 same jury and hope we don't lose too many jurors; otherwise,
7 it would be a mistrial. I have had a case where we had to
8 continue trial two weeks and come back. We lost one juror, we
9 still had enough to keep going, because we had alternates. I
10 don't like to do that if we don't have to do that. Those are
11 our three options.

12 MR. YANEZ: Touching upon the motion to admit the
13 preliminary hearing transcript, I do object to that. I think
14 there is --

15 THE COURT: I'm not making a ruling yet.

16 MR. YANEZ: Okay.

17 THE COURT: I think before I would make a ruling I
18 would need some evidence to support the offer of proof made by
19 Ms. Thomson.

20 MR. YANEZ: Okay. So then, I guess I will reserve
21 my argument as to that. I think there is argument as to -- I
22 know the State's argument is going to be well, you had an
23 opportunity to cross-examine this witness at the preliminary
24 hearing. However, the standard under Crawford is that you
25 have a full and fair opportunity to cross-examine. We're

1 talking about a preliminary hearing which is a limited hearing
2 as to probable cause. And I think, as Ms. Thomson said, I
3 don't think necessarily she did a bad job, I think you don't
4 have the amount of information at that early stage of the case
5 that you do later that you have an opportunity to investigate
6 the case. I think that --

7 THE COURT: Was she a witness to the alleged crime?

8 MS. THOMSON: She was outside in the car. She was
9 in the car on the way to the trailer park and then in the car
10 as the defendant left, and then ultimately kicked them out.

11 THE COURT: Talking about Bridgett Graham. Okay.

12 MS. THOMSON: Yes.

13 MR. YANEZ: Right. So as to that portion that the
14 Court has to consider under Crawford, I would argue that we
15 have not -- we did not have a full and fair opportunity to
16 cross-examine that witness at the preliminary hearing. And
17 then, as to the jury now, again, my request is we can swear
18 them in and see what happens tomorrow and then go forward
19 tomorrow based -- well, I guess there's a bunch of what ifs
20 tomorrow depending on what information the State has.

21 THE COURT: So you mentioned some witnesses. If the
22 State were to rest at three p.m. Monday, how much time?

23 MR. YANEZ: Depending if Mr. Chambers testifies or
24 not, I can tell you the only other potential witness I see at
25 this point -- of course, I don't know if I need to call my

1 investigator to rebut some of the testimony of the State's
2 witnesses, but I have an expert who's going to testify. But
3 that shouldn't be too long. I anticipate maybe an hour for
4 both direct and cross, an hour and a half tops for our expert.
5 So I think we should be done, even if Mr. Chambers testifies,
6 by Tuesday, Wednesday at the latest.

7 THE COURT: Sounds like what I'm hearing is if we
8 can't get Bridgett Graham here, the State is concerned because
9 it did not have the best opportunity to elicit all the
10 evidence that it wants to elicit now from that witness. So
11 the preliminary hearing transcript is deficient in terms of
12 State's ability to meet its burden. But the defense says that
13 it's also concerned about its Crawford rights to properly
14 cross-examine and confront the witnesses against the
15 defendant. So the defense has concerns about use of the
16 preliminary hearing transcript. You both are telling me you
17 have concerns about the preliminary hearing transcript.

18 MR. YANEZ: That's right.

19 THE COURT: So, I mean, are you both suggesting to
20 me then that -- I mean, sounds like the defense is saying you
21 would rather continue trial rather than me going forward with
22 trial with the preliminary hearing transcript. And it sounds
23 like the State is saying you would rather me continue trial
24 rather than force you to go ahead with the preliminary hearing
25 transcript.

1 MR. YANEZ: Actually, my position is I'd like to go
2 forward without the preliminary hearing transcript.

3 THE COURT: You want to go forward without the
4 preliminary hearing transcript.

5 MR. YANEZ: Yes.

6 THE COURT: If they meet their burden of showing
7 unavailability, then I would allow them to use the transcript
8 if they meet their burden. But I would need to hear more
9 evidence. You did have notice and opportunity to be heard.
10 At the time of the preliminary hearing the defendant was
11 represented by counsel. You did, in fact, engage in
12 cross-examination. I know it's early stage. I think that
13 meets Crawford in terms of Sixth Amendment rights to
14 confrontation. So I'm more concerned about protecting both of
15 your rights to elicit all the truth if we can't have the
16 witness available today or tomorrow or the next day.

17 MR. YANEZ: Right. Well, I mean, if the Court --

18 THE COURT: What I'm also concerned about, we've
19 already wasted a lot of time of these jurors. So, any last
20 thoughts? Why don't we finish up with getting the jurors
21 resolved today. We'll see what time we finish. Looks like if
22 we finish say at four, we've got an hour. I don't see any
23 prejudice in letting the jury go home an hour unsworn and I'll
24 decide what to do tomorrow. I don't see what the urgent need
25 is to swear them in when I can -- why don't we just let them

1 lose an hour. But if we were going to lose more than an hour,
2 you know, then I might be concerned about the waste of time
3 and resources of the Court and the jurors. Does that sound
4 fair?

5 MR. YANEZ: It's over my objection. That's why
6 you're the Judge and you make those decisions.

7 THE COURT: Just trying to move things along in a
8 fair way, but I appreciate it. I understand your position.

9 MR. YANEZ: Thank you, Judge.

10 THE COURT: Let's bring the jurors in.

11 MS. THOMSON: Thank you, Your Honor.

12 THE COURT: Just FYI, [indiscernible] versus State,
13 125 Nevada 328 2009. Confrontation clause guarantees an
14 opportunity for effective cross-examination, not
15 cross-examination that is effective in whatever way and to
16 whatever extent the defense might wish. Citing
17 [indiscernible] v. State, 2006. So I don't think there's a
18 Sixth Amendment issue here, it's more an issue of whether the
19 statutory requirement of unavailability can be satisfied here.
20 I'm not convinced as to that yet.

21 (Prospective jury panel reconvened at 2:18 p.m.)

22 THE COURT: Please be seated. We're back on the
23 record everybody. Daniel Carranto, you are one of the newer
24 people, right? Is that right? Mr. Carranto, how are you
25 doing today?

1 PROSPECTIVE JUROR NO. 349: Good. How are you?

2 THE COURT: I'm fantastic. Thank you for paying
3 attention. You heard all the questions and hopefully we won't
4 need to reask all of those. So you're Daniel Steven Carranto,
5 badge number 349, correct?

6 PROSPECTIVE JUROR NO. 349: Yes, sir.

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

8 PROSPECTIVE JUROR NO. 349: My whole life.

9 THE COURT: What level of education did you
10 complete?

11 PROSPECTIVE JUROR NO. 349: I graduated high school.

12 THE COURT: Very good. Are you presently employed?

13 PROSPECTIVE JUROR NO. 349: Yes, I am, sir.

14 THE COURT: Tell us about that.

15 PROSPECTIVE JUROR NO. 349: I'm employed at Cinemark
16 [indiscernible], the movie theatre.

17 THE COURT: All right. Very good. Are you married?

18 PROSPECTIVE JUROR NO. 349: No.

19 THE COURT: Single?

20 PROSPECTIVE JUROR NO. 349: Yes, indeed.

21 THE COURT: No kids?

22 PROSPECTIVE JUROR NO. 349: Pardon?

23 THE COURT: No kids?

24 PROSPECTIVE JUROR NO. 349: No.

25 THE COURT: Have you ever served on a jury before?

1 PROSPECTIVE JUROR NO. 349: No, but I was summonsed
2 before.

3 THE COURT: Maybe you made it a little bit farther
4 this time.

5 PROSPECTIVE JUROR NO. 349: I actually did here.

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

8 PROSPECTIVE JUROR NO. 349: I haven't, no, but --

9 THE COURT: Do you know anybody who's been a victim,
10 any close friends or relatives that have been a victim of a
11 violent crime?

12 PROSPECTIVE JUROR NO. 349: My family, we were, but
13 it was a break-in and my dad actually got in trouble because
14 he -- he was throwing tools at the guy and broke one of the
15 guy's ribs and the other guy got away.

16 THE COURT: Okay. So why did your dad get in
17 trouble? It sounds like he was defending the home.

18 PROSPECTIVE JUROR NO. 349: Because my dad attacked
19 the guy, and I don't know. Just something very weird that my
20 dad ended up getting in trouble for. They ended up brushing
21 it off, but he still got in trouble for it.

22 THE COURT: He didn't get arrested?

23 PROSPECTIVE JUROR NO. 349: No, he didn't get
24 arrested.

25 THE COURT: It's just they were investigating.

1 PROSPECTIVE JUROR NO. 349: Yeah.

2 THE COURT: How old are you?

3 PROSPECTIVE JUROR NO. 349: Twenty-five.

4 THE COURT: So have you ever testified as a witness
5 before in a criminal case?

6 PROSPECTIVE JUROR NO. 349: No, I haven't.

7 THE COURT: Have you ever been arrested for
8 anything?

9 PROSPECTIVE JUROR NO. 349: Luckily, no.

10 THE COURT: If you're called upon to serve, are you
11 able to serve?

12 PROSPECTIVE JUROR NO. 349: Yeah, I'll be able to
13 serve.

14 THE COURT: Do you think you'll be fair and
15 impartial? You've heard some of the questions about what
16 being fair and impartial means. Do you have anything you need
17 to tell us about that?

18 PROSPECTIVE JUROR NO. 349: Honestly, because going
19 off of one of the questions that came up I believe yesterday,
20 about if I would want myself on the jury if I was in the
21 gentleman's place, would I want myself on the jury. I
22 honestly don't think I would want myself because I know myself
23 very well to be very -- I panic very easily and I get very
24 nervous. So when -- if it came down to a decision and
25 everybody on the panel decided one decision and I felt like it

1 was wrong, I would panic and I would probably go with them
2 just out of -- just because I'd be scared to stand alone.

3 THE COURT: Well, that's not good. We need people
4 that are willing to decide not based on passion, fear, or
5 anxiety, but based on the evidence and reasons, dialogue,
6 putting their common sense to play.

7 PROSPECTIVE JUROR NO. 349: Yeah, I understand. I
8 didn't want to leave that out.

9 THE COURT: You might just jump to going along
10 because you want to avoid the anxiety?

11 PROSPECTIVE JUROR NO. 349: I believe I would, yeah.

12 THE COURT: So that probably wouldn't make you a
13 good juror.

14 PROSPECTIVE JUROR NO. 349: Like I said, I didn't
15 want to leave it out if it meant something, especially this
16 serious. I wouldn't want the gentleman to have an unfair
17 juror on the panel.

18 THE COURT: You're not saying that just to -- so you
19 can go home.

20 PROSPECTIVE JUROR NO. 349: No, I'm not -- no. I
21 don't know. Like I said, I don't want it to be unfair for the
22 gentleman because I don't know him, I'm not going to go and
23 say I do.

24 THE COURT: Well, are you sure about these feelings?
25 You sat here a long time and you've been through a lot of this

1 process.

2 PROSPECTIVE JUROR NO. 349: Well, I didn't want
3 to --

4 THE COURT: I'm tempted just to cut you loose, but,
5 I mean, you feel firm about not being able to stand up for
6 your independent views in this case?

7 PROSPECTIVE JUROR NO. 349: Just like I said, I'm
8 just -- I don't know. I don't want to be unfair to anybody.
9 Due to the pressure, I would -- like I said, I don't want to
10 give anybody any unfair advantage just because of my fear.

11 THE COURT: And you think you'd -- you're starting
12 off with an unfair advantage to the State?

13 PROSPECTIVE JUROR NO. 349: Yes, sir.

14 THE COURT: All right. I'm not going to allow any
15 voir dire. I'm going to go ahead and excuse you, sir. Thank
16 you very much for your time and your honesty.

17 PROSPECTIVE JUROR NO. 349: I'm sorry about that.

18 THE COURT: That's okay. We need people to come
19 forward and they're honest. Mr. Carranto, 349, is excused.
20 Please call the next person in order.

21 THE CLERK: Badge number 363, J. Linton, seat number
22 eight.

23 THE COURT: Mr. Linton, you're the lucky person.
24 Step on up.

25 MS. THOMSON: Can we approach just for a second?

1 THE COURT: Yes, you may approach.

2 (Bench conference transcribed as follows)

3 MS. THOMSON: [inaudible]

4 THE COURT: Vasquez. We called Vasquez. Oh, no
5 problem.

6 (End of bench conference)

7 (In the presence of the prospective jury panel)

8 THE COURT: Mr. Linton.

9 PROSPECTIVE JUROR NO. 363: Yes, sir.

10 THE COURT: Before I get all your biographical
11 information, you're J. Otto Linton. What does the J stand
12 for?

13 PROSPECTIVE JUROR NO. 363: Jonathan.

14 THE COURT: All right, Jonathan Linton, 363. How do
15 you feel about serving?

16 PROSPECTIVE JUROR NO. 363: It's my civil duty.

17 THE COURT: I appreciate that. You think you can
18 give enough attention and focus to make sure that both sides
19 here get a fair trial?

20 PROSPECTIVE JUROR NO. 363: Yes.

21 THE COURT: Are you starting off with any biases or
22 prejudices that we need to know about?

23 PROSPECTIVE JUROR NO. 363: Not that I'm already
24 aware of, no.

25 THE COURT: Okay. Well, are you aware --

1 PROSPECTIVE JUROR NO. 363: No, I'm not aware of
2 any.

3 THE COURT: -- of any prejudice that might work to
4 the detriment of the defendant?

5 PROSPECTIVE JUROR NO. 363: No, Your Honor.

6 THE COURT: Okay. All right. So go ahead, why
7 don't you give us some biographical information we're looking
8 for.

9 PROSPECTIVE JUROR NO. 363: My name's J. Otto
10 Linton, badge number 363. I've completed some college. I'm
11 the general manager of Casino Travel and Tours and
12 Transportation. Married, two children. And I've never served
13 on a jury.

14 THE COURT: Very good. Thank you. Have you ever
15 been arrested for a crime?

16 PROSPECTIVE JUROR NO. 363: No.

17 THE COURT: Have you ever been a victim of a violent
18 crime or know somebody that's close to you who has?

19 PROSPECTIVE JUROR NO. 363: Yes.

20 THE COURT: Can you explain that for us?

21 PROSPECTIVE JUROR NO. 363: Sure. About 10 years
22 ago I was getting water at one of those windmill water things
23 and was held at gunpoint. The gentleman asked for my wallet.
24 I said you really don't want this, there's no money in it. I
25 gave him my cell phone instead. And then, in the last four

1 years my house has been robbed three times.

2 THE COURT: Oh, wow. And that's here in town?

3 PROSPECTIVE JUROR NO. 363: Yes, sir.

4 THE COURT: All right. Did they ever catch the
5 suspects?

6 PROSPECTIVE JUROR NO. 363: No, they haven't,
7 actually.

8 THE COURT: Do you have any strong feelings about
9 the effectiveness of law enforcement in doing their jobs?

10 PROSPECTIVE JUROR NO. 363: On the robbery side?

11 THE COURT: Yeah, on the robberies.

12 PROSPECTIVE JUROR NO. 363: I would say yes.

13 THE COURT: Tell us your feelings.

14 PROSPECTIVE JUROR NO. 363: Well, I mean, we
15 actually had some photos, things of that nature, of those
16 individuals coming in. We had a general idea of where they
17 were living and coming from, and to no avail.

18 THE COURT: All right. So you think they could have
19 worked a little harder to get some leads.

20 PROSPECTIVE JUROR NO. 363: I know they could have
21 worked a little harder.

22 THE COURT: So is that something that you could set
23 aside and not hold against the State in this case, because
24 it's a completely different matter?

25 PROSPECTIVE JUROR NO. 363: This is a completely

1 different situation, yes.

2 THE COURT: All right. Now, you've heard some
3 questions about the defendant's constitutional right not to
4 testify. If the defendant chooses for whatever reason, based
5 on his own decision or advice of counsel not to testify, do
6 you agree not to hold that against him?

7 PROSPECTIVE JUROR NO. 363: That is his prerogative.

8 THE COURT: All right. Thank you, sir. You also
9 heard some discussion about police officers have -- some
10 people are growing up taught to respect police officers, and
11 you've heard some discussion here today about whether police
12 officers are credible. Are you willing to decide -- are you
13 willing to set aside any preexisting feelings you might have
14 about the credibility of police officers and judge their
15 credibility just based on what you see and hear here in the
16 courtroom, their demeanor on the stand, their motives and all
17 the other evidence that's actually presented in this case?

18 PROSPECTIVE JUROR NO. 363: Yes.

19 THE COURT: Okay. Very good. Anything else you
20 need to report to us about your ability to serve?

21 PROSPECTIVE JUROR NO. 363: The only issue that I
22 may have is my wife is going in for a heart procedure on
23 Tuesday.

24 THE COURT: Wow. Okay. Heart procedure. Is it
25 something where she needs to be admitted or is it an

1 outpatient --

2 PROSPECTIVE JUROR NO. 363: It's an outpatient
3 thing, but my son goes to UNLV and is in class all day and my
4 daughter goes to high school and doesn't have a license.

5 THE COURT: But if you're chosen to serve and
6 there's some emergency, we certainly wouldn't keep you from
7 your wife. That's one of the reasons why we have alternates.

8 PROSPECTIVE JUROR NO. 363: I understand.

9 THE COURT: Thank you for letting us know.

10 PROSPECTIVE JUROR NO. 363: Thank you.

11 THE COURT: All right. And best wishes to your
12 wife.

13 PROSPECTIVE JUROR NO. 363: Thank you.

14 THE COURT: All right. Let's take the microphone
15 and pass it down to Mr. Chris Vasquez, number 32. Hi, Mr.
16 Vasquez.

17 PROSPECTIVE JUROR NO. 362: Hi. How you doing?

18 THE COURT: Great. Why don't you go ahead and tell
19 us your -- the information that we need, sir.

20 PROSPECTIVE JUROR NO. 362: My name's Chris Vasquez,
21 badge number 362. College graduate. I work for the City of
22 Henderson, Parks and Recreation Department. Married, two
23 children, 15 and 22. And I have served on a jury.

24 THE COURT: Great. Was that here in Clark County?

25 PROSPECTIVE JUROR NO. 362: Yes.

1 THE COURT: How long ago?

2 PROSPECTIVE JUROR NO. 362: About six years.

3 THE COURT: And what type of case was it, was it
4 civil or criminal?

5 PROSPECTIVE JUROR NO. 362: Criminal.

6 THE COURT: Did you serve as a foreperson?

7 PROSPECTIVE JUROR NO. 362: No.

8 THE COURT: Did the jury reach a decision?

9 PROSPECTIVE JUROR NO. 362: Yes.

10 THE COURT: All right. Anything negative about that
11 experience that would cause you some angst about doing it
12 again?

13 PROSPECTIVE JUROR NO. 362: No.

14 THE COURT: How do you feel about serving? Do you
15 have the time and the patience to go ahead and serve as a
16 juror for the next week?

17 PROSPECTIVE JUROR NO. 362: Yes.

18 THE COURT: Anything else we need to know? Have you
19 been a victim of a violent crime?

20 PROSPECTIVE JUROR NO. 362: No.

21 THE COURT: Anyone close to you?

22 PROSPECTIVE JUROR NO. 362: No.

23 THE COURT: Have you ever been arrested?

24 PROSPECTIVE JUROR NO. 362: No.

25 THE COURT: Have you ever testified as a witness in

1 a criminal case?

2 PROSPECTIVE JUROR NO. 362: No, I haven't.

3 THE COURT: Mr. Vasquez and Mr. Linton, I need to
4 ask, are you both citizens?

5 PROSPECTIVE JUROR NO. 363: Yes.

6 PROSPECTIVE JUROR NO. 362: Yes.

7 THE COURT: All right. Very good. I think that's
8 all I need to know. Oh, wait a minute. Okay. I'll turn the
9 floor over to the State. They might have a few questions for
10 Mr. Vasquez and Mr. Linton.

11 MS. THOMSON: Thank you, Your Honor. You, and I
12 wrote down Monday, but I think you said Tuesday when the
13 surgery is, correct?

14 PROSPECTIVE JUROR NO. 363: Yes, ma'am.

15 MS. THOMSON: Is it something where -- and I don't
16 know exactly how to ask without sounding callous -- but is it
17 something where you're concerned or is it sort of a this is
18 something that needs to be done and it will be fine?

19 PROSPECTIVE JUROR NO. 363: Well, anytime that
20 there's a heart, an organ of that thing, there's obviously
21 some concern. Will she be fine? It's a good thing she has
22 life insurance.

23 MS. THOMSON: I feel a little bit better about being
24 callous now. If you were selected as a juror, would you be
25 comfortable sitting here and listening, that you would be able

1 to give your full attention with the exception of if something
2 went terribly wrong and you were allowed to go?

3 PROSPECTIVE JUROR NO. 363: Of course.

4 MS. THOMSON: And if we do not prove the case beyond
5 a reasonable doubt, will you be comfortable finding the
6 defendant not guilty?

7 PROSPECTIVE JUROR NO. 363: Yes.

8 MS. THOMSON: And if we do prove the case beyond a
9 reasonable doubt, would you be willing to find him guilty?

10 PROSPECTIVE JUROR NO. 363: Yes.

11 MS. THOMSON: If we do in fact prove that he
12 committed first-degree murder, then there will be a penalty
13 phase. If that happens, will you be able to consider each of
14 the three penalties I talked about yesterday? And I can go
15 through those if you'd like.

16 PROSPECTIVE JUROR NO. 363: I would be able to
17 consider all three.

18 MS. THOMSON: And same question for you, Mr.
19 Vasquez. If we do not prove the case beyond a reasonable
20 doubt, will you be able to find the defendant not guilty?

21 PROSPECTIVE JUROR NO. 362: Yes.

22 MS. THOMSON: And if we do prove the case beyond a
23 reasonable doubt, would you be willing to find him guilty?

24 PROSPECTIVE JUROR NO. 362: Yes.

25 MS. THOMSON: And same caveats, would you be able to