

1
2
3
4
5
6
7
8
9
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11
12
13
14
15
16
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24
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IN THE SUPREME COURT OF THE STATE OF NEVADA

KEANDRE VALENTINE,)
)
 Appellant,)
)
 v.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)
)

No. 74468

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INDEX
KEANDRE VALENTINE
Case No. 74468

	<u>PAGE NO.</u>
1	
2	
3	Amended Jury List filed 07/28/17657
4	Amended Notice of Department Reassignment filed 09/20/17 825-826
5	Court's Exhibit 1 dated 07/24/17..... 3064-3080
6	Court's Exhibit 2 dated 07/24/17.....3081
7	Court's Exhibit 33082
8	Court's Exhibit 43083
9	Court's Exhibit 53084
10	Court's Exhibit 6 dated 07/31/17.....3085
11	Court's Exhibit 7 dated 07/31/17.....3086
12	Court's Exhibit 8 dated 07/31/17.....3087
13	Court's Exhibit 9 dated 07/31/17..... 3088-3091
14	Court's Exhibit 10 dated 07/31/17..... 3092-3093
15	Court's Exhibit 11 dated 07/31/17..... 3094-3103
16	Court's Exhibit 12 dated 07/31/17..... 3104-3107
17	Court's Exhibit 133108
18	Court's Exhibit 14 dated 08/01/17.....3109
19	Court's Exhibit 15 dated 08/01/17.....3110
20	Court's Exhibit 16 dated 08/01/17.....3111
21	Court's Exhibit 17 dated 08/01/17.....3112
22	Court's Exhibit 18 dated 08/01/17..... 3113-3114
23	Court's Exhibit 19 dated 08/01/17.....3115
24	Court's Exhibit 20 dated 08/01/17.....3116
25	Court's Exhibit 21 dated 08/01/17..... 3118-3122
26	Court's Exhibit 22 dated 08/02/17..... 3123-3125
27	Court's Exhibit 23 dated 08/02/17.....3117
28	Court's Exhibit 24 3126-3131

1	Court’s Exhibit 25 dated 08/03/17.....	3132-3138
2	Court’s Exhibit 26 dated 08/03/17.....	3139
3	Court’s Exhibit 27 dated 08/03/17.....	3140
4	Court’s Exhibit 28 dated 08/04/17.....	3141-3142
5	Court’s Exhibit 29 dated 08/04/17.....	3159-3229
6	Defendant’s Exhibit A dated 07/27/17	3232-3233
7	Defendant’s Exhibit A dated 07/27/17	3244-3245
8	Defendant’s Exhibit B dated 07/27/17	3143-3144
9	Defendant’s Exhibit C dated 07/27/17	3145-3146
10	Defendant’s Exhibit D dated 07/27/17	3147-3148
11	Defendant’s Exhibit F dated 07/31/17.....	3149-3150
12	Defendant’s Exhibit G dated 07/31/17	3151-3152
13	Defendant’s Exhibit H dated 07/31/17	3153-3154
14	Defendant’s Exhibit I dated 07/31/17.....	3155-3156
15	Defendant’s Exhibit J dated 07/31/17	3157-3158
16	Defendant’s Motion to Reconstruct the Record Date of Hrg: 07/02/18.....	3253-3310
17	Defendant’s Notice of Alibi Witness filed 07/14/17	518-625
18	Defendant’s Notice of Expert Witnesses filed 06/30/17	265-293
19	Defendant’s Notice of Non-Opposition to State’s Motion to Compel Reciprocal Discovery filed 07/17/17	641-642
20	Defendant’s Notice of Witnesses filed 07/13/17	516-517
21	District Court Minutes dated 07/02/18	3252
22	District Court Minutes from 06/29/16 through 09/28/17	841-881
23	Ex Parte Motion and Order for Release of Evidence filed 12/01/17.....	837-838
24	Ex Parte Motion and Order for Release of Evidence filed 12/08/17.....	839-840
25	Judgment of Conviction filed 10/16/17	827-831
26	Jury List filed 07/25/17.....	656
27	Indictment filed 06/29/16	1-6
28		

1	Indictment Warrant Return filed 06/30/16	7-8
2	Instructions to the Jury filed 08/04/17	770-818
3	Media Request and Order for Camera Access to Court Proceedings filed 07/11/16	114-115
4	Motion for Production of Discovery Date of Hrg: 09/01/16	185-210
5	Notice of Appeal filed 11/06/17	832-836
6	Notice of Court Exhibits Added to the Trial Record filed 07/10/18	3314-3334
7	Notice of Department Reassignment filed 09/19/17	823-824
8	Notice of Intent to Seek Punishment as a Habitual Criminal filed 01/27/17	251-252
9	Notice of Motion and Motion Outlining State's Discovery Compliance Date of Hrg: 02/21/17	253-261
10	Notice of Motion and Motion to Compel Reciprocal Discovery Procedural History Date of Hrg: 08/03/17	635-640
11	Notice of Motion and Motion to Exclude Eyewitness Expert Testimony Date of Hrg: 07/20/17	294-331
12	Notice of Motion and Motion to Strike Alibi Notice Date of Hrg: 08/03/17	643-647
13	Notice of Motion and Motion to Strike Defendant's Supplemental Notice of Expert Witnesses Date of Hrg: 08/03/17	626-630
14	Notice of Rebuttal Alibi Witness filed 07/24/17	654-655
15	Notice of Witnesses and/or Expert Witnesses filed 07/28/16	116-119
16	Opposition to State's Motion to Exclude Eye-Witness Expert Testimony filed 07/19/17	332-515
17	Opposition to State's Motion to Strike Alibi Notice filed 07/18/17	648-653
18	Opposition to State's Motion to Strike Defendant's Supplemental Notice of Expert Witnesses Date of Hrg: 07/20/17	631-634
19	Order filed 07/25/18	3311-3313
20	Proposed Exhibit K	3246-3247
21	Proposed Exhibit L	3248-3249
22	Proposed Exhibit U	3250-3251
23	Receipt of Copy: List of Discovery Items	

1	Provided to Defense filed 06/06/17	262-264
2	Second Amended Jury List filed 08/03/17	769
3	Second Supplemental Notice of Witnesses and/or Expert Witnesses filed 09/20/16.....	237-242
4	State’s Exhibit 13 dated 07/26/17.....	3230-3231
5	State’s Exhibit 33 dated 07/26/17.....	3232-3233
6	State’s Exhibit 48 dated 07/26/17.....	3343-3344
7	State’s Exhibit 52 dated 07/26/17.....	3000-3001
8	State’s Exhibit 52 dated 07/26/17.....	3234-3235
9	State’s Exhibit 54 dated 07/26/17.....	2990-2991
10	State’s Exhibit 57 dated 07/26/17.....	3236-3237
11	State’s Exhibit 171 dated 07/26/17.....	3002-3014
12	State’s Exhibit 172 dated 07/26/17.....	3015-3026
13	State’s Exhibit 175 dated 07/22/17.....	3027-3037
14	State’s Exhibit 182 dated 07/28/17.....	3038-3047
15	State’s Exhibit 183 dated 07/31/17.....	3335-3336
16	State’s Exhibit 184 dated 07/31/17.....	3337-3339
17	State’s Exhibit 185 dated 07/31/17.....	3340-3342
18	State’s Exhibit 186 dated 07/31/17.....	3048-3049
19	State’s Exhibit 187 dated 07/31/17.....	3050-3051
20	State’s Exhibit 188 dated 07/31/17.....	3238-3239
21	State’s Exhibit 192 dated 08/01/17.....	3240-3242
22	State’s Exhibit 193 dated 07/31/17.....	3055-3057
23	State’s Exhibit 194 dated 07/31/17.....	3052-3054
24	State’s Exhibit 195 dated 07/31/17.....	3058-3063
25	State’s Exhibit 196 dated 08/02/17.....	3242-3243
26	State’s Exhibit 197 dated 08/02/17.....	2992-2993
27	State’s Exhibit 198 dated 08/02/17.....	2994-2995
28		

1	State's Exhibit 199 dated 08/02/17.....	2996-2997
2	State's Exhibit 200 dated 08/02/17.....	2998-2999
3	State's Motion in Limine to limit Testimony of Dr. Steven Smith	
4	Date of Hrg: 07/31/17.....	658-768
5	State's Response to Defendant's Motion for Production of Discovery	
6	Date of Hrg: 09/01/16.....	211-236
7	Supplemental Notice of Witnesses and/or	
8	Expert Witnesses filed 08/12/16.....	120-184
9	Third Supplemental Notice of Witnesses	
10	and/or Expert Witnesses filed 01/26/17.....	243-250
11	Verdict filed 08/04/17.....	819-822

TRANSCRIPTS

12	Recorder's Transcript JURY TRIAL DAY 1	
13	Date of Hrg: 07/24/17.....	937-1238
14	Recorder's Transcript JURY TRIAL DAY 2	
15	Date of Hrg: 07/25/17.....	1239-1426
16	Recorder's Transcript JURY TRIAL DAY 3	
17	Date of Hrg: 07/26/17.....	1427-1625
18	Recorder's Transcript JURY TRIAL DAY 4	
19	Date of Hrg: 07/27/17.....	1626-1799
20	Recorder's Transcript JURY TRIAL DAY 5	
21	Date of Hrg: 07/28/17.....	1800-2021
22	Recorder's Transcript JURY TRIAL DAY 6	
23	Date of Hrg: 07/31/17.....	2022-2341
24	Recorder's Transcript JURY TRIAL DAY 7	
25	Date of Hrg: 08/01/17.....	2341-2529
26	Recorder's Transcript JURY TRIAL DAY 8	
27	Date of Hrg: 08/02/17.....	2530-2812
28	Recorder's Transcript JURY TRIAL DAY 9	
	Date of Hrg: 08/03/17.....	2813-2947

1	Recorder's Transcript JURY TRIAL DAY 10	
2	Date of Hrg: 08/04/17.....	2948-2957
3	Recorder's Transcript Calendar Call	
4	Date of Hrg: 02/16/17.....	894-898
5	Recorder's Transcript Calendar Call and Defendant's Motion for Production of Discovery	
6	Date of Hrg: 09/01/16.....	890-893
7	Recorder's Transcript Defendant's Motion for Setting of Reasonable Bail	
8	Date of Hrg: 10/04/16.....	893a-893f
9	Recorder's Transcript Defendant's Request Re: Stipulated Status Check-Trial Setting	
10	Date of Hrg: 06/06/17.....	904-911
11	Recorder's Transcript Grand Jury Return	
12	Date of Hrg: 06/29/16.....	882-884
13	Recorder's Transcript Initial Arraignment and Indictment Warrant Return	
14	Date of Hrg: 07/07/16.....	885-889
15	Recorder's Transcript Motion Outlining State's Discovery Compliance and Status Check: Trial Setting	
16	Date of Hrg: 02/21/17.....	899-903
17	Recorder's Transcript Sentencing	
18	Date of Hrg: 09/28/17.....	2958-2989
19	Recorder's Transcript State's Motion to Exclude Eyewitness Expert Testimony and Calendar Call	
20	Date of Hrg: 07/20/17.....	912-921
21	Recorder's Transcript State's Motion to Exclude Eyewitness Expert Testimony, State's Motion to Strike Alibi Notice, and State's Motion to Strike Defendant's Supplemental Notice of Expert Witnesses	
22	Date of Hrg: 07/24/17.....	929-936
23	Recorder's Transcript State's Motion to Exclude Eyewitness Expert Testimony; State's Motion to Strike Alibi Notice and State's Motion to Strike Defendant's Supplemental Notice of Expert Witnesses; Overflow	
24	Date of Hrg: 07/21/17.....	922-928
25	Recorder's Transcript Grand Jury	
26	Date of Hrg: 06/28/16.....	9-113
27		
28		

1 MR. DICKERSON: So withdrawing 2?

2 MS. LEXIS: [Indiscernible] 1, 3, 11.

3 THE COURT: I got it.

4 MR. GASTON: So 1, 3, and 11?

5 THE COURT: I got it.

6 MS. MACHNICH: And 11?

7 THE COURT: Okay. Thank you.

8 [End of bench conference.]

9 THE COURT: All right. Ms. Machnich, you may proceed.

10 MS. MACHNICH: Yes, thank you, Your Honor. Okay.

11 Apologize, court's indulgence.

12 Good afternoon, everyone. It's been a long day already, so we'll try to
13 keep it moving. But who here likes public speaking? Anyone? A couple of you.
14 Okay. Well, maybe we'll chat in a little bit.

15 For most of us, it can be a little bit uncomfortable at times or extremely
16 uncomfortable, where I need to -- and it can sometimes feel like the questions
17 we're asking are rather probing, and that's because all we're trying to do is find a
18 fair and impartial jury as defense counsel for Mr. Valentine, and, obviously, the
19 State is looking for a fair and impartial jury, also. So that's why we're asking all of
20 these questions about all of these issues.

21 And to illustrate that further, another full panel question, who likes pie?
22 Pie? Pie? Pie is good. Okay. So let's say there was a pie eating -- or not pie
23 eating, but pie baking contest, and I was selected randomly as the judge in the
24 final round. And the last two pies were a cherry pie and an apple pie. But here's
25 the deal. I don't really like cherry pies at all. I just don't prefer them. Yeah.

218

1 But, like, I would try my best to be fair and impartial. I mean, I would
2 do my best to pick the very best pie. But do you think that the contestants
3 themselves, the final baker of the final cherry pie and the final apple pie, do you
4 think that they have the right to know of my distaste for cherry pies? Who here
5 thinks they have a right to know or they -- they should know? Okay. All right.

6 So I will speak with Juror No. 24. I don't know how to pronounce your
7 last name.

8 PROSPECTIVE JUROR NO. 024: Raczka.

9 MS. MACHNICH: Raczka, Mr. Raczka. Why do you think that they
10 have a right to know?

11 PROSPECTIVE JUROR NO. 024: Well -- oh, thanks. It would just be
12 difficult to make a decision. I mean, you -- as a contestant in that contest, you'd be
13 thinking that the judge is going to make a decision on the pies based upon the
14 qualities of the best apple pie or is it the best cherry pie. Excuse me. And in fact,
15 if -- if the -- they'd have to know that you didn't like cherry pie and right away that
16 would let them know that regardless of how well they made it, you couldn't make
17 a -- a fair decision.

18 MS. MACHNICH: Exactly. All right. Who didn't -- or I'll ask for a
19 raising of hands in the opposite direction. Who thinks that it's not important for the
20 contestants to know? Because I'm going to do my best. Anyone? Seeing no
21 hands. Okay.

22 So I will stay with Mr. Raczka. You understand we're talking about
23 inherent bias that every human being has in some respect, right?

24 PROSPECTIVE JUROR NO. 024: Correct.

25 MS. MACHNICH: And so that is why, when we get down to it, we're

1 asking all of these questions of all of you. And that we're looking for your inherent
2 biases, the biases that tickle in the back of your head, when you're, like, I'm going
3 to do the best I can. And that little thing in the back of your head goes, I don't like
4 that person. I don't want that pie. We're looking to get that out at this point,
5 because all we want is a fair jury for the State and Mr. Valentine. And this is the
6 only time that we get to learn that.

7 So if you'll forgive me for having further questions at this point, I know
8 it's 4:00 p.m. in the afternoon, I just want to get to their -- those inherent biases.
9 And as His Honor referenced earlier, there is no wrong answer. We'll say, well, do
10 you know the law is this? Oh, you understand the law is this. That's fine.

11 But we're looking for those inherent biases that live in the back of your
12 mind saying, oh, I just have this feeling. And so that's all we're trying to do here.

13 Let me see here. You know, let's talk about investigation in this case.
14 I'd like to see these -- investigation is sort of on a spectrum, right? There's, like, all
15 the investigation in the world, all -- everything tied up neat in a tidy little bow. It
16 probably doesn't happen. You were talking about *CSI* with the State a little while
17 ago. But you're talking about just everything, all the investigation. So that's one
18 end. We'll call that, like, very complete investigation in it. Okay.

19 And then on the other end of things, we have the minimalist
20 investigation. The police should conserve their resources, they should do just
21 enough to get the guy they think it is, minimalist. We got him. We arrested him.
22 We're done.

23 Who here would say that they are closer to the minimalist end of the
24 investigation? Please raise your hands. Seeing no hands. So it would be -- would
25 it be fair to say that all of you believe that you're towards the more complete

1 investigation side? I'm seeing nodding all around. All right.

2 Would any of you as a jury give a pass to the State if you thought, well,
3 they -- they did enough? Seeing no hands. All right.

4 So let's take this one step further. If we're looking at complete
5 investigation, we're looking at the spectrum of investigation, that's all on the State
6 of Nevada, right? I see some nodding. Okay.

7 So let's talk to someone. Who have not -- who have we not heard
8 from? Ms. Smallwood?

9 PROSPECTIVE JUROR NO. 017: Uh-huh.

10 MS. MACHNICH: Can I -- I need to have that. All right. We've been
11 talking about the State's investigation in this case. You were nodding, so you
12 believe that the State should have to do a thorough investigation?

13 PROSPECTIVE JUROR NO. 017: Correct.

14 MS. MACHNICH: Okay. Because it's important to find the right
15 person for you, the jury, if the case is going to be proven, yes?

16 PROSPECTIVE JUROR NO. 017: Yes.

17 MS. MACHNICH: Okay. All right. So at any point, do you believe that
18 the defendant should have to prove anything?

19 PROSPECTIVE JUROR NO. 017: That's a -- a good question. I think
20 that it would be important for his side to also do an investigation and look into
21 things to see if they had another set of evidence to present.

22 MS. MACHNICH: Okay. So I guess we should talk about the burden
23 of proof. And we've heard that term thrown around a little bit today. But the
24 burden of proof in a criminal trial is exclusively on the State of Nevada.

25 PROSPECTIVE JUROR NO. 017: Correct.

1 MS. MACHNICH: Okay. And when I say that, I mean that all of the
2 investigation to be done in the case, the only people who have to do any of that is
3 the State of Nevada. Would it be all right with you if Mr. Valentine did not do any
4 investigation and did not put on a defense of his own, he just contradicted or
5 draw -- drew into question the State's case, in this case?

6 PROSPECTIVE JUROR NO. 017: Yes, it would be. Because that's --
7 I mean, the law says it is just up to, you know, the other side to present the
8 evidence and do the investigation. So.

9 MS. MACHNICH: Okay. But I just -- I know you had just mentioned
10 that you thought the that --

11 PROSPECTIVE JUROR NO. 017: Well --

12 MS. MACHNICH: -- Mr. Valentine should investigate.

13 PROSPECTIVE JUROR NO. 017: Well, I think that, as your attorney,
14 if you share information and you feel that you have things that maybe can
15 counterdict, you know, that contradict what the State is presenting, that -- and you
16 have other important evidence that shows another side.

17 MS. MACHNICH: Okay. So it would be your opinion that if something
18 didn't come out at trial, if there was, like, a missing something, you think that
19 Mr. Valentine should present that something? Or should the State have to present
20 that something and have to have looked into that something?

21 PROSPECTIVE JUROR NO. 017: Well, I think the State would have
22 to look into it. And it might have been at your questioning.

23 MS. MACHNICH: Okay. So let's talk about this burden of proof. And
24 did you drive here today, ma'am?

25 PROSPECTIVE JUROR NO. 017: Yes.

1 MS. MACHNICH: Okay. So imagine that a police officer walked in this
2 courtroom today, right now, came in and said, you, ma'am, Ms. Smallwood, you
3 sped on the way to court today. What are you -- what are you going to say to that?
4 No?

5 PROSPECTIVE JUROR NO. 017: Well, how do you know? What's
6 your proof? I mean, I would --

7 MS. MACHNICH: Exactly.

8 PROSPECTIVE JUROR NO. 017: Right.

9 MS. MACHNICH: So he said, well, my -- I saw you. I saw you speed.
10 How are you going to prove you didn't do it?

11 PROSPECTIVE JUROR NO. 017: Well, I would want to ask, you
12 know, again, do you have -- do you have me on camera? Did you use a
13 speedometer? What a -- you know, was there -- did you have something to
14 measure? Just because you saw it doesn't mean that I did it, if I know I didn't do it.

15 MS. MACHNICH: Right. Well, there's no camera.

16 PROSPECTIVE JUROR NO. 017: Right.

17 MS. MACHNICH: Should you have to prove you didn't do it?

18 PROSPECTIVE JUROR NO. 017: That's a really -- I mean, you know,
19 and I'm just thinking back into my professional life, what I did. And how many
20 times I probably, you know, had people come to me and accusing students of
21 doing something, and I had to be the final, you know, decision maker, whether it's
22 going to go forward or not. You want to listen to -- you know, you want to listen to
23 all sides. I don't know if I'm answering your questions.

24 But -- but if I knew that I wasn't speeding and somebody kept saying
25 that I was speeding, then I would do my darnedest to provide character witnesses,

1 any documentation, anything that I had to say that I didn't do it.

2 MS. MACHNICH: So you would feel that you had to provide
3 evidence?

4 PROSPECTIVE JUROR NO. 017: I would, yeah.

5 MS. MACHNICH: Okay. So in a -- just like traffic tickets, a defendant
6 should have to provide evidence that that's your feeling on the matter, that
7 they're -- they should have to provide something to prove that they didn't do
8 something?

9 PROSPECTIVE JUROR NO. 017: If again, there's -- if they are -- I'm
10 not articulating it very well.

11 MS. MACHNICH: That's okay.

12 PROSPECTIVE JUROR NO. 017: If -- if the evidence hasn't been
13 brought out that -- does that make sense? If there's something that hasn't been
14 brought to the jury that I know needs to be presented. I don't know if that makes
15 sense.

16 MS. MACHNICH: All right. We'll come back to that in a second.
17 I'll ask a similar question to Mr. Garfield.

18 PROSPECTIVE JUROR NO. 034: Uh-huh.

19 MS. MACHNICH: You're right there. What happens -- did you drive?

20 PROSPECTIVE JUROR NO. 034: Yes.

21 MS. MACHNICH: Okay. What happens if that police officer comes in
22 here and says, you, you sped today?

23 PROSPECTIVE JUROR NO. 034: Right. I would say no, I didn't. And
24 unless you can provide evidence to say I did, then case closed. There's -- I didn't.
25 I'm not going off hearsay. I -- I need -- in that case. But again, I think each case

1 and each circumstance is going to be different. A speeding ticket is going to be a
2 lot different than, say, another situation or another incident that happens.

3 MS. MACHNICH: Like a serious -- serious criminal offense?

4 PROSPECTIVE JUROR NO. 034: Right.

5 MS. MACHNICH: And how are those two different?

6 PROSPECTIVE JUROR NO. 034: If -- if evidence can be provided.

7 Again, I'm not going off of hearsay. I don't think hearsay is -- is valid enough. So
8 say there is a criminal -- a more serious criminal case, I would imagine that the
9 accuser is going to have some kind of evidence to bring a case against that --
10 whether, you know, when you're going with a speeding ticket, that's kind of just,
11 like, you know, usually in a speeding occurrence, they catch you. They have the
12 radar gun. There's something to show, hey, you did this.

13 If it's just out of the blue, someone saying, oh, I'm accusing you of this.
14 Well, no, we need to see some evidence. You know, so I think it's a case-by-case.

15 MS. MACHNICH: Okay. Do you believe that the defense should have
16 to put on its own evidence and prove that something wasn't done?

17 PROSPECTIVE JUROR NO. 034: I would say if -- if you can, it should
18 be presented in light. If you can counter an accusation, especially -- I mean, if you
19 are innocent and you didn't do it, and you have -- I mean, if you can prove that,
20 okay, if you're saying I was here, but I can prove that I'm here, I mean, that's -- to
21 me, that is necessary in the sense of defending your character and your own -- like
22 if someone's going to accuse me of something, I want to try to produce something
23 to say otherwise. I don't -- I'm not just going to sit there and just listen to
24 accusations and not try to defend myself.

25 MS. MACHNICH: Okay. But you understand that in our judicial

1 system, the defense does not have to put on any evidence at all.

2 PROSPECTIVE JUROR NO. 034: Right.

3 MS. MACHNICH: All right. So you --

4 PROSPECTIVE JUROR NO. 034: This is just coming from a personal
5 standpoint.

6 MS. MACHNICH: Right. And I -- and I really appreciate you sharing
7 that with us.

8 PROSPECTIVE JUROR NO. 034: Uh-huh. Uh-huh.

9 MS. MACHNICH: But taking it a step further in this instance, if
10 Mr. Gaston and myself were to sit at the defense table and just -- we were just
11 lousy lawyers and we did not really do anything --

12 PROSPECTIVE JUROR NO. 034: Right.

13 MS. MACHNICH: -- and you found that the State did not prove the
14 elements beyond a reasonable doubt of every single crime for every single count
15 in this case, would you be able to find Mr. Valentine not guilty?

16 PROSPECTIVE JUROR NO. 034: If they didn't provide enough
17 evidence in their case -- I mean, I think both sides have to provide -- whether guilty
18 or not guilty -- have to provide enough evidence to sway my mind. My mind's not
19 made up. I need to see something either way to -- to make a decision. So if -- if I
20 don't see enough evidence to make guilty, then yes, of course, then I could make it
21 not guilty, because I didn't see enough to prove. I'm not -- again, not just going to
22 go off of he did it, cool. End of story.

23 MS. MACHNICH: So this is actually a great segue for us.

24 PROSPECTIVE JUROR NO. 034: Uh-huh.

25 MS. MACHNICH: Who here thinks, as we sit here, Mr. Valentine is

1 guilty? Who is already at guilty? Please raise your hand.

2 Okay. That's great, because presumption of innocence all of that, we
3 talk about. So good job.

4 So who here thinks that the State and Mr. Valentine are currently on
5 the same plateau as you sit here? Okay.

6 I'm going to speak with this lovely lady right here. One, two, three,
7 four -- Ms. Day.

8 PROSPECTIVE JUROR NO. 023: Uh-huh.

9 MS. MACHNICH: Hi. How's it going?

10 PROSPECTIVE JUROR NO. 023: Good, thanks.

11 MS. MACHNICH: Okay. So you think that the State and Mr. Valentine
12 are currently neutral; they're on the same level?

13 PROSPECTIVE JUROR NO. 023: Pretty much, yes.

14 MS. MACHNICH: Okay. So let's talk about the presumption of
15 innocence. If we lived in a place, a very dark, sad place, where a defendant had to
16 prove their innocence, they were guilty when they were in the courtroom and they
17 had to prove up that they were innocent for a jury to find that, if we lived in that
18 location, as the defendant sat here, what would he be?

19 PROSPECTIVE JUROR NO. 023: Guilty.

20 MS. MACHNICH: Right.

21 PROSPECTIVE JUROR NO. 023: Uh-huh.

22 MS. MACHNICH: So we actually have the opposite system, because
23 Nevada is in the great United States of America and we have a presumption of
24 innocence here.

25 PROSPECTIVE JUROR NO. 023: Uh-huh.

227

1 MS. MACHNICH: So if Mr. Valentine is presumed innocent unless
2 he's proven guilty, what is he right now?

3 PROSPECTIVE JUROR NO. 023: Innocent.

4 MS. MACHNICH: Okay. Do you see the difference between innocent
5 and equal footing?

6 PROSPECTIVE JUROR NO. 023: Yes.

7 MS. MACHNICH: Okay. What's the difference?

8 PROSPECTIVE JUROR NO. 023: Oh, I'm sorry. I don't see a
9 difference between the two.

10 MS. MACHNICH: Okay. Well, you're starting with this just blank slate.

11 PROSPECTIVE JUROR NO. 023: Correct.

12 MS. MACHNICH: Okay. So we actually have -- does anyone see the
13 difference between the blank slate and presumption of innocence, innocent as he
14 sits here? Okay.

15 I'm going to come down here. How about Ms. Jones? I saw you
16 nodding there.

17 Ma'am, what is the difference between equal footing and the defendant
18 sitting here, et cetera?

19 PROSPECTIVE JUROR NO. 042: He's presumed innocent, so it's the
20 burden of the State to prove that he is guilty.

21 MS. MACHNICH: Okay. So as he sits here, he is innocent?

22 PROSPECTIVE JUROR NO. 042: Correct.

23 MS. MACHNICH: He's not at the starting line, like the State of
24 Nevada?

25 PROSPECTIVE JUROR NO. 042: Correct.

1 MS. MACHNICH: Okay. So what's the best way to do this? Let's
2 think about someone -- and who -- who here still does not understand the -- the
3 difference between equal footing and presumed innocent, sitting here, has done
4 nothing wrong? Does anyone still not -- do those still kind of sound similar to
5 anyone? Please raise your hand if those still sound similar. I'm going to talk to all
6 of you one way or another. So volunteer now. Anyone? All right.

7 Who are we talking to? We are going to talk to Mr. Winterbourne.

8 Hi. Where are you standing on this question right now? Do you
9 understand -- or do you see the difference between equal footing and presumed
10 innocent, already -- we're at the finish line and if the State proves him guilty, then
11 they can --

12 PROSPECTIVE JUROR NO. 009: Yeah. Presumed innocent is
13 innocent. And equal footing means that it's not innocent or guilty.

14 MS. MACHNICH: Right. Exactly. It's -- it's neutral.

15 PROSPECTIVE JUROR NO. 009: Yeah.

16 MS. MACHNICH: But as Mr. Valentine sits here, he is innocent right
17 now.

18 PROSPECTIVE JUROR NO. 009: Innocent.

19 MS. MACHNICH: Because you've heard no evidence, right?

20 PROSPECTIVE JUROR NO. 009: Right.

21 MS. MACHNICH: So that's a great explanation, Mr. Winterbourne.

22 Does anyone at this point -- anyone have any feelings on this topic,
23 that they think it's unfair that the defense gets what appears to be a head start?
24 Anyone feel that way, that it's unfair that the defense should start back with the
25 State? Yes? Okay.

1 PROSPECTIVE JUROR NO. 006: It's hard for me to say this, but
2 it's -- it's from my -- from the bottom of my heart.

3 MS. MACHNICH: Okay.

4 PROSPECTIVE JUROR NO. 006: And I feel for him really to get an
5 imperil [sic] justice, there needs to be at least one African-American in this jury.

6 MS. MACHNICH: That's a different issue that --

7 PROSPECTIVE JUROR NO. 006: That's -- that's just my -- my
8 feeling. I had to say that. I'm sorry.

9 MS. MACHNICH: Well, sir, we appreciate your take on it. And believe
10 us, all legal issues will be dealt with between counsel and His Honor. So --

11 PROSPECTIVE JUROR NO. 006: It's all right.

12 MS. MACHNICH: -- we do appreciate your take. Okay.

13 So we were talking about that. All right.

14 Anyone still not really -- does anyone feel like it's unfair? Like just sort
15 of that nagging feeling of it's kind of unfair that the defense gets this head start,
16 because he's presumed innocent and all -- there's no presumption of -- anyone?
17 All right. Hearing crickets, I will move on. All right.

18 So let's talk about defense attorneys. Everybody's not favoritist
19 people. Who here as a negative opinion of criminal defense attorneys? You won't
20 hurt my feelings. Anyone? Anyone? Laughter? No hands? That's great. Okay.

21 And you might have heard this when we introduced ourselves; how
22 about public defenders? Anybody have any negative feelings toward public
23 defenders as defense attorneys? Seeing no hands, we appreciate that.

24 Let me see here.

25 Mr. -- or Ms. Antucci.

1 PROSPECTIVE JUROR NO. 035: Antonucci.
2 MS. MACHNICH: Antonucci.
3 PROSPECTIVE JUROR NO. 035: Uh-huh.
4 MS. MACHNICH: I apologize for that.
5 PROSPECTIVE JUROR NO. 035: Thank you.
6 MS. MACHNICH: Ms. Antonucci. We need to get her a microphone.
7 PROSPECTIVE JUROR NO. 035: Thank you.
8 MS. MACHNICH: Do you know, ma'am, if your -- you said your
9 husband -- you were involved in a criminal trial.
10 PROSPECTIVE JUROR NO. 035: Ex-husband.
11 MS. MACHNICH: Ex-husband.
12 PROSPECTIVE JUROR NO. 035: Ex-husband. Uh-huh.
13 MS. MACHNICH: Ex-husband. If your ex-husband had a paid
14 defense attorney or a public defender?
15 PROSPECTIVE JUROR NO. 035: Public defender.
16 MS. MACHNICH: Okay. Now, you've heard that we're public
17 defenders.
18 PROSPECTIVE JUROR NO. 035: Uh-huh.
19 MS. MACHNICH: You understand that we're appointed counsel in
20 cases?
21 PROSPECTIVE JUROR NO. 035: Correct.
22 MS. MACHNICH: Okay. Is there anything about your experience with
23 the public defender that was representing your ex-husband that would leave you in
24 an uneasy position in this case or hold it against Mr. Valentine here?
25 PROSPECTIVE JUROR NO. 035: No.

1 MS. MACHNICH: Okay. Just making sure. I just want to make sure.
2 Anyone else feel that, you know, he has a public defender, he must be
3 guilty? Anyone else? Because it -- it truly is based upon economic need. All right.

4 Now, let's get on to defendant testifying or not testifying in a case.
5 You're going to hear -- and you're going to get instructions that a defendant does
6 not have to testify in a criminal trial. And we can say that eight ways from Sunday
7 and the judge will have a very specific instruction on the issue if he chooses not to
8 testify.

9 But does anyone here, that inkling in the back of their head, need to
10 hear from Mr. Valentine to find him not guilty if the State doesn't prove their case?
11 No one?

12 I see Mr. Grusinski.

13 PROSPECTIVE JUROR NO. 020: Uh-huh.

14 MS. MACHNICH: I see you shaking your head. So I'm going to ask
15 you to take the microphone for a second. Lucky you.

16 What are you feelings on that?

17 PROSPECTIVE JUROR NO. 020: That -- that he has to testify for me
18 to --

19 MS. MACHNICH: Right.

20 PROSPECTIVE JUROR NO. 020: -- to -- no. He's presumed innocent
21 and if I don't see the evidence from the prosecution, if it's not proven to me that he
22 did the crime, then I don't see -- I don't see a reason, no.

23 MS. MACHNICH: Okay. Does anyone -- at any point, would you feel
24 that you had to hear from him in order to find him not guilty, if the State didn't prove
25 their case? I see shaking of the heads, so negative.

1 PROSPECTIVE JUROR NO. 020: No.

2 MS. MACHNICH: Does anyone feel, and again, there is no wrong
3 answer here, does anyone feel that they need to hear from the defendant to find
4 him not guilty, even if the State doesn't prove its case? Because some people just
5 feel this way. They need to hear from a defendant. And it's okay to feel that way.
6 All right. Seeing no response, I appreciate that. All right.

7 And just to go a little bit further here, let's -- who have I not spoken
8 with?

9 I have not spoken with Ms. Hermosillo; did I pronounce your name
10 right?

11 PROSPECTIVE JUROR NO. 010: Yeah.

12 MS. MACHNICH: Okay. Can we please pass to Ms. Hermosillo.

13 Ma'am, can you think of any reason why a defendant would not testify
14 in a criminal case?

15 PROSPECTIVE JUROR NO. 010: No.

16 MS. MACHNICH: Okay. There's no reason why he wouldn't testify?

17 PROSPECTIVE JUROR NO. 010: No.

18 MS. MACHNICH: Why not?

19 PROSPECTIVE JUROR NO. 010: Yeah. Why?

20 MS. MACHNICH: Right? Okay. And perhaps he wouldn't testify
21 because public speaking is hard. We started with that. Is that fair?

22 PROSPECTIVE JUROR NO. 010: Yes.

23 MS. MACHNICH: Okay. Also he may not testify because he's
24 conferred with counsel and we've all decided it's not necessary.

25 PROSPECTIVE JUROR NO. 010: Okay.

233

1 MS. MACHNICH: Okay. All right. And also he might choose not to
2 testify because the State of Nevada has very smart and tenacious prosecutors and
3 he might feel like he might get tongue tied or tied up on the stand; is that fair?

4 PROSPECTIVE JUROR NO. 010: Yes.

5 MS. MACHNICH: Okay. Does anyone have an issue with this at all?
6 Reasons why he may not testify that have nothing to do with whether he is guilty or
7 not guilty in a case? All right. Seeing universal negative response, I appreciate
8 that.

9 Ma'am, do you have any -- any strong feelings about that? I know you
10 couldn't think of a --

11 PROSPECTIVE JUROR NO. 010: No.

12 MS. MACHNICH: No? Okay. We haven't really spoken with you, so,
13 you know. All right. Let me see here.

14 Now, let's talk about reasonable doubt and burden in this case. We
15 cannot define reasonable doubt for you, at no point are you going to hear either
16 party in this case and even His Honor say reasonable doubt is a certain
17 percentage, because that's not how Nevada law works. But His Honor is going to
18 read you a jury instruction at the close of evidence about what the law in Nevada
19 is. But I would like to sort of discuss on a general level the difference in standards
20 between civil and criminal cases.

21 So where are my civil jurors? Prior civil jurors? I know you're out
22 there. Anyone -- there's -- there's a couple, right? No? Okay.

23 Mr. McAvity, prior civil juror?

24 PROSPECTIVE JUROR NO. 006: Yeah. I've done -- done jury
25 before, yeah.

1 MS. MACHNICH: Fantastic. Okay. So as a civil juror, that means you
2 were dealing with a case that was fighting over money, right?

3 PROSPECTIVE JUROR NO. 006: Yes.

4 MS. MACHNICH: It was not -- so, yeah, we're on the same page.

5 PROSPECTIVE JUROR NO. 006: Yeah. It was only -- it was only
6 about -- yeah. It was companying battling over money.

7 MS. MACHNICH: Okay.

8 PROSPECTIVE JUROR NO. 006: And whose -- whose property
9 rights, stuff like that.

10 MS. MACHNICH: Do you know what the standard of proof was in that
11 case?

12 PROSPECTIVE JUROR NO. 006: The what?

13 MS. MACHNICH: The -- do you know who, like, what they had to
14 prove?

15 PROSPECTIVE JUROR NO. 006: If they owned the -- the rights and
16 the patents to the -- what they're fighting over. So --

17 MS. MACHNICH: Okay. Did they have to prove it by, like, 51
18 percent? Or did they have to prove it --

19 PROSPECTIVE JUROR NO. 006: 100 percent --

20 MS. MACHNICH: -- beyond a reasonable doubt?

21 PROSPECTIVE JUROR NO. 006: Reasonable doubt.

22 MS. MACHNICH: Oh, it was a -- they -- your --

23 PROSPECTIVE JUROR NO. 006: From what I -- from -- yeah, I
24 mean, you -- you have to be 100 percent sure before you -- before you give a
25 judgment on something.

1 MS. MACHNICH: Okay. So you -- you recall applying that sort of
2 standard --

3 PROSPECTIVE JUROR NO. 006: Yeah.

4 MS. MACHNICH: -- to civil cases?

5 PROSPECTIVE JUROR NO. 006: Yeah.

6 MS. MACHNICH: In many jurisdictions civil cases are sometimes a
7 lower standard. It's like you kind of weigh the evidence and you pick the one you
8 believe more, and that's the one you find for. In -- in many civil cases. And -- and
9 I don't want to speak to your jurisdiction, sir.

10 PROSPECTIVE JUROR NO. 006: Yeah.

11 MS. MACHNICH: But does everybody understand why in a criminal
12 case there might be potentially a higher standard that the plaintiff, the State of
13 Nevada has to meet, in order to get their verdict of guilty? Does everybody
14 understand?

15 How about Ms. Hernandez.

16 Can I get the microphone down here?

17 Hi.

18 PROSPECTIVE JUROR NO. 029: Hi.

19 MS. MACHNICH: Okay. So -- all right. Do you understand why there
20 might be -- or you understand that there is a higher standard of proof in criminal
21 cases?

22 PROSPECTIVE JUROR NO. 029: No.

23 MS. MACHNICH: No? Okay. So you understand that we're not in a
24 civil case and so we're not just saying, okay, let's weigh which scale is higher,
25 like 51 percent; we're not the there here. Do you understand?

236

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PROSPECTIVE JUROR NO. 029: Yeah.

MS. MACHNICH: Why do you think that would be important?

PROSPECTIVE JUROR NO. 029: I don't know, honestly, to be honest.

MS. MACHNICH: Just do your best. Maybe because we're talking about, you know, a -- a man's life.

MR. DICKERSON: And, Your Honor, at this point in time, we're going to object under Rule 7.70C that this -- I'm sorry, 7B, that this would be defined later by you in the jury instructions.

MS. MACHNICH: I'm not going into a definition, Your Honor.

THE COURT: Well, I think with this -- are you -- you're asking questions of Ms. Hernandez?

MS. MACHNICH: I am, Your Honor.

THE COURT: So Ms. Hernandez didn't have prior jury service. So this isn't a case where you would need to make sure that she understands the difference between the burden in a civil case and a burden in a criminal case, which would be my only concern. So I don't think you need to get into it. I'll define the burden.

MS. MACHNICH: Okay.

THE COURT: So -- so if you want to -- if you want to make sure that someone who's been on a civil jury is not going to be confused, you can ask that person. But -- but not to a person who hasn't been on a jury and -- and is going to hear the law from me so. Okay?

MS. MACHNICH: Okay.

THE COURT: So I'm sustaining the objection.

1 MS. MACHNICH: And we can move on from there. All right.

2 So does anyone have -- or have you ever had a loved one who has
3 undergone surgery -- let's not talk about anything too serious, but surgery where
4 they had to be put under anesthesia?

5 PROSPECTIVE JUROR NO. 029: No.

6 MS. MACHNICH: Anyone? Loved one? Put under anesthesia for
7 what could be a minor surgery? Okay.

8 We'll go back to Mr. Gray.

9 Hi, Mr. Gray.

10 PROSPECTIVE JUROR NO. 008: How you doing?

11 MS. MACHNICH: Good. All right. So we definitely won't be defining
12 reasonable doubt. But I just want you to think about it in a certain way.

13 So you -- you've had a loved one undergo surgery?

14 PROSPECTIVE JUROR NO. 008: Uh-huh. Yes.

15 MS. MACHNICH: Okay. And for the sake of this, is it -- is it fair to say
16 it was not a life threatening procedure, emergent, had to be done right then?

17 PROSPECTIVE JUROR NO. 008: No.

18 MS. MACHNICH: Okay. But I don't want -- I don't want to say
19 elective, like it was for fun. I mean, I'm not talking about --

20 PROSPECTIVE JUROR NO. 008: Correct. I understand.

21 MS. MACHNICH: Right. All right. So, but they had to go under. They
22 had to have the surgery at some point.

23 PROSPECTIVE JUROR NO. 008: Correct.

24 MS. MACHNICH: All right. Now, imagine a situation where your loved
25 one is under anesthesia, and the doctor comes out and says, hey, I have this

1 blood. Are you with me?

2 PROSPECTIVE JUROR NO. 008: I'm with you.

3 MS. MACHNICH: [Indiscernible] I mean, it sounds a little weird.

4 PROSPECTIVE JUROR NO. 008: Yeah.

5 MS. MACHNICH: But the doctor says, so we have this blood and it's
6 the only blood of their type that we have. And it's enough blood to get through the
7 surgery, so let's not worry about that. But the label on this specific blood, it's kind
8 of scratched out right here, so we don't have the certification that it's been fully
9 purified, made sure that it was perfect.

10 You still with me?

11 PROSPECTIVE JUROR NO. 008: I'm still with you.

12 MS. MACHNICH: Okay. So he has this blood. The label's been a
13 little obscured. And he says, you know, we've never had a problem with this blood
14 bank before. They've -- we've never had any issues. No one's gotten any
15 diseases from the blood we've given them. Everything's always been fine in the
16 past.

17 But all the same, sir, because this label is obscured, we're -- we're
18 going to have to have you sign off on using this blood in your loved one.

19 Do you sign off?

20 PROSPECTIVE JUROR NO. 008: And that's all the blood they have,
21 and she's in the middle of surgery?

22 MS. MACHNICH: Not in the middle. At the beginning. They've just
23 put her under.

24 PROSPECTIVE JUROR NO. 008: No.

25 MS. MACHNICH: Okay. You don't sign off? Why don't you sign off?

1 PROSPECTIVE JUROR NO. 008: Because it could be tainted and it
2 could do more harm to her.

3 MS. MACHNICH: And -- but they've told you everything --

4 PROSPECTIVE JUROR NO. 008: I don't care what they've told me.

5 MS. MACHNICH: Okay.

6 PROSPECTIVE JUROR NO. 008: They've got to prove it to me.

7 MS. MACHNICH: Right. So it's -- it would be a concern for you that
8 you didn't have that proof and you had a doubt as to the --

9 PROSPECTIVE JUROR NO. 008: Yes.

10 MS. MACHNICH: -- pureness of this blood?

11 PROSPECTIVE JUROR NO. 008: Yes.

12 MS. MACHNICH: Okay. Everyone, I put to you that that's a doubt that
13 is of a weighty nature --

14 MR. DICKERSON: Your Honor, same objection.

15 MS. MACHNICH: I'll move on from the analogy.

16 MR. DICKERSON: Quantifying this is going to be expressed by you in
17 the jury instructions.

18 THE COURT: Well, let's -- let's move on. I -- I think -- I will give the
19 instruction to the jury on what is reasonable doubt. All right. And so you don't
20 need to define -- define doubt, either. I think that -- that is something you should
21 leave up to me. All right. So let's -- let's move on from this analogy.

22 MS. MACHNICH: And, respectfully, I -- I absolutely will. I will just say
23 that I was using specific language from the statute as a weighty doubt. But I -- I
24 will move on at this point, Your Honor. Thank you.

25 THE COURT: Okay. Yeah. I don't even think you should -- well, let's

1 just move on.

2 MS. MACHNICH: We can drop it. Okay.

3 THE COURT: Thank you.

4 MS. MACHNICH: Well, thank you, sir. All right.

5 Let's see here. Let me just go grab some more.

6 [Pause in proceedings.]

7 MS. MACHNICH: All right. One more general area, and then I just
8 have a few follow ups for some people.

9 Specifically -- all right. My one more general area. Does anyone
10 here -- now, during the course of this trial it's going to become readily apparent
11 that Mr. Valentine is in custody. You're -- we all go out the same doors. You're
12 going to see us leaving without him. Everyone figures it out at some point.

13 Will anybody hold the fact that Mr. Valentine is in custody on this case
14 against him when determining if the State has met their burden in this case?
15 Seeing a universal negative response, I really do appreciate that, everybody.
16 Okay.

17 So let me speak with Ms. Justice.

18 PROSPECTIVE JUROR NO. 001: Hi.

19 MS. MACHNICH: Hi. All right. I'm sorry we're putting you through
20 this.

21 PROSPECTIVE JUROR NO. 001: That's okay.

22 MS. MACHNICH: You understand this is -- this is basically the only
23 part of the trial where we are interacting and asking questions of you guys.

24 PROSPECTIVE JUROR NO. 001: Correct. Yeah.

25 MS. MACHNICH: Is that -- it -- so it gets easier, I want to say.

241

1 PROSPECTIVE JUROR NO. 001: Sure.

2 MS. MACHNICH: Okay. All right. So you had mentioned having
3 some memory issues that went along with your anxiety.

4 PROSPECTIVE JUROR NO. 001: Correct.

5 MS. MACHNICH: All right. Now, I -- I don't think any of us have really
6 made it clear yet, and if you have, I missed it, and I apologize. We wanted you to
7 know that you will be allowed to take notes during the trial.

8 PROSPECTIVE JUROR NO. 001: Okay.

9 MS. MACHNICH: Okay. And ultimately, if during deliberation, you or
10 any other member of the jury needed to rehear testimony because there was some
11 concern over what was said -- while it's sort of disfavored because it's very time
12 consuming -- if it's absolutely necessary to determine a verdict, His Honor will
13 make it the case that you can review that testimony and you'd be able to relisten to
14 that testimony. Is --

15 PROSPECTIVE JUROR NO. 001: That's good.

16 MS. MACHNICH: -- does that make you feel better about your
17 memory issues? And do you feel like you could work through the memory issues if
18 you had the ability to relisten to testimony if absolutely necessary, under the
19 circumstances? And if you were able to take notes during the trial of important
20 things?

21 PROSPECTIVE JUROR NO. 001: Yes. It would be helpful.

22 MS. MACHNICH: Okay. And do you feel, then, that you could
23 remember or retain in some manner enough of the information to come to a verdict
24 in this case?

25 PROSPECTIVE JUROR NO. 001: I would do the best that I could.

1 MS. MACHNICH: Okay.

2 PROSPECTIVE JUROR NO. 001: -- with, you know, the options I
3 have --

4 MS. MACHNICH: Right.

5 PROSPECTIVE JUROR NO. 001: -- to review everything. Sure, yes.

6 MS. MACHNICH: Okay. And -- and we're not asking -- no one's
7 perfect and no one remembers all of the details. It's impossible. But in the -- in
8 the jury deliberation room, you're able to see the evidence that's put in that His
9 Honor admits. And -- and then you'll have your notes, everybody will have their
10 notes, and you'll all be able to discuss it. And I just want to make sure that you
11 feel that, you know, if -- if we have all of these options available, that you'd be able
12 to serve on this jury and deliberate along with the other members of the jury.

13 PROSPECTIVE JUROR NO. 001: Yes. I like the idea of being able to
14 take notes and, obviously, the deliberation process where we can actually discuss
15 things would be helpful --

16 MS. MACHNICH: Okay.

17 PROSPECTIVE JUROR NO. 001: -- during the week. I guess it's just
18 based on my note-taking, so it would just be, you know, up to me to actually be
19 diligent about it. But other than that, I think I should be able to make a -- a fair
20 judgment.

21 MS. MACHNICH: Okay. And I really appreciate that. All right.
22 And let me speak with, let me see, Mr. Wheeler.
23 Hi. Hi, Mr. Wheeler.

24 PROSPECTIVE JUROR NO. 022: Hello.

25 MS. MACHNICH: I think we had some concerns about at some point

1 you had said you had some negative interactions with law enforcement.

2 PROSPECTIVE JUROR NO. 022: Yes.

3 MS. MACHNICH: Okay. Is it fair to say that the law enforcement
4 officers that you've had interactions with are not testifying in this case?

5 PROSPECTIVE JUROR NO. 022: Yes. Right. Yeah.

6 MS. MACHNICH: Okay. So you don't -- you don't know any of them,
7 none of them have done anything negative to you?

8 PROSPECTIVE JUROR NO. 022: No. Uh-uh. Yeah. No. Yeah.

9 MS. MACHNICH: All right. And so you understand that law
10 enforcement will be testifying?

11 PROSPECTIVE JUROR NO. 022: Right. Correct.

12 MS. MACHNICH: And these are officers you've had no experience
13 with; would you be able to listen to what they said and judge their credibility based
14 on the testimony that you hear and hear all of the things that go into judging
15 whether a person is telling the truth?

16 PROSPECTIVE JUROR NO. 022: Right. Yeah, sure.

17 MS. MACHNICH: And you'd be willing --

18 PROSPECTIVE JUROR NO. 022: Yes.

19 MS. MACHNICH: -- you'd be able and willing to do that?

20 PROSPECTIVE JUROR NO. 022: Yes.

21 MS. MACHNICH: All right. I appreciate that.

22 PROSPECTIVE JUROR NO. 022: All right.

23 MS. MACHNICH: Okay. And let's --

24 THE COURT: Well, I've got a question. You -- you had said that you
25 wouldn't trust everything they say. Is that a standard that -- that's different than

1 how you would treat other witnesses that are not police officers?

2 PROSPECTIVE JUROR NO. 022: I would just -- no. I mean, I would
3 just treat them as any other person, to be honest, yeah. I wouldn't -- I wouldn't --

4 THE COURT: Okay.

5 PROSPECTIVE JUROR NO. 022: Yeah. I don't know -- I don't -- I
6 really don't know how -- I mean, I -- I've seen -- like I said, police do bad things.
7 I've seen police do a lot of good things. So it's just kind of like I don't really know.
8 I'd have to judge on a case-by-case basis, you know.

9 THE COURT: You agree to put aside all of your prior
10 predispositions --

11 PROSPECTIVE JUROR NO. 022: Uh-huh.

12 THE COURT: -- and judge any police officer witnesses based upon
13 what happens in this courtroom and what's --

14 PROSPECTIVE JUROR NO. 022: Uh-huh.

15 THE COURT: -- said in this courtroom; is that --

16 PROSPECTIVE JUROR NO. 022: Right.

17 THE COURT: Can you do that?

18 PROSPECTIVE JUROR NO. 022: Yeah, I think so.

19 THE COURT: You sure?

20 PROSPECTIVE JUROR NO. 022: I -- I -- I'm not sure. I mean, like I
21 said, I -- I mean, I would just have to be neutral, just from this blank slate from the
22 beginning. I mean, I -- I wouldn't have any --

23 THE COURT: Can you -- can you give --

24 PROSPECTIVE JUROR NO. 022: I couldn't -- I couldn't judge before
25 I -- before I saw some evidence or anything, I guess, so you know, I guess I can. I

1 don't know.

2 THE COURT: Well, I'm hearing a lot of different things.

3 PROSPECTIVE JUROR NO. 022: Yeah.

4 THE COURT: So I --

5 PROSPECTIVE JUROR NO. 022: Yeah.

6 THE COURT: -- I just want to make sure that --

7 PROSPECTIVE JUROR NO. 022: Okay. All right.

8 THE COURT: -- you know when a police officer takes the stand,
9 you're not going to, you know, either automatically believe them or automatically
10 disbelieve them.

11 PROSPECTIVE JUROR NO. 022: Uh-huh.

12 THE COURT: You're going to listen carefully to all the evidence.

13 PROSPECTIVE JUROR NO. 022: Right.

14 THE COURT: And judge their credibility.

15 PROSPECTIVE JUROR NO. 022: Right.

16 THE COURT: Based upon what you see and hear in the courtroom.

17 PROSPECTIVE JUROR NO. 022: Yeah.

18 THE COURT: If you're going to bring in things that happened before in
19 your life that's going to affect your ability to judge them, then --

20 PROSPECTIVE JUROR NO. 022: Uh-huh.

21 THE COURT: -- then we need to know that. It's only fair to both sides.

22 PROSPECTIVE JUROR NO. 022: Yeah. I don't think -- I don't think it
23 would affect my judgment, I guess. I would just have to hear what happened and
24 what the -- their side -- you know, their side of the story is, and what the -- you
25 know, both side of the story is, I guess, and then just go from there. I mean, I -- I

1 didn't -- I wasn't there, so I -- I wouldn't know. And I wouldn't know what the history
2 of the police officer is or if he was a good -- if he just had a good record or not.
3 You know, I guess it would depend on his record as a police officer --

4 THE COURT: All right.

5 PROSPECTIVE JUROR NO. 022: -- and I just have to go by that,
6 yeah.

7 THE COURT: All right. I think I understand what you're saying.

8 PROSPECTIVE JUROR NO. 022: Yeah.

9 THE COURT: Thank you. You may continue.

10 MS. MACHNICH: Okay. And -- and sir, so you feel that you could
11 be --

12 PROSPECTIVE JUROR NO. 022: Yeah.

13 MS. MACHNICH: -- fair and unbiased to both of the parties in this
14 case?

15 PROSPECTIVE JUROR NO. 022: Yes. Yeah. Right.

16 MS. MACHNICH: Okay. And you could sit and consider what you've
17 heard and render a verdict?

18 PROSPECTIVE JUROR NO. 022: Sure. Yeah. Absolutely. Yeah.
19 I'm just go -- yeah --

20 MS. MACHNICH: Okay. Well, if -- if there was enough -- I mean,
21 obviously, we understand hung juries happen.

22 PROSPECTIVE JUROR NO. 022: Yeah.

23 MS. MACHNICH: If -- if you would be able to deliberate with your
24 jurors and judge everyone who testified based on what they testified to.

25 PROSPECTIVE JUROR NO. 022: Right. Yeah.

1 MS. MACHNICH: How they testified.
2 PROSPECTIVE JUROR NO. 022: Yeah. Exactly. Yeah.
3 MS. MACHNICH: Okay.
4 PROSPECTIVE JUROR NO. 022: I would just have to go by what
5 the -- the evidence is and --
6 MS. MACHNICH: Okay.
7 PROSPECTIVE JUROR NO. 022: -- go from there. Yeah.
8 MS. MACHNICH: Okay. And I -- and I think what the judge is trying to
9 make sure doesn't happen --
10 PROSPECTIVE JUROR NO. 022: Uh-huh.
11 MS. MACHNICH: -- is like, unlike the presumption of innocence where
12 Mr. Valentine is up here --
13 PROSPECTIVE JUROR NO. 022: Uh-huh.
14 MS. MACHNICH: -- innocent --
15 PROSPECTIVE JUROR NO. 022: Yeah.
16 MS. MACHNICH: -- the State -- the State's neutral, we're asking and
17 what the court asks of everyone and every juror who serves is that you just
18 approach each witness on the stand on an equal footing. And they go on as a
19 blank slate and then you -- you judge it from there, based on their testimony, and
20 what they say and how they say it, and their demeanor, everything.
21 PROSPECTIVE JUROR NO. 022: Right. Yeah. Their character.
22 MS. MACHNICH: Yeah.
23 PROSPECTIVE JUROR NO. 022: Exactly. Yeah.
24 MS. MACHNICH: Can you do that?
25 PROSPECTIVE JUROR NO. 022: I -- I think so. I mean, I've never

1 done it before, so it's the first time, so.

2 MS. MACHNICH: Okay. You believe that --

3 PROSPECTIVE JUROR NO. 022: I hope so.

4 MS. MACHNICH: You believe that you can do that?

5 PROSPECTIVE JUROR NO. 022: I -- I believe so, yeah. I think so.

6 MS. MACHNICH: Okay.

7 PROSPECTIVE JUROR NO. 022: Yep.

8 MS. MACHNICH: I know we're just beating a dead horse.

9 PROSPECTIVE JUROR NO. 022: Yeah. Right.

10 MS. MACHNICH: So -- so but you would do your very best to be fair

11 and impartial?

12 PROSPECTIVE JUROR NO. 022: Yeah. I would.

13 MS. MACHNICH: Okay.

14 PROSPECTIVE JUROR NO. 022: Yep.

15 MS. MACHNICH: All right.

16 Mr. Gray.

17 PROSPECTIVE JUROR NO. 008: Yes.

18 MS. MACHNICH: One more time. All right.

19 I know you have some very strong feelings about police officers.

20 PROSPECTIVE JUROR NO. 008: Yes.

21 MS. MACHNICH: Okay. And this is from your prior experiences and

22 your son's experiences.

23 PROSPECTIVE JUROR NO. 008: That's correct.

24 MS. MACHNICH: All right. It would be fair to say that in general police

25 officers are people.

1 PROSPECTIVE JUROR NO. 008: That's correct.

2 MS. MACHNICH: There are good people and there are bad people.

3 PROSPECTIVE JUROR NO. 008: That's correct.

4 MS. MACHNICH: And you don't always know who is good and who is
5 bad, based on the split second when they walk into a room. You don't -- you don't
6 know for sure if they're good or bad when they're just standing there.

7 PROSPECTIVE JUROR NO. 008: Well, not if they're good or bad.
8 But I believe they know the system and how to work it.

9 MS. MACHNICH: Oh, okay. So you're worried about people working
10 the system?

11 PROSPECTIVE JUROR NO. 008: Right. I know what -- they know
12 what to say to prove a person guilty, because they've been through all these
13 circumstances God knows how many times.

14 MS. MACHNICH: But you -- then with that knowledge, you know, like,
15 you know what that sounds like to you?

16 PROSPECTIVE JUROR NO. 008: Yes.

17 MS. MACHNICH: But if a police officer got on the stand and didn't
18 testify in that conspicuous way that -- that you would be concerned about, you
19 would be able to give that police officer a fair shake? Or would -- would you? I
20 guess that's my question.

21 PROSPECTIVE JUROR NO. 008: I don't know. I -- from what I've
22 been through, I -- no. Not by -- just by looking at him, no.

23 MS. MACHNICH: Oh, no, no. But by what they said and how they
24 said it.

25 PROSPECTIVE JUROR NO. 008: No. I would need some physical

1 evidence.

2 MS. MACHNICH: Okay. All right. So you would not be able to --

3 PROSPECTIVE JUROR NO. 008: No.

4 MS. MACHNICH: -- find your verdict just on testimony?

5 PROSPECTIVE JUROR NO. 008: No.

6 MS. MACHNICH: Okay. All right.

7 I'm going to move on, sir. Is there anything else you would like to say
8 before we move on?

9 PROSPECTIVE JUROR NO. 008: No.

10 MS. MACHNICH: And I should have said that to Mr. Wheeler. I didn't
11 mean to cut you off, sir. Was there anything else you wanted to add?

12 PROSPECTIVE JUROR NO. 022: No. I'm good.

13 MS. MACHNICH: Okay. Just wanted to make sure. I -- I sometimes
14 move on, and I don't -- I don't take that into account. Okay.

15 Let me see here.

16 Court's indulgence.

17 [Pause in proceedings.]

18 MS. MACHNICH: All right. Very few more things, and then
19 Mr. Gaston will get up for a few minutes.

20 Mr. Ramnath.

21 PROSPECTIVE JUROR NO. 019: Yes.

22 MS. MACHNICH: Hi.

23 Could you pass him the mic?

24 Hi, sir.

25 PROSPECTIVE JUROR NO. 019: Hello.

251

1 MS. MACHNICH: All right. You had said earlier that your business
2 was the victim of some robberies?

3 PROSPECTIVE JUROR NO. 019: Yes.

4 MS. MACHNICH: Were you present during the robberies?

5 PROSPECTIVE JUROR NO. 019: No.

6 MS. MACHNICH: All right. But the business itself was robbed?

7 PROSPECTIVE JUROR NO. 019: Yes.

8 MS. MACHNICH: Okay. Was this when other people were there, or
9 was it at night?

10 PROSPECTIVE JUROR NO. 019: It was at night.

11 MS. MACHNICH: Okay. So it was a break-in scenario?

12 PROSPECTIVE JUROR NO. 019: Yes.

13 MS. MACHNICH: All right. And did police officers come out and
14 investigate your case?

15 PROSPECTIVE JUROR NO. 019: Yes. The next day. The following
16 morning.

17 MS. MACHNICH: Okay. And do you feel that the police officers did a
18 good job?

19 PROSPECTIVE JUROR NO. 019: I don't know. I can't really say
20 there.

21 MS. MACHNICH: So you don't have a strong feeling one way or the --
22 one way or another?

23 PROSPECTIVE JUROR NO. 019: No.

24 MS. MACHNICH: Okay. You don't -- you don't feel like they can do no
25 wrong?

1 PROSPECTIVE JUROR NO. 019: Well, they --
2 MS. MACHNICH: And you don't feel like they're all bad?
3 PROSPECTIVE JUROR NO. 019: Well, there was no follow up.
4 MS. MACHNICH: Okay.
5 PROSPECTIVE JUROR NO. 019: And I --
6 MS. MACHNICH: Okay. So your issue would be with the follow-up in
7 the investigation?
8 PROSPECTIVE JUROR NO. 019: A little bit of negative feelings --
9 MS. MACHNICH: Okay.
10 PROSPECTIVE JUROR NO. 019: -- about that.
11 MS. MACHNICH: Okay. And also, at any point, did you interact with
12 anyone associated with the District Attorney's Office?
13 PROSPECTIVE JUROR NO. 019: No.
14 MS. MACHNICH: Okay. So that's one follow-up question I don't need
15 to go on to.
16 Is there anything about your involvement or your business being
17 involved in those break-ins that would make you hold that experience as the victim
18 of a crime against Mr. Valentine as he sits here, innocent?
19 PROSPECTIVE JUROR NO. 019: [No audible response.]
20 MS. MACHNICH: Okay. Explain that look. Let me --
21 PROSPECTIVE JUROR NO. 019: There's a little bit of negative
22 feeling.
23 MS. MACHNICH: Okay. Because he's a criminal defendant and
24 because he's sitting there?
25 PROSPECTIVE JUROR NO. 019: No, not particularly him.

253

1 MS. MACHNICH: Okay.
2 PROSPECTIVE JUROR NO. 019: But --
3 MS. MACHNICH: Us?
4 PROSPECTIVE JUROR NO. 019: No. There was surveillance taken,
5 a camera picture, and it was very clear who the persons were.
6 MS. MACHNICH: Okay.
7 PROSPECTIVE JUROR NO. 019: And nothing was ever done.
8 MS. MACHNICH: Okay. So you have negative feelings about the
9 police officers?
10 PROSPECTIVE JUROR NO. 019: Well, both sides.
11 MS. MACHNICH: Both sides?
12 PROSPECTIVE JUROR NO. 019: Yes.
13 MS. MACHNICH: Okay. So the people who did it?
14 PROSPECTIVE JUROR NO. 019: Correct.
15 MS. MACHNICH: And the police officers.
16 PROSPECTIVE JUROR NO. 019: The follow-up. Correct.
17 MS. MACHNICH: Okay. So both -- so both sides?
18 PROSPECTIVE JUROR NO. 019: Yes.
19 MS. MACHNICH: All right. So I am obviously an advocate for my
20 client. So I -- I will ask if -- it's fair to say that those were not Mr. Valentine?
21 PROSPECTIVE JUROR NO. 019: No.
22 MS. MACHNICH: Okay. So you don't believe that he was involved in
23 that offense and you -- you don't want to punish him for that?
24 PROSPECTIVE JUROR NO. 019: No. No. Not at all.
25 MS. MACHNICH: All right. So would you hold that against -- would

1 you be able to be fair and impartial as a juror in this case for Mr. Valentine, who is
2 the defendant in this case?

3 PROSPECTIVE JUROR NO. 019: Again, past experience --

4 MS. MACHNICH: Okay.

5 PROSPECTIVE JUROR NO. 019: -- would play a little part in that.

6 MS. MACHNICH: Okay. So what I'm hearing is you don't -- you don't
7 feel that you can be completely fair and impartial?

8 PROSPECTIVE JUROR NO. 019: Yes.

9 MS. MACHNICH: Okay.

10 PROSPECTIVE JUROR NO. 019: Correct.

11 MS. MACHNICH: And I really appreciate your honesty, sir. Thank
12 you. Thank you.

13 Does anyone else feel that they could not be fair and impartial?

14 And I just have one more person to follow up with.

15 Ms. McGarity. Hi.

16 PROSPECTIVE JUROR NO. 050: Hi.

17 MS. MACHNICH: Pass this down. Okay.

18 PROSPECTIVE JUROR NO. 050: Thank you.

19 MS. MACHNICH: So ma'am, you said that your brother is a circuit
20 court judge?

21 PROSPECTIVE JUROR NO. 050: Yes.

22 MS. MACHNICH: Did he start off as a district attorney? Or a --

23 PROSPECTIVE JUROR NO. 050: A public defender of children.

24 MS. MACHNICH: Okay. Okay.

25 PROSPECTIVE JUROR NO. 050: And he loved his job.

255

1 MS. MACHNICH: Okay. So -- so he started off as an attorney in the
2 criminal justice system?

3 PROSPECTIVE JUROR NO. 050: Yeah. Public defender, yeah.

4 MS. MACHNICH: Okay. So does anything about his job at any point
5 affect your ability to be fair and impartial?

6 PROSPECTIVE JUROR NO. 050: No.

7 MS. MACHNICH: Okay. And now, the only other thing I noticed is that
8 you had mentioned when we were, like, presumption of innocence stuff, right at the
9 beginning --

10 PROSPECTIVE JUROR NO. 050: Yeah.

11 MS. MACHNICH: -- you were, like, until he's proven guilty.

12 PROSPECTIVE JUROR NO. 050: Well, that's the rest of the thing.

13 MS. MACHNICH: Right. Oh, you're right. Okay. So you're just going
14 through --

15 PROSPECTIVE JUROR NO. 050: Yeah.

16 MS. MACHNICH: -- innocence until proven guilty?

17 PROSPECTIVE JUROR NO. 050: Proven guilty, yeah.

18 MS. MACHNICH: Okay. Do you believe that it's necessary that he be
19 proven guilty in this case? Is he necessarily going to be proven guilty?

20 PROSPECTIVE JUROR NO. 050: I don't know, if I haven't heard
21 anything --

22 MS. MACHNICH: That's fair.

23 PROSPECTIVE JUROR NO. 050: -- he's innocent.

24 MS. MACHNICH: You're right. Okay. That's great.

25 That was my concern, because I saw that. I didn't realize you were

1 just filling out the rest of the statement. But you can understand where we're
2 coming from.

3 PROSPECTIVE JUROR NO. 050: Uh-huh. Yeah.

4 MS. MACHNICH: All right. Thank you.

5 PROSPECTIVE JUROR NO. 050: You're welcome.

6 MS. MACHNICH: And I will pass this over to my co-counsel to
7 address different topics, not the same thing. Thank you.

8 MR. GASTON: I'm fairly certain, if you want to power through, I can
9 get done pretty quickly.

10 THE COURT: Go ahead.

11 MR. GASTON: Okay.

12 Hi. Now that it's 4:45, and they've warmed up the crowd for me, I'm
13 ready.

14 Let's go to Ms. Smallwood real quick. As a frequent flier of principals'
15 offices, I'm going to start there.

16 PROSPECTIVE JUROR NO. 017: I saw good kids, bad kids, all kids,
17 you know, so.

18 MR. GASTON: Well, yeah, I was there for awards. All right. So
19 people come into your office and Kid A is accused of doing something and, I don't
20 know, he got in a scuffle with Kid B. All right. Presumably, you -- you don't have a
21 bias one way or the other. You're just trying to figure out what happened, right?

22 PROSPECTIVE JUROR NO. 017: Correct.

23 MR. GASTON: All right. But Kid A is kind of just one of those kids
24 who is just always in trouble and just kind of no good. I don't know how to
25 describe him. But you know the kid I'm talking about.

257

1 Kid B is on the honor roll, hall monitor, and all the other stuff that good
2 kids do.

3 PROSPECTIVE JUROR NO. 017: Those could be the sneaky kids,
4 though, sometimes. So they're sometimes more trouble than the other ones.

5 MR. GASTON: You're sort of hurting my point. You would have been
6 the right kind of principal. The fact is, I'm -- I'm in the principal's office all the time.
7 The other kid's not. The other kid's more likely to be guilty, right? Fair?

8 PROSPECTIVE JUROR NO. 017: Yeah. You have a -- yeah. I
9 mean, there's a reputation they have and --

10 MR. GASTON: And to be fair, that doesn't -- it's not unfair to think that,
11 right? I mean, it's kind of common sense. The kid's in the principal's office all the
12 time. Cute girl who has never done anything wrong in her whole life is there for the
13 first time. I mean, you kind of come in with an idea of what's going on. Right?
14 That sounds like you're more than a fair principal.

15 But did you find yourself kind of having the same -- having some of
16 those thoughts when you're trying to decide what happened? Kind of leaning one
17 way or the other before you even heard what's said, just because you know the
18 kids' histories?

19 PROSPECTIVE JUROR NO. 017: You know, I'd been doing it for a
20 long time. So I like to say that I listened to all sides of the story and really did a
21 thorough investigation of kids. And there were times -- some times where, you
22 know, I just had to make a decision and -- and go forward. But I -- I'd like to say
23 that I was fair.

24 And you get to learn, like some people are really good at, you know,
25 covering up and hiding and saying the things that they think they want you to hear.

1 So.

2 MR. GASTON: Let's go back the other way. So that was the scenario
3 I was kind of painting of where one person is lying, potentially, to get the other kid
4 in trouble. The other kid's got a rough history, and he takes the fall, because this
5 guy's lying and making up a story. That's not always what happens, right? I
6 mean, the fact is --

7 PROSPECTIVE JUROR NO. 017: Right.

8 MR. GASTON: Show of hands, who here agrees with the statement,
9 most people in the world are good people? Show of hands? Maybe -- anyone
10 here think all -- or a lot of people are evil? Right. Even people who do bad things
11 are, you know, I'm sure they had their reasons and I'm sure mostly they're good.

12 What if the kid is mistaken? So Kid A is just mistaken. But Kid A
13 knows who Kid B is, too, right? Let's -- let's give them names. Sarah knows who
14 John is. John's the bad guy here. Okay. John's always in detention, John's
15 always up to no good. Sarah's watching the front of the classroom and someone
16 hits her in the back of the head with a spitball and she turns around and John's
17 laughing. Karen's probably pretty dang sure that John's the one who did the
18 spitball, right? And so that's the evidence that comes forward to you.

19 What do you do then? Because Karen didn't see the spitball. Karen
20 didn't know who did it. But she sees the kid laughing. But John could be laughing
21 because his buddy Mac did it. But on the -- at the end of the day, Karen's now
22 accusing John of throwing the spitball. How do you kind of make a decision about
23 what happened with them?

24 PROSPECTIVE JUROR NO. 017: Well, and that's when you have to
25 do the investigation and you -- you listen to all of the other people that are around

1 and who is sitting near, where was -- you know is it possible to throw that? Was
2 there somebody in the way? Is -- you know, it's that. You have to listen to the
3 other people around and see if there was other eyewitnesss or --

4 MR. GASTON: I'm not going to repeat the same scenario with
5 everybody else.

6 Does everybody -- so -- so does everybody kind of get the point that
7 I'm trying to make? Show of hands? All right. Okay.

8 Let's talk about economics for a minute. Okay. You're going to hear a
9 count -- counted [indiscernible] you're going to hear a score. In fact, if you haven't
10 figured out yet, can't afford an attorney, that's why one is appointed to him through
11 the public defender's office.

12 MS. LEXIS: Your Honor, objection. This is outside the scope of
13 potential voir dire.

14 THE COURT: So voir dire is the process by which you need to ask
15 questions, not provide information.

16 MR. GASTON: Okay.

17 THE COURT: Okay. So let's --

18 MR. GASTON: I'll do it a different way.

19 THE COURT: Okay. Thank you. So sustained. Go ahead.

20 MS. LEXIS: If you could ask the jury to disregard his statements or his
21 testimony.

22 MR. GASTON: It doesn't matter. I'll say something different this time.

23 THE COURT: Well, all right. I mean, the jury has already heard that a
24 public defender was appointed. But let's try not to go beyond that with respect to
25 the -- the defendant's background.

1 If you want information about the defendant's background to come into
2 evidence, you know the way to do it.

3 MR. GASTON: Yes, sir.

4 THE COURT: Okay.

5 MS. LEXIS: Thank you.

6 MR. GASTON: We'll talk about poor people. Okay. People who can't
7 afford some of the basic stuff that you guys take for granted, that you can afford.
8 Okay. Let's start on one extreme position.

9 Who here has a view that they're -- they must be that poor because
10 they deserve it or God hates them or they're lazy or something; show of hands.
11 Nobody, right? Okay.

12 Go the other way around, though.

13 Let's give the microphone to Mr. Reynolds. We'll pass the microphone
14 down to Mr. Reynolds.

15 PROSPECTIVE JUROR NO. 051: Hello.

16 MR. GASTON: You heard Ms. Machnich, Tegan, Ms. Machnich talk
17 about kind of subtle biases, how she started with the pie comment.

18 PROSPECTIVE JUROR NO. 051: Uh-huh.

19 MR. GASTON: You're going to the grocery store. Okay.
20 It's 11:00 p.m. at night. You've got three kids out, dressed in a polo, jeans. They
21 look like nice, respectable, affluent suburban kids. Probably are a little different,
22 your thoughts are a little different than if there are three people wearing
23 super-baggy jeans, no shirt on, looking like maybe they're from a different
24 neighborhood; is that a fair assumption?

25 PROSPECTIVE JUROR NO. 051: No.

1 MR. GASTON: Anybody think that they might react
2 differently? 11:00 p.m. at night, you're out walking by yourself? I see some hands.
3 If we could pass the microphone back to Mr. Sheldon.

4 Fair to say you might react differently?

5 PROSPECTIVE JUROR NO. 015: Yeah. I think just by what we see
6 every day on the news, if we're bombarded with it. And to -- common sense-wise,
7 just to protect yourself in the event that something -- you know, what you see on
8 TV would happen, I think you would think differently. Maybe stand back, get back,
9 maybe come back later. You know. It might not be the right thing to stereotype,
10 but, come on, we all do it. It's common sense. We see it every day.

11 MR. GASTON: Political correctness is fine and nice, but end of the
12 day, better safe than sorry?

13 PROSPECTIVE JUROR NO. 015: Right. I mean --

14 MR. GASTON: Showing --

15 PROSPECTIVE JUROR NO. 015: I mean, you know, if you're going to
16 be honest. So.

17 MS. MACHNICH: Yeah. Okay. And I guess that's what I'm talking
18 about, kind of subtle biases, right? The fact is you don't know anything different
19 about the poor kids and the affluent kids, right? Nothing. You know nothing about
20 who these people are, but you're going to be a lot more cautious around the poor
21 kids than the affluent kids. Right? That's a subtle bias. That is a bias. That's
22 what it is. It's a bias. It's a prejudice. I'm not saying it's wrong, I'm not saying it's
23 right. But that's what we're talking about when we're talking about prejudices,
24 right?

25 I'm always surprised when the judge asks the first question, who here

1 has biases, prejudices, [indiscernible] that anybody ever raises their hand. I mean
2 it happened in this trial, is my best example. But it -- it doesn't work that way.
3 That's the kind of thing I'm trying to talk about.

4 So given that -- let's pass the microphone over to Mr. Lee.

5 Given that kind of thing we're talking about -- and Mr. Lee, I'm
6 assuming you fall in the same category of things we were just talking about.

7 PROSPECTIVE JUROR NO. 016: I try not to.

8 MR. GASTON: Try not to?

9 PROSPECTIVE JUROR NO. 016: Uh-huh.

10 MR. GASTON: Okay. Do you find yourself kind of thinking the same
11 way or, no? Sometimes, or not?

12 PROSPECTIVE JUROR NO. 016: Like I said, I try not to. But, I mean,
13 I'm sure it happens, subconsciously.

14 MR. GASTON: So do you think, given that that's kind of maybe some
15 of the ways we're coming from, given the news, the bombardment, right, and even
16 when you're watching a movie, if the movie, the setting is in a poor neighborhood,
17 probably it's crime movie, right? If the setting is in an affluent neighborhood, it can
18 be a comedy. You never know, right?

19 PROSPECTIVE JUROR NO. 016: And if it's in a rural area, it's a
20 horror movie. It's where I grew up, so.

21 MR. GASTON: All right. So we see our tropes.

22 PROSPECTIVE JUROR NO. 016: Yep.

23 MR. GASTON: Coming into a criminal trial where a guy's accused of a
24 crime, do you think that that might affect you or some of the other members of the
25 jury, when they're trying to come from that baseline, starting from zero? Is the guy

1 guilty? Is the guy not guilty? Do you think that kind of bias might play into it a little
2 bit, kind of how you might judge the poor, essentially?

3 PROSPECTIVE JUROR NO. 016: With some jurors, yeah.

4 MR. GASTON: Okay. So when you try not to think that way, right,
5 because there's -- again, there's a difference between having a bias and not
6 knowing it, and there's a difference between having a bias and realizing it and
7 trying to work around it.

8 When you say you try not to think that way, what -- what kind of steps
9 do you use? What kind of things do you think people can use in general to kind of
10 work their way around certain biases?

11 PROSPECTIVE JUROR NO. 016: For me, it's, you know, coming in
12 here, it's always innocent until proven guilty. It's the burden lies on the State.

13 MR. GASTON: Anyone else have any ideas of kind of ways they
14 might try to work around that bias when they see themselves thinking a certain
15 thought and they realize, wait, wait, maybe that's -- any ideas? Okay.

16 If we can pass the microphone down to Mr. Duerson?

17 PROSPECTIVE JUROR NO. 048: Yes.

18 MR. GASTON: You said a comment earlier I want to talk about. I
19 wrote it down. Not a lot of people take advantage of opportunity. This is the
20 land -- land of opportunity and not a lot of people take advantage of opportunity.
21 Some people fritter it away. What did you mean by that?

22 PROSPECTIVE JUROR NO. 048: Oftentimes when too many people
23 in the news have choices to make, and they choose the wrong one --

24 MR. GASTON: I guess can --

25 PROSPECTIVE JUROR NO. 048: -- too often for too little reason.

1 MR. GASTON: Can you give an example or some examples of what --
2 what you're thinking of?

3 PROSPECTIVE JUROR NO. 048: Running from a cop.

4 MR. GASTON: You think it's a bad decision to run from a cop?

5 PROSPECTIVE JUROR NO. 048: Generally, yes.

6 MR. GASTON: Show of hands? The cop says stop, people stop.
7 This kind of segues in the -- well, how do you come -- segues are my point, but I'm
8 not ready to get there yet.

9 How do you come down to the discussion we're talking about with
10 respect to poverty and poor? For example, the homeless; do you think the
11 homeless -- the guy standing out there with the sign who is asking for money, we
12 try not to look at him and wait for the light to turn green, that guy, do you think if
13 you give him a couple dollars, he's going to blow it on drugs?

14 PROSPECTIVE JUROR NO. 048: I wouldn't know.

15 MR. GASTON: Okay. Show of hands? Alcohol? Worried?

16 UNIDENTIFIED PROSPECTIVE JUROR: I'd rather give him food --
17 food and water.

18 MR. GASTON: Yeah. Okay. Same thing. Another bias; right? We
19 don't know anything about this guy. Right? He could be out there because he's
20 crazy and his wife just died and he doesn't know what to do with himself. We don't
21 know anything about the guy. But we all have a preconceived notion about we'd
22 rather give him food than money, right?

23 Do you feel that the homeless are homeless by choice? That if they
24 really wanted a job, they could go get one, regardless of what it is?

25 PROSPECTIVE JUROR NO. 048: Not all homeless. Some people

1 are mentally challenged and that's where they find their way in life. And some
2 people get there through misfortune.

3 MR. GASTON: Do you feel that's --

4 PROSPECTIVE JUROR NO. 048: Some people choose it.

5 MR. GASTON: Do you feel that some of them might just be lazy?

6 PROSPECTIVE JUROR NO. 035: Yes.

7 PROSPECTIVE JUROR NO. 048: Some of them, yes.

8 MR. GASTON: Okay. Someone said yes, and I didn't even ask a
9 question.

10 If we can pass the microphone down to -- is that Ms. Antonucci?

11 PROSPECTIVE JUROR NO. 035: Yes.

12 MR. GASTON: You said yes. Clearly a strong feeling.

13 PROSPECTIVE JUROR NO. 035: Yes.

14 MR. GASTON: All right. What do you think?

15 PROSPECTIVE JUROR NO. 035: I feel very bad for the homeless
16 people, but the ones that I see, to me, look like they're pretty able to go and -- and
17 work. And, you know, we all have choices in life, you know. You either make a
18 good choice or you make a poor choice, you know. I grew up very poor, but I
19 always worked. I knew I had to work.

20 Yes, there are people that are mentally ill. I agree. But I won't give
21 them any money. I'll buy them a hamburger or I'll give them a bottle of water. I've
22 bought dog food for their dog. But the -- like I said, the most of that I see are
23 young, able-bodied people. I mean, they look like they -- you know. And there are
24 jobs.

25 MR. GASTON: They look like they could go work.

266

1 PROSPECTIVE JUROR NO. 035: There are jobs, you know.

2 MR. GASTON: So why do you think they're homeless then? I mean, I
3 get the lazy [indiscernible].

4 PROSPECTIVE JUROR NO. 035: A lot of -- a lot of them like that
5 lifestyle. They really do. And they don't want to change, you know. They don't
6 want to change. They like their life the way it is. They're perfectly happy the way
7 they live, you know. But some of them, I agree, have no choice, you know.

8 MR. GASTON: So what about welfare? How do you feel about people
9 who are on welfare?

10 PROSPECTIVE JUROR NO. 035: That's a whole 'nother subject. I
11 think they're --

12 MR. GASTON: I don't believe in what the definition of welfare is, but
13 receiving some kind of government benefit.

14 PROSPECTIVE JUROR NO. 035: Right.

15 MR. GASTON: That's not like Social Security or a pension.

16 PROSPECTIVE JUROR NO. 035: The welfare system is broken --

17 MR. GASTON: Yeah.

18 PROSPECTIVE JUROR NO. 035: -- as far as I'm concerned.

19 MR. GASTON: So how do you feel about people who collect welfare?
20 Unemployed? [Indiscernible.]

21 PROSPECTIVE JUROR NO. 035: I think welfare should be for a
22 certain length of time. And those people need to have a time limit. In other words,
23 get on their feet, whatever it is, job training. Learn skills or whatever to get a job. I
24 don't think they should make a career out of it.

25 MR. GASTON: Career out of living on welfare?

267

1 PROSPECTIVE JUROR NO. 035: Exactly.
2 MR. GASTON: Okay.
3 PROSPECTIVE JUROR NO. 035: And generation after generation
4 living on it. I -- I don't believe in that.
5 MR. GASTON: So how would you judge somebody if they were able
6 to work but were on welfare?
7 PROSPECTIVE JUROR NO. 035: I would tell them to go get a job.
8 Try to get a job.
9 MR. GASTON: Would you think less of them?
10 PROSPECTIVE JUROR NO. 035: For your own self-respect, you
11 know.
12 MR. GASTON: Okay. Would you think less of them?
13 PROSPECTIVE JUROR NO. 035: No. I wouldn't think less of them.
14 MR. GASTON: Okay. Show of hands, if you're able to work, but
15 you're not, you're collecting welfare, show of hands, who -- who would that bother?
16 I mean, you all are paying taxes. You're paying for it.
17 PROSPECTIVE JUROR NO. 035: Yeah. We're paying for it.
18 MR. GASTON: Okay. Who here might let them -- let that -- let that
19 affect them in jury service? Okay.
20 If we can -- okay. That was a lot of hands. Let's start then in the back
21 with Mr. McAvity.
22 How might that affect you in your jury service?
23 PROSPECTIVE JUROR NO. 006: Well, I feel that -- that when you're
24 accepting welfare or whatever, it's -- it's basically just to help you get to where you
25 need to be. If you're -- if you're trying to pimp the system, then you're just hurting

1 people like me. I feel like a person -- my -- my feelings, taxation is theft, anyway.

2 But they're taking my money and they're -- and -- and they're paying all
3 these people to -- that can work to live for free, when I -- when I'm working and I'm
4 not living for free and I'm hurting? Yeah. That's -- that's irritating.

5 MR. GASTON: So how would it affect you in your finding a decision of
6 guilt or not guilty?

7 PROSPECTIVE JUROR NO. 006: If I found -- if I -- if I found out that
8 somebody could work and they're taking -- and they're taking tax money, I'd find
9 them guilty.

10 MR. GASTON: Does it matter what the charge was? Do you get what
11 I'm saying?

12 PROSPECTIVE JUROR NO. 006: Well, I thought -- I thought you
13 meant if they're charged for, you know --

14 MR. GASTON: Welfare fraud or something?

15 PROSPECTIVE JUROR NO. 006: -- welfare fraud.

16 MR. GASTON: That's why I'm clarifying.

17 PROSPECTIVE JUROR NO. 035: Fraud.

18 MR. GASTON: A guy -- a guy's charged with whatever, I mean --

19 PROSPECTIVE JUROR NO. 006: Well -- well --

20 MR. GASTON: -- are you just going to find -- [indiscernible].

21 PROSPECTIVE JUROR NO. 006: I mean, I can't -- I can't say that,
22 you know, I mean, if he -- if he -- if he ain't trying to get a job, then -- then yeah, I'm
23 going to have a bias towards that. But if he's trying to get a job and can't get a job,
24 that's different.

25 MR. GASTON: Fair enough.

1 PROSPECTIVE JUROR NO. 006: Because it's -- it's hard to get a job
2 nowadays, and you know, it's -- it's not easy.

3 MR. GASTON: Right.

4 PROSPECTIVE JUROR NO. 006: But at least showing some kind of
5 effort.

6 MR. GASTON: Yeah, fair enough.

7 PROSPECTIVE JUROR NO. 006: You know.

8 MR. GASTON: If we could pass the microphone. There were some
9 more hands that raised. I think on the second one.

10 If we could pass that to Mr. Grusinski -- oh -- what's your name? Oh,
11 Mr. Gary --

12 PROSPECTIVE JUROR NO. 024: Raczka.

13 MR. GASTON: -- Raczka. You raised your hand. Same -- same kind
14 of question. I'm assuming you feelings are similar in terms of being irritated that
15 you're paying for someone else, they're not working.

16 PROSPECTIVE JUROR NO. 024: Well, yeah, I think a lot of people
17 are just tired of it.

18 MR. GASTON: A lot of people?

19 PROSPECTIVE JUROR NO. 024: Yeah. People taking a free ride out
20 of the system.

21 MR. GASTON: Why do you think it might affect your jury service?

22 PROSPECTIVE JUROR NO. 024: I didn't say it was going to affect my
23 jury service. You just asked if it would bother us, right?

24 MR. GASTON: Is that what --

25 PROSPECTIVE JUROR NO. 024: Had a bias about it.

270

1 MR. GASTON: Okay. And your bias essentially would be?

2 PROSPECTIVE JUROR NO. 024: Yeah. I mean, I lived in Detroit
3 for 25 years. Okay.

4 MR. GASTON: I can use that as an example here in a second.

5 PROSPECTIVE JUROR NO. 024: Yeah. And there's a lot of people
6 there that are -- I -- I mean, I have friends that are down there, them -- and living
7 downtown, and they're taught to take advantage of the system. You know, it's just
8 not a right thing. And, yeah, I don't have -- I -- that person I would feel -- not
9 necessarily guilty of something, other than fraud, but I would think less of them as
10 a person. And I don't know if that impacts me or not in the decision-making
11 process --

12 MR. GASTON: [Indiscernible.]

13 PROSPECTIVE JUROR NO. 024: -- because I've never served on a
14 jury before.

15 MR. GASTON: Okay. Serving on a jury is about -- look, I mean,
16 Judge is going to instruct you on the law. I'm not trying to talk about that. You've
17 heard the objections and sustained and stuff like that.

18 When you really break it down to, jury is a great thing. You get to -- it's
19 your really only interaction for most of you with your -- the legal system and seeing
20 how it works, et cetera. And you're serving a -- a very valuable function. It doesn't
21 work without jurors.

22 On the other hand, there's a reason it's compulsory. There's a reason
23 you're basically held hostage from your life to serve on the jury. What it really boils
24 down to, your goal is to find out the truth, and if you're convinced by the required
25 standard of beyond a reasonable doubt. Not what's more likely, not whatever. But

1 are you convinced beyond a reasonable doubt. Is he guilty of what he's accused
2 of by that standard or not.

3 If you think less of the person -- if you think less of the defendant by
4 the time the trial is done, you think less of him, maybe you just don't like the guy, I
5 don't know. Does that -- would that matter?

6 PROSPECTIVE JUROR NO. 024: It doesn't mean he's guilty of what
7 he -- what he's being accused of.

8 MR. GASTON: That's what I'm trying to get to. Would that affect you
9 when you're trying to decide guilty or not guilty?

10 PROSPECTIVE JUROR NO. 024: I don't think so.

11 MR. GASTON: Anybody? Show of hands?

12 PROSPECTIVE JUROR NO. 026: I don't think you can blanket it like
13 that.

14 MR. GASTON: Too -- to general a statement.

15 PROSPECTIVE JUROR NO. 026: Yeah.

16 MR. GASTON: Okay. If we can pass it to Mr. -- is it Wheeler? Or, no.
17 I'm sorry. Wrong -- wrong way on that.

18 Mr. Galloway.

19 You raised your hand, as well, about potentially affecting your jury
20 service.

21 PROSPECTIVE JUROR NO. 026: No. You -- well, I was agreeing
22 with, like, kind of what these guys agreed with. Like, if they were taking advantage
23 of the system, welfare, for example, and not actively pursuing work, yeah, I would
24 have a -- I would have a -- maybe a -- I guess an opinion on the person.

25 MR. GASTON: Problem with it?

1 PROSPECTIVE JUROR NO. 026: Yeah. Yeah. I mean, but based on
2 what we're in here for and our job as jurors to hear the evidence and then go
3 forward, I mean, that wouldn't affect -- affect me, I guess.

4 MR. GASTON: The guilty or not guilty?

5 PROSPECTIVE JUROR NO. 026: Yeah. The guilt or not guilty. But, I
6 mean, I have a personal experience of welfare. I mean, I worked since I was 15, I
7 lost my job. I had to go on welfare. I had three kids and four -- five weeks later I
8 was working again and was off of it. So, you know --

9 MR. GASTON: It -- it was the stopgap measure it's supposed to be?

10 PROSPECTIVE JUROR NO. 026: Yeah.

11 MR. GASTON: Yeah. And so --

12 PROSPECTIVE JUROR NO. 026: So when I see people taking
13 advantage of it, yeah, I'm going to, like, go to work, you know? Why am I paying
14 for you to -- so, yeah, I have a personal, you know, thing with that. But it's, you
15 know, not going to affect my serve -- my jury service.

16 MR. GASTON: Does anyone here think that crime is higher in poor
17 areas than affluent areas?

18 PROSPECTIVE JUROR NO. 026: Statistically?

19 UNIDENTIFIED PROSPECTIVE JUROR: I think that it is.

20 UNIDENTIFIED PROSPECTIVE JUROR: Statistically, yeah.

21 UNIDENTIFIED PROSPECTIVE JUROR: Yeah, more people.

22 MR. GASTON: That's what I'm saying. If we can pass the microphone
23 down to --

24 PROSPECTIVE JUROR NO. 039: Muhlestein, 30 -- 39.

25 MR. GASTON: People got moved around and I lost my chart. Your --

1 it is, right -- I -- I think -- I don't have a stat to show you, but it's probably right. Why
2 do you think that might be? Poor people commit more crimes or what?

3 PROSPECTIVE JUROR NO. 039: It just -- I think it depends on the --
4 the culture, their family situation, their upbringing, and -- and all those play a -- a
5 role.

6 MR. GASTON: Okay. Fair enough. And you might -- you might see a
7 different kind of upbringing in poor neighborhoods stereotypically, than, like, an
8 affluent neighborhood, right? And I guess, agree or disagree, like one of those
9 strongly agree/agree survey things affluent [indiscernible] like, agree or disagree
10 with the statement: Poor people are more likely to commit a crime?

11 PROSPECTIVE JUROR NO. 039: From statistically I think I would
12 agree with that. But as a -- as a person, judging the situation, I -- I personally
13 wouldn't make a judgment unless I knew -- unless I knew the facts.

14 MR. GASTON: Okay. Somebody had an electrical engineering
15 degree. Was that -- was that you?

16 PROSPECTIVE JUROR NO. 024: Yes.

17 MR. GASTON: Let's pass the microphone back down.

18 Question for you. Assume statistically poor people are arrested for
19 crimes more than affluent people. Just assume. Can you think of a reason why
20 that might be, other than poor people commit more crimes?

21 I put you on the spot. I just picked you.

22 PROSPECTIVE JUROR NO. 024: Well, I -- no, I just don't -- I'm not --
23 I'm trying to -- to figure out the question exactly.

24 MR. GASTON: Poor people -- let's assume, poor people are arrested
25 for crimes, committing crimes more than affluent people. So assume that's true.

1 Can you think of a reason why that might be true, other than because poor people
2 commit more crimes?

3 PROSPECTIVE JUROR NO. 024: Maybe law enforcement has more
4 coverage in the poor areas.

5 MR. GASTON: Does anyone think that's probably right?

6 PROSPECTIVE JUROR NO. 035: No.

7 MR. GASTON: If we can pass the microphone down to -- you said it
8 again. Ms. Antonucci, right?

9 PROSPECTIVE JUROR NO. 035: Yeah.

10 MR. GASTON: You said no.

11 PROSPECTIVE JUROR NO. 035: Uh-uh.

12 MR. GASTON: So do you think -- you do not think that law
13 enforcement coverage is higher in poor areas?

14 PROSPECTIVE JUROR NO. 035: No, not all the time.

15 MR. GASTON: Okay. Now, can you think of a reason, other than
16 because poor people commit more crimes, that poor people might be arrested for
17 crimes more than affluent people?

18 PROSPECTIVE JUROR NO. 035: No.

19 MR. GASTON: So would you agree or disagree with the statement
20 that poor people are more likely to commit a crime?

21 PROSPECTIVE JUROR NO. 035: No. I don't think they're more likely
22 to commit crimes.

23 MR. GASTON: So why do you think that they might be arrested more
24 than affluent people?

25 PROSPECTIVE JUROR NO. 035: I have no idea.

275

1 MR. GASTON: Any -- any --

2 PROSPECTIVE JUROR NO. 035: I just think there's no justification
3 for -- for crime. I mean, you know, you commit a crime, you commit a crime.
4 There's no -- you -- you can't justify it if you're doing something wrong.

5 MR. GASTON: Okay. Well, I'm going to come back to this in just a
6 second. Let me back up and follow up with that.

7 Do you think that's what I'm doing up here? That I'm providing kind of
8 a social background to justify --

9 PROSPECTIVE JUROR NO. 035: No.

10 MR. GASTON: -- that crimes are okay?

11 PROSPECTIVE JUROR NO. 035: No. I'm saying the people that
12 commit crimes, I don't like when they try to justify what they've done. Oh, I did it
13 because I'm poor or if I'm from a poor neighborhood. I -- to me, that's not a
14 justification. You know right from wrong.

15 MR. GASTON: Yeah.

16 PROSPECTIVE JUROR NO. 035: You know, whether you're poor or
17 you're rich. You know right from wrong.

18 MR. GASTON: Okay. Everybody agree with that?

19 Can anyone think of potential reasons why poor people might get
20 arrested more than affluent people other than simply because poor people are
21 more likely to be criminals?

22 MR. DICKERSON: Your Honor, I'm going to object as asked and
23 answered.

24 MR. GASTON: I don't think that's even a valid objection. But.

25 MR. DICKERSON: It is, actually, Rule 7.70A.

276

1 THE COURT: Yeah. Well, I'll let him -- I'll let him explore this a little
2 bit longer.

3 MR. GASTON: Thank you.

4 THE COURT: All right.

5 MR. GASTON: Everybody get -- I mean, let's back up. I'm not trying
6 to, like, be condescending.

7 THE COURT: You mean profiling? Is that where you're trying to go
8 or?

9 MR. GASTON: No. Not necessarily. No. I mean, the general gist
10 here, if -- presume, if, in your jury service, we talk about potential biases that might
11 affect you. Some criminal trials are better for certain people than others.
12 Someone here earlier mentioned -- she's no longer here. But she mentioned that
13 she might be okay to be a juror on an armed robbery case, but not a sexual
14 assault case, right? You can be a fair juror in one case and not another case.

15 So we're probing certain biases that might affect you being a juror on a
16 certain case. And in this case, we're trying to probe biases right now about our
17 attitude and perspectives towards the poor and whether -- that's, basically, what
18 I'm worried about is are you going to think the client's poor and therefore he's more
19 likely to have committed this crime?

20 THE COURT: So let's get to the question.

21 MR. GASTON: So that's -- that's what I'm trying to get -- get at. Does
22 anybody here, being honest, think that might be the case?

23 Mr. Wheeler's hand.

24 PROSPECTIVE JUROR NO. 022: Well, it could be.

25 MR. GASTON: Could be, because he's poor he's more likely to have

1 committed the crime?

2 PROSPECTIVE JUROR NO. 022: Depending on situations, family
3 situations, you need things, got to -- you know, whether -- whether it's going to be
4 presented to us is how we're going to know that.

5 MR. GASTON: So you need the money more so you're more likely to
6 potentially have gone out to steal it?

7 PROSPECTIVE JUROR NO. 022: Depending on your situation.

8 MR. GASTON: Okay. I think I'm -- I have to pass the microphone to
9 you to keep talking to you.

10 PROSPECTIVE JUROR NO. 022: Very well.

11 MR. GASTON: It's like the baton of power.

12 So when you're back trying to make a decision, you're deliberating,
13 everything is close. A couple people are arguing for X, you're arguing for Y. Is
14 that going to be a factor in your deliberation?

15 PROSPECTIVE JUROR NO. 022: I can't say until I hear what you
16 guys are going to present.

17 MR. GASTON: And does anyone think why --

18 PROSPECTIVE JUROR NO. 022: Because you -- I could -- I could
19 say that, yes, somebody could go out and commit a crime out of desperation.
20 They need money, whatever, because you know it happens. But am I going to
21 hold that against him? I mean, you know, you could have everybody on this planet
22 go to law school and not everybody is going to be lawyers. So not everybody gets
23 to see the -- the good ride through life.

24 But you can also say, you know, what's right and wrong. Am I going to
25 hold that against him because he needs, you know, to get through life? I don't

278

1 know.

2 MR. GASTON: That's not necessarily --

3 PROSPECTIVE JUROR NO. 022: Depends on what you guys
4 present.

5 MR. GASTON: That's not necessarily an excuse either. I mean --

6 PROSPECTIVE JUROR NO. 022: No, no.

7 MR. GASTON: -- that's not what we're talking about here.

8 PROSPECTIVE JUROR NO. 022: No.

9 MR. GASTON: I guess what I'm worried about is the idea that, look,
10 he can't do anything about being poor, it has nothing to do with it. So is he more
11 likely to be guilty simply because he's poor? And if that's what you're thinking,
12 then this is probably not the right case for you. That -- that's what I'm trying to get
13 at.

14 Because that's -- I'll go ahead and tell you, that's not a proper basis to
15 consider whether someone is guilty or not guilty, whether they're poor or rich. The
16 justice system treats everybody the same.

17 And so if we can pass the microphone for now, Mr. Wheeler.

18 Kind of -- kind of the same worry. I mean, when you get back in the
19 deliberation room, are you a little more likely to edge towards he's guilty, if you -- if
20 you think he's poor?

21 THE COURT: So I'm going to admonish you to move on from this
22 topic now, because Rule 7.70C says you're not allowed to ask questions touching
23 on the verdict a juror would return based upon hypothetical facts, it's kind of what
24 you're doing now. And -- and we are kind of getting into an area that's been asked
25 and answered.

1 So I want you to move on from this area on what they would do back in
2 the jury deliberation room. It's not proper. Okay. So please move on from that.

3 MR. GASTON: All right.

4 THE COURT: All right.

5 MR. GASTON: Let's go back to something that Mr. McAvity said. He
6 said I just got to say -- something like I just got to say how's he supposed to get a
7 fair trial --

8 MR. DICKERSON: May we approach, Your Honor?

9 THE COURT: Yes.

10 [Bench conference transcribed as follows.]

11 MS. LEXIS: He's going to bring up the fact that this juror brought up
12 race. I think that's where he's going. He doesn't think that this -- that he
13 personally -- this particular juror personally doesn't believe this defendant can get
14 a fair trial unless there's an African-American on the jury.

15 THE COURT: Yeah.

16 MS. LEXIS: I don't think that that should be proper.

17 THE COURT: Is that where you're going with that?

18 MR. GASTON: Yes. And we're --

19 THE COURT: I don't want to get into race.

20 MR. GASTON: Not -- I'm not -- well, okay. Personally --

21 MR. DICKERSON: And we're -- well, may -- may -- well, this -- for the
22 juror statements tended to -- to be tainting to the whole jury.

23 THE COURT: Yeah, I'm worried it might be tainting them now.

24 MS. LEXIS: Yes.

25 MR. DICKERSON: If they come from counsel, they're going to be

1 even more tainted.

2 THE COURT: Yeah. I sustain that.

3 MR. GASTON: Okay. Well, I just didn't know that --

4 THE COURT: All right. Move on from race.

5 MR. GASTON: Well, can I respond before?

6 THE COURT: Yeah.

7 MR. GASTON: So I'll respond with I don't think -- if they don't want me
8 to mention the juror's statement about the jury pool can't be fair because there's no
9 African-Americans, I think that might be a fair objection. But the idea that I can't
10 even talk about race in general doesn't seem like a valid objection, especially in a
11 case where racial issues are going to be present. I think I should be able to probe
12 how people feel about race -- race and law enforcement's interaction, the Black
13 Lives Matter movement, et cetera. Because that direct -- their -- their views on
14 those issues directly impacts their ability to be a juror on this case.

15 THE COURT: I do not want you to explore or speculate on -- I don't
16 want one juror to speculate on what other jurors might think or not think.

17 MR. GASTON: Okay.

18 THE COURT: You -- you can ask any individual juror whether they're
19 biased based upon race.

20 MR. GASTON: Okay.

21 THE COURT: But you can't say do you think he can get a fair trial.

22 MR. GASTON: Okay.

23 THE COURT: Because that's asking one person to speculate for what
24 everyone else would think.

25 MR. GASTON: Yes, sir.

1 THE COURT: Which is impossible.

2 MR. GASTON: So I'm -- I'm going to get into race. That's how I was
3 going to do it.

4 THE COURT: You can get --

5 MR. GASTON: I can do it a different way.

6 THE COURT: You can only get into, like, there's one person -- I
7 already -- we already covered that, though.

8 MR. GASTON: We didn't -- we haven't covered the race. We covered
9 the very general questions [indiscernible].

10 MR. DICKERSON: [Indiscernible] jurors.

11 THE COURT: Well, I covered it.

12 MR. GASTON: Well, you covered --

13 MR. DICKERSON: True.

14 MR. GASTON: And we also -- we also haven't talked about race and
15 their interactions with law enforcement.

16 THE COURT: We're going to -- it's after 5:00, anyway. We're going to
17 have to finish tomorrow. Okay.

18 MR. GASTON: If -- if the court want -- I think I have, like, 15 minutes
19 left, if you want to --

20 THE COURT: I'm -- we're not going 15 more minutes.

21 MR. GASTON: Okay. Okay.

22 THE COURT: We're going to cut this off right now.

23 MR. GASTON: Okay.

24 [End of bench conference.]

25 THE COURT: All right. So ladies and gentlemen, it's 5:10. I need to

1 let you guys go. What -- what I'm going to do is I want -- I want the following
2 people just to stick around for a few minutes, because we make a couple
3 decisions. Badge No. 1, Dana Justice; Badge No. 8, Stephen Gray; Badge No. 22,
4 James Wheeler.

5 And then Shirley Hernandez, No. 29, will you raise your hand? Where
6 are you? There you are. Okay. Did you find out yet whether your employer will
7 pay for you to be here?

8 PROSPECTIVE JUROR NO. 029: Yes.

9 THE COURT: What's you find out?

10 PROSPECTIVE JUROR NO. 029: The only --

11 THE COURT: Well, do you have the microphone? You need to have
12 the microphone.

13 Marshal.

14 What'd you find out?

15 PROSPECTIVE JUROR NO. 029: I talked to my district manager.
16 And she said that they only pay for three days.

17 THE COURT: Three days?

18 PROSPECTIVE JUROR NO. 029: And they only reimburse the
19 difference from the \$40 that's paid here.

20 THE COURT: Okay. So how does that affect your financial condition,
21 then?

22 PROSPECTIVE JUROR NO. 029: It will cut my paycheck short.

23 THE COURT: Okay. How much -- about how much money are you
24 going to end up losing by being here for -- say this -- say this trial goes through
25 Tuesday.

1 PROSPECTIVE JUROR NO. 029: Probably like \$200-300.

2 THE COURT: Okay. And so how would you describe whether there's
3 a financial hardship to you?

4 PROSPECTIVE JUROR NO. 029: I have bills coming up to pay, so I
5 really need that money --

6 THE COURT: All right.

7 PROSPECTIVE JUROR NO. 029: -- to pay for it.

8 THE COURT: Tell you what, why don't you stick around a few
9 minutes. We're going to -- I'm going to talk briefly with these guys. Okay.

10 PROSPECTIVE JUROR NO. 029: Okay.

11 THE COURT: So those four people -- Dana Justice, Stephen Gray,
12 James Wheeler, and Shirley Hernandez, stick around for a few minutes.

13 The rest of you, what I'm going to do is I give you the admonishment
14 and tell you to be back here tomorrow at 11:00. And the people in the back, you
15 need to be back here -- the court orders you to all be back here tomorrow at 11:00.

16 During this overnight recess, do not communicate among yourselves
17 or with anybody else about this trial or the subject matter of this trial; do not
18 communicate at all with any other parties, attorneys, or witnesses involved in this
19 trial; do not seek or obtain any information or comments about this case from any
20 source including newspapers, television, radio, Internet, e-mail, cell phones, or any
21 other electronic device; do not read, watch, or listen to any report of or
22 commentary about the case; do not perform any research or investigation; do not
23 form or express any opinion on any subject connected with the trial until the case
24 is finally submitted to you for deliberations.

25 So you are directed to be outside the hallway of this courtroom

1 tomorrow for further proceedings no later than 11:00 by order of the court so that
2 you don't be held in contempt of court. All right. Thank you very much.

3 You're all excused for the evening. Please be back here tomorrow.

4 [Prospective jury panel recessed at 5:11 p.m.]

5 THE COURT: All right. And then the four people that I asked to stick
6 around, since we need to discuss you, I'm going to ask you to step outside. And
7 we're going to have some discussions about you.

8 And I'll let you know momentarily what's going to happen. All right.
9 But stick around just -- out on the benches right outside the courtroom for a few
10 minutes.

11 [Remaining four prospective jurors recessed at 5:12 p.m.]

12 THE COURT: All right. We're outside the presence of the jury.

13 So first I want to discuss what we're going to do with Ms. Hernandez.
14 I -- I don't think I -- there was a challenge for cause, but we were concerned about
15 she claimed financial hardship.

16 What's the parties' positions before the court decides whether to
17 release her, do the parties want to take a position on whether she should stay or
18 go?

19 MS. LEXIS: The State would, Your Honor. Based on what she told
20 the court before she was excused from the courtroom, the juror -- her employment
21 will pay for 3 days and if this case were to go forward with trial onto Tuesday, that
22 would be four additional days of jury service that her employment would not
23 reimburse her for the difference.

24 THE COURT: She said about \$200-\$300.

25 MS. LEXIS: 200-300.

1 THE COURT: Which doesn't seem like a lot of money --

2 MS. LEXIS: Right.

3 THE COURT: -- considering she's got a lot of equity in her house. So
4 how do you -- how do you want to balance that?

5 MS. LEXIS: Well, at 45 -- jurors are paid \$45 a day.

6 THE COURT: Yeah.

7 MS. LEXIS: Times the four times -- four other days that she would not
8 be receiving any kind of supplement from work, that equals \$180. It's very close to
9 what she would be short, \$200 or \$300. So I don't believe it's as much of a
10 financial difficulty, given the fact that she would be reimbursed for the three days
11 and she would be paid by jury service.

12 THE COURT: So you're arguing against me releasing her?

13 MS. LEXIS: Yes.

14 THE COURT: What's the defense position? Do you take a position?

15 MS. MACHNICH: You know, generally, Your Honor, I don't take a
16 strong position. I know -- speaking about people's finances, they can use it as a
17 scapegoat to get out of jury duty, and they can use it because they generally don't
18 have enough -- generally don't have enough money to pay for their everyday living.
19 And if she's taking care of her mother, she said she was the one -- she was the
20 sole caregiver or the sole breadwinner, she's taking care of a young child and
21 potentially an elderly parent, I think that there is -- you know, it's -- it's hard for us
22 to take a position on her economic status.

23 I will say that she did appear to be distracted today, just to note it for
24 the court. She wasn't particularly interested in participating. And that -- that's
25 concerning, that if her mind is going to be elsewhere, we don't particularly want her

1 not paying attention and sitting on this jury or being wrapped up in her economic
2 status, her economic troubles and not paying attention. But generally speaking,
3 Your Honor, we would submit.

4 THE COURT: It's a tough one. I mean, she does have equity in the
5 house, but sometimes it's difficult to -- to get the equity. I'm not sure which way to
6 go on this. I just -- it does sound like -- am I correct, she had two dependents, a
7 one-year-old and then her mom?

8 MS. MACHNICH: Yes. That was our --

9 THE COURT: And her mom's not working?

10 MS. LEXIS: Her mom was visiting from Florida to help her care for her
11 child.

12 THE COURT: Care -- was she here visiting because of the jury
13 service or --

14 MS. LEXIS: No. I think --

15 THE COURT: -- why was she here visiting?

16 MS. LEXIS: -- it was to care --

17 MS. MACHNICH: I thought she was a caregiver for the young child.
18 Like, she had, like, temporarily stayed with her.

19 THE COURT: I did have that in my notes that she --

20 MS. LEXIS: I show that she was temp -- that she was here from
21 Florida to help care for her child. But I also believed it was temporary, as opposed
22 to --

23 THE COURT: I don't know.

24 MS. LEXIS: -- something that she's always here for.

25 MS. MACHNICH: I don't know.

1 THE COURT: She's a single mother.

2 MS. LEXIS: She really would not be losing as much money as before
3 we inquired as to whether she would be serving.

4 THE COURT: Yeah. I'm -- I just -- given that she has 90,000 in equity
5 in her house and she's only going to be losing, by her own admission, a couple
6 hundred dollars. I -- I can't find that to be a financial hardship.

7 MS. MACHNICH: Okay.

8 THE COURT: I'm not going to -- I'm not going to release her. She did
9 seem a little bit distant and distracted. I'm going to emphasize to her that -- the
10 importance to pay attention.

11 MS. MACHNICH: Yeah.

12 THE COURT: So let's -- let's observe her again as we go forward and
13 make sure she pays attention.

14 MS. MACHNICH: Okay.

15 THE COURT: All right. So I did want to keep -- since, of course, I
16 didn't have challenges for cause yet by defense, I do have the three challenges for
17 cause by the State. I wanted to resolve those.

18 Let's hear first as to Dana Justice. Make your challenge -- oh, yes?

19 MS. MACHNICH: Oh, no. I was just going to respond, because they
20 had made their -- their strike --

21 THE COURT: You already know their position.

22 MS. MACHNICH: Right.

23 THE COURT: So you can respond and then they can get the last
24 word.

25 MS. MACHNICH: Excellent.

1 MS. LEXIS: I would actually like to make our position more known.
2 THE COURT: Okay.
3 MS. LEXIS: We were whispering at the bench and --
4 THE COURT: Okay.
5 MS. LEXIS: -- so that they can --
6 THE COURT: Well, you go first, then --
7 MS. MACHNICH: Thank you.
8 THE COURT: -- and then we can hear from them and then I'll decide.
9 MS. MACHNICH: Okay.
10 MS. LEXIS: Thank you. Your Honor, concerning Ms. Justice, first, I
11 would like to just note her overall demeanor while she was -- during the entire jury
12 selection process. She cried at times. She was very emotional. She told the court
13 that being here in court and having to take part in this trial will add to her anxiety,
14 which is already somewhat heightened. She does -- she said she had a chemical
15 dependency and generalized anxiety. Those are the two things that she said
16 she -- she suffered from. This was right -- right at -- at the very start of the court's
17 questioning of -- of this particular witness.
18 She said things, and I have it in quotations, she can't focus. She -- her
19 brain goes in circles. This will add to the anxiety. She would have to use
20 marijuana to ease her -- her anxiety. She normally doesn't take it in the -- or she
21 would normally take it in the morning, but she would refrain from taking marijuana,
22 you know, until the afternoon when she returns from home -- from court.
23 But really, she indicated she was sweating, she was shaking, and in
24 such a -- and in such a state of mind that she was at -- that that particular state of
25 mind was visible to us, as well as other jurors who were sitting next to her. She

1 actually turned to the juror next to her and said, you know, he can see me
2 sweating, shaking. I can't focus in a broad spectrum. I can only think of things in
3 one at a time. She may not remember, and then when asked, you know, for a
4 percentage, she said she was 100 percent confident she won't remember.

5 And while note taking may alleviate her memory, I think that her
6 general anxiety and her chemical dependency would actually have -- would affect
7 her ability to sit in this particular jury.

8 We haven't heard any testimony. We're just talking, and I understand
9 public speaking may be difficult for people, however, I mean, if she's crying and
10 emotional and already showing a lack -- and telling the court of her lack of her
11 ability to focus and already sweating and shaking, just during jury selection, I don't
12 think she's an appropriate fit for this particular jury because of her state of mind
13 and her -- and her conditions.

14 And that's why we're challenging her for cause.

15 THE COURT: All right. Thank you. You did elaborate a little bit more
16 than at the bench. I appreciate that.

17 MS. LEXIS: Thank you.

18 THE COURT: Ms. Machnich, your response?

19 MS. MACHNICH: Your Honor, I will state, first, I -- I did most of my
20 rehabilitation based off of her memory issues, which is what a the State says they
21 were challenging based upon. So largely that was my questioning of her.

22 I'd first like to address the chemical dependency. I guess they're
23 referring to marijuana. It's not habit forming and it's just like having a drink, and I
24 think that we've seen that through the legalization of marijuana and the State --
25 any number of us go home and have a drink after work. That's what she's talking

1 about doing. She might be more -- she might also treat it as more of a medication
2 because of her anxiety. But again, it's not something when -- when someone says
3 chemical dependence, and at one point they said it might be similar to codeine or
4 something -- we're not talking about that. We're not talking about a narcotic.
5 We're talking about marijuana, again, must more akin to alcohol.

6 She was sitting here today throughout the entire day. While at times
7 she got emotional, while the day went on, she did appear to get more comfortable.
8 I noticed by the time that I was speaking with her that she was not shaking. She
9 was not crying. She was able to answer questions to all of us, including
10 Your Honor.

11 And I think that, you know, there might be other reasons that the State
12 was looking to strike her other than her anxiety. It could potentially be her life
13 situation and her experiences that are not as common. I mean, she's had people
14 accused of crime in her family. She's also -- had been victims of crime.

15 So it does go both ways, but, you know, that's a different perspective
16 that we would welcome on a jury, having someone who has had both of those
17 perspectives. Because, as Your Honor would have noted, there are many people
18 who have never had anyone accused of crime in their family.

19 So I -- I think that there might be that -- I don't want to say ulterior
20 motive, because that sounds so bad, but that other motivation by the State as well,
21 to get rid of her, which is more appropriate for a peremptory strike than a for-cause
22 strike. And I believe our main issue which was memory, I had a chance to speak
23 with her. I specifically asked her the questions, and she said that she could do it.

24 So I -- I think that we have cleared that up for cause. And I would
25 object to the State's Motion for Cause in this instance.

1 THE COURT: All right. Thanks.

2 So I guess that's why I get to make the decision.

3 MS. MACHNICH: Exactly.

4 THE COURT: Is because I'm not on one side or the other. I'm -- I try
5 to just do what -- what's right and what's fair. Sometimes I get it wrong, but it --

6 In this case, though, I have to balance a couple things. You know, I
7 did see on the one hand that, you know, she -- she seemed articulate and
8 coherent. She did seem engaged at times; a little bit disengaged at other times.

9 What I found was unusual is that a couple times, despite her
10 nervousness and fear and expressed anxiety disorder, she did volunteer to speak
11 two times, which I thought was -- was interesting. And she didn't -- I mean, even
12 though I invited her to -- to speak to us privately, she -- she didn't invoke that right
13 to speak to us privately.

14 So I -- I've got to balance that with the other thing, that she did -- she
15 did at times seem very nervous. She was not smiling, even at times when some of
16 the other jurors were -- were laughing at some of the little jokes that were made.
17 She did look away. Her voice was shaking at times. She indicated she was
18 sweating profusely. She did indicate her body was shaking. She used the term
19 brain derails at times.

20 She's going to have trouble remembering. Not everybody can
21 remember everything. She did express some relief when she heard we could take
22 notes and have things played back. So these are all the things I'm balancing.

23 She did seem attentive when directly -- a question was directly placed
24 to her, or her responses seemed appropriate. She did seem a little bit more
25 comfortable as the day went on. But -- but she did -- she did, throughout the entire

1 proceeding, she -- she did seem like she was trembling and nervous and -- and
2 fearful and -- and then she did indicate she's going to have to take marijuana as a
3 medication in the evenings, each evening, without -- without a prescription. That's
4 probably a federal crime.

5 MS. MACHNICH: But it's legal in the State of Nevada, Your Honor.

6 THE COURT: It's legal in the state of Nevada.

7 I -- I think, on balance, I -- I'm concerned enough that -- that her
8 general anxiety disorder, which she said she -- she has been diagnosed, is going
9 to affect her ability to focus and concentrate and -- and remember enough of the
10 details to give a fair trial.

11 So I -- I am going to remove her this time. Just -- just tip the scale a
12 little bit against -- against allowing her to stay. I -- she just does not -- overall,
13 she's not going to be able to perform her duties as a juror because of her general
14 anxiety disorder. It's my general sense. So I'm going to remove her. All right.

15 MS. MACHNICH: Thank you for your reasoned response, Your Honor.
16 We appreciate that.

17 THE COURT: Thank you. And I don't know -- you know, I didn't, you
18 know, study her answers enough to know whether that hurts one side or helps
19 another side. I just don't think she can do her job to the extent she needs to do it
20 as a juror. So I'm striking her for that reason.

21 MS. MACHNICH: That's fair.

22 THE COURT: All right.

23 And so let's talk now about James Wheeler.

24 Well, let's talk about Stephen Gray, No. 008.

25 MS. MACHNICH: Your Honor, we're going to submit on this one. I do

1 not believe, regrettably for myself, that I was able to rehab him to the point of being
2 able to make a fervent statement on it. So instead of having the State restate
3 their --

4 MS. LEXIS: Thank you.

5 MS. MACHNICH: -- Motion for Cause, we'll submit to the --
6 Your Honor.

7 MS. LEXIS: Thank you, counsel.

8 THE COURT: All right. I -- I made notes for this one. And I'm -- I'm
9 going to go ahead and -- and excuse Stephen Gray for cause. I believe that he
10 has clear prejudice against the -- the State's position and the police officers in this
11 case. Yeah. I -- I thank you for submitting that.

12 MS. MACHNICH: Of course.

13 THE COURT: Because I -- I know you tried and just didn't say the
14 right things to be rehabilitated.

15 MS. MACHNICH: Yeah.

16 THE COURT: So let's now talk about James wheeler, 022.

17 MS. LEXIS: Your Honor, we will submit on Mr. Wheeler.

18 THE COURT: Okay. Anything the State -- or the defense wanted to
19 say on Mr. Wheeler?

20 MS. MACHNICH: Your Honor, I do believe, after further questioning,
21 that he did get to a place of being unbiased and he could be a fair juror. So.

22 THE COURT: And I thought that I, with some of my questions, I
23 rehabilitated --

24 MS. MACHNICH: Yeah.

25 THE COURT: -- him. You know, it wasn't my goal to rehabilitate --

1 MS. MACHNICH: Right.

2 THE COURT: -- but I -- I thought that in response to my questions, he
3 showed that he can be fair and unbiased. So -- so I'm going to deny the State's
4 challenge for cause as to Mr. Wheeler.

5 MS. LEXIS: And Your Honor, with us submitting, of course, we still
6 reserve the right to use a peremptory challenge.

7 THE COURT: Of course.

8 MS. LEXIS: I was just submitting in terms of I don't think we rose to a
9 level of a for-cause challenge.

10 THE COURT: Yeah. I -- and -- and I -- and I -- you have the right to --
11 to exercise a peremptory challenge, of course.

12 MS. LEXIS: Thank you.

13 THE COURT: You know, I just -- I think that he could be fair and
14 impartial. Or I don't know if this is the right case for him, but I'll leave that up to you
15 to decide.

16 MS. LEXIS: Thank you.

17 THE COURT: All right. And so -- and now do -- does the State want
18 to -- I'm sorry, does the defense want to make its challenges for cause now or wait
19 until tomorrow? You can wait until tomorrow. You don't need to do it today.

20 MR. GASTON: Actually, she did one already that I'm not going to --

21 MS. MACHNICH: Generally, we're -- generally speaking, yes.

22 THE COURT: Oh.

23 MS. MACHNICH: We would like to wait. However, there's one who
24 actually said he couldn't be fair to either side, Mr. Ramnath, who is in Seat 9,
25 Badge No. 19. I -- I thought I was going to get something interesting out of him,

1 and he -- he said he couldn't be fair to the police --

2 THE COURT: He's got -- no. He didn't say he couldn't be fair. He
3 said he has negative feelings towards both sides.

4 MS. LEXIS: That's what I show.

5 THE COURT: Which is a little bit different.

6 MS. MACHNICH: Okay. And we can try to flesh that out. But that
7 was one person that I wanted to bring up and so it was --

8 THE COURT: I thought -- I saw a distinction in there, all right.

9 MS. MACHNICH: That's fair.

10 THE COURT: And so I thought we need a little bit more --

11 MS. MACHNICH: And -- and that's fair, if we're not there yet. And we
12 certainly have more time. But that was just a concern I had, I wanted to bring up
13 while it's fresh in my mind today.

14 THE COURT: Okay.

15 MS. MACHNICH: Because it sounded like he couldn't be fair to either
16 side. Like he didn't -- he felt uncomfortable about police officers and
17 uncomfortable about defendants. Like, I don't -- and I don't know where that lands
18 someone, so --

19 THE COURT: Mr. Gaston, why don't you follow up with that a little bit
20 tomorrow.

21 MR. GASTON: Yes, sir.

22 THE COURT: All right. Did we get -- have -- I forget, did we finish our
23 discussion about race at the bench? Or was there something more? I -- I don't
24 have any problem at all with you asking individual jurors about whether they have
25 any bias or prejudice towards this gentleman because of his race.

1 MR. GASTON: I guess -- I guess he --

2 THE COURT: But I -- but I don't think you should ask, like, do you
3 think he can get a fair trial with this jury? As we almost have it empanelled.

4 MR. GASTON: That's definitely not what I was trying to do.

5 THE COURT: Okay.

6 MR. GASTON: I was using that as a segue to talk about race. But I
7 didn't -- I definitely wasn't going to try to get one juror to say this panel can't be fair,
8 ha, ha.

9 But I'm also -- I don't think talk about race should be as limited as
10 Andrew --

11 THE COURT: What did you have in mind?

12 MR. GASTON: I have in mind to first -- generally, the way I do topics
13 is general to specific. So start general about asking the panel as a whole about --
14 to talk a little bit about race -- what their views are on race relations with police
15 officers and in modern America. Talk about Black Lives Matter, talk about how
16 people feel about that, et cetera, whether race is sometimes used as an excuse.
17 How people feel about Affirmative Action, blah, blah, blah, blah, blah.

18 Once I start getting a feel for how jurors think about it, then I follow up
19 specifically with those individual jurors to learn more about their individual views on
20 race and how -- that might affect how law enforcement treats African-Americans or
21 how African-Americans respond to law enforcement, and whether that might affect
22 their own individual jury service.

23 THE COURT: Your -- Mr. Dickerson, did you have a response to that?
24 Did you take issue with --

25 MR. DICKERSON: Yeah. The State's concern in --

1 THE COURT: Yeah.

2 MR. DICKERSON: -- in coming to the bench was that Mr. Gaston was
3 going directly off of what Mr. McAvity said in the box. It was, hey, looking around --

4 THE COURT: Yeah.

5 MR. DICKERSON: -- this guy can't get a fair trial because it's all --
6 basically, all white people is what he was saying. There's no black people here.

7 MS. MACHNICH: And I tried to defuse that when I was up there and
8 he said that. I was like, oh, we're dealing with the law.

9 THE COURT: I started to get a little bit concerned, but I hope -- I -- I
10 think now that he clarified he's not going to go there.

11 MR. DICKERSON: Well, and --

12 THE COURT: He knows better not to go there.

13 MR. GASTON: And -- and to be fair, I should have probably --

14 MR. DICKERSON: And -- and that's what -- that's exactly where he
15 was going when we came up to the bench. So I just wanted the court to be aware
16 of that. If it happens again, that type of questioning, leading the jury into thinking
17 that this defendant here is going to be going uphill, because he has white jurors
18 and no black jurors, we're going to object again.

19 MR. GASTON: To clarify, that's not where I was going. I probably
20 should have used a different segue. It just seemed that to make sense.

21 THE COURT: So --

22 MR. GASTON: I didn't realize at the time that's how it would be taken.
23 I should have started differently.

24 THE COURT: Okay. So -- so the way you described your plan, as
25 long as you're asking questions and not telling the jurors what to think, I'm okay

1 with that. All right. And so -- so, remember, ask questions, don't tell them what to
2 think. I'm okay with that. And, you know, don't suggest to the jurors or elicit a
3 response from any individual juror that this man can't get a fair trial with the jury as
4 currently composed.

5 MR. GASTON: Yes.

6 THE COURT: All right. So I think we'll be okay. Let's just all be a
7 little --

8 MR. DICKERSON: Thank you, Your Honor.

9 MS. MACHNICH: Yeah.

10 THE COURT: -- I'll be cautious.

11 MR. GASTON: Can I clarify one objection? I didn't want to argue back
12 and forth in front of the jury.

13 THE COURT: Yeah.

14 MR. GASTON: It wasn't a big deal, so I just moved on.

15 THE COURT: Hypothetical questions.

16 MR. GASTON: No, no, no. Not that one.

17 THE COURT: Oh, which one?

18 MR. GASTON: I get that one. You can't ask hypothetical questions
19 about the verdict. I -- I get that.

20 THE COURT: You can't say how -- what -- how -- what do you mean,
21 like, what are you going to decide back there?

22 MR. GASTON: Yeah, I know, I get --

23 THE COURT: You can't ask that.

24 MR. GASTON: I get that. I'll -- I'll --

25 THE COURT: Which one then?

1 MR. GASTON: The asked and answered, because I asked one --

2 THE COURT: But that -- 7.70A, asked and answered, is a valid
3 objection. Now --

4 MR. GASTON: Isn't it different from going from juror to juror?
5 Because I asked the first guy the one question, then I went to the second guy.

6 THE COURT: Yeah. I know. And a lot of civil attorneys, they'll ask
7 the same question over and over to each, to like 24 -- and it's not asked and
8 answered if you go from one juror to the next juror.

9 MR. GASTON: That was my position. I just wasn't sure.

10 THE COURT: But you were kind of like asking it as a whole and -- and
11 having trouble getting a response. And then you ask them again.

12 MR. GASTON: Okay. Yeah.

13 THE COURT: So you weren't really getting a response.

14 MR. GASTON: Okay.

15 THE COURT: And that's kind of iffy on whether that's asked and
16 answered.

17 MR. GASTON: Okay. That's -- that was what I was asking.

18 MR. DICKERSON: It was the State's position that that same question
19 was actually posed to the panel as a whole before, so.

20 THE COURT: It was. And so he did have a valid objection. But -- but
21 I think you were just -- people were just reluctant to speak --

22 MR. GASTON: Okay.

23 THE COURT: -- rather than answering. So -- so it was, like, asked
24 and not answered. But --

25 MS. MACHNICH: Asked and crickets.

1 THE COURT: Yeah. That's why I let you get -- have a little bit of
2 leeway with that. All right.

3 MR. GASTON: All right. Thank you.

4 THE COURT: All right. So tomorrow at 11:00.

5 MS. MACHNICH: Yes.

6 THE COURT: And see you tomorrow, sir.

7 MR. DICKERSON: It looks like Noreen [phonetic] is taking my spot.

8 THE COURT: Oh.

9 MR. DICKERSON: But I appreciate everything. I'll see you here
10 at 11:00 tomorrow.

11 THE COURT: All right. I'll see you guys at 11:00. All right.

12 MS. MACHNICH: Okay.

13 THE MARSHAL: Judge, you've got all four jurors outside.

14 THE COURT: Oh, let's bring them -- let's let them in. Let's bring them
15 all in.

16 MS. LEXIS: Oh, that's right.

17 MS. MACHNICH: Oh, yeah. Oh, my God. Oops.

18 THE COURT: Let's just -- just bring them in.

19 [Remaining four prospective jurors reconvened at 5:32 p.m.]

20 THE COURT: We're still on the record. All right. All right.

21 You guys can just stand right there. That's good.

22 Ms. Justice, Dana Justice, we're excusing you. Thank you very much
23 for your attentiveness so far. You are excused.

24 Stephen Gray, the court is excusing you. You're excused with the
25 thanks of the court.

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Mr. Wheeler, we're -- we're going to keep you for the moment, and you're going to continue to be on this process.

Ms. Hernandez, unfortunately, I'm going to keep you a little bit longer. I -- it sounds like it's a little bit of a hardship, but we hope that -- we hope you can suffer through it and -- and find a way to pay your bills. We would appreciate if you continue to possibly be a juror in this case. All right. We'll see if you make it a little bit further. All right.

So thank you very much. We'll see you two tomorrow at 11:00. Okay.

The admonishment that I gave still applies. All right. Thank you very much.

All right, you guys, I'll see you -- see you tomorrow.

MR. DICKERSON: Thank you, Your Honor.

MS. LEXIS: Thank you.

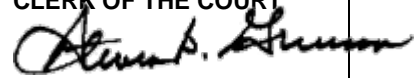
THE COURT: Court's adjourned.

[Court recessed at 5:33 p.m., until July 25, 2017, at 11:10 a.m.]

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



Shawna Ortega, CET*562



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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
vs.
KEANDRE VALENTINE,
Defendant.

CASE NO. C-16-316081-1
DEPT. NO. II

BEFORE THE HONORABLE RICHARD SCOTTI, DISTRICT COURT JUDGE

TUESDAY, JULY 25, 2017

**TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL - DAY 2**

APPEARANCES:

For the Plaintiff:

AGNES M. LEXIS, ESQ.
Chief Deputy District Attorney
MICHAEL DICKERSON, ESQ.
Deputy District Attorney

For the Defendant:

TEGAN C. MACHNICH, ESQ.
Deputy Public Defender
TYLER GASTON, ESQ.
Deputy Public Defender

RECORDED BY: DALYNE EASLEY, COURT RECORDER

1 **LAS VEGAS, NEVADA, TUESDAY, JULY 25, 2017**

2 [Case called at 11:10 a.m.]

3 [Outside the presence of the prospective jury panel.]

4 THE COURT: All right. Good afternoon -- or good morning,
5 everybody. Please be seated.

6 MS. LEXIS: Hello. Good morning.

7 MS. MACHNICH: Good morning.

8 MR. GASTON: Could we -- one issue to bring up before the jury,
9 but 15 seconds.

10 THE COURT: No problem.

11 MR. GASTON: We're working it out real quick.

12 THE COURT: Go ahead. Work it out.

13 [Pause in proceedings.]

14 MR. GASTON: Your Honor, we've -- we had a list of -- not a list -- that
15 makes it imply like it's large, and it really wasn't -- a couple discovery things that
16 we were still working on both sides.

17 On our end, we have an expert identification witness that we're going
18 to be calling in our case in chief. He's not preparing a report in this case, but he --
19 obviously, pursuant to statute and Judge Herndon's ruling, any reports or studies
20 that he relied on in forming his opinion or basis for testimony, we're obligated and
21 going to disclose to the State. Our expert is looking into that and going to get it to
22 us. We talked an hour ago, so when he gets it to us, we'll give it to them.

23 We've given the State a heads up of generally what the -- the topics
24 that he said he's going to look up, and as soon as we get those studies, we're
25 going to give that to the State. We haven't done so yet, though. That's issue one

1 we've resolved amongst ourselves, put it on the record.

2 Issue two is we -- we had a -- we noticed a cell site expert, and we
3 didn't give the State any discovery with respect to, like, cell site location or cell
4 phone data. We don't have any. Our cell site expert might as well not exist
5 anymore. We've told the State that. We're not going to be calling him. We didn't
6 end up getting cell site data. We couldn't find the phone number. So we've given
7 them an update on that.

8 From their perspective, we had an outstanding request regarding the
9 criminal record of three individuals: Omara McBride [phonetic], Chanise
10 something --

11 MS. LEXIS: Williams.

12 MR. GASTON: Williams?

13 MS. LEXIS: Chanise Williams.

14 MR. GASTON: And Bobby McCoy. The State has disclosed to us the
15 criminal records to the extent that they understand it with respect to Chanise
16 Williams, they believe it's a petty larceny, which could be relative to the
17 truthfulness or untruthfulness.

18 Omara McBride, they believe that she had priors for solicitation and
19 prostitution. Same premise, relevant to truthfulness and untruthfulness. They told
20 us about that.

21 The last one is Bobby McCoy, who they have not noticed as a witness,
22 but he is potentially an alternate suspect in this case. And we've disclosed the
23 identifiers to the extent that we have them to the State. The State is going to do a
24 search of his criminal history and will get back to us regarding any convictions for
25 truthfulness or untruthfulness that would be relevant to character for truthfulness or

1 untruthfulness, any prior felonies.

2 And we've indicated that we have a good faith basis to believe that
3 Bobby McCoy is pending trial for murder in California. We can -- we have not
4 found that yet.

5 THE COURT: Okay.

6 MR. GASTON: We, A, are able to find something like that, even
7 though technically that doesn't result in a conviction, we explained our view of how
8 that could still potentially be relevant, especially if the conduct happened prior to
9 this incident in 2016, May 2016, because it could be relevant as to why our client
10 didn't snitch out Bobby, for example, if he knows Bobby is a murderer.

11 So they said they're going to check on that. If it exists, they'll disclose
12 it to us. But they haven't run the check yet, so, obviously, we don't have anything
13 yet. But we've agreed -- we -- I guess we've agreed amongst ourselves regarding
14 all of those things.

15 We have one dispute --

16 THE COURT: It sounds like you worked it all out, so very good. Let
17 me --

18 MR. GASTON: Well, we --

19 THE COURT: -- make sure -- oh, were you done? I -- I didn't mean
20 to -- as soon as you're finished, I need to make sure they agree --

21 MR. GASTON: That's -- that's what I was going to say.

22 THE COURT: -- that it's worked out.

23 MR. GASTON: We have one dispute, but the rest -- that's my
24 understanding of our agreement so far.

25 MS. LEXIS: That is all correct, Your Honor. Thank you for allowing us

1 the opportunity to kind of work it out.

2 THE COURT: Great. No. I appreciate it.

3 So is there something that you need me to resolve, then?

4 MR. GASTON: One -- one request.

5 THE COURT: All right. The State has noticed three rebuttal
6 witnesses. I think they noticed it yesterday. Obviously, we're -- again, pursuant to
7 the rulings we made -- or Judge Herndon made and the arguments in Judge
8 Herndon, the late notice issue isn't really late notice, given the posture of this case.
9 So they did notice three rebuttal witnesses.

10 Now, obviously, we reserve the right to call any of those rebuttal
11 witnesses in our case in chief or anything like that.

12 But the -- the big -- the big issue that we have is one of the records
13 was custodian of Gang Intelligence.

14 Actually, I have a question for the State. 10 seconds. Sorry.

15 [Pause in proceedings.]

16 MR. GASTON: Sorry, we have two issues.

17 So with respect to the custodian of records regarding the Gang
18 Intelligence, it is the position of the State -- or the position of defense, since I work
19 for the defense, that anything -- any tangible objects the State has that it intends to
20 introduce in its case in chief or even rebuttal, if it's statements of the defendant, it
21 needs to be disclosed. The fact that it's rebuttal doesn't change the fact that it's
22 still statements of the defendant.

23 What I'm really worried about is that if they have -- they know our alibi
24 witness. Our alibi. Date client makes the statement when he was being
25 interviewed by police, A, on May 26th, I was -- which is the date of the first

1 robbery, two days before the others -- I was in California at my cousin's birthday
2 party, Damian [phonetic].

3 We had disclosed that as an alibi witness to the State. And if we could
4 get him to answer his phone, that is something we will bring in to trial.

5 They know -- California, the address, the phone number, the identity of
6 the witness, and the entire essence of our alibi.

7 If they have a jail call, for example, because our client's been in
8 custody for 16 months, of our client kind of working this alibi out in advance of
9 Damian and they think that they can wait until rebuttal to disclose this jail call to us,
10 that's in our -- that's inapposite with existing law.

11 It is, first -- two separate prongs. First, it is a statement of the
12 defendant. It needs to be disclosed to the defense, period. Full stop. And I've --
13 the question I just clarified with the State was have you disclosed to us all of the
14 jail calls that exist? They have not. They -- they indicate that they have disclosed
15 to us all of the ones that they intend to introduce in their case in chief.

16 And the fact that we are playing with such fine distinctions makes me a
17 little worried that they are sandbagging a statement of the defendant working out
18 this alibi in advance with Damian or something like that -- some statement of the
19 defendant that contradicts his own alibi, and they're holding it back.

20 CCDC did not disclose to us the entirety of the jail calls. We have all
21 of the jail calls that we believed to have existed. So if there is something like that
22 that is being held back, in order to let me get up in opening and say, our guy's in
23 California at a birthday party, ha-ha. And then they're like, well, Tyler's an idiot,
24 look at this. And then burn our entire credibility in front of the jury, that's also a
25 second objection. That is essentially allowing trial by ambush.

1 The entire purpose of rebuttal witnesses. The entire purpose of
2 rebuttal alibi witness notice is the point of that. And as a rebuttal alibi notice, how
3 helpful is it to say we're noticing custodian of Gang Intelligence? I don't know what
4 that even tells us. Is it a field -- field interview report that we use kind of to verify
5 the PSI gang enhancement stuff where the -- like the field cards where they're,
6 like, hey, we ran into this guy; look at a field interview card; this supports our idea
7 that we ran into this guy on the 25th in Vegas? Because if that's what it is, that
8 should be disclosed, as well. Aside from the fact that, you know, I -- I don't even
9 think that would be admissible in a criminal case.

10 THE COURT: So I need to cut you off now, because you're rambling.

11 MR. GASTON: Yeah.

12 THE COURT: In the future, if you're going to have long motions to
13 make, I want you to do them in writing.

14 MR. GASTON: Sorry.

15 THE COURT: All right.

16 So let me hear from the State.

17 MS. LEXIS: Your Honor, concerning the -- let me just give you just a
18 brief timeline considering -- concerning the alibi.

19 THE COURT: Uh-huh.

20 MS. LEXIS: Defense counsel filed a Notice of Alibi, I believe it was
21 the 14th of July.

22 I filed a Motion to Strike the alibi notice as untimely. Judge Herndon
23 heard that motion yesterday, denied the State's Motion to Strike. However, Judge
24 Herndon did find that the alibi notice was insufficient. It didn't give -- put the State
25 in sufficient notice as to the context with enough specificity of the defendant's alibi.

1 Mr. Gaston and Ms. Machnich, in court, in open court, indicated --
2 gave a better rendition of what the alibi was going to be.

3 I will tell the court that since -- after finding -- after they filed their notice
4 of alibi, I did pull some jail calls concerning this particular alibi witness.

5 THE COURT: Okay.

6 MS. LEXIS: I -- I have not found anything that -- anything that
7 Mr. Gaston is -- is concerned with, such as a defendant forming or trying to put
8 together an alibi.

9 However, the State's position is that rebuttal evidence, impeachment
10 evidence, particularly impeachment evidence that is going to be rendered during a
11 rebuttal case, which is when we would put on a rebuttal case --

12 THE COURT: Uh-huh.

13 MS. LEXIS: -- is not -- is not -- we don't have to disclose that to the
14 defense.

15 I can get law and e-mail it to you at the break.

16 THE COURT: Unless it's anything exculpatory.

17 MS. LEXIS: Correct.

18 THE COURT: You would have a duty, right?

19 MS. LEXIS: Correct. And this would not be --

20 THE COURT: So you haven't found any exculpatory so far?

21 MS. LEXIS: No, sir. No, Your Honor.

22 THE COURT: I mean, but -- well, I mean, you -- do you have a duty to
23 review the jail calls to see if there's anything exculpatory?

24 MS. LEXIS: I don't believe so.

25 THE COURT: Why is that?

1 MS. LEXIS: Well, because they have everything we're going to
2 introduce in our case in chief. And --

3 THE COURT: Oh, they have all the jail calls?

4 MS. LEXIS: They do. They have all of the jail calls that we are going
5 to introduce in our --

6 THE COURT: Well, now, I'm confused. Now I'm really confused.

7 MS. LEXIS: Okay.

8 MR. GASTON: They're drawing the distinction. We have all the jail
9 calls that they're going to introduce in their case in chief. That's the distinction.
10 Not the entirety of the jail calls that exist.

11 THE COURT: Because I -- well, because I said -- I thought I said, do
12 you have -- do they have all the jail calls? And you said yes, and they said no.
13 Because I think you're saying they have all the jail calls that you plan to use in your
14 case in chief.

15 MS. LEXIS: Correct.

16 THE COURT: But there might be some other jail calls.

17 MS. LEXIS: Correct.

18 THE COURT: Okay.

19 MS. LEXIS: And I am --

20 THE COURT: It sounds like they want the other jail calls if you might
21 end up using them in rebuttal. I think that's what he's asking for.

22 MS. LEXIS: I don't think they're entitled to that for two reasons. Again,
23 it's a rebuttal case, and we're not required under law, existing state of the law, to
24 disclose rebuttal evidence.

25 THE COURT: We all keep talking about the law, but no one's, like,

1 saying what the law is. So let's look at the law. It's probably in 174. Let me get
2 that out.

3 MS. LEXIS: Okay. Thank you, Your Honor.

4 THE COURT: I'm waiting for my law clerk to pull it out.

5 MS. LEXIS: And we'll pull it up, as well.

6 THE COURT: Because everyone keeps says the law is this, the law is
7 that. But no one actually wants to cite the law. So I like to cite the law.

8 Let's look at 174. Let's see if we can figure this out.

9 MS. LEXIS: Your Honor, I don't believe it would be under the statutory
10 obligations by the State.

11 THE COURT: Oh, so when you guys are saying law, you're referring
12 to case law?

13 MS. LEXIS: We are, Your Honor. And I can --

14 THE COURT: Well, who's got some case -- I mean, I'm not going to
15 grant a motion unless I have case law.

16 MR. GASTON: Well, I can clarify the disagreement a little bit. I
17 actually agree --

18 THE COURT: Okay.

19 MR. GASTON: -- with their proposition that as a general matter,
20 evidence used solely for impeachment or rebuttal is not discoverable, as a general
21 matter.

22 The question --

23 THE COURT: Okay.

24 MR. GASTON: -- the discrepancy here is Defendant's statements. My
25 position is Defendant's statements --

1 THE COURT: Well, Defendant's statements are discoverable
2 under 174, aren't they?

3 MR. GASTON: Yes.

4 MS. LEXIS: Yes.

5 THE COURT: Let's see -- well, here, 174.235, written or recorded
6 statements or confessions made by the defendant. Those have to be produced.

7 MR. GASTON: That's --

8 THE COURT: Whether it's rebuttal, case in chief, or anything.

9 MR. GASTON: That's the entirety of my position.

10 THE COURT: So -- so if you have any statements of the defendant
11 that haven't been produced, either -- either you've got to produce them now or I'm
12 not going to let you use them, because it would violate the rule, right?

13 MS. LEXIS: I don't think it does.

14 THE COURT: Why? I mean --

15 MS. LEXIS: Because that particular obligation, that statute,
16 Your Honor, is concerning the State's case in chief. It has nothing to do with
17 rebuttal --

18 THE COURT: Where does it say that?

19 MS. LEXIS: -- or impeachment evidence.

20 THE COURT: It doesn't say that. It says except as otherwise
21 provided -- and I'll let you argue if the otherwise provided applies -- it says -- well, it
22 says, at the request of a defendant, so --

23 MR. GASTON: We made that request --

24 MS. MACHNICH: We --

25 MR. GASTON: -- in a discovery motion for --

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THE COURT: Did you make a discovery request?

MS. MACHNICH: We did, yes.

MR. GASTON: In front of Judge Herndon.

THE COURT: It says:

The prosecuting attorney shall permit the defendant to inspect and to copy or photograph any written or recorded statements or confessions made by the defendant.

Let's see:

Or any written or recorded statements made by a witness that the prosecuting attorney intends to call.

I think the intends-to-call part only applies to witnesses, unless -- are you arguing that the intends to call clause applies to statements of the defendant?

MS. LEXIS: I guess I'm -- I'm arguing a -- I am arguing a distinction.

THE COURT: Okay.

MS. LEXIS: And it's different from the statute. I believe case law as it exists both in Nevada Supreme Court, Ninth Circuit, and the U.S. Supreme Court, indicates very clearly that we don't have to disclose rebuttal or impeachment evidence, particularly impeachment evidence that we are going to introduce during a rebuttal case.

And with -- with -- with regard to the defendant's own statements, they have access to -- they could subpoena these calls, and in particular, they have access to the very person who made the -- the calls. The defendant himself would know, better than me, I wouldn't -- I have to listen to hours and hours of jail calls to see if this is going to be known. But they can ask the defendant, did he put -- try to put together an alibi? And did he do that in jail calls? I mean, that's -- that's how

1 they would know.

2 THE COURT: Well, I guess this is -- that kind of, like, raises the -- the
3 first question is, are the jail calls, the -- the statements of the defendant in the
4 possession, custody, or control of the District Attorney's Office? They are actually
5 calls that are monitored by the sheriff's department.

6 MR. GASTON: Well, the -- I think the --

7 THE COURT: Right. So I don't know if -- so I guess the first issue
8 would be are they discoverable under *Brady* or *Giglio*?

9 MR. GASTON: I think the -- well, I would -- I would argue not
10 necessarily --

11 THE COURT: Or the statutes?

12 MR. GASTON: The statutes. Because I don't think they're really
13 exculpatory necessarily. I think under the statute --

14 THE COURT: Well, maybe they're inculpatory.

15 MR. GASTON: Yeah.

16 THE COURT: So are they -- are they -- are they in the possession,
17 custody, or control of the District Attorney's Office?

18 MR. GASTON: I don't think the -- the statute doesn't apply in the
19 custody of the -- I don't think the discovery is in the possession or custody or
20 control of the District Attorney's Office. It's the State of Nevada. And what
21 happens when we subpoena the jail calls from CCDC, they ignore when we do --
22 do those specific.

23 THE COURT: How do you normally get those?

24 MR. GASTON: They send them to the State and the State sends them
25 to us.

1 THE COURT: Is it after you subpoena them?

2 MR. GASTON: Yeah. We don't -- they don't send them directly to us.
3 I've done it twice, and both times they've sent it to the State. So -- and -- and
4 again, it's in the custody and control of the State of Nevada.

5 And just as a basic common sense --

6 THE COURT: So what I'm looking at -- I'm just trying to -- I'm trying to
7 interpret the statute in the most reasonable manner. It talks about the duty to
8 produce written or recorded statements or confessions made by the defendant,
9 then a comma. And then it talks about written or recorded statements made by a
10 witness the prosecuting attorney intends to call, without a comma, so it's all one
11 long phrase.

12 So the intends-to-call clause obviously modifies statements of a
13 witness, not statements of the defendant.

14 MR. GASTON: That would be our position.

15 THE COURT: That's -- that's the plain reading of the statute. All right.
16 Unless there's case law providing otherwise.

17 I -- you know, if you want time to -- to provide me with a case that
18 says, you know -- and since we're -- we're not going to get to the rebuttal case
19 today --

20 MS. LEXIS: Yes, Your Honor.

21 THE COURT: -- if you've got a case that -- that it says that, you know,
22 you don't have to provide inculpatory statements of a -- of a -- of the defendant that
23 you might or might not use in the rebuttal case until you actually decide --

24 MS. LEXIS: Yes, Your Honor.

25 THE COURT: -- I'd like to see that. I'll give you a chance to get that

1 for me.

2 MS. LEXIS: We'll do a bench memorandum.

3 MS. MACHNICH: Could -- could you --

4 MR. GASTON: Well, here's the potential problem, though. The -- the
5 potential problem is, I mean, similarly, if the defendant confesses --

6 THE COURT: Yeah.

7 MR. GASTON: -- let's assume it's not jail calls; let's just assume it's a
8 straight-up confession, audio recorded and everything like that, but it's not
9 mentioned in a police report. Every single case, the -- the district attorney turns
10 that over.

11 THE COURT: Okay.

12 MR. GASTON: But let's imagine that an enterprising district attorney
13 with the same understanding of the law as -- as they're putting forth in this case
14 decides, I'm going to be clever this time. I'm not going to disclose the defendant's
15 confession. It's not mentioned anywhere. I'm not going to disclose it.

16 And then we go forward with trial --

17 THE COURT: Yeah.

18 MR. GASTON: -- and we get up and we're, like, Defendant never
19 talked to the police or there's no statements, he never confessed or anything like
20 that.

21 THE COURT: I understand.

22 MR. GASTON: Then does it really make sense from a common sense
23 perspective that now they're allowed to sandbag that confession on me?

24 THE COURT: But it's not my job as the judge to decide what makes
25 sense or not. It's my job to follow the law. So I'm asking her to provide me with

1 the law on this issue. All right.

2 MR. GASTON: Okay. And the -- the other problem is openings. The
3 other problem is opening statements.

4 THE COURT: I don't get to just ignore the law. I've got to apply the
5 law.

6 MR. GASTON: No. I get that. The -- the problem is opening
7 statements.

8 THE COURT: Okay.

9 MR. GASTON: So on opening statement, I intend to open on an alibi.
10 If that alibi can be patently refuted by Defendant's statements that they're
11 sandbagging, then that's the issue.

12 MS. LEXIS: I'm telling you right now, as it stands --

13 THE COURT: Well --

14 MS. LEXIS: -- there are no such statements. I wish there was.

15 THE COURT: Yeah.

16 MR. GASTON: Okay.

17 MS. LEXIS: I wish there was.

18 THE COURT: So I think that helps resolve the issue.

19 MS. LEXIS: Okay?

20 THE COURT: Now, -- now, if you --

21 MS. LEXIS: As an officer of the court, none.

22 THE COURT: -- if you feel like you get sandbagged later, then we'll
23 decide what to do about it.

24 MR. GASTON: Well, I guess what's -- what --

25 THE COURT: Well, let her -- let her finish. I'm sorry.

1 MR. GASTON: I didn't mean -- I didn't mean to cut you off.

2 THE COURT: As you're saying as an officer of the court.

3 MS. LEXIS: As an officer of the court, can -- these jail calls --

4 THE COURT: Uh-huh.

5 MS. LEXIS: -- that I have not disclosed, that I thought would be
6 relevant to his alibi, Your Honor, they gave a phone number to an alibi witness. I
7 just pulled -- or asked CCDC to pull jail calls the defendant made to this particular
8 phone number.

9 The calls that I have listened to, there are not too many. There are,
10 like, maybe 30 of them.

11 THE COURT: Okay.

12 MS. LEXIS: We're having an extern also listen to them, because --

13 THE COURT: It's still a lot of listening.

14 MS. LEXIS: Right. Because -- or we just got this alibi. I mean, my
15 whole -- my whole objection was it was untimely.

16 THE COURT: Uh-huh.

17 MS. LEXIS: And Judge Herndon allowed it. But he allowed it --

18 THE COURT: He allowed it.

19 MS. LEXIS: He also gave us the benefit of since the actual disclosure
20 was made yesterday, that we could follow our -- our alibi notices as needed.

21 So my Notice of Rebuttal Witnesses for the alibi notice is in an
22 overabundance of caution.

23 THE COURT: Okay. So you have two things. Number one, you've
24 got her representation as an officer of the court, plus you've got your own client,
25 who would have been a participant to the calls. He knows what he said or didn't

1 say. So --

2 MR. GASTON: Well, with respect to the former -- with -- with respect
3 to the former issue, if she's representing that there are -- that she's -- there's no jail
4 calls to her knowledge, that she's going to have --

5 THE COURT: Well, but she hasn't listened to everything personally.

6 MR. GASTON: That's the question.

7 THE COURT: They have interns.

8 MR. GASTON: So once she's done listening to them, if it turns out that
9 there is, her position, she doesn't have to turn it over right now. And that's what
10 we're disagreeing about.

11 And then the second issue is, as rebuttal witness, they noticed
12 custodian of records from Gang Intelligence. Custodian of records is going to
13 authenticate some tangible object to be introduced into evidence. And so what
14 I'm -- if -- if that tangible object is anything that's related to a defendant's
15 statement, then it needs to be disclosed now. That's my position.

16 THE COURT: Well, yeah. I mean, I understand. Would you agree -- I
17 think the State would agree that if your expert formed opinions based upon
18 defense statements, all right, then the defense is entitled to know that before they
19 have to put on their opening statement.

20 MS. LEXIS: In the -- in the context of an expert, yes, Your Honor, I
21 would agree.

22 THE COURT: Okay. And so -- so I think that -- that resolves --

23 MR. GASTON: Well, if it's not an expert -- again, we're playing with
24 the words. In the context of an expert, we would agree.

25 It's not an expert. It's a custodian of records for Gang Intelligence. It's

1 someone who is going to authenticate a document, authenticate a field interview
2 report, authenticate a jail call. They're going to -- they're -- it's not an expert
3 witness. It's someone who is going to authenticate something.

4 THE COURT: Well, this -- so this isn't an expert on gang intelligence.

5 MR. GASTON: No. It's a custodian of records from the Gang
6 Intelligence Metro. So presumably it's going to authenticate some kind of record or
7 document or something. And if that something -- it relies on a defendant's
8 statement --

9 THE COURT: Well, it's something that had to be used in the --
10 intended to be used as part of their case in chief, it would have to be disclosed.

11 So where -- what's the authority that -- that they have to disclose
12 documentary evidence that they may or may not use in their rebuttal case? Where
13 is that authority?

14 MR. GASTON: I actually don't think they -- I don't think they have to.
15 What I'm saying is if it's the defendant's statement. If -- if that -- if the document
16 they're authenticating is a jail call the defendant made, the field interview,
17 interaction with the defendant, involves defendant statements, that has to be
18 disclosed.

19 If it's just something else that they have that's really clever and going
20 to hamstring our case, that's something different.

21 THE COURT: So where is the authority that you want me to rely upon
22 that says if they want to use an inculpatory defendant's statement in their rebuttal
23 case, where do they -- where is the authority that says they have to turn that over?

24 MR. GASTON: First and foremost, NRS 174. The -- the statute we
25 were just looking at, controlling discovery. If they have a statement that's in

1 possession of the State, of the defendant, they've got to turn it over. There's no
2 distinction made between case in chief, they -- in fact, in that same statute, it
3 makes a distinction with witnesses they're going to intend -- they intend to call. It
4 doesn't make that same distinction about Defendant's statements. Because if they
5 wanted to, they could have just said, Defendant's statements that they intend to
6 introduce in their case in chief. It didn't say that. They say that elsewhere when
7 they talk about other kinds of discoverable stuff, but they don't say it there. Why?
8 Because they didn't intend it.

9 And that doesn't -- and usually -- and what I meant by the common
10 sense isn't that we can ignore law and go with common sense or since
11 fundamental justice. But when fundamental justice aligns with the plain reading of
12 the statute, it's a good basis to say we're right.

13 Defendant's statements have to be disclosed, period.

14 THE COURT: All right.

15 MR. GASTON: It doesn't matter if it's rebuttal or not.

16 THE COURT: So I think I'm starting to understand this one. So let me
17 go back to the State.

18 MS. LEXIS: Yes, Your Honor.

19 THE COURT: We'll -- we'll get this resolved.

20 MS. LEXIS: Yes, Your Honor.

21 THE COURT: Are -- is there a possibility -- your -- your custodian of
22 records on Gang Intelligence --

23 MS. LEXIS: Yes, Your Honor.

24 THE COURT: -- are you using this person to authenticate records or
25 recorded statements of a defendant that you may or may not use in -- as part of

1 your rebuttal case? Is that what -- is that what he's designated for?

2 MS. LEXIS: No.

3 THE COURT: Okay.

4 MS. LEXIS: At this point, I'm not sure. I wanted to just note every
5 possible rebuttal alibi witness, because --

6 THE COURT: Okay.

7 MS. LEXIS: -- again, I found out in -- with specificity yesterday, the --
8 the extent of the alibi.

9 So I wanted to just lodge -- I wanted to put them on notice early.

10 THE COURT: Still abundance of caution.

11 MS. LEXIS: In an overabundance of caution.

12 THE COURT: This -- this custodian of records of Gang Intelligence,
13 he's not someone that monitors jail calls?

14 MS. LEXIS: He -- he has access to jail calls.

15 THE COURT: Oh, he has access to --

16 MS. LEXIS: Correct.

17 THE COURT: So he has access to the jail calls?

18 MS. LEXIS: Correct. But he doesn't monitor them.

19 THE COURT: So he has access. Do they -- do they sometimes --
20 when you say access, do they -- do they record them?

21 MS. LEXIS: Sometimes, because --

22 THE COURT: Or just listen in sometimes?

23 MS. LEXIS: It's -- all the jail calls are recorded. The designation with
24 gang intelligence is they're also doing classification and they -- and they do other
25 things.

1 So for instance, they will listen in on a jail call of a particular gang
2 target or someone who is, you know, thought to have been conducting gang
3 activity within the jail, maybe if there's a potential threat, if they know of something
4 that's going on, that's when they'll listen in.

5 THE COURT: So is it possible that this COR of Gang Intelligence is
6 aware of some statement by the defendant that's inconsistent with their proposed
7 alibi?

8 MS. LEXIS: No. I -- I will tell you --

9 THE COURT: You don't know -- you don't know of any -- of anything?

10 MS. LEXIS: I have not spoken to --

11 THE COURT: Okay.

12 MS. LEXIS: -- said COR. I just noticed the COR, so that if --

13 THE COURT: Okay.

14 MS. LEXIS: -- I do find something to rebut the defendant's alibi, I will
15 have the means upon which to introduce it.

16 THE COURT: All right. But you're -- it's not like -- you're not
17 intentionally or negligently withholding anything to your knowledge that -- that
18 would be inconsistent with their alibi?

19 MS. LEXIS: Correct.

20 THE COURT: I think -- I think we're premature on the -- on the issue
21 then. So --

22 MR. GASTON: Fair enough. With respect --

23 THE COURT: So I thank you for flushing it out, guys.

24 MS. LEXIS: Thank you, Your Honor.

25 MR. GASTON: Final issue with the Gang Intelligence -- final issue

1 with the Gang Intelligence, I would just request -- I don't want to have another
2 argument if it turns out to be nothing. If the State does find something they want to
3 use with the Gang Intelligence -- and there's two possibilities: Either A, it involves
4 Defendant's statement and they feel like they don't have to turn it over, that would
5 re-address this issue. Not to wait -- wait and say, well, I -- I just felt like we didn't
6 have to.

7 THE COURT: Here -- here's what I would request, simply if and when
8 it comes to the attention of the State that there is a statement of the defendant that
9 has not yet been produced and is actually or potentially inconsistent with your
10 understanding of their alibi, then you bring it to the attention of the court, outside
11 the presence of the jury.

12 MS. LEXIS: Okay.

13 THE COURT: Is that fair?

14 MS. LEXIS: Sure.

15 THE COURT: Okay.

16 MS. LEXIS: Yes, Your Honor.

17 MR. GASTON: And then final request --

18 THE COURT: Okay.

19 MR. GASTON: -- not a statement, but final request is just period, if
20 they are intending to call the Gang Intelligence custodian of records or whatever,
21 and --

22 THE COURT: They don't have to let you know at this point in time.

23 MR. GASTON: I'm not asking that.

24 THE COURT: -- if they're going to use him in rebuttal.

25 MR. GASTON: Right. I'm not asking that.

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THE COURT: Or --

MR. GASTON: It could be time for them to call him up.

Instead of standing in front of the jury and saying, we're calling John Doe who works in Gang Intelligence, guys, I would just ask that we figure out a way to do this outside the presence of the jury, without implying that he has some kind of gang connection.

MS. LEXIS: I know better than to do that. I wouldn't do that, Your Honor.

MR. GASTON: I didn't think that they would. I just wanted to say it.

THE COURT: I don't need to make any order there. But --

MR. GASTON: And that's all we've got outside the presence.

THE COURT: So -- all right. Excellent.

MS. LEXIS: Okay.

THE COURT: Sounds like we flushed it all out. I'm sorry that it took -- it was a little bit tedious.

MS. LEXIS: No, thank you.

THE COURT: But I think it's helpful for me to ask these questions and get the answers. And thank you for your patience.

MS. LEXIS: Thank you for your patience, Your Honor.

MR. GASTON: I -- I do have one question.

THE COURT: Yeah. Oh, one more? Okay.

MR. GASTON: Just a question. The venire challenge stuff that we did earlier, and I made that one point about how someone from my office told me that the jury commissioner sends the same amount of subpoenas to the ZIP codes and the court indicated that's not consistent with how the court remembers.

1 The -- that attorney's pulling two cases where she thought that that
2 was mentioned to go through the transcript to see if we find it. Is that something
3 that the court would find persuasive if I find -- like, is this a waste of time?

4 THE COURT: Right.

5 MR. GASTON: Or if the court potentially -- is that an issue, if I do find
6 it we can revisit the issue?

7 MR. DICKERSON: Motion to Reconsider.

8 THE COURT: Why don't, if you find something like that, and you can
9 move to reconsider, I'll look at the authority --

10 MR. GASTON: That's what I thought. Okay.

11 THE COURT: -- and then decide. I'm not going to give an advisory
12 ruling until I see the cases.

13 MR. GASTON: Okay. I just didn't want to waste the person's time if it
14 doesn't --

15 THE COURT: No. Well --

16 MR. GASTON: If, I mean --

17 THE COURT: Well, I can't say until I see it.

18 MR. GASTON: Fair enough.

19 THE COURT: All right.

20 MR. GASTON: Thank you.

21 THE COURT: All right. Shirley Hernandez, No. 29, in talking to some
22 of the other judges and JEAs and law clerks, you know, she said she might lose
23 out at \$200, you know, which to me doesn't sound like a lot of money. To --
24 maybe to all of us attorneys, it doesn't sound like a lot of money. Some people
25 think and, you know, if -- if she makes under 40,000 a year, maybe \$200 is enough

1 of a reason to let her go. So I'm going to ask her how much she makes, gross
2 income --

3 MS. LEXIS: Okay.

4 THE COURT: -- if it's less than 40,000. If it's less than 40, you know,
5 then I am going to let her go for hardship.

6 MS. LEXIS: Okay.

7 MR. GASTON: And we submit. We don't have a position.

8 MS. MACHNICH: That's fair.

9 THE COURT: No. I -- I understand. It's just -- I think some people
10 use that 40,000 as a cutoff. So.

11 MR. GASTON: Okay.

12 MS. LEXIS: I understand.

13 MS. MACHNICH: I haven't heard that, but that's a nice cutoff. I
14 mean --

15 THE COURT: Okay.

16 MS. MACHNICH: -- I think that's fair.

17 MR. GASTON: Thank you, Your Honor.

18 THE COURT: Okay. Let's -- let's go ahead and bring the jurors in.
19 Thank you, marshal.

20 [Pause in proceedings.]

21 [Prospective jury panel reconvened at 11:37 a.m.]

22 THE COURT: And you folks in the back, remember, you can sit
23 wherever you want. Feel free to spread out or sit next to friends that you might
24 have made. All right.

25 Marshal, is everybody apparently accounted for?

26

1 THE MARSHAL: Everybody's accounted for.

2 THE COURT: All right. Everyone can be seated.

3 We're -- we're back on the record in the case *State vs. Keandre*
4 *Valentine*, C-316081.

5 For the record, the court has excused Badge No. 001, Dana Justice.

6 And in her place, we've now -- Madam Clerk, please put on the record
7 who has filled Seat No. 1.

8 THE CLERK: Badge 053, Ileana Henriquez.

9 THE COURT: All right. Ms. Ileana Henriquez, you may come forward.

10 And the marshal will give you the biographical form. We'll get to you in
11 a moment. All right.

12 And the court has also excused 008, Stephen Gray.

13 Madam Clerk, please identify the juror who will take that spot.

14 THE CLERK: Badge 054, Carole Martin.

15 THE COURT: Ms. Martin, please come forward. Welcome.

16 And the -- the clerk -- the court marshal will also provide you with a
17 handout. And I'll get to you in a moment. Thank you very much, ma'am. And
18 welcome. All right.

19 Then I have a question for Shirley Hernandez.

20 So we just -- we were discussing financial hardship. I had a question
21 for you that might affect my decision. Can you -- do you mind -- you don't have
22 to -- unless you want to be reconsidered to be excused, do you mind telling me
23 what your gross annual income is?

24 Yeah. Thank you for waiting for the microphone.

25 PROSPECTIVE JUROR NO. 029: It's about 25.

1 THE COURT: 20 -- 25,000 a year?

2 PROSPECTIVE JUROR NO. \$029: Yeah. A year.

3 THE COURT: Okay. Because based upon that, then, because you
4 indicated you might lose out about a couple hundred dollars. And for someone
5 making that income, I can see how \$200 in your situation, where you have a baby
6 dependent, would be a significant amount of money. So I will excuse you for
7 financial hardship, if you still want to be excused.

8 Do you still want to be excused or --

9 PROSPECTIVE JUROR NO. 029: Yes, sir.

10 THE COURT: All right. Then the court will excuse you.

11 So sorry to drag you back here today, but we appreciate your
12 participation this far and maybe sometime in the future you can serve.

13 PROSPECTIVE JUROR NO. 029: Thank you.

14 THE COURT: Thank you.

15 Madam Clerk, will you please call the next person in order to take
16 Seat No. 029.

17 THE CLERK: 055, Meryl Grant.

18 THE COURT: 055, please come forward.

19 And that's Meryl Grant. All right.

20 So let's chat with those three people.

21 Ms. Henriquez, will you please provide us with the information that's on
22 the form. You saw how we did it yesterday. Do you feel comfortable just speaking
23 and following along the form?

24 PROSPECTIVE JUROR NO. 053: Yeah.

25 THE COURT: Go ahead, then.

1 PROSPECTIVE JUROR NO. 053: My badge number is 0053. My
2 name is Ileana Henriquez. I lived here for 20 years. My highest education is high
3 school. No -- no job. Not married. No kids. And I've never served on a jury.

4 THE COURT: All right. And let me ask you, have you ever served --
5 have you ever been a -- a witness in a criminal lawsuit before?

6 PROSPECTIVE JUROR NO. 053: No.

7 THE COURT: No? Have you ever been convicted of a -- of a crime?

8 PROSPECTIVE JUROR NO. 053: No.

9 THE COURT: Have you ever been a victim of a serious crime?

10 PROSPECTIVE JUROR NO. 053: No.

11 THE COURT: No? All right. Do you know any -- are you -- are you
12 personally or have any close friends or relatives that -- that have connections to
13 law enforcement?

14 PROSPECTIVE JUROR NO. 053: No.

15 THE COURT: Okay. Well, very much -- I very much appreciate all
16 your information. Thank you.

17 Could you pass the microphone down two spots.

18 And now we're going to talk to Ms. -- are you Carole Martin?

19 PROSPECTIVE JUROR NO. 054: I am.

20 THE COURT: All right. Please provide us with your information.

21 PROSPECTIVE JUROR NO. 054: Carole Martin. My badge is 0054.
22 I've lived in Clark County a little over six years. I completed a little over a year of
23 college. Job position, I'm retired, but I was an administrative assistant. I am
24 divorced. I had one child, almost 47. And I've never served on a jury.

25 THE COURT: Have you ever been a witness in a criminal lawsuit?

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PROSPECTIVE JUROR NO. 054: No.

THE COURT: Have you ever been convicted of a crime?

PROSPECTIVE JUROR NO. 054: No.

THE COURT: Have you ever been a victim of a serious crime?

PROSPECTIVE JUROR NO. 054: No.

THE COURT: Have -- have you personally or have any close friends or relative that have connections to law enforcement?

PROSPECTIVE JUROR NO. 054: No.

THE COURT: All right. Well, thank you very much, Ms. Martin.

PROSPECTIVE JUROR NO. 054: Uh-huh.

THE COURT: So let's pass the microphone up to the -- up one row and down a couple slots until we get to Ms. Meryl Grant, in Seat No. 15.

Hello, Ms. Grant.

PROSPECTIVE JUROR NO. 055: Good morning.

THE COURT: Good morning. And let -- give me one moment before you start, if you don't mind. All right.

You may proceed.

PROSPECTIVE JUROR NO. 055: I'm Badge No. 055. My name is Meryl Grant. I've lived in Clark County a little over 16 years. I have an undergraduate degree. I have a legal assistant certificate. And I've had many classes in master's programs. Job position, I've been a housewife for many years. Prior to that, I managed a contract department for a telecommunication company. I'm married. I have two children, one is 22 and one is 21. And I've served on a jury before.

THE COURT: What type of case was it, civil or criminal?

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PROSPECTIVE JUROR NO. 055: It was criminal.

THE COURT: Without telling me the verdict, did they reach a verdict?

PROSPECTIVE JUROR NO. 055: Yes, we did.

THE COURT: And did you happen to serve as a foreperson?

PROSPECTIVE JUROR NO. 055: No, I did not.

THE COURT: All right. Do you think -- did anything about that prior jury trial experience -- would anything make it difficult for you to serve again in this case?

PROSPECTIVE JUROR NO. 055: There was a gun involved. And it --

THE COURT: Okay.

PROSPECTIVE JUROR NO. 055: -- and when we were deliberating, we passed it around, and I was just flipped out being in a room with a gun. And I touched it, and it was just -- I remember how heavy it was, and it just -- I've never forgotten it.

THE COURT: Okay.

PROSPECTIVE JUROR NO. 055: I -- because I've never been around a gun, touched a gun, or done anything with a firearm.

THE COURT: Wow. Well, I don't think we're going to need to ask you to do that here. So -- but if the attorneys think that that might come up, can ask you some questions about that.

PROSPECTIVE JUROR NO. 055: Sure.

THE COURT: So thank you for mentioning that. All right.

The three new people, do you all believe that you could listen carefully to the evidence in this case and -- and follow the law? I see you shaking your heads. Anybody think that they can't -- can't do that? Nobody. Okay.

1 And the three new people, if you're chosen to be on the jury panel, can
2 you be fair and objective in this case? So just shake your head yes, if you think
3 you can.

4 I see the -- the person in Seat No. 1. I didn't -- I couldn't tell what you
5 were -- do you think you could be fair and objective? Or do you have some
6 concerns in this case?

7 PROSPECTIVE JUROR NO. 053: I have a little bit of concern.

8 THE COURT: All right. Well, let's talk to you for a second. Ms. --
9 Ms. Grant, could you pass the microphone back to the lady in Seat No. 1.

10 Let's talk to you just briefly. Let's find out, Ms. Henriquez.

11 PROSPECTIVE JUROR NO. 053: Yes.

12 THE COURT: So -- so we need to have jurors that are fair and
13 impartial, that means jurors that are going to listen to -- all the -- the evidence and
14 apply the law that I give to you and then make a decision based on the law and the
15 facts.

16 PROSPECTIVE JUROR NO. 053: Right.

17 THE COURT: Do you have some concerns about your ability to do
18 that?

19 PROSPECTIVE JUROR NO. 053: Yes. Because I just kind of -- I
20 don't know if I should say this, but I feel a little sympathetic for the defendant.

21 THE COURT: Okay. So you feel a little bit of sympathy --

22 PROSPECTIVE JUROR NO. 053: Yes.

23 THE COURT: -- even though you don't know anything --

24 PROSPECTIVE JUROR NO. 053: Yeah.

25 THE COURT: -- what happened; right?

1 PROSPECTIVE JUROR NO. 053: Well, just because he's a
2 defendant. And I have two family members that are -- well, one was a defendant
3 and one is currently a defendant.

4 THE COURT: Oh, I see. Okay.

5 PROSPECTIVE JUROR NO. 053: And so I don't want him to get put
6 away or anything like that.

7 THE COURT: So you have two -- two family members that are
8 defendants. Are they in -- defendants in ongoing active cases?

9 PROSPECTIVE JUROR NO. 055: One is. One is, yeah.

10 THE COURT: So let me tell you -- let's -- let's find out. Let me get the
11 information about that.

12 Tell me about the first one. What -- what -- what's the relation to you
13 with this person?

14 PROSPECTIVE JUROR NO. 053: The first one was my little brother.

15 THE COURT: Your brother. And -- and what was he charged with?

16 PROSPECTIVE JUROR NO. 053: DUI.

17 THE COURT: Okay. DUI. All right. And is that an active case?

18 PROSPECTIVE JUROR NO. 053: Not anymore.

19 THE COURT: No? Okay. Well, what happened to your -- what was
20 the sentence given to your brother?

21 PROSPECTIVE JUROR NO. 053: He -- he didn't get anything, but --

22 THE COURT: All right.

23 PROSPECTIVE JUROR NO. 053: -- he did go to jail for --

24 THE COURT: He didn't go to jail?

25 PROSPECTIVE JUROR NO. 053: Just for, like -- he was just, like,

1 held when -- when they arrested him.

2 THE COURT: All right. Do you think he was treated unfairly?

3 PROSPECTIVE JUROR NO. 053: No, not him.

4 THE COURT: Okay. All right. So tell me -- tell me about the other
5 situation. Who is -- who is your relative?

6 PROSPECTIVE JUROR NO. 053: And -- and then the second one is
7 my cousin.

8 THE COURT: Your cousin?

9 PROSPECTIVE JUROR NO. 053: Yes.

10 THE COURT: What happened to your cousin?

11 PROSPECTIVE JUROR NO. 053: Also DUI.

12 THE COURT: And what was his sentence?

13 PROSPECTIVE JUROR NO. 053: Well, one is ongoing and the other
14 one they -- they -- I forgot what he told me, like, classes or stuff like that.

15 THE COURT: So it's two --

16 PROSPECTIVE JUROR NO. 053: But he did go to jail for two days,
17 too.

18 THE COURT: Was it two different DUIs?

19 PROSPECTIVE JUROR NO. 053: Yes.

20 THE COURT: And he went to jail for one of them?

21 PROSPECTIVE JUROR NO. 053: Yes.

22 THE COURT: And do you think he was treated improperly in -- in both
23 or one of those cases?

24 PROSPECTIVE JUROR NO. 053: No. He wasn't treated -- I don't
25 think he was treated improperly.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 053: But --

3 THE COURT: So you're just -- because you have family members that
4 are defendants, you feel a little bit of sympathy --

5 PROSPECTIVE JUROR NO. 053: Right.

6 THE COURT: -- towards the defendant?

7 PROSPECTIVE JUROR NO. 053: Yes.

8 THE COURT: Okay. I understand that. I'm going to let the attorneys
9 ask you some more questions about that.

10 PROSPECTIVE JUROR NO. 053: Okay.

11 THE COURT: And we'll see where this -- where this leads you. Okay.

12 PROSPECTIVE JUROR NO. 053: Okay.

13 THE COURT: But thank you for being honest to us.

14 PROSPECTIVE JUROR NO. 053: Yeah. I just thought I'd mention it.

15 THE COURT: That's important for -- for you to mention.

16 PROSPECTIVE JUROR NO. 053: Right.

17 THE COURT: But do you think -- I'm going to -- at the end of the case,
18 I'm going to give you what -- what Nevada law is. I'll confer with the attorneys.
19 And I'll -- and then I'll instruct all of the jurors on what Nevada law is. Do you
20 believe that you can do your duty as a juror in following the law?

21 PROSPECTIVE JUROR NO. 053: I don't know if my, like, you know,
22 emotions will get in -- in the way.

23 THE COURT: You worry a little bit about your emotions?

24 PROSPECTIVE JUROR NO. 053: Yeah. A little bit.

25 THE COURT: Okay. Is that related again to your family members?

1 PROSPECTIVE JUROR NO. 053: Yeah, I -- yeah. And for, you know,
2 the defendant's family members and stuff like that.

3 THE COURT: The defendant's family members. Right. Okay. Do
4 you, as a general proposition, believe that -- that if -- if people are found guilty for
5 violating serious crimes in Nevada that they should be punished for that, as a
6 general proposition?

7 PROSPECTIVE JUROR NO. 053: I feel that they should, but I also
8 feel that, you know, a little bit more sympathetic for them and stuff.

9 THE COURT: Okay. So do -- do you agree, then, that under the
10 American system of justice a defendant is presumed innocent until and unless --

11 PROSPECTIVE JUROR NO. 053: Yes, I know that.

12 THE COURT: Until and unless shown otherwise, right?

13 PROSPECTIVE JUROR NO. 053: Right.

14 THE COURT: Right. So -- I mean, so we -- everybody in this room --
15 not just you, but everybody in this room should be looking at this defendant,
16 assuming that he's --

17 PROSPECTIVE JUROR NO. 053: Innocent.

18 THE COURT: -- he's innocent as he's sitting right here, right?

19 PROSPECTIVE JUROR NO. 053: Right, right.

20 THE COURT: Right. But the State has the burden of proving beyond
21 a reasonable doubt all of the elements of the crimes charged; do you understand
22 that?

23 PROSPECTIVE JUROR NO. 053: [No audible response.]

24 THE COURT: They have -- the State has the burden of proof.

25 PROSPECTIVE JUROR NO. 053: All right.

1 THE COURT: Right. All right. And so if the State can prove all of the
2 elements of the crimes that are -- that are charged in this case, then are you
3 capable, as a juror, of finding him not guilty or finding a guilty verdict, if that's
4 what -- where the evidence leads you?

5 PROSPECTIVE JUROR NO. 053: I can try, yes, but --

6 THE COURT: All right.

7 PROSPECTIVE JUROR NO. 053: -- you know, I will still feel --

8 THE COURT: You still feel a little bit --

9 PROSPECTIVE JUROR NO. 053: -- that.

10 THE COURT: -- concerned?

11 PROSPECTIVE JUROR NO. 053: Yes.

12 THE COURT: Okay. All right. Well, you're doing a good job in
13 answering my questions, and that's all I have right now. But let me ask you also, if
14 the State fails to meet its burden of proving beyond a reasonable doubt all the
15 elements of the crimes, then are you capable of doing your job as a juror in finding
16 the defendant not guilty?

17 PROSPECTIVE JUROR NO. 053: Yes.

18 THE COURT: Okay. All right. Very good. Thank you.

19 Did any of the new people also have any -- any similar concerns they
20 wanted to raise with me? No. I don't see any. All right.

21 So let's -- let's see where we are in the voir dire. We were in the
22 middle of the defense.

23 MS. MACHNICH: Your Honor, can we approach very briefly?

24 THE COURT: Yes.

25 MS. MACHNICH: And we'll actually be brief this time.

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THE COURT: Of course. Yeah. Of course. Of course.

[Bench conference transcribed as follows.]

THE COURT: Briefly. Let's go ahead. Did I do something wrong?

MS. LEXIS: No. Well, no. Ms. -- the -- the 70-year-old -- we have a 70-year-old, and technically under statute, people who are 70 can be given the option to get out. And so I just ask that she be asked that question at this point before we get into anything about -- I mean, right now she's completely neutral, because we don't know what her bias is or her answers.

THE COURT: Yeah. I could ask her. But it is the statute --

MS. MACHNICH: Yeah.

MS. LEXIS: That's fine.

THE COURT: -- if she wants to be dismissed.

MS. MACHNICH: I [indiscernible].

MR. GASTON: Procedurally do you want me to go back and [indiscernible] or do you want Ms. Machnich to talk to them [indiscernible] comes back?

THE COURT: I could probably --

MS. MACHNICH: Yeah, I don't know.

THE COURT: I will probably go to the State to voir dire the new people that it could pass for cause --

MR. DICKERSON: Appreciate that.

THE COURT: -- and then I'll go back to you guys.

MS. MACHNICH: Okay. Thank you.

MS. LEXIS: Thank you.

[End of bench conference.]

1 THE COURT: All right. So a question on Ms. -- Ms. Martin. Let's
2 see -- one second.

3 Without drawing undue attention to you, you -- given your age, you
4 have the option of not serving if you don't want to serve. We would appreciate
5 having you on our jury, if you want to participate in the process, it would be a great
6 honor to allow you to -- to stay and participate and see if you get chosen. But I -- I
7 am allowed to -- to offer you the right to -- to be excused if that's what you want.

8 PROSPECTIVE JUROR NO. 054: Okay. I'm sort of -- I'm sort of torn,
9 because I would like to serve, but I do -- I watch my grandchildren in the
10 afternoons. And I also have a medical appointment on Monday and Tuesday that
11 I've --

12 THE COURT: I'm pretty sure we're going to be going into Monday --

13 PROSPECTIVE JUROR NO. 054: Yeah. That I've already changed,
14 sorry.

15 THE COURT: -- and possibly deliberations Tuesday.

16 PROSPECTIVE JUROR NO. 054: Right.

17 THE COURT: We'll done -- I'm -- I'm pretty sure we'll be done by -- by
18 Tuesday, but I can't -- all right. I guess?

19 MS. MACHNICH: We're hopeful.

20 THE COURT: We're hopeful.

21 PROSPECTIVE JUROR NO. 054: Okay.

22 THE COURT: Yeah. So I'll leave it up to you. Either way, it doesn't --
23 doesn't matter to me. You know, it would be great to have you, but -- but I
24 certainly understand you have those other commitments. But the law gives you
25 the right to decide in this case.

1 PROSPECTIVE JUROR NO. 054: Okay. I think I would like to serve.
2 THE COURT: You would like to serve?
3 PROSPECTIVE JUROR NO. 054: I would, yeah.
4 THE COURT: All right. Well, I hope -- hope you're able to adjust your
5 schedule and make arrangements, and we'll try to move this case along.
6 Thank you very much for -- for participating. I appreciate that. All
7 right.
8 We'll see where this leads up. All right.
9 I'm now going to ask the State to -- even though we were doing the --
10 what's called the voir dire by the defense, since we have new people, I'm now
11 inviting the State to ask questions to the three new people that we have on the
12 panel. And then decide whether to approach and make any challenges on the
13 record. All right.
14 MR. DICKERSON: Great. Thank you, Your Honor.
15 THE COURT: Yes, sir.
16 MR. DICKERSON: Greetings, new folks. Thanks for joining the panel.
17 Ms. Hernandez, you have two family members facing --
18 PROSPECTIVE JUROR NO. 053: Yes.
19 THE COURT: -- facing criminal cases, ma'am?
20 PROSPECTIVE JUROR NO. 053: Yes. The it's Henriquez.
21 THE COURT: Henriquez.
22 MR. DICKERSON: Oh.
23 THE COURT: We let -- I -- I excused Ms. Hernandez.
24 MR. DICKERSON: That's right. I apologize. Ms. Henriquez.
25 Ms. Henriquez, do you not feel that the system has treated your family

1 members fair?

2 PROSPECTIVE JUROR NO. 053: No, I think they did treat them fair.

3 MR. DICKERSON: Okay. So keeping that in mind, do you believe in
4 this system that we have of criminal justice and the jury in general?

5 PROSPECTIVE JUROR NO. 053: Yeah.

6 MR. DICKERSON: Yeah? Do you see the benefit of this American
7 right of the jury system to have a fair and impartial jury?

8 PROSPECTIVE JUROR NO. 053: Yes.

9 MR. DICKERSON: And as part of that, do you agree that the jury
10 can't -- or it would really go against this whole system for the jury to rewrite the law
11 in deliberations?

12 PROSPECTIVE JUROR NO. 053: I don't understand what you said,
13 sorry.

14 MR. DICKERSON: So as a jury, you would be required to follow the
15 law. You'd be instructed by the judge in what the law is, including the law that you
16 can't consider sympathy. Okay.

17 PROSPECTIVE JUROR NO. 053: Yeah. That's what I have trouble
18 with.

19 MR. DICKERSON: Okay.

20 PROSPECTIVE JUROR NO. 053: But I can't help it.

21 MR. DICKERSON: So if the judge instructs you on the law, are you
22 going to be able to follow that law?

23 PROSPECTIVE JUROR NO. 053: Probably not, actually.

24 MR. DICKERSON: Why is that?

25 PROSPECTIVE JUROR NO. 053: Because I do feel sympathy and I

1 can't stop, like, I can't control it.

2 MR. DICKERSON: Okay. And it's fine to feel sympathy for other
3 people.

4 PROSPECTIVE JUROR NO. 053: Right.

5 MR. DICKERSON: But the fact of the matter is, if the evidence shows
6 beyond a reasonable doubt the defendant in a criminal case is guilty, what is the
7 job of the jury?

8 PROSPECTIVE JUROR NO. 053: It is to follow the law and just pay
9 attention to the facts, but --

10 MR. DICKERSON: And at that point in time, would --

11 PROSPECTIVE JUROR NO. 053: -- it's hard for me, I guess, right
12 now.

13 MR. DICKERSON: You seem pretty nervous right now.

14 PROSPECTIVE JUROR NO. 053: I'm a little nervous, yes.

15 MR. DICKERSON: Okay. So what's so hard about it for you?

16 PROSPECTIVE JUROR NO. 053: Putting aside, like, other -- like,
17 when someone -- never mind. I can't -- I can't explain.

18 MR. DICKERSON: It's cool. Just try.

19 PROSPECTIVE JUROR NO. 053: It's hard just pay attention -- just
20 listening to the facts for me.

21 MR. DICKERSON: Yeah.

22 PROSPECTIVE JUROR NO. 053: When someone -- when -- if it's -- if
23 it gets emotional.

24 MR. DICKERSON: How does the fact that you feel that the system
25 has treated your family members fairly play into all of this?

1 PROSPECTIVE JUROR NO. 053: Just the fact that they were put
2 away for -- and I didn't want them to get put away for longer. You get me? So,
3 like, I wouldn't want someone's family members to get put away.

4 MR. DICKERSON: If they were still treated fairly?

5 PROSPECTIVE JUROR NO. 053: Yes.

6 MR. DICKERSON: It's just -- was sad -- it was a sad thing in your life,
7 right?

8 PROSPECTIVE JUROR NO. 053: Yes.

9 MR. DICKERSON: Okay. So if you are picked to be on this jury, what
10 can you tell me about your ability to be fair and impartial and listen to the facts as
11 they come out?

12 PROSPECTIVE JUROR NO. 053: I would listen to the facts and stuff,
13 but if it gets emotional, that would probably overcome the facts.

14 MR. DICKERSON: Okay. So you might get emotional --

15 PROSPECTIVE JUROR NO. 053: Yes.

16 MR. DICKERSON: -- is what you're saying? Okay. Do you know
17 anybody who has been the victim of a crime?

18 PROSPECTIVE JUROR NO. 053: No.

19 MR. DICKERSON: No? You, yourself, have never been a victim of a
20 crime?

21 PROSPECTIVE JUROR NO. 053: No.

22 MR. DICKERSON: All right. Have you, yourself, ever been accused
23 of a crime?

24 PROSPECTIVE JUROR NO. 053: No.

25 MR. DICKERSON: Okay. Thank you, Ms. Henriquez. I appreciate it.

1 PROSPECTIVE JUROR NO. 053: Uh-huh.
2 MR. DICKERSON: Go ahead and pass the mic. Who else do we
3 have? Yeah.
4 Ms. Martin, how you doing, ma'am?
5 PROSPECTIVE JUROR NO. 054: Good.
6 MR. DICKERSON: Thank you for making the decision to serve. You
7 have been in Las Vegas for six years.
8 PROSPECTIVE JUROR NO. 054: Uh-huh.
9 MR. DICKERSON: In Clark County, I should say.
10 PROSPECTIVE JUROR NO. 054: Right.
11 MR. DICKERSON: Where were you before that?
12 PROSPECTIVE JUROR NO. 054: Chicago.
13 MR. DICKERSON: And you were an administrative assistant as a
14 career?
15 PROSPECTIVE JUROR NO. 054: Yes.
16 MR. DICKERSON: Where were you an administrative assistant?
17 PROSPECTIVE JUROR NO. 054: At INT Inc.
18 MR. DICKERSON: And what is that?
19 PROSPECTIVE JUROR NO. 054: It's a business management
20 system -- company.
21 MR. DICKERSON: And you've never served --
22 PROSPECTIVE JUROR NO. 054: A secretarial, kind of, you know.
23 MR. DICKERSON: And you've never served on a jury?
24 PROSPECTIVE JUROR NO. 054: No.
25 MR. DICKERSON: So you making the decision to sit here and -- and

1 serve, what is it that you feel is guiding you to make that decision?

2 PROSPECTIVE JUROR NO. 054: Well, I feel I can be impartial. And
3 I've been called, I think -- I guess this is my third time to be called, I think. And the
4 other two times I was let go. And so I figure third time's a charm, as far as I should
5 probably do it.

6 MR. DICKERSON: Very good. All right. There we go. I appreciate
7 that.

8 We'll go ahead and pass the microphone to Ms. Grant, Badge No. 055.
9 How you doing, ma'am?

10 PROSPECTIVE JUROR NO. 055: Fine.

11 MR. DICKERSON: Two adult kids.

12 PROSPECTIVE JUROR NO. 055: Yes.

13 MR. DICKERSON: Previously been on a jury.

14 PROSPECTIVE JUROR NO. 055: Yes.

15 MR. DICKERSON: How long ago was that? I didn't catch it.

16 PROSPECTIVE JUROR NO. 055: I think it was, like, back in the '80s.

17 MR. DICKERSON: Okay. And where was that?

18 PROSPECTIVE JUROR NO. 055: Arlington, Virginia.

19 MR. DICKERSON: Is that where you're from?

20 PROSPECTIVE JUROR NO. 055: I lived there.

21 MR. DICKERSON: Okay. Where are you from originally?

22 PROSPECTIVE JUROR NO. 055: New Jersey.

23 MR. DICKERSON: Okay. And are your kids here in Las Vegas?

24 PROSPECTIVE JUROR NO. 055: No. One of them just graduated
25 from college and moved to Baltimore --

1 MR. DICKERSON: Okay.

2 PROSPECTIVE JUROR NO. 055: -- for employment. And the other
3 one is finishing his last year in college and is doing a summer internship in
4 Washington, D.C.

5 MR. DICKERSON: Fantastic. So other than that jury trial in the '80s,
6 you've never been around guns before?

7 PROSPECTIVE JUROR NO. 055: No.

8 MR. DICKERSON: You're scared of guns, I take it?

9 PROSPECTIVE JUROR NO. 055: Yes.

10 MR. DICKERSON: That's your only real concern about your jury
11 service is guns in general?

12 PROSPECTIVE JUROR NO. 055: Yes.

13 MR. DICKERSON: Okay. Okay. You don't --

14 PROSPECTIVE JUROR NO. 055: We had a -- years ago we had a
15 family business and they used to -- we had people broke windows or stuff or
16 shoplift and we'd -- my mother would go to court for that.

17 MR. DICKERSON: Okay. And that's when you were a child?

18 PROSPECTIVE JUROR NO. 055: Yeah.

19 MR. DICKERSON: Okay.

20 PROSPECTIVE JUROR NO. 055: Younger.

21 MR. DICKERSON: Do you know anybody else who has been accused
22 of crime?

23 PROSPECTIVE JUROR NO. 055: No.

24 MR. DICKERSON: Other than that experience as a kid with your
25 family business, anybody else that's been a victim of crime?

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PROSPECTIVE JUROR NO. 055: I can't think of any.

MR. DICKERSON: So other than your fear of guns, we aren't going to force you to -- to hold a gun or anything; is that okay?

PROSPECTIVE JUROR NO. 055: Yeah.

MR. DICKERSON: Can you be fair and impartial and listen to the facts as they will come out?

PROSPECTIVE JUROR NO. 055: Sure.

MR. DICKERSON: Okay. I appreciate it.

We'll pass for cause, Your Honor.

MR. GASTON: Court's indulgence.

Good morning -- afternoon.

To recap a little bit with the new people, briefly, Ms. Henriquez -- this goes to everybody, the three new people, I'm assuming you guys were all listening and paying attention yesterday when everyone was talking? So show of hands, yes? Okay. So I don't have to rehash everything.

But, briefly, Ms. Henriquez, did -- anything that we talked about yesterday, did you have any strong opinions about one way or the other? Anybody say anything, you're, like, well, that guy's wrong, I can't wait to get called on to correct that guy? Or anything you -- you would have added had I called on you? No? Okay.

Just for the mic, because they record everything.

PROSPECTIVE JUROR NO. 053: No.

MR. GASTON: Okay. Ms. Martin --

If we can pass the microphone.

-- same question.

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PROSPECTIVE JUROR NO. 054: No.

MR. GASTON: Okay. And if we could -- or people just help me. And same -- same question.

PROSPECTIVE JUROR NO. 055: Yes, I did.

MR. GASTON: Okay. Will you pass the microphone over.

PROSPECTIVE JUROR NO. 055: I felt really strongly yesterday when your colleague was starting to make the analogy using a doctor, that my husband --

MR. GASTON: About a doubt in the blood transfusion and stuff?

PROSPECTIVE JUROR NO. 055: I'm sorry?

MR. GASTON: About doubt in the blood transfusion and stuff like that? Is that what you're --

PROSPECTIVE JUROR NO. 055: No. When she said -- and -- just my ears perked up more when she said what if it was a doctor who did this and went on to start talking about that.

MR. GASTON: All right.

PROSPECTIVE JUROR NO. 055: Because my husband's a physician, and I really don't like it when I start hearing things about physicians starting to get bashed or just anything bad about them. I take it really personally.

MR. GASTON: Okay. Because your husband's a doctor?

PROSPECTIVE JUROR NO. 055: Yes.

MR. GASTON: To clarify, not to rehash what Ms. Machnich was talking about, I don't think she was bashing physicians.

PROSPECTIVE JUROR NO. 055: No, but --

MR. GASTON: I think she was just giving you an example of

1 something important.

2 PROSPECTIVE JUROR NO. 055: Right. But I just don't like hearing
3 them used as -- as examples, either.

4 MR. GASTON: Okay. Okay. Fair enough.

5 I mean, obviously, I'm super likable and friendly and charming. But --
6 why is everyone laughing? But because she used the -- the doctor as an example,
7 do you have any strong feelings towards Ms. Machnich or anything that -- because
8 she's going -- I mean, she's an attorney on the case. She's representing
9 [indiscernible].

10 PROSPECTIVE JUROR NO. 055: I just heard it. And it just -- what
11 can -- you know, it's, like, if you hear somebody start telling a lawyer joke, you
12 know, whether it's good or bad, you -- your ears just perk up and --

13 MR. GASTON: Well, I know lots of lawyer jokes. I can't even think of
14 a doctor joke.

15 PROSPECTIVE JUROR NO. 055: Right. Well, I just heard it and I
16 just --

17 MR. GASTON: Okay. I'm just --

18 PROSPECTIVE JUROR NO. 055: -- started to listen more closely to
19 what she was -- where she was going to go with it.

20 MR. GASTON: Sure. Okay.

21 PROSPECTIVE JUROR NO. 055: How's that?

22 MR. GASTON: Here's -- here's what I'm trying to get to. Does that
23 cause -- when she gets up and talks and argues and asks questions of witnesses
24 and does her job, are you going to listen to her less? Are you going to kind of --
25 I -- I guess if we're using that race-card-finish-line-marathon-runner analogy thing,

1 where we're both starting here at the line -- is -- Ms. Machnich -- I keep calling her
2 Tegan, and Tegan is her first name -- Ms. Machnich starting kind of behind the line
3 a little bit because of the physician comments and stuff?

4 PROSPECTIVE JUROR NO. 055: I don't know.

5 MR. GASTON: Okay. Is it possible?

6 PROSPECTIVE JUROR NO. 055: I don't know.

7 MR. GASTON: You -- you heard the example I used earlier. And it
8 kind of worked out perfectly in this case; sometimes jurors are good for certain
9 cases.

10 PROSPECTIVE JUROR NO. 055: Right.

11 MR. GASTON: Sometimes they're not good for others.

12 Just the victim -- prior victim of sex assault is probably not a good juror
13 for a sex assault trial. Armed robbery might be different. There's good jurors and
14 bad jurors for different types of cases.

15 PROSPECTIVE JUROR NO. 055: Right.

16 MR. GASTON: In a case like this, given how it started, do you think
17 you might be a better juror for another case, if they don't -- if it didn't start that
18 way?

19 PROSPECTIVE JUROR NO. 055: Possibly, yes.

20 MR. GASTON: Okay. If you were the defendant in this case, would
21 you want someone like yourself to be on the jury?

22 PROSPECTIVE JUROR NO. 055: No.

23 MR. GASTON: Okay. I'm going to ask that as a general -- does
24 anyone else have -- does anyone else agree wholeheartedly that if they were the
25 defendant right now, they wouldn't want themselves on the jury? Show of hands.

1 Okay. Thank you, thank you.

2 If -- all right. Anything else that we talked about that struck out at you
3 or anything like that?

4 PROSPECTIVE JUROR NO. 055: No, no.

5 MR. GASTON: Okay. Okay. All right. So yesterday we talked about
6 some general stuff. We talked a lot about I think poor people in general, higher
7 arrest rates, whether that means they commit for crimes or not, how people view
8 that. And I think we had talked -- I think pretty ad nauseam, but we went into a lot
9 of detail about that.

10 We were transitioning to start talking about race when we took the
11 break for the afternoon. So let's -- let's talk about that.

12 And again, there's a lot of sensitive topics that we bring up. And
13 people tend to be fairly polarized on different aspects, but that's what we've got to
14 do, because those are the kind of issues that can lead a jury to go one way or the
15 other, despite what the facts say, and so that's what we're worried about. All right.

16 Who here is familiar with the statistic at some point in their
17 lives 25 percent of black men have been incarcerated? Show of hands? Heard
18 something like that? Okay.

19 Similarly like what we're talking about poor people, does anyone think
20 from that statistic that that means black males commit more crimes than other
21 demographics? Okay.

22 I see one hand. Mr. McAvity.

23 Anyone else? I see Mr. Raczka.

24 PROSPECTIVE JUROR NO. 024: Yeah.

25 MR. GASTON: Anybody else? Okay.

1 If we can pass the microphone back to Mr. Sheldon.

2 You guys thought I was going to call on you because you raised your
3 hand.

4 You didn't raise your hand. Why?

5 PROSPECTIVE JUROR NO. 015: Well, I was -- I was sitting here
6 thinking what you said. Could you say that one more time? Your last statement.

7 MR. GASTON: Yeah. And I speak pretty quickly, too, so if I'm -- tell
8 me to slow down a bit.

9 We talked a little bit about how poor people -- and we're just all
10 assuming this is the case -- I don't actually have a study for you, that poor people
11 get arrested more for crimes than affluent people, does that mean poor people
12 commit more crimes?

13 Similarly, we've all heard a statistic, something similar of 25 percent of
14 African males have been incarcerated at some point in their lives in the United
15 States. Does that mean to you that African-American males are more likely to
16 commit crimes than other demographics? So because 25 percent of -- I mean,
17 not 25 percent of Caucasian males are arrested. Do you think -- or have been
18 incarcerated -- do you think that means black men commit more crimes?

19 PROSPECTIVE JUROR NO. 015: If that statistic is firm, yeah, that
20 would make sense.

21 MR. GASTON: Okay. So fair enough. You -- you don't know one way
22 or the other, if the statistic is true, it implies they commit more crimes?

23 PROSPECTIVE JUROR NO. 015: Just by, like you said, like what you
24 hear.

25 MR. GASTON: Okay.

1 PROSPECTIVE JUROR NO. 015: I mean, I'm -- I'm -- I don't study it.
2 I don't know it. I have friends that are African, you know, black males. And, you
3 know, they're just like me. I see other ones that are not like me. So, I mean, you
4 just got to go by with what you see and experience, I guess.

5 MR. GASTON: If we could pass the mic -- thank you.

6 If we could pass the microphone down to Mr. McAvity.

7 You did raise your hand.

8 PROSPECTIVE JUROR NO. 006: Yeah, well, I've -- I've read
9 statistics. I know statistics. I know that African-Americans are 13 percent of the
10 population in America. And they create -- you know, they're more -- they're the
11 ones that create the most crime.

12 Do I blame that on -- on economic? Partially. Partially it's economic.
13 Others, bad decisions. Mostly it's bad decisions.

14 But everybody has a choice to make their own decisions. And I
15 believe that.

16 MR. GASTON: Thank you.

17 If we could pass the microphone down to Mr. Raczka. Down here in
18 the middle, sorry.

19 You -- you also raised your hand. Why?

20 PROSPECTIVE JUROR NO. 024: Well, I -- like I said before, I lived in
21 Detroit for 25 years. And I mean, there's a lot of, you know, crime in Detroit. And
22 it's primarily, you know, from African-Americans. And my daughter lives in
23 Chicago and it's the -- you know, same thing right now. So it's just -- you know, it's
24 you're -- what you're exposed to for your whole life and --

25 MR. GASTON: So can you think of -- I mean, you're not saying it's like

1 a -- something genetic about making you black also makes you a criminal?

2 PROSPECTIVE JUROR NO. 024: No, no, no.

3 MR. GASTON: You're talking about the upbringing of or the culture of
4 growing up in the inner city, Detroit or Chicago, for example?

5 PROSPECTIVE JUROR NO. 024: Correct.

6 MR. GASTON: Okay. If we could pass the microphone to Ms. Day.
7 How do you shake out on this issue?

8 PROSPECTIVE JUROR NO. 023: Kind of exactly the same. I didn't
9 know the statistics. And I don't necessarily buy the fact that they commit more
10 crimes. I think -- and -- and maybe that's true, but maybe it's location. But I don't
11 know if those statistics are United -- the entire United States or --

12 MR. GASTON: Or -- or like Chicago, for example?

13 PROSPECTIVE JUROR NO. 023: Right, right.

14 MR. GASTON: Okay. Can anyone think of some reasons that
15 African -- same premise, that African-Americans make up such a high percentage
16 of the incarcerated population, as opposed to the United States population, other
17 than simply because they commit more crimes? Does anyone have a theory as to
18 why?

19 If you could pass it back to Mr. McAvity.

20 Got a suggestion?

21 PROSPECTIVE JUROR NO. 006: There's a thing called the industrial
22 prison complex. And, basically, what it is, is it's a pay-for-play, states get money
23 for -- to bring people into the prisons, and African-Americans, Latin-Americans,
24 minorities, are the subjects of those mainly.

25 And it's just money, big money. And governments and states, and

1 they're all incorporated with it.

2 MR. GASTON: Let me ask -- let me ask this way. When I gave my
3 example yesterday, I don't remember if I said Walmart or Bob Evans or a grocery
4 store, but you pass two types of groups of kids. All right. You've got teenagers
5 who, well-dressed, wearing a polo, nice fitting clothes, hanging out, and you walk
6 past them without a thought.

7 And then you've got teenagers with baggy clothes, looking a little
8 rougher, and you might think twice. Right? And we said better safe -- you know,
9 political correctness is nice, but better safe than sorry.

10 When I was giving that example -- show of hands -- when I described
11 the people who were wearing the baggy clothes and looking a little rougher, who
12 thought African-American in their head, when they were thinking of the story? And
13 who thought white for the Polos? No show of hands?

14 PROSPECTIVE JUROR NO. 015: Well, that's what you see.

15 MR. GASTON: Pass the microphone to Mr. Sheldon, if we can.

16 PROSPECTIVE JUROR NO. 015: Like, the media, news show.

17 MR. GASTON: Would you say that again.

18 PROSPECTIVE JUROR NO. 015: The media, news, that's what you
19 see. The --

20 MR. GASTON: You mean the --

21 THE COURT: Badge number? Just make sure you give the badge
22 number. It helps the clerk.

23 MR. GASTON: My bad. Mr. Sheldon, badge number?

24 PROSPECTIVE JUROR NO. 015: 015, Rick Sheldon.

25 You know, social media, news, movies, everything. You know, that's

1 what you see. It -- when you say baggy pants, that's what I think. So.

2 MR. GASTON: So we've gotten -- part of the pie-eating competition
3 and we've -- we've talked about this a lot, I think we're kind of getting on now to a
4 point about subtle biases. I don't think anyone here is going to raise a question if I
5 said who here is racist, right?

6 At the end of the day, we're sort of gathering certain personality
7 characteristics by nothing other than their race and their economic situation. Does
8 that strike anybody as wrong? Or inevitable? I guess --

9 PROSPECTIVE JUROR NO. 015: I think it's a better-safe-than-sorry
10 thing.

11 MR. GASTON: Better safe than sorry.

12 So will that affect you in your jury service in this case? We've got a
13 black defendant.

14 PROSPECTIVE JUROR NO. 015: Me personally?

15 MR. GASTON: Yeah.

16 PROSPECTIVE JUROR NO. 015: No. I'm going to -- if I'm chosen,
17 I'm, you know, going to listen to the facts. Like I said, I have friends that are
18 African-American that you, you know, they are put in that same stereotype, like
19 what you are saying, and they're nowhere near like that.

20 MR. GASTON: Could we pass the microphone to Mr. Garfield.

21 PROSPECTIVE JUROR NO. 034: Badge 034.

22 MR. GASTON: How do you -- how -- how -- kind of like a general
23 question, how do you come out on this issue, because we're talking about race
24 and crime and --

25 PROSPECTIVE JUROR NO. 034: Yeah. I think -- I mean, like you

1 said inevitable. I think we're surrounded constantly by images, social media,
2 movies, all that.

3 So, of course, in this kind of situation when you're just asking a general
4 question, sure, that'll pop up in my head. But then you have to look at the actual
5 person, and I judge character. And so when you're talking about baggy clothes
6 and all this, I'm going to think character traits. I -- I don't think color. I don't think
7 crime and that personality is a gender or race. I think it's character.

8 And that's why I said I like to hear when people talk, because you can
9 tell a lot by how someone presents themselves. And that's not how they look, that's
10 not how -- you know, you can -- you can be poor. You can be anything and still
11 present yourself in a way where you show character.

12 And so that's kind of -- yes, when you ask a general question of, okay,
13 is this image going to pop in your head? Yeah, probably, because I've been
14 around it since I was a little kid and the media and everything just pumps it into
15 your head. But then I also can judge character. And I'd rather --

16 MR. GASTON: How would you judge character if the defendant
17 doesn't testify?

18 PROSPECTIVE JUROR NO. 034: That, to me, in -- in my personal
19 opinion, I think that's a judge -- a show of character. Like myself, if I'm accused
20 and I'm innocent, I'm going to step up for myself. That's just how I feel.

21 MR. GASTON: Who here agrees with that? Show of hands? Okay.
22 I -- I want to follow up with this a little bit. But the -- the basic premise, right, I
23 mean -- we talked --

24 Actually, if we could pass it back to -- back to Ms. Smallwood.

25 Two kids in a dispute, step one -- and I keep using it as a principal

1 example. I'm sure there's other functions of your life that I could use as an
2 example.

3 PROSPECTIVE JUROR NO. 017: I'm enjoying this, right, reliving my
4 profession.

5 MR. GASTON: All right. Yes.

6 PROSPECTIVE JUROR NO. 017: Badge No. 17.

7 MR. GASTON: All right. So two -- two kids, right? There's a dispute.
8 Step one is talk to both kids and get both sides of the story, right?

9 PROSPECTIVE JUROR NO. 017: Right.

10 MR. GASTON: Okay. In a criminal case it doesn't always work like
11 that. Who here fundamentally wants to hear both sides of the story before making
12 a decision? Yeah. Okay.

13 How are you going to be able to do that if the defendant doesn't
14 testify?

15 PROSPECTIVE JUROR NO. 017: Well, and as I said yesterday,
16 then -- well, that's when you have to review all of the evidence, all of the other
17 witnesses and statements and look at the whole -- the whole picture, you know, to
18 decide. Because even as my job that I had -- and I wasn't a primary -- I had deans
19 who did it, but they always came to me, and, of course, I, you know, got to know
20 kids and personalities and teachers and personalities, and the ones that could
21 push kids' buttons and -- and things.

22 Bu then, you know, that's when -- you just have to look at the whole
23 history of everything and everybody's statements and -- and make a -- a decision
24 from there, because I had plenty of kids who refused to talk or say anything, too, or
25 to defend themselves and just didn't want to.

1 MR. GASTON: Why do you think they might -- does that mean they're
2 guilty in your mind?

3 PROSPECTIVE JUROR NO. 017: No. They could be afraid.
4 Somebody was threatening them, that, you know, they would have some recourse
5 afterwards when they went back into their neighborhood. You know, they didn't
6 want to be the snitch, you know, so -- or they just were afraid or they grew up in
7 that culture where you just don't -- you just -- you just don't do that. So a variety of
8 reasons.

9 MR. GASTON: So that -- in your mind, that could be a potential
10 reason why an innocent person might not testify, because they don't want to face
11 recrimination back in their neighborhood --

12 PROSPECTIVE JUROR NO. 017: Uh-huh.

13 MR. GASTON: -- for snitching, et cetera?

14 PROSPECTIVE JUROR NO. 017: Uh-huh. Uh-huh.

15 MR. GASTON: Anyone agree with that? Show of hands? Most
16 everybody, makes sense to everybody.

17 If we could pass the microphone to Mr. Lee.

18 PROSPECTIVE JUROR NO. 016: Badge No. 016.

19 MR. GASTON: Somebody's accused you of doing something, and it
20 could be anything. The speed ticket example, stealing your watch from the store,
21 an affair, doesn't matter. Someone accused you of something.

22 Basic response of an innocent person, I didn't do it, right? If the
23 defendant does not get up and say, I didn't do it, are you going to think that there's
24 some nefarious purpose as to why he didn't do that?

25 PROSPECTIVE JUROR NO. 016: No, not in a court of law.

1 MR. GASTON: Okay. And that's the other thing we're talking about,
2 right, following the law and so forth. And I think people get it. Right? You don't
3 know right now what the law right now, you're going to get instructed on it,
4 everyone's going to follow it.

5 But at the end of the day, we don't have these implicit kind of biases.
6 Is it going to nag at you a little bit that you got to hear from all of the State's
7 witnesses, all of the State's witnesses' testimony, et cetera, and not from the
8 person who is accused? Is that going to bother you a little bit in trying to reach a
9 decision of guilty, not guilty?

10 PROSPECTIVE JUROR NO. 016: Personally, no.

11 MR. GASTON: Okay. Does anybody think it will bother them? I see
12 two hands.

13 PROSPECTIVE JUROR NO. 006: You -- you guys are going to be
14 speaking a little more, aren't you? I thought you were -- we're hearing his side of
15 the story.

16 MR. GASTON: Pass the microphone back.

17 Yeah. Say it again for the badge -- badge number. So think of this like
18 a baton of power. If you don't have the baton of power --

19 PROSPECTIVE JUROR NO. 006: Yeah. I'm just -- I'm -- you guys
20 are speaking for on behalf of him to get the -- so you're giving us his side of the
21 story, aren't you? But not just him.

22 MR. GASTON: Well, there's rules. So we can't testify. We -- we
23 weren't there, we didn't see, we're not witnesses.

24 PROSPECTIVE JUROR NO. 006: Uh-huh.

25 MR. GASTON: We -- we're -- our questions and arguments are

1 contained to the facts that are presented in court, so --

2 PROSPECTIVE JUROR NO. 006: So you're just refuting the -- trying
3 to challenge the facts or whatever they bring up, basically?

4 MR. GASTON: Or different roles, whatever.

5 PROSPECTIVE JUROR NO. 006: Yeah.

6 MR. GASTON: But we -- we're not witnesses. We can't testify, you
7 know.

8 PROSPECTIVE JUROR NO. 006: Yeah.

9 MR. GASTON: We can't get up, and you know, there's different roles
10 from a witness and an attorney.

11 So will that bother you a little bit, that you don't get to hear him get up
12 and say what happened or tell his side of the story? All you get is us kind of
13 arguing inferences from the facts presented?

14 PROSPECTIVE JUROR NO. 006: If the facts don't add up, he's
15 innocent.

16 MR. GASTON: Okay.

17 Can we pass it down to Mr. Raczka?

18 Court's indulgence.

19 I've got a question for you.

20 Court's indulgence.

21 PROSPECTIVE JUROR NO. 024: Badge No. 024.

22 MR. GASTON: Thank you. So you raised your hand. It might bother
23 you a little bit if he doesn't get up and testify?

24 PROSPECTIVE JUROR NO. 024: Yes. It might bother me a little bit.

25 MR. GASTON: Why?

1 PROSPECTIVE JUROR NO. 024: Well, I mean, my whole adult life,
2 you know, I've been working for a living, and you know, there's things that happen
3 and you get accused of something once in a while for, you know, maybe you didn't
4 do this or you didn't do that. And you always have to, you know, justify what's
5 been going on or show or explain why. And I'm just -- that's the way I'm brought
6 up.

7 MR. GASTON: Can you think of any reasons why someone might not
8 want to testify, even though they're innocent? Or is it pretty much if he's not
9 testifying, it's probably because, you know, he's got something to hide?

10 PROSPECTIVE JUROR NO. 024: I mean, honestly, it -- it bothers me
11 that if -- if somebody doesn't speak up for themselves.

12 MR. GASTON: Okay. If the judge instructed you, you know, you're
13 not supposed to consider it, you won't consider it?

14 PROSPECTIVE JUROR NO. 024: I mean, I would try not to, but I
15 don't know if I can shut it off.

16 MR. GASTON: That's the best you can say, right, I try -- I try not to,
17 but you're going to think what you think, right?

18 PROSPECTIVE JUROR NO. 024: Uh-huh.

19 MR. GASTON: All right. Can we pass the microphone.

20 So I guess in final -- in finality, when trying to reach a decision of not
21 guilty, if -- I mean, in order to reach a decision of not guilty, it would be important to
22 you that he testifies?

23 PROSPECTIVE JUROR NO. 024: I mean, unless there was no
24 evidence against him, then I wouldn't. But other than that --

25 MR. GASTON: Well --

1 PROSPECTIVE JUROR NO. 024: -- he'd doesn't -- yeah.

2 MR. GASTON: I mean, okay. Who here thinks we're here for
3 absolutely no -- like, because there's no evidence that exists at all? Okay. All
4 right. Fixed that real quick.

5 Someone else raised their hand that it might bother. I talked to you,
6 we'll talk to you. Same -- anything different? Or pretty much what we talked
7 about? Okay. Okay.

8 Can we pass the microphone to Mr. Wheeler. I'm going to come down
9 to the third row, so don't think you guys are off here.

10 You didn't raise your hand. Why wouldn't it bother you? I mean, basic
11 premise, hey, you did this.

12 No, I didn't.

13 If you don't hear the guy say no, I didn't, why won't that bother you?

14 PROSPECTIVE JUROR NO. 022: My -- I don't know. It's just -- it -- I'd
15 have to think about it. I mean, it would depend on what the prosecution -- what
16 evidence they had against him and --

17 MR. GASTON: So you'd look at the rest of the stuff to see what adds
18 up.

19 PROSPECTIVE JUROR NO. 022: Yeah. I don't know. He might be --
20 you know, something -- you know, public speaking, possibly just being nervous
21 and, you know -- you know, if you seem nervous, maybe if you're speaking, you
22 seem guilty. So could -- could be, you know, like --

23 MR. GASTON: I'm going to make that point and I'm going to cheat a
24 little bit.

25 PROSPECTIVE JUROR NO. 022: Right. Yeah.

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MR. GASTON: Can I go to Ms. Henriquez.

PROSPECTIVE JUROR NO. 022: Okay.

MR. GASTON: At this point.

Sorry to pick on you, but you seemed not a fan of public speaking earlier.

PROSPECTIVE JUROR NO. 053: I'm not.

MR. GASTON: Okay. So this is why I'm using you as an example. Can you think of a reason, maybe piggyback off Mr. Wheeler, do you think fear of public speaking might be a reason you're not -- you don't want to get up and testify?

PROSPECTIVE JUROR NO. 053: One of the reasons.

MR. GASTON: Okay. Now, do you think that's outweighed by the fact you're being accused of a crime and public speaking be damned -- darned, you're going to get up and testify anyways?

PROSPECTIVE JUROR NO. 053: No.

MR. GASTON: Okay. You guys get when witnesses testify, right? They get up. They're asked questions by their counsel. They tell their story. Then they're cross-examined by the other side.

Have you ever meant to say something and been misunderstood?

PROSPECTIVE JUROR NO. 053: Yes.

MR. GASTON: Have you ever meant to say something and kind of tripped up your words?

PROSPECTIVE JUROR NO. 053: Yes.

MR. GASTON: Okay. All right. You're a little nervous testifying -- or not testifying -- talking right now, right?

1 PROSPECTIVE JUROR NO. 053: Yeah, a little bit.

2 MR. GASTON: There's no real stakes for you, though, right?

3 PROSPECTIVE JUROR NO. 053: Right.

4 MR. GASTON: Okay. You're not -- because you're not being accused
5 of anything?

6 PROSPECTIVE JUROR NO. 053: Right.

7 MR. GASTON: And you're still nervous?

8 PROSPECTIVE JUROR NO. 053: Yes.

9 MR. GASTON: Anyone think that maybe when you're being accused
10 of all the charges and so forth that the State read earlier, you might be a little
11 nervous? You might be in danger of tripping up? You might think you could tell
12 your story just fine, if you could just get up and tell it. But and being
13 cross-examined might mix you up?

14 Does anyone find that those are just justifications I'm just making up?
15 Or does anyone find those are kind of compelling?

16 Can you pass the microphone back to Mr. Raczka.

17 One second again. Not to keep walking away when you touch the
18 baton of power, but one second.

19 PROSPECTIVE JUROR NO. 024: Badge 024.

20 MR. GASTON: Okay. Did -- the potential reasons we talked about:
21 Fear of public speaking; potentially getting tripped up, especially when the
22 pressure is on; being cross-examined; fear of being punished, so to speak, for
23 snitching; et cetera, does that make you change your mind at all about whether it's
24 important to hear him testify or not?

25 PROSPECTIVE JUROR NO. 024: Not really. I mean, if I was being

1 accused of something -- in fact, the more severe, the more I'd want to, you know,
2 speak for myself.

3 MR. GASTON: Where do you live, if you don't mind me asking? What
4 neighborhood?

5 PROSPECTIVE JUROR NO. 024: Right now?

6 MR. GASTON: What neighborhood?

7 PROSPECTIVE JUROR NO. 024: Aliante.

8 MR. GASTON: Okay. Nice area?

9 PROSPECTIVE JUROR NO. 024: Yeah.

10 MR. GASTON: Okay. Presumably you're not going back home to a
11 neighborhood where you would get in trouble for snitching.

12 PROSPECTIVE JUROR NO. 024: I don't think so.

13 MR. GASTON: Fair to say you probably have a very different
14 upbringing than someone who grew up in the inner city, whatever, right?

15 PROSPECTIVE JUROR NO. 024: Probably.

16 MR. GASTON: Do you think that might -- would you be able to take
17 that into consideration when evaluating someone else's decisions? That they're
18 from a different culture and upbringing than perhaps you were?

19 PROSPECTIVE JUROR NO. 024: Could try to take it into
20 consideration. But don't know if I'd understand it.

21 MR. GASTON: Okay. Fair enough.

22 Mr. Garfield. You raised your hand earlier, if I'm not mistaken, about
23 potentially I'm just kind of making an excuse and justifying why you might not
24 testify.

25 PROSPECTIVE JUROR NO. 034: Right.

1 MR. GASTON: Why do you find the proposed reasons insufficient or
2 unpersuasive?

3 PROSPECTIVE JUROR NO. 034: Just in my personal experience,
4 where if, you know, I've -- I've been accused of things that, I mean, on a minor
5 scale, and if I'm -- if I try to defend myself and I actually have a guilty conscious,
6 yeah, I'm going to slip up a little bit, but I don't really -- I mean, I get it when you're
7 getting cross-examined, it's a different situation, and it's court, okay, this is, you
8 know, a totally different ball game. But I feel like as a -- as a character judgment, if
9 you can't get up and give your side of the story with a -- a clear head and -- and try
10 to defend it, I -- I just can't --

11 MR. GASTON: You mentioned getting tripped up; if you have a guilty
12 conscious you might get tripped up.

13 PROSPECTIVE JUROR NO. 034: But --

14 MR. GASTON: Have you ever been tripped up when you're just
15 talking?

16 PROSPECTIVE JUROR NO. 034: When it's a serious accusation, no.

17 MR. GASTON: No? You ever had a big misunderstanding with a
18 girlfriend or something like that? Or a romantic partner?

19 PROSPECTIVE JUROR NO. 034: No, I usually deserved it, so that's
20 fine. No, but no.

21 MR. GASTON: All right. Whatever. I'm not even going to move on
22 with that. Okay. Fair enough.

23 So you're standing by your position that it's going to be hard for you to
24 get a decision not guilty if he doesn't testify?

25 PROSPECTIVE JUROR NO. 034: I -- I would -- it's not impossible.

1 But I -- I would prefer it. But again, in a court of law, I understand how the law
2 works. And if I would have to just go off evidence, then I would have to just go off
3 evidence.

4 MR. GASTON: Is that something you would consider, though, in -- in
5 reaching your decision of guilty or not guilty, even if you were told by the judge that
6 you're not supposed to?

7 PROSPECTIVE JUROR NO. 034: It -- it --

8 MR. GASTON: I mean, you're not an unthinking automaton, you're not
9 like a computer.

10 PROSPECTIVE JUROR NO. 034: Right. I mean, it's going to be in
11 the back of my head, but I would do my best --

12 MR. GASTON: Okay.

13 PROSPECTIVE JUROR NO. 034: -- in this position.

14 MR. GASTON: Fair enough.

15 One second.

16 Can we -- well -- stick with me for one more second. I'm going to pass
17 it to somebody else.

18 How far did you go in school?

19 PROSPECTIVE JUROR NO. 034: High school diploma, and then I did
20 two years of college.

21 MR. GASTON: You're very articulate, you speak well, confidently. Do
22 you think someone who didn't graduate high school would be as articulate as you
23 are?

24 PROSPECTIVE JUROR NO. 034: Yes. When I was in L.A., I did a lot
25 of music engineering recording, a lot of hip-hop, a lot of singing R&B, I was kind of

1 in that scene. And a lot of the gentlemen I worked with, you know, high school
2 education, but they were brilliant when it came to the music and all that. And so
3 I -- I've had a lot of experience with guys who weren't on my same educational
4 level, but still were fine.

5 MR. GASTON: Can you pass the microphone down to Ms. Jones.

6 PROSPECTIVE JUROR NO. 042: Badge 42.

7 MR. GASTON: Thank you. I keep forgetting. Thank you.

8 How do you come down on the issue of testifying, not testifying, good
9 reasons, you're going to consider it anyways? How do you kind of come down on
10 this?

11 PROSPECTIVE JUROR NO. 042: I think it's his option to testify or not
12 to testify. I'll listen to the facts in the case, and it's not going to persuade me
13 negatively.

14 MR. GASTON: Okay. Do you find -- with respect to potentially being
15 misunderstood, et cetera, do you think it's an increased danger if you never even
16 graduated high school, for example?

17 PROSPECTIVE JUROR NO. 042: It could be.

18 MR. GASTON: Okay. Can we pass the microphone down to Ms. -- I
19 don't have it -- Armanross?

20 PROSPECTIVE JUROR NO. 051: No, Reynolds.

21 MR. GASTON: Reynolds. Oh, Armanruss.

22 PROSPECTIVE JUROR NO. 037: Armanious.

23 MR. GASTON: Armanious.

24 Can we pass the microphone down to him.

25 PROSPECTIVE JUROR NO. 037: Badge No. 37.

1 MR. GASTON: What do you -- what do you think about the testifying
2 aspect of this? We'll come back to the race thing in a second, but the testifying.

3 PROSPECTIVE JUROR NO. 037: I don't think it changes anything in
4 a court of law.

5 MR. GASTON: Okay. Let's assume a guy wanted to lie. He wanted
6 to get up and be, like, I didn't do it. Here's why. Here's where everybody's wrong.
7 Could a liar get up just as well as an innocent person and tell a story?

8 PROSPECTIVE JUROR NO. 037: It's possible.

9 MR. GASTON: Okay. Can we pass the microphone to Ms. Antonucci.

10 PROSPECTIVE JUROR NO. 035: Good morning.

11 MR. GASTON: Good morning. Badge number?

12 PROSPECTIVE JUROR NO. 035: 035.

13 MR. GASTON: Thank you. You nodded a second ago in answering
14 my question. Do you think a liar could get up just as well as an honest person and
15 tell the same --

16 PROSPECTIVE JUROR NO. 035: Absolutely.

17 MR. GASTON: Okay. As a juror, it's believed -- and it's your duty --
18 but it's believed that you guys can do a good job of kind of figuring out the liars
19 from truth-tellers. In your own life, do you think you're pretty good at that?

20 PROSPECTIVE JUROR NO. 035: Pretty good. I'm a pretty good
21 judge of character.

22 MR. GASTON: You ever wrong?

23 PROSPECTIVE JUROR NO. 035: Oh, yeah.

24 MR. GASTON: Yeah. People ever been wrong before --

25 PROSPECTIVE JUROR NO. 035: Nobody's perfect.

1 MR. GASTON: -- about who they thought they should trust with the --
2 the car keys and -- or the -- who they should trust and -- okay.

3 All right. I'm going to move on topics, because I think I can -- I think -- I
4 guess does anyone have any big strong points that they want to make that I didn't
5 bring up regarding testifying, not testifying, the justifications, reasons, for why they
6 should or shouldn't? Okay.

7 Oh, Mr. Reynolds. And thank you.

8 PROSPECTIVE JUROR NO. 051: Badge 051.

9 MR. GASTON: What do you think?

10 PROSPECTIVE JUROR NO. 051: With -- with your thoughts and
11 everything, what comes to mind is partially a resume for a job. You can write
12 anything on your job. You can put wherever you can work. You do things such --
13 you don't put down a phone number, you don't put down a contact, and you say
14 you do whatever. You go into whatever job interview, saying you have all this
15 background experience, and you don't.

16 Obviously, it'll -- it'll show in the job of whether you could keep up or
17 not. But I -- I think not giving any kind of reference or anything like that could
18 easily deter such.

19 MR. GASTON: But on paper, just on the surface, you're telling a story
20 with your resume, agreed?

21 PROSPECTIVE JUROR NO. 051: Uh-huh.

22 MR. GASTON: And that story can sound good, whether it's all made
23 up or whether it's true.

24 PROSPECTIVE JUROR NO. 051: Agreed.

25 MR. GASTON: Yeah. And it's hard to judge.

1 PROSPECTIVE JUROR NO. 051: Uh-huh.

2 MR. GASTON: So you -- you would agree with my point earlier that if
3 someone gets up to testify, that doesn't necessarily mean they're innocent or
4 guilty. It just means they're willing to get up and tell the story.

5 PROSPECTIVE JUROR NO. 051: Agreed.

6 MR. GASTON: Okay. I'm also stealing your job resume, metaphoric,
7 for future trials. I like that one.

8 PROSPECTIVE JUROR NO. 051: Uh-huh.

9 MR. GASTON: All right. Let's go back to race a little bit.

10 Who here is familiar with the Black Lives Matter stuff? Show of hands.
11 There shouldn't be a hand down. Everybody's heard about it. It's in the news.
12 Okay.

13 Can we pass the microphone down to Mr. Duerson.

14 Well, if you -- if I were at -- if I were forcing you to summarize the Black
15 Lives Matter movement and the -- I don't know if backlash is the right word --
16 alternative movement of Blue Lives Matter, et cetera, how would you summarize
17 that? If you were telling me I don't want --

18 PROSPECTIVE JUROR NO. 048: Summarize the backlash?

19 MR. GASTON: Or just summarize kind of what it means when I'm
20 talking about Blue Lives Matter, Black Lives Matter. Pretend I don't know anything
21 about it. What would you tell me? How would you summarize the situation today?

22 PROSPECTIVE JUROR NO. 048: A segment of our society feels that
23 they are picked on unjustly. They are standing up for themselves and standing up,
24 stated their case in such a way that other people felt, no, wait a minute, you're
25 sounding like you're special and there are other people involved here, too. And

1 then the discussion spirals up or down, depending on who you're talking to.

2 MR. GASTON: Anyone think that's an inaccurate summary? It seems
3 very accurate. Okay.

4 Can we pass it back to Mr. Galloway.

5 Now --

6 PROSPECTIVE JUROR NO. 026: Badge No. 26.

7 MR. GASTON: -- focusing specifically on Black Lives Matter, how
8 would you summarize their position?

9 PROSPECTIVE JUROR NO. 026: I -- to summarize their position on
10 Black Lives Matter, maybe they felt picked on and --

11 MR. GASTON: By police?

12 PROSPECTIVE JUROR NO. 026: Yeah. By law or law enforcement,
13 primarily, so.

14 MR. GASTON: Do you think it's a justified position?

15 PROSPECTIVE JUROR NO. 026: Probably in some cases.

16 MR. GASTON: Other cases you think they're just making an excuse?

17 PROSPECTIVE JUROR NO. 026: I don't know. In this day and age, I
18 think it's probably more of an excuse. Back in the '50s and '60s, maybe more
19 justification back then, just because our times as a cultural society, we -- a lot of us
20 have moved past that, so.

21 MR. GASTON: When were the L.A. riots, if you know off the top of
22 your head? I want to say they were '90s, but --

23 PROSPECTIVE JUROR NO. 026: Well, it was the '80s.

24 MR. GASTON: '80s? Okay.

25 PROSPECTIVE JUROR NO. 026: Yeah.

1 MR. GASTON: So that seems like 20 years later, still having the issue
2 of law enforcement and -- does that potentially change your mind that it's more of
3 a --

4 PROSPECTIVE JUROR NO. 026: Was that law enforcement's fault?
5 The L.A. riots? How they got started? I don't know. People have different
6 opinions on how it started.

7 MR. GASTON: I don't know. I -- I thought that was their position, but I
8 don't know. I could be wrong.

9 PROSPECTIVE JUROR NO. 026: Yeah. I don't know.

10 MR. GASTON: Okay. If we can pass the microphone down to
11 Mr. Grusinski.

12 If you know, if you -- what would be your opinion, and watching the
13 news, et cetera -- if you were to summarize kind of from your view, how young
14 black males feel toward police, especially ones who grew up in inner city Chicago,
15 Detroit, inner city areas, how -- what -- what kind of relationships do you think they
16 have with police officers?

17 PROSPECTIVE JUROR NO. 020: I guess I would -- I would imagine
18 how they were raised. Maybe their parents' influence on them.

19 MR. GASTON: Do you -- do you think that their interactions with law
20 enforcement is probably different than your interactions with law enforcement?

21 PROSPECTIVE JUROR NO. 020: I didn't get my hearing aid today,
22 so.

23 MR. GASTON: Can we --

24 PROSPECTIVE JUROR NO. 020: It's difficult hearing.

25 MR. GASTON: Can we get the headphones for Mr. Grusinski?

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PROSPECTIVE JUROR NO. 020: Support.

THE COURT: Thank you.

[Pause in proceedings.]

MR. GASTON: Can you hear me better now?

PROSPECTIVE JUROR NO. 020: We'll see.

MR. GASTON: We've only been going for, like, an hour or so forth, but have -- a lot of the stuff I've said, have you not heard? That I --

PROSPECTIVE JUROR NO. 020: I'm sorry?

MR. GASTON: The stuff that I've said or the stuff that other jurors have said, have you not heard that?

PROSPECTIVE JUROR NO. 020: Most of it.

MR. GASTON: You've heard most of it?

PROSPECTIVE JUROR NO. 020: Yeah.

MR. GASTON: Well, percentage-wise, how much would you say?

PROSPECTIVE JUROR NO. 020: 70, 75 percent.

MR. GASTON: Okay. To a limited extent, this is super important. The stuff that happens in trial, I don't think it's possible to overstate how important it is. If you make it on the jury, can you promise that even if everyone's going full steam, that you'll stop the process and say, wait, wait, wait, I need my hearing aid, if you can't hear? Because you can't be a juror if you're only going to hear 70 percent what people say.

PROSPECTIVE JUROR NO. 020: Oh, I can hear everything you just said now.

MR. GASTON: Okay. So similarly, if you -- if you don't have --

PROSPECTIVE JUROR NO. 020: The hear -- the hearing aids,

1 they're -- they're not a hundred percent.

2 MR. GASTON: Yeah.

3 PROSPECTIVE JUROR NO. 020: And -- and these, yesterday, even
4 with these, I had a little trouble.

5 MR. GASTON: Okay.

6 PROSPECTIVE JUROR NO. 020: But --

7 MR. GASTON: So are you worried that potentially because of your
8 hearing, that you might miss things during trial?

9 PROSPECTIVE JUROR NO. 020: I don't think so.

10 MR. GASTON: Okay.

11 PROSPECTIVE JUROR NO. 020: I can always ask for the transcript.

12 MR. GASTON: Well, it's not the same thing.

13 PROSPECTIVE JUROR NO. 020: Oh.

14 MR. GASTON: There's -- because when we're talking about judging
15 credibility, right, reading a resume on paper is different than seeing a guy, flesh
16 and blood, kind of look at you and tell you a story, right?

17 PROSPECTIVE JUROR NO. 020: Uh-huh.

18 MR. GASTON: So we can agree there's a difference between just
19 reading something on paper and looking at them as they say it, right?

20 PROSPECTIVE JUROR NO. 020: Uh-huh.

21 MR. GASTON: So with that in mind, are you potential -- with that in
22 mind, are you still very confident that you're going to be able to serve as a juror on
23 this case?

24 PROSPECTIVE JUROR NO. 020: I believe so.

25 MR. GASTON: Okay. Because you -- and if you can't hear anything,

1 will you raise your hand and tell us if you're only picking up every other word or
2 something?

3 PROSPECTIVE JUROR NO. 020: Would I? Yes.

4 MR. GASTON: Okay. Okay. So the only thing I'm worried about is
5 this morning you only heard 75 percent of the stuff. And I -- I might not have
6 known it, we might have finished the whole day, and unless I called on you, we
7 might not have noticed. That's what I'm -- that's what I'm worried about.

8 I think we're on the same page.

9 PROSPECTIVE JUROR NO. 020: Yeah.

10 MR. GASTON: Okay. I feel confident. Moving on.

11 So do you -- speaking of -- we left off speaking with -- how young black
12 males might interact with police officers. Do you think how police officers interact
13 with young black males might be different than how they interact with you, from
14 their perspective, the police officers? They might come in with a different attitude,
15 come in with different -- they say different things, they act differently, or no?

16 PROSPECTIVE JUROR NO. 020: Do I -- do I think young black males
17 would react differently to police than with me? I don't have a lot of experience of
18 reacting with young black males.

19 MR. GASTON: Okay. Fair enough.

20 PROSPECTIVE JUROR NO. 020: I don't know.

21 MR. GASTON: Fair enough.

22 Does anyone here think that police officers might treat a young black
23 male differently than they treat someone who was in Summerlin and is white is 35.
24 Show of hands.

25 PROSPECTIVE JUROR NO. 006: Possibly. Possibly. It depends

1 how -- you know, the black male carries themselves.

2 MR. GASTON: Let's assume they carry themselves as the
3 stereotypical inner city black male; do you think that might then cause some
4 problems?

5 PROSPECTIVE JUROR NO. 006: Yes.

6 MR. GASTON: Can we pass the microphone down to Mr. Muhlestein.
7 What to you -- what do you think? I mean, we don't know anything
8 about these people. This -- and this is the bias thing that I keep talking about. I
9 mean, these people I'm describing, we're getting a good idea of the personality,
10 and we don't know anything about them, because the guy doesn't exist. I'm just
11 making him up. Like, black guy, inner city, poor, how he carries himself. But do
12 you feel like you've already constructed kind of a personality profile of this guy?

13 PROSPECTIVE JUROR NO. 039: Yeah. I think so. But at the same
14 time, for me, and what guides me, similar to what -- and by the way, No. 39.

15 MR. GASTON: Thanks. That's my bad.

16 PROSPECTIVE JUROR NO. 039: But what guides me, personally,
17 is -- is looking at a person's character, and not to judge the individual by the
18 outward appearance. And I think for officers, I think in some cases, yes, they will
19 prejudge and look at the -- look at the outward -- what the person looks like, they're
20 coming from a poor, you know, neighborhood, you know, more likely, you know,
21 they're going to look at that person and say, yeah, they're, you know, they're guilty
22 of a crime.

23 But then I think there are other officers who may think otherwise. And I
24 know the media mainly publishes those situations where the former, rather than
25 the latter --

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MR. GASTON: Is more exciting, right?

PROSPECTIVE JUROR NO. 039: Exactly. And there was an -- an article where an officer actually was looking out for this young, black individual, and it didn't get much attention.

MR. GASTON: It's not as good of a story.

PROSPECTIVE JUROR NO. 039: All -- right.

MR. GASTON: Could we pass the microphone to Mr. Maurer.

PROSPECTIVE JUROR NO. 045: Badge No. 45.

MR. GASTON: How do you kind of come down on -- on this issue?

PROSPECTIVE JUROR NO. 045: Which issue in particular?

MR. GASTON: I guess that's a super general question.

PROSPECTIVE JUROR NO. 045: Yeah.

MR. GASTON: Well, let's narrow it down a little bit. Okay. These young black men, do you feel like they might be disrespectful towards police in a way that you would never dream of?

PROSPECTIVE JUROR NO. 045: No.

MR. GASTON: Do you think police might be disrespectful to them in a way that they would never be disrespectful to you?

PROSPECTIVE JUROR NO. 045: I think it's absolutely feasible, yeah.

MR. GASTON: If you were to find out that a black man was super disrespectful to a police officer, would that make you more or less or not be a factor in whether that guy likely committed a crime or not? How would it influence your decision of whether that guy committed a crime or not, if he were super disrespectful to a police officer?

PROSPECTIVE JUROR NO. 045: I don't know it would affect my

1 decision as to whether they committed a crime or not. There's facts that would
2 contribute to that and --

3 MR. GASTON: So the actual evidence of the crime.

4 PROSPECTIVE JUROR NO. 045: Actual evidence of the crime, yeah.

5 MR. GASTON: Okay. Anyone here think that if people are going to be
6 disrespectful to the police officers, they're more likely to commit a crime? One -- I
7 see one hand. Anyone else?

8 If we can pass the microphone to Ms. McGarity?

9 PROSPECTIVE JUROR NO. 050: Yeah.

10 MR. GASTON: Is that good? I wrote down something. I couldn't read
11 my writing, and there was no way it was right.

12 PROSPECTIVE JUROR NO. 050: Okay.

13 MR. GASTON: You did not raise your hand.

14 PROSPECTIVE JUROR NO. 050: No.

15 MR. GASTON: Why?

16 PROSPECTIVE JUROR NO. 050: I've just been listening. What was
17 the -- the policeman --

18 MR. GASTON: If -- if you were to learn that a young black man was
19 being disrespectful to a police officer, not just saying -- omitting sir when he speaks
20 to them, but being, like, blatantly disrespectful, would that impact your decision of
21 deciding whether he's more likely to -- or less likely to have committed a crime?

22 PROSPECTIVE JUROR NO. 050: Not really. I mean, it depends --
23 the situation. I mean, does the guy just walk up to him and start yelling at him? Or
24 is there background? Is there a reason? Was a crime committed somewhere?
25 Are they looking for somebody? It's -- it all depends. It depends on the person, if

1 he's had prior experience with police, he might have a very bad attitude towards
2 them. If he was brought up to not respect police, he might have a very bad
3 attitude.

4 MR. GASTON: And that doesn't necessarily mean it's more or less
5 likely that he committed the crime?

6 PROSPECTIVE JUROR NO. 050: No. It's just the environment.

7 MR. GASTON: So you feel -- I mean, is it safe to say that you feel
8 confident that if -- if you're selected as a juror --

9 PROSPECTIVE JUROR NO. 050: Uh-huh.

10 MR. GASTON: -- and -- and you're going back to deliberate and
11 you're trying to parse the evidence and so forth, that you will be able to do a good
12 job of looking at all of the context --

13 PROSPECTIVE JUROR NO. 050: Yes.

14 MR. GASTON: -- of the evidence and not just one thing or --

15 PROSPECTIVE JUROR NO. 050: Yes. You look at everything.

16 MR. GASTON: Okay. Everybody -- I'm assuming everybody probably
17 agrees with that? I'm not trying to speak for everybody. I mean, does anyone
18 think there's just one thing that would just, like, that -- that's -- that's what I was
19 waiting for? Anybody have that one thing in their head? Okay.

20 THE COURT: So we're going to take a lunch break now.

21 Ladies and gentlemen, during this lunch recess, you are admonished,
22 do not communicate among yourselves or with anybody else about this trial or the
23 subject matter of this trial; do not communicate at all with any of the parties,
24 attorneys, or witnesses involved in the trial; do not seek or obtain any information
25 or comments about the case from any source, including newspapers, television,

1 radio, Internet, e-mail, cell phones, or any other electronic device; do not read,
2 watch, or listen to any report or commentary about the case; do not perform any
3 research or investigation; and do not form or express any opinion on any subject
4 connected with the trial until the case is finally submitted to you for deliberations.

5 To the people in the box and the people in the back, you are all
6 directed to return to the hallway outside this courtroom for further proceedings in
7 one hour. So that would be -- it's now 12:45. So 1:45. And then we'll continue
8 with our process. Okay.

9 Thank you very much. And please take your belongings with you.
10 Thank you folks.

11 [Prospective jury panel recessed at 12:44 p.m.]

12 THE COURT: All right. We're outside the presence of the jury, so
13 lunch break, everybody?

14 MR. GASTON: Your Honor, do you want us to go ahead and address
15 the for cause -- a couple for-cause challenges that we might have already? Or do
16 you want us to wait?

17 THE COURT: Let's -- let's let everybody have a lunch break. It's kind
18 of late.

19 MR. GASTON: Okay.

20 THE COURT: It's, like, 12:45 or so. So yeah. Do you want to -- let's
21 just do that when we're done with --

22 MR. GASTON: That's fine.

23 THE COURT: -- voir dire, all right?

24 MS. MACHNICH: That's fine. Yep.

25 MR. GASTON: Okay.

1 THE COURT: Okay. Cool.

2 MR. GASTON: Thank you.

3 THE COURT: Thank you.

4 MS. LEXIS: Thank you.

5 MS. MACHNICH: Thank you.

6 [Court recessed at 12:45 p.m., until 2:00 p.m.]

7 [Outside the presence of the prospective jury panel.]

8 THE COURT: Okay. How we doing? Are we all set to bring the jurors
9 in and -- and then --

10 MR. GASTON: I believe so, Your Honor.

11 THE COURT: -- proceed with --

12 MS. MACHNICH: Yep.

13 THE COURT: -- Mr. Gaston's questioning?

14 MR. GASTON: I -- I normally have a list of 12 issues or 13 issues to
15 bring up. I have none.

16 THE COURT: All right.

17 MR. GASTON: None.

18 THE COURT: Let's bring the jurors in. And let's just keep going. And
19 then we'll -- and then -- and then when we're done with your voir dire, you can
20 approach and tell me what your --

21 MR. GASTON: Cause challenges?

22 THE COURT: -- challenges are. Okay.

23 MR. GASTON: Yes, sir.

24 THE COURT: Thank you.

25 [Pause in proceedings.]

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[Prospective jury panel reconvened at 2:02 p.m.]

THE COURT: All right. Thank you. Please be seated, everybody.
Mr. Gaston, you still have the floor.

MR. GASTON: Thank you, Your Honor. All right.

So we talked a little bit about race. That was the right not to testify,
testify and justifications, race, how they interacted with the police a little bit.

I think we talked at one point about -- I think it was Ms. McGarity.

PROSPECTIVE JUROR NO. 050: McGarity, yeah.

MR. GASTON: Talked about -- kind of implied a point I want to talk
about: Different degrees of bad.

Can we pass the microphone to -- I'm just picking on someone who
has not talked a lot.

Hermosillo.

PROSPECTIVE JUROR NO. 010: Badge 10.

MR. GASTON: Thank you.

What are the degrees of bad? Being disrespectful; generally bad,
correct?

PROSPECTIVE JUROR NO. 010: Yes.

MR. GASTON: On the other end of the spectrum, murder is bad,
right?

PROSPECTIVE JUROR NO. 010: Yes.

MR. GASTON: And then there's a thousand kinds of gradations along
the way, right? Cheating, lying, committing crimes, et cetera.

As a juror, do you feel confident -- potential juror -- do you feel
confident that you would be able to make the differences in your mind between the

1 different kinds of bad? So there's the bad that's relevant, what he's -- what the
2 guy's been charged with. That's why you're here. Did he do what he's charged
3 with? And are you convinced beyond a reasonable doubt?

4 Let's assume that you -- if -- if you were to learn bad behavior along
5 the way that wasn't what he was charged with, would you be able to keep those
6 separate? Or would you let them influence each other?

7 PROSPECTIVE JUROR NO. 010: Yes, I could keep it separate.

8 MR. GASTON: Okay. And that was a long, compound question,
9 which usually means it's confusing. Did you kind of get what I was trying to --

10 PROSPECTIVE JUROR NO. 010: Yes.

11 MR. GASTON: Okay. Does anyone feel like those might influence
12 them? That those -- those actions might influence each other; the bad on one
13 level, being disrespectful, doing some bad things, et cetera, might influence them
14 in that ultimate decision of guilty or not guilty on what he's charged with?

15 If we can pass the microphone down to Mr. Wheeler. Thank you.

16 My least favorite thing so to ask the question and get crickets. So I
17 appreciate when you raise your hand.

18 Badge number?

19 PROSPECTIVE JUROR NO. 022: 22.

20 MR. GASTON: All right. You raised your hand. So you do think they
21 might influence each other a little in your mind?

22 PROSPECTIVE JUROR NO. 022: Yeah. I mean, if it's a pattern of
23 behavior, I --

24 MR. GASTON: So a guy --

25 PROSPECTIVE JUROR NO. 022: -- I suppose that could -- could

1 influence me.

2 MR. GASTON: Okay. All right. So a guy commits petty larceny from
3 a store. He steals candy bars 17 times, and he's accused of stealing a candy bar
4 this time, he's probably -- he probably stole the candy bar?

5 PROSPECTIVE JUROR NO. 022: Yeah. Yeah. It could -- I -- I mean,
6 if it's -- if there was a pattern, yeah.

7 MR. GASTON: That makes sense?

8 PROSPECTIVE JUROR NO. 022: Yeah.

9 MR. GASTON: That makes sense. What about different things?

10 He's --

11 PROSPECTIVE JUROR NO. 022: Yeah.

12 MR. GASTON: A guy's accused of cheating, or you know this guy
13 always cheats on his tests in school --

14 PROSPECTIVE JUROR NO. 022: Uh-huh.

15 MR. GASTON: -- and he's accused of getting into a fight with some
16 other kid. So he's bad on one level.

17 PROSPECTIVE JUROR NO. 022: Uh-huh.

18 MR. GASTON: Would you -- would you think those would influence
19 each other?

20 PROSPECTIVE JUROR NO. 022: Possibly, possibly. Yeah.

21 MR. GASTON: So kind of implying a little bit about character?

22 PROSPECTIVE JUROR NO. 022: Right, yeah. Yeah.

23 MR. GASTON: So if the guy does some bad, you can infer he has a
24 bad character, therefore he might do some other things that are bad?

25 PROSPECTIVE JUROR NO. 022: Yeah. Possibly, yeah. It's -- yeah.

1 MR. GASTON: Do you feel like as a juror you would be able to keep
2 those separate and kind of focus on whether the actual evidence presented is
3 sufficient or not?

4 PROSPECTIVE JUROR NO. 022: Yeah. Yeah. I would think so,
5 yeah.

6 MR. GASTON: Does anyone think they might have a problem kind of
7 drawing those distinctions? We talked earlier about distinctions between whether
8 you liked the guy or not is different than whether he's guilty or not guilty. I mean, it
9 would -- it would suck to be in a system where you've got to be liked to -- this is
10 coming from you as four friends. But it would suck to be in a system where you
11 have to be liked to be acquitted.

12 Similarly here, some bad behavior doesn't equal all bad behavior.
13 Does everybody agree with that? Anybody disagree strongly or want to talk?
14 Okay. Okay.

15 Can we pass the microphone down to Ms. Antonucci. Badge number,
16 please?

17 PROSPECTIVE JUROR NO. 035: 035.

18 MR. GASTON: Do you think that people are ever falsely accused of a
19 crime?

20 PROSPECTIVE JUROR NO. 035: Absolutely.

21 MR. GASTON: Okay. Does anybody here ever think that people --
22 can that -- that people -- so I'm assuming -- everybody raise their hand.
23 Everybody thinks that being falsely accused is possible. Agreed? Okay. All right.

24 Someone may be lying, they want to make up a story about you,
25 et cetera. Let's assume nobody is lying, do you still think it's possible to be falsely

1 accused of a crime?

2 PROSPECTIVE JUROR NO. 035: Yes.

3 MR. GASTON: Okay. And what kind of scenario? What -- like how?

4 People could be mistaken or --

5 PROSPECTIVE JUROR NO. 035: Mistaken, mistaken identity.

6 MR. GASTON: Okay. You heard the story from Mr. Galloway about
7 what happened when he was younger. If you remember the -- being falsely
8 identified by the neighbor. Do you think -- and they -- and my understanding is
9 they caught the real guy later.

10 PROSPECTIVE JUROR NO. 026: Yeah.

11 MR. GASTON: Do you think that can happen to other people, as well?

12 PROSPECTIVE JUROR NO. 035: Yes.

13 MR. GASTON: And actually, I'm just going to stay with Mr. Galloway,
14 because I'm going to talk about this.

15 Can we pass it to Mr. Galloway.

16 PROSPECTIVE JUROR NO. 026: Badge 26.

17 MR. GASTON: How old were you?

18 PROSPECTIVE JUROR NO. 026: 16, 17, somewhere in there.

19 MR. GASTON: Okay. Did you know your neighbor that well?

20 PROSPECTIVE JUROR NO. 026: I didn't know the neighbor. It was
21 at my friend's house. It was his neighbor.

22 MR. GASTON: Oh, okay. So you never seen the neighbor before
23 really.

24 PROSPECTIVE JUROR NO. 026: No.

25 MR. GASTON: Safe to assume the neighbor wasn't just out to get

1 you?

2 PROSPECTIVE JUROR NO. 026: I don't think so. I don't know why.

3 MR. GASTON: Neighbor probably wasn't like this guy, this is the guy.

4 PROSPECTIVE JUROR NO. 026: Right. Right, I'm assuming.

5 MR. GASTON: Okay. So the neighbor -- from the neighbor's
6 perspective, presumably the neighbor is being helpful, honest, and trying to figure
7 out who broke into their house, right?

8 PROSPECTIVE JUROR NO. 026: Right.

9 MR. GASTON: At the end of the day, though, that neighbor identified
10 your car and you as the person who did it?

11 PROSPECTIVE JUROR NO. 026: Yeah, we were there. But we
12 were --

13 MR. GASTON: How do you think that could have happened?

14 PROSPECTIVE JUROR NO. 026: Well, because we were in the area.
15 We were leaving my friend's house. And right around the time, I guess --

16 MR. GASTON: But it sounds like the neighbor identified your car as
17 the car that was used to --

18 PROSPECTIVE JUROR NO. 026: Right.

19 MR. GASTON: How do you think that mistake can happen?

20 PROSPECTIVE JUROR NO. 026: Because we were leaving the
21 scene.

22 MR. GASTON: Okay. So kind of being in the area?

23 PROSPECTIVE JUROR NO. 026: Yeah. We were there in the area.

24 MR. GASTON: When the neighbor identified you, were you in
25 handcuffs?

1 PROSPECTIVE JUROR NO. 026: I was.
2 MR. GASTON: Okay. Were you near the cop car and everything like
3 that?
4 PROSPECTIVE JUROR NO. 026: Yeah. We were all in the cop car.
5 Yep.
6 MR. GASTON: Okay. Do you think that might have influenced the
7 decision a little bit of your neighbor?
8 PROSPECTIVE JUROR NO. 026: Me being in handcuffs influence --
9 it could have.
10 MR. GASTON: There's not six of you lined up behind a screen like
11 you see on TV; it's just you in handcuffs?
12 PROSPECTIVE JUROR NO. 026: Well, there was three of us.
13 MR. DICKERSON: And Your Honor, I'm going to object at this point in
14 time, Rule 7.70D, this is going to be in substance argument of the case.
15 MR. GASTON: I'm talking about how a -- this is an identification case.
16 I'm talking to the jurors about their views on identifications, misidentifications --
17 MS. LEXIS: And speaking --
18 MR. GASTON: -- and how they feel about that.
19 MS. LEXIS: Well, we object as to the speaking responses, as well.
20 MR. GASTON: Okay. If they want to object and do that, then we can
21 approach.
22 THE COURT: Why don't you guys come forward.
23 [Bench conference transcribed as follows.]
24 THE COURT: So is this --
25 MS. LEXIS: This is an ID case. I mean --

1 THE COURT: Is this similar to the facts of this case?
2 MR. DICKERSON: Yeah.
3 MS. LEXIS: It is so similar.
4 MR. DICKERSON: Extremely.
5 MS. LEXIS: And he just, basically, put out there in front of the jury now
6 that this is an identification case. That's in substance argument.
7 MR. GASTON: This is the fifth time that they've objected.
8 MS. LEXIS: I mean --
9 MR. GASTON: I don't -- I shouldn't have to be the one to ask to
10 approach every time. If they want to object about something substantive, then
11 shouldn't they object and I have to approach? If they want to approach, then
12 approach. If they want to do objections in front of the jury, then that's --
13 MS. LEXIS: Well, we didn't do speaking --
14 MR. GASTON: I was responding -- I was responding on the essence.
15 I don't want to have to be the one who is always asking to approach.
16 MR. DICKERSON: I think that the -- the response shows --
17 THE COURT: Well --
18 MR. DICKERSON: -- that it is, in fact, argument of the case, the
19 response that it is an identification case, this is what he's trying to argue it now.
20 MR. GASTON: I think it's the other way around. I think --
21 THE COURT: Since you can't ask questions or in substance
22 arguments of the case, it sounds like you're trying to argue to the jury that this is a
23 case of mistaken identity.
24 MS. LEXIS: Uh-huh.
25 THE COURT: And that just -- just because someone's in the area, that

1 you can't just assume they're guilty. That's what you're trying to do. You're not --

2 MR. GASTON: I think -- it's the other way around.

3 THE COURT: It's not the purpose of voir dire.

4 MR. GASTON: No. It's the other way around. I -- I couldn't care less
5 if -- who, you know, thinks less that mistaken identities could happen. I care the
6 other way around. I want to know who thinks mistaken identities don't really
7 happen. [Indiscernible] because the fact is, in this case, five people are going to
8 stand up, point their finger at my client --

9 THE COURT: Okay. I -- I'm sustaining the objection.

10 MR. GASTON: So --

11 MS. LEXIS: Thank you.

12 THE COURT: -- because you're too close to the line here.

13 MS. LEXIS: Thank you.

14 MR. GASTON: Am I allowed to talk about identification at all?
15 Because I should have the right to probe who thinks identification is so powerful
16 that they don't need to hear anything else? Who thinks it doesn't lead to mistakes?

17 THE COURT: I'll give you room. I -- no, you're getting too close to the
18 line here, on that.

19 MS. LEXIS: I agree.

20 MR. GASTON: But if it -- if -- my question is what --

21 THE COURT: I'm getting very frustrated with this.

22 MR. GASTON: I -- I guess this is the most critical part of my entire voir
23 dire. Because, you know, in essence, I'm asking the jury -- at the end, we're going
24 to be asking those jurors --

25 THE COURT: How far do you think he can go on this?

1 MS. LEXIS: Your Honor, he can ask as to biases, preconceived
2 notion --

3 THE COURT: I can't hear you. I'm sorry.

4 MS. LEXIS: -- he can -- I'm sorry, Your Honor. He can ask about
5 biases, preconceived notions. He can try to go over to that route. But right now,
6 he is arguing his case. He is saying this is an identification case. If he's using this
7 particular juror's experience to argue mistaken identity, identification, which is the
8 crux of this particular case.

9 Now, maybe he can do it in closing arguments, maybe he can do that
10 during trial. But this is not the proper venue to make these arguments.

11 MR. GASTON: She might have a right to know which jurors don't find
12 this persuasive, which jurors are going to be the ones who say, I don't need to
13 hear anything else --

14 THE COURT: What, that mistaken identity happens?

15 MR. GASTON: The other way around. I want to know which jurors
16 think -- some of us don't think like this. I want to know which jurors are going to
17 think at the end that five people saying my guy did it is enough and they don't need
18 to hear anything else. I want to know which jurors don't find --

19 [Indiscernible] interrupt.

20 I want to know which jurors aren't going to potentially think that a
21 mistaken identity case is about the defense.

22 THE COURT: So he's -- he's entitled to know that. How can he go
23 about that doing that?

24 MR. DICKERSON: Well, but he's asked that -- so he did ask does
25 everybody believe that he could be --

1 THE COURT: He's asked one or two people that.

2 MR. DICKERSON: But he also asked the whole venire, and he got
3 responses from everybody, generally, as he accepted it -- yeah, there can be
4 mistaken identity. And --

5 THE COURT: I don't --

6 MR. DICKERSON: -- and that was in the affirmative.

7 MS. LEXIS: He's -- he's --

8 THE COURT: I -- I don't know.

9 MS. LEXIS: He's already asked and answered that.

10 THE COURT: Let me -- you know what, we're going to take a break.
11 And I'm going to have to think about this. Because this is --

12 MR. GASTON: Thank you, Your Honor. Thank you.

13 [End of bench conference.]

14 THE COURT: All right. We're going to take a break, and I've got to --
15 I've got to think about this some more. Because I'm not sure what the answer is.
16 So.

17 So here's what we're going to do. I'm going to order a 10-minute
18 recess.

19 In this recess, don't communicate among yourselves or with anybody
20 else about this trial or the subject matter of the trial; do not communicate at all with
21 any of the parties, attorneys, or witnesses involving this trial; do not seek or obtain
22 any information or comments about the case from any source, including
23 newspapers, television, radio, Internet, e-mail, cell phones, or any other electronic
24 device; do not read, watch, or listen to any report of or commentary about the
25 case; and do not conduct any research or investigation; do not form or express any

1 opinion on the subject connected with this trial until the case is finally submitted to
2 you for deliberations. All right.

3 So we're actually going to take 15 minutes. During the 15-minute
4 recess, I'm going to order the attorneys to meet and confer and talk about this
5 issue that they brought up at the bench. And the court's ordering them to come up
6 with a solution. All right.

7 And I'll -- and I'll tell you -- then I'll rule on the objection that was made.
8 All right.

9 So you guys, please be back here in 15 minutes.

10 [Prospective jury panel recessed at 2:15 p.m.]

11 THE COURT: All right. We're outside the presence of the jury.

12 So I think it's kind of ridiculous that you guys can't work this out. But
13 I'm going to order you guys to meet and confer. And I -- for six minutes, and then
14 I'm going to come back and see if you guys worked it out. If you can't work it out,
15 I'm just going to make a ruling and someone's going to be happy, someone's not
16 going to be happy. And who knows, maybe we'll just end -- end voir dire now. I
17 don't know. But we'll be back -- I'll be back in about 12 minutes. Okay. You guys
18 meet and confer.

19 MR. GASTON: Thank you, Your Honor.

20 THE COURT: Now, I'm -- I'm ordering you guys, nobody leave for at
21 least six minutes --

22 MR. GASTON: Absolutely.

23 THE COURT: -- while you guys try to work this out.

24 MR. GASTON: Absolutely.

25 MS. MACHNICH: That's fair.

1 THE COURT: All right. On the scope of questioning about identity.
2 All right. This can't be the first time either one of you guys have tried a case
3 involving identity. All right.

4 So we're off the record.

5 [Court recessed at 2:16 p.m., until 2:25 p.m.]

6 [Outside the presence of the prospective jury panel.]

7 THE COURT: Okay. Let's go. All right.

8 MR. GASTON: We have reached a consensus.

9 THE COURT: Great. Good. Good. Because I have some notes, but
10 why don't you tell me what you guys figured out.

11 MR. GASTON: So we agree on a couple things. We -- I mean, we
12 agree on everything, but we agree first and foremost that I can't be using specific
13 scenarios such as his story or making up my own story about what's good, what's
14 bad, et cetera. And regardless, really, that's just period, can't do it.

15 THE COURT: Right.

16 MR. GASTON: They agree that I should obviously be able to probe
17 identification. I proposed my next whole segues of wrongful convictions, what
18 leads to them, what doesn't, DNA being important, et cetera, I should be able to
19 probe those ideas without using specific scenarios of my own device or using
20 specific stories from prior jurors such as -- whatever, Mr. Galloway. I think that's
21 our consensus.

22 THE COURT: The problem is when you start providing detailed
23 hypothetical questions to the jurors which are based upon facts very similar to the
24 facts in this case.

25 MR. GASTON: And we -- and we have --

1 THE COURT: And I -- and, unfortunately, I don't know when you're
2 getting close to that line because I don't know the detailed facts of this case.

3 MS. LEXIS: Right.

4 THE COURT: So I rely on the State to let me know by objection.

5 MR. GASTON: That's pretty much the -- that's pretty much the
6 agreement we've reached is don't use specific hypotheticals.

7 THE COURT: And I think that's fine. I -- I'm fine with that.

8 Do I need to -- given that there was a remark made to the jury that this
9 is a mistaken identity case, do I need at this point to give any kind of curative
10 instruction? Or is that something we can just deal with at the close of the case
11 with --

12 MR. GASTON: I mean, I think my exact statement was this is an
13 identification case. And they're going to find out in 15 seconds when we open that
14 it's an identification case, so I don't see a lot of prejudice.

15 THE COURT: Well, that's going to be your opening statement anyway.

16 MR. GASTON: Yes.

17 THE COURT: So that probably didn't create any kind of unfair
18 prejudice against the State, right?

19 MS. LEXIS: We're not going to ask for a curative instruction. We
20 just -- we remarked that that was improper. But now there's really no cure, and I
21 don't want to draw any more attention to it. Let's just get -- let's just get going, get
22 this jury picked.

23 MR. GASTON: In the -- in the future, I will err on the side -- I should
24 have asked to approach. I think that's the consensus we reached as well, so.

25 THE COURT: That's probably the best idea, too. I generally don't

1 have a problem with somebody saying objection, and then the general basis for
2 the objection. And then I can decide if you guys want to approach. But if you'd
3 just like to -- like to ask to approach from the get-go, that's fine, too.

4 MR. GASTON: And I made my -- yeah, I should have approached
5 there. I think I was wrong. I made my position clear that I don't always want to be
6 the person asking to have secret conversations --

7 THE COURT: Right.

8 MR. GASTON: -- at the bench.

9 MR. DICKERSON: And just for the record --

10 THE COURT: Well, that sounds fine. All right.

11 MR. DICKERSON: So the -- the specific agreement that we agreed to
12 was that him asking general questions about all those topics to get the jurors'
13 specific experiences and their feelings about things is -- is fine. But him relaying
14 any other experiences of his own or other jurors' experiences to other jurors is a
15 problem.

16 THE COURT: I -- I think that's a fine solution. All right.

17 Let's bring the jurors in, marshal.

18 So there's DNA evidence in this case? Or allegedly or --

19 MR. GASTON: There's a DNA test. It was inconclusive.

20 THE COURT: Okay. Okay.

21 MS. LEXIS: Not enough. Not enough of a sample.

22 THE COURT: Oh, right. Yeah. Okay.

23 MR. GASTON: There were -- there were some fingerprints and there
24 were identifications.

25 THE COURT: All right.

1 MR. GASTON: And our defense is not ID, that's basically wrong ID,
2 that's -- pretty much summarizes everything. And he's found with stolen property.

3 THE COURT: I see. Okay.

4 MR. GASTON: Summarized that perfectly. And a gun. He was found
5 with a gun.

6 MR. DICKERSON: Or you're just let me know your defense now.

7 MR. GASTON: You think it's an ID case. Best hustle ever.

8 [Pause in proceedings.]

9 THE COURT: Which, I mean, the whole point of this -- I mean, you
10 can't say here -- here is what I'm going to end up proving this case. What do you
11 think of that?

12 MS. MACHNICH: Right.

13 THE COURT: That's really --

14 MS. MACHNICH: Right.

15 THE COURT: -- what you can't -- that's really what you can't do in voir
16 dire.

17 MS. MACHNICH: Right.

18 MR. GASTON: Do you find that persuasive? No? Okay.

19 THE COURT: Right. And so.

20 MS. LEXIS: All right. We plead tradeoff, right? No? No? Oh,
21 shucks.

22 THE COURT: I don't always read the police reports before I start the
23 trial.

24 MS. LEXIS: You like to start out fresh.

25 THE COURT: Yeah.

1 MS. LEXIS: You learn as they learn the facts?

2 THE COURT: Well, I -- now I can see why there's reason to look at
3 the police report. So, anyway.

4 What is he doing? I guess he's organizing them.

5 MR. GASTON: People got -- I think several victims were victims of
6 armed robbery, identified the defendant. Defendant is found in an apartment with
7 stolen property --

8 MS. LEXIS: And a gun.

9 MR. GASTON: -- arrested, and that's pretty much the case, right?

10 MS. LEXIS: Yeah.

11 THE COURT: All right.

12 MR. GASTON: You guys don't get it.

13 MR. DICKERSON: Could be because we -- we've got a couple
14 witnesses outside, so the jurors were all moved out in the hall.

15 [Pause in proceedings.]

16 THE COURT: Here they come.

17 THE MARSHAL: We're missing one juror, Judge.

18 THE COURT: What?

19 THE MARSHAL: We're waiting on one juror in the restroom. I got
20 everybody lined up, just waiting on this person.

21 THE COURT: Just bring them in as soon as they're all ready.

22 THE MARSHAL: Unless you want me to bring them in.

23 THE COURT: Line them all up and bring them in when they're all
24 ready.

25 THE MARSHAL: Okay.

100

1 [Pause in proceedings.]

2 [Prospective jury panel reconvened at 2:34 p.m.]

3 THE COURT: Thank you. Please be seated.

4 So ladies and gentlemen of the jury, sometimes we'll find that there's
5 legal issues that we need to resolve. We had to resolve one now. The rules on
6 procedure -- the rules and procedures are not -- are not always clear. We had to
7 resolve something. We got it resolved.

8 Please don't hold the fact that we needed to take a break -- don't hold
9 that fact against -- against anybody in this case. All right. We resolved it. The
10 time was worthwhile.

11 We'll allow Mr. Gaston to continue now, all right, based upon our
12 discussions.

13 MR. GASTON: Thank you, Your Honor.

14 THE COURT: Thank you.

15 MR. GASTON: So we were talking about identifications.

16 Can we pass the microphone to -- sorry -- Ms. Martin. Third on the --
17 third on top.

18 I guess it's a sign I haven't called on you enough if I say your name
19 and they don't automatically pass the microphone to you. Okay.

20 So talk about identifications. We all agree that misidentifications can
21 happen. Presumably, show of hands, we all agree that correct identifications
22 happen too, right? I mean, yeah, they can be wrong, they can be right. Okay.

23 What kind of things do you think make a -- make an identification more
24 accurate or less accurate? What kind of factors would you look for in trying to
25 make -- make that determination?

1 PROSPECTIVE JUROR NO. 054: 54 is my number. You mean like
2 height, weight, that kind of thing?

3 MR. GASTON: Okay. So you -- I mean, you -- okay. To answer, you
4 would look at details?

5 PROSPECTIVE JUROR NO. 054: Right.

6 MR. GASTON: You know, like the more detailed the description,
7 probably the more accurate their identification will be.

8 Are there any other things you could think that would make you think --
9 if you heard that someone identified another person, that would make you think
10 that's more accurate or less accurate?

11 PROSPECTIVE JUROR NO. 054: I'm not sure.

12 MR. GASTON: I did that compound questioning again.

13 PROSPECTIVE JUROR NO. 054: Yeah. I'm not sure.

14 MR. GASTON: Okay. Does anyone have some ideas? Okay.
15 If we could pass the microphone down to Mr. Sheldon.

16 PROSPECTIVE JUROR NO. 015: First, daytime or nighttime would
17 make it more accurate. Obviously, in the daytime. Maybe distance, you know,
18 how far from you, from what you were explaining, detailing.

19 MR. GASTON: So talking about like opportunity to observe, like how
20 long you got to see the guy.

21 PROSPECTIVE JUROR NO. 015: Right.

22 MR. GASTON: Do you wear glasses or not? Stuff like that.

23 PROSPECTIVE JUROR NO. 015: Like, if it was a nighttime -- if it was
24 a blue car, but it -- they're saying black, you know, nighttime can do that to you.

25 MR. GASTON: Okay. So they may say it's a blue car, but in reality it

1 was a black car?

2 PROSPECTIVE JUROR NO. 015: Right.

3 MR. GASTON: Okay. Anyone else have some suggestions? Or were
4 those -- that pretty much summarized your guys'? Okay. Okay. Fair enough.

5 Has -- has anybody ever had the experience themselves of making a
6 misidentification? Let me give you an example. I mean not -- not just in a criminal
7 case. But everybody been at the mall, and you -- you see the person near the ice
8 cream counter and you're just, like, positive that's -- that's your buddy Jack. And
9 you go up and you put your hand on the -- the shoulder, and you turn around, and
10 you're, like, oh, sorry, man, my bad.

11 Anybody have an experience, like, something like that, where you just
12 thought for sure this is the guy you know, and it turned out it was wrong? Show of
13 hands? Anybody? Most people. Okay.

14 Can we pass the microphone to Ms. Day.

15 Did you think of a specific example or you're just sure that happened?

16 PROSPECTIVE JUROR NO. 023: No. It's a specific example.

17 MR. GASTON: You -- you -- okay. When we were talking about the
18 things that make it more or less likely that you're accurate --

19 PROSPECTIVE JUROR NO. 023: Uh-huh.

20 MR. GASTON: -- did those kind of things play into your decision, as
21 well?

22 PROSPECTIVE JUROR NO. 023: Yeah. Details in particular.

23 MR. GASTON: Okay.

24 PROSPECTIVE JUROR NO. 023: Looked just like him, sounded like
25 him. I thought it was him.

1 MR. GASTON: So if you're selected as a juror and there's an
2 identification in the case, is that it for you? You're convinced beyond a reasonable
3 doubt, you're done? Or would you look at other evidence? Or how -- how would
4 you go -- I mean --

5 PROSPECTIVE JUROR NO. 023: I think all the factors would come
6 into play. And based on people making mistaken identities, there could be other
7 factors that could weigh more or could sway me another way.

8 MR. GASTON: Okay.

9 PROSPECTIVE JUROR NO. 023: Uh-huh.

10 MR. GASTON: Ms. -- Ms. -- if we could pass the microphone to
11 Mr. Muhlestein. Down one. Sorry.

12 PROSPECTIVE JUROR NO. 023: Oh, sorry.

13 MR. GASTON: You raised your hand as well.

14 PROSPECTIVE JUROR NO. 039: Yes.

15 MR. GASTON: I guess same -- same kind of question.

16 PROSPECTIVE JUROR NO. 039: Uh-huh.

17 MR. GASTON: Do you feel like that's the holy grail of evidence, if
18 there's an identification, you don't need to hear anything else?

19 PROSPECTIVE JUROR NO. 039: It's not.

20 MR. DICKERSON: May we approach, Your Honor?

21 THE COURT: Yes, you may.

22 [Bench conference transcribed as follows.]

23 THE COURT: So.

24 MR. GASTON: Did I -- did I break our consensus?

25 THE COURT: Before you say anything, you were going over the line,

1 because what you can't ask is how they would decide something, if they're -- if
2 they're chosen as a juror and facts are a particular a way, how can they decide.

3 MR. GASTON: So what I'm trying to do.

4 THE COURT: That's what you can't do.

5 MR. GASTON: So what I'm trying to do, let me just go over it, like, I'm
6 trying to [indiscernible] what we talked about, like, who is going to think that an
7 identification is it and they don't even hear anything else. What would be a
8 suggestion of how, like, you want me to do that?

9 THE COURT: Okay.

10 MS. LEXIS: Because, I mean, we're asking them to consider all -- all
11 of the evidence and not, like, consider how much weight something -- I mean,
12 that's something they have to determine once the evidence has been presented.
13 Right now, I --

14 MR. GASTON: Don't you guys do it the same way, in reverse,
15 though? Like, when you talk about DNA, like, just who here thinks that if they don't
16 hear any DNA evidence, they'll still be able to determine --

17 MS. LEXIS: They would automatically return a verdict of not guilty.

18 MR. GASTON: Okay.

19 MS. LEXIS: There's no forensic, which who here would automatically,
20 you know, come back with a --

21 MR. GASTON: Isn't that --

22 MS. LEXIS: How did you ask it?

23 MR. GASTON: Isn't that what I'm trying to do?

24 MR. DICKERSON: I asked -- specifically for that, I asked who believes
25 that you can never convict somebody based on testimony alone were that

1 testimony credible and to raise above the level beyond a reasonable doubt?

2 MR. GASTON: Isn't that what I'm trying to do here?

3 MS. LEXIS: No. Because yours is hypothetical asking on how they
4 would vote given a certain hypothetical. You know, it's only --

5 MR. GASTON: Isn't that what Dickerson --

6 MS. LEXIS: No.

7 MR. GASTON: What Mr. Dickerson's was?

8 MR. DICKERSON: No.

9 MS. LEXIS: No.

10 MR. DICKERSON: [Indiscernible] when --

11 THE COURT: It's close. We're kind of splitting hairs. Let's give him a
12 little bit of latitude here just to get through this.

13 MS. LEXIS: Okay.

14 THE COURT: I think which one -- I don't want you to do is ask -- ask
15 for what they're going to do in the deliberation room, how they're going to vote.

16 MR. GASTON: Yeah.

17 THE COURT: Would it be guilty or not guilty. You can ask stuff like,
18 you know, would you -- would you need more than if -- if this is the evidence that
19 you would have, would you need more than that in order to -- well --

20 MR. GASTON: I can't ask that or can? Because that's all I want to
21 know. I want to know who thinks identification is it and they don't need anything
22 else. And my question is the inverse of the State's question about --

23 THE COURT: You're trying to find out if you need forensic evidence
24 to -- to go along with a --

25 MR. GASTON: [Indiscernible.]

106

1 MR. DICKERSON: And I think that --
2 THE COURT: -- to go along with eyewitness identification.
3 MR. GASTON: [Indiscernible.]
4 MR. DICKERSON: Simply adds one --
5 THE COURT: He's entitled to know if they think -- if their -- their
6 feelings or if they -- if they need more than -- or -- or --
7 MR. DICKERSON: I think simply --
8 THE COURT: -- if they're going to be satisfied with just --
9 MR. DICKERSON: -- asking if they would still consider all evidence
10 presented is -- that's applicable. That would be fine.
11 MR. GASTON: But everybody is going to say yes. I don't know --
12 think about that.
13 MR. DICKERSON: I mean, if you hear that there's a positive ID, would
14 you still consider other evidence to the contrary?
15 THE COURT: Weren't you asking -- weren't you asking if just
16 eyewitness testimony is -- is going to be sufficient to -- to find --
17 MR. DICKERSON: If that eyewitness testimony --
18 THE COURT: -- beyond a reasonable doubt.
19 MR. DICKERSON: Yeah. If that eyewitness testimony is credible and
20 proves beyond a reasonable doubt that the person is guilty, could --
21 THE COURT: You once asked the inverse of that.
22 MR. DICKERSON: So that -- the inverse of that would be if the -- if the
23 identification is credible and proves beyond a reasonable doubt that a person did
24 it, could you find them not guilty?
25 MR. GASTON: It's not the inverse. I just want to present -- I want to

107

1 do the exact same thing you did, just [indiscernible].

2 MS. LEXIS: He wants a hypothetical, and that's -- and then the
3 ultimate question is going to be what verdict would they render given this
4 hypothetical or the state of evidence?

5 THE COURT: Well, it's kind of -- kind of where Mr. Dickerson went,
6 though. I'm -- I'm not --

7 MR. GASTON: Well --

8 THE COURT: -- not [indiscernible], but whether they -- that that would
9 satisfy the reasonable doubt standard in their minds.

10 MR. DICKERSON: No, no, no. Because I already -- I already gave it
11 to them. I said it does prove it beyond a reasonable doubt. Does anybody believe
12 that that's not enough to convict somebody. So I told them they -- it's there.
13 Beyond a reasonable doubt's been established with testimony alone.

14 THE COURT: So ask the question --

15 MR. GASTON: Does anybody -- does anybody believe that you can't
16 do that?

17 MR. DICKERSON: So what about asking --

18 THE COURT: So --

19 MR. DICKERSON: -- question about is anyone here, if you have --
20 based on identification alone, they can render a verdict of guilty, they could
21 determine it's not a beyond a reasonable doubt, just by an identification alone.

22 THE COURT: I think that's -- that's adequate.

23 MR. GASTON: It's fine.

24 THE COURT: I'm going to allow him to ask that.

25 MS. LEXIS: Okay.

1 MR. GASTON: Thank you, Your Honor.

2 MS. LEXIS: Thank you.

3 MR. DICKERSON: Thank you, Your Honor.

4 [End of bench conference.]

5 THE COURT: Okay.

6 MR. GASTON: Mr. Muhlestein, I'll restate my question.

7 Do you feel that, based on an identification alone, you could be
8 convinced beyond a reasonable doubt that somebody's guilty?

9 PROSPECTIVE JUROR NO. 039: Not that alone.

10 MR. GASTON: If we could pass the microphone to Ms. McGarity.
11 Same question. Do you feel that -- or badge number, sorry.

12 PROSPECTIVE JUROR NO. 050: 50.

13 MR. GASTON: Do you feel that by an identification alone you could be
14 convinced beyond a reasonable doubt that someone is guilty?

15 PROSPECTIVE JUROR NO. 050: Alone, no.

16 MR. GASTON: Okay.

17 PROSPECTIVE JUROR NO. 050: You -- you need something to back
18 it up.

19 MR. GASTON: Does anybody disagree? Does anybody think that
20 they could be convinced beyond a reasonable doubt based on just an
21 identification?

22 I see two hands -- two hands. I see, three, four, five, six. Okay.

23 Let's pass it to Mr. Reynolds. [Indiscernible.]

24 I heard somebody back there say it depends. So I'm going to attribute
25 that answer to you. Badge number. You've got that say badge number, sorry.

1 PROSPECTIVE JUROR NO. 051: Badge 051.
2 MR. GASTON: And you kind of went like this, like it depends, too.
3 PROSPECTIVE JUROR NO. 051: Yep.
4 MR. GASTON: What did you mean by it depends?
5 PROSPECTIVE JUROR NO. 051: Obviously depending on the
6 surveillance camera or whatever it was caught on to identify. Obviously, as stated
7 before, dark light, angle, everything like that could attribute or either help or
8 distinguish it.
9 MR. GASTON: So -- so there -- there could be a very reliable
10 identification. All the factors that you talk about that are important, it can be very
11 reliable.
12 PROSPECTIVE JUROR NO. 051: Uh-huh.
13 MR. GASTON: There could be some other evidence, maybe not.
14 PROSPECTIVE JUROR NO. 051: Uh-huh.
15 MR. GASTON: But you could -- you feel like it's possible you could
16 just be convinced beyond a reasonable doubt that the guy is right.
17 PROSPECTIVE JUROR NO. 051: Clear as day, you know, yeah.
18 MR. GASTON: Okay. What -- and vice versa, though, just because
19 somebody says that, do you feel like that's enough for you? Just because there is
20 an identification?
21 PROSPECTIVE JUROR NO. 051: No. You still leave it open ended,
22 obviously. But like I said, in -- I mean, if there was, like, a portrait shot, like a high
23 school kind of photo, obviously --
24 MR. GASTON: Okay.
25 PROSPECTIVE JUROR NO. 051: -- it makes it really easy.

1 MR. GASTON: I -- I would kind of agree. I'm not -- I'm not just going
2 to beat the dead horse. I mean, if everybody has similar answers, I mean -- okay.
3 If we could pass it down to Mr. Duerson.

4 Badge number, please.

5 PROSPECTIVE JUROR NO. 048: 48.

6 MR. GASTON: If -- if there's an identification, no other evidence, but
7 an identification, that's the man who did it, is that enough for you to be convinced
8 beyond a reasonable doubt?

9 PROSPECTIVE JUROR NO. 048: The scenario you paint, it's
10 possible, depending on who identified and all the factors around or other
11 corroborating identifications. But it's possible.

12 MR. GASTON: So same -- so would you -- would you put yourself
13 closer to Mr. Reynolds' position, with respect to looking at all the factors that we
14 talked about, make it reliable, unreliable, or are you kind of in the other -- other
15 side?

16 PROSPECTIVE JUROR NO. 048: Identification by just one glance at
17 a distance is far more -- far less reliable than identification up front, close, personal
18 contact, et cetera.

19 MR. GASTON: Everybody agree with that? Seems like I'm getting the
20 same kind of answers. I mean, we agree misidentifications. We agree they're
21 correct. We're going to look at all the factors. Every -- show of hands, everybody
22 agree on that point? Anybody disagree? Okay. Okay.

23 If I can pass it to Mr. Maurer.

24 PROSPECTIVE JUROR NO. 045: 45.

25 MR. GASTON: Thank you. I want -- I want to transition a little bit.

111

1 Mr. Reynolds mentioned surveillance. Is surveillance video something
2 that you find important? That's like a video of things happening.

3 PROSPECTIVE JUROR NO. 045: If it pertains to the facts of the
4 case, yes.

5 MR. GASTON: Presume everybody probably agrees with that. You
6 don't even have to raise your hands. Okay.

7 Can you be convinced beyond a reasonable doubt in a case that
8 doesn't have surveillance video?

9 PROSPECTIVE JUROR NO. 045: Based on the evidence -- fair
10 evidence that's presented, yes.

11 MR. GASTON: Maybe it happened in a park and there just is no
12 surveillance video, as an example?

13 PROSPECTIVE JUROR NO. 045: Right.

14 MR. GASTON: Okay. Everybody -- all right. The State asked --
15 talked about shows about *CSI* and other -- I don't know what else they mentioned,
16 but like forensic shows, basically. And do you have to have forensics, et cetera.

17 I think most people kind of agreed they don't have to have forensics to
18 render a verdict. Same -- similar, they're going to look at all the evidence,
19 et cetera, right?

20 UNIDENTIFIED PROSPECTIVE JUROR: Uh-huh.

21 MR. GASTON: How do you come down on that, Mr. Maurer, with
22 respect to forensic evidence? DNA, fingerprints, et cetera, if none of that exists, is
23 that going to bother you? Is it going to trouble you?

24 PROSPECTIVE JUROR NO. 045: No. My understanding is we're
25 going to be making decisions based on the facts that are presented to us and

1 that's all that's available to us.

2 MR. GASTON: Okay. Okay. What about a lack of physical evidence?
3 Is -- is that something that you could find important in determining not guilty?

4 PROSPECTIVE JUROR NO. 045: No.

5 MR. GASTON: No? Okay. Does anybody think the lack of physical
6 evidence might be something that they think is important in determining not guilty
7 or in evaluating their decision? Anybody think that would be important?

8 Ms. Day?

9 Can we pass it back to Ms. Day.

10 Why do you think that might affect your decision?

11 PROSPECTIVE JUROR NO. 023: Well, depending on the case that
12 the State would present, if they -- if it was weak in nature and there was nothing
13 else to -- to prove it, if there was a lack of physical evidence, then I would have to
14 go with not guilty.

15 MR. GASTON: Okay. Okay. Essentially, by -- by lack of physical
16 evidence, you don't mean just automatically, you mean if -- if you're just not
17 convinced beyond a reasonable doubt?

18 PROSPECTIVE JUROR NO. 023: Exactly.

19 MR. GASTON: I'm not going to beat this dead horse. I'm assuming
20 everybody is saying the same thing too, right? Does anybody disagree with the
21 positions mentioned? Anybody have a strong opinion one way or the other?
22 Okay. All right.

23 Wrapping up here, promise. I think one or two topics left.

24 We'll stay with Ms. Day.

25 Are you familiar with the Innocence Project?

1 PROSPECTIVE JUROR NO. 023: I am.

2 MR. GASTON: Okay. Can you describe what they do?

3 PROSPECTIVE JUROR NO. 023: There are people that are in prison
4 that state that they are innocent. And if they are able, I think, to present a -- a
5 good case in their favor, there's a group of -- an organization of lawyers and -- and
6 other people that will work on their behalf to free them.

7 MR. GASTON: Are you aware of whether any people have been
8 exonerated?

9 PROSPECTIVE JUROR NO. 023: Yes.

10 MR. GASTON: Who were wrongfully convicted? Everybody, I'm sure,
11 has heard of the case -- cases or whatever? Okay.

12 What kind of things do you think lead to wrongful conviction? And
13 please don't say because defense attorneys suck.

14 PROSPECTIVE JUROR NO. 023: No. I wasn't going to say that.

15 MR. GASTON: Well, that's probably a reason why, if I fell asleep at a
16 table it's probably not good. But other reasons that could lead to wrongful
17 conviction.

18 PROSPECTIVE JUROR NO. 023: It could be errors in evidence,
19 poor -- the -- the people that do the -- the CSI people, sloppy work,
20 misidentification, that kind of thing.

21 MR. GASTON: Do you think wrongful convictions happen often, not
22 very often, middle of the road; where would you put yourself in your belief in that?

23 PROSPECTIVE JUROR NO. 023: I don't think they happen very
24 often.

25 MR. GASTON: Okay. And why?

1 PROSPECTIVE JUROR NO. 023: Well, like I said, my brother's a
2 corrections officer, and everybody in prison is wrongfully --

3 MR. GASTON: Sure.

4 PROSPECTIVE JUROR NO. 023: -- committed, according to them.

5 MR. GASTON: It's hard to sort between who is telling the truth and
6 who just wants out of prison, right?

7 PROSPECTIVE JUROR NO. 023: Very difficult, yeah.

8 MR. GASTON: Okay. If we could pass the microphone to
9 Mr. Wheeler.

10 Badge number, please?

11 PROSPECTIVE JUROR NO. 022: Badge 22.

12 MR. GASTON: What -- what do you think? How -- where would you
13 put it? Do wrongful convictions happen often, not often; where would you put
14 yourself in that spectrum?

15 PROSPECTIVE JUROR NO. 022: I really -- I don't -- I don't know.
16 You know, I'll be honest.

17 MR. GASTON: Do you think having a trial can increase the risk of a
18 wrongful conviction? Or would it go the other way, do you think, decrease it, make
19 it -- the conviction more reliable if the guy actually had a trial?

20 PROSPECTIVE JUROR NO. 022: Probably decrease it.

21 MR. GASTON: Decrease it.

22 PROSPECTIVE JUROR NO. 022: Yeah.

23 MR. GASTON: Anybody --

24 PROSPECTIVE JUROR NO. 022: If it's a jury trial.

25 MR. GASTON: Anybody disagree with that? Everybody agree that

1 trial -- I mean, okay, so everyone seems to agree that a trial is important?

2 UNIDENTIFIED PROSPECTIVE JUROR: Uh-huh.

3 MR. GASTON: Okay. It makes things more reliable? Okay.

4 I'm making sure I didn't miss anything. All right.

5 I'm going to go back to Ms. Smallwood, and yes, another school
6 example is coming.

7 Far more creative on that subject, but I don't --

8 Hi.

9 So would you agree with the statement that you're judged by who
10 you're associate with?

11 PROSPECTIVE JUROR NO. 017: Badge 17. I would say the majority
12 of times, yes.

13 MR. GASTON: Could be a good kid, but you're hanging out with
14 people always in detention, people are going to think you're a little worse of a kid,
15 right?

16 PROSPECTIVE JUROR NO. 017: Yeah. It's guilty by association,
17 sometimes.

18 MR. GASTON: Everybody think that's pretty -- that happens, makes
19 sense? They do it themselves? Those -- do you think that that could potentially
20 lead you to make wrong decisions about whether somebody is guilty or not guilty?

21 PROSPECTIVE JUROR NO. 017: Yes, I think it could, for some
22 people who don't understand the people and do a thorough -- have a complete set
23 of facts and things, yes.

24 MR. GASTON: Does anybody here have any -- or had in the past --
25 friends, family, that look -- you can like them, you can love them, but maybe they're

1 just kind of bad influences? You might -- maybe shouldn't hang around with them?

2 Show of hands. I want to call on somebody. Show of hands.

3 Can we just pass it to Mr. Lee.

4 Friend, family?

5 PROSPECTIVE JUROR NO. 016: Badge 16. Mostly friends.

6 MR. GASTON: Okay. Are you still friends with them?

7 PROSPECTIVE JUROR NO. 016: Yes.

8 MR. GASTON: You hang out with them?

9 PROSPECTIVE JUROR NO. 016: Yes.

10 MR. GASTON: But if they propose, let's go out at 2:00 in the morning,
11 maybe you don't do it?

12 PROSPECTIVE JUROR NO. 016: Usually not.

13 MR. GASTON: You still do? Okay.

14 Do you think it's fair if you get judged as being that kind of person
15 yourself, simply because you hang out with them?

16 PROSPECTIVE JUROR NO. 016: Yes, and no.

17 MR. GASTON: Okay. People are going to do it --

18 PROSPECTIVE JUROR NO. 016: You're making a choice to do it.

19 MR. GASTON: Okay. Do you feel like you would be able to do a good
20 job kind of distinguishing between the guilt-by-association feeling and the actual
21 evidence presented regarding guilty or not guilty if you get on the jury?

22 PROSPECTIVE JUROR NO. 016: Yes.

23 MR. GASTON: Does anybody feel like they might have a problem with
24 that, that they -- it might be hard for them to kind of distinguish between these
25 guilt-by-association feelings -- you hang out with a bunch of hoodlums, you're

1 probably a hoodlum -- as opposed to looking at the actual evidence presented?

2 Does anybody think they might have a problem with that?

3 Mr. Wheeler, can you pass it down.

4 You've got to wait for the -- for the microphone.

5 PROSPECTIVE JUROR NO. 022: Badge 22.

6 MR. GASTON: Yes.

7 PROSPECTIVE JUROR NO. 022: I guess if it was, like, a gang or
8 something like that, that -- that, you know, wouldn't be too good.

9 MR. GASTON: All right. Well, let's back up. I -- that's not where I was
10 trying to go.

11 PROSPECTIVE JUROR NO. 022: Okay.

12 MR. GASTON: Back up from the gang. But friends, just a friend --

13 PROSPECTIVE JUROR NO. 022: Just a friend.

14 MR. GASTON: Friend is up to no good, but you're closely associated
15 with him?

16 PROSPECTIVE JUROR NO. 022: Yeah, I mean, that's not a big deal.
17 Yeah, everybody's got a -- probably a friend that's a little off or something. But,
18 you know --

19 MR. GASTON: Okay.

20 PROSPECTIVE JUROR NO. 022: -- doesn't mean they're bad --
21 they're bad, all bad, no.

22 MR. GASTON: Okay. So you were worried about, like, a gang. When
23 you raised your hand, you were thinking about gangs?

24 PROSPECTIVE JUROR NO. 022: Yeah. I'd be more -- I'd be more
25 worried about, like -- like an actual criminal organization or something like that.

1 Yeah.

2 MR. GASTON: If you're a member of a criminal organization, you're
3 probably a criminal?

4 PROSPECTIVE JUROR NO. 022: Criminal, yeah. Yeah. Then
5 you're -- yeah, yeah. It's a little worse, yeah.

6 MR. GASTON: Got it. Okay. All right. Can we pass the microphone
7 to Ms. Grant.

8 PROSPECTIVE JUROR NO. 055: Badge 55.

9 MR. GASTON: Okay. Of the things we've talked about so far, any
10 others -- any strong feelings to add or anything like that, one way or the other?

11 PROSPECTIVE JUROR NO. 055: No.

12 MR. GASTON: Okay. I do want to come back to the one -- the strong
13 feeling you indicated earlier. Not Ms. Machnich, but a gun -- about guns.

14 You've heard the charges, armed robbery. Gun. Are you -- is this
15 going to bother you potentially? I mean, you're not going to be asked to hold it or
16 dance around with it, but the -- the fact is the case does involve guns. Is that going
17 to potentially bother you, your emotional reaction to a gun? Hearing about a gun,
18 hearing about people who are robbed with a gun; is that something that you think
19 you emotions might kind of take over?

20 PROSPECTIVE JUROR NO. 055: Yes.

21 MR. GASTON: Okay. Do you think that might impact your decision as
22 a juror?

23 PROSPECTIVE JUROR NO. 055: I don't know.

24 MR. GASTON: Is it possible?

25 PROSPECTIVE JUROR NO. 055: I don't know.

1 MR. GASTON: Okay. Do you think -- and I'm sure you've heard me
2 use this example again and before. There's -- some jurors are good for -- other --
3 actually, I think I used it an hour ago. Some jurors are good for certain cases and
4 not for others. Do you think you might be better served as a juror on a case that
5 didn't involve a gun?

6 PROSPECTIVE JUROR NO. 055: Yes.

7 MR. GASTON: Okay. Do you think you would be able to better set
8 aside your emotions and look at the facts?

9 PROSPECTIVE JUROR NO. 055: I'm not sure I understand your
10 question.

11 MR. GASTON: If -- if you were -- if you were on -- if you were on
12 another case that didn't involve a gun, do you think you would be better able to be
13 fair and impartial to both sides?

14 PROSPECTIVE JUROR NO. 055: Yes.

15 MR. GASTON: Can you pass the microphone to Mr. Ramnath.

16 PROSPECTIVE JUROR NO. 019: Badge 19.

17 MR. GASTON: Same kind of premise, different topic, but same kind of
18 premise. Because of the prior robberies, I think you mentioned earlier you had a
19 bit of a negative feeling. What -- what do you mean by a bit of a negative feeling?

20 PROSPECTIVE JUROR NO. 019: By the fact we had surveillance
21 camera take pictures, and, you know, there was -- there was clear identification on
22 the cameras. It was given to the police, and nothing ever happened.

23 MR. GASTON: All right. So in that identification, it wasn't a person or
24 anything like that. It was -- it was from cameras, you're saying?

25 PROSPECTIVE JUROR NO. 019: Yes.

1 MR. GASTON: Okay. And ultimately nobody was ever apprehended?

2 PROSPECTIVE JUROR NO. 019: Correct.

3 MR. GASTON: Okay. So when you say you have a bit of negative
4 feeling, do you have it towards us, the defendant, the Public Defender's Office, the
5 district attorneys, the police, everybody? Like, how would you -- like, who is the
6 recipient of your negative feeling?

7 PROSPECTIVE JUROR NO. 019: Well, it -- it seems like it's both
8 sides here. There are law enforcement people in there.

9 MR. GASTON: Okay. So you're not -- you would say you're not
10 biased one way or the other; you just equally anti-everybody?

11 PROSPECTIVE JUROR NO. 019: Just equally biased.

12 MR. GASTON: I don't even know where to go from there. Okay.
13 Do you think you can be fair and impartial?

14 PROSPECTIVE JUROR NO. 019: Well, I still have that issue hanging
15 over my head. And I'm not sure if I can.

16 MR. GASTON: As victims testify, as witnesses testify, as you listen to
17 testimony, if you hear potential testimony about an armed robbery that happened,
18 et cetera, is that potentially going to bother you?

19 PROSPECTIVE JUROR NO. 019: No, it wouldn't.

20 MR. GASTON: It wouldn't? Would you be thinking of your own stuff
21 as --

22 PROSPECTIVE JUROR NO. 019: Yes, I will.

23 MR. GASTON: Will that potentially distract you from listening to the
24 evidence?

25 PROSPECTIVE JUROR NO. 019: Possibly.

1 MR. GASTON: Okay. Same kind of premise I was talking about, do
2 you think you might be better served as a juror on a different type of case?

3 PROSPECTIVE JUROR NO. 019: Yes.

4 MR. GASTON: Okay. If you were the defendant, would you want
5 someone like yourself on the jury?

6 PROSPECTIVE JUROR NO. 019: No.

7 MR. GASTON: Okay. You said that very strongly. Okay. Thank you.
8 Can we pass the microphone to Mr. Raczka.

9 PROSPECTIVE JUROR NO. 024: Badge No. 24.

10 MR. GASTON: Thank you. We're done with the topics, just kind of --
11 now we're starting on this fair and impartial thing, I -- I'm going through here.

12 But you talked about a little bit earlier that made me wonder about the
13 fair and impartiality. Okay. Is the testimony, et cetera.

14 In a case where the defendant doesn't testify, do you think that will
15 potentially affect your decision?

16 PROSPECTIVE JUROR NO. 024: It could.

17 MR. GASTON: Do you think so you might be better served as a juror
18 on a case -- a different kind of case?

19 PROSPECTIVE JUROR NO. 024: If the defendant's going to testify,
20 I'd probably be better on that one, yeah.

21 MR. GASTON: Okay. So if the defendant is not going to testify, do
22 you think you might be a better -- juror better served on a different kind of case?

23 PROSPECTIVE JUROR NO. 024: Yes.

24 MR. GASTON: A civil case or a -- one where the defendant does
25 testify?

1 PROSPECTIVE JUROR NO. 024: Yes.

2 MR. GASTON: Okay. If you were the defendant and you were in the
3 trial where you didn't testify, would you want someone like yourself on the jury?

4 PROSPECTIVE JUROR NO. 024: Probably not.

5 MR. GASTON: Okay. Thank you.

6 May we pass the microphone to Mr. Garfield?

7 PROSPECTIVE JUROR NO. 034: Badge No. 034.

8 MR. GASTON: Literally the exact same questions. Same -- same
9 concern as what you -- you see -- you see where I'm coming from. Same concern.

10 PROSPECTIVE JUROR NO. 034: Yeah. Absolutely. Yes, it does
11 affect me. Am I -- like, if I was the defendant, you know, I would feel -- I'm a good
12 judge of character. I'm logical, and I can sit as a human being in the system that
13 we're in and say, yes, I can look at evidence. So I'm not going to restrict myself
14 saying, no, I can't look at evidence and I have to have a testimony. Personally, do
15 I -- would it want one? Yes. But do I have to have one? No. I can look at
16 evidence.

17 MR. GASTON: So you feel like you would be able to set that aside?

18 PROSPECTIVE JUROR NO. 034: Yes.

19 MR. GASTON: Okay. One second.

20 Thank you, Mr. Garfield.

21 May we pass the microphone down to Ms. -- Ms. Antonucci.

22 Ms. Antonucci.

23 PROSPECTIVE JUROR NO. 035: Badge 035.

24 MR. GASTON: We talked a lot yesterday, and one of the things that
25 you made very clear -- and I think everybody agreed with this -- is crime is wrong.

1 You could have all the great social background, excuses you want, the fact is
2 crime is wrong. Fair to say that's an accurate summary of your belief?

3 PROSPECTIVE JUROR NO. 035: Yes.

4 MR. GASTON: And I see other people nodding along. Okay.

5 Do you think -- I guess before we even get going, do you feel like
6 you're leaning one way or the other towards the State or the defense, towards
7 guilty or not guilty?

8 PROSPECTIVE JUROR NO. 035: Nope.

9 MR. GASTON: And would that be because you don't know anything
10 about the case?

11 PROSPECTIVE JUROR NO. 035: Absolutely.

12 MR. GASTON: Okay. If -- as far as the defendant testifying or not
13 testifying, is that going to bother you?

14 PROSPECTIVE JUROR NO. 035: No.

15 MR. GASTON: Okay. As for hearing witnesses' testimony, hearing
16 victims testify about being the victim of a gun crime, armed robbery, we -- we
17 heard talk about being emotional earlier, sympathetic towards the defendant,
18 sympathetic towards people. I'm assuming you put yourself in that category as
19 well, being sympathetic towards people? Yes. They record all our answers. You
20 got to say yes or no.

21 PROSPECTIVE JUROR NO. 035: Yes, I am sympathetic.

22 MR. GASTON: Right. So presumably these victims are going to
23 testify and you're going to feel for them, right? Do you think that that might impact
24 your decision one way or the other?

25 PROSPECTIVE JUROR NO. 035: No.

1 MR. GASTON: Okay. I'm going to give the exact same question I
2 gave the other people, and I think everyone's done a pretty good job of being up
3 front about what's going on through the multiple hours of voir dire.

4 If you were a defendant on this case, would you want someone like
5 yourself?

6 PROSPECTIVE JUROR NO. 035: No.

7 MR. GASTON: Why not?

8 PROSPECTIVE JUROR NO. 035: Because I'm totally against crime.
9 I'm not saying, you know, one way or the other guilty or innocent in this case, but
10 I'm just totally against crime. That's all.

11 MR. GASTON: Do you think because the defendant -- well, I guess
12 being against crime -- I don't think anyone's pro crime that's on the jury. Do you
13 think coming back not guilty means you're pro crime, like you're in favor of crime?
14 You're okay with the crime?

15 PROSPECTIVE JUROR NO. 035: No. No.

16 MR. GASTON: So do you think you could still be anticrime and come
17 back not guilty?

18 PROSPECTIVE JUROR NO. 035: Possibly.

19 MR. GASTON: Possibly. But you feel like you're leaning towards not
20 necessarily being a good juror for the defendant to have on the jury?

21 PROSPECTIVE JUROR NO. 035: Yes.

22 MR. GASTON: Okay. And so if you were the defendant, that would
23 give you some pause?

24 PROSPECTIVE JUROR NO. 035: Right.

25 MR. GASTON: Do you think you might be better served on a different

1 kind of case, maybe a civil case, for example? Where money is at stake, as
2 opposed to --

3 PROSPECTIVE JUROR NO. 035: Probably.

4 MR. GASTON: Okay. Thank you.

5 And then I want to pass the microphone down to Mr. Duerson, if we
6 can.

7 PROSPECTIVE JUROR NO. 048: Number 48.

8 MR. GASTON: Same premise. Let me just start with the basic
9 question. If you were the defendant, would you want someone like you on the
10 trial?

11 PROSPECTIVE JUROR NO. 048: Yes.

12 MR. GASTON: And why is that? I mean, I'm not trying to -- I'm not
13 trying to pick on you. To be fair, you've given answers on -- you've -- you've given
14 answers, and one way that I like about this is the -- the guy. And then you've given
15 answers the other way, so like on both sides. So I'm not trying to pick on you or
16 anything, but like why?

17 You were very confident that you would want someone like yourself on
18 the jury. Why?

19 PROSPECTIVE JUROR NO. 048: I feel I can assess things and
20 people, all with a good deal of skepticism. And it's got to filter through and do the
21 best you can, with what you get.

22 MR. GASTON: Would you put yourself as a -- I'm assuming you would
23 say yourself, anticrime, as well?

24 PROSPECTIVE JUROR NO. 048: Yes.

25 MR. GASTON: Not a -- not a thing you're a fan of? Does that view, do

1 you think, going to influence your decision on guilty or not guilty?

2 PROSPECTIVE JUROR NO. 048: No.

3 MR. GASTON: And why is that? I ask a lot of why questions. Sorry.

4 PROSPECTIVE JUROR NO. 048: It's not impossible to generally
5 believe crime is bad, but you've got to prove the crime is there.

6 MR. GASTON: Okay.

7 PROSPECTIVE JUROR NO. 048: And if you prove it, you prove it.

8 MR. GASTON: Anybody else? I'm going to sit down here in a second.
9 I'm done.

10 Does anybody have any -- I promise. That's it, you know.

11 Anybody have any strong -- anybody have anything that they think I
12 should know that I didn't ask? I asked a lot of questions. But anybody? Okay.

13 One second. Let me double check it.

14 No further questions, Your Honor.

15 THE COURT: All right. Thank you.

16 So I'm going to give the State 10 more minutes if they want to take it.
17 They don't have to take it. And then you guys could have 10 more minutes.

18 And then I'll -- then I'll entertain any challenges.

19 MR. GASTON: Thank you.

20 MS. LEXIS: Thank you, Your Honor.

21 Hello, everyone. All right.

22 We're going to -- I'm just going to ask some follow-up questions, okay.
23 But in particular to certain jurors.

24 So Mr. Ramnath, hi, sir.

25 PROSPECTIVE JUROR NO. 019: Hello.

1 MS. LEXIS: You're in Seat No. 9, Juror No. 19?
2 PROSPECTIVE JUROR NO. 019: Correct.
3 MS. LEXIS: Okay. Mr. Gaston asked you some questions about
4 whether you would want a juror like yourself if you were the defendant. Okay. And
5 sometimes I think attorneys, we think things in too -- too big of a vacuum. So let
6 me just kind of -- let me ask it in this way, okay.
7 Do you consider yourself a law-abiding citizen?
8 PROSPECTIVE JUROR NO. 019: Yes.
9 MS. LEXIS: Okay. And you have previously been -- your salon was
10 victimized twice, right?
11 PROSPECTIVE JUROR NO. 019: Correct.
12 MS. LEXIS: It was -- it was a burglary, correct?
13 PROSPECTIVE JUROR NO. 019: Yes.
14 MS. LEXIS: Okay. And it appears to me from all of the questioning
15 that that experience kind of -- kind of stuck with you; would you agree?
16 PROSPECTIVE JUROR NO. 019: It does. It did.
17 MS. LEXIS: Okay. But that your feelings of negativity are kind of
18 equal. I think you even said that during Mr. Gaston's question.
19 PROSPECTIVE JUROR NO. 019: Yes, I do.
20 MS. LEXIS: Okay. Negativity for the police for not following up,
21 negativity for those who were responsible for the crimes --
22 PROSPECTIVE JUROR NO. 019: Were not caught.
23 MS. LEXIS: -- would you agree?
24 PROSPECTIVE JUROR NO. 019: Correct.
25 MS. LEXIS: Okay. All right. In this particular case, though, this isn't a

1 resident -- or this isn't a business burglary. Okay. You've heard that this is --
2 this -- armed robberies; did you hear that?

3 PROSPECTIVE JUROR NO. 019: I did.

4 MS. LEXIS: Okay. I asked you if you were a law-abiding citizen. One
5 of the fundamental principles as a United States citizen, okay, the same right that
6 gives you the ability to sit on a jury or that same right that gives the defendant the
7 right to a trial by a jury. Okay.

8 PROSPECTIVE JUROR NO. 019: Okay.

9 MS. LEXIS: Would instruct you that a defendant such as Mr. Valentine
10 cannot be compelled to testify during his trial. Okay. That is the state of the law.
11 Okay.

12 Do you think you could follow that law?

13 PROSPECTIVE JUROR NO. 019: Yes, I could.

14 MS. LEXIS: Okay. Do you agree with the fundamental principle that
15 the defendant and also the State of Nevada, that we all deserve the right to a fair
16 and impartial jury; would you agree with that?

17 PROSPECTIVE JUROR NO. 019: I do.

18 MS. LEXIS: Okay. Do you think that your experiences, when you
19 were burglarized, when your business was burglarized, do you think that your
20 opinions, negative for both the police officers and also the criminals who
21 committed the crime, do you think that that would taint your ability to sit in
22 judgment of what we have alleged Mr. Valentine to have committed? Do you think
23 you would -- do you think that that experience -- could you set aside that
24 experience and decide this case only based on, as you are instructed, the law?
25 Okay. Based on the evidence presented in this case?

1 PROSPECTIVE JUROR NO. 019: I might have some trouble with
2 that.

3 MS. LEXIS: Okay. Why?

4 PROSPECTIVE JUROR NO. 019: Again, going back to my previous
5 experience.

6 MS. LEXIS: Okay. So, are you telling us, sir, that because you were
7 burglarized -- I mean, it wasn't -- you don't -- it wasn't Mr. Valentine that did that to
8 your -- or to your business, was it?

9 PROSPECTIVE JUROR NO. 019: I don't know.

10 MS. LEXIS: Okay. But are you telling us that because -- are you
11 telling us that because, you know, the person wasn't caught there, you know, the
12 person who --

13 PROSPECTIVE JUROR NO. 019: Yeah.

14 MS. LEXIS: -- burglarized your business, that you would take that out
15 on -- on Mr. Valentine?

16 PROSPECTIVE JUROR NO. 019: No.

17 MS. LEXIS: Okay. So I guess I'm not sure -- I guess I'm not sure why
18 you can't be fair and impartial?

19 PROSPECTIVE JUROR NO. 019: You know, I -- I guess I can't say
20 how many times I repeat this. I'm -- I still have a problem.

21 MS. LEXIS: Okay.

22 PROSPECTIVE JUROR NO. 019: I still do have a problem.

23 MS. LEXIS: Okay. So you would hold it against Mr. Valentine?

24 PROSPECTIVE JUROR NO. 019: No, I wouldn't. But I'm saying that I
25 might -- there might be some issue with that --

1 MS. LEXIS: Okay.

2 PROSPECTIVE JUROR NO. 019: -- with me regarding my previous
3 experience.

4 MS. LEXIS: Okay. So you think that if you were selected as a juror,
5 as you're listening to evidence, you would think, you know, what happened to my
6 business, that was really messed up. So.

7 PROSPECTIVE JUROR NO. 019: Yeah.

8 MS. LEXIS: Okay.

9 PROSPECTIVE JUROR NO. 019: Absolutely.

10 MS. LEXIS: And so who would -- who would you take that out on?

11 PROSPECTIVE JUROR NO. 019: No one.

12 MS. LEXIS: Okay. But you still think you can -- can you be fair and
13 impartial?

14 PROSPECTIVE JUROR NO. 019: I have my doubts.

15 MS. LEXIS: Okay. Okay.

16 Ms. Grant, hello, ma'am.

17 PROSPECTIVE JUROR NO. 055: Yes.

18 MS. LEXIS: Seat No. 15, Juror No. 55. The question was posed
19 concerning guns, and you had been a prior juror; is that right?

20 PROSPECTIVE JUROR NO. 055: Correct.

21 MS. LEXIS: In a criminal case?

22 PROSPECTIVE JUROR NO. 055: Correct.

23 MS. LEXIS: And that particular case involved guns?

24 PROSPECTIVE JUROR NO. 055: Correct.

25 MS. LEXIS: And you talked about an experience in the jury

1 deliberation where the gun was kind of passed around or -- was it secured?

2 PROSPECTIVE JUROR NO. 055: What do you mean?

3 MS. LEXIS: Was it, like, in a box? Was it loaded? I mean, what
4 were -- what were the circumstances of having to pass around this gun?

5 PROSPECTIVE JUROR NO. 055: It was just passed around the table,
6 kind of.

7 MS. LEXIS: Okay.

8 PROSPECTIVE JUROR NO. 055: Like holding this.

9 MS. LEXIS: Okay. And you indicated that that's what made you
10 uncomfortable was actually feeling the weight of that gun?

11 PROSPECTIVE JUROR NO. 055: Correct.

12 MS. LEXIS: Okay. I mean, it's -- it's a dangerous weapon, right?

13 PROSPECTIVE JUROR NO. 055: Correct.

14 MS. LEXIS: Okay. You're not comfortable with guns, though; is that
15 right?

16 PROSPECTIVE JUROR NO. 055: That is correct.

17 MS. LEXIS: Okay. Do you think that having guns in that -- in that
18 other case affected your ability to be a fair and impartial juror in your prior case?

19 PROSPECTIVE JUROR NO. 055: Can you repeat that, please?

20 MS. LEXIS: Yeah. The last case that you were a juror on, okay, you
21 don't have to tell us, you know, the circumstances. You don't have to tell us -- we
22 know that it involved a gun, though, okay. There was a gun in that case, there's a
23 gun in this case.

24 PROSPECTIVE JUROR NO. 055: Correct.

25 MS. LEXIS: You -- you said that you have a problem with guns, and

1 when Mr. Gaston asked you questions, you said you don't think you can be fair if
2 there's a gun involved in this case. Okay. Is that what you said?

3 PROSPECTIVE JUROR NO. 055: He asked if I would feel better not
4 being on that case.

5 MS. LEXIS: Okay.

6 PROSPECTIVE JUROR NO. 055: On this case, and I said yes.

7 MS. LEXIS: Okay. But you were able to sit as a juror in -- in the
8 other -- in the prior case, and there was a gun involved, right?

9 PROSPECTIVE JUROR NO. 055: Correct. It was many years ago, I
10 knew nothing about them.

11 MS. LEXIS: Okay. And you were fair and impartial then, weren't you?

12 PROSPECTIVE JUROR NO. 055: Yes.

13 MS. LEXIS: Okay. I guess what I'm getting at is, I mean, there is a
14 gun involved in this case, okay. And a lot of people will feel uncomfortable around
15 guns, particularly people who don't have much experience with it.

16 But do you think that you're being uncomfortable with the fact that a
17 weapon is used here, and we're not even sure we're going to bring the gun in,
18 okay, do you think that because there was a gun used, you don't necessarily -- you
19 can't sit in -- on this jury?

20 PROSPECTIVE JUROR NO. 055: I would prefer not to, correct.

21 MS. LEXIS: Okay. Okay. Prefer. But could you, if called upon?

22 PROSPECTIVE JUROR NO. 055: I don't know. I wouldn't have a
23 choice, I don't think.

24 MS. LEXIS: Okay. Would you bring the same impartiality that you did
25 to your other case to this case, if you were chosen? Would you still try to be fair

1 and impartial?

2 PROSPECTIVE JUROR NO. 055: I would always try to be fair and
3 impartial.

4 MS. LEXIS: Okay. Thank you, ma'am.

5 PROSPECTIVE JUROR NO. 055: It's not the same thing, though.

6 MS. LEXIS: Okay.

7 THE COURT: So, ma'am, what we're trying to find out is you -- you
8 have some aversion to guns. And --

9 PROSPECTIVE JUROR NO. 055: Correct.

10 THE COURT: And -- and that's -- that's a -- a rational experience.
11 Some people are just very averse to guns, right? And people react differently.
12 And it's nothing wrong with having that reaction.

13 I need to -- I need to know, before I can allow you to sit on the jury, if
14 your negative reaction to guns is going to cause you, you know, to want to either
15 find the defendant, you know, guilty or not guilty, if it's going to affect your
16 judgment in the case.

17 You know, or -- or if you can say, without equivocation that, you know,
18 you can make your decision based strictly on the evidence in this case and not
19 your emotion over guns. Do you -- do you understand what I'm asking?

20 PROSPECTIVE JUROR NO. 055: I would prefer to be in a situation
21 without a gun.

22 THE COURT: I understand your preference. But if I order you to be
23 on the jury, you know, and -- and you're not stricken and you're on the jury, are
24 you -- is there some -- is there -- is there a realistic risk that you might tend to, you
25 know, find the defendant guilty just because there's a -- a gun in issue in the case?

1 PROSPECTIVE JUROR NO. 055: I hope I wouldn't do that. I don't
2 know.

3 THE COURT: But there's a possibility that -- that --

4 PROSPECTIVE JUROR NO. 055: I don't know, sir.

5 THE COURT: Okay. Well, all right. I guess I don't know means that --

6 PROSPECTIVE JUROR NO. 055: I would prefer to be in a situation
7 where there was no guns.

8 THE COURT: All right. Okay. All right. So if I were -- so if I were to
9 tell you you have to follow the law and you can't convict the defendant unless the
10 State met its burden of proof beyond a reasonable doubt as to all elements, right,
11 is it -- there's some possibility that the fact that this case involves a gun might have
12 some, like, subconscious effect on you, is that -- is that what you're saying that
13 you --

14 PROSPECTIVE JUROR NO. 055: I don't know. I'm not that deep to --

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 055: -- to deal with my
17 subconsciousness right now.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 055: I -- you're asking me a question,
20 you know, do I want to be on a jury with a gun involved? And my preference was
21 to not be on a jury with a gun involved.

22 THE COURT: Right. Okay. All right. I -- I appreciate your answers.
23 Thank you, ma'am.

24 PROSPECTIVE JUROR NO. 055: Sorry I can't --

25 THE COURT: All right. Thank you. Appreciate your responses.

1 Thank you.

2 Keep going. What else you got?

3 MS. LEXIS: Thank you, Your Honor.

4 Court's brief indulgence.

5 Sir, the -- Mr. Raczka.

6 PROSPECTIVE JUROR NO. 024: Yes.

7 MS. LEXIS: Juror No. 24, Seat No. 13, the conversation that I had
8 with Mr. Ramnath concerning being able to follow -- would you consider yourself a
9 law-abiding citizen, sir?

10 PROSPECTIVE JUROR NO. 024: Yes.

11 MS. LEXIS: Okay. You've heard a little bit of allusion to this, but if
12 you're selected as a juror, you're going to be instructed on the law by Judge Scotti,
13 okay.

14 PROSPECTIVE JUROR NO. 024: All right.

15 MS. LEXIS: And one of those laws, okay, is that a defendant cannot
16 be compelled to testify against himself, right?

17 PROSPECTIVE JUROR NO. 024: Understand.

18 MS. LEXIS: Okay. So would you follow that law?

19 THE COURT: Let me read the exact instructions, just so, you know
20 we -- this is what I'm going to instruct you at the end of the case, if the defendant
21 exercises his right not to testify. It -- it reads like this:

22 It is a Constitutional right of a defendant in a criminal trial that he may
23 not be compelled to testify. Thus, the decision as to whether he should testify is
24 left to the defendant on the advice and counsel of his attorney. You must not draw
25 any inference of guilt from the fact that he does not testify. Nor should this fact be

1 discussed by you or enter into your deliberations in any way.

2 That's the instruction, based upon the United States Constitution.

3 MS. LEXIS: Thank you. I think that was very helpful.

4 Sir --

5 PROSPECTIVE JUROR NO. 024: Yeah. I understand how -- how it
6 reads. And I could not bring it up in deliberations. But I can't guarantee it's not
7 going to make me, you know, my personal feelings.

8 MS. LEXIS: Okay. So you're having more of a problem with your
9 ability to set aside that thought; is that what it is?

10 PROSPECTIVE JUROR NO. 024: Yes. Every time I --

11 MS. LEXIS: Because you're wanting to follow the law?

12 PROSPECTIVE JUROR NO. 024: Right.

13 MS. LEXIS: Okay.

14 PROSPECTIVE JUROR NO. 024: Right. But, you know, I've -- I've
15 never been a juror, but I've been in arbitration cases. And, you know, both sides
16 state their cases. If you don't speak up for yourself, you end up losing. So.

17 MS. LEXIS: Okay. Okay.

18 Ms. Antonucci?

19 PROSPECTIVE JUROR NO. 035: Yes.

20 MS. LEXIS: Number 35, Juror No. 75 [sic], Seat 17.

21 Mr. Gaston also asked you questions about sympathy. Sympathy for
22 people in general, sympathy for victims. We have Ms. -- Ms. Henriquez who
23 expressed the sympathy towards defendants, okay.

24 PROSPECTIVE JUROR NO. 035: Uh-huh.

25 MS. LEXIS: Do you consider yourself a law-abiding citizen?

1 PROSPECTIVE JUROR NO. 035: Yeah, absolutely.

2 MS. LEXIS: Okay. It sounds like it. You're anti-crime, I think as we
3 all -- as we all are.

4 PROSPECTIVE JUROR NO. 035: Yes.

5 MS. LEXIS: Okay. If you were instructed by the court, okay, or if you
6 were selected as a juror in this particular case, and you received instructions by
7 the court, okay, do you think you would put your whole heart and mind into
8 following those instructions?

9 PROSPECTIVE JUROR NO. 035: Yes.

10 MS. LEXIS: Okay. You were asked about sympathy and whether or
11 not you could set that aside or whether, you know, having some sort of -- look,
12 we're all people, all right. And it is impossible to expect all of you or all of us to talk
13 about these broad terms, things that haven't been defined, things like reasonable
14 doubt and things like that.

15 As jurors, you know, they want people with different experiences. And
16 when you walk through that door, you're not necessarily told to put those
17 experiences aside, okay. So it's not like you can't feel sympathy, okay, because
18 you're still human. Okay. That -- you -- you don't become a robot the minute you
19 get into that box, okay?

20 PROSPECTIVE JUROR NO. 035: Right.

21 MS. LEXIS: However, if you're instructed towards the end of trial, if
22 you're selected prior to deliberation, that sympathy just does not have any part in a
23 jury deliberation process, could you follow that?

24 PROSPECTIVE JUROR NO. 035: Yes.

25 MS. LEXIS: Okay. I mean, as sympathetic as the defendant may

1 look, as sympathetic as the victims may look, would you -- could you tell us that
2 you could be fair and impartial and only look at the evidence that's presented
3 when -- before making up your mind about the guilt or innocence of this person?

4 PROSPECTIVE JUROR NO. 035: Yes.

5 MS. LEXIS: Okay. Court's brief indulgence.

6 Thank you, Your Honor.

7 THE COURT: All right. Mr. Gaston, do you want a few more minutes?

8 Ms. Machnich?

9 MS. MACHNICH: Court's indulgence.

10 THE COURT: Sure.

11 MS. MACHNICH: May we approach just briefly, Your Honor.

12 THE COURT: Yes, you may.

13 [Bench conference transcribed as follows.]

14 MS. MACHNICH: Do I need to flesh out Ms. Grant a little bit more?

15 Because I can get her yelling at me.

16 THE COURT: That's correct.

17 MS. MACHNICH: Or are we there?

18 MS. LEXIS: No, I'm -- I'm not --

19 MS. MACHNICH: You're not going to oppose our strike?

20 THE COURT: I'm sorry.

21 MS. MACHNICH: We're going to -- we're going to move to strike Grant
22 for cause. I think we're -- I think she's already there. I think she's crossed the line
23 of not being fair and impartial.

24 THE COURT: So you're going to challenge for cause?

25 MS. MACHNICH: She also hate -- I'm going to --

1 THE COURT: And what's their position?
2 MS. MACHNICH: Well, there are two reasons. And if we're not
3 there --
4 THE COURT: Before we get into it, let's just find out their position.
5 MS. MACHNICH: Okay. I just want to find out --
6 MS. LEXIS: We agree.
7 MS. MACHNICH: Okay.
8 THE COURT: Okay.
9 MS. MACHNICH: All right. So then we are ready to do our for-cause
10 challenges now, Your Honor. We don't have further questions --
11 THE COURT: Okay. Very good.
12 MS. MACHNICH: -- as it stands.
13 THE COURT: All right. So we'll take a short recess for the jurors.
14 And then we'll talk about them.
15 MS. MACHNICH: Sounds good.
16 THE COURT: All right.
17 MS. MACHNICH: Yeah.
18 [End of bench conference.]
19 THE COURT: All right. So at this point I need to discuss some
20 potential challenges against some of the jurors. I need to discuss that with the
21 attorneys. So I'm going to excuse you all again for another break. I know this is a
22 tedious process, but it's -- it's important, because we need to discuss things
23 outside your presence. And doing it up here, you can hear a few things. So I'm
24 going to let you guys go outside for let's say 15 minutes.
25 The prior admonishment applies. And let me give you a quick

1 run-through here.

2 Do -- do not communicate with yourselves, or with anyone else about
3 the case; don't communicate with any of the parties, witnesses, or attorneys about
4 the trial; don't seek or obtain any information from any source; don't read, watch, or
5 listen to any report or -- or commentary about the case; don't do any research or
6 investigation; don't form any opinions.

7 And return to the courtroom -- return to the hallway outside this
8 courtroom at 3:40. All right.

9 So you are excused for just 15 minutes. We'll bring you back in. This
10 won't take long. Thank you.

11 [Prospective jury panel recessed at 3:23 p.m.]

12 THE COURT: All right. Please be seated, everybody. We're outside
13 the presence of the jury.

14 As you know, we fill vacancies in the order in which they become
15 available.

16 At the side bar, the State -- or the defense made a for-cause challenge
17 as to Meryl Grant, 055. And the State submitted it to the court and the court finds
18 that the -- there's good cause to remove Ms. Grant for cause.

19 And so she is now stricken, and the court clerk will assign the next
20 person in order, which I understand would be --

21 THE CLERK: 058.

22 THE COURT: -- 058, a Nekeisha Ward.

23 And so we'll talk to her when she comes back in. That's Nekeisha
24 Ward. All right.

25 I understand the defense wanted to make some additional challenges

1 for cause.

2 Tell us who the first one is, and then you present your argument,
3 please.

4 MS. MACHNICH: Thank you, Your Honor.

5 First, I would like to address the juror who is sitting in Seat 9. He is
6 Juror Badge No. 19, Mr. Ramnath.

7 THE COURT: Okay.

8 MS. MACHNICH: He stated both when we were speaking with him
9 and when the State was speaking with him afterward, that he cannot set aside his
10 prior experiences. He has doubts about being fair and impartial. He still has a
11 problem. And there might be some issue.

12 I believe he cannot be unequivocally fair and impartial in this case, and
13 because he cannot, we would ask that he be struck for cause at this time.

14 THE COURT: He kind of really didn't say why, though. He said that
15 he would -- he would be equally biased, negative feelings. But then he -- he said
16 he wouldn't hold it against the defendant, but -- but then he would come back and
17 say he -- he thinks that he might have a problem being fair and impartial.

18 So I couldn't understand why he feels that way.

19 MS. MACHNICH: I agree with you, Your Honor. I don't know why he
20 feels that way, either, although he had mentioned earlier -- I -- I have a feeling that
21 on his surveillance video there were younger black men robbing his salon. I don't
22 think he wants to say that. That's what I would surmise from his workaround to the
23 questions.

24 And I -- I think that he was very clear, however, that he -- that he could
25 not be fair and impartial and he does not know if he could be fair and impartial and

1 he would have a problem.

2 THE COURT: Let me hear from the State.

3 MS. LEXIS: I don't think he rises to the level of a for-cause,
4 Your Honor. I -- I don't think he -- I'm with the court, I agree with the court in that
5 he didn't really state an equivocal position on anything.

6 THE COURT: Well --

7 MS. MACHNICH: Other than he can't be fair and impartial and he's
8 going to have a problem. I --

9 THE COURT: Well, here's the standard. Let's see:

10 When a prospective juror manifests a prior belief that is both material
11 and contestable --

12 Here he has a prior -- he has a belief based on a prior incident that --
13 that he's going to have negative feelings towards everybody.

14 -- it is the judge's duty to determine whether the juror is capable of
15 suspending that belief for the duration of the trial. A prospective jurors who is
16 anything less than unequivocal about his or her impartiality should be excused for
17 cause.

18 That's the standard I need to apply.

19 MS. LEXIS: Submit.

20 THE COURT: Just -- he said, you know, if it was -- just a matter of he
21 had negative feelings.

22 MS. MACHNICH: Would it be possible -- I mean, maybe he just
23 doesn't want to say it in front of everyone. I mean, I -- I want to say, based on
24 what he said he doesn't particularly feel that the cops followed up on his robbery,
25 so he doesn't like that, per se. But he saw the people on his video. And just when

1 he said -- when I believe in this last part of the examination, it -- but it wasn't the
2 defendant who committed this. And he's like, well, I don't know.

3 Like, we know what he said, he -- he doesn't actually think
4 Mr. Valentine did that, but I think that that was his nod towards, you know, black
5 males robbed his salon. I -- I -- again, you're -- you heard what I did, as well,
6 Your Honor.

7 THE COURT: Well, you know what, I have my notes. I -- I don't think
8 we need to voir dire him anymore. I have in my notes when the State asked the
9 question, you know, can you set -- can you set aside your past experience and
10 decide the case only on the law?

11 Answer, I might have some trouble.

12 MS. MACHNICH: Yeah.

13 THE COURT: And he does have some doubts about being fair and
14 impartial. That is less than unequivocal. I -- I'm going to -- I am very frustrated,
15 but I'm going to have to excuse Mr. Ramnath for cause.

16 He did -- he said -- the language that he used combined with his prior
17 experiences suggests to this court that he is less than equivocal. So he is
18 excused. That's No. 19.

19 MS. MACHNICH: Thank you, Your Honor.

20 Next, I would like to address Mr. Raczka, who is in Seat 13. He's
21 Juror No. 24.

22 THE COURT: Well, hold on. Let's finish -- who fills number --
23 Seat No. 9?

24 THE CLERK: 059, Thomas Vandenboom.

25 THE COURT: All right. One moment. Tom Vanderboom [sic]. All

1 right.

2 What's next? Do you have another one?

3 MS. MACHNICH: Yes, Your Honor. Juror No. 24 who is currently
4 sitting in Seat No. 13, Mr. Raczka.

5 He was the gentleman --

6 THE COURT: I know who he is.

7 MS. MACHNICH: Okay. He said that regardless of the law, he would
8 always have an issue finding someone not guilty if they didn't testify and the
9 defendant would have to testify.

10 And he was specifically asked -- I mean, Your Honor read the statute
11 and he -- or read the jury instruction, and he's, like, yep, that's the law. Yep, still
12 think about it.

13 So I think by that, it's a Constitutional right that my client not be
14 compelled to testify. And he must be struck.

15 MS. LEXIS: He did say that he would not bring up his personal
16 opinions during deliberations. And I don't believe he said that he wouldn't follow
17 the law, regardless of the law. He said he was a law-abiding citizen. He would try
18 to follow the law. He -- it's just that these jurors cannot give the hundred-percent,
19 you know, certainty as to how certain things will -- will affect them.

20 He said he will try his best. He would not bring it up in jury
21 deliberations. And he would try to follow the law, listen to the evidence.

22 MR. GASTON: There was a second part of that sentence, when he
23 said I won't bring it up in jury deliberations.

24 MS. MACHNICH: But --

25 MR. GASTON: There was a second part of that sentence that

1 followed but.

2 MS. MACHNICH: And it was I will think about it, I will consider it,
3 and -- and he's going to have a problem, specifically. I mean, in all contrast,
4 Mr. Garfield, we got almost to the same point, but then he was able to say,
5 unequivocally, that he could be fair and impartial.

6 THE COURT: I -- I'm going to excuse Mr. Raczka. Because he --
7 look, the statute -- the -- the law requires that they not discuss it and they not -- not
8 consider it during deliberations. And the consider during deliberations means it
9 can't invade his -- his decision-making process, even if it's not orally
10 communicated to others. And he did, I think quite clearly, indicate to this court that
11 it would impact his decision-making process. All right. And he's unable to set it
12 aside, in contrast with Mr. Garfield.

13 So No. 24, Gary Raczka is excused.

14 And the replacement is?

15 THE CLERK: 063, Cale McCoy.

16 THE COURT: All right. Anything else?

17 MS. MACHNICH: One final one.

18 THE COURT: Go ahead.

19 MS. MACHNICH: This will be very brief.

20 THE COURT: Go ahead.

21 MS. MACHNICH: And we'll submit.

22 Mr. -- Ms. Antonucci, Seat 17, Juror No. 35.

23 MS. LEXIS: Your Honor, I -- she was absolutely rehabilitated, so.

24 MS. MACHNICH: And -- and Your Honor, I think she did go back and
25 forth. But the fact that she very strongly said that she would be better on a

1 different jury and the defendant would not want her on this jury --

2 THE COURT: She did. But I saw her choice. She -- I -- I think she's
3 going to follow the law and she's going to set aside her prior emotions.

4 MS. MACHNICH: Okay.

5 THE COURT: I deny your challenge for cause as to Betty
6 Antonucci, No. 035. I think she was rehabilitated.

7 MS. MACHNICH: Thank you for the consideration.

8 THE COURT: All right.

9 MS. MACHNICH: Yes.

10 THE COURT: All right. Do you guys want to take a quick break? Or
11 can we bring the jurors back in?

12 MR. GASTON: I think we can bring them back in.

13 MS. MACHNICH: Bring them back in. Yep.

14 THE COURT: Marshal. Marshal? We're ready for the jurors. Thanks.

15 [Pause in proceedings.]

16 THE COURT: I really thought the reading was to --

17 MS. LEXIS: Who would help.

18 THE COURT: -- Mr. Raczka would -- would turn him around.

19 MS. LEXIS: I thought so, too.

20 THE COURT: But he was just a little bit --

21 MR. DICKERSON: Hard-headed.

22 THE COURT: -- unequivocal for -- for me.

23 MS. LEXIS: Understand, Your Honor.

24 THE COURT: Or equivocal.

25 MS. MACHNICH: Equivocal.

1 THE COURT: A little bit -- little bit too equivocal on that.
2 MR. GASTON: That's the first question you asked, who here -- before
3 we get started, who here has biases and prejudices --
4 THE COURT: It's pretty standard. But --
5 MR. GASTON: You get people to raise their hand to that a lot or not?
6 THE COURT: I have had people raise their hands.
7 MR. GASTON: Someone did this time.
8 MS. LEXIS: I have, too.
9 THE COURT: Yeah, I've had -- I've had it. And that flushes out the
10 people that are, like, blatantly or have big problems, you know. Sometimes you,
11 like -- like --
12 MS. MACHNICH: Big problems.
13 THE COURT: -- [indiscernible] people or other -- you know.
14 MR. GASTON: I was surprised when the guy raised his hand. I think
15 that might have been the first time I ever seen someone answer that question.
16 MS. MACHNICH: I've never seen someone raise their hand and say
17 I'm a racist before, you're correct.
18 THE COURT: I've seen it about 25 percent of the time, someone
19 raises their hand.
20 MS. MACHNICH: I've never had someone do it on that type of
21 grounds. Because usually it's a little bit more -- I mean, it is, it's religious grounds.
22 I can't pass judgment. I've had people do it the other way, say, I can't -- I can't
23 convict someone, I can't, like, I am so negative against the police that I can't
24 convict that defendant. Of course, they're -- they're off at that point.
25 THE COURT: I had it, like, tattooed, I have it on different things.

1 MS. MACHNICH: Oh, I've had it on illegal immigration. Like, oh, I see
2 he uses an interpreter.

3 THE COURT: Oh, okay.

4 MS. MACHNICH: I can't -- I can't get over that. And we're, like, he's --
5 okay. That's -- that's not part of this case.

6 THE COURT: All right.

7 MS. LEXIS: Your Honor --

8 THE COURT: Yes, ma'am? Oh. Did you want to --

9 MS. LEXIS: Yes. Just briefly.

10 [Prospective jury panel reconvened at 3:35 p.m.]

11 [Bench conference transcribed as follows.]

12 THE COURT: Yes? Yes, Ms. --

13 MS. LEXIS: We had two witnesses. We thought we would get much
14 further.

15 THE COURT: I know. I know.

16 MS. LEXIS: May I have permission to just excuse them now?

17 THE COURT: Yes.

18 MS. LEXIS: I don't think we'll get to witnesses. Right?

19 THE COURT: No.

20 MR. GASTON: I'm totally fine with that.

21 MS. LEXIS: I don't want -- I don't want you to be upset that we don't
22 have witnesses.

23 THE COURT: No, I'm not upset. That's okay. No. I --

24 MS. LEXIS: We had them wait since after --

25 THE COURT: That's fine. I'm sorry.

1 MS. LEXIS: No, that's okay. It's not your fault.

2 THE COURT: We had to take a couple breaks. So that's okay.

3 MS. LEXIS: No. That's okay.

4 THE COURT: All right. That's okay.

5 MS. LEXIS: We're going to excuse.

6 THE COURT: Yep.

7 MS. LEXIS: Okay.

8 [End of bench conference.]

9 THE COURT: All right. Please be seated, everybody. Everyone's
10 accounted for?

11 So after discussions with the parties, I am going to excuse the
12 following three jurors: Badge No. 19, Harrichan Ramnath, you are excused, sir, for
13 cause; Gary John Raczka, Badge No. 24, you are excused, sir; and then Cheryl --
14 sorry -- Meryl Grant, Badge No. 55, you are excused. All right.

15 And the clerk -- I'll -- I'll go ahead and call the -- the people that will
16 take these -- take the seats. And then the clerk can confirm.

17 So the -- the -- actually, off the record, I had excused first Meryl Grant,
18 and so that -- that seat is being filled with No. 58, Nekeisha Ward.

19 Will you please come forward, Badge No. 58? Thank you, ma'am.
20 You're taking Seat No. 15. That's -- that's the middle and the far right. Yes,
21 ma'am. Thank you.

22 And then, let's see, Thomas Vandenoorn, Badge No. 63, you are
23 taking Seat No. 9. That's the middle row, far left.

24 And then Gary -- I'm sorry, Cale McCoy, Badge No. 63, sir, you're
25 taking the middle row in the middle. Thank you, sir. All right.

150

1 Thank you for your patience through this process. Again, it is a very
2 important process and -- and we appreciate your patience.

3 So let's talk to Mr. Vandenboom first.

4 Sir, will you please provide us with the information that's on your -- on
5 the form.

6 You're Mr. Vandenboom, right?

7 THE MARSHAL: He needs the mic.

8 THE COURT: Oh, and the -- the microphone's right here. Will you
9 hand to the marshal now? Thanks. All right. All right.

10 Tell us about yourself, sir.

11 PROSPECTIVE JUROR NO. 059: Thomas Vandenboom,
12 Badge No. 59. I've lived in Clark County for just under four years. Some college
13 education completed. I am in entertainment group services for MGM Resorts
14 International. Not married. No children. And I've never served on a jury.

15 THE COURT: All right. Have you ever been the victim of a -- of a
16 serious crime?

17 PROSPECTIVE JUROR NO. 059: No.

18 THE COURT: Have you ever testified as a witness in a criminal case?

19 PROSPECTIVE JUROR NO. 059: I have not.

20 THE COURT: All right. Do you have any close friends or relatives or
21 have yourself had any connection with law enforcement?

22 PROSPECTIVE JUROR NO. 059: My brother's in-laws are all in law
23 enforcement. I don't speak to them on that level. My father was in law
24 enforcement. He's deceased.

25 THE COURT: All right. Very good, sir. Thank you very much. We'll

1 let the attorneys ask some follow up.

2 Let's pass the microphone to your left. And just go down four seats
3 down to Mr. Cale McCoy, No. 63.

4 Sir, will you please provide us with the information?

5 PROSPECTIVE JUROR NO. 063: Yes. Cale McCoy. Badge No. 63.
6 I've lived in Clark County for four years now. I have a bachelor's of science in
7 nursing. I am one class away from my master's in health informatics. I am
8 currently a clinical application analyst for a healthcare technology company here in
9 Las Vegas. I am not married, but I am engaged. I have a child that is 17 months
10 old. I've never served on a jury before. I do like to bring up that --

11 THE COURT: Yep.

12 PROSPECTIVE JUROR NO. 063: -- it was brought to my attention
13 last night by my fiancée that I do not have a babysitter for Wednesday and Friday
14 of this week. My fiancée is taking a master's of education class at UNLV and that
15 class starts at 4:00 p.m. on Wednesday night and on Friday night.

16 And I have no family in Las Vegas currently. Everyone is in Ohio
17 where I'm from. The babysitter we usually use cannot watch her on Wednesday or
18 Friday.

19 THE COURT: Okay. What do you normally do when you -- when your
20 babysitter has a conflict?

21 PROSPECTIVE JUROR NO. 063: So what we normally do, usually
22 I -- I work. I work from, you know, 8:00 to 3:30 or 8:00 to 3:00, depending on --
23 or 7:00 to 3:30. It's very flexible at the healthcare technology company. So when
24 she has classes, I usually come in a little earlier and I leave a little earlier and I go
25 home and she leaves the house at that point when I get home at, like, 3:00, 3:30.

1 That's usually what occurs. She's a teacher, so she has summers off.

2 THE COURT: Can I just stop you for a second?

3 PROSPECTIVE JUROR NO. 063: Yes.

4 THE COURT: When you say the word she, are you referring to your
5 girlfriend? Fiancee?

6 PROSPECTIVE JUROR NO. 063: Correct, yes. My fiancee, correct.

7 THE COURT: Fiancee? Okay. You were talking about a babysitter,
8 that's who I wanted to talk about.

9 PROSPECTIVE JUROR NO. 063: Oh.

10 THE COURT: Who is the babysitter?

11 PROSPECTIVE JUROR NO. 063: The babysitter, she runs it through
12 her house. And she watches her -- usually she watches her -- she can watch her
13 until 4:00 at the latest, because she has a second job cleaning a Mormon church.

14 THE COURT: All right. So you don't have a babysitter after 4:00. So
15 she watches just until 4:00 and then at 4:00 --

16 PROSPECTIVE JUROR NO. 063: Correct.

17 THE COURT: So what happens at 4:00 that she can't watch the -- the
18 child anymore?

19 PROSPECTIVE JUROR NO. 063: So, usually, it's right beside my
20 fiancee's school where she works as a teacher. So she'll pick her up at,
21 like, 3:00, 3:30, bring her home. I'll meet my fiancee at home. If not, I can get
22 there usually by 4:00 at the babysitter's house and pick her up at 4:00.

23 THE COURT: All right. But what -- so what -- I mean, because if trial
24 goes till 5:00 and you wouldn't get there until 5:30, so what -- what does the
25 babysitter do from 4:00 to 5:30?

1 PROSPECTIVE JUROR NO. 063: She leaves. She has a second job
2 cleaning a Mormon church.

3 THE COURT: Oh, cleaning the church.

4 PROSPECTIVE JUROR NO. 063: Uh-huh. Correct.

5 THE COURT: Okay. All right. You don't have any other friends or
6 family that could watch?

7 PROSPECTIVE JUROR NO. 063: No. I tried. We have a friend we
8 do use for babysitting services, as well. She's does it for free, obviously, she's a
9 friend of the family's. And she's actually away on a trip in, like, Australia right now.
10 But other than that, we don't have anybody else.

11 THE COURT: And how is that -- how -- your child is one-year-old?

12 PROSPECTIVE JUROR NO. 063: 17 months old.

13 THE COURT: Or 17 months, so about a year and a half.

14 PROSPECTIVE JUROR NO. 063: Correct.

15 THE COURT: All right.

16 PROSPECTIVE JUROR NO. 063: I would have brought this up on the
17 first day, but I -- it wasn't -- I didn't realize she had classes this week. It's not every
18 week she has classes.

19 THE COURT: Wednesday and Friday. All right. I'll excuse you for
20 hardship. You may go. Thank you, sir.

21 PROSPECTIVE JUROR NO. 063: Thank you.

22 THE COURT: Madam Clerk, please call the next person in order.

23 THE CLERK: 065, Yubart Narsa.

24 THE COURT: Yubart Narsa, would you please come forward, sir.
25 Yubart Narsa. There you are, sir. All right.

1 Will you please provide us with the biographical information.

2 PROSPECTIVE JUROR NO. 065: My name is Yubart Narsa,
3 Badge 065.

4 THE COURT: Yes, sir.

5 PROSPECTIVE JUROR NO. 065: I lived in Clark County for about
6 four years. I have some high school education background. I work for a forest
7 service residential as a service coordinator. Never been married. No kids of my
8 own, but I'm raising an eight-year-old child for the past five years.

9 THE COURT: Eight-year-old, okay.

10 PROSPECTIVE JUROR NO. 065: And never served as a jury.

11 THE COURT: Never served on a juror. Have you ever testified as a
12 witness in a criminal case before?

13 PROSPECTIVE JUROR NO. 065: No.

14 THE COURT: Have you ever been the victim of a serious crime?

15 PROSPECTIVE JUROR NO. 065: Yes.

16 THE COURT: All right. Tell us about that.

17 PROSPECTIVE JUROR NO. 065: It was about nine years ago. It was
18 a Craigslist scam where I had a gun pulled on me.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 065: And it was actually my friend that
21 was involved with me, as well. But I ended up having the gun pulled on me. And
22 the money was taken and, as a matter of fact, these past two days have been
23 hard, because I feel like it was just yesterday.

24 THE COURT: Yeah. Did -- did they catch the person that committed
25 the crime?

1 PROSPECTIVE JUROR NO. 065: Yeah. He committed another crime
2 to where he shot a lady for \$40.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 065: To where we ended up giving
5 him \$6,000. And, of course, you know, I had to go to court and face the guy and
6 he was found guilty.

7 THE COURT: Okay. All right. And -- and you said that it -- how has
8 that affected you the last two days during our jury selection process? Are you
9 having flashbacks of what happened?

10 PROSPECTIVE JUROR NO. 065: Absolutely.

11 THE COURT: Yeah.

12 PROSPECTIVE JUROR NO. 065: It's never an easy thing, especially
13 when there's a gun --

14 THE COURT: Right.

15 PROSPECTIVE JUROR NO. 065: -- towards your head. You know, I
16 literally turned around and gave him my back and I just started praying deep down
17 inside. And, you know, the peek of my eye, I saw the person running down the
18 driveway.

19 THE COURT: So I have to ask, then, how is it going to affect you in
20 this case? I don't -- see, I -- I'm kind of starting at the same level as -- as you all. I
21 don't know the details of -- of the case, so I don't -- I don't know what's going to
22 come out about a gun. But supposedly there's some gun at issue in this case.

23 PROSPECTIVE JUROR NO. 065: I -- I -- you know, honestly, I can't
24 tell you how it's going to affect me. These -- I mean, yesterday I couldn't sleep. I
25 felt like, again, I was put in that position again.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 065: Like, facing this whole thing, like --
3 like I said, I feel like it happened yesterday.

4 THE COURT: So let me -- I'll let the attorneys ask you some more
5 questions about that. They'll probe that a little bit more.

6 PROSPECTIVE JUROR NO. 065: Sure.

7 THE COURT: Let me ask you, have you ever -- do you have any law
8 enforcement connection, either yourself or close friends or family?

9 PROSPECTIVE JUROR NO. 065: No, sir.

10 THE COURT: All right. All right.

11 And one thing I didn't ask any of the new people, have any of your
12 been convicted of a crime? If so, could you raise your hand. No? All right. All
13 right.

14 Let me turn it over to Mr. Dickerson, he might have some questions for
15 you.

16 MS. MACHNICH: Four.

17 THE COURT: You have one more?

18 MS. LEXIS: Yes.

19 MS. MACHNICH: Ms. Ward.

20 THE COURT: Ms. -- oh, I'm sorry, ma'am. Ms. -- oh, let me go back.
21 That's right.

22 Ms. Nekeisha Ward, would you please provide us your information,
23 ma'am?

24 PROSPECTIVE JUROR NO. 058: Sure. My name is Nekeisha Ward,
25 Badge No. 0058. Lived in Clark County, it's going on eight years in November.

1 Education completed, some college. I'm actually admin assistant at a HCA, which
2 is a healthcare company. And I'm married, no children. And I never served on a
3 jury.

4 THE COURT: Have you ever testified as a witness in a criminal case?

5 PROSPECTIVE JUROR NO. 058: No, sir.

6 THE COURT: All right. Do you have any law enforcement
7 connections, either yourself or -- or close friends or family.

8 PROSPECTIVE JUROR NO. 058: I do, but I don't talk to my play
9 father. He's in California.

10 THE COURT: Okay. Have you ever been a victim of a serious crime?

11 PROSPECTIVE JUROR NO. 058: No, sir.

12 THE COURT: All right. Have you ever been convicted of a crime?

13 PROSPECTIVE JUROR NO. 058: No, sir.

14 THE COURT: All right. Let me turn it over to Mr. Dickerson, then.

15 MR. DICKERSON: Thank you, Your Honor.

16 THE COURT: Well, let me ask all -- all the new people, is there
17 anybody here who is -- who is unwilling to -- you've -- you've heard me ask this
18 question to everybody. Any of you that are unwilling to follow the law as I instruct it
19 to you? Anybody? All right.

20 Now, you've also heard that one of the laws is that, you know, it's a
21 Constitutional right of the defendant not to be forced to testify, and you can't -- you
22 can't let that enter into your deliberations in any way. Are you -- and that's a
23 Constitutional right. Are you all willing to follow that? If -- if not, I need you to raise
24 your hand and -- and the attorneys will ask you some more questions about that.
25 Anybody? I don't see any hands.

1 Mr. Dickerson, you have the floor.
2 MR. DICKERSON: Thank you very much, Your Honor.
3 THE COURT: And then we'll turn it over to Ms. Machnich or -- or
4 Mr. Gaston.
5 MR. DICKERSON: Thank you very much.
6 Greetings, folks.
7 Mr. Vandenboom, you have several people that are in your family that
8 are in law enforcement? Or your brother-in-law's -- or your brother's in-laws.
9 PROSPECTIVE JUROR NO. 059: Yes, that is correct.
10 THE COURT: Okay. And where is that?
11 PROSPECTIVE JUROR NO. 059: Chicago, Illinois.
12 MR. DICKERSON: Okay. Not here in Las Vegas?
13 PROSPECTIVE JUROR NO. 059: Correct.
14 MR. DICKERSON: And your father was in law enforcement?
15 PROSPECTIVE JUROR NO. 059: He was, before my time.
16 MR. DICKERSON: Okay.
17 PROSPECTIVE JUROR NO. 059: He -- he passed a few years ago,
18 well outside of law enforcement.
19 MR. DICKERSON: What do you do at the MGM?
20 PROSPECTIVE JUROR NO. 059: I work with entertainment groups,
21 booking rooms, that kind of thing.
22 MR. DICKERSON: How long have you been there?
23 PROSPECTIVE JUROR NO. 059: This time it will be three years in
24 November.
25 MR. DICKERSON: You were there before?

1 PROSPECTIVE JUROR NO. 059: I was. Before it was MGM Resorts,
2 when it was MGM Mirage. I've --

3 MR. DICKERSON: Okay.

4 PROSPECTIVE JUROR NO. 059: -- been in Vegas a couple of times.

5 MR. DICKERSON: Okay. And where are you in between those
6 times?

7 PROSPECTIVE JUROR NO. 059: Moved here from Austin, Texas.
8 Before then was kind of traveling with -- trying to find a job, performing and all that.

9 MR. DICKERSON: Performing what?

10 PROSPECTIVE JUROR NO. 059: I was a singer/dancer.

11 MR. DICKERSON: Okay. Is that what you did in Austin, Texas?

12 PROSPECTIVE JUROR NO. 059: No. I got into hospitality in Austin,
13 Texas.

14 MR. DICKERSON: Okay. Great. I know there's a lot of music out
15 there.

16 PROSPECTIVE JUROR NO. 059: Yeah.

17 MR. DICKERSON: So is it more theater than --

18 PROSPECTIVE JUROR NO. 059: Yep.

19 MR. DICKERSON: Okay. Great. Thanks.

20 Mr. Narsa, this -- you were the victim of what sounds to be a robbery
21 with a deadly weapon.

22 PROSPECTIVE JUROR NO. 065: Yes.

23 MR. DICKERSON: And it was not --

24 PROSPECTIVE JUROR NO. 065: By the way, Badge No. 065.

25 MR. DICKERSON: Thank you very much. And Mr. Vandeenboom

1 was 059, just for the record.

2 Thank you very much, Mr. Narsa.

3 So where did that occur, first of all?

4 PROSPECTIVE JUROR NO. 065: Oakland, California.

5 MR. DICKERSON: Okay. And were you living in Oakland at the time?

6 PROSPECTIVE JUROR NO. 065: Yes, sir. No, actually, I lived in

7 Modesto.

8 MR. DICKERSON: Okay.

9 PROSPECTIVE JUROR NO. 065: It's about 45 minutes away.

10 MR. DICKERSON: Did you spend a lot of time in Oakland?

11 PROSPECTIVE JUROR NO. 065: No.

12 MR. DICKERSON: Okay. Specifically, that guy was caught?

13 PROSPECTIVE JUROR NO. 065: Yes.

14 MR. DICKERSON: So it doesn't sound like you harbor any ill feelings
15 about law enforcement there?

16 PROSPECTIVE JUROR NO. 065: I don't know.

17 MR. DICKERSON: Do you have -- do you have feelings about law
18 enforcement?

19 PROSPECTIVE JUROR NO. 065: I mean, I do, of course.

20 MR. DICKERSON: Tell me about it.

21 PROSPECTIVE JUROR NO. 065: I mean -- I mean, I don't know. It's
22 just -- I mean, I -- they did the right job, you know, when they were called in. But
23 as far as what the law is in Oakland, I mean, I don't know.

24 MR. DICKERSON: So you're unhappy with the way things turned out?

25 PROSPECTIVE JUROR NO. 065: Well, I mean, I don't like to be put

1 on a stand and got to testify against somebody. And the position I was put in,
2 especially in Oakland, it's a, you know, kind of bad area. And, I mean, we literally
3 had to call in and tell them that, hey, we need more support, you know, picking us
4 up, dropping us. And the whole time, I mean, we were scared, my friend and I.

5 MR. DICKERSON: Yeah.

6 PROSPECTIVE JUROR NO. 065: I didn't know what happened --
7 what was going to happen to me.

8 MR. DICKERSON: So you were scared during the whole process?

9 PROSPECTIVE JUROR NO. 065: Absolutely.

10 MR. DICKERSON: Here today -- are you a law-abiding citizen?

11 PROSPECTIVE JUROR NO. 065: Yes.

12 MR. DICKERSON: And sitting here today, you understand the
13 significance of a jury trial, having testified in front of one?

14 PROSPECTIVE JUROR NO. 065: I do.

15 MR. DICKERSON: Do you know the importance of having that jury be
16 fair and impartial?

17 PROSPECTIVE JUROR NO. 065: Yes, kind of.

18 MR. DICKERSON: You agree that it's important, right?

19 PROSPECTIVE JUROR NO. 065: Yes.

20 MR. DICKERSON: And you could be fair and impartial?

21 PROSPECTIVE JUROR NO. 065: Yes.

22 MR. DICKERSON: You're not going to let the -- the robbery with the
23 deadly weapon that happened to you make you find the defendant in this case
24 guilty, simply on that fact?

25 PROSPECTIVE JUROR NO. 065: No.

1 MR. DICKERSON: Okay. Are you going to be able to listen to the
2 evidence in this case?

3 PROSPECTIVE JUROR NO. 065: I'll try.

4 MR. DICKERSON: Okay.

5 PROSPECTIVE JUROR NO. 065: But again, it's affecting me.

6 MR. DICKERSON: Yeah.

7 PROSPECTIVE JUROR NO. 065: I mean, I think of myself first.

8 MR. DICKERSON: Yeah.

9 PROSPECTIVE JUROR NO. 065: You know. And like I said, these
10 past two days, I -- I feel like I haven't been myself yet.

11 MR. DICKERSON: So, well, I -- I -- tell me if I understand you
12 correctly. It sounds like you're more than willing to be fair and impartial and take
13 the evidence in as -- as the evidence comes out in this case, and judge this case
14 just on that evidence. But you personally are affected just by, you know, reliving
15 what's happened to you and you tried to put it in the past?

16 PROSPECTIVE JUROR NO. 065: And that's exactly what's
17 happening. And, you know, having an eight-year-old daughter that -- asking me
18 what's wrong, why are you so quiet again, you know, and you know, jumping in my
19 bed last night, it just -- it's not -- I don't find that, you know, normal.

20 MR. DICKERSON: Yeah.

21 PROSPECTIVE JUROR NO. 065: And I felt okay for many, many
22 years. But again, you know, the -- it came back as if it was yesterday.

23 MR. DICKERSON: Yeah. So those feelings that you've had, the
24 feelings you have about law enforcement and the feeling you've had there, you're
25 not going to hold that against the State, myself, or Ms. Lexis, are you?

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IN THE SUPREME COURT OF THE STATE OF NEVADA

KEANDRE VALENTINE,) No. 74468
)
Appellant,)
)
vi.)
)
THE STATE OF NEVADA,)
)
Respondent.)
_____)

APPELLANT’S APPENDIX VOLUME VI PAGES 1154-1401

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 2 day of August , 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT
STEVEN S. OWENS

SHARON G. DICKINSON
HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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