PROSPECTIVE JUROR NUMBER 003: Yes, I do.

THE COURT: Do you think you can do that?

PROSPECTIVE JUROR NUMBER 003: Yes.

THE COURT: If the State's failed to prove the Defendant guilty, are you going to hesitate to come back and say not guilty?

PROSPECTIVE JUROR NUMBER 003: No, I have no problem with guilty or not guilty decision.

THE COURT: Flip a coin -- flip that coin over, if the State does prove the Defendant guilty beyond a reasonable doubt, can you come and say guilty?

PROSPECTIVE JUROR NUMBER 003: Yes.

THE COURT: Do you think you can do this and be fair and impartial?

PROSPECTIVE JUROR NUMBER 003: Yes.

THE COURT: Okay.

And, then, just -- let's keep on going. You're, Don Prince?

PROSPECTIVE JUROR NUMBER 004: I'm Don Prince. I moved -- I've been in Las Vegas for 15 years, moved here from Manhattan Beach, California. I have a master's degree in business. I have two adult sons. One lives in Hong Kong; one lives here. I've spent 20 years as a vice president of sales for Corning Glass, and after that I went into the private equity business, and from there I am almost retired. I still do some consulting work and that's about it.

THE COURT: You ever been on jury duty before?

PROSPECTIVE JUROR NUMBER 004: Yeah, I was a foreman of a jury in Dallas.

THE COURT: When was that?

PROSPECTIVE JUROR NUMBER 004: That was about 20 years ago.

THE COURT: Okay. And where did you say?

PROSPECTIVE JUROR NUMBER 004: In Dallas.

THE COURT: Oh, in Dallas.

Criminal or civil?

PROSPECTIVE JUROR NUMBER 004: Criminal.

THE COURT: Okay. And is there anything about that experience being -- not only on a jury but being the foreman of that jury that is going to interfere with your ability to be on this jury?

PROSPECTIVE JUROR NUMBER 004: Not at all.

THE COURT: Do you recall that process, that jury process?

PROSPECTIVE JUROR NUMBER 004: Yes, I do.

THE COURT: And do you remember any instructions or any of those kinds of things that you were given during the course of that trial?

PROSPECTIVE JUROR NUMBER 004: Just basically the boilerplate instructions that --

THE COURT: Are you going to have any problem leaving that experience out in the hallway and not let it interfere with this --

PROSPECTIVE JUROR NUMBER 004: No, not at all. It's --

THE COURT: Do you think you'll make a good juror?

PROSPECTIVE JUROR NUMBER 004: I hope so.

THE COURT: Okay. Would you be comfortable with somebody on the jury if you were actually a participant in this case?

PROSPECTIVE JUROR NUMBER 004: Yes, I would.

THE COURT: Okay.

Then we have -- is it Heather? What's your name?

PROSPECTIVE JUROR NUMBER 006: Heather Jonas.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 006: I've been here 47 years and my husband worked for -- is retired from the school district, and I work for Steinberg Diagnostic Medical Imaging for 27 years now.

THE COURT: Okay. Where did you go to school?

PROSPECTIVE JUROR NUMBER 006: I went to school, C.T. Sewell in Henderson and Basic High School.

THE COURT: And Basic?

PROSPECTIVE JUROR NUMBER 006: Yeah.

THE COURT: Okay. When did you graduate?

PROSPECTIVE JUROR NUMBER 006: I graduated in 1981. Long time ago.

THE COURT: Have you ever had jury duty before?

PROSPECTIVE JUROR NUMBER 006: I have not served. I've been summoned before but never been on a jury.

THE COURT: Any issues about what we're going to ask this jury to do?

PROSPECTIVE JUROR NUMBER 006: No.

THE COURT: Think you can do it?

PROSPECTIVE JUROR NUMBER 006: I'm good with it.

THE COURT: Think you can be fair and impartial?

PROSPECTIVE JUROR NUMBER 006: Yes.

THE COURT: And do you think you'd make a good juror?

PROSPECTIVE JUROR NUMBER 006: I think so.

THE COURT: You'll be comfortable with somebody being on the jury if you were a participant in this --

PROSPECTIVE JUROR NUMBER 006: Yes.

THE COURT: -- on either side? Okay, great.

Okay, then we go to --

PROSPECTIVE JUROR NUMBER 071: I'm Leslie Stowell. And I have son living in Argentina, I have a daughter living here in town, and I have three teenagers soon to graduate from high school. I've been here 22 years. And I was a teacher for three years and I've worked in schools for many other years.

THE COURT: And where did you go to school?

PROSPECTIVE JUROR NUMBER 071: I went to Southern Utah University.

THE COURT: All right. What did you say your husband does?

PROSPECTIVE JUROR NUMBER 071: He works for City National Bank.

THE COURT: And your kids are too young to work; right, they're all in high school, teenagers?

PROSPECTIVE JUROR NUMBER 071: They're teenagers.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 071: Two are graduating soon.

THE COURT: Have you ever had jury service before?

PROSPECTIVE JUROR NUMBER 071: Just came but didn't go to the jury.

THE COURT: Do you understand what we're going to ask this jury to do?

PROSPECTIVE JUROR NUMBER 071: Yes.

THE COURT: Can you do it?

PROSPECTIVE JUROR NUMBER 071: Yes.

THE COURT: Can you do it and be fair and impartial to both the State and the defense?

PROSPECTIVE JUROR NUMBER 071: Absolutely.

THE COURT: Do you think you'll make a good juror?

PROSPECTIVE JUROR NUMBER 071: Yes.

THE COURT: Would you be comfortable with somebody with your frame of mind who was on the jury and you were over here as a participant?

PROSPECTIVE JUROR NUMBER 071: Yes.

THE COURT: Okay, perfect. Then we go to --

PROSPECTIVE JUROR NUMBER 060: My name is Allen Becker. I've been in Las Vegas for 20 years, moved here from southern California. I used to work for the City of Las Vegas, and now currently City of Henderson as a building inspector and also code enforcement. I have four boys, they're all adults, two of them are Metro, and the other two work in the computer industry doing point of sales, maintenance, service, and installs. My wife works for a home builder here in southern Nevada. I have been summoned; this is the third time, never served on a jury. And I live my life by the facts, as far as my work and everything else that I do, and I think I would make a great juror.

THE COURT: Okay, there you go.

Your name is?

PROSPECTIVE JUROR NUMBER 069: My name's Peter Vlassopoulos. I'm a recently retired elevator constructor. My wife recently retired from Clark County code enforcement. I have three daughters. I think I'll make an excellent juror.

THE COURT: How old are they? Are they grown?

PROSPECTIVE JUROR NUMBER 069: They are grown. They're all grown, college graduates.

THE COURT: Where did you go to school?

PROSPECTIVE JUROR NUMBER 069: In Indiana.

THE COURT: Okay. How far did you go?

PROSPECTIVE JUROR NUMBER 069: High school.

THE COURT: And your three daughters are all college graduates and what do they do?

PROSPECTIVE JUROR NUMBER 069: One works for an engineering firm, the other one works for like a hospital, like an administrator, and then my youngest is a rape crisis counselor.

THE COURT: So, have you ever been on jury service before?

PROSPECTIVE JUROR NUMBER 069: No, sir.

THE COURT: Do you have any questions or issues about how this jury service in this case is going to go?

PROSPECTIVE JUROR NUMBER 069: No, sir.

THE COURT: You understand what we're going to ask the jury to do?

PROSPECTIVE JUROR NUMBER 069: Absolutely. I believe I will be fair and impartial.

THE COURT: Okay. Those are the magic words, fair and impartial.

All right. You know, no matter how straightforward a case seems, it is never as easy as you would think to make up your mind. When 12 people go into that deliberation room to consider their verdict, it always turns out to be more of a challenge than anybody really anticipated, and there's a lot of aspects to the process of making your mind up and deciding -- answering the question: Did the State prove him guilty beyond a reasonable doubt? And the whole purpose of deliberating is to have everybody that heard the evidence will find as to what they believe the evidence showed. And when you get done going through this deliberation process, you end up making up your mind, pulling the trigger, making the call, and you'll be

surprised at reaching it -- a decision is a task, you have to pay attention.

Your name is?

PROSPECTIVE JUROR NUMBER 064: My name is Erik Bagger. I have lived in Las Vegas for 15 years. Born and raised originally from Cleveland, Ohio. I am married. My wife is -- does retail. She's a manager for a clothing store. I am an on call bartender for P.T's. No kids. The highest level of education is associate's degree in engineering for recording arts, for music, which was in Orlando, Florida. And I believe I'd be a good juror. Never been summoned to jury duty before. I've been summoned but never served before.

THE COURT: Been summoned but never actually on a jury?

PROSPECTIVE JUROR NUMBER 064: Correct, yes.

THE COURT: Okay. And you understand the nature of jury service in this case?

PROSPECTIVE JUROR NUMBER 064: Yes.

THE COURT: And you understand what we're going to ask the jury to decide?

PROSPECTIVE JUROR NUMBER 064: Correct.

THE COURT: And you think you're up to the task?

PROSPECTIVE JUROR NUMBER 064: Yes.

THE COURT: Would you be comfortable with somebody being on the jury with your frame of mind if you were a participant in this case?

PROSPECTIVE JUROR NUMBER 064: Yes, I would.

THE COURT: Perfect, okay.

Go ahead.

PROSPECTIVE JUROR NUMBER 021: My name is Nicole Miller. I've lived

here in Las Vegas since 1996. I am married. My wife stays home with our two children. I graduated from UNLV with a degree in criminal justice and I work for Clark County Child Protective Services.

THE COURT: How long have you worked for Child Protective Services?

PROSPECTIVE JUROR NUMBER 021: I've worked there for approximately 15 years.

THE COURT: Really?

PROSPECTIVE JUROR NUMBER 021: Yes, sir.

THE COURT: Quite a challenging job.

PROSPECTIVE JUROR NUMBER 021: Yes, sir, it is.

THE COURT: So have you ever been on jury service before?

PROSPECTIVE JUROR NUMBER 021: I've been summoned but never served.

THE COURT: Okay, seems to be the tone of most everybody here, so.

You understand what we're going to be asking this jury to decide?

PROSPECTIVE JUROR NUMBER 021: Yes, sir.

THE COURT: Do you think you're going to have any trouble making up your mind?

PROSPECTIVE JUROR NUMBER 021: No, sir.

THE COURT: Would you be comfortable with somebody on a jury if you were the one who was involved in the trial would you be comfortable with somebody on the jury with your frame of mind?

PROSPECTIVE JUROR NUMBER 021: Yes, sir.

THE COURT: Perfect, okay.

PROSPECTIVE JUROR NUMBER 022: Dave Baudoin. I've been in Vegas

for 30 plus years. I'm a general manager in the automotive dealership. My wife is a stay at home housewife. We have one daughter who's a senior at Arizona State. I've been summoned before but never picked.

THE COURT: Okay. Understand the nature of jury service as it relates to this case?

PROSPECTIVE JUROR NUMBER 022: Yes, sir.

THE COURT: See any problems in performing jury service in this case?

PROSPECTIVE JUROR NUMBER 022: No, sir.

THE COURT: Do you think you can do that and be fair and impartial?

PROSPECTIVE JUROR NUMBER 022: Yes, sir.

THE COURT: Would you be comfortable with somebody on the jury with your frame of mind if you were a participant in this case?

PROSPECTIVE JUROR NUMBER 022: Yes, sir.

THE COURT: Great, okay.

PROSPECTIVE JUROR NUMBER 057: Michelle Moline. I've been in Las Vegas for just over 9 years from -- originally from Los Angeles. I'm an HR professional of 21 years. No husband, no kids. I have served on a jury before, not in Clark County but in Los Angeles. And some college.

THE COURT: You served on a jury in Los Angeles?

PROSPECTIVE JUROR NUMBER 057: Yes.

THE COURT: How long ago was that?

PROSPECTIVE JUROR NUMBER 057: It's got to be at least 20 years.

THE COURT: Oh, really.

PROSPECTIVE JUROR NUMBER 057: Yep.

THE COURT: Was it a civil or a criminal case?

PROSPECTIVE JUROR NUMBER 057: I did both, one civil and one criminal case.

THE COURT: There's a world of differences between civil cases and criminal cases.

PROSPECTIVE JUROR NUMBER 057: Yes, there is.

THE COURT: About the only similarity is they're held in the same building.

PROSPECTIVE JUROR NUMBER 057: Right.

THE COURT: Other than that, there's nothing else.

PROSPECTIVE JUROR NUMBER 057: Correct.

THE COURT: Just saying.

Either one of those -- do you have a pretty good recall of how the criminal case went?

PROSPECTIVE JUROR NUMBER 057: Not really. It was -- like I said, it had to be at least 20, if not 30 years ago.

THE COURT: Well, that's good because all I was going to do was ask you to forget it.

PROSPECTIVE JUROR NUMBER 057: Okay, good I forgot it.

THE COURT: You've already done that then we're way ahead.

But you understand the nature of the jury service in this case?

PROSPECTIVE JUROR NUMBER 057: Absolutely.

THE COURT: You understand what we're going to ask this jury to decide?

PROSPECTIVE JUROR NUMBER 057: Yes.

THE COURT: Any problems making that kind of call?

PROSPECTIVE JUROR NUMBER 057: No, I do not.

THE COURT: And if you think the State failed to prove the Defendant guilty,

are you going to hesitate to come back and say not guilty?

PROSPECTIVE JUROR NUMBER 057: No, I will not.

THE COURT: Do you think just the opposite, the State proved exactly what they needed to prove beyond a reasonable doubt, are you going to come back and say guilty?

PROSPECTIVE JUROR NUMBER 057: Correct.

THE COURT: Do you think that you have the kind of frame of mind that you'd be comfortable with if you were a participant in this trial?

PROSPECTIVE JUROR NUMBER 057: Absolutely, I do investigations almost every day being in human resources.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 027: Hi, my name is Brittany. I was born in California but pretty much grew up here in Las Vegas. I work at the MGM Grand. This is my first jury summons, never been on a jury before, but I do believe that I would be a good juror.

THE COURT: What do you do at the MGM?

PROSPECTIVE JUROR NUMBER 027: I work in the box office.

THE COURT: Oh, okay, okay. So who's there now?

PROSPECTIVE JUROR NUMBER 027: Oh, you mean who's performing?

THE COURT: Yeah.

PROSPECTIVE JUROR NUMBER 027: Of?

THE COURT: Cirque du Soleil or somebody?

PROSPECTIVE JUROR NUMBER 027: Yeah. So, KA is our resident show and then we have David Copperfield and we have the Jabbawockeez dance crew and the comedy club.

THE COURT: Good. So how old are you?

PROSPECTIVE JUROR NUMBER 027: I'm sorry?

THE COURT: How old are you?

PROSPECTIVE JUROR NUMBER 027: I'm 25.

THE COURT: Okay, you look very young. Sometimes we need to talk to the young folks about jury service and not getting pushed around but you're old enough you're not going to -- you'll be able to hold your own.

PROSPECTIVE JUROR NUMBER 027: Yep.

THE COURT: Do you understand the nature of jury service in this case?

PROSPECTIVE JUROR NUMBER 027: Yes, sir.

THE COURT: Do you understand, again, what we're going to ask this jury to decide?

PROSPECTIVE JUROR NUMBER 027: Yes.

THE COURT: Do you have any qualms whatsoever about your ability to perform jury service in this case?

PROSPECTIVE JUROR NUMBER 027: No.

THE COURT: You'll be fair and impartial?

PROSPECTIVE JUROR NUMBER 027: Yes, sir.

THE COURT: And do you think you have that kind of a fair frame of mind that you would be comfortable with if somebody with your frame of mind was on the jury and you were a participant in this case?

PROSPECTIVE JUROR NUMBER 027: Yes.

THE COURT: You said no jury service?

PROSPECTIVE JUROR NUMBER 027: No, this is my first summons and I've never been on a jury before.

THE COURT: Okay, perfect.

And we have?

PROSPECTIVE JUROR NUMBER 029: Kimberly.

THE COURT: Kimberly Reese?

PROSPECTIVE JUROR NUMBER 029: Kimberly Reese. I've been in Vegas my whole life. I'm a personal trainer and a banquet bartender. And I have a son who just graduated. And --

THE COURT: From?

PROSPECTIVE JUROR NUMBER 029: Pardon?

THE COURT: From high school?

PROSPECTIVE JUROR NUMBER 029: High school.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 029: And my highest level of education is associate's degree in physical therapy.

And what else, what else?

THE COURT: Ever had jury service before?

PROSPECTIVE JUROR NUMBER 029: No, I haven't.

THE COURT: You understand how the jury service in this case is going to work?

PROSPECTIVE JUROR NUMBER 029: I do.

THE COURT: Okay. You think you can do it?

PROSPECTIVE JUROR NUMBER 029: I do.

THE COURT: Do you think you can make the ultimate decision and call as to whether or not the State has proven the Defendant guilty beyond a reasonable doubt?

PROSPECTIVE JUROR NUMBER 029: Yes, I do.

THE COURT: And you have no problems with finding the Defendant guilty if the State proves him guilty?

PROSPECTIVE JUROR NUMBER 029: No problem.

THE COURT: And can you find him not guilty if the State fails to prove him guilty --

PROSPECTIVE JUROR NUMBER 029: No problem.

THE COURT: -- beyond a reasonable doubt?

PROSPECTIVE JUROR NUMBER 029: Yes, I can.

THE COURT: Okay. And, once again, would you be comfortable with somebody being on the jury if you were a participant in this trial with your frame of mind?

PROSPECTIVE JUROR NUMBER 029: Absolutely.

THE COURT: Okay.

Okay, then we have?

PROSPECTIVE JUROR NUMBER 032: Felicitas Luna. I've lived here for about 25 years. I was born in Mexico, raised here. I have three daughters. My highest -- I graduated from high school and I'm currently going to cosmetology school and also training for breastfeeding consultant for WIC and this is my first jury summons.

THE COURT: How old are your daughters?

PROSPECTIVE JUROR NUMBER 031: My oldest one is in first grade. She's six.

THE COURT: Oh, okay. So you understand the nature of jury service?

PROSPECTIVE JUROR NUMBER 031: Yes, sir.

THE COURT: As it applies to this case?

PROSPECTIVE JUROR NUMBER 031: Yes, sir.

THE COURT: And do you see my problem with you being able to perform jury service in this case and be fair and impartial to both sides?

PROSPECTIVE JUROR NUMBER 031: No, sir.

THE COURT: Okay. And, once again, if you were a participant in this trial, would you be comfortable with somebody on the jury with your frame of mind?

PROSPECTIVE JUROR NUMBER 031: Definitely.

THE COURT: Perfect, okie-doke.

You are?

PROSPECTIVE JUROR NUMBER 034: David Franklin.

THE COURT: David Franklin, okay.

PROSPECTIVE JUROR NUMBER 034: I've been here 58 years. I work at the Mirage since the opening, still there. Also play drums on the side.

THE COURT: You started at the Mirage?

PROSPECTIVE JUROR NUMBER 034: Yeah.

THE COURT: Wow.

PROSPECTIVE JUROR NUMBER 034: Opened it. It was the event.

THE COURT: Yes, it was.

So, okay, so married?

PROSPECTIVE JUROR NUMBER 034: Single.

THE COURT: Children?

PROSPECTIVE JUROR NUMBER 034: One.

THE COURT: How old?

PROSPECTIVE JUROR NUMBER 034: 40.

THE COURT: And boy or girl?

PROSPECTIVE JUROR NUMBER 034: Boy.

THE COURT: What does he do?

PROSPECTIVE JUROR NUMBER 034: He works bartend part-time.

THE COURT: Does he work at the Mirage also?

PROSPECTIVE JUROR NUMBER 034: I'm trying to get him there.

THE COURT: So, you ever been on jury service before, you said no?

PROSPECTIVE JUROR NUMBER 034: Yes, I have.

THE COURT: You have.

Here in Las Vegas, of course?

PROSPECTIVE JUROR NUMBER 034: Yes.

THE COURT: How long ago?

PROSPECTIVE JUROR NUMBER 034: A little over two years.

THE COURT: Civil or criminal?

PROSPECTIVE JUROR NUMBER 034: Criminal.

THE COURT: Were you by any chance the foreperson?

PROSPECTIVE JUROR NUMBER 034: No.

THE COURT: Anything -- that's not very long ago. You remember that experience pretty well?

PROSPECTIVE JUROR NUMBER 034: Some of it, yeah, it was a good experience.

THE COURT: What kind of case was it?

PROSPECTIVE JUROR NUMBER 034: Robbery at a gas station, right up the street here.

THE COURT: Well, considering that this -- charges in this case is a robbery

also the instructions would be somewhat similar.

PROSPECTIVE JUROR NUMBER 034: Yes.

THE COURT: If not real similar. But it's important -- I'm sure I'm going to do a much better job than whoever it was that tried that other case.

PROSPECTIVE JUROR NUMBER 034: That was Elizabeth Gonzalez.

THE COURT: Well, I might have to take that back. She does a great job.

So, it's important though that you don't let that experience from that prior trial interfere with what's going on in this trial. All I want you to do is just kind of -- the best you can, leave that experience out in the hallway, don't let anything you recall about those instructions in that case interfere with the instructions you're going to get in this case.

PROSPECTIVE JUROR NUMBER 034: I already did.

THE COURT: Okay, good, there you are. Because the way this works is when the evidence is all over with, I will read you instructions on the law and then you're going to hear closing arguments from both the State and the defense. By the way, the State gets two shots at you at the closing argument because they're the ones with the burden of proof. But a lot of what you're going to hear in the closing arguments revolve around the instructions. And so you're each -- you all are going to have a copy of the instructions and you're encourage to make notes as counsel makes their closing arguments, make notes on your instructions because when you go to deliberate you're going to take your notes with you. It'll help you follow the instructions of the law in regards to what you believe the evidence has been.

Does that all make sense? Is that kind of how it went in your other --

PROSPECTIVE JUROR NUMBER 034: Yeah.

THE COURT: Okay, good. But I just want you to make sure that you focus

and concentrate on the instructions in this case.

PROSPECTIVE JUROR NUMBER 034: Absolutely.

THE COURT: Don't let that other experience interfere.

PROSPECTIVE JUROR NUMBER 034: Okay.

THE COURT: So, are you thinking you can do this?

PROSPECTIVE JUROR NUMBER 034: Oh, I know I can.

THE COURT: Did you think that that prior jury service was a positive experience?

PROSPECTIVE JUROR NUMBER 034: Well, once I got through it I thought it was great. It wasn't so bad. I was rather proud of it.

THE COURT: And that's kind of in general how the vast, vast majority -- in fact, I have to search real hard to think of somebody that didn't have that kind of an approach to their jury service. It's not something that they would actually run out and volunteer to do, you can't do that anyway, but still considering all that was involved it turned out to be a positive experience.

PROSPECTIVE JUROR NUMBER 034: Positive experience, absolutely.

THE COURT: Good for you.

Do you think you'll make a good juror?

PROSPECTIVE JUROR NUMBER 034: Yeah.

THE COURT: Would you be happy -- if you were a participant in this jury, would you be comfortable with somebody on the jury with your frame of mind?

PROSPECTIVE JUROR NUMBER 034: Most definitely.

THE COURT: Perfect.

Okay, then we have?

PROSPECTIVE JUROR NUMBER 037: Lee Thomas.

THE COURT: Lee Thomas. And tell us about yourself.

PROSPECTIVE JUROR NUMBER 037: I've been in Las Vegas for -- since 1963. I work at a RV dealership for almost 30 years. Married, no children, two dogs.

THE COURT: What does your husband do?

PROSPECTIVE JUROR NUMBER 037: Painter for Millrose (phonetic) Pro Painting, does all remodels on the strip.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 037: I have a fear of talking on this microphone.

THE COURT: You don't worry, you don't worry, just relax. Everybody is in the same boat, everybody feels the same way.

So have you ever been on a jury before?

PROSPECTIVE JUROR NUMBER 037: One time in the early 90's.

THE COURT: The early 90's. Over at the old courthouse?

PROSPECTIVE JUROR NUMBER 037: Yes.

THE COURT: What kind of trial was it? Was it a civil or criminal?

PROSPECTIVE JUROR NUMBER 037: Criminal, a threat against the president's life.

THE COURT: What's that?

PROSPECTIVE JUROR NUMBER 037: A threat against the president's life.

THE COURT: Oh, really.

PROSPECTIVE JUROR NUMBER 037: But it was from like a homeless, mentally ill person. So it was not a serious threat.

THE COURT: You remember that?

PROSPECTIVE JUROR NUMBER 037: Yeah.

THE COURT: You remember pretty well? Were you by chance the foreperson of that jury?

PROSPECTIVE JUROR NUMBER 037: No, no.

THE COURT: Anything about that experience that potentially could interfere with your jury service in this case?

PROSPECTIVE JUROR NUMBER 037: No, no.

THE COURT: And you can kind of keep that outside and not let it interfere?

PROSPECTIVE JUROR NUMBER 037: Yes, I hope so.

THE COURT: But you do understand how the process works?

PROSPECTIVE JUROR NUMBER 037: Yes, yeah.

THE COURT: Okay. Did you make a good juror in that case?

PROSPECTIVE JUROR NUMBER 037: I think so.

THE COURT: Do you think you'd make a good juror in this case?

PROSPECTIVE JUROR NUMBER 037: Yes.

THE COURT: You understand the nature of what we're going to ask this jury to decide; right?

PROSPECTIVE JUROR NUMBER 037: Yes.

THE COURT: Are you going to have any problems making that kind of a call?

PROSPECTIVE JUROR NUMBER 037: No.

THE COURT: If you think the State proved the Defendant guilty beyond a reasonable doubt, are you going to come back and say guilty?

PROSPECTIVE JUROR NUMBER 037: Yes.

THE COURT: Okay. If the State fails to do that, are you going to come back and say not guilty?

PROSPECTIVE JUROR NUMBER 037: Yes.

THE COURT: Okay. Would you be comfortable with somebody on the jury with your frame of mind if you were a participant in this trial?

PROSPECTIVE JUROR NUMBER 037: Yes.

THE COURT: Okay, then we have?

PROSPECTIVE JUROR NUMBER 039: Meseret Gemeda.

THE COURT: And you pronounce it Gemeda?

PROSPECTIVE JUROR NUMBER 039: Yes.

THE COURT: Okay. And tell us about yourself?

PROSPECTIVE JUROR NUMBER 039: I have been here in Las Vegas for nine years. I'm working table --

THE COURT: Where are you from?

PROSPECTIVE JUROR NUMBER 039: Ethiopia.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 039: I've been here in Las Vegas for nine years. I work at Suncoast as table game dealer and bus person at Bellagio. I'm married and two children.

THE COURT: And they're babies?

PROSPECTIVE JUROR NUMBER 039: Yes.

THE COURT: Okay. What does your husband do?

PROSPECTIVE JUROR NUMBER 039: Dealer, table game dealer.

THE COURT: Oh, okay. Have you ever had jury service before?

PROSPECTIVE JUROR NUMBER 039: I never been.

THE COURT: Did you say you were naturalized citizen?

PROSPECTIVE JUROR NUMBER 039: Citizen, yes.

THE COURT: Out of curiosity, when you went through the course and the class, did they talk about jury service?

PROSPECTIVE JUROR NUMBER 039: Yes.

THE COURT: One of the things they teach you in that class on becoming a naturalized citizen -- did it seem unusual -- did it seem out of -- rather strange that we do how we do what we do or is it just America?

PROSPECTIVE JUROR NUMBER 039: No, it's strange. I never been.

THE COURT: It is strange. I mean it is strange compared to the way things are done every place else in the world. It is a pretty unusual system we have, pretty unique, really unique to America but here you are.

PROSPECTIVE JUROR NUMBER 039: Yes.

THE COURT: And you understand how this is going to work, in terms of jury service, you understand what we're going to ask this jury to decide?

PROSPECTIVE JUROR NUMBER 039: Yes.

THE COURT: Are you going to have any problems in making that kind of a decision?

PROSPECTIVE JUROR NUMBER 039: I don't have any problem but English is my second language.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 039: I might be have a language barrier.

THE COURT: Well, you speak good English, I mean, you speak well.

PROSPECTIVE JUROR NUMBER 039: Thank you.

THE COURT: If you felt uncomfortable, with English being your second language, it would be possible to get an interpreter to sit over on the side of the room, they would talk into a microphone and you'd have earphones on that -- and

they would interpret in Ethiopian what's being said in English. I don't know how hard or difficult that would be to get an interpreter. But it doesn't sound to me like you need that because your English is pretty darn good.

PROSPECTIVE JUROR NUMBER 039: Thank you.

THE COURT: The only drawback about doing that, with an interpreter, is when you go into the deliberation room with the other members of the jury you can't take the interpreter. You have to go in by yourself and you have to be able to converse in English with the other jurors and your thoughts on the evidence that you've heard.

Do you think your English is good enough that you'll feel comfortable conversing in English with the other members of the jury?

PROSPECTIVE JUROR NUMBER 039: Yes.

THE COURT: Sounds to me like you're fine.

You think you'd make a good juror?

PROSPECTIVE JUROR NUMBER 039: Yes, sir

THE COURT: And would you be comfortable if you were a participant in this trial, would you be comfortable with somebody on the jury with your frame of mind right now?

PROSPECTIVE JUROR NUMBER 039: Yep.

THE COURT: Perfect, perfect, okay.

Then we go -- next seat is?

PROSPECTIVE JUROR NUMBER 055: Hi there, I'm Melissa Svejda. I have been in Las Vegas --

THE COURT: Okay, okay, okay, okay, let me find it. Melissa, how do you say it?

PROSPECTIVE JUROR NUMBER 055: Svejda.

THE COURT: S-V-E?

PROSPECTIVE JUROR NUMBER 055: Uh-huh.

THE COURT: Okay, I'm sorry, go ahead.

PROSPECTIVE JUROR NUMBER 055: I've been in Las Vegas since 2003. I'm a professional dancer. I'm a newlywed. My husband works for Nevada State Bank as an underwriter. And I've never been on a jury before and no children, two dogs.

THE COURT: Two children, two dogs?

PROSPECTIVE JUROR NUMBER 055: No children, two dogs.

THE COURT: Oh, no children.

So where do you dance?

PROSPECTIVE JUROR NUMBER 055: Well, I just left a show at Planet Hollywood. I was in Crazy Girls for two years and I just recently left. And I also dance at Foundation Room. So I'm doing that and then freelancing.

THE COURT: Okay. No jury service, but you understand the nature of jury service as it applies to this case?

PROSPECTIVE JUROR NUMBER 055: Yes.

THE COURT: Any problems with you being able to perform the jury service that we're going to ask this jury to do?

PROSPECTIVE JUROR NUMBER 055: No problems.

THE COURT: Do you think you can do that and be fair and impartial to both sides?

PROSPECTIVE JUROR NUMBER 055: Yes.

THE COURT: Do you think you're going make a good juror?

PROSPECTIVE JUROR NUMBER 055: I think so.

THE COURT: Would you be comfortable with somebody on the jury with your frame of mind if you were a participant in this trial?

PROSPECTIVE JUROR NUMBER 055: I mean, I would hate to be in that position, but, yes, I would want me on the jury.

THE COURT: You'd want -- if you were a participant, you'd want somebody like you on the jury?

PROSPECTIVE JUROR NUMBER 055: Yes.

THE COURT: Perfect, perfect.

Okay. Then we have Randall?

PROSPECTIVE JUROR NUMBER 042: I'm Randall Robarts. I'm 30 years old. I've lived in Las Vegas my entire life. I worked at UPS for ten years as a supervisor. And I was getting tired of it so I just recently quit that to chase my dream of becoming a pilot, and yesterday I just got my multi-engine instrument rating. So that was a really exciting thing for me. I served on a jury right after my 18th birthday. It was a civil court -- civil case. And I feel like I could be a fair and impartial juror.

THE COURT: How long ago was that trial?

PROSPECTIVE JUROR NUMBER 042: About 12 years ago.

THE COURT: Okay. Well, let me see, was it here, in the RJ building?

PROSPECTIVE JUROR NUMBER 042: It was somewhere downtown.

THE COURT: Because 2005 we moved into this building, and before that it was the old courthouse.

PROSPECTIVE JUROR NUMBER 042: Yeah, it probably would have been the old courthouse then.

THE COURT: Okay. Civil trials, you know, are so much different than we do in a criminal trial. A civil trial has eight folks and they don't have to have a unanimous verdict and you've got all kinds of other issues.

Do you remember much about that trial?

PROSPECTIVE JUROR NUMBER 042: Not a whole lot. I remember the subject of it. But I don't remember, you know, everything about it.

THE COURT: Was it a personal injury type of case or --

PROSPECTIVE JUROR NUMBER 042: Yeah, it was an optometry thing, for a guy's eye.

THE COURT: Oh, like a medical malpractice type thing?

PROSPECTIVE JUROR NUMBER 042: Yeah, that sort of thing, yeah.

THE COURT: Okay. Well, I only ask you, I don't want to stir up memories, but I want you to forget, forget remembering about it because this is going to be completely different then what you went through before. So just set all that aside and focus on the instructions that you get here.

It's real important you, all the jurors, understand that the only thing you can rely upon in reaching a verdict is that which comes right off of this witness chair, that and the exhibits that are admitted, it's the only evidence. Everything counsel says is not evidence and can't be considered. It only has meaning as it relates to an answer given to a question. But the answers to the questions are what you rely on. There's instructions that tell you --

PROSPECTIVE JUROR NUMBER 042: I understand.

THE COURT: Okay. Can you do that?

PROSPECTIVE JUROR NUMBER 042: Yes, sir.

THE COURT: And do you think you can be fair and impartial about the whole

process?

PROSPECTIVE JUROR NUMBER 042: Yes, sir.

THE COURT: And would you be comfortable with somebody with your frame of mind on the jury if you were a participant in it?

PROSPECTIVE JUROR NUMBER 042: Yes, sir.

THE COURT: Perfect, perfect.

Okay. And we go back over here, down -- you guys can just hand that microphone down.

So you are?

PROSPECTIVE JUROR NUMBER 049: Christy.

THE COURT: Christy.

PROSPECTIVE JUROR NUMBER 049: Yeah.

I'm Christy Abreu. I was born and raised in Southern California but I've been here about 30 years. I'm divorced. I have four kids. My oldest daughter is a lead underwriter at an insurance company, one son works at the El Cortez as a pit boss, and my other son is athlete relations at the UFC. My youngest is still at home in high school. She's a sophomore. I work at Findlay Honda in Henderson in the accounting office. I've never been on a jury before.

What am I missing? Is that it?

THE COURT: You pretty much covered everything.

PROSPECTIVE JUROR NUMBER 049: Okay.

THE COURT: So you understand the nature of jury service as it relates to this case?

PROSPECTIVE JUROR NUMBER 049: Yes, I do.

THE COURT: Do you have any questions or problems with performing jury

service in this case?

PROSPECTIVE JUROR NUMBER 049: Not at all.

THE COURT: Can you do it and be fair and impartial?

PROSPECTIVE JUROR NUMBER 049: I'm sure I can be, yes.

THE COURT: Again, the ultimate question, if the State proved the Defendant guilty beyond a reasonable doubt, that's what the jury has to decide. If you feel like they did, can you come back and say guilty?

PROSPECTIVE JUROR NUMBER 049: Yes, I could.

THE COURT: And if you feel like they didn't, can you come back and say not guilty?

PROSPECTIVE JUROR NUMBER 049: I couldn't -- I wouldn't, yes. I would say not guilty.

THE COURT: You wouldn't hesitate?

PROSPECTIVE JUROR NUMBER 049: I wouldn't hesitate either way.

THE COURT: Okay. And would you be comfortable with somebody on the jury with your frame of mind if you were an actual participant?

PROSPECTIVE JUROR NUMBER 049: Definitely.

THE COURT: Okay.

Okay. Then we have?

PROSPECTIVE JUROR NUMBER 056: My name is Christopher Carrier. I've been in Las Vegas for about 24 years. I'm a civil engineer, got my masters here at UNLV. Single, no kids, never been in a jury before, but I feel like I'd be a most excellent juror.

THE COURT: Who do you work for?

PROSPECTIVE JUROR NUMBER 056: I work for a small environmental

consultant company. It's called Broadbent and Associates.

THE COURT: Is this dirt related stuff?

PROSPECTIVE JUROR NUMBER 056: Some of it is, yeah. We do a lot of oil remediation, things like that.

THE COURT: Good for you.

So, again, not having been on a jury before, do you understand what the nature of the jury service in this case is going to be like? I mean, we talked around and around and around it.

PROSPECTIVE JUROR NUMBER 056: Yes, sir.

THE COURT: Do you think you can do it?

PROSPECTIVE JUROR NUMBER 056: Yes, sir.

THE COURT: Do you think you can make that kind of an ultimate decision?

PROSPECTIVE JUROR NUMBER 056: Yes, sir.

THE COURT: Are you going to hesitate to come back and say not guilty if the State fails to prove their case?

PROSPECTIVE JUROR NUMBER 056: No hesitations.

THE COURT: And can you come back and say the Defendant's guilty if you believe the State's evidence proves the Defendant guilty beyond a reasonable doubt?

PROSPECTIVE JUROR NUMBER 056: Yes, sir.

THE COURT: Think you'd make a good juror?

PROSPECTIVE JUROR NUMBER 056: Yes, sir.

THE COURT: Would you be comfortable if you were a participant with somebody on the jury with your frame of mind?

PROSPECTIVE JUROR NUMBER 056: I would love to have somebody like

me on the jury.

THE COURT: You can be a lawyer.

Okay, your name is?

PROSPECTIVE JUROR NUMBER 052: Marlene Mecall.

THE COURT: Marlene, okay, hang on.

What's your --

PROSPECTIVE JUROR NUMBER 052: 52.

THE COURT: What's your last name?

PROSPECTIVE JUROR NUMBER 052: Mecall.

THE COURT: Mecall.

PROSPECTIVE JUROR NUMBER 052: Number 52.

THE COURT: Oh, okay, gotcha.

PROSPECTIVE JUROR NUMBER 052: I've been here since 2000. I'm married. I have -- we have two daughters. Ones 40, ones 37, they live in Scottsdale. One works for the Hartford, the other one has her own business. Seven grandchildren. I was on a jury three years ago, a criminal case.

THE COURT: Here?

PROSPECTIVE JUROR NUMBER 052: Yes.

THE COURT: What kind of case, civil or criminal?

PROSPECTIVE JUROR NUMBER 052: Criminal.

THE COURT: Were you by any chase the foreperson?

PROSPECTIVE JUROR NUMBER 052: I was not the foreman.

THE COURT: Okay. Do you remember much about that case?

PROSPECTIVE JUROR NUMBER 052: Yes.

THE COURT: What was the nature of the criminal charges?

PROSPECTIVE JUROR NUMBER 052: Grandfather being accused of molesting his three-year-old granddaughter.

THE COURT: Okay. Nothing related to what's going on in here.

PROSPECTIVE JUROR NUMBER 052: No, no.

THE COURT: Anything about that case is going to interfere with your ability to be on this case and be fair and impartial?

PROSPECTIVE JUROR NUMBER 052: No, no.

THE COURT: You can just apply the instructions -- but you understand the process?

PROSPECTIVE JUROR NUMBER 052: Yes.

THE COURT: You understand how it works?

PROSPECTIVE JUROR NUMBER 052: Yes.

THE COURT: You get instructions, and then you hear the arguments, and they tell you what they -- how the lawyers interpret what the facts are and how they apply to the --

PROSPECTIVE JUROR NUMBER 052: Right.

THE COURT: -- instructions? That's just straightforward stuff?

PROSPECTIVE JUROR NUMBER 052: Yes.

THE COURT: But don't -- that other case is not going to interfere with your jury service in this case?

PROSPECTIVE JUROR NUMBER 052: No.

THE COURT: Okay. Did you think you made a good juror in that case?

PROSPECTIVE JUROR NUMBER 052: Yes.

THE COURT: And do you think you'd make a good juror in this case?

PROSPECTIVE JUROR NUMBER 052: Yes.

THE COURT: Would you be comfortable with somebody being on the jury with your frame of mind if you were a participant in this trial?

PROSPECTIVE JUROR NUMBER 052: Yes, I would.

THE COURT: Perfect, all right.

All right. Then we have?

PROSPECTIVE JUROR NUMBER 053: I'm Danielle Rae.

THE COURT: Danielle, tell me about yourself.

PROSPECTIVE JUROR NUMBER 053: I have lived here since I was five. I have some college. I'm married. I am self-employed as a professional photographer and nutrition coach. My husband does IT work at an insurance brokerage. We have three small kids. And this is my first time being summoned, never been on a jury, and I think I'd be a fair and impartial juror.

THE COURT: Who's taking care of your kids?

PROSPECTIVE JUROR NUMBER 053: They're in school at the moment, so, and then my mom's going to pick them up.

THE COURT: Okay. Is that going to work for the next couple of days?

PROSPECTIVE JUROR NUMBER 053: Yes.

THE COURT: Okay. So you're not going to have something like that hanging over your head and --

PROSPECTIVE JUROR NUMBER 053: No.

THE COURT: -- and then distracting you?

PROSPECTIVE JUROR NUMBER 053: All three of them are in school. So we're good.

THE COURT: Okay, all right. Think you'd make a good juror?

PROSPECTIVE JUROR NUMBER 053: Yes, sir.

THE COURT: Once, again, if you were a participant in this trial, would you be comfortable with somebody on the jury with your frame of mind?

PROSPECTIVE JUROR NUMBER 053: Yes, sir.

THE COURT: And we have?

PROSPECTIVE JUROR NUMBER 054: Kelly Mays.

THE COURT: Kelly Mays, right?

PROSPECTIVE JUROR NUMBER 054: Right.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 054: Okay. I've lived in Las Vegas since 2001. I teach at UNLV. My husband also teaches there. I have two, grown stepsons. One works in retail and ones a bartender. I have served on a jury once before. It was a civil case and it settled before we went to deliberations, so.

THE COURT: Not unusual.

How long ago was that?

PROSPECTIVE JUROR NUMBER 054: At least five years, maybe seven, I think.

THE COURT: It was here in the RJC building?

PROSPECTIVE JUROR NUMBER 054: Yes, yes, sir.

THE COURT: Which one of your sons has more fun, the ones that's the bartender or the ones that's in retail?

PROSPECTIVE JUROR NUMBER 054: I don't really want to think about it.

THE COURT: So you think you'd make a good, fair, and impartial juror?

PROSPECTIVE JUROR NUMBER 054: Yes, sir.

THE COURT: And you're not going to have any hesitation about being able to make the call --

PROSPECTIVE JUROR NUMBER 054: No, sir.

THE COURT: -- that we're going to ask this jury to do?

PROSPECTIVE JUROR NUMBER 054: Yes, sir.

THE COURT: If the State's proven the Defendant beyond a reasonable doubt guilty, are you going to come back and say guilty?

PROSPECTIVE JUROR NUMBER 054: I can do that.

THE COURT: And if they fail to do that, are you going to hesitate to come back and say not guilty?

PROSPECTIVE JUROR NUMBER 054: I will not hesitate.

THE COURT: Would you be comfortable with somebody on the jury with your frame of mind if you were a participant in this trial?

PROSPECTIVE JUROR NUMBER 054: Yes, sir.

THE COURT: Perfect. Okay.

Now I'm going to turn this group over to counsel for additional questioning. The State will go first and then followed by the defense. And then as soon as both sides have passed the 24 people, then we'll actually go through the selection of this group. And I'll let the rest of these guys go.

So, do you have questions you want to ask?

MR. SCHWARTZ: Yes, Your Honor. Thank you.

THE COURT: Or do you just want to pass for cause?

MR. SCHWARTZ: I'll ask a few questions. It looked like fun when you were doing it.

Thank you, Your Honor.

How's everyone doing?

THE JURY: Good.

MR. SCHWARTZ: Good, good, good. All right.

So, first off, Mr. Rose and myself are very thankful you guys are here. I know lots of other things you could be doing. I'm sure there's other things we could be doing but we appreciate you being here and answering the questions. I know some things are uncomfortable to talk about, totally get that, but we really appreciate it. And I'm sure Ms. Spells and Ms. Jones as well are they thankful for you guys being here, so.

Anybody super excited to get summoned for jury duty? Not anybody, huh? Oh, maybe. Okay, let's pass the mic back. Let's pass the mic back there.

And this is -- I'm going to call you Melissa because I'm not sure how to say your last name. And what were you thinking when you got the jury summons?

PROSPECTIVE JUROR NUMBER 055: I mean, on one hand I'm really excited because I've kind of always wanted to be on a jury. The only thing is, yeah, the time. But other than that, it's -- it is exciting.

MR. SCHWARTZ: Okay, great.

And you haven't done it before?

PROSPECTIVE JUROR NUMBER 055: No.

MR. SCHWARTZ: Okay. And Danielle, did you also kind of raise your hand?

PROSPECTIVE JUROR NUMBER 053: Kind of.

MR. SCHWARTZ: Okay. You're kind of excited?

PROSPECTIVE JUROR NUMBER 053: Just because I've never experienced it before.

MR. SCHWARTZ: So far it's been an interesting experience this morning; right?

PROSPECTIVE JUROR NUMBER 055: So far.

MR. SCHWARTZ: Okay, all right.

And just raise your hand if you have anything you want to say with what I'm about to say.

Anyone have an issue with the idea of having to disagree with people when you're deliberating, people you don't know?

Anybody have an issue with having to say your opinion to people you don't know? No hands.

PROSPECTIVE JUROR NUMBER 052: Can I say something related to that?

MR. SCHWARTZ: Absolutely. Let's get you the mic.

PROSPECTIVE JUROR NUMBER 052: The issue --

MR. SCHWARTZ: Let's get you the mic real quick, Marlene.

PROSPECTIVE JUROR NUMBER 052: It's Marlene.

MR. SCHWARTZ: Yes.

PROSPECTIVE JUROR NUMBER 052: The issue I had with the last trial was that it took so long to get a unanimous verdict.

MR. SCHWARTZ: Sure.

PROSPECTIVE JUROR NUMBER 052: So that was my issue.

MR. SCHWARTZ: Okay.

PROSPECTIVE JUROR NUMBER 052: It took probably three days to get to that point.

MR. SCHWARTZ: But did you have a problem sort of taking the time and explaining your opinions to other jurors?

PROSPECTIVE JUROR NUMBER 052: No.

MR. SCHWARTZ: Did you feel that because it was taking so long you just wanted to agree with everybody automatically?

PROSPECTIVE JUROR NUMBER 052: No.

MR. SCHWARTZ: Okay. Same thing here, you wouldn't feel pressure to --

PROSPECTIVE JUROR NUMBER 052: No.

MR. SCHWARTZ: -- agree just because it was taking a while; right?

PROSPECTIVE JUROR NUMBER 052: No.

MR. SCHWARTZ: Okay, awesome. Thank you.

PROSPECTIVE JUROR NUMBER 052: But it was really annoying.

MR. SCHWARTZ: Certainly, certainly understandable.

Anybody else have anything they want to say about that? Okay.

Now, some of you raised your hand -- or when you were talking with the judge, you talked about how you had prior jury service. Let's go back to Mr. Prince, in the back there.

I'm going to ask just kind of run through everybody, I guess, we could really just do this simply. Everyone who said they were on a jury before, I don't want to know what the verdict was, but did anyone not come to a verdict? So fair to say everybody who was on a jury, except for -- was it, you ma'am -- where the case settled.

PROSPECTIVE JUROR NUMBER 054: [Nods head]

MR. SCHWARTZ: Everybody else fair to say that you guys as a jury were able to reach a verdict? Okay, great.

And just touching on some of the things that the judge was asking you about, there was somebody who mentioned that you had -- let's flip to that page -- some past criminal charges or convictions.

If we could pass it down to Ms. Miller right in front of you, did you feel that it was -- was it a -- was it the District Attorney's Office who had filed the charges

or do you remember?

PROSPECTIVE JUROR NUMBER 021: Yes, it was.

MR. SCHWARTZ: And did you feel that the District Attorney's Office treated you fairly?

PROSPECTIVE JUROR NUMBER 021: Yes.

MR. SCHWARTZ: Okay. Ultimately case was dismissed; right?

PROSPECTIVE JUROR NUMBER 021: Yeah, I did all my stuff. I did all my requirements, yeah.

MR. SCHWARTZ: So nothing about that would cause you to hold anything against myself or the State in that matter?

PROSPECTIVE JUROR NUMBER 021: No.

MR. SCHWARTZ: Okay. Do you feel like the police officers -- was it Metro?

PROSPECTIVE JUROR NUMBER 021: It was secret shoppers. So I'm not really sure.

MR. SCHWARTZ: Oh, secret shoppers.

PROSPECTIVE JUROR NUMBER 021: Yeah.

MR. SCHWARTZ: Did you feel like they treated you fairly?

PROSPECTIVE JUROR NUMBER 021: Well, you know, I was 18, so I was terrified. So I couldn't really speak if it was fair or not because I was so scared.

MR. SCHWARTZ: Okay.

PROSPECTIVE JUROR NUMBER 021: So I just wanted to get it over with.

MR. SCHWARTZ: Okay.

PROSPECTIVE JUROR NUMBER 021: So, I'm sure everything was fine because I finished all my stuff pretty quickly.

MR. SCHWARTZ: So nothing about the secret shoppers would -- you

wouldn't hold that against Metro or any police officers going forward?

PROSPECTIVE JUROR NUMBER 021: No, it was my fault, so

MR. SCHWARTZ: Okay. It's been a while --

PROSPECTIVE JUROR NUMBER 021: It's my own fault.

MR. SCHWARTZ: -- so we can move on; right?

PROSPECTIVE JUROR NUMBER 021: Oh, yeah, I can move on.

MR. SCHWARTZ: Okay, great.

Could we pass it over to Mr. Baudoin. Is it Baudoin?

PROSPECTIVE JUROR NUMBER 022: Baudoin, yeah.

MR. SCHWARTZ: Baudoin.

Same kind of questions, was it the District Attorney's Office that --

PROSPECTIVE JUROR NUMBER 022: Yes.

MR. SCHWARTZ: -- filed charges against you?

Did you have any sort of -- did you feel like they treated you fairly for the most part?

PROSPECTIVE JUROR NUMBER 022: Yes.

MR. SCHWARTZ: Same question with regards to the police department?

PROSPECTIVE JUROR NUMBER 022: Yes.

MR. SCHWARTZ: Okay. So, no bias against the DA's office --

PROSPECTIVE JUROR NUMBER 022: None whatsoever.

MR. SCHWARTZ: -- the police department?

Thank you, sir.

And let's just jump over to Ms. Reese. First of all, personal trainer/bartender sounds pretty cool. That's got to keep you entertained; huh?

PROSPECTIVE JUROR NUMBER 029: Uh-huh, yes.

MR. SCHWARTZ: In regards to your -- what you mentioned before about the trafficking, did you feel like you were treated fairly overall?

PROSPECTIVE JUROR NUMBER 029: I did. I was -- it was fair.

MR. SCHWARTZ: Okay, awesome, thank you.

Okay. Let's move on to talking about when I was mentioning law enforcement, Metro. Anybody have any -- you know you hear a lot of stuff going on in the world, anyone have really positive experiences with law enforcement? Something that just sticks out in your mind, you know, that was a really good experience I had.

Pass it over to -- you are Michelle?

PROSPECTIVE JUROR NUMBER 057: Yes.

MR. SCHWARTZ: How are you doing?

PROSPECTIVE JUROR NUMBER 057: Good.

I've also had positive experience. But a memorable was I was in LAPD Explorer for almost two years when I was in high school. And it was a career that I was planning on doing, is becoming a police officer, but decided that I wouldn't be able to handle the stress. Don't ask me why I got in HR because it's very -- it's very similar.

MR. SCHWARTZ: Sure, sure.

PROSPECTIVE JUROR NUMBER 057: But I have a lot of respect for what they do every day.

MR. SCHWARTZ: Okay. And as an explorer you got to do ride-alongs?

PROSPECTIVE JUROR NUMBER 057: Ride-alongs, run security for like celebrity golf tournaments, and things like that, but never anybody crazy.

MR. SCHWARTZ: So as you're sitting here now do you kind of wish maybe

you had gone?

PROSPECTIVE JUROR NUMBER 057: No.

MR SCHWARTZ: Okay. Still good with --

PROSPECTIVE JUROR NUMBER 057: I'm still good with being in HR.

MR. SCHWARTZ: Okay. I was going to say maybe something other than HR, too, or are you good with HR?

PROSPECTIVE JUROR NUMBER 057: No, I'm good with HR.

MR. SCHWARTZ: All right, cool.

Anybody else, positive experience that stuck out? Yes, sir.

PROSPECTIVE JUROR NUMBER 060: Well, being a volunteer with the Henderson Police Department I have a lot of social interaction with the public. My wife and I participate in the Every 15 Minute Program, which I'll be at Coronado this Friday. We do the Shop with a Cop every Christmas. We do the National Night Out. And so we participate -- we have a lot of interaction with the public and it's been very enjoyable seeing the response that we get. So I really enjoy it. I've been doing it -- this will be ten years next year.

MR. SCHWARTZ: Are there certain qualifications to become a volunteer for the police department?

PROSPECTIVE JUROR NUMBER 060: For the City of Henderson you have to go through the formal background check and then also go through the Citizens Academy. It's a 13 week modified police academy. It kind of gives you an idea what the police department goes through. And so all of our volunteers have to go through that program, they have a year to accomplish that.

MR. SCHWARTZ: And you mentioned the Every 15 minutes, is that the DUI program?

PROSPECTIVE JUROR NUMBER 060: Yes, it is.

MR. SCHWARTZ: Okay. I remember that from high school, that's a great program.

Anyone else have some positive experience they want to share? Okay. Let's talk, in every profession there's good and bad; right? Anyone have any particularly negative experiences that you had with law enforcement? Something that's just been stuck in your mind ever since it happened? No? Okay, okay.

And this is?

PROSPECTIVE JUROR NUMBER 032: Felicitas Luna.

MR. SCHWARTZ: Ms. Luna, okay.

PROSPECTIVE JUROR NUMBER 032: About two years ago I was actually getting a ride from one of my neighbors to work. We got pulled over because it was a Honda and it didn't have plates but it had the permit. So the officer stopped us, he didn't have a driver's license, so he got a ticket for driving a car without a driver's license, then I got a ticket for allowing him to drive a car without a driver's license.

MR. SCHWARTZ: Wow.

PROSPECTIVE JUROR NUMBER 032: But the car wasn't mine, and I don't how to drive stick shift, but I got a car, and I was asking him why, and then he was like, if you have a nasty mouth, something like, I'll give you another one and I'll take you with me. I was like, no, I don't want anymore.

MR. SCHWARTZ: Kept your mouth shut, I take it.

PROSPECTIVE JUROR NUMBER 032: Yeah, I was just --

MR. SCHWARTZ: You know that's a new one. I have not heard that, you allowing him to drive without a driver's license.

PROSPECTIVE JUROR NUMBER 032: Without a driver's license.

MR. SCHWARTZ: You should have checked his license before you got in the car; right?

PROSPECTIVE JUROR NUMBER 032: Exactly.

MR. SCHWARTZ: I guess, something like that.

PROSPECTIVE JUROR NUMBER 032: But then I asked him, I was like, well, the cars not mine, shouldn't the person that owns the car ask him, like, do you a driver's license? But somebody else is letting him drive. I just needed a ride to get to work and I got stuck with a ticket.

MR. SCHWARTZ: That's an unfortunate experience.

Do you hold that against law enforcement as a whole now?

PROSPECTIVE JUROR NUMBER 032: No.

MR. SCHWARTZ: Okay.

PROSPECTIVE JUROR NUMBER 032: But now I drive my own car.

MR. SCHWARTZ: Makes sense, I guess, right.

Okay. And were you able to get that matter taken care of hopefully after the fact?

PROSPECTIVE JUROR NUMBER 032: Yeah, I had to do voluntary -- volunteer work for a couple of weeks to get that.

MR. SCHWARTZ: Okay. That's an interesting one.

All right. Anybody else have negative experiences, maybe been pulled over for something weird like that -- that they -- no idea what was wrong? No, okay.

Now, the judge mentioned this idea of the show CSI and it looked like almost everybody here raised their hand that they watched it or at least had watched it. And as he mentioned, you know, fingerprint evidence, DNA evidence is not available in every case for one reason or another.

And does anyone have an issue with that? Would you feel like you would need to see CSI type evidence, you know, there's some magic thing that's tying everything perfectly together with a bow on it? Anyone raise their hand think that they have to have fingerprint, DNA evidence in every case? No, okay.

And kind of along that same line, there's some cases for the CSI show you watch, sometimes a weapon might be used in the crime and then the weapons never recovered. Does anyone have a problem with finding someone guilty of a crime with a weapon, if the weapons never provided, but the State -- you believe the State has proven beyond a reasonable doubt that a weapon was used? Does anyone have a problem with the fact that the weapons not actually ever recovered? Okay, no hands.

Everyone's okay with the fact that there might be one reason or another why a weapon is not recovered? Okay.

And the judge, at the end of this case before you hear from us again, is going to instruct you in the law. And as jurors you're going to agree -- you're going to take an oath that you're going to follow the law, regardless if you agree with it. So does anyone have a problem following the law even if you don't agree with that specific law?

This is a fun time to talk about marijuana; right? So, now, obvious things are getting to go be a little different because the marijuana law, you know, that passed. But prior to that, and right now, marijuana is illegal, a lot of people, which whatever you want to believe is fine with me, believe that you can smoke marijuana. But if the law says that marijuana is illegal, as a juror you would have to follow that law.

Does anyone think that they might have trouble following the law that

they didn't personally agree with but was in fact a law? No, everyone's cool? All right, sounds good.

Okay, let's see. I'll pick on a couple of people here. Miss -- let's see. Ms. Gemeda?

PROSPECTIVE JUROR NUMBER 039: Yes.

MR. SCHWARTZ: How are you doing, ma'am?

PROSPECTIVE JUROR NUMBER 039: I'm doing good.

MR. SCHWARTZ: Can we pass the microphone over.

Now, imagine you're driving home and you hear on the radio that it's supposed to rain out later, okay, the forecast is rain. It's not raining as you're driving home, you don't need your windshield wipers, you do see the clouds coming in though, you see some dark clouds coming in, you park in your driveway, you go inside, you're getting ready for bed, you hear some thunder, but you don't see any rain, okay, and then you go to sleep, and you wake up in the morning, you go outside and it's wet everywhere, right, the grass is wet, the car is wet, the ground is wet, the road is wet.

What happened?

PROSPECTIVE JUROR NUMBER 039: It might be rain when I was sleeping.

MR. SCHWARTZ: Okay. You said it might be raining. Is there something else that could have done that you think?

PROSPECTIVE JUROR NUMBER 039: No.

MR. SCHWARTZ: Okay. So, is it fair that you would infer that it probably rained outside?

PROSPECTIVE JUROR NUMBER 039: Can you repeat it again.

MR. SCHWARTZ: Yeah. So based on everything that you saw before, and

after, and during you would assume it rained; is that fair to say?

PROSPECTIVE JUROR NUMBER 039: Yes.

MR. SCHWARTZ: But you never saw it rain; right?

PROSPECTIVE JUROR NUMBER 039: Uh-huh.

MR. SCHWARTZ: Yeah?

PROSPECTIVE JUROR NUMBER 039: No, it's --

MR. SCHWARTZ: You didn't see it rain, it might have, I guess this is what I'm telling you saw. You didn't see it rain but you saw all these different pieces of things that lead you to the conclusion that it rained; right?

PROSPECTIVE JUROR NUMBER 039: Yes.

MR. SCHWARTZ: Okay. And do you think that's something that might kind of apply as a juror, right, you would be listening to all the different evidence -- for everybody -- you'd be listening to the evidence, some things maybe weren't specifically seen by a witness but you can take different pieces of what's said and infer what happened.

Does anyone have a problem with the idea of doing that? No, okay.

Okay. Let's pass the mic back to -- I think I have the name wrong on here -- Ms. Stowell. Ms. Stowell, let's go back to you for a second.

Now, it sounds like you got your hands full, three teenagers and two kids out of the house, a lot of things being on at the house; right?

PROSPECTIVE JUROR NUMBER 071: Right.

MR. SCHWARTZ: Now, have you ever had a situation where your kids got into a fight about something?

PROSPECTIVE JUROR NUMBER 071: Quite often.

MR. SCHWARTZ: Quite often, of course.

And have you had a situation where your kids come to you with two different versions of something than happened, ones telling you that A happened, the other ones saying, no, no, B happened?

PROSPECTIVE JUROR NUMBER 071: Yes.

MR. SCHWARTZ: Okay. Probably every time they get in a fight; right?

PROSPECTIVE JUROR NUMBER 071: Yes.

MR. SCHWARTZ: What are somethings you would do, as a mom you're in charge; right, you've got to figure out what actually happened, what are somethings you would do to figure out what happened?

PROSPECTIVE JUROR NUMBER 071: Talk to them individually.

MR. SCHWARTZ: Okay.

PROSPECTIVE JUROR NUMBER 071: I don't know.

MR. SCHWARTZ: Okay. So maybe talk to them separately?

PROSPECTIVE JUROR NUMBER 071: Separately.

MR. SCHWARTZ: Would you look at their body language to see if they're doing anything that might tip you off that they're either telling the truth or not telling the truth?

PROSPECTIVE JUROR NUMBER 071: Look in their eyes and see what kind of facial expressions they have.

MR. SCHWARTZ: Okay. I guess if something -- if they were saying, for instance something that you could verify happened, you could go check to see if there was --

PROSPECTIVE JUROR NUMBER 071: Right.

MR. SCHWARTZ: -- evidence of that happening? Okay.

So you'll kind of look at both sides and then make a determination

based on what facts in evidence you have about what happened?

PROSPECTIVE JUROR NUMBER 071: Yeah. And body language, tone of voice.

MR. SCHWARTZ: Tone of voice, okay, great.

Anybody have any other thoughts on that, when you're trying to kind of figure out what's going on?

Michelle, you said you've got to investigate things all the time; right?

PROSPECTIVE JUROR NUMBER 057: All the time.

MR. SCHWARTZ: So what do you look at when you're trying to figure out what's going on?

PROSPECTIVE JUROR NUMBER 057: The facts.

MR. SCHWARTZ: Okay. How do you find --

PROSPECTIVE JUROR NUMBER 057: I have to base every decision, hearsay, facts, witnesses, all kinds of different things, depending on what the employee relation situation is.

MR. SCHWARTZ: Okay. So, fair to say, you would talk to everybody that's involved?

PROSPECTIVE JUROR NUMBER 057: Absolutely.

MR. SCHWARTZ: Okay. Try to see if anything that they were saying was backed up maybe by something else?

PROSPECTIVE JUROR NUMBER 057: Correct.

MR. SCHWARTZ: Other people saw the same thing that they saw?

PROSPECTIVE JUROR NUMBER 057: Correct.

MR. SCHWARTZ: And then make a determination, once you have all the facts figure out what happened?

PROSPECTIVE JUROR NUMBER 057: Reasonably conclude.

MR. SCHWARTZ: Okay, great.

And anyone have a problem -- as jurors that's basically what we're asking you to do; right, anyone have a problem with that? Okay, awesome.

Okay, last thing. Anybody have any moral, spiritual, religious any of those things, personal reasons why you wouldn't want to sit in judgment of another person? Because that's what we're asking you do to do. Anyone have a problem with having to sit in judgment of someone else? No, okay.

Court's brief indulgence.

THE COURT: Okay.

MR. SCHWARTZ: Your Honor, the State's going to pass for cause.

THE COURT: Very good.

Counsel, before you start your questions, let me just -- a couple of things that counsel touched upon.

I'll wait. I'll wait. I'll wait until she gets done. Go ahead, sorry.

MS. JONES: No problem, Your Honor.

THE COURT: I don't want to disrupt your flow there.

MS. JONES: Not at all.

Good afternoon. Come on we said we were excited about being here.

Good afternoon.

THE JURY: Good afternoon.

MS. JONES: Good.

My name is Kelley Jones, again. You know me now because I knew someone in the jury at this point. As the State, Mr. Schwartz, mentioned, you know, we just want to find out a little more about you, see a little more about you serving

on this jury. So, I'm just going to ask you a few more questions, try to get a little more understanding about background about everybody.

Michelle.

PROSPECTIVE JUROR NUMBER 057: Yes.

MS. JONES: We have a lot in common.

PROSPECTIVE JUROR NUMBER 057: We do.

MS. JONES: Yeah, I used to be an HR manager myself. Did that for a few years before I became an attorney.

So you definitely understand about investigation?

PROSPECTIVE JUROR NUMBER 057: Yes, I do.

MS. JONES: Okay. And you understand about people -- you need to talk to everybody. I think you mentioned that.

PROSPECTIVE JUROR NUMBER 057: Yes.

MS. JONES: You try to get all the facts?

PROSPECTIVE JUROR NUMBER 057: Correct.

MS. JONES: Excuse me.

So you talk to everybody about the facts of the case?

PROSPECTIVE JUROR NUMBER 057: Whoever was involved, yes.

MS. JONES: And you mentioned something about hearsay, can you elaborate a little more about hearsay when you're doing your investigations?

PROSPECTIVE JUROR NUMBER 057: It's very difficult to come to a conclusion when it's one said one thing and one said another. But based on what took place, what witnesses, its -- there's opportunities that we can reasonably conclude that something happened.

MS. JONES: And how do you get to that point? Especially when it's a he

said/she said. I mean, I used to see that all the time when I was --

PROSPECTIVE JUROR NUMBER 057: Based on their previous behavior, previous corrective actions, if they've demonstrated the same type of behavior before that we could reasonably conclude that something like -- depending on the situation.

MS. JONES: Michelle, I don't want you to think I'm picking on you.

PROSPECTIVE JUROR NUMBER 057: No, that's okay.

MS. JONES: But what if there was no past behavior, okay, this is the first time that you've seen these two individuals in this kind of situation?

PROSPECTIVE JUROR NUMBER 057: Then usually it's just a conversation that takes place.

MS. JONES: Nicole -- can you pass the mic to Nicole.

You also do investigations; correct?

PROSPECTIVE JUROR NUMBER 021: Yes, ma'am, I do.

MS. JONES: Okay. And you also have to talk to everyone involved?

PROSPECTIVE JUROR NUMBER 021: Yes, ma'am, I do.

MS. JONES: And you said you work a lot with police officers?

PROSPECTIVE JUROR NUMBER 021: Yes, ma'am.

MS. JONES: So you have an opportunity to talk to the officers in your cases?

PROSPECTIVE JUROR NUMBER 021: Yes, ma'am.

MS. JONES: Have you ever had a time where maybe a police officer took, especially with Child Protective Services, something very personal in the case and they wanted to try to help that person in the case, help the child in the case, may be get the child out of the home? No?

PROSPECTIVE JUROR NUMBER 021: I mean, have I? I've removed

children, yes. So I don't --

MS. JONES: No, I'm asking you like may be a police officer in helping you to do that?

PROSPECTIVE JUROR NUMBER 021: Yes, we do have police assistance, yes. But we also collaboratively work with detectives conducting investigations.

MS. JONES: You do collaborate --

PROSPECTIVE JUROR NUMBER 021: Yes, ma'am.

MS. JONES: -- with, okay.

PROSPECTIVE JUROR NUMBER 021: Yes, ma'am. I work with the abuse and neglect detail, collaboratively when we conduct investigations.

MS. JONES: Everybody talked about the fact that if they were sitting on that side of the table they would like themselves as -- to be a juror; right, Kelly you got that, didn't you, yeah. No one said that they wouldn't want to be a juror in a case. So with that, what do you think the expectations of a juror would be?

And, Kelly, because you laughed first I'm going to kind of pass the mic down to you.

PROSPECTIVE JUROR NUMBER 054: I cannot --

MS. JONES: Plus you have a great name so, of course, I had to --

PROSPECTIVE JUROR NUMBER 054: Of course, of course.

I mean, I think, most of it has already been said today. But paying very close attention, I think, paying attention to what's going on is very important, keeping an open mind, trying to differentiate between facts and interpretations of facts, and deliberating with other jurors, and listening also to what they have to say.

MS. JONES: Danielle, what do you think about that?

PROSPECTIVE JUROR NUMBER 053: I wouldn't have done anything --

that's what I would have said.

MS. JONES: Okay.

PROSPECTIVE JUROR NUMBER 053: Just being impartial and listening to all the different, like she said, what seems to be fact versus interpretation.

MS. JONES: And Mr. Schwartz made a comment about inferring items. When you go to bed and it happens to be, maybe the sidewalk was wet, and somebody said maybe they woke up and it was raining.

And I'm sorry -- did you -- that was your response; correct?

PROSPECTIVE JUROR NUMBER 032: Yes.

MS. JONES: Were there any other things that could have happened, that maybe it didn't rain?

PROSPECTIVE JUROR NUMBER 032: It's also wet though, there's -- might be rain or not, but it's wet already.

MS. JONES: Right. Because sometimes things are not always what they appear to be, so could something else have happened during the night?

Susie, in the back, could something else have happened other than the rain? Could you see something else as far as an open mind is concerned?

PROSPECTIVE JUROR NUMBER 003: Yes, it's possible.

MS. JONES: Could you elaborate a little bit more on that? What else could have happened other than --

PROSPECTIVE JUROR NUMBER 003: Well, maybe somebody was filming the night before and they did a, I don't know, thunder, rain scene so they had the fire engine, sprayed water that way and created rain, you know, scene.

MS. JONES: Absolutely.

PROSPECTIVE JUROR NUMBER 003: Something like that.

MS. JONES: That is true. Or even the sprinkler system going off at night.

UNKNOWN PROSPECTIVE JUROR: That's what I was thinking.

MS. JONES: Oh, there you go, there you go. I appreciate that.

If you were a Defendant in the case, how would you want your defense counsel to operate? Would you have a problem if sometimes we might have to get a little assertive in order to try a case?

Maybe I'll talk to you. I haven't talked to you -- Leslie.

PROSPECTIVE JUROR NUMBER 071: Can you repeat the question.

MS. JONES: Yes, ma'am.

If you were a Defendant, would you have a problem with your defense counsel getting a little assertive with one of the witnesses? Especially in trying to prove your case?

PROSPECTIVE JUROR NUMBER 071: No.

MS. JONES: Okay. You're okay with that?

PROSPECTIVE JUROR NUMBER 071: Yeah, I think you should be assertive.

MS. JONES: Okay. All right.

What about someone else? Sorry, I'm trying to learn names right now. Sure.

PROSPECTIVE JUROR NUMBER 004: Yeah, I would say that it's called passion, not assertion. And I would -- I've been in civil cases, and I've always wanted my attorneys to have passion in my position.

MS. JONES: Thank you.

Anybody else? Would anybody else have a problem or issue with the defense attorney being passionate about their client in trying to make sure that their

case was heard? Good.

Mr. Schwartz talked a little bit about how to determine whether someone is telling the truth or try to determine if somebody is right or wrong. What about a case where -- could you see where there may be a case where someone could maybe misrepresent something under oath? Not intentionally but just maybe got some facts wrong. Could you see where that may happen?

Let's see. Heather, could you imagine that where someone may misrepresent something, not intentionally, but may misrepresent the fact?

PROSPECTIVE JUROR NUMBER 006: Yes.

MS. JONES: Do you see where that could happen?

PROSPECTIVE JUROR NUMBER 006: Sure.

MS. JONES: And would you understand if that happened --

PROSPECTIVE JUROR NUMBER 006: Uh-huh.

MS. JONES: -- somebody just misrepresented. Not lie, just misrepresented what happened at that time?

PROSPECTIVE JUROR NUMBER 006: Yes.

MS. JONES: Could you think of times that would happen, and if so, what times?

PROSPECTIVE JUROR NUMBER 006: I think it could happen. I can't really think of certain times but, yeah.

MS. JONES: If somebody was under stress?

PROSPECTIVE JUROR NUMBER 006: Yes, okay, that could.

MS. JONES: Maybe they didn't see things quite as well?

PROSPECTIVE JUROR NUMBER 006: Yes.

MS. JONES: David, okay.

PROSPECTIVE JUROR NUMBER 022: Okay.

MS. JONES: You mentioned that you were accused but you were treated very fairly in that case?

PROSPECTIVE JUROR NUMBER 022: Yes, ma'am.

MS. JONES: Was there any point that there might have been some misrepresentation in that case?

PROSPECTIVE JUROR NUMBER 022: I mean being accused was as a misrepresentation.

MS. JONES: Okay.

PROSPECTIVE JUROR NUMBER 022: But, you know, I mean, it all worked out in the wash.

MS. JONES: All right. There was just a misunderstanding?

PROSPECTIVE JUROR NUMBER 022: So to speak.

MS. JONES: All right. Do you believe that there could be certain people who are trained to testify, I mean -- and when I say, train, not in a bad way, but that's part of their learning, like I'm trained to ask questions. And, again, not a bad thing but just trained to do some things. Could you see that happening? I see a couple of people nodding. [Indiscernible] talk about being coached. I don't see any more of just more of knowing how to answer questions, but coaching, people could be coached.

And -- thank you. Marlene.

PROSPECTIVE JUROR NUMBER 052: Yes.

MS. JONES: Would you elaborate a little more on the coaching or a person being coached?

PROSPECTIVE JUROR NUMBER 052: I could see that the couching could

be deceiving. It would depend how -- who was -- who they were coached by. I'm not sure that I could agree with someone being coached ahead of time on -- well, they would have been given the questions ahead of time and been coached through the answers. I guess I could see that happening. I don't know how that would affect what I would think.

MS. JONES: Would you have an issue with someone if they were just not so much coached but they had an opportunity to review a report before they actually came in and talked to you or testified?

PROSPECTIVE JUROR NUMBER 052: No, I'd be okay with that.

MS. JONES: Okay. Nicole, I saw you up there shaking your head.

PROSPECTIVE JUROR NUMBER 021: I think it's more about being trained. I do -- I testify a lot on our child protective service cases. I've also done it for criminal court when our cases have gone criminally. So I don't think it's about being coached or -- it's about knowing your cases and being, you know, attentive and being, you know, testifying about what you know and what you did in your investigation. So it's about being prepared. And if you review your stuff because it happened a year ago, you have to be able to review reports and cases and things that we've reviewed in order to be prepared for the trial.

MS. JONES: Thank you. That's exactly what I was looking for actually.

I'm going to start calling on a few more people so that's why I went to get my handy dandy list here.

Going a little bit more about training and some of the -- a little bit more about experience also. We all said we understand that police officers have a tough job, and that they're trained to investigate, you know, that that's why they go to the academy, so that they can do that well. And they're trained to talk to witnesses in

situations, very similar to Michelle, making sure that they've talked to everybody and they try to get all the facts of the case. And also, as Nicole mentioned, train to even testify in court but that wouldn't phase anyone; correct, you'd be okay with that, you understand that that's part of their job? Okay.

And, Ms. Lee, so, you don't have a problem with that, you understand that police officers investigate and that that's what they're trained to do?

PROSPECTIVE JUROR NUMBER 037: Yes.

MS. JONES: And they're trained to write reports and write them well?

PROSPECTIVE JUROR NUMBER 037: Yes.

MS. JONES: And because of their jobs, and that they take that job very seriously, that that's our expectation also, just as people, that we expect our police officers and our law enforcement to do those things well?

PROSPECTIVE JUROR NUMBER 037: Yes. Yeah, part of their job.

MS. JONES: Yes. Thank you.

Judge Bixler made a comment earlier today, which is very important to us as defense, a person is presumed innocent. And, so, I'm going to kind of explore a little bit about that.

Have you ever been like driving down the road some time and you got on the 95 or I-15 and you see somebody pulled over. What's your first thought? Does anybody think, oh, my gosh, what did he do wrong, was he speeding? I'm getting a couple of people -- okay, I'm getting some smiles back there. I like that.

Peter?

PROSPECTIVE JUROR NUMBER 069: Yes.

MS. JONES: Talk to me a little about that. What's your perception at that time?

PROSPECTIVE JUROR NUMBER 069: For the most part I would think they're getting a ticket, pulled over for some reason, that would be my guess.

MS. JONES: Okay.

PROSPECTIVE JUROR NUMBER 069: All right. Don't know for sure but that would be my guess. Unless -- if I didn't see it happen, like if I didn't see him zip by me, get pulled over, wouldn't know for sure.

MS. JONES: But sometimes you could get pulled over or maybe you weren't even pulled over. Maybe the person just needed some assistance. Can that happen?

PROSPECTIVE JUROR NUMBER 069: Sure.

MS. JONES: All right.

PROSPECTIVE JUROR NUMBER 069: Guy could have had a flat.

MS. JONES: That's right.

PROSPECTIVE JUROR NUMBER 069: Right. You know, who knows. You know, maybe there's a taillight out, and not getting a ticket, but tell him, hey, you're -- you hit your -- I saw you hit your brakes but your right taillights out, letting you know.

MS. JONES: Good.

Anybody else? Because I know a lot of people talk about they've got some really good experiences with Metro, so keeping that open mind about a person being innocent. I know I was one of those people. A police officer was very kind to me one time and stopped me because I might have been going a little fast and just wanted to give me a shout out, slow down. And I appreciated that. Didn't actually pull me over for a ticket.

So, you don't feel that someone has to have done something to actually

be here today; correct, because that's what the judge said. If the State rested, if we didn't do anything, Mr. Harvey would be presumed innocent and is innocent. And we all understand that; right?

Could you raise your hands again if you actually served on a jury? Great. Just want to ask were you happy with the verdict?

I don't know what happened to my mic. Oh, there it is.

PROSPECTIVE JUROR NUMBER 069: Who am I passing it to?

MS. JONES: Sure. Let's see, if you could raise those hands again, I apologize.

How are you doing today?

PROSPECTIVE JUROR NUMBER 034: Good.

MS. JONES: Good.

Were you happy with the verdict in your case?

PROSPECTIVE JUROR NUMBER 034: Yes.

MS. JONES: Why so? Why were you happy?

PROSPECTIVE JUROR NUMBER 034: Well, it's going back a few years but we deliberated. But we listened to, like you said, to the facts, the testimony, we went up to the room, we deliberated, and we all came back with the conclusion. And the majority -- but we did -- some were on different pages but we did work through it.

MS. JONES: Okay.

PROSPECTIVE JUROR NUMBER 034: And I felt comfortable with it.

MS. JONES: And you were satisfied -- pass the mic down.

PROSPECTIVE JUROR NUMBER 034: Oh, here you go.

PROSPECTIVE JUROR NUMBER 037: Yeah. And actually everybody but

only one person had the same, you know, so after several hours everybody came to the same agreement. So I thought it did work out.

MS. JONES: So you just kind of worked through it?

PROSPECTIVE JUROR NUMBER 037: Yes.

MS. JONES: Kelly, if I remember your jury did not come to a verdict, was that the one that they settled before there was actually a verdict and before you actually went into the jury room?

Was there anyone who was not happy with their verdict?

One of you just said it took too long to come to a verdict.

PROSPECTIVE JUROR NUMBER 052: Yeah. And I also didn't like that they had an expert --

MS. JONES: Thank you.

PROSPECTIVE JUROR NUMBER 052: Because it involved a child, it should -- the child should have been -- I felt the expert witness should have examined the child. But the expert witness was a paid witness who came from Canada and just looked at paperwork and I had a problem with that.

MS. JONES: And you were --

PROSPECTIVE JUROR NUMBER 052: We all pretty much, except for those couple of people, felt that enough evidence had been presented. But it was presented from family members who had had witnessed it.

MS. JONES: So you'd taken all the information, weighed it --

PROSPECTIVE JUROR NUMBER 052: Yes.

MS. JONES: -- and came up with a decision?

PROSPECTIVE JUROR NUMBER 052: Yes.

MS. JONES: Okay.

Again, when we're talking about a criminal offense, it's the State's burden, and I think Judge Bixler mentioned that also, that they have to prove each and every element of the crime. And quite frankly our great nation is based on the fact that you're innocent until proven guilty. Does it bother anyone that the defense would not have to do anything in this case because Mr. Harvey is innocent until the State provides proof? Does everybody -- you understand, you're okay with that? Nobody, no problems.

Mr. Bagger?

PROSPECTIVE JUROR NUMBER 064: Yes.

MS. JONES: I think that Judge Bixler mentioned that this was a robbery and you mentioned that your wife works in retail.

PROSPECTIVE JUROR NUMBER 064: Okay.

MS. JONES: And you said you have no problems with this case?

PROSPECTIVE JUROR NUMBER 064: Nope.

MS. JONES: No issues with the fact that she works in a retail store?

PROSPECTIVE JUROR NUMBER 064: Nope. They're a small security.

MS. JONES: Okay.

PROSPECTIVE JUROR NUMBER 064: [Indiscernible] minor.

MS. JONES: Okay, that's good. They're a small security. All right.

Court's indulgence.

THE COURT: Sure.

MS. JONES: And, Erik, could you tell me a little bit more about what your wife does?

PROSPECTIVE JUROR NUMBER 064: She basically sells clothes for a living.

MS. JONES: Okay.

PROSPECTIVE JUROR NUMBER 064: Yeah, that's retail, like selling clothes.

MS. JONES: Okay. I was trying to figure out if she might have been a manager or like Michelle, might have been in HR administrator.

PROSPECTIVE JUROR NUMBER 064: No --

MS. JONES: Okay.

PROSPECTIVE JUROR NUMBER 064: She technically works for Bebe. She's just been hired at Town Square like a month ago. So it's a new job. Before, she worked at Primm, at Stateline, that was all the way out at Stateline.

MS. JONES: Oh, yes, I know where Primm is.

PROSPECTIVE JUROR NUMBER 064: For a company called Karen Millen, they're a European base company so not many people heard of them before.

MS. JONES: Okay.

I'm just going to ask some general questions that I'm going to ask several of you the questions. Has anyone had a bad experience with a black person?

A couple mentioned -- a couple of people mentioned that they have been victims of crimes. No? No, no victims of crime where there was a person of color or an African-American person involved?

And I think the Court also mentioned, and I know Mr. Rose mentioned, that there is allegedly a weapon involved. Does anybody have a problem -- let's first, with a knife? No.

Yeah, Peter.

PROSPECTIVE JUROR NUMBER 069: I will have a problem with a weapon,

yeah.

MS. JONES: You would have a problem with a weapon?

PROSPECTIVE JUROR NUMBER 069: Uh-huh, of course. A knife, gun, bat, I mean, I see a reason that would be a threat. That's what you're asking, yeah.

MS. JONES: So you would see that as a threat?

PROSPECTIVE JUROR NUMBER 069: Yes. I would see that as a threat.

MS. JONES: I know this is going to sound crazy, does anybody own a knife?

PROSPECTIVE JUROR NUMBER 053: Everyone.

MS. JONES: Right, right, whether it's cooking or -- right.

One last area, has anybody had an experience where they may have been falsely accused of something? Whether it was a girlfriend mentioning that she heard you said something about her hair, her new hair style, when you had not said anything at all. Has anyone been in that kind of situation?

Leslie, can you elaborate on that a little bit.

PROSPECTIVE JUROR NUMBER 071: Well, I had a dear friend in high school and we were great friends and all of a sudden one day she didn't want to speak to me anymore. I could never find out, even years later I never found out what had happened, but somebody must have said something to her. And I didn't feel like I had done anything wrong towards her.

MS. JONES: How did that make you feel?

PROSPECTIVE JUROR NUMBER 071: It was painful.

MS. JONES: And you never got an opportunity to kind of smooth things over or find out what had occurred?

PROSPECTIVE JUROR NUMBER 071: I never found out but years later we saw each other and we're cordial but not friends anymore.

MS. JONES: Anyone else? Michelle.

PROSPECTIVE JUROR NUMBER 057: Unfortunately it happens quite a bit in being in the HR business where someone says that I either promised them something or told them something. I had a recent incident where one of my resorts, I was friendly with the manager as in we would laugh and joke in her office. We had a complaint filed that the associate didn't feel comfortable coming to talk to HR because they felt that their manager said that they were best friends with HR so that they wouldn't get any results. And it was very discerning for me because I'm very impartial. I don't take anybody's side. So I actually discussed it with my department to not have that site anymore, to switch HR partners so that misperception would stop.

MS. JONES: During that time period you felt a little frustrated about it?

PROSPECTIVE JUROR NUMBER 071: Oh, sure, sure

MS. JONES: Maybe even a little angry about it?

PROSPECTIVE JUROR NUMBER 071: Yeah, perception is reality for some people.

MS. JONES: Very true.

What about someone else? Melissa.

PROSPECTIVE JUROR NUMBER 055: I had something printed when the show that I was in they had a journalist come and they were taking photos and interviewing people. And I stayed quiet and the next thing I know it's my picture with a quoted statement that I had said. And then I found out that all the girls were talking about it and I got in trouble and I didn't even say a word and it was printed so.

MS. JONES: How did that resolve?

PROSPECTIVE JUROR NUMBER 055: I mean, I made a fuss about it and had to address everyone and I was upset. But, I mean, what you can do at that point.

MS. JONES: Court's indulgence, Judge.

Thank you, Your Honor.

THE COURT: Pass for cause?

MS. JONES: Pass for cause.

THE COURT: Very good, okay.

So both sides have passed this group of 24 for cause that means that the counsel will shortly start the process of selecting which 14 folks out of this party of 24 folks will constitute the jury, which also means that I can let you guys go.

I'm sorry that not every single one of you was up here, but you've done what you were asked to do, you showed up, as you can clearly see we couldn't do this without you. We went through probably at least half of the folks that were over there. And it's an important role. And I hope that you'll, since you are now being discharged, won't be bothered for jury duty for a while. Thank you each and every one for you participation in this process.

And as they start the selection process, I'm just going to pretend like you're all the jury, and I'm going to start -- I'm going to get a jump on instructing you while they're going through the process.

So you guys are going to start passing the -- your sheet.

[Colloquy between the Court and the Court Clerk]

THE MARSHAL: Folks need to stand and stretch a minute, you can.

Judge, my jury is telling me they need a break.

THE COURT: Sure. Now, listen, we'll take a short break, but I've got to give

you the standard admonishment.

Don't converse or discuss amongst yourselves or with anyone else on any subject connected or related to this case. Don't watch, listen, or read any reports or commentaries regarding this case through any medium of information. Don't form or express any opinions or ideas on any subject connected or related to this case. Something I forgot to kind of mention. Not only don't discuss this case, but as to the people here in this room, we can't -- none of us can talk to you. So nobody is being rude by not conversing with you. It's just that the attorneys, the parties, the -- the only person that you could talk to that's part of this case is Tom. So, if you have any questions or anything you want to say to us or we need to say to you when you're not here in the courtroom, we all go through Tom. He's your vessel of communication, okay.

All right. Go take five minutes and go to the restroom, whatever you got to do.

[Outside the presence of the prospective jury panel]

THE COURT: Okay. We're outside the presence of the jury. We're going to hand you the sheet and you guys are going to start passing it back and forth. But as soon as they come back it, I'm going to start instructing them and then when you guys get done with the process of challenges, I'll discharge those that are off and we're off and running. We'll read the Indictment.

Is it an Indictment or Complaint?

MR. SCHWARTZ: It's an Information.

MS. SPELLS: It's an Information.

MR. ROSE: It's an Information, Your Honor.

MS. JONES: It's an Information.

THE COURT: We'll read the Information to them and swear them all in and then you guys can do your opening statements. We'll be ready --

MR. SCHWARTZ: And, Your Honor, does the alternate jurors, are they 13 or 14 or are they --

THE COURT: Yes, 13, 14.

MR. SCHWARTZ: 13, 14.

THE COURT: It doesn't make any difference to me how you -- all that's going to happen is when you guys get done, we read off the first 14 names, and then -- because you might not exercise, I mean, everyone of your challenges. So there might be more than 14 people. But it's the first 14 people that haven't been crossed off that are the jury. Everybody other than the first 14 --

MR. SCHWARTZ: Is gone.

THE COURT: -- gone, okay?

MR. SCHWARTZ: Thank you.

MR. ROSE: And, Your Honor, does Your Honor have a preference or rule as to, you know, use all five wherever or if one of them has to be used on an alternate?

THE COURT: No, no, no. It's just you've got five, you can use them however you want to use them. You don't have to designate the one that's for the alternate. Just understanding that, again, first 14 names that haven't been marked off are the 14. And 13 and 14 are the alternates.

MR. SCHWARTZ: Waiving one doesn't waive the rest?

THE COURT: Exactly.

MR. SCHWARTZ: Cool.

THE COURT: You can waive one, and not waive any, you can waive them all, waive one, use one, whatever you want to do.

MR. SCHWARTZ: Great. Thank you, Your Honor.

MR. ROSE: Thank you, Your Honor.

[Recess taken at 3:06 p.m.]

[Trial resumed at 3:26 p.m.]

[In the presence of the prospective jury panel]

THE MARSHAL: All rise, please.

And be seated.

THE COURT: Will the parties stipulate to the presence of the jury pool.

MR. SCHWARTZ: Yes, Your Honor.

MS. SPELLS: Yes.

MR. ROSE: Yes, Your Honor.

THE COURT: Perfect. All right. They're still going through the selection process. So, to kind of save time, I'm going to start giving you the instructions that the jury is going to get. I'm just going to kind of jump the gun and explain a few of the things. And then when they get done, we'll just stop, and I'll read off the names of the 14 jurors. This is the part where we really have to kind of be careful because if you don't hear your name called, I don't want to hear sniffling and crying.

So a couple of things that come up that I think I just need to touch on real briefly, this concept of the jury sitting in judgment. It doesn't really happen exactly like that because a jury has its specific function in a trial, as the court has a specific function, everybody has a function. But in this situation, the jury acts in the capacity of the judge of the facts. The jury's responsibility is to listen to the evidence, look at the evidence, listen to the testimony, and decide what they believe the evidence establishes. If there's questions of law, the judge answers the questions of law, you guys are the judge of the facts in the case, okay? That's how

that part of it works.

I've already explained to you about not talking to anybody that's here in the courtroom and about not doing any research, not reading anything, just -- you can't use anything except the evidence that's adduced during the course of the trial from that witness chair right there, where somebody is under oath, that's the only thing you can consider.

First thing we'll do when we get done with the selection process is read you the Information, which is the actual charging document. It informs the -- the purpose of which it informs the Defendant of what the State accuses him of having done. It also serves to inform you and me, the jurors, what the State has to prove the Defendant has done. So the very first thing we'll do is swear you in again as the actual jurors, then we're going to read the Information to you, and then the jury -- then the trial starts. And I'll explain this to you a couple of times, but here's the order in which the trial will progress, the very first thing that happens is that both counsel will make opening statements. The purpose of the opening statements is to tell you what they believe the evidence is going to show, okay. The State will be go first, followed by the defense, as soon as they've made their opening statements -- now, in terms of what's going to happen here today, I think that we're going to finish the selection process, we're going to swear you in, read the Information, have opening statements, and then we're going to be done for the day. We'll come back tomorrow and we'll start with the witness rather than have part testimony tonight and then some more tomorrow. We'll take the State's, I think it's the longest witness, will be the very first witness. Everybody else after that is going to be fairly short.

So the State puts on their evidence first, they call their witnesses, those witnesses are examined and they're cross-examined by the defense counsel, okay.

After the State's concluded their witnesses, then the defense has an opportunity, but no obligation to put on whatever witnesses they choose to. If they call witnesses, they'll be examined and then cross-examined by the State. There's an opportunity for rebuttal witnesses by each side, but I doubt seriously that there are going to be any rebuttal witnesses.

Once the evidence has been concluded, I will read you the instructions, which are statements of law that you, the jury, will utilize in your deliberation to determine how the facts as you find them to be apply to the statements of law that I give you, okay. And I touched upon it very briefly during the close -- after I read you the instructions, we're going to have closing arguments. The initial closing argument is from the State, followed by the closing argument from the defense, and then lastly closing argument from the State. They get two cracks at their closing arguments because they are the ones with the burden of proof. During that process, you'll have your copy of the instructions, and I encourage you to follow counsel along and make notes on your instructions, okay. Because a good bit of what they're going to be arguing during closing arguments has to do with these instructions that will be read to you, okay. And then as soon as their closing arguments are done, we'll identify which of the jurors are alternates, and they'll be sent home or around with instructions, and then the other 12 folks will go to the deliberation room and start deliberating. So that's what you should expect.

Now, there's a few items here that I'm going to go through, this particular, little piece of information I feel compelled to read it because it's kind of specific. You must not be influenced in any degree by any personal feelings of sympathy for or prejudice against the State or the Defendant. Both sides are entitled to the same fair and impartial consideration. In considering the weight and

value of the testimony of any witness, you may take into consideration the appearance, the attitude, and the behavior of the witness, the interest of the witness in the outcome of the case, if any, the relation of the witness to the Defendant or the State, the inclination of the witness to speak truthfully or not, and the probability or improbability of the witness's statements, and all of the facts and circumstances in evidence. Thus you must give the testimony of any witness just such weight and value as you believe that testimony of the witness is entitled to receive.

I know that this was touched on before, but there's two basic categories of evidence, direct evidence and circumstantial evidence, they were kind of discussed. But the classic examples are you walk outside you look, you see it's raining, it's raining, that's direct evidence that it rained because you saw it.

If you walked outside and it's not raining, but the streets wet, the sidewalks wet, and there's water running down the gutter those are things that you did observe. Those are facts that you observed that will lead you to conclude another fact occurred it rained that's circumstantial evidence.

You, the jury, are entitled to give such weight to direct evidence and circumstantial evidence as you deem appropriate. And you can give it such weight to either of those kinds of evidence.

During the course of the trial, even though everybody has a specific function, the State's, District Attorneys, they are obliged to call their witnesses and ask those questions. Defense witness -- counsel will be cross-examining those witnesses and possibly putting on other witnesses for the defense, they don't have to. Their function is to ask questions. The clerk, the recorder they have specific functions. They swear in the witnesses, take care of the evidence, everybody has a function. The recorder makes sure that we're getting a clean record. I answer

questions of law.

You, the jury, are supposed to listen to all this and make up your mind and answer whether or not the State's proven their case. It is possible, but not encouraged, for the State -- I mean, for the jury to ask questions. If you're going to ask any questions, here are the rules. You'll take your notebook, and you'll get a clean sheet, you'll write your juror number down, and you'll write the question. It has to be a question for the witness, the witness only, and you have to ask the question while the witness is on the witness stand. You have can't expect them to be recalled if they've already left the witness stand, all right. You'll hold up your hand, you'll get Tom's attention, and you'll hand him the question, he'll bring it to me, I'll get counsel to approach the bench, we'll all read the question, and then decide if there's any objections to it. If there's something objectionable about the question, then we'll just file the question with the clerk. If it's a question that can and should be asked, then either myself or counsel will ask the witness the question. So I will be looking at the jury as we wind down a particular -- in each of the witness's testimony to see if there's anybody that has a question. Once again, it's really kind of like a last stop at the -- if you have some burning question that you feel like you have to ask but, again, it's not encouraged. It's really not what the jury's function is, okay.

And the notes, you're each going to get a note pad, and you're encouraged to take notes during the course of the trial. But don't take notes to the exclusion of watching and paying close attention to the witnesses. There's going to be plenty of breaks where you can jot stuff down to remind you of something that you thought was noteworthy. But pay close attention to the witnesses when they're on the witness stand because you only get one shot. The evidence in the case cannot be supplemented once the case is over with and you guys start deliberating.

You can have a read back, that's not even encouraged, but you can have a read back. It's a pain in the rear end. So, make good notes that will help you remember what transpired, okay.

A couple of things. First of all, from here on after we've identified the 14 jurors and everybody else has been excused, those 14 jurors are going to get a separate badge, not the same badge you have on, you're going to get an actual sitting jury badge. You're encouraged to have that on you visible every time you're anywhere close around the RJC. The purpose of that is to make sure that folks know you're not just in a jury pool, you're on -- you're sitting on a jury and hopefully it kind of insulates you and keep people away from you. I certainly don't want anybody coming up and chatting you up about anything to do with the case. While this case is pending, the subject of this case is completely and totally off limits. And if one of the other jurors says something to you about something having to do with the case or a witness or anything that has to do with the case, just remind them that you've been instructed not to discuss anything that has to do with this case while the case is pending, and that way you can just avoid trouble completely.

You'll also park in a different place then you parked where you got here and Tom will show you this.

You won't come in and out of the doors anymore. Starting after this afternoon, you'll use the hallway doors, down there; right? You still have them come out here, how come?

THE MARSHAL: Until they go to deliberation.

THE COURT: Oh, okay. That sounds kind of strange. Aren't the witnesses out there?

THE MARSHAL: We keep them separate.

THE COURT: Okay. Okay, I'll take it back. You won't be coming in and out of here but you're going to wait for Tom while you're out there. And whenever we take breaks you'll -- they do use the deliberation room don't they for breaks and stuff?

THE MARSHAL: We can, if you wish. It's just we've got three trials going on the floor and only two deliberation rooms.

THE COURT: Oh, okay. And we're probably behind the group next door. We'll probably behind the other group too. They all start --

THE MARSHAL: Possibly.

THE COURT: Well, we'll find a place. We'll find a place. When you come in, we want you to have some place. They may have to go to a different floor where you can put your purse and put your, you know, your stuff, and get coffee and get water and have a place. We need to see if we can run them down some spot.

But, under those circumstances, you're going to have to be real, real careful about out here in the hallway while you're waiting to come in. Because -- just steer clear of the folks in the room here and anybody that you don't know that's on that jury because they could very easily be a witness, okay. And just don't talk to any of those people.

If you can't -- if you want a break -- and I said this earlier, if you want a break, and we just had a break ten minutes before, 15 minutes before, get Tom's attention and let him know and we'll take another break. The jury being comfortable is one of the primary things that we try to tend to. So don't hesitate to bring your water, bring your coffee, whatever it is that you need. If you need to stand up and stretch, don't be afraid to do it. If you need a break, don't be afraid to ask. If you can't hear a witness, for heaven's sakes, don't be afraid to raise your hand and let

Tom know that you couldn't hear what the witness was saying. We can fix that immediately.

If you see me -- this is just general stuff, you've seen this on TV. If I rule on objections, and I tell you just -- if I say strike that and don't consider it, then just strike it, mark it out of your mind. I hardly ever do that.

I think we've pretty much gone through all this. This part about reading articles or watching information on media about the trial, I doubt that that will happen but it certainly can happen easily. But let me address and emphasize, don't do something silly by getting on the computer, getting on the Internet, and looking something up that has to do with this case. You are -- you are not even to consider or concern yourself with the issue of punishment. If the Defendant is convicted, the subject matter of punishment is completely and totally up to the Court. It has nothing to do with you guys. You do exactly what I've told you repeatedly. You are the judge of the facts, you will take the evidence and apply them to the instructions of law, and ultimately make the call did the State prove their case against the Defendant beyond a reasonable doubt. That's what you do, that's your function.

I'm at the end of my instructions.

How close you are guys?

MR. SCHWARTZ: On the final one, Your Honor.

THE COURT: Okay.

MS. SPELLS: I think we're done, Your Honor.

THE COURT: Okay. Here it comes. Let me just number these so I can make sure.

Okay. Let me go over this and make sure I've done it right because of the first court -- I just -- because I've done it before where I didn't number them right

and they were down the hall and we had to go hunt everybody down.

[Colloquy between the Court and the Clerk]

THE COURT: Now, listen, don't take the doors off the hinges as you run to the door to get out of here. Actually, just wait for a minute because I want to make sure that everybody is clear of who our 14 jurors are and that there's no issues.

[Colloquy between the Court and the Clerk].

THE COURT: All right. So, she's going to read the names of the 14 jurors, and the rest of you are going to be excused. We'll wait until we read the 14 names before I thank you for your jury service and excuse you. The rest of you, that are the 14, don't move because we're going to rearrange you to keep you in the right order. It gets a little convoluted when we're rearranging.

Do you keep them -- well, we only have two rows. So we get all 14, seven and seven?

THE MARSHAL: Yes.

THE COURT: Okay. You know how to do it. Do you want to read them?

THE CLERK: Okay. Juror Number 1 is Susie Chang.

Oh, they're already up there. Do you want to have everybody come out of the box and then as I call them put them in the box?

THE COURT: Well, let's let them excuse them first.

THE CLERK: Okay.

THE COURT: Let's let the ones that aren't called to get excused.

THE CLERK: Juror Number 2 is Peter -- I can't pronounce your last name.

JUROR NUMBER 2: Vlassopoulos.

THE CLERK: Vlassopoulos.

Juror Number 3 is Erik Bagger, Juror Number 4 is Nicole Miller, Juror

Number 5 is Michelle Moline, Juror Number 6 is Felicitas Luna-Herrera, Juror Number 7 is David Franklin, Juror Number 8 Lee Wortham-Thomas, Juror Number 8 is Meseret Gemeda, Juror Number 10 is Melissa Svejda, Juror Number 11 is Randall Robarts, Juror Number 12 is Christopher Carrier, Juror Number 13 is Marlene Mecall, and Juror Number 14 is Danielle Rae.

THE COURT: Okay. Those 14 folks are the jurors, the rest of you are going to be excused. I cannot thank you all enough, those of you who will be leaving, as you clearly see we couldn't do this if you weren't here. So I thank you, thank you, thank you for your jury service. I hope it hasn't felt like wasted time because it certainly wasn't wasted. Thank you all very much and you'll be excused. And hopefully you won't hear anything from the Jury Commissioner Office for quite a while. And everybody who was not excused, just remain seated, we'll straighten everybody out.

Well, we've got 14 folks. We're good to go. All right. Tom, you want to arrange them?

THE MARSHAL: If you want to just call, read them off. I think you were number one.

THE CLERK: Juror Number 1 Susie Chang, Juror Number 2 Peter, Juror Number 3 Erik, Juror Number 4 Nicole, Juror Number 5 Michelle.

THE COURT: As you guys can see you're going to be in the same order you're in right now.

THE CLERK: Juror Number 6 Felicitas, Juror Number 7 David, Juror Number 8 Lee, Juror Number 9 Meseret, Juror Number 10 Melissa, Juror Number 11 Randall, Juror Number 12 Christopher, Juror Number 13 Marlene, and Juror Number 14 is Danielle.

THE COURT: Perfect. Okay. All right. So relax, have a seat you guys.

First thing we're going to do is swear you in as the actual jurors in this case. So first thing that happens is everybody please stand, raise your right hand, and you're going to get sworn in again.

[The Court Clerk swore the jury panel]

THE COURT: Everybody have a seat. Tom's going to hand out the actual juror badges and note pads and pen, pencil.

When we get done with the opening statements, and let you guys go, Tom will give you some special instructions on where you park because they've got a place for the jurors to park, okay.

THE MARSHAL: So when we're all done you don't run out. We're going to go out the door, go all the way down to the far end, to the windows on the far end and I'll meet you down there.

THE COURT: Then he'll show you where your parking area is, all that kind of stuff.

All right. So as I earlier explained the first thing that goes on in this trial is the opening statements of both the State and the defense.

You're up.

MR. ROSE: Thank you, Your Honor.

OPENING STATEMENT BY THE STATE

MR. ROSE: Good afternoon, ladies and gentlemen. On March 30th, 2016, the Defendant, Alfred Harvey, had a choice to make and because of his choices because of his actions that we are here today. You see Alfred could have made the choice and physically give back the rest of the items that he had taken from T.J. Maxx. He could have gone back inside with Julian Munoz, kind of worked it all out.

He chose not to do that. Instead he chose to reach into his pocket, pull out a knife, and use that knife to threaten Julian and that's why we're here today. That is why the Defendant is charged with one count of robbery with use of a deadly weapon, for stealing those miscellaneous clothing items, the wallets, the face cream, and moisturizer, the fragrances, that's why we're here.

On March 30th, 2016, Julian Munoz was working as a loss prevention officer at T.J. Maxx and you'll get to hear from him. The day started like any other day. He was sitting in his security office, doing what he always does, just kind of keeping an eye on everybody, looking for what he calls, alert signals, little clues that might tell him that maybe somebody's doing something that they've just not supposed to do. You'll actually get to see the cameras that he was looking at, the same video that he got to look at you'll get to see too.

What you'll get to see is the Defendant enters the store, and you're going to watch as the camera kind of follows him for a moment or two, and then moves on to the next person. But soon enough you'll see that Julian saw some of those alert signals, some of those little clues, and then the camera comes back to the Defendant. And you'll get to watch the Defendant roam around the store, picking up items at random, putting them down, selecting some of those clothing items, the fragrances, the wallets, perfume, actually putting them in his pockets. You'll get to watch and you'll get to hear Julian, about that video, as he watches the Defendant go throughout the store, end up actually at the checkout line, in there for a few moments, kind of looking around. And even there you'll see that he puts something into his jacket pocket and then without going up and paying for anything you'll see that he leaves the store.

Now, you'll hear from Julian that when it looked like the Defendant was

getting ready to leave the store, Julian left the security office and he went out and he positioned himself outside of the store in front of the doors, to try and get the property back from the Defendant. Sure enough the Defendant leaves without paying, items still in his pockets, Julian stops him, identifies himself as loss prevention, and says, hey, give me back the stuff.

You'll actually hear that the Defendant gives back some of it, he goes and reaches into his pockets and hands back two of the wallets that he had taken. You'll also hear that Julian can still see other items concealed on the Defendant's person. He says, hey, why you don't come back into the store with me. We don't have to do this in front of everybody. And that's when we get to our critical moment, that's where we get to that point in time when the Defendant could have chosen to give back the rest of those items. He could have chosen to go back into the store and work everything out but you'll hear that that's not what he did. You'll hear from Julian that the Defendant reached into his pocket, he pulled out that knife. He heard the click of the blade as it snapped into place. The Defendant made sure that Julian saw it and held it down at his side. You'll get to hear Julian's 9-1-1 call. You'll be able to hear the fear in his voice before the Defendant ran over to the U-Haul and started to speed away.

Now, you'll also get to hear from another person, a man by the name of Errol Appel or Appel, not related, he doesn't know anybody at T.J. Maxx, his wife happens to be the manager of the Ross, which is in the same shopping center. And he was in his car that day, out in front of the Ross. And you'll hear that he saw a commotion out in front of the T.J. Maxx, so he asks, hey, what's going on. And once he hears what's going on, he also makes a choice. He says, call the police, tell them I'm going to follow them. I'm going to go after them. You'll hear that Errol

followed him, follows behind in that U-Haul -- or follows behind that U-Haul that the Defendant is driving while directing the police to where the Defendant is going.

You'll hear how the Defendant turned this way and that, trying to get away before finally coming to stop in the parking lot of the Hebrew School. You'll hear that Errol is still on the phone with the police at that point, in fact, directing the officers to take a left right here, he's right there, there's the U-Haul. And he watches as the officers make contact and arrest the Defendant.

Now, you'll also hear from some of the officers. You'll hear that they didn't find the knife; they didn't find that knife that Julian saw and heard the knife that put him in fear. You'll also hear it's not surprising, it's not unusual given the time and the distance that the Defendant had to get rid of that knife as he fled the scene.

But you'll also hear what they did find, what they found inside that U-Haul. Inside that U-Haul they found some of the other clothing items that we're talking about, they found the fragrances; they found the facial mask, the moisturizer, still with the T.J. Maxx stickers on them.

Ladies and gentlemen, on March 30th, 2016, the Defendant had a choice to make. At the end of this case, we're going to ask you to hold him accountable for the choices that he did make and to find him guilty of one count of robbery with use of a deadly weapon for stealing those items.

Thank you very much.

THE COURT: Thank you, Counsel.

Who's going to make your opening?

MS. JONES: Your Honor, we're going to reserve our opening.

THE COURT: All right. So the defense is reserving their opening argument until after the State closes their evidence, okay.

So, it's 4 o'clock, five minutes until four, we're going to conclude for today and have you guys back in the morning.

What time did we decide? I've gone through the calendar, that at 8 o'clock, I think there's not too terrible much on the calendar. We can start as early as you have guys can be ready.

MR. SCHWARTZ: 10 o'clock will be fine with the State.

THE COURT: Can you do 10 o'clock?

MS. SPELLS: That's fine, Your Honor.

THE COURT: Okay. Is there anybody over here that can't be here at 10 o'clock? Anybody got a problem in the morning? Perfect, 10 o'clock. So, we will -- yes.

JUROR NUMBER 9: I have a question. I have to go to work at 3 a.m. in the morning. I have to call them to excuse today.

THE COURT: Do you want us to help you and let them know that you had to be here for 10 o'clock jury service?

JUROR NUMBER 9: Yes, please.

THE COURT: Okay, just wait here, and we'll have the JEA call. Do you have the contact number, information for your --

JUROR NUMBER 9: Yes, sir.

THE COURT: Okay, then just wait and -- go with everybody and get your instructions about parking and everything and then come back and we'll -- either myself or the JEA will call over to your employer and explain to them that your -- you've been picked on a jury and you have to be here, okay.

Yes?

JUROR NUMBER 13: Yes. Juror 13 and juror 14, are we considered

alternates?

THE COURT: We'll pick the alternates -- after all the evidence is over with, then we'll pick the alternates, okay.

So here we are. I'm going to give you the overnight admonishment, which is exactly like the regular admonishment. Don't converse or discuss amongst yourselves or with anyone else on any subject connected or related to this trial. Don't watch, listen, or read any reports or commentaries regarding this trial or any person associated or connected with this trial through any medium of information, which means radio, television, newspapers, or the Internet or any other source that you can possibly dream up. Don't form or express any opinions on any subject connected or related to this trial until such time that this case has been finally submitted to you for deliberation.

Okay. When you go home and you're talking to your husband, your wife, your kids, whatever just tell them, I'm on a jury in a criminal case and the judge asked me not to say anything else about it until the case is over with, okay. You'll have plenty of time to talk about it all you want after this case over. All right. Go relax, take the evening off.

And then we'll call for you, okay.

All right. Go ahead and go with Tom and get your instructions about where you park and where you report to. And we'll see you guys tomorrow morning at 10 o'clock.

THE MARSHAL: Okay. Folks, I need you to leave your notebooks and your pens on the chair, take the blue badges with you, and all your personal property and let's go outside.

[Outside the presence of the jury panel]

THE COURT: All right. We're outside the presence of the jury. Anything we need to put on the record?

MS. SPELLS: Your Honor, I don't know if you want to discuss the 9-1-1 call now or tomorrow. What's the Court's pleasure?

THE COURT: What, I'm sorry?

MS. SPELLS: Would the Court like to discuss the 9-1-1 phone call now?

THE COURT: Yeah, yeah, let's go ahead and do it right now.

MS. SPELLS: Okay.

THE COURT: And I'm a little bit unfamiliar with what you're talking about. So kind of explain to me what the problem is.

MS. SPELLS: Sure, Your Honor. There are actually two, 9-1-1 phone calls. And for the record, this is Jasmin Spells on behalf of Mr. Alfred Harvey with the defense.

The first 9-1-1 phone call is made by the named victim, Julian Munoz, and he is speaking to the 9-1-1 operator. The part that we take issue with is towards the end of the phone call the 9-1-1 operator is -- makes a statement, okay, I'll ask the questions and then there's a question about kids. And then she says, so, let me get this right, he committed a robbery in front of his kids or with his kids, that's incredible.

We did file a Motion in Limine with regard to not even having the named victim, Julian Munoz, be able to make any reference to kids being present. That motion was limited in scope because we didn't understand that there was video where kids are possibly depicted; however, the Court did deny that motion but that motion was not inclusive of this 9-1-1 surveillance. And we just think that the statement from the 9-1-1 operator comes across as being very incredulous and is

way more prejudicial than probative and is kind of outside of the spectrum of what should be occurring with a 9-1-1 phone call. So that is the first issue. We did advise the State of this on Sunday sometime.

And then the second issue is there's a second phone call where Errol Appel makes a 9-1-1 phone call and the defense believes that it's very obvious that Mr. Appel is at the Ross, that is where his wife is the manager at, he sees individuals running out of T.J. Maxx, he inquires what is going on, and then subsequently he follows Mr. Harvey in this U-Haul truck. However, during the 9-1-1 phone call he makes statements that are completely hearsay because they tend to answer questions of the actual incident in question. Whether it was a knife, what he saw, things of that nature, and those statements, based upon all the evidence that we have seen, as far as police reports, 9-1-1, all of the things that we have reviewed, he would have no personal knowledge of that. So we don't believe that any of those statements --

THE COURT: Well, I mean, it matters if he saw -- first of all, how could he relay anything other than what he saw because he was in his car and did he have a conversation with anybody?

MR. ROSE: Your Honor, I believe he did.

MS. SPELLS: Yes.

MR. ROSE: I believe that the testimony will indicate that he asked the two loss prevention officers who were standing outside something to the effect of, what happened and he's given a one or two line response. And that is the basis of his responses to the 9-1-1 operator.

MS. SPELLS: He -- I think the officer said something to the effect of, this guy pulled a knife on us or this guy tried to rob us with a knife or whatever. And when he

is then speaking to 9-1-1 he makes those same statements. But from his statement, his voluntary statement, all the other evidence it's very clear that what he saw were individuals running out of T.J. Maxx. He inquired as to what occurred and his involvement was the following of the U-Haul vehicle.

So if the State chooses to present 9-1-1 phone call as evidence as to actually his part, we don't have an objection to that. It's the basis for those statements about the things that he was not present for. We would present -- I mean, it's duplicitous to --

THE COURT: So you're saying that it's hearsay?

MS. SPELLS: They are just hearsay. And it's duplicitous to the first 9-1-1 phone call, which we're only objecting to literally, I think it's the last minute or the last few sentences of that.

THE COURT: You have a comment about it?

MR. ROSE: I do, Your Honor.

First, I guess with respect to Mr. Appel, the second of the 9-1-1 calls. I don't believe there's actually hearsay. We're not offering it for the truth of the matter assertive. Because what the evidence will show is that he was basing all of his actions and his responses to the 9-1-1 operator on what he was told. And I think it is important for the jury to understand what it was he was told, to explain why it is that he is following this random U-Haul while on the phone with the police.

And the State is prepared to make it fully apparent to the jurors that his statements are based only on what he was told and not what it was that he was actually seeing. But I think that it -- because we are offering it just to give some of kind of context as to what it was that he believed occurred, which explained why he acted the way that he did. Along with the fact that we will make sure, and I have no

doubt that the defense will make it apparent, that he did not have personal knowledge of the events themselves out in front of the T.J. Maxx. I think that any prejudice can be minimized because of that and it does go to explain why, you know, this 73-year-old man decides he's going to speed off after a U-Haul on the phone with the police.

So, I think, that that is given all of what we are fully prepared to do in terms of making apparent what he did and did not actually see himself, along with the purpose that we are using it for. We would not object to a instruction to the jury as to what they're allowed to use Errol's statements for. We don't think that that is -- should be excluded from the trial.

With regard to --

THE COURT: No, no, no. Let's just do one thing at a time.

MR. ROSE: Yes, Your Honor.

THE COURT: First of all, maybe I missed something here, but isn't -- aren't 9-1-1 calls all hearsay. I mean, I just was kind of the opinion that 9-1-1 calls were excited utterances by virtue, nature of the -- it's an emergency 9-1-1 call. I just -- I don't know. I've just been of the opinion that those are all excited utterance type situations. I guess, you can have a 9-1-1 call if it's not.

MR. ROSE: Right, I think Your Honor is correct that they'll often fall under that. I think if you look at the *Crawford* case and some of the ones after that, when it comes to -- at least the confrontation clause issue. Those are different from hearsay specifically. But that looks at calls that are made immediately after or during an exciting event or an emergency versus calls that are made significantly later. So I fully agree with Your Honor that, you know, right now I think that you could potentially describe this as an excited utterance. But even if it's not, it's simply not

being offered for the truth of the matter asserted. This is not a situation where you have somebody calling hours later saying, hey, by the way here's what happened, here's what I did after they've had a chance to calm down.

So I think first because it's not being offered for the truth of the matter asserted it's simply non-hearsay; therefore, we don't need to get to an exception. However, if it is going to be considered hearsay, I think Your Honor is correct in saying that the first portion of it would be an excited utterance and then the latter portions of it would be not only excited utterances but also present sense impressions because he's describing what it is that he's in fact doing as he does it.

MS. SPELLS: Your Honor, may I respond, please?

THE COURT: Sure.

MS. SPELLS: And, Your Honor, we completely disagree. Here's the thing, what he sees are three individuals running away from T.J. Maxx, and he can testify as to that, and he's making the 9-1-1 phone call as he is following the vehicle, and any testimony about this is the vehicle that I am following, this is who I saw in the vehicle, the vehicle is going to this location. We're not objecting to that. Anything other than that is definitely not an excited utterance. He is not under the stress of any event, nothing has occurred to him. He is a by-stander. He is actually at Ross. And I don't know if this Court is familiar with this location, it's off of Sahara and Decatur. We had an opportunity to look at the location. So the T.J. Maxx is say, here, where the Court is or what have you, and then next to it is another little trinket store, and then there's a 9-1-1 -- not a 9-1-1 a .99 cent store and then there's a Ross. So you're talking about some distance here. This is not as if he was in front of the Ross, next to the Ross, no. He sees individuals running, those individuals, he says three individuals, one or two possibly security officers kind running in the

parking lot and he's kind of like, oh, what's going on. And so there's no stress, there is no excited utterance because he's not even a part of that. He's way on the other side of the parking lot. This is -- how far would you say that is? I suck with distance.

MS. JONES: I think it's about a half a football field.

MR. ROSE: And, Your Honor, I would just point out --

MS. SPELLS: So that --

MR. ROSE: -- at this point we have no testimony as to where within that parking lot he was. He was apparently close enough to hear a statement by our loss prevention officers. Otherwise, as defense counsel pointed out, you'd have no personal knowledge of the fact of a knife or a robbery or anything like that. And we still have a situation which is at least exciting enough to cause him to call the police and then to go chasing after the U-Haul as it sped off --

MS. SPELLS: If I may --

MR. ROSE: -- trying to tell the police what happened.

MS. SPELLS: If I may finish my sentence, however. So the issue is that there is absolutely nothing that's occurring to him. We did have an evidentiary hearing earlier and what we learned from that was that actually one of the security officers had run out and was, I guess, taking photographs in the parking lot of Mr. Harvey is what he testified to. And so we know that those individuals, from the evidence that is part of the record, that those individuals were not in front of the T.J. Maxx, that they ran through the parking lot.

So our position is that, one, it's duplicative of things that other witnesses can testify and those witnesses actually having personal knowledge. But, second, it is completely hearsay. He has no knowledge. He only knows that people were running, what he was told, and yes, that he is following the car. And I don't believe

that it's necessary to explain his actions. He can definitely say that I inquired what happened, and based upon that I followed the car, and then whatever he saw from there. It's all not present sense impression because he didn't see anything. So for him to tell the officers, yeah, Mr. Harvey pulled a knife or tell 9-1-1 operators that this individual pulled a knife, this individual took items, this individual robbed, that's completely --

THE COURT: Well, he was told that the robbery had occurred and these guys were running away from the robbery; is that correct? And that he was told that they had a knife that they pulled on him; is that correct?

MR. ROSE: That's correct, Your Honor.

MS. SPELLS: That's our understanding.

THE COURT: Okay. If that doesn't create a situation for the potential for making an excited utterance on a 9-1-1 call, I don't know what does.

I'm denying your motion to strike out -- these are both going to be witnesses; right?

MR. ROSE: Yes, Your Honor.

MR. SCHWARTZ: Correct.

THE COURT: And so we don't really have a confrontation because they're both going to be on the witness stand and subject to cross-examination.

What I am going to grant is the statement that on the first 9-1-1, that last statement by the 9-1-1 operator, that has nothing to do with the call, it's completely out of line, and it's be stricken off of that 9-1-1 call.

MR. ROSE: Your Honor, and I will certainly -- we've actually already prepared a redacted version which eliminates that and I think one other later reference to the children.

I would simply point out, for the record, that when we did have the argument on the Motion in Limine on this, I brought up the fact that we were going to have to redact other things, and my main focus at that point in time was on the video, which does show the kids. At that point in time, the representations that were made were that the only thing that we were talking about with regard to that Motion in Limine was the statement by the victim regarding the -- regarding the presence of the kids, saying let's go inside, we shouldn't do this in front of your kids.

So I think the -- we did have the potential to have this discussed and raised previously. I don't think it was at that point in time. My understanding was it was not going to be raised at that point. However, given Your Honor's ruling we have the redaction prepared. I will give a copy of that to defense counsel tonight or today, right now actually, and make sure that they have the chance to listen to it and if they think that -- if my timing is off slightly or if there's something else in there that they feel is inappropriate, they can get in contact with me and we can hopefully get a agreed upon version settled before court tomorrow morning.

THE COURT: Okay. You guys -- get her a copy, and let her look at it, and we'll have time to go through it in the morning. If there's something that we need to do to kind of revisit anything or if I need to decide anything, we'll have a chance to do it in the morning.

But the issue about somebody saying, the kids, that's kind of a not -- that's been ruled upon and Judge Smith denied redacting out a statement about the kids.

MS. SPELLS: We were in front of Judge Miley --

THE COURT: Oh, Judge Miley.

MS. SPELLS: -- because this case was sent to Department 8 for overflow.

And the Motion in Limine was very specific as to the -- Julian Munoz' statements. The only thing discussed with regards to that Motion in Limine was -- were his statements that came out of his voluntary statement, as well as the statements that the officers wrote down in their police report as coming from Mr. Munoz, and then we briefly addressed the video surveillance. And it was the defense's position that we weren't requesting that all video surveillance that had children in it be redacted. So the motion only addressed the victim statements --

THE COURT: So the --

MS. SPELLS: -- it never addressed the 9-1-1 phone call and these statements not being from the named victim but actually coming from the 9-1-1 operator.

THE COURT: And that's -- I agree with you. That will -- that's -- that will be out. The -- but the video of them running away, it does show the kids?

MR. SCHWARTZ: It shows the inside of the store. So it shows the kids with the Defendant in the store moving throughout and then the outside is not on video.

THE COURT: Okay. So there's no outside video showing them running across?

MR. ROSE: That's correct, Your Honor.

MR. SCHWARTZ: Correct.

THE COURT: All right. Just out of curiosity, where are these kids?

THE DEFENDANT: With my wife, Your Honor.

THE COURT: Okay. So they're not in foster care --

THE DEFENDANT: No, they're in school and --

THE COURT: -- or Child Protective Services or anything, they're with their mom, okay?

All right. Let me go work on the calendar. I'll make -- I'll try to make it as short as possible. We should have plenty of time for a 10 o'clock start.

MR. SCHWARTZ: Thank you. Your Honor.

MS. JONES: Thank you, Your Honor.

THE COURT: Also, just a -- I got the State's instructions -- did you get a copy?

MS. SPELLS: Yes, Your Honor.

MS. JONES: Yes, Your Honor.

MS. SPELLS: We'll provide the Court with ours.

THE COURT: Okay. When you get a chance to -- and maybe by like noon ish tomorrow we can start discussing instructions. If you have some objections or suggestions, so we'll be able to just transition --

MS. SPELLS: We'll submit a proposed copy as well.

THE COURT: -- right from the evidence, right into the closing.

MR. SCHWARTZ: The only correction we're going to make I believe we have our -- the new Amended Information, so we'll put in the old --

THE COURT: Okay.

MR. SCHWARTZ: -- Amended Information.

THE COURT: Okay, okay. All right, very good. I will see you folks tomorrow morning.

Anybody got anything on calendar?

MS. SPELLS: Not in this department.

MR. SCHWARTZ: No, Your Honor.

THE COURT: Okay.

THE DEFENDANT: Thank you, sir.

THE COURT: All right, see you in the morning.

MS. JONES: Thank you, Your Honor.

MR. ROSE: Thank you, Your Honor.

[Jury Trial, Day 1, concluded at 4:18 p.m.]

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

Gina Villani
Court Recorder

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED C. HARVEY, Appellant, vi. THE STATE OF NEVADA, Respondent.	No. 72829/75911

APPELLANT'S APPENDIX VOLUME III PAGES 500-688

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

Attorney for Appellant

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

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

Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 22 day of October, 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:

ALFRED C. HARVEY, NDOC# 1174900
C/O SOUTHERN DESERT CORRECTIONAL CENTER
P.O. BOX 208
INDIAN SPRINGS, NV 89070

BY */s/ Rachel Howard*
Employee, Clark County Public Defender's Office

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED C. HARVEY, Appellant, v. THE STATE OF NEVADA, Respondent.	No. 72829/75911

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Clerk of Supreme Court

APPELLANT'S APPENDIX VOLUME III PAGES 500-688

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

Attorney for Appellant

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

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

Counsel for Respondent

Docket 72829 Document 2018-41577

INDEX
ALFRED C. HARVEY
Case No. 72829

PAGE NO.

Addendum to Motion Motion to Dismiss, or in the Alternative, for a Curative Jury Instruction on the State's Failure to Gather or Preserve Material Evidence
Date of Hrg: 10/31/16 75-90

Amended Information filed 11/16/16 184-185

Bail Bonds filed 05/13/16 49

Case Appeal Statement filed 05/16/18 1674-1676

Certificate of Discharge dated 05/13/16 52-53

Court's Exhibit dated 11/17/16 ..... 1021a

Criminal Complaint filed 04/01/16 1

Defendant's Motion to Reconstruct the Record and Motion Asking Trial Judge to Make a Decision in this Matter
Date of Hrg: 04/16/18 1464-1554

Defendant's Notice of Witnesses filed 06/14/16 65-66

Defendant's Proposed Instructions and Verdict Form filed 11/16/16 186-200

Defendant's Reply to State's Opposition to Defendant's Motion for New Trial and Evidentiary Hearing and Decision by Trial Judge
Date of Hrg: 04/30/18 1357-1444

Defendant's Reply to State's Opposition to Reconstruct the Record And Motion Asking Trial Judge to Make a Decision in this Matter
Date of Hrg: 04/30/18 1564-1645

District Court Minutes from 04/20/16 through 03/08/17 328-354

District Court Minutes from 02/07/18 through 04/30/18 1677-1682

Ex Parte Order for Transcripts filed 04/23/18 1669

Ex Parte Order for Transcripts filed 05/07/18 1670

Information filed 04/19/16 30-32

Instructions to the Jury filed 11/17/16 250-274

Judgment of Conviction (Jury Trial) filed 03/17/17 322-323

Jury List filed 11/15/16 183

Justice Court Minutes from 04/01/16 through 04/18/16 26-29

Motion for New Trial Based on Grounds of Newly Discovered Evidence and

Motion for Evidentiary Hearing and Decision by Trial Judge
Date of Hrg: 04/16/18 1022-1117

Motion for Own Recognizance Release Under Intensive Supervision
Date of Hrg: 05/04/16 10-12

Motion for Own Recognizance Release Under Intensive Supervision
Date of Hrg: 08/03/16 85-88

Motion in Limine
Date of Hrg: 11/28/16 173-182

Motion to Allow Defendant to Cover His Face Tattoos
Date of Hrg: 11/02/16 148-163

Motion to Dismiss, or in the Alternative, for a Curative Jury
Instruction on the State's Failure to Gather or Preserve Material Evidence
Date of Hrg: 10/31/16 67-74

Motion to Suppress Show-Up Identification
and Subsequent In-Court Identification
Date of Hrg: 11/02/16 91-112

Notice of Appeal filed 04/10/17 324-327

Notice of Appeal filed 05/16/18 1671-1673

Notice of Intent to Seek Punishment
as a Habitual Criminal filed 06/10/16 59-61

Notice of Motion and Motion to compel Discovery
Date of Hrg: 06/01/16 33-42

Notice of Witnesses filed 06/13/16 62-64

Order Denying Defendant's for New Trial and Defendant's
Motion to Reconstruct the Record
Date of Hrg: 04/30/18 1666-1668

Power of Attorney dated 05/13/16 50-51

Proposed Jury Instructions Not Used at Trial filed 11/17/16 275-276

Proposed Jury Instructions Not Used At Trial filed 11/17/16 277-281

Second Supplemental Notice of Witnesses filed 11/04/16 170-172

Sentencing Memorandum
Date of Hrg: 03/08/17 283-310

State's Opposition to Defendant's Motion for New Trial and Evidentiary Hearing
Date of Hrg: 04/30/18 1118-1356

State's Opposition to Defendant's Motion for Own Recognizance Release or for Bail Reduction
Date of Hrg: 05/04/16 13-18

State's Opposition to Defendant's Motion for O.R. Release Or for Bail Reduction
Date of Hrg: 05/04/16 19-22

State's Opposition to Defendant's Motion to Allow Defendant to Cover His Face Tattoos
Date of Hrg: 11/02/16 164-169

State's Opposition to Defendant's Motion to Dismiss and/or Sanborn Instruction
Date of Hrg: 11/02/16 137-147

State's Opposition to Defendant's Motion to Reconstruct the Record
Date of Hrg: 04/30/18 1555-1563

State's Opposition to Defendant's Motion to Suppress Show-Up Identification and Subsequent In-Court Identification
Date of Hrg: 11/02/16 113-136

State's Response to Defendant's Motion to Compel Discovery
Date of Hrg: 06/02/16 43-58

Supplemental Notice of Witnesses filed 10/17/16 89-91

Supplement to Defendant's Reply to State's Opposition to Defendant's Motion for a New Trial and Motion for Evidentiary Hearing and Decision by Trial Judge
Date of Hrg: 04/30/18 1445-1463

Supplement to Defendant's Reply to State's Opposition to Defendant's Motion to Reconstruct the Record and Motion Asking Trial Judge to Make a Decision in this Matter
Date of Hrg: 04/30/18 1646-1665

Temporary Custody Record dated 04/01/16 25

Verdict filed 11/18/16 282

TRANSCRIPTS

Recorder's Transcript
JURY TRIAL DAY 1
Date of Hrg: 11/15/16 500-688

Recorder's Transcript
JURY TRIAL DAY 2
Date of Hrg: 11/16/16 689-917

Recorder's Transcript
JURY TRIAL DAY 3
Date of Hrg: 11/17/16 918-979

Recorder's Transcript
JURY TRIAL DAY 4
Date of Hrg: 11/18/16 980-997

Recorder's Transcript
Bench Warrant Return…Defendant's Motion to Compel Discovery
Date of Hrg: 06/01/16 365-371

Recorder's Transcript
Calendar Call
Date of Hrg: 06/15/16 384-387

Recorder's Transcript
Defendant's Motion for New Trial Based on Grounds of Newly Discovered Evidence and Motion for Evidentiary Hearing and Decision by Trial Judge; Defendant's Motion to Reconstruct the Record and Motion Asking Trial Judge to Make a Decision in this Matter
Date of Hrg: 04/16/18 1683-1688

Recorder's Transcript
Defendant's Motion for New Trial Based on Grounds of Newly Discovered Evidence and Motion for Evidentiary Hearing and Decision by Trial Judge; Defendant's Motion to Reconstruct the Record and Motion Asking Trial Judge to Make a Decision in this Matter
Date of Hrg: 04/30/18 1689-1699

Recorder's Transcript
Defendant's Motion for Own Recognizance
Release Under Intensive Supervision
Date of Hrg: 05/04/16 359-364

Recorder's Transcript
Defendant's Motion for Own Recognizance
Release Under Intensive Supervision or on House Arrest
Date of Hrg: 08/03/16 391-394

Recorder's Transcript
Defendant's Motion to Dismiss, or in the Alternative, for a Curative Jury Instruction on the State's Failure to Gather or Preserve Material Evidence
Date of Hrg: 10/31/16 415-416

Recorder's Transcript
Defendant's Motion to Suppress Show-Up Identification and Subsequent In-Court Identification…Defendant's Motion to Allow Defendant to Cover His Face Tattoos… Defendant's Motion to Dismiss, or in the Alternative, for a Curative Jury Instruction on the State's Failure to Gather or Preserve Material Evidence…Calendar Call
Date of Hrg: 11/02/16 417-436

Recorder's Transcript
Evidentiary Hearing
Date of Hrg: 11/09/16 437-484

Recorder's Transcript
Initial Arraignment
Date of Hrg: 04/20/16 355-358

Recorder's Transcript
Status Check: Custody/Bond Status and Defendant's Motion to Compel Discovery
Date of Hrg: 06/02/16 372-383

Recorder's Transcript
Status Check: Resetting of Trial/New Counsel
Date of Hrg: 06/29/16 388-390

Recorder's Transcript
Sentencing
Date of Hrg: 03/08/17 998-1021

Reporter's Transcript
Preliminary Hearing
Date of Hrg: 04/18/16 2-24

INDEX
ALFRED C. HARVEY
Case No. 75911
(Second Appeal)

PAGE NO.

Defendant's Reply to State's Opposition to Defendant's Motion for New Trial and Evidentiary Hearing and Decision by Trial Judge filed 04/23/18
Date of Hrg: 04/30/18 ..... VII: 1357-1444

District Court Minutes from 02/07/18 through 04/30/18 ..... VIII: 1677-1682

Motion for New Trial Based on Grounds of Newly Discovered Evidence and Motion for Evidentiary Hearing and Decision by Trial Judge filed 04/05/18
Date of Hrg: 04/16/18 ..... VI: 1022-1117

Order Denying Defendant's for New Trial and Defendant's Motion to Reconstruct the Record
Date of Hrg: 04/30/18 ..... VIII: 1666-1668

State's Opposition to Defendant's Motion for New Trial and Evidentiary Hearing filed 04/17/18
Date of Hrg: 04/30/18 ..... VI: 1118- VII: 1356

Supplement to Defendant's Reply to State's Opposition to Defendant's Motion for a New Trial and Motion for Evidentiary Hearing and Decision by Trial Judge filed 04/27/18
Date of Hrg: 04/30/18 ..... VII: 1445-1463

TRANSCRIPTS

Recorder's Transcript
Defendant's Motion for New Trial Based on Grounds of Newly Discovered Evidence and Motion for Evidentiary Hearing and Decision by Trial Judge; Defendant's Motion to Reconstruct the Record and Motion Asking Trial Judge to Make a Decision in this Matter
Date of Hrg: 04/16/18 ..... VIII: 1683-1688

Recorder's Transcript
Defendant's Motion for New Trial Based on Grounds of Newly Discovered Evidence and Motion for Evidentiary Hearing and Decision by Trial Judge; Defendant's Motion to Reconstruct the Record and Motion Asking Trial Judge to Make a Decision in this Matter
Date of Hrg: 04/30/18 ..... VIII: 1689-1699

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DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, vs. ALFRED HARVEY, Defendant.	CASE NO. C314260 DEPT. VIII

BEFORE THE HONORABLE JAMES M. BIXLER, SENIOR DISTRICT COURT JUDGE

TUESDAY, NOVEMBER 15, 2016

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 1

APPEARANCES:

For the State: BRYAN S. SCHWARTZ, ESQ.
STEVEN ROSE, ESQ.
Deputy District Attorneys

For the Defendant: JASMIN D. SPELLS, ESQ.
KELLEY R. JONES, ESQ.
Deputy Public Defenders

RECORDED BY: JILL JACOBY, COURT RECORDER

Case Number: C-16-314260-1

TUESDAY, NOVEMBER 15, 2016 AT 9:36 A.M.

[Outside the presence of the prospective jury panel]

THE COURT: We're on the record in the matter of the State of Nevada versus Alfred Harvey. Defendant's present out of custody -- is he out of custody?

MS. SPELLS: He's in custody.

THE COURT: He's in custody, okay.

Okay, so what's the deal? State's changed a couple of words in the Amended Information; is that right?

MR. SCHWARTZ: That's right, Your Honor.

MR. ROSE: That's right, Your Honor.

THE COURT: You changed miscellaneous clothing to miscellaneous items, changed her to him -- his; is that it?

MR. ROSE: I believe those were the only two changes, Your Honor.

THE COURT: Okay.

MS. SPELLS: Good morning, Your Honor. Jasmin Spells on behalf of Mr. Harvey.

Your Honor, we don't have any issue with the her to his, obviously we understand that the named victim here was a male individual; however, the change with regard to the deletion of clothing to have it read miscellaneous items instead of miscellaneous clothing items, is a significant change, it's a change in the theory of prosecution and; therefore, it requires a change in the theory of defense. This amendment came after the original calendar call as well as after the overflow calendar call and literally less than 24 hours before the start of trial. Although the State e-mailed out the request at approximately 11 a.m., co-counsel and I were out visiting the scene that the address is for the occurrence of this incident and so we

didn't even receive the e-mail or have an opportunity to review that until late yesterday afternoon around two or so. As soon as we got that we did inform the State that we would be requesting a continuance because it definitely does change our theory of defense.

We prepped the case based upon their theory of prosecution that was the same language that was in the complaint. It changed the way that we worked up the case. There were a number of things that we would have done differently had we been aware that the State was intending to make those amendments.

So at this time we can't be ready to proceed because we need to redo our theory of defense. We need to evaluate the evidence in a different light. There are additional things that we still need do based upon those changes. The only way that we would be prepared to go forward is if the State decided that they were not going to make those amendments.

This is a notice pleading state so the State has the obligation of putting the defense on notice as to what their theory of prosecution is and changes at the 24th hour are burdensome to the defense. And so as this point, You Honor, we are requesting a continuance of this matter.

MR. SCHWARTZ: Good afternoon -- good morning, Your Honor. So, here's the situation, the State has never once changed its theory of prosecution. From the beginning of this case it's all been about the defendant going into T.J. Maxx. He's alleged to have taken three items. Ms. Spells has been on the case as long as I have, and that's from the very beginning, it's always been the same three items, a wallet, lotion, fragrances, nothing about that has changed. The State merely was going to strike the language clothing from the Amendment -- the Information just to make it a little clear. In the State's mind, that's no way changing the theory of

prosecution.

With that in mind though, Your Honor, you know, I do agree that if for some reason they were relying on the word clothing to prepare their defense, they're certainly entitled to a theory of defense. I did come up this morning with an alternative suggestion leaving the word clothing in the Amendment. It would be miscellaneous clothing items and then it would be -- including and we would list out the items that, from the beginning, we've alleged that the Defendant has stolen. So it would read, and I do have a copy if you'd like to look at it, Your Honor, it would be miscellaneous clothing items, including wallet, and/or fragrances, and/or perfume, and/or moisturizer, and/or facial cream.

Now, I'm not committed to any of that language except I want the items that we're alleging him to stole -- has stolen in the Information. And it's consistent --

THE COURT: I'm reading the Declaration of Arrest; it identifies exactly what the Defendant is alleged to have taken. And this is like not a surprise. The Declaration of Arrest says, T.J. Maxx handed -- handed him two wallets, fragrance, cream, multiple other items, fragrance, multiple other face cream.

I mean, there's nothing about any of this that's a surprise, this is -- nothing here is new. It's all been part of this case from the get-go. This guy's been sitting in custody since April. Since April on what amounts to a -- I don't know what these items totaled up to. It's either a petty larceny or a grand larceny. And because he took a -- alleged to have taken a knife out to get away it becomes a robbery with a use. Give me a break. This guys -- he must have a real record because otherwise I'm sure there'd been a multitude of motions to get him out of custody considering the nature of this case. But I don't --

MS. SPELLS: If we may --

THE COURT: Here's what we're going to do, this thing is going to go to trial.

MS. SPELLS: Your Honor, if we approach and/or make a record outside the presence of the State so that the Court fully understands --

THE COURT: Well, come up here and tell me what's going on.

MR. SCHWARTZ: Well, I think she wants to do it without the State --

THE COURT: You want to do it without the State?

MS. SPELLS: I do.

THE COURT: Okay. You guys have the little fuzzy noise --

MS. SPELLS: Is it possible to just have them exit the room for a few minutes?

THE COURT: Yeah.

MR. SCHWARTZ: To be clear, we're discussing why this is going to affect the theory of defense, is that why?

MS. SPELLS: Yes.

MR. SCHWARTZ: Okay.

MS. SPELLS: That's it. We're not going to discuss anything further.

MR. SCHWARTZ: And just so you have a copy, that's the -- the other Amended I mentioned just as a type of a compromise to try to include the language that they wanted.

THE COURT: Okay. We'll have them step out for a minute.

MS. SPELLS: Thank you.

THE COURT: All right. The record should reflect we're outside the presence of the State.

MS. SPELLS: Yes.

THE COURT: Counsel.

MS. SPELLS: And here's the thing, Your Honor, the language specifically

stated miscellaneous clothing items and that is what the State was arguing, although the police report and everything else may have signified something different. Because it is a notice pleading state, the State is required to inform us of exactly what they're charging. The obvious thing here is that no clothing items were taken and so the obvious theory of defense here is that the State charged the case wrong and that it should have been a complete not guilty. And that is the defense that we were going with based upon their changes and so that is the defense that we prepared. Had the State notified us this at calendar call or at some earlier date then would have been completely understandable. But to do it, like I said, less than 24 hours before the beginning of trial when that's the theory that we've been -- that we have prepared with regard to our opening, our closing, speaking to our witnesses, looking at the evidence with regard to how that best goes with our theory. At the lateness of the hour we have to completely change gears. Because at the point that they are including other things, or even the amended that they are trying to give today to keep clothing items but also list out the other things, that is the complete difference. It may seem insignificant in that it's only one word but it is extremely significant with regard to the theory of defense and how we prepared this case.

Because I understand that, yes, we were aware of what the police report said but so was the State. It was their mistake and any good defense attorney obviously is going to capitalize on a mistake of the State or things that they have done. And, so, to know that they're going to change it, we have no way of knowing that. But based upon that, we didn't file a writ, there a number of different things that would have been done differently in this case. We completely acknowledge and understand that the State does have the ability to amend the complaint; however, at the lateness of the hour we should be given an opportunity to

prepare our defense because we now have to change course with absolutely everything we were doing from opening, to closing, to jury instructions, to the way that that we were defending this case. And so that makes a significant difference.

Based upon that, Your Honor, as I said, we found this out at, you know, 2, 3 o'clock in the afternoon. There are a number of different things of the -- police reports are not voluminous here but we have testimony and different witnesses that we would need to prep differently and re-go over all of that testimony, redo our opening, redo our closing.

And so at this point we would submit to Your Honor that we would be ineffective. We can't go forward trying to redo an entire theory with a few hours of notice.

THE COURT: You mean because the theory of your defense is that the State had made a mistake and had erroneously indicated the Defendant stole items of clothing as opposed to items of fragrance and creams and -- your theory is that he didn't steal any clothing?

MS. SPELLS: He didn't commit the offense as alleged. So it would have to be a not guilty. And it would be a situation -- any other case, for instance, if they charge a robbery but it's just a grand larceny or with, you know, if they charge a grand larceny but it's just a petty larceny, the State is required to meet the elements of what they have charged. But the way that they allege the crime is what we go off of. This is a notice pleading state. If it was not that significant of a change, then they wouldn't have changed it, they wouldn't at the lateness of the hour be scrapling. Because they fully have to understand that they couldn't prove that he took clothing items and that's the -- that's the reason for the change.

But this is not the defense who wasn't prepared to go forward. We

announced ready. We were fully prepared to go forward. It's the State who did this less than 24 hours before trial, the day before trial.

THE COURT: Let me ask you, what's the difference if the -- because what was being stolen is secondary to the elements of the crime. The elements of the crime require that he stole property and used force with a deadly weapon to, in this case, escape. That's what the State has to prove that the actual items, whether it's clothing or fragrance or creams, the items that he was stealing is secondary to the actual charge that he was stealing something from the victim and used force with a weapon to perfect an escape.

How does the -- I mean, I understand your argument that you prepared with the concept that they alleged that he stole clothing and to prove -- in other words, why doesn't the State just put their case on and then after they put their case on say, well, we move to amend to conform to the evidence that was adduced instead of -- instead of just clothing items, we want it expanded to conform to the evidence that he stole fragrance and creams, in lieu of clothing items.

MS. SPELLS: And I think that that would be appropriate if this were a preliminary hearing and they were moving at the end of a preliminary hearing to have their complaint or their allegations reflect the evidence that has gone forth. But under a notice pleading statute we have the -- the State has the requirement to inform us the way in which they are charging the case, and that's why the language reads, to wit: X, Y, Z. And that is what they noticed. And so for them to amend after the closing of evidence does not conform with the requirements of notice pleading.

And I'm sure that, Your Honor, has a lot of experience on the bench and so I'm sure that you're fully aware and have seen even motions by the defense that asks for clarification with regard to the way the State is charging so the defense

does not have to prepare for 50 million defenses that the State needs to clarify and actually put forth the manner in which they are charging the case.

If this were not a notice pleading state, if we were not familiar with Informations and Indictments that have the to wit language, then I would completely agree with the Court's understanding. But here I do think that under notice pleading they are definitely required to specifically allege the manner in which they are charging the case and that we are required to have notice, much more than 21 hour -- 21 hours if we would read it at the moment that it was sent.

THE COURT: I need to bring the State back in here. I need to have them -- I'm going to explain to them, to a certain degree, that you prepared with a particular defense -- they screwed this up. They alleged that he stole clothing items and there's no clothing items stolen and that should be your whole defense. That they have -- they have misalleged the nature in which the crime was accomplished. I need to have some response from the State.

All right. Listen, guys -- the record should reflect the State's back here. Here's the deal, and I have to concede they kind of have a point but, the defense has prepared based upon notice pleading that the Defendant committed the act of robbery with use of a deadly weapon by stealing clothing items. As it turns out from the review of the information, there weren't any clothing items stolen, which is their whole defense. Their defense is that he didn't steal any clothing items. That's what they were -- that's what he was alleged to have accomplished. He didn't accomplish that. He didn't do that, that's not what the facts are. There are -- there's something else. And based upon the allegation that she stole clothing items and he didn't that's how they approached their defense.

I'm sorry that I had to say all of this, but the point is by amending the

complaint hours before the trial starts their argument is we came prepared to base a defense -- because the State screwed this up and mistakenly alleged something that the facts don't support. So, that's how we approach the defense. Now, to be surprised that all of a sudden they're going to make a correction to correct what was supported by the evidence is -- you can't do that hours from the trial.

Have I said that -- basically what you said?

MS. SPELLS: Yes, Your Honor.

THE COURT: So I said I need to bring you guys in here and I need to hear a response. My first thought is this is ridiculous but their argument actually has some merit to it, so.

MR. SCHWARTZ: And that's fine, Your Honor, I mean, they're entitled to whatever defense they want. But my proposed Amendment today leaves in that language, they can have the word clothing, they can say whatever they want about clothing not being taken. But from the beginning it's never been about clothing. And so if we're going to sit here and pretend like we're going to argue these details about the word clothing -- I mean, the way I allege it in this new one today, I'm alleging that wallets, moisturizer and all that fall under the big scope of clothing. You go to a clothing store there's wallets, moisturizer, fragrance. I mean, I'm arguing it's all the same thing. It's all falling under the same thing. They're still classified as clothing under the Amended Information that I have today.

So their defense that they've prepared is still valid.

MR. ROSE: And, Your Honor, I would also just point out that this is the same exact evidence that we had throughout the entirety of the case. If the defense is that these things don't constitute clothing items, and therefore the State just has zero evidence of anything with regard to clothing, I would wonder why we didn't

have a pretrial writ on the exact same basis. Because if it's simply not clothing --

THE COURT: Well, here's why -- I mean, here's why. Obviously they weren't going to put you on notice that you screwed up the pleadings and were alleging that clothing is what was stolen as opposed to other non-clothing items. Why would they put you on notice to correct the defect if they aren't required to?

MR. SCHWARTZ: That's fair too, Your Honor. We're -- as we -- if you guys want -- if everyone is looking at it as a mistake, we're obviously allowed to correct it. But also the case law says, an inaccurate Information is not in effect violating the Defendant's substantive rights. So, you know, he does have substantive -- he has rights to a defense, a theory of defense. But the fact that there's a mistake, quote/unquote a mistake in the Information does not amount to a necessary continuance in this matter. It doesn't affect his rights.

MR. ROSE: Your Honor, NRS 173.095 is the statute which governs the Amendment of an Information or an Indictment. And it states that any time before the verdict is rendered or a decision is made, that the State can amend an Indictment or an Information except in two circumstances. One circumstance is if we charge a new or different offense, and the second circumstance is if it would prejudice a substantial right of the defendant.

Now, there's also the case of *Viray v State*, V-I-R-A-Y, v State, that's 121 Nevada 159, it's from 2005, it's a published case, and in there there's an actual quote from the Nevada Supreme Court, which says, an inaccurate Information does not prejudice a Defendant's substantial rights if the defendant had notice of the State's theory of prosecution. Even if the State was inaccurate in using the word clothing to describe these items which were taken, which we're not conceding that that's necessarily an inaccurate way of describing them. But even if that was

inaccurate, the State's theory of prosecution has not changed at all, the same items that weren't actually taken were in the arrest report or the declaration of arrest, they were testified to at the preliminary hearing, they were documented in a photograph, all of which has been in the possession of the defense for weeks or months at this point. And we're simply asking to conform to the testimony, to the evidence that we've had since day one.

So I don't think that under either prong of 173.095 that we would be prohibited from amending it. We could, in fact, have amended it at any point during the trial. This is not a situation where we waited to see what the defense was going to be and then gone and amended our Information to specifically address and counteract that defense.

We realize that there might be some ambiguity about it, and said, well, we just want to be clear about what it is that we're talking about. And what we've offered to do today is to leave the word clothing in there and then simply specify what items we are actually talking about. Give more notice and constrain ourselves to what it is that we have to show.

MS. JONES: However, Your Honor, in the case that they are citing, the Court also stated that the defense was on notice because the compliant and the Information were the same, which is not the same in this case. So, they're changing the Information -- the changing of the Information as well as -- we prepared based on the Information and the complaint being the same. That is -- and that is the issue at hand.

In that particular case, the Court stated that defense was on notice because, again, the complaint and the -- I'm sorry, Your Honor, the complaint and the Information were actually the same. They are actually changing the Information

at this point. We based our defense on both the complaint and the information at hand and it was based on miscellaneous clothing items. That's why we are still asking for the continuance in this case.

MS. SPELLS: And here's the thing, Your Honor, to lay out --

THE COURT: Here's what I'm -- you know, here's what's going to happen. I mean, I can -- you guys are -- I understand completely what everybody's take on this is. Here's what I'm inclined to do. Let's proceed to trial on the amended complaint -- I mean on the original complaint. If your theory is correct, you're going to a clothing store, you're correct in saying that anything that they sell in a clothing store is incorporated into clothing items. It doesn't have to be actual cloth material that you put on. Clothing items are included in everything that they sell. And they stole something that you don't wear but you buy in a clothing store, they're clothing items. That's your argument, that's your argument, that's what you tell the jury.

Proceed to trial; no amendment.

MR. SCHWARTZ: Your Honor, I appreciate that ruling, even the new amendment suggested today where we leave the clothing items in there and just specify what we're talking about. There's no surprise as you said.

THE COURT: You can tell the jury what you're talking about; you can tell them -- you can tell them exactly here are the items of clothing that we're referring to. He took some fragrances, he took some creams, he took some blah, blah, blah. All of those things that he allegedly took say, these are the items of clothing that we're referencing, that you buy them in a clothing store, that's why we call them items of clothing. There you go, you're off and running.

MS. JONES: However, Your Honor, understanding that you could also buy these items in Walgreens or Wal-Mart, which are not specifically clothing stores.

So, Your Honor, we would still state at this time that we are asking for a continuance, because all though T.J. Maxx sells multiple items and is actually a clothing store, again, you can buy these items, you can buy a wallet, you can buy fragrances --

THE COURT: Sure.

MS. JONES: -- you can buy all of these in Walgreens which happens to be a --

THE COURT: I don't disagree with you. But here's the deal, if there's no amendment to the complaint, then you should be ready to proceed.

So I don't know -- I don't know if anybody's prejudiced by this. Here's the deal, if you are adamant about wanting to change the language in the complaint, I'm going to grant them a continuance. I don't think it's necessary. I think you can proceed to trial and prove your case without any amendment. I mean, I think you should have an opportunity to prove your case without any amendment. It's just a matter of adjusting your approach and informing the jury this is what we're talking about. This is a clothing store and items of clothing in our opinion include everything. It's not even critical. Because the point is it doesn't make any difference what he was stealing. It makes no difference what he was stealing. If he was stealing something and he used force with a deadly weapon to escape, there are the elements of your crime. The issue of exactly which items were being stolen is secondary and really not anything worth continuing this case over.

He's been in custody since April. He's entitled to have a trial. So if you guys want to proceed on the original Information, we're having a trial. If you really want to do an amendment, then I'm going to grant the continuance.

MR. SCHWARTZ: Understood, Your Honor. We'll withdraw our Amendment.

I would like to make a -- just clarify the record as to why he is in custody since April. He was OR'd by Judge Miley and given house arrest.

THE COURT: Okay, didn't know that.

MR. SCHWARTZ: And then he messed up on house arrest by smoking meth so he's back in custody. So it's not that he's just been sitting in custody this whole time. He was out of custody. He does have several prior felonies which is why I think we're here today.

THE COURT: Okay. Something that -- it's really not that imperative to know to proceed to trial. There was one mention in that affidavit of arrest that said the guy from the store, the security guy from the store, tried to get the Defendant to come back inside because he did not want to do this in front of the kids, his kids. I'm not sure -- I assumed he was talking about the Defendant's kids. But that's the last mention of kids. And they have a helicopter kind of runs him down, they identify the vehicle, they find him, they arrest him. Not one more word about two little kids.

Were there kids in the car?

MR. SCHWARTZ: There were, Your Honor, yes. We believe the testimony will show that there were two kids in the car.

THE COURT: Okay.

MR. SCHWARTZ: And there was a motion -- there was some pretrial motions about that issue, the kids.

THE COURT: Because I haven't seen anything specifically about what's going on in this matter as far as motion practice goes.

MR. SCHWARTZ: If I could just inform the Court, there was a Motion in Limine to prevent the State from addressing the statement from the loss prevention officer regarding the children; that motion was denied by Judge Miley. There was

two other motions -- two other items in the Motion in Limine regarding some forged credit cards or forged bills or fraudulent cards found on the Defendant or in the U-Haul at the time of stop and that was granted by Judge Miley. So the State has informed all its witnesses we are not going to address that issue.

THE COURT: Can't mention any of those items?

MR. SCHWARTZ: Nothing about that.

THE COURT: Okay.

MR. SCHWARTZ: Additionally, there was a motion to suppress in regards to the show-up identification with Julian Munoz, he's the loss prevention guy, that was also granted by Judge Miley. So, she did suppress the show-up identification. We're not -- we've instructed everyone not to talk about the show-up identification; however, in-court identification is allowed and the request to suppress that was denied by Judge Miley.

THE COURT: Okay. One of the hazards of jumping in on a case is just -- just had a little history here in front of somebody else.

MR. SCHWARTZ: Sure.

THE COURT: That sounds clean. I think we're ready to proceed. Are we -- we told the Jury Commissioner's Office to give the jury a break, but they should be back by now. We told them to give them a 15 minute recess. So I'm sure they're downstairs ready to come up.

MR. SCHWARTZ: Okay.

MS. SPELLS: Your Honor, we just do have a few other things that we would need to address then.

THE COURT: Okay.

MS. SPELLS: And 15 minutes may be sufficient. But we did file a motion to

cover Mr. Harvey's face tattoos and --

THE COURT: How are you going to accomplish that?

MS. SPELLS: Well, we have makeup this morning. We just didn't apply it yet. He came out shortly before you took the bench. So we would need to --

THE COURT: This is getting to be a habit around the courthouse.

MS. SPELLS: And it's just the face tattoos, Your Honor, it's not the neck tattoos or anything like that.

MR. SCHWARTZ: And I -- just to kind of speed things up. We have no opposition to covering his cheek and the one over his eye.

THE COURT: Okay. All right. Sure, go ahead, you can do it.

Anything else?

MS. SPELLS: I believe that's it for now, Your Honor.

THE COURT: Okay. I forgot to bring my trial book. So I'm going to run down Judge Smith's trial Book.

MR. SCHWARTZ: Thank you, Your Honor.

THE COURT: Make sure that I stay focused and on the right page.

[Brief pause in proceeding]

THE COURT: I just wanted to go over a couple of little things real quick on the jury selection process.

Tom, when you bring in the jurors, do you have them start at one particular end in numerical order?

THE MARSHAL: They start up under the child with the eagle in the back row with juror number 1. I'll put 7 across, then 8 through 14 across, and then the next 5 will be against the wall, and then the last 5 will be up front.

THE COURT: Okay. So we're going to have, you each get challenges, so

there will be 10 extras. As soon as we get 24 -- we'll have two alternates. As soon as we get 24 qualified then I'll excuse the rest of them and then you guys start passing the slip back and forth.

MR. SCHWARTZ: Thank you, Your Honor.

MR. ROSE: Thank you, Your Honor.

THE COURT: Perfect.

[Recess taken at 10:07 a.m.]

[Trail resumed at 10:33 a.m.]

[Outside the presence of the prospective jury panel]

THE COURT: The jury is -- you want me to address, what the panel --

MR. ROSE: Not by the State.

MR. SCHWARTZ: The normal ones are fine.

THE COURT: Okay. I'm just --

MR. SCHWARTZ: Nothing in particular.

THE COURT: -- pretty much standard stuff.

MS. SPELLS: We think the normal ones are fine, Your Honor.

MR. SCHWARTZ: Do you usually have them do panel voir dire for the parties?

THE COURT: Yeah. I mean, we're going to start off with the entire panel and then as soon as we get through the big general questions, then we'll focus on the 24 in the box.

MR. SCHWARTZ: Okay.

MR. ROSE: Okay.

THE COURT: And as one of those goes, excused, we'll just go numerical right down the order with the rest of the jury panel. So we'll know who's coming up.

MR. SCHWARTZ: Great, thank you, Your Honor.

THE COURT: You all ready?

THE LAW CLERK: You wanted to put something on the record before; correct?

THE COURT: Oh.

MS. SPELLS: We did.

THE LAW CLERK: Yeah.

MS. SPELLS: Your honor, just briefly, we just wanted to make sure that the record was clear that prior to the Court's ruling the defense had requested to address the Court with regard to our theory of defense outside of the presence of the State because we did not want to inform them of that yet and so we just want a record that that did happen. The State did exit, we did discuss that with the Court with regard to the amendments and going forward, and then subsequently to that the State did reenter and they were informed of the theory of defense and then the Court made a ruling.

THE COURT: That's correct. That's all accurate.

MR. SCHWARTZ: The only other thing I just thought of, Your Honor, for the Information, did you allow us to at least change the her to the his? That was fine?

THE COURT: Yes, there was no objection to that.

MS. SPELLS: There's no objection to that.

MR. SCHWARTZ: Okay, great, excellent. Thank you.

MS. SPELLS: And, Your Honor, there --

THE CLERK: Do you want to use [indiscernible] or give me a new one?

THE COURT: Yeah, let's just enter --

MR. SCHWARTZ: Interlineate would be great, if that's okay.

THE COURT: Yeah, just -- we'll do it like that.

[Colloquy between the Court and the Court Clerk]

THE COURT: All right. For the record, on line 25, the word her, the Court's going to interlineate and replace her with him and I'm going to initial it.

MR. ROSE: Could we have his, Your Honor?

THE COURT: What's that?

MR. ROSE: Could we have the word his as opposed to him?

THE COURT: Oh, and his, I'm sorry.

MR. ROSE: No problem. Thank you very much, Your Honor.

THE COURT: It will say, his, his presence.

Are we ready?

MR. ROSE: Yes, Your Honor.

MS. SPELLS: Your Honor, there is one other brief thing --

THE COURT: Okay.

MS. SPELLS: -- just to let you know about it. There is some concern with the 9-1-1 phone call. I think the State wanted to bring that up after we had an impaneled jury, but we do just want to let the Court know that there's some concern --

THE COURT: There's an issue about the 9-1-1 call?

MS. SPELLS: Yes.

MR. SCHWARTZ: There's just some statements I believe that Ms. Spells would like redacted, and I think she has an objection to the second one under hearsay objections. So we have a redacted copy of them, we'll want to just have the Court rule on it, but we figured since the jury was waiting to get them in.

THE COURT: Yeah, let's get this selection process. We can address it when

we take a break or take a lunch break or whatever.

MR. SCHWARTZ: Thank you, Your Honor.

MR. ROSE: Thank you, Your Honor.

MS. SPELLS: Okay.

[In the presence of the prospective jury panel]

THE COURT: Bring them in.

THE MARSHAL: All rise, please.

And be seated.

THE COURT: Good morning, ladies and gentlemen.

PROSPECTIVE JURORS: Good morning.

THE COURT: So, you all came up from the Jury Commissioner's Office. Do you go through an orientation down there -- did somebody come and talk to you or did you watch a film?

PROSPECTIVE JURORS: Watched a film.

THE COURT: You watched a film, okay.

So, my name's James Bixler. I'm a Senior District Court judge assigned to the trial of this case, which for the record is the State of Nevada versus Alfred C. Harvey, this is a criminal case.

What's going to happen here real fast is I'm going to kind of go through some information that you need to be aware of, kind of keep you informed as to how this whole process works, and then we're going to start what is referred to as the voir dire or voir dire, which is the Court and counsel asking you folks questions about your qualifications to sit on a jury, and in particular, this jury, okay.

So, there's going to be a lot of things that are going to go on here but I'll try to give you the order. The first thing we're going to do is have a roll call, the

clerk's going to call everybody's name in order, and you answer here, present. As soon as the roll call is completed, and we know that we've got the right group of folks, then we're going to swear you all in, and we'll start this questioning process, okay.

Before we get there, I would like to thank you guys for volunteering for jury duty that was --

UNKNOWN PROSPECTIVE JUROR: Volunteer?

THE COURT: Okay. You can't volunteer for jury duty. You can't volunteer for jury duty. You have to be randomly selected by the Jury Commissioner's Office. I'm telling you this because it's important that you stay in the same order that you are. You have been randomly selected downstairs, but it's no longer random, now you have to stay in the exact order that your juror badge number was assigned to you, okay? And, by the way, a little further explanation, you have to be randomly selected by a Jury Commissioner's Office to be on -- in this jury pool. We are the only country in the world that does what we do, in terms of asking our citizens to show up and give up their time to render verdicts in civil and criminal cases. No one else in the world relies on their citizens to answer the most important questions in our process, our judicial, civil and criminal process. We're the only ones that rely on you guys, and I cannot tell you how much we appreciate the fact that you're here and you answered the summons, you answered the call.

So, let's have a roll call first and then we'll start with maybe a few explanations and then I'm going to start asking everybody questions. Just so you understand, eventually there will be 14 folks selected out of this group to sit on this jury. There will be 12 jurors and two alternates, and we won't identify the alternates until the end of the evidence and the jury is getting ready to deliberate, okay? We

just want everybody to pay the same level of close attention and that's why we don't identify any alternates until the end.

So, let's have a roll call first. You can answer; you don't need to stand up, just answer present or here, whatever is convenient. I need to remind everybody, this applies right now and throughout the course of the trial, we have a system of recording what goes on here in such a fashion that everything that's said is going to be reduced to a verbatim record. So when the questions asked, we need to have a response so we have a full and complete transcript of what transpired, okay?

So, we're going to start with the roll call.

[Clerk calls roll of prospective jury panel]

THE COURT: Is there anyone present whose name was not called? The answer to that is no.

Okay. All right. So, next thing that we're going to do, it's real important to understand that when we start this voir dire, the questioning process, we're going to swear you all in to make sure that you're going to tell us the truth, okay. The truthful answers are absolutely imperative, full, truthful answers are imperative. We're not trying to pry into your private issues or background, except to the extent that they may have some bearing upon your ability to be qualified to sit as a juror in this case. Eventually, the way this works, we're going to reduce this pool down to 24 people who have been passed for cause by both the State and the defense, okay? As soon as we have a pool of 24 folks that have been passed for cause, I'll excuse whoever is left. You're going to be surprised how fast we're going to go through a bunch of folks, and you'll -- the folks sitting over on that side of the room will take the place of whomever -- for whatever reason was excused over here, okay. We don't

slide everybody up, the next in order just takes that person's place, okay.

So, can you swear them in? Let's swear them all in.

[Colloquy between the Court and the Court Clerk]

What's your name?

PROSPECTIVE JUROR NUMBER 051: Noelle.

THE COURT: Is it Heather?

PROSPECTIVE JUROR NUMBER 006: Yes.

THE COURT: You and our clerk --

[Colloquy between the Court and the Court Clerk]

She's our court recorder, she's the one who makes the transcripts and prepares the record for the trial, you guys have known each other for many years?

PROSPECTIVE JUROR NUMBER 006: Yes.

THE COURT: Is that going to be a problem?

PROSPECTIVE JUROR NUMBER 006: No.

THE COURT: That's not going to affect your ability to be fair and impartial, is it?

PROSPECTIVE JUROR NUMBER 006: I have [indiscernible].

THE COURT: Okay. You can be fair and impartial even though you know somebody that's -- that works here with the court system?

PROSPECTIVE JUROR NUMBER 006: Yes.

THE COURT: Okay, all right, good.

All right. Let's --

MS. SPELLS: Your Honor, may we approach, please.

THE COURT: Sure. We have a lot of secret conferences.

MS. SPELLS: Turn off the microphones.

THE COURT: They do.

[Bench conference begins]

MS. SPELLS: Your Honor, we did want to make an objection to the veneer as a whole. We don't believe that it's a cross section of the community. We do have a client who, although light skinned, is a black male. Our understanding from the census number of June 2013 is that African Americans represent 11.5 percent. I did a quick count of the individuals that we have from the listing that we received, and it appears that there's one individual listed as being black. We do have actually an over percentage of Asian Americans they're 9.6 percent.

May I ask, are these bench conferences being recorded or do we need to make a record at a later date?

THE COURT: We need to make a record. We will anyway.

MS. SPELLS: Okay.

THE COURT: But when we take a break and you can put all this on record.

MS. SPELLS: Okay. So my concern basically is that I did just do a quick analysis of how many of each different ethnicity we have represented on the jury and we are substantially low with regard to African Americans, there's no Native Americans, and we are also substantially low with regard to Hispanics or Latinos, there are only two Hispanics in the pool as a whole, one black person in the pool as a whole, 7 Asians and 34 whites out of a pool of 45.

THE COURT: Okay. We'll make a record and the State can respond.

MS. SPELLS: Okay.

THE COURT: We'll let you make a complete record of it, okay.

MR. SCHWARTZ: Thank you.

MR. ROSE: Thank you.

MS. SPELLS: Thank you.

MS. JONES: Thank you.

[Bench conference concludes]

THE COURT: All right. Let's swear them in. All right. Everybody, please stand and raise your right hand, the clerk's going to swear everybody in.

[The Clerk swears in the prospective jury panel]

THE COURT: Perfect. Everybody have a seat.

Okay. Now, a couple basic questions for qualification purposes, and I'm sure you were asked all this downstairs. Is there anyone here in this group who is not a citizen of the United States? Response is no. No responses, so the answer is no.

Is there anyone in this group who's ever been convicted of a felony offense and have not had your civil rights restored? Once again, there's no responses, so the answer is no.

I will periodically do what I just did; ask a question, if there's no responses, I'll make an answer for the record. It looks like I'm talking to myself and once the case is over I probably will be.

All right. Curiosity, out of this whole group, how many of the folks here in this group became citizens through the naturalization process? They're always a number. There's a few like six, seven, eight. For those of you who were born here and aren't familiar with the naturalization process, it's quite amazing what folks go through to become citizens of the United States. They have to take courses and they have to take a test. And it would be quite amazing, for those of us who never seen or been through that process, to see what they've had to learn. And I only say this because one of the things as I said earlier about jury service one of the things

they teach these folks to become a U.S. citizen is about jury service because we're so unique in the way we ask our citizens to come serve on jury duty. I can promise you that absent some kind of a language issue or some other serious defect; you're not going to see any of the folks that became naturalized citizens jumping at a chance to get off jury duty.

One of the questions I'm going to propose to everybody here is this trial is not going to last very long, just a couple of days. This is going to be relatively one of the shorter trials that goes on in this building. If you have a conflict of some nature and you can't be with us for the next couple of days, in all probability this trial will be over before Friday. But it will for sure be over by Friday and it will probably be over by Thursday. If you can't be here with us for the next couple of days during the course of this trial, and you have some qualifying activity that will get you out of this jury service -- you don't really get out of jury service, what you do is you get referred back down to the third floor Jury Commissioner's Office and you get reassigned down the road into another jury pool. And some of the jury pools have cases that go on for weeks and weeks. So if you want to get your jury service over with, this will be a good case. So I'm just urging you don't try to dream up reasons to get out of this jury service because this is a -- this is going to be a real good, short case, okay.

But, that having been said, here are the things that if you have conflicts going on in your life will cause me to excuse you, okay. If you have trip plans and you can't get out of them, you've got nonrefundable tickets to Tahiti or some place, I would consider releasing you. If you have childcare issues, you can't find anybody to care for a child or an elder person if you take care of an elder person; I would consider releasing you for that also. But you only get to do that once. Because the

next time you get rolled into another jury panel, you'll have been put on notice that you're going to have to make some outside arrangements to cover for either childcare or elder care, if that's the kind of issue you've got.

If you have a doctor's appointment, some kind of a doctor's appointment that you can't move, can't change, I know how hard it is to get a doctor's appointment, I would consider releasing you for those reasons.

Here's what I can't release you from -- for, employment type reasons, you've got a job and you can't get off. First of all, by Nevada law your employer has to let you off to serve on jury duty. And they also have to give you -- in case you work the night shift, they have to give you eight hours to get some sleep before your jury service, so. But if you have a self-employed, you own your own business, you've got nobody to cover you, I can't let you off that reason. What I can do is make a notation, and if we have enough people and you have that kind of a problem and somebody else doesn't, I'll let somebody else on the jury panel and I'll excuse you. But we need to make sure we have enough folks to serve on this jury, okay.

So, we're going -- and the way this works is I'm going to ask a question, and then we're going to start in the back row, I'll canvas the back row, then we'll canvas the next row, and then down here like this, then we'll come over here and we'll start in the front row and just move back until we've had -- everybody has had an opportunity. What I need you to do is hold your hand up, and then when I get to you you need to stand up, state your name, and your -- are the member fore numbers on your jury badge?

UNKNOWN PROSPECTIVE JURORS: Yes.

THE COURT: Just the last four numbers of your jury badge, okay.

So to the question of whether or not you have something going on in

your life that will interfere with your ability to serve on this jury for the next couple of days, is there anybody there in that back row that is in that kind of situation? Everybody looks clean back there.

Okay. In the second row down here, anybody in this next row that has a conflict of some sort that will prevent them from being able to be here for the next couple of days? You guys all good, excellent.

Now the next row down here, you guys, anybody in that row? Yes, and your name is?

PROSPECTIVE JUROR NUMBER 040: My name is Lirio Ramos.

THE MARSHAL: Ma'am, can you speak through the microphone.

PROSPECTIVE JUROR NUMBER 040: My name is Lirio Ramos.

THE COURT: Okay. And what's going on?

PROSPECTIVE JUROR NUMBER 040: And tomorrow, sir, I have an operation for my left arm.

THE COURT: You have an operation for --

PROSPECTIVE JUROR NUMBER 040: Yeah, they have to remove -- I have a surgery and they have to cut, check, and ex-ray it tomorrow morning.

THE COURT: Okay, that's your arm you're talking about?

PROSPECTIVE JUROR NUMBER 040: Yeah, I have a fracture of my wrist.

THE COURT: That's a good enough excuse. Here's how this works --

PROSPECTIVE JUROR NUMBER 040: Yeah, I'd like to be here, but then it so happen I cannot.

THE COURT: You go on downstairs to the Jury Commissioner's Office and they will roll you down the road into another jury panel when you're not in that condition. And the record should reflect that she does have her arm in a cast.

THE MARSHAL: We don't do that anymore.

THE COURT: We don't?

THE MARSHAL: No, you just release.

THE COURT: Is that right? They don't have to go down.

THE MARSHAL: Just release, they don't go back down.

THE COURT: Okay. So you don't have to go down to the Jury Commissioner's Office these days, they just will send you a new summons.

Who's the next in order? 25th.

THE CLERK: Melissa Svejda.

THE COURT: Melissa, you'll be in that second chair, second row up.

Melissa, are you going to be good to go here?

PROSPECTIVE JUROR NUMBER 055: Oh, sure.

THE COURT: Okay.

All right. Now, the first row, you guys all right, everybody can be here for a couple of days? Yes, your name is?

PROSPECTIVE JUROR NUMBER 051: May name is Noelle Chiodo.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 051: I'm a full-time college student and there's GPA policy and attendance policy in order to keep my scholarship money.

THE COURT: What's your major?

PROSPECTIVE JUROR NUMBER 051: Business -- well, technically pre-business right now.

THE COURT: So what's going on in the next two days that you can't miss?

PROSPECTIVE JUROR NUMBER 051: I'm at school tomorrow, Thursday in the morning 8:00 a.m. until like 3:00. 8:00 a.m. until 2:45 p.m. tomorrow, and then

Thursday 11:30 to 1:30 p.m.

THE COURT: What class?

PROSPECTIVE JUROR NUMBER 051: Tomorrow my first class is accounting 201, they have second year seminar, and then I have micro-economics, and then Thursday is data statistics and analysis.

THE COURT: I will let you go for this reason, but I -- before I do, I want you to listen to me. First of all, I would be willing to call every one of your professors and tell them you're on jury duty, if you get picked for this jury. I can almost guarantee you, of the numerous times over the years that I've done that, I have never, ever once had a professor say, she's got to be here for this class. It would be more beneficial. They all say, keep them on jury duty. It is such an important function and they will probably learn more sitting on this jury for the next couple of days then they would ever -- this is going to be a real learning experience for everybody that stays on this jury. And I've never had a jury -- all these years I've never had a jury, when the smoke cleared and the days over and their jury service is done, they haven't thought that the jury service was a positive experience.

So, do you want to go to class or you want to talk to your professors? And I'll even talk to them and explain what's going on.

PROSPECTIVE JUROR NUMBER 051: Can I go to class?

THE COURT: I mean, it's up -- it's your call.

PROSPECTIVE JUROR NUMBER 051: I have to go to class.

THE COURT: Okay. All right. Go on down to the -- oh, excuse me. We don't do that. We'll just note down that you were excused and you'll get a summons from the Jury Commissioner's Office.

PROSPECTIVE JUROR NUMBER 051: Thank you.

THE COURT: Listen, and the next time you get a summons, jury summons, you need to contact the Jury Commissioner's Office and ask them to slot it when you're not in school because they can do that.

PROSPECTIVE JUROR NUMBER 051: Okay.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 051: Thank you.

THE COURT: All right. And then next in order we have, what, Christopher Carrier?

THE CLERK: Yes.

THE COURT: Christopher, come on down.

Christopher, are you going to be good to go here for a few days?

PROSPECTIVE JUROR NUMBER 056: I believe so.

THE COURT: Good, good, good, good.

All right. First row over here, anybody here that can't hang in here with us for a few days? You guys look like you're all good to go.

Okay. Second row, anybody in that second row unable to be here for a few days? No responses so that's good.

Last row, anybody -- in the corner there. Your name is --

PROSPECTIVE JUROR NUMBER 079: Do I have to stand up?

THE COURT: What is it?

PROSPECTIVE JUROR NUMBER 079: Do I have to stand up?

THE MARSHAL: Yes, your name.

PROSPECTIVE JUROR NUMBER 079: My name is Jemia Braza.

THE COURT: I don't even see what -- what's your last name again?

PROSPECTIVE JUROR NUMBER 079: Braza, B-R-A-Z-A.

THE COURT: Oh, Braza. Here you go, okay.

What's up?

PROSPECTIVE JUROR NUMBER 079: So, I'm a college student and I have two upcoming exams. And today I've -- well, from today, Wednesday, and Thursday I have lectures. I would like to attend. And I have a lab at 7 p.m. but I know we get out at around 5.

THE COURT: So, for everybody's information, we will all -- we'll take a lunch break, either an hour or an hour and fifteen, twenty whatever, in the middle of the day, right around noonish. Scheduling-wise, for your information, we'll never go past 5:00, 5:15 right in that area and we'll start probably tomorrow around 10:30 in the morning, maybe 10 o'clock. We'll decide that before we break today. And probably Thursday, we have no conflicts so we can start whenever we want to, when everybody can be here, and same basic schedule start probably around the 9:00, 9:30 on Thursday, and the lunch break, and then be over with by -- by Thursday we'll probably be done. But not past 5 o'clock unless the jury is deliberating and you guys don't want to leave, which is an entirely possible scenario. If it's after five and you guy's -- and the jurors are deliberating and we'll stay until you get done. As long as you want to, okay.

You want me to call your professor and see if you can --

PROSPECTIVE JUROR NUMBER 079: But my lectures at 2:30 and then I still have to study for my lab.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 079: And I have two big exams this upcoming week.

THE COURT: Well, I'm going to go ahead and excuse you. And you'll get a

summons -- once again, when you get your next summons from the Jury Commissioner's Office, if you're still in school, you've got to make life easy and just go down and say, slot me for a time when I'm not in school and they'll accommodate you, okay. All right. Go on and you're excused.

All right. Now, I'm going to ask some general questions of --

THE MARSHAL: I think I have one more here, Your Honor.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 087: My name's Ronald Schneck. I work three weeks a month in New York and only come home one week a month. I came home this week because my son came into town. I haven't seen him in a year and because I had the summons. I was supposed to serve in September but I couldn't because my boss wrote a letter because I couldn't get out of New York.

THE COURT: Okay. Can you be here for a couple of days?

PROSPECTIVE JUROR NUMBER 087: As long as it lasts only a couple of days, I'm okay. If it goes -- I've got to fly back. I'm going to work through thanksgiving now because I've got to be back in New York.

THE COURT: When is your -- when are you due to fly back?

PROSPECTIVE JUROR NUMBER 087: Sunday.

THE COURT: I'll shoot myself if we're still here on Sunday.

Okay. Now, we're going to get into some substantive kind of questions, okay. Your backgrounds, if I ask you a question and you think of something that you're not quite sure if it applies or not, go ahead and dispose it. Eventually, like I said, counsel, the state and the defense, are going to take these 24 people that have been passed for cause and they're going to select the 14 folks out of this group who's actually going to sit on the jury.

So, information, anything that you remotely think is relevant to the questions that I've asked, go ahead and disclose it because it gives these guys a better, fuller picture of you guys in the process of selecting the jury that's fair and impartial.

All right. I need to know if there's anybody -- we'll start over here with this group. Any of you guys ever been charged with a crime? Okay, and your name is --

PROSPECTIVE JUROR NUMBER 021: Nicole Miller.

THE COURT: Okay. Nicole, what were you charged with?

PROSPECTIVE JUROR NUMBER 021: Petty larceny.

THE COURT: Okay. How long ago was this?

PROSPECTIVE JUROR NUMBER 021: Oh, twenty years ago.

THE COURT: Were you convicted?

PROSPECTIVE JUROR NUMBER 021: No, it was dismissed.

THE COURT: Okay, okay. Is there anything about that experience that would give you cause or pause to be on a jury?

PROSPECTIVE JUROR NUMBER 021: I don't think so.

THE COURT: We're going to read the Information to the jurors in just a second but -- in a little while but. The nature of this charge is robbery with the use of a deadly weapon. And we're going to read you the entire complaint. And I need to explain this whole process real quickly. The defendant is innocent until and unless the State proves him guilty beyond a reasonable doubt. That is the basic premise of criminal law in America and that applies to every single state in the union and every single criminal proceeding.

If there's something in your background that may affect that thought

process, you probably need to let us know. Is there anything about that experience of having that petty larceny twenty years ago would make it difficult for you to be fair and impartial on a case like this?

PROSPECTIVE JUROR NUMBER 021: No.

THE COURT: Good, perfect.

And next to --

PROSPECTIVE JUROR NUMBER 022: Dave Baudoin. It was theft about 40 years ago.

THE COURT: What was it for?

PROSPECTIVE JUROR NUMBER 022: Theft.

THE COURT: Oh, okay.

Again, were you convicted and was there anything about that incident --

PROSPECTIVE JUROR NUMBER 022: No.

THE COURT: -- that would interfere with your ability to be fair and impartial here?

PROSPECTIVE JUROR NUMBER 022: No.

THE COURT: Okay, perfect.

Anybody else? Yes, you are?

PROSPECTIVE JUROR NUMBER 029: Kimberly Reese.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 029: My records are sealed so I don't know -- is it just a question on --

THE COURT: We're not doing applications for --

PROSPECTIVE JUROR NUMBER 029: Right. I just don't know if I need to disclose it.

THE COURT: Well, if you're going to err, err in the side of disclosure. Because if it has any -- you had some records sealed?

PROSPECTIVE JUROR NUMBER 029: Uh-huh.

THE COURT: What kind of --

PROSPECTIVE JUROR NUMBER 029: What was it?

THE COURT: -- criminal records?

PROSPECTIVE JUROR NUMBER 029: What was it?

THE COURT: Yeah. What was it for?

PROSPECTIVE JUROR NUMBER 029: Trafficking.

THE COURT: Okay, okay. And how long was this?

PROSPECTIVE JUROR NUMBER 029: '95.

THE COURT: Twenty some years ago?

PROSPECTIVE JUROR NUMBER 029: Yeah.

THE COURT: Anything about that -- obviously you were convicted but you've had the records sealed --

PROSPECTIVE JUROR NUMBER 029: Uh-huh.

THE COURT: -- since then and you've had your civil rights restored as a part of that also; correct?

PROSPECTIVE JUROR NUMBER 029: Uh-huh.

THE COURT: Yeah. All right. Anything about what you encountered as an experience with regards to that -- would that interfere with your ability to be on a jury in a case like this, this case has nothing to do with any kind of controlled substances?

PROSPECTIVE JUROR NUMBER 029: No.

THE COURT: So you think you can be fair and impartial?

PROSPECTIVE JUROR NUMBER 029: Sure.

THE COURT: Perfect, perfect.

All right. Over here on this side, you're all good? Okay.

Anybody else on this side have any experience, any kind of criminal charges?

PROSPECTIVE JUROR NUMBER 063: Transportation of illegally taking game.

THE COURT: What's your name and --

PROSPECTIVE JUROR NUMBER 063: Shane Hayes.

THE COURT: Okay. And your badge number is what?

PROSPECTIVE JUROR NUMBER 063: 063.

THE COURT: Okay. Now, what was it?

PROSPECTIVE JUROR NUMBER 063: Transportation of illegal game.

THE COURT: Transportation of an illegal game. How long ago was this?

PROSPECTIVE JUROR NUMBER 063: Roughly twenty.

THE COURT: Okay. Anything about that experience that would interfere with your ability to be fair and impartial here?

PROSPECTIVE JUROR NUMBER 063: No.

THE COURT: Perfect, perfect. Thank you.

Okay. And next row, anybody there? Yes, one. Your name and number?

PROSPECTIVE JUROR NUMBER 077: Miguel Gradilla. My number is 77.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 077: Petty theft.

THE COURT: Okay. How long ago?

PROSPECTIVE JUROR NUMBER 077: About two and a half years.

THE COURT: Okay. The case is all over with now; right?

PROSPECTIVE JUROR NUMBER 077: Yeah, it's all over with.

THE COURT: Okay. Was it here locally?

PROSPECTIVE JUROR NUMBER 077: Yes, it was here locally.

THE COURT: In justice court or in municipal court?

PROSPECTIVE JUROR NUMBER 077: I didn't go to court or nothing like that.

THE COURT: Oh, you didn't?

PROSPECTIVE JUROR NUMBER 077: No.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 077: I just wanted to tell the truth about something I did.

THE COURT: Okay. Okay, no, that's fine. Did you have to pay a fine or anything?

PROSPECTIVE JUROR NUMBER 077: Yeah, I had to pay the fine.

THE COURT: Okay. And you were able to just post money and you didn't even have to go to court?

PROSPECTIVE JUROR NUMBER 077: No, I didn't have to go to court or anything.

THE COURT: Anything about that experience that would cause you problems and being fair and impartial in a case like this?

PROSPECTIVE JUROR NUMBER 077: No.

THE COURT: Okay, perfect. Thank you.

Anybody else in that row, that second row over there?

How about the last row, anybody back there? Okay.

Now, the next question is just kind of the flip side of whether or not you've been charged, who has been the victim of a crime? And when I say, you, we'll kind of expand that to make sure that it's not somebody close to you, like your husband or your wife or your kids or somebody that's immediately close, kind of expand that so we can see if that has any potential to affect your ability to be fair and impartial.

Victim of a crime, anybody in that back row?

Second row, we have one, two.

MS. SPELLS: Your Honor, is it possible we can move this. We just can't see.

THE COURT: What's that? Oh, sure, absolutely.

THE MARSHAL: Just this?

MS. JONES: Both.

MS. SPELLS: I think -- yeah, both, sorry.

THE COURT: Okay. How's that? Is that all right?

MS. SPELLS: Better for me.

Can you see?

MS. JONES: Yes.

THE COURT: All right. Yes, your name and number?

PROSPECTIVE JUROR NUMBER 026: My name's Lisa Kline and my number is 26. I was a victim of rape.

THE COURT: Okay. How long was this?

PROSPECTIVE JUROR NUMBER 026: '96.

THE COURT: Was there a criminal case?

PROSPECTIVE JUROR NUMBER 026: No, because I was too afraid to

report.

THE COURT: So you were the victim of a crime but you never reported it; is that right? So, that's a pretty serious -- that's a pretty serious event in your life. Have you been able to recover from it?

PROSPECTIVE JUROR NUMBER 026: [No audible response]

THE COURT: I've got to be honest with you. I've had cases that involved sexual assault allegations, and people on the jury panel who have been the victims of sexual assault, and I'd say most of the time they're -- you're just an inappropriate candidate for jury service under those circumstances. But I've had one woman who said absolutely would not affect her ability to be fair and impartial, absolutely be fair to the defendant and she ended up staying on the jury. So it all kind of depends upon your own emotional makeup. If it's going to be something that's going to interfere with your ability to listen to the evidence and evaluate it and be fair and impartial in answering the question that the jury has to answer.

PROSPECTIVE JUROR NUMBER 026: If I'm still emotional about it now.

THE COURT: Yeah, all right. I agree with you. There's a lot of civil matters that are going on in this courthouse that you might be more appropriate as a juror, okay. So I'm going to go ahead and excuse you and they'll send you a summons in the future, okay.

What was her name?

THE CLERK: Lisa Kline.

PROSPECTIVE JUROR NUMBER 26: Lisa Kline.

THE MARSHAL: Number 026.

THE COURT: Michelle.

PROSPECTIVE JUROR NUMBER 057: Yes.

THE COURT: So, Michelle --

PROSPECTIVE JUROR NUMBER 057: Yes, sir.

THE COURT: -- you're going to be able to hang in here with us for a few days?

PROSPECTIVE JUROR NUMBER 057: Sure.

THE COURT: Perfect. All right. Ever been the -- oh, excuse me -- have you ever been the victim of a crime?

PROSPECTIVE JUROR NUMBER 057: Nope.

THE COURT: Ever been charged with a crime?

PROSPECTIVE JUROR NUMBER 057: No.

THE COURT: Nobody close to you?

PROSPECTIVE JUROR NUMBER 057: No.

THE COURT: Okay.

Yes, your name is?

PROSPECTIVE JUROR NUMBER 032: My name is Felicitas Luna. My number is 32.

THE COURT: Okay. All right. Your number is 36, 036?

PROSPECTIVE JUROR NUMBER 032: No, 032.

THE COURT: Oh, 032, gotcha, okay. So what's up?

PROSPECTIVE JUROR NUMBER 032: I was a victim of armed robbery.

THE COURT: How long was this?

PROSPECTIVE JUROR NUMBER 032: About four years ago, at a pharmacy --

THE COURT: All right. Here --

PROSPECTIVE JUROR NUMBER 032: Yeah. That I used to work at.

THE COURT: Was there a criminal case generated --

PROSPECTIVE JUROR NUMBER 032: Yes.

THE COURT: -- as a result of that?

Did -- were you ever a witness in a trial?

PROSPECTIVE JUROR NUMBER 032: Yes.

THE COURT: Don't tell us what happened but that's pretty close to home about what the allegations of this case. Are you going to be able to separate and keep that out of your mental thought process and --

PROSPECTIVE JUROR NUMBER 032: Oh, definitely.

THE COURT: Okay. Again, general information, and I say this a couple of different ways, what we're hoping for, everybody has a background of some sort or another. I mean, we are who we are because of our experiences, our education, all of our life's experiences make us each the individuals that we all are and we certainly embrace that. But what we don't want is any of your background and life's experiences to interfere with your ability to sit on this jury and be fair and impartial to both the Defendant and the State. And we kind of refer to it as, we'd like you leave your baggage out in the hall and just bring your good common sense with you to your jury duty.

Can you do that?

PROSPECTIVE JUROR NUMBER 032: Yes.

THE COURT: And you don't think that would interfere with your ability to be fair and impartial here?

PROSPECTIVE JUROR NUMBER 032: No.

THE COURT: Perfect. Thank you.

Okay, over here -- oops, okay, I forgot. Anybody in that second row?

Is all good? Okay.

First row?

PROSPECTIVE JUROR NUMBER 052: Marlene Mecall, Number 52.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 052: The place where I worked was a victim of armed robbery. I was a cashier there.

THE COURT: Were you part of the robbery incident?

PROSPECTIVE JUROR NUMBER 052: Well, he came in with the gun and nothing ever happened after that. I mean, nobody was harmed; there was no trial because I don't know if he ever got caught. But this was --

THE COURT: How long was this?

PROSPECTIVE JUROR NUMBER 052: 50 years.

THE COURT: Oh, okay.

PROSPECTIVE JUROR NUMBER 052: I was 16.

THE COURT: Where did this --

PROSPECTIVE JUROR NUMBER 052: In Chicago.

THE COURT: In Chicago, okay.

Anything about that experience that would interfere with your ability --

PROSPECTIVE JUROR NUMBER 052: No.

THE COURT: -- to be fair and impartial?

PROSPECTIVE JUROR NUMBER 052: No.

THE COURT: Okay. Thank you very much.

I see another hand right here.

PROSPECTIVE JUROR NUMBER 054: Hi, Kelly Mays. I'm 54.

THE COURT: And what happened?

PROSPECTIVE JUROR NUMBER 054: I had two home break-ins, but it's about 20 years ago in New Mexico.

THE COURT: New Mexico?

PROSPECTIVE JUROR NUMBER 054: Uh-huh.

THE COURT: A couple of home burglary type things?

PROSPECTIVE JUROR NUMBER 054: Yeah. Identity theft related to one of them.

THE COURT: Okay. Was there ever criminal proceedings?

PROSPECTIVE JUROR NUMBER 054: I think the one that involved identity theft, I think he was convicted. But I never had anything, other than paperwork.

THE COURT: You never went to trial or testified or --

PROSPECTIVE JUROR NUMBER 054: Never. Other than paperwork, I never did anything.

THE COURT: Anything about either of those incidents that would interfere with your ability to be fair and impartial here?

PROSPECTIVE JUROR NUMBER 054: No.

THE COURT: Okay. Thank you.

Now, over here, we have one hand in the front row.

PROSPECTIVE JUROR NUMBER 060: Allen Becker, Number 60. I was involved 40 years ago in an armed robbery at my place of employment, California.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 060: And I don't know if it ever went to trial.

THE COURT: Okay. But there was a criminal case?

PROSPECTIVE JUROR NUMBER 060: I don't know if he was ever caught. I

heard he was eventually. It was a chain that I worked at and I heard that they did get caught at another chain in California.

THE COURT: But as far as you know you never had to go testify or --

PROSPECTIVE JUROR NUMBER 060: No.

THE COURT: Okay. Anything about that experience that would prevent you from being able to be fair and impartial in a case like this?

PROSPECTIVE JUROR NUMBER 060: No, sir.

THE COURT: Excellent.

Right next to him.

PROSPECTIVE JUROR NUMBER 063: Shane Hayes, 63. Two auto thefts from my company. I'm a one-man company so they were my trucks.

THE COURT: Your trucks got stolen?

PROSPECTIVE JUROR NUMBER 063: Five years ago and then last October. All my tools -- company tools and everything was stolen.

THE COURT: You say last October, this is November; you're talking about a month ago.

MS. JONES: Your Honor --

PROSPECTIVE JUROR NUMBER 063: No, beginning -- October of '15.

THE COURT: Okay.

MS. JONES: Disclosure, Shane Emerson is my --

PROSPECTIVE JUROR NUMBER 063: Oh, hi Kelley.

MS. JONES: -- handy person.

THE COURT: He's your what, what?

MS. JONES: He's my handy person.

Shane, how you are?

PROSPECTIVE JUROR NUMBER 063: Hey, good. I didn't notice you up there.

THE COURT: We're going --

MS. JONES: It's been awhile actually.

THE COURT: We're going to do what I didn't do earlier. We're going to -- I'm going to introduce these guys to everybody.

Is that going to be a problem that you work with her doing handy work stuff?

PROSPECTIVE JUROR NUMBER 063: I don't think so.

THE COURT: I mean, do you see her on a regular basis and you've known her for some time?

MS. JONES: We've gone out to dinner --

PROSPECTIVE JUROR NUMBER 063: Six or seven years.

MS. JONES: Yeah. We've known each other for about ten years?

PROSPECTIVE JUROR NUMBER 063: Eight or nine.

MS. JONES: Yeah, yeah.

I thought I recognized him.

THE COURT: You probably should be excused. Go on -- that might be a problem. Go on downstairs to the jury -- well, excuse me. Just go ahead and leave. You'll be excused and you'll get a new summons.

Thank you for being here. I appreciate it.

PROSPECTIVE JUROR NUMBER 063: Bye, Kelley.

MS. JONES: Bye, Shane.

THE COURT: We'll, finish this line of questions real quick and then we're going to come back and I'm going to have everybody introduce themselves and we'll

see if there's any more of those issues.

You are?

PROSPECTIVE JUROR NUMBER 071: I'm Leslie Stowell and I'm Number 71. 18 years ago when my daughter was about 7-years-old she was raped. She kept it a secret for a very long time and I'm raising her daughter now as a result of what's happened because she's not able to be a fit mother.

THE COURT: That's quite a burden for her -- a whole long period of time. So there was never a criminal case?

PROSPECTIVE JUROR NUMBER 071: There was no case. It was a stepbrother and -- in a household I had no control of. And today she still doesn't want to get any help.

THE COURT: That's very sad, very unfortunate. Is that kind of an experience something that's going to keep you from being able to be fair and impartial as a juror in this case?

PROSPECTIVE JUROR NUMBER 071: I can be as fair and as impartial as you would like me to. I can still do it. But it's --

THE COURT: But you have to --

PROSPECTIVE JUROR NUMBER 071: But it's definitely something that's deep in my heart that is -- I don't -- I don't have words for it.

THE COURT: I can understand that. Here is what we want. That the mental attitude approach to serving on this jury is we want to have 14 folks that can forget the things that have happened to them or whatever's going on in their life and sit over here in this jury box and pay close attention to the witnesses that get on the witness stand and focus on what they're saying, you have to make a call about who you believe and what you believe of what they're saying, and eventually you have to

answer the ultimate question if the State proved the Defendant guilty beyond a reasonable doubt. And you really have to focus and concentrate on the witnesses on the witness stand, that's the only thing you can rely on in rendering a verdict. And if you've got something from an emotional perspective that's going to enter -- cause you inability to be able to do that then that's -- the whole purpose of this process of asking you guys' questions.

Do you think your state of mind is such that you're not going to be able to concentrate and be a good juror?

PROSPECTIVE JUROR NUMBER 071: As long as it's not a rape case I'm fine.

THE COURT: It's not a rape case. It's a --

PROSPECTIVE JUROR NUMBER 071: Okay.

THE COURT: -- just a robbery case --

PROSPECTIVE JUROR NUMBER 071: I'm good if it's not that.

THE COURT: Do you think you can do it?

PROSPECTIVE JUROR NUMBER 071: Uh-huh.

THE COURT: Okay. Perfect.

PROSPECTIVE JUROR NUMBER 071: Thank you.

THE COURT: I admire you're doing that.

PROSPECTIVE JUROR NUMBER 075: My name is Anonglak Phoumiphat. My number is 75. My brother is in a prison in Lovelock in Reno about -- I think close to three years now. He was charged with child molester. But I know that's not true because it's his two daughters' best friend accusing him and later on wrote the letter. But by this time he was on house arrest but he broke the rule. He had his friend's phone and had pictures in there. So he was charged with that. I spent a lot of

money trying to get him out but later on he just told me to just, you know, let him go and do what he has to do. Because a lot of family, there's ten of us children, really tried to help him. He's number -- I think number seven or eight in the family. And we really tried to help. But I don't think this is going to affect me to serve this court. This is separate case. If you need me here.

THE COURT: We need everybody. But are you certain -- it sounds to me like you were pretty involved in that criminal prosecution process against your brother; is that right?

PROSPECTIVE JUROR NUMBER 075: Yes. Yeah, he's my brother. Yeah, tried to help, yes.

THE COURT: So you -- you got kind of a first-hand look at what it's like to be charged with a crime I would think.

PROSPECTIVE JUROR NUMBER 075: Yes. Being that I know my brother's families really close. I think this has to do with kids, you know, jealous of each other's boyfriend's and then doesn't think that it's going to hurt the adult. So they make all those stories up. They wrote the letter, got the parents involved, but by this time it was in too deep, the Court was like, you know what, you know -- I don't know. It's just one of those case. We couldn't fight it anymore, didn't have any money to get a lawyer, so that was it.

THE COURT: I mean, you tell me whether you -- I just want your honest assessment. Nobody knows you like you do. And if you tell me that that's not going to interfere with your ability to be fair and impartial in this case, fine. But if there is a potential for that experience to prevent you or make it difficult for you to be fair and impartial --

PROSPECTIVE JUROR NUMBER 075: I can be fair.

THE COURT: You can?

PROSPECTIVE JUROR NUMBER 075: Yes.

THE COURT: Okay, good for you. Thank you.

Anybody else? At the end over there.

PROSPECTIVE JUROR NUMBER 081: Jodi Hill, Number 81. I was raped in January, and I did --

THE COURT: This last January?

PROSPECTIVE JUROR NUMBER 081: Uh-huh.

I also work for Metro, the person who did it works for Metro, there is a case that's open currently, and I'm not going to be fair and impartial.

THE COURT: Lot of civil matters going on in this building you'd be an appropriate candidate for something other than one of these criminal cases.

Okay. Here is what we're going to do next, going to give you an enlightenment -- in light of somebody actually knowing somebody here. I would normally have done this earlier. But what I'm going to do is have counsel introduce themselves and identify the potential folks that are going to be witnesses in the case and make just a capsule statement about what the case is about to them, okay. So this is going to be real short, but just pay attention to the folks and the names to see if you know anybody.

Go ahead, sorry.

MR. ROSE: Good morning, ladies and gentlemen. My name is Steven Rose, along with Brian Schwartz, my co-counsel. We are representatives of the State of Nevada. This case involves one count of robbery with use of a deadly weapon, that being a knife, occurring at the T.J. Maxx at the intersection of Sahara and Decatur, here in Las Vegas, Nevada. Among other individuals, the names of people that we

think that we will be calling to testify at trial will be Julian Munoz, Shaun Bramble, Errol Appel, A-P-P-E-L, Officer T. Humpherys, Officer Nelson, Officer Velazquez, and possibly a custodian of records.

Thank you.

THE COURT: Good. Counsel.

MS. SPELLS: Good morning everyone. My name is Jasmin Spells, and along with my co-counsel Kelley Jones, we represent Mr. Alfred Harvey, who has entered a not guilty plea to that one charge of robbery with use of a deadly weapon, alleged to be a knife.

We anticipate calling a witness by the name of Douglas Hinkey, as well as a witness by the name of Tara Jefferson Harvey.

Thank you.

THE COURT: Perfect. Thank you very much.

So the next question is: counsel or any of their identified potential witnesses, does anybody over in this group know any of those folks? No response. The answer is no then.

In the second part of the group, anybody in that group over here know any of those folks? No responses. The answer is no.

Okay.

PROSPECTIVE JUROR NUMBER 071: Tara? That name Tara is --

THE COURT: Stand up so we can identify you.

PROSPECTIVE JUROR NUMBER 077: I don't know her last name, but is Tara -- is she a heavyset, white female? Does she work for GCA or something like that? An agency that I know that she works for?

MS. SPELLS: She is not.

PROSPECTIVE JUROR NUMBER 077: Okay, just wanted to make sure.

THE COURT: Okay. That was -- what's your name for the record?

PROSPECTIVE JUROR NUMBER 077: Miguel.

THE COURT: Okay.

So there's a couple of things that I need to make sure that we don't have a problem with. As I started off I told you this is a criminal case, the reason we have criminal cases is because the State is obligated to prove beyond a reasonable doubt that a Defendant committed a crime. The Defendant is not obligated to prove that he didn't do the crime. The Defendant is not obligated to prove anything. The burden of proof in a criminal case is completely and entirely on the State of Nevada. So, and once again, that's the way it works in every state, in every criminal court in the country. That is the most basic premise of American criminal jurisprudence.

UNKNOWN PROSPECTIVE JUROR: Yes, sir.

THE COURT: Anybody in this group that doesn't understand or doesn't believe that they can apply that most basic standard to this case? Anybody has a problem with that? No responses over here, the answer is no.

Anybody over on this side? No responses, answer is no.

So kind of along those same lines, the State's the one that's required to call witnesses, if you voted right now, if the jury retired, they have no choice but to find the Defendant not guilty because there hasn't been any evidence to prove that he's done anything. And that's how this whole thing works. The Defendant doesn't need to say anything, doesn't need to prove anything. The Defendant can sit there and play solitaire throughout the entire process, that won't happen, but I'm just saying he doesn't have to do a thing. And the fact that he may choose not to testify that is certainly his prerogative and there is a multitude of reasons why someone

may elect not to get on the witness stand and testify. And you, as the jury, are instructed that in the event that happens, you may not even converse or discuss in your deliberation process about the fact that the Defendant choose not to say anything, okay. So that's just a little instructive and you're going to hear that repeatedly through the course of this process, okay.

So let's see. I'm going to ask a whole bunch of general questions here like I'm doing and then I'm going to turn it over to counsel for both the State and the defense, and they're going to ask you guys questions, they can ask you as a group, they can ask you individually. I just urge everybody to make this process go as efficiently as possible.

Is anybody in this entire group, kind of canvas the same way we've been doing, who has ever been involved in police work? Have you ever been either a commissioned or noncommissioned police officer or had any specific police training or there's -- you've got a spouse or somebody close to you that's a policeman? We'd like to know that too, okay.

Over here, anybody on the back row? First row, back row, over here we have --

PROSPECTIVE JUROR NUMBER 003: Hi, my name is Susie Chang, badge number 0003. I'm not a law enforcement officer, but I am a peace officer. I do carry a -- little, small little badge but I don't carry any guns or anything. So just wanted to disclose.

THE COURT: Is that part of your job?

PROSPECTIVE JUROR NUMBER 003: Yes, it is.

THE COURT: And who do you work for?

PROSPECTIVE JUROR NUMBER 003: I work for Nevada Gaming Control

Board.

THE COURT: Okay. Are you a gaming control boardie?

PROSPECTIVE JUROR NUMBER 003: Yes, I am.

THE COURT: You're an enforcement agent for --

PROSPECTIVE JUROR NUMBER 003: I'm not an enforcement agent. They are considered law enforcement. I'm an investigation's agent.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 003: So.

THE COURT: All right.

PROSPECTIVE JUROR NUMBER 003: So, yeah.

THE COURT: But you deal a lot with police, I mean, and police type folks?

PROSPECTIVE JUROR NUMBER 003: Yes, I do.

THE COURT: Is there anything about that kind of relationship that would interfere with your ability to be on this jury and be fair and impartial?

PROSPECTIVE JUROR NUMBER 003: I think I'll be able to be -- impartial and fair.

THE COURT: So and here is one of the things that --

PROSPECTIVE JUROR NUMBER 003: Yes.

THE COURT: -- that we ask in your kind of a situation.

PROSPECTIVE JUROR NUMBER 003: Uh-huh.

THE COURT: You deal enough with law enforcement type folk's --

PROSPECTIVE JUROR NUMBER 003: Yes.

THE COURT: -- that if you're in the jury deliberation room and you're considering the evidence that's been admitted, would -- is it possible that the thought might cross your mind that how could I find him not guilty when I'm going to have to

go tomorrow and see all of the folks that I work with and work around that are law enforcement and explain to them that I found the Defendant in a criminal case not guilty. Is that something that would cross your mind?

PROSPECTIVE JUROR NUMBER 003: No. If everything is based on fact and that's how I determine, you know when I do my investigation, so how the facts have been presented, that's where -- how I make my decision. So I don't have any hesitation to talk to people. If I say this person is, you know, my contribution to the decision was not guilty; I don't see that as being a problem for me.

THE COURT: All right. Because of your position in dealing with law enforcement folks, are you going to look at a police officer who gets on the stand or somebody that works, that's a police officer in some form or fashion, whether they're in a uniform or not, are you going to look at them from the witness stand and automatically give them some kind of extra credibility just because they're a cop?

PROSPECTIVE JUROR NUMBER 003: No.

THE COURT: You can treat them just like any other witness?

PROSPECTIVE JUROR NUMBER 003: Absolutely.

THE COURT: Okay, perfect. Thank you. I appreciate you sharing that with us.

PROSPECTIVE JUROR NUMBER 021: My name is Nicole Miller. I'm juror 021.

THE COURT: 021.

PROSPECTIVE JUROR NUMBER 021: I work for Child Protective Services. I conduct -- we work regularly with law enforcement. We conduct investigations regarding child abuse, you know --

THE COURT: You're a CPS investigator?

PROSPECTIVE JUROR NUMBER 021: Yes.

THE COURT: Really?

PROSPECTIVE JUROR NUMBER 021: Yes.

So we -- I'm in a specialized unit. So we deal with children under the age of five and we conduct investigations of fatality, near fatality, shaken baby, and other severe injuries.

THE COURT: So you deal with police real regular?

PROSPECTIVE JUROR NUMBER 021: Yes, sir.

THE COURT: You probably have a lot of police folks that you know real well?

PROSPECTIVE JUROR NUMBER 021: Yes, sir.

THE COURT: Anything about being in that position and that relationship that's going to interfere with your ability to be fair and impartial to both, to the State and the defense?

PROSPECTIVE JUROR NUMBER 021: I don't think so, sir. I've never been in this situation before, so. I can, you know, I conduct my investigations and I base my, you know, similar to what the lady behind me, you know, we base it on facts, and work towards those things. I've never been in this situation so I'm not really sure. Just being honest.

THE COURT: No, that's -- that's what we want. We want you to be completely honest.

Do you think you can be on this jury and not let what you do for a living in any form or fashion interfere with your fair and impartial duty?

PROSPECTIVE JUROR NUMBER 021: I think I can.

THE COURT: You think you can do it?

PROSPECTIVE JUROR NUMBER 021: Uh-huh.

THE COURT: And just leave that other stuff about work out in the hallway and not think for a second that I would ever have to explain myself to anybody if -- if we find that the -- if I believe that the evidence does not indicate that the Defendant beyond a reasonable doubt committed the offense, then you're going to be obligated to say not guilty. Are you going to feel as though that you are going to have a hard time explaining that to anybody?

PROSPECTIVE JUROR NUMBER 021: No, sir.

THE COURT: Okay, good. Thank you. I appreciate it.

PROSPECTIVE JUROR NUMBER 022: Dave Baudoin. My badge number is 22, former Marine Corps Military police.

THE COURT: Semper Fi.

PROSPECTIVE JUROR NUMBER 022: Semper FI. I had a Bixler in my unit.

THE COURT: Wasn't me, was it?

PROSPECTIVE JUROR NUMBER 022: '76.

THE COURT: No, I was long out by then.

PROSPECTIVE JUROR NUMBER 022: Okay.

THE COURT: So you were military police -- I thought they called them shore patrol?

PROSPECTIVE JUROR NUMBER 022: No, no that's the Navy.

THE COURT: Yeah, I know but they always gave us a hard time.

PROSPECTIVE JUROR NUMBER 022: Sorry about that.

THE COURT: How much training do you guys go through in the military, in the Marine Corps?

PROSPECTIVE JUROR NUMBER 022: It's pretty extensive. It's similar to the police academy.

THE COURT: But when you got out you didn't work in law enforcement?

PROSPECTIVE JUROR NUMBER 022: No.

THE COURT: Anything about that experience of being in the military police --

PROSPECTIVE JUROR NUMBER 022: No, sir.

THE COURT: -- can affect your perception here?

PROSPECTIVE JUROR NUMBER 022: No, sir.

THE COURT: You're not going to like see a cop get on the witness stand and automatically give him some additional credibility just because he's a cop, are you?

PROSPECTIVE JUROR NUMBER 022: Just like the rest of the folks, I'll look at the facts.

THE COURT: Look at the facts and you've got to treat a cop witness just like any other witness. Can you do that?

PROSPECTIVE JUROR NUMBER 022: Yes, sir.

THE COURT: You can do that?

PROSPECTIVE JUROR NUMBER 022: Yes, sir.

THE COURT: Okay, perfect. Thank you.

Anybody else?

Marine Corps birthday was just last Thursday.

PROSPECTIVE JUROR NUMBER 055: Hi, there I'm Melissa Svejda, number 55. My cousin-in-law is a retired criminal forensic investigator for the Nevada -- for the State of Nevada.

THE COURT: For the State of Nevada?

PROSPECTIVE JUROR NUMBER 055: Uh-huh.

THE COURT: He's a criminal investigator for what agency? Don't they --

PROSPECTIVE JUROR NUMBER 055: For Metro police.

THE COURT: What is it?

PROSPECTIVE JUROR NUMBER 055: For the police department, Metro police.

THE COURT: Oh, Metro.

PROSPECTIVE JUROR NUMBER 055: He's retired. Yeah, he's retired. I think two years now. But I just wanted to let you know.

THE COURT: What's his name?

PROSPECTIVE JUROR NUMBER 055: Joe Maffei (phonetic).

THE COURT: I think I know him. Do you talk to him on a regular basis?

PROSPECTIVE JUROR NUMBER 055: Uh-huh.

THE COURT: So here we -- we're back to the same issue. Is that relationship -- now what's -- he's a relation?

PROSPECTIVE JUROR NUMBER 055: He's my cousin-in-law but we're very close.

THE COURT: He's married to a cousin of yours?

PROSPECTIVE JUROR NUMBER 055: Right.

THE COURT: Okay. And you talk to him on a regular basis?

PROSPECTIVE JUROR NUMBER 055: Yes.

THE COURT: Well, again, this is the scenario that causes heartburn. Is there any possibility that if you're on this jury and you're deliberating that you're -- you would be concerned about the possibility of finding the Defendant not guilty and then having to explain to --

PROSPECTIVE JUROR NUMBER 055: No, I mean, again, I think I would base it on just the facts presented.

THE COURT: You think you can judge the facts independently and be fair

and impartial to both the defense and the State?

PROSPECTIVE JUROR NUMBER 055: Yes.

THE COURT: Perfect. All right.

PROSPECTIVE JUROR NUMBER 054: Kelly Mays, 54. My brother's a retired U.S. Deputy Marshal.

THE COURT: Okay. How long has he been retired?

PROSPECTIVE JUROR NUMBER 054: Three years I think. Something like that.

THE COURT: Did you say brother or brother-in-law?

PROSPECTIVE JUROR NUMBER 054: Brother.

THE COURT: Brother.

You converse with him on a regular basis?

PROSPECTIVE JUROR NUMBER 054: No.

THE COURT: Where does he live?

PROSPECTIVE JUROR NUMBER 054: In Tennessee.

THE COURT: In Tennessee.

Anything about the fact that you have a brother that's a retired law enforcement officer is going to interfere with your --

PROSPECTIVE JUROR NUMBER 054: No.

THE COURT: -- ability to be fair and impartial?

PROSPECTIVE JUROR NUMBER 054: No.

THE COURT: You're not going to give police witnesses any added credibility, immediate credibility just because they're a cop, are you?

PROSPECTIVE JUROR NUMBER 054: No.

THE COURT: Would you agree that a police officer can be right or wrong just

like anybody else?

PROSPECTIVE JUROR NUMBER 054: Absolutely.

THE COURT: Okay. Thank you very much.

Over here.

PROSPECTIVE JUROR NUMBER 060: Allen Becker, number 60. I currently am a volunteer with the Henderson Police Department for the last nine, going on ten years, and I have two sons that work for Metro. One is a detective; one is in patrol.

THE COURT: So, you obviously have pretty regular contact with these police folks.

PROSPECTIVE JUROR NUMBER 060: Yes. I have breakfast with retired police officers every Friday.

THE COURT: Well, how would that conversation go if you were on this jury and found the Defendant not guilty, would you have some explaining to do to these guys?

PROSPECTIVE JUROR NUMBER 060: You know, I base everything I do on facts. I do work for the City of Henderson and my job is based on facts in my line of work. And that's the way I base my life is on the facts. So, I think I can be fair and impartial, no problem.

THE COURT: Okay, good. I mean, we're going to take your word for it. If you say you can be fair and impartial, we'll take your word for it. And if you say that there's something that's going to prevent you, we also can take your word for it.

PROSPECTIVE JUROR NUMBER 072: Tom Metzger, 072. My niece is a police officer in Charleston, South Carolina.

THE COURT: And you talk to her on a regular basis?

PROSPECTIVE JUROR NUMBER 072: Semi-regular.

Phoenix this morning.

THE COURT: Really, okay.

So is there anything about any those relationships that would interfere with your ability to be on this jury --

PROSPECTIVE JUROR NUMBER 076: Well, quite honestly I was ticketed by Metro last year for doing 34 in a 30, and I posted the ticket on Facebook and my Milwaukee police officer friends lit up on it.

THE COURT: So -- which brings me to another subject.

PROSPECTIVE JUROR NUMBER 076: I didn't have a lot of use for that particular Metro officer, no.

THE COURT: Okay. This is exactly my point in my question. Just because you have a relationship in some or fashion with police officers doesn't mean that you like them all. You may have a particular person involved in law enforcement that you don't particularly like at all and so the issue of treating a police officer differently can work both ways. I mean, some folks might tend to give a police officer some additional credibility just because they're a cop. But you may have had an experience with a police officer that kind of soured you and you may look just the opposite, you may think that just because he's a police officer that they all have some kind of a motivation to maneuver their testimony in a certain way that's not necessarily credible. So the questions actually work both ways. So, when I asked you if there's anything in your background that would interfere with your ability to be fair and impartial, it works both ways. Can you be fair and impartial as a juror in this case and not let these relationships and these events that involve police officers interfere?

PROSPECTIVE JUROR NUMBER 076: I would hope that most Metro

wouldn't do that. I looked at it as we have a new generation, for 34 in a 30. It was a $209 for a four over.

THE COURT: So you're not going to let that interfere with your jury service here?

PROSPECTIVE JUROR NUMBER 076: It's hard to say. I'm very sour right now.

UNKNOWN PERSPECTIVE JUROR: Apparently.

THE COURT: Did you pay the ticket?

PROSPECTIVE JUROR NUMBER 076: Yes, I did. I had to come here three times to finally get to pay the ticket.

THE COURT: Well, you tell me, can you be fair and impartial or do you think that --

PROSPECTIVE JUROR NUMBER 076: I believe so, yes.

THE COURT: Okay. Thank you. I appreciate it.

PROSPECTIVE JUROR NUMBER 084: My name is Amanda Fuller and I'm number 84. My father is a retired Metro swat officer here in Nevada. And I also work for the county in the child support division.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 084: I don't know if that's something that you guys need to know.

THE COURT: Yeah, well --

PROSPECTIVE JUROR NUMBER 084: Okay.

THE COURT: -- like I said, if you have anything on your mind when you're talking about these things -- if you're going to err, err on the side of discloser rather than not telling or -- it just gives everybody a big -- better, fuller picture about who

you are. Anything about it -- any of those --

PROSPECTIVE JUROR NUMBER 084: I can be fair.

THE COURT: -- relationships. Your -- I mean your job really, child support, doesn't really directly involve law enforcement.

PROSPECTIVE JUROR NUMBER 084: Correct.

THE COURT: And the other relationship is not going to interfere with your --

PROSPECTIVE JUROR NUMBER 084: No.

THE COURT: -- fair and impartial ability?

Perfect. All right.

Do you guys know each other?

PROSPECTIVE JUROR NUMBER 084: No.

PROSPECTIVE JUROR NUMBER 086: Okay. I'm Irene Opsahl, number 86.

THE COURT: Okay. All right. So.

PROSPECTIVE JUROR NUMBER 086: And I was married to a swat officer.

THE COURT: Oh, really.

PROSPECTIVE JUROR NUMBER 086: He's retired a couple of years.

THE COURT: So he's retired. Who's the swat officer?

PROSPECTIVE JUROR NUMBER 086: Adam Carpenter. He went to motors after swat.

THE COURT: Do you know Kevin -- my brother-in-law is a swat officer.

PROSPECTIVE JUROR NUMBER 086: I also have two family members that work for Metro, Judy Fredlin and Todd Fredlin.

THE COURT: Do you -- well, you know a number of folks I'm sure having been involved in law enforcement, your husband's involvement in law enforcement, you guys have a lot of friends in law enforcement.

PROSPECTIVE JUROR NUMBER 086: Yes. But I can be impartial.

THE COURT: You can be fair and impartial?

PROSPECTIVE JUROR NUMBER 086: Uh-huh.

THE COURT: You won't let that interfere? You would never have the thought that with all these cop friends that you are around you would never feel as though you would have to explain anything to anybody --

PROSPECTIVE JUROR NUMBER 086: Well --

THE COURT: -- if you were silting on the jury and found the defendant not guilty. Would that ever cross your mind? Not even a little bit?

PROSPECTIVE JUROR NUMBER 086: Well, probably a little bit, but, you know, I can try.

THE COURT: Well --

PROSPECTIVE JUROR NUMBER 086: I can be impartial.

THE COURT: Okay. The yard stick here is you need to be able to give me an unequivocal, yes; I can be fair and impartial. Can you do that?

PROSPECTIVE JUROR NUMBER 086: Well, I can be.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 086: Yeah.

THE COURT: As long as you say you can be, we take it --

PROSPECTIVE JUROR NUMBER 086: I was also on the witness stand for a burglary and my testimony was very important. So I realize the importance.

THE COURT: Good. All right. So you've seen this process from a different perspective from over here on the witness stand. I mean, is there anything about that experience that would interfere with your ability to be on this jury?

PROSPECTIVE JUROR NUMBER 086: But it wouldn't interfere but it makes

me realize, like I said, the importance of it.

THE COURT: Was it a jury trial?

PROSPECTIVE JUROR NUMBER 086: Yes, it was.

THE COURT: Wow, okay.

But you still can be fair and impartial in this case?

PROSPECTIVE JUROR NUMBER 086: I can.

THE COURT: Okay. All right, perfect. Let's see here.

THE MARSHAL: We have one more.

THE COURT: Oh, okay.

PROSPECTIVE JUROR NUMBER 087: Ronald Schneck, badge number 87. My son is a detective in Louisiana. It's one of the reasons I'm in town this week is because he came in to town, besides my jury summons. But I can be.

THE COURT: Really?

PROSPECTIVE JUROR NUMBER 087: Yeah.

THE COURT: So this is the son that's here that you want to see?

And when does he leave?

PROSPECTIVE JUROR NUMBER 087: He leaves Thursday.

THE COURT: He leaves Thursday.

And when do you leave?

PROSPECTIVE JUROR NUMBER 087: I leave Sunday.

THE COURT: You leave Sunday to New York?

PROSPECTIVE JUROR NUMBER 087: Yeah.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 087: He goes back to Louisiana on Thursday.

THE COURT: Can you hang in here with us?

PROSPECTIVE JUROR NUMBER 087: Sure.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 087: Yeah.

THE COURT: It'll be all right?

PROSPECTIVE JUROR NUMBER 087: Yeah, it'll be all right.

THE COURT: You can be fair and impartial?

PROSPECTIVE JUROR NUMBER 087: Yes.

THE COURT: You're not going to have to worry about explaining to your son why you voted for a not guilty verdict?

PROSPECTIVE JUROR NUMBER 087: No, no. We talk pretty often but I understand the policies and.

THE COURT: Okay, perfect. Thank you. I appreciate it.

I'm just going to ask. You guys are now getting the hang of what it is we're doing. We're trying to find the first 24 folks and then these guys are going to select 14 people who can be fair and impartial to both the State and the Defendant and render a verdict and answer the ultimate question: Did the State prove the Defendant guilty beyond a reasonable doubt, okay?

Is there anything that you can think of in your background that might have any effect on your ability to be fair and impartial in this kind of a criminal case? In the back row.

And I'm -- this is the broad spectrum and I'm talking about anything at all in your background.

PROSPECTIVE JUROR NUMBER 015: Jeff Wenger, number 15. In the past two years I was in business with my father-in-law. It's a long complicated story. But

we had a verbal contract, he got sick, dishonored the verbal contract, I didn't have a written contract with him. His best friend was also our company attorney. Led to a falling out, a divorce. It was real ugly mess and I moved out here since. And I just still fairly jaded about the entire thing. Especially with the involvement of the attorney, the way it was handled.

THE COURT: Where was this?

PROSPECTIVE JUROR NUMBER 015: This was in Ohio.

I worked with him for 23 years and built the company -- well, we went from $300,000 sales to $3.6 million, and I ran the company the last 15 years. And I left. I walked away because of what happened.

THE COURT: How long you been out here?

PROSPECTIVE JUROR NUMBER 015: Just under two years.

THE COURT: What are you doing now for a living?

PROSPECTIVE JUROR NUMBER 015: I haven't done anything yet.

THE COURT: Haven't been working?

PROSPECTIVE JUROR NUMBER 015: Nope.

THE COURT: And you have a lot of animosity over what happened?

PROSPECTIVE JUROR NUMBER 015: Yes, yeah.

THE COURT: Does it interfere with your ability to --

PROSPECTIVE JUROR NUMBER 015: This has stirred up more than -- just the whole procedure has stirred it up more than I thought it would. It's just something I'm having trouble putting behind me.

THE COURT: Is it going to interfere with your ability to be able to sit on this jury --

PROSPECTIVE JUROR NUMBER 015: Yes.

THE COURT: -- and focus?

PROSPECTIVE JUROR NUMBER 015: Yes.

THE COURT: You're out of here.

PROSPECTIVE JUROR NUMBER 015: Thank you.

THE COURT: You might want to go get some help.

PROSPECTIVE JUROR NUMBER 015: Yeah, I know. Thank you.

THE COURT: All right. We come to Mr. Becker, I think; right?

PROSPECTIVE JUROR NUMBER 060: Yes, sir.

THE COURT: Now, any questions that have been asked or answers that have been given that have jogged your memory that might have an effect on your ability to be on this jury to be and be fair and impartial? I mean you've told us a couple of things about your background, but anything else that you can think of that has the potential to interfere with your ability to be fair and impartial here?

PROSPECTIVE JUROR NUMBER 060: No, sir.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 020: Hello. My name is Irwin Glassman. I'm 020. And when you admonished us earlier about having doctor's appointments and other duties to attend to, I don't have any of those exactly but people have appointments with me. I'm an OB/GYN. The next two or three days I have about 50 to 60 appointments waiting to see me. It's not that I can't judge anybody; it's just that I may be sort of distracted I guess over the next few days.

THE COURT: Distracted, yeah.

Can you get anybody to cover for you?

PROSPECTIVE JUROR NUMBER 020: We have a practice of five people, they're swamped. And we just --

THE COURT: Here's what I'm going to do, I'm going to excuse you.

PROSPECTIVE JUROR NUMBER 020: I apologize.

THE COURT: But you're going to get a summons down the road, and so when you get that summons you're going to start scrambling around because they're going to -- they keep track and they understand that you're a doctor but they still expect you to make some arrangements. But this may not have been explained to you. So go ahead and go on down.

PROSPECTIVE JUROR NUMBER 020: I apologize, sir.

THE COURT: And that's it. That's all right. Don't need to apologize, just make --

[Colloquy between the Court and the Court Clerk]

THE COURT: And then we have Mr. Hayes; right? No, he's gone.

Bagger. So is it Bagger?

PROSPECTIVE JUROR NUMBER 064: Bagger.

THE COURT: All right. Now, you've heard a lot of questions asked, a lot of answers, anything that's been asked or answered jog your memory about anything that you might want to share with us about your background that would potentially interfere with your ability to be fair and impartial?

PROSPECTIVE JUROR NUMBER 064: Nothing.

THE COURT: You're good to go?

PROSPECTIVE JUROR NUMBER 064: Good to go.

THE COURT: Okay. All right.

All right. In the back there.

PROSPECTIVE JUROR NUMBER 018: I'm Janice Enriquez. I'm juror number 18. I'm a nurse midwife. So like Irwin, we actually come from the same

corporation, I have patients that I have scheduled as well. And I only come from a group of three practitioners.

THE COURT: Really?

PROSPECTIVE JUROR NUMBER 018: Yeah.

THE COURT: Can't make any arrangements for the next couple of days?

PROSPECTIVE JUROR NUMBER 018: Today was already very difficult to rearrange the schedule and for the next couple of days really going to put a burden on the doctors I work with.

THE COURT: Okay. Once again, I'm going to go ahead and let you go, but you're going to get summons and you're going to have to -- the next time around they're going to say, you were kind of forewarned that you're going to have to make some arrangements to get covered for a few days, okay.

PROSPECTIVE JUROR NUMBER 018: Thank you, sir.

THE COURT: And then we have Amy. Amy Nguyen; right?

PROSPECTIVE JUROR NUMBER 066: Yes.

THE COURT: Okay. Amy, of all the questions and answers you've heard, anything jog your memory that's -- you want to share with us that could potentially bear upon your ability to be on this jury and be fair and impartial?

PROSPECTIVE JUROR NUMBER 066: I just want to know if we do have to show-up for the rest of the week, or is it just going to be a two-day --

THE COURT: Well, you have to show-up until the trials over. If you're going to be on a jury, you have to be here at the assigned time. Like I said, tomorrow we're probably going to start around 10:00, 10:30, we break for lunch, and we're done by 5-ish, not long after. And then the next day we'll probably start maybe a little bit earlier. You know, it's entirely possible that this trial will be over tomorrow. If

we get through this selection process, they have witnesses ready to go this afternoon. So it's entirely possible this could be over tomorrow, but it will more than likely over by Thursday.

Can you do that?

PROSPECTIVE JUROR NUMBER 066: My only commitment would be that I have a doctor's appointment tomorrow, that's my only commitment. However, it is very important because it's my personal health.

THE COURT: Okay. You can't -- do you want to at least check with the doctor and see if you can move it?

PROSPECTIVE JUROR NUMBER 066: I have tried. They won't be able to take me in for another two months, and I've already rescheduled my jury duty, like, they wouldn't let me move today.

THE COURT: Okay. Well, then I'm going to let you go, okay. Go on -- oh, you don't need to go down there. Just -- thank you for being here. I appreciate it. And you'll get a summons from the Jury Commissioner's Office probably in a while. Hopefully it won't be next week.

And it's Peter; right?

PROSPECTIVE JUROR NUMBER 069: Yes, Your Honor. I'm good to go.

THE COURT: All right. You've heard anything that's been asked and answered, are you okay?

PROSPECTIVE JUROR NUMBER 069: I am well. Thank you.

THE COURT: Okay. All right.

Let's see. Along those lines of things that interfere, is there anybody that's on any kind of medication that makes you sleepy or interferes with your ability to focus and pay attention? If you fall into that category, you probably need to let us

know. Okay. We have one back here, one over there.

PROSPECTIVE JUROR NUMBER 008: Christine Colangeli, number 8. I take metoprolol for high blood pressure, it makes me sleepy, and Xanax for anxiety.

THE COURT: You're badge number?

THE CLERK: Badge number 5 and juror number 8.

PROSPECTIVE JUROR NUMBER 008: Oh, 8.

THE COURT: Okay. Number 8, gotcha. Christine, okay.

Well how -- did you take it -- how often, once a day or?

PROSPECTIVE JUROR NUMBER 008: Both -- well, once a day for the metoprolol -- once a day for the metoprolol and twice for the Xanax.

THE COURT: So what do you do to keep alert?

PROSPECTIVE JUROR NUMBER 008: I work from home, so I usually nap at home in the middle of my day.

THE COURT: We kind of have a policy. Our first goal is to make sure that the jury is comfortable, you can bring coffee or water in, you can ask for a break any time if -- I don't care if we just had a break 15 minutes before, if you need a break, we'll take a break. If you need to stand up, you can stand up during the course of the trial. We'll do anything we can to accommodate the jurors to make sure that they are and that they stay comfortable and alert.

Now, if you are taking medication that's going to prevent that, you're probably not going to be an appropriate candidate. You normally stay awake for the hours that we're going to be having this trial?

PROSPECTIVE JUROR NUMBER 008: It depends. Some days I can go without it and some days I can't. I could try. All I could say is I could try, you know.

THE COURT: Does like drinking --

PROSPECTIVE JUROR NUMBER 008: Did I nap yesterday, no.

THE COURT: Does drinking coffee or, you know, some high caffeine --

PROSPECTIVE JUROR NUMBER 008: I drink decaf because of my high blood pressure.

THE COURT: Really?

PROSPECTIVE JUROR NUMBER 008: Yeah, it's really, really high.

THE COURT: Holy, moly.

PROSPECTIVE JUROR NUMBER 008: Do I think I can do it, yeah, probably. But, you know, there's a slight chance that I could not really feel well at a certain point.

THE COURT: Well, I don't know. I think maybe -- maybe you -- it's up to you. If you think, if you are -- if you're drowsy and tired enough that you think it has the potential to interfere with your ability to focus, then I'm going to let you go.

PROSPECTIVE JUROR NUMBER 008: I honestly don't know. It depends on the day and the week. I couldn't say.

THE COURT: I'm a little reluctant to keep you. It's so important that everybody be alert and pay attention. I think we better be safe. I'm going to go ahead and excuse you. And you should probably, in the future when you get a jury summons, you probably ought to go to your doctor and say, look, this -- we went through this rigmarole before, why don't you write me a letter that says I take medication that makes me drowsy and bring it down to the Jury Commissioner's Office.

PROSPECTIVE JUROR NUMBER 008: It's a little early for that. It's a process with adjusting the medications to try to get me to that point, so.

THE COURT: Where it doesn't make you drowsy?

PROSPECTIVE JUROR NUMBER 008: Right, right.

THE COURT: Well, then have a discussion with your doctor, and if you're -- if you feel comfortable with your level of medication that it's not interfering with your ability to be alert -- right now it sounds like you're not quite sure.

PROSPECTIVE JUROR NUMBER 008: Today I feel good, you know, yesterday I felt good; last week I probably took a nap four out of five days during my work week. So it just -- it depends.

THE COURT: I'm going to let you go. Listen, I appreciate you being here. I really appreciate you being honest. But I'm going to let you go.

PROSPECTIVE JUROR NUMBER 008: Thank you.

THE COURT: We don't want to do something that's going to create a problem.

Thank you very much for being here. I appreciate it, Christine.

So we're going to replace Christine with --

PROSPECTIVE JUROR NUMBER 008: Thank you.

THE COURT: -- is it Leslie?

So, see, I told you guys we're going to run through a whole bunch of folks over here.

So, Leslie, you've heard everything that's been talked about here, are you okay, good to go? I know you've had your issue and the problem in the background in the past, are you going to be okay?

PROSPECTIVE JUROR NUMBER 071: I'm fine.

THE COURT: Okay. You're sure?

PROSPECTIVE JUROR NUMBER 071: Yes.

THE COURT: Okay. It doesn't have anything to do with what happened to

you, you just need to be able to stay alert, stay focused, pay close attention to the witnesses, and then be able to make the call and answer the ultimate question, okay, did they prove the Defendant guilty beyond a reasonable doubt or not. Can you do all that?

PROSPECTIVE JUROR NUMBER 071: Yes.

THE COURT: Okay.

Okay. We have one over here that has an issue on this medication stuff.

PROSPECTIVE JUROR NUMBER 084: My name's Amanda Fuller. I'm number 84. And I take Vistaril for anxiety. I was just recently diagnosed with it about a month and a half ago. I take it every day because I have to. There's some days I can't even go to work.

THE COURT: How do you feel today?

PROSPECTIVE JUROR NUMBER 084: Emotional. I take it because my mother passed away. She used to work here.

THE COURT: Used to work in the court?

PROSPECTIVE JUROR NUMBER 084: Yeah. Here in this building, and it's just giving me --

THE COURT: Well --

PROSPECTIVE JUROR NUMBER 084: You guys probably know her.

THE COURT: What was her name?

PROSPECTIVE JUROR NUMBER 084: Mary Mosser.

MR. ROSE: Oh, yeah.

THE COURT: I think so.

Listen --

PROSPECTIVE JUROR NUMBER 084: So it's been a battle trying to control this for over a year and a half now. So this is new to me. I've never done this before, getting up in front of people, even -- I've been anxious this whole time.

THE COURT: Listen, it sounds to me like you're wound up to the point that you're probably going to have a difficult time.

PROSPECTIVE JUROR NUMBER 084: Yeah. And I probably should take more medication and that's going to put me to sleep probably.

THE COURT: Go on down -- well, excuse me. We're going to excuse you, you go ahead and just wait and they'll give you another jury summons. What you need to do is go to your doctor --

PROSPECTIVE JUROR NUMBER 084: Yeah.

THE COURT: -- and get your doctor to write you a letter --

PROSPECTIVE JUROR NUMBER 084: Okay.

THE COURT: -- that says you're medicated to the point that it puts you to sleep or makes you drowsy.

PROSPECTIVE JUROR NUMBER 084: Right.

THE COURT: Okay. And bring it to the --

PROSPECTIVE JUROR NUMBER 084: They're trying to fix the, you know, dosage.

THE COURT: That's fine.

Okay. We're going to take a break for lunch. I'm going to ask one more question and I think we're going to take a lunch break.

Any of you guys watch CSI or NCIS, any of those crime shows? How many of you watch? I do. I watch a lot of them. I just need to make this statement, and see if you guys can appreciate what I'm about to say. You do know that those

are all scripts? Those shows are all written and they don't really have much reality relationship. If you're a big fan of any of those shows, don't expect to see pretty much any of that stuff that you see on TV. I just need to make that statement. You need to be realistic. What happens in the real world and what happens on those TV shows has little, if any, actual bearing. So I just want to warn you of that, okay.

Listen, we're going to take a lunch break. It's five after 12.

PROSPECTIVE JUROR NUMBER 077: Can I say something?

THE COURT: Sure.

Your name is what?

PROSPECTIVE JUROR NUMBER 077: I know you guys didn't say that --

THE COURT: What's your name?

PROSPECTIVE JUROR NUMBER 077: I know you guy's --

THE COURT: What's your name fist?

PROSPECTIVE JUROR NUMBER 077: Oh, Miguel. My badge number is 77. I know you guys said that, you know, work can be an excuse to be excused.

THE COURT: Right.

PROSPECTIVE JUROR NUMBER 077: Well, I work -- I work for Sara Lee, Bimbo, you know, and Oro Wheat, they're a bread company. I start about 8 o'clock, 10 o'clock every night. You know as a matter of fact I've been up since last night, 8 o'clock in the morning. So I deal with 23 drivers, I manage the warehouse by myself, I manage -- and then plus these guys own -- they each own their route so I deal with 23 different attitudes every day. Yelling, screaming at me, you know, I'm missing this, I'm missing that. Everything comes back to me. So when I come here basically -- even though I have to come to jury, if I end up getting picked, I'm still going to go to work because I can't afford to miss work. So with dealing with those

attitudes, I think it might be a problem for me to concentrate on everything and on the witnesses that come up and speak.

THE COURT: Well, here's the deal, again, I can't let you go for work related reasons --

PROSPECTIVE JUROR NUMBER 077: Yeah, I know. I understand it.

THE COURT: -- because the law is very clear. You have an employer, they are required by law to accommodate your jury service, they can't do anything to you, they can't -- for sure they can't fire you, they can't discipline you, they can't do any of those things to you, and there is a huge penalty if they do.

PROSPECTIVE JUROR NUMBER 077: Okay.

THE COURT: As far as -- the fact that you go to work at night, they are also mandated that they have to adjust your schedule so that you have eight hours in which to sleep before your jury duty.

PROSPECTIVE JUROR NUMBER 077: Okay.

THE COURT: And I've had to over the years call a few employers that had employees on juries and explain the gravity of the relationship between citizens and jury duty and employment. And they've all got the message. But I'll tell you, if you're over here and there's still more people available, I will let you go in lieu of somebody who doesn't have that same problem.

PROSPECTIVE JUROR NUMBER 077: Okay.

THE COURT: But right now, we've got to keep you.

PROSPECTIVE JUROR NUMBER 077: That's understandable. Thank you.

THE COURT: All right. We're going to take a -- we'll say an hour. It's five after 12; we'll say five after 1, you guys go get something to eat.

Now, listen, a couple of things you've got to -- remember where you're

seated because you've got to sit in the same seat that you're in right now, okay. I'm going to give you this admonishment that it's -- I say it every single time we take a break, whether it's an hour break, it's an overnight break, or it's a five minute recess for whatever reason. And some of this is going to sound a little strange. I'm telling you that you cannot converse or discuss anything or about anybody that has anything to do with this case. You can't discuss it with anybody else and you sure as hell can't discuss it between yourselves. The first time the subject of this case should cross your lips is when you're sitting in the deliberation room deliberating, that is it. If somebody approaches you and tries to engage you in conversation about this case, you can't talk about it. You've just got to tell them, I can't talk about this case, the judge said I cannot talk about this case while this case is pending.

So the admonishment goes: you're not to converse or discuss amongst yourselves or with anyone else on any subject connected or related to this case. Don't watch, listen, or read any reports or commentaries regarding this case through any medium of information, which means radio, television, newspapers, Internet. And don't form or express any opinions on any subject connected or related to this case or any person connected or related to this case until such time as this case has been finally submitted to the jury.

All right. Now you guys are going to have lunch. You know, it's a big sacrifice for you guys to give up your time to come down here and serve on these juries, what a shame it is when a jury does something wrong that causes the case to be retried. Jury misconduct is probably the first reason the cases need to be retried. So when we give you these admonishments about not talking about the case, that's the first and most important admonishment. Do not get on your phone and get on the Internet and look anything up that has to do with this case because in today's

time it's not hard to do. And I'm telling you can't do it. And if you do it and it's discovered, you're going to cause this case to be retried by somebody else. So just pay attention to the admonishments and don't discuss this case while you're on break, okay.

So we'll say -- now it's ten after because I flapped my lip for five minutes. Ten after one and you'll meet Tom out in the hallway and then we'll come in and take your original seats, okay.

Listen, just so you guys you understand. We all stand up when you guys come in and out of the courtroom out of respect for what you guys are doing.

All right. We're going to recess. See you at ten after one.

[Outside the presence of the prospective jury panel]

THE COURT: We are outside the presence of the jury.

All right. Anything we need to put on the record?

MS. SPELLS: Yes, Your Honor. Thank you. Jasmin Spells on behalf of Mr. Alfred Harvey. When the jury came in, before they were sworn, I think I asked to approach the bench and wanted to inform the Court that we wanted to object to the jury veneer as a whole, given that we don't believe that it is a fair cross section of the community, and that having a fair cross section of the community as a jury pool is a Defendant's right that that is guaranteed by not only the Nevada Constitution but also the United States Constitution Amendment Number 6, Amendment Number 14, and the Nevada Constitution Article 1, Section 1; Article 1, Section 8, as well as *Ballard v United States*.

The issue here is that from the jury pool I show that there were 45 individuals of those there were seven who indicated that they were of Asian ethnicity, there were 34 individuals marked as being Caucasian, one individual

marked as being black and/or African American, two individuals marked as being Hispanic, and one as marked as other. There were no Native Americans marked in the information that we received. My understanding is that the last census for Clark County indicated that there is an 11.5 percent of African Americans that -- Asian Americans represent 9.6 percent, Native Americans represent 1.2 percent. We would submit that here Asian Americans were represented but blacks were underrepresented as well as Hispanics.

Based upon that, Your Honor, we would request that we -- or indicate that we should have received a new panel because Mr. Harvey is entitled to have a fair cross section of the community based upon the percentage numbers that the consensus shows here. We would indicate that this constitutes a significant underrepresentation of both Hispanic, as well as African Americas, and we could not be sure without speaking with the Jury Commissioner and questioning said Jury Commissioner as to the randomness of this. And Mr. Harvey is definitely entitled to have a cross representative or a cross fair section of these different ethnicities.

So that being said, Your Honor, we would of -- we request that we should have been given a new panel or least given the opportunity to question the Jury Commissioner as to the process that was done in this instant to procure this jury pool and why is it deficient in those areas.

THE COURT: State want to respond?

MR. ROSE: Yes, please, Your Honor.

First, the rights to the cross selection within the community is a right to have the individuals for the veneer drawn from a fair cross section of the community. There is, in fact, no right whatsoever to have any individual panel or individual veneer match exactly the cross section of the community. As long as there is no

systematic exclusion from the jury selection process on the basis of race, the law from the Nevada Supreme Court to the Ninth Circuit to the U.S. Supreme Court, has said that it is perfectly acceptable to have individual panels which don't perfectly match that cross section of the community. Because we understand that this is often done at random, and that because we are drawing these people at random that you're going to have times when you're going to have panels which do not perfectly match the cross selection of the community. I think that's exemplified perfectly in this particular panel where although, yes, there is potentially underrepresentation of African Americans and of Hispanic Americans in this. We also have an over representation of Asian Americans in this. I think that is specifically due to the fact that we have a system which draws individuals at random.

Further, because it is looking at the jury selection process or the veneer selection process we have zero indication, there is zero evidence, based upon this data and what's been presented to this court, that the manner in which they are selected is in anyway -- in anyway shows that the process is unfair or that it excludes people on the basis of race.

What we are asking the Court to do is to find that because this panel does not perfectly match the census data that it automatically indicates that the jury selection process somehow is systematically exclusionary, which would simply go to then -- require that every panel match that census data, which is exactly what the courts have said we don't need to do.

Further, in August of this year, 2016, the Nevada Supreme Court filed an order of affirmant in the case of *Battle v State*. It's Docket Number 68744; it was filed August 10th, 2016. And I understand that it is an unpublished decision;

however, Supreme Court Rule 123 was repealed and they did indicate that you can now cite to any unpublished cases which were filed after January 1st of 2016. And in that case, the Nevada Supreme Court looked at exactly this issue, the issue of the veneer panels in this, and in deciding that issue the Nevada Supreme Court said, and I quote, we conclude that the process explained by the Jury Commissioner provides no opportunity for systematic exclusion of specific races. They indicated in that from looking at a transcript, and I have a copy of both that opinion and I have a copy of the transcript from the Jury Commissioner that they looked at, which was not from that underlying case, it was from a completely different case before a completely different judge, and they said that based on that jury transcript -- or that transcript which they saw that the system that we have in place currently provides no opportunity for systematic exclusion of specific reasons.

I think we've already had a ruling by the Nevada Supreme Court specifically on this issue. I have a copy of the order itself here, if Your Honor wants to take a look at it, a copy of the transcript, which was used both by the lower court when it denied the challenge in *Battle* and then used again by the Nevada Supreme Court when reviewing it. If Your Honor wants to take a look at those for yourself, even though I believe that we do have kind of a definitive statement by the Nevada Supreme Court that the process which we use at this point in time might not be perfect but what it does not do is it does not provide any opportunity for a systematic exclusion of specific races. Because of that, I don't believe that we have a sufficient issue on this matter to either have the Jury Commissioner come down and testify or to get a new veneer.

THE COURT: All right. It's -- the Court's opinion that there's no reason to question the selection process by the Jury Commissioner's Office in regards to a

selective exclusion of a particular race group and -- there's another case, too, but it involved the exact same issue but it was also a grand jury selection process.

MR. ROSE: *Afzali*.

THE COURT: Yeah.

MR. ROSE: Yeah.

THE COURT: And I tried that case. And that was the same issue, but it's a little bit different the way the Jury Commissioner goes about the -- picking the jury as opposed to the grand jury, but the same general process is involved and I haven't read *Baker*?

MR. ROSE: *Battle*.

THE COURT: *Battle*. But, you know, we've seen a lot of jury pools and sometimes, you know, the makeups different every time. But the generalized selection process is -- does not provide for, in the Court's opinion, any kind of selection exclusion process.

And so you've made an adequate record, it covers it, but it's -- your request to get other, more jurors or a different panel is denied.

MS. SPELLS: Thank you, Your Honor.

THE COURT: We may end up -- actually, we may end up having to get more jurors. We're down to just about like seven or eight left and we've got a ways to go. So, I mean, we may have to get some more jurors. We don't know. But if we do, it's simply because we need more jurors period.

Anything else we need to put on the record?

MR. SCHWARTZ: Not from the State.

MR. ROSE: Not by the State.

MS. SPELLS: Your Honor, I don't know if you want to address the 9-1-1 call

now or at a later time period?

THE COURT: We can do it now. I don't -- I mean, if you want to go get lunch --

MS. SPELLS: We would like to go get lunch.

THE COURT: Go get lunch and bring it back and we'll do it here in the courtroom on the record while you eat lunch.

THE DEFENDANT: Thank you, sir.

THE COURT: Okay.

MR. ROSE: What time does Your Honor want us back?

THE COURT: Ten after one.

MR. ROSE: After one?

THE COURT: Yeah.

MR. ROSE: Yes, Your Honor.

MR. SCHWARTZ: Thank you, Your Honor.

[Recess taken at 12:22 p.m.]

[Proceeding resumed at 1:23 p.m.]

[Outside the presence of the prospective jury panel]

THE COURT: All right. So, we're back on the record in the matter of the State of Nevada vs. Alfred C. Harvey.

MS. SPELLS: Yes, Your Honor. Thank you. Jasmin Spells on behalf of the defense.

Just to inform the Court as we were walking in, we being Jasmin Spells and Kelley Jones the defense, walking into the courtroom there was a male juror, I do not know his juror number, who walked up to us and made the statement that someone had called his name and he was in the bathroom. He paused, looked at

me again, and said, I'm just trying to let you know. I did nod my head and put up my thumb to inform him, like; I saw that he was speaking to me. I did not make any audible response, neither did Ms. Jones. She didn't say anything and I did inform the State of that. So just wanted to let the Court --

THE COURT: All right.

MR. ROSE: That's correct, Your Honor.

MS. SPELLS: -- know.

MR. ROSE: Ms. Jones did inform us as soon as she came into the courtroom that that's what happened. We have no issues with any of it. We don't think any further inquiry is necessary.

THE COURT: I'll just reiterate that the proposition that they don't talk to anybody here in the courtroom, they don't talk about the case to anybody, even themselves, and I'll just reemphasize the importance of not talking to just us. Tom's the only one they can talk to.

MR. ROSE: Thank you, Your Honor.

MS. SPELLS: Thank you.

THE MARSHAL: And, Judge, that was juror number 69.

THE COURT: Okay.

THE MARSHAL: And I've already gone over the rules with them again out in the hallway.

THE COURT: Okay. All right.

All right, are we ready to bring them in?

MR. ROSE: One other thing --

MS. SPELLS: [indiscernible]

THE MARSHAL: I don't want the jurors to trip on the cord.

MS. SPELLS: Oh, definitely.

THE MARSHAL: So as soon as they get in I'll move it again.

MS. SPELLS: Definitely, no, no. Sure. Thank you so much.

MR. ROSE: One other very brief thing, Your Honor, just in terms of scheduling, I spoke with the defense counsel early today -- not early today, just a few moments ago. We have the victim ready to go today to testify. He's also our longest witness. He has -- we're going to be playing some video through him. He's the victim. It will likely be the longest testimony. The concern at least by the State and the thought by both parties is that the preference should be potentially to have him simply start tomorrow with him, rather than have him do some testimony today and then have to come back tomorrow morning and continue that testimony. I think the preference from both parties would be to have it just kind of go -- be a straight shot through with him and the other witnesses. We're just kind of looking at the timing of today and when we think we might be done with jury selection and the initial instructions and opening statements. So as long as it's okay with the Court, we would defer to the Court's preference with regard to the scheduling, but I think it's, at least the State's preference, I don't think there's an objection by the defense. I don't know if it's actually their preference. I don't know if there's an objection by the defense to getting through openings today, releasing the jury for the day, and then picking up bright and early tomorrow morning with Mr. Munoz.

THE COURT: You're okay with that?

MS. SPELLS: We're fine with that, Your Honor.

MS. JONES: Yes, Your Honor.

THE COURT: All right, perfect, perfect, perfect.

MR. ROSE: Thank you, Your Honor.

THE COURT: All right. Then that's the -- that'll be the way we proceed.

MS. SPELLS: One final thing, just with scheduling each day, today I anticipated we're not going to call Mr. Munoz; we can talk about the 9-1-1 phone call after that during a break and have a ruling and then --

THE COURT: Why don't we finish the jury selection, you do your openings, and then we'll -- then we'll -- when we get rid of them, we'll put it all on the record.

MS. SPELLS: Okay, thank you.

MR. ROSE: Thanks, Your Honor.

THE COURT: Perfect.

All right, bring them in.

[In the presence of the prospective jury panel]

THE MARSHAL: All rise, please. Remember stay in the same chairs you were in.

And be seated.

THE COURT: Anybody see an empty seat that wasn't empty before?

Will the parties stipulate to the presence of the jury pool.

MR. SCHWARTZ: Yes, Your Honor.

MR. ROSE: Yes, Your Honor.

MS. SPELLS: Yes, Your Honor.

MS. JONES: Yes, Your Honor.

THE COURT: Perfect.

Okay. So we are at the point where we're going to start focusing on 24 folks over here. You guys over there need to pay close attention because if you get up here I'm just going to give you one question. If you hear the questions that were going asked, and would you like to offer some information, so we don't go back

through everything individually.

What we're going to do now is start over here, on the top right, and, I believe, it's Cynthia Shackleford; is that right?

PROSPECTIVE JUROR NUMBER 001: Yes, sir.

THE COURT: Okay. And it's going to be the same for everybody. Here's what I want you to do. I want you to share with us some background, some personal background. I want you to tell us how long you've lived in Las Vegas; what you do for a living, and prior to you retiring what you did do for a living; if you're married and what your spouse does for a living; if you have children, what your adult children do for a living. I'd like to know how far you went in school. I'd like to know if you've ever been on jury duty before. And basically if you think you'll make a good juror. I ask you the last question, whether you'll make a good juror or not, and I frame it like this: If you were the State or if you were the Defendant, would you be comfortable with somebody being on the jury that has your frame of mind right now. That's the ultimate test is whether or not you think that you are going to make a good juror and be fair and impartial.

So, Ms. Shackleford, we'll start with you. It's the same questions for everybody. How long have you been here in Las Vegas and just kind of -- you remember all the things I was bringing up? I'll prompt you now and again.

PROSPECTIVE JUROR NUMBER 001: Do I sit or do I need to --

THE COURT: You can sit. You can sit right there.

PROSPECTIVE JUROR NUMBER 001: I've lived in -- is this on?

THE MARSHAL: Yes, you've just got to speak in the end of it.

THE COURT: Yes, just speak at the end. And all the other jurors --

PROSPECTIVE JUROR NUMBER 001: Here?

THE COURT: There you go, yeah.

PROSPECTIVE JUROR NUMBER 001: I've lived here two and a half years; my husband and I are both retired. I retired after 41 years of federal service, partially army security, the rest with the Department of Veterans Affairs. No children. I guess that's about it.

THE COURT: Do you -- ever had jury duty before?

PROSPECTIVE JUROR NUMBER 001: Nope, I never had.

THE COURT: But where -- two and a half years ago, where did you come from?

PROSPECTIVE JUROR NUMBER 001: I came from Seattle, Washington.

THE COURT: Okay. It's a little drier down here?

PROSPECTIVE JUROR NUMBER 01: A lot drier, that was an incentive.

THE COURT: You understand what jury duty in this case looks like?

PROSPECTIVE JUROR NUMBER 001: I believe so, yes.

THE COURT: You understand what we're going to ask this jury to decide?

PROSPECTIVE JUROR NUMBER 001: Pardon me?

THE COURT: Do you understand what we're going to ask this jury to decide?

PROSPECTIVE JUROR NUMBER 001: Yes, I do.

THE COURT: There will be 12 people in that deliberation room, and a verdict has to be unanimous, it has to be all 12 folks unanimous, and you ultimately have to decide the question: Did the State of Nevada prove the Defendant guilty beyond a reasonable doubt? If the answer is no, can you come back with a not guilty verdict?

PROSPECTIVE JUROR NUMBER 001: Yes, I can.

THE COURT: And if think that the State did prove the Defendant guilty beyond a reasonable doubt, can you come back and say guilty?

PROSPECTIVE JUROR NUMBER 001: Certainly.

THE COURT: Okay. Do you think you'll make a good juror?

PROSPECTIVE JUROR NUMBER 001: As far as I know. I don't have any reason to doubt my ability to be a good juror.

THE COURT: Okay. And, like I said, if you were on either side of the aisle over here, would you be comfortable with somebody on the jury with your frame of mind?

PROSPECTIVE JUROR NUMBER 001: I would.

THE COURT: Okay, perfect.

Okay. Is it Susie Chang; right? Susie, again, tell us something about yourself? How long have you been here and all that.

PROSPECTIVE JUROR NUMBER 003: Sure. Susie Chang. I work for Nevada Gaming Control Board. I've been in Vegas since 2002. My husband works for the Las Vegas Valley Water District. I'm college grad.

What else do you need to know? I'm sorry.

THE COURT: Well, that's okay.

PROSPECTIVE JUROR NUMBER 003: No children.

THE COURT: No children?

PROSPECTIVE JUROR NUMBER 003: No children.

THE COURT: Wow.

Have you ever had jury duty before?

PROSPECTIVE JUROR NUMBER 003: No, I've been summoned before but never served on a panel here, as a juror, no.

THE COURT: Okay. Do you understand what we're going to ask this jury to ultimately decide?