

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSHUA HONEA,

Appellant,

v.

STATE OF NEVADA,

Respondent.

Docket No. 76621

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APPELLANT'S APPENDIX

VOLUME 2

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whom 7:16, 34:8. widowed 50:22. wife 31:12, 32:22, 42:9, 49:17, 56:5, 57:8, 82:18. Wilmer 34:6. Wirey 15:8. wish 48:1. Without 51:14, 51:19, 65:6, 80:7, 80:10, 83:14, 83:19, 92:19. witness 16:8, 21:7, 61:16, 61:17, 61:19, 61:20, 63:20, 64:1, 64:13, 71:5. witnesses 7:12, 13:19, 14:25, 16:7, 16:12, 18:1, 19:14, 20:9, 37:7, 51:15, 61:3, 61:14, 63:13, 65:1, 83:15, 88:1. woman 65:19, 103:5, 103:14, 103:15, 111:15, 113:1. wondering 60:20. Wong 24:21, 35:18. Word 3:10, 35:13. words 39:3, 54:19, 54:20, 78:4. worked 6:8, 30:18, 37:25, 46:10, 46:14, 48:6, 55:9, 67:10, 69:13, 75:20, 77:8, 77:14, 79:3, 113:23, 115:4. worker 15:20, 36:8.	working 37:25, 38:2, 40:16, 44:19, 49:6, 49:8, 50:10, 50:12, 50:23, 54:18. works 26:18, 31:12, 32:4, 33:2, 36:9, 37:20, 39:20, 42:18, 44:20, 45:1, 47:24, 49:4, 49:8, 49:9, 49:10, 57:8, 60:6, 60:11, 64:20, 108:17, 108:18, 108:19, 108:20, 108:21, 110:25, 113:24, 114:23, 115:5. world 98:12, 98:16, 99:16. worry 92:1, 98:11. worth 48:25. write 41:7. writing 41:17, 41:21. written 59:6. wrongfully 102:19, 103:10, 103:14, 111:8, 111:11. Wynn 33:20, 43:3. . . < Y >. year 46:9, 67:14, 76:7, 77:25. year-and-a-half 42:7. yesterday 4:25, 5:10, 5:17. young 31:4, 81:8, 105:15, 106:15, 106:17, 107:10. younger 92:13. yourself 12:21,	60:5, 67:1, 80:16. yourselves 51:13, 83:13. . . < Z >. Zachery 15:12. Zafirir 15:9, 15:16. Zerate 15:10, 16:21. Zero 36:9, 39:6, 90:22.
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FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

NOV 27 2017

BY, S. Boyle
S. BOYLE, DEPUTY

AINF
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STACEY KOLLINS
Chief Deputy District Attorney
Nevada Bar #005391
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

CASE NO: C-15-309548-1

-vs-

DEPT NO: XXV

JOSHUA RAY HONEA,
#3060176
Defendant.

SECOND AMENDED
INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss.

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That JOSHUA RAY HONEA, the Defendant above named, having committed the crimes of SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (Category A Felony - NRS 200.364, 200.366 - NOC 50105), SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE (Category A Felony - NRS 200.364, 200.366 - NOC 50106), FIRST DEGREE KIDNAPPING (Category A Felony - NRS 200.310, 200.320 - NOC 50053), LEWDNESS WITH A MINOR UNDER FOURTEEN YEARS OF AGE (CATEGORY A Felony - NRS 201.230 - NOC 50975), USE OF MINOR IN PRODUCING PORNOGRAPHY (Category A Felony - NRS 200.700, 200.710.1, 200.750 - NOC 50367), LURING CHILDREN OR MENTALLY ILL PERSONS WITH THE INTENT TO ENGAGE IN SEXUAL CONDUCT (Category B Felony - NRS 201.560 - NOC 51081) in the manner following:

C-15-309548-1
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Amended Information
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1 That the said Defendant, on or between May 4, 2011 and July 13, 2015, at and within
2 the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such
3 cases made and provided, and against the peace and dignity of the State of Nevada,

4 COUNT 1 - FIRST DEGREE KIDNAPPING

5 did, on or between May 4, 2011 and June 29, 2013, willfully, unlawfully and
6 feloniously, lead, take, entice, carry away or kidnap M.S., a minor, with the intent to keep,
7 imprison, or confine said M.S., from the parents, guardians, or other person or persons having
8 lawful custody of M.S., or with the intent to hold M.S. to unlawful service, or to perpetrate
9 upon the person of M.S. any unlawful act, to-wit: sexual assault with a minor under fourteen
10 years of age.

11 COUNT 2 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
12 AGE

13 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
14 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
15 age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis
16 into the genital opening of the said M.S., against the will of the said M.S., or under conditions
17 in which Defendant knew, or should have known, that M.S. was mentally or physically
18 incapable of resisting or understanding the nature of Defendant's conduct.

19 COUNT 3 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
20 AGE

21 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
22 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
23 age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis
24 into the genital opening of the said M.S., against the will of the said M.S., or under conditions
25 in which Defendant knew, or should have known, that M.S. was mentally or physically
26 incapable of resisting or understanding the nature of Defendant's conduct.

27 //

28 //

1 COUNT 4 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
2 AGE

3 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
4 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
5 age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis
6 into the genital opening of the said M.S., against the will of the said M.S., or under conditions
7 in which Defendant knew, or should have known, that M.S. was mentally or physically
8 incapable of resisting or understanding the nature of Defendant's conduct.

9 COUNT 5 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
10 AGE

11 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
12 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
13 age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis
14 into the genital opening of the said M.S., against the will of the said M.S., or under conditions
15 in which Defendant knew, or should have known, that M.S. was mentally or physically
16 incapable of resisting or understanding the nature of Defendant's conduct.

17 COUNT 6 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
18 AGE

19 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
20 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
21 age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into
22 the mouth of the said M.S., against the will of the said M.S., or under conditions in which
23 Defendant knew, or should have known, that M.S. was mentally or physically incapable of
24 resisting or understanding the nature of Defendant's conduct.

25 COUNT 7 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
26 AGE

27 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
28 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of

1 age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into
2 the mouth of the said M.S., against the will of the said M.S., or under conditions in which
3 Defendant knew, or should have known, that M.S. was mentally or physically incapable of
4 resisting or understanding the nature of Defendant's conduct.

5 COUNT 8 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
6 AGE

7 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
8 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
9 age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into
10 the mouth of the said M.S., against the will of the said M.S., or under conditions in which
11 Defendant knew, or should have known, that M.S. was mentally or physically incapable of
12 resisting or understanding the nature of Defendant's conduct.

13 COUNT 9 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
14 AGE

15 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
16 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
17 age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into
18 the mouth of the said M.S., against the will of the said M.S., or under conditions in which
19 Defendant knew, or should have known, that M.S. was mentally or physically incapable of
20 resisting or understanding the nature of Defendant's conduct.

21 COUNT 10 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
22 AGE

23 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
24 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
25 age, to sexual penetration, to-wit: cunnilingus, by said Defendant placing his mouth and/or
26 tongue on and/or into the genital opening of the said M.S., against the will of the said M.S., or
27 under conditions in which Defendant knew, or should have known, that M.S. was mentally or
28 physically incapable of resisting or understanding the nature of Defendant's conduct.

1 COUNT 11 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
2 AGE

3 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
4 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
5 age, to sexual penetration, to-wit: cunnilingus, by said Defendant placing his mouth and/or
6 tongue on and/or into the genital opening of the said M.S., against the will of the said M.S., or
7 under conditions in which Defendant knew, or should have known, that M.S. was mentally or
8 physically incapable of resisting or understanding the nature of Defendant's conduct.

9 COUNT 12 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
10 AGE

11 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
12 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
13 age, to sexual penetration, to-wit: cunnilingus, by said Defendant placing his mouth and/or
14 tongue on and/or into the genital opening of the said M.S., against the will of the said M.S., or
15 under conditions in which Defendant knew, or should have known, that M.S. was mentally or
16 physically incapable of resisting or understanding the nature of Defendant's conduct.

17 COUNT 13 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
18 AGE

19 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
20 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
21 age, to sexual penetration, to-wit: cunnilingus, by said Defendant placing his mouth and/or
22 tongue on and/or into the genital opening of the said M.S., against the will of the said M.S., or
23 under conditions in which Defendant knew, or should have known, that M.S. was mentally or
24 physically incapable of resisting or understanding the nature of Defendant's conduct.

25 COUNT 14 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
26 AGE

27 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
28 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of

1 age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into
2 the mouth of the said M.S., against the will of the said M.S., or under conditions in which
3 Defendant knew, or should have known, that M.S. was mentally or physically incapable of
4 resisting or understanding the nature of Defendant's conduct.

5 COUNT 15 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
6 AGE

7 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
8 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
9 age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into
10 the mouth of the said M.S., against the will of the said M.S., or under conditions in which
11 Defendant knew, or should have known, that M.S. was mentally or physically incapable of
12 resisting or understanding the nature of Defendant's conduct.

13 COUNT 16 - FIRST DEGREE KIDNAPPING

14 did, on or between June 30, 2013 and December 31, 2014, willfully, unlawfully and
15 feloniously, lead, take, entice, carry away or kidnap M.S., a minor, with the intent to keep,
16 imprison, or confine said M.S., from the parents, guardians, or other person or persons having
17 lawful custody of M.S., or with the intent to hold M.S. to unlawful service, or to perpetrate
18 upon the person of M.S. any unlawful act, to-wit: sexual assault with a minor under sixteen
19 years of age.

20 COUNT 17 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

21 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
22 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
23 age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis
24 into the genital opening of the said M.S., against the will of the said M.S., or under conditions
25 in which Defendant knew, or should have known, that M.S. was mentally or physically
26 incapable of resisting or understanding the nature of Defendant's conduct.

27 //

28 //

1 COUNT 18 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE
2 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
3 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
4 age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis
5 into the genital opening of the said M.S., against the will of the said M.S., or under conditions
6 in which Defendant knew, or should have known, that M.S. was mentally or physically
7 incapable of resisting or understanding the nature of Defendant's conduct.

8 COUNT 19 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE
9 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
10 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
11 age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis
12 into the genital opening of the said M.S., against the will of the said M.S., or under conditions
13 in which Defendant knew, or should have known, that M.S. was mentally or physically
14 incapable of resisting or understanding the nature of Defendant's conduct.

15 COUNT 20 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE
16 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
17 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
18 age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis
19 into the genital opening of the said M.S., against the will of the said M.S., or under conditions
20 in which Defendant knew, or should have known, that M.S. was mentally or physically
21 incapable of resisting or understanding the nature of Defendant's conduct.

22 COUNT 21 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE
23 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
24 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
25 age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis
26 into the genital opening of the said M.S., against the will of the said M.S., or under conditions
27 in which Defendant knew, or should have known, that M.S. was mentally or physically
28 incapable of resisting or understanding the nature of Defendant's conduct.

1 COUNT 22 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

2 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
3 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
4 age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into
5 the mouth of the said M.S., against the will of the said M.S., or under conditions in which
6 Defendant knew, or should have known, that M.S. was mentally or physically incapable of
7 resisting or understanding the nature of Defendant's conduct.

8 COUNT 23 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

9 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
10 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
11 age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into
12 the mouth of the said M.S., against the will of the said M.S., or under conditions in which
13 Defendant knew, or should have known, that M.S. was mentally or physically incapable of
14 resisting or understanding the nature of Defendant's conduct.

15 COUNT 24 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

16 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
17 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
18 age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into
19 the mouth of the said M.S., against the will of the said M.S., or under conditions in which
20 Defendant knew, or should have known, that M.S. was mentally or physically incapable of
21 resisting or understanding the nature of Defendant's conduct.

22 COUNT 25 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

23 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
24 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
25 age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into
26 the mouth of the said M.S., against the will of the said M.S., or under conditions in which
27 Defendant knew, or should have known, that M.S. was mentally or physically incapable of
28 resisting or understanding the nature of Defendant's conduct.

1 COUNT 26 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

2 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
3 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
4 age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into
5 the mouth of the said M.S., against the will of the said M.S., or under conditions in which
6 Defendant knew, or should have known, that M.S. was mentally or physically incapable of
7 resisting or understanding the nature of Defendant's conduct.

8 COUNT 27 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

9 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
10 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
11 age, to sexual penetration, to-wit: cunnilingus, by said Defendant placing his mouth and/or
12 tongue on and/or into the genital opening of the said M.S., against the will of the said M.S., or
13 under conditions in which Defendant knew, or should have known, that M.S. was mentally or
14 physically incapable of resisting or understanding the nature of Defendant's conduct.

15 COUNT 28 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

16 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
17 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
18 age, to sexual penetration, to-wit: cunnilingus, by said Defendant placing his mouth and/or
19 tongue on and/or into the genital opening of the said M.S., against the will of the said M.S., or
20 under conditions in which Defendant knew, or should have known, that M.S. was mentally or
21 physically incapable of resisting or understanding the nature of Defendant's conduct.

22 COUNT 29 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

23 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
24 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
25 age, to sexual penetration, to-wit: cunnilingus, by said Defendant placing his mouth and/or
26 tongue on and/or into the genital opening of the said M.S., against the will of the said M.S., or
27 under conditions in which Defendant knew, or should have known, that M.S. was mentally or
28 physically incapable of resisting or understanding the nature of Defendant's conduct.

1 COUNT 30 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

2 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
3 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
4 age, to sexual penetration, to-wit: cunnilingus, by said Defendant placing his mouth and/or
5 tongue on and/or into the genital opening of the said M.S., against the will of the said M.S., or
6 under conditions in which Defendant knew, or should have known, that M.S. was mentally or
7 physically incapable of resisting or understanding the nature of Defendant's conduct.

8 COUNT 31 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

9 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
10 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
11 age, to sexual penetration, to-wit: cunnilingus, by said Defendant placing his mouth and/or
12 tongue on and/or into the genital opening of the said M.S., against the will of the said M.S., or
13 under conditions in which Defendant knew, or should have known, that M.S. was mentally or
14 physically incapable of resisting or understanding the nature of Defendant's conduct.

15 COUNT 32 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

16 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
17 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
18 age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into
19 the mouth of the said M.S., against the will of the said M.S., or under conditions in which
20 Defendant knew, or should have known, that M.S. was mentally or physically incapable of
21 resisting or understanding the nature of Defendant's conduct.

22 COUNT 33 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

23 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
24 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
25 age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into
26 the mouth of the said M.S., against the will of the said M.S., or under conditions in which
27 Defendant knew, or should have known, that M.S. was mentally or physically incapable of
28 resisting or understanding the nature of Defendant's conduct.

1 COUNT 34 - FIRST DEGREE KIDNAPPING

2 did, on or between June 30, 2011 and June 29, 2013, willfully, unlawfully and
3 feloniously, lead, take, entice, carry away or kidnap M.S., a minor, with the intent to keep,
4 imprison, or confine said M.S., from the parents, guardians, or other person or persons having
5 lawful custody of M.S., or with the intent to hold M.S. to unlawful service, or to perpetrate
6 upon the person of M.S. any unlawful act, to-wit: sexual assault with a minor under fourteen
7 years of age.

8 COUNT 35 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
9 AGE

10 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
11 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
12 age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis
13 into the genital opening of the said M.S., against the will of the said M.S., or under conditions
14 in which Defendant knew, or should have known, that M.S. was mentally or physically
15 incapable of resisting or understanding the nature of Defendant's conduct.

16 COUNT 36 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
17 AGE

18 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
19 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
20 age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into
21 the mouth of the said M.S., against the will of the said M.S., or under conditions in which
22 Defendant knew, or should have known, that M.S. was mentally or physically incapable of
23 resisting or understanding the nature of Defendant's conduct.

24 COUNT 37 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
25 AGE

26 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
27 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
28 age, to sexual penetration, to-wit: cunnilingus, by said Defendant placing his mouth and/or

1 tongue on and/or into the genital opening of the said M.S., against the will of the said M.S., or
2 under conditions in which Defendant knew, or should have known, that M.S. was mentally or
3 physically incapable of resisting or understanding the nature of Defendant's conduct.

4 COUNT 38 - FIRST DEGREE KIDNAPPING

5 did, on or between June 30, 2013 and December 31, 2014, willfully, unlawfully and
6 feloniously, lead, take, entice, carry away or kidnap M.S., a minor, with the intent to keep,
7 imprison, or confine said M.S., from the parents, guardians, or other person or persons having
8 lawful custody of M.S., or with the intent to hold M.S. to unlawful service, or to perpetrate
9 upon the person of M.S. any unlawful act, to-wit: sexual assault with a minor under sixteen
10 years of age.

11 COUNT 39 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

12 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
13 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
14 age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis
15 into the genital opening of the said M.S., against the will of the said M.S., or under conditions
16 in which Defendant knew, or should have known, that M.S. was mentally or physically
17 incapable of resisting or understanding the nature of Defendant's conduct.

18 COUNT 40 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

19 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
20 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
21 age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into
22 the mouth of the said M.S., against the will of the said M.S., or under conditions in which
23 Defendant knew, or should have known, that M.S. was mentally or physically incapable of
24 resisting or understanding the nature of Defendant's conduct.

25 COUNT 41 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

26 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
27 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
28 age, to sexual penetration, to-wit: cunnilingus, by said Defendant placing his mouth and/or

1 tongue on and/or into the genital opening of the said M.S., against the will of the said M.S., or
2 under conditions in which Defendant knew, or should have known, that M.S. was mentally or
3 physically incapable of resisting or understanding the nature of Defendant's conduct.

4 COUNT 42 - USE OF MINOR IN PRODUCING PORNOGRAPHY

5 did, on or between June 30, 2011 and December 31, 2014, willfully, unlawfully,
6 feloniously and knowingly, use, encourage, entice or permit M.S., a minor under the age of
7 18, to simulate or engage in, or assist others to simulate or engage in sexual conduct, to-wit:
8 by said Defendant causing and/or directing and/or encouraging the said M.S. to take a picture
9 of the said M.S. in the nude on a cell phone and send to said Defendant, for the purpose of
10 producing a pornographic performance.

11 COUNT 43 - LURING CHILDREN OR MENTALLY ILL PERSONS WITH USE OF
12 TECHNOLOGY WITH THE INTENT TO ENGAGE IN SEXUAL CONDUCT

13 did, on or between June 30, 2011 and July 13, 2015, then and there, willfully and
14 feloniously and knowingly contact or communicate with, or attempt to contact or communicate
15 with M.S., who is less than 16 years of age and who is at least 5 years younger than the
16 defendant, or a person who the defendant believed to be a child being less than 16 years of age
17 and at least 5 years younger than the defendant, regardless of the actual age of the person,
18 through the use of a computer, system or network, with the intent to persuade, lure or transport
19 the said child away from her home or from any location known to her parent or guardian or
20 other person legally responsible for the child without the express consent of the parent or
21 guardian or other person legally responsible for the child and with the intent to avoid the
22 consent of the parent or guardian or other person legally responsible for the child, the
23 Defendant committing the crime in the following manner, to-wit: by texting and/or otherwise
24 communicating with the said M.S. to lure her to various locations, Defendant possessing the
25 intent to engage in sexual conduct with the child or mentally ill person or to cause the child or
26 mentally ill person to engage in sexual conduct.

27 //

28 //

1 COUNT 44 - LEWDNESS WITH A MINOR UNDER FOURTEEN YEARS OF AGE

2 did, on or between May 4, 2011 and June 30, 2011, then and there, willfully,
3 unlawfully and feloniously commit a lewd or lascivious act upon or with the body, or any part
4 or member thereof, of a child, to-wit: M.S., a child under the age of fourteen years, by said
5 Defendant touching and or rubbing and or kissing the body and or mouth of the said M.S.,
6 with the intent of arousing, appealing to or gratifying the lust, passions, or sexual desires of
7 the said Defendant or M.S.

8 COUNT 45 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
9 AGE

10 did, on or between May 4, 2011 and June 30, 2011, then and there, willfully, unlawfully
11 and feloniously sexually assault and subject M.S., a child under fourteen years of age, to sexual
12 penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into the mouth of
13 the said M.S., against the will of the said M.S., or under conditions in which Defendant knew,
14 or should have known, that M.S. was mentally or physically incapable of resisting or
15 understanding the nature of Defendant's conduct.

16 COUNT 46 - USE OF MINOR IN PRODUCING PORNOGRAPHY

17 did, on or between June 30, 2011 and December 31, 2014, willfully, unlawfully,
18 feloniously and knowingly, use, encourage, entice or permit M.S., a minor under the age of
19 18, to simulate or engage in, or assist others to simulate or engage in sexual conduct, to-wit:
20 by said Defendant causing and/or directing and/or encouraging the said M.S. to take a cell
21 phone video of the said M.S. in the nude and or masturbating and send said video to Defendant,
22 for the purpose of producing a pornographic performance.

23 COUNT 47 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
24 AGE

25 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
26 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
27 age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis
28 into the genital opening of the said M.S., against the will of the said M.S., or under conditions

1 in which Defendant knew, or should have known, that M.S. was mentally or physically
2 incapable of resisting or understanding the nature of Defendant's conduct.

3 COUNT 48 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
4 AGE

5 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
6 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
7 age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into
8 the mouth of the said M.S., against the will of the said M.S., or under conditions in which
9 Defendant knew, or should have known, that M.S. was mentally or physically incapable of
10 resisting or understanding the nature of Defendant's conduct.

11 COUNT 49 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
12 AGE

13 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
14 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
15 age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis
16 into the genital opening of the said M.S., against the will of the said M.S., or under conditions
17 in which Defendant knew, or should have known, that M.S. was mentally or physically
18 incapable of resisting or understanding the nature of Defendant's conduct.

19 COUNT 50 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
20 AGE

21 did, on or between June 30, 2011 and June 29, 2013, then and there, willfully,
22 unlawfully and feloniously sexually assault and subject M.S., a child under fourteen years of
23 age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into
24 the mouth of the said M.S., against the will of the said M.S., or under conditions in which
25 Defendant knew, or should have known, that M.S. was mentally or physically incapable of
26 resisting or understanding the nature of Defendant's conduct.

27 //

28 //

1 COUNT 51 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

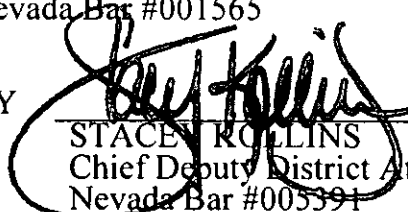
2 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
3 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
4 age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis
5 into the genital opening of the said M.S., against the will of the said M.S., or under conditions
6 in which Defendant knew, or should have known, that M.S. was mentally or physically
7 incapable of resisting or understanding the nature of Defendant's conduct.

8 COUNT 52 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

9 did, on or between June 30, 2013 and December 31, 2014, then and there, willfully,
10 unlawfully and feloniously sexually assault and subject M.S., a child under sixteen years of
11 age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis
12 into the genital opening of the said M.S., against the will of the said M.S., or under conditions
13 in which Defendant knew, or should have known, that M.S. was mentally or physically
14 incapable of resisting or understanding the nature of Defendant's conduct.

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

17 BY

18 
19 STACEY ROLLINS
20 Chief Deputy District Attorney
21 Nevada Bar #005391

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(TK01)

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

NOV 28 2017

BY, S. Boyle
S. BOYLE, DEPUTY

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9 Email: Jempe_law@embarqmail.com
10 Counsel for JOSHUA RAY HONEA

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 vs.

13 JOSHUA RAY HONEA,
14 #3060176

15 Defendant.

CASE NO: C-15-309548-1

DEPT. NO: XXV

DATE: _____

TIME: _____

16 REPLY TO STATE'S OPPOSITION TO MOTION TO ADMIT EVIDENCE OF M.S.'S
17 KNOWLEDGE OF SEX ACTS AND PRIOR SEXUAL CONDUCT

18 COMES NOW the Defendant, JOSHUA HONEA, by and through his attorney,
19 JONATHAN E. MacARTHUR, and respectfully brings this response to the State's Opposition to
20 the Motion to Admit Evidence of M.S.'s Knowledge of Sex Acts and Prior Sexual Conduct.

21 DATED this 27th day of November, 2017.

22
23
24 By: /s/ Jonathan MacArthur
25 JONATHAN E. MACARTHUR
26 Nevada Bar #7072

27 C-15-309548-1
28 ROPP
Reply to Opposition
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STATEMENT OF FACTS

Joshua Honea is charged with First Degree Kidnapping, Sexual Assault with a Minor Under Fourteen Years of Age, Sexual Assault with a Minor Under Sixteen Years of Age, Lewdness with a Minor Under Fourteen Years of Age, Use of Minor in Producing Pornography and Luring Children or Mentally Ill Persons with the Intent to Engage in Sexual Conduct for acts alleged to have occurred between June 2011 and June 2015.

The allegations are based on the testimony and statements made by M.S. and her mother P.S., alleging that Honea began a relationship with M.S. when she was eleven years old. The State alleges that M.S. was incapable of forming consent, and unable to either physically or mentally resist or understand the nature of the defendant's conduct.

The defense seeks to admit the following evidence of previous sexual conduct of M.S., which goes directly to M.S.'s ability to consent, and her prior knowledge of sexual conduct and acts, which goes to her ability to contrive allegations of a sexual nature, and her ability to form consent.

1. M.S. had a sexual relationship with Franco Cardejos-Orduno beginning in October of 2013, and ending in January of 2014. At the time the two had sex, MS. was fourteen years of age.
2. Franco gave a voluntary statement to the police where he admitted that the relationship was sexual.¹

ARGUMENT

The State argues in its opposition that the aforementioned sexual conduct is not admissible because the conduct is subsequent to the initial sexual contact with the defendant. However, as noted in the initial motion, the defense anticipated such an argument. The defense does not have to adopt the timeline of the State. The defense is allowed to present its own theory of the case. See U.S. Const. Amend. VI, and U.S. Const. Amend. XIV. *See also Crane v. Kentucky*, 476 U. S. 683, 690 (1986) (quoting *California v. Trombetta*, 467 U. S. 479, 485 (1984)) "[T]he Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'"

¹ The defense, at this time, withdraws the portion of the original moving papers regarding W.S. due to an inability to serve W.S. with a subpoena.

1 Additionally, courts have held that rules of evidence cannot bar a defendant from his
2 Constitutional right to present a defense. *Id.*, see e.g. Davis v. Alaska, 415 U. S. 308, 315–316
3 (1974).

4 Case law in Nevada is clear, as cited in the original motion, that there are exceptions to
5 rape shield. The State asserts that the defense is barred from any such evidence because the sexual
6 conduct regarding Franco occurred after the time the complaining witness claims to have had
7 intercourse with the defendant; however, the defense does not adopt that timeframe. The defense
8 is allowed to present evidence that 1) the entirety of the allegations are untrue or 2) that the
9 allegations are partially true or 3) true in some modified capacity. And if the defense should
10 argue that the allegations are partially true, but not in the timeframe the State presents, the defense
11 is allowed to fully present that defense. With the particular charges, the defendant must present
12 evidence relating to consent. The relationship between M.S. and Franco goes directly to the
13 theory of defense, and is not being offered solely for the purpose of commenting on M.S.'s
14 chastity or any other inadmissible purpose. The defense asks that if this Court wishes more
15 information about the theory of defense, it allow the defense to make a record outside the presence
16 of the State as to the exact nature of that theory.

17 CONCLUSION

18 Nevada law, due process and the right of confrontation require this Court allow Honea to
19 present evidence of M.S.'s ability to contrive sexual assault charges and her ability to form
20 consent. Honea respectfully requests that this Court grant his motion.

21 By: /s/ Jonathan MacArthur
22 JONATHAN E. MACARTHUR
Nevada Bar #7072

23 CERTIFICATE OF SERVICE

24 I hereby certify that on November 27, 2017, I personally served, via email, a copy
25 of the foregoing **Response to State's Opposition** to the following:

26 Stacey.Kollins@clarkcountyda.com; Kristina.Rhoades@clarkcountyda.com

27
28 By: /s/ Jonathan MacArthur

Steven D. Grierson

TRAN
CASE NO. C-15-309548-1
DEPT. NO. 25

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	
)	REPORTER'S TRANSCRIPT
)	OF
vs.)	JURY TRIAL
)	
)	
JOSHUA HONEA,)	
)	
Defendant.)	
<hr/>)	

BEFORE THE HONORABLE KATHLEEN DELANEY
DISTRICT COURT JUDGE

DATED: TUESDAY, NOVEMBER 28, 2017

REPORTED BY: SHARON HOWARD, C.C.R. NO. 745

1 APPEARANCES:

2 For the State:

STACEY KOLLINS, ESQ.

3 KRISTINA RHOADES, ESQ.

4
5 For the Defendant:

MONIQUE MCNEILL, ESQ.

6 JONATHAN MACARTHUR, ESQ.

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* * * * *

1 LAS VEGAS, NEVADA; TUESDAY, NOVEMBER 28, 2017

2 P R O C E E D I N G S

3 * * * * *

4

5 THE COURT: Let's get started. Make sure your
6 cell phones are off. This is the State of Nevada vs.
7 Joshua Honea.

8 We'll pick up speed with Mr. Milton. Can you see the
9 board like me.

10 PROSPECTIVE JUROR: My name is Mike Milton, 517.
11 I'm a service manager for FIS Global. My clients are BLM,
12 Harris Bank, and Union Bank. My wife works for Equifax.
13 She's a manager of a claims team. We have two kids to
14 lazy to work, 8 and 4. I've lived in Vegas 10 years.
15 Never been on a juror anywhere.

16 THE COURT: Your highest level of education.

17 PROSPECTIVE JUROR: Some college.

18 THE COURT: Any family in law enforcement, you
19 or a family member.

20 PROSPECTIVE JUROR: Both my sons play hockey
21 with kids whose parents are in law enforcement, Metro. We
22 have kid that go to school with my sons and have friends
23 of my sons that work in correction facilities. I talk to
24 them -- nothing about the case -- just about taking
25 training for SWAT to work downtown.

1 THE COURT: You didn't mean you tried to inquire
2 about this case.

3 PROSPECTIVE JUROR: No.

4 THE COURT: I just wanted to check. You didn't
5 recognize any of the potential witnesses in the case.

6 Also I want to make sure we make the record when
7 we're complete with you, would there be any reason why
8 your knowledge of those people, connection to those people
9 would have any impact on your ability to be fair and
10 impartial on this trial.

11 PROSPECTIVE JUROR: No.

12 THE COURT: You'll weigh the testimony that
13 comes in through members of law enforcement as you would
14 any other witness.

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: We also had questions touching upon
17 any connection you, yourself, close friend or family
18 member might have had in anyway with the criminal justice
19 system either because of being a victim of a crime,
20 accused of a crime, and specifically related to any sex
21 crime matter, anything relating to that.

22 PROSPECTIVE JUROR: I was arrested once for a
23 failure to appear for a traffic ticket. I was about 15,
24 16 years ago. Everything else is fine. No one mistreated
25 me.

1 My step brother, probably 20 years ago was convicted
2 of a sex crime. I don't know which crime. I know he had
3 to register. I was very perturbed because I thought it
4 was mishandled, but nothing to do - I can be impartial
5 here.

6 THE COURT: Was that here.

7 PROSPECTIVE JUROR: Fresno, California.

8 THE COURT: We'll flesh that out a little bit.

9 Was that related to how law enforcement handled
10 the case or attorneys handled the case.

11
12 PROSPECTIVE JUROR: Attorneys.

13 He was a teacher at the time. Never touched
14 anyone. A comment was made and parents came forward. The
15 lawyer he hired was very, very bad. Because of that he
16 ended up getting convicted for a lewd comment. I was not
17 pleased with that. No one in my family was. But it has
18 nothing to do with this here.

19 THE COURT: To have the record for this. Would
20 you be able to set aside any feelings you have about how
21 that was handled in that case and just deal with this case
22 on its merits.

23 PROSPECTIVE JUROR: Of course.

24 THE COURT: Anything else with regard to any
25 other of those matters.

1 PROSPECTIVE JUROR: No.

2 THE COURT: Anything from yesterday at all,
3 hearing people respond, that you think you want to share
4 that information with us.

5 PROSPECTIVE JUROR: I understand 90 percent of
6 what you say.

7 THE COURT: Not a hearing difficulty.

8 In all candor, we appreciate there is going to
9 be things read, the instructions of the court on the law
10 that apply to the case as you find the facts and legal
11 terms and definition for those in terms of explanation for
12 how to interpret that information.

13 You'll each have a copy set of that. If you are
14 on the jury and deliberate, I'll read through those. We
15 don't necessarily expect or need you to be predisposed to
16 have legal knowledge. It's more about being able to be
17 fair and open-minded. You can each make notes and try to
18 understand it and discuss it with your fellow jurors when
19 you deliberate to reach a fair and impartial conclusion
20 doing equal justice to both sides of the case.

21 PROSPECTIVE JUROR: I believe I can.

22 THE COURT: Ms. Kollins -- and when you respond
23 give that badge number, again. Remember, you're not just
24 talking to Ms. Kollins, but to the court and defense
25 counsel as well.

1 MS. KOLLINS: Good afternoon. I'm with the
2 Clark County District Attorney's office. Myself and chief
3 deputy District Attorney Rhoades are with the special
4 victims unit. We want to thank you for taking the time
5 with us, because we know coming off of a long holiday
6 weekend this is the last place any of you want to be. We
7 just want to thank you in advance for your time.

8 There's no question, up to this point, this is a
9 sexual crime. So my questions are going to kind of focus
10 on that, if you'll just bear with me.

11 What I would like to do is open questions up to
12 everyone. If you don't respond, I'll start picking on
13 people instead of going one at a time, because it will
14 take too much time.

15 Does everyone think people are going to behave the
16 same way? Anybody.

17 Anybody have a certainly set of expectation about how
18 a victim of a sex crime should behave, in terms of their
19 demeanor?

20 Would you agree with me that everyone behaves
21 differently in every circumstance.

22 I'm going to start talking to individuals. If I
23 could start with Mr. Kollins, Juror 333, seat 7.

24 How are you?

25 PROSPECTIVE JUROR: Good.

1 MS. KOLLINS: What do you think about that. Is
2 every victim of a sex crime going to act the same way.

3 PROSPECTIVE JUROR: No.

4 MS. KOLLINS: Why not.

5 PROSPECTIVE JUROR: It depends on the situation
6 and people around.

7 MS. KOLLINS: Do you have a set of expectations
8 on what a victim who comes in here tells you or sounds
9 like.

10 PROSPECTIVE JUROR: No.

11 MS. KOLLINS: Would you agree with me some
12 people become distraught, some people are quiet, some
13 people are shy. Would you agree with me, everybody is
14 different, right.

15 PROSPECTIVE JUROR: Yes.

16 MS. KOLLINS: Not one set of, kind of
17 characteristic, in that regard that would make you believe
18 or disbelieve.

19 PROSPECTIVE JUROR: I haven't been in this
20 situation before, so I can't tell you yes or no. I'm
21 going to expect myself not to be surprised.

22 MS. KOLLINS: Some people -- it's kind of a
23 myth -- if someone doesn't come in here distraught, crying
24 have to take breaks, emotional that they are not being
25 credible versus someone who can be shy.

1 PROSPECTIVE JUROR: Some people hold stuff in.
2 Some people don't.

3 Thank you.

4 MS. KOLLINS: Ms. Morse, 364.

5 How are you.

6 PROSPECTIVE JUROR: I'm well.

7 MS. KOLLINS: You're shaking your head. What do
8 you think, or did I misinterpret.

9 PROSPECTIVE JUROR: I thought you were asking
10 the same thing over and over again. Sorry.

11 MS. KOLLINS: Do you have strong feelings.

12 PROSPECTIVE JUROR: It's a very individual
13 thing.

14 MS. KOLLINS: Okay. Do you think it's tough for
15 anybody to could into a courtroom and discuss things that
16 are very private.

17 PROSPECTIVE JUROR: Absolutely.

18 MS. KOLLINS: In detail.

19 PROSPECTIVE JUROR: Absolutely.

20 MS. KOLLINS: For a victim to be a victim of
21 sexual assault, do you think it has to be a forcible rape
22 situation, like we see on television.

23 PROSPECTIVE JUROR: No.

24 MS. KOLLINS: Anybody think that. For sexual
25 assault to be sexual assault it has to be forcible and

1 violent? Does anybody have a opinion on that.

2 MS. KOLLINS: Ms. Baiza, 512 -- sorry, Ms. Wong
3 353.

4 PROSPECTIVE JUROR: Yeah.

5 MS. KOLLINS: What do you think about that.

6 PROSPECTIVE JUROR: If they're not mentally
7 alert or if they're impaired with alcohol, they can be
8 sexually abused without fighting back.

9 MS. KOLLINS: What if they are a minor.

10 PROSPECTIVE JUROR: Yeah. Their maturity level
11 is going to determine their actions as well.

12 MS. KOLLINS: You are going to learn that the
13 age of concept in Nevada is 16. Would you agree that the
14 laws should provide special protection for people that
15 age.

16 PROSPECTIVE JUROR: Yes.

17 MS. KOLLINS: Anybody think that shouldn't
18 apply. Any of you guys back there.

19 You looked puzzled, ma'am.

20 Ms. Makinster, 437.

21 PROSPECTIVE JUROR: I didn't comment.

22 THE COURT: At any point if someone has a
23 comment raise your hand so we can call on you.

24 PROSPECTIVE JUROR: I also feel like sometimes I
25 think in many cases people who bottle things up don't even

1 realize something happened to them until much later in
2 life, or they realize something wasn't right or
3 something didn't -- you kind of block it out because you
4 don't remember or want to remember, then all of a sudden
5 it comes up again. You have that, oh, something did
6 happen. Like realizing now you are coming to terms with
7 it.

8 A lot of times -- or a lot of times people don't
9 realize that, like, physically, going along with something
10 but mentally not wanting to. I guess it's kind of a gray
11 area in some situations.

12 A lot of times people will go along and don't have
13 another option, or they're not mature enough to understand
14 they have a choice.

15 MS. KOLLINS: So contribute it to maturity,
16 development. Not having that benchmark of what is right
17 or wrong. Like I should have had a V-8 moment.

18 Ms. Baiza, 512, do you think when a victim of sexual
19 assault comes forward that they are opening up to
20 scrutiny.

21 PROSPECTIVE JUROR: I feel anytime anybody is
22 coming forward with personal details of their life and
23 they are willing choosing to share it or they have to
24 share it due to certain circumstances, everybody judges
25 other people. It's just human nature. It's not always

1 right, I don't think in certain situations.

2 Anytime someone goes public, whether they are a
3 celebrity or a regular person, they're open to scrutiny.
4 I think it's our job as individuals not to try to judge
5 other people and say I would have done this. It didn't
6 happened to this person, so you just have to set it aside
7 and not be judgmental, I guess.

8 MS. KOLLINS: Your job in here is to be fair.

9 PROSPECTIVE JUROR: Exactly.

10 MS. KOLLINS: I'll move on to Mr. Hankins 513.
11 How are you.

12 PROSPECTIVE JUROR: Good.

13 MS. KOLLINS: So what do you think about that.
14 Does a victim open themselves you to all kinds of
15 character assassination when they come forward and tell
16 what happened.

17 PROSPECTIVE JUROR: Absolutely.

18 MS. KOLLINS: Is that fair.

19 PROSPECTIVE JUROR: It's not fair, but that's
20 just the way it is.

21 MS. KOLLINS: Okay.

22 What if you find out that a victim made
23 decisions that you disagreed with.

24 PROSPECTIVE JUROR: Say that one more time. I'm
25 sorry.

1 MS. KOLLINS: What if a victim made decisions
2 you disagrees with, you don't think that was the best
3 course of action.

4 PROSPECTIVE JUROR: They put themselves in that
5 situation.

6 MS. KOLLINS: Maybe, yeah. We're talking about
7 a kid here under 16. We're not talking about a 25 year
8 old that goes out clubbing and gets in a bad situation.
9 We're not talking about those kinds of decisions.

10 We're talking about a teenager's decisions -- smoking
11 pot, bad decisions. Sometimes kids don't know. You know
12 what I mean.

13 PROSPECTIVE JUROR: When an adult comes up to a
14 child, they can change their mind at any time and
15 influence them to do things that they don't know what --
16 should they do it or not. They are kids, you know what
17 I'm saying. They don't know how to make a right decision.
18 That's why you have parents.

19 MS. KOLLINS: They don't have the skill set.

20 PROSPECTIVE JUROR: Yes.

21 MS. KOLLINS: Would you agree with me, that's
22 why the law makes special protections for kids. They
23 can't drive until they're 18. They can't go to bars until
24 they're 21. They can't enter into contracts. They're not
25 supposed to have sex before they're 16, consensually,

1 correct. So that's why the law protects them because they
2 don't have the mentality to make decisions.

3 Do you agree with all that.

4 PROSPECTIVE JUROR: Yes.

5 MS. KOLLINS: Thank you.

6 THE COURT: I want to make sure folks
7 understand. This is jury selection, so there are going to
8 be questions asked by both sets of counsel. I don't want
9 anybody thinking, okay, this must be some hint or some
10 specific thing related to the trial or otherwise.

11 We're going to try to ask questions that we know are
12 valuable in helping counsel determine who can best serve
13 on this trial, right. But you shouldn't be reading
14 anything into the questions about anything related to the
15 case.

16 You'll receive the evidence in the case. You are
17 going to hear argument of counsel in the case that begins
18 tomorrow. But I want you to keep your mind on the answers
19 to the questions and not to presupposing the reason for
20 the questions. Just answer the questions to the best of
21 your ability.

22 PROSPECTIVE JUROR: Sally Khalil, 322 -- in what
23 this gentleman said here, I believe that a lot of 16 year
24 olds are impressionable and want to grow up fast, because
25 they're close to 18 and close to 21, close to that freedom

1 from their parents. I get to drink now, and I get to go
2 out and do adult things. There are a lot of
3 impressionable 16 year olds out there that want to grow up
4 too fast.

5 MS. KOLLINS: We'er speaking to Ms. Khalil,
6 322.

7 Times have kind of progressed. You see 16 is
8 going on 25. But pre-teens, 11, 12, are different than
9 15, 16.

10 PROSPECTIVE JUROR: Absolutely.

11 MS. KOLLINS: I wanted to comment on what Judge
12 Delaney said about the questions and whether there was any
13 insinuation here. I ask these questions in these kinds of
14 cases all the time. Because I try to start a dialogue to
15 see what people think and how they feel. I'm not
16 commenting on any evidence. I'm not putting forth any
17 theories of the case. I just try to start a dialogue. So
18 that's my purpose today.

19 Does everybody demand equal protection under the law.
20 Everybody. No matter what their status, age, color,
21 right. Everybody agrees with that. Whether they're an
22 addict. Whether they're not an addict. They all deserve
23 equal protection under the law No one deserves a lesser
24 standard. Does everybody agree with that.

25 I would like to go to Mr. Rago, 305.

1 How are you.

2 PROSPECTIVE JUROR: Good. How are you.

3 MS. KOLLINS: Okay. Thanks.

4 Didn't you get my Cyber Monday shopping in, but
5 that's okay. Probably saved me a couple grand yesterday
6 by being in here.

7 So the topic I would like to approach with you
8 is about disclosure. About when kids or even adults
9 finally think it's time to come forward and tell
10 somebody.

11 Do you think there are reasons why a pre-teen, a
12 teen, an adult may delay disclosing sexual abuse.

13 PROSPECTIVE JUROR: Intimidation.

14 MS. KOLLINS: By who.

15 PROSPECTIVE JUROR: The person who committed the
16 act. Manipulation of the situation.

17 MS. KOLLINS: Manipulations by the predator.

18 PROSPECTIVE JUROR: Yes.

19 MS. KOLLINS: Anything else you can think of.

20 PROSPECTIVE JUROR: I agree with the last
21 comment. Pre-teens are impressionable. An older person,
22 a predator might have that power over them in terms of
23 just being an older individual.

24 MS. KOLLINS: Okay. Easy to manipulate
25 pre-teens, right, versus an adult.

1 PROSPECTIVE JUROR: Right.

2 MS. KOLLINS: Mr. Goings, 462.

3 PROSPECTIVE JUROR: Yes. They may also wait to
4 come forward for fear of getting in trouble. There were a
5 lot of stupid things I did as a kid that I didn't tell my
6 mom about.

7 MS. KOLLINS: Amen.

8 PROSPECTIVE JUROR: Pardon any French. She'd
9 whoop my ass.

10 THE COURT: I'm not sure there is French for
11 that.

12 PROSPECTIVE JUROR: I can easily understand why
13 when a teen or pre-teen does not immediately come forward
14 for fear that they would be the one getting in trouble for
15 anything that might have happened.

16 MS. KOLLINS: Okay.

17 What do you think about the notion of not coming
18 forward because they thought nobody would believe they.

19 PROSPECTIVE JUROR: In this day and age and
20 social media where everybody questions everybody, wants to
21 call you a liar, I can see that being a possibility.

22 MS. KOLLINS: Also a possibility. Thank you.

23 Ms. King, 361.

24 PROSPECTIVE JUROR: I understand that sometimes
25 when it's family, there is also that.

1 MS. KOLLINS: Sorry.

2 PROSPECTIVE JUROR: Sometimes within a family,
3 sometimes family members just want to keep it quiet and
4 don't want to get anyone in trouble. It kind of puts
5 shame -- more shame on the victim.

6 MS. KOLLINS: That's kind of been a theme in the
7 past. The criminal justice system has evolved and that's
8 been the theme to keep it in the family. It's shameful.
9 We don't want anyone to know. We heard about that a
10 lot.

11 What do you think about just fear of this whole
12 criminal justice system. Talking to 14 strangers, a court
13 reporter, defense attorney cross-examines you, having to
14 have exams, going to hearings, coming to meet with
15 lawyers, do you think all of that is daunting for someone
16 who wants to come forward.

17 Does anybody disagree with that. They think it's no
18 big deal to go through with that.

19 PROSPECTIVE JUROR: Milton -- it's not that it's
20 a big deal. I think a pre-teenage is not thinking in
21 advance, not afraid of the court. It's their parents,
22 friends. They're ashamed. Even at that age they didn't
23 know it was wrong.

24 It wasn't until someone has a discussion that it was
25 wrong. I don't think they think of the court or other

1 stuff 3 years down the road.

2 MS. KOLLINS: Do you think a kid, pre-teen, teen
3 has the skill set to want to protect someone. Do you
4 think that a kid that age can be protective.

5 PROSPECTIVE JUROR: Consciously view it that
6 way. They love or feel they love that person, they'll be
7 protective.

8 MS. KOLLINS: So they could be protecting the
9 offender, somebody in the family.

10 PROSPECTIVE JUROR: Of course.

11 MS. KOLLINS: Anybody disagrees with that.
12 Anyone. I'm not forgetting about you guys over here.

13 Anybody disagree with that or have a strong comment
14 on any of that.

15 Do you think -- kind of the converse to that. Do you
16 think someone closely related, the kid can feel threatened
17 and not want to come forward. They can feel threatened
18 either physically or socially or within their family.
19 Everyone agree with that.

20 PROSPECTIVE JUROR: Yes.

21 MS. KOLLINS: Let's talk about lifestyle.
22 People choose a lifestyle, jobs to work. We have a home.
23 We pay the mortgage. We do all of those things we're
24 supposed to do as adults, right.

25 Some of us don't, right. Some of us go down a bad

1 path. It happens. People in here know people that have
2 gone down a bad path and ended up in some pretty scary
3 situations.

4 Anybody in here have an interaction with anybody drug
5 addicted or doing drugs and addicted.

6 Can you raise your hand.

7 Ms. Chacon, 463, seat 1.

8 PROSPECTIVE JUROR: Yes.

9 MS. KOLLINS: Tell us about your drug addicts.

10 PROSPECTIVE JUROR: Well, in junior high, high
11 school my best friend he went down the wrong path. I
12 didn't choose to make the same decision.

13 MS. KOLLINS: You went like this.

14 PROSPECTIVE JUROR: Unfortunately.

15 The flip side is after years of taking that path
16 then many rehab in a positive way. It takes a long time.
17 We can now interact, but it takes a long time.

18 MS. KOLLINS: Sometimes you don't want to make
19 their life choices be your life choices. If you're going
20 to work and paying a mortgage, sometimes that's not
21 synergistic with the addict lifestyle, right.

22 Did that person deserve equal protection under the
23 law.

24 PROSPECTIVE JUROR: Yeah.

25 MS. KOLLINS: If that person gets victimized,

1 does the justice system protect the drug addicted or
2 not.

3 PROSPECTIVE JUROR: Yeah.

4 MS. KOLLINS: Is there anybody that's raised
5 their hand who thinks the person they know that's drug
6 addicted doesn't deserve protection under the law.

7 No hands.

8 Anybody think men and women view sexual abuse
9 differently, raise their hand.

10 Mr. Perreault, 459, seat 30. Why do you think men
11 and women treat it differently.

12 PROSPECTIVE JUROR: Just everything you hear on
13 the news today with all these sexual things, sexual
14 attacks. A guy goes after a girl and there is a sexual
15 problem. When a woman hits on a guy at work, it's, hey,
16 that's cool. Kind of funny that way.

17 MS. KOLLINS: Maybe a double standard. How
18 about any other way.

19 PROSPECTIVE JUROR: Like.

20 MS. KOLLINS: She asked for it. It was her
21 fault.

22 PROSPECTIVE JUROR: No. No. No.

23 MS. KOLLINS: No victim blaming.

24 PROSPECTIVE JUROR: Certainly not.

25 MS. KOLLINS: 572 (sic).

1 PROSPECTIVE JUROR: Just because generally
2 everyone, general speaking, each have different views of
3 sex than women. When it goes to an assault situation,
4 it's different. Any interaction between two people, both
5 sides, whether it's the same sex or different sex view
6 that situation in a bad light.

7 MS. KOLLINS: Okay.

8 How about some of the inquiry I had with
9 Mr. Perreault, victim shaming, blaming. You think men and
10 women do that.

11 PROSPECTIVE JUROR: It occurs. Whether it is
12 right, I don't think it's right. There are people out
13 there that feel that way, they asked for it. It was my
14 right to do what I do, sexual, or any other crime.

15 MS. KOLLINS: There's a lot of that.

16 PROSPECTIVE JUROR: I wouldn't say it's
17 widespread as we see on the news, but --

18 MS. KOLLINS: They kind of have a job of
19 sensationalizing things that grab attention. It's not the
20 reality in all cases that we see in and out of the court
21 house all the time. You agree with that.

22 PROSPECTIVE JUROR: Yes.

23 MS. KOLLINS: Morse, 364. You had your hand up
24 for that.

25 PROSPECTIVE JUROR: Yes.

1 MS. KOLLINS: Did you have a comment about men
2 and women feel differently about sex assault.

3 PROSPECTIVE JUROR: I do. I also think there
4 have been changes over time on perceptions of what is okay
5 and what is not okay. I think over time we each educated
6 ourselves that this is really not okay, but I do think it
7 is better.

8 MS. KOLLINS: Getting better from those old
9 stigmas.

10 PROSPECTIVE JUROR: Yes.

11 MS. KOLLINS: Tell me, do you agree or disagree
12 with this. Women are tougher on victims than men are in
13 terms of scrutiny and analyzing behavior and the victim's
14 decision making choices. You think women are tougher on
15 women.

16 PROSPECTIVE JUROR: I think some can be. You
17 could hear that on the news, whatever. But I don't think
18 it's -- I don't like to think it is a general statement to
19 say women are tougher.

20 MS. KOLLINS: You never spoke to me before, and
21 I've never spoken to anyone. We're just talking in
22 generalities. We're not attributing any specific opinions
23 to anyone or any gender.

24 Ms. Rice, 428, how are you.

25 PROSPECTIVE JUROR: Good.

1 MS. KOLLINS: What do you think about that women
2 treat women harder.

3 PROSPECTIVE JUROR: I don't think so, but I
4 don't know. I just don't know.

5 MS. KOLLINS: Okay.

6 PROSPECTIVE JUROR: I think we're fair with each
7 other.

8 MS. KOLLINS: I would like to think we try.

9 PROSPECTIVE JUROR: We try.

10 MS. KOLLINS: Sometimes, as women, we might say
11 I wouldn't put myself in that situation. That means we're
12 judging, right.

13 PROSPECTIVE JUROR: Absolutely.

14 MS. KOLLINS: Ms. Riley, 460 -- what do you
15 think about that, women are tougher on women.

16 PROSPECTIVE JUROR: Women are tough on women. I
17 don't know that they're tougher.

18 MS. KOLLINS: Are they equally tough on men as
19 women.

20 PROSPECTIVE JUROR: It depends on the victim.
21 People see things the same way, but some women can be
22 passionate because they are female and understand. I
23 wouldn't say tougher.

24 MS. KOLLINS: Okay.

25 Ms. Savko, 404, how are you.

1 PROSPECTIVE JUROR: Good. Tired.

2 MS. KOLLINS: Do you think sex crimes, for the
3 most part, occur in secret.

4 PROSPECTIVE JUROR: They can, yes. Or they can
5 happen in public places, off to the side.

6 MS. KOLLINS: You say they can occur in secret.
7 What are some of the circumstances where you think they
8 would occur in secret.

9 PROSPECTIVE JUROR: With me I was almost 3. The
10 other kid was 8. We would play we were on a date. Don't
11 tell anybody, we'll go play. So we'd be in the play room
12 and everybody else was watching TV or doing other
13 things.

14 MS. KOLLINS: Mr. Ilsley, 504 -- what do you
15 think of that notion that sex crimes occur in secret.

16 PROSPECTIVE JUROR: They can.

17 MS. KOLLINS: What do you think some of the
18 reasons would be that they occur in secret.

19 PROSPECTIVE JUROR: A crime committed. The
20 perpetrator would want to hide the fact, not do it so he
21 would be caught.

22 MS. KOLLINS: Mr. 003, Finfrock, what do you
23 think about that. What are some of the reasons you think
24 they would occur in secret.

25 PROSPECTIVE JUROR: Pretty much the same thing.

1 You want to hide what is going on.

2 MS. KOLLINS: Okay. I would like to move to
3 Mr. Ward, 12.

4 How are you.

5 PROSPECTIVE JUROR: Good.

6 MS. KOLLINS: What do you think a sex offender
7 looks like.

8 PROSPECTIVE JUROR: Anybody.

9 MS. KOLLINS: Anybody. Not one set of
10 characteristics. Not just the guy with the rape coat on
11 the corner.

12 Anybody disagrees with that, that a sex offender has
13 a look and if they don't look that way they didn't do
14 it.

15 Anyone think that.

16 A nice guy can be a sex offender, right.

17 PROSPECTIVE JUROR: Sure.

18 MS. KOLLINS: Any type of profession that you
19 would expect to be a sex offender to have.

20 PROSPECTIVE JUROR: Any profession.

21 MS. KOLLINS: Anybody.

22 Juarez 421, what do you think about that. What does
23 a sex offender look like.

24 PROSPECTIVE JUROR: Anybody, man, woman, it
25 doesn't matter. They can look professional. They can

1 look homeless. It really doesn't matter.

2 MS. KOLLINS: Man, woman, age, it doesn't
3 matter.

4 PROSPECTIVE JUROR: No.

5 MS. KOLLINS: Anybody disagrees with that.

6 I would like to close this discussion with an
7 open-ended question. If you have a response, raise your
8 hand.

9 I'm asking a lot of yes or no. What do you
10 think a sex offender has to do to get close to a kid.

11 Ms. King, 361.

12 PROSPECTIVE JUROR: Make them feel safe.

13 MS. KOLLINS: Anything else.

14 PROSPECTIVE JUROR: I don't know.

15 MS. KOLLINS: What about making the people
16 around them feel safe. The people that are responsible
17 for that kid, making those people feel they can be
18 trusted.

19 Everybody think that's an important thing for a sex
20 offender to do.

21 Mr. Milton, 517.

22 PROSPECTIVE JUROR: It depends on the type of
23 sex offender. You want to play along and make them feel
24 safe. Win the trust of family, trust of friends so that
25 they will be okay leaving them alone with you. It has to

1 be a private setting, especially, if you know it's wrong.
2 If you don't think it's wrong, you won't be hiding it.

3 MS. KOLLINS: There's a series of behaviors to
4 get access.

5 PROSPECTIVE JUROR: Yes.

6 MS. KOLLINS: Anybody else have a comment back
7 there about what a sex offender might do to gain access to
8 a kid.

9 PROSPECTIVE JUROR: Sara Baiza, 512 -- I also
10 think in some cases, like let's say pre-teens, 11, 12, 13,
11 they talk to them in a way that makes them feel like --
12 kids always want to grow up too fast. They talk to them
13 in a way that makes them feel like I'm much more mature.
14 I'm an adult, in quotes, so to say. So if you make them
15 feel validated, and you're way more mature than anybody
16 else. You can handle these types of situations. If you
17 make them feel they are capable and act older and are more
18 mature.

19 MS. KOLLINS: Empowered.

20 PROSPECTIVE JUROR: Create a bond. And like we
21 said before, create a bond so that they wouldn't want to
22 go against them because you have a bond with this
23 perpetrator. This person treats me like I want to be
24 treated, so to say.

25 MS. KOLLINS: Thank you.

1 Ms. Corona, 346 -- what do you think about that.

2 PROSPECTIVE JUROR: At 12 to 14, most definitely
3 they can be influenced to think they are more mature.
4 Maybe it has something to do with how they grew up, a
5 family member, someone around them had, like, grew up too
6 quick as well. An older sibling influenced by them.

7 MS. KOLLINS: Remember being a teenage girl.

8 PROSPECTIVE JUROR: Yes.

9 MS. KOLLINS: Not that long ago.

10 That's all you wanted to do was grow up.

11 PROSPECTIVE JUROR: Given the opportunity a kid
12 will take it. Not all of them have that.

13 MS. KOLLINS: Thank you.

14 Mr. Rizalde, 350.

15 MS. KOLLINS: What do think about what we been
16 discussing about victimology in general. Do you have any
17 expectation from a sex victim on how they should act or
18 communicate or do from up here.

19 PROSPECTIVE JUROR: No.

20 MS. KOLLINS: What about if you disagree with
21 their choices. We talked about drug use, smoking weed,
22 things escalating and you don't agree with the lifestyle.
23 What do you think about how that might influence you.

24 PROSPECTIVE JUROR: Nothing.

25 MS. KOLLINS: Ms. Rice, 428.

1 PROSPECTIVE JUROR: Another way a kid can be
2 victimized is being isolated from people that love them by
3 the predator also.

4 MS. KOLLINS: Isolated and controlled by that
5 predator.

6 Do you think that would influence their disclosure if
7 there was isolation.

8 PROSPECTIVE JUROR: A rebellious teenager who
9 can't talk to their parents for whatever reason, so they
10 become attached to that predator or could be.

11 MS. KOLLINS: This is kind of a timely topic.
12 You do these kinds of cases you really cannot address
13 what's going on in the media. With a group of people this
14 size, at least to some extent, kind of figure out do you
15 follow it, what do you think about it, have strong
16 opinions.

17 We've had Kevin Spacey, Roy Moore, Sylvester
18 Stallone, Harvey Weinstein, all these people in the media
19 in the last 60, 90 days. There have been accusations of
20 sexual abuse.

21 Anybody following any of those stories with any
22 degree of scrutiny, regularity.

23 Ms. King 361.

24 PROSPECTIVE JUROR: Personally, I don't know,
25 maybe I can't speak for the majority, but there is a big

1 difference between personal opinion and the law. So I
2 think to say that we all come in with our own opinions
3 about certain things, but that's an opinion. And a court
4 case, it's all about the law.

5 MS. KOLLINS: Agreed. But I guess my job up
6 here is to find out if somebody holds such a strong
7 opinion about delayed disclosure, like these women 20
8 years later, they never could be believed. We're looking
9 for a strong opinion.

10 Obviously, everybody that ends up on a panel will
11 promise to follow the law, whether they like the law or
12 not. That's kind of how it's written.

13 Do you follow that.

14 PROSPECTIVE JUROR: The only difference when
15 we're talking about celebrity is that's a whole different
16 group of people than everyone else.

17 MS. KOLLINS: Agreed. But it is in the news.

18 PROSPECTIVE JUROR: Not that they don't need to
19 be protected by the law, but I know personally I have a
20 different opinion on that then I would a child.

21 MS. KOLLINS: Mr. Ilsley, 504. You had your
22 hand up.

23 PROSPECTIVE JUROR: It seemed in reading those
24 cases the common denominator want sexual. It was more like
25 power they all had over other victims.

1 MS. KOLLINS: Exerting power and position in
2 their community.

3 PROSPECTIVE JUROR: The Weinstein case and
4 delayed reaction of reporting of the crime was they felt
5 he was so powerful so it would damage your career.

6 MS. KOLLINS: Do you think that that element of
7 power can translate to a case about kids. The whole
8 notion of the person is perpetrating on me has more power
9 than me.

10 PROSPECTIVE JUROR: Sure.

11 MS. KOLLINS: Ms. Rice, you also had your hand
12 up. Are you following those cases -- Juror 428.

13 PROSPECTIVE JUROR: Yeah. I follow them
14 regularly to see the result, the repercussion.

15 MS. KOLLINS: Ms. Jankiewicz, 356, how are
16 you.

17 PROSPECTIVE JUROR: Well. How are you.

18 MS. KOLLINS: Not bad.

19 You think you can be fair and impartial in this
20 case.

21 PROSPECTIVE JUROR: Of course.

22 MS. KOLLINS: Any reason you can think of that
23 someone doesn't deserve equal protection under the law.

24 PROSPECTIVE JUROR: No.

25 MS. KOLLINS: This evidence in this case is

1 going to be a little graphic in details. Words that most
2 adults don't like to say in public -- penis, vagina, all
3 of it.

4 Will you not be able to listen to that even if it's
5 distasteful.

6 PROSPECTIVE JUROR: Yes.

7 MS. KOLLINS: Can you be fair to both sides.

8 PROSPECTIVE JUROR: Yes.

9 MS. KOLLINS: Ms. Monson, 499 -- how are you.

10 PROSPECTIVE JUROR: Good. Thank you.

11 MS. KOLLINS: Any feelings or commentary on what
12 we've been talking about today.

13 PROSPECTIVE JUROR: Just about you kept
14 referring to a kid being vulnerable at 12, 14. I think
15 everybody is vulnerable to some degree. They are more
16 venerable and looking for acceptance.

17 MS. KOLLINS: Acceptance. Affirmation.

18 PROSPECTIVE JUROR: But I don't think you can
19 put an age limit on it. Adults know they are kids. They
20 are not thinking. They are in the moment.

21 MS. KOLLINS: This is just explaining
22 conversation. Someone tells you your hair looks pretty
23 today, or you look skinny today, you eat it up. Just
24 spread the conversation about skill set with teens and
25 pre-teens, because that's basically what we are talking

1 about.

2 PROSPECTIVE JUROR: The more mature the child
3 is -- I mean just because they are 14, they could be more
4 mature depending on their lifestyle. Sometimes kids are
5 raise to grow up faster because of their lifestyle or how
6 they are raised, whatever the situation is.

7 So sometimes people know. Some kids might be able to
8 accept it and move on. Other kids, because they are
9 connected they want more -- want to hear it more.

10 MS. KOLLINS: Positive attention.

11 PROSPECTIVE JUROR: I don't think you can put a
12 limit on age taking advantage of.

13 MS. KOLLINS: If you think a kid made bad
14 decisions, do you think she deserves less protection.

15 PROSPECTIVE JUROR: Absolutely not. A kid makes
16 a bad decisions, we do -- we only have ourselves to fix
17 issues. Kids count on adult in life to guide them, help
18 them make right decisions, not steer them toward wrong
19 decisions.

20 MS. KOLLINS: Mr. Goings, 462.

21 PROSPECTIVE JUROR: No child should be held --
22 held against them for making bad choices. Held against
23 him just because he didn't think something.

24 We, as adults who have made stupid choices, we
25 consider stupid choices, they're kids. This is the time

1 to make those choices and realize that was stupid. We
2 know not to stick a fork into a light socket. Stick a
3 fork in a socket you get shocked and hurt. They don't
4 know that. Either we tell them, or they make the choice
5 of the fork in the light socket. They get a shock. It's
6 a stupid choice. I shouldn't do that.

7 MS. KOLLINS: Skill set changes over time.

8 PROSPECTIVE JUROR: Right.

9 MS. KOLLINS: For example, say you pull up in
10 the driveway. You leave the keys in the car to your 2017
11 Porche. Windows down, you go inside. The car is stole.
12 The bad guy is caught. We go to court. The jury says,
13 hey, dummy. You left your keys in the car. Not guilty.
14 You were stupid.

15 That's not right is it.

16 PROSPECTIVE JUROR: No.

17 MS. KOLLINS: That's not right.

18 PROSPECTIVE JUROR: Just because they had an
19 opportunity doesn't mean --

20 MS. KOLLINS: It doesn't matter what you did.
21 Because you didn't ask for your car to be stolen.

22 Mr. Weise, 391. What do you think about what we're
23 talking about. Any strong opinions about anything.

24 PROSPECTIVE JUROR: Not really. Everybody id
25 different.

1 MS. KOLLINS: Do you have any exposure to
2 teenagers.

3 PROSPECTIVE JUROR: I have one now, 16.

4 MS. KOLLINS: High schooler, junior.

5 PROSPECTIVE JUROR: Yes.

6 MS. KOLLINS: Sometimes makes some decisions
7 that you don't agree with.

8 PROSPECTIVE JUROR: A little bit.

9 MS. KOLLINS: Even though you tell him you
10 really need to do (a), they get closer to (b), it doesn't
11 mean you don't love them, right.

12 PROSPECTIVE JUROR: Right.

13 MS. KOLLINS: Do they deserve equal protection
14 under the law.

15 PROSPECTIVE JUROR: Yes.

16 MS. KOLLINS: Have you ever known anyone that's
17 been a victim.

18 PROSPECTIVE JUROR: Not really.

19 MS. KOLLINS: Anyone, close friend or associate
20 you know that has had anyone that was a victim of a sex
21 crime.

22 PROSPECTIVE JUROR: No.

23 MS. KOLLINS: What do you think of a kid that
24 comes in here and talks to you from up here talking about
25 sexual acts in detail. What do you think the demeanor

1 should be like. What do you expect from them.

2 PROSPECTIVE JUROR: Like mentioned before,
3 everyone is different. Some talk right through it.
4 Crying all the time. Everybody is different.

5 MS. KOLLINS: Crimes occur in secret.

6 PROSPECTIVE JUROR: Yes.

7 MS. KOLLINS: Can you be fair and impartial to
8 both sides.

9 PROSPECTIVE JUROR: Yes.

10 MS. KOLLINS: Is there anything that will
11 distract you from your service in this case over the
12 course of the next couple of weeks.

13 PROSPECTIVE JUROR: No.

14 MS. KOLLINS: Mr. McMullen, 514, how are you.

15 PROSPECTIVE JUROR: Good.

16 MS. KOLLINS: We've been talking for awhile
17 front center. Anything we've talked about that you have a
18 strong opinion about.

19 PROSPECTIVE JUROR: I just agree the way I grew
20 up, the way I was taught, I worked from a young age to
21 prove to my parents I was responsible. I have two
22 daughters. I have a son. When you go out with another
23 family's daughter, you are responsible for that young
24 woman. You know right from wrong. You're 18, a senior.

25 MS. KOLLINS: Does he date.

1 PROSPECTIVE JUROR: He has a girlfriend. I
2 believe crimes happen in secret. I believe that the
3 perpetrator, not the child, the perpetrator wants some
4 kind of secrecy. I would think to manipulate. It's my
5 opinion looking at it with two teenage daughters.

6 MS. KOLLINS: So kids make bad choices.

7 PROSPECTIVE JUROR: Yes.

8 MS. KOLLINS: Have you been exposed to any of
9 your daughter's or son's friends have made bad choices and
10 gone down a path -- smoked, drinking -- doing what they're
11 not supposed to do.

12 PROSPECTIVE JUROR: Yeah.

13 MS. KOLLINS: Does that mean they're bad kids.

14 PROSPECTIVE JUROR: They're just kids.

15 MS. KOLLINS: Do we throw them away.

16 PROSPECTIVE JUROR: No.

17 MS. KOLLINS: We don't protect them.

18 PROSPECTIVE JUROR: We always protect them.
19 They are kids.

20 MS. KOLLINS: Protect them from themselves.

21 PROSPECTIVE JUROR: Protect ourselves from
22 ourselves.

23 MS. KOLLINS: Can you be fair and impartial to
24 both sides.

25 PROSPECTIVE JUROR: I hope so. I think so. I

1 would say I know so.

2 MS. KOLLINS: Anything that will distract you
3 from your service.

4 Strike that.

5 Mr. Escoto, 501 -- we've been talking a lot.
6 Anything that we've discussed today that you have strong
7 feelings on or would like to comment about.

8 PROSPECTIVE JUROR: I have been working with
9 kids for about 15 years now. I can't judge one.

10 MS. KOLLINS: 15 years not one of the kids
11 didn't deserve protection from the law.

12 PROSPECTIVE JUROR: Not from my experience.
13 Usually the ones that act out need the most protection,
14 the most help from maybe their own family. Help from or
15 all sides.

16 MS. KOLLINS: What is your profession.

17 PROSPECTIVE JUROR: I teach 3rd grade right now.
18 I have taught 5th grade. Also I substitute taught all
19 grades.

20 MS. KOLLINS: So 5 grade, that's 10.

21 PROSPECTIVE JUROR: 10, 11.

22 MS. KOLLINS: Can you be a fair and impartial
23 juror in this case.

24 PROSPECTIVE JUROR: Yes.

25 MS. KOLLINS: Ms. Juarez, 421, anything that

1 will distract you from your service over the next couple
2 of weeks.

3 PROSPECTIVE JUROR: No.

4 MS. KOLLINS: Can you be fair and impartial to
5 both sides.

6 PROSPECTIVE JUROR: Yes.

7 MS. KOLLINS: Do you have any exposure to
8 teen -- teen kids.

9 PROSPECTIVE JUROR: My kids are all under 5.

10 MS. KOLLINS: What do you think a victim of sex
11 assault is going to sound like on the stand. Any certain
12 set of expectations.

13 PROSPECTIVE JUROR: Like before, talk through it
14 with no emotion. Everyone is different.

15 MS. KOLLINS: Are women tougher on women.

16 PROSPECTIVE JUROR: I don't know.

17 MS. KOLLINS: Ms. Leos, 422 -- how are you.

18 PROSPECTIVE JUROR: Fine, thank you. How are
19 you.

20 MS. KOLLINS: Good. Thank you.

21 You've lived in Las Vegas for 23 years.

22 PROSPECTIVE JUROR: About that, yeah.

23 MS. KOLLINS: How long have you been a medical
24 assistant.

25 PROSPECTIVE JUROR: 10 years.

1 MS. KOLLINS: What kind of medical office do you
2 work in.

3 PROSPECTIVE JUROR: I work for primary medical
4 care. The doctor does treat there. The provider I work
5 for is a primary care. We see all kinds of things all
6 day.

7 MS. KOLLINS: The whole gambit then. I hate to
8 approach the topic, but I want to ask you a little bit.
9 You mentioned work done and the investigation of the case.
10 That was here in Las Vegas.

11 PROSPECTIVE JUROR: No, New Mexico.

12 MS. KOLLINS: I did -- obviously -- sorry for
13 that. I don't want to bring up a bad topic. Obviously,
14 anything in that case has nothing to do with what we have
15 here.

16 PROSPECTIVE JUROR: Right.

17 MS. KOLLINS: Do you think your feelings about
18 the bad performance of those police officers are going to
19 effect the way you feel about the police officers here.

20 PROSPECTIVE JUROR: I don't believe so.

21 MS. KOLLINS: You don't think so.

22 PROSPECTIVE JUROR: I don't think so.

23 MS. KOLLINS: Two different cases. Two
24 different circumstances.

25 PROSPECTIVE JUROR: Completely.

1 MS. KOLLINS: There is good and bad in every
2 profession. Would you agree.

3 PROSPECTIVE JUROR: Yes.

4 MS. KOLLINS: What do you think a sexual abuse
5 victim should act like when she talks to you.

6 PROSPECTIVE JUROR: She could be upset. She
7 could be angry. She could be crying. Everybody handles
8 things differently.

9 MS. KOLLINS: You think it's tough to come here
10 and talk about intimate details.

11 PROSPECTIVE JUROR: Yes.

12 MS. KOLLINS: Embarrassing. Never met any of
13 these people before.

14 PROSPECTIVE JUROR: Sure.

15 MS. KOLLINS: What do you think about the notion
16 that for a sex crime to have occurred it has to be a
17 forcible or violent rape, like on TV.

18 PROSPECTIVE JUROR: Like, what do you mean.

19 MS. KOLLINS: Like on television we see the
20 stranger in the corner with a rain coat, and he comes
21 around the corner and he grabs someone. There's like a
22 violent sexual assault. So that's kind of a connotation
23 of the crime of sexual assault. That's what people think
24 it is.

25 That's not necessarily the case.

1 PROSPECTIVE JUROR: No.

2 MS. KOLLINS: You agree with that.

3 PROSPECTIVE JUROR: Yeah.

4 MS. KOLLINS: There is a whole gambit of what
5 could happen.

6 PROSPECTIVE JUROR: Yeah.

7 MS. KOLLINS: I asked the question to a few
8 people. I meant to follow up on it a little more.

9 Do you think when somebody comes forward as a victim
10 they're scrutinized.

11 PROSPECTIVE JUROR: Sure.

12 MS. KOLLINS: Is that fair.

13 PROSPECTIVE JUROR: No.

14 MS. KOLLINS: What kind of scrutiny do you think
15 they get.

16 PROSPECTIVE JUROR: Shame. Why did you do that.
17 Why did you put yourself there. Those kinds of questions.
18 What did you do. Did you invite them in. Stuff like
19 that.

20 MS. KOLLINS: Why didn't you tell. Why did you
21 keep it going.

22 PROSPECTIVE JUROR: Yes.

23 MS. KOLLINS: Sorry to use the S word. Slut
24 shamed. You've heard that term before.

25 Do you think that could be contribute to why a kid

1 might not come forward.

2 PROSPECTIVE JUROR: Absolutely.

3 MS. KOLLINS: Ms. Ganigan, 515 -- how are you.

4 PROSPECTIVE JUROR: Fine.

5 MS. KOLLINS: How did you feel when you got your
6 jury summons.

7 PROSPECTIVE JUROR: Surprised.

8 MS. KOLLINS: Have much exposure do you have to
9 teenagers.

10 PROSPECTIVE JUROR: My son is 35 now. And my
11 daughter --

12 MS. KOLLINS: Sometimes they do stuff you don't
13 agree with.

14 PROSPECTIVE JUROR: I just guide them to do the
15 right thing.

16 MS. KOLLINS: The best you can, right.

17 PROSPECTIVE JUROR: Yeah. Sometimes they go the
18 other way.

19 MS. KOLLINS: Have you ever known any friends
20 that went the other way and made bad choices and bad
21 decisions.

22 PROSPECTIVE JUROR: Not really.

23 MS. KOLLINS: I don't know if you were one of
24 the individuals that raised your hand or not. Have you
25 ever known anyone that's been addicted to drugs or had any

1 problem with drugs.

2 PROSPECTIVE JUROR: No.

3 MS. KOLLINS: Because you are addicted does that
4 make you a bad person.

5 PROSPECTIVE JUROR: You can change. Sometimes
6 we have -- sometimes we have a bad choice, but on the
7 other hand sometimes they go along way before they realize
8 what they are doing is really bad.

9 MS. KOLLINS: A wake up call, right.

10 Does that addiction mean they don't deserve
11 equal protection under the law.

12 PROSPECTIVE JUROR: No.

13 MS. KOLLINS: Any reason you can't be fair and
14 impartial over the course of the next couple of weeks.

15 PROSPECTIVE JUROR: No.

16 MS. KOLLINS: I feel like I'm shouting. Can I
17 come over here with the court's permission.

18 THE COURT: As long as everybody speaks up.

19 MS. KOLLINS: Please, court reporter, let me
20 know if you can't hear me.

21 Good afternoon, Ms. Hewitt, 430. How are you.

22 PROSPECTIVE JUROR: Good.

23 MS. KOLLINS: Lot of talk today. Talking for
24 about an hour-and-a-half.

25 Is there anything we've discussed that you have

1 strong opinions about. Whether it's what you expect from
2 a victim, or you could never listen to either police
3 officers or drug addicts the same. You couldn't give the
4 same weight the same fair opportunity.

5 Anything like that.

6 PROSPECTIVE JUROR: I'd try not to be
7 judgmental. I don't watch the news. To me it's
8 one-sided. I can't really get into both sides. I try not
9 to watch at all.

10 MS. KOLLINS: The State has the burden of proof
11 in this case. You understand that. So our burden is to
12 put on all of the evidence that would lead to your
13 conclusion. You understand that the defense doesn't have
14 to do anything, okay. There's no obligation.

15 When you say you want to hear two sides, that doesn't
16 mean that's how the case works. Are you okay with that.

17 PROSPECTIVE JUROR: Yeah.

18 MS. KOLLINS: Mr. Makinster, 437, how are you.

19 PROSPECTIVE JUROR: Good.

20 MS. KOLLINS: I know you responded to questions
21 awhile ago. I forget which one it was.

22 Is there anything that would distract you from your
23 service or the next couple of weeks.

24 PROSPECTIVE JUROR: No.

25 MS. KOLLINS: How much exposure do you have to

1 teenagers.

2 PROSPECTIVE JUROR: I have teen nephews.

3 MS. KOLLINS: Any of their friends or anything
4 you know about them, kids that made bad choices or things
5 you heard from your sister-in-law or brother law got into
6 trouble.

7 PROSPECTIVE JUROR: When I was a kid a lot of my
8 friends, you know, were one way or the other. Poor
9 decisions, but not my nephew.

10 MS. KOLLINS: But you had friends that went one
11 way and you went the other.

12 PROSPECTIVE JUROR: Right.

13 MS. KOLLINS: Went to work, college, paid the
14 mortgage.

15 PROSPECTIVE JUROR: Right.

16 MS. KOLLINS: You think some of them find their
17 way back.

18 PROSPECTIVE JUROR: Yeah.

19 MS. KOLLINS: Thank you. Thank you for your
20 candor. I appreciate that.

21 Mr. Ormond, 448 -- how are you.

22 PROSPECTIVE JUROR: Well.

23 MS. KOLLINS: What do you think about what we're
24 talking about here.

25 PROSPECTIVE JUROR: Normal stuff.

1 MS. KOLLINS: What do you think a kid that's
2 been sexually assaulted, sexually abused for a long time,
3 period of time would act like when they come in here?

4 PROSPECTIVE JUROR: I don't think there is a
5 particular way to act. Just pretty much yourself.

6 MS. KOLLINS: You've known kids that got in
7 trouble and made bad choices.

8 PROSPECTIVE JUROR: I work with kids.

9 MS. KOLLINS: Okay. They don't tell us
10 everything. How do you work with kids.

11 PROSPECTIVE JUROR: I'm retired now, but I was a
12 Clark County School District custodian.

13 MS. KOLLINS: CMSD.

14 You saw in the class room they were
15 well-behaved, but out of class, out in the hallways doing
16 what kids do out of the view of the watchful eyes.

17 PROSPECTIVE JUROR: I got that.

18 MS. KOLLINS: Kids or teenagers.

19 PROSPECTIVE JUROR: Elementary to middle
20 school.

21 MS. KOLLINS: Do you have nieces or nephews.

22 PROSPECTIVE JUROR: Yes.

23 MS. KOLLINS: Are they kids you have been in
24 their life, not been in their life.

25 PROSPECTIVE JUROR: I've been in their life but

1 not the sole time.

2 MS. KOLLINS: Are they grown now.

3 PROSPECTIVE JUROR: They're grown.

4 MS. KOLLINS: Pretty good kids.

5 PROSPECTIVE JUROR: Yeah, for the most part.

6 MS. KOLLINS: What do you think sex offenders
7 look like.

8 PROSPECTIVE JUROR: I don't think there is a
9 look.

10 MS. KOLLINS: Not one set of traits.

11 PROSPECTIVE JUROR: No.

12 MS. KOLLINS: Thank you, sir.

13 Ms. West, Juror 454 -- how are you.

14 PROSPECTIVE JUROR: Fine.

15 MS. KOLLINS: I don't think we spoke yet today.
16 Right down to the end.

17 Not fun to raise your hand and talk in this
18 forum. I will ramble because nobody is talking back.

19 Any strong opinion about what you think we've been
20 talking about.

21 PROSPECTIVE JUROR: Nope. I feel like it is
22 handled everywhere. Other cases going on right now.

23 MS. KOLLINS: Under sex cases.

24 PROSPECTIVE JUROR: Yep.

25 MS. KOLLINS: Have you known anyone that's been

1 a victim of a sexual abuse.

2 PROSPECTIVE JUROR: I found out about a friend's
3 daughter recently was abused in college, sexually, and
4 didn't tell anybody until she had her first baby because
5 it brought out those emotions when she had her baby.

6 MS. KOLLINS: So after that delay, when she
7 finally disclosed, did they go to the police. Did they
8 start the whole law enforcement process.

9 PROSPECTIVE JUROR: The only thing I know was
10 there was an article in the newspapers to tell her story,
11 so I don't know the details. But she finally opened up to
12 her family and friends about what happened because the
13 article was coming out.

14 MS. KOLLINS: Locally.

15 PROSPECTIVE JUROR: No, in Sacramento.

16 MS. KOLLINS: Obviously, the circumstance of
17 that case are different from our case. Do you have any
18 opinion or feelings you might about that case, separate
19 from what you hear here.

20 PROSPECTIVE JUROR: No.

21 MS. KOLLINS: Is there anything that will
22 distract you from your service here.

23 PROSPECTIVE JUROR: No.

24 MS. KOLLINS: Mr. Perreault, 459 -- how are
25 you.

1 PROSPECTIVE JUROR: Good.

2 MS. KOLLINS: A little bit of discussion since I
3 talked to you last. Anything you feel compelled to
4 comment on.

5 PROSPECTIVE JUROR: No. It's pretty straight
6 forward.

7 MS. KOLLINS: Anything that would distract you
8 from your service.

9 PROSPECTIVE JUROR: Nope.

10 MS. KOLLINS: Can you be fair and impartial to
11 both sides.

12 PROSPECTIVE JUROR: I think I can. I remember
13 the conversation I had with your Honor yesterday. I went
14 home and reevaluated to do my duty and see both sides.

15 MS. KOLLINS: We appreciate that it was actually
16 in your thought process when you left the court. People
17 so quickly want to get out of here. We appreciate that.

18 PROSPECTIVE JUROR: If I was sitting in his
19 chair, I'd want somebody that is doing the best he
20 could.

21 MS. KOLLINS: Thank you.

22 Ms. Riley, how are you.

23 PROSPECTIVE JUROR: 460 -- fine.

24 MS. KOLLINS: I guess I'm making a record. I
25 don't think we did. But you were a court reporter for

1 myself in other departments that both myself and Mr.
2 MacAurthur practiced in several years ago.

3 PROSPECTIVE JUROR: Right.

4 MS. KOLLINS: But we don't associate outside of
5 work. We don't talk outside of work. We probably haven't
6 seen each other unless I've appeared in court.

7 PROSPECTIVE JUROR: Correct.

8 MS. KOLLINS: Is there anything that would
9 distract you from your service over the course of the next
10 two weeks.

11 PROSPECTIVE JUROR: Just trying to balance
12 getting an appeal done.

13 MS. KOLLINS: What is the deadline for that.

14 PROSPECTIVE JUROR: January 31st.

15 MS. KOLLINS: How far into it are you.
16 Understanding there is holiday time coming up.

17 PROSPECTIVE JUROR: I just started.

18 MS. KOLLINS: Not too far. I'll keep that in
19 mind.

20 Anything else you would like to comment on. We
21 had a discussion how crimes occur in secret and what we
22 expect from kids.

23 Anything like that.

24 PROSPECTIVE JUROR: No.

25 MS. KOLLINS: Does everyone deserve equal

1 protection.

2 PROSPECTIVE JUROR: Yes.

3 MS. KOLLINS: Khalil, 322 -- how are you.

4 PROSPECTIVE JUROR: Well.

5 MS. KOLLINS: Thank you.

6 We talked about a lot of topics over this
7 hour-and-a-half. Is there anything that I should have
8 discussed with you that I haven't. Any opinions you have
9 about kids, or addiction, or anything like that.

10 PROSPECTIVE JUROR: No.

11 The only thing I want to say is that my brother,
12 at 21, was very addicted to cocaine and marijuana. He
13 became chemically addicted. He became bipolar. So I
14 visited him one day, and he happy with his life. He
15 doesn't care about anything except collecting money from
16 the government and living his life.

17 The last time I saw him, he hadn't taken a bath
18 in a year-and-a-half. That was his choice. The reason I
19 said that is everybody has choices. We may not like the
20 choices family members make. Like even though he's raised
21 stellar, everyone has their own choices and have the right
22 to have their own choices.

23 MS. KOLLINS: Sometimes it's hard not to judge
24 those choices when you don't live that lifestyle.

25 PROSPECTIVE JUROR: It was very hard for me

1 because I was without work and homeless for a period of
2 time in between being laid off from one place and being
3 hired onto another. I wept to him and it opened my eyes
4 to the fact that God didn't put me on this earth to be
5 judgmental. I understand he's truly happy the way he is.

6 Everybody deserves fairness. Everybody deserves
7 a right to be heard, you know, whether you are a police
8 officer or an 11 year old. Whoever it is, everybody has a
9 right to live in this world and live a life judgment
10 free.

11 That's how I feel.

12 MS. KOLLINS: Everybody is entitled to a
13 platform to be fair.

14 PROSPECTIVE JUROR: Yes.

15 MS. KOLLINS: Anything that would distract you
16 from your service in the next two weeks.

17 PROSPECTIVE JUROR: The department could. I
18 have to have knee surgery. That is why the wheelchair. I
19 can't walk far. But nothing will distract me. I can get
20 in my chair and get here.

21 MS. KOLLINS: Are your surgeries scheduled in
22 the next two weeks.

23 PROSPECTIVE JUROR: No.

24 MS. KOLLINS: You can have accommodations.

25 PROSPECTIVE JUROR: Absolutely.

1 MS. KOLLINS: Court's indulgence.

2 THE COURT: Yes.

3 When I talk I try to listen. You talked about
4 being judgmental about people's life choices, life styles,
5 drug addiction, choices they made, but, ultimately you are
6 the receivers of the fact of which you will have to make a
7 decision. I guess to the extent that's judging, you will
8 have to accumulate the facts from the evidence as we
9 present them to you and make a decision.

10 Is there anybody for any reason, whether it be a
11 religious affiliation or anything else, that you cannot
12 sit in judgment of another individual, because you are
13 prohibited by your religion or you just don't think you
14 can decide the facts in a criminal case.

15 THE COURT: I'll clarify that point further.
16 There will be an instruction but it's important for the
17 jurors to understand so it's not a problem for anyone.

18 The instruction reads as follows. In your
19 deliberation, you may not discuss or consider the subject
20 of punishment, as that is a matter which lies solely with
21 the court. Your duty is confined to the determination of
22 whether the Defendant is guilty or not guilty.

23 Is there anyone here who has a problem with or would
24 not follow that instructions.

25 Seeing no hands.

1 Let's take a brief recess. We'll give you 15
2 minutes.

3 JURY ADMONITION

4 During the recess, ladies and gentlemen, you are
5 admonished not to converse among yourselves or with anyone
6 else, including, without limitation, the lawyers, parties
7 and witnesses, on any subject connected with this trial,
8 or any other case referred to during it, or read, watch,
9 or listen to any report of or commentary on the trial, or
10 any person connected with this trial, or any such other
11 case by any medium of information including, without
12 limitation, newspapers, television, internet or radio.

13 You are further admonished not to form or express any
14 opinion on any subject connected with this trial until the
15 case is finally submitted to you.

16 Are you passing the panel.

17 MS. KOLLINS: I am. I just have a couple of
18 closing comments before I pass.

19 THE COURT: Sure.

20 MS. KOLLINS: One thing I forgot to do.

21 THE COURT: When we come back. Okay. See you
22 in 15 minutes.

23 (Brief recess taken.)

24 MS. MCNEILL: We forgot to ask, and I didn't
25 think it would be a problem with us splitting up voir

1 dire.

2 THE COURT: No worries.

3 (Brief recess taken.)

4 THE COURT: Mr. Finfrock, 306 -- has advised our
5 marshall he now has a concern about his ability to pay
6 attention to the trial because he is a teacher and he's
7 going to be concerned about his students if he is away for
8 this trial.

9 Do we want to bring him back in and have a chat with
10 him now. Do you want to talk to him when he comes back,
11 because I was thinking we'd bring him in now.

12 I had a question. I'm a little concerned about
13 Mr. Rizalde, seat 9, Juror 350. I wasn't clear if he
14 didn't have an answer to your question. Didn't understand
15 your question. I know you moved on. Should we make some
16 more inquiry with him.

17 I think he understands fine. I know he expressed
18 concerns about things yesterday. He seems nervous and not
19 wanting to answer. It's more of a -- what we directed to
20 Ms. Corono is are you going to be able to participate in
21 this process if you are a juror.

22 MS. KOLLINS: I just assumed it was a little bit
23 of stage fright. He really didn't have a response for my
24 questions, so I just kind of moved on.

25 THE COURT: I was thinking we'd spend a couple

1 of minutes with both of them.

2 MS. KOLLINS: Sure.

3 THE COURT: Why don't we do that. Estimates on
4 your time. I need to finish this today. I'm not bringing
5 back another 25 people. So we're going to finish today.

6 MR. MACARTHUR: No way.

7 THE COURT: It's finishing today, Mr. MacArthur.
8 She took an hour-and-a-half. Defense can finish what
9 you're doing in an hour-and-a-half.

10 MS. MCNEILL: Can I be heard on that. My
11 concern is, I understand Ms. Kollins did it in an
12 hour-and-a-half; however, based on Ms. Kollins line of
13 questions, we and our client is facing multiple life
14 sentences. On this kind of subject matter, it takes
15 time.

16 THE COURT: More than an hour-and-a-half.

17 MS. MCNEILL: Possibly, yes. We didn't have --

18 THE COURT: She didn't go one by one. She made
19 sure she got a chance to talk to everybody. I don't know
20 why we can't do the same thing.

21 MS. MCNEILL: With all due respect to Ms.
22 Kollins, with this subject matter it's easier to pick a
23 jury. Everyone thinks sex crimes are bad, so it's much
24 easier on their side then our side to ferret out how
25 people feel about us defending someone accused of a sex

1 crime.

2 THE COURT: How long do you all estimate it will
3 take. I appreciate we have to have answers, but there are
4 way to do these thing and have discussions.

5 It's one thing if you think there are people who need
6 cause excuses. We can figure that out. We're looking for
7 fair and impartial jurors, not the jurors that are going
8 to swing our way. I really want to make sure we are
9 getting this process complete. I really don't see -- I
10 can go longer today, if need be. It's my preference and I
11 told them we wouldn't do that, but I wasn't anticipating
12 that need either. I would have taken a shorter break if I
13 thought that was going to be the case. That's why I was
14 asking.

15 MS. MCNEILL: I've never picked a jury in a day
16 in a sex case.

17 THE COURT: It's not a day. It's two days. You
18 heard a million answers from my questions. We just spent
19 an hour-and-a-half with Ms. Kollins. There was no
20 anticipation -- you all thought you'd get a whole day to
21 yourselves. You should have anticipated that and asked
22 for that.

23 MS. MCNEILL: I don't mean ourselves. The
24 Supreme Court, your Honor, has said that you can't put
25 undue time restrictions on jury selection. I think when we

1 get up there it's going to be a lot of for-cause
2 challenges once we start asking all the questions. I
3 can't put a time frame on it. If you want us to, I'll take
4 3 hours.

5 THE COURT: Let's get started and see where we
6 go.

7 MS. KOLLINS: I do want to make a record when we
8 finish jury selection.

9 THE COURT: When we cut them loose, we'll make a
10 record.

11 MS. KOLLINS: Maybe it's a good time before
12 staff is gone and things transpire. Ms. Savage has been
13 booked on her warrant. They sent the warrant return to
14 defense. They placed her in jail and placed it on
15 calendar for the 4th.

16 THE COURT: It's rescheduled to tomorrow at 1
17 o'clock.

18 MS. KOLLINS: We didn't --

19 THE COURT: He has been advised of the
20 relationship of the witness to the case, so even though
21 it's a half hour before we're to reconvene with trial,
22 they understand to have separate transport.

23 MS. KOLLINS: He's not in custody.

24 THE COURT: Understood. I think that's where
25 the discussion came before. My JEA says I keep forgetting

1 because often times we have to deal with that issue.

2 MS. KOLLINS: I know we're under a time crunch,
3 but I needed to interject that. I told the investigator
4 to take care to coordinate that with the jail. I wasn't
5 sure if they had communicate with the department. I'll
6 find out.

7 Thank you.

8 THE COURT: All I know is it didn't appear to be
9 driven by the State. We were aware of the custody status.
10 I reviewed the statute to figure out the time frame we had
11 within which to work on the bail hearing. Within the
12 documentation a \$10,000.00 bail was included.

13 We need to have the bail hearing. The jail actually
14 contacted the department and said there's no future date.
15 So we need something somewhere along the line and set
16 something on the 4th or you all set it on the 4th and we
17 brought it forward.

18 MS. KOLLINS: Thank you for clarifying.

19 THE COURT: Tomorrow at 1 o'clock. We'll bring
20 the jurors back at 1:30. If we -- depending on where we
21 are in the inquiry, we'll cut it loose and wrap up for the
22 day and bring them back tomorrow. That's how things go
23 sometimes.

24 I would like to talk to the two individual jurors
25 first. Let's Mr. Finfrock first, Elvis.

1 Have a seat Mr. Finfrock. My marshall advised us
2 today about the time of trial how that might impact your
3 ability to do your job and/or perhaps how you're here not
4 doing your job might distract you from these proceedings.

5 We had folks with work conflicts and hardship
6 concerns. We did not excuse those individuals. We know
7 there were questions asked that talked about the ability
8 to serve, things that might get in the way of service.

9 We are here half days Monday, Tuesday, and Wednesday.
10 We have full days Thursday and Friday. I understand from
11 your job position it's difficult. I don't know what your
12 schedule is. We are looking for folks to be able to set
13 aside and serve here.

14 Help us understand what concerns you expressed to the
15 marshall today.

16 PROSPECTIVE JUROR: Yes, I recognize we all have
17 responsibilities. As I hear this time scale I keep
18 thinking about my 170 students.

19 THE COURT: What grade.

20 PROSPECTIVE JUROR: 3 through 8.

21 It's coming time to end the semester, which we're
22 sort of wrapping up.

23 THE COURT: It ends the 22nd.

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: We'll end around the 12th, more

1 likely the 8th of December. That doesn't give you ample
2 time to complete.

3 PROSPECTIVE JUROR: In the next two weeks one of
4 my sole jobs is writing progress reports for each student,
5 which is very detailed, per student. I'll be working with
6 those kids over the next two weeks one on one. It takes
7 the semester to wrap up.

8 My anxiety level is going through the roof thinking
9 about this case trying to also figure out how to
10 management all the students.

11 THE COURT: Somewhere between now and the end of
12 the semester you're supposed to meet with 170 students and
13 write progress reports.

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Ms. Kollins.

16 MS. KOLLINS: Are the writing or drafting the
17 reports so you can do it in the morning or at different
18 times. We only have 3 afternoons and 2 full days.

19 PROSPECTIVE JUROR: Even without this case I
20 feel highly overwhelmed with what is expected of my
21 school. And, yes, I can be writing them at various times
22 and working with their portfolios.

23 THE COURT: Any questions for Mr. Finfrock.

24 MR. MACARTHUR: I do.

25 I appreciate everything you are saying.

1 Obviously you care about your students. You take your job
2 seriously. However, as you might imagine, we never know
3 what the facts of the case are going to involve until we
4 know, right. If you were to have a case that involved a
5 lot of engineering and math knowledge, it might be useful
6 to have a juror who is an engineer. Would you agree.

7 PROSPECTIVE JUROR: Yes.

8 MR. MACARTHUR: Several of the witnesses
9 testifying in this case are school teachers. Because you
10 are a school teacher, I presume you are aware of mandatory
11 reporters. I'm sure you know a lot of teachers who care
12 about students and can give much needed insight into the
13 course of their lives. Is that fair.

14 PROSPECTIVE JUROR: Yes.

15 MR. MACARTHUR: Do you consider jury service to
16 be a civic duty.

17 PROSPECTIVE JUROR: Yes.

18 MR. MACARTHUR: Put on the same level as the
19 draft or paying taxes.

20 PROSPECTIVE JUROR: Yes.

21 MR. MACARTHUR: My question becomes this. Given
22 your unique insight you might recognize how valuable you
23 are to this process make that sacrifice for all of us
24 here, if we ask you.

25 PROSPECTIVE JUROR: Yes.

1 MR. MACARTHUR: Is that something you take
2 seriously.

3 PROSPECTIVE JUROR: Yes.

4 MR. MACARTHUR: Thank you, sir.

5 No further questions.

6 THE COURT: Mr. Finfrock, you may step out. We
7 have one more juror to speak to. We'll get back to you.

8 Have a seat in the row. Thank you.

9 I wanted to bring you back in briefly to double check
10 to make sure, yesterday you had expressed a little concern
11 about following everything we were talking about.

12 PROSPECTIVE JUROR: Yeah.

13 THE COURT: But you know my understanding and
14 belief was that you were able to do so and we proceeded
15 today. But I was a little concerned when you declined to
16 answers to Ms. Kollins questions.

17 It wasn't clear to me what your reasoning was there.
18 If you didn't have an answer to it, that's fine If you
19 were a little nervous, that's fine. But if you're not
20 understanding us, that's a different issue. I'm trying to
21 understand better where your reluctance came from.

22 PROSPECTIVE JUROR: I got lost in the
23 conversation. I misunderstand a lot of things.

24 THE COURT: Remind us what you do for a
25 living.

1 PROSPECTIVE JUROR: Security officer,
2 dispatcher. We don't interact that much.

3 THE COURT: Remind me what your education level
4 was.

5 PROSPECTIVE JUROR: Some college.

6 THE COURT: We have another juror on the panel
7 whose first language is Tagalog, just like yourself.
8 You've lived here a significant period of time. They've
9 indicated they are following the translation. Can you put
10 it in some form of percentage, as I asked others to do
11 yesterday, of where you think your understanding is from 1
12 to 100.

13 PROSPECTIVE JUROR: 72 percent, yeah. Related
14 to this case, not really into like harassment, sexual
15 harassment. These things going on, I really don't know
16 these things.

17 THE COURT: You're not comfortable with these
18 things and not following things.

19 PROSPECTIVE JUROR: Not following. Also I never
20 been in this kind of situation before. I grew up with my
21 grandmother. She grew up me. The is the way our culture
22 is.

23 THE COURT: All right. Ms. Kollins.

24 MS. KOLLINS: I don't have anything, your
25 Honor.

1 THE COURT: mr. MacArthur, Ms. McNeill, any
2 questions.

3 MS. MCNEILL: No, your Honor.

4 THE COURT: Step back out. We'll be back in
5 touch with you.

6 PROSPECTIVE JUROR: Thank you.

7 THE COURT: I'm concerned about keeping Mr.
8 Rizalde.

9 MS. KOLLINS: I also have concerns with Mr.
10 Finfrock. I'll submit it. I'm not opposed to letting him
11 go, if that's the representation he makes. But I agree as
12 to Mr. Rizalde.

13 THE COURT: Let's start with Mr. Rizalde.
14 Defense, any objection to him.

15 MR. MACARTHUR: No objection.

16 THE COURT: That was my concern. I thought it
17 was stage fright, but it occurred to me he's not following
18 and he confirmed it.

19 What about Mr. Finfrock.

20 MR. MACARTHUR: I would object to letting him
21 leave because of his unique qualification.

22 THE COURT: I agree. He did express anxiety on
23 how he's going to complete his duties. I trust he'll be
24 able to do them.

25 Let's bring them in. Take your seats, please.

1 We have had one additional excusal from the panel.
2 Seat No. 9 is now open. I'm going to ask the clerk to
3 call the next juror in line for that seat.

4 THE CLERK: Chalice Lundquist, 523.

5 THE COURT: Thank you.

6 Ms. Lundquist, can you help us get to know you a
7 little better by going by through the questions on the
8 board.

9 PROSPECTIVE JUROR: Thank you.

10 I'm Chalice Lundquist, 523. My job is -- I'm an
11 instructional assistant at Production Vocal Academy of
12 Arts High School. I have been married for 27 years. My
13 husband is a retired lieutenant from Metro. I have 4
14 children.

15 THE COURT: What is your husband's name.

16 PROSPECTIVE JUROR: Robert Lundquist.

17 THE COURT: When did he retire.

18 PROSPECTIVE JUROR: When he retired he worked in
19 missing persons and domestic violence.

20 THE COURT: How long was he with Metro.

21 PROSPECTIVE JUROR: 24 years.

22 THE COURT: Thank you.

23 Go ahead.

24 PROSPECTIVE JUROR: I have some college. We've
25 got 4 kids. Three of them don't live in this State.

1 They're off doing college. My youngest is a senior in
2 high school and not working now.

3 THE COURT: Then we've talked about that
4 connection to law enforcement. We assume from his work
5 there are family friends. Do you have any other close
6 connections to law enforcement.

7 I assume you didn't recognize any potential witnesses
8 read here.

9 PROSPECTIVE JUROR: I recognized Magrath. I
10 don't know him.

11 THE COURT: But the name was familiar.

12 Any other connection to law enforcement through
13 family.

14 PROSPECTIVE JUROR: No.

15 THE COURT: Close friends with the Las Vegas
16 Metropolitan Police Department.

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Too many to name.

19 PROSPECTIVE JUROR: Too many to name. They're
20 Not friends. We see them on a regular basis.

21 THE COURT: Of course, the question that we
22 followed up with everyone with any law enforcement
23 connections, especially those related to anyone who may
24 testify in this case. Is that something that would impact
25 your ability to be fair and impartial.

1 PROSPECTIVE JUROR: No.

2 THE COURT: You'd be able to listen to the
3 testimony of law enforcement witnesses and give it just
4 such weight as you believe it's entitled.

5 PROSPECTIVE JUROR: Absolutely.

6 THE COURT: Would you have any reason to believe
7 you would tend to give greater weight to testimony of
8 someone just because they are a member of law
9 enforcement.

10 PROSPECTIVE JUROR: No.

11 THE COURT: Have you had experience through your
12 husband's job and knowledge of people -- how shall we say
13 this -- both good and bad folks in the job.

14 PROSPECTIVE JUROR: Absolutely. In every job.

15 THE COURT: What about connections to you,
16 yourself, close friends or family member been a victim of
17 the criminal justice system, either accused of a crime,
18 any crime, but specific to sex crimes.

19 PROSPECTIVE JUROR: My sister 17 year ago had a
20 situation with ex-husband. He beat her. She left, but we
21 haven't --

22 THE COURT: Here in Las Vegas.

23 PROSPECTIVE JUROR: No, California.

24 THE COURT: Was he prosecuted.

25 PROSPECTIVE JUROR: Not that I know of.

1 THE COURT: Any circumstances about that case
2 that would effect your ability to listen to the evidence
3 in this case.

4 PROSPECTIVE JUROR: No.

5 THE COURT: Any other situations like that.

6 PROSPECTIVE JUROR: No.

7 THE COURT: Again, whether it be victim or
8 accused, any connections you might have to any cases
9 involving sex assault or sex crime.

10 PROSPECTIVE JUROR: No.

11 THE COURT: Ms. Kollins, I know you had some
12 additional wrap-up questions. You may want to inquire of
13 Ms. Lundquist as well.

14 MS. KOLLINS: Briefly. How are you.

15 PROSPECTIVE JUROR: Good.

16 MS. KOLLINS: You were setting there, and I
17 don't know if the people back were paying attention to
18 everything but I can say I would like to think they do. I
19 wouldn't want to think they weren't.

20 Any expectations about a victim, how they should
21 act.

22 PROSPECTIVE JUROR: No.

23 MS. KOLLINS: You said your husband retired as a
24 lieutenant. Was he ever assigned to sex crimes.

25 PROSPECTIVE JUROR: Not unless there was a

1 lieutenant out, so there is a possibility he could have
2 been.

3 MS. KOLLINS: I recognize the name. I don't
4 have a face to put with it. I'm not sure.

5 Obviously, the question is going to be can you set
6 aside your association with law enforcement and give both
7 sides a fair shot.

8 PROSPECTIVE JUROR: Yes, I can.

9 MS. KOLLINS: We were talking about what if your
10 kids make bad choices. Does that mean they aren't
11 entitled to equal protection.

12 PROSPECTIVE JUROR: Not at all.

13 MS. KOLLINS: Any of your kids' friends ever
14 take a bad path, bad decisions.

15 PROSPECTIVE JUROR: We've had several friends
16 that had run-ins with the law.

17 MS. KOLLINS: Eventually found their way back
18 around.

19 PROSPECTIVE JUROR: One of them, yes. One, I
20 don't know.

21 MS. KOLLINS: Anything that would distract you
22 from your service for the next two weeks.

23 PROSPECTIVE JUROR: No.

24 MS. KOLLINS: Your association with law
25 enforcement, if you were to come to a decision one way or

1 the other in this case, would you feel compelled to
2 explain your verdict to them. Like, I did this because of
3 that, after this case was over.

4 PROSPECTIVE JUROR: Sorry. I want to make sure
5 I'm clear. Who are we speaking of.

6 MS. KOLLINS: You have friends in law
7 enforcement. Your husband was with law enforcement. If
8 you were to come to a decision either one way or the
9 other, would you feel you have to justify what you did to
10 your friends in law enforcement.

11 PROSPECTIVE JUROR: No.

12 MS. KOLLINS: That being said, I'm almost
13 prepared to pass the panel.

14 I want to thank everyone for listening to me. I know
15 it's long and tedious and horrifically boring, but in
16 closing briefly, Ms. Rhoades and I appreciate your time.

17 You may see us on our cell phones and that is not
18 because we are being disrespectful to you or this process.
19 There are things going on in this court room, and we're
20 also trying to coordinate things that are happening for
21 this case. If you see us on our phones, we're not
22 Tweeting. We're not on Instagram. We're not on Face
23 Book. We're returning emails. We're talking to our
24 investigator. We're doing things we're compelled to do
25 for our jobs. I always tell jurors that. I don't want

1 you to think we're playing on our phone while you are
2 trying to take in what we have to do here.

3 We treat this process respectfully. We appreciate
4 your time. Thank you.

5 We pass for cause, your Honor.

6 THE COURT: Mr. MacAuthur.

7 MR. MACARTHUR: Good afternoon everyone.

8 If I can assume that not everybody thinks this
9 is a great place to be. I know you've been here for a
10 couple of days, so I usually like to help manage people's
11 expectation so they're not angry later.

12 It's about 10 to 4:00. We started at 1:30. We
13 feel like we're half way through, because the State's done
14 now you're in front of defense. There is two of us. We
15 are covering different topics. You'll hear from both of
16 us. I want to apologize in advance and say that we're
17 certainly not going to get you out in an hour and 10
18 minutes.

19 We'll be seeing each other tomorrow. I hope you
20 don't hold that against us. If you do hold it against
21 somebody, please don't hold it against him. Fair.

22 Now, most of my questions are going to be to the
23 panel as a whole. So far we've been addressing these
24 questions to the first 32 people. However, I'd ask that
25 everybody in the room act as though I'm asking the

1 question to you. The reason being is that while you are
2 in the back of the room, rather than be up here, you may
3 find out that's not true. You'll save us a lot of time
4 tomorrow if you know how you would have answered those
5 questions in advance and pay attention to the questions as
6 though you were inside of the first 32.

7 Before I get started, Mr. McMullin.

8 PROSPECTIVE JUROR: Yes.

9 MR. MACARTHUR: Clark High School, 1990.

10 PROSPECTIVE JUROR: Close, 1989.

11 MR. MACARTHUR: Hyde Park Junior High School.

12 PROSPECTIVE JUROR: I grew up -- I came here
13 from Pennsylvania in high school.

14 MR. MACARTHUR: Did you have two double sessions
15 in Bonanza. You are a little more gray.

16 MR. MACARTHUR: That's okay. I had hair.

17 First thing. How many of you, based on what
18 you've heard so far, are interested in being a juror in
19 this case. I'm not saying willing. I'm saying, I want to
20 be a juror in this case.

21 If I could, I'll start in the back.

22 Ma'am, your badge number.

23 PROSPECTIVE JUROR: 463.

24 PROSPECTIVE JUROR: 462.

25 PROSPECTIVE JUROR: 517.

1 PROSPECTIVE JUROR: 333.

2 PROSPECTIVE JUROR: 346.

3 MR. MACARTHUR: This is awesome.

4 Second row. Third row.

5 PROSPECTIVE JUROR: 364.

6 PROSPECTIVE JUROR: 499.

7 PROSPECTIVE JUROR: 513.

8 PROSPECTIVE JUROR: 404.

9 PROSPECTIVE JUROR: 501.

10 PROSPECTIVE JUROR: 430.

11 PROSPECTIVE JUROR: 437.

12 PROSPECTIVE JUROR: 459.

13 PROSPECTIVE JUROR: 322.

14 MR. MACARTHUR: There is an abundance of
15 bridges. The next part of my question usually has to do
16 with people who prefer not to be here.

17 One of the most common questions I get when I'm
18 at a party. How do I get out of jury duty. I hate that
19 question. First of all, because it's a civic duty. Two,
20 I'm never going to get to sit on a jury. I know too much
21 about the system that one side is going to kick me every
22 time.

23 So the advice I give is the purpose of voir dire is
24 to ask you questions about how you feel about certain
25 things and based on your answers we may determine you're

1 not a good match for this case. It doesn't mean you're
2 not a good juror generally, but not a good match for this
3 case.

4 Does everybody understand that.

5 Okay.

6 So the most effective way to get out of jury duty, if
7 there is such a thing, is to merely answer the question if
8 it applies to you. If it applies to you, please, share
9 it. Chances are good one side or the other might have a
10 strong feeling about it.

11 The reason I say this is because most people think if
12 I can keep my hand down and hide in the back, they'll
13 never pick me. That's the opposite truth. That is not
14 how that works. We are left with the jury that we haven't
15 eliminated. So people that don't give us information seem
16 pretty benign, then with that in mind, does everybody here
17 understand all of our time and resources are currently
18 being used to determine whether this man, Joshua Honea,
19 committed a crime.

20 Everybody understand that if we're spending that much
21 time and resources that as a matter of policy we must
22 think it's important.

23 Does everybody here also regard it as important.

24 Put a different way, anybody here -- feel free to be
25 honest -- feel this isn't worth your time.

1 Excellent. Now, as the defense counsel -- lead
2 defense counsel -- there's two of us -- I am, for the next
3 couple of weeks, responsible for this man. Takes that as
4 given. Would you agree that when something is important
5 that you put more time and effort into making sure it goes
6 the right way.

7 Maybe, if you're having something delivered to
8 someone else you don't really care who's doing the
9 delivery. Is that fair. You don't interview the guy from
10 UPS to make sure he's a good person. Is that the same
11 attitude when we're picking a babysitter. Everybody
12 understand for the next two weeks, I'm the babysitter.

13 Now, when we talk about types of jurors, we are not
14 here to judge you. Everybody understand that. We're not
15 here to embarrass you. Let's say that you're real good
16 pie maker. You want to put your pie in a contest.
17 Everybody would like to win, right. And the finalist got
18 an apple pie from your and a cherry pie from someone else.
19 Would you want to know if the judge that is determining
20 the best pie hated cherry pie. See what I'm saying.

21 So my first question will be -- and I'm sure it was
22 asked in a different way -- I'm going to ask my way.

23 Is there anyone here, who based on the name of the
24 charges that you heard -- you heard it was a sexual
25 assault involving an underage person. I think the State

1 even included that the person was alleged to be 11. Does
2 that subject matter, before we get into any evidence or
3 facts, rub you the wrong way such that you couldn't be
4 fair.

5 Anyone.

6 Now, next, I would like to ask how many people here
7 have heard of the presumption of innocence.

8 THE COURT: I just read it yesterday.

9 MR. MACARTHUR: Can I get a random person to
10 tell me what they think that means to them.

11 PROSPECTIVE JUROR: Innocent until proven
12 guilty -- 512.

13 MR. MACARTHUR: All right.

14 We all know that sound bite. What does that really
15 mean.

16 PROSPECTIVE JUROR: What's the opposite of
17 defense -- prosecution. It's their duty to prove,
18 without -- beyond a reasonable doubt -- I know all of
19 these sound bites. I hear it all the time. But it does
20 mean like, you have to prove to every single juror here
21 that this person is guilty, one hundred percent. There
22 can't be any doubt. It has to be -- it's all or
23 nothing.

24 So even if, like, yeah, he could be guilty. Okay.
25 It has to be every person has to agree, yes, he's

1 guilty.

2 If it doesn't reach that point, it's still assumed
3 that that person is innocent.

4 THE COURT: Before you follow up on that, Mr.
5 MacArthur, I'm not going to read the instruction here
6 today because we're not settled on those full instructions
7 yet. Although there is a standard instruction on
8 reasonable doubt.

9 I just want to help the jurors to understand that
10 that summary does not entirely match the instruction that
11 would be given from the court. So when you use terms like
12 all or nothing, yes, the verdict has to be unanimous.
13 There's no doubt about that. There will be a specific
14 instruction that will tell the jurors what reasonable
15 doubt is.

16 You said terms like not any doubt. The instruction
17 is clear on what that is and that's not exactly how it
18 reads. I wanted to make sure the jurors are aware.

19 MR. MACARTHUR: Thank you, Judge.

20 That is correct. She is going to be the final
21 arbiter of what the law is and how you are expected to
22 apply that.

23 You understand that.

24 PROSPECTIVE JUROR: Yes.

25 MR. MACARTHUR: However my question is to see

1 before you're educated by her what it means to you. I
2 appreciate that complete answer.

3 Is there anybody in the prospective panel that
4 disagreed with her.

5 PROSPECTIVE JUROR: 517 -- I don't want to say
6 disagree, but for me, again, sound bites, we withhold
7 judgment until we have seen all of the facts. Saying the
8 same thing, but I like to clarify.

9 MR. MACARTHUR: I do the same thing. It drives
10 my family crazy. If you would, if you can, distinguish
11 what is the difference in what she said and what you
12 said.

13 PROSPECTIVE JUROR: Because if you are
14 withholding judgment I'm not assuming he's guilty or not
15 guilty. I'm assuming innocent. He didn't do it. If a
16 person didn't do it, and you change your mind at the end
17 or I believe -- I don't have any opinion if the person is
18 guilty or not guilty until the end. I don't hold judgment
19 until I see the facts.

20 MR. MACARTHUR: Thank you, sir.

21 Does everybody see the contrast in the two
22 versions. Is one of them right, or are they both right.
23 Can anybody tell me whether those two things can exist at
24 the same time.

25 I'm not hearing any answers. Let me put the

1 question a different way. We've all heard the term where
2 there's smoke there's fire, right. We all know that
3 Joshua Honea is the Defendant, right. And presumably we
4 live in a country where we don't pick criminal defendants
5 out of a lottery. There must have been some process by
6 which he got there, even if we don't know what that
7 process is. Is that fair.

8 Is anybody thinking that because Joshua Honea is
9 seated at this table next to defense counsel, that he must
10 have done something illegal or else he wouldn't be over
11 there. Anyone.

12 Ms. Rice -- 428.

13 PROSPECTIVE JUROR: I'm presuming that he's
14 necessarily guilty of something, but like you said some
15 process went forward and that's why we are all here.

16 MR. MACARTHUR: Mr. Perreault.

17 PROSPECTIVE JUROR: 459 -- just because somebody
18 is sitting at the table doesn't mean they're guilty. It
19 might be some kind of incident that -- like Law and Order
20 shows I watch there's circumstantial evidence, but he
21 could be not guilty. Maybe something happened, but not
22 all the facts are.

23 MR. MACARTHUR: Would it be fair to say that
24 none of us are surprised to find out there are
25 circumstances that led to him being here, but that we're

1 here to determine whether those circumstances are
2 consistent and compelling that he committed a crime.

3 Is that fair.

4 PROSPECTIVE JUROR: Yes.

5 MR. MACARTHUR: Here comes the tricky question.
6 How many of you thought when you came here that the role
7 of a juror is to be completely neutral, wait to hear the
8 evidence from both sides, not favoring one or the other.
9 And you render a verdict at the end.

10 If there is enough evidence to meet the standard
11 described by the judge, the Defendant is convicted.
12 There's not enough evidence, the Defendant is acquitted.

13 How many of you thought that was the way it worked.

14 Okay. Now, would everyone agree you haven't heard
15 any evidence, yet. You just know the charges. So if we
16 put you in the extremely awkward circumstance of going
17 into the jury room right now and coming back with a guilty
18 or not guilty verdict, how many people would vote guilty.

19 How many people would vote not guilty.

20 How many people would have to say I don't know.

21 MR. MACARTHUR: You all stepped into the bear
22 trap. If there is a presumption of innocence, does it not
23 require that the answer is not guilty, because you haven't
24 heard anything.

25 See what just happened there.

1 THE COURT: Ms. Chacon had her hand up.

2 PROSPECTIVE JUROR: 463 -- there is due process,
3 a presumption that there is a process that -- that's a
4 tricky question.

5 MR. MACARTHUR: You are right. I don't mean to
6 hide behind the trickery. What is not a trick is you all
7 agree you haven't heard any evidence, right. I said, if
8 we put you in a weird circumstance of going back to
9 deliberate now, how would you vote. And the vast majority
10 of people said they couldn't vote. Would you agree with
11 me that that suggests we don't have much of a presumption
12 of innocence going in.

13 You wouldn't agree.

14 PROSPECTIVE JUROR: I don't.

15 MR. MACARTHUR: Your point would be.

16 PROSPECTIVE JUROR: 532 -- my point is, I would
17 feel it goes along with what she said. It can't end
18 there. That's not the way it works.

19 We can't just not hear evidence and expect to do
20 something with that. So while I would feel like he's not
21 guilty because that's where it starts, we haven't been
22 allowed to hear anything. So you can't require me to have
23 a judgment yet. I guess that's what I was thinking. That
24 is where I was going.

25 MR. MACARTHUR: I don't disagree with you.

1 There's supposed to be a process. If the
2 process were perfect we wouldn't have to do this over and
3 over again. What I would like to do, if I could -- before
4 I ask the question, I'll give you --

5 PROSPECTIVE JUROR: Ward, 312 -- to render a
6 decision at that point would amount to a not guilty
7 verdict. I haven't heard anything. That is why I
8 answered the way I did.

9 MR. MACARTHUR: Let me be more precise. Not
10 being able to render a verdict is called a mistrial.

11 PROSPECTIVE JUROR: What is the consequence of
12 that.

13
14 MR. MACARTHUR: Sure. Having to do it again in
15 front of another panel or jurors -- another two weeks.

16 PROSPECTIVE JUROR: Just start the process
17 over.

18 MR. MACARTHUR: Putting it a different way.
19 Let's talk about the presumption of innocence and what
20 those words might mean.

21 How many of you are parents.

22 How many of you have ever received a telephone call
23 from the school saying your kid did something bad, please,
24 come talk to us.

25 Apparently, we have a room full of perfect kids.

1 I'll pick on Mr. McMullin. When you received that
2 call, did you go.

3 PROSPECTIVE JUROR: Yeah Usually, for my kids,
4 just they didn't do this assignment. Never a big deal,
5 fortunately.

6 MR. MACARTHUR: I don't mean to imply anything
7 else. Have you ever had somebody accuse your child of
8 something. Hey, I think your kid did this, this, stolen
9 something, broken something.

10 MR. MACARTHUR: I have a daughter that is the
11 sweetest girl in the world but because she was caught with
12 her friends she got caught bullying -- accused of
13 bullying.

14 THE COURT: Clearly the person that accused your
15 daughter, didn't know that about her.

16 PROSPECTIVE JUROR: Right. What's funny is the
17 person accused her friends, again, so --

18 MR. MACARTHUR: Fair enough. It happens that
19 way.

20 When you spoke to that person, did you ask them why
21 they thought your daughter was bullying.

22 PROSPECTIVE JUROR: It wasn't a situation where
23 we could confront the other parents.

24 MR. MACARTHUR: I might move onto a different
25 person.

1 Has anybody had a child accused of something and
2 you didn't know whether it was true or not, and you had to
3 go to school.

4 Yes, ma'am.

5 PROSPECTIVE JUROR: 364.

6 MR. MACARTHUR: If it's not too personal, could
7 you share that.

8 PROSPECTIVE JUROR: My son was accused of
9 flipping over the desk of another child at school in
10 anger.

11 MR. MACARTHUR: Did you find out whether that
12 was true or not.

13 PROSPECTIVE JUROR: Yes.

14 MR. MACARTHUR: Was it true.

15 PROSPECTIVE JUROR: Yes.

16 MR. MACARTHUR: When the school told you he
17 flipped over a desk, did you immediately ground him or
18 spank him, or do whatever it is you do in your
19 household.

20 PROSPECTIVE JUROR: No, I did not.

21 MR. MACARTHUR: Did you ask questions first of
22 the person who made this charge against your child.

23 PROSPECTIVE JUROR: I asked my child not the
24 other child.

25 MR. MACARTHUR: So to put another way, you did

1 some investigation.

2 PROSPECTIVE JUROR: Yes.

3 MR. MACARTHUR: You didn't just take somebody's
4 word for it, that your kid did something wrong.

5 PROSPECTIVE JUROR: No.

6 MR. MACARTHUR: Your children are important to
7 you.

8 PROSPECTIVE JUROR: Absolutely.

9 MR. MACARTHUR: You would let somebody abuse
10 them by making false accusation against them.

11 PROSPECTIVE JUROR: Correct.

12 MR. MACARTHUR: Is it also true that if there's
13 going to be disciplinary issues, you want to be involved
14 in that.

15 PROSPECTIVE JUROR: Yes.

16 MR. MACARTHUR: Would you agree with me that as
17 a parent your job is not sitting there as a neutral fact
18 finder listening to one side and the other and eventually
19 arriving at some disimpassioned (sic) conclusion as to
20 what happened.

21 Would you agree you might be biased in favor of your
22 children.

23 PROSPECTIVE JUROR: Yes.

24 MR. MACARTHUR: Can we presume that you have
25 your children's best interest at heart.

1 PROSPECTIVE JUROR: Yes.

2 MR. MACARTHUR: Would it surprise you the panel
3 if the way the criminal justice system works is to put you
4 in charge of the presumption of innocence, to marry you to
5 that status, until, and if, they can change your mind.

6 Only getting one head nod. Brave sir.

7 PROSPECTIVE JUROR: 517.

8 MR. MACARTHUR: Do you see the difference in the
9 way I described it versus the way you described it.

10 PROSPECTIVE JUROR: Yes.

11 MR. MACARTHUR: Does it make sense to you.

12 PROSPECTIVE JUROR: I see your point of view.

13 MR. MACARTHUR: Do you think that is my point of
14 view or is that actually what the constitution and the
15 criminal justice system expect.

16 PROSPECTIVE JUROR: I think that's your point of
17 view.

18 MR. MACARTHUR: Do you think I would be able to
19 get away with a false point of view in front of a
20 constitutionally elected Article 3 judge, if it was just
21 my opinion.

22 PROSPECTIVE JUROR: Everyone views things
23 different. That's how you view it. I view it as you want
24 to be impartial, and if I'm leading one side, I can't be
25 impartial.

1 THE COURT: Maybe -- I know you're going to
2 cover additional ground on this. As he said, we haven't
3 resolved the full instructions for the end of the trial.
4 I do believe this instruction is standard and will be one
5 that's given. It's a portion of instruction related to
6 this issue. I want to read and see if it ties into your
7 inquiry.

8 The Defendant is presumed innocent unless the
9 contrary is proved. This presumption places upon the
10 State the burden of proving beyond a reasonable doubt,
11 every element of the crime charged and that the Defendant
12 is the person who committed the offense.

13 MR. MACARTHUR: Thank you, Judge.

14 Sir, would you agree with me that it is no
15 longer just my point of view.

16 PROSPECTIVE JUROR: Sure.

17 MR. MACARTHUR: I don't mean to be obstreperous
18 about it. You're entitled to see the world the way you
19 see it. But the question becomes, is the way you think
20 the presumption of innocence, is it going to conflict with
21 the way the constitution imagines it should be provided,
22 if you're a juror in this case.

23 PROSPECTIVE JUROR: I don't believe so. If I
24 don't get the evidence that proves him guilty, the only
25 other option is not guilty.

1 MR. MACARTHUR: Okay. Understood.

2 Let me ask that same question that got us here
3 again. All you now have had an opportunity to hear about
4 how the law is applied, and that perhaps some of your
5 presumptions about being completely impartial and not
6 leaning one way or another are incorrect.

7 We haven't heard any evidence. If you have to decide
8 right now, how many of you would feel guilty.

9 How many would vote not guilty.

10 How many would still say, under these circumstances,
11 Mr. MacArthur, I still couldn't render a verdict.

12 If I could, let me the numbers for that group of
13 people.

14 PROSPECTIVE JUROR: 333.

15 PROSPECTIVE JUROR: 305.

16 PROSPECTIVE JUROR: 356.

17 PROSPECTIVE JUROR: 306.

18 PROSPECTIVE JUROR: 448.

19 MR. MACARTHUR: Did I miss anyone.

20 The State referenced in its voir dire that it
21 had the burden proof. They've explained to a limited
22 degree what that meant. Does everyone here understand
23 that only party that has a responsibility to present
24 evidence to you is them.

25 Would each of you agree that there are at least two

1 sides to a story.

2 How many people would be uncomfortable if they only
3 heard one side.

4 Excellent.

5 How could it be that in a fair trial the Defendant
6 has no legal or ethical obligation to present any
7 evidence.

8 How could it be that in a criminal trial that only
9 one side has an obligation to present evidence.

10 MS. KOLLINS: Your Honor, may we approach,
11 please.

12 THE COURT: Yes.

13 (Discussion held at the bench.)

14 MR. MACARTHUR: I don't mean to be quite so
15 mystical or arcane, but the question is can anyone imagine
16 a circumstance where the State puts on witness after
17 witness, two weeks, and the defense counsel literally sits
18 at their table and she shops for dresses on Amazon and I'm
19 playing (inaudible). We should be disbarred if we did
20 that.

21 Can anyone imagine a circumstance where the only
22 evidence being presented in a case is by the State for 2
23 weeks and the Defendant is still not guilty at the end.

24 Can anyone.

25 PROSPECTIVE JUROR: Michael Milton -- 517.

1 MR. MACARTHUR: I've seen a lot more people
2 being a little --

3 PROSPECTIVE JUROR: It would be weird. I'm sure
4 there is a circumstance that could be the case.

5 MR. MACARTHUR: I'm wondering if somebody has
6 one on hand.
7 Mr. Goings.

8 PROSPECTIVE JUROR: The way it works -- 462 --
9 the way I see it is something happened. He's been
10 accused. Now they have to prove that it's true. If they
11 can't do that, not guilty.

12 MR. MACARTHUR: Even if I don't say anything.

13 PROSPECTIVE JUROR: It's their job to say this
14 accusation points at him. He's done it. It's their job
15 to make that into a big neon sign overhead saying he did
16 it. Make me believe he did it.

17 MR. MACARTHUR: That is independent of me.

18 PROSPECTIVE JUROR: Correct.

19 MR. MACARTHUR: Ma'am.

20 PROSPECTIVE JUROR: 463 -- it's the State's job,
21 if they have the burden of proof, that is just their
22 burden to prove whether or not he's guilty with facts.

23 Their burden to provide it. If you don't say
24 anything and they had nothing -- didn't have the
25 sufficient evidence within their burden of proof to change

1 our minds, we'd have to find not guilty.

2 MR. MACARTHUR: Let me get a few obvious things
3 out of the way.

4 If I've got an airtight defense, an alibi he was in
5 France with the Premier on television and couldn't have
6 done it, I would want to show that to you, right.

7 I'm not saying that defense isn't going to present
8 evidence. The question is how well you understand the
9 burden of proof.

10 Let me make it more concrete. Everyone knows that
11 JFK was killed by a fascination -- November 23rd, 1963.
12 That's not news to anyone. I'm 43 years old. Born in
13 1972. If the State charged me with killing JFK and put on
14 witness after witness, saying looked like this guy, eye
15 witness. That's the same kind of rifle Mr. MacArthur
16 owns. Can you imagine they might have a hard time
17 convicting me of the assassination.

18 PROSPECTIVE JUROR: I hope so.

19 MR. MACARTHUR: Oh, I hope so.

20 You'd be surprised. And somebody give me the obvious
21 answer. Why am I not guilty of that crime.

22 Unless they put on evidence of time travel, it
23 doesn't matter what else they put on, does it. Because
24 something is missing. Agreed.

25 Does that get everyone here a better conception of

1 how the State has the burden of proof, and if they can't
2 meet it -- it doesn't matter what's going on over here --
3 it's just they couldn't meet it.

4 PROSPECTIVE JUROR: Yeah.

5 MR. MACARTHUR: Good. Okay.

6 Let's talk about elements of a crime. The court
7 has given you limited information on the charges that will
8 be brought here. You've heard about sexual assault.
9 You'll also hear about kidnapping and some other
10 electronics related charges.

11 Do you understand that criminal charges have
12 elements. Things that to be proved for them to be true.

13 Okay. I would like to put this in a different way.
14 You can think of those elements as ingredients, right. So
15 instead of saying sexual assault, you could also say the
16 State has to prove chocolate chip cookies. To do that,
17 they'd have to prove beyond a reasonable doubt they had
18 flour, sugar, milk, little bit of yeast, chocolate chips,
19 and whatever else goes in there, including eggs, right.
20 If they do that, beyond a reasonable doubt, does anybody
21 here have a problem voting guilty.

22 What happens if the State proves beyond a reasonable
23 doubt that flour, sugar, and chocolate chips, what do you
24 have.

25 PROSPECTIVE JUROR: No eggs.

1 PROSPECTIVE JUROR: No cookies.

2 MR. MACARTHUR: You might have something that's
3 edible. It might even taste good. But are they
4 cookies.

5 Does everyone here understand that each one of those
6 elements, independently, is equally important. Because if
7 you don't have heat, you got cookie dough.

8 Is there a danger that anyone here is going to return
9 a verdict against this young man if they give you cookie
10 dough. Think about that.

11 Anyone.

12 We have a case in which this young man is charged
13 with having sexually assaulted a minor. And, God, does
14 that hang in the air for as long as it takes to where we
15 start presenting evidence.

16 MS. KOLLINS: May we approach.

17 THE COURT: We don't need to approach.

18 Mr. MacArthur, we already had one discussion. We are
19 not speaking about the case at hand, and we are not in
20 anyway to influence outcomes in the trial.

21 You have questions to ask, please, ask the
22 questions.

23 MR. MACARTHUR: Understood, Judge. I'll ask a
24 proper question.

25 THE COURT: Disregard the prior question. Ask

1 proper questions.

2 MR. MACARTHUR: All right. Placing it a
3 different way.

4 Is there anyone here, who because of the nature of
5 the charges, in the way it might make you feel, might want
6 to hold the State to a slightly lesser standard. That if
7 they get over half way there, you'll do the rest of the
8 work for them.

9 Does that make sense.

10 PROSPECTIVE JUROR: Makes sense.

11 MR. MACARTHUR: Your badge number.

12 PROSPECTIVE JUROR: 502-- I don't know if it
13 pertains to the question, but I just -- I feel like I need
14 to make it known that the more and more -- it's nothing
15 personal against you -- but the more and more I hear you
16 ask questions, I'm beginning to doubt if I am going to be
17 impartial in this particular sense. Because I'm
18 becoming -- I don't know if this is like appropriate to
19 say, but I'm becoming a little intimidated. I have no
20 strong feelings up until like a couple minutes ago. When
21 you first approached, I'm feeling like I'm literally
22 nervous right now.

23 I don't know if that's something that needs to be
24 taken into consideration. I feel -- I felt strongly
25 enough about it to say something.

1 THE COURT: Let me follow up before
2 Mr. MacArthur does, if he has questions for you.

3 Let me ask it this way. Because we had a
4 conversation with one of the other jurors yesterday, but
5 it was separate from the group.

6 When it comes time to deliberate, it's going to be 12
7 people who are on the panel who are the primary jurors,
8 who will go in that room and deliberate. What we are
9 looking for are people who will have their recollections
10 of the evidence, the facts they found, and sit down with
11 their fellow jurors and look at the law and apply the law
12 to the facts as they them to be and deliberate.

13 Deliberation, of course, presumes there will be
14 communication back and forth and perhaps disagreement,
15 some agreement, or attempt to reach agreement. Will you
16 be able to do that. Do you think based on the reaction
17 you are having now in terms of questions that are
18 important for us to elicit information so that the
19 attorneys can make a final determination on the panel --
20 and Mr. MacAuthur explained in the beginning that this
21 voir dire process is to help them understand who the best
22 people will be.

23 PROSPECTIVE JUROR: I completely understand.

24 THE COURT: Think you can do that.

25 PROSPECTIVE JUROR: When he put it in the sense

1 of like, cookie dough, if we are really going to talk in
2 that sense I feel like in my personal life and the things
3 I've experienced, if somebody presents something and -- I
4 mean, I'm just being completely honest here.

5 If somebody has something that is 99 percent and not
6 100, if you go percentages like cookie dough, I would be
7 inclined to believe the 99 percent as being there. I
8 would not be able to, at least, have that in my mind that,
9 okay, this is 99 percent right there --

10 THE COURT: There is going to be instruction on
11 reasonable doubt. The best thing to do at this point is
12 to complete this line of inquiry with the understanding
13 you will be instructed on what reasonable doubt is.

14 The reason I'm holding back is you'll all be
15 instructed on that. Your duty as jurors is to deliberate
16 with your fellow jurors and reach a verdict. Anyone
17 believes they can't do that.

18 I see no hands at this time.

19 Mr. MacAuthur, any additional line of questioning.

20 MR. MACARTHUR: Yes, ma'am.

21 First let me say --

22 THE COURT: Can I have counsel at the bench.

23 (Discussion held at the bench.)

24 THE COURT: There was some discussion I wanted
25 to confer with counsel. I'm going to hold off on reading

1 the reasonable doubt instruction, but something that's
2 important for the jurors to understand. I want to see by
3 a show of hands if there is anyone who doesn't understand
4 and needs to discuss this further. Is that there is no
5 numerical quantitative if you get "X" percent it's this.
6 If you don't, it's that. That's not how the reasonable
7 doubt analysis works.

8 So based on the discussion, based on how perhaps the
9 hypothetical was interpreted, I think there was some
10 concern raised that somehow there has to be a numerical
11 percentage to the process that is quantifiable. That's
12 not how the instructions read and what those instructions
13 will be.

14 Anybody that has problem with understanding that
15 there will be instructions on reasonable doubt. There
16 will be instructions on the State's burden and the fact
17 that there are elements of a crime and that those elements
18 need to be found in order for the crime to -- the charge
19 to be determined. And I think we addressed that to some
20 degree in what I read before. I'll read it one more
21 time.

22 That the Defendant is presumed innocent unless the
23 contrary is proved. This presumption places upon the
24 State the burden of proving, beyond a reasonable doubt,
25 every element of the crime charged. And the Defendant is

1 the person who committed the offence.

2 That is how we'll proceed. There will be
3 instructions to help you understand that.

4 Anybody now who has a concern about being able to
5 follow those instructions. I see no hands.

6 Mr. MacAuthur, let's go ahead and reassume the
7 questioning for now. We do intend to break close 5:00.
8 I'll check back in with counsel and see where we are. We
9 are going to need you to return tomorrow to complete the
10 process, as Mr. MacAuthur indicated when we first began
11 questioning.

12 Go ahead.

13 MR. MACARTHUR: Thank you, your Honor.

14 Let me drop my volume a bit. You are right, but
15 I think perhaps my question is misunderstood. I wasn't
16 asking you about reasonable doubt when I started the
17 question. I was talking about the element of crime and
18 how each one has to be proven beyond a reasonable doubt.

19 Now the judge explained she will give you the
20 definition of what reasonable doubt is. In your mind how
21 you feel about the evidence, my question, did you
22 understand before you get to reasonable doubt issues that
23 the State has to provide you evidence on each element.

24 PROSPECTIVE JUROR: Yes.

25 MR. MACARTHUR: I didn't mean to make it not

1 serious by calling it cookie dough. I wanted to use
2 something that we're familiar with that isn't quite so
3 heavy as sexual assault.

4 So as you sit there, do you understand that it is the
5 State's burden to provide you proof on each one of these
6 elements.

7 PROSPECTIVE JUROR: Yeah, I understand that. I
8 explained it earlier when you asked about the presumption
9 of innocence, I think I made a pretty clear statement on
10 my feelings about it.

11 MR. MACARTHUR: You understand that if there are
12 4 elements in a crime and they only prove 3 of them that
13 we are not in the area of reasonable doubt. We are in the
14 area of whether or not they've met their burden.

15 PROSPECTIVE JUROR: Okay.

16 MR. MACARTHUR: Make sense.

17 PROSPECTIVE JUROR: Yes.

18 MR. MACARTHUR: The reason I said you are right
19 is there is no reason that you should feel intimidated.
20 If I'm making you feel that way and other people in the
21 room feel that way, I'm not doing a good job.

22 PROSPECTIVE JUROR: All right.

23 MR. MACARTHUR: While I'm talking to you, would
24 you promise if you were a juror to hold them to their
25 burden to make them prove those elements to your

1 satisfaction before you voted guilty.

2 PROSPECTIVE JUROR: I would say, yes. I
3 feel -- I guess I'm feeling still conflicted from before
4 with the whole if we had to go deliberate now would you
5 pick not guilty because that's not reality. I guess I'm
6 feeling a little -- like I was going down a path and now
7 all of these other things are coming up, and it doesn't
8 really relate to me in a way, I guess. Like, I guess it's
9 gotten muddy, I think.

10 I feel at least it strayed. The questioning from the
11 prosecution versus defense is so different I guess it's
12 kind of like threw me for left curve.

13 MR. MACARTHUR: Are these impressions
14 interfering with your ability to be fair to that man.

15 PROSPECTIVE JUROR: I would say, no.

16 MR. MACARTHUR: You would say, no.

17 You bring up a good point. Back when I asked
18 about the presumption of innocence, you said I'm neutral.
19 I'm not on one side or the other. Then I questioned this
20 woman about her bias in favor of her children. We talked
21 about discipline. You know the conversation.

22 It was only until somebody had given her enough
23 information to where she was confident that her child had
24 done something wrong, right. And she agreed. I'm not
25 saying you have to agree, but she agreed that as this

1 child's mother she required a high standard of proof
2 because this is her kid.

3 PROSPECTIVE JUROR: Yes.

4 MR. MACARTHUR: o you see how that might be
5 different then being perfectly impartial.

6 PROSPECTIVE JUROR: I can see the difference.

7 MR. MACARTHUR: So I guess the real question is,
8 are you willing to accept the presumption of innocence,
9 which requires you to assume that man, as he sits there
10 now, didn't do anything wrong. And that the State, by
11 presenting witnesses and evidence, has to actually change
12 your mind. Not get you to go in that direction because
13 you were in the middle. But actually take you from that
14 guy is not guilty to good point, good point.

15 Now, I'm over here, and I'm no longer with you. Now
16 I've been convinced beyond a reasonable doubt because they
17 have met all of those elements that you are guilty.

18 See the difference there.

19 PROSPECTIVE JUROR: I see the difference.

20 MR. MACARTHUR: So I'm not only talking to you.
21 Does everyone here see how that might influence the out
22 come differently. That if you are perfectly okay with
23 this guy being guilty or not guilty, you might arrive at a
24 different destination then if you start off saying, hey,
25 you are not guilty. I'm going to make the government

1 prove beyond a reasonable doubt that you did something
2 wrong before I change my mind.

3 MS. KOLLINS: May we approach.

4 (Discussion held at the bench.)

5 THE COURT: Proceed, Mr. MacAuthur.

6 MR. MACARTHUR: Thank you.

7 Hopefully I don't have to restate that long
8 premise. Does everyone here understand the difference
9 between the expectation that you presume he's not guilty
10 and that somebody has to then change your mind. Not just
11 tip the scale. All right.

12 If I could, Mr. Finfrock, 306.

13 PROSPECTIVE JUROR: Yes.

14 MR. MACARTHUR: Did you have a change of heart.
15 I believe you originally were in a group of people that if
16 you were in the awkward circumstance of having to render a
17 verdict before you heard evidence, you would, like, I
18 can't vote. Have you had a change of understanding at
19 all.

20 PROSPECTIVE JUROR: Well, I have been sitting
21 here thinking about your initial questions about, you
22 know, you walk in how do you feel about the person, or do
23 you have an initial feeling whether they are guilty or
24 innocent without knowing the facts. I want to be as
25 unbiased as I can, but there is a side to me that someone

1 brought this person here. He must -- like, I tend to
2 really genuinely think about where my heart is. I do lean
3 toward maybe there is something -- there's definitely
4 something serious that's happened that, you know, this
5 person has been involved with, so, yes. But I don't want
6 to think that way, but I'm trying to be honest.

7 MR. MACARTHUR: I appreciate that answer.
8 That's what we are here to do. The question is not can
9 you provide the right answer. The question is are these
10 circumstances, with this Defendant, these facts the right
11 case for you to be a juror, right.

12 PROSPECTIVE JUROR: Yes.

13 MR. MACARTHUR: You have candidly expressed that
14 regardless of what the law is you have misgivings because
15 it's a serious charge and if it doesn't feel like a it
16 would be a coincidence, him sitting there, right.

17 But putting it another way, is you were sitting over
18 there -- I'm not saying whether you did something wrong or
19 not -- would you feel comfortable with a prospective juror
20 feeling the way you do about you sitting over there.

21 Does that make sense.

22 PROSPECTIVE JUROR: I would recognize that there
23 would be several jurors that would probably feel as I'm
24 feeling and maybe not state it, but do feel that way.

25 MR. MACARTHUR: Sure. Would that frighten

1 you.

2 PROSPECTIVE JUROR: It would be scary.

3 MR. MACARTHUR: I appreciate that answer. That
4 is what we're talking about.

5 So ladies and gentlemen -- let me open it up to the
6 panel. Mr. Finfrock has expressed a human feeling. Maybe
7 it doesn't work to the benefit of the Defendant. Maybe it
8 works to the benefit of the State. He's entitled to feel
9 that way.

10 How many people feel similarly to Mr. Finfrock. If I
11 could have your badge numbers.

12 PROSPECTIVE JUROR: 305.

13 PROSPECTIVE JUROR: 523.

14 PROSPECTIVE JUROR: 356.

15 PROSPECTIVE JUROR: 428 -- we are not working on
16 zero facts. Like we know a few things about the case.

17 MR. MACARTHUR: Do we.

18 PROSPECTIVE JUROR: Those few things presented,
19 I guess.

20 MR. MACARTHUR: Okay. I might counter that.
21 What you've heard is an allegation as opposed to facts,
22 right.

23 PROSPECTIVE JUROR: Right.

24 MR. MACARTHUR: Was there something else you
25 wanted to say.

1 Was there one more hand or two over there.

2 Yes, Juror 542.

3 PROSPECTIVE JUROR: Now that we got more
4 definition of like what exactly it like comes down to, I
5 feel like it would be appropriate to put my name on that
6 list.

7 MR. MACARTHUR: Understood. Your number
8 again.

9 PROSPECTIVE JUROR: 542.

10 MR. MACARTHUR: 542, okay.

11 Directing the next question to the last people
12 that raised their hands and provided their numbers.

13 You'er here to do the best job you can, but you
14 have already had the opportunity to hear from the State a
15 couple of hours. You heard from the Judge a couple of
16 times. Are you likely to change your minds just because
17 some court official tells you should feel differently.

18 PROSPECTIVE JUROR: No.

19 MR. MACARTHUR: Fair to say because there are 7
20 of you -- if I'm wrong, raise your hand so I can respond
21 to that. If I don't see a hand, I'll assume that --

22 PROSPECTIVE JUROR: Sara Rice -- can you
23 elaborate.

24 MR. MACARTHUR: Sure.

25 Mr. Finfrock described his misgivings. It's not

1 because he didn't understand the presumption of innocence
2 or the burden of proof, or the fact that the judge is
3 going to read the law. He was merely stating that on the
4 inside, these are my misgivings. And they interfere with
5 my ability to do the whole presumption of innocence the
6 way you describe it.

7 My question was, if the judge says you are supposed
8 to apply the law differently, is it going to change how
9 you feel on the inside. Is that something you're going to
10 be able to eliminate, just because the judge told you
11 don't feel that way.

12 Ms. Rice says she would.

13 PROSPECTIVE JUROR: Ms. Lundquist, 523. I would
14 like to clarify that, yes, I can see that point of view.
15 I do have those feelings. But I also can see my son in
16 that seat, and I'd have to balance that.

17 Does that make sense.

18 MR. MACARTHUR: It does.

19 PROSPECTIVE JUROR: That is a human thing, but,
20 again, I don't want to be responsible for doing damage to
21 someone who is not guilty.

22 MR. MACARTHUR: Sure.

23 PROSPECTIVE JUROR: I have both of those
24 feelings.

25 MR. MACARTHUR: Ms. Lundquist brings up a good

1 point. This entire line of questioning being about the
2 presumption of innocence and attaching yourself to that
3 idea that the person is not guilty until someone changes
4 your mind. Her translation for that is I can imagine my
5 son. Why is that important.

6 Anybody.

7 MS. KOLLINS: Your Honor, may we approach.

8 PROSPECTIVE JUROR: Because you are biased in
9 that degree.

10 THE COURT: Mr. Goings, your badge number is.

11 PROSPECTIVE JUROR: 462.

12 THE COURT: It's getting close to 5:00. Let me
13 have counsel approach briefly.

14 (Discussion held at the bench.)

15 THE COURT: Ladies and gentlemen, sorry that I
16 misspoke. When we started here today I should have
17 estimated differently our time frame, when you had a break
18 and other things. I had hoped to complete selection
19 today. That is not going to be the case. We do need you
20 to return tomorrow. We do anticipate completing tomorrow.
21 I trust you will see where we are in the process, but as
22 you can see this is very important business that we are
23 engaging in. I want to make sure during the final
24 selection process we have done our best jobs to have the
25 jurors for this panel.

1 We are going to recess for the evening. We'll ask
2 you again --

3 JURY ADMONITION

4 During the recess, ladies and gentlemen, you are
5 admonished not to converse among yourselves or with anyone
6 else, including, without limitation, the lawyers, parties
7 and witnesses, on any subject connected with this trial,
8 or any other case referred to during it, or read, watch,
9 or listen to any report of or commentary on the trial, or
10 any person connected with this trial, or any such other
11 case by any medium of information including, without
12 limitation, newspapers, television, internet or radio.

13 You are further admonished not to form or express any
14 opinion on any subject connected with this trial until the
15 case is finally submitted to you.

16 We do plan to start promptly at 1:30. So be here
17 tomorrow ready to go. Thank you.

18 (Prospective Jurors Dismissed.)

19 THE COURT: We had a couple of bench conferences
20 related to voir dire inquiry of Mr. MacArthur so far.

21 First objection that was raised by the State
22 when they asked to approach was as a result of a
23 hypothetical that was given related to ingredients or
24 elements, I should say, of each of the crimes and equating
25 that to chocolate chip cookies. As Mr. MacArthur pointed

1 out at the bench one of the jurors Ms. Baiza, 512, she
2 indicated in her response -- then indicated she was
3 potentially conflating the idea of elements of the charge
4 and her duty as a juror in regard to reasonable doubt, put
5 a number on it.

6 Ms. Kollins at that point sought to object and raised
7 the issue of there is no quantifying of reasonable doubt
8 and the court addressed that in a following up discussion
9 with the jurors once we ended that bench conference.

10 Does either side wish to make a record regarding that
11 bench conference. Ms. Kollins, as to your objection
12 first.

13 MS. KOLLINS: No, your Honor. The court cured
14 the State's concern. He was attaching a numeric quantity
15 to what was required of reasonable doubt. The court cured
16 it with the instruction.

17 THE COURT: Mr. MacAuthur.

18 MR. MACARTHUR: Thank you, Judge.

19 Let me say the court and the State are
20 absolutely correct, but should not be an indication of
21 reasonable doubt. However, the reason why the objection
22 was inappropriate was that the prospective juror completed
23 reasonable doubt with elements. So had I been permitted
24 to continue I would have said you misunderstood me. We're
25 not trying to put numbers on reasonable doubt. What I'm

1 asking is if you understand what elements are and how they
2 pertain to the proof of a crime.

3 THE COURT: Let's be clear. You did continue.
4 You did say that.

5 MR. MACARTHUR: After the bench conference.

6 At any rate, my question itself was not
7 objectionable. Her response got into an area we'd want to
8 avoid, but I would not have let her continue down that
9 path.

10 THE COURT: Ms. Kollins.

11 MS. KOLLINS: The last thing, your Honor. She
12 actually touched on the numeric issue twice during his
13 questioning. The first time I didn't say anything.
14 Questioning continued. It went to discuss how many
15 elements, ingredients were in the cookies. She went back
16 to the numerical reference, and that's when I approached.
17 So, you know, she completed it and it was polluting the
18 panel.

19 THE COURT: The court did indicate some concern
20 with the hypotheticals to the extent some of them may
21 touch upon but may not necessarily create the most
22 accurate impression of what the burden and what the
23 instructions would be on the subject.

24 MR. MACARTHUR: To respond to what Ms. Kollins
25 said, is that it's inappropriate for counsel to quantify

1 reasonable doubt or try to encourage them to do that.

2 However, it is never inappropriate to hear what it is a
3 juror has to say. The entire purpose of the voir dire is
4 to determine whether or not they're a suitable jury.

5 THE COURT: I it appropriate for counsel, once a
6 juror misstates something like that, that it's appropriate
7 of counsel to correct them.

8 MR. MACARTHUR: I intended to do that. I tried
9 to lead her away the first time. When she did it the
10 second time, Ms. Kollins had made the objection.

11 THE COURT: Fair enough. I want to make sure
12 we're on the same page.

13 MR. MACARTHUR: The purpose of the entire voir
14 dire process is determine whether or not we have suitable
15 jurors. And those answers are informative. If she had
16 said, for example, If I was 60 percent of the way there, I
17 probably would vote guilty. That's a huge problem and
18 that would give me grounds for cause. I don't know what
19 the answers are going to be. I know what limits there are
20 on questions I can ask put. If they throw in additional
21 information that provides insight to the state of mind of
22 the jury, then that is fertile information that is in no
23 way improper. I did not encourage that answer, but as to
24 the extent it informed her thinking process, it was very
25 relevant to whether she could be kicked for cause.

1 THE COURT: The second bench conference related
2 to an objection as to a question that was asked that
3 appeared to not be a question as much as a statement on
4 presumption of innocence and circumstances of that.
5 Phrased as, you know, you come in here and you think -- I
6 don't want to rephrase it, it's in the record.
7 Ultimately, related to presumption of innocence and how
8 that should be handled by the jurors.

9 Then there was, again, an objection raised by Ms.
10 Kollins at the bench about -- that this was -- wasn't
11 really a question as much as it was a statement, a lengthy
12 one.

13 I then explained to counsel that I thought both
14 counsel had engaged in some of that in terms of this voir
15 dire and to some degree we are educating jurors as to
16 their responsibilities and seeking from the group if they
17 understand that. Asking the converse also helps with
18 anyone who doesn't understand.

19 I expressed to Mr. MacAuthur some of the times he'd
20 passed on the opportunity to asked the converse and not
21 follow up with the group that that would help elicit that.
22 And maybe we were spending a significant period of time
23 with one juror that that would be problematic if it wasn't
24 eliciting any information from the full panel.

25 As a follow up Mr. MacAuthur indicated he would and

1 did, in fact, resume his questioning and enlarged the
2 questioning to the full panel.

3 Ms. Kollins, anything to add.

4 MS. KOLLINS: No. The court covered it. Part of
5 my concern was it was so compound that it was turning into
6 a statement. Nobody was really responding.

7 THE COURT: Mr. MacAuthur.

8 MR. MACARTHUR: Court's indulgence. No
9 statement.

10 THE COURT: I know Ms. Kollins just had the
11 third bench conference.

12 MS. KOLLINS: I didn't argue it up there. It
13 was the Golden Rule. The State's position is this. I
14 could never stand up here and say put yourself in the
15 shoes of Morgan Savage. This poor girl stated -- blah,
16 blah, blah, blah.

17 This juror bought up I imagine my son sitting there.
18 That's from her mouth and didn't elicit that. So that's
19 not on him. But the follow-up question, if we have to
20 read it back -- yes, well what if you were him, what if
21 that was him. And that's why this is important. You
22 can't ask them -- you can ask them, can you be fair. But
23 you can't ask them to put themselves in the shoes of the
24 Defendant in that manner.

25 THE COURT: It is tricky because it is not

1 uncommon to ask a question of a juror, would you want a
2 juror like you sitting here if you were the Defendant.
3 Ms. McNeill asked that question of one of the people voir
4 dired yesterday. She did it very artfully.

5 I would agree with you on that point that it didn't
6 necessarily state the question the same way did before.

7 MS. KOLLINS: It is asked in that manner all the
8 time. This particular juror said I can imagine my son
9 sitting over there. That is not the context that we
10 generally permit that. We can't ask jurors, you know, if
11 this was your kid sitting over there, now is it going to
12 be a higher standard. Is that going the impact your
13 ability to review reasonable doubt. That's the whole
14 reason that putting yourself in the shoes of an offender
15 is prohibited.

16 THE COURT: The way she explained the answer
17 didn't bother me as much. I understand why you're
18 objecting to the follow up. The way she explained it when
19 she talked about, I'm trying to clarify the answer I gave
20 previously when I said I was one of those who might have
21 these misgivings coming in. But then she indicated I can
22 see it the other way because I can balance it out because
23 I can look at it like this. And she did that. I thought
24 that response didn't necessarily go where it should have
25 gone. I understand your concern. We're going to continue

1 the inquiry differently.

2 MS. KOLLINS: That was my only concern. I'm not
3 suggesting that Mr. MacAuthur elicited what she said.
4 What she said is what she thinks and that's fine. It was
5 the follow-up question where it was going to go and
6 telling them that that is why this is important. I
7 disagree.

8 THE COURT: Ms. McNeill, did you want to speak to
9 this.

10 MS. MCNEILL: I did want to respond to that,
11 your Honor.

12 The Golden Rule is something that comes up in
13 closing. You're not allowed to say put yourself in this
14 person's shoes. But when we are picking a jury, it's
15 something very different. They should put themselves in
16 those shoes. If I were the State, I would want them to
17 because putting themselves in the shoes might turn out
18 they can't be fair to the State. I would have concerns
19 about that at this point now that's she's thinking about
20 her son.

21 What we're here to do is find out if they can be fair
22 to both sides. And the only way you can ferret out if
23 people can be fair is to let them talk and hear what they
24 have to say. And when they say things like that, that's
25 when you get into what's going on in their head.

1 So to follow up with, okay, so if you did put your
2 son there, how does that effect you. Because what she
3 might say is if I think about it that way, you know what,
4 I am going to hold them to a different burden of proof, or
5 I'm going to make you prove something. So getting them to
6 talk about what they think is going on and what they're
7 supposed to be doing and how they're viewing things is
8 absolutely appropriate.

9 I would follow up with this. I don't believe it was
10 inappropriate -- his follow-up question. Especially in
11 light of the fact that for an hour-and-a-half what they
12 heard from the State was victim, victim, victim, victim,
13 victim, predator, predator, predator. All we talked about
14 in this room is that there is a victim. There's not.
15 They haven't decided that.

16 THE COURT: I don't insert myself in these
17 things. I don't think it's been overused, but it has been
18 used.

19 MS. MCNEILL: Right. And I do object and that's
20 why I am going to have to spend some time with this very
21 sensitive topic. My point they're clearly trying to
22 educate the jury. I know we're not supposed to. Let's be
23 candid. That's what we're doing. We all know we do it.

24 I think one of the things that's a side effect of
25 that is we have to hear what they're actually thinking about

1 what we're saying to them. So I don't think the question
2 was inappropriate in light of the fact it's drawing out
3 that now she's thinking maybe I do have some ideas about
4 how this works that might effect both sides.

5 THE COURT: Here's the thing I want to sort of
6 get straight here and hopefully we can get through
7 tomorrow and get finished and all be on the same page.
8 I'm not going to artificially constrain either side,
9 defense specially. I'm not going to constrain either side
10 to finish the voir dire the way you see fit. And when I
11 express my concerns I express them because I think in
12 fairness you need to know I have them, and I'm looking for
13 some change in direction on how things are going.

14 At the end of the day what I'm looking for here, what
15 I don't perceive is happening to the degree that makes the
16 court feel better about the circumstances, is I'm not
17 seeing the follow up that helps the jurors understand. I
18 have no problem with you understanding and going to try to
19 understand the thought process on how they're
20 understanding what it is we're doing here, but we're not
21 getting the follow up. Like, for instance, well, I don't
22 disagree with you Ms. McNeill. The Golden Rule does apply
23 to closing. We are -- it would be impermissible to start
24 this part of the process, because those folks might end up
25 being on the jury, to start talking Golden Rule type

1 things. I think it was her answer. I think she
2 quantified -- let me use a different word -- she explained
3 what she meant by how she's balancing and how she's
4 thinking. Sharing her thought process and where it's
5 coming from. But to the extent there are things that
6 start to come out, you know, like this 99 percent, 100
7 percent, her expression. I'll come in, and I have, but I
8 would expect counsel also to, you know, confirm, well, you
9 know, the court is going to instruct on this, but we are
10 trying to understand, so let's move onto this, and sort of
11 bring it back to their understanding of what the trial is
12 going to be and what it's going to do.

13 I don't disagree you have to get to know these people
14 better and their minds and what they're thinking so you
15 can make your decision. I'm going to keep talking here
16 for a minute because now I'm going to segue into a
17 question I have for defense counsel more than the State.

18 Are you -- is this -- are we -- this line of
19 questioning we're in right now and the 7 people, for
20 instance, that you focused on who then indicated -- are
21 you of the belief that as you complete this line of
22 questioning that those are going to go to cause excusals.

23 MR. MACARTHUR: Yes.

24 THE COURT: Or are these lines of questions that
25 you think are going to be how you are going to make your

1 final preemption selections.

2 MR. MACARTHUR: Both. I believe we have
3 identified two people to removed for cause.

4 THE COURT: Let's have a for instance
5 discussion. I have some grave concerns about that thought
6 process, because I don't believe we're going through the
7 kinds of questioning, going through these hypotheticals
8 and talking about these things, not in the realistic way
9 in which this trial is going to go down, but in
10 hypotheticals trying to understand how people think that
11 we're actually getting to cause excusal areas. We're
12 getting to thought processes and who might be the most
13 thoughtful juror, but we're not necessarily getting to
14 cause excusals.

15 I've asked these folks repeatedly the types of
16 questions that I think go to cause excusals and I
17 repeatedly have gotten answers that show us that we
18 haven't identified anybody, yet, in this panel who isn't
19 going to go back there with their fellow jurors and
20 deliberate.

21 I appreciate there's still questions. I haven't made
22 up my mind on that. Let's hear, for instance, who do you
23 think now has reached cause.

24 MR. MACARTHUR: Let me preface it by saying the
25 reason why we have two parties doing voir dire is because

1 you can get different answers depending on who's
2 questioning. It's always heavy or carries a lot of
3 weight, to better put it, when the court states or implies
4 what right answer is. I don't think that's the court's
5 intent. I think the court is like, hey, you better say
6 this. But to John Q. Public, the judge admonishes, hey
7 we're going to get to that and I don't want anybody
8 thinking this, they know the right answer is to agree with
9 you. So my first job is to get them to express, when they
10 are declining to apply the rules as they understand them
11 so far. And the only two they're really familiar with so
12 far are presumption of innocence and -- I'll just stop
13 there.

14 The first was the hypothetical example I said how
15 many of you would vote right now. And first it was all
16 over the map. I wouldn't base my motion for cause based
17 on the first answer. I expect that jurors don't really
18 understand what we're talking about. However after having
19 had an opportunity to explain the presumption of innocence
20 and burden of proof, and having had the court come in once
21 or twice to say, hey, this is the way it is. I'll give
22 you more information later, there were still 5 persistent
23 people who said even though I've heard that I still could
24 not vote not guilty.

25 Now, the reason I'm saying two instead of 5 is that

1 while I'm bothered with their answers, 2 of them gave a
2 wrong answer elsewhere. So moving down the page, there
3 was the issue of presumption of innocence, would you vote
4 right now. On that issue I had asked them, do you
5 understand you must assume he is not guilty as he sits
6 there now. We had a variety of answers of people who said
7 as represented by Mr. Finfrock, 306, who said the most on
8 the issue. I asked other people to raise their hand if
9 they agreed with him. In that instance I got 7 people.
10 But still we're only talking about 2.

11 The reason why is because 2 people from the 7 match
12 up with 2 people from the 5 previously They've now given
13 2 wrong answers, the first was 305, the second was 356.
14 And both of these jurors --

15 THE COURT: Who is 356.

16 MR. MACARTHUR: Jankiewicz.

17 Both 305 and 356 not only said -- even having
18 heard what we heard if we went back to deliberate now we'd
19 refuse to return a verdict -- but they also said that they
20 had misgivings with presuming him to be innocent because
21 in the back of their minds they felt like there has to be
22 a reason that he's here. I don't think I have to
23 illustrate why those things are problematic. They had the
24 benefit of having been questioned then educated as to what
25 the law expects and what the court will expect from them

1 when it reads the instructions later. And I even followed
2 up with saying is there anyone here who thinks they can
3 feel differently if the court tells them otherwise. Out
4 of those 7, two backed out. They said, if the judge tells
5 me that's what I have to do, that's what I have to do.
6 But that still leaves 5 that said it doesn't really matter
7 what the court officers say to us, that's just how we
8 feel. I thanked them for that and we moved on.

9 So because they met all of the those criteria,
10 they are inappropriate jurors and there is a basis to
11 remove them for cause.

12 THE COURT: Go ahead, Ms. Kollins.

13 MS. KOLLINS: First of all, they all know there
14 was a process to get Mr. Honea here. Even Mr. MacArthur
15 said we don't use a lottery to put someone in that chair.
16 So everyone here knew there was a process ahead of time.

17 The standard that Mr. MacArthur is sayings
18 misgivings, I don't think anyone here has told him they
19 adamantly would not follow the law and would not be fair.
20 That's the standard. Or if they were predisposed or
21 prejudiced or biased against Mr. Honea. That's the
22 standard. Not that they had misgivings.

23 Of course, all these people have feelings. They
24 don't know what the law is. We're taking 1 liners out of
25 context and we're trying to elevate it to the level of

1 for-cause challenges.

2 Additionally, my assumption has been through the
3 course of this that for cause challenges are
4 contemporaneous statements coming out of people's mouths.
5 Not sitting and coming up with a laundry list of people
6 comparing and contrasting what their responses to
7 questions were.

8 THE COURT: There is one place, because they'e
9 been in trial with me and maybe you have not, I don't do
10 it that way. So that's -- I'm sorry, I didn't clarify
11 that yesterday. I should have when we talked about it.

12 I don't want the jurors to hold it against attorneys
13 who are looking to potentially bounce them for cause, I
14 don't typically require it one by one and wait for a cause
15 response to come out. I do it as a conclusion of each
16 section separately. Then I announce it as an excusal, if
17 when one occurs. Mr. MacArthur would know that from prior
18 trials.

19 I should have brought that up.

20 MS. KOLLINS: Here is the other thing. Quite
21 honestly, Judge, I've done enough trial work. If I heard
22 something here that was completely alarming that I thought
23 I would agree with him I would and say, yes, I concur,
24 submit it to the court. I don't want a juror on the
25 panel. I don't understand the analysis between Finfrock

1 that he fought 20, 30 minutes to keep when we were going
2 to let him go and now he's challenging for cause.

3 THE COURT: My thoughts are similar. I want
4 to -- let's not obsess on editorializing here. We're
5 allowed to do that, but here's the point.

6 You know, first of all on that last section you
7 talked about, you know, there was 7 who -- total with Mr.
8 Finfrock -- who have misgivings or whatnot, then you said
9 2 backed out and others didn't -- the reality is, we never
10 got there.

11 I'm not going to talk to you when you're talking to
12 each other because I don't think you're listening.

13 MR. MACARTHUR: We're fine, Judge.

14 THE COURT: The last questioning when you talked
15 about and you were explaining how the two folks and the
16 ones who were in the second batch with Mr. Finfrock
17 expressing misgivings and there were 7 total who indicated
18 they might feel the same. Then you said two backed out,
19 but the others did not. Here's the problem that we're
20 going to run into in the final outcome when the court is
21 making it's determination on whether these are cause
22 challenges or not, is first of all, one backed out, one
23 explained her thought process, the others weren't given a
24 chance to have any discussions. You didn't follow up with
25 them one by one. There wasn't question saying is

1 everybody else still of this mind set and these two are
2 the only two.

3 You're making assumptions as to what those
4 people are feeling when you think it fits into your
5 framework. I understand why. If I was in your position
6 and found them as two who had been of this mind set, I
7 understand how that went down. I don't think we finished
8 that line of questioning.

9 Going back to others who when you talk about somehow
10 they had a position that they would not follow the court's
11 instructions and could not vote not guilty, I don't think
12 that that's what that response was. That wasn't the
13 question. The question was you were educating them in
14 terms of -- you got a lot of hands up saying I can't make
15 a decision without evidence. You still had a few folks
16 who are still confused or there wasn't any follow up.

17 I'm giving you these insights that as I sit here
18 right now I have not heard from those individuals anything
19 that rises to the level of cause excusal. I don't think
20 the questions have been there. I don't think follow up
21 questions have been there. So at this point I'm not
22 feeling it.

23 You're coming back tomorrow and finishing your
24 questioning. I just want you to have these things in mind
25 because I think perhaps when you reach your analysis of

1 where you think you've reached cause, you stop proceeding,
2 it's still going to be up to the court to make that
3 determination, and I haven't heard it.

4 I'll see you all tomorrow at 1:30. We're going to
5 start the other thing at 1:00. Have a nice evening.

6 (Off the record.)

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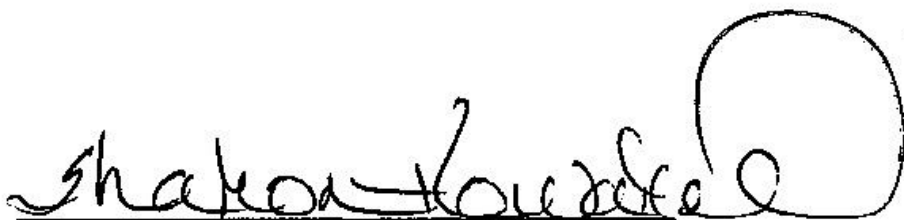
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CERTIFICATE
OF
CERTIFIED COURT REPORTER

* * * * *

I, the undersigned certified court reporter in and for the
State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the
time and place therein set forth; that the testimony and
all objections made at the time of the proceedings were
recorded stenographically by me and were thereafter
transcribed under my direction; that the foregoing is a
true record of the testimony and of all objections made at
the time of the proceedings.

A handwritten signature in cursive script, appearing to read "Sharon Howard", is written over a horizontal line. The signature is fluid and includes a large, circular flourish at the end.

Sharon Howard
C.C.R. #745

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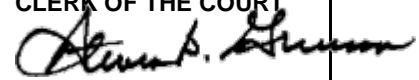
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TRAN
CASE NO. C-15-309548-1
DEPT. NO. 25

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
JOSHUA HONEA,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

BEFORE THE HONORABLE KATHLEEN DELANEY
DISTRICT COURT JUDGE

DATED: WEDNESDAY, NOVEMBER 29, 2017

REPORTED BY: SHARON HOWARD, C.C.R. NO. 745

1 APPEARANCES:

2 For the State:

STACEY KOLLINS, ESQ.

3 KRISTINA RHOADES, ESQ.

4
5 For the Defendant:

MONIQUE MCNEILL, ESQ.

6 JONATHAN MACARTHUR, ESQ.

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* * * * *

1 LAS VEGAS, NEVADA; WEDNESDAY, NOVEMBER 29, 2017

2 P R O C E E D I N G S

3 * * * * *

4
5 THE COURT: This is the date and time the court
6 set to address the bench warrant return of Ms. Morgan
7 Savage based on a material witness warrant that was issued
8 by the court at request of the State, per statute. This
9 warrant was, in fact, issued, based upon an affidavit that
10 was provided pursuant to NRS 178.494. Also pursuant to
11 that statute the determination of a bail setting and an
12 outcome related to Ms. Savage's return to be a material
13 witness in the case needed to be set within 72 hours.
14 When it originally got set it was set for December 4th.
15 We moved it forward to today's date and time.

16 I note that Ms. Savage is present with us in custody
17 in this case. Counsel for the State is here, as well as
18 the defense is here. Also the Defendant is present.

19 We have excluded any other people being present from
20 the room so we can proceed with a conclusion of Ms.
21 Savage's return.

22 I know, Ms. Kollins, you were making some copies, and
23 I guess there was some ability to provide some
24 documentation. I don't know if you need to make a record
25 about that. Counsel, when they were out of the room,

1 indicated they had a record they wanted to make.

2 MS. KOLLINS: Your Honor, I inquired from the CO
3 whether or not I could give Ms. Morgan copies of her
4 statements that she previously made. We had some contact
5 about 3 weeks ago. The items I gave her were stolen with
6 all of her belongings so she didn't have her statement,
7 prior testimony to review. The CO told me I was able to
8 send just those pieces of paper back with her. I made her
9 a copy of her voluntary statement and her preliminary
10 hearing transcript.

11 THE COURT: Did the defense have a chance to see
12 that paperwork.

13 MR. MACARTHUR: It came from us. It was our
14 copies.

15 THE COURT: Okay. That's what I appreciate,
16 cooperation between counsel.

17 Ms. Savage, I see a set of documents there. You will
18 be able to take those back with you. I trust that if
19 something occurs -- I've had it happen one time we sent
20 documents back. They went with the CO. I don't know what
21 CO did who had the documents. The next thing I know, the
22 next time the person was in court with me, it was wherever
23 those documents went when I went back there, they didn't
24 come to me and I never saw them again. So we need to make
25 sure whatever happens, they stay with ms. Morgan.

1 THE OFFICER: There will be no problem. She is
2 going to take them with her.

3 THE COURT: Okay.

4 My understanding of what needs to proceed today
5 is to proceed with formalizing a bail setting for Ms.
6 Savage's understanding of how we're going to proceed. I
7 know you indicated you wanted to make a record on behalf
8 of defense related to something that occurred yesterday,
9 correct.

10 MS. MCNEILL: Correct.

11 THE COURT: Please.

12 MS. MCNEILL: Mr. MacArthur and I visited Ms.
13 Savage last night at CCDC. We are allowed to speak to the
14 State's witnesses. We asked if she was willing to speak
15 with us, and she was.

16 My concerns at this point are this. I think the
17 State failed to turn over exculpatory evidence, and I have
18 some concerns about Ms. Savage's legal rights.

19 Ms. Savage indicated to us that multiple times since
20 she has testified at preliminary hearing she has told the
21 State that she does not want proceed with this case. That
22 she would like the charges dropped. I think that is
23 absolutely exculpatory when a complaining witness is
24 saying she don't want the charges brought against the
25 Defendant. She indicated to us that she feels she's being

1 used as a tool of the State to prosecute Mr. Honea. She
2 indicated to us that she has concerns about testifying
3 because she may need to testify that she lied at the
4 preliminary hearing, which then places her in danger of
5 being prosecuted for perjury.

6 She indicated to us that after she was forced to
7 testify at the preliminary hearing against Mr. Honea she
8 suffered a grave and serious depression. And I have
9 concerns that she is now sitting in custody and is, again,
10 potentially going to be forced to testify, and now she's
11 concerned she may get charged with perjury. I think she
12 probably needs her own lawyer. Our issue is that I think
13 it was a Brady violation, that we've never been told that
14 for potentially months she's asked that these charges be
15 dropped.

16 THE COURT: Help me tie that into that being
17 exculpatory. The reason -- I'm not trying to sound naive
18 or stupid in the question. If I do sound stupid in the
19 question, my apologies in advance.

20 It's not uncommon in cases where folks will
21 potentially recant testimony, not be cooperative as
22 witnesses, or otherwise want the State to do something
23 other than what the State -- based on the evidence --
24 feels compelled to do.

25 How does that trigger a potential Brady violation.

1 MS. MCNEILL: When the witness says -- well,
2 I'll tell you --

3 THE COURT: We're not sure what the
4 communications. She represented to you certain
5 communications.

6 MS. MCNEILL: Here's my concern. She said I
7 only told the police the things that happened happened
8 because I was mad at Josh. Because she's saying it didn't
9 happen, right.

10 THE COURT: She's saying that now. Is she
11 saying that she said that to others in the past.

12 MS. MCNEILL: Yes. She's saying she's tried to
13 convey that she does not want these charges to be brought.
14 I understand that the State is the one who brings the
15 charges, but when the complaining witness is saying I
16 don't even want this to happen, I think we're allowed to
17 ask about this.

18 Part of the reason is this. If she then -- she told
19 us she believes she has to say what Stacey wants her to
20 say or she doesn't get released. So if we had never had
21 this conversation and we had never been made privy to the
22 fact she doesn't even want to be here, she doesn't want
23 these charges -- she's an adult, your Honor. It's been 2
24 years since these charges have been brought. We are not
25 talking about a child anymore.

1 She said that everyone keeps telling her she is a
2 victim. She doesn't believe she's a victim. If we hadn't
3 talked to her, she still would believe she has to say what
4 the State wants her to say. She would have come in and
5 testified to things. We would have never known that. We
6 would have never been able to cross-examine her and say,
7 isn't it true you didn't even want to be here. You don't
8 want these charges brought. You don't want this to be
9 prosecuted. In fact, did you lie at the preliminary
10 hearing. Did you lie when you talked to police because
11 you were mad at him.

12 THE COURT: There's nothing in the paperwork
13 that she saw that she would indicate that she would not
14 have the ability to be released. That there was already a
15 bail order, bail condition, so I'm not sure where that
16 information comes from.

17 Regardless, I'm not trying to debate what you were
18 told. I appreciate you making your record here today. I
19 do want to give the State the opportunity to respond.

20 Do you have anything else related to the record you
21 want to make now.

22 MS. MCNEILL: Mr. MacArthur says we have an
23 offer of proof, your Honor, and wants to talk to Ms.
24 Savage. This is what she's conveyed to us.

25 THE COURT: Before we do that one of the things

1 mentioned earlier is appropriate to consider, which would
2 be Ms. Savage having her own representation. We don't
3 have one for today, but let me see if the State has a
4 response at this time.

5 Obviously, we are going to look to having counsel for
6 Ms. Savage and having another discussion. If you want to
7 save it until then, that's fine too. If you want to make
8 a record now, that's fine.

9 MS. KOLLINS: I emphatically deny that Morgan
10 Savage has ever told me she did not want to proceed with
11 this case. Particularly in the last few months when she's
12 been the subject of a missing person's report. We found
13 her in an alley. I have talked to her twice since we
14 found her in that alley 4 weeks ago.

15 She has never in the process of this case indicated
16 to me that she was feeling forced, that she was feeling
17 coerced, that she was feeling pressured that I was forcing
18 her to make a statement. I have never heard any of this.
19 I'm an officer of the court. I have enough cases on my
20 plate. She has never indicated to me that she feels so
21 strongly about this case that she has been compelled to
22 lie.

23 I'm certain this was all unrecorded. I guess I take
24 umbrage with it because, again, my ethics are being
25 challenged here in open court like I did something from

1 the defense.

2 I'm speechless.

3 THE COURT: Defense has to bring forward what it
4 is they were told.

5 MS. KOLLINS: True. But if that's what they
6 were told, did they record it. Was it recorded. Was it
7 under oath. Are we -- is everybody aware she's detoxing
8 last night. Does everybody know that.

9 THE COURT: I'll take at face value what counsel
10 has represented here in court from both sides, because you
11 are all officers of the court. I trust and believe that
12 you're always -- I've always expensed that you are
13 fulfilling your ethical obligations in what you identify
14 to the court.

15 What we need to do is have Ms. Savage have counsel
16 before we proceed further. I don't wish to inquire of her
17 without her having counsel here to protect her rights,
18 depending on what it is she may say do or accuse or
19 otherwise. I think we can do that. I think we can
20 arrange for that to take place tomorrow. I don't think I
21 can get counsel on board now, but we can work on that.

22 Beyond that, at that point in time, you know, I'm not
23 going to take any further action on any other statements
24 that have been made here today because I don't have that
25 evidence, if you will.

1 My tension is to proceed with confirming the bail
2 setting, but other than that, having counsel be present
3 for her tomorrow.

4 MS. KOLLINS: That kind of puts a unique hamper
5 on opening statements at this point.

6 THE COURT: Okay. Other than we can do it
7 before opening statements. I appreciate you might have to
8 make a last minute adjustment, if need be, but I don't --
9 I assume Ms. Savage as notified she had the opportunity to
10 post bail if she's in custody. She'll remain in custody
11 until she posts bail. If she's in custody tomorrow we can
12 have a discussion.

13 I appreciate the State has what evidence it has and
14 what information it intends to proceed with. I don't --
15 I'm not privy to your opening statements, but I can
16 imagine how both sides intend to proceed.

17 MS. KOLLINS: Here is my other concern. So
18 these two, with or without an investigator --

19 MR. MACARTHUR: Without.

20 MS. KOLLINS: They made themselves witnesses in
21 this case by doing that. How are they going to impeach
22 her. Isn't it true I spoke to you. They're now witnesses
23 in their own case because they didn't take an investigator
24 to speak to her. How is that supposed to work.

25 And they're going to impeach her with this

1 information they gathered that is not documented, not
2 recorded, and no third-party witness, other than counsel,
3 because they didn't take an investigator. How is that
4 going to work in a trial setting.

5 MS. MCNEILL: I'm guessing she might just
6 cooperate and we don't need to impeach her.

7 MR. MACARTHUR: We have to accept whatever
8 answer she gives. If we say, did you say, she's going to
9 say yes or no.

10 MS. MCNEILL: Right.

11 MR. MACARTHUR: There is no way we can
12 contradict her. It throws egg on us the same way it
13 throws egg on her.

14 Let's say this. I understand the State's concern.
15 This is a precarious situation. I've certainly had
16 witnesses that derided my character unfairly. I imagine
17 that that could potentially happen to the State. But, it
18 is what it is. Ms. Savage has said the State did these
19 things, and then in defending itself the State implied
20 that maybe that was not so. That defense counsel may have
21 played a part in that. Now, to the extent it was not
22 recorded, that is not the same as saying it wasn't
23 documented. I made notes while I was there. I made them
24 part of my intended cross-examination of Morgan. I'm
25 happy to provide that information to the court or the

1 State, if requested. Although I don't think I should have
2 to because that's part of my theory of defense.

3 What I want to add is this, two things. If the State
4 is saying that Ms. Savage is unpredictable, then it's
5 probably important to document her feelings on the matter
6 as soon as possible. Because I've been on the wrong side
7 of a false allegation. I've paid a sanction for it. Now,
8 it's not directed at me in this instance, but I do
9 understand in hindsight how important it is to be
10 protected by a record.

11 Number 2, is that one of the facts that Ms. McNeill
12 did not include in her presentation was one of the first
13 things that Ms. Savage said after we asked if we could
14 have permission to talk to her, was when she was arrested.
15 She said she'd been arrested on Monday at about 4:00 p.m.
16 She believed that the reason she was arrested is because
17 she made the mistake of not appearing in court on the
18 27th, which I think is the Monday at 10:00 a.m. She
19 thought she was supposed to be there on Tuesday at 10:00
20 a.m. And she thought she was arrested as a result.

21 At that point I explained to her she was in custody
22 on a material witness warrant, and that it had been issued
23 on the 20th. So it would appear that she's operating
24 under information that's not actually true, and that's
25 what led us down the path of, well, how do you feel. At

1 one point she said I feel like I have to say what they
2 want me to say, or I'm going to stay in custody longer and
3 I don't know what to do. At that point I said we can't
4 give you legal advice, but you are going to be in court
5 tomorrow and you should feel free to express whatever you
6 want to express to Judge Delaney. Because I don't think
7 she would let anything bad happen to in her presence. I
8 filled it out. That whatever it is you want to say, you
9 should feel comfortable with her.

10 At that point is when she opened up and made the
11 further representation that Ms. McNeill provided to the
12 court, including that she was inclined to tell to court
13 that, first, parts of her testimony were false. At that
14 point we really had to be touchy, because we didn't have
15 counsel, and we can't provide legal advice. So here we
16 are.

17 MS. KOLLINS: Notably continued to talk to her.
18 They're concerned about her need for counsel, yet, they
19 sit there and talk to her.

20 They also tell her that she's in a predicament at the
21 State's fault and they befriend her and et her to at least
22 feel she is in custody because of our doing, when she
23 hasn't had the opportunity to know the full reason she is
24 in custody. Morgan knows why she's there. Now she's got
25 two people telling her, oh, bad DA's. They put you

1 here.

2 This whole thing smells so bad, you know. I know she
3 needs counsel. We'll take care of it tomorrow.

4 THE COURT: We may be able to take care of it
5 later. I have heard all I need to here. The more you all
6 are talking about what you said, I need to hear from this
7 person. And I would have it be her that speaks, rather
8 then so much information coming out about what the nature
9 of those conversations were.

10 MR. MACARTHUR: Fair enough.

11 THE COURT: I have reached out to my JEA to try
12 to identify whether or not either of our track attorneys
13 that I would hope would be available today to potentially
14 come down here today so that they could represent and
15 speak with Ms. Savage and represent if we could
16 potentially continue this hearing later today to try to do
17 so. I've identified my first next in line and preference
18 to be Mr. Ruggeroli. If he can come down here. We can
19 ask her to come back, and I'll work out with the CO how we
20 triage that. If not I've asked to see if we can identify
21 Jenny Pandullo. I think I will leave Ms. Allen out of
22 picture at this point, having been co-counsel on cases in
23 the past with counsel here, just to keep some separation,
24 you know, there in terms of that.

25 But we'll look into that. My preference would be to

1 continue this matter today. I'm not predisposed to assume
2 any outcome of anything other than my goal is to stay on
3 track with completing jury selection today. And my goal
4 is to stay on track with moving forward with this trial.
5 Ultimately whatever Ms. Savage's testimony is it is and
6 whatever information we have evidence-wise coming into
7 this trial as officers of the court we are able to put
8 forward.

9 So we'll address these things as needed as we can as
10 we proceed. Ms. Savage I will note for the record you
11 have been present. I have not invited you to engage in
12 any discussion with the court. I'm not going to until you
13 have an attorney present that is solely there to represent
14 you. The individual that I am trying to find and
15 hopefully can be made available is someone who would
16 regularly practice in this department. He is familiar
17 with the court and the court process. He is a very, very
18 good attorney. He's worked with us for some time. He
19 would only be here to protect your interest, okay. But I
20 would note that you have shown some emotion here as
21 there's been this discussion back and forth. I'm sure you
22 can appreciate that everybody's senses are heightened in
23 this matter because everybody has a job to do. The
24 requirement that the court would expect of you is this and
25 only this. That when you are placed under oath to give

1 testimony to this court that that testimony be truthful.
2 That is your obligation. We'll proceed as soon as
3 possible, either later today or first thing in the morning
4 to do that.

5 At this time your bail is set at \$10,000.00. If you
6 are able to post bail, then you would understand you'd be
7 required to return at whatever court date is provided to
8 you at the time you post that bail.

9 What I need to do is trying to think how best to do
10 this. I'm going to ask you to be returned here at -- can
11 I get your position on this. If I give you a time now,
12 can she be brought back here. It's going to be close to
13 shift change. I don't want to run afoul of that. I'm
14 thinking maybe 4 o'clock. I'm not sure we'll be done with
15 whatever we need to do here, but can we have her
16 available.

17 THE OFFICER: At 4 o'clock.

18 THE COURT: Yes. Our defendant is out of
19 custody. She can be in there.

20 THE OFFICER: We are just going to transport her
21 downstairs.

22 THE COURT: Once we're ready for her she can be
23 brought up.

24 THE OFFICER: Yes.

25 THE COURT: Let's say 4:30. We are going to try

1 to identify someone who can be present for her today. If
2 that doesn't occur, at that time we'll reschedule it for
3 tomorrow morning. We're working on that.

4 THE OFFICER: Okay.

5 THE COURT: Thank you.

6 MS. KOLLINS: At 9:34 last night I received a
7 text from Mr. MacArthur offering the State a plea of
8 guilty to -- his words -- sexy 1 to 6. That offer is
9 rejected.

10 MR. MACARTHUR: That was petty.

11 THE COURT: As I explained to Ms. Savage,
12 everybody has a heightened -- I don't know what the right
13 word is. I feel it. There's tension. I understand it.
14 But it's not going to effect this trial. I appreciate we
15 are all here to do a job. I appreciate we all have things
16 we need to say. We're all going to say it, and we're all
17 going to let it be water off a duck's back to the other
18 side. The other side is going to let it be water off the
19 duck's back so we can move on. I'm not going to be able
20 to say you can't voice your concerns. You have them.
21 They're legitimate on both sides. However, from what you
22 understand and what you know, but, let's keep the antics
23 a minimum, if we can.

24 MS. RHOADES: I have one more things, your
25 Honor.

1 THE COURT: Ms. Rhoades, please.

2 MS. RHOADES: When I was coming up into the
3 courtroom and the courtroom doors were locked, Mr. Honea's
4 family -- multiple members of his family were sitting
5 right in front of the courtroom where there were jurors in
6 ear shot. Visible jurors with their badges on, and
7 they're talking about family stuff and how Mr. Honea looks
8 younger or older. How he looks really nice in a suit.
9 It's completely inappropriate for his family to be around
10 the jurors and to be talking about their lives in front of
11 jury. You have admonished the people been here of that,
12 and I think that it is inappropriate. That they should
13 not be allowed in the courtroom anymore. Most of them are
14 potential witnesses in this case. There's no reason for
15 them to be here for voir dire. They should be excluded.

16 THE COURT: Was it the grandparents or others as
17 well.

18 MS. RHOADES: Grandparents and others.

19 THE COURT: How many others.

20 MS. RHOADES: Three or four in addition to the
21 grandparents.

22 THE COURT: Was one of them the lady -- I'm not
23 sure if that's Mr. Honea's mother -- there was 3 of them
24 here the other day when I spoke to the grandparents.

25 MR. MACARTHUR: The grandparents, then the third

1 person is not here today.

2 THE COURT: Who is that person.

3 MR. MACARTHUR: I believe he's -- are you
4 talking to people here now.

5 THE COURT: Two days ago when I admonished
6 them.

7 MR. MACARTHUR: A family friend who is not
8 here.

9 THE COURT: Now, we have 3 other people in
10 addition to the grandparents here today.

11 MR. MACARTHUR: Yes, your Honor.

12 THE COURT: It's been antidotally provided to me
13 that the -- some family members, I'm assuming the
14 grandparents, from when -- sorry, I'm communicating with
15 my JEA at the same time -- have expressed opinions about
16 this case. To the extent it's been overheard and seen by
17 staff members, I tried to handle the issue on Monday in a
18 way that made it clear to them I was not going to book any
19 shenanigans here. I don't believe for one minute they
20 don't know what they're doing, and that they're not
21 seeking to do something that they perhaps inadvertently
22 think that they think may benefit, but it may backfire.
23 That's my bigger concern, then anything else. That they
24 are going to do something that's going to cause a problem
25 here and it's not going to benefit anyone.

1 MR. MACARTHUR: Judge, I accept the court's
2 inclination. However, you have arrived at this point
3 without having heard counter-representations from another
4 person who was also present. With that in mind, I
5 approached at the same time in which the Bailiff was
6 having this conversation. And while it was out front in
7 front of the courtroom, it was not next to jurors. Now
8 I'm not saying they couldn't have been in ear shot. I
9 don't know how loudly the conversation was going on. But
10 they were not standing amongst jurors. It was a
11 significant gap in space to where I'm having a
12 conversation right next to a juror. That's point number
13 one.

14 Point number two is that the family was instructed by
15 Elvis that they can't be directly in front of the
16 courtroom. Not only do they have to avoid jurors, which
17 they had done, but that they may not be in a place where
18 jurors are likely to go. We admonished them to go to the
19 anti-room where the next court over is, and that's where
20 they've been ever since. So when --

21 THE COURT: After this happened what Ms. Rhoades
22 observed or prior.

23 MS. RHOADES: After I spoke with Elvis and told
24 him what I saw.

25 MR. MACARTHUR: Elvis said you can't be in front

1 of the courtroom. You have to go down to the end, which
2 they did.

3 Now, the grandparents were two of the people here
4 that you said don't have interactions with the jury. And
5 they're alleged to have been interacting with the jurors.
6 Every other person present are family members that were
7 not present earlier. And, one of them is Paula Kraski
8 (ph), the witness for the defense, who's a school teacher.
9 She never been to court before because she told me that
10 this morning. At any rate, they are down at the end of
11 the hallway.

12 The next point I would like to make is that Ms.
13 Rhoades said that they are all witnesses for the defense
14 That's not true. We've only identified Dara Coalman, the
15 mother. Nor was she one of the people admonished. And
16 the family has now been duly informed that they can't be
17 in front of the court, and they can't interact with
18 jurors. They didn't violate the only premise that the
19 court gave them, namely don't interact with jurors. They
20 made sure they were separated because there was no jurors
21 in front of the courtroom at the time they were talking.

22 Now they understand that not only do you have to
23 avoid jurors, but don't be in front of this court. They
24 are down at that room. And they're conducting themselves
25 appropriately.

1 I get Ms. Rhoades representation. If I were in her
2 position, I would want to same record of any interaction
3 with the jury. However, to have her cast in such a way
4 that's deliberate and have the court accept that premise
5 before having heard from other witnesses was premature.

6 I would ask the court --

7 THE COURT: I didn't accept any premise, Mr.
8 MacArthur. I listened to Ms. Rhoades and I'm letting you
9 speak. What have I accepted.

10 MR. MACARTHUR: You said not for a minute did
11 you think they were doing it without knowledge --

12 THE COURT: That's not based on Ms. Rhoades'
13 representations. It's based on my general thought about
14 what occurred. You're not telling me that something that
15 occurred didn't occur. You're telling me there was other
16 thought processes they went through to get there.

17 MR. MACARTHUR: I don't believe so, Judge. I
18 think I just said that that didn't occur. They were not
19 talking to jurors.

20 THE COURT: She didn't say they were talking to
21 jurors. She said they were talking to each other about
22 family things close enough that jurors could have heard.
23 I didn't hear you say anything different then that. Is
24 that what occurred.

25 MR. MACARTHUR: I can't contradict Ms. Rhoades

1 because I arrived later than she did. By the time I
2 arrived, I saw that Elvis was already interacting with
3 them. But what I can say, is that the closest juror to
4 the family was 7 or 8 feet away. Is that close enough
5 potentially to hear, I have no idea. But the vast
6 majority of your jurors, or our jurors, extended down to
7 hallway. There were jurors by the neighboring court and
8 this one. The family was not unduely close to the jurors.
9 They avoided the jurors as asked. And now they have been
10 told they can't be in front of the court And they are in
11 that alcove, which is reasonable. I think that, if I
12 might just have the court patience for 30 more seconds.

13 Yes, tensions are high. The parties are kind of at
14 each other. I'm willing to put that behind us for today
15 because we need to get through voir dire. But the past
16 two representations by State's counsel, to the extent they
17 were relevant, were that I sent a text implying I would
18 take a 1 to 6, and described it as sexy, but they didn't
19 read the whole text. The whole thing was, elbowing
20 between counsel. I understand that now we are at each
21 other it can be caste a different way, but she could have
22 read the whole text.

23 MS. RHOADES: You're talking to the court.
24 Please don't talk to us.

25 MR. MACARTHUR: I'm almost done.

1 Then Ms. Rhoades characterizes the family as
2 interfering with the case. Both of those would reasonably
3 be read by the court that, Judge, the defense attorneys
4 are sketchy people and the Defendant's family are sketchy
5 people. To get past this we kind of have to clear the
6 decks. I'm not asking the court to accept any other
7 excuses. I'm just saying the family didn't violate your
8 rule, nor did they act unreasonably. There's no reason to
9 disparage them, or us for doing the things we all know we
10 have a professional responsibility to do.

11 MS. RHOADES: I have moved on from any of those
12 representations. My concern is what the family is doing
13 and what I saw. I saw them sitting in these chairs There
14 were 2 jurors. Mr. Ilsley was one of them. Standing
15 directly by that wall where you can look over the balcony,
16 right across from the family. And the family was there
17 talking loudly and openly about all this. I didn't say
18 potentially defense witnesses in the case because they
19 have been noticed by both. Some of them have been noticed
20 by the State and defense.

21 THE COURT: Ms. Kollins.

22 MS. KOLLINS: I was going to put the entire text
23 in the record.

24 "Ladies of the State. I feel duty bound to inform
25 you that Ms. McNeill and I are an undefeated team in jury

1 trials -- parenthetical -- a moment of silence for Cooper
2 and Giles -- closed paren -- you can save yourself the
3 agony of the 52-count acquittal with a sexy 1 to 6. Come
4 on. It's the holidays."

5 THE COURT: Okay.

6 MR. MACARTHUR: Rightly or wrongly, that's my
7 brand of humor.

8 THE COURT: Thank you. I understand.

9 Okay. Let me do something else so I can come
10 back to this issue. This is a very serious issue.

11 Mr. Ruggeroli is not available. Ms. Pandullo is
12 available. However, Ms. Pandullo, based on the
13 communication I had with my staff, my understanding is
14 maybe had some awareness of this case already coming in
15 because of her relationship to counsel. If that's the
16 case, I absolutely trust implicitly your ability to do
17 your job. The reason I focused on Mr. Ruggeroli first, I
18 think he's as separated from the defense team as any of
19 the track attorneys. Then I went to you next thinking
20 that we could do that, you know, with a little more
21 separation. I said I was going to leave Ms. Allen in the
22 back because we'd also -- she had served as co-counsel
23 with Ms. McNeill in a past trial.

24 All I'm really looking for is someone who can be Ms.
25 Savage's advocate in court to make sure she understands

1 her rights and she answers the questions that may be posed
2 to her. That she does so with the advice of counsel. I
3 trust you to be able to do that, of course. I want to
4 know if you are comfortable with that based on what you
5 know coming into today.

6 Ms. PANDULLO: Your Honor, what I can tell you
7 is I know that Mr. MacArthur and Ms. McNeill are in trial,
8 but I don't know a lot of particulars on the case. So o
9 other than telling me her name, for example, I don't know
10 who that would be within the case. I'm happy to do
11 whatever the court would like me to do. If you don't feel
12 comfortable, that's fine as well.

13 THE COURT: I was hoping that you could go see
14 her in advance of her returning here today at which time
15 we had set for her to come back at 4:30. She just left
16 here 10 minutes ago. She probably went down and went back
17 over. I don't think they're keeping her downstairs.

18 Do you have access to somebody if they're
19 downstairs.

20 THE OFFICER: I can have them bring her back up.
21 She can be put in the cell.

22 THE COURT: I wanted you to have a chance to
23 meet with her before we returned to the hearing. I'm not
24 trying to figure it all out then, because in a nut shell
25 she was -- I have all the paperwork here.

1 We got an application from the State to have her -- a
2 warrant issued as a material witness order requiring her
3 to be a material witness to post bail. Then we have a
4 warrant. And she was returned on that warrant yesterday.
5 I put it on calendar today. And the court's order, she's
6 on bail setting of \$10,000.00. Basically what occurred
7 then here today was that representations were made by
8 counsel as to a communication they had with her last
9 night. Then representations made by the State
10 contradicting information that was provided.

11 So at the end of the day we are going to be wanting
12 you to talk to her to understand these communications.
13 And we just want to make sure -- I basically didn't let
14 her speak while we were in here. I told her she needed
15 have someone to protect her rights in court, but that what
16 I expected of her when she returned to court, either later
17 today or tomorrow, is that she give truthful answers to
18 any questions asked.

19 MS. PANDULLO: I can advise her on all of that.

20 THE COURT: She can share with you her
21 understanding of what occurred and what she is facing and
22 what the circumstances are. Then you can help her and
23 guide her through that, but I really think we need her to
24 have counsel.

25 MS. PANDULLO: She's here on a material witness

1 warrant, so she is held.

2 THE COURT: You'll work with Ms. Pandullo to
3 bring her up here.

4 MS. PANDULLO: Wonderful. Thank you.

5 THE COURT: Back to the family and the juror
6 issue. So maybe I misspoke in the way I said it. I hope
7 it's clear to counsel I always try to hear all sides and
8 not make up my mind. I also am never going to play hide
9 the ball on what I'm thinking because I think it benefits
10 counsel. And sometimes I speak more quickly, then I
11 probably should have. I will say even with both sides
12 representations that I don't believe for one minute that
13 this family does not know what their obligations are. I
14 am sorry, but where I'm struggling is they've been told by
15 staff long before I communicated with them on Monday to
16 essentially mind their Ps and Qs around jurors. Then I
17 had to go so far as to tell them not to interact with the
18 jurors and what they needed to do to stay separate from
19 the jurors.

20 I don't perceive that I should need to say you need
21 to be cordoned off. You need to be "X" number of feet from
22 the jurors, or you need to be over here, any of those
23 things. They've been told multiple times that they put
24 this trial in jeopardy and they have problems if they are
25 in any way, shape, or form interacting with jurors. They

1 are sitting right outside and having verbal conversations
2 loud enough to be heard potentially by any jurors anywhere
3 in the vicinity. I don't understand that mind set other
4 then they want to place themselves right there having
5 conversations potentially around jurors in a misguided
6 opinion, in my sense and my opinion, of thinking that
7 somehow that would benefit their relative.

8 In my experience you never know how jurors who see
9 and perceive things of people outside the courtroom might
10 perceive and how those might go. If I'm wrong in that
11 easement that is my opinion. I'm entitled to have it.
12 I'm not going to exclude them from the court permanently
13 at this stage.

14 Elvis, can you do me a favor. Where are the jurors.
15 Are they down that way still.

16 THE MARSHAL: Right here.

17 THE COURT: How do I get the people in the
18 alcove there in here so I can talk to them without
19 bringing them in in front of the jurors.

20 THE MARSHAL: I'll move the jurors to the other
21 end.

22 THE COURT: That's more obvious. Bring them all
23 in and don't make a fuss about it.

24 THE MARSHAL: Okay.

25 THE COURT: Let's do that.

1 MS. RHOADES: Everyone noticed by either side
2 should not be here during the trial. I guess if they want
3 to sit here during voir dire, if the court is going to
4 allow that, fine. But we are going to invoke the
5 exclusionary rule.

6 THE COURT: I haven't excluded the family from
7 voir dire. We are going to finish today whether they are
8 here or not. I will tell you that this is problematic, and
9 we're going to have that discussion. We are going to have
10 the breaks and other things.

11 MS. MCNEILL: For the record, no one who is here
12 was subpoenaed by -- I never had jurors potentially
13 excluded during voir dire. They have always been allowed
14 to come in.

15 THE COURT: Elvis, I want them standing here.

16 MS. MCNEILL: If they're witnesses for the
17 State, they were hopefully subpoenaed.

18 THE COURT: I understand.

19 Folks -- for the two folks that were here
20 previously, Mr. Honea's grandparents -- can you hear me,
21 sir. Do you need a device. Give him a device and see if
22 it will help him. I want to make sure I'm heard crystal
23 clear.

24 GALLERY INDIVIDUAL: I have hearing aides. I
25 adjusted them.

1 THE COURT: For the two folks I spoke to
2 previously, one of the things I hoped, I thought you
3 understand, is how imperative it is that there not be any
4 contact with jurors, purposeful, not purposeful, any
5 contact with jurors. Okay. The other folks who are here I
6 haven't had a conversation with you and I get that. But
7 when you are immediately outside the courtroom, in
8 whatever space, and there are jurors anywhere in the
9 vicinity and you are having conversations, that is not
10 okay. I don't know how to better convey it. I thought I
11 conveyed it clearly on Monday. There's now been another
12 concern expressed. That's not the second concern. That's
13 the second concern I've dealt with, but there have been
14 multiple concerns prior to that.

15 Maybe I can get through to you this way. If you
16 share any kind of idea that somehow being present around
17 jurors and having conversations around jurors that you
18 perceive to be positive and helpful to someone that you
19 care about who is in this courtroom, I can tell you from
20 my experience you never know how jurors will interpret who
21 you are, what you are doing, and what you are saying. And
22 it is just as likely that anything that jurors may observe
23 by sight or hear, because they are close enough, could
24 work against your intentions, just as much as they could
25 work in favor of your intentions. So I hope that that

1 helps you better understand why it is so important.

2 I don't know how to tell you to self-police, other
3 then to say don't be around the jurors. If you have to go
4 see where they are go and go to the furthest point, if you
5 have to ask the martial for a place that's comfortable to
6 sit away from them, I don't know what else to tell you
7 other then I am going to allow you to remain today. If I
8 have one, one, I don't care who it comes from, indication
9 that there is any conversation or interaction happening
10 with jurors, whether or not you initiated it, you will be
11 excused from the courtroom and the court house today.

12 Do you understand.

13 GALLERY INDIVIDUALS: Yes.

14 THE COURT: As we proceed with the trial, anyone
15 who has been noticed as witness to trial may not be
16 present. So I want you to have that understanding in
17 advance. I'm not going to exclude you from the voir dire.
18 We are going to have that place where you are going to
19 sit. I'm going to ask you -- they can be in the alcove in
20 here, Elvis, as we bring the jurors in, and they know to
21 go back out. The two folks that were here and have been
22 doing that since Monday, I appreciate it. And you'll
23 continue doing that.

24 But on these other breaks, someone needs to go to the
25 bathroom, whatever it is, you better self-police for your

1 own sake and for the sake of this case not to have
2 interaction with the jurors.

3 Thank you. I'll ask you to step into the alcove, so
4 we can get started with voir dire.

5 MS. KOLLINS: The only other thing I'd ask for
6 that Mr. MacArthur said I wasn't entitled to is theory of
7 defense. You can't sit on the statement of a witness
8 because it is important to your theory of defense. I'm
9 entitled to those notes that were taken during that
10 interview. I'm not going to have any meaningful way to
11 participate in this hearing this afternoon because, again,
12 Mr. MacArthur and Ms. McNeill have made themselves
13 witnesses and the only witnesses to those statements.

14 I'm entitled to those notes. I don't think they can
15 cloak them in work product. Those are statements of a
16 witness. They are statements that are created by myself,
17 since I'm the primary assigned prosecutor at the
18 inception. I'm entitled to them before she comes back or
19 takes the stand today.

20 THE COURT: You didn't seem to be opposed to
21 providing a copy. You indicated perhaps you're not
22 required to do so but that you were not opposed to doing
23 it. Can we just assume that you are okay with me
24 instructing those notes to be brought forward so my staff
25 can make a copy set and provide them to Ms. Kollins so we

1 can proceed with that inquiry later today.

2 MR. MACARTHUR: I'm going to object for the
3 record, because I do believe it is work product. And the
4 reason why I don't think it fails same way that Ms.
5 Kollins describes is that police officers routinely make
6 notes when they interview witnesses. Ultimately, we're
7 entitled to the reports, but not the notes that they
8 make.

9 THE COURT: Because they ultimately are turned
10 into official reports. We don'ts have that.

11 MR. MACARTHUR: I'd be happy to make an official
12 report.

13 THE COURT: Mr. MacArthur, a few minutes ago --
14 and maybe you have the same issue I have, because you also
15 overspeak, just like I do.

16 A minute ago you said you have no problem turning
17 them over. If you want to make objection, fair enough.
18 But at this point in time I'm going to ask you turn them
19 over. There is no attorney/client privilege in these
20 notes. I don't see any basis not to do it. I want to get
21 forward on this.

22 MS. MCNEILL: He is objecting because I told him
23 to.

24 THE COURT: I'm gland you listen to
25 co-counsel.

1 MS. MCNEILL: On the bottom of it -- we'd be
2 happy to turn over the notes. The top and bottom are
3 other things not related to that.

4 THE COURT: Did you take them electronically.

5 MS. MCNEILL: We talked this morning. This is
6 what we came up with.

7 MR. MACARTHUR: When I prepare for trial, what I
8 do is I make a preparation sheet for each witness. This
9 is my Morgan Savage cross. Even though it's not
10 necessarily all cross, I know at least where to look for
11 the information. So I have information from last night at
12 the top of the page, but I also have other issues that I
13 would have covered with --

14 THE COURT: Come up and show me what we are
15 talking about so I can see what you are talking about.

16 MR. MACARTHUR: Yes, ma'am.

17 THE COURT: You didn't hand write notes while
18 you were there.

19 MR. MACARTHUR: I -- I will check the file.

20 THE COURT: When you come back up, I need you
21 to -- I don't see anything here that's substantive so when
22 you said you had notes, this just looks like your prepared
23 cross. I'm confused as what is from last night and what
24 the not.

25 MS. MCNEILL: For the record, I had a note pad

1 that I don't have with me today. I literally wrote on the
2 top -- talking arrested at 4:36 p.m. That was the only
3 thing I wrote down.

4 THE COURT: Any other notes you have.

5 MR. MACARTHUR: I don't have them in my blue
6 sheet, which is where it would be. That suggests it's on
7 a different blue sheet.

8 THE COURT: Can you come back up and show me
9 what you are referencing is from your discussion last
10 night.

11 MR. MACARTHUR: There was a break last night.

12 THE COURT: This is last night.

13 MR. MACARTHUR: Yes.

14 THE COURT: This is for the trial.

15 MR. MACARTHUR: Part of my cross.

16 THE COURT: I'm not sure how beneficial this will
17 be for you Ms. Kollins. I'll instruct the court staff to
18 make a copy of what is represented to be the notes from
19 last night, exclusive of the lower part. Again, I don't
20 know how you benefit any way from the lower part which Mr.
21 MacArthur is representing is related to his trial prep and
22 not part of that. And from what I can see, that appears
23 to be the case.

24 Anything else.

25 MS. RHOADES: No, your Honor.

1 THE COURT: All right. Let's have the jurors.

2 We appreciate your patience. We had a matter to
3 address before we were able to bring you all present.

4 We will resume now with the questioning of
5 jurors in the primary 32 seats.

6 Mr. MacArthur.

7 MR. MACARTHUR: Thank you, Judge.

8 Ladies and gentlemen of the jury, we had some
9 matters outside that we couldn't avoid, so apologize to
10 the start late. I'll tell you this. If I can get
11 straight answers, we'll make sure you get out of here
12 today. Fair.

13 PROSPECTIVE JUROR: Fair.

14 MR. MACARTHUR: Where was I. We had been
15 talking about elements of a crime as being ingredients
16 that the State has to meet beyond a reasonable doubt.

17 We tied that in sort of with the presumption of
18 innocence, right. You start with the idea that the man
19 over there is actually innocent. That you invest yourself
20 in that position, because starting from there, the State
21 presents evidence and attempts to change your mind. If
22 they succeed, it's beyond a reasonable doubt.

23 Is there anyone now who disagrees with that premises.
24 The reason I ask that is everyone will remember that
25 yesterday I asked how many people if you had to vote now

1 would vote guilty, not guilty, and I just can't say. I
2 spent ample time on that. I won't do it again today. But
3 I do need to narrow that down.

4 Now that you have heard from the judge, you heard
5 from me. You understand these legal concepts. Is there
6 someone, as you sit there now, who regardless of what the
7 law is, in your heart, in your gut you couldn't walk away
8 from this premise and say, as he sits there now, he is not
9 guilty.

10 PROSPECTIVE JUROR: May I say something --
11 517 -- you phrased that twice, once innocent, once not
12 guilty. Those are two different things.

13 MR. MACARTHUR: Sure. That makes a good point.
14 The reason why I say back and forth is because it's the
15 presumption of innocence. And the presumption requires you
16 to assume that he is innocent until someone changes your
17 mind. The reason why I switch over to the not guilty is
18 there's not a verdict form that says guilty and innocent.
19 It says guilty and not guilty.

20 THE COURT: The other reason is because as we've
21 discussed in the instructions yesterday, it's your duty,
22 as jurors, to find the facts, apply the law the court
23 gives you and determine whether or not the Defendant is
24 guilty or not guilty of the charges the State has
25 brought.

1 PROSPECTIVE JUROR: When you say innocent and
2 not guilty, it's two different things.

3 MR. MACARTHUR: They are two very different
4 things. A person could be not proven to be guilty, but at
5 the same time not be completely innocent, right.

6 PROSPECTIVE JUROR: Correct.

7 MR. MACARTHUR: So for the purposes of this
8 communication, we know you are starting with the
9 presumption of innocence, that this person as a result
10 remains not guilty until someone changes your mind with
11 evidence beyond a reasonable doubt, right. Okay.

12 So let's test it out.

13 How many people, as you sit here now, believe him to
14 be not guilty or innocent.

15 THE COURT: As we get started today, we have a
16 lot of time at the bench when we talked about these
17 things, but I'm going to make these representations in
18 court. Your phrasing creates confusion. I know it's not
19 your intention, and I'm not believing it is.

20 MR. MACARTHUR: Thank you, Judge.

21 THE COURT: The court's humble opinion, not
22 about what you believe as you sit there today about this
23 case. Which is how that was phrased. As we talked about,
24 this is voir dire. You don't have an opinion on this
25 case.

1 The question, as properly phrased, is do you
2 understand, and of course, if there is anyone here who has
3 questions or concerns we beg to hear from you. Do you
4 understand that as the Defendant sits here today, he is
5 innocent of the charges brought against him, because there
6 has not yet been a trial and because there has not yet
7 been evidence put forward for you to weigh to determine
8 whether or not the State, who holds -- and only the State
9 who holds the burden -- to prove his guilty beyond a
10 reasonable doubt as to one of more of the charges. That
11 it is going to be your duty to receive the evidence, weigh
12 it with your fellow jurors and determine whether or not
13 the State has met their burden.

14 Is there anyone here who does not understand that
15 that is their duty. May I see by a raise of hands.

16 Is there anyone here who will not follow those
17 instructions of the court, please, again we beg you to
18 raise your hand if, in fact, that is how you feel, that
19 you would not follow those instructions.

20 Only the first 32, please.

21 I see no hands.

22 Mr. MacArthur, I think we have resolved that
23 issue. If you have further questions, that's fine. But I
24 will continue to interrupt if I believe there are
25 statements that could be confusing to the jurors about

1 what it is that is their duty as jurors and what it is we
2 are trying to accomplish with voir dire here today.

3 MR. MACARTHUR: Understood, Judge. And
4 respectfully, let me just ask, we are not the same person.
5 We don't ask the question the same way. Would you order
6 that I have -- this has been thoroughly covered and you'd
7 discourage me from asking further questions on it.

8 THE COURT: Not necessarily. But what I'll ask
9 you to do is whatever questions you have to ask to
10 complete your portion of voir dire with these individuals,
11 is that rather than them being crouched in terms of this
12 case and this particular Defendant and how they feel or
13 think about anything about this case -- as they know which
14 I've admonished them repeatedly not to do -- that you will
15 keep your questions related to general concepts of a
16 criminal trial in the Eighth Judicial District Court.

17 MR. MACARTHUR: Yes, ma'am.

18 I'll keep it short and get to the ultimate
19 question.

20 Let me ask it a different way. When I asked could
21 everybody do that, the vast majority of you raised your
22 hand. However there were 4 of you -- I believe Mr.
23 Finrock -- if I'm saying your name correctly.

24 PROSPECTIVE JUROR: Finfrock.

25 MR. MACARTHUR: I was corrected by the judge

1 after you left.

2 Several hands remain down. So here is my question to
3 people who did not raise their hands. For whatever
4 reason, you don't have to justify. Are you going to have
5 a hard time presuming this Defendant, in this case to be
6 innocent. If you do, please, leave your hand up and we'll
7 talk about it. If you don't, we'll move on.

8 You are thinking. I don't mind giving you time to
9 think.

10 PROSPECTIVE JUROR: I'll do my best, yes. I
11 will do my best to.

12 MR. MACARTHUR: Not to nit pic, but I'll nit
13 pic. You are doing your best, it's kind of like Yoda,
14 there's no try. You do it or not. This man is charged
15 with serious crimes.

16 PROSPECTIVE JUROR: Yes.

17 MR. MACARTHUR: Do you have some lingering
18 doubts that you might be able to implement the presumption
19 of innocence the way the judge says you are.

20 PROSPECTIVE JUROR: Um, I will say that, you
21 know, going back to what I think the prosecutor mentioned
22 originally, you know, like, do we know people or do we
23 have encounters with people that have been sexual
24 predators, and it's not something that you want to
25 advertise, but I have known two people that are sexual

1 predators that have been convicted. Once when I was in
2 high school.

3 The reason I didn't bring it up before is it's not --
4 I was never close friends with these people, but
5 acquaintances. But I knew them well enough to think they
6 had good character. It was in both cases shocking to find
7 out.

8 It just made me very acutely aware that anybody can
9 be a predator.

10 MR. MACARTHUR: I didn't mean to interrupt.

11 PROSPECTIVE JUROR: So I, you know, I keep that
12 in the back of my head. Like I said yesterday, sometimes
13 it's hard for me to -- when I come in here, to reach this
14 point and not one thing, but multiple things, there isn't
15 something going on there that's not --

16 MR. MACARTHUR: Untoward.

17 PROSPECTIVE JUROR: Completely illegal.

18 THE COURT: I didn't want to interrupt you Mr.
19 Finfrock. Are you done. If you have more to say, that's
20 fine.

21 PROSPECTIVE JUROR: I think that being said, yes
22 I'm going to do my best even though I genuinely want to
23 look at this person as innocent.

24 THE COURT: One of the things that was touched
25 upon in the discussion yesterday is that there is a

1 process that got us here. That process that got us here
2 does not further inform us here other than there is a
3 charging document that will be read to the jurors. The
4 court has instructed and will reinstruct now that if is a
5 charging document. It's not evidence. It's not evidence
6 of the allegations that it contains, and the ultimate
7 determination and outcome of the trial will be based on
8 the receipt of evidence here by the jurors. And the
9 thoughtful and careful and fair and impartial deliberation
10 that the jurors will undertake with the evidence as they
11 find it to be and the law the court gives when the trial
12 proceeds.

13 So, you know, it's understood there was a process
14 that got us here. It's understood that people will have
15 some understanding of that and some, perhaps, thoughts
16 about that. The question is can you and would you be able
17 to set aside that understanding of we got here somehow,
18 but my duty is to receive the evidence. My duty is to
19 hold the State to its burden. My duty is to ensure that
20 there is a fair and impartial deliberation and the outcome
21 is one that jurors unanimously agree is appropriate.

22 Do you believe you can do that.

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Mr. MacArthur, any further questions
25 you have.

1 MR. MACARTHUR: No, your Honor.

2 All right. Changing topics. Who here is
3 familiar with the term whistle blower. Generally
4 speaking, at random, what does that mean to you.

5 PROSPECTIVE JUROR: Bring something out in the
6 open you know is wrong.

7 THE COURT: Do we have the juror's name and
8 badge number.

9 PROSPECTIVE JUROR: 430.

10 MR. MACARTHUR: 430 -- has anyone here been a
11 whistle blower, where they came out and said, hey, I'm
12 part of a group that somebody is doing something they
13 shouldn't do and brought that out in the open.

14 Your badge number.

15 PROSPECTIVE JUROR: 404 -- in high school a few
16 of my friends got involved in methamphetamine and they'd
17 take me in the car and we'd go shopping. They did a drug
18 deal with me in the car. I told everybody's parents
19 because that's serious. I was 17 years old, that's
20 considered legal age in Texas. You could be arrested and
21 do time. I wasn't going to do time for my friends. I
22 would rather them get in trouble and deal with their
23 parents.

24 So I didn't mind being a tattletail at that time. I
25 tattled a few more times on her just because, you know, it

1 was my best friend since we were 7. I didn't want to see
2 her go down the wrong path. I wanted to help her.

3 MR. MACARTHUR: There was one other person.

4 PROSPECTIVE JUROR: 523 -- I had a couple of
5 experiences. I probably have had a couple more I'm not
6 thinking of now. But in high school a similar situation
7 where a student in leadership was doing things she
8 shouldn't have done. I felt like it was, one, breaking
9 the oath that they gave. I was more concerned with not
10 being safe and drinking and driving. So that was one
11 situation.

12 Another situation was -- I'm not sure about the
13 detail of the situation -- but I was concerned someone may
14 commit suicide so I called his parents.

15 MR. MACARTHUR: The second may be more of an
16 intervention.

17 PROSPECTIVE JUROR: Yeah.

18 MR. MACARTHUR: Because you two ladies are the
19 only ones that raised their hands, I'll be directing my
20 questions to you. But I want everyone in the first 32 to
21 feel comfortable raising your hands and participating.

22 Is there some difficulty with coming out with the
23 truth. What's the difficulty in being a whistle blower.

24 PROSPECTIVE JUROR: 404 -- they hate you for a
25 little bit. She wanted to literally put me through a

1 wall, so I avoided all contact for a little while. It's
2 hard but we're best friends again now.

3 MR. MACARTHUR: I'm glad to hear that. You said
4 first of all, they hate you.

5 PROSPECTIVE JUROR: Yes.

6 MR. MACARTHUR: Socially ostracized.

7 PROSPECTIVE JUROR: Pretty much.

8 MR. MACARTHUR: You said she wanted to put you
9 through a wall. So reprisal.

10 PROSPECTIVE JUROR: Yes. It was scary.

11 MR. MACARTHUR: Would you imagine that that's a
12 typical state of affairs when any time somebody is part of
13 an in group that you're supposed to be loyal to spills the
14 beans on somebody else in that in group.

15 Does that make sense to everyone else here.

16 Similar experience to you.

17 PROSPECTIVE JUROR: Similar.

18 MR. MACARTHUR: Were there ill-feelings toward
19 the person you told on.

20 PROSPECTIVE JUROR: Yes.

21 MR. MACARTHUR: Were there reprisals.

22 PROSPECTIVE JUROR: Oh, yes.

23 MR. MACARTHUR: Cast a wide net. Were there
24 reprisals.

25 PROSPECTIVE JUROR: I did have a couple of

1 people say they'd beat me up.

2 MR. MACARTHUR: Usually we hear about whistle
3 blowing in the news or from people we know, is that
4 fair.

5 What usually happens or what I would say what is the
6 typical narrative with whistle blowers. What usually
7 happens to them.

8 A person in an agency comes out and says, hey, other
9 people in this agency are doing something wrong or
10 illegal. What do we imagine usually happens to them.

11 PROSPECTIVE JUROR: 462 -- usually hear that
12 that person is in some form or fashion exercised from the
13 company, guilty or not guilty, they're phased out or
14 forced out. Snitches get stitches. They basically view
15 you -- you snitched, so you are gone.

16 MR. MACARTHUR: Sure. Not to interrupt, but
17 that could be true whether you're a member of the mob or a
18 member of AT&T, fair.

19 Does that surprise anyone. Let's talk about whether
20 that's the way it's supposed to be. Is it fair that the
21 person who's upholding the ethical line is the one who
22 losing their job.

23 PROSPECTIVE JUROR: No.

24 MR. MACARTHUR: Anybody here think that that is
25 fair. It seems like an obvious question, but, boy, if you

1 want to have a good conversation, raise your hand.

2 Clearly, if we have a whistle blower issue, then the
3 majority of people in an organization say you don't say
4 anything about that. Whether that is where you work or
5 your church or your group of friends or school, if most
6 people weren't cool with it, more people would be whistle
7 blowers, right.

8 So let's talk about should it be that way. Who are
9 the people that are most likely to come out and say what
10 is happening here is wrong. How do you feel about those
11 people.

12 PROSPECTIVE JUROR: 459 -- Perreault -- I see
13 somebody step forward and that guy is a hero. I hope he
14 doesn't get what normally happens.

15 MR. MACARTHUR: Right.

16 PROSPECTIVE JUROR: 428 -- what they do is stand
17 on principle coming forward based on what they believe.
18 Yeah, that's brave, like he said.

19 MR. MACARTHUR: Thank you.

20 Any other thoughts on that.

21 PROSPECTIVE JUROR: Whistle blowers get
22 black-listed, black-balled, then retaliated against.

23 MR. MACARTHUR: Are there politics in the court
24 house.

25 PROSPECTIVE JUROR: Absolutely.

1 MR. MACARTHUR: Just because we work in the
2 criminal justice system, people talk about things that are
3 wrong.

4 PROSPECTIVE JUROR: Yes.

5 MR. MACARTHUR: Have you seen that personally.
6 I'm not going to ask you for specifics.

7 PROSPECTIVE JUROR: Yes.

8 MR. MACARTHUR: Here is an inverse question. Why
9 don't more people come out and say, hey, something wrong
10 is happening here.

11 PROSPECTIVE JUROR: 504 -- I don't think I've
12 ever seen a successful whistle blower, somebody able to
13 come back from that. It's usually my experience that
14 getting to that point it usually ruffles feathers, even
15 though what you're doing is courageous you don't see them
16 come back to the work place.

17 MR. MACARTHUR: Rephrasing that, things don't
18 typically work out well for the whistle blower, do they.

19 PROSPECTIVE JUROR: No.

20 MR. MACARTHUR: Why are they doing it if it's
21 going to cause problems in their own life. Why in the
22 world put themselves at risk. Most people are smart
23 enough not to do that.

24 PROSPECTIVE JUROR: Me or -- just their moral
25 fiber might express the greater good.

1 MR. MACARTHUR: They might also be people that
2 don't have a strong sense of self-preservation. They just
3 lack natural fear.

4 PROSPECTIVE JUROR: True.

5 PROSPECTIVE JUROR: May I make a comment.

6 MR. MACARTHUR: Your badge number.

7 PROSPECTIVE JUROR: 364 -- just like some people
8 may feel that there are rules and regulations and laws
9 about repercussions, you're not supposed to retaliate, so
10 if someone feels they are safe to be a whistle blower.

11 MR. MACARTHUR: Takes me to the next point.
12 Before I get there the lady over here has something to
13 say.

14 PROSPECTIVE JUROR: 454 -- I think some people
15 know it is the right thing to do. That's how you -- it's
16 your job doing the right thing. I mean, if don't do it,
17 but you know it's the right thing to do, you should do
18 it.

19 MR. MACARTHUR: Thank you.

20 My next question is for you, sir, and you,
21 ma'am, the last two people.

22 MR. MACARTHUR: How is it that whistle blowers
23 get excommunicated, or exiled, or removed from the
24 organization. I mean, if they're apparently doing
25 everything they're supposed to be doing until the point

1 they come out and say, hey, other people here are doing
2 the wrong things, how is it they get eliminated. What
3 does that look like.

4 PROSPECTIVE JUROR: Typically from what I've
5 seen is it's never really done cleanly, per se. Getting
6 to an end point, they ruffle a lot of feathers and rub
7 people the wrong way. They feel here is the end point. I
8 don't care how, I'm willing to get there.

9 Because my attitude is things for the greater good
10 goes two ways, but multiple ways to get to the end.
11 Sometimes people take the direct route, which might cause
12 conflict at work, et cetera.

13 PROSPECTIVE JUROR: 454 -- can you repeat the
14 question.

15 MR. MACARTHUR: Yes.

16 Once a person becomes a whistle blower, you have
17 heard Mr. Goings earlier opine that usually what happens
18 to whistle blowers is eventually they get excommunicated
19 from the group, school, business, mob.

20 PROSPECTIVE JUROR: Fired.

21 MR. MACARTHUR: How does that happen. Is there
22 a process or predictable process by which the person goes
23 from being on the in group to being fired.

24 PROSPECTIVE JUROR: It depends on who they are
25 telling on. If it's someone high up in the company,

1 that's got pull, they can get them removed. If it's
2 somebody who is not, then it's a process to move them into
3 a position to be demoted. Just kind of takes time. It
4 might not happen right away. Just depends on who they
5 blow the whistle on.

6 PROSPECTIVE JUROR: 459 -- a lot of times in the
7 corporate world there's collateral damage. Certain
8 individuals get hurt. A lot of times the heat turns back
9 on how did you know about this and why did you sit on
10 it.

11 MR. MACARTHUR: How many people know what a
12 paper trail is. You are all awake. Sir, I don't think
13 you and I have spoken. When I say there is this whistle
14 blower, then all of a sudden there's this paper trail,
15 what am I talking about.

16 PROSPECTIVE JUROR: 513 -- some type of evidence
17 showing that they hurt that person or get that person in
18 trouble.

19 MR. MACARTHUR: Have you had a job where the
20 supervisor was unfair just to you.

21 PROSPECTIVE JUROR: Yes.

22 MR. MACARTHUR: I'm sighting example. I'm not
23 speaking specifically of this. Where everybody shows up
24 at 10 after the hour, but for some reason you are the only
25 person that gets written up for being late. You ever had

1 that situation.

2 PROSPECTIVE JUROR: Something close to that.

3 MR. MACARTHUR: You ever had a situation where
4 literally every single thing that might be characterized
5 as wrong suddenly get documents, but only against you.

6 I'm hoping if you have ever been in that situation,
7 please raise your hands if you have ever been in that kind
8 of situation.

9 Mr. Goings -- only 4 or 5 people. You are fortunate.
10 Stay where you work.

11 I'll take a slight side step to the right. Coercion,
12 do people here believe that other people may say something
13 differently or not say anything at all because of a
14 threat. Raise hand if you know that's a thing.

15 Yesterday the State spent a decent amount of time
16 asking you if you believe that a young person can be
17 coerced by an older person not to say anything. Remember
18 that question. Certainly everybody understood.

19 Does that also apply to other people. Not just a
20 youthful person. Can we imagine a which in which that
21 same youthful person is encouraged to say something
22 because of a threat. Is that clear to everyone.

23 Do we live in a world where you might keep something
24 to yourself because you are afraid. But we also live in a
25 world where maybe what you say is because you were afraid.

1 Does that make sense. Does that cut both ways.

2 Okay. We understand there is two sides of that coin,
3 but the State only covered one. Yeah. Okay.

4 All right. Back to the process. Only some of you
5 have ever been prior jurors. For the rest of you you
6 think this works solely on what you see on TV or something
7 similar. Sometimes people are surprise it's not. For the
8 next question I just need you to understand you are doing
9 voir dire right now, questioning. Once we've selected a
10 jury, you hear opening argument from the State and from
11 the defense, then it's witness, after witness. We get to
12 take turns going back and forth with questioning a
13 witness. Everybody with me so far.

14 After all the witnesses are done with the State, the
15 defense has an opportunity to do same thing. Again, we go
16 back and forth. Still with me.

17 Okay. Then at the end the State gets to do a closing
18 argument. Then the defense gets to do a closing argument.
19 But then, because the State has the burden of proof, they
20 get to argue again. So based on this time line you are
21 going to hear a lot of evidence from State's witnesses.
22 Day 1, day 2, day 3, however long it takes for them to
23 get through their witnesses. Everybody understand that.

24 There won't really be any counter witnesses from the
25 defense, until they're done. Understood. And that may

1 take a week. Is that fair.

2 Does everyone here have the ability to
3 compartmentalize the information, not make a decision
4 until you have heard all of the evidence from both sides.

5 Is there anyone here that I have to be worried about
6 might hear something so damning from a State's witness --
7 let's assume it's even credible. I believe that person.
8 It certainly sounds damning. That your mind is made up,
9 that you are just waiting to hit the guilty button. Is
10 there anybody I need to be worried that that's going to
11 happen. That you can't keep it together until you've
12 heard from the defense. Anyone.

13 All right. Seeing no hands, I'll move on.

14 I don't like this section, but other people do.
15 Let's talk about lawyers. Anybody here who's had a bad
16 experience because of lawyers. Apparently nobody has been
17 divorced. Anybody else ever had their life complicated or
18 made unpleasant by some sort of interaction with
19 lawyers.

20 We're you the lawyer that caused that problem.

21 PROSPECTIVE JUROR: I would like to think not.

22 MR. MACARTHUR: Fair enough. What are some
23 reasons people don't like lawyers.

24 Your badge number.

25 PROSPECTIVE JUROR: 364.

1 MR. MACARTHUR: Can you give us some reasons why
2 people might not like lawyers.

3 THE COURT: I don't know that we have time for
4 that. Go ahead.

5 PROSPECTIVE JUROR: Sometimes their approach and
6 how they treat a witness.

7 MR. MACARTHUR: Might have a little bit of an
8 air of intimidation about them. Sorry about that.

9 Sir.

10 PROSPECTIVE JUROR: Scott Ward, 312.

11 MR. MACARTHUR: If you're anything like me, when
12 you first got out of law school, your email box was filed
13 with lawyers jokes.

14 Can you give me some of the reasons why people don't
15 like and/or trust lawyers.

16 PROSPECTIVE JUROR: I suppose commonly sometimes
17 spin information, try to get you to think one thing
18 regardless of the truth. Arrogance perhaps come into
19 play.

20 MR. MACARTHUR: Is there anyone here who thinks
21 that because -- well, let me start more generally.

22 Is there anyone here who thinks that because we're
23 lawyers that the only thing that matters is that we win.
24 That truth is completely irrelevant to the process. You
25 guys are not impressing me.

1 Anybody here that thinks because we're lawyers the
2 only thing that's important to us is that we win, not that
3 the facts are important.

4 PROSPECTIVE JUROR: That is your job.

5 MR. MACARTHUR: Anybody think that's our job.

6 I'm not here to try to defuse you of that
7 notion. Would it be fair for me to assume that you expect
8 us only to give you truthful information or truthful
9 evidence from both sides. And that if there was evidence
10 that one side wasn't playing fair that you might hold that
11 against that side.

12 Mr. Goings is the only one. Nobody else would be
13 offended.

14 Let me do it by a show of hands. How many people
15 would hold it against a party if they thought the lawyers
16 were being dishonest. I'm curious to talk to people that
17 wouldn't be offended.

18 PROSPECTIVE JUROR: 448.

19 MR. MACARTHUR: Why wouldn't you be offended if
20 you thought one side was being shifted.

21 PROSPECTIVE JUROR: I'm not sure. I'd have to
22 know what's going on before I could really say.

23 MR. MACARTHUR: Fair. I don't want to assume.
24 That's fair.

25 But let me ask you this way. Nobody else is inside